**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-95-5/18-T

Date: 24 March 2016

Original: English

**IN THE TRIAL CHAMBER**

**Before:** **Judge O-Gon Kwon, Presiding Judge**
**Judge Howard Morrison**
**Judge Melville Baird**
**Judge Flavia Lattanzi, Reserve Judge**

**Registrar:** **Mr. John Hocking**

**Judgement of:** **24 March 2016**

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

# PUBLIC REDACTED VERSION OF JUDGEMENT ISSUED ON 24 MARCH 2016

## VOLUME III OF IV

**Office of the Prosecutor**

Mr. Alan Tieger
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**The Accused**

Mr. Radovan Karadžić

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## B. SARAJEVO COMPONENT

### 1. Facts

#### a. Chronology of events in Sarajevo

3526. In this section of the Judgement the Chamber will discuss the situation in the city of Sarajevo and the relevant events that occurred therein during the conflict in BiH. The section also refers to various shelling and sniping incidents, including the casualties resulting therefrom. Some of these are specifically charged in the Indictment under Schedules F and G while others are not. Those that are listed in Schedules F and G are discussed in later parts of the Judgement in more detail. The Chamber notes that shelling and sniping incidents not listed in Schedules F and G of the Indictment are only relevant to the pattern and the nature of the campaign.[11204]

3527. The city of Sarajevo, capital of BiH, lies in a valley, stretching from east to west along both banks of Miljacka River.[11205] Hills and mountains overlook Sarajevo to the south and the north; from these elevations, it is possible to have unobstructed and clear views of the distinguishable features of the city and to see into its streets.[11206]

3528. In 1991, Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaš, Hadžići, and Trnovo.[11207] According to the 1991 census, Sarajevo had 527,049 inhabitants of whom approximately 49% were Bosnian Muslims, 30% were Bosnian Serbs, and 7% were Bosnian Croats.[11208] Before the conflict, it was the largest and most important political, cultural, industrial, and commercial centre of BiH.[11209] Citizens of Sarajevo took pride in the city's diversity, referring to themselves as "Sarajlijas" or Sarajevans.[11210] Sarajevo was well-known as a multi-ethnic, multi-religious city,

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11204 Hearing, T. 5479–5481 (19 July 2010); T. 7670–7672 (11 October 2010); T. 10932 (31 January 2011). *See also* Prosecution Rule 73 *bis* Submission, para. 16 (wherein the Prosecution stated that it "will not present evidence in order to secure a conviction in respect of any crime sites or incidents not listed in the Schedules to the Indictment).

11205 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 17; Aernout van Lynden, T. 2398 (19 May 2010); P5926 (Map of Sarajevo); Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4356; David Harland, T. 2017–2018 (6 May 2010); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 14.

11206 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 17, 46; Aernout van Lynden, T. 2398 (19 May 2010); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), p. 26 (under seal).

11207 *See* Adjudicated Fact 2.

11208 P5964 (Census data for BiH by municipality in 1971, 1981, and 1991, April 1995), e-court p. 2. *See also* Adjudicated Fact 2885.

11209 D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), para. 176. *See also* Adjudicated Fact 1.

11210 Vitomir Žepinić, T. 33651 (14 February 2013); P2007 (BBC news report re Sarajevo, with transcript).

with a long history of religious and cultural tolerance.[11211] The great majority of the urban areas of Sarajevo were ethnically mixed.[11212]

3529. A number of important JNA installations, including the Viktor Bubanj Barracks, the Maršal Tito Barracks, the Jusuf Džonlić Barracks, and the Jajce Barracks, were located in Sarajevo.[11213] The Command of the 2nd Military District of the JNA was located in Bistrik, at one end of Dobrovoljačka street, across from the Gavrilo Princip Bridge.[11214]

3530. Starting in September 1991, various JNA units withdrew from Slovenia and parts of Croatia and subsequently assumed position in barracks throughout BiH, including those located in and around Sarajevo; the retreating JNA units brought a significant amount of weaponry and ammunition.[11215] The Bosnian Muslim leadership did not look at this development favourably.[11216]

3531. While nationalist propaganda increased during the course of 1991,[11217] up until late 1991, the inhabitants of Sarajevo lived relatively peacefully together.[11218] Inter-ethnic tensions started to appear in late 1991 and gradually escalated.[11219]

3532. In the early months of 1992, the JNA, which by then had become a Serb-dominated army, began distributing weaponry and ammunition to Bosnian Serbs at the barracks around Sarajevo.[11220]

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11211 Adjudicated Fact 2776.

11212 David Harland, T. 2107–2108 (7 May 2010); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), p. 72 (under seal).

11213 KDZ310, T. 9201 (29 November 2010); P950 (Agreement on withdrawal of JNA from BiH), p. 1; John Wilson, T. 3919 (21 June 2010), T. 4035 (22 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 30.

11214 KDZ310, T. 9201 (29 November 2010); D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 4; D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 5.

11215 Dušan Kovačević, T. 39643 (10 June 2013); P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 10; KDZ310, T. 9200–9201 (29 November 2010); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 4; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25271, 25341; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 30. *See also* Section IV.A.1.c: Sarajevo area.

11216 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25341.

11217 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 19; KDZ310, T. 9172–9179 (29 November 2010); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 6; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 4.

11218 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 15; P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 3; P2007 (BBC news report re Sarajevo, with transcript); D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 4.

11219 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 17–18; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25249; D2443 (Witness statement of Željka Malinović dated 9 November 2012), paras. 3, 6; D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), para. 38.

11220 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 10; KDZ310, T. 9201–9203 (29 November 2010); Colm Doyle, T. 2848, 2864–2865, 2890 (27 May 2010). On 20 March 1992, the JNA General Staff was informed that in Sarajevo, 300 automatic rifles had been distributed by the JNA to retired officers and that another 100 individuals would be armed in a matter of days. P979 (Report from JNA 2nd Military District to JNA General Staff, 20 March 1992), p. 6. *See also* Section IV.A.1.c: Sarajevo area. As

In the same period, Bosnian Muslims in Sarajevo also armed themselves, though to a lesser extent.[11221]

3533. On or about 1 March 1992, during a Serb wedding ceremony held at a historic Orthodox Church located in the old part of Sarajevo, Ramiz Delalić and Suad Šabović, two Bosnian Muslims, shot and killed the father of the bridegroom who was carrying a Serb flag and wounded a priest.[11222] Soon after, on the orders of Rajko Dukić, the President of the SDS Executive Board, barricades were erected at strategic locations in and around Sarajevo by armed Serbs in civilian clothes and black masks.[11223] Muslims for their part erected barricades in front of the Assembly building later that evening.[11224] The barricades blocked all passages in and out of the city and cut off parts of the town.[11225] Soon after the erection of the barricades, Momčilo Mandić asked Čedomir Kljajić, the Chief of Police Affairs in Sarajevo, to accompany him to the office of the Accused and the headquarters of the SDS, located in the Holiday Inn at the time.[11226] After arriving at the Holiday Inn, Kljajić observed that Dukić was issuing instructions to those manning the Serb

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mentioned above, the Presidency of SRBiH immediately denounced the JNA's mobilisation order of 28 September 1991 and most Bosnian Croat and Bosnian Muslim reservists did not respond. *See* paras. 45, 52.

11221 Colm Doyle, T. 2737, 2739–2740 (26 May 2010), T. 2889–2890 (27 May 2010); D4865 (Report of BiH Ministry of Defence, 24 December 1999); D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 2; D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 20.

11222 D385 (SRBiH MUP Report on Sarajevo, 13 March 1992), p. 2; Momčilo Mandić, T. 4877 (8 July 2010); Momčilo Mandić, C3 (Transcript from *Prosecutor v. Stanišić and Župljanin*), T. 9692–9693; D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), para. 58; P1940 (Interview with Radovan Karadžić from Naša Borba entitled "Yugoslavia or Three Bosnians", 16 March 1992), p. 1; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25333–25334; P924 (ECMM report, 1–2 March 1992), p. 1; D214 (Minutes of 56th SRBiH Presidency session, 2 March 1992), p. 2; D215 (Excerpts from Ljubo Grcković's diary), p. 118; Dragan Šojić, T. 31768 (19 December 2012); D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 7; Martin Bell, T. 9856 (15 December 2010); D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 8; Mirsad Kučanin, P17 (Transcript from *Prosecutor v. S. Milošević*), T. 28972; P1353 (Shorthand record of 10th session of SerBiH Assembly, 11 March 1992), e-court p. 6; D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), para. 191.

11223 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 6; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25264; P920 (ECMM report, 13 March 1992), p. 1; Colm Doyle, T. 2848–2849, 2854–2855 (27 May 2010); D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), para. 59; Vitomir Žepinić, T. 33611 (13 February 2013); D2443 (Witness statement of Željka Malinović dated 9 November 2012), para. 4; D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), para. 47; D3070 (JNA 2nd Military District report, 12 March 1992), p. 3; P2444 (Witness statement of KDZ354 dated 5 February 2011), para. 4 (under seal). *See also* Adjudicated Fact 6. On Serb barricades, *see* Section IV.A.1.C: Sarajevo area.

11224 P5612 (Intercept of conversation between Mićo Stanišić and Rajko Dukić, 2 March 1992), p. 2; D2443 (Witness statement of Željka Malinović dated 9 November 2012), para. 4; D3070 (JNA 2nd Military District report, 12 March 1992), p. 3.

11225 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25338–25340; P924 (ECMM report, 1–2 March 1992), p. 1.

11226 P6468 (Excerpts from Čedomir Kljajić's interview with OTP), e-court p. 2; Čedomir Kljajić, T. 42197–42198 (30 July 2013); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 19, 21; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 25; P927 (Aerial photograph of Sarajevo marked by Aernout van Lynden); Aernout van Lynden, T. 2393 (19 May 2010). During the early months of 1992, the Holiday Inn also hosted a number of foreign journalists. *See* Martin Bell, T. 9810 (14 December 2010).

barricades via the telephone.[11227] In the early afternoon, Serbs who were manning a barricade near the main entrance to the city came under gunfire from a nearby building.[11228] When Colm Doyle, the head of the ECMM in Sarajevo,[11229] approached one of the Serb barricades and asked for it to be dismantled, he was told that the barricade would be dismantled only on the orders of the Accused.[11230] At another barricade, while negotiating the passage of ECMM monitors to the airport, Doyle came under Serb gunfire.[11231] During the night of 1 March 1992, there was considerable shooting in the city and as a result, three people were killed.[11232]

3534. The following day, the SDS leadership formally demanded that the BiH government (i) arrest the perpetrators of the killing of the Serb at the wedding ceremony;[11233] (ii) divide Sarajevo RTV into separate Muslim, Serb, and Croat channels and crack down on the Sarajevo-based broadcaster JUTEL; (iii) stop seeking international recognition for BiH until such time that all three parties reach agreement with respect to the constitutional arrangement of BiH; (iv) order an immediate halt to the media campaign which describes the independence and sovereignty of BiH as a *fait accompli*; (v) urgently resume participation in the Peace Conference on Yugoslavia, under the auspices of the EC;[11234] (vi) immediately effect personnel changes in the MUP so as to comply with the inter-party agreement on the division of power; (vii) order MUP to avoid violent confrontation with Bosnian Serbs, in particular those manning the barricades; and (viii) dissolve the BiH Presidency Crisis Staff headed by Ejup Ganić.[11235] Later that day, Plavšić instructed Velibor Ostojić, the Minister of Information of BiH, to prevent confrontation at the barricades as negotiations were underway.[11236]

3535. On 2 March 1992, in an intercepted telephone conversation, Dukić informed Mićo Stanišić that he and Plavšić had spoken to Čengić and Izetbegović, respectively, about the Muslim

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11227 Čedomir Kljajić, T. 42199 (30 July 2013).

11228 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25265.

11229 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25248.

11230 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25267–25268, 25341; P924 (ECMM report, 1–2 March 1992), e-court p. 2; Colm Doyle, T. 2659–2660 (21 May 2010), T. 2695 (26 May 2010).

11231 Colm Doyle, T. 2848, 2861 (27 May 2010).

11232 P924 (ECMM report, 1–2 March 1992), e-court p. 1.

11233 Žepinić stated that Delalić was eventually arrested by the MUP and that he told the crime inspectors that the killing had been ordered by Izetbegović. Žepinić believed Delalić's claim, particularly after Delalić was released and no charges were filed against him. *See* D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), para. 58.

11234 On EC Peace Conference on Yugoslavia, *see* Section II.E.1.

11235 P5729 (Intercept of conversation between Biljana Plavšić, Rajko Dukić, and Radovan Karadžić, 2 March 1992), pp. 1–2; P924 (ECMM report, 1–2 March 1992), p. 1; D214 (Minutes of 56th SRBiH Presidency session, 2 March 1992), pp. 2–3; Colm Doyle, T. 2701 (26 May 2010); P5553 (Conditions for Negotiation of the Crisis Staff of the Serb People in BiH, 2 March 1992), pp. 1–2.

11236 P5726 (Intercept of conversation between Rajko Dukić, Biljana Plavšić, Ostojić, and Čengić, 2 March 1992), pp. 2, 4.

barricades in front of the Assembly building; Dukić then told Stanišić that Serb barricades in Sarajevo should not be removed so long as the Muslim barricades remained in place.[11237] In the same conversation, Stanišić informed Dukić that he had visited all the check-points and commented that "Sarajevo is ours [...] a hundred percent".[11238] Dukić replied to this by saying "Mićo, we have done a big thing."[11239]

3536. On the same day, a special meeting of the BiH Presidency was convened during which it was decided that many of the demands made by the SDS should be met.[11240] The Presidency also called for the barricades to be dismantled and for citizens to return to everyday life.[11241] After the special meeting of the BiH Presidency, Plavšić, Franjo Boras, the Bosnian Croat member of BiH Presidency, and Vitomir Žepinić, the Deputy MUP Minister, spoke with Dukić and convinced him to make arrangements for the removal of the Serb barricades.[11242] On 2 March 1992, more people were killed or injured in Sarajevo, some of them in close vicinity of the barricades.[11243]

3537. On 3 March 1992, the decision of the BiH Presidency on the demands of the SDS was published; shortly after, the Serb barricades began to be dismantled.[11244] On the same day, however, upon receiving reports that Arkan's and Šešelj's men were on their way from Pale to Sarajevo, Bosnian Muslims set up barricades in predominantly Muslim inhabited parts of Sarajevo.[11245] Later that day, the Accused and Izetbegović agreed to meet that same night with the 2nd Military District Commander, Lieutenant-General Milutin Kukanjac, in order to diffuse the unfolding crisis.[11246] In this meeting, based on Kukanjac's proposal, it was agreed that in order to

11237 P5612 (Intercept of conversation between Mićo Stanišić and Rajko Dukić, 2 March 1992), p. 2.

11238 P5612 (Intercept of conversation between Mićo Stanišić and Rajko Dukić, 2 March 1992), pp. 2–3.

11239 P5612 (Intercept of conversation between Mićo Stanišić and Rajko Dukić, 2 March 1992), p. 3.

11240 P924 (ECMM report, 1–2 March 1992), e-court pp. 2, 4–5; D214 (Minutes of 56th SRBiH Presidency session, 2 March 1992), p. 4. The BiH Presidency refused to accept the proposed division of Sarajevo RTV. P5602 (Intercept of conversation between Jovanović, Stanišić, and Radovan Karadžić, 2 March 1992), pp. 3–4.

11241 D214 (Minutes of 56th SRBiH Presidency session, 2 March 1992), p. 4; P924 (ECMM report, 1–2 March 1992), e-court pp. 2, 4–5; D3070 (JNA 2nd Military District report, 12 March 1992), p. 3.

11242 D2928 (Intercept of conversation between Biljana Plavšić, Rajko Dukić, Franjo Boras, and Vitomir Žepinić, 2 March 1992).

11243 D385 (SRBiH MUP Report on Sarajevo, 13 March 1992), pp. 2–4; Momčilo Mandić, T. 4886–4887 (8 July 2010); P5602 (Intercept of conversation between Jovanović, Stanišić, and Radovan Karadžić, 2 March 1992), p. 2; P5725 (Intercepts of conversations between (i) Rajko Dukić and "Dragan" and (ii) Rajko Dukić and Biljana Plavšić, 2 March 1992), p. 1.

11244 P924 (ECMM report, 1–2 March 1992), e-court p. 3.

11245 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25269; Colm Doyle, T. 2713 (26 May 2010); P5605 (Intercept of conversation between Radovan Karadžić, Goran Milić, Alija Izetbegović, and an unidentified woman, 3 March 1992), p. 6; D4522 (Intercept of conversation between Radovan Karadžić and Todor Dutina, 3 March 1992), e-court p. 1. *See also* Adjudicated Fact 6.

11246 P5605 (Intercept of conversation between Radovan Karadžić, Goran Milić, Alija Izetbegović, and an unidentified woman, 3 March 1992), pp. 10–14; D1523 (Notes of meeting between Cyrus Vance and Hans-Dietrich Genscher, 8 March 1992), e-court pp. 4–5 (under seal).

control the situation, mixed units, involving Bosnian Muslims, Bosnian Serbs, and JNA troops would patrol Sarajevo.[11247] The following day, Muslim barricades were dismantled.[11248]

3538. On 20 March 1992, representatives of the SDA concluded that division of Sarajevo RTV into ethnic channels as well as any appointment of non-Muslims to the posts of general manager and editor-in-chief of Sarajevo RTV would run contrary to the interests of Bosnian Muslims.[11249]

3539. Around the same time, Serb units began moving artillery onto the hills around Sarajevo.[11250] Bosnian Muslims and Bosnian Serbs once again set up barricades in and around Sarajevo, inhibiting the movement of the population.[11251]

3540. At the end of March or the beginning of April 1992, JNA forces took control of Sarajevo airport and began using it exclusively to move JNA personnel and their families out of BiH.[11252] By this time, the activities of JNA personnel in the barracks contributed to the tensions.[11253] In early April 1992, residents of Sarajevo demonstrated for peace in large numbers in front of the Assembly building.[11254] However, during the protest they came under sniper fire which was said to have come from the direction of Holiday Inn.[11255]

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11247 D3070 (JNA 2nd Military District report, 12 March 1992), pp. 3–4; Martin Bell, T. 9813 (14 December 2010).

11248 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25270; Colm Doyle, T. 2713 (26 May 2010). After these events, people in Sarajevo organised and armed themselves in order to guard their homes. *See* D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 6.

11249 D213 (SDA letter re Sarajevo TV personnel changes, 20 March 1992).

11250 Herbert Okun, T. 1729 (27 April 2010).

11251 D2540 (Witness statement of Goran Sikiraš dated 2 December 2012), para. 8; P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 27–28; D2443 (Witness statement of Željka Malinović dated 9 November 2012), para. 5.

11252 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25273, 25344; D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), e-court p. 3. *See also* Adjudicated Fact 2778.

11253 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 30. In November 1991, Jure Pelivan, the Prime Minister of BiH, informed Doyle of his serious concerns about JNA involvement in illicit transfers of armament into BiH and characterised the build-up of JNA forces in BiH territory as a "military occupation". P946 (ECMM report re meeting with Prime Minister Pelivan, 27 November 1991). In March 1992, BiH Deputy Prime Minister, Rusmir Mahmutčehajić announced that after the declaration of independence by BiH, the JNA would be viewed as an occupation force. *See* D3070 (JNA 2nd Military District report, 12 March 1992), p. 5.

11254 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 9; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 19; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 21; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 11; D2538 (Witness statement of Milan Pejić dated 2 December 2012), para. 11; D3065 (Witness statement of Aleksandar Vasiljević dated 26 February 2013), paras. 181–182.

11255 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 9; Colm Doyle, T. 2968–2969 (28 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 21; D3065 (Witness statement of Aleksandar Vasiljević dated 26 February 2013), paras. 181–182. The evidence on the identity of those who targeted the protesters with gunfire is inconsistent.

3541. During the night of 4 April 1992, Bosnian Muslim units attacked and took control of the MUP building in Sarajevo, expelling the Bosnian Serb employees.[11256] Soon after, BiH police and TO forces surrounded the 2nd District Command building complex and the Sarajevo Military Hospital which was at the time run by the JNA.[11257] Around the same date, Bosnian Muslims began attacking JNA forces and installations in Sarajevo.[11258] On 6 April 1992, extensive gunfire erupted, with each side accusing the other of having started the hostilities.[11259] Armed Muslims detained and mistreated Žepinić on several occasions, prompting him to eventually leave for Belgrade.[11260] A number of Serbs had their houses searched and ransacked, were mistreated by armed Bosnian Muslim units, faced harassment at their workplace, were purged from employment, or were prevented from entering and departing Sarajevo.[11261] Following these events, some Serb families left for parts of Sarajevo where Serbs were in the majority while others moved to Pale.[11262] Around the same period, a large number of Bosnian Muslim civilians began moving into areas of Sarajevo which were under the control of the BiH government.[11263]

3542. By 10 April 1992, the security situation in Sarajevo had deteriorated; the command of the 2nd Military District reported that mortar fire had again been directed against features in the city and that all movements and all roads to the city were being controlled by Green Berets, armed civilians, and BiH MUP forces.[11264] On 12 April 1992, the leaders of all three parties agreed to an immediate and total cease-fire in BiH, including in Sarajevo.[11265] They also agreed that Bosnian Serbs should

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11256 D396 (Announcement of SerBiH MUP, 5 April 1992), p. 1; Momčilo Mandić, T. 4926 (8 July 2010). *See also* D2538 (Witness statement of Milan Pejić dated 2 December 2012), para. 11.

11257 D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), para. 8; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 27; Milan Mandilović, T. 5366 (16 July 2010), T. 5397–5398 (19 July 2010); D495 (JNA 2nd Military District combat report, 21 April 1992), p. 2; D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), para. 47.

11258 D495 (JNA 2nd Military District combat report, 21 April 1992), pp. 1–4; P6170 (Transcript of conversation between Branko Kostić, Alija Izetbegović, and Blagoje Adžić, 26 April 1992), pp. 18–19.

11259 Adjudicated Fact 7.

11260 D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), paras. 72–73; Martin Bell, T. 9857 (15 December 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 61.

11261 D2443 (Witness statement of Željka Malinović dated 9 November 2012), paras. 8–9, 22–23; D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), para. 16; D1400 (SRNA news report, 11 April 1992); Hajrudin Karić, T. 15320–15321 (23 June 2011); D396 (Announcement of SerBiH MUP, 5 April 1992), e-court p. 1; D447 (SerBiH MUP, Analysis of functioning of the MUP, July 1992), e-court p. 11; D2538 (Witness statement of Milan Pejić dated 2 December 2012), para. 10; D3138 (Witness statement of Mirko Šošić dated 17 March 2013), paras. 6–7; Mirko Šošić, T. 35759–35760 (21 March 2013).

11262 D2443 (Witness statement of Željka Malinović dated 9 November 2012), paras. 8, 12; D8 (SRNA news report, 10 April 1992).

11263 P2444 (Witness statement of KDZ354 dated 5 February 2011), para. 22 (under seal); Bakir Nakaš, T. 6687–6688 (14 September 2010).

11264 P925 (JNA 2nd Military District combat report, 10 April 1992), pp. 2–3.

11265 P947 (Cease-fire Agreement, 12 April 1992); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25283–25284. *See also* para. 329.

have a greater role with respect to Sarajevo RTV broadcasts.[11266] The following day, however, during a meeting with Doyle and Sarajevo RTV management, Bosnian Serb representatives claimed that the agreement concerning Sarajevo RTV essentially required that all the assets which belonged to the station be divided between the three ethnic groups.[11267] As a result, the meeting did not lead to any progress.[11268] The next day, Serbs from Pale warned the employees at Sarajevo RTV that if the station did not get off the air, it would be targeted.[11269] Doyle, having been informed of this threat, immediately contacted the Accused who then assured him that this attack would not take place.[11270] Shortly after, however, mortar fire targeted the Sarajevo RTV building, killing a number of people.[11271] The Accused later admitted to Doyle that the bombing had been carried out by Bosnian Serbs but insisted that the attack did not have his permission.[11272]

3543. On 16 April 1992, the Accused told Herbert Okun, who was an adviser to the Special Envoy of the Secretary General at the time,[11273] that the situation in Sarajevo was urgent and that people were fighting because the ethnic groups could not and did not want to live together.[11274] Around the same time, the JNA's 216th Mountain Brigade was relocated to Grbavica in anticipation of the withdrawal of JNA units from the barracks in the city.[11275] In the preceding months, on the basis of Kukanjac's directives, the JNA had already moved most of its heavy weaponry, ammunition and explosives from Sarajevo to Serb-held positions on the elevations outside the city.[11276]

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11266 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25277; Colm Doyle, T. 2683 (21 May 2010).

11267 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25277–25278; Colm Doyle, T. 2683–2684 (21 May 2010). A month earlier, during an exchange with Izetbegović in the presence of Cutileiro, the Accused stated that by ignoring the Bosnian Serb perspective, Sarajevo RTV had caused further deterioration of the situation; the Accused subsequently reiterated the SDS demand that there be a separate TV channel for each ethnic group in BiH. D1284 (Handwritten notes of meetings attended by Radovan Karadžić in relation to Conference on BiH, February and March 1992), p. 25.

11268 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25278.

11269 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25278, 25348; Colm Doyle, T. 2678 (21 May 2010).

11270 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25278, 25348; Colm Doyle, T. 2678 (21 May 2010).

11271 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25278–25279; Colm Doyle, T. 2678 (21 May 2010), T. 2728, 2736 (26 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 101. These killings are not charged in the Indictment.

11272 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25279; Colm Doyle, T. 2678–2680 (21 May 2010). By contrast, in a letter addressed to the directors of the prominent media outlets in Sarajevo, including Sarajevo RTV and the Oslobođenje newspaper, Mićo Stanišić denied that Bosnian Serbs bore any responsibility for the attack on Sarajevo RTV and instead attributed the attack to the Green Berets. D4272 (Letter from Mićo Stanišić to the BiH media, 18 April 1992), pp. 1–2.

11273 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4139.

11274 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4174, 4205.

11275 D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 4, 14; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 22; D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 13.

11276 P979 (Report from JNA 2nd Military District to JNA General Staff, 20 March 1992), p. 9; D239 (Report of 17th Corps, 3 April 1992), p. 2; D236 (JNA 4th Corps Report, 7 May 1992), p. 2; D3671 (Witness statement of Dušan

3544. On 20 April 1992, Kukanjac reported that BiH MUP and TO forces had made specific plans to attack JNA installations in Sarajevo.[11277] On the same day, SerBiH Prime Minister Branko Đerić prohibited Bosnian Serb units from firing heavy artillery at the city unless the SerBiH Minister of Defence authorised such fire due to "exceptional conditions".[11278] Despite this order, Serbs engaged in the shelling of Sarajevo.[11279] Two days after Đerić's order concerning the use of heavy artillery and the day before his planned meeting with Carrington, Cutileiro, and Izetbegović, the Accused issued his so-called "peace platform".[11280] With this document, the Accused proposed, amongst other things, (i) an unconditional and immediate cease-fire; (ii) the continuation of the EC Peace Conference on Yugoslavia; (iii) prioritisation of drawing of maps of Sarajevo and the constituent states; and (iv) clarification of the role of the JNA in BiH.[11281]

3545. On 25 April 1992, after giving Martin Bell, a BBC war correspondent,[11282] a tour of the frontlines in Trebević, the Accused stated: "If we didn't have hope for political solutions we would already free Sarajevo".[11283] In late April 1992, Bosnian Serbs, backed by the JNA, again shelled various neighbourhoods in and around the city.[11284] At the same time, armed Serb units, supported by JNA tanks, attacked Muslim neighbourhoods around the airport, forcing the inhabitants of the affected areas to seek refuge in Sarajevo.[11285]

3546. Around the same period, Hasan Efendić, the Commander of the BiH TO, ordered his forces to capture weapon and ammunition depots in BiH territory, blockade the JNA barracks, and capture JNA personnel.[11286] Soon after, Bosnian Muslims blockaded the JNA barracks and installations in Sarajevo, including the complex in Bistrik where Kukanjac and his entire staff, numbering 400 persons, were still stationed.[11287] By the end of April 1992, Bosnian Muslim and Bosnian Serb

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Kovačević dated 7 June 2013), para. 47; Dušan Kovačević, T. 39643 (10 June 2013); D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), p. 2.

11277 D3069 (JNA 2nd Military District report, 20 April 1992), p. 1. *See also* D4636 (Report of the Command of the 2nd Military District, 22 April 1992), p. 2.

11278 D219 (Order by Branko Đerić re artillery ban, 20 April 1992). The Chamber notes that in the English translation of D219, the surname "Đerić" has been mistakenly transcribed as "Ćerić".

11279 Colm Doyle, T. 2772 (26 May 2010).

11280 D220 (Radovan Karadžić's Peace Platform, 22 April 1992).

11281 D220 (Radovan Karadžić's Peace Platform, 22 April 1992).

11282 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 3.

11283 P1997 (BBC news report re interview with Radovan Karadžić at Trebević, with transcript); Martin Bell, T. 9769–9770 (14 December 2010).

11284 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 9; P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), para. 3; Colm Doyle, T. 2665 (21 May 2010); P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992), para. 4; Herbert Okun, T. 1634 (26 April 2010), T. 1729 (27 April 1992), T. 1781–1782 (28 April 2010).

11285 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 64. *See also* Section IV.1.1.c.ii: Ilidža.

11286 D222 (TO directive, 23 April 1992), p. 2; D332 (Order of TO Sarajevo, 29 April 1992).

11287 Colm Doyle, T. 2752, 2791 (26 May 2010); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25368; P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), para. 3; D217 (Excerpt from

military formations as well as criminal bands were engaged in fierce clashes in the city; the shelling and sniping activities by both sides also increased exponentially.[11288] The fighting ebbed somewhat when Lord Carrington arrived in the city to broker a cease-fire.[11289]

3547. On 2 May 1992, in a letter to Doyle, Đerić indicated that given the attacks launched by the BiH TO, the Bosnian Serbs were unwilling to remove heavy artillery from around Sarajevo and threatened to take possession of radio and television relays which were being used by broadcasters from the Muslim side to propagate "informative terror".[11290]

3548. On the same day around noon, Green Berets and HOS units attacked the JNA social centre in downtown Sarajevo, seriously wounding its director.[11291] Subsequently, units from the 65th Motorised Protection Regiment of the JNA were dispatched to the social centre in order to evacuate the JNA personnel there, some of whom were wounded.[11292] However, these units were ambushed by Bosnian Muslims.[11293] An armoured battalion from Grbavica as well as an anti-sabotage detachment, which had been hitherto securing the Military Hospital, were dispatched to rescue the ambushed units but they too were attacked on their way.[11294]

3549. During the evening of 2 May 1992, after arriving from Lisbon, Izetbegović, his daughter, and his bodyguard were taken into custody by the JNA at the Sarajevo airport and taken to the

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General MacKenzie's book entitled "The Road to Sarajevo"), e-court p. 3; D236 (JNA 4th Corps Report, 7 May 1992), p. 1; John Wilson, T. 4007 (21 June 2010); D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 14.

11288 Milan Mandilović, T. 5379 (16 July 2010); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25273; Colm Doyle, T. 2720 (26 May 2010), 2928 (28 May 2010); Barko Zečević, T. 12152 (22 February 2011); D495 (JNA 2nd Military District combat report, 21 April 1992), p. 1; D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), e-court pp. 1, 4; D4636 (Report of the Command of the 2nd Military District, 22 April 1992), pp. 1–2; D920 (Intercept of conversation between Radovan Karadžić and Radovan Pejić, 23 April 1992); D917 (BBC news report re Sarajevo, with transcript); D918 (BBC news report re Sarajevo, with transcript); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 33, 61; Martin Bell, T. 9802, 9815–9816, 9818–9819, 9827, 9829 (14 December 2010), 9930 (15 December 2010); John Wilson, T. 3962, 4004–4005 (21 June 2010). On 22 April 1992, Alen Gičević, a resident of Sarajevo at the time, was injured by a mortar shell which landed near his home at Džidžikovac street in Sarajevo's centre. *See* P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 9.

11289 Martin Bell, T. 9835 (14 December 2010); P2025 (BBC news report re Ilidža, with transcript). On Lord Carrington's visit, *see* para. 329.

11290 D229 (Branko Đerić's letter to Colm Doyle, 2 May 1992). Richard Gray, who was the Chief Operations Officer for the UNMOs in Sarajevo until June 1992, stated that the BiH government regularly used Sarajevo RTV to circulate inflammatory propaganda against Bosnian Serbs. *See* D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 23.

11291 D236 (JNA 4th Corps Report, 7 May 1992), p. 2; D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 4; Martin Bell, T. 9830 (14 December 2010).

11292 D236 (JNA 4th Corps Report, 7 May 1992), p. 3.

11293 D236 (JNA 4th Corps Report, 7 May 1992), p. 3.

11294 D236 (JNA 4th Corps Report, 7 May 1992), p. 3; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 23; Milan Mandilović, T. 5375–5376 (16 July 2010).

Lukavica Barracks.[11295] At around the same time, the Military Hospital also came under Bosnian Muslim attack.[11296] In response to the attacks against the JNA social centre and the Military Hospital, Kukanjac ordered the use of artillery against the city centre.[11297]

3550. In the morning hours of 3 May 1992, members of the 65th Motorised Protection Regiment were captured by Green Berets and the HOS.[11298]

3551. On 3 May 1992, General MacKenzie, the Commander of UNPROFOR Sector Sarajevo, Doyle, Ganić, and General Aksentijević of the JNA began negotiating the release of Izetbegović.[11299] During these negotiations, it was agreed that under the supervision and guarantee of the ECMM and UNPROFOR, Izetbegović would be released by the JNA and that in return, Bosnian Muslim forces would allow Kukanjac to leave his headquarters in downtown Sarajevo and move to Lukavica Barracks, on the Serb side of the confrontation lines.[11300]

3552. MacKenzie and Doyle then travelled to Lukavica Barracks where Izetbegović had been detained in order to persuade him to accept the exchange agreement.[11301] While MacKenzie and Doyle were at the barracks, Kukanjac contacted Izetbegović by telephone and indicated that there would be no exchange unless his entire staff, along with their equipment, were also removed from Bistrik and taken to safety.[11302] Despite the reservations expressed by MacKenzie and Doyle as to the feasibility of the plan to move such a large number of JNA personnel through Muslim-controlled parts of the city, Izetbegović accepted Kukanjac's proposal, assuming personal responsibility for their safety.[11303] Later that day, Izetbegović and MacKenzie, along with a large convoy of empty trucks belonging to the 2nd Military District, departed for downtown Sarajevo in order to pick up Kukanjac and his personnel; after the convoy arrived in Bistrik, the trucks were

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11295 D236 (JNA 4th Corps Report, 7 May 1992), p. 4; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25294-25295, 25384; Colm Doyle, T. 2859 (27 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 66.

11296 D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), paras. 9–10; D236 (JNA 4th Corps Report, 7 May 1992), pp. 3–4; D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 4; D919 (BBC news report re attack of JNA convoy, with transcript); Martin Bell, T. 9825 (14 December 2010); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 3.

11297 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 65.

11298 D236 (JNA 4th Corps Report, 7 May 1992), p. 3.

11299 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25266; D236 (JNA 4th Corps Report, 7 May 1992), p. 4.

11300 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25295; Colm Doyle, T. 2680 (21 May 2010); D236 (JNA 4th Corps Report, 7 May 1992), pp. 4–5; D919 (BBC news report re attack of JNA convoy, with transcript); Martin Bell, T. 9830–9831 (14 December 2010).

11301 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25368.

11302 Colm Doyle, T. 2752–2753 (26 May 2010); D217 (Excerpt from General MacKenzie's book entitled "The Road to Sarajevo"), e-court pp. 4–5.

11303 Colm Doyle, T. 2754, 2757 (26 May 2010); D217 (Excerpt from General MacKenzie's book entitled "The Road to Sarajevo"), e-court p. 5.

loaded with JNA personnel and equipment.[11304] It was then decided that the convoy should drop off Izetbegović and his daughter near the Presidency building and then proceed to the Lukavica Barracks with Kukanjac and his personnel.[11305] Shortly after embarking on its route on Dobrovoljačka street, however, Muslim forces intercepted and attacked the convoy's rear, killing at least 14 JNA members, including two Colonels, and taking a large number of prisoners.[11306] At this point, Izetbegović emerged from the vehicle he was in and addressed the attackers, explaining to them that he had promised safety to the convoy.[11307] Following Izetbegović's intervention, the convoy proceeded to a location where Izetbegović and his daughter were transferred to an APC bound for the Presidency building.[11308] From there, the rest of the convoy travelled to Lukavica Barracks.[11309] Soon after, a battalion from the 216th Mountain Brigade of the JNA was ordered to move from Lukavica Barracks to Dobrovoljačka street where the incident had taken place; before the battalion arrived, however, Bosnian Muslims took away the dead and the captured JNA soldiers and disappeared from the scene.[11310] In the days that followed, Doyle and MacKenzie successfully negotiated the release of the JNA personnel.[11311]

3553. After the events of 3 May 1992, the situation in Sarajevo deteriorated further.[11312] The trams which connected the eastern and western parts of the city and which were regarded as symbols of normalcy stopped running.[11313]

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11304 D217 (Excerpt from General MacKenzie's book entitled "The Road to Sarajevo"), e-court p. 6; D236 (JNA 4th Corps Report, 7 May 1992), p. 5; D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 5; D919 (BBC news report re attack of JNA convoy, with transcript).

11305 D236 (JNA 4th Corps Report, 7 May 1992), pp. 5–6; D919 (BBC news report re attack of JNA convoy, with transcript).

11306 Colm Doyle, T. 2755, 2757, 2785–2786 (26 May 2010), T. 2860 (27 May 2010); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25370–25371; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 22; Milan Mandilović, T. 5372–5374 (16 July 2010); P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), para. 26; D216 (Article entitled "Colm Doyle Interview with Vecernje Novosti", 12 May 1992); D236 (JNA 4th Corps Report, 7 May 1992), p. 6; D2540 (Witness statement of Goran Sikiraš dated 2 December 2012), para. 10; D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 8; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 66; Martin Bell, T. 9825 (14 December 2010); D919 (BBC news report re attack of JNA convoy, with transcript); D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 21; D3671 (Witness statement of Dušan Kovačević dated 7 June 2013), paras. 10, 12–13, 15. *See also* D2974 (Letter from Momčilo Krajišnik to Jose Cutileiro and others, 28 May 1992), p. 1.

11307 D217 (Excerpt from General MacKenzie's book entitled "The Road to Sarajevo"), e-court p. 9.

11308 D217 (Excerpt from General MacKenzie's book entitled "The Road to Sarajevo"), e-court p. 9.

11309 D236 (JNA 4th Corps Report, 7 May 1992), p. 6.

11310 D236 (JNA 4th Corps Report, 7 May 1992), p. 6.

11311 Colm Doyle, T. 2786 (26 May 2010); D236 (JNA 4th Corps Report, 7 May 1992), pp. 6–7; D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"), p. 10.

11312 Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25370–25382.

11313 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 48; Martin Bell, T. 9830 (14 December 2010).

3554. Sometime later, representatives of the BiH Presidency and the JNA reached an agreement for the withdrawal of all JNA units from BiH.[11314] With this agreement, the JNA undertook to return all equipment, armament, and ammunitions of the TO which had been left in its custody and stored in the military barracks around town.[11315] Soon after, the JNA units were evacuated from the Military Hospital; medical equipment and medicines were, however, left behind.[11316]

3555. On 11 May 1992, the JNA declared that its personnel would be evacuated from the Maršal Tito Barracks, Viktor Bubanj Barracks, Jusuf Džonlić Barracks, and Gavrilo Princip Barracks and that the following day the weaponry and ammunition in these barracks would be handed over to the TO forces from each the four municipalities in which these barracks were located.[11317]

3556. By mid-May 1992, after several weeks of intense urban combat, the frontlines in Sarajevo were established.[11318] "Serb irregulars" completely surrounded the city and controlled all the traffic.[11319] Using the heavy artillery and sniper rifles made available to them by the JNA, they regularly targeted the city, including its civilian areas, from the surrounding hills.[11320] The shelling became particularly intense and widespread on 14 May 1992, prompting John Wilson, the Chief of the UNMOs in Sarajevo,[11321] to conclude that several thousand shells had fallen on the city that day.[11322] As a result of the continued shelling, the number of civilian casualties increased significantly; economic life came to a halt and there were growing shortages of food, medicine and

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11314 P950 (Agreement on withdrawal of JNA from BiH), p. 1; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25296.

11315 P950 (Agreement on withdrawal of JNA from BiH), p. 1; Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25296.

11316 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 25–26; Milan Mandilović, T. 5364–5365 (16 July 2010). *See also* Adjudicated Fact 2884.

11317 D231 (JNA Order re TO arming of Muslims, 11 May 1992).

11318 P953 (Article from Oslobođenje, entitled "Happy Birthday Republic", 6 January 1995), p. 4; Colm Doyle, T. 2995 (28 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 33, 61; Martin Bell, T. 9861 (15 December 2010).

11319 P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), para. 3; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 39; P1154 (Witness statement of KDZ088 dated 27–29 April 2010), p. 77 (under seal).

11320 P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), para. 3; Colm Doyle, T. 2737 (26 May 2010); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25297–25298; P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 41–42; John Wilson, T. 3915, 3919, 3977 (21 June 2010); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), p. 45 (under seal). *See also* Adjudicated Fact 8.

11321 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 5. Following his time as UNMO, John Wilson was then appointed as military adviser to Vance and UNPROFOR liaison officer to the ICFY in December 1992. *See* P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 6, 8; P1046 (John Wilson's Report to Australian Army, 15 November 1992), p. 9.

11322 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 41–42, 73; John Wilson, T. 3994 (21 June 2010), T. 4040 (22 June 2010), T. 4131 (23 June 2010). *See also* Richard Gray, T. 29982–29983 (8 November 2012).

other essential supplies.[11323] The heavy shelling also forced the UNPROFOR mission in Sarajevo, which had hitherto been located in the Post Office building (PTT), to be temporarily relocated to Belgrade.[11324] Wilson, along with seven UNMOs and a French protection unit nevertheless stayed in Sarajevo in order to provide humanitarian assistance and to facilitate dialogue between the warring parties.[11325] The remaining UN personnel could only venture out of the PTT building in armoured vehicles, and even then, were frequently and deliberately targeted by both sides.[11326] On 18 May 1992, a UN convoy was organised to take Plavšić who had been in Sarajevo for negotiations back to her residence; Bosnian Muslims targeted the convoy with gunfire and prevented Plavšić from leaving the city that day.[11327]

3557. On 12 May 1992, Mladić was appointed as the Commander of the newly-established VRS and by late May was interacting with representatives of the international community.[11328] On 19 May 1992, Mladić appointed Colonel Tomislav Šipčić as the SRK Commander and the SRK was assigned to the greater Sarajevo area, the former zone of responsibility of the 4th JNA Corps.[11329] The SRK's main forces were positioned around what was colloquially called the inner ring of Sarajevo, in particular in the areas of Ilidža, Nedžarići, and Grbavica.[11330] The inner ring extended from the northern bank of Miljacka River in Marin Dvor, across the river and westward to Dobrinja, then upwards to the neighbourhood of Alipašino Polje, nearing the Stupska Petlja in the west of city of Sarajevo, northward to the areas of Sokolja Dol and Zuca, and following eastward to complete the circle near Grdonj and Debelo Brdo near Grbavica.[11331] Auxiliary forces of the SRK

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11323 P944 (Letter from Sarajevo Mayor to EC President, 1 May 1992), p. 1; P937 (UNSG Report re peacekeeping operation in BiH, 12 May 1992), paras. 3, 18; Colm Doyle, T. 2665–2666 (21 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 33, 49; P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 10. *See also* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), pp. 21, 26 (indicating a significant rise in the number of wounded and killed civilians in Sarajevo in mid-May 1992).

11324 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 7, 64; P1046 (John Wilson's Report to Australian Army, 15 November 1992), para. 5; D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 9.

11325 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 7, 64.

11326 John Wilson, T. 3919–3920, 3952 (21 June 2010); D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 10. The attacks on UN personnel were condemned by the Security Council. *See* P1031 (UNSC Resolution 757, 30 May 1992), p. 2; John Wilson, T. 3926–3927 (21 June 2010).

11327 Plavšić spent the night at the PTT building while UN personnel controlled the angry crowds which had gathered outside; she returned to her residence the following day. D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 15.

11328 John Wilson, T. 3982 (21 June 2010), T. 4123 (23 June 2010). On the creation of VRS and the appointment of Mladić, *see* Section II.C.1: VRS; Section IV.B.3.c.i: Accused's support for Mladić and SRK.

11329 *See* fn. 526; Adjudicated Fact 20.

11330 *See* Adjudicated Fact 21.

11331 Stanislav Galić, T. 37161–37166 (15 April 2013), 37347–37348 (16 April 2013), T. 37390 (18 April 2013), T. 37471 (22 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić). Radinović stated that throughout the entire war, the frontlines in and around Sarajevo remained relatively constant. Changes in the position of the warring parties occurred in Stup where the VRS assumed control of additional territory in the

were positioned on the so-called exterior ring of the Sarajevo front.[11332] During this period, the SRK had about 200 pieces of artillery of many different calibres in its possession whereas the Bosnian Muslim forces inside the city had only a dozen pieces of heavy weaponry, including a few tanks, and a number of mortars.[11333] Frontlines were not shifting much from that moment on, and after 1992, were more or less set.[11334] The SRK held the high ground around the city and could often see directly what its forces were firing at, while the ABiH held the lower ground in most parts.[11335] The SRK's forward command post was in Lukavica while on the opposing side, the 1st Corps of ABiH had its headquarters in downtown Sarajevo (until it moved to Visoko in March 1994).[11336] The ABiH 1st Corps troops were positioned mostly on the confrontation lines.[11337] In

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autumn of 1992 and in Žuč and Orlić, two elevations overlooking the city, where ABiH forces made advances in late 1992. *See* D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), paras. 191, 270. *See also* Adjudicated Fact 32.

11332 Adjudicated Fact 23.

11333 D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), p. 3; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 43; John Wilson, T. 3933, 3937–3938, 3978 (21 June 2010); [REDACTED].

11334 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 14; Jeremy Bowen, T. 10105 (13 January 2011); P820 (Witness statement of David Harland dated 4 September 2009), para. 30; David Harland, T. 2018 (6 May 2010), T. 2078–2094 (7 May 2010); D134 (Aerial photograph of Sarajevo marked by David Harland); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 15–20 (testifying that the ABiH held Mojmilo, Sokolje, Hum, Žuč, Grdonj, Debelo Brdo, Čolina Kapa which were also in the hilltops and overlooked some Bosnian-Serb held territory); P1767 (Map of Sarajevo marked by David Fraser); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 33; Manojlo Milovanović. T. 25753 (5 March 2012); P1005 (SRK Order, 9 September 1992), p. 1 (indicating that by September 1992 the SRK had achieved most of its "military goals for the war" and did not expect "major movements of the frontline"); Savo Simić, T. 30039–30041 (12 November 2012).

11335 David Harland, T. 2018 (6 May 2010); David Harland, T. 2087–2092 (7 May 2010) (conceding also that some SRK-held areas, such as Grbavica and Dobrinja, were at a disadvantageous position vis-à-vis ABiH-held territories); John Wilson, T. 3979–3980 (21 June 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 18, 77–82, 87, 155 (testifying that during his interview with Ratko Mladić, Mladić pointed to the city from one of the SRK positions in the east, indicating that the city was in the palm of his hand); P806 (SKY news report re Sarajevo, with transcript); P933 (SKY news report re Sarajevo, with transcript); P842 (VRS map of Sarajevo, 31 August 1995); Aernout van Lynden, T. 2398, 2419–2423 (19 May 2010), T. 2499–2506 (20 May 2010); P934 (Map of Sarajevo marked by Aernout van Lynden); D198 (Aerial photograph of Sarajevo marked by Aernout van Lynden); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 14, 29; Colm Doyle, T. 2737–2738 (26 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 43, 84–86; P1997 (BBC news report re interview with Radovan Karadžić at Trebević, with transcript); P1998 (BBC news report re interview with Colonel Bartula, with transcript); Martin Bell, T. 9767–9772 (14 December 2010); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 43; Pyers Tucker, T. 23291–23292 (18 January 2012); KW570, T. 32216 (18 January 2013) (private session).

11336 P2407 (Witness statement of KDZ304), p. 7; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 41; Francis Roy Thomas, T. 6880 (15 September 2010); P2414 (Witness statement of KDZ182), pp. 83–84 (under seal) (testifying that the headquarters was located slightly to the west of the Presidency building); David Fraser, T. 8006 (18 October 2010). Asim Džambasović confirmed that the command post of the 1st Corps was located in Danijela Ozme street, at number 7. *See* Asim Džambasović, T. 15192–15193 (22 June 2011); D617 (Map of Sarajevo).

11337 P2414 (Witness statement of KDZ182), p. 83 (under seal); KDZ185, T. 4241 (28 June 2010) (private session) (testifying also that because of the lack of weapons many of these soldiers would go home leaving their weapons at the frontlines for the other soldiers to use). *But see* Stanislav Galić, T. 37239–37240 (15 April 2013) (who testified that, judging by the ABiH maps, the ABiH forces were located at least one to three kilometres deep within their territory).

addition, there were a number of their command posts and military targets within the city.[11338] The frontline within Sarajevo city was between 42 and 64 kilometres long, depending on the period.[11339]

3558. During the latter part of May 1992, Bosnian Serbs on average fired several hundred shells a day at Sarajevo.[11340] In late May and early June 1992, the city of Sarajevo was subjected to heavy shelling by the SRK, with a variety of artillery and from various positions. The events immediately preceding and following these bombardments, as well as the related findings, are outlined in more detail in another section of the Judgement.[11341]

3559. Following the above mentioned shelling incidents, the city of Sarajevo continued to be subjected to shelling and sniping attacks.[11342] These attacks persisted throughout the summer of 1992, which was deemed by Bell to have been one of the worst periods of the conflict in Sarajevo.[11343] At the same time, the food had become scarce in Sarajevo.[11344] The markets were empty and the humanitarian operations were very limited.[11345]

3560. On 29 June, the Sarajevo airport in Butmir, which up until that point had been under the control of the Bosnian Serbs, was handed over to UNPROFOR, to be used by UNPROFOR

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11338 *See e.g.* David Fraser, T. 8006, 8088–8092 (18 October 2010); D772 (ABiH General Staff list of ABiH units in Sarajevo, 10 April 1995); KDZ185, T. 4384 (30 June 2010).

11339 Francis Roy Thomas, T. 6903 (16 September 2010). Stanislav Galić testified that the confrontation line in Sarajevo was 65 kilometres long during his time as the SRK Commander. *See* Stanislav Galić, T. 37185 (15 April 2013), T. 37343–37344 (16 April 2013). Dragomir Milošević, noting that it was not possible to be exact, testified that the SRK estimated that the frontline in Sarajevo and surrounding areas was about 50 kilometres long. *See* Dragomir Milošević, T. 32516 (23 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević).

11340 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4202; Herbert Okun, T 1655–1656 (26 April 2010), T. 1678 (27 April 2010); John Wilson, T. 3915–3916 (21 June 2010).

11341 *See* discussion on Scheduled Incidents G.1 and G.2.

11342 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 71–72; P2005 (BBC news report re Sarajevo, with transcript); P2031 (BBC news report re Sarajevo, with transcript); P2035 (BBC news report re Sarajevo, with transcript); Martin Bell, T. 9793–9795 (14 December 2010).

11343 Martin Bell, T. 9797 (14 December 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 78; P2026 (BBC news report re Sarajevo, with transcript); P2030 (BBC news report re Sarajevo, with transcript); D228 (Report re humanitarian activity, 12 June 1992), para. 13 (under seal). *See* Adjudicated Fact 8. *See also* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), pp. 6, 52–53 (indicating that June and August were months with high numbers of killed and wounded civilians); P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 58–59.

11344 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 27; Youssef Hajir, T. 8786 (1 November 2010); D228 (Report re humanitarian activity, 12 June 1992), para. 13 (under seal).

11345 *See* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 27; P928 (SKY news report re Sarajevo, with transcript); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 52. Jeremy Bowen recalled that there were some aid flights in the early months of the war but that they were coming on an *ad hoc* basis. *See* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 21. Youssef Hajir testified that food shortages were especially severe at the beginning of the war, but improved once UNPROFOR and other humanitarian organisation arrived. *See* Youssef Hajir, T. 8786 (1 November 2010).

exclusively.[11346] On 17 July 1992, a 14-day cease-fire agreement was signed in London by the representatives of three warring sides, including the Accused.[11347] On 22 July, Mladić issued Directive 2, referring to the cease-fire agreement and instructing all units to "respect the agreed fortnight cease-fire" but to stay in full combat readiness.[11348]

3561. On 3 August 1992, Directive 3 was issued by Mladić in which he instructed the units to "keep Sarajevo firmly under blockade and prevent its breaking" and then ordered the SRK specifically to "gradually tighten the encirclement of Sarajevo".[11349] Hussein Abdel-Razek, the Sector Sarajevo commander between 21 August 1992 and 20 February 1993,[11350] testified that, upon his arrival in Sarajevo, he immediately assessed the city as a dangerous place, with constant sniping and shelling and no working infrastructure and utilities.[11351] Following the London Conference,[11352] the Accused and Koljević agreed, on 28 August 1992, to group together Bosnian Serb heavy weapons around Sarajevo and place them under the supervision of UN monitors, regardless of the actions of the other side.[11353] However, this agreement was never fully implemented.[11354]

3562. In mid-September 1992, Sarajevo was also shelled indiscriminately.[11355] When Pyers Tucker, a military assistant to Morillon,[11356] arrived in Sarajevo in October 1992, life in the city

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11346 *See* para. 339. *See also* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 118.

11347 D4710 (Agreement signed by Mate Boban, Radovan Karadžić and Haris Silajdžić, 17 July 1992), e-court pp. 1–2 (providing that all heavy weapons were to be placed under international supervision).

11348 D593 (Directive 2, 22 July 1992). *See also* P1478 (Ratko Mladić's notebook, 27 May–31 July 1992, pp. 357–358 (wherein the Accused informs Mladić on 21 July 1992 of the cease-fire agreement, and tells him that the Bosnian Serbs are to not respond to provocations, and that it would be important for them to observe the cease-fire).

11349 D235 (Directive 3, 3 August 1992). The orders relevant to Sarajevo in this directive were relayed the next day to the SRK units by the SRK Command. *See* P5979 (SRK Order, 4 August 1992).

11350 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 2.

11351 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 3–4.

11352 *See* Section II.E.4: London Conference.

11353 P1259 (UNPROFOR report re heavy weapons in BiH, 28 August 1992), e-court p. 2; Hussein Abdel-Razek, T. 5487–5488 (19 July 2010).

11354 Hussein Abdel-Razek, T. 5489–5491 (19 July 2010); T. 5563–5566 (20 July 2010), T. 5647–5650 (21 July 2010) (also testifying that the Accused told him during their meeting that he was misinterpreted and that the UN would not be involved in handling weapons physically); P1260 (SRK information on ICFY, 30 August 1992) (Abdel-Razek testifying that this order was never implemented on the ground); P1261 (UNPROFOR report re meeting with Radovan Karadžić and Colonel Šiber, 13 September 1992); D503 (Marrack Goulding's note to UNSG, 7 September 1992), para. 14; D3384 (SRK report, 13 September 1992), p. 1.

11355 P1271 (UNPROFOR report re letter sent to Ratko Mladić, 15 September 1992), para. 3; P1258 (Witness statements of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 15, 22 (testifying that when he tried to send a letter of protest to the Accused about this particular shelling, it was refused because he did not address the Accused as the RS President). *See also* D3385 (SRK combat report, 17 September 1992), paras. 1–2 (in which Galić reports that an ABiH infantry attack was successfully repulsed and that offensive operations will continue throughout the day).

11356 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 6.

was "very unpleasant" and there was daily random shelling of various parts of the city.[11357] In early October 1992, following the resumption of humanitarian flights, aid was slowly starting to arrive in Sarajevo; however, it was being delivered far below the minimum required to satisfy basic needs.[11358] The difficulties in delivery arose because the city was subjected to heavy shelling and sniping at this time and because Bosnian Serb forces blocked UNHCR convoys.[11359] On 7 October UN officials protested to Koljević and Plavšić about "recent" artillery attacks on Sarajevo.[11360] The UN reported on 8 October that the mood of people in Sarajevo has reached the lowest level since April 1992 due to the continued shelling and lack of utilities.[11361] On 9 October 1992, the RS Presidency held a session in which it decided to halt the bombing of Sarajevo and do so through the Main Staff.[11362] Thus, on 10 October, Galić issued an urgent order to all SRK units to stop firing on Sarajevo as of 3 p.m. that day, instructing them they could open fire only in case of "great necessity", and not before having been given permission from him or his deputy.[11363] However, on 26 October, Galić reported on the fighting between the ABiH and the SRK around Hrasnica.[11364] On 31 October, a major attack was launched by the Bosnian Serbs from the north and south of the centre of Sarajevo; the first few rounds caught people in the open and caused a number of casualties.[11365] According to Tucker, this attack had the objective of cutting the city into eastern and western halves and relieving the pressure on Grbavica.[11366] After that attack, which according to Tucker was a major military offensive, the Bosnian Serbs carried out mainly defensive or retaliatory operations, trying to pressure the other side to accept the *status quo*.[11367]

3563. On 10 November 1992, a cease-fire agreement was signed among the three parties, which was followed two days later by Galić's order to all SRK units to refrain from firing and to ask for

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11357 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 21–22. *See also* P4998 (Ewa Tabeau's expert report entitled "Population Losses in the 'Siege' of Sarajevo 10 September 1992 to 10 August 1994", 10 May 2002), pp. 80, 96 (indicating high numbers of civilian casualties in September and October).

11358 D1502 (Report of humanitarian organisation, 7 October 1992) (under seal), para. 8.

11359 KDZ240, P2935 (Transcript from *Prosecutor v. Krajišnik*), T. 6784–6785 (under seal); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 21.

11360 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 23; P1272 (UNPROFOR report re meetings with Presidency, HVO, and SDS, 7 October 1992), p. 3.

11361 P1262 (UN report on Sarajevo, 8 October 1992); Hussein Abdel-Razek, T. 5501–5502 (19 July 2010). *See also* Adjudicated Fact 133.

11362 D431 (Minutes of RS Presidency session, 9 October 1992), p. 2.

11363 P1264 (SRK Order, 10 October 1992); Hussein Abdel-Razek, T. 5507–5508 (19 July 2010).

11364 Stanislav Galić, T. 37216–37217 (15 April 2013); D3386 (SRK combat report, 26 October 1992).

11365 P4212 (UNPROFOR report, 31 October 1992), paras. 1–2; P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 37–38.

11366 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 37–38, 44–45, 49 (also stating that this was the last attempt by the Bosnian Serbs during his time in Sarajevo to capture the city or to cut it in half); Pyers Tucker, T. 23198 (17 January 2012), T. 23222–23224 (18 January 2012).

11367 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 49.

his permission to respond to fire.[11368] According to Abdel-Razek, while the shelling incidents were numerous in the period of August through to October, November was relatively quiet.[11369] On 19 November, Mladić issued Directive 4, in which he instructed the SRK to keep Sarajevo and Igman under "full blockade" and "tighten the circle".[11370]

3564. In a meeting on 20 November 1992 with the Accused, Morillon of UNPROFOR protested the "deliberate obstruction" of UNHCR and UNPROFOR convoys by Bosnian Serb forces over the previous three weeks.[11371] The Accused responded that the Bosnian Serbs were "predisposed to be obstructive" because UNPROFOR was smuggling weapons and rations to the ABiH and UNHCR was delivering more aid to the Bosnian Muslims than the Bosnian Serbs.[11372] On 22 November, the SRK lodged a protest with the UN, complaining about the ABiH putting pressure on SRK positions and causing civilian casualties.[11373] On 27 November, Morillon and Tucker met with the Accused, Koljević, and Mladić.[11374] Morillon had a private discussion with the Accused, during which the latter agreed that the demilitarisation of Sarajevo could be a catalyst for peace throughout BiH.[11375] Morillon also noted his belief that the Bosnian Serb authorities were interested in progress.[11376]

3565. In December 1992, during the fight for Oteš, the fighting and the shelling in and around Sarajevo was intensifying, prompting Abdel-Razek to hold a press conference in which he stated that the UN mandate was weak and that he was struggling to fulfil it as none of the parties was co-operating with the UN.[11377] Tucker also confirmed that the period between 1 and 10 December

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11368 D3388 (SRK Order, 12 November 1992); Stanislav Galić, T. 37221–37227 (15 April 2013). Another cease-fire then took effect on 27 November 1992. *See* D3389 (SRK Order, 26 November 1992). *But see* D3390 (Response by Stanislav Galić to UNPROFOR protest, 28 November 1992) (indicating that the UN protested to Galić about a number of SRK activities in this period, which Galić denied any SRK responsibility for).

11369 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 23. *See also* Stanislav Galić, T. 37217–37219 (15 April 2013) (testifying that the SRK refrained from firing on 10 November due to a cease-fire that was in place and because of the potential repercussions in the media); D3387 (SRK combat report, 10 November 1992).

11370 P976 (Directive 4, 19 November 1992), p. 5.

11371 P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 2.

11372 P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 2. *See also* D1514 (Minutes of meeting between Radovan Karadžić and a member of a humanitarian organisation, 28 November 1992), paras. 9, 12 (under seal) (the Accused raising concerns that food was not being equally distributed between the Bosnian Serbs and Bosnian Muslims in Sarajevo).

11373 D3467 (SRK protest letter to UNPROFOR, 22 November 1992).

11374 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 72; Pyers Tucker, T. 23243–23247 (18 January 2012); D539 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 27 November 1992).

11375 D539 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 27 November 1992), para. 4.

11376 D539 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 27 November 1992), para. 12; Richard Mole, T. 5875 (17 August 2010).

11377 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 10–11, 12–13, 17, 27; P1269 (UNPROFOR report re Sarajevo, 6 December 1992); Hussein Abdel-Razek, T. 5535–5536, 5573–5576 (20 July 2010), T. 5639–5640 (21 July 2010); D519 (SRK combat report, 23 December 1992); D505 (Article from Independent entitled "UN Chief in Sarajevo Calls for Intervention to End Conflict", 18 January 1993). *See*

"involved the worst sustained shelling of Sarajevo since the start of the war" by the Bosnian Serbs; while it concentrated around Oteš and Stup, in the west of Sarajevo, the city was also shelled by the Bosnian Serbs with the aim of breaking the people's and their leaders' will to resist.[11378] According to Tucker, more than 1,500 rounds of explosives were fired per day at that time and the fight for Oteš involved house to house fighting as well as support by Bosnian Serb infantry and artillery.[11379] By 7 December, Oteš and parts of Stup were captured by the Bosnian Serbs but the fighting in the surrounding areas petered out only around 19 December.[11380] Thereafter, the intensity of the shelling in the city reduced.[11381] On 13 December, a three year old, Anisa Pita, was shot and wounded in her right leg on the porch of her residence in Širokača.[11382] In mid-December, the UN attempted to negotiate a cessation of hostilities agreement, which involved the withdrawal of heavy weapons around Sarajevo, but while signed by Mladić and Petković on 22 December, it was eventually not accepted by the Bosnian Muslim side.[11383] At midnight on 24 December, Bosnian Serbs opened a 20 minute barrage of fire on Sarajevo from all around the city, and against random civilian targets.[11384] The same happened at midnight on 7 January 1993.[11385]

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*also* D3391 (SRK combat report, 6 December 1992); D3392 (SRK combat report, 6 December 1992) (both indicating heavy fighting between the two sides); Stanislav Galić, T. 37171–37172 (15 April 2013) (testifying that capturing Oteš was a military necessity as the ABiH forces nearly surrounded Ilidža Brigade in the area); P1435 (UNMO report, 11 December 1992), paras. 13–30. Following the conference Abdel-Razek also made it clear to his superiors that he wanted to leave Sarajevo as he was unable to make progress. *See* Hussein Abdel-Razek, T. 5536 (20 July 2010).

11378 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 82–83, 86 (testifying also that in an attempt to break the siege of Sarajevo the ABiH attacked Ilidža which made the SRK panic, pummel the area from which the attack came with heavy weapons, and then also counter attack and shell the city persistently in order to "punish" the other side); P936 (SKY news report re Sarajevo, with transcript); D534 (Article from AFP entitled "Fierce Fighting Raging Around Sarajevo", 3 December 1992). *See also* P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), pp. 261–262 (wherein General Nambiar expresses his deep concern about the escalation of the conflict in the Sarajevo area in a meeting with Mladić on 8 December 1992).

11379 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 83–85, 89–90 (claiming also that this figure was probably an understatement); P4219 (UNMO daily situation report, 6 December 1992); P4218 (UNMO daily situation report, 5 December 1992); P1428 (UNMO report, 4 December 1992). *See also* Adjudicated Fact 133 (providing that fire into Sarajevo was intense between September and December 1992.

11380 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 87–88; Stanislav Galić, T. 37163 (15 April 2013), T. 37475 (22 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); D536 (Article from AFP entitled "Serbs Cut Airport Road", 8 December 1992).

11381 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 88.

11382 *See* discussion on Scheduled Incident F.1.

11383 Hussein Abdel-Razek, T. 5631–5638 (21 July 2010); D518 (Cease-fire agreement between Ratko Mladić and Milivoje Petković, 22 December 1992).

11384 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 109–114 (this sort of co-ordinated fire indicated to Tucker that it must have been approved by Galić). *See also* D2452 (Report of Ilidža Brigade, 25 December 1992) (noting that ABiH was opening fire on Ilidža during the day on 25 December 1992).

11385 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 109–110.

3566. In January 1993, the ABiH was preparing for an offensive[11386] and the city continued to be shelled, including the Old Town where a shell fell on people queuing for water, killing a number of people.[11387] KDZ185 testified that when he arrived to Sarajevo, the shelling was heavy, with a daily average of 1,200 shells being fired.[11388] In January and February, the winter was at its coldest, with severe shortages of electricity, gas, and oil, and morale in the city was at its lowest.[11389] Humanitarian convoys "continued to be harassed" and prevented from reaching the civilian population.[11390] In an attempt to escape the deprivation in the city at this time, hundreds of civilians attempted to cross the airport to Butmir and Mt. Igman each night and would be shot at by Bosnian Serbs and killed or injured.[11391]

3567. According to the SRK report of 4 February 1993, the ABiH fired ten shells on Ilidža, resulting in the wounding of a child; however the SRK did not respond.[11392] On 11 February 1993, the Bosnian Muslim authorities announced that they would refuse to accept further aid in Sarajevo because the Bosnian Serbs were refusing to allow relief convoys into the eastern enclaves.[11393] UNHCR immediately suspended all aid flights into Sarajevo.[11394] On 12 February, the SRK reported that after the ABiH fired another ten shells on SRK-held territory, its units responded to

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11386 D336 (John Wilson and Graham Messervy-Whiting's report to ICFY, 22 January 1993) (in which Wilson also predicted, in paragraphs 6, 8–9, 11, and 13(d), that the SRK would continue to "maintain the siege" without taking the city while the ABiH would be launching an offensive if its position in negotiations was weak and it needed to provoke international intervention); John Wilson, T. 4135–4138 (23 June 2010). Wilson's prediction came true as the ABiH launched an attack on SRK positions on 31 January 1993. *See* D349 (SRK combat report, 31 January 1993).

11387 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 59, 83; P2007 (BBC news report re Sarajevo, with transcript); P2004 (BBC news report re Sarajevo, with transcript); Martin Bell, T. 9799–9800 (14 December 2010).

11388 P6060 (Record of interview with KDZ185), e-court p. 14; KDZ185, T. 4187–4188 (28 June 2010). *See also* D3395 (SRK combat report, 11 January 1993) (indicating that some 200 shells were fired by the ABiH on various SRK positions and that the SRK units opened fire on ABiH positions in the Mojmilo and Hrasnica sectors); D3396 (SRK combat report, 15 January 1993); D3397 (SRK combat report, 24 January 1993) (stating that the ABiH opened infantry fire and fired a small number of shells on the SRK-held territory).

11389 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 116–117. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 42 (testifying that by 1993 the civilian population was "fully engaged in the grind of survival"); D1140 (Letter to UN Secretary General, 2 February 1993), e-court p. 1 (under seal) (the author stating that the "ongoing destruction of Sarajevo" and the "suffering of its people" was deeply moving).

11390 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 140.

11391 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 116–120 (testifying that 5 to 30 people were killed or injured each night during these airport crossings); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 18; Youssef Hajir, T. 8841 (2 November 2010); John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6176–6177.

11392 Stanislav Galić, T. 37336–37338 (16 April 2013), T. 37925–37927 (8 May 2013); D3410 (SRK combat report, 4 February 1993). *See also* D2776 (SRK combat report, 3 February 1993), para. 1.

11393 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 132.

11394 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 132; KDZ240, T. 16124–16125 (5 July 2011) (closed session).

the attack.[11395] On 14 February, the ABiH launched an infantry attack on the Slaviša Vajner Čiča Barracks also resulting in the SRK response.[11396]

3568. By 3 March 1993 the warring parties had signed a BiH-wide cease-fire agreement,[11397] according to which (i) the hostilities in Sarajevo and elsewhere were to cease, (ii) UNPROFOR was to monitor the confrontation lines in Sarajevo and the removal of heavy weapons (weapons above 12.7 mm calibre) from Mojmilo, Dobrinja, Lukavica, Gornji Kotorac, Vojkovići, Hrasnica, Sokolovići, Butmir, Ilidža, Oteš, Stup, and Nedžarići, (iii) civil infrastructures were to be restored, and (iv) Blue Routes were to be established in order to ensure freedom of movement for civilians and humanitarian aid.[11398] This cease-fire was signed contrary to Galić's wishes.[11399] Additionally, the ABiH never intended to respect it.[11400] Instead it mounted an attack designed to cut the SRK's main re-supply line along the Pale road in response to which, on 21 March 1993, the SRK shelled the whole of Sarajevo, including civilian targets and the Old Town; around 2,400 shells fell that day.[11401] The next day the ABiH shelled Ilidža while the SRK was engaging in an offensive operation in Stup.[11402]

3569. On 2 April 1993, General Manojlo Milovanović, Chief and Deputy Commander of the VRS Main Staff,[11403] issued an order setting out in detail the procedures for checking UNPROFOR and humanitarian aid convoys.[11404] On 11 April 1993, the RS Prime Minister Vladimir Lukić wrote a

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11395 D3403 (SRK combat report, 12 February 1993), paras. 1–2; Stanislav Galić, T. 37338–37340 (16 April 2013).

11396 D3404 (SRK combat report, 14 February 1993). *See also* D3487 (SRK combat report, 25 February 1993).

11397 The Accused and Mate Boban signed the agreement in January 1993, while Izetbegović only signed it in March, once the UN agreed to place the heavy weapons under its control. *See* D924 (ICFY Agreement for Peace in BiH, 3 March 1993), p. 2; P2538 (Patrick Treanor's research report entitled "Radovan Karadžić and the Serbian Leadership 1990-1995", 1 May 2009), para. 155. *See also* para. 366.

11398 D924 (ICFY Agreement for Peace in BiH, 3 March 1993), pp. 6, 9, 19–21. *See also* para. 366.

11399 P1055 (UNPROFOR report re meeting with Stanislav Galić, 27 March 1993).

11400 D343 (ABiH Supreme Command Staff Order to 2nd Corps, 16 March 1993); KDZ185, T. 4295–4296 (29 June 2010).

11401 P1048 (Record of interview with KDZ185), e-court pp. 5, 19 (under seal); P5908 (Record of interview with KDZ185), para. 5; KDZ185, T. 4184–4185 (28 June 2010) (private session), T. 4225–4226 (28 June 2010), T. 4239–4241 (private session), T. 4295–4296 (29 June 2010), T. 4305–4306, 4309–4318 (29 June 2010) (partly private session); P1065 (UNPROFOR report re shelling in Sarajevo, 21 March 1993); P1066 (SRK combat report, 22 March 1993); P1050 (UNPROFOR daily report, 21 March 1993); D344 (SRK combat report, 19 March 1993); D346 (ABiH 1st Corps combat report, 20 March 1993); D347 (SRK combat report, 21 March 1993); D348 (ABiH 1st Corps combat report, 21 March 1993); D3405 (SRK combat report, 15 March 1993); D3406 (SRK combat report, 18 March 1993).

11402 D3407 (SRK combat report, 22 March 1993); Stanislav Galić, T. 37348–37349 (16 April 2013). *See also* D3476 (SRK combat report, 24 March 1994); D4566 (SRK combat report, 28 March 1993); D3438 (SRK combat report, 29 March 1993).

11403 Manojlo Milovanović, T. 25431–25432 (28 February 2012).

11404 D2163 (VRS Main Staff Order, 2 April 1993). *See also* Dragomir Milošević, T. 32894–32895 (30 January 2013), T. 33237–33238 (5 February 2013); Milenko Indić, T. 32423–32424 (22 January 2013). According to those procedures, before a convoy could move, a request had to be made to the VRS Main Staff via the VRS Liaison Group headed by Indić and had to list, *inter alia*, the number of personnel and the type of vehicles in the convoy, the type and quantity of cargo transported, the route the convoy was taking, and the convoy's expected

letter to the UN Secretary General protesting the use of humanitarian convoys to transport ammunition to ABiH units in Butmir, Sokolović Kolonija, and Hrasnica and stating that the RS government had issued an order to "strictly control all humanitarian convoys".[11405]

3570. On 4 April 1993 the ABiH forces fired six shells on Grbavica resulting in the VRS protesting to the UN about cease-fire violations by the ABiH.[11406] On 17 April, a nine year old girl was shot and wounded while playing in front of her house in Sedrenik.[11407]

3571. In early May 1993, fighting between the ABiH and the SRK along the confrontation line continued.[11408] On 6 May, the Security Council passed Resolution 824 which established Sarajevo as one of the safe areas, along with Tuzla, Žepa, Goražde, Bihać, and Srebrenica; it also provided for an immediate cease-fire and declared that the safe areas should be free from armed attack by all parties or any other hostile acts.[11409] Further, it declared that all parties should respect the rights of UNPROFOR and international humanitarian agencies to free and unimpeded access and demanded full co-operation with UNPROFOR.[11410] Nevertheless, the ABiH launched a number of attacks on 15 May, which were responded to by the SRK.[11411] Galić testified that on that day the SRK response was restrained as one of the neighbourhoods from which the ABiH opened fire was a densely populated area.[11412] On the same day, Galić ordered the SRK to ensure the unhindered

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time of arrival. If the VRS Main Staff approved the convoy, the VRS Liaison Group would inform the relevant SRK units and its soldiers at relevant check-points would inspect the convoy "completely and thoroughly" to ensure that it was carrying only the type and quantity of cargo specified in the request. If a convoy appeared at a check-point unannounced, or without a declaration of what it was carrying, or using a different route to the one requested, it would "not be allowed to pass" and would be turned back until it complied with the correct procedures. *See* D2163 (VRS Main Staff Order, 2 April 1993), paras. 3, 5; Stanislav Galić, T. 37573 (23 April 2013), T. 38025 (9 May 2013); Dragomir Milošević, T. 32894–32895 (30 January 2013), T. 33237–33238 (5 February 2013); D2774 (Witness statement of Milenko Inđić dated 19 January 2013), paras. 161–162; Milenko Inđić, T. 32423–32424 (22 January 2013); KW570, T. 32218–32219 (18 January 2013); D2845 (SRK instructions, 22 August 1993), p. 1; Adrianus van Baal, T. 8419–8420, 8439 (27 October 2010); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 69; D2164 (VRS Main Staff Order, 9 April 1993); D3408 (SRK combat report, 5 April 1993), para. 7; D3261 (VRS Main Staff Order, 27 February 1994); D3469 (SRK combat report, 24 April 1993), para. 5.

11405 D3575 (TANJUG news report, 11 April 1993), p. 1; D3563 (Witness statement of Vladimir Lukić dated 18 May 2013), para. 38.

11406 D345 (VRS protest to UNPROFOR, 6 April 1993); D3408 (SRK combat report, 5 April 1993); D4567 (SRK combat report, 4 April 1993). *See also* D3468 (SRK combat report, 8 April 1993) (reporting that ABiH opened fire from Dobrinja and that SRK returned small arms fire in the Dobrinja sector); D3469 (SRK combat report, 24 April 1993) (reporting that one of the SRK brigades was engaged in intense combat).

11407 *See* discussion on Scheduled Incident F.2.

11408 D3409 (SRK combat report, 5 May 1993); D3441 (SRK combat report, 4 May 1993).

11409 P984 (UNSC Resolution 824, 6 May 1993). *See also* P820 (Witness statement of David Harland dated 4 September 2009), para. 102; P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), p. 3; Michael Rose, T. 7523 (8 October 2010).

11410 P984 (UNSC Resolution 824, 6 May 1993), p. 2.

11411 D3411 (SRK combat report, 15 May 1993). *See also* D3470 (SRK combat report, 21 May 1993).

11412 Stanislav Galić, T. 37358–37359 (18 April 2013). *See also* D3442 (SRK combat report, 17 May 1993); D3412 (SRK combat report, 19 May 1993); D3413 (SRK combat report, 28 May 1993).

passage of humanitarian aid to Sarajevo and to adhere to the Geneva Conventions and Additional Protocols.[11413]

3572. When David Harland, a Civil Affairs Officer for the UNPROFOR and later a political advisor to the Commander of the UNPROFOR BiH Command in Sarajevo,[11414] arrived in Sarajevo in June 1993, the city seemed eerily empty, with burnt out cars on the streets, anti-sniping barricades made of containers and constant background noise of gunfire; its buildings were peppered with damage from shelling and gunfire.[11415] On 1 June, two shells exploded in the suburb of Dobrinja during a football game resulting in a large number of casualties.[11416] On 3 June, the SRK command reported that the ABiH opened sniper and mortar fire on a number of SRK-held areas, including civilian targets in Ilidža, resulting in the wounding of four soldiers and the killing of two women; Galić testified that the SRK did not respond to the attacks due to the cease-fire in force at the time.[11417] On 15 June, another general cease-fire was signed and, on 17 June, the SRK command reported that the ABiH shelled SRK positions and that the ABiH forces would not be observing the cease-fire.[11418] In a meeting with Andreev of UNPROFOR on 22 June 1993, Mladić acknowledged the urgency of "unblocking" Sarajevo for both sides and promised that all humanitarian convoys would be able to pass across RS territory but that the Bosnian Serbs would continue to check convoys at Sarajevo airport.[11419] On 25 June, Mladić issued Directive 5, in which he instructed VRS units to thwart the "unblocking of Sarajevo" to be followed by "quick and rigorous operations to liberate the axis Sarajevo-Kijevo village-Trnovo village-Rogovo pass-Kalinovik" and the area around Igman and Bjelašnica; the code-name for the operation was "Lukavac 93".[11420] Lukavac 93 was thus launched by the SRK, Drina Corps, and Herzegovina Corps, with the SRK engaged in the area of Jahorina-Igman-Bjelašnica axis.[11421] The SRK launched attacks with the aim of capturing Mt. Igman as the connection between Sarajevo and the

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11413 D3482 (SRK Order, 15 May 1993), p. 1; Stanislav Galić, T. 37616–37618 (23 April 2013); D2561 (SRK Order, 15 May 1993), p. 1; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 97.

11414 P820 (Witness statement of David Harland dated 4 September 2009), para. 5.

11415 P820 (Witness statement of David Harland dated 4 September 2009), paras. 25–27.

11416 *See* discussion on Scheduled Incident G.4.

11417 D3443 (SRK combat report, 3 June 1993); Stanislav Galić, T. 37487–37489 (22 April 2013). *See also* D3471 (SRK combat report, 10 June 1993).

11418 D629 (SRK Order, 16 June 1993); D3415 (SRK combat report, 17 June 1993); Stanislav Galić, T. 37381–37383 (18 April 2013). *See also* D3444 (SRK combat report, 23 June 1993); D3416 (SRK combat report, 24 June 1993); D3420 (SRK report, 11 June 1993).

11419 D1499 (UNPROFOR report re meeting with Ratko Mladić, 22 June 1993), pp. 1–2 (Mladić also promised to co-operate on making Sarajevo a safe area so long as safety assurances were found for Lukavica and Grbavica).

11420 P843 (Directive 5, 25 June 1993), paras. 2, 4.

11421 Stanislav Galić, T. 37390 (18 April 2013), T. 37604 (23 April 2013) (although Dragomir Milošević testified that the operation started between 6 and 7 June); P5981 (SRK Order, 26 June 1993), para. 2; Savo Simić, T. 30040–30043 (12 November 2012) (testifying that the main objective of the operation was to establish a link between the south and southeastern part of the RS); D568 (Speech of Dragomir Milošević, 30 March 1996), p. 4.

rest of the BiH went across and underneath Sarajevo airport through to Mt. Igman.[11422] Due to these attacks, Izetbegović asked that the talks in Geneva, set for July, be postponed, while NATO threatened the Bosnian Serb side with air strikes.[11423] Michael Rose, who was the Commander of the UNPROFOR BiH Command in Sarajevo from January 1994 to January 1995,[11424] testified that the capture of Mt. Igman by the SRK was considered a full encirclement of Sarajevo and that therefore the Bosnian Serbs were given an ultimatum to withdraw.[11425]

3573. On 5 July 1993, the SRK command reported to the VRS Main Staff that the ABiH opened fire on a number of frontlines resulting in three dead and two wounded soldiers; Galić testified that SRK units did not respond in this instance as they were "preparing".[11426] On 10 July, the SRK command reported that the ABiH opened infantry and mortar fire; it also noted that SRK units in all sectors were in full combat readiness and firing.[11427] On 11 July, Munira Zametica, a 48 year old woman was shot dead while collecting water from the Dobrinja river in Dobrinja.[11428] On 12 July, a shell exploded in Dobrinja near a water pump where people were queuing for water, resulting in a number of casualties.[11429] On 18 July, the SRK command reported that its units were engaged in the Lukavac 93 operation while the ABiH opened infantry and mortar fire on a number of SRK-held positions, as well as on Grbavica and Ilidža, killing two civilians.[11430] According to Galić, the ABiH was at this time trying to attack on the confrontation lines within Sarajevo and slow down the Lukavac 93 attacks taking place outside Sarajevo.[11431] On 30 July, in a meeting with UNPROFOR, Milovanović expressed concern about the smuggling of weapons and ammunition in humanitarian

11422 P820 (Witness statement of David Harland dated 4 September 2009), paras. 43–46; Michael Rose, T. 7572 (8 October 2010); Francis Roy Thomas, T. 6849–6850 (15 September 2010).

11423 P820 (Witness statement of David Harland dated 4 September 2009), para. 49; David Fraser, T. 8152 (19 October 2010).

11424 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 5.

11425 Michael Rose, T. 7572–7573 (8 October 2010).

11426 Stanislav Galić, T. 37384–37386 (18 April 2013); D3417 (SRK combat report, 5 July 1993) (indicating that the SRK units were to continue preparing for the Lukavac 93 operation).

11427 D2819 (SRK combat report, 10 July 1993), paras. 1–2; Dragomir Milošević, T. 32802–32804 (29 January 2013). *See also* D2820 (SRK combat report, 16 July 1993).

11428 *See* discussion on Scheduled Incident F.3.

11429 *See* discussion on Scheduled Incident G.5.

11430 D3421 (SRK combat report, 18 July 1993).

11431 Stanislav Galić, T. 37405–37408 (18 April 2013); D3422 (SRK combat report, 25 July 1993) (indicating exchange of fire between the two sides); D3465 (SRK combat report, 24 July 1993); D2798 (SRK combat report, 28 July 1993); D3423 (SRK combat report, 29 July 1993); D4631 (Letter from Manojlo Milovanović to UNPROFOR, 2 August 1993); D3446 (SRK combat report, 2 August 1993); D3447 (SRK combat report, 8 August 1993).

convoys.[11432] That day, UNPROFOR reported that its freedom of movement across RS territory was being affected by "misunderstandings, bureaucracy and over zealous check-points".[11433]

3574. The SRK eventually managed to capture and take control of Mt. Igman and Bjelašnica.[11434] Following a meeting with Briquemont, Andreev, Mladić, Plavšić, and Krajišnik on 5 August 1993, the Accused agreed to the withdrawal of the SRK forces from Mt. Igman, despite Mladić's protests, and on 14 August an agreement was signed according to which UNPROFOR was to monitor the vacated territory, which, together with the airstrip, became a demilitarised zone ("DMZ").[11435] However, neither party respected the DMZ—the ABiH was present in the northern part of the zone while there were some Bosnian Serb troops in the southern part; the DMZ was properly demilitarised only at the beginning of 1995.[11436]

3575. On 11 August 1993, the military commanders of the three warring sides in BiH signed the Military Agreement for Peace in BiH, eventually leading to a follow-up agreement allowing UNMOs freedom of movement throughout BiH and turning the administration of Sarajevo, with the exclusion of Pale, to the UN.[11437] This was followed up by an order from Galić to all SRK units not to open fire on Sarajevo "at any cost" and to remove "possible troublemakers" and "soldiers eager for adventure and provocations especially against UNPROFOR" by giving them secondary duties.[11438] On 13 August, SRK command reported that the ABiH was launching mainly infantry attacks along various axes but that SRK units were not responding to provocations, "except for repulsing heavier attacks".[11439] On 19 August, the SRK command, having listed ABiH activities, reported that all units were in full combat readiness and were "not responding to provocations

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11432 D3579 (UNPROFOR fax, 30 July 1993), p. 2; D3563 (Witness statement of Vladimir Lukić dated 18 May 2013), para. 51.

11433 D3579 (UNPROFOR fax, 30 July 1993), p. 2 (adding, however, that the Bosnian Serb leadership did not appear to have a "genuine policy" of obstructing convoys at this time).

11434 P820 (Witness statement of David Harland dated 4 September 2009), paras. 43–46; Michael Rose, T. 7572 (8 October 2010); Francis Roy Thomas, T. 6849–6850 (15 September 2010).

11435 P820 (Witness statement of David Harland dated 4 September 2009), paras. 50–55; P824 (UNPROFOR report re meeting with Radovan Karadžić, 5 August 1993), pp. 2–3; Michael Rose, T. 7573 (8 October 2010); D722 (UNPROFOR report re letter from Ambassador Sacirbey, 19 October 1994), e-court p. 4; P2414 (Witness statement of KDZ182), p. 87 (under seal); KDZ182, T. 13160–13161 (10 March 2011); D1135 (Map of Sarajevo marked by KDZ182); Stanislav Galić, T. 37604–37605 (23 April 2013); D4645 (Letter from Radovan Karadžić to Boutros Boutros Ghali, Bill Clinton, Lord Owen, and Stoltenberg, 7 August 1993); D2755 (Fax from Vere Hayes, undated). *See also* Adjudicated Fact 2783.

11436 P2414 (Witness statement of KDZ182), pp. 57, 88 (under seal); P2447 (Witness statement of KDZ182), p. 62; P1774 (UNPROFOR report re meeting with Ejup Ganić, 2 October 1994); Milenko Indić, T. 32465 (22 January 2013); D2784 (ABiH 1st Corps minutes of meeting at Sarajevo airport, 5 January 1995).

11437 P5041 (Military Agreement for Peace in BiH, 11 August 1993) (Mladić representing the Bosnian Serbs, Rasim Delić the Bosnian Muslims, and Milivoj Petković the Bosnian Croats); P2538 (Patrick Treanor's research report entitled "Radovan Karadžić and the Serbian Leadership 1990-1995", 1 May 2009), para. 191. *See also* para. 379.

11438 P2665 (SRK order, 11 August 1993). *But see* D4617 (SRK Order, 11 August 1993).

11439 D3424 (SRK combat report, 13 August 1993). *See also* D3447 (SRK combat report, 8 August 1993).

unless forced to do so, and then only with infantry weapons and sniper rifles."[11440] On 31 August, Dragomir Milošević proposed opening several routes for the delivery of humanitarian aid to Sarajevo.[11441]

3576. On 2 September 1993, the SRK command again reported on the ABiH opening small arms and sniping fire on SRK positions and on Grbavica from, *inter alia*, Sedrenik; the SRK units returned fire on Sedrenik using a 12.7 mm anti-aircraft machine gun.[11442] On 3 September, Nafa Tarić, a 35 year old woman and her eight year old daughter were shot and wounded by a single bullet in the centre of Sarajevo.[11443] On 4 September, Galić reported to the VRS Main Staff that some of the soldiers were exhausted and that "considering that they respond only in exceptional circumstances, the question [...] is, how long can they restrain themselves".[11444]

3577. KDZ450 testified that the period between October 1993 and February 1994 was a "very difficult period" for the city for a number of reasons, including the volume and intensity of shelling and sniping activity, which impeded the supply of humanitarian aid to the city.[11445] Following the rejection of the Owen-Stoltenberg plan by the Bosnian Muslim side at the end of September 1993,[11446] the situation in Sarajevo deteriorated and shelling was on the increase.[11447] Francis Roy Thomas, a senior UNMO in Sarajevo between 15 October 1993 and 14 July 1994,[11448] testified that, upon his arrival in Sarajevo on 15 October 1993, there was an unsuccessful attempt by the ABiH to take the Pale road, which was the Bosnian Serb's connection between Pale and Lukavica.[11449] On

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11440 D2827 (SRK combat report, 19 August 1993). Dragomir Milošević testified that this order clearly did not instruct the troops to open sniper fire on civilians. Dragomir Milošević, T. 32836–32837 (29 January 2013). *See also* D4570 (SRK combat report, 20 August 1993).

11441 D2849 (SRK proposal, 31 August 1993), p. 1; Dragomir Milošević, T. 32899 (30 January 2013).

11442 D3425 (SRK combat report, 2 September 1993); Stanislav Galić, T. 37410–37411 (18 April 2013) (testifying that this weapon is a more precise weapon).

11443 *See* discussion on Scheduled Incident F.4.

11444 D3429 (SRK combat report, 4 September 1993), p. 2; Stanislav Galić, T. 37424–37429 (18 April 2013) (testifying that the SRK command was warning the Main Staff that there could be unauthorised and random fire from SRK soldiers and that he personally took measures to prevent that from happening). *See also* D2809 (SRK combat report, 13 September 1993) (in which the SRK command reports that, given the frequency of ABiH operations, he foresees that certain units will not be able to tolerate the consequences of those operations and will be forced to return fire); D3426 (SRK combat report, 22 September 1993); Dragomir Milošević, T. 32719–32720 (28 January 2013).

11445 KDZ450, T. 10549 (19 January 2011), T. 10652–10654 (20 January 2011); D632 (Order of ABiH 1st Corps, 8 December 1993). *See also* P820 (Witness statement of David Harland dated 4 September 2009), para. 61; David Harland, T. 2038–2039 (6 May 2010); Adjudicated Fact 134.

11446 P820 (Witness statement of David Harland dated 4 September 2009), paras. 56–59. *See also* para. 382.

11447 P820 (Witness statement of David Harland dated 4 September 2009), paras. 60–63; P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993); P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5. *See also* D3427 (SRK combat report, 13 October 1993) (in which SRK command reports that ABiH troops opened fire on a number of axes and that SRK units "periodically opened fire" when their positions were threatened); D3450 (SRK combat report, 24 October 1993).

11448 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 13.

11449 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 46, 82.

16 October, UNPROFOR reported that convoy deliveries to Sarajevo had increased recently; however, distribution to the civilian population had been very limited because large quantities of aid had been diverted to the military or stockpiled by Bosnian Muslim authorities while a smaller amount had been diverted to the black market.[11450] On 19 October, ABiH soldiers, disguised as Bosnian Serbs, shot at the UNPROFOR BiH Commander and also began using tanks to fire from the city in an attempt to draw retaliatory fire.[11451] On 29 October, Dragomir Milošević issued an order to the SRK units to intensify sniping against ABiH forces and that each brigade should set up a platoon-strength sniper group of 31 soldiers, each of whom should be supplied with sniper rifles.[11452] In late October and early November 1993, Sarajevo was heavily bombarded, with some 500 shells falling on the Old Town on 27 October alone.[11453]

3578. On 3 November 1993, UNPROFOR reported that the Bosnian Serbs were causing more difficulties for the humanitarian aid supply to Sarajevo than they had for some time, and that convoys carrying food, medicine, and equipment had been delayed.[11454] On 11 November, the Accused issued Directive 6, in which he ordered the VRS to create objective conditions for the achievement of the VRS "war goals", including the "liberation of Sarajevo"; one of the tasks of the SRK units was to "prevent the deblockade of Sarajevo".[11455] This was followed up by a supplement to the directive, sometime in December of the same year, in which the Accused ordered the VRS to seize Žuč and Mojmilo in order to ensure "the most favourable position for dividing the town".[11456]

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11450 P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 2.

11451 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 88–89 (testifying also that he only saw ABiH using tanks once or twice during his time in Sarajevo, while there were numerous occasions where he observed Bosnian Serbs using tank fire); Francis Roy Thomas, T. 6813 (15 September 2010).

11452 D2902 (SRK Order, 29 October 1993). Milošević denied that this order could have been a basis for the firing on civilians in Sarajevo. Dragomir Milošević, T. 33272–33274 (6 February 2013).

11453 P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 7; P820 (Witness statement of David Harland dated 4 September 2009), para. 71; P1569 (UNMO report, 18 October 1993). *See also* D3428 (SRK combat report, 26 October 1993), para. 8 (reporting that "[d]espite disturbances and the chaos in Sarajevo, the enemy forces are firing various types of weapons on our positions as the line of contact" while the SRK is assessing "the possibilities of moving [their] forward line"); Stanislav Galić, T. 37416–37418 (18 April 2013). In contrast, the SRK report of 5 November notes that the ABiH fired around 800 shells in the whole month of October. The report also notes that in the area of Grbavica, 101 shells fell in the period from September to November. *See* D3431 (SRK report, 5 November 1993).

11454 P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 7.

11455 P3039 (Directive 6, 11 November 1993), para. 3(1)(a) and p. 9.

11456 P4925 (Supplement to Directive 6, 12 December 1993), para. 2(a); P3052 (VRS Main Staff Order, 14 December 1993); P5045 (Interim Report from Stanislav Galić to the VRS Main Staff, 27 December 1993). *See also* Dragomir Milošević, T. 33092–33099 (4 February 2013).

3579. The shelling of the city, including on heavily populated areas, continued in November and December, often reported by the UNMOs as random SRK fire with no discernible target.[11457] On 2 November, Ramiza Kundo, a 38 year old woman, was shot and wounded while carrying water in the west end of Sarajevo.[11458] UNPROFOR reported that in mid-December the ABiH was launching "heavy infantry attacks" from Sarajevo on Serb-held territory.[11459] On 26 December UNMOs also reported increased sniping activity in the city resulting in the wounding of women and children.[11460]

3580. In early January 1994, Sarajevo, including many of its residential areas, experienced heavy shelling again, resulting in a large number of civilian casualties.[11461] In a meeting with the Accused on 3 January 1994, De Mello of UNPROFOR stated that the Joint Declaration on the provision of humanitarian relief, signed by the Accused,[11462] was being "totally disregarded" by Bosnian Serb forces at check-points and that the "petty harassment" of convoys had become intolerable, indicating that the Bosnian Serbs had a deliberate strategy to "grind UNPROFOR to a halt".[11463] The Accused denied that this strategy existed but reiterated that humanitarian convoys had to be checked for weapons and ammunition.[11464] On 6 January, Sanija Dževlan, a 32 year old woman, was shot and wounded while riding her bicycle in Dobrinja.[11465] On 22 January, three shells landed

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11457 P1571 (UNMO report, 21 November 1993); P1572 (UNMO report, 30 November–1 December 1993); P1573 (UNMO report, 2–3 December 1993); P1574 (UNMO report, 4–5 December 1993); P1575 (UNMO report, 6–7 December 1993); P1576 (UNMO report, 13–14 December 1993); P1577 (UNMO incident report, 19–26 December 1993); P1578 (UNMO report, 24–25 December 1993); P1579 (UNMO report, 26–27 December 1993); P1580 (UNMO report, 27–28 December 1993); P1581 (UNMO report, 30–31 December 1993); P1582 (UNMO incident report, 25 December 1993–1 January 1994); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 33, 93–95; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 24; D2804 (SRK combat report, 8 December 1993) (indicating that SRK opened mortar fire on 8 December). On the other side, the SRK reported that in the month of November around 140 shells landed on its territory. *See* D3431 (SRK report, 5 November 1993).

11458 *See* discussion on Scheduled Incident F.5.

11459 D3490 (UNPROFOR report, 15 January 1994), p. 3.

11460 P1561 (UNMO report, 25-26 December 1993); P1560 (Map of Sarajevo showing shelling sites, 25-26 December 1993); Francis Roy Thomas, T. 6800–6806 (15 September 2010).

11461 D178 (Annex VI to UNSG's Report, 6 June 1994); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 93, 96; Francis Roy Thomas, T.6860–6864 (15 September 2010); P1583 (UNMO report, 2–3 January 1994); P1584 (UNMO report, 3–4 January 1994); P1585 (UNMO report, 4–5 January 1994); P1586 (UNMO report, 4–5 January 1994); P1587 (UNMO report, 7–8 January 1994); D631 (UNMO report, 10-11 January 1994); P1588 (UNMO incident report, 1–8 January 1994); P1589 (UNMO incident report, 8–15 January 1994); P1590 (UNMO incident report, 22–29 January 1994); P1591 (UNMO summary of incident reports, January 1994), p. 1; P1592 (UNMO summary of shoot reports, January 1994); P1598 (UNMO summary of victims, December 1993 to February 1994), p. 2; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 24.

11462 *See* para. 384.

11463 P5034 (UNPROFOR report re meeting with Radovan Karadžić, 4 January 1994), paras. 2–3 (adding that UNPROFOR personnel were often personally searched at Bosnian Serb check-points, making it impossible for them to escort UNHCR convoys).

11464 P5034 (UNPROFOR report re meeting with Radovan Karadžić, 4 January 1994), para. 3.

11465 *See* discussion on Scheduled Incident F.6.

in Alipašino Polje, resulting in the deaths of six children.[11466] On his arrival in Sarajevo, on 23 January 1994,[11467] Rose was told that there was indiscriminate shelling within the city centre by the Bosnian Serbs.[11468] At that time, the intensity of the shelling was approximately 1,500 to 2,000 shells per day, going both ways, and sniping was also common.[11469] According to Thomas, the high casualty rate in this period was partly caused by the fact that the Bosnian Serbs were shelling areas known to be used by civilians to avoid dangerous areas exposed to sniper fire.[11470]

3581. On 26 January, Galić issued an order in which he outlined a two-stage operation in Sarajevo; in the first stage the SRK units were ordered to prevent the "de-blocking" of Sarajevo and the linking of ABiH units from Sarajevo with ABiH units outside of Sarajevo by engaging in "decisive defence" and through improving the SRK's strategic-tactical position by capturing features such as Debelo Brdo, Mojmilo, Grdonj, Hum, and Čolina Kapa.[11471] In the second stage, which was to start in the spring of 1994 and last 20 to 30 days, the SRK was to continue the above activities, prevent any supplies from getting into the city, prevent any medical evacuation, and "liberate the Serb part of the City of Sarajevo".[11472] Despite the above, the humanitarian situation in Sarajevo began to improve; during a meeting with Rose on 30 January, the Accused stated that he had in the preceding days instructed the civilian and the military authorities to "ease further" the movement of UN convoys.[11473]

3582. On 4 and 5 February 1994, two shelling incidents took place, one in Dobrinja and the other at Markale market in the centre of Sarajevo, resulting in a large number of casualties.[11474] On 9 February, as a result of these two incidents and particularly the Markale incident,[11475] a cease-fire

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11466 *See* discussion on Scheduled Incident G.6.

11467 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 5, 21.

11468 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 23 (conceding that there was also shelling directed at the Bosnian Serbs in Grbavica). *See also* David Harland, T. 2317–2318 (11 May 2010); D178 (Annex VI to UNSG's Report, 6 June 1994).

11469 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 30. *See also* P1584 (UNMO report, 3–4 January 1994); P1586 (UNMO report, 4–5 January 1994); P1588 (UNMO incident report, 1–8 January 1994); D3452 (SRK combat report, 6 January 1994).

11470 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 96; P1587 (UNMO report, 7–8 January 1994), para. 9.

11471 P5968 (SRK Order, 26 January 1994), pp. 5, 8.

11472 P5968 (SRK Order, 26 January 1994), pp. 6, 8.

11473 D700 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 30 January 1994), para. 2; Michael Rose, T. 7484 (7 October 2010) (testifying that when he arrived in BiH in January 1994, the flow of aid was "clearly not too bad"); D691 (TANJUG news report, 30 January 1994), p. 1; P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 90.

11474 See discussion on Scheduled Incidents G.7 and G.8.

11475 Harland testified that the overall effect of the Markale shelling was the stabilisation of the situation around Sarajevo. *See* P820 (Witness statement of David Harland dated 4 September 2009), para. 76. *See also* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 40; Michael Rose, T. 7338–7340 (6 October 2010).

negotiated by Rose was agreed upon by both sides whereby WCPs would be established, as well as a TEZ, a 20 kilometre circle around the city, from which both sides would withdraw all heavy weapons by 21 February.[11476] The cease-fire was to start on 10 February and UN troops were to be positioned on key terrain between the warring parties.[11477] In subsequent negotiations, the Accused and Yasushi Akashi, Special Representative of the Secretary General from January 1994,[11478] agreed that there would be seven WCPs for SRK weapons, which would be located at the outskirts of the city, while one WCP would be set up in the city itself for ABiH weapons; all would be monitored by the UNPROFOR soldiers.[11479] While the Bosnian Serbs attempted to negotiate a protocol to the agreement, under which they would be entitled to redeploy the weapons in case of an attack by the ABiH, this was not accepted by the UN.[11480]

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11476 P820 (Witness statement of David Harland dated 4 September 2009), paras. 79–80; P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 40–44 (testifying that the Bosnian Serb side was threatened with NATO air strikes if it did not pull out its guns 20 kilometres away from Sarajevo); Michael Rose, T. 7256, 7263–7264 (5 October 2010), T. 7338–7340 (6 October 2010), T. 7547–7550, 7562–7563 (8 October 2010); D718 (Map of Sarajevo and surrounding areas); P1642 (SRK Order, 10 February 1994); D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 48; D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994); Yasushi Akashi, T. 37691–37692 (24 April 2013); Adrianus van Baal, T. 8477–8480 (28 October 2010); D830 (UNPROFOR report re cease fire negotiations in Sarajevo, 8 February 1994); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 97–98; P2119 (Witness statement of KDZ450 dated 17 January 2011), para. 86 (under seal); P2121 (UNPROFOR report re Joint Commission meeting, 10 February 1994); Stanislav Galić, T. 37446–37448 (18 April 2013); Milenko Indić, T. 32446–32448 (22 January 2013). KDZ450 testified that Galić was eventually relieved of his duty as the SRK Commander because he had agreed to the TEZ and the WCPs, all of which was against Mladić's wishes. *See* P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 38–39; Stanislav Galić, T. 37449 (18 April 2013). All weapons above 81mm were considered heavy weapons for the purposes of the agreement. *See* P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 15. *See also* Adjudicated Facts 2784, 2785.

11477 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 97.

11478 Yasushi Akashi, T. 37665 (24 April 2013).

11479 D842 (UNPROFOR report re meeting with Radovan Karadžić and Alija Izetbegović, 21 February 1994), paras. 11–12; P2120 (UNPROFOR report re meeting with Stanislav Galić, 16 February 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 46–49; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 104–105; P1593 (SRK map of Sarajevo showing weapon sites); P1594 (SRK map of Sarajevo showing weapon sites); P1595 (SRK map of Sarajevo showing weapon sites); P1596 (SRK map of Sarajevo showing weapon sites); P1654 (Agreement between Yasushi Akashi and Radovan Karadžić, 18 February 1994; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, para. 11; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 20–21; P2119 (Witness statement of KDZ450 dated 17 January 2011), paras. 89, 91 (under seal); KDZ450, T. 10558–10559, 10590–10591 (19 January 2011) (private session); D961 (UNPROFOR report re meeting with Stanislav Galić, 18 February 1994). *See* Adjudicated Fact 2786. Since the ABiH stored a large amount of its equipment in the Koševo tunnel, that too was later agreed as a WCP. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 99.

11480 D717 (UNPROFOR report re weapons collection points in Sarajevo, 16 August 1994), e-court p. 4; P2118 (UNPROFOR report re weapon collection points in Sarajevo, 12 September 1994); Yasushi Akashi, T. 37693–37695 (24 April 2013), T. 37753–37757 (25 April 2013); Michael Rose, T. 7556–7562 (8 October 2010); D716 (UNPROFOR report re meetings with Radovan Karadžić and Alija Izetbegović, 20 February 1994); KDZ450, T. 10563–10565, 10591–10593 (19 January 2011) (private session), T. 10577–10583 (19 January 2011); D842 (UNPROFOR report re meeting with Radovan Karadžić and Alija Izetbegović, 21 February 1994), paras. 5–7; KDZ304, T. 10501, 10509–10510 (18 January 2011), T. 10534–10537 (19 January 2011). *But see* Adrianus van Baal, T. 8473–8474 (27 October 2010), T. 8496–8497 (28 October 2010); Dragomir Milošević, T. 33249–33251 (5 February 2013).

3583. As a result of the above cease-fire agreement, delivery of aid to Sarajevo improved.[11481] On 17 February, UNPROFOR reported that the humanitarian situation was relatively good, with a steady flow of food; however, the civilian population was receiving less than a third of the aid delivered as some of it was diverted to the military, some appeared on the black market, and the majority could not be accounted for.[11482]

3584. As agreed, by 21 February, the sites suspected of containing heavy weapons were inspected and found to be clear; according to Rose, during the withdrawal process, the Serbs produced a far greater number of weapons than the other side, reflecting the disparity between the two sides.[11483] However, both sides were also disingenuous in complying with the agreement; for example, the SRK positioned a number of inoperative weapons around Sarajevo for the purpose of handing them

11481 P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), pp. 1, 3; Michael Rose, T. 7484 (7 October 2010). *See also* D3466 (SRK Order, 16 January 1994) (ordering that "full protection and unhindered movement" be given to humanitarian convoys in order to avoid conflicts with UNPROFOR, especially during the Geneva talks); Stanislav Galić, T. 37570–37571 (23 April 2013).

11482 P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), p. 3.

11483 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 50; Michael Rose, T. 7549 (8 October 2010) (testifying that the ABiH agreed to stop using its heavy weapons but did not agree to place them under the control of the UN; instead in a symbolic gesture it produced some weapons in one of the barracks in the city); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, paras. 14, 16; P2132 (UNPROFOR report re meeting with Stanislav Galić, 15 February 1994); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 100, 104; P2119 (Witness statement of KDZ450 dated 17 January 2011), para. 93 (under seal); D962 (UNPROFOR daily report, 20 February 1994), para. 7; D4612 (SRK report, 22 February 1994).

over to WCPs[11484] while the ABiH had a number of heavy weapons on Mt. Igman to which the UN was never given access.[11485]

3585. On 24 February 1994, Andreev, De Mello, and Koljević agreed in principle to the creation of Blue Routes within Sarajevo for the delivery of humanitarian aid.[11486] The routes included the Dobrinja-Butmir route for Bosnian Muslim civilians, the Lukavica-Ilidža route for Bosnian Serb civilians, and the pedestrian crossing in downtown Sarajevo at the Bratstvo Jedinstvo Bridge.[11487]

3586. As a result of the cease-fire agreement, Sarajevo was relatively calm for the rest of February; there were almost no war-related civilian deaths in the city in the last three weeks of February and few casualties later on.[11488] While the ABiH continued to fire at SRK positions

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11484 P820 (Witness statement of David Harland dated 4 September 2009), para. 81; P847 (VRS Main Staff Order, 9 February 1994); P848 (Order of Drina Corps, 9 February 1994); Rupert Smith, T. 11866–11867 (15 February 2011); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 143; P1670 (SRK Order, 21 August 1994); Michael Rose, T. 7260–7262 (5 October 2010), T. 7549–7552 (8 October 2010); P1641 (SRK proposal re artillery, 10 February 1994) (indicating that the SRK proposed to set aside artillery that is out of order for the purposes of the agreement); D714 (UNPROFOR report re situation in BiH, 13 August 1994), pp. 3, 4; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 13–16, 29; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 100–102; P2447 (Witness statement of KDZ182), pp. 63–64; P2414 (Witness statement of KDZ182), pp. 64–65 (under seal); KDZ182, T. 13032 (9 March 2011); D3493 (Letter from Radovan Karadžić to Yasushi Akashi, 27 February 1994) (in which the Accused indicates that he has been made aware of problems relating to the re-grouping of the SRK weapons and promises to fix them); Dragomir Milošević, T. 32725–32728 (28 January 2013), 33216–33221 (5 February 2013); Milenko Indić, T. 32447–32449 (22 January 2013), T. 32641–32646 (24 January 2013); P6087 (VRS Main Staff information, 12 February 1994); P6016 (SRK list of technical and material equipment, 21 February 1994). Galić testified that the SRK honoured the agreement to the "last letter". However, in anticipation of the agreement, Galić had already issued an order on 9 February for the SRK units to move defective weapons to fire positions around Sarajevo in order to then remove them once the agreement was signed and in order to have working weapons remain in their positions. He also ordered that this operation be conducted during the night. *See* Stanislav Galić, T. 37448 (18 April 2013), T. 37952–37959 (8 May 2013); P6303 (SRK Order, 9 February 1994); D2802 (SRK combat report, 20 February 1994). Accordingly, and in light of all the other evidence listed in this footnote, the Chamber does not accept Galić's evidence that he complied with the agreement to the "last letter".

11485 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 103, 105; Francis Roy Thomas, T. 6848–6849 (15 September 2010); Michael Rose, T. 7260–7261 (5 October 2010); KDZ450, T. 10594–10595 (19 January 2011) (private session); KDZ304, T. 10463–10464 (18 January 2011).

11486 Harland testified that negotiations for the opening of Blue Routes had been on-going for a long time but went "nowhere" until the Bosnian Serbs felt an urgent need to forestall NATO air strikes through "bold and conciliatory gestures". *See* P820 (Witness statement of David Harland dated 4 September 2009), para. 89. The concept of 'Blue Routes' into Sarajevo was first proposed at the ICFY in January 1993. *See* para. 389. *See also* Adjudicated Fact 3020.

11487 P820 (Witness statement of David Harland dated 4 September 2009), para. 90.

11488 P820 (Witness statement of David Harland dated 4 September 2009), paras. 82–84, 91, 95; P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), pp. 1–2; P849 (UNPROFOR Weekly Political Assessment, 1 March 1994), pp. 1–2; P850 (UNPROFOR Weekly Political Assessment, 9 March 1994), pp. 1–2; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 45; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 10; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 107; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 94; P4998 (Ewa Tabeau's expert report entitled "Population Losses in the 'Siege' of Sarajevo 10 September 1992 to 10 August 1994", 10 May 2002), p. 33 (indicating that the number of casualties fell significantly between February and August 1994); P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 40–41. On the other hand, the SRK lost a number of soldiers in the area on 9 February 1994. *See* D832 (SRK combat report, 3 March 1994), para. 5.

immediately following the cease-fire, the SRK forces kept abiding by the cease-fire and eventually the ABiH stopped its firing as well.[11489] To Rose and Thomas, this indicated that the Bosnian Serb side had absolute control over its heavy weaponry.[11490]

3587. March 1994 was an encouraging time for Sarajevo as the cease-fire continued to hold.[11491] By 15 March, the trams started operating again, which signified the beginning of better living conditions.[11492] Life in Sarajevo improved as utilities were restored, including running water, and for the first time people started hoping for a return to normality.[11493] On 17 March, the Blue Routes Agreement was negotiated between the parties under which several routes, including the Airport Routes, were opened on 23 March for the movement of civilians from both sides and to re-supply the city with humanitarian aid.[11494] KDZ450 testified that the combination of the cease-fire, the TEZ, and the opening of the Blue Routes contributed to a significant improvement in the freedom of movement of convoys.[11495] Rose confirmed that the flow of aid "improved immensely" in February as a result of the TEZ.[11496] He recalled that aid came to a halt during the crisis in Goražde in April 1994,[11497] but that after April 1994 aid flowed into Sarajevo "more or less unblocked".[11498]

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11489 Michael Rose, T. 7263–7264 (5 October 2010); P1642 (SRK Order, 10 February 1994); Adrianus van Baal, T. 8481–8485 (28 October 2010); D832 (SRK combat report, 3 March 1994), p. 2; P2119 (Witness statement of KDZ450 dated 17 January 2011), para. 70 (under seal) KDZ450, T. 10691–10692 (20 January 2011); D969 (UNMO report, 18 February 1994); D831 (SRK combat report, 16 February 1994); D4575 (SRK combat report, 21 February 1994); D4576 (SRK combat report, 22 February 1994); D3474 (SRK combat report, 28 February 1994); D3475 (SRK combat report, 1 March 1994); D4578 (SRK combat report, 11 March 1994); D4610 (Radovan Karadžić's Order, 13 March 1994) (in which the Accused instructed the VRS Main Staff to exercise maximum restraint and refrain from responding to fire during Bajram); D4580 (SRK combat report, 17 March 1994); D3433 (SRK combat report, 31 March 1994); D833 (UNPROFOR report re meeting Between Adrianus van Baal and Manojlo Milovanović, March 1994), e-court p. 4; D2803 (Report re truce violations, undated); P2711 (Letter from SRK to UNPROFOR, 1 March 1994).

11490 Michael Rose, T. 7263–7264 (5 October 2010); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 107.

11491 P849 (UNPROFOR Weekly Political Assessment, 1 March 1994), p. 1; P820 (Witness statement of David Harland dated 4 September 2009), paras. 91, 97.

11492 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 62; Michael Rose, T. 7257, 7269–7270 (5 October 2010); P850 (UNPROFOR Weekly Political Assessment, 9 March 1994), p. 2; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 48; D702 (Report of humanitarian organisation, 29 March 1994), paras. 28–29 (under seal).

11493 Michael Rose, T. 7256–7257 (5 October 2010); Adrianus van Baal, T. 8461–8462 (27 October 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 24, 70; KDZ450, T. 10549 (19 January 2011).

11494 *See* para. 390.

11495 KDZ450, T. 10549 (19 January 2011); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 94.

11496 Michael Rose, T. 7484 (7 October 2010).

11497 *See* P3042 (VRS Main Staff Report, 11 April 1994) (ordering that all relations with UNPROFOR "should be suspended" following a decision of the Supreme Command); P1786 (VRS Main Staff Report, 14 April 1994), p. 3 (stating that there had been no movement of UNPROFOR and humanitarian organisations across RS territory on 14 April in accordance with the decision of the Supreme Command); David Fraser, T. 8027, 8030 (18 October 2010) (testifying that this document was consistent with UNPROFOR's assessment that humanitarian aid and freedom of movement were "controlled by the Serbs").

11498 Michael Rose, T. 7484–7485 (7 October 2010) (adding that UNPROFOR rarely met the objectives of the World Health Organisation when it came to humanitarian aid, but that there were strong flows of aid into Sarajevo in particular periods).

Harland also agreed that the opening of the Blue Routes led to "substantial relief of the humanitarian situation" in Sarajevo.[11499]

3588. By 19 March, however, the level of sniping in the city started increasing.[11500] According to Adrianus van Baal, the Chief of Staff of UNPROFOR BiH Command at the time,[11501] sniping activity continued during this time despite the cease-fire agreement—it was specifically directed at trams in Sarajevo.[11502] Both Thomas and KDZ450 testified that after the creation of the TEZ, sniping became an important factor in the war and that the Serbs resorted to sniping because they lost the advantage of their heavy weapons and because the ABiH was undertaking "tunneling" towards the Serb lines at the time.[11503]

3589. In March 1994, Bosnian Muslims and Bosnian Croats formed a federation which tilted the military balance against the Bosnian Serb side; this signified a massive change in the strategic situation in BiH, leading in particular to the unwillingness of the Bosnian Muslims to sign up to any peace accord which they felt was unjust and would reward the Bosnian Serbs.[11504] On 21 March, Galić complained to the UN about violations of the cease-fire agreement by the ABiH, consisting

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11499 P820 (Witness statement of David Harland dated 4 September 2009), paras. 97, 120. *See also* Rupert Smith, T. 11349–11350 (8 February 2011) (testifying that "everything" which Sarajevo needed came from flights landing at the airport and convoys travelling on the Blue Routes); Michael Rose, T. 7258 (5 October 2010) (testifying that after the Blue Routes were opened people could buy fresh food again).

11500 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 63, 65; P1656 (Letter from Radovan Karadžić to Yasushi Akashi, 21 and 28 March 1994), e-court p. 5; P1564 (UNMO report on sniping victims from March to June 1994); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 119; Francis Roy Thomas, T. 6808–6810 (15 September 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 70.

11501 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 5.

11502 Van Baal testified that the SRK's focus on trams was due to Milovanović being opposed to the running of the trams. According to Van Baal, Milovanović even stated at one of their meetings that trams would be targeted if allowed to operate. *See* P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 36, 40–45; Adrianus van Baal, T. 8444–8451 (27 October 2010); D825 (Manojlo Milovanović's book entitled "My View of the War in Bosnia 1992–1995"). p. 31. However, Van Baal made no record of this statement by Milovanović in his notes, which were taken contemporaneously during the meeting in question. *See* D1090 (Handwritten notes of Adrianus van Baal). In addition, during his testimony before the Chamber, Milovanović denied that he ever made such a statement to Van Baal. He testified that he told Van Baal that the UN should encourage Bosnian Muslims to put a stop to urban transport otherwise he could not guarantee that "some idiot won't open fire". *See* Manojlo Milovanović, T. 25689–25691 (1 March 2012). Given that Van Baal did not record Milovanović's statement in his contemporaneous diary despite it being such a striking threat, the Chamber is not persuaded by Van Baal's evidence that this is what transpired in his meeting with Milovanović. Instead, the Chamber accepts Milovanović's evidence as to the statement he made to Van Baal.

11503 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 70; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 62–63.

11504 Michael Rose, T. 7248–7250 (5 October 2010), T. 7327–7328 (6 October 2010); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010,) para. 20; Yasushi Akashi, T. 37676–37677 (24 April 2013) (testifying that the Bosnian Serbs were more powerful in the beginning of the conflict but that Bosnian Muslim and Bosnian Croats became more powerful towards the end which meant they were against any long-term freezing of the military situation); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 103.

mostly of infantry fire.[11505] On 27 March, UNPROFOR protested to the ABiH about an attack on SRK positions, calling it a direct violation of the cease-fire.[11506]

3590. In mid-April, the TEZ was being openly violated.[11507] According to Anthony Banbury, a Civil Affairs Officer in UNPROFOR and later an assistant to Akashi,[11508] April 1994—during the crisis in Goražde—[11509] was a particularly bad period for Sarajevo, with a prevalence of sniping and mortar attacks, and very little gas, electricity, and water in the city.[11510] The period of May and June 1994, however, was generally quiet around Sarajevo.[11511] On 28 May 1994, UNPROFOR reported that there had been a "major influx" of humanitarian and commercial goods into Sarajevo, leading to rapid deflation in food prices and the opening of new shops.[11512]

3591. On 25 May, the VRS Main Staff reported to the Accused that the ABiH opened sniper fire in the area of the Vrbanja Bridge and Zlatište and ordered the SRK units to respect the cease-fire.[11513] On the same day, a bus was shot at in Dobrinja resulting in the wounding of two women.[11514] June was marked by fighting in other parts of BiH and the failure of peace talks in Geneva, which in turn resulted in the Bosnian Serb side cutting off electricity and gas to Sarajevo and halting aid convoys into the city.[11515] Thus, from around the middle of June 1994, the humanitarian situation in Sarajevo began to deteriorate again.[11516] In his book, Rose wrote that in this period the Bosnian Serb leadership "lapsed into a state of lunacy, blocking convoys and cutting

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11505 D834 (Letter from Stanislav Galić to UNPROFOR, 21 April 1994); Adrianus van Baal, T. 8488–8489 (28 October 2010); KDZ450, T. 10644–10645 (20 January 2011).

11506 P2122 (UNPROFOR protest letter to ABiH, 31 March 1994); KDZ450, T. 10649–10650 (20 January 2011),

11507 P829 (UNPROFOR Weekly Political Assessment, 16 April 1994), p. 1.

11508 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 3, 5; Anthony Banbury, T. 13305–13306 (15 March 2011).

11509 P820 (Witness statement of David Harland dated 4 September 2009), paras. 102–118; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 13; P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 66–102; D3496 (UNPROFOR report, 16 April 1994); D3497 (UNPROFOR report, 17 April 1994). *See also* para. 391.

11510 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 12. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 21, 64–65.

11511 P820 (Witness statement of David Harland dated 4 September 2009), para. 120; D177 (UNPROFOR Weekly Summary, 14–20 May 1994) (reporting sporadic fire and few civilian casualties between 14 and 20 May). *But see* P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 24 (testifying that May was marked by sniping and some shelling activities). *See also D3434* (SRK combat report, 5 May 1994) (indicating that the ABiH opened sniper fire on 5 May but that the SRK did not respond and was preparing for the Strela 94 operation).

11512 P2520 (UNPROFOR Weekly Political Assessment, 28 May 1994), p. 5.

11513 D3453 (VRS Main Staff report, 25 May 1994).

11514 *See* discussion on Scheduled Incident F.7.

11515 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 108–119 (testifying that, nevertheless, the standard of living in Sarajevo was better due to the lack of shelling, even though sniping incidents remained a feature of daily life); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 68; Adrianus van Baal, T. 8393–8399 (27 October 2010); P1819 (Letter from Adrianus van Baal to Ratko Mladić, 28 June 1994).

11516 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 116, 118.

off communication with the world".[11517] In response to a protest from Akashi about these restrictions, the Accused wrote on 24 June that UNPROFOR was taking little notice of the convoy procedures by carrying "undeclared goods and equipment".[11518] In a meeting on 27 June with Banbury and Rose, Krajišnik stated that improvements in the quality of life in Sarajevo had angered many Bosnian Serbs living outside Sarajevo and that the Bosnian Serb side was about to send a letter to UNPROFOR stating that the Airport Routes were being misused and therefore had to be closed.[11519] Despite these threats, all the Blue Routes remained open and were heavily used in late June and early July 1994.[11520]

3592. On 8 June 1994, following the talks in Geneva, the parties signed an Agreement on the Cessation of Offensive Actions, which was to last for one month.[11521] This prompted Galić to issue a declaration to the SRK units encouraging them to respect the agreement.[11522] However, by the end of June sniping activities on both sides had increased.[11523] On 19 June, a tram was shot at while travelling on Zmaja od Bosne street, resulting in casualties.[11524] On 26 June, Sanela Muratović, a 16 year old girl, was shot and wounded while walking in the west end of Sarajevo [11525]

3593. According to Rose, during the summer of 1994, the ABiH violated the cease-fire on more occasions than the SRK but this did not result in NATO air strikes against the ABiH because by the end of summer NATO changed its position that it would respond to violations by both sides.[11526] In

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11517 D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 167; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 117. *See also* P860 (Letter from Sergio Vieira de Mello to Radovan Karadžić, 31 July 1994, and Letter from VRS to UNPROFOR, 30 July 1994), e-court pp. 2–3 (in which De Mello expressed his dismay to the Accused at further restrictions on UNPROFOR's freedom of movement).

11518 D695 (Letter from Radovan Karadžić to Yasushi Akashi, 24 June 1994) (also stating that the Bosnian Muslims were mounting a military offensive and refusing to exchange prisoners); Michael Rose, T. 7463–7464 (7 October 2010) (stating that he would have taken "grave exception" to the allegations contained in this letter).

11519 P2465 (UNPROFOR report, 28 June 1994), paras. 7–8 (indicating that this anger probably explained why the Bosnian Serbs wanted to close the Airport Routes); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 21 (stating that it was his impression that Bosnian Serb leaders found the increased living standards in Sarajevo objectionable); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 102.

11520 D1172 (UNPROFOR report, 17 August 1994), p. 3; D1161 (UNPROFOR Weekly Political Assessment, 11 July 1994), p. 5; Anthony Banbury, T. 13465 (16 March 2011). *See also* P2470 (UNPROFOR report, 1 September 1994), p. 5 (stating that the 10,000th UNHCR flight landed at Sarajevo airport on 12 July 1994).

11521 P2470 (UNPROFOR report, 1 September 1994), p. 4; D1147 (UNPROFOR report, 21 June 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 113; P1665 (Agreement on Cessation of Hostilities in BiH, June 1994).

11522 Stanislav Galić, T. 37429–37432 (18 April 2013); D3430 (Letter from Stanislav Galić to SRK members, undated).

11523 P1771 (UNPROFOR report re anti-sniping measures, 25 June 1994); D3455 (SRK combat report, 24 June 1994); D2554 (SRK combat report, 26 June 1994).

11524 *See* discussion on Scheduled Incident F.8.

11525 *See* discussion on Scheduled Incident F.9.

11526 Michael Rose, T. 7554–7556 (8 October 2010); D715 (UNPROFOR report re situation in BiH, 15 February 1994), e-court p. 3; D835 (Letter from Manojlo Milovanović to Michael Rose) (complaining that the SRK had

the meantime, incidents of sniping in the city increased in the months of July and August, particularly on trams.[11527] On 22 July, Seid Solak, a 13 year old boy was shot and wounded while walking in the Čengić Vila area of Sarajevo.[11528] On 23 July, the SRK command reported to the VRS Main Staff that the ABiH had opened infantry fire on SRK lines on various axes.[11529] On the same day, Milovanović issued an order to the SRK to "carry out all necessary preparations" for the closure of the Airport Routes to civilians and humanitarian traffic.[11530] On 26 July, citing the smuggling of weapons into the city as the reason, the Bosnian Serbs, under the orders of the Accused, decided to close the airport to commercial convoys using the Airport Routes; this resulted in Rose feeling obliged to close the airport, for security reasons, to all civilian traffic thus stopping the humanitarian airlift.[11531] On 27 July, the SRK command reported a number of infantry attacks by the ABiH, noting that SRK units responded both with infantry fire and mortars.[11532] According to Rose, for the first time in many months the situation in Sarajevo was "moving backwards".[11533]

3594. By August 1994, the situation in Sarajevo began to deteriorate as incidents of sniping were on the increase.[11534] On 1 August the ABiH launched a number of attacks on the SRK from within

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been tricked by the UN in relation to this agreement and urging it to stop ABiH from engineering works towards SRK territory); D836 (SRK combat report, 6 July 1994); D2808 (SRK combat report, 1 July 1994); Yasuhi Akashi, T. 37714 (24 April 2013); Adrianus van Baal, T. 8492–8493, 8506 (28 October 2010) (conceding that strikes were only conducted against the Bosnian Serb side but stating also that the UN was unable to verify the claims of cease-fire violations made by the Bosnian Serb side as it had no access to their territory); Anthony Banbury, T. 13462 (16 March 2011); D966 (UNPROFOR Weekly Situation Report, 28 June 1994), p. 4.

11527 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 68; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 43, 56; P1822 (UNMO report on sniping incident of 11 August 1994).

11528 *See* discussion on Scheduled Incident F.10.

11529 D3435 (SRK combat report, 23 July 1994).

11530 P1639 (SRK Order, 23 July 1994) (indicating that the order was made pursuant to an oral order of the Accused). To Rose this indicated a "very close relationship" between the military and civilian authorities on the Bosnian Serb side. *See* Michael Rose, T. 7259–7260 (5 October 2010); Vlade Lučić, T. 30812–30813 (3 December 2012) (testifying that it was unclear whether this order was implemented or not because it was only an order to carry out "preparations").

11531 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 127–129; P1668 (UNPROFOR report re negotiations in BiH, 2 August 1994); Michael Rose, T. 7258–7260 (5 October 2010), T.7431–7433 (7 October 2010); P1639 (SRK Order, 23 July 1994); P859 (UNPROFOR report re closing of Sarajevo routes, 26 July 1994) (attaching the letter of the Accused explaining his decision to close some of the Blue Routes); P820 (Witness statement of David Harland dated 4 September 2009), para. 122; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 102; D3928 (Article from Večernje Novosti entitled "Moslems to Blame for Blockade, Failure of Balkan Policy", 28 July 1994); John Zametica, T. 42463–42464 (29 October 2013); P2470 (UNPROFOR report, 1 September 1994), p. 8 (describing the Mt. Igman route as Sarajevo's "lifeline route").

11532 D3457 (SRK combat report, 27 July 1994).

11533 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 129. *See also* KDZ450, T. 10549–10550 (19 January 2011); P2470 (UNPROFOR report, 1 September 1994), p. 6 (stating that following the closure of the Airport Routes the "strangulation of Sarajevo" recommenced).

11534 P820 (Witness statement of David Harland dated 4 September 2009), para. 125; KDZ450, T. 10549–10550 (19 January 2011). *See also* P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), p. 57 (indicating that the proportion of sniping incidents increased in the period between August 1994 and May 1995).

the TEZ and from the outer ring.[11535] On 2 August, while the ABiH attack continued, resulting in SRK casualties, the SRK sent a request to the UN to recover the weapons in the northwestern part of its area; however, the response was negative.[11536] On the same day, De Mello reported to Annan that the situation in Sarajevo was "dire" following the closure of the Airport Routes as only two UNHCR convoys were permitted entry to Sarajevo in July 1994, the humanitarian airlift had not yet resumed, and UNHCR warehouses had emptied.[11537] On 5 August, the Bosnian Serbs seized a number of heavy weapons from a WCP in Ilidža and in response NATO launched air strikes, targeting an SRK anti-tank gun located in the TEZ; when threatened with more strikes, the Bosnian Serbs returned the weapons the next day.[11538] Violations of the TEZ by the ABiH continued following the air strikes.[11539] On 10 August, the SRK command reported that its units were responding to attacks, including with sniper rifles.[11540] On 11 August, after the humanitarian airlift had resumed, fire was opened on a UNHCR aircraft at the Sarajevo airport from ABiH controlled territory, resulting in the closure of the airport and the cancellation of UNHCR flights.[11541]

3595. By 12 August, the trams stopped operating due to sniping.[11542] On that day, in a meeting between Rose, Koljević, Gvero and Tolimir, the Bosnian Serbs accepted the proposed anti-sniping agreement, which had been negotiated by Rose during the course of the previous weeks.[11543] On

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11535 Adrianus van Baal, T. 8493–8495 (28 October 2010); D837 (SRK combat report, 1 August 1994).

11536 D838 (SRK combat report, 2 August 1994), para. 3; Adrianus van Baal, T. 8498–8499 (28 October 2010).

11537 P1668 (UNPROFOR report re negotiations in BiH, 2 August 1994), paras. 1–2; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 128.

11538 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 132; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 64; Adrianus van Baal, T. 8476–8477, 8499–8502 (28 October 2010); D837 (SRK combat report, 1 August 1994). Also in August, Rose threatened Ejup Ganić with air strikes as the ABiH was firing on the Ilijaš and Visoko areas. *See* P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 134–135; D839 (Letter from Adrianus van Baal to ABiH Supreme Command Staff, 12 August 1994).

11539 D840 (Letter from Adrianus van Baal to ABiH Supreme Command Staff, August 1994); D839 (Letter from Adrianus van Baal to ABiH Supreme Command Staff, 12 August 1994).

11540 D2828 (SRK combat report, 10 August 1994) (indicating that on 10 August, in the area of responsibility of the 3rd Sarajevo Infantry Brigade, two ABiH soldiers were killed by sniper fire and UNPROFOR was involved in pulling their bodies out); Dragomir Milošević, T. 32838–32839 (29 January 2013).

11541 D827 (Letter from Adrianus van Baal to ABiH Supreme Command Staff, 13 August 1994); Adrianus van Baal, T. 8461 (27 October 2010); Anthony Banbury, T. 13471 (16 March 2011). *See also* John Zametica, T.42466–42467 (29 October 2013) (testifying that Bosnian Muslim forces often deliberately shelled Sarajevo airport in order to prevent flights from landing and to increase black market prices). On 15 and 18 August, another two mortar rounds landed at Sarajevo airport, which UNPROFOR determined were fired from ABiH-controlled territory. *See* D828 (Letter from Adrianus van Baal to ABiH Supreme Command Staff, 15 August 1994); P2458 (UNPROFOR Weekly BiH Political Assessment, 11 September 1994), para. 12; P865 (UNPROFOR report on meeting with Bosnian Serb and Bosnian Muslim leadership, 26 September 1994), para. 17 (under seal) (de Mello reminding Izetbegović at a meeting of his obligation to make it public that the ABiH had targeted the airport on 18 August).

11542 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 136.

11543 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 136; P1669 (UNPROFOR report re meeting with Nikola Koljević and Milan Gvero, 13 August 1994); P820 (Witness statement of David Harland dated 4 September 2009), paras. 126–127; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 28–32; P2465 (UNPROFOR report, 28 June 1994); P2123 (UNPROFOR letter to ABiH, 15 July 1994).

14 August, the Anti-sniping Agreement was signed at Sarajevo airport under which both sides agreed to issue, within the next 24 hours, orders explicitly forbidding sniping activities against military personnel, civilians, and UN personnel.[11544] Dragomir Milošević issued such an order to the SRK units on 18 August, instructing all the troops to immediately stop sniping activities and activities from other weapons.[11545] There was a marked effect after this agreement was signed as the sniping incidents stopped almost immediately and went down from about 100 per week to about 10 per week; this lasted for about one month before a gradual increase in incidents occurred once again.[11546] Also in mid-August, the UN reported that the ABiH was violating the cease-fire agreement by firing on the SRK from within the TEZ.[11547]

3596. On 19 August, at a meeting with Rose, Mladić, Tolimir, Koljević, Krajišnik, and Buha, the Accused explained that the Airport Routes had been closed not to stop the delivery of humanitarian aid to Sarajevo but to prevent the smuggling of black market goods and weapons.[11548] He also stated that he would not consider reopening them until the Bosnian Muslims released all Bosnian Serb POWs, and that he would close them for 30 days for every Bosnian Serb killed by sniping in Sarajevo.[11549] Nevertheless, according to Rose, there was an improved flow of aid to Sarajevo following the Anti-Sniping Agreement.[11550] The civilian population had also been growing food in

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11544 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 139–140 (on the Bosnian Serb side, the agreement was signed by Koljević and Dragomir Milošević); P820 (Witness statement of David Harland dated 4 September 2009), paras. 129–131; P861 (UNPROFOR report re agreement on elimination of sniping in Sarajevo, 14 August 1994); P862 (Letter from UNPROFOR to Romanija Corps, 17 August 1994) (indicating that the SRK did not agree to having anti-sniping teams on its side); P1617 (Report from SRK Security-Intelligence Organ to SRK Command, 15 August 1994); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, paras. 54–55; P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 70, 104; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 95; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 40–41; Dragomir Milošević, T. 32827–32829, 32839(29 January 2013). *See also* Adjudicated Fact 2789.

11545 Dragomir Milošević, T. 32840–32841 (29 January 2013); P863 (Excerpt from SRK Order, 18 August 1994).

11546 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 141; Michael Rose, T. 7267 (5 October 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 133; David Harland, T. 2097 (7 May 2010); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 50; Dragomir Milošević, T. 32841–32842 (29 January 2013); P2447 (Witness statement of KDZ182), p. 35, KDZ182, T. 13040–13041 (9 March 2011). Between 14 August and 8 September 1994, UNPROFOR reported four sniping incidents in the city. *See* P864 (UNPROFOR report re violations of anti-sniping agreement, 12 September 1994); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, para. 57; P2414 (Witness statement of KDZ182), pp. 35–36 (under seal); KDZ182, T. 13040–13041 (9 March 2011); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 42–43; P1773 (UNPROFOR report re efficacy of Anti-Sniping Agreement, 15 September 1994); Dragomir Milošević, T. 32841–32842 (29 January 2013) (testifying that SRK resumed sniping once the other side started opening sniping fire on them).

11547 D717 (UNPROFOR report re weapons collection points in Sarajevo, 16 August 1994), paras. 1–2; Adrianus van Baal, T. 8495–8496 (28 October 2010).

11548 D704 (UNPROFOR report re meeting with Radovan Karadžić, 19 August 1994), para. 11.

11549 D704 (UNPROFOR report re meeting with Radovan Karadžić, 19 August 1994), para. 11.

11550 Michael Rose, T. 7484, 7493 (7 October 2010). *See also* Michael Rose, T. 7429 (7 October 2010) (testifying that the UN managed to maintain a flow of aid throughout the conflict "in spite of all the difficulties that were placed in front of it"); P2457 (UNPROFOR Weekly BiH Political Assessment, 28 August 1994), para. 16.

community and private gardens, which was sold in city shops at moderate prices.[11551] However, there had been no progress on reopening the Airport Routes and consequently the city was receiving most of its supplies via the tunnel in Butmir.[11552]

3597. On 8 September 1994, in a meeting with the Accused, Koljević, and Zametica, UNPROFOR again called for the reopening of the Airport Routes.[11553] The Accused agreed to consider a step-by-step process for opening the Airport Routes, starting with civilian traffic first, then humanitarian traffic, and then commercial traffic.[11554] In the meantime, UNPROFOR was reporting that humanitarian flights were landing at Sarajevo airport and that UNHCR land convoys were delivering food; as a result, by 15 September, 100% of food needs in Sarajevo were met.[11555] That same day, Brinkman of UNPROFOR protested to the ABiH over the opening of fire from ABiH positions at a convoy travelling on one of the open Blue Routes.[11556]

3598. By mid-September 1994, the quiet period came to an end as the ABiH forces launched an attack against the Bosnian Serb side on the Pale-Ilidža road which was easily repelled by the SRK but then led to the SRK blocking convoys into Sarajevo again.[11557] The UN reported that the heaviest fighting since February 1994 erupted in Sarajevo on 18 September, with a large number of shells exchanged between the two sides; according to the UN report, the ABiH initiated the fighting by firing mortars from residential areas within the city while the SRK responded in a restrained manner.[11558] Rose immediately wrote to both sides requesting them to immediately halt the

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11551 P2457 (UNPROFOR Weekly BiH Political Assessment, 28 August 1994), para. 16.

11552 P2457 (UNPROFOR Weekly BiH Political Assessment, 28 August 1994), para. 2. Regarding this tunnel, *see* para. 3782.

11553 D1136 (UNPROFOR report, 9 September 1994), para. 5.

11554 D1136 (UNPROFOR report, 9 September 1994), para. 5. *See also* D1162 (UNPROFOR report, 14 September 1994), p. 2 (reporting that Muratović and Koljević endorsed this proposal in a meeting on 14 September 1994).

11555 D1173 (UNPROFOR report, 9 September 1994), pp. 7–8; D1164 (UNPROFOR report, 15 September 1994), p. 3; Anthony Banbury, T. 13481, 13512 (16 March 2011) (testifying that in September 1994 the supply of humanitarian aid to Sarajevo was "satisfactory"). Banbury explained that the airport was a "critical" source of humanitarian supplies for the civilian population, and that there were around eight to 15 UNHCR flights arriving in Sarajevo each day when the airport was operational. *See* Anthony Banbury, T. 13335 (15 March 2011), 13512 (16 March 2011); KDZ088, T. 6405–6406 (8 September 2010) (closed session) (testifying that an "exceptionally large number" of aircraft carrying humanitarian aid landed in Sarajevo throughout the conflict); Milenko Indić, T. 32474 (22 January 2013) (testifying that there was somewhere between five to ten flights into Sarajevo airport each day); KDZ240, T. 16110 (5 July 2011) (closed session).

11556 D1165 (UNPROFOR protest to VRS, 15 September 1994); Anthony Banbury, T. 13482–13483 (16 March 2011).

11557 P820 (Witness statement of David Harland dated 4 September 2009), paras. 134–135; David Harland, T. 2227–2231 (10 May 2010); P834 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 20 September 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 149; Michael Rose, T. 7256 (5 October 2010); David Fraser, T. 8102–8103 (19 October 2010); D773 (UNMO report, 19 September 1994); D777 (VRS Main Staff Order, 16 September 1994); D774 (UNPROFOR report re Sarajevo TEZ violations, 18 September 1994). According to KDZ450, this was the first attack by the ABiH that involved heavy weapons since the signing of the cease-fire. *See* KDZ450, T. 10598–10600 (19 January 2011).

11558 P1673 (UNPROFOR report re Sarajevo heavy weapons exclusion zone, 19 September 1994), paras. 1–3 (also reporting that this was an attempt by the BiH authorities to move Sarajevo to front page news and portray the

military action and stop violating the TEZ.[11559] Following the offensive, the supply of humanitarian aid was interrupted and the humanitarian situation deteriorated.[11560] In a meeting on 20 September with Rose and in the presence of the Accused, Milovanović, and Koljević, Krajišnik stated that "it would be difficult to stop Serb soldiers from shooting at airplanes" if certain demands were not met, including that UNPROFOR formally recognise Bosnian Serb ownership of the airport, pay rent, and end the movement of Bosnian Muslim government delegations.[11561] The Accused indicated that he wanted these demands included in an agreement which would supplement the Airport Agreement.[11562]

3599. On 21 September, the SRK reported that the ABiH had opened infantry, sniper, and some mortar fire on SRK positions on both that day and the preceding day.[11563] On 22 September, following two sniping incidents in the city—one against a civilian and another against a UN soldier—Rose called for another air strike against a Bosnian Serb tank in the TEZ to the west of Sarajevo, which was followed by a Bosnian Serb attack on an UNPROFOR tank, wounding the driver.[11564] In a meeting with the UN the next day, Mladić demanded an apology and told General David Fraser, who was in Sarajevo from April 1994 to May 1995 working as an assistant to the UNPROFOR commander of Sector Sarajevo,[11565] that no convoy would pass through the Bosnian Serb territory without an apology; this materialised on the ground as all Serb check-points were closed for larger vehicles.[11566] This decision of the VRS Main Staff to stop the movement of all

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SRK as the aggressor shelling indiscriminately into civilian areas); D775 (SRK combat report, 19 September 1994). *See also* Michael Rose, T. 7563–7566 (8 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 65–66; David Fraser, T. 8106–8108 (19 October 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 110; KDZ450, T. 10624–10627 (20 January 2011).

11559 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 149; P1673 (UNPROFOR report re Sarajevo heavy weapons exclusion zone, 19 September 1994), e-court pp. 3–4. Rose also had a meeting with Izetbegović in which the latter explained that the attack was in response to SRK sniping. *See* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 150.

11560 Michael Rose, T. 7484 (7 October 2010), T. 7604–7605 (8 October 2010).

11561 P834 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 20 September 1994), para. 4.

11562 P834 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 20 September 1994), para. 4.

11563 D776 (SRK combat report, 21 September 1994).

11564 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 152; Michael Rose, T. 7566–7569 (8 October 2010); D719 (Letter from Manojlo Milovanović to UNPROFOR, 23 September 1994); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 66–67; David Fraser, T. 8114 (19 October 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 113; KDZ450, T. 1062910631 (20 January 2011); P2127 (UNPROFOR report re air strike, 22 September 1994); P2128 (Extract from UNPROFOR logbook, 22 September 1994) (under seal); P2129 (UNPROFOR letter to Ratko Mladić, 24 September 1994). This was preceded by the ABiH opening fire on SRK-held areas in the preceding two days.

11565 Fraser worked for two different Sector Sarajevo commanders during his time in Sarajevo, first for General Andre Sobirou and then for General Herve Gobilliard. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 4–5.

11566 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 67; D719 (Letter from Manojlo Milovanović to UNPROFOR, 23 September 1994).

humanitarian organisations in the territory of the RS led the RS Minister of Health to draft a complaint to the Main Staff noting a shortage of medical supplies and humanitarian aid in RS territory.[11567] On 25 September, Mladić informed UNPROFOR, via a liaison officer, that the safety of aircraft flying into Sarajevo airport could no longer be guaranteed; consequently, flights into Sarajevo were suspended.[11568]

3600. On 2 October 1994, in a meeting with the Accused, Zametica, Tolimir, Koljević, Krajišnik and Buha, De Mello insisted on reopening Sarajevo airport for humanitarian flights but the Accused reiterated his position that the airport would not reopen until the Airport Agreement was renegotiated and that the Airport Routes would remain closed until all Bosnian Serb POWs in Tarčin were released.[11569] However, he agreed to re-establish freedom of movement for humanitarian convoys travelling on the other Blue Routes.[11570] During a subsequent meeting on 5 October 1994, which was also attended by Akashi and Rose, Akashi agreed to ask the UN headquarters if there was any way to acknowledge that UNPROFOR "took over" the airport from the Bosnian Serbs in return for which the Bosnian Serbs would reopen Sarajevo airport to both UNPROFOR and UNHCR flights.[11571]

3601. On 6 October 1994, the ABiH conducted an operation on Mt. Igman, going through the DMZ and killing a number of SRK soldiers and four Serb nurses located there; it also established positions in the area, contrary to the August 1993 agreement.[11572] As a result, in the days that

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11567 D3873 (Aide mémoire of RS Minister of Health, 2 October 1994); Radovan Radinović, T. 41608–41611 (19 July 2013) (testifying that the VRS was more restrictive than the politicians when it came to the issue of humanitarian convoys).

11568 P6272 (UNPROFOR report, 27 September 1994), para. 3; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 152; D3500 (UNPROFOR report, 7 October 1994), para. 15 (the Accused and Mladić acknowledging at a meeting with UNPROFOR that the airport was closed in response to the NATO air strikes).

11569 P4866 (UNPROFOR report, 2 October 1994), paras. 5–7.

11570 P4866 (UNPROFOR report, 2 October 1994), para. 5.

11571 D3500 (UNPROFOR report, 7 October 1994), paras. 13, 16 (reporting also that Mladić and Krajišnik stated that if their demands were not met, they would consider closing the airport again); Yasushi Akashi, T. 37716–37718 (24 April 2013).

11572 P820 (Witness statement of David Harland dated 4 September 2009), para. 142; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 155; P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994); Michael Rose, T. 7572–7579 (8 October 2010); D721 (Letter from General Rose to Ejup Ganić, 16 October 1994); D722 (UNPROFOR report re letter from Ambassador Sacirbey, 19 October 1994); P2447 (Witness statement of KDZ182), p. 57; P2414 (Witness statement of KDZ182), pp. 90–91 (under seal); KDZ182, T. 13095–13098 (9 March 2011); P2439 (UNPROFOR report re Mount Igman incident, 8 October 1994); P2440 (UNPROFOR report re Mount Igman incident, 7 October 1994); D1120 (AFP daily report entitled "UN Believes Bosnians Attacked Serbs from DMZ", 13 October 1994); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 67–69; David Fraser, T. 8152–8153 (19 October 2010); D783 (Map of Mt. Bjelašnica and Mt. Treskavica area with confrontation lines, 1994); D2783 (UNPROFOR Memo, 6 October 1994). *See also* D3500 (UNPROFOR report, 7 October 1994), para. 6 (indicating that Mladić and the Accused met with Akashi the day before this incident and Mladić referred to the ABiH troops leaving Sarajevo through the Butmir tunnel and launching attacks on Mt. Igman).

followed, the SRK opened sniper fire on Sarajevo and shelled the city, targeting civilians.[11573] Having lodged a strong protest with the ABiH, Rose also had a meeting with Mladić and Tolimir on 10 October in which Mladić threatened to operate against Sarajevo and restrict the freedom of movement of the UN if ABiH units were not cleared out of the DMZ.[11574] On 8 October, a tram was shot at on Zmaja od Bosne street, resulting in casualties.[11575] On 27 October, Milošević issued a warning to SRK units, stating that the "enemy does not respect any rules or principles of humanity" and that even though the SRK tried to "obey all Geneva conventions until now [...] if the enemy continues in the same way, they will force us that as of today we respond on [*sic*] every bullet fired [...] by firing at the selected target under the Muslim control in Sarajevo".[11576] On 31 October, foreign media reported that ABiH forces had opened fire at UN planes at Sarajevo airport, but that the airlift had not been suspended.[11577]

3602. By November 1994, the ABiH forces were still positioned on Mt. Igman and launched an offensive from there, targeting both Bosnian Serbs and one UNPROFOR observation post.[11578] According to Rose, this did not result in NATO air strikes because by that time NATO was no longer willing to launch strikes against the Bosnian Muslims.[11579]

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11573 Michael Rose, T. 7272 (5 October 2010); P2447 (Witness statement of KDZ182), p. 57; P2414 (Witness statement of KDZ182), pp. 58–59, 61 (under seal); KDZ182, T. 13098–13102 (9 March 2011). *See also* P1487 (Ratko Mladić's notebook, 4 September 1994–29 January 1995), pp. 101–102. Following the ABiH attack on Mt. Igman, UNPROFOR attempted to get the parties to sign a number of follow up agreements to the anti-sniping agreement of 14 August 1994 and the cease-fire agreement of 9 February 1994 but was not successful. *See* P2447 (Witness statement of KDZ182), pp. 61–62; P2422 (Amendment to Anti-Sniping Agreement, October 1994); P2423 (Appendix I and II to Cease-fire Agreement); P2424 (Cease-fire Agreement, October 1994); KDZ182, T. 13107–13108 (10 March 2011); D1122 (UNPROFOR report, 20 November 1994) (under seal).

11574 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 68–69 (testifying that Mladić threatened to act against the city). *But see* P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994), para. 2; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 155; P820 (Witness statement of David Harland dated 4 September 2009), para. 143.

11575 *See* discussion on Scheduled Incident F.11.

11576 Later in the report Milošević forbids any "devious killing, injuring or capturing" that is not in accordance with the Geneva Conventions and international law. *See* D2812 (Warning of SRK command, 27 October 1994); Dragomir Milošević ,T. 32735–32737 (28 January 2013).

11577 D1121 (AFP daily report entitled "UN: Government Forces Fire on Planes at Airports", 31 October 1994); KDZ182, T. 13102–13103 (9 March 2011), T. 13108–13109 (10 March 2011).

11578 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 157–158, 160; P1676 (UNPROFOR report re discussions with Radovan Karadžić and Ejup Ganić, 23 October 1994); Michael Rose, T. 7580–7581 (8 October 2010); D723 (UNPROFOR report re demilitarised zone violations by ABiH, 29 October 1994), e-court pp. 1–4, 9; D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), pp. 188, 191 (indicating that Izetbegović was directly responsible for not withdrawing the troops from Mt. Igman); P1776 (UNPROFOR report re meeting with Radovan Karadžić and General Tolimir, 20 November 1994); P2426 (UNPROFOR report re meeting between Hervé Gobilliard and Dragomir Milošević, 23 November 1994); D1121 (AFP daily report entitled "UN: Government Forces Fire on Planes at Airports", 31 October 1994); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 68–70; D2797 (SRK combat report, November 1994).

11579 Michael Rose, T. 7581, 7591 (8 October 2010).

3603. On 17 November, Dragomir Milošević informed UNPROFOR that the SRK was imposing additional measures on convoy movement, including the inspection of all humanitarian convoys crossing SRK frontlines.[11580] On 18 November, a woman and her seven year old son were shot at while walking on Zmaja od Bosne street, resulting in the death of the boy and injuries to the woman.[11581] On 19 November, Gobilliard met with the Accused and Krajišnik, among others, and the Accused threatened that if the ABiH continued to fire from within the TEZ, the Bosnian Serbs would retaliate.[11582] The situation in Sarajevo deteriorated and the number of reported cease-fire violations increased, although, according to Rose, that number was exaggerated as the civilian casualties in fact decreased.[11583] At the same time, however, there was a "total halt" in the movement of convoys, the volume of humanitarian supplies was very low, and the arrival of humanitarian flights depended on the good will of the Bosnian Serbs; the Sarajevo population was being "strangled" as the Bosnian Serbs wanted to apply as much pressure on the city as possible before the winter set in.[11584] On 23 November, a tram was shot at while travelling on Zmaja od Bosne street, resulting in the wounding of two women.[11585]

3604. At the beginning of December 1994, the SRK shelled Sarajevo's downtown area with wire-guided missiles from within the TEZ.[11586] On 5 December, at a meeting between Rose and Andreev on one side and Gvero and Tolimir on the other, Gvero connected the opening of the airport to assurances from NATO that it would not bomb targets in Bosnian Serb territory.[11587] The

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11580 P2425 (From SRK to UNPROFOR, 17 November 1994).

11581 *See* discussion on Scheduled Incident F.12.

11582 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70; P1776 (UNPROFOR report re meeting with Radovan Karadžić and General Tolimir, 20 November 1994), p. 1.

11583 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 69; David Fraser, T. 8118–8121 (19 October 2010); D778 (UNPROFOR report, 17 November 1994); P2454 (UNPROFOR report, 19 November 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 168 (also testifying that the ABiH would fire into the air in this period in order to increase the tension around Sarajevo); D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 197; Michael Rose, T. 7485 (7 October 2010); P2414 (Witness statement of KDZ182), pp. 47–48 (under seal); P2419 (VRS Main Staff Order, 6 November 1994); P2420 (Report of 2nd Light Infantry Brigade re VRS Main Staff order, 7 November 1994); D2823 (SRK combat report, 6 November 1994).

11584 P2414 (Witness statement of KDZ182), pp. 27, 28 (under seal); P2447 (Witness statement of KDZ182), p. 62 (adding that the ABiH wanted to gain territory also before the winter set in); P2425 (From SRK to UNPROFOR, 17 November 1994) (in which Dragomir Milošević informed UNPROFOR that that the SRK would strictly control the crossings of the frontlines by UNPROFOR and humanitarian organisations).

11585 *See* discussion on Scheduled Incident F.14.

11586 P820 (Witness statement of David Harland dated 4 September 2009), paras. 151–152, 157; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 183; P870 (UNPROFOR daily report, 1 December 1994), p. 3; P872 (UNPROFOR Weekly Situation Report, 10 December 1994), p. 5; P2427 (UNPROFOR protest letter to SRK, 2 December 1994) (complaining about the attack and indicating that the projectiles landed at the Presidency, the Ministry of Interior, and a cinema); P2447 (Witness statement of KDZ182), pp. 67–68; KDZ182, T. 13178–13179 (10 March 2011).

11587 P2456 (UNPROFOR report, 5 December 1994), para. 5; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 75 (to Banbury this indicated the Accused's ability to control access to the airport). Gvero repeated this statement on 10 December at another meeting with the UN. *See* P872 (UNPROFOR Weekly Situation Report, 10 December 1994), p. 2,

effectiveness of the WCPs began to deteriorate and on 6 December VRS members forcibly removed a number of weapons from various sites around Sarajevo.[11588] On 8 December, Andreev wrote to the Accused protesting the Bosnian Serb forces' refusal to provide the necessary security guarantees for UNPROFOR and UNHCR flights into Sarajevo airport.[11589] On 10 December, UNPROFOR reported that the first convoys in almost a month had arrived in Sarajevo.[11590] On 12 December, Rose met with Krajišnik, Koljević, Gvero, and Tolimir and told the participants at this meeting that the "endless bureaucracy and checks" of the convoys were unacceptable.[11591] They, in turn, gave assurances that regular convoys would run until a more permanent agreement on convoy procedures was reached.[11592] According to Banbury, around mid-December, the Bosnian Serbs eased restrictions on freedom of movement in order to come across as the more reasonable party in peace negotiations with President Carter.[11593]

3605. On 22 December, a shelling incident took place in the Old Town of Sarajevo, in Baščaršija, resulting in a number of casualties.[11594]

3606. On 31 December 1994, the COHA was signed under the auspices of Jimmy Carter, followed by the agreement on its implementation signed on 11 January 1995; it was to last for an initial period of four months, subject to renewal by the parties.[11595] As part of this agreement, the parties also agreed to provide full freedom of movement to UNPROFOR and UNHCR for the

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11588 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 180; P2414 (Witness statement of KDZ182), pp. 27–28 (under seal).

11589 P2475 (UNPROFOR letter to Radovan Karadžić, 8 December 1994), p. 2; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 78.

11590 P872 (UNPROFOR Weekly Situation Report, 10 December 1994), p. 5; P820 (Witness statement of David Harland dated 4 September 2009), para. 156.

11591 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 182; P1640 (UNPROFOR report, 12 December 1994), paras. 3, 9; P2476 (UNPROFOR report, 13 December 1994); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 79–83.

11592 P2476 (UNPROFOR report, 13 December 1994), paras. 5–6; P1640 (UNPROFOR report, 12 December 1994), para. 3.

11593 P2453 (UNPROFOR report, 15 December 1994), paras. 2(d), 3, 5; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 84–85 (stating that this was an example of the Accused being able to "turn the pressure on and off as he pleased"); Anthony Banbury, T. 13321–13323 (15 March 2011). Yasushi Akashi testified that both the Bosnian Serbs and the Bosnian Muslims viewed humanitarian aid as "something very political and militarily significant" and that both sides interfered with humanitarian aid. *See* Yasushi Akashi, T. 37767–37768 (25 April 2013); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 16.

11594 *See* discussion on Scheduled Incident G.9.

11595 P1648 (Agreement on Cessation of Hostilities, 31 December 1994); P2428 (UNPROFOR report, 1 January 1995); P820 (Witness statement of David Harland dated 4 September 2009), paras. 158, 160–161 (testifying also that this agreement on implementation was never really implemented as all sides had other plans); P873 (Cease-fire Agreement, 11 January 1995); P874 (UNPROFOR report re cease-fire agreement, 11 January 1995); Rupert Smith, T. 11298 (8 February 2011), T. 11841 (15 February 2011); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 186–188, 190–194; KDZ182, T. 13183 (10 March 2011) (also testifying that nether side complied with the agreement in its entirety); Yasushi Akashi, T. 37674, 37723–37726 (24 April 2013); D3503 (UNPROFOR fax, 19 December 1994); D3504 (UNPROFOR fax, 20 December 1994); D3505 (Letter from Yasushi Akashi to Radovan Karadžić, 24 December 1994). *See also* para. 410.

delivery of humanitarian aid resulting in the re-opening of the Blue Routes, including the Airport Routes.[11596] As a result, the situation in Sarajevo improved, and January and February 1995 were relatively peaceful.[11597] There was also a substantial improvement in the humanitarian situation and more than 5,000 people were using the Airport Routes daily.[11598]

3607. Yet, towards the end of February 1995 there was an increase in sniping incidents in the city, including the sniping of civilians.[11599] On 27 February, a tram was shot at while travelling on Zmaja od Bosne street, resulting in a number of casualties.[11600] In March the situation deteriorated in other parts of BiH, and the COHA was beginning to collapse, largely due to ABiH activities, which then led to the resumption of sniping and shelling in Sarajevo on a regular basis.[11601] On 3 March, another tram on Zmaja od Bosne street was shot at, resulting in casualties, while Tarik Žunić, a 14 year old boy, was shot at in the Sedrenik area while walking home from school.[11602] On 5 March, Mladić told General Rupert Smith, commander of UNPROFOR BiH Command,[11603] that the SRK's increase in sniping in Sarajevo was in response to Serb casualties suffered in the military offensives launched by the ABiH, which to Smith was an explicit recognition that sniping was used by the SRK as a punitive measure rather than for any military gain.[11604] On 8 March

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11596 *See* para. 410.

11597 Anthony Banbury, T. 13314–13315 (15 March 2011); D1018 (UNPROFOR letter to Nikola Koljević, 4 February 1995) (indicating Smith's intention to open airport routes to civilian traffic); Martin Bell, T. 9903, 9906–9907 (15 December 2010); KDZ182, T. 13183 (10 March 2011).

11598 D1166 (UNPROFOR Weekly Situation Report, 18 February 1995), p. 2; Anthony Banbury, T. 13314–13315 (15 March 2011), T. 13488–13489 (16 March 2011); D1124 (UNPROFOR report, 7 April 1995), para. 5; KDZ182, T. 13109–13111, 13183 (10 March 2011); P2478 (UNPROFOR Weekly Situation Report (Sarajevo), 4 March 1995), para. 19; P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 10 (adding that the airport was closed to humanitarian flights on 7 March and 11 March after planes were hit by gunfire); D1123 (UNPROFOR report on the implementation of COHA during March 1995), p. 4; P2480 (Minutes of Kiseljak's Civil Affairs monthly meeting, 21 March 1995); Vladimir Radojčić, T. 31278 (12 December 2012) (recalling that after cease-fires were signed more humanitarian aid would arrive in Sarajevo). *But see* D2287 (UNPROFOR daily report, 9 February 1995), p. 1 (reporting that Bosnian Serb forces had rejected "a lot" of convoy requests for the following day and that this posed a "real threat" to UNPROFOR's freedom of movement).

11599 Rupert Smith, T. 11310, 11331 (8 February 2011), T. 11461–11463 (9 February 2011).

11600 *See* discussion on Scheduled Incident F.15.

11601 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 91–92; P2478 (UNPROFOR Weekly Situation Report (Sarajevo), 4 March 1995); Anthony Banbury, T. 13315 (15 March 2011); P820 (Witness statement of David Harland dated 4 September 2009), paras. 164–167; P876 (UNPROFOR Memo re meeting with Ratko Mladić, 6 March 1995); Rupert Smith, T. 11309–11310, 11329–11331 (8 February 2011), T. 11461–11463 (9 February 2011), T. 11583–11592 (10 February 2011); D1019 (Ratko Mladić letter to UNPROFOR, 11 February 1995); D1020 (Ratko Mladić letter to UNPROFOR, 13 February 1995); D1023 (Ratko Mladić letter to UNPROFOR, 24 February 1995); D1024 (Ratko Mladić letter to UNPROFOR, 3 March 1995); P1470 (UNPROFOR report re meeting with Ratko Mladić, 5 March 1995), para. 6; P2255 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 14 March 1995), e-court p. 6; P2429 (UNPROFOR report, 21 March 1995); D1124 (UNPROFOR report, 7 April 1995), para. 5(c).

11602 *See* discussion on Scheduled Incidents F.16 and F.17.

11603 Rupert Smith, T. 11296–11298 (8 February 2011).

11604 Rupert Smith, T. 11309–11311 (8 February 2011); P1470 (UNPROFOR report re meeting with Ratko Mladić, 5 March 1995), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 94–95;

1995, Directive 7 was signed by the Accused, ordering the SRK to, among other things, prevent the lifting of the blockade of Sarajevo "from without" by using "decisive defence".[11605] As a result, the conditions in Sarajevo deteriorated with an alarming upsurge in military activity, including a substantial increase in sniping activities against civilians causing the tram service to be stopped.[11606] In this period, Grbavica was sniped by the ABiH, resulting in the deaths of two Serb girls; this in turn led to increased shelling in Sarajevo and prompted the Accused to close the Blue Routes.[11607] Thus, on 12 March 1995, the city was subjected to the heaviest shelling since September 1994, while the number of sniping casualties in the period up to 18 March was the highest since August 1994.[11608] According to Smith, the bulk of the shelling and sniping in this period came from the Bosnian Serb side and, in his view, was aimed at harassing the population at large.[11609] On 14 March, Akashi met with the Accused, Mladić, Krajišnik, and Koljević, and the Accused reiterated the Bosnian Serb policy that the Airport Routes would close for one month for every Bosnian Serb killed by sniping in Sarajevo.[11610] Subsequent attempts to negotiate the reopening of the Airport Routes failed.[11611] On 25 March 1995, Smith met with Koljević who

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P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330–13331 (15 March 2011).

11605 P838 (Directive 7, 8 March 1995), pp. 7, 11–12. While the English translation of P838 refers to the lifting of the "siege" on page 7, the Chamber recalls the CLSS memorandum attached to D235 and the explanation therein as to how the BCS word "deblokada" (which is used on page 7 of P838) should be translated. The memorandum provides that the accurate translation is the "lifting of the blockade". *See* D235 (Directive 3, 3 August 1992). Accordingly, the Chamber considers that the reference to the "siege" in the English translation of P838, page 7, is inaccurate and has therefore used the term "lifting of the blockade" in the text above.

11606 P820 (Witness statement of David Harland dated 4 September 2009), paras. 169–171; P878 (UNPROFOR report re cease-fire agreement, 29 March 1995), para. 1.

11607 P820 (Witness statement of David Harland dated 4 September 2009), para. 171; P879 (VRS Main Staff Report, 11 March 1995); David Harland, T. 2099–2100 (7 May 2010); Rupert Smith, T. 11329–11337 (8 February 2011), T. 11592–11594 (10 February 2011); P2256 (SRK combat report, 12 March 1995); P2257 (UNPROFOR Weekly Situation Report, 18 March 1995), para. 7; D1123 (UNPROFOR Report on the implementation of the Cessation of Hostilities Agreement During March 1995); Yasushi Akashi, T. 37730 (24 April 2013); D3509 (UNPROFOR report, 12 March 1995), paras. 1, 4; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 100; John Zametica, T. 42462 (29 October 2013); Dragomir Milošević, T. 33227–33228 (5 February 2013) (testifying that he could not recall this action but could not "exclude the possibility" that it took place).

11608 P2257 (UNPROFOR Weekly Situation Report, 18 March 1995), paras. 6–8; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 99–101; Rupert Smith, T. 11332–11334, 11337–11338 (8 February 2011).

11609 Rupert Smith, T. 11333–11334 (8 February 2011). *See also* P2479 (UNPROFOR report, 14 March 1995), para. 3 (listing the Accused and Mladić's complaints to the UN about the Muslim and Croat offensives in BiH in breach of the COHA).

11610 P2255 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 14 March 1995), p. 7; P2479 (UNPROFOR report, 14 March 1995), para. 6; Rupert Smith, T. 11335 (8 February 2011); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 98.

11611 P2258 (UNPROFOR report re meeting with Nikola Koljević, 27 March 1995), para. 5 (recounting a meeting with Koljević in which he stated that the policy of closing the airport for every Bosnian Serb killed by sniping was necessary to thwart the efforts of the Bosnian Muslims to force the Bosnian Serbs from Sarajevo); Rupert Smith, T. 11339 (8 February 2011). At a meeting on 5 April 1995, Koljević stated that another Bosnian Serb man had been killed by sniper fire, which meant that the Airport Routes had to close for a total of 90 days. *See* P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 119; P2484 (UNPROFOR report, 5 April 1995), para. 5; P2485 (Anthony Banbury's notes, 5 April 1995), e-court p. 3.

openly admitted that the Bosnian Serb side's intention now was to pursue the end of the war through military means; in Smith's view, given that the Serbs lacked manpower, they were going to do this by relying on fire-power.[11612] By the end of March, there was a widespread resumption of fighting in Sarajevo.[11613] On 29 March, UNPROFOR reported that an increase in Bosnian Serb firing at UN aircraft at Sarajevo airport led to the suspension of flights between 17 and 24 March.[11614]

3608. By April 1995 it became clear that the peace talks were going nowhere as a result of which the COHA was no longer operative, the TEZ was being violated by both sides, and the situation in Sarajevo escalated with a daily average of firing incidents close to 1,000.[11615] On 5 April, the Accused indicated to Smith that a decision had been made to start a counter-offensive and that the Bosnian Serb Forces would employ weapons they had not used yet.[11616] On 7 April, a modified air bomb exploded in Hrasnica inflicting civilian casualties.[11617] On 8 April, the Bosnian Serbs halted the humanitarian airlift, alleging that the UN was violating the Airport Agreement by smuggling arms to the ABiH and subsequent attempts to negotiate the reopening of the airport failed.[11618] In

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11612 P2258 (UNPROFOR report re meeting with Nikola Koljević, 27 March 1995), paras. 1–2; Rupert Smith, T. 11338–11340 (8 February 2011). According to Smith, the same was the case with the Bosnian Muslim side. In his view, at this stage both sides wanted to resolve the situation through military means and not through negotiations. *See* Rupert Smith, T. 11342–11343 (8 February 2011), T. 11593–11595 (10 February 2011); P2248 (Radovan Karadžić's Order to RS Government, VRS Main Staff, and Presidents of Municipalities, 26 March 1995).

11613 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 99; P2032 (BBC news report re targeting safe areas, with transcript); D182 (Order of ABiH 12th Division, 20 March 1995); P1778 (UNPROFOR report re meeting with General Milošević, 21 March 1995).

11614 P878 (UNPROFOR report re cease-fire agreement, 29 March 1995), para. 3; P820 (Witness statement of David Harland dated 4 September 2009), para.171; D1123 (UNPROFOR report on the implementation of the COHA during March 1995), para. 17.

11615 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 120; P2486 (UNPROFOR Weekly Situation Report (Sarajevo), 16 April 1995), paras. 1, 3–4; P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 51; P820 (Witness statement of David Harland dated 4 September 2009), para. 174; P882 (UNPROFOR Weekly Situation Report (Sarajevo), 14 April 1995), pp. 1–2; Rupert Smith, T. 11341 (8 February 2011); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 39; P2011 (Video footage of Sarajevo, with transcript); P2414 (Witness statement of KDZ182), p. 52 (under seal); KDZ182, T. 13054–13055, 13057–13058 (9 March 2011), T. 13185–13186 (10 March 2011); D1117 (UNPROFOR protest letter to Rasim Delić, 26 April 1995); P2442 (UNPROFOR letter re heavy weapon violations in safe areas, 26 April 1995).

11616 Rupert Smith, T. 11344–11346 (8 February 2011); P2260 (UNPROFOR report re meeting with Radovan Karadžić, 5 April 1995), paras. 9–10, 14.

11617 *See* discussion on Scheduled Incident G.10.

11618 P820 (Witness statement of David Harland dated 4 September 2009), para. 173. On 19 April 1995, in a meeting between Smith, Aguilar, Harland, Krajišnik, Mandić, and Stanišić, Krajišnik stated that he agreed "in principle" to the resumption of the humanitarian airlift, but that the details were in the hands of Koljević, who was in charge of humanitarian aid. *See* P881 (David Harland's note re meeting in Pale on Sarajevo Airport, 20 April 1995), p. 2; P820 (Witness statement of David Harland dated 4 September 2009), para. 173. At another meeting with Mandić on 26 April 1995, Harland sought assurances that security guarantees would be provided for flights carrying UN civilians and UNHCR flights, but these assurances were never provided. *See* P884 (David Harland's note re discussions in Pale on Sarajevo airport, 26 April 1995), p. 1; P820 (Witness statement of David Harland dated 4 September 2009), para. 176.

mid-April, two members of UNPROFOR were killed by sniper fire.[11619] On 21 April, Akashi and Smith met with both sides separately to negotiate an extension of the COHA; however, while both sides expressed a desire to extend it, they demanded that it be done on their terms so no mutual agreement was reached.[11620] According to Akashi, while the Bosnian Serbs and Bosnian Croats were in favour of "some kind of continuation" of the COHA, the Bosnian Muslims were against it.[11621] During this meeting, the Accused told Akashi that the Airport Routes would remain closed as long as sniping against Bosnian Serbs continued.[11622] Akashi and Smith had two more rounds of these meetings on 30 April and 1 May but no progress was made; afterwards, Smith reported that the Bosnian Muslim side refused the continuation of COHA but promised it would exercise restraint while the Bosnian Serb side unanimously decided to resolve the situation by military means.[11623] At the meeting of 30 April, which was attended, among others, by Akashi, Smith, Janvier, Koljević, and Krajišnik, the Accused stated that the Bosnian Serbs would not uphold the Airport Agreement as long as the Anti-Sniping Agreement was not being upheld by the other side.[11624] According to Harland, from this point there was no resumption of humanitarian airlift until the end of the war.[11625] The Airport Routes also did not reopen until the end of the war.[11626] Consequently, by May 1995, the humanitarian situation in Sarajevo was rapidly deteriorating.[11627]

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11619 P820 (Witness statement of David Harland dated 4 September 2009), para. 172; P880 (UNPROFOR Memo re anti-sniping project, 24 April 1995); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 34–36, 72; David Fraser, T. 8016–8017 (18 October 2010); Rupert Smith, T. 11333 (8 February 2011); D2907 (UNPROFOR report, 18 April 1995); P2414 (Witness statement of KDZ182), pp. 8, 42, 72–73 (under seal); P2407 (Witness statement of KDZ304), p. 10; KDZ304, T. 10514–10515 (18 January 2011); P2011 (Video footage of Sarajevo, with transcript). While Harland, Fraser, KDZ304, and KDZ182 testified that one of those two French soldiers was killed by the SRK while erecting anti-sniping barriers, Edin Garaplija gave evidence that he was in fact shot by Nedžad Herenda, a member of the Bosnian Muslim Ševe unit. As discussed later, the Chamber considers this to be an accurate reflection of the events. The witnesses all agree that the other UN soldier shot in this period was shot by the ABiH in the area of Dobrinja. *See* para. 4505, fn. 15085.

11620 P2261 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 22 April 1995), para. 1; Rupert Smith, T. 11347–11350 (8 February 2011), T. 11596–11599 (10 February 2011). *See also* P2489 (UNPROFOR Weekly Situation Report (Sarajevo), 24 April 1995), paras. 3–5.

11621 Yasushi Akashi, T. 37222 (24 April 2013).

11622 P2261 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 22 April 1995), para. 10; Rupert Smith, T. 11348–11349 (8 February 2011).

11623 Rupert Smith, T.11352–11355 (8 February 2011), T.11601–11603 (10 February 2011); P2262 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 30 April 1995), paras. 1–2, 4–5; P2263 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 1 May 1995), pp. 3–4; D3511 (UNPROFOR report, 22 April 1995), para. 5; Yasushi Akashi, T. 37733–37735 (24 April 2013) (testifying that during their meeting he thought the Accused's position was non-compromising and that he was at that point ready to defy the international community).

11624 P2262 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 30 April 1995), para. 11.

11625 P820 (Witness statement of David Harland dated 4 September 2009), para. 173.

11626 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 100.

11627 P820 (Witness statement of David Harland dated 4 September 2009), paras. 182–183; David Harland, T. 2217 (10 May 2010); P2407 (Witness statement of KDZ304), p. 33; P886 (UNPROFOR Weekly Situation Report (Sarajevo), 13 May 1995), p. 2; P2441 (UNPROFOR Weekly Situation Report (Sarajevo), 19 May 1995), p. 3. *See also* Adjudicated Facts 3088, 3089.

3609. In response to Bosnian Serb mortar attacks on civilian areas of Sarajevo on 7 and 8 May 1995, Smith requested that NATO conduct air strikes but his request was denied; Smith informed the Accused of his reasons behind the request during their meeting on 9 May, at which point the Accused did not deny that civilian areas were attacked.[11628] On 12 May, an ABiH offensive around Sarajevo started and the SRK suppressed the ABiH attacks displaying military prowess and dominant fire power.[11629] By mid-May, the TEZ had largely collapsed and both sides were using their heavy weapons liberally, particularly around the confrontation lines.[11630] In late May, there was an outbreak of fighting along the confrontation lines and both sides withdrew heavy weapons from the WCPs; the Bosnian Serb side then used them to shell civilian areas in Sarajevo, as a result of which, on 24 May, Smith issued an ultimatum that they would be subject to air strikes if they did not cease firing their heavy weapons on that day.[11631] On the same day, two modified air bombs exploded in Safeta Zajke street and Majdanska street, killing and injuring a number of people.[11632] The Bosnian Serbs did not return the weapons as instructed by Smith and air strikes were launched on 25 May; this led to further shelling of Sarajevo, as well as a number of UN personnel being detained around BiH and a crisis point in the relationship between the UN and the Bosnian Serb side.[11633] On 26 May, yet another modified air bomb exploded, this time on Safeta Hadžića street, injuring a number of people.[11634] On 27 May, an incident between the UN and the SRK soldiers

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11628 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 3; Rupert Smith, T. 11355–11360 (8 February 2011). *See also* P2415 (UNPROFOR protest letter to SRK, 7 May 1995) (in which Gobilliard complained to Dragomir Milošević about constant firing on civilians around the city and on the Mt. Igman route); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 72.

11629 P820 (Witness statement of David Harland dated 4 September 2009), paras. 180–183; P886 (UNPROFOR Weekly Situation Report (Sarajevo), 13 May 1995); D184 (ABiH 1st Corps combat report, 16 May 1995); Rupert Smith, T. 11469–11470 (9 February 2011); D1118 (UNPROFOR Weekly Situation Report (Sarajevo), 21 May 1995); D1119 (ABiH Security Information Center Sarajevo report, 18 May 1995) (indicating that fire was opened by the ABiH on Grbavica from civilian areas and from the areas in the vicinity of the UN); Dragomir Milošević, T. 32718–32719 (28 January 2013); KDZ304, T. 10496–10498 (18 January 2011).

11630 P2441 (UNPROFOR Weekly Situation Report (Sarajevo), 19 May 1995), pp. 1–2; P2414 (Witness statement of KDZ182), pp. 93–94 (under seal); D2900 (Order of ABiH 12th Division, 20 May 1995); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 72; P2407 (Witness statement of KDZ304), p. 10. *See also* Adjudicated Fact 2791.

11631 P820 (Witness statement of David Harland dated 4 September 2009), para. 183; Rupert Smith, T. 11365–11372 (8 February 2011), 11470–11472 (9 February 2011), T. 11477–11483 (10 February 2011); D185 (12th Division ABiH combat report, 24 May 1995); D1009 (Excerpt from Rupert Smith's book entitled "The Utility of Force: The Art of War in the Modern World"); D1027 (UNPROFOR press statement, 22 May 1995); P2267 (UNPROFOR report re telephone conversation with Ratko Mladić, 25 May 1995); P2268 (UNPROFOR report re telephone conversations with Ratko Mladić, 26 May 1995); D1051 (UNPROFOR report on air strikes, 26 May 1995); P2447 (Witness statement of KDZ182), p. 74. Smith conceded that the ABiH also had heavy weapons outside of the WCP. *See* Rupert Smith, T. 11866–11871 (15 February 2011); D1052 (ABiH 1st Krajina Corps combat report, 31 May 1995). *See also* Adjudicated Facts 2792, 2793; Section IV.D.1.a: NATO air strikes.

11632 *See* discussion on Scheduled Incidents G.11 and G.12.

11633 Rupert Smith, T. 11367–11369 (8 February 2011), T. 11493–11498 (10 February 2011); D1058 (UNPROFOR report to Marrack Goulding, 30 May 1995), paras. 8–12; D987 (Intercept of conversation between Radovan Karadžić and General Milovanović, 25 May 1995). *See also* Adjudicated Facts 2793, 2794, 2796; Section IV.D: Hostages component.

11634 *See* discussion on Scheduled Incident G.13.

took place on the Vrbanja Bridge, deepening the crisis even further.[11635] On 27 May, at a meeting of Akashi's staff, Banbury wrote that they were "paralysed on everything" including humanitarian aid.[11636] On 28 May, UNPROFOR reported that, in response to NATO air strikes, the Bosnian Serbs blocked land access to Sarajevo and severely restricted UNPROFOR's freedom of movement.[11637] On 26 May, Dragomir Milošević issued an order to SRK units to establish a "full blockade" of UNPROFOR and to disregard UN requests for food and water.[11638] According to Harland, at this time the Bosnian Serbs sought to impose a "total blockade" on Sarajevo and cut off its food supply completely.[11639] Following these events the WCPs ceased to exist.[11640]

3610. Due to the total blockade on its freedom of movement, UNPROFOR fortified the road over Mt. Igman so that at least some humanitarian aid could be provided to Sarajevo.[11641] Until the end of the war, this road was the only viable route for the delivery of humanitarian aid to Sarajevo.[11642] However, this road was also used by ABiH forces at night, as a result of which the SRK forces fired on vehicles using that route at night.[11643] On 6 June UNHCR reported that a third of the civilian population of Sarajevo (approximately 100,000 people) was totally dependent on aid, that Sarajevo airport would be completely emptied of supplies by the following day, that the bakery would run out of flour on 8 June, that only 15% of the aid target would be achieved by 10 June, by which point there would be no aid to distribute to the civilian population.[11644] However, on 8 June,

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11635 D1058 (UNPROFOR report to Marrack Goulding, 30 May 1995), para. 13; P2447 (Witness statement of KDZ182), pp. 75–76. *See also* Section IV.D: Hostages component.

11636 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 167; P2498 (Anthony Banbury's notes, 27 May 1995), e-court p. 1.

11637 P6275 (UNPROFOR Weekly Situation Report, 28 May 1995), para. 6; D1058 (UNPROFOR report to Marrack Goulding, 30 May 1995), para. 14.

11638 P6097 (SRK Order, 26 May 1995), pp. 1–2; Dragomir Milošević, T. 33231 (5 February 2013) (explaining that the purpose of this order was to exert greater control over the movement of UNPROFOR convoys).

11639 P820 (Witness statement of David Harland dated 4 September 2009), para. 178.

11640 P2447 (Witness statement of KDZ182), p. 77.

11641 P820 (Witness statement of David Harland dated 4 September 2009), para. 178; David Harland, T. 2178, 2203–2204 (10 May 2010); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 22 (testifying that when the airport was closed the only way to move in and out of Sarajevo was across Mt. Igman); P2407 (Witness statement of KDZ304), pp. 18, 25 (testifying that the only way that UNPROFOR could "bypass the blockade" established by the SRK was to use the Igman road, as all other access routes were blocked by SRK forces); Dragomir Milošević, T. 33232 (5 February 2013) (testifying that UNPROFOR was forced to use the Mt. Igman road at this time because all the other roads into Sarajevo were blocked). *See also* D4487 (UNPROFOR Report on meetings in Sarajevo and Pale, 13 November 1994), para. 2 (under seal).

11642 P820 (Witness statement of David Harland dated 4 September 2009), para. 178.

11643 P2407 (Witness statement of KDZ304), p. 26; Dragomir Milošević, T. 33239 (5 February 2013).

11644 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 172; P2503 (Anthony Banbury's notes, 6 June 1995), e-court p. 2; P4192 (UN Weekly Situation Report, 29 May-4 June 1995), para. 14.

UNHCR and UNPROFOR met with the Accused and Koljević and successfully negotiated an agreement to deliver humanitarian aid to Sarajevo by land through the Sierra 1 check-point.[11645]

3611. In the last months of the conflict, the balance of power evolved and the ABiH was able to attack in much greater strength and with better equipment.[11646] According to Akashi, at that juncture the BiH government, supported by the US government, did not want a long-term cease-fire as that would have made Bosnian Serb territorial gains permanent.[11647] On 16 June 1995, the ABiH started a series of large-scale attacks, trying to break out of Sarajevo; they saw some success in the early stages, but were pushed back with heavy casualties.[11648] As a result, the SRK retaliated and the situation in Sarajevo deteriorated, with a number of civilians killed at water lines and market places and the SRK firing modified air bombs at the city.[11649] On the same day two modified air bombs exploded in different parts of Sarajevo, injuring a number of people.[11650] On 17 June 1995, noting the ABiH offensive, the Accused declared a state of war in the zone of responsibility of the SRK.[11651] Its aim was to "enable the full engagement of human and material potential" in defence of the RS and to "take all necessary measures to achieve the defined aims" of defeating the enemy.[11652] The situation was becoming desperate and the morale was very low as the SRK adopted a new strategy to clench their grip on urban Sarajevo in response to every hill taken by the

11645 D1125 (UNPROFOR daily report to UNSC, 9 June 1995), p. 1; P890 (UNPROFOR Weekly Situation Report (Sarajevo), 10 June 1995), p. 3; P820 (Witness statement of David Harland dated 4 September 2009), para. 191.

11646 Martin Bell, T. 9911–9912 (15 December 2010).

11647 Yasushi Akashi, T. 37673–37674 (24 April 2013); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 32. *See also* P2407 (Witness statement of KDZ304 undated), pp. 23–24 (testifying about ABiH attacks in early June followed by disproportionate SRK response resulting in a protest by Gobilliard to Dragomir Milošević); P2134 (UNPROFOR protest letter to Dragomir Milošević, 8 June 1995).

11648 P820 (Witness statement of David Harland dated 4 September 2009), paras. 190, 203 (testifying that the offensive was a military operation, directed primarily at the SRK); P892 (UNPROFOR Weekly Situation Report Sarajevo), 24 June 1995), pp. 1–2; David Harland, T. 2340–2351 (11 May 2010); D183 (Orders of 102nd Mountain Brigade of ABiH, May to June 1995); D186 (111th Brigade ABiH combat report, 16 June 1995); D187 (115th Mountain Brigade ABiH combat report, 16 June 1995); D188 (105th Brigade ABiH combat report, 16 June 1995); D189 (105th Brigade ABiH combat report, 19 June 1995); D191 (12th Division ABiH combat report, 4 July 1995); Martin Bell, T. 9866 (15 December 2010); P2414 (Witness statement of KDZ182), p. 52 (under seal); D1130 (UNPROFOR report, 18 June 1995), e-court pp. 5, 9; D1131 (UNPROFOR Weekly Situation Report, 18 June 1995), para. 8; P2407 (Witness statement of KDZ304), pp. 29–30; KDZ304, T. 10506–10508 (18 January 2011) (private session) (testifying that the offensive was conducted on the confrontation line); D958 (UNPROFOR Weekly Situation Report, 17 June 1995). *See also* discussion on Scheduled Incidents G.14 and G.15, and the evidence outlined therein.

11649 P820 (Witness statement of David Harland dated 4 September 2009), paras. 195–199, 203; P892 (UNPROFOR Weekly Situation Report (Sarajevo), 24 June 1995), pp. 1–2; P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 54–55; P2006 (BBC news report re Sarajevo, with transcript); P1679 (BBC news report re Sarajevo, with transcript); Martin Bell, T. 9796–9797 (14 December 2010). *See also* discussion on Scheduled Incidents G.14 and G.15.

11650 *See* discussion on Scheduled Incidents G.14 and G.15.

11651 D2904 (Radovan Karadžić's Decision, 17 June 1995).

11652 D2904 (Radovan Karadžić's Decision, 17 June 1995), p. 1.

ABiH outside of Sarajevo.[11653] UNPROFOR's freedom of movement inside Sarajevo was also limited due to proliferation of ABiH check-points.[11654] In a letter to the Accused dated 15 June, Akashi described the situation in Sarajevo and the eastern enclaves as a "developing disaster" where "humanitarian supplies and relief personnel are prevented from reaching their destinations, warehouses are empty, [and] whole families are crying out for food".[11655] At the end of June and the beginning of July, Sarajevo experienced heavy fighting since the SRK was responding to the continued offensives of the ABiH by indiscriminately shelling and sniping downtown areas, resulting in civilian casualties.[11656] On 24 June, UNPROFOR reported that the first food convoys in more than four weeks had reached Sarajevo but would satisfy the needs of only 20% of the civilian population.[11657]

3612. Throughout July 1995 the situation in the battlefield around Sarajevo was relatively quiet as the Bosnians Serbs focused their attention on Srebrenica, but the shelling and sniping in the city continued unabated, having no apparent military value.[11658] According to Harland, in early July the humanitarian situation in Sarajevo had become "desperate" and the "civilian population's morale was very low, as was UNPROFOR's".[11659] Despite the agreement reached on 8 June 1995, the

11653 P820 (Witness statement of David Harland dated 4 September 2009), paras. 204–206; P894 (UNPROFOR Memo re meeting in Lukavica, 29 June 1995); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 32 (testifying that the summer of 1995 was one of the worst periods in terms of sniping and shelling).

11654 D1128 (UNPROFOR daily report, 16 June 1995), para. 1; KDZ182, T. 13123 (10 March 2011).

11655 P5084 (UNPROFOR report re letter sent to Radovan Karadžić, 15 June 1995), p. 2 (noting that the letter was also sent to Alija Izetbegović).

11656 P820 (Witness statement of David Harland dated 4 September 2009), paras. 213–215; P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), pp. 1–3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 179; P2507 (Anthony Banbury's briefing notes, 1 July 1995), para. 2; P2274 (UNPROFOR letter to Ratko Mladić, 26 June 1995); Rupert Smith, T. 11420–11421 (9 February 2011). *See also* P2407 (Witness statement of KDZ304), pp. 31–32; KDZ304, T. 10492–10493 (18 January 2011); D1132 (UNPROFOR report, 28 June 1995).

11657 P892 (UNPROFOR Weekly Situation Report (Sarajevo), 24 June 1995), pp. 1, 4; P820 (Witness statement of David Harland dated 4 September 2009), para. 190; P2443 (UNPROFOR report re humanitarian situation in Croatia and BiH, 6 July 1995), p. 3 (reporting that the prospect for future aid convoys reaching Sarajevo was "not good" because ABiH forces shelled a convoy in the area of Rajlovac, in response to which Koljević indicated that the Bosnian Serbs would not allow convoys for the next week unless they received written security guarantees from the Bosnian Muslim authorities). *See also* Adjudicated Fact 3090.

11658 P820 (Witness statement of David Harland dated 4 September 2009), paras. 217–219; P822 (UNPROFOR Weekly Situation Report (Sarajevo), 8 July 1995), pp. 1–2; P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), pp. 1, 4; P2134 (UNPROFOR protest letter to Dragomir Milošević, 8 June 1995), e-court pp. 2–3; D4646 (SRK Order, 26 July 1995).

11659 P820 (Witness statement of David Harland dated 4 September 2009), para. 204; P2443 (UNPROFOR report re humanitarian situation in Croatia and BiH, 6 July 1995), pp. 2–3 (reporting that UNHCR was facing the most serious disruption in its food distribution program in Sarajevo since it began in 1992 as the suspension of UNHCR airlift operations since 8 April 1995 was causing UNHCR to fall well below its food supply targets); P822 (UNPROFOR Weekly Situation Report (Sarajevo), 8 July 1995), p. 1.

Bosnian Serb authorities continued to obstruct convoys.[11660] Thus, UNPROFOR and UNHCR again resorted to using the Mt. Igman road in early July 1995 to provide aid, mainly flour, to Sarajevo.[11661] However, Bosnian Serb forces, mainly the units of the Ilidža Brigade, regularly attacked convoys using this route.[11662] On 15 July, UNPROFOR reported that civilians in Sarajevo were surviving on whatever food they had stockpiled, on what they could grow in vegetable gardens, and whatever goods were brought into Sarajevo through the tunnel.[11663] On 19 July, in a meeting with Smith, Mladić agreed to allow UNPROFOR and UNHCR to move convoys into Sarajevo using a route from Kiseljak.[11664] However, on 30 July, Mladić informed Smith that the Bosnian Muslims had attacked convoys using this route the day before in order to make the route impossible to use, leaving Mt. Igman as the only alternative.[11665] Mladić also stated that use of the Mt. Igman route by the ABiH was "illegal" and something which the Bosnian Serbs would "never accept".[11666] In another meeting with Mladić on 31 July, Smith emphasised the need to reopen Sarajevo airport for the delivery of humanitarian aid and to simplify procedures for checking convoys.[11667] Mladić responded that the airport could not be opened until ABiH forces withdrew

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11660 P2443 (UNPROFOR report re humanitarian situation in Croatia and BiH, 6 July 1995), p. 3 (stating that Bosnian Serb authorities had not given clearance for the delivery of aid to Sarajevo since 20 June 1995 and were demanding 50% of deliveries, rather than the usual 23%); KDZ182, T. 13186–13188 (10 March 2011).

11661 P2507 (Anthony Banbury's briefing notes, 1 July 1995), para. 4 (stating that UNHCR was considering sending a convoy to Sarajevo via Mt. Igman at dawn on 2 July 1995); P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), p. 5 (stating that a UNHCR convoy carrying 62 tonnes of food arrived in Sarajevo at 3:30 a.m. via the Mt. Igman route)

11662 P2407 (Witness statement of KDZ304), pp. 25–26 (under seal); P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), p. 3. A humanitarian convoy arriving on the night of 3 to 4 July 1995 was attacked by the Bosnian Serbs, causing injuries to two drivers and damage to two vehicles, while a second convoy arriving on the night of 6 to 7 July 1995 proceeded without incident. *See* P822 (UNPROFOR Weekly Situation Report (Sarajevo), 8 July 1995), p. 3; P820 (Witness statement of David Harland dated 4 September 2009), para. 218. On the evening of 14 July 1995, a convoy carrying flour on Mt. Igman was attacked from Bosnian Serb territory. Two vehicles were destroyed and two drivers injured. *See* P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), pp. 4–5; Nikola Mijatović, T. 30764 (30 November 2012) (testifying that this report was "not accurate" and the Bosnian Serbs were not the ones who opened fire); D2512 (Report of 1st Ilidža Infantry Brigade, 14 July 1995) (referring to an artillery attack on an "unannounced" convoy of trucks travelling on Mt. Igman). *See also* Rupert Smith, T. 11417 (9 February 2011); P2407 (Witness statement of KDZ304), p. 26 (testifying that the use of the Igman road was "unacceptable to the Serbs" and that they demanded that UNPROFOR use only the Blue Routes to supply Sarajevo); Dragomir Milošević, T. 33239 (5 February 2013) (testifying that convoys using the Igman route could not be inspected or controlled); Adjudicated Fact 3021. When asked about these attacks, Milošević testified that the SRK "was not shooting at humanitarian aid convoys" but "shooting at those who infiltrated [...] those convoys", including ABiH vehicles and vehicles transporting weapons. *See* Dragomir Milošević, T. 33235 (5 February 2013); Nikola Mijatović, T. 30764 (30 November 2012) (testifying that there were no problems when UNPROFOR announced their convoys and were not smuggling ammunition and weapons into Sarajevo).

11663 P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), p. 5.

11664 P4178 (Agreement Between General Smith and General Ratko Mladić, 19 July 1995), paras. 4, 6.

11665 D2621 (Letter from VRS to UNPROFOR, 30 July 1995), e-court p. 2.

11666 D2621 (Letter from VRS to UNPROFOR, 30 July 1995), e-court p. 2; Dragomir Milošević, T. 33242–33243 (5 February 2013) (testifying that the Bosnian Serbs did not provide consent to use of the Mt. Igman road); Vladimir Radojčić, T. 31289 (12 December 2012) (testifying that the Bosnian Serbs objected to use of the Mt. Igman road because it was used to supply the ABiH).

11667 D1047 (VRS Main Staff Report, 31 July 1995), p. 3.

from Mt. Igman and that convoy procedures would be simplified in proportion to the "growth of mutual trust" between UNPROFOR and the VRS.[11668]

3613. On 8 August 1995, the VRS Main Staff issued an urgent order instructing all the corps to warn their units to save ammunition of all calibres as much as possible.[11669] On 18 August, Milošević issued an order to all SRK units to use "all means to prevent a new offensive to lift the blockade of Sarajevo".[11670] On 21 August, in a meeting with Koljević, Pedauye of UNPROFOR emphasised the importance of opening Sarajevo airport before the onset of winter.[11671] Koljević, noting that the Bosnian Muslims were using the tunnel under the airport for military purposes, responded that the Bosnian Serbs were prepared to open the airport only if humanitarian activities were separated from the military ones.[11672]

3614. On 28 August 1995, the second Markale market incident took place which led to NATO air strikes, as described later in this judgement.[11673] On 2 September 1995, Harland and Smith decided to open the airport for anyone wanting to cross it.[11674] When they informed Krajišnik of this intention, Krajišnik threatened to shoot any vehicle that crossed the airport without Bosnian Serb approval.[11675] UNPROFOR ignored the threat, which was never carried out—as a result, traffic began to flow in and out of Sarajevo for the first time since 1992.[11676] On 14 September, the Accused and Holbrooke agreed on a framework for a cease-fire agreement according to which both the ABiH and the VRS were first to stop all operations within and around the TEZ in Sarajevo, the VRS was to remove its heavy weapons outside of the TEZ while the ABiH was to place its heavy weapons under the control of the UN, and NATO was to cease the air strikes; the framework also envisaged that after all of these steps were completed, an agreement would be signed on cessation of hostilities, first in Sarajevo and then in the rest of BiH.[11677] At a meeting on 20 September, Smith informed Dragomir Milošević that as part of the cease-fire UNPROFOR required "full and unhindered" freedom of movement, including the removal of Bosnian Serb check-points on roads

11668 D1047 (VRS Main Staff Report, 31 July 1995), p. 3.

11669 D2813 (VRS Main Staff Order, 8 August 1995).

11670 D4619 (SRK report, 18 August 1995), p. 2 (noting also that there have been many false reports by the SRK units and ordering that all measures be taken for complete and correct reporting).

11671 P2287 (UNPROFOR report re meetings with Bosnian Serb leadership, 22 August 1995), para. 15.

11672 P2287 (UNPROFOR report re meetings with Bosnian Serb leadership, 22 August 1995), para. 14.

11673 *See* discussion on Scheduled Incident G.19.

11674 P820 (Witness statement of David Harland dated 4 September 2009), para. 240.

11675 P820 (Witness statement of David Harland dated 4 September 2009), para. 240.

11676 P820 (Witness statement of David Harland dated 4 September 2009), para. 240.

11677 D1017 (Drina Corps Order, 14 September 1995), p. 1. *See also* D1053 (UNPROFOR letter to Ratko Mladić, 4 September 1995); P2106 (Witness statement of KDZ304), pp. 5–7 (under seal); P2111 (UNPROFOR report re withdrawal of heavy weapons, 18 September 1995); Adjudicated Fact 2800.

into Sarajevo.[11678] On 25 September 1995, Sarajevo trams started working again.[11679] At meetings on 6 and 8 October, Krajišnik, Dragomir Milošević, and Inđić, among others, proposed the opening of several routes into Sarajevo for the delivery of humanitarian aid.[11680] Following these developments, the situation improved and a cease-fire was agreed upon on 12 October.[11681] The fighting subsided by 14 October 1995.[11682]

b. Sniping

3615. The Prosecution alleges that the Accused, together with a number of others, participated in a joint criminal enterprise to establish and carry out a campaign of sniping against the civilian population of Sarajevo between April 1992 and November 1995 the primary purpose of which was to spread terror among the civilian population.[11683] In order to illustrate that campaign[11684] the Prosecution presented, *inter alia*, detailed evidence in relation to 16 sniping incidents listed in Schedule F of the Indictment.[11685] These incidents included sniping of trams as well as sniping of individual victims who found themselves on the streets of Sarajevo, all alleged to have been perpetrated by the "Sarajevo Forces".[11686] In addition, the Prosecution also brought general evidence going to the nature of sniping in Sarajevo and a number of unscheduled sniping incidents, in order to establish a pattern of conduct by the Bosnian Serb military and political authorities.[11687]

3616. In response, the Accused argues that there is no evidence that the SRK was tasked with opening sniper fire against civilians; instead the SRK sniping practice was strictly "military on military" and the victims of sniping incidents were simply caught in the exchange of fire and shot

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11678 D2899 (Fax from UNPROFOR, 20 September 1995), para. 3 (adding that Miletić and Milošević found it "difficult to accept" this requirement, but ultimately decided to comply with it).

11679 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 194; P2511 (Anthony Banbury's notes, 26 September 1995), e-court p. 1.

11680 These routes included the Ilidža–Kiseljak, Ilidža–Tarčin and Airport–Mt. Igman routes. *See* P908 (Minutes from the first meeting on the implementation of cease-fire agreement, 6 October 1995), e-court p. 5; P909 (Minutes from the second meeting on the implementation of cease-fire agreement, 8 October 1995), e-court p. 3; P820 (Witness statement of David Harland dated 4 September 2009), para. 243.

11681 P820 (Witness statement of David Harland dated 4 September 2009), paras. 240–242, 244–245; P910 (BiH Government's acceptance of the cease-fire agreement, 11 October 1995); P911 (RS Government's acceptance of the cease-fire agreement, 11 October 1995).

11682 Adjudicated Fact 2802.

11683 Indictment, para. 15.

11684 Indictment, paras. 15, 82 (referring to the sniping incidents in Schedule F as being "illustrative examples" of the campaign).

11685 Originally, the Indictment contained an additional scheduled incident of sniping but it was withdrawn by the Prosecution pursuant to Rule 73*bis*. *See* Rule 73 *bis* Decision.

11686 Sarajevo Forces are defined in the Indictment as (i) members of JNA operating in and around Sarajevo until about 20 May 1992, (ii) members of the VRS, in particular the SRK, and (iii) members of other forces operating in or with responsibility over the Sarajevo area. *See* Indictment, para. 18.

by stray bullets.[11688] The Accused does concede, however, that civilian deaths may have occurred during the war due to "uncontrolled sniper[s]" but argues that there was an attempt by the SRK not to harm civilians.[11689] In addition, the Accused claims that ABiH snipers opened fire on their own civilians.[11690] The Prosecution argues in turn that the Accused's suggestions that ABiH forces fired on their own civilians are implausible and not supported by reliable evidence, while his claims that the victims were caught in exchanges of fire are also unsupported by the evidence.[11691]

i. *Sniping in general*

3617. With respect to sniping, the Chamber heard from two experts in this case, namely Patrick van der Weijden, a trained sniper himself, commissioned by the Prosecution,[11692] and Mile Poparić, a ballistics expert, commissioned by the Accused,[11693] both of whom have produced an expert report for the purpose of this case.[11694]

3618. Van der Weijden drew a distinction between a "popular sniper" and a "professional military sniper" noting that the latter is better trained in a number of specialised skills (including the ability to camouflage), has more and better quality equipment, and usually operates in a "shooter/spotter team".[11695] A popular sniper, on the other hand, usually operates alone, with less equipment, and having had less training.[11696] Van der Weijden also noted that the term "sniper" has been popularised by the media as it got a "new impulse" in the Balkan conflict and has since then been used to indicate a hidden shooter, shooting at whoever gets in his sight, including women and children.[11697] According to Poparić, every bullet fired from small arms in Sarajevo was regarded as

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11687 As indicated to the parties during the case, the Chamber will not be making findings as to the responsibility of the Accused for specific unscheduled incidents. *See* T. 5481 (19 July 2010). *See also* fn. 11204.

11688 Defence Final Brief, para. 2171; Closing Arguments, T. 48030 (2 October 2014).

11689 Defence Final Brief, para. 2171.

11690 Defence Final Brief, para. 2181.

11691 Prosecution Final Brief, Appendix C, para. 12.

11692 *See* P1611 (Patrick van der Weijden's *curriculum vitae*).

11693 *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), which also contains Poparić's *curriculum vitae* at page 2. Mile Poparić never served as a sniper nor does he have any combat experience. However, he has had training in the use of infantry weapons. *See* Mile Poparić, T. 39020 (30 May 2013).

11694 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012).

11695 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 2–4; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 31; David Fraser, T. 8019 (18 October 2010).

11696 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 2. But note Mile Poparić's evidence that snipers can operate alone, in pairs, or in groups of snipers. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 27.

11697 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 2. *See also* P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 88; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 58.

a bullet fired from a sniper weapon, which is "grossly erroneous" since sniper fire and ordinary small arms fire are "essentially very different" even though the difference between the two has become "imperceptibly blurred".[11698] However, contrary to Poparić's position, the Chamber considers that for the purpose of entering factual and legal findings on the sniping incidents alleged in the Indictment, which are charged as murder, unlawful attacks on civilians, and terror, the distinction between a popular sniper and a professional military sniper is not important. What matters instead is the identity of the perpetrators, regardless of their level of training or the specific weapons they used, and whether their actions satisfied the elements of the crimes charged.[11699] Accordingly, the Chamber's use of the term "sniper" throughout this judgement will be in line with the above-described popular use of the term, encompassing both professional military sniper teams and hidden shooters operating alone and targeting individuals and objects.

3619. The Chamber also heard that in an urban setting, large buildings or factories offer multiple possibilities to establish shooting positions, making it difficult for the enemy to locate the shot.[11700] In those situations, snipers will prefer to stay away from the windowsills or if possible shoot through loopholes created by using a hole shot in the wall.[11701] They will also choose positions on either side of the frontline but not right on it.[11702] Van der Weijden also testified that in built up areas the shooting ranges of a sniper are at an average of 75 metres while long shots are possible only from dominating positions, with an overview from above.[11703] He further noted that sniper rifles are usually fitted with magnifying scopes of varying sizes, making it possible to identify whether individuals are combatants or civilians, even at ranges of over two kilometres.[11704] In terms of judging a distance when shooting, in a relatively static situation, where the frontlines remain unchanged for weeks or months as in Sarajevo, a sniper can choose an object for target practice and then set the settings on his scope for future shots at the same distance.[11705] As for machine guns, which can also be used for sniping, the typical scope would have a magnification of

11698 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 26.

11699 *See Galić* Appeal Judgement, para. 254, fn. 711.

11700 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 4.

11701 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 4.

11702 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 5.

11703 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 5.

11704 According to Van der Weijden, a sniper can distinguish between civilians and combatants through a number of indicators, including the target's size, the way in which he or she moves, clothing, sex, age, and actions. A sniper can also use a rangefinder on his rifle to identify children, noting that if children are hit at great distance with the use of the rangefinder, they would have been identified as such in order to be hit. P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix B, pp. 1–3. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 31.

11705 Patrick van der Weijden, T. 6950, 6963 (27 September 2010).

four and, if the machine gun was placed on a tripod and used in a static frontline, the sniper would have relatively accurate fire up to 1,500 metres.[11706]

3620. In terms of target identification, Van der Weijden testified that in an urban battle zone, more civilians are present and most targets will only be visible for a short moment.[11707] Thus, strict rules of engagement are usually provided to guide the sniper.[11708] He has to be extremely careful when taking his shots and must positively identify his target as the enemy beforehand.[11709] As for the targets themselves, Van der Weijden explained that it is easy for people unaccustomed to shooting to get confused about the origin of fire as the bullet usually strikes before the sound of the shot reaches the victim.[11710] He also explained that being exposed to sniping causes great anxiety to the population as they never feel safe and never know exactly when or from where the shot would come.[11711]

ii. *Sniping in Sarajevo*

(A) Nature of sniping in the city

3621. The Chamber heard that sniping within Sarajevo was constant throughout the conflict, resulting in many civilian casualties and the setting up of anti-sniping barriers all over the city to protect civilians.[11712] Fraser testified that during his time there both sides conducted sniping

11706 Patrick van der Weijden, T. 6950–6951 (27 September 2010). P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, p. 1.

11707 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix B, p. 1.

11708 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 5. According to Van der Weijden, the sniper is permitted to shoot a civilian only if that civilian poses an immediate threat to the sniper or his comrades; however, if the sniper is not sure that there is such a threat, he should not use force. Patrick van der Weijden, T. 6952 (27 September 2010); P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix B, p. 1.

11709 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix B, p. 1.

11710 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 7. This was confirmed by Dragan Mioković, an investigator at CSB Sarajevo, who testified that sniping victims on Zmaja od Bosne street in Sarajevo often had no idea where the bullets that injured them had come from, but nevertheless always assumed that they had come from the Metalka building and/or the four white high-rises in Grbavica. *See* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 36.

11711 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 7.

11712 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 86; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 26, 47–49; Aernout van Lynden, T. 2398–2401 (19 May 2010); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 35, 37; Jeremy Bowen, T. 10107–10111 (13 January 2011); P2074 (BBC news report re Sarajevo, with transcript); P2075 (BBC news report re Sarajevo, with transcript); P2106 (Witness statement of KDZ304), pp. 9–10 (under seal); David Harland, T. 2026–2029 (6 May 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 57; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 18, 23–24; P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 37–38; P2018 (BBC news report, with transcript); P2010 (Video footage of Sarajevo); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 34.

activities which usually ended up in a tit-for-tat type of exchange.[11713] Both sides, according to Fraser, were also indiscriminate and would shoot at men, women, and children.[11714] This was confirmed by KDZ182 who told the Chamber that both sides would kill innocent people, including women, children, and the elderly, in order to show they were in control and to exert pressure through the reporting of the media.[11715] However, both KDZ182 and Fraser, as well as many other witnesses, testified that the Serbs shot more, particularly in the Sedrenik and the so-called "Sniper Alley"[11716] areas.[11717] Harland also stated that both sides sniped but because the Bosnian Serbs held the higher ground around Sarajevo, they had a lot more opportunity and capacity to do so.[11718] Van Baal testified that the SRK used sniping as a "means of repression and terror"—the sniping was carried out without any discrimination and citizens, women, and children were targeted "at unexpected places and unexpected times".[11719] Rose himself testified that the presence of snipers in Sarajevo made normal life impossible and that there was an atmosphere of fear in the city.[11720] Tucker testified that when he arrived to the city in October 1992 there was constant sniper fire and intense periods of small arms fire around the perimeters of the city.[11721] Richard Mole, a senior

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11713 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24; David Fraser, T. 8054 (18 October 2010). *See also* P6060 (Record of interview with KDZ185), e-court p. 13. Thomas testified that both sides used snipers as "instruments of policy". *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 61. *See also* P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 87; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 24.

11714 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24.

11715 P2414 (Witness statement of KDZ182), pp. 40, 46–47 (under seal). *See also* Anthony Banbury, T. 13317 (15 March 2011) (testifying that the large majority of sniping victims in Sarajevo were civilians).

11716 Sniper Alley was the stretch of Zmaja od Bosne street in the Marin Dvor area of Sarajevo and in front of the Holiday Inn. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 26.

11717 At the airport, the shooting was done by both sides in equal measure. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24, 26; David Fraser, T. 8015 (18 October 2010); P2414 (Witness statement of KDZ182), pp. 7, 41 (under seal); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 24. According to KDZ182, during his time in Sarajevo there were 66 incidents involving Serb sniper fire and six incidents involving ABiH sniper fire. *See* P2414 (Witness statement of KDZ182), pp. 41–42 (under seal). *See also* P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 87 (testifying that the sniping threat was greater within the city due to the domination of high ground by the Serb side); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 217 (testifying that the level of sniping was greater on the Bosnian Serb side, while the greater number of civilians killed were within the city); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 163; P2495 (Anthony Banbury's notes, 23 May 1995), e-court p. 2; P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 29; P2031 (BBC news report re Sarajevo, with transcript). Some witnesses also acknowledged that the Bosnian Serb reluctance to report their casualties, coupled with the media's home base location being on the ABiH-held side of Sarajevo resulted in a somewhat unbalanced view of the sniping activity in the city. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 62–63; P820 (Witness statement of David Harland dated 4 September 2009), para. 299; David Harland, T. 2144–2145 (10 May 2010).

11718 P820 (Witness statement of David Harland dated 4 September 2009), paras. 294–295, 298 (testifying also that the Bosnian Muslim side engaged in two types of sniping: (i) counter-sniping which was the endless game of tit-for-tat, or (ii) killing civilians to provoke a response from the Serbs).

11719 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, paras. 48–49. *See also* KDZ182, T. 13093 (9 March 2011); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 53; P2000 (BBC news report re Sarajevo, with transcript).

11720 Michael Rose, T. 7266–7267 (5 October 2010).

11721 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 22.

UNMO in Sarajevo between 16 September and 26 December 1992,[11722] testified that during his time in Sarajevo there was continual background noise of small arms and artillery fire in the city.[11723] Even when Sarajevo was "calm", the Bosnian Serbs would engage in sniping in order to put pressure on the city.[11724] A number of local citizens of Sarajevo confirmed the above, testifying that the civilians in the city were continuously targeted by Bosnian Serb sniper fire no matter where they were, and that certain areas, such as Marin Dvor and Sedrenik, were particularly dangerous as far as sniper fire was concerned.[11725] In addition, when in operation, the Sarajevo trams and the people onboard were also subjected to sniper fire from the Bosnian Serb side.[11726] Confirming the evidence above about the targeting of civilians, the demographic expert Ewa Tabeau produced reports in which she analysed civilian deaths in Sarajevo and came to the conclusion that in the period between 1 April 1992 and August 1994, an absolute minimum of 503 civilians died as a result of sniper or firearm fire, while another 2,215 were wounded.[11727] As for the period between September 1994 and November 1995, Tabeau used different sources of information and was able to conclude that, at a minimum, some 449 individuals died from war-related causes, including sniping, within the confrontation lines of Sarajevo.[11728] In addition, in this period, an absolute minimum of 77 civilians were wounded due to sniping.[11729]

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11722 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 4.

11723 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 65. *See also* Adjudicated Fact 135.

11724 KDZ450, T. 10550 (19 January 2011).

11725 *See e.g.* P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 21–23; P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), pp. 2–3; P2413 (Witness statement of KDZ289 dated 19 April 1996), p. 3; P2922 (Witness statements of KDZ079 dated 17 May 2006), para. 17; P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), paras. 86, 88–93; P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 7; P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 13; P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1728; P496 (Witness statement of Tarik Žunić dated 21 April 2006), pp. 2–3; P496 (Witness statement of Tarik Žunić dated 25 April 2010), p. 2. *See also* Section IV.B.1.b.iii.A.: Zmaja od Bosne street (formerly Vojvode Putnika); Section IV.B.1.b.iii.C: Sredrenik.

11726 P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 13; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), paras. 6–7, 15; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 66; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 39; David Fraser, T. 8127–8128 (19 October 2010). *See also* para. 3645.

11727 Tabeau reached these numbers by using two main sources of information in the said period, namely the Households Survey conducted in September 1994 in the ABiH-held Sarajevo and the records of the Bakije Funeral home, the largest funeral home in Sarajevo. She then compared them to the 1991 census and, in order to distinguish between military and civilian casualties, to the ABiH lists of fallen soldiers. *See* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), pp. 1–2, 4–7; P4998 (Ewa Tabeau's expert report entitled "Population Losses in the 'Siege' of Sarajevo 10 September 1992 to 10 August 1994", 10 May 2002), pp. 1–4; Ewa Tabeau, T. 28173–28176, 28196–28197 (26 April 2012). Tabeau explained that the real number of civilian deaths is most likely higher because the number of those reported as soldiers in the Household Survey was higher than the numbers seen in ABiH lists of fallen soldiers, due to, among other things, families hoping to obtain a military pension. *See* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), p. 8.

11728 For this period, Tabeau's main source of information in relation to the wounded civilians were patient records of the three main Sarajevo hospitals. This source was somewhat incomplete as it did not include the records of a number of smaller hospitals in the city and because it included only hospitalised patients. Tabeau also used a

3622. All SRK units had snipers rifles and dedicated marksmen.[11730] They had various M48 rifles of 7.9 mm calibre in its arsenal.[11731] These rifles had optical sights and were referred to as sniping rifles.[11732] In addition, they had M76 sniper rifles which also used 7.9 mm calibre ammunition, albeit different to the ammunition used for the M48 rifles.[11733] Finally, the SRK had semi-automatic 7.62 mm calibre rifles that could be equipped with optical sights,[11734] which meant that they could fire with precision from up to 400 metres away, with an overall range of 800 metres.[11735] However, Stanislav Galić, the SRK Commander from September 1992 to August 1994,[11736] testified that there were no sniping units as such in the SRK, but only a small number of sharpshooters who would be assigned across various units down to the level of company.[11737] Thus, the level of command and control which could issue tasks to snipers was at the level of the platoon commander at the highest and, occasionally, that of the company commander.[11738] Higher levels of command did not deal with snipers except in extraordinary circumstances.[11739]

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number of different sources relating to those killed in Sarajevo, including again the Bakije Funeral home records. For this period, however, she was unable to determine which deaths were attributed to shelling and which to sniping since, unlike the Household Survey, the sources she used here did not contain that type of information. She therefore classified 449 deaths as being war-related. *See* P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 3–5, 11–12, 17–18, 23, 51–54; Ewa Tabeau, T. 28206–28209 (26 April 2012).

11729 P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 6–7, 51–57 (adding that the real number was probably more around 320 civilians, based on the comparison she made to other partially overlapping sources).

11730 Dragomir Milošević, T. 32820–32821 (29 January 2013) (adding that it was difficult to find good "marksmen specialists" as the SRK soldiers did not want to be located close to the confrontation lines). *See* Adjudicated Fact 2808.

11731 Stanislav Galić, T. 37463–37464 (22 April 2013).

11732 Stanislav Galić, T. 37463–37464 (22 April 2013); D2827 (SRK combat report, 19 August 1993); D2828 (SRK combat report, 10 August 1994) (both orders referring to "sniper rifles"); P5945 (Report of 1st Romanija Infantry Brigade to SRK, 29 October 1993). Van der Weijden referred to this rifle in his report but explained that it was a hunting rifle owned by many civilians in the region who used it to arm themselves when they became combatants. P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, pp. 3–4.

11733 Dragomir Milošević, T. 32818–32820 (29 January 2013). *See* Adjudicated Fact 2812.

11734 Stanislav Galić, T. 37463–37464 (22 April 2013); P1279 (SRK request to VRS Main Staff, 10 July 1995). According to Van der Weijden's report, the VRS had the following 7.62 mm calibre semi-automatic rifles in its arsenal: Zastava M76, Zastava M59/66, and SVD Dragunov or M91. P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, p. 1.

11735 Stanislav Galić, T. 37463–37464 (22 April 2013). These ranges were confirmed by Van der Weijden. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A.

11736 Stanislav Galić, T. 37155 (15 April 2013); Dragomir Milošević, T. 32503 (23 January 2013). *See* Adjudicated Fact 27.

11737 Stanislav Galić, T. 37192 (15 April 2103), T. 37465 (22 April 2013), T. 37840–37842 (7 May 2013), T. 38060 (9 May 2013).

11738 Stanislav Galić, T. 37472 (22 April 2013).

11739 Stanislav Galić, T. 37472 (22 April 2013), T. 37840–37842 (7 May 2013) (conceding, however, that it was possible that sniper squads existed at a battalion level but denying any personal knowledge of such squads).

3623. Contradicting Galić, Dragan Maletić, commander of the 1st Company of the 3rd Battalion of the 1st Romanija Infantry Brigade,[11740] and KDZ310, a soldier in this battalion,[11741] both testified that there was a sniper squad in the battalion and that it was directly subordinated to the battalion commander rather than to company or platoon commanders.[11742] In addition, the order of Galić's deputy dated 4 November 1992 shows that the SRK Command would issue orders specifically concerning the use of snipers in SRK units.[11743] Furthermore, on 29 October 1993, Milošević issued an order on behalf of Galić to all the SRK brigades to intensify sniping against the ABiH forces; the order also instructed each brigade to set up a platoon-strength "sniper group" of 31 soldiers, each of whom should be supplied with sniper rifles and silencers.[11744] KDZ304 thought that SRK snipers were highly professional and were under the control of the SRK command.[11745] Van der Weijden also testified that it appeared from some of the SRK orders that snipers were deemed to be an important asset for the SRK commanders.[11746] Similarly, Fraser thought that the Serb snipers were controlled and regulated at the corps level, as shown by one of the SRK orders, and because three of the notorious sniping areas, namely Sedrenik, Sniper Alley, and the airport, crossed a number of different SRK Brigades.[11747] Furthermore, the sniping activities appeared to be co-ordinated, and whenever he and UNPROFOR met with the SRK Commanders, namely Galić and later Milošević, to protest about sniping incidents, the number of incidents would decrease, giving him the impression that there was some control over the snipers' activities.[11748] Van Baal

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11740 The 3rd Battalion later became part of the Sarajevo Mechanised Brigade and was renamed as the 2nd Infantry Battalion. *See* Dragan Maletić, T. 30844 (3 December 2012); D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 8, 25–26; Božo Tomić, T. 30178–30179 (13 November 2012); D2267 (Vlado Lizdek's interview with OTP), pp. 5–6; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 5.

11741 P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 28–29.

11742 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 31; Dragan Maletić, T. 30846–30848 (3 December 2012), T. 30873–30874 (4 December 2012); P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 40–41, 43–44.

11743 P1010 (SRK Order re designation of sniper positions, 4 November 1992) (indicating also that every SRK unit should have at least two snipers); Dragomir Milošević, T. 32832–32833 (29 January 2013).

11744 D2902 (SRK Order, 29 October 1993). Dragomir Milošević denied that this order could have been a basis for the firing on civilians in Sarajevo. *See* Dragomir Milošević, T. 33272–33274 (6 February 2013).

11745 P2407 (Witness statement of KDZ304), pp. 8, 10.

11746 Patrick van der Weijden, T. 6941–6943, T. 6946–6949 (27 September 2010); P1614 (Order of 2nd Sarajevo Light Infantry Brigade, 14 August 1994), para. 12; P1208 (Order of 2nd Light Infantry Brigade, 30 July 1994), para. 4; P1617 (Report from SRK Security-Intelligence Organ to SRK Command, 15 August 1994), p. 2; P1618 (SRK Order, 1 October 1995), para. 4. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 30–31; P6060 (Record of interview with KDZ185), e-court pp. 13–14.

11747 David Fraser, T. 8018, 8021–8023 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 25; P1613 (SRK Order, 19 January 1995), para. 5. *See also* P2414 (Witness statement of KDZ182), p. 36 (under seal). As far as Sniper Alley was concerned, Fraser conceded that the Muslim side benefited politically from the incidents that happened in that area and could not explain why the SRK commanders would allow something like that to happen. *See* David Fraser, T. 8123–8124 (19 October 2010). *See also* KDZ304, T. 10524 (19 January 2011); Dragomir Milošević, T. 32842 (29 January 2013) (testifying that the SRK had no political interest in continuing the sniping activity).

11748 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 8, 11, 21–22, 23, 25. *See also* P6060 (Record of interview with KDZ185), e-court pp. 12–13. As noted in paragraph 3595, following the signing of

thought that there was a clear line, both politically and at the "highest military level", on the use of snipers as far as the Serb side was concerned.[11749] Rose thought that sniping was clearly a part of the Bosnian Serbs' policy of terrorising the civilian population of Sarajevo and that there was "clear control" over the sniping in the city.[11750] KDZ182 believed that the SRK snipers in Sarajevo were not just locals operating randomly but were perfectly co-ordinated and had the aim of terrorising civilians.[11751] John Hamill, an artillery officer in the Irish Army and UNMO in BiH from May 1993 to July 1994,[11752] thought that snipers in Sarajevo operated as the "tools of the management" and were under the control of someone in a position of authority.[11753] Milenko Inđić, the SRK's liaison officer with UNPROFOR,[11754] testified that the "SRK just controlled sniper group formations" but stated that it could not control the opening of fire and so the sniping was not stopped.[11755]

3624. Van der Weijden emphasised the importance of proper training for snipers, stating that, for a long range shot, the shooter must be either well trained or very experienced to make first round hits.[11756] To show that this was the case, the Prosecution presented to the Chamber a number of documents showing that the SRK organised training for snipers during the Indictment period. For example, training for five sniper squad commanders was organised in 1994,[11757] and an eight-day course for sniper instructors took place on 23 January 1995.[11758] Over 100 sniper instructors would

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the Anti-Sniping Agreement in August 1994, the number of people killed and wounded on Zmaja od Bosne reduced dramatically, leading Rose and others to conclude that both parties had strict control over their snipers. *See* P2447 (Witness statement of KDZ182), p. 35, KDZ182, T. 13040–13041 (9 March 2011); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 141. *See also* P6060 (Record of interview with KDZ185), e-court pp. 3, 13.

11749 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 48, 50, 58; Adrianus van Baal, T. 8534–8535 (28 October 2010). *See also* P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 27–29, 67–68 (testifying that in his experience there were very few rogue shooters on both sides); KDZ450, T. 10574–10575 (19 January 2011), T. 10676 (20 January 2011).

11750 Michael Rose, T. 7267–7268 (5 October 2010).

11751 P2414 (Witness statement of KDZ182), pp. 36, 44 (under seal); KDZ182, T. 13091–13095 (9 March 2011).

11752 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6059–6060. Hamill became an artillery officer in September 1974 and had 20 years of experience with the Irish Defence Forces prior to serving as a UNMO on six occasions. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6059–6060, 6124; John Hamill, T. 9673 (13 December 2010).

11753 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6217.

11754 D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 39.

11755 D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 144.

11756 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 3–4, 106.

11757 P1615 (Report from 1st Igman Infantry Brigade to SRK Command, 21 January 1995), para. 3. Van der Weijden estimated that five sniper squad commanders would have been responsible for between 30 to 40 snipers. *See* Patrick van der Weijden, T. 6943–6944 (27 September 2010).

11758 P1616 (SRK Order, 5 January 1995); P1612 (SRK Order, 29 January 1995), p. 6; P1613 (SRK Order, 19 January 1995), para.4. The instructors were told to bring their own rifles, namely M76, which was, according to Van der Weijden, the standard sniper rifle of the JNA. *See* Patrick van der Weijden, T. 6938–6940, 6945–6946 (27 September 2010). *See also* David Fraser, T. 8018–8023 (18 October 2010); P1783 (Report of 1st Ilijaš

have been trained by January 1995.[11759] This confirms Fraser's evidence that during his time in Sarajevo, namely 1994 and 1995, the sniper activity was confined to professional sharpshooters and that amateur shooters were long gone.[11760]

3625. Contradicting the evidence outlined above, Dragomir Milošević denied that civilians were deliberately targeted by sniper fire in Sarajevo, arguing that they were caught in combat activities, although he could not exclude the possibility that a "deranged mind on the Serbian side engaged in such activity".[11761] Galić explained that the main task of SRK snipers or sharpshooters was to neutralise ABiH sniper enemy fire and target important military targets, and that civilians were not targeted but rather became collateral damage.[11762] A number of other SRK soldiers and officers also testified that their specific units never deliberately targeted Sarajevo civilians by opening sniper fire on them and/or that snipers were used only on military targets and in response to ABiH fire.[11763] They also denied using sniper fire on trams and other modes of public transport in the city.[11764] In his book, however, Milovanović wrote that sniping was a huge problem for both

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Infantry Brigade to SRK re training, 13 January 1995); P1784 (Report of 3rd Sarajevo Infantry Brigade to SRK re training, 5 January 1995).

11759 Patrick van der Weijden, T. 6945 (27 September 2010).

11760 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24, 31; David Fraser, T. 8019–8020 (18 October 2010). *See also* KDZ450, T. 10555–10556 (19 January 2011). Van der Weijden also testified that, according to SRK documents, the SRK snipers worked in pairs, using sound suppressors, as is normally done by professional snipers who operate in two-man teams, consisting of the shooter and the marksman or spotter. *See* Patrick van der Weijden, T. 6942–6943, 6951–6952 (27 September 2010); P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 3; P1208 (Order of 2nd Light Infantry Brigade, 30 July 1994), para. 4.

11761 Dragomir Milošević, T. 32836–32837, 32840–32841 (29 January 2013), T. 33197–33207 (5 February 2013); D2827 (SRK combat report, 19 August 1993) (in which Milošević reported to the VRS Main Staff that SRK units were ordered to open sniper fire only on targets that pose a threat to SRK soldiers). *See also* D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 139–140.

11762 Stanislav Galić, T. 37465–37466 (22 April 2013), T. 37845–37846, 37852–37854 (7 May 2013), T. 38060 (9 May 2013).

11763 *See e.g.* Božo Tomić, T. 30214 (13 November 2012); D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 20, 26; Dragan Maletić, T. 30883–30886, 30889–30890 (4 December 2012); D2525 (Photograph of Sarajevo marked by Dragan Maletić); D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 25; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 43; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 36; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 41. Gengo testified that the Serbian side's response to sniper fire depended on the origin of the fire; sometimes they used a machine-gun, or if fire was opened from a forest, they used mortars to respond. *See* Slavko Gengo, T. 29784–29785 (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 27.

11764 *See* Dragomir Milošević, T. 33209–33210 (5 February 2013); D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 15; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 28; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 18; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 27; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 28; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 29–30; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 10; D2387 (Witness statement of Stojan Džino dated 4 November 2012), paras. 50–51; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 32; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 20; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 15–16.

parties in Sarajevo "having completely got out of control".[11765] Milošević conceded that he had received, from UNPROFOR and the media, allegations about Serb soldiers sniping at civilians, but claimed that the media exaggerated the situation on the ground and could not be trusted while at the same time he tried to establish if the information from UNPROFOR was true or not.[11766] Similarly, Galić also conceded that he received protests about sniping or infantry fire causing civilian casualties, usually from UNPROFOR and through Inđić.[11767] Inđić, on the other hand, testified that while he received protests about sniper fire being opened, he never received protests about such fire causing civilians casualties.[11768]

(B) ABiH sniping practices

3626. As noted above, the Bosnian Muslim side had and used snipers throughout the conflict, particularly targeting the suburb of Grbavica, including the civilians located therein.[11769] In addition, according to the BiH MUP report of 13 October 1993 on the activities of the 2nd Independent Battalion of the ABiH, which had its headquarters in the Sarajevo dental clinic on Meše Selimovića street, the battalion had a number of "death sowers",[11770] one of which was placed near its headquarters, overlooking the Nemanjina street and two to three sniper nests on the third floor of the dental clinic, covering the petrol station plateau at Koševo, a large part of Moša Pijade

11765 D825 (Manojlo Manojlović's book entitled "My View of the War in Bosnia 1992–1995"), p. 31.

11766 Dragomir Milošević, T. 33276–33277 (6 February 2013) (adding that the extent of activities he had to carry out did not give him the opportunity to personally carry out the entire procedure of establishing guilt—he instead relied on the assistance of the military police and prosecutor's office).

11767 Stanislav Galić, T. 37788–37792 (7 May 2013) (clarifying that he never received protests in relation to individual sniping incidents listed in Schedule F of the Indictment).

11768 D2774 (Witness statement of Milenko Inđić dated 19 January 2013), paras. 142–143.

11769 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24. Maletić whose company was stationed along Miljacka, between the Vrbanja and Bratstvo Jedinstvo bridges, testified that the unit facing his unit had snipers and had used them, which is why a large number of civilians had been killed in Grbavica and Vraca. D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 8–9, 19, 32. *See also* Stanislav Galić, T. 37468–37469 (22 April 2013); Dragomir Milošević, T. 32821–32823 (29 January 2013); D2824 (Order of ABiH, March 1993); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 156; D201 (1st Romanija Brigade combat report, 13 July 1992); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 36; Jeremy Bowen, T. 10107–10108 (13 January 2011); P2074 (BBC news report re Sarajevo, with transcript); P820 (Witness statement of David Harland dated 4 September 2009), para. 171; P879 (VRS Main Staff Report, 11 March 1995); David Harland, T. 2099–2101 (7 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 46–47; P2022 (BBC news report re Grbavica, with transcript); Michael Rose, T. 7268 (5 October 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 133; D3526 (Order of ABiH 1st Motorised Brigade, 2 October 1993); D4633 (Order of ABiH 1st Corps, 12 December 1993); P1753 (Order of ABiH 12th Division, 19 September 1995); D2825 (Report of 1st Romanija Infantry Brigade, undated); D2826 (1st Romanija Infantry Brigade combat report, 25 July 1992); P2407 (Witness statement of KDZ304), p. 28; KDZ304, T. 10485 (18 January 2011); KDZ088, T. 6369–6372 (8 September 2010) (closed session); D564 (SRK combat report, 23 July 1992), para. 1; D2779 (VRS Main Staff notes of meeting at Sarajevo airport, 7 April 1993), p. 2.

11770 KDZ485 explained that the "death sower" is a type of machinegun that can fire rounds at very high velocity thus making it difficult for the target to escape. *See* KDZ485, T. 8881 (3 November 2010); P1905 (Witness statement of KDZ485), Supplemental Information Sheet.

street, and the area around the medical school.[11771] The Chamber also heard that special sniper groups, referred to as Ševe and Laste, operated from ABiH-held territory.[11772] Edin Garaplija, a former member of the BiH MUP's SDB, confirmed that Ševe was a special MUP unit that operated during the conflict with the task of sniping at Bosnian Serb positions.[11773] According to Galić, the 1st Corps of the ABiH had around 500 snipers in Sarajevo because the Zrak factory, which produced optical sights, was in ABiH-held territory.[11774] Thomas testified that it was difficult for him to visit and inspect sniper locations in ABiH-held territory due to the BiH government's stonewalling.[11775] He was successful in seeing one such location, however, which was located in Dobrinja and which was manned by very professional police officers who had good sniping equipment.[11776]

(C) Sniping investigations and anti-sniping measures undertaken in the city

3627. A number of witnesses before this Chamber, including both members of the BiH MUP and UNPROFOR, participated in the investigation of sniping incidents in Sarajevo. With respect to the BiH MUP investigations, the CSB Sarajevo's department for serious criminal acts was tasked with investigating sniping incidents in which one or more people were killed.[11777] This department was notified of any such incident by the local police station concerned and would in turn inform an investigative judge of the Sarajevo Supreme Court who would become the head of the investigating team.[11778] A team was then formed, including an investigator, criminal technicians, and a ballistics expert.[11779] The investigative judge was responsible for the investigation, for ensuring that no legal

11771 D858 (BiH MUP Report re ABiH's 11th Independent Battalion, 19 October 1993), pp. 2–3.

11772 Stanislav Galić, T. 37468 (22 April 2013), T. 38061 (9 May 2013); Dragomir Milošević, T. 32821–32822 (29 January 2013); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 37; D2774 (Witness statement of Milenko Inđić dated 19 January 2013), paras. 151–152; Francis Roy Thomas, T. 6830–6834 (15 September 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 68 (testifying that snipers on the BiH side were supplied by the police rather than the army). *See also* para. 4505. While Mirsad Kučanin, a CSB Sarajevo inspector, acknowledged the existence of a special police unit called Laste, which did get involved in combat, he also testified that it was poorly equipped and carried only rifles and some captured weapons. Kučanin encountered this unit when they were securing his crime scenes. P27 (Witness statement of Mirsad Kučanin dated 4 September 2000), p. 3.

11773 Edin Garaplija, T. 33382–33384, 33388 (7 February 2013). Garaplija also testified about this unit's other activities, which he labeled terrorist activities. *See* para. 4505.

11774 Stanislav Galić, T. 37468 (22 April 2013), T. 38060–38061 (9 May 2013).

11775 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 64; Francis Roy Thomas, T. 6830–6834 (15 September 2010).

11776 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 64.

11777 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 4; P1905 (Witness statement of KDZ485), para. 5.

11778 The investigating judge could authorise an investigator to conduct the investigation on his behalf. *See* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 2, 4. *See also* P1905 (Witness statement of KDZ485), para. 5.

11779 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 4–5; P1905 (Witness statement of KDZ485), para. 5. Mirza Sabljica testified that in most serious cases the investigation team would include two

errors were made, and for conveying instructions to the investigator who would then pass them on to the other members of the team.[11780] The bulk of the investigation was carried out by ballistic experts and criminal technicians, whose task was to determine the type of the projectile used and the direction from which it came.[11781] Upon completion of the investigation, the investigator would write up an official report on the basis of his notes and "verbal comments" of the experts, providing a chronological description of the work conducted.[11782] Later on, the investigator would also collect other documents prepared during the investigation, and would pass them on, together with his own report, to the investigating judge.[11783] It was for the judge to then prepare a report outlining the findings of the investigation and appending the documents prepared by the CSB and its experts.[11784] On rare occasions, the investigative judge would ask that further investigation be conducted, usually consisting of additional questioning of witnesses.[11785]

3628. If no ballistic expert was available,[11786] determination of the origin and/or direction of fire was made by one of the criminal technicians who were also trained to determine the direction of fire.[11787] With respect to methods that were used for establishing the origin and/or direction of fire, they depended on the type of the incident and the scene in question, as well as any evidence found on the scene and any assistance from eye-witnesses.[11788] For example, in cases of sniping of trams, the first step was to examine the damage on the tram, including identifying the bullet's entry and exit holes and their dimensions.[11789] Once this was done, a rope, glass tubes,[11790] a measuring level, and a small optical device[11791] would be used to establish the bullet's entry angle and to determine

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ballistics experts rather than one. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 9.

11780 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5. *See also* Dragan Mioković, T. 8555 (28 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 67–68; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4643–4644; P1905 (Witness statement of KDZ485), para. 6.

11781 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 7, 67.

11782 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5.

11783 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5; P1905 (Witness statement of KDZ485), para. 7. *See also* KDZ485, T. 8900–8902 (3 November 2010).

11784 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5.

11785 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 33–34.

11786 According to KDZ485, "there were not too many [ballistics experts] to go around" during the war. P1905 (Witness statement of KDZ485), para. 11; KDZ485, T. 8900 (3 November 2010).

11787 P1905 (Witness statement of KDZ485), para. 11. KDZ485 could recall only one sniping incident where the ballistics expert was absent from the scene. KDZ485, T. 8900 (3 November 2010).

11788 P1905 (Witness statement of KDZ485), para. 12.

11789 Mirza Sabljica, T. 7732 (12 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 68.

11790 Mirza Sabljica testified that the team had a number of these tubes of different sizes, depending on the type and caliber of the ammunition that was used. *See* Mirza Sabljica, T. 7743 (12 October 2010).

11791 The device was a type of sophisticated binocular, with a 16 time zoom, made for the BiH MUP in order to assist in their investigations. Mirza Sabljica did not know if this device was ever tested as reliable for the purpose for

the direction of fire and facilities from which the bullet may have originated.[11792] This was done by connecting the entry and exit holes with a tube and a rope,[11793] measuring the sides of the resulting triangle and its hypotenuse, using trigonometry to calculate the entry angle, and then, finally, using the optical device to look through the hole[11794] to sight the area and potential facilities from which the bullet could have originated.[11795] Mirza Sabljica, a ballistics expert working for CSB Sarajevo,[11796] testified that the investigation team usually insisted on the tram remaining at the location of the incident although that was often impossible as trams were sometimes moved by the driver to avoid being shot again.[11797] If the tram could not be returned to the location at which it was when hit,[11798] the investigators would only take measurements and calculate the bullet's entry angle but would not use the optical device to conduct the sighting exercise as the difference in a few centimetres in the position of the tram would result in a different direction of fire.[11799] In these instances, the ballistic experts were therefore able to establish only the general direction of fire but not the precise location from which the bullet had been fired.[11800] The sniping investigations related to sniping of apartments were conducted in the same manner, using the equipment and the methodology described above.[11801]

3629. Sabljica also explained that the ballistics experts could not establish the distance which the bullets had travelled and, for that reason, in areas where VRS and ABiH positions were close to each other, they would not specify the exact origin of fire from within VRS-held territory or outside

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which it was used. He did admit, however, that the device would be affected by certain aberrations in light and noted that the team did not have the equipment necessary to take into account those aberrations. *See* Mirza Sabljica, T. 7733, 7744–7745 (12 October 2010).

11792 Mirza Sabljica, T. 7732–7735, 7743 (12 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 68. *See also* P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 2; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 2, 11; P1905 (Witness statement of KDZ485), para. 14; P1924 (Photograph of Sarajevo marked by KDZ485).

11793 According to Mirza Sabljica, the wall of the Sarajevo trams was somewhere between 12 and 15 centimetres thick. *See* Mirza Sabljica, T. 7742 (12 October 2010).

11794 The device would be lightly fixed to the tube that was inserted through the bullet's entry and exit holes and the investigators could look to see what particular buildings could be seen through it. *See* Mirza Sabljica, T. 7735 (12 October 2010).

11795 However, the bullet would sometimes get stuck in the body of a tram and there would be no exit hole. Mirza Sabljica, T. 7732–7735, 7743 (12 October 2010); P1734 (Sketch drawn by Mirza Sabljica); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 68. *See also* P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 2; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 2, 11.

11796 For Mirza Sabljica's qualifications, *see* Mirza Sabljica, T. 7702, 7705–7706 (11 October 2011); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 1–8, 60.

11797 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 67–68; P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5; P1905 (Witness statement of KDZ485), para. 13.

11798 Mirza Sabljica, T. 7736, 7746 (12 October 2010); P1905 (Witness statement of KDZ485), para. 13.

11799 Mirza Sabljica, T. 7736, 7745–7746 (12 October 2010).

11800 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 68–69; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 34.

11801 Mirza Sabljica, T. 7734–7735 (12 October 2010); P1905 (Witness statement of KDZ485), para. 12.

but simply referred to cardinal directions.[11802] Dragan Mioković, an investigator in CSB Sarajevo,[11803] stated that given the circumstances in which the investigations were carried out, the BiH MUP "practically just documented these incidents" rather than elucidating the crimes, which is why medical reports were not of primary importance when conducting investigations.[11804]

3630. Generally, UNPROFOR would be informed about the sniping incidents, either from its own troops or through protests by warring factions, and would conduct its own investigation and also assist the BiH MUP in their investigations.[11805] Fraser testified that because UNPROFOR was not supposed to get involved in exchanges between the warring factions, it took great care to determine whether sniping incidents were directed against civilians or not.[11806] If they were, it would then exercise particular caution to determine which side fired the shot against the civilian.[11807] Fraser conceded, however, that the UNPROFOR investigation was not a criminal investigation.[11808] Instead, UNPROFOR would get information from its troops positioned in the area of the incident and from the local authorities, including the local police, and would then protest, verbally or in writing, with the party found to have conducted the sniping attack.[11809] Rose testified that the UN could not determine beyond reasonable doubt from where the sniper fire had come because it did not conduct investigations that would have established that.[11810]

3631. In addition, prompted by the number of sniping incidents in the Sniper Alley area, Sector Sarajevo also created an international anti-sniping task force wherein snipers from each UNPROFOR battalion were given anti-sniping tasks in their area of responsibility, with the aim of protecting civilians.[11811] This force had a co-ordination centre and sniping incidents were reported

11802 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 7.

11803 For Dragan Mioković's qualifications, *see* Dragan Mioković, T. 8544–8545, 8548–8551 (28 October 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 2, 28–29.

11804 Mioković testified that medical reports would be submitted to the investigating judge separately, after the team had completed its work. *See* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 34–35. KDZ485 testified, however, that when investigating an incident, one of duties of the police was to establish if anyone was injured or killed and to follow up at the hospital or the mortuary. *See* P1905 (Witness statement of KDZ485), paras. 7, 15.

11805 David Fraser, T. 8016, 8054–8055 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 22–23; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 18–20.

11806 David Fraser, T. 8015–8016 (18 October 2010).

11807 David Fraser, T. 8016 (18 October 2010).

11808 David Fraser, T. 8054–8055 (18 October 2010). *See also* KDZ304, T. 10523 (19 January 2011).

11809 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 23; David Fraser, T. 8016, 8054–8055 (18 October 2010), T. 8124–8125 (19 October 2010); P2414 (Witness statement of KDZ182), p. 31 (under seal).

11810 Michael Rose, T. 7293–7294 (5 October 2010).

11811 David Fraser, T. 8016 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 32, 34; P2407 (Witness statement of KDZ304), pp. 10–11; P1773 (UNPROFOR report re efficacy of Anti-Sniping Agreement, 15 September 1994).

to the Sector Sarajevo headquarters as soon as possible after they occurred.[11812] While part of the task force's duties was to deter both sides, it principally had to deter the Bosnian Serbs from shooting at civilians.[11813] It would do that by, for example, physically interposing UNPROFOR soldiers between the Serb snipers and the civilians in the Sniper Alley area and then engaging the snipers themselves.[11814] It would also install passive barriers throughout the city, although at times the BiH authorities would not allow this.[11815] Another one of its tasks was to photograph all the possible areas in Grbavica where the Serbs were shooting from and observe the identified locations thus becoming very familiar with the sniper positions in the area.[11816] That information would have then been sent up to the battalion and the sector level.[11817] All of the above meant that the anti-sniping task force was "very good in determining the point of origin for specific incidents" and that UNPROFOR commanders were "certain" that Bosnian Serb forces were engaging in sniping attacks against civilians in Sarajevo.[11818]

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11812 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 32–33, 37; P1771 (UNPROFOR report re anti-sniping measures, 25 June 1994); P1772 (UNPROFOR report re sniping in Sarajevo, 6 September 1994); KDZ182, T. 13083 (9 March 2011) (private session); P2407 (Witness statement of KDZ304), p. 15; P2113 (UNPROFOR report re anti-sniping, 23 September 1994).

11813 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 33–34; P2414 (Witness statement of KDZ182), pp. 6–7, 40–41 (under seal); KDZ182, T. 13083–13084 (9 March 2011) (private session). KDZ304 explained that it was difficult to monitor the snipers on the Bosnian Muslim side as most of the UNPROFOR forces, with the exception of RusBat, had no acces to SRK-held areas and could not observe or verify the number or the identity of sniping victims on the Serb side. Since RusBat never reported any sniping incidents on the Serb side, the anti-sniping task force was unable to locate the sniper nests on the Bosnian Muslim side. *See* P2407 (Witness statement of KDZ304), pp. 13–15.

11814 P2407 (Witness statement of KDZ304), p. 11. Fraser testified that this did not always work as UNPROFOR lost a number of soldiers through sniping, one of whom was shot by the Serbs while located in one of the UNIS towers, while another was shot near the airport by the Bosnian Muslim side. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 33–34, 36; David Fraser, T. 8016 (18 October 2010). KDZ182 testified that UNPROFOR soldiers would engage the snipers only in a situation of self-defence, and were able to do that because they had thermal cameras which allowed them to see where the snipers were. He also confirmed that an UNPROFOR soldier was shot by the Bosnian Muslim side at the airport. *See* P2414 (Witness statement of KDZ182), pp. 29, 42, 44, 72 (under seal). *See also* P5908 (Record of interview with KDZ185), para. 8; P1075 (Photograph of UN APC in Sarajevo); D2907 (UNPROFOR report, 18 April 1995); D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 158.

11815 David Fraser, T. 8016 (18 October 2010), T. 8121–8122 (19 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 34; P2414 (Witness statement of KDZ182), p. 40 (under seal); P6060 (Record of interview with KDZ185), e-court p. 13; P5908 (Record of interview with KDZ185), para. 8; P1069 (Photograph of anti-sniping barricades in Sarajevo); P1070 (Photograph of anti-sniping barricades (Maršal Tito Barracks)); P1071 (Photograph of anti-sniping barricades (Dobrinja)); P1072 (Photograph of anti-sniping barricades (Dobrinja)); P1073 (Photograph of anti-sniping barricades in Sarajevo); P1074 (Photograph of anti-sniping barricades (Parliament building)); P1075 (Photograph of UN APC in Sarajevo); P2407 (Witness statement of KDZ304), p. 11. Fraser also explained that while the barriers had a positive impact, they would simply result in moving the problem elsewhere as the snipers would find new positions from which they could gauge the target. *See* David Fraser, T. 8163–8164 (19 October 2010).

11816 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24–25, 29; David Fraser, T. 8016–8018 (18 October 2010).

11817 David Fraser, T. 8018 (18 October 2010); P2407 (Witness statement of KDZ304), p. 12; P2112 (UNPROFOR report re sniper fire in Sarajevo, 21 September 1994).

11818 David Fraser, T. 8018 (18 October 2010). Fraser also testified that UNPROFOR did not use reports produced by the BiH government agencies. *See* David Fraser, T. 8034 (18 October 2010).

3632. The Accused argues that both the BiH MUP and the UN investigators working on scheduled sniping incidents were "exceptionally unreliable" as they were biased and their work was riddled with mistakes.[11819] The Prosecution responds that this is a broad allegation based on mis-characterisation of the evidence the relevant witnesses gave.[11820] As will be seen below, in its analysis of the scheduled sniping incidents the Chamber has considered and analysed a number of CSB Sarajevo and UN reports prepared on the basis of the investigation methods outlined above. These were produced by ballistics experts and/or criminal technicians who were, in most cases, on site soon after the incident happened and who used accepted ballistics methods to determine the direction of fire. These individuals, particularly the UNPROFOR and its anti-sniping force, also had extensive knowledge of notorious sniping positions in the city, as well as access to the scene, contemporaneous information, and eye-witnesses. Given these factors, the Chamber generally gave considerable weight to the CSB Sarajevo and UN reports when analysing the scheduled sniping incidents. In doing so, the Chamber was also constantly cognisant of the shortcomings of the investigations conducted during the war, such as for example the difficulties faced by investigators when working on a crime scene while under threat of enemy fire, their inability to determine the exact origin of fire as opposed to the direction of fire, and inconsistencies between ballistic and other investigative reports. Whenever issues arose with respect to particular reports, they were considered by the Chamber in relation to each particular incident. Accordingly, while finding this type of evidence to be generally reliable and credible, the Chamber approached it as one piece of the puzzle assessed against the totality of evidence tendered in relation to each incident.

3633. The Chamber also heard from one of the Prosecution investigators, Barry Hogan, who visited Sarajevo on many occasions and prepared various materials relating to the incidents listed in Schedule F of the Indictment.[11821] He testified that he visited each of the locations where the victims listed in Schedule F were wounded or killed, accompanied by one of those victims or eyewitnesses, and used a GPS unit to produce an accurate reading of the position of the victim and/or a tram at the time the shooting took place, as recounted by that victim or witness. These were then used to produce a map recording all the incident sites.[11822] Hogan would then stand at the location where the victims were wounded and/or killed and would take GPS readings from there.[11823] Hogan also explained that no local police reports or UN reports were used for the

11819 Closing Arguments, T. 47954–47959, 47989–47991 (2 October 2014).

11820 Closing Arguments, T. 48056–48059 (7 October 2014).

11821 Barry Hogan, T. 11192–11193 (3 February 2011).

11822 Barry Hogan, T. 11204–11206, 11230–11231, 11255 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

11823 Barry Hogan, T. 11232–11233, 11241–11245 (3 February 2011) (adding that the readings were taken in degrees, minutes, and seconds but that later, when preparing the maps, he converted those measurements into decimal degrees which did not affect the location of the incident as recorded on the maps. *See also* P2190 (GPS

purpose of this exercise.[11824] As for the origin of fire, the victims/witnesses simply indicated the direction from which the fire had come, as they were not in a position to identify the exact locations from which the bullets were fired.[11825] These victims and/or witnesses were pointing out locations purely from memory as they were not given their own witness statements or any other materials in order to refresh their memories.[11826] The Chamber has considered Hogan's evidence and found that he was a reliable and truthful witness. He was meticulous and did not overstep the boundaries of his mandate. However, the Chamber notes that his mandate was limited to simply recording the locations of the incident sites. In addition, for each alleged incident, his GPS recordings were dependent on the recollection of a singular victim/witness who was not given any material to refresh his or her memory despite being taken to the relevant locations years after the incident. Thus, at times, as will be seen below,[11827] there was some inconsistency between those recollections and the official reports created by the BiH MUP and/or other evidence. Accordingly, while accepting Hogan's evidence as credible, the Chamber is fully aware of its limitations and also of the fact that his activities were dependent on the recollections of others.

3634. Finally, as noted above,[11828] the Chamber heard from two experts relating to sniping in Sarajevo. For the Prosecution, Van der Weijden conducted investigations into all scheduled sniping incidents and considered the alleged origin of fire, as well as the opportunity the shooter in each incident would have had to identify the target as a combatant. He visited the incident sites in 2006 and 2009 and inspected the exact locations at which the victims were shot, using the GPS co-ordinates obtained by Hogan and provided to him by the Prosecution; while there, he observed the surroundings, usually from the location of the wound on the victims' bodies, checking for a clear line of sight to a possible shooting position.[11829] He then visited the areas he identified as possible shooting positions to see if it would be technically feasible to fire from them.[11830] He would then eliminate the locations offering no views on the incident sites and/or offering no tactical advantage to the shooter, and would eventually arrive at the area he thought the shot had come from.[11831]

3635. When conducting this exercise, Van der Weijden was also provided with witness statements in which the origin of fire was often suggested by the witnesses; however, this did not have much

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locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

11824 Barry Hogan, T. 11231–11235 (3 February 2011); D990 (Photographs of GPS device).

11825 Barry Hogan, T. 11231 (3 February 2011).

11826 Barry Hogan, T. 11288 (3 February 2011).

11827 *See e.g.* para. 3963.

11828 *See* para. 3617.

11829 Patrick van der Weijden, T. 6953, 6968–6969 (27 September 2010).

11830 Patrick van der Weijden, T. 6953, 6970–6971 (27 September 2010).

effect on his investigation as he would, using the method described above, independently assess whether their account was feasible.[11832] For some incidents, he was also given reports prepared by the BiH MUP, but noted that these were not "very helpful" as they were not "very complete".[11833] Van der Weijden conceded that he did not review the medical information pertaining to the injuries of the victims in question nor did he always have knowledge of the exact position the victim was in when shot, but again explained that he was concerned mainly with lines of sight and with the general layout of the incident site.[11834] Van der Weijden was only broadly aware of the confrontation lines in Sarajevo and not in relation to each specific incident; however, according to him, having detailed knowledge of these lines was not necessary since his investigation was concerned purely with the inquiry into where the shot might have come from, rather than from which side of the confrontation line it originated.[11835] He also noted that he never established that any of the shots were fired by a trained sniper as opposed to a regular soldier,[11836] and accepted that he was never able to reach a definitive conclusion as to the exact location from which the bullet had come from.[11837]

3636. The Accused argues that Van der Weijden is the Prosecution's most important witness with respect to the alleged sniping incidents but is of highly questionable credibility, given that he attended only several military courses. In addition, according to the Accused, Van der Weijden was aware of the confrontation lines in Sarajevo only in "broad lines" and reached his conclusions purely by looking at the layout of the incident site, trying to establish possible origins of the shots.[11838] Further, the Accused claims that Van der Weijden was never able to reach a definitive conclusion as to the exact origin of fire and acknowledged that the BiH MUP reports were not very helpful as they were incomplete.[11839] The Prosecution responds that the Accused mis-characterised Van der Weijden's conclusions since, for a number of incidents, namely, F.1, F.3, F.6, and F.12, Van der Weijden either concluded there was only one possible origin of fire or excluded any reasonable possibility that the fire originated from ABiH-held territory.[11840] The Prosecution also

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11831 Patrick van der Weijden, T. 6967–6968 (27 September 2010).
11832 Patrick van der Weijden, T. 6954 (27 September 2010).
11833 Patrick van der Weijden, T. 6971–6972 (27 September 2010).
11834 Patrick van der Weijden, T. 6954, 6969–6970 (27 September 2010).
11835 Patrick van der Weijden, T. 6965–6966, 6971 (27 September 2010).
11836 Patrick van der Weijden, T. 6967 (27 September 2010).
11837 Patrick van der Weijden, T. 6972 (27 September 2010).
11838 Defence Final Brief, paras. 2163–2165.
11839 Defence Final Brief, paras. 2166–2167.
11840 Closing Arguments, T. 47734 (30 September 2014).

notes that Van der Weijden's conclusions are only a part of the totality of evidence for each scheduled incident.[11841]

3637. The Chamber has analysed Van der Weijden's qualifications and testimony and is satisfied that he is an expert in sniping and a reliable witness and that his evidence, as far as its main purpose is concerned—namely to establish the lines of sight between possible origins of fire and the alleged location of the incident—can be accepted as generally credible.[11842] The Chamber also notes, however, that Van der Weijden's methodology was dependent on the information given to him by the Prosecution as to the location of incident sites, which at times was confusing and/or internally inconsistent.[11843] In addition, as he himself stated, his investigation was concerned purely with the inquiry into where the shot might have come from, rather than from which side of the confrontation line it originated from, and he willingly admitted that he was never able to reach a definitive conclusion as to the exact location where the bullet originated. Accordingly, his evidence was approached as one of a number of factors in the Chamber's assessment of the totality of the evidence and, at times, was of relatively limited value in the Chamber's determination on the origin of fire in the incidents alleged.

3638. While preparing his expert report, Poparić visited Sarajevo twice, in September 2010 and May 2011.[11844] The first visit lasted three days and its purpose was for Poparić to familiarise himself with the sites and to help the Accused prepare for cross-examination of Prosecution witnesses.[11845] The purpose of the second visit was to prepare the Accused's legal adviser for the site visit.[11846] Poparić explained that during the visits he was led to the relevant locations by a former member of the SRK who knew the best way to some of the more inaccessible areas.[11847] He also explained that in addition to the two official visits, he went to Sarajevo on a few more occasions on his own, usually when he needed further clarification, but did not meet with the victims of the sniping incidents.[11848]

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11841 Closing Arguments, T. 47734 (30 September 2014).

11842 The Chamber has noted in relation to each individual incident where his evidence was not relied upon, due mainly to the inaccurate or confusing information he was given by the Prosecution.

11843 *See e.g.* discussion in relation to Scheduled Incident F.11.

11844 Mile Poparić, T. 39173 (4 June 2013).

11845 Mile Poparić, T. 39173 (4 June 2013).

11846 Mile Poparić, T. 39173 (4 June 2013).

11847 Mile Poparić, T. 39173–39177 (4 June 2013).

11848 He did meet, however, with a person who took one of the victims of one of the scheduled incidents to the hospital. *See* Mile Poparić, T. 39177–39180 (4 June 2013).

3639. During his visits, Poparić visited locations of the scheduled incidents and locations from which the shots might have originated.[11849] However, with respect to six scheduled sniping incidents that took place on Zmaja od Bosne street, he conceded that he did not go inside the four white high-rises in Grbavica claiming that this was not necessary because he had photographs from the *Dragomir Milošević* case and because it was not clear on which floors the sniper nests were located.[11850] His analysis of the incidents relevant to the high-rises was in any event based primarily on (i) the height of the four high-rises and (ii) the distance between the high-rises and the incident site, which allowed him to calculate the maximum angle of descent of any bullets fired from there.[11851] Poparić also clarified that he did not go inside the Metalka building but stood next to it to see the view down Franje Račkog street; he also had a set of photographs taken from the building in 2001, at the time when there was no vegetation, for the purposes of the *Dragomir Milošević* case.[11852] Poparić did not dispute Van der Weijden's findings as to what was visible from the white high-rises and the Metalka building and assumed them to be correct for the purposes of his analysis.[11853]

3640. In terms of the equipment, Poparić had a compass, a camera, and a measuring tape.[11854] The compass was not of much use to him due to the fact that many of incident locations were in or near certain facilities so there was no dispute about them.[11855] He also did not use a GPS to identify the relevant locations because this was not necessary given that he had photographs and other information.[11856] In addition, small differences in measurements would not have made much difference for sniping incidents due to the fact that the trajectory of a bullet is horizontal and straight.[11857] He also did not use a laser rangefinder which would have been useful only if there was information about the nature of the wounds of the victims, which was not available.[11858]

3641. As for the type and quality of materials available to him, Poparić explained that what was lacking in the materials available was information relating to medical and forensic evidence.[11859] When preparing his report, he consulted a forensic medicine doctor in relation to one of the

11849 Mile Poparić, T. 39177 (4 June 2013).
11850 Mile Poparić, T. 39183–39189 (4 June 2013).
11851 According to Poparić, that angle was about ten degrees. *See* Mile Poparić, T. 39184–39185 (4 June 2013).
11852 Mile Poparić, T. 39185–39189 (4 June 2013).
11853 Mile Poparić, T. 39189–39190 (4 June 2013).
11854 Mile Poparić, T. 39182–39183 (4 June 2013).
11855 Mile Poparić, T. 39183 (4 June 2013).
11856 Mile Poparić, T. 39180–39181 (4 June 2013).
11857 Mile Poparić, T. 39181–39182 (4 June 2013).
11858 Mile Poparić, T. 39182–39183 (4 June 2013).
11859 Mile Poparić, T. 39191 (4 June 2013).

incidents[11860] but did not consult any professional snipers.[11861] When pointed out to him that he used a map of confrontation lines from 1995 in relation to incidents from 1993, while failing to specify the date of the map in his report, Poparić denied that he deliberately and repeatedly omitted relevant information from his report and that he had developed premises based on incorrect information.[11862]

3642. The Prosecution submits that Poparić was neither credible nor reliable and that his evidence should be disregarded as a whole.[11863] The Accused on the other hand claims that Poparić, unlike the Prosecution witnesses, stated all the facts, thus successfully challenging the Prosecution evidence.[11864] The Chamber has analysed both Poparić's expert report and his testimony on the scheduled sniping incidents alleged in the Indictment and has found that on many occasions he ventured outside of his area of expertise and made conclusions on issues in which he had no training, such as for example determining entry and exit wounds from videos and photographs.[11865] As will be seen from the Chamber's analysis in relation to each scheduled sniping incident, Poparić often jumped to conclusions, making questionable leaps in logic.[11866] At times, he also reached conclusions based on incorrect information.[11867] In addition, while expressing opinions as to what could and could not be seen from certain buildings in Sarajevo, such as the four white high-rises and the Metalka building,[11868] he also conceded that he never entered those buildings.[11869] All of these aspects of Poparić's evidence tended to compromise his credibility and impartiality. Accordingly, the Chamber has found his evidence to be of limited value, as will be seen in the sections analysing each specific scheduled incident.

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11860 This was Dr. Dušan Dunjić and the consultation related to Scheduled Incident F12. *See* Mile Poparić, T. 39191–39193, 39198 (4 June 2013).

11861 Mile Poparić, T. 39193–39194 (4 June 2013).

11862 Mile Poparić, T. 39195–39198 (4 June 2013).

11863 The Prosecution claims that Poparić changed his theories freely in an attempt to maintain that fire did not originate from Serb-held positions or that victims were caught in cross-fire. He produced graphic images that were inaccurately manipulated and distorted, and he intentionally omitted contrary evidence of which he was aware on the ground that it was "totally irrelevant". According to the Prosecution he also engaged in methodologically-flawed analyses and conducted limited on-site personal examinations. *See* Prosecution Final Brief, Appendix C, paras. 5–11.

11864 Closing Arguments, T. 48012–48013 (2 October 2014).

11865 *See e.g.* paras. 3719, 3738.

11866 *See e.g.* paras. 3758, 3763.

11867 *See e.g.* para. 3719.

11868 *See* para. 3667.

11869 As noted above in paragraph 3667, Poparić justified his decision not to enter the relevant buildings by saying, *inter alia*, that there was no evidence indicating the floors at which sniper nests operated. However, as will be seen below, this is incorrect—for example, exhibit P1738, which contains photographs of sniper nests in the four white high-rises clearly indicates the floors at which those nests were located. *See* P1738 (Photographs of sniper nests).

iii. *Scheduled sniping incidents*

3643. The Prosecution submits in its Final Brief that the sniping fire in all scheduled incidents, with the exception of Scheduled Incident F.5, originated from "well-known SRK positions", namely Grbavica; Špicasta Stijena; the Orthodox Church in Dobrinja; upper parts of Hrasno Brdo and Ozrenska street; the School for the Blind, the Faculty of Theology, and other areas of Nedžarići; and Baba Stijena.[11870] In addition, it alleges that the victims, as well as the bus and trams they were on, were deliberately targeted in those incidents and were not legitimate military objectives.[11871] Each scheduled sniping incident is discussed below according to the broad geographical area of Sarajevo where it took place. Some of these areas were notorious for sniper activity, such as Zmaja od Bosne street, Marin Dvor area, and Sedrenik.

(A) Zmaja od Bosne street (formerly Vojvode Putnika)

3644. According to the Indictment, Scheduled Sniping Incidents F.8. F.11, F.12, F.14, F.15, and F.16 took place on Zmaja od Bosne street, along Sniper Alley, and targeted trams and pedestrians in the area.[11872] The Prosecution claims that the origin of fire in all those incidents was south of Zmaja od Bosne, namely the four white high-rises on Lenjinova street, the Metalka building, and the Jewish cemetery, all located in the area of Grbavica and controlled by the SRK.[11873]

3645. Zmaja od Bosne street, in particular the stretch near the Holiday Inn and the area around Marin Dvor,[11874] was one of the most dangerous locations in Sarajevo during the war, where many civilians were wounded or killed by sniper fire; for that reason, it was also known as Sniper Alley.[11875] It was close to the confrontation lines on Miljacka River,[11876] and the trams that ran

11870 Prosecution Final Brief, Appendix C, para. 2.

11871 Prosecution Final Brief, Appendix C, para. 3.

11872 Indictment, Schedule F. *See also* Prosecution Final Brief, Appendix C, para. 15; Closing Arguments, T. 47741–47742 (30 September 2014).

11873 Prosecution Final Brief, Appendix C, paras. 13–16. *See also* Closing Arguments, T. 47741–47742 (30 September 2014).

11874 The Chamber understands the Marin Dvor area to stretch from the St. Joseph Church in the east to the outer limits of the Maršal Tito Barracks in the west. David Fraser, T. 8081–8083 (18 October 2010); D771 (SRK combat report, 22 June 1994); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18.

11875 P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 7; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1624; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 3; Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1657; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 66; P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 2; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 33; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 13–14; P1765 (Map of Sarajevo marked by David Fraser); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 52; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 143; P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 15, 35; Jeremy Bowen, T. 10111–10112 (13 January 2011); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 24; P1996

along it, as well as the pedestrians, were visible from a number of skyscrapers and high-rise buildings surrounding the area.[11877] The intersections where Franje Račkog and Đure Daničića streets (which run from Miljacka River) cut across Zmaja od Bosne were particularly dangerous areas.[11878] In addition, in front of the Holiday Inn, at the intersection between Franje Račkog and Zmaja od Bosne streets, the trams had to enter a so-called "S-curve" in the tracks,[11879] in order to cross from one side of the street to the other, and thus had to slow down, becoming an easier target.[11880] Because Zmaja od Bosne street was so dangerous, large transport containers and lorries filled with sand were placed on the south side, on the most exposed parts, such as intersections.[11881]

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(Witness statement of Martin Bell dated 8 March 2010), paras. 35, 53; P2012 (Video footage of Sarajevo); P2000 (BBC news report re Sarajevo, with transcript); Martin Bell, T. 9778–9779 (14 December 2010). *See also* Adjudicated Facts 70, 71, 122, 2915.

11876 P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 10; KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 831 (under seal); P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 12; Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1471–1474, 1487; P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4; D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42, Image 18.

11877 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 835–837 (under seal); P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2; Huso Palo, P120 (Transcript from *Prosecutor v. Milošević*), T. 1539; Sabina Šabanić, P491 (Transcript from *Prosecutor v. Perišić*), T. 693, 696; P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2; P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 6; Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1657–1658; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 14.

11878 Alen Gičević, T. 7642–7647 (11 October 2010); D728 (Photograph of Sarajevo marked by Alen Gičević); D729 (Map of Sarajevo marked by Alen Gičević); Mirza Sabljica, T. 7677–7678 (11 October 2010); P1724 (Aerial photograph of Sarajevo marked by Mirza Sabljica); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 16–17, 34. *See* Adjudicated Fact 2916.

11879 At one point during the case, the Accused attempted to show that there had been no such S-curve at the intersection of Franje Račkog and Zmaja od Bosne streets at the time of the scheduled incidents, and that the S-curve was constructed sometime after the conflict. *See* Patrick van der Weijden, T. 7039–7051 (28 September 2010); D653 (Map of Sarajevo marked by Patrick van der Weijden); D654 (Map of Sarajevo). However, the Prosecution brought sufficient evidence to indicate that the S-curve in that location has existed since 1984. *See* Patrick van der Weijden, T. 7191–7195, 7197 (29 September 2010); P1630 (Map of Sarajevo marked by Patrick van der Weijden); P1631 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); Mirza Sabljica, T. 7680–7682 (11 October 2010); P1726 (Map of Sarajevo marked by Mirza Sabljica); Alen Gičević, T. 7611 (11 October 2010).

11880 P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 7; Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 857–858; KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 825–826 (under seal); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 66; Mirza Sabljica, T. 7678, 7680 (11 October 2010); P1724 (Aerial photograph of Sarajevo marked by Mirza Sabljica); P1725 (Map of Sarajevo marked by Mirza Sabljica); Patrick van der Weijden, T. 7036–7039 (28 September 2010); D652 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); Barry Hogan, T. 11203–11204, 11218, 11286–11287 (3 February 2011); P2189 (Aerial photograph of Sarajevo marked by Barry Hogan); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); D2656 (Photograph of Sarajevo marked by Milorad Katić); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 48.

11881 Alen Gičević, T. 7612–7613 (11 October 2010); P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 3; P1692 (Photograph of Sarajevo marked by Alen Gičević); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 33–34; P5908 (Record of interview with KDZ185), para. 8; P1074 (Photograph of anti-sniping barricades (Parliament building)); Adjudicated Fact 123; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 47–48.

Another dangerous area open to sniper attacks on Zmaja od Bosne was the area of Pofalići, close to Hotel Bristol,[11882] as well as the area near the Presidency building.[11883]

3646. A number of locations and buildings are relevant to sniping incidents that took place on Zmaja od Bosne street.[11884] One such building is a high-rise referred to as "Metalka", which is located in the neighbourhood of Grbavica,[11885] on the southern side of Miljacka River, some 300 metres from Zmaja od Bosne street.[11886] Its eastern side affords a view down Franje Račkog street.[11887] To the southeast of Metalka is a building similar in appearance and known as the "Invest Banka" building, which affords a view down Đure Daničića street from its eastern part.[11888] Just south of Invest Banka is another building with a red façade ("Red Façade building"),[11889] while further east of Metalka is the co-called Unioninvest building.[11890] Southeast of the Unioninvest building, located on the slopes of Debelo Brdo, is the Jewish cemetery.[11891] Also in Grbavica, on the street formerly known as Lenjinova street (now Grbavička street), stand four white skyscrapers, each 18 storeys tall.[11892] They dominate Grbavica and face the Maršal Tito Barracks.[11893]

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11882 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 870–872; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 7; P440 (Map of Sarajevo marked by Slavica Livnjak).

11883 Jeremy Bowen, T. 10112–10114 (13 January 2011); P2076 (BBC news report re Sarajevo, with transcript).

11884 Barry Hogan, T. 11202–11203 (3 February 2011); P2188 (Aerial photograph of Sarajevo marked by Barry Hogan).

11885 Grbavica is a neighbourhood in the municipality of Novo Sarajevo. *See* Adjudicated Fact 65.

11886 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 87, 91, 94, 97, 100. *See also* Patrick van der Weijden, T. 7016 (27 September 2010); KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 824 (under seal); P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 9; Alen Gičević, T. 7611, 7642–7645 (11 October 2010); P1691 (Photograph of Sarajevo marked by Alen Gičević); D728 (Photograph of Sarajevo marked by Alen Gičević); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 66–67; P1720 (Photograph of Sarajevo marked by Mirza Sabljica); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 33; Barry Hogan, T. 11199–11204, 11219 (3 February 2011); P2186 (Panoramic photograph of Sarajevo marked by Barry Hogan); P2188 (Aerial photograph of Sarajevo marked by Barry Hogan ); P2189 (Aerial photograph of Sarajevo marked by Barry Hogan); P2208 (Photograph of Sarajevo marked by Barry Hogan).

11887 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18; D2656 (Photograph of Sarajevo marked by Milorad Katić).

11888 Poparić testified that while the Invest Banka building offers a direct view down Đure Daničića street, its close proximity to other buildings on Đure Daničić street presented a "serious obstacle" to its use as a firing position. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18.

11889 Alen Gičević, T. 7628–7629, 7642–7645 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević); D728 (Photograph of Sarajevo marked by Alen Gičević); Patrick van der Weijden, T. 7021–7027 (28 September 2010); D649 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); D650 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18.

11890 Alen Gičević, T. 7628, 7642–7645 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević); D728 (Photograph of Sarajevo marked by Alen Gičević); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18.

11891 *See* Adjudicated Facts 72 and 2829. *See also* D788 (Photograph of Sarajevo marked by Bogdan Vidović).

11892 P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2; P119 (Statement of Huso Palo to BiH authorities, 24 November 1994), p. 2; Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1453–1454; P442 (Aerial photograph of Sarajevo marked by Sabina Šabanić); P492 (Witness statement of

3647. On the northern side of Miljacka River, to the northeast of the Holiday Inn stand two skyscrapers referred to as the "Unis towers".[11894] The School of Technology is to the west of the Holiday Inn, and across the street from the Holiday Inn stands the Faculty of Philosophy and the Museum buildings.[11895] To the east of the Faculty of Philosophy are the Executive Council and Assembly buildings.[11896] The Maršal Tito Barracks, now no longer in existence, were located to the west of the School of Technology.[11897]

3648. The Vrbanja Bridge on Miljacka River is located just south of the Assembly building.[11898]

3649. The so-called "salvation route" or the "road of life", which ran north of and parallel to the Zmaja od Bosne street and was protected by transport containers and lorries filled with sand,[11899]

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Sabina Šabanić dated 16 November 1995), p. 2; P492 (Addendum to witness statement of Sabina Šabanić dated 16 November 1995, 24 April 2010); P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 6; P492 (Addendum to witness statement of Sabina Šabanić dated 22 May 2006, 24 April 2010); Mirza Sabljica, T. 7675 (11 October 2010); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 33; Barry Hogan, T. 11199–11200, 11219–11220 (3 February 2011); P2186 (Panoramic photograph of Sarajevo marked by Barry Hogan); P2209 (Photograph of Sarajevo marked by Barry Hogan).

11893 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 42–43, Image 18.

11894 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1485; P444 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Alen Gičević, T. 7642–7645 (11 October 2010); D728 (Photograph of Sarajevo marked by Alen Gičević); Barry Hogan, T. 11199–11200 (3 February 2011); P2186 (Panoramic photograph of Sarajevo marked by Barry Hogan); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 59; Aernout van Lynden, T. 2580–2584 (21 May 2010); D211 (Aerial photograph of Sarajevo marked by Aernout van Lynden); D212 (Aerial photograph of Sarajevo marked by Aernout van Lynden).

11895 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 835–836 (under seal); P436 (Aerial photograph of Sarajevo marked by KDZ090); Alen Gičević, T. 7642–7645 (11 October 2010); D728 (Photograph of Sarajevo marked by Alen Gičević); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 66–67; P1720 (Photograph of Sarajevo marked by Mirza Sabljica); Barry Hogan, T. 11202–11203 (3 February 2011); P2188 (Aerial photograph of Sarajevo marked by Barry Hogan); Aernout van Lynden, T. 2584–2590 (21 May 2010) D212 (Aerial photograph of Sarajevo marked by Aernout van Lynden).

11896 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 835–836 (under seal); P436 (Aerial photograph of Sarajevo marked by KDZ090); Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1486; P444 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Alen Gičević, T. 7642–7645 (11 October 2010); D728 (Photograph of Sarajevo marked by Alen Gičević); Barry Hogan, T. 11199–11200, 11202–11203 (3 February 2011); P2186 (Panoramic photograph of Sarajevo marked by Barry Hogan); P2188 (Aerial photograph of Sarajevo marked by Barry Hogan).

11897 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1452–1454; P442 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Barry Hogan, T. 11199–11200 (3 February 2011); P2186 (Panoramic photograph of Sarajevo marked by Barry Hogan); Aernout van Lynden, T. 2584–2590 (21 May 2010) D212 (Aerial photograph of Sarajevo marked by Aernout van Lynden).

11898 Barry Hogan, T. 11202–11203 (3 February 2011); P2188 (Aerial photograph of Sarajevo marked by Barry Hogan); Aernout van Lynden, T. 2584–2590 (21 May 2010); D212 (Aerial photograph of Sarajevo marked by Aernout van Lynden).

11899 Alen Gičević, T. 7610–7613 (11 October 2010); P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 3; P1691 (Photograph of Sarajevo marked by Alen Gičević); P1692 (Photograph of Sarajevo marked by Alen Gičević).

was safer than any other road because it was protected from the view by a large number of buildings which provided cover for people who used it.[11900]

(1) Confrontation lines in the area

3650. The confrontation line in the Marin Dvor area ran along Miljacka River with ABiH positions on the north side of the river and VRS positions on the south side.[11901] The 1st Romanija Infantry Brigade and the 1st Sarajevo Mechanised Brigade of the SRK held the area of Grbavica and the positions south and east of Grbavica.[11902] The 3rd Battalion of the 1st Romanija Infantry Brigade, which was later absorbed into the 1st Sarajevo Mechanised Brigade and became the 2nd Infantry Battalion of that brigade,[11903] had positions in the area that stretched from Vrbanja Bridge, along Miljacka River, to Strojorad, then to the football stadium, Šanac, Ozrenska street, Milinkladska street, and Slaviša Vajner Čiča Barracks.[11904] The 1st Company of that battalion held the line between the Vrbanja and Bratstvo Jedinstvo Bridges, along Miljacka River.[11905] Thus, the Metalka building and the four white high-rises in Grbavica were in the area of responsibility of the SRK.[11906] Further, due to Metalka being difficult to access, the troops at some point withdrew "in [the] depth" of the territory.[11907]

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11900 P1690 (Witness statement of Alen Gičević dated 16 February 2010), pp. 3–4. *See also* Adjudicated Fact 64 (which provides that civilians developed alternative routes to traverse Sarajevo in order to avoid sniper fire but that even those would not afford protection from shelling).

11901 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 26–27; P1770 (Photograph of Sarajevo marked by David Fraser); Stanislav Galić, T. 37467–37468 (22 April 2013); Dragan Maletić, T. 30854–30855 (3 December 2012); P6018 (Photograph of Sarajevo); Milorad Katić, T. 31404–31407 (13 December 2012); P6044 (Photograph of Sarajevo marked by Milorad Katić); P815 (Map of Sarajevo showing confrontation lines). *See also* Adjudicated Facts 67, 68, 2826. Given that the ABiH held positions north of the Miljacka River, the area of Marin Dvor was under the control of the ABiH. *See* Adjudicted Fact 2827.

11902 Stanislav Galić, T. 37184 (15 April 2013); D3382 (Map of Sarajevo); P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 6; D2628 (Map of Sarajevo marked by Željko Bambarez); Adjudicated Facts 66, 2826.

11903 Dragan Maletić, T. 30844 (3 December 2012); D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 8, 25–26; Božo Tomić, T. 30178–30179 (13 November 2012); D2267 (Vlado Lizdek's interview with OTP), pp. 5–6; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 5.

11904 According to Maletić, positions to the right of the 3rd Battalion were manned by the brigade's 1st Battalion. *See* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 8–9, 17; Dragan Maletić, T. 30844 (3 December 2012); D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 8, 25–26; Božo Tomić, T. 30178–30179 (13 November 2012); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 5; Blagoje Kovačević, T. 29041–29042 (18 October 2012).

11905 Dragan Maletić, T. 30849 (3 December 2012); D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 9; D2521 (Map of Sarajevo marked by Dragan Maletić); [REDACTED].

11906 Dragan Maletić, T. 30849–30850 (3 December 2012); [REDACTED]; Blagoje Kovačević, T. 29042 (18 October 2012); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 62, 67; P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 31. *But see* P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992), p. 4 which refers to the 2nd Infantry Battalion of the 1st Romanija Infantry Brigade holding positions near Metalka in September 1992, with the 3rd Battalion to its left. The Chamber also notes here that the English translation of the report refers to the 1st Infantry Battalion manning the positions

3651. As for the positions to the right of Vrbanja Bridge, the area from Vrbanja Bridge towards the Jewish cemetery up to the foot of Debelo Brdo was held by the 3rd Infantry Battalion of the 1st Sarajevo Mechanised Brigade of the SRK.[11908] This battalion was positioned on the western side of the Jewish cemetery while the ABiH was stationed along its northeastern wall–the two sides were separated only by the width of the cemetery.[11909] The confrontation line at the cemetery remained unchanged throughout the conflict.[11910] According to Blagoje Kovačević, commander of the 3rd Infantry Battalion from June 1993,[11911] the cemetery itself was never occupied by anyone as it was no-man's land.[11912]

3652. On the ABiH side, the confrontation line in the Zmaja od Bosne area was manned by the ABiH's 1st Motorised Brigade.[11913] This brigade was responsible for the line on Miljacka River from the area of the Vrbanja Bridge and through Hrasno Brdo, with soldiers deployed from the School of Economics to the Elektroprivreda building, with only the river separating them from the VRS.[11914] The 1st Motorised Brigade had outside trenches and held positions within certain buildings, namely, the cellars of the Mechanical Engineering Faculty, the School of Economics, and another faculty building, as well as in the exits that connected those positions to the trenches.[11915] In March 1995, however, the confrontation line along Miljacka River ran from the Vrbanja Bridge to Topal-Osman Paše street.[11916]

3653. Maletić testified that his company's counterpart on the other side of the confrontation line was a Croatian unit called Kralj Tvrtko.[11917] It was deployed along the axis of the Wood

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around Metalka but the original document in BCS in fact refers to the 2nd Infantry Battalion. Thus, the English translation contains a typographical error.

11907 Maletić could not remember if this took place in 1993 or 1994. Dragan Maletić, T. 30849–30851 (3 December 2012), T. 30888 (4 December 2012). Stanislav Galić confirmed that the 1st Romanija Infantry Brigade was later redeployed beyond Grbavica. *See* Stanislav Galić, T. 37184 (15 April 2013).

11908 *See* Adjudicated Fact 2828; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević).

11909 *See* Adjudicated Fact 73; D3382 (Map of Sarajevo); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); Blagoje Kovačević, T. 29054–29056 (18 October 2012). But *see* P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992), p. 4 (which provides that in September 1992 the 1st Battalion of the 1st Romanija Infantry Brigade was manning the positions on Jewish cemetery).

11910 *See* Adjudicated Fact 74.

11911 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 2.

11912 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 22.

11913 Mirza Sabljica, T. 7704 (11 October 2010).

11914 Mirza Sabljica, T. 7704 (11 October 2010).

11915 Mirza Sabljica, T. 7901–7902 (13 October 2010).

11916 Mirza Sabljica, T. 7899–7902 (13 October 2010); D765 (Map of Sarajevo marked by Mirza Sabljica).

11917 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 19; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 19. The existence of this unit is also confirmed by D772 (ABiH General Staff list of ABiH units in Sarajevo, 10 April 1995) and D633 (Order of ABiH 1st Corps, 25

Processing School, Šumaprojekt facilities, Mechanical Engineering Faculty, and Unioninvest building,[11918] in solid edifices that blocked the view of his frontline forces.[11919] The Executive Council building, the Museum complex, the Assembly building, and the Faculty of Philosophy were all in the area of responsibility of the ABiH.[11920] The ABiH also held positions on the northern base Mt. Trebević and had a view onto the intersection of Maršal Tito and Vrazova streets.[11921] In addition to the eastern side of the Jewish cemetery, Debelo Brdo, from which Grbavica and the Jewish cemetery are visible, was held by the ABiH, as was Čolina Kapa—both those positions overlooked Sarajevo but were still lower than the SRK positions.[11922]

3654. There is some controversy in the evidence in relation to several buildings along parts of the confrontation line in the area, which appear to have changed hands during the war and/or were divided between the warring parties. Sabljica testified that at the beginning of the conflict, in 1992, there were ABiH positions in one of the buildings near the Metalka building but that after 1992 they were no longer there.[11923] He also testified that the Red Façade building was in the area of responsibility of the VRS during the war.[11924] Maletić, however, testified that part of Red Façade building was held by the Muslims while another part was held by the Serbs.[11925] This was confirmed by Željko Bambarez, who in 1994 spent eight months in Grbavica as the Commander of a platoon in the 1st Company of the 3rd Battalion of the 1st Sarajevo Mechanised Brigade.[11926]

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October 1993), para. 5.6. *See also* Francis Roy Thomas, T. 6896–6897 (16 September 2010) (testifying that his UNMOs visited the Croatian unit in question).

11918 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 22–23; D2523 (Map of Sarajevo marked by Dragan Maletić).

11919 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 25.

11920 Alen Gičević, T. 7628–7631, 7638–7639 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević).

11921 *See* Adjudicated Fact 104; P1764 (ABiH Map of Sarajevo); P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Alen Gičević, T. 7657–7661 (11 October 2010); D733 (Photograph of Sarajevo marked by Alen Gičević); D734 (Photograph of street sign in Sarajevo). Gičević conceded that the ABiH was deployed in a number of places in the area between the white skyscraper in Grbavica and the intersection in question. *See* Alen Gičević, T. 7662–7663 (11 October 2010); D735 (Photograph of Sarajevo).

11922 *See* Adjudicated Facts 105, 2830, and 2845; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; Francis Roy Thomas, T. 6897–6898, 6906 (16 September 2010); D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.7; David Harland, T. 2087–2090 (7 May 2010); D134 (Aerial photograph of Sarajevo marked by David Harland); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 15–18; P1767 (Map of Sarajevo marked by David Fraser); KDZ304, T. 10496 (18 January 2011).

11923 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 63.

11924 Mirza Sabljica, T. 7705 (11 October 2010). *See also* Alen Gičević, T. 7628–7631 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević). The Chamber notes that the regular SRK combat report of 24 July 1994 refers to the presence of soldiers of the 1st Sarajevo Mechanised Brigade on top of a "Red Building". *See* D4604 (SRK Report, 24 July 1994).

11925 Dragan Maletić, T. 30890 (4 December 2012); D2525 (Photograph of Sarajevo marked by Dragan Maletić). *See also* Francis Roy Thomas, T. 6898 (16 September 2010).

11926 Bambarez testified that he was first a commander of the 2nd Platoon of the 2nd Company of the 3rd Battalion of the 1st Romanija Infantry Brigade and that in June 1993 his battalion became part of the Sarajevo Mechanised Brigade of the SRK. In 1994 he was moved to Grbavica due to the killing of Mišo Čolić, a commander of the 1st

According to him, the Red Façade building was divided between the two warring sides and the Muslim-controlled part of the building afforded a view through Đure Daničića street onto Zmaja od Bosne street, as well as onto Marin Dvor and the UNPROFOR check-point on Vrbanja Bridge.[11927] Bambarez, who was actually in the Red Façade building during his time in Grbavica, explained that of the two high buildings now blocking the view between the Red Façade building and Đure Daničića street one was not there during the war, while another, which was in his platoon's zone of responsibility, was there at the time but was not as high then as it is now.[11928] However, another soldier of the 3rd Battalion, Milorad Katić, testified during cross-examination that it was not possible to shoot from the ABiH part of this building onto the area in front of the Holiday Inn, as the view was obstructed by one of the buildings.[11929] In any event, in cross-examination, Bambarez testified that his time in Grbavica was relatively quiet and that he was not aware of Muslims ever firing from the Red Façade building during that time.[11930]

3655. Sabljica and Gičević testified that the Unioninvest building was in the area of responsibility of the VRS during the war.[11931] In contrast, Bambarez told the Chamber that it was under ABiH control.[11932] This is confirmed by the SRK report from April 1994 to the VRS Main Staff, in which the SRK Commander Galić reported that the enemy had opened fire from the Unioninvest building.[11933] [REDACTED] also thought that the building was either under ABiH control or in no-

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Company of the 3rd Battalion. *See* D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 3, 5; Željko Bambarez, T. 31299 (12 December 2012).

11927 D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 8–10; D2623 (Photograph of Sarajevo marked by Željko Bambarez). Blagoje Kovačević testified that four entrances of the Red Façade building were held by his battalion while the ABiH held one of the entrances. D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 22.

11928 Željko Bambarez, T. 31299–31308 (12 December 2012); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 8–10; D2623 (Photograph of Sarajevo marked by Željko Bambarez); D2624 (Photograph of a building marked by Željko Bambarez); D2625 (Photograph of a building marked by Željko Bambarez); D2626 (Photograph of a building marked by Željko Bambarez); D2627 (Photograph of a building marked by Željko Bambarez).

11929 Milorad Katić, T. 31407–31411 (13 December 2012); D2651 (Witness statement of Milorad Katić dated 10 December 2012), paras. 10, 16; D2623 (Photograph of Sarajevo marked by Željko Bambarez); P6045 (Photograph of Sarajevo marked by Milorad Katić). Katić also clarified that his battalion was not deployed in that area when he was its soldier, namely until 13 March 1993, but was instead in the sector overlooking Debelo Brdo via Zlatište and up to Osmice. *See* Milorad Katić, T. 31413–31414 (13 December 2012). During further re-examination, Katić stated that there was in fact no view from the whole of the Red Façade building onto the targets in front of the Holiday Inn. *See* Milorad Katić, T. 31414–31417 (13 December 2012); D2655 (Photograph of Sarajevo marked by Milorad Katić).

11930 Željko Bambarez, T. 31309–31311, 31328–31329 (12 December 2012).

11931 Mirza Sabljica, T. 7705 (11 October 2010); Alen Gičević, T. 7628–7631 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević).

11932 Željko Bambarez, T. 31306, 31308 (12 December 2012). Blagoje Kovačević testified that it was the 10th Mountain Brigade of the 1st Corps of the ABiH, led by Dušan Topalović Caco, that controlled the territory from Čolina Kapa to Vranjača towards Trebević and from Vranjača to the Unioninvest building towards Grbavica. *See* D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 18; Blagoje Kovačević, T. 29039–29040 (18 October 2012).

11933 D4581 (SRK Report, 23 April 1994), p. 1.

man's land but was adamant that it was never in the SRK hands.[11934] Sabljica testified that by March 1995, the Unioninvest was indeed in the area of responsibility of the ABiH.[11935]

(2) Snipers in the area

3656. The Chamber heard that snipers were operating on both sides of Zmaja od Bosne street but that most of the snipers were on the Serb side of the confrontation line, firing into the ABiH-held territory.[11936]

3657. Mirsad Kučanin, a criminal inspector within CSB Sarajevo who investigated around 100 cases of sniping and shelling in Sarajevo,[11937] testified that the most significant area where Serb snipers operated was Grbavica and that most of his investigations involved fire coming from there.[11938] According to him, there was a sniper in every house between Vrbanja and Hrasno Bridges but the fire was most frequent from the Metalka building, the four white high-rises, and the three "shopping centre" skyscrapers.[11939] In addition, the snipers fired from the Jewish cemetery covering the central part of the city called Skenderija and the Marin Dvor area.[11940] Aernout van Lynden, a Sky News war correspondent who reported from Sarajevo starting in May 1992,[11941] testified that he was taken by SRK commanders to a number of high-rises in Grbavica and to the Jewish cemetery and its surrounds where he saw gun placements of various sorts, including machine-guns and sniper rifles with telescopic sites.[11942]

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11934 [REDACTED].

11935 Mirza Sabljica, T. 7899–7902 (13 October 2010); D765 (Map of Sarajevo marked by Mirza Sabljica).

11936 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 14, 29; David Fraser, T. 8015 (18 October 2010); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 63, 65.

11937 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 2; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4555–4557, 4560.

11938 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 8. *See also* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 65; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 52; Adjudicated Fact 121.

11939 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court pp. 8–9; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4609–4614; P20 (Map marked by Mirsad Kučanin).

11940 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 8; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4608–4609; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 52; Milan Mandilović, T. 5381–5383 (16 July 2010); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 65; Alen Gičević, T. 7612–7613 (11 October 2010); P1692 (Photograph of Sarajevo marked by Alen Gičević). *See also* Adjudicated Fact 124.

11941 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 3–5, 11, 17.

11942 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 94–95, 97, 99–102, 109–112 (Van Lynden also stated that the men manning these positions were in radio contact with other positions higher up in the slopes who were essentially the spotters for the snipers); P806 (Sky Newsreport re Sarajevo, with transcript); P935 (Sky Newsreport re Sarajevo, with transcript); Aernout van Lynden, T. 2425–2427 (19 May 2010).

3658. KDZ310 testified that there were many SRK snipers in Grbavica, adding that the area between Vrbanja Bridge and Elektroprivreda alone had, on average, seven to eight snipers.[11943] As noted earlier, they were part of the sniper squad responsible only to the 3rd Battalion's commander[11944] and would change positions often.[11945] Galić confirmed that most of the SRK snipers were in Grbavica, along Miljacka River and in the white high-rises, but claimed that they were placed there to neutralise ABiH fire coming from Marin Dvor, the Faculty of Mechanical Engineering, and the government buildings.[11946] However, contrary to Galić, KDZ310 testified that snipers in Grbavica opened fire at whatever they saw, mainly civilians, including the elderly and children, and that their sniping was constant.[11947] Indeed, upon joining the battalion and receiving a 7.62 mm semi-automatic rifle,[11948] KDZ310 and his fellow soldiers, who were not part of the sniper squad, were told by their commander that they could open fire freely and shoot anything that moved.[11949]

3659. Maletić testified that his company did not have snipers and that his soldiers were positioned at the foot of the buildings, including Metalka and the four white high-rises, with semi-automatic, and automatic rifles, and machine guns.[11950] Because of these positions, they could only see the enemy's first line of defence.[11951] Maletić also testified that it was prohibited to fire on civilian targets and that, therefore, his soldiers did not target trams from Metalka and/or wait for them to

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11943 P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 40–41, 43. *See also* P2444 (Witness statement of KDZ354 dated 5 February 2011), paras. 93–94 (under seal); KDZ354, T. 13195–13197, 13120 (10 March 2011) (testifying that everyone in Grbavica knew who the snipers were, that they had special rifles and that they would go into a high-rise building and stay there for a few hours every day).

11944 According to KDZ310, the Commander of the sniper squad was Marinko Krneta. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 40–41, 43–44. *See also* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 31; Dragan Maletić, T. 30846–30848 (3 December 2012), T. 30873–30874 (4 December 2012).

11945 According to KDZ310, the snipers also used their freedom of movement to loot. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 43.

11946 Stanislav Galić, T. 37465–37466 (22 April 2013), T. 37843–37844 (7 May 2013). *See also* [REDACTED].

11947 KDZ310 would occasionally talk to these snipers who usually told him that they had shot someone, although he could not verify that and he never personally observed it. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 41, 43; KDZ310, T. 9278 (29 November 2010).

11948 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 38; KDZ310, T. 9208 (29 November 2010). KDZ310 also saw various other infantry weapons around him, including M76, M53, and M84 rifles. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 50; P1946 (Excerpt of book on military equipment marked by KDZ310).

11949 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 37; KDZ310, T. 9275–9276, 9278 (29 November 2010).

11950 Dragan Maletić, T. 30883–30886 (4 December 2012).

11951 While, according to Maletić, civilian zones could be attacked from some of the 1st Company's positions, this did not happen, at least not in a planned and organised manner. Maletić also explained that there were no civilians in the two apartment buildings between the Assembly building and the river as the Muslim side used them to fire on the SRK positions. *See* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 14, 25, 27; Dragan Maletić, T. 30849–30850 (3 December 2012), T. 30886–30889 (4 December 2012). *See also* [REDACTED].

slow down at the S-curve.[11952] When asked in cross-examination whether upper floors of Metalka afforded a view behind enemy lines, Maletić claimed his company was at the foot of the building and therefore had no knowledge about the view from the upper floors.[11953] He did concede, however, that one could see behind the enemy lines from the white high-rises in Grbavica.[11954] The Chamber recalls that it has already found above that there was a view onto Zmaja od Bosne street from both Metalka and Invest Banka buildings, the former affording the view down Franje Račkog street and the latter affording the view down Đure Daničića street.[11955] In addition, the Chamber went on a site visit to Sarajevo and observed the area in and around those two buildings.[11956] Accordingly, even accepting as true Maletić's testimony that he and/or his troops were never on the higher floors of Metalka, the Chamber considers his proclaimed lack of knowledge on the view from Metalka disingenuous, particularly since he spent some time in the area during the conflict. Maletić did, however, concede that there was such a view from the four white high-rises and this is indeed confirmed by other evidence before the Chamber.[11957]

3660. In contrast to Maletić, Katić testified on cross-examination that there were armed men inside the Metalka building and that they could, if they wanted to, hit targets in front of the Holiday Inn.[11958] During re-examination, however, he clarified that he was never at the positions in the area and that given the height of the dominant buildings on the Muslim side of the confrontation line it would have been dangerous to have positions on Metalka's upper floors; he also explained that the armed men in the building were in fact soldiers who lived there and had weapons in their apartments.[11959] The Chamber is not convinced by Katić's explanation during re-examination. First, it is illogical that soldiers would not have positions in Metalka because it was too dangerous and yet would then choose to live in the building. In addition, as will be seen below, the Chamber

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11952 Dragan Maletić, T. 30889–30890 (4 December 2012); D2525 (Photograph of Sarajevo marked by Dragan Maletić).

11953 Dragan Maletić, T. 30851–30856 (3 December 2012), T. 30886–30889 (4 December 2012); P6018 (Photograph of Sarajevo); P6024 (Photograph of Sarajevo); D2525 (Photograph of Sarajevo marked by Dragan Maletić); D2526 (Photograph of Sarajevo). *See also* [REDACTED]. The Chamber notes that P6024 was admitted only for the purpose of understanding Maletić's testimony as the Accused challenged its provenance.

11954 Dragan Maletić, T. 30856 (3 December 2012); P6019 (Photograph of a tram and green building); P6020 (Photograph of a tram); P6020 (Photograph of a tram); P6021 (Photograph of Sarajevo); P6022 (Photograph of a street); P6023 (Photograph of a street). The Chamber notes that these photographs were admitted only for the purpose of understanding the testimony of the witness as the Accused challenged their provenance.

11955 *See* para. 3646.

11956 The Chamber recalls that in its Order on Submissions for a Site Visit, dated 15 November 2010, at paragraph 6, it stated that the purpose of its site visit to Sarajevo was not to gather evidence or receive any submissions from the parties but to allow the Chamber to become more familiar with the topography of certain key locations and thus assist its determination of the charges in the Indictment related to Sarajevo.

11957 *See* para. 3666. *See also* P1738 (Photographs of sniper nests); P1762 (Witness statement of David Fraser dated 17 October 2010), p. 32.

11958 Milorad Katić, T. 31404–31407 (13 December 2012); P6044 (Photograph of Sarajevo marked by Milorad Katić).

11959 Milorad Katić, T. 31417–31421 (13 December 2012).

has heard evidence indicating that an improvised sniper nest was found on the last floor of the Metalka building.[11960] Furthermore, when asked if the SRK had firing positions in the Metalka and Invest Banka buildings, Galić himself confirmed that the SRK opened fire from "that sector".[11961]

3661. Blagoje Kovačević, who commanded the SRK battalion located in the area of Jewish cemetery, testified that there were no professional snipers in his battalion as they were unnecessary given the short distances between the warring parties.[11962] He explained that the company that held the Jewish cemetery was called the Anti-Armour Company; it was commanded by Slavko Aleksić, who liked to represent himself as a "Chetnik", and it had small calibre infantry weapons, such as rifles.[11963] While conceding that he had some problems in exercising control over the members of his units and that there were instances of individuals opening fire without him knowing about it, Kovačević testified that his battalion did not open fire on civilians and/or trams in the city and that they never received orders to that effect.[11964]

3662. The FreBat was responsible for anti-sniping tasks in the area and had its vehicles and soldiers at the principal points where snipers would engage civilians, ready to place themselves between those civilians and the snipers.[11965] It also had special reconnaissance troops whose task was to find the snipers and engage them.[11966] In addition, the task force photographed all the possible areas in Grbavica where the Serbs were shooting from and mounted observation on the identified locations thus becoming very familiar with the sniper positions in the area.[11967] Along Sniper Alley, the reconnaissance troops engaged mostly the Serb snipers.[11968]

3663. Fraser testified that the two warring factions in the area were close to each other and that, frequently, this proximity resulted in exchanges of fire in the area of Vrbanja Bridge and the Jewish

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11960 *See* para. 3668.

11961 Stanislav Galić, T. 37844 (7 May 2013).

11962 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 36. In cross-examination, Kovačević claimed that the same was the case for the whole brigade, not just his battalion. While he conceded that the brigade had shooting positions in Grbavica he denied that these were manned by professionally trained snipers with sniper equipment. *See* Blagoje Kovačević, T. 29048–29053 (18 October 2012); P5930 (Report of 1st Sarajevo Mechanised Brigade to SRK, 29 October 1993). Given the evidence referred to above regarding a sniper squad in the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade, the Chamber does not accept Kovačević's evidence that no snipers existed within the brigade.

11963 Blagoje Kovačević, T. 29055–29059 (18 October 2012); P5931 (Anti-Tank Company request for ammunition, 16 December 1993). *See also* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 109–112.

11964 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 27–28, 34–35; Blagoje Kovačević, T. 29075–29076 (18 October 2012).

11965 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 32–35.

11966 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 33–34, 36.

11967 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24–25, 29; David Fraser, T. 8016–8017 (18 October 2010).

11968 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 33.

cemetery.[11969] Despite that, he thought it unlikely for civilians to be simply caught in an exchange of fire between the two factions in the Sniper Alley area because a professional sniper would take care to line up a military target and would be unlikely to miss it.[11970] Similarly, even a regular rifleman would normally be proficient enough in firing his weapon and thus would be able to avoid shooting civilians.[11971] As for the trams in the area, in Fraser's opinion, it was also unlikely that those were hit by mistake; in his experience, the trams seemed to be a favourite target of snipers because of the psychological effect this had on the people in Sarajevo.[11972] KDZ485 could not recall any incidents where civilians were killed by snipers during combat activity as they would usually take cover or shelter during such times.[11973]

3664. Fraser also thought that the snipers operating in Sarajevo were "very competent", as demonstrated by the fact that in the Sniper Alley area they would regularly fire at a telephone pole in order to make their presence known to the UNPROFOR.[11974] Furthermore, it was not uncommon for those snipers to register their positions by firing a couple of shots to check on wind and distance and to set themselves up for the day's activities.[11975] It was also not uncommon for them to fire a round of bullets off the side of one of the UNPROFOR vehicles at the end of the day.[11976] Fraser did accept, however, that UNPROFOR was not in a position to check the Serb side of the confrontation line with respect to each incident as it was not given freedom of movement in that area.[11977] The Serbs would also not let UNPROFOR personnel come to their side of Miljacka River to investigate sniping incidents allegedly committed by the ABiH.[11978] Instead the

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11969 David Fraser, T. 8125 (19 October 2010).

11970 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 32, 39. *See also* P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 46.

11971 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 32.

11972 Fraser explained that if trams stopped running it meant that the situation was grave which in turn had a psychological effect on the people in the city. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 39; David Fraser, T. 8127–8128 (19 October 2010). However, Maletić testified that it was prohibited to fire on civilian targets and that, therefore, his soldiers did not target the trams and/or wait for the trams to slow down at the S-curve. *See* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 8–9; Dragan Maletić, T. 30883–30886, 30889–30890 (4 December 2012); D2525 (Photograph of Sarajevo marked by Dragan Maletić). Dragomir Milošević placed the blame on the Bosnian Muslim side which would fire on the SRK positions while trams were running, resulting in the SRK response and trams getting shot. *See* Dragomir Milošević, T. 33208–33209 (5 February 2013). *See also* D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 13 (testifying that one could not rule out the possibility of trams getting accidentally hit in cross-fire).

11973 P1905 (Witness statement of KDZ485), para. 30.

11974 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 31.

11975 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 31.

11976 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 31.

11977 David Fraser, T. 8127 (19 October 2010).

11978 *See* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24.

UNPROFOR personnel had to speak to the SRK Commander and other Bosnian Serb leaders about those matters.[11979]

3665. In the spring or summer of 1995, Fraser and his superior asked the Serb side if they could visit some of Serb positions; together with other UNPROFOR soldiers they were escorted by the Commander of the Ilidža Brigade to a red brick building located to the south of the four white high-rises in Grbavica.[11980] It was a three to four storey building with holes in the walls of the upper floors through which one could see the Muslims side of Miljacka River; there were also sandbags and other paraphernalia that could be used by snipers.[11981] Fraser, who commanded over snipers during the course of his career,[11982] thought that the building was a good position for snipers and "definitely looked like it was prepared for that use".[11983] KDZ182, who was also present during this visit, testified that whilst in the building he saw a certain device used for sniping that allowed the shooter to be located to the side of the gun, instead of behind it, as explained to the visiting group by the Commander of the Ilidža Brigade.[11984]

3666. In February and March 1996, after the BiH authorities were able to go to the neighbourhood of Grbavica again, CSB Sarajevo's ballistic experts, including Sabljica and Zlatko Međedović, visited Metalka, the four white high-rises, and two other buildings in the area,[11985] on the order of an investigating judge.[11986] In the white high-rises, the team found five or six apartments on higher floors,[11987] which had been redesigned to serve as sniper nests.[11988] Each apartment looked the same: the partition walls that divided the rooms within each apartment had holes while the outer wall of the building, facing Zmaja od Bosne street, had the smallest opening, thereby creating what

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11979 David Fraser, T. 8032–8034 (18 October 2010).

11980 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 27–28; P1770 (Photograph of Sarajevo marked by David Fraser); P2414 (Witness statement of KDZ182), pp. 36–39 (under seal).

11981 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 28.

11982 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 4, 30–31.

11983 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 29. Fraser did concede, however, that the presence of sandbags and holes in the wall did not necessarily mean that the shooters were using sniper rifles with optical sights. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 29–30; David Fraser, T. 8127 (19 October 2010).

11984 P2414 (Witness statement of KDZ182), pp. 38–39, 44–45 (under seal).

11985 One of the buildings was an 18 floor skyscraper on Rave Janković street, while the other was a private house in the neighbourhood of Vraca, in Smederevska street. *See* Mirza Sabljica, T. 7941–7943 (14 October 2010); P1736 (BiH MUP Reports re sniper nest sites, 25 April 1996); P1737 (Aerial photograph of Sarajevo marked by Mirza Sabljica).

11986 Mirza Sabljica, T. 7675 (11 October 2010), T. 7933 (14 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 60–62.

11987 Sabljica testified that they were located above the tenth floor but could not remember exact floors. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 62.

11988 Mirza Sabljica, T. 7675 (11 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 61.

is referred to as a "tunnel".[11989] The perforations on the partition walls had a conical shape so that the shooter could fire from the depth of the apartment.[11990] According to Sabljica, at least three such perforated walls would have separated the shooter from the fire coming into the building, as indicated by the sandbags placed behind the last partition wall, making it extremely difficult to spot the shooter from the outside.[11991] Looking from what he believed to be the sniper's position, Sabljica could see the stretch of Zmaja od Bosne street from the Holiday Inn to the Faculty of Natural Sciences and Mathematics just west of the Maršal Tito Barracks.[11992] Photographs of inspected sniper nests were taken during the investigation.[11993]

3667. Based on his analysis of the material relating to the sniper nests in four white high-rises, Poparić, testified that it was obvious that they were constructed professionally.[11994] In his opinion, they were aimed at the Maršal Tito Barracks as the view from them reached only as far as the School of Technology.[11995] Poparić also thought that the way these nests were constructed showed that a response was expected from the opposite side which to him meant that they were directed at the Maršal Tito Barracks.[11996] During cross-exmination, however, Poparić conceded that he did not go inside the four white high-rises in Grbavica, noting that it was not necessary because he had the photographs from the *Dragomir Milošević* case and thus knew what could be seen from them.[11997]

3668. As for the Metalka building, Sabljica and the others inspected it as well but did not find such well-equipped sniper nests as found in the white high-rises.[11998] However, in one of the apartments, on the eighth and top floor, they found an improvised sniping nest with an opening on one of the walls, as well as some empty automatic weapon shell casings.[11999] Sabljica testified that the only type of automatic weapon available in the Balkans at the time was an M84 machine-gun,

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11989 Mirza Sabljica, T. 7675–7676, 7706–7708 (11 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 61. This is in line with how Van der Weijden described professional sniper nests in an urban setting. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 4.

11990 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 61.

11991 Mirza Sabljica, T. 7708 (11 October 2011); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 61.

11992 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 61.

11993 Mirza Sabljica, T. 7709 (11 October 2010), T. 7933–7934, 7944–7947 (14 October 2010); P1738 (Photographs of sniper nests). The Chamber notes that Metalka is not one of the buildings featuring in P1738.

11994 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42.

11995 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42.

11996 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42.

11997 Mile Poparić, T. 39183–39189 (4 June 2013).

11998 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 62–63.

11999 Mirza Sabljica, T. 7676–7677 (11 October 2010).

which uses 7.62 mm calibre bullets,[12000] and also confirmed that the bullet casings found in the white high-rises were of 7.62 mm calibre, as well as 7.9 mm calibre.[12001]

3669. As for the ABiH side of the confrontation line, according to Fraser, the "legislative building" and the UNIS towers were used as sniping nests.[12002] KDZ450 confirmed that snipers on the Bosnian Muslim side operated around the Presidency building, UNIS towers, and the Holiday Inn.[12003] Maletić testified that the enemy unit facing his company used snipers[12004] and that the entire area of Grbavica was under sniper fire coming from buildings such as the high-rises in Pofalići, the Mechanical Engineering Faculty, the Unis towers, the Executive Council building, the Museum, the Unioninvest building, the red high-rises in Hrasno, the Elektroprivreda building, the Bristol Hotel, Debelo Brdo, and Trebević.[12005] According to Galić, the sniper units of the 1st Corps of the ABiH had "stronger buildings" on their side of Miljacka River, that is, buildings with reinforced concrete and higher than three floors, which gave them more possibilities for sniper use.[12006]

3670. Based on the evidence outlined above, the Chamber finds that sniper nests and shooting positions of both warring factions existed in the area surrounding the confrontation lines on Zmaja od Bosne. The Chamber is also convinced that SRK sniper nests and shooting positions were located on the upper floors of all four white high-rises in Grbavica, as well as on the last floor of the Metalka building. They were also scattered in a number of other buildings in the area throughout the zone of responsibility of the 3rd Battalion of the 1st Romanija Infantry Brigade, later the 2nd Battalion of the 1st Sarajevo Mechanised Brigade and were, contrary to Galić's testimony,

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12000 Mirza Sabljica, T. 7709–7710 (11 October 2010). The Chamber notes that the transcript records Sabljica as having referred to an M74 machine gun. However, given that the Chamber only ever heard about M84 machine guns in this case, the Chamber considers this to have been either a mistake in interpretation or a mistake on the part of Sabljica and should have been a reference to M84.

12001 Mirza Sabljica, T. 7939–7941 (14 October 2010); P1736 (BiH MUP Reports re sniper nest sites, 25 April 1996).

12002 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24; David Fraser, T. 8049 (18 October 2010). However, KDZ182 testified that as far as presence of snipers in UNIS towers was concerned, this was "an idea that was spread" and that he never saw a report or was able to check whether snipers were in fact there. He did know, however, that there were snipers in the "former parliament building". *See* P2414 (Witness statement of KDZ182), pp. 40, 43 (under seal). *See also* D4607 (SRK Report, 30 July 1994), p. 1; D4587 (SRK Report, date illegible), p. 1.

12003 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 133; KDZ450, T. 10669 (20 January 2011).

12004 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 19, 32.

12005 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 20. *See also* D2651 (Witness statement of Milorad Katić dated 10 December 2012), para. 5; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 13, 30, 36–37; Dragomir Milošević, T. 33275–33276 (6 February 2013); Stanislav Galić, T. 37450 (18 April 2013), T. 37466 (22 April 2013); D2826 (1st Romanija Infantry Brigade combat report, 25 July 1992). [REDACTED]. Edin Garaplija testified that a member of Ševe, Nedžad Herenda, operated as a sniper from the Executive Council building. *See* Edin Garaplija, T. 33388 (7 February 2013). Van Baal testified that he had reports that ABiH would snipe at Serb positions from "a government building and from a hotel". *See* Adrianus van Baal, T. 8457, 8459–8460 (27 October 2010).

12006 Stanislav Galić, T. 37467–37468, 37471 (22 April 2013).

manned by snipers subordinated directly to the battalion commander. Further, the SRK shooting positions existed on the western side of the Jewish cemetery. Thus, there were many SRK snipers, as well as forces with semi-automatic rifles in the area. The Chamber finds, relying in particular on the evidence of KDZ310, that they would target civilians, both pedestrians and those riding in trams, as well as combatants on the ABiH-held side of the confrontation line.[12007] As for the ABiH, the Chamber is satisfied that the ABiH had snipers in UNIS towers, Mechanical Engineering Faculty, Faculty of Natural Sciences and Mathematics, and the Executive Council and Assembly buildings. It is also satisfied that it opened fire on Grbavica, including on civilians, from those positions.

(3) Zmaja od Bosne street, 19 June 1994 (Scheduled Incident F.8)

3671. The Indictment alleges that on 19 June 1994 Jasmina Kučinar, a 31 year old woman, and her four year old son, Damir Kučinar were shot and lightly wounded in their legs while travelling in a crowded tram on Zmaja od Bosne street towards Alipašino Polje. According to the Indictment, Mensur Jusić, a 36 year old man, sustained a slight leg wound while Belma Sukić née Likić, a 23 year old woman, was wounded in her left armpit. The Indictment also alleges that the tram was near the Holiday Inn when the incident happened.[12008] In its Final Brief, the Prosecution argues that the "likely origin of fire was a location 600 metres from the incident site in the area of the Jewish cemetery."[12009] The Accused submits that the investigators did not know the origin of fire for this incident and claims that the bullet was in fact fired from the Executive Council building.[12010]

3672. On 19 June 1994, at approximately 5 p.m., Mensur Jusić was riding on a tram heading down Zmaja od Bosne street in the direction of Ilidža.[12011] Jasmina Kučinar was on the same tram with her four year old son.[12012] As the tram approached the intersection of Zmaja od Bosne and Fra Anđela Zvizdovića streets, Kučinar heard a shot and saw that her son who had been sitting by the

12007 The Chamber therefore rejects Galić's evidence on this issue. Given the contrary evidence outlined above, the Chamber finds that Galić was disingenuous when he testified that the SRK snipers in the area only fired in order to neutralise the fire coming from the enemy. *See also* Adjudicated Fact 2910.

12008 Indictment, Scheduled Incident F.8. In its Final Brief, the Prosecution argues that the tram was hit when located just east of the S-curve. Prosecution Final Brief, Appendix C, para. 15.

12009 Prosecution Final Brief, Appendix C, para. 17.

12010 Defence Final Brief, para. 2235; Closing Arguments, T. 47986–47987 (2 October 2014).

12011 *See* Adjudicated Fact 209. The Chamber notes that in its original form this Adjudicated Fact refers to the Vojvode Putnika street but that this is the old name for Zmaja od Bosne street and that the latter will be used throughout this judgement.

12012 *See* Adjudicated Fact 210. *See also* Prosecution Submission, filed confidentially on 30 January 2015, paras. 9–11.

window had been injured.[12013] Jusić was hit in the shin of his right leg.[12014] Jusić saw that the arm of a woman standing to his right was bleeding.[12015] The injured received medical treatment at a nearby emergency clinic.[12016] No military vehicles were present in the close vicinity of the location of the incident.[12017] No military activity was underway in the area.[12018]

3673. Bogdan Vidović, a criminal technician in the CSB Sarajevo,[12019] participated in the investigation of the incident.[12020] He testified that it happened while the westbound tram was in the area of Marin Dvor, in front of the St. Joseph Church.[12021] The middle part of the left hand side of the tram was hit by one bullet, which pierced the wall of the tram, entered the tram right above the floor level, flew across the aisle, and then hit the carrying frame of the seat on the right hand side of the tram. The bullet split into pieces and caused the injuries to Jusić's right lower leg,[12022] Belma Likić's left arm, and Damir Kučinar's knees.[12023] The ballistic tests determined that the bullet fragments found in the tram belonged to a 7.9 mm calibre bullet which could have been fired from any of M48 rifle, carabine rifle, automatic rifle, or M53 machine-gun.[12024] Finally, the report concludes that the bullet originated from the direction of Grbavica–Vraca and was "probably fired

12013 *See* Adjudicated Fact 211. The Chamber notes that this Adjudicated Fact refers to the intersection of Vojvode Putnika and Tršćanska streets. Those are former names of the said streets. The Chamber will use the current names, namely Zmaja od Bosne and Fra Anđela Zvizdovića, in this judgement.

12014 Adjudicated Fact 212.

12015 *See* Adjudicated Fact 213.

12016 Adjudicated Fact 214.

12017 Adjudicated Fact 216.

12018 Adjudicated Fact 217.

12019 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 2, 11–12, 31–32, 34.

12020 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 2–3.

12021 Bogdan Vidović, T. 8172–8174, 8177–8178, 8186 (19 October 2010); D787 (Map of Sarajevo marked by Bogdan Vidović); D788 (Photograph of Sarajevo marked by Bogdan Vidović); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 10, 26, 28; P1761 (Map of Sarajevo marked by Bogdan Vidović). *See also* P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court p. 5.

12022 While the reports refer to a Mesud Jusić, the Chamber is satisfied that this is Mensur Jusić referred to in the Indictment.

12023 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 3–9; P1757 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street); P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court pp. 5, 7; P1759 (Photographs re sniping incident of 19 June 1994 on Zmaja od Bosne marked by Bogdan Vidović). *See also* Adjudicated Fact 218. The Chamber notes that none of the BiH MUP reports on this incident refers to any injuries sustained by Jasmina Kučinar. In fact, the Chamber received no evidence indicating that Jasmina Kučinar was injured in this incident.

12024 While the ballistics report states that the bullet in question was a 7.9 mm calibre bullet, the text under some of the CSB Sarajevo photographs taken at the scene refer to a bullet of 7.62 mm calibre. The Chamber considers this to be inaccurate and finds the ballistics analysis report to be determinative on this matter. *See* P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court p. 7; P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 27–29; Bogdan Vidović, T. 8190–8191, 8196, 8254–8255 (20 October 2010).

from the aggressor's positions" in Grbavica.[12025] When questioned on this conclusion, Vidović clarified that, for security reasons, the tram was moved some three stops away from the incident site when the investigation was conducted,[12026] as a result of which, the ballistics experts were not sent to the site,[12027] and the exact origin of fire could not be determined.[12028] Instead, only the direction of fire, which ran from Grbavica, across the Unioninvest building, towards the incident site, could be established.[12029]

3674. During cross-examination, Vidović agreed that the fire in the area where the incident happened could have originated from the Assembly building.[12030] He also agreed that because of a tree seen in a photograph shown to him, the western boundary of the Jewish cemetery had no view on the incident site and that the tram tracks could have been fired on from the cemetery's eastern boundary.[12031] As for the view of the site from Vraca, Vidović testified that the extent of that view depended on the exact location of the tram when hit but accepted that the bullet fired from there would have hit the tram at an acute angle.[12032] However, he stated that the bullet's actual entry point led him to the conclusion that the bullet came in at a right angle rather than an acute one.[12033] He also indicated that the incident took place during a period of cease-fire,[12034] and that he believed that UNPROFOR was informed about it.[12035] When questioned about the area, Vidović confirmed that a police station was located some 200 to 300 metres away from the incident site, that the command of the 1st Corps of ABiH was located in the centre of the city, and that the confrontation line was not far from the incident site, running along Miljacka River, to the east of the Vrbanja Bridge.[12036]

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12025 P1757 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street); P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 6, 10; P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court p. 5.

12026 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 10, 13.

12027 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 12.

12028 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 29.

12029 Bogdan Vidović, T. 8174–8175 (19 October 2010); D787 (Map of Sarajevo marked by Bogdan Vidović).

12030 Bogdan Vidović, T. 8179, 8182 (19 October 2010); D788 (Photograph of Sarajevo marked by Bogdan Vidović).

12031 Bogdan Vidović, T. 8178–8182 (19 October 2010); D788 (Photograph of Sarajevo marked by Bogdan Vidović).

12032 Bogdan Vidović, T. 8185–8187 (20 October 2010); D789 (Map of Sarajevo marked by Bogdan Vidović).

12033 Bogdan Vidović, T. 8192–8195 (20 October 2010).

12034 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 10–11.

12035 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 18–19. Indeed, the CSB Sarajevo report on the investigation provides that the UNPROFOR conducted its own investigation of this incident. *See* P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court p. 5.

12036 With respect to the confrontation line, Vidović explained that he marked it not based on what he observed but what he heard. P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 17–18, 23–27; P1761 (Map of Sarajevo marked by Bogdan Vidović). *See also* Bogdan Vidović, T. 8175–8176 (19 October 2010); D787 (Map of Sarajevo marked by Bogdan Vidović).

3675. Hogan visited the site of the incident with Jusić and recorded the tram's approximate location when struck by the bullet, namely the intersection of Zmaja od Bosne and Fra Anđela Zvizdovića.[12037] As seen on the photographs marked by Hogan in court, there was an unobstructed view towards the Jewish cemetery from that intersection.[12038]

3676. Van der Weijden also investigated this incident and had at his disposal the report prepared by CSB Sarajevo, as well as the statements of Vidović and Jusić.[12039] Like Hogan, he visited the site of the incident, and then went to the Jewish cemetery which is about 600 metres away and which offered several good positions with a view of the incident site.[12040] According to Van der Weijden, the fact that the tram's left hand side was facing south when it reached the incident site indicated that the shot was fired from the Jewish cemetery.[12041] Because of the distance between the two sites, Van der Weijden was of the opinion that either a medium machine-gun or a sniper rifle was used in this incident, noting that both used either 7.62 mm or 7.92 mm calibre bullets.[12042] Furthermore, he noted that at this distance it would have been impossible for the shooter to identify who the people in the tram were.[12043] Noting also that the witnesses heard one shot but that three people were injured, Van der Weijden explained that this could be either because other shots were not heard due to the noise produced by the tram or because the one bullet that was fired fragmented on impact.[12044] On the subject of hearing the bullet, Vidović testified that one would not have been able to determine, on the basis of the sound heard, that the fire came from the Jewish cemetery.[12045]

3677. Poparić pointed out that the CSB Sarajevo investigation team did not determine the direction from which the bullet was fired but simply assumed that it was fired from VRS positions in Grbavica.[12046] Having gone to the scene, Poparić observed that the incident site is visible from

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12037 Hogan explained that the tram locations he recorded were only approximations in light of the fact that the trams were moving when hit. Barry Hogan, T. 11214 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2203 (Photograph re sniping incident of 19 June 1994 on Zmaja od Bosne street marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 105, Image 71.

12038 Barry Hogan, T. 11214 (3 February 2011); P2203 (Photograph re sniping incident of 19 June 1994 on Zmaja od Bosne street marked by Barry Hogan).

12039 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 65.

12040 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 59–61. *See also* Patrick van der Weijden, T. 6955 (27 September 2010).

12041 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 61. *See also* Barry Hogan, T. 11214 (3 February 2011); P2203 (Photograph re sniping incident of 19 June 1994 on Zmaja od Bosne street marked by Barry Hogan).

12042 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 59.

12043 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 62.

12044 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 59.

12045 Bogdan Vidović, T. 8183 (19 October 2010).

12046 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 106. The Chamber notes that this is somewhat inaccurate as the forensic investigation report prepared by Vidović provides that the direction of fire was Grbavica–Vraca. It is the report prepared by the investigator

both the Jewish cemetery and Debelo Brdo and that the closest line between the Jewish cemetery and the scene of the incident measured 570 metres.[12047]

3678. Poparić analysed the video footage recorded by Van Lynden of the VRS positions at the Jewish cemetery looking down on Marin Dvor area and concluded that the position shown in the video was not a sniper position as the soldier shown was armed with "a simple M70 7.62 mm automatic rifle.[12048] He also observed that the tram lines were not visible from that position because the trees blocked the view.[12049]

3679. Following his analysis of the photographs of the tram taken by the CSB Sarajevo and his own examination of the scene, Poparić came to the conclusion that the bullet came "from the front half-sphere of the tram".[12050] Using the size of the bullet entry point (which he determined by magnifying a photograph of it)[12051] and assuming that the bullet exited the tram wall near a seat located in a certain location,[12052] Poparić made an "approximate calculation" of the angle which the projectile formed with the tram wall, namely 28.8 degrees, and came to the conclusion that the bullet was fired from the BiH Executive Council building and not from the Jewish cemetery as alleged.[12053] Had the bullet come from the Jewish cemetery, according to Poparić, it would have hit the tram at close to a 90 degree angle with an angle of descent being low, approximately five or six degrees.[12054] Poparić also testified that the fact that the bullet had the energy to travel through the wall of the tram and then across the aisle where it hit the seat on the opposite side of the tram,

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that referred to the origin of fire, as opposed to the direction of fire, "most probably" being the "aggressor's positions in Grbavica". Both these reports are part of the CSB Sarajevo report cited by Poparić in support of his proposition above. *See* P1758 (BiH MUP Report re sniping incident of 19 June 1994 on Zmaja od Bosne street), e-court pp. 4–5.

12047 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 44–46 (Images 21 and 23), 106–107 (Image 72).

12048 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 108, Image 73; P935 (Sky Newsreport re Sarajevo, with transcript).

12049 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 108, Image 73; P935 (Sky Newsreport re Sarajevo, with transcript). In its Final Brief, the Prosecution argues that this evidence has inefficient factual basis and is contradicted by reliable evidence. Prosecution Final Brief, Appendix C, para. 16.

12050 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 109; Mile Poparić, T. 38976 (30 May 2013).

12051 Mile Poparić, T. 38976 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 111, Image 77.

12052 Mile Poparić, T. 38976–38977 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 110, Image 76; D3637 (Photograph of a tram marked by Mile Poparić).

12053 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 110–113; Mile Poparić, T. 38975 (30 May 2013).

12054 Mile Poparić, T. 38975–38976 (30 May 2013).

damaging the metal railing, indicates that it was fired from a "relatively short" range thus again implicating the Executive Council building as the origin of fire.[12055]

3680. Galić told the Chamber that the day before this incident he sent a regular combat report to the VRS Main Staff in which he reported that SRK units were honouring the cease-fire, despite the enemy's provocation, and reported on his decision to continue "to fully and consistently implement the agreement on the cessation of combat activities".[12056] According to Galić, because of this decision, no shooting at the city by the SRK was expected the next day, especially not at public transportation.[12057] He also issued another combat report at around 5 p.m. on the day of the incident, reporting that the enemy operated sniper rifles and a hand-held rocket launcher in the area of the Vrbanja Bridge, and that the provocation was responded to with adequate fire on enemy positions.[12058] He then repeated in the combat report his decision to continue to implement the agreement on the cessation of combat activities.[12059] There was no mention of the incident in the report and Galić stated that had he been informed of it he would have informed the Main Staff.[12060]

3681. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of two adjudicated facts which go to the origin of fire and provide as follows: (i) there was an unobstructed line of sight between the site of the event and the area of the Jewish cemetery under SRK control;[12061] and (ii) the shot which struck the tram was fired from the area of the Jewish cemetery held by the SRK.[12062]

3682. The Chamber finds based on the evidence and adjudicated facts outlined above that the tram in question was shot at, most likely by a single bullet, in the area of Marin Dvor in front of the St. Joseph Church. It also finds that this tram was a civilian vehicle and that it was operating due to a cease-fire that was in place at the time. In addition, the three casualties in this incident, namely Damir Kučinar, Mensur Jusić, and Belma Sukić née Likić[12063] were civilians and were not taking direct part in hostilities at the time of the incident.

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12055 Mile Poparić, T. 38977–38979 (30 May 2013).

12056 Stanislav Galić, T. 37530–37531 (22 April 2013); D3454 (SRK combat report, 18 June 1994).

12057 Stanislav Galić, T. 37531 (22 April 2013).

12058 Stanislav Galić, T. 37531–37532 (22 April 2013); D2668 (SRK combat report, 19 June 1994), p. 1.

12059 Stanislav Galić, T. 37531–37532 (22 April 2013); D2668 (SRK combat report, 19 June 1994), p. 1.

12060 Stanislav Galić, T. 37532 (22 April 2013).

12061 *See* Adjudicated Fact 219.

12062 *See* Adjudicated Facts 220, 221.

12063 The Chamber notes that while the Indictment alleges that Jasmina Kučinar was also wounded in this incident, the Chamber has not received any evidence to support that allegation. Accordingly, the Chamber considers that three rather than four persons were injured in this incident. *See* fn. 12023.

3683. In terms of the origin of fire, the Chamber does not accept Poparić's conclusion that the bullet came from the Executive Council building as it is based on speculation. For example, Poparić simply assumed that the bullet exited the tram's wall at a particular location, near a particular seat.[12064] He made that assumption on the basis of another photograph made by the CSB Sarajevo, namely a close up of the bullet's exit point on the inside of the tram.[12065] However, other than showing a portion of a red seat, that photograph does not show the actual location of that seat relative to the interior of the tram.[12066] Thus, it is unclear to the Chamber how Poparić came to the conclusion that the bullet exited the tram wall at a particular location, which in turn allowed him to conclude that the bullet hit the tram at an acute angle. Further, Poparić calculated that angle based on a close-up photograph of the bullet's entry point, which the Chamber views as a highly speculative and potentially inaccurate calculation. Indeed, Poparić's analysis is also contradicted by Vidović's testimony, namely, that the bullet entered the tram at a right angle, as opposed to an acute angle which in turn suggests that a different seat from the one identified by Poparić was in the vicinity of the exit point.[12067] Given that Vidović was able to observe the entry point on the tram itself, the Chamber considers his evidence here to be more persuasive than Poparić's speculations as to the acute nature of the angle.

3684. Accordingly, based on all the evidence before it, the Chamber finds that the bullet struck the tram at a right angle, from the direction of the Jewish cemetery. In addition, relying on the adjudicated facts and recalling Van der Weijden's evidence as to the lines of sight, the Chamber finds that it was the SRK forces, located on the western side of the Jewish cemetery, that opened fire on the tram. This is also consistent with the preponderance of evidence suggesting that the sniper fire in the area of Zmaja od Bosne street came from the Serb side,[12068] and with the evidence that the SRK had a sniper squad active in the area, as well as a number of other units with semi-

12064 Poparić explains under Image 76 that the left circle he marked on that image indicates the point of the projectile entry while the right dotted circle marks the point where the projectile exited the paneling on the inner side "as assumed on the basis of Image 75". *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 110, Image 76.

12065 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 109, Images 75 and 76; P1759 (Photographs re sniping incident of 19 June 1994 on Zmaja od Bosne marked by Bogdan Vidović), e-court p. 2. Indeed, under Image 76 in his report, Poparić explains that the exit point of the bullet was "assumed" on the basis of Image 75.

12066 P1759 (Photographs re sniping incident of 19 June 1994 on Zmaja od Bosne marked by Bogdan Vidović), e-court p. 2. The Chamber notes that judging by the photograph depicting the exterior of the tram and the entry point of the bullet, there are two potential seats that could have been in the vicinity of the exit point, the one identified by Poparić and another one, just in front of it. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 109, Image 75; P1759 (Photographs re sniping incident of 19 June 1994 on Zmaja od Bosne marked by Bogdan Vidović), e-court p. 6.

12067 Bogdan Vidović, T. 8192–8195 (20 October 2010).

12068 *See* paras. 3621, 3656–3662. In addition, the Chamber also recalls that it rejected the Accused's arguments that ABiH forces were the ones sniping at Bosnian Muslims civilians throughout Sarajevo. *See* Section IV.B.1.d: Bosnian Muslims targeting own civilians.

automatic rifles. Given the distance involved and the fact that it was struck by one bullet only, the Chamber is also convinced that the tram was deliberately targeted by a single shot and that the SRK shooter would have known that the tram was a civilian vehicle carrying civilians.

(4) Zmaja od Bosne street, 8 October 1994 (Scheduled Incident F.11)

3685. The Indictment alleges that Alma Ćutuna, a 43 year old woman, was wounded in the upper right leg while travelling on a tram on Zmaja od Bosne.[12069] In its Final Brief, the Prosecution argues that the shots were fired from sniper positions in Serb-held territory to the south of Miljacka River.[12070] The Accused submits, however, that the source of fire in this incident was the Executive Council building.[12071]

3686. On 8 October 1994, Alma Ćutuna and her husband were on a tram travelling eastbound on Zmaja od Bosne street.[12072] The tram was crowded as people had decided to come out due to a cease-fire.[12073] While on the tram, Ćutuna was standing facing the middle doors, looking at Grbavica, wearing jeans and a red and black blouse.[12074] According to KDZ090, sometime between 12 and 12:10 p.m., as the tram was passing the Museum and approaching the Faculty of Philosophy, it slowed down in order to enter the S-curve and, at that point, was shot at, the bullets first hitting the upper and then the lower section of the tram.[12075] As a result, Ćutuna was wounded on the inside of her right thigh resulting in two exit wounds on the side of her right hip; she also

12069 Indictment, Scheduled Incident F.11. In footnote 22 of the Indictment, the Prosecution notes that "the evidence also shows that one person was killed and an additional nine were wounded in the incident." The Prosecution has stated on the record that this killing is not charged as part of this incident. *See* T. 39012–39014 (30 May 2013).

12070 Prosecution Final Brief, Appendix C, para. 18. The Prosecution also alleges in its Final Brief that the tram was hit on "either side of the S-curve". Prosecution Final Brief, Appendix C, para. 15. *See also* Closing Arguments, T. 47742–47747 (30 September 2014).

12071 Defence Closing Brief, para. 2266.

12072 P2923 (Witness statement of KDZ090 dated 21 February 1996), p. 1; P1028 (Video re sniping incident of 8 October 1994 on Zmaja od Bosne street) (under seal).

12073 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 824–825 (under seal); P2923 (Witness statement of KDZ090 dated 21 February 1996), p. 1; P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 8. *See also* Adjudicated Fact 2923.

12074 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 826 (under seal); P2923 (Witness statement of KDZ090 dated 21 February 1996), p. 1 (under seal); P2923 (Witness statement of KDZ090 dated 19 April 2006), paras. 8, 9.

12075 According to KDZ090, when the shooting started, the tram was still moving but once it was hit it stopped. *See* P2923 (Witness statement of KDZ090 dated 21 February 1996), p. 1; P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 8; KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 825–826, 829–832, 835–837 (under seal); P432 (Aerial photograph of Sarajevo marked by KDZ090) (under seal); P436 (Aerial photograph of Sarajevo marked by KDZ090); P437 (Aerial photograph of Sarajevo marked by KDZ090); P1028 (Video re sniping incident of 8 October 1994 on Zmaja od Bosne street) (under seal). *See also* Adjudicated Fact 2924.

sustained cuts on her head from the tram's broken window glass.[12076] She was admitted to the hospital, underwent an operation the same day, and discharged on 11 November 1994, having spent some of her recovery in intensive care.[12077] Other persons were also wounded during this incident,[12078] while, according to KDZ090, the driver of the tram travelling in front of Ćutuna's tram at the time of the attack was killed.[12079] Ćutuna still suffers from pain in her leg and needs help with her day to day activities.[12080]

3687. KDZ090 testified that the shots were fired from the Metalka building.[12081] There were no military institutions or equipment in the vicinity of the incident's location and the closest military installation was the Maršal Tito Barracks, some two tram stops away.[12082] Furthermore, there was no fighting that day since the cease-fire was in place and no ABiH soldiers in the tram.[12083]

3688. CSB Sarajevo was informed about this incident around 12:45 p.m. on 8 October 1994 and then informed an investigative judge who sent out a team, which included KDZ485, to the scene to investigate.[12084] The investigation started at 1 p.m. and lasted for an hour and 15 minutes.[12085] A report, dated 10 October 1994, was compiled, listing one casualty, Nedžad Hadžijbarić, and 11 wounded, including Alma Ćutuna.[12086] According to the report, the driver of the first tram[12087] told the investigators that the first burst of shots was fired at his tram, tram number 206, at 12:19 p.m. by Serbs from the Metalka building, injuring three passengers.[12088] Some two to three minutes

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12076 P2923 (Witness statement of KDZ090 dated 21 February 1996), pp. 1–2; P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 8 ; KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 824, 827 (under seal). *See also* Adjudicated Facts 2921, 2925.

12077 P2923 (Witness statement of KDZ090 dated 21 February 1996), p. 2; P1257 (Medical report for Alma Ćutuna) (under seal); P1218 (Medical report for Alma Ćutuna) (under seal). *See also* Adjudicated Fact 2926.

12078 *See* P1254 (Medical report for Zumra Habibović); P1255 (Medical report for Aiša Gačević); P1256 (Medical report for Samir Moro).

12079 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 824, 827 (under seal); P2923 (Witness statement of KDZ090 dated 21 February 1996), pp. 1–2; P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 8.

12080 P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 13. *See also* Adjudicated Fact 2927.

12081 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 824, 831–832 (under seal); P2923 (Witness statement of KDZ090 dated 19 April 2006), paras. 9–10.

12082 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 827 (under seal); P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 9. *See also* Adjudicated Fact 2922.

12083 KDZ090, P481 (Transcript from *Prosecutor v. D. Milošević*), T. 827–828 (under seal). *See also* Adjudicated Facts 2922, 2923.

12084 KDZ485, T. 8880–8881 (3 November 2010); P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 1.

12085 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2.

12086 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), pp. 3–5. *See also* Adjudicated Fact 2930.

12087 It would therefore appear that the tram driver was not killed in this incident as suggested by KDZ090. However, given that one person did die in the incident and that the situation would have been chaotic at the time, the Chamber does not consider that KDZ090's evidence as to the dead person's identity puts in doubt the remainder of KDZ090's testimony.

12088 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2.

later, the second burst was fired on tram 236 which was following tram 206 and entering the stretch between the Faculty of Philosophy and the Museum, that is the S-curve; again several civilians were wounded.[12089] According to the report, soon thereafter bursts of fire were heard again and four children who were running across the aforementioned location were wounded.[12090] The report also notes that the incident happened in front of UNPROFOR who were "hiding behind their transporters" at the scene.[12091]

3689. While it does not appear to contain ballistics analysis, the report notes that four entry and exit holes were identified and photographed on tram 236, and that they were probably caused by the "death sower."[12092] KDZ485 testified that he knew of one incident where that weapon had been used by the Serbs but did not know if the ABiH had it in its arsenal.[12093] However, as mentioned above, the BiH MUP had reported already in October 1993 that the 2nd Independent Battalion of the ABiH had at least one death sower in its possession.[12094]

3690. The site of the incident was also visited by Rose and Gobilliard at 12:45 p.m., while the UNPROFOR soldiers conducted an investigation of the scene.[12095] The next day, Rose sent a letter to the Accused, informing him of the incident and requesting that he "take all appropriate measures to identify and prosecute the perpetrators of this crime."[12096] On 10 October 1994, Rose and Gobilliard released a joint statement stating that there was no doubt that the fire had come from Serb positions at the Jewish cemetery.[12097] On the same day, Rose met with Mladić and raised this incident but Mladić said that the shots came from the Holiday Inn and that the incident was staged by the Muslim side.[12098]

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12089 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2. *See also* Adjudicated Fact 2929.

12090 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2. *See also* Adjudicated Fact 2929.

12091 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2.

12092 P1907 (BiH MUP Report re sniping incident of 8 October 1994 on Zmaja od Bosne street), p. 2.

12093 KDZ485, T. 8902–8905 (3 November 2010).

12094 *See* para. 3626.

12095 P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), p. 6; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 156; P1675 (Video clip of Michael Rose and Herve Gobilliard in Sarajevo); P2414 (Witness statement of KDZ182), p. 60 (under seal).

12096 Rose also protested to Alija Izetbegović for a sniping incident in Vojkovići for which the ABiH was found to be responsible. *See* P1644 (Letters from Michael Rose to Alija Izetbegović and Radovan Karadžić, 9 October 1994). *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 43; P1674 (UNPROFOR report re meeting with Ratko Mladić, 11 October 1994).

12097 P1638 (Witness statement of Michael Rose dated 26 March 2009), p. 156; P1674 (UNPROFOR report re meeting with Ratko Mladić, 11 October 1994).

12098 P1638 (Witness statement of Michael Rose dated 26 March 2009), p. 155; Micheal Rose, T. 7268–7269 (5 October 2010) P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994), p. 2. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 43–46.

3691. UNPROFOR released a report on the incident, dated 13 October 1994, which states that all three instances of sniping occurred at the intersection of Đure Daničića and Zmaja od Bosne streets, that is, between the Faculty of Philosophy and the Executive Council building, as witnessed by the UNPROFOR personnel present near that intersection during the incident.[12099] This location is located one block to the east of the S-curve and thus different from the location of the incident identified by KDZ090 and the CSB Sarajevo report.[12100] Between the second and the third burst of fire, UNPROFOR soldiers intensified surveillance of the Invest Banka building, as well as the Red Façade building, the latter being under ABiH control according to the report.[12101] The report also notes that it was impossible to carry out an investigation on the first tram, that is tram 206, as it was some 200 metres from the incident site but that the second tram, tram 236, stopped immediately, some 30 metres from the relevant intersection, in front of the Executive Council building, and showed bullet traces between its front and middle door at the height of about one metre.[12102]

3692. UNPROFOR soldiers also found six fresh bullet impact traces in the ground at the above-mentioned intersection, which they used to identify the origin of fire, namely a "group of houses" situated in the SRK-held territory, west of the Jewish cemetery.[12103] Later on in the day, when tram 236 was in the tram depot, UNPROFOR investigators measured the angle of the bullet entry point, which came to be 1450 mils from the vertical line.[12104] The report concluded that the already

12099 According to the report, the first burst of fire took place at 12:20 p.m., the second at 12:23 p.m., and the third at 12:35 p.m.. *See* P2421 (UNPROFOR report re sniping incident on Zmaja od Bosne on 8 October 1994, 13 October 1994), pp. 2, 5–6, Annex 2.

12100 The Prosecution acknowledged during Closing Arguments that the evidence identifies two different locations for the incident but noted that this ultimately did not matter because regardless of where the tram was when hit, the fire came from the "SRK-held positions to the south of the Miljacka river". *See* Closing Arguments, T. 47742–47743 (30 September 2014).

12101 According to the map in Annex 2 of the report, the UNPROFOR referred to the Invest Banka building as "Prisunic" while the Red Façade building was referred to as "Butane". Another building, referred to as "Banane" in the report, and located just east of the Red Façade building, was also said to be under the control of the ABiH at the time. In fact, the report specified that Banane and Butane were the only two buildings in the area under the ABiH control. *See* P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), pp. 5–7, Annex 2.

12102 P2421 (UNPROFOR report re sniping incident on Zmaja od Bosne on 8 October 1994, 13 October 1994), p. 2.

12103 Because the six impact points all had a furrow of about 10 centimetres deep and showed a clean "angle of incidence", the UNPROFOR soldiers were able to place an antenna rod in the furrows and found the same direction and the same origin of fire for all six points of impact. The latter part of the report refers to a single house, indicated by number 14 on the map in Annex 2 of the report, as the source of fire. P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), pp. 3, 6–7, Annex 2. The Chamber notes that this location is different to the location identified as the origin of fire in the Adjudicated Fact 2932 and by KDZ090, namely the Metalka building. This was acknowledged by the Prosecution during the Closing Arguments. The Prosecution also submitted that in such a case, namely where an adjudicated fact contradicts evidence brough by the Prosecution, the Chamber should follow the Tribunal jurisprudence and simply asses the relevance and the weight of the adjudicated fact in question in light of the evidence as a whole. Closing Arguments, T. 47442 (30 September 2014).

12104 They were able to do that because the bullet passed through the wall of the tram and then struck the seat support, thus creating a measurable line. *See* P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), p. 3, Annex 1.

established origin of fire conformed with that angle of entry.[12105] Finally, while the report records that the UNPROFOR soldiers stationed at the intersection of Đure Daničića and Zmaja od Bosne thought that the second burst of fire came from very close by, it concludes that this was most likely because the echo off the facades of the buildings made it seem louder.[12106]

3693. Hogan visited Zmaja od Bosne street and recorded the co-ordinates of the incident's location as remembered by KDZ090, which placed the incident at a location that was more in line with the location recorded in the UNPROFOR report of 13 October 1994.[12107] He noted that the Metalka building could not be seen from that location.[12108] When cross-examined by the Accused, he explained that he could not remember whether the exact co-ordinates indicated by KDZ090 were on the sidewalk near the incident site or at the actual incident site.[12109] He did, however, agree that KDZ090, when pointing out the location of the incident to him, indicated that it happened between the Executive Council building and the Faculty of Philosophy.[12110]

3694. Van der Weijden visited both the incident site, as indicated to him by the Prosecution, as well as Grbavica.[12111] He expressed the view that the co-ordinates for the site of the incident given to him by the Prosecution must have been wrong as (i) they indicated a location some 50 metres east to the one described in the materials provided to him, and (ii) this location was not visible from Grbavica.[12112] He found that, if situated in that location when hit, the tram would have been visible from another alleged sniping nest, the Jewish cemetery, but that in that case it would have been exposed to the shooter for a shorter period of time and the distance between the alleged origin of fire and the tram would have been quite far, more than 600 metres.[12113] Thus, he believed that the incident probably occurred on or near the stretch of Zmaja od Bosne street between the Museum

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12105 P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), p. 3.

12106 P2421 (UNPROFOR report re sniping incident of Zmaja od Bosne on 8 October 1994, 13 October 1994), pp. 5–6.

12107 Barry Hogan, T. 11217–11218 (3 February 2011); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); P1028 (Video re sniping incident of 8 October 1994 on Zmaja od Bosne street) (under seal); P2190 (GPS locations for shelling and sniping incidents in Sarajevo).

12108 Barry Hogan, T. 11217–11218 (3 February 2011); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

12109 Barry Hogan, T. 11239 (3 February 2011). *See also* P1028 (Video re sniping incident of 8 October 1994 on Zmaja od Bosne street) (under seal).

12110 Barry Hogan, T. 11246–11247 (3 February 2011); P1028 (Video re sniping incident of 8 October 1994 on Zmaja od Bosne street) (under seal); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

12111 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 88; Patrick van der Weijden, T. 7032–7034 (28 September 2010); D651 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

12112 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94'), p. 89; Patrick van der Weijden, T. 7006–7008 (27 September 2010).

12113 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 88–89.

and the Faculty of Philosophy, i.e. near the S-curve.[12114] He also conceded during cross-examination that he determined this to be the place of the incident on the basis that, had the tram been a little further from the said location, it could not have been hit from the south as suggested by the BiH MUP reports.[12115] He also noted that he was aware that the area between Miljacka River and the tram tracks was under the control of the ABiH.[12116] Further, he conceded that no one told him to check whether Unioninvest or the Red Façade buildings could have been the origin of fire, but noted that the view from the latter to the S-curve would have been obstructed by the buildings in front of it.[12117] He therefore never checked the Red Façade building.[12118]

3695. When shown the video footage of the third burst of fire at the children on the street, Van der Weijden accepted that the fire appeared to be coming down Đure Daničića street.[12119] He further accepted that given the distance of the Serb positions to the location of this incident, the angle of descent of the bullet would have been some five degrees whereas the injuries sustained by one of the men indicated a greater angle of descent.[12120] However, he also explained that he could hear machine-gunfire in the footage, which meant that shots would have landed in a cone of fire, making some shots higher than others.[12121]

3696. Noting that there were multiple victims in this incident and having described their injuries, Van der Weijden concluded that automatic fire was most likely used to shoot at the tram, and that the weapons used would have been either an M84 machine-gun in 7.62 mm calibre, or an M53 machine-gun in 7.92 mm calibre, mounted on a bipod or tripod.[12122] He noted that machine-guns

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12114 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 89; Patrick van der Weijden, T. 7032–7035 (28 September 2010); D651 (Aerial photograph of Sarajevo marked by Patrick van der Weijden). *See also* Barry Hogan, T. 11218–11219 (3 February 2011); P2208 (Photograph of Sarajevo marked by Barry Hogan)

12115 Patrick van der Weijden, T. 7011–7014 (27 September 2010); D647 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

12116 Patrick van der Weijden, T. 7017–7018 (27 September 2010); D648 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

12117 Patrick van der Weijden, T. 7021–7027 (28 September 2010); D649 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); D650 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

12118 Patrick van der Weijden, T. 7024–7025 (28 September 2010).

12119 Patrick van der Weijden, T. 7055 (28 September 2010); D655 (Video footage relating to a sniping incident in Sarajevo).

12120 Patrick van der Weijden, T. 7059–7060 (28 September 2010).

12121 Patrick van der Weijden, T. 7052–7061 (28 September 2010); D655 (Video footage relating to a sniping incident in Sarajevo); D656 (Video footage relating to a sniping incident in Sarajevo); D657 (Photograph related to a sniping incident in Sarajevo); D658 (Photograph related to a sniping incident in Sarajevo); D659 (Photograph related to a sniping incident in Sarajevo); D660 (Photograph related to a sniping incident in Sarajevo); D661 (Photograph related to a sniping incident in Sarajevo).

12122 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 87. *See also* Adjudicated Fact 2928. If mounted on a tripod, an M84 can successfully reach targets which are 1000 metres away, while an M53 mounted on a tripod has the shooting accuracy of up to 1500 metres. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A.

are more effective against moving targets, such as trams that are only temporarily visible.[12123] On cross-examination he confirmed that if Ćutuna's entry wound was on her right thigh and the exit wound was on her right hip, this would imply that the bullet was travelling upwards rather than downwards.[12124] However, he clarified that this would not necessarily be the case if the victim was crouching down when struck by the bullet and also explained that the bullet might change its trajectory once it enters the tram.[12125]

3697. Poparić analysed the material relevant to this incident, including the CSB Sarajevo report as well as the video footage of the scene, filmed by the BiH TV immediately after the incident, recording not only the position of the trams but also the last burst of shots on the four children running across the incident location.[12126] He did not seem to be aware of the UNPROFOR report of 13 October 1994, however.[12127]

3698. Poparić began his analysis by expressing doubt about the official character of the CSB Sarajevo report of 10 October 1994 because it had no log number.[12128] Having analysed the video footage of the scene, which records the position of trams 206 and 236, and contains interviews with two people injured in the incident, he came to the conclusion that tram 206 was hit when passing by the Executive Council building, the stretch which at the time was protected by containers, while tram 236 was struck in front of the Executive Council building where it stopped immediately after being struck.[12129] Poparić explained that he reached his conclusion on tram 236's location based on the statements of the people interviewed by the BiH TV, statement of an eye-witness, and the video footage of the scene which shows the tram at that location together with its broken window and the traces of broken glass on the ground, indicating that the tram stopped immediately, moving only a metre or two after being struck by the bullets.[12130] Based on all this, Poparić concluded that trams 206 and 236 could not have been fired on from the VRS positions in Grbavica or from Metalka as

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12123 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 87.

12124 Patrick van der Weijden, T. 7034 (28 September 2010).

12125 Patrick van der Weijden, T. 7050 (28 September 2010), T. 7186–7187 (29 September 2010). The Chamber notes that during this discussion the Prosecution referred to scheduled incident F15 but that the injuries in fact discussed relate to incident F11.

12126 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 127–137.

12127 Mile Poparić T. 39254 (4 June 2013), T. 39263 (5 June 2013).

12128 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 128.

12129 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 128–130, 132, Image 90. *See also* Mile Poparić, T. 38983–38986 (30 May 2013).

12130 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 129–131, Images 92 and 93; Mile Poparić, T. 38985–38987 (30 May 2013). In its Final Brief, the Prosecution argues that Poparić's analysis of footage of the broken glass was speculative and ignored the reasonable explanation that the glass resulted from the evacuation after the incident. *See* Prosecution Final Brief, Appendix C, para. 11.

they were protected by the BiH Assembly and Executive Council buildings, as well as by the above mentioned containers.[12131]

3699. Poparić also analysed the footage of the third burst of shots, which shows the moment when the bullets struck the area near the Faculty of Philosophy and the cloud of dust that rose from the ground as a result. He speculated that the cloud was about two metres high which in turn meant that the bullet hit the ground with high energy and at a high angle of descent. This, according to Poparić, indicated that it was fired from "a relatively small distance" thus excluding Metalka, Invest Banka, and the Red Façade buildings as the origins of fire.[12132] Poparić concluded that the fire seen in the footage came from the Executive Council building and noted that this was confirmed by the footage of an UNPROFOR soldier talking to Rose and pointing in the direction of the Executive Council.[12133]

3700. During cross-examination, Poparić testified that his theory on the dust clouds was not based on any published studies but on his extensive experience with trajectories of small arms.[12134] He also explained that had the bullet come from the Red Façade building which was divided in half by the warring parties, then the angle of descent would have been no more than ten degrees.[12135] When shown the UNPROFOR report of 13 October and the entry angle that UNPROFOR measured on the tram, namely 81 degrees from the vertical line and 9 degrees from the horizontal line, Poparić explained that having the angle alone was not enough to conclude where the bullet came from and that one needed to look at the firing tables for the weapon used in the incident.[12136] Based on those, he concluded that had the bullet come from the Red Façade building, the angle would have been less than four or five degrees.[12137] When asked whether such a small angle, be it

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12131 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 131–132, 135.

12132 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 132–134, Image 95; Mile Poparić, T. 38987–38989 (30 May 2013); D3638 (Photograph of tram track marked by Mile Poparić).

12133 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 134–135, Image 96. During cross-examination Poparić conceded that the footage he viewed had no sound so that he did not know whether the UNPROFOR soldier mentioned the Executive Council building to Rose. He reiterated his position that the soldier was pointing at the Executive Council building but then also said that he was pointing in the direction of the Red Façade building and Grbavica. *See* Mile Poparić, T. 39264–39265 (5 June 2013).

12134 Mile Poparić, T. 39252–39253 (4 June 2013).

12135 Mile Poparić, T. 39253–39254 (4 June 2013). While the transcript records that Poparić referred to a "famous silver building which was divided in half by the VRS and the ABiH" the Chamber considers that this was a reference to the Red Façade building as that was the only famous building in the area that was divided in half by the warring parties. The Chamber is of the view that the reference to this building being silver must have been an error in interpretation or a mistake in Poparić's testimony.

12136 Mile Poparić, T. 39255–39257 (4 June 2013), T. 39260–39262 (5 June 2013).

12137 Mile Poparić, T. 39255–39257 (4 June 2013), T. 39260–39262, T.39294–39297 (5 June 2013); D3649 (Photograph of tram tracks marked by Mile Poparić).

nine or four degrees, meant that the fire could not have come from the Executive Council building, Poparić stated that one could fire from the ground floor or from one of the upper floors of the Executive Council building so the angle of descent could range from two to 80 degrees.[12138] When confronted with the report of the meeting between Mladić and Rose of 10 October 1994, Poparić accepted that Mladić's position that the fire came from Holiday Inn was wrong but denied that this meeting proved anything as to the actual origin of fire.[12139]

3701. The Chamber recalls that it has taken judicial notice of two Adjudicated Facts which provide that the visibility on 8 October 1994 was sufficient to allow a sniper at the Metalka Building to identify and target a tram negotiating the S-curve, that the shots came from the direction of the Metalka Building, which was held by the SRK and that they were fired by a member of the SRK.[12140] However, as noted above, these Adjudicated Facts are inconsistent with some of the evidence offered by the Prosecution, including the UNPROFOR report of 13 October 1994 and the co-ordinates of the incident site obtained and used by Hogan.[12141] That being the case, the Chamber is unable to rely on these two Adjudicated Facts and will disregard them for the purpose of its analysis of this incident.

3702. As far as the exact location of the incident is concerned, the Chamber is persuaded by the report prepared by UNPROFOR following the incident. This report refers to, *inter alia*, interviews with UNPROFOR soldiers who witnessed all three instances of fire being opened that day and who place all three instances at the intersection of Đure Daničića street and Zmaja od Bosne street.[12142] In addition, the Chamber recalls that both CSB Sarajevo and UNPROFOR reports provide that the third burst of fire took place at the same location as the two previous bursts of fire. The video footage of that third burst of fire clearly shows that it took place at the intersection of Đure Daničića and Zmaja od Bosne streets. Bearing all that in mind, the Chamber considers that Ćutuna's tram was shot at when passing through that intersection rather than the intersection noted in the CSB Sarajevo report. This tram was a civilian vehicle, with civilians onboard, and was

12138 Mile Poparić, T. 39262–39266 (5 June 2013).

12139 Mile Poparić, T. 39263–39266 (5 June 2013).

12140 *See* Adjudicated Facts 2931, 2932.

12141 *See* 3692–3693, fn. 12103.

12142 The Chamber notes here that in determining the location of the incident the CSB Sarajevo investigators appear to have relied on the tram driver's recollection of what happened and did not speak to the UNPROFOR soldiers in the area. However, in contrast to those soldiers, the tram driver would have been engaged in driving the tram and, once the bullets struck the tram, would have been trying to get it to safety in a state of panic and chaos. Thus, the Chamber considers the description of the event by the UNPROFOR soldiers at the scene to be more persuasive than that of the driver. For the same reason, the Chamber has decided to disregard the evidence of KDZ090 as to the location at which the tram was first struck by the bullets, particularly since that evidence was not in line with the location KDZ090 actually showed to Barry Hogan.

operating due to a cease-fire in place at the time. In addition, Alma Ćutuna herself was a civilian and was not taking direct part in hostilities when she was wounded in this incident.

3703. The Chamber does not accept Poparić's conclusion that the bullets came from the Executive Council building as it is based on a number of plainly unreasonable speculations. For example, on the basis of the footage showing pieces of tram's window on the ground next to the tram itself, Poparić concluded that the tram must have moved only about a metre or two after being struck by the bullets and that it therefore must have been shot at from the Executive Council building. However, this is pure speculation as some or all of the glass could have fallen out of the window frame after the tram had stopped. In other words, it is simply not possible to draw any conclusions from the video footage of the glass on the ground.[12143] In addition, Poparić relied on the analysis of a dust cloud in relation to the third burst of shots fired on that day, to show that bullets came in at a high angle of descent. At the same time, he was unaware of the UNPROFOR investigation which found that the angle of descent was in fact low in relation to both the traces on the tram and the traces on the ground. Accordingly, the Chamber will disregard–in its entirety–Poparić's analysis in relation to this incident.

3704. As far as the origin of fire is concerned, the Chamber accepts UNPROFOR's conclusion that it came from the SRK-held area somewhere west of the Jewish cemetery. First, UNPROFOR conducted its own analysis of the bullet traces on both the tram in which Ćutuna was riding and the ground at the intersection of Đure Daničića and Zmaja od Bosne streets, which led them to that location. Indeed, both sites indicated a low angle of descent, which is consistent with the fire coming from the SRK positions south of Miljacka.[12144] Second, the Chamber is convinced, relying on Van der Weijden's evidence outlined above,[12145] that the SRK forces in that area had a line of sight to the intersection between Đure Daničića and Zmaja od Bosne streets. Finally, the Chamber recalls the evidence it heard about the prevalence of sniping attacks from the area of the Jewish cemetery and Zmaja od Bosne generally.[12146] Accordingly, the Chamber finds that the fire that struck Alma Ćutuna's tram and wounded her came from the SRK-held area to the west of Jewish

12143 Furthermore, as noted above, the UNPROFOR report clearly states that the tram moved some 30 metres after it was struck by the fire.

12144 The Chamber notes that Van der Weijden calculated that the angle of descent of a bullet fired from Metalka which is located 321 metres away and at the elevation of 35 metres would have been around five degrees. *See* Patrick van der Weijden, T. 7015–7017 (27 September 2010), T. 7059 (28 September 2010). Thus, the fire involving a higher elevation while at the same time further away would have been coming at an angle higher than five degrees but still at a relatively low angle of descent.

12145 *See* para. 3694.

12146 *See* paras. 3657, 3659. In addition, Blagoje Kovačević admitted that sometimes he had problems in achieving control over his troops, which were located in the area of the Jewish cemetery, and that they would open fire without him knowing about it. *See* para. 3661. The Chamber also recalls that it rejected the Accused's arguments that ABiH forces were sniping at Bosnian Muslim civilians throughout Sarajevo. *See* para. 4519.

cemetery. The Chamber is also satisfied that a machine gun, most likely an M84, was used in this incident and that it had the necessary range to accurately target the tram at that distance. Both the 1st Sarajevo Mechanised Brigade and the 1st Romanija Infantry Brigade had such a machine gun in its arsenal.[12147] Finally, the Chamber has no doubt that the tram was deliberately targeted by the SRK shooter, as illustrated by the fact that after the two trams were shot and struck in the same location, fire was opened again in that same location at a number of people who were trying to leave the area. The Chamber is also confident that the shooter would have known that tram was a civilian vehicle with civilians travelling onboard.

(5) Zmaja od Bosne street, 18 November 1994 (Scheduled Incident F.12)

3705. The Indictment alleges that, on 18 November 1994, Dženana Sokolović, a 31 year old woman, and her seven year old son, Nermin Divović, were fired on while walking on Zmaja od Bosne street. According to the Indictment, Sokolović was wounded in her abdomen and the bullet passed through her and hit her son in the head, killing him.[12148] In the Final Brief, the Prosecution argues that the bullet came from Metalka.[12149] The Accused argues, however, that the bullet came from the side opposite to Grbavica, that is, from the ABiH-held territory.[12150]

3706. There was a cease-fire in place on 18 November 1994 and the trams were running.[12151] Dženana Sokolović and her son, Nermin Divović, were shot at the zebra crossing, as they were crossing the Franje Račkog street.[12152] There were no soldiers around and no combat going on in the area at the time.[12153] Nermin Divović died on the way to the hospital and his body was taken to the mortuary.[12154] Sokolović and her daughter were taken to Koševo Hospital by a UN vehicle.[12155] Sokolović underwent surgery and stayed in hospital for seven or eight days.[12156] She was unable to attend her son's funeral.[12157] Since the incident, she has not been able to hold a full-time job.[12158]

12147 *See* fn. 11948.
12148 Indictment, Scheduled Incident F.12.
12149 Prosecution Final Brief, Appendix C, para. 19.
12150 Defence Final Brief, para. 2278.
12151 Adjudicated Fact 2938.
12152 *See* Adjudicated Fact 2940.
12153 Adjudicated Fact 2939.
12154 Adjudicated Fact 2941.
12155 Adjudicated Fact 2942.
12156 Adjudicated Fact 2942.
12157 Adjudicated Fact 2942.
12158 Adjudicated Fact 2942.

3707. According to the CSB Sarajevo report dated 19 November 1994, the incident was witnessed by UNPROFOR, UNHCR, and GOFRS members, who were standing near the Museum.[12159] They told the CSB Sarajevo investigators that as Sokolović and her son were crossing over to the other side of Franje Račkog street, the side further from the Museum, a shot was heard from the direction of Grbavica, "more precisely from the aggressor's positions".[12160] The UNHCR member helped Sokolović and her son, while two UNPROFOR armoured personnel carriers arrived and positioned themselves on the Franje Račkog street.[12161] Stationed at the corner of Franjo Račkog and Zmaja od Bosne streets, on the side of Franje Račkog closer to the Museum, was an UNPROFOR armoured personnel carrier.[12162].

3708. The report also notes that CSB Sarajevo's investigation team, which included a forensic technician Sead Bešić, came to the incident site around 1:30 p.m., and noticed that the site was not secured by the police.[12163] There was blood at the scene but, before the arrival of the team, the UNPROFOR soldiers washed it off and then covered it with sand.[12164] During cross-examination, Bešić explained that the investigation was difficult due to the team being unable to access the site; further, he stated that it is difficult to determine the direction of fire just on the basis of the entry and exit wounds.[12165]

3709. In terms of the injuries the victims sustained, the description of the incident in the CSB Sarajevo report notes that the bullet first hit the boy in the head and then injured Sokolović.[12166] When cross-examined on the accuracy of this, Bešić stated that he was not in charge of interviewing witnesses and/or writing the report but was there only to take photographs and collect

12159 Nermin Divović approached these men, as he was passing by with his mother, and asked them for some sweets. P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court pp. 4–5.

12160 P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 4. *See also* Sead Bešić, T. 9491 (9 December 2010); Mile Poparić, T. 39291–39294 (5 June 2013).

12161 P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court pp. 4–5. *See also* Sead Bešić, T. 9490–9493 (9 December 2010); D901 (Photograph re sniping incident on 18 November 1994 on Zmaja od Bosne street marked by Sead Bešić).

12162 P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court pp. 4–5.

12163 Sead Bešić, T. 9489–9490 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 35; P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 4.

12164 Sead Bešić, T. 9493 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 37; P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 5.

12165 Sead Bešić, T. 9491–9492 (9 December 2010). While Bešić also stated during cross-examination that the direction in which the victims were walking was never established, the Chamber notes that the CSB Sarajevo report clearly outlines that the direction in which they were walking was from the Museum to Marin Dvor. *See* Sead Bešić, T. 9494 (9 December 2010). *Compare*. P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 4.

12166 The latter part of the report, however, refers to the entry wound being on the right side of the boy's head. P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court pp. 1, 5.

physical evidence.[12167] The report also notes that Sokolović had a wound in the abdominal area, with the entry wound on the right-hand side of her body and the exit wound on the left-hand side.[12168]

3710. However, contrary to the report above, the medical records for Dženana Sokolović, which were attached to the above report, provide that the bullet that caused her injuries entered the left hand side of her abdomen and exited on the right hand side.[12169] Bešić was unable to explain this discrepancy but speculated that his colleague at the scene probably failed to describe the wound accurately.[12170] He also noted that at the time only one forensic pathologist was working in Sarajevo and the people assisting him were not knowledgeable enough to determine which wound was the entry wound.[12171]

3711. Šefik Bešlić, an abdominal surgeon who operated on Sokolović, on 18 November 1994 and later in 2007, testified that he had no doubt that the bullet entered the right side of her body and exited on the left side.[12172] While admitting that he could not remember the actual surgery he performed on Sokolović,[12173] Bešlić remained adamant that the bullet entered on the right hand side of her body, because of a contusion on her liver, the wound on the right hand side being smaller in size than the wound on the left hand side (thus indicating an entry wound), and the size of the scars he saw on Sokolović's abdomen in 2007.[12174] He explained that the doctor who prepared the medical report in question must have made a mistake when describing Sokolović's wounds, and noted that this was understandable given the circumstances under which the doctors had to work at that time.[12175] Bešlić also testified that the line between Sokolović's entry and exit wounds was almost horizontal.[12176]

3712. As for the wound on Sokolović's son, the CSB Sarajevo report states that he had an entry-exit wound on his head–the entry wound was at the back of his head, above the right ear, while the

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12167 P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 35–36.

12168 P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 5.

12169 P1023 (Medical records for Dženana Sokolović); P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 8.

12170 Sead Bešić, T. 9494–9496, 9526–9530 (9 December 20110).

12171 Sead Bešić, T. 9494–9496 (9 December 2010).

12172 P472 (Witness statement of Šefik Bešlić dated 30 January 2007), paras. 1–5.

12173 D3 (Supplemental statement of Šefik Bešlić dated 9 December 2009), para. 3. *See also* Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4419.

12174 P472 (Witness statement of Šefik Bešlić dated 30 January 2007), paras. 3–5. *See also* Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4422–4423, 4428–4429, 4435–4439, 4440–4441. However, Bešlić also accepted that it was the passage of bullet, regardless of where it entered and exited, that caused the contusion. *See* Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4449–4450.

12175 Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4419–4420, 4424–4427; P1023 (Medical records for Dženana Sokolović).

exit wound was located below his eye.[12177] According to the autopsy report, the entry wound was located on the boy's right cheek while the exit wound was at the back of his head on the left-hand side.[12178]

3713. UNPROFOR reported this incident in its daily report of 19 November in which it stated that the fire that killed Nermin came from the SRK side, after which UNPROFOR returned fire towards the SRK.[12179]

3714. When visiting Zmaja od Bosne with Sokolović, Hogan recorded the co-ordinates of the location of the incident, placing it near the intersection between Zmaja od Bosne and Franje Račkog rather than on the actual crossing on Franje Račkog street.[12180] He explained that when he conducted this exercise with the victim, he did not provide her with her statements in order to refresh her memory.[12181] He was also shown the video footage of the aftermath of the incident and confirmed that Sokolović's son could be seen lying on a pedestrian crossing.[12182]

3715. Van der Weijden's report notes that Sokolović was walking eastbound on Zmaja od Bosne street with her seven year old son and her daughter when the shots were fired and her son fell down.[12183] Sokolović and her daughter were immediately pulled to safety behind a car by others, and Sokolović realised she had a stomach wound; the bullet had passed through her abdomen and hit her son, Nermin in the head.[12184] Van der Weijden visited the incident site, as well as Grbavica, in November 2006.[12185] He visited Metalka noting that its rooms offer direct and clear views of the stretch of the road on which the victims were located.[12186] While in the building, he determined the shooter would have been some 300 metres away from the site of the incident and would have been

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12176 Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4443.

12177 P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 5.

12178 P1544 (Autopsy report for Nermin Divović); P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 10; Sead Bešić, T. 9496–9497 (9 December 2010).

12179 P6366 (UNPROFOR daily report, 19 November 1994), p. 8.

12180 Barry Hogan, T. 11204–11206, 11220, 11247–11253 (3 February 2011); P2189 (Aerial photograph of Sarajevo marked by Barry Hogan); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); D991 (Photograph re sniping incident of 18 November 1994 on Zmaja od Bosne street marked by Barry Hogan); D992 (Photograph re sniping incident of 18 November 1994 on Zmaja od Bosne street marked by Barry Hogan).

12181 Barry Hogan, T. 11288 (3 February 2011).

12182 Barry Hogan, T. 11289 (3 February 2011); P2216 (Video footage re sniping incident of 18 November 1994 on Zmaja od Bosne street).

12183 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 91.

12184 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 91.

12185 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 92.

12186 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 92. Van der Weijden states in his report that the branches of trees "in the street" will have grown since the war and now obstruct some of the windows that at the time would have also offered an unobstructed view. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 92.

able to identify the victims as a woman and two children.[12187] Noting the way in which the woman was injured and her child killed, as well as the fact that the witnesses reported hearing multiple shots, Van der Weijden concluded that either a machine-gun or a semi-automatic sniper rifle was used in this incident.[12188] He also noted that both weapons use the same calibre bullets, namely 7.62 mm, and that both are capable of hitting targets up to 800 metres.[12189]

3716. On cross-examination, Van der Weijden reiterated that the Metalka building was the most likely position from which the shots were fired but conceded that there were other possibilities and that, for example, the shooter could have been "in the middle of the street", presumably referring to Franje Račkog street.[12190] He also conceded that at the time of his investigation he was unaware of the contradicting medical records relating to the entry and exit wounds on Dženana Sokolović's body, but agreed that if the entry wound was on the left-hand side of her body, it meant that the shot would have originated from the north rather than the south.[12191]

3717. Poparić, also analysed this incident stating that it was difficult to establish what happened given the lack of forensic information and a "lot of contradictory data".[12192] For example, the precise location where the victims were standing when shot was never determined, according to Poparić.[12193]

3718. While stating that it was impossible on the basis of available evidence to come to any reliable conclusions on the origin of fire,[12194] Poparić then proceeded to conclude that Sokolović and her son were hit by two different bullets, and that the bullets came from the north rather than from the south of the incident site, that is, from the direction opposite to Grbavica.[12195] Poparić came to this conclusion based in part on the assumptions he made relating to the evidence received in the *Dragomir Milošević* case, such as Sokolović's witness statements, video footage of

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12187 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 91, 93. *See also* Adjudicated Fact 2944.

12188 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 91.

12189 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 91.

12190 Patrick van der Weijden, T. 7094–7095 (28 September 2010). *See also* Barry Hogan, T. 11220 (3 February 2011); P2210 (Photograph of Sarajevo marked by Barry Hogan).

12191 Patrick van der Weijden, T. 7095–7096, 7099–7101 (28 September 2010).

12192 Mile Poparić, T. 38900–38901 (29 May 2013), T. 39248 (4 June 2013).

12193 Mile Poparić, T. 38916–38917, 38920–38923 (29 May 2013); D3629 (Photograph of Sarajevo marked by Mile Poparić); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 137–139, 143–144.

12194 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 143. *See also* Mile Poparić, T. 38900–38901 (29 May 2013).

12195 Mile Poparić, T. 38922–38923 (29 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 137–145.

Sokolović's injuries, video footage of her son's body at the scene,[12196] and the footage of Hogan with Sokolović at the scene years later.

3719. For example, based on the video footage of them standing next to each other, Poparić determined the approximate heights of Hogan and Sokolović, which he then used, together with the medical reports and the video footage of the victims' wounds,[12197] to show that two different bullets were involved in this sniping incident.[12198] He also concluded, based on the video footage of Nermin's head wound, that the bullet that killed the boy entered on the left hand side of the head and exited on the right-hand side, thus indicating that it came from the positions opposite to Grbavica.[12199] He found further support for that conclusion in the mistaken belief that the CSB Sarajevo report states that, on the boy's arrival to the hospital, the doctors established that the entry wound was on the left-hand side of his head while the exit wound was on the right.[12200] Poparić seemed to be under this impression despite stating in two different places in his report, namely on pages 139 and 144, that on the boy's arrival it was established that the entry wound was on the right hand side and the exit wound on the left hand side of the boy's head, which is in line with the CSB Sarajevo report.[12201] Indeed, both the CSB Sarajevo report and the boy's autopsy report clearly state that the entry wound was on the right hand side of the boy's head and the exit wound was on the left; the only discrepancy being the exact location of the entry and exit wounds.[12202] This discrepancy becomes significant, however, as the wounds seen in the video footage of the boy's head[12203] accurately reflect the autopsy report, namely that the entry wound was on the boy's right cheek while the exit wound was at the back of his head on the left-hand side. The trickle of blood

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12196 This video was admitted into evidence in this case as P2216 and D3628. *See* Barry Hogan, T. 11289 (3 February 2011); Mile Poparić, T. 38915–38916, 38924 (29 May 2103).

12197 With respect to Skolović's wounds, Poparić relied on the footage of Sokolović lying in her hospital bed with bandages on her abdomen to determine the positioning or the height of her wound. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 141–142, Image 99.

12198 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 142, 144–145.

12199 Mile Poparić, T. 38911–38912 (29 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 140; D3628 (Video footage of Nermin Divović's body).

12200 Mile Poparić, T. 38901–38902, 38912–38913 (29 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 139–141, 144, fn. 301.

12201 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 139, 144, fn. 301; P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 5. The Chamber notes that, while the English translation of the relevant part of Poparić's report on page 139 states that the entry wound on the boy's head was above the left ear and the exit wound below the right eye, the original BCS version of the report provides the opposite, namely that the entry wound was above the right ear and the exit wound below the left eye. It is the latter that is correct as suggested by the fact that it coincides with the CSB Sarajevo report cited to in footnote 301 of the report.

12202 *See* para. 3712; P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court pp. 5, 10; P1544 (Autopsy report for Nermin Divović).

that Poparić describes as coming from the entry wound above left ear[12204] could have easily come from the entry wound on the right hand side of the head or from the exit wound on the back of the head. Thus, the Chamber does not accept Poparić's analysis in relation to the exit and entry wounds on the boy's head and his conclusion that those wounds showed that two bullets from the north wounded the victims.

3720. With respect to the confusion surrounding Sokolović's wound, Poparić referred to Bešlić's evidence and concluded that it is unlikely that the surgeon who wrote that the entry point of the wound was on the left-hand side of Sokolović's abdomen made a mistake because he recorded the size of the wounds, indicating that he performed the examination in a "detailed and conscientious manner".[12205] Poparić also referred to the evidence of a medical doctor from another trial who testified that it would be impossible for Bešlić after so many years to see which wound was the entry wound and which was the exit wound.[12206] The Chamber finds both these conclusions to be outside of Poparić's expertise and tenuous at best. Thus, it will not take them into account when making findings on this incident.

3721. Poparić criticised the fact that no one tried to establish the level of entry and exit wounds on Sokolović's body and explained that, had the bullet come from Metalka, it would have a downward trajectory so that the entry wound on Skolović's body would be higher than the exit wound[12207] and the same would apply to her son's wound.[12208] He then found it hard to reconcile such downwards trajectory to the boy's wound.[12209] However, the Chamber first notes that, contrary to Poparić's criticism, Bešlić did note that the line between Sokolović's entry and exit wounds was almost horizontal.[12210] In addition, the said trajectory can easily be reconciled with the boy's wound as established in the autopsy report, which notes that the entry wound was on the boy's right cheek while the exit wound was at the back of his head on the left-hand side.[12211]

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12203 This is the image Poparić used to suggest that the bullet entered the boy's head from the left-hand side. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 141, Image 100.

12204 Mile Poparić, T. 38911–38912 (29 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 140, Image 100.

12205 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 140.

12206 Mile Poparić, T. 38913–38914 (29 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 140.

12207 Mile Poparić, T. 38905–38906 (29 May 2013).

12208 Mile Poparić, T. 38906 (29 May 2013).

12209 Mile Poparić, T. 38905–38906 (29 May 2013).

12210 Šefik Bešlić, P471 (Transcript from *Prosecutor v. D. Milošević*), T. 4443.

12211 P1544 (Autopsy report for Nermin Divović); P459 (BiH MUP Report re sniping incident of 18 November 1994 on Zmaja od Bosne street), e-court p. 10; Sead Bešić, T. 9495–9497 (9 December 2010).

3722. Poparić also noted that in the video footage of the scene, some people can be seen sheltering behind a vehicle and several bursts of fire are heard which to him indicated that the fire was being exchanged between warring parties.[12212] The Chamber once again does not accept Poparić's conclusion here as it was based on pure assumptions without considering other possibilities, such as for example an exchange of fire between the UNPROFOR soldiers on the scene and the shooter. Indeed, when shown the UNPROFOR report of 19 November 1994 referred to above,[12213] Poparić did not exclude the possibility that this was an exchange of fire between UNPROFOR and the person who shot Sokolović and her son.[12214]

3723. Poparić also pointed out that Skolović, when visiting the scene with Hogan, placed the location of the incident near the intersection between Zmaja od Bosne and Franje Račkog rather than on the actual crossing on Franje Račkog street, noting that it would be difficult for someone in the Metalka building to see a person at that particular location.[12215] Once again, the Chamber recalls that Poparić never entered the Metalka building and thus cannot claim with sufficient certainty that this particular position would not be visible from the building.[12216]

3724. Poparić then estimated the boy's height based on the video footage of his body lying on the intersection and the estimated height of Sokolović, arguing that had the bullet come from Metalka, the boy would have been hit lower down his body; however, he also explained that if the boy was standing at a short distance from Sokolović, then it was possible for the bullet to hit both of them.[12217] The Chamber is of the view that estimating the boy's height from the footage of him lying on the pedestrian crossing is questionable at best. In addition, as implied by Poparić's own testimony, it is not very useful given that there is no information as to how far the boy was from his mother at the moment when they were shot. Thus, the Chamber will not accept Poparić's analysis relating to the victims' height and bullet trajectory.

3725. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of the following adjudicated facts which go to the origin of fire: (i) Sokolović was shot in the right side of her body and the bullet went through her abdomen and exited on the left

12212 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 143.

12213 *See* para. 3713.

12214 Mile Poparić, T. 39248–39251 (4 June 2013), T. 39290–39294 (5 June 2013); P6366 (UNPROFOR daily report, 19 November 1994).

12215 Mile Poparić, T. 38906–38911 (29 May 2013); D3626 (Photograph of Barry Hogan and Dženana Sokolović marked by Mile Poparić); D3627 (Photograph of Barry Hogan and Dženana Sokolović marked by Mile Poparić).

12216 *See* para. 3639.

12217 Mile Poparić, T. 38908–38911 (29 May 2013).

side, continuing through her son's head;[12218] (ii) the shots came from the Metalka building;[12219] (iii) the shot that wounded Sokolović and killed her son, both civilians, originated from Metalka, a known SRK sniper position;[12220] and (iv) the shots were fired by a member of the SRK.[12221]

3726. The Chamber finds, based on the evidence and adjudicated facts outlined above, that Sokolović and her son were civilians and were not taking direct part in hostilities at the moment when they were shot. Indeed, they were walking in the city as a cease-fire was in place at the time. The Chamber is also satisfied that they were shot as they were crossing Franje Račkog street and approaching the museum. This is corroborated both by the footage of Nermin Divović lying on the said zebra crossing having just been shot, and by the CSB Sarajevo report compiled at the time of the incident.

3727. The Chamber is also satisfied, relying both on Bešlić's evidence and the medical records of Nermin's head wounds, as well as the adjudicated facts, that the bullet that wounded Sokolović came from her right hand side and that it entered the right side of her abdomen, exited on the left side of her abdomen, and then struck Nermin in the head, causing devastating head injuries that lead to his death. As indicated above, the Chamber does not accept Poparić's analysis of the location of entry and exit wounds of the two victims. First and foremost, this is because, unlike Bešlić, Poparić is not a doctor and thus his opinion as to the entry and exit wounds of the victims carry little weight. In addition, the analysis he presented was extremely speculative, as he relied heavily on video footage and his own estimates of the height of the individuals seen in the footage. At times, he was also plainly mistaken as to the content of the evidence before him.[12222] Accordingly, the Chamber does not accept Poparić's conclusion that the wounds on the victims show that two different bullets struck them and that those bullets came from the north rather than the south. Indeed, based on the evidence above, the Chamber is convinced that the opposite happened, namely that one bullet came from the south and that it wounded Sokolović and killed her son Nermin. The Chamber is particularly persuaded here by the medical evidence relating to their wounds[12223] and the report of the CSB Sarajevo report, as well as the footage of the aftermath of the incident, all of which point to the conclusion that the bullet arrived from the south.

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12218 *See* Adjudicated Fact 2945.

12219 *See* Adjudicated Fact 2943.

12220 *See* Adjudicated Fact 2946.

12221 *See* Adjudicated Fact 2946.

12222 *See* para. 3719.

12223 The Chamber notes that the only contradicting medical evidence is the initial report on Sokolović's injuries prepared by the physician who saw her immediately after the incident. The Chamber, however, accepts Bešlić's evidence that this physician made a mistake, which was understandable given the circumstances that doctors were operating under at the time of the incident. The Chamber also finds Bešlić's evidence as to Sokolović's

3728. As for the origin of fire, the Chamber is convinced, relying on adjudicated facts and the evidence of Van der Weijden, as well as the evidence about the presence of well-equipped SRK snipers in Grbavica and particularly in the Metalka building,[12224] that the shot that wounded Sokolović and killed her son was fired from Metalka, which at the time was in the SRK's zone of responsibility. This is further confirmed by the fact that UNPROFOR soldiers, who were at the scene after the incident, returned fire at the SRK The Chamber is also convinced that, given the distance between Metalka and the incident site, the SRK soldier who shot Sokolović and her son was able to see that they were both civilians. Despite that, he proceeded to target them deliberately, as there was no ongoing fighting in the area at the time of the incident. Further, the Chamber notes that all these findings are consistent with the evidence suggesting that the sniper fire in the area of Zmaja od Bosne street came from the Serb side.[12225]

(6) Zmaja od Bosne street, 23 November 1994 (Scheduled Incident F.14)

3729. The Indictment alleges that on 23 November 1994, Afeza Karačić (also referred to as Hafiza Karačić), a 31 year old woman, and Sabina Šabanić, a 26 year old woman, were both wounded in the right shoulder when the tram they were travelling in came under fire on Zmaja od Bosne, between the School of Technology and Maršal Tito Barracks.[12226] In its Final Brief, the Prosecution clarifies that the tram was struck "in the area immediately west of the S-curve" and submits that the fire came either from the four white high-rises or from Metalka.[12227] The Accused argues that the fire came either from the Executive Council building or from the ABiH positions on Golo Brdo.[12228]

3730. On 23 November 1994, Afeza Karačić and her sister took a tram to Otoka, where they lived.[12229] Having left work at 3:30 p.m., Sabina Šabanić took a tram to go home.[12230] Šabanić and Karačić were on the same crowded tram.[12231] Huso Palo was driving this tram westbound on Zmaja od Bosne street in the direction of School of Technology and the Maršal Tito Barracks.[12232] It was

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entry and exit wounds convincing given that he was her doctor and that he examined her wounds on more than one occasion and operated on her twice. *See* para. 3711.

12224 *See* paras. 3658–3660, 3668.

12225 *See* paras. 3621, 3656, 3662. In addition, the Chamber also recalls that it rejected the Accused's arguments that ABiH forces were sniping at Bosnian Muslims civilians throughout Sarajevo. *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

12226 Indictment, Scheduled Incident F.14.

12227 Prosecution Final Brief, Appendix C, para. 20.

12228 Defence Final Brief, para. 2287.

12229 *See* Adjudicated Fact 2955.

12230 P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2. *See also* Adjudicated Fact 2955.

12231 *See* Adjudicated Fact 2955.

12232 P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2; P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1695 (Witness statement of Mirza Sabljica

not yet dusk; the day was cold but there was no fog and the visibility was good.[12233] There were also no leaves on the trees.[12234] Sometime between 3:30 and 4 p.m., when the tram was between the School of Technology and the Maršal Tito Barracks (between the two museums), it was hit by what Huso Palo referred to as a "single bullet", which injured Šabanić and Karačić.[12235]

3731. Sabina Šabanić was standing at the rear of the front section of the tram, facing Grbavica, when the bullet entered an inch below the top of her front right shoulder, passed diagonally down the shoulder, and exited her body some two inches below the top of the shoulder.[12236] Following the incident she spent four days in the Koševo Hospital and is now partially disabled.[12237]

3732. Karačić was standing in the middle of the tram, at the connecting platform between the front and the rear cars of the tram, facing east, when she was shot.[12238] The bullet came from her right, entered her upper right shoulder and exited slightly lower on the right arm, severing a nerve.[12239] Karačić was taken to the Koševo Hospital[12240] and had several operations as a result of which her

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dated 11 February 2010), p. 69; P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 38. *See also* Adjudicated Fact 2958.

12233 P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 4. *See also* Adjudicated Fact 2956.

12234 *See* Adjudicated Fact 2956.

12235 P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2; P492 (Witness statement of Sabina Šabanić dated 22 May 2006), paras. 2, 4; Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1445, 1447–1451, 1457, 1465–1466; P441 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Huso Palo, P120 (Transcript from *Prosecutor v. Milošević*), T. 1535–1536; P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2; P119 (Statement of Huso Palo to BiH authorities, 24 November 1994), p. 2; P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1833 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), e-court p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 69–70; P1721 (Aerial photograph of Sarajevo marked by Mirza Sabljica); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 43; P1836 (Aerial photograph of Sarajevo marked by Dragan Mioković). *See also* Mirza Sabljica, T. 7888–7889 (13 October 2010); D763 (Aerial photograph of Sarajevo marked by Mirza Sabljica); Dragan Mioković, T. 8639–8644 (29 October 2010); D849 (Aerial photograph of Sarajevo marked by Dragan Mioković). *See also* Adjudicated Fact 2958.

12236 P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2; P492 (Addendum to witness statement of Sabina Šabanić dated 16 November 1995, 24 October 2010); P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1450, 1458; P1219 (Medical certificate for Sabina Šabanić) (under seal). *See also* Adjudicated Fact 2961. According to the MUP report compiled after the investigation of this incident, both Šabanić and Karačić were standing at the platform connecting the front and the rear part of the tram. *See* P1833 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), e-court p. 2.

12237 P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2; P492 (Addendum to witness statement of Sabina Šabanić dated 16 November 1995, 24 October 2010). *See also* Adjudicated Fact 2962.

12238 *See* Adjudicated Fact 2959. According to the MUP report compiled after the investigation of this incident, both Šabanić and Karačić were standing at the platform connecting the front and the rear part of the tram. *See* P1833 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), e-court p. 2.

12239 *See* Adjudicated Fact 2960; P1833 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), e-court p. 2; P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 2.

12240 *See* Adjudicated Fact 2962; P1833 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), e-court p. 2; P1545 (Medical record for Hafiza Karačić); P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 2.

arm was shortened by six centimetres.[12241] Due to her injuries, she has an 80% disability; she cannot drive a car or write properly and has difficulty eating with her right hand.[12242]

3733. Huso Palo testified that the shot came from the tram's left-hand side, from one of the four white skyscrapers in Grbavica on Lenjinova street as they were the only location from which the tram could be seen.[12243] However, during cross-examination he explained that he did not know from where the shots were fired.[12244] Given the location of her injury, as well as the fact that these four skyscrapers were thought by the locals to be sniping nests, Šabanić was also of the view that the shots were fired from there.[12245] She also rejected the proposition that there was an exchange of fire when she was wounded, or at any other time when she was walking in this area.[12246] There were no soldiers or military targets in, or in the vicinity of, the tram, and only UNPROFOR soldiers were on the street.[12247] While admitting that the tram was very crowded and that she could not move within it, Šabanić remained adamant that no soldiers were on it because she saw all the passengers when they got off the tram following the sniping.[12248] She confirmed, however, that buildings belonging to BiH civilian authorities and the Presidency were nearby.[12249]

3734. The incident was investigated by an investigating team from CSB Sarajevo, with Mioković as the team leader, and Sabljica as the ballistics expert.[12250] When the team arrived on the scene, the tram had already been moved back to the depot, together with another tram which was shot five minutes earlier, in the same location between the Maršal Tito Barracks and the School of

12241 *See* Adjudicated Fact 2963.

12242 *See* Adjudicated Fact 2963.

12243 P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2; P119 (Statement of Huso Palo to BiH authorities, 24 November 1994), p. 2. *See also* Barry Hogan, T. 11219–11220 (3 February 2011); P2209 (Photograph of Sarajevo marked by Barry Hogan).

12244 Huso Palo, P120 (Transcript from *Prosecutor v. Milošević*), T. 1535, 1539, 1543, 1547.

12245 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1452–1456; P442 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Sabina Šabanić, P491 (Transcript from *Prosecutor v. Perišić*), T. 683–686, 696–697; P467 (Aerial photograph of Sarajevo); P469 (Aerial photograph of Sarajevo marked by Sabina Šabanić); P492 (Witness statement of Sabina Šabanić dated 16 November 1995), p. 2; P492 (Addendum to witness statement of Sabina Šabanić dated 16 November 1995, 24 April 2010); P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 6; P492 (Addendum to witness statement of Sabina Šabanić dated 22May 2006, 24 October 2010).

12246 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1472–1476; P443 (Aerial photograph of Sarajevo marked by Sabina Šabanić); Sabina Šabanić, P491 (Transcript from *Prosecutor v. Perišić*), T. 692–693.

12247 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1457–1458; P492 (Witness statement of Sabina Šabanić dated 22 May 2006), para. 5; P119 (Witness statement of Huso Palo dated 24 February 1996), p. 2. *See also* Adjudicated Fact 2957.

12248 Sabina Šabanić, P491 (Transcript from *Prosecutor v. Perišić*), T. 698–699.

12249 Sabina Šabanić, P491 (Transcript from *Prosecutor v. D. Milošević*), T. 1485–1487; P444 (Aerial photograph of Sarajevo marked by Sabina Šabanić).

12250 P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 4, 39–40; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 69. *See also* Dragan Mioković, T. 8638 (29 October 2010).

Technology.[12251] According to Sabljica, it was therefore not possible to establish the exact origin of fire but the team was able to determine that it came from the tram's left-hand side, from the direction of Sector South and the area of Grbavica.[12252] However, a report prepared by Miokovic, based on the notes he made at the scene,[12253] concluded that the bullet was fired from the south or the southeast and that it came "from the aggressor's position".[12254] Sabljica could not explain the basis for the reference to the "aggressor's position" given that the tram was in a depot when investigated and that the bullet's entry angle could not be determined.[12255]

3735. The CSB Sarajevo reports note that only one bullet was fired at the tram but since no entry point was found it was concluded, based on the damage to the right hand side of the interior of the tram, that the bullet entered through an open window from the left hand side of the tram and that it fragmented into pieces.[12256] According to Sabljica, a bullet can fragment only upon impact with a hard surface so in his opinion the two victims were injured after the bullet impacted a metal plate on the tram and fragmented.[12257] Miokovic, on the other hand, thought that the bullet fragmented before it impacted any surface in the tram, and it was then that the fragments injured the two victims.[12258] However, he also conceded that there was no material evidence that a fragmentation bullet was used here.[12259] Sabljica conceded that the team did not take into account the injuries of

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12251 P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 71; P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), p. 38. *See also* Dragan Miokovic, T. 8638–8639 (29 October 2010).

12252 P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 71. *See also* Mirza Sabljica, T. 7886–7887 (13 October 2010).

12253 P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), pp. 39–40.

12254 P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1. *See also* Dragan Miokovic, T. 8639 (29 October 2010).

12255 Mirza Sabljica, T. 7887 (13 October 2010); P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1.

12256 P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1834 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), p. 38; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 71–72. *See also* Dragan Miokovic, T. 8639 (29 October 2010). The Chamber notes that another BiH MUP report notes that the bullet entered through the rear "right" window of the front section of the tram, which does not seem to be recorded in the English translation of that report. However, given the description of the incident in this report, particularly the direction in which the train was travelling and the direction from which the bullet is said to have come, the reference to the "right" window must have been a description of the position of the said window in relation to other windows on the left hand side of the tram. *See* P1835 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1; P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), p. 41.

12257 According to Sabljica, the metal plate was located "inside the tram on the wall, on the interior tram wall where the bullet hit" and it was "in the upper right-hand side corner of the tram's window frame." *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 71–72.

12258 According to Miokovic, fragmentation bullets can fragment even without impacting something first. Dragan Miokovic, T. 8571–8573 (29 October 2010); P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), pp. 5, 42.

12259 P1830 (Witness statement of Dragan Miokovic dated 26 October 2010), pp. 42–43. Mirza Sabljica testified that some fragments of the bullet jacket were found in the tram but explained that this was not enough to establish

the victims when coming to its conclusion about the bullet entering through an open window, and also confirmed that the team could not establish the angle at which the bullet entered the tram.[12260]

3736. Hogan visited the scene of the incident with one of the victims[12261] and recorded the co-ordinates of the location of the incident, placing it at the intersection between Zmaja od Bosne and Franje Račkog streets instead of further to the west, as recounted by Huso Palo and Sabina Šabanić.[12262] Van der Weijden then visited this site, as well as Grbavica, on 29 November 2006.[12263] Judging by the photographs in his report, and because he used the co-ordinates given to him by the Prosecution, Van der Weijden placed the location of this incident at the intersection of Franje Račkog and Zmaja od Bosne streets, instead of further to the west, near the Maršal Tito Barracks as recounted by Huso Palo and Sabina Šabanić.[12264] As a result, he visited Metalka noting that the rooms in the building offer direct and clear views of the stretch of Zmaja od Bosne, between the Museum and the Faculty of Philosophy.[12265] When in the building, he determined that the tram would be exposed to the shooter located in the building for at least eight seconds.[12266]

3737. Noting that there were multiple victims in this incident and having described their injuries, Van der Weijden concluded that most likely automatic fire was used to shoot at the tram, and that the weapons used would have been either a M84 or a M53 machine-gun in 7.62 mm calibre, mounted on a bipod or a tripod.[12267] He noted that machine-guns are more effective against moving targets, such as trams, that are only temporarily visible.[12268]

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the type of the projectile used in this incident. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 71. *See also* P1714 (BiH MUP Report re sniping incident of 23 November 1994 on Zmaja od Bosne street), p. 1.

12260 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 72.

12261 The Chamber notes that the identity of this victim is not clear from the evidence before it.

12262 Barry Hogan, T. 11204–11206 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

12263 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 95.

12264 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 94.

12265 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 95. Van der Weijden states in his report that the branches of the trees "in the street" will have grown since the war and now obstruct some of the windows that at the time would have also offered an unobstructed view. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 95. *See also* Barry Hogan, T. 11219–11220 (3 February 2011); P2208 (Photograph of Sarajevo marked by Barry Hogan); P2209 (Photograph of Sarajevo marked by Barry Hogan).

12266 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 95.

12267 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 94. *See also* fn. 12122.

12268 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 94.

3738. Poparić analysed this incident using the relevant CSB Sarajevo reports, as well as the statements of Palo, Šabanić, and Karačić.[12269] He concluded that the bullet that struck the tram did not originate from the SRK positions in Grbavica but came from east, from a location with a much higher site angle, such as for example the Executive Council building or the ABiH positions on Golo Brdo.[12270] He based his conclusion on the position at which the two victims were standing in the tram when shot, and their injuries. With respect to Karačić, he pointed out that she was standing facing the back of the tram, at 90 degrees to the axis of the tram—thus, if she had been wounded by a bullet coming from Grbavica, the bullet could not have exited through her upper right arm but would have ended up inside her body or exited on the side of it.[12271] Poparić therefore concluded that her injury could have been caused only by a bullet coming from east, at a high angle of descent.[12272] He also explained that the differences in length between the entry and exit wounds of both victims were great, also suggesting that the bullet had a great angle of descent.[12273] He conceded, however, that he never spoke to Karačić or saw her injuries and that no measurements of her wounds were recorded in the available reports.[12274] He also conceded that he assumed that both her and Šabanić's arms were in straight vertical downwards position by their side when struck and noted that irrespective of the positions of Karačić's arm, had the bullet come from the white high-rises, it would have stayed in her body and not exited on her upper arm.[12275]

3739. Poparić further challenged the report prepared by Mioković, saying that it was impossible for the bullet that entered through an open window to fragment before impacting any obstacle and also to hit the window frame after exiting the body of one of the victims.[12276] He suggested that the bullet did not pass through an open window but through the tarpaulin of the joint on the tram and fragmented at that point, which was then missed by the investigators.[12277] However, in that case, given the injuries to the victims, the bullet could not have come from the SRK positions in

12269 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 145–146. The Chamber notes that Afeza Karačić did not testify in this case and thus the Chamber did not have access to her witness statement.

12270 Mile Poparić, T. 38989–38993 (30 May 2013); D3639 (Satellite image of Sarajevo marked by Mile Poparić); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 149–151.

12271 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 149.

12272 Mile Poparić, T. 38991–38993 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 149.

12273 Mile Poparić, T. 38992–38993 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 151.

12274 Mile Poparić, T. 39277–39278 (5 June 2013).

12275 Mile Poparić T. 39278–39279 (5 June 2013).

12276 Mile Poparić, T. 38989–38991 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 149.

12277 Mile Poparić, T. 38993 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 149, 151.

Grbavica.[12278] Noting the position of the tram as testified to by Karačić in the *Dragomir Milošević* case, namely the intersection of Franje Račkog and Zmaja od Bosne, the joint of the tram would not have been visible from Metalka.[12279]

3740. In addition to the evidence and adjudicated facts outlined above, the Chamber has also tok judicial notice of the following adjudicated facts which go to contentious issues in this incident. They provide as follows: (i) the tram was shot at the intersection in front of the Holiday Inn, or shortly thereafter in front of the Maršal Tito Barracks between the two museums;[12280] (ii) Afeza Karačić and Sabina Šabanić were hit by one single bullet which fragmented;[12281] (iii) it was common for the VRS to fire fragmentation bullets at trams that would fragment on impact, even through glass;[12282] (iv) the origin of fire was either the high-rise buildings on Lenjinova street or the Metalka building, both held by the SRK;[12283] (v) the shots came from SRK-held territory;and were fired by a member of the SRK.[12284]

3741. As far as the exact location of the incident is concerned, the Chamber notes that the majority of the evidence before it places the tram somewhere between the School of Technology and the Maršal Tito Barracks at the moment when it was shot.[12285] The Chamber is therefore convinced that this is the location of the incident. While Hogan's evidence suggests otherwise, the Chamber recalls that it is based on a recollection of a victim of the incident. However, the Chamber does not have any information as to who this victim was. As a result, and given the weight of other evidence, the Chamber does not accept Hogan's GPS co-ordinates as accurate.

3742. The Chamber further considers that this tram was a civilian vehicle, with civilians travelling onboard. In addition, Šabanić and Karačić were civilians and were not taking direct part in hostilities when they were shot and wounded.

3743. In terms of the origin of fire, the Chamber recalls that Poparić reached his conclusion that the bullet came from the Executive Council building or from Golo Brdo, based on a number of assumptions as to the location and the nature of Šabanić's and Karačić's injuries. However, he never checked if his assumptions were correct by talking to the two victims. Furthermore, he is not a doctor and thus his analysis as to whether and where bullets or bullet fragments should have

12278 Mile Poparić, T. 38993 (30 May 2013).
12279 Mile Poparić, T. 38993–38994 (30 May 2013).
12280 Adjudicated Fact 2967.
12281 *See* Adjudicated Fact 2965.
12282 *See* Adjudicated Fact 2966.
12283 Adjudicated Fact 2968.
12284 Adjudicated Fact 2969.

exited the victims' bodies, carries little weight. His analysis in this respect also does not account for the possibility suggested by Sabljica, namely that the bullet fragmented upon impact before hitting the victims, which in turn would have affected the trajectory of the fragments that injured the victims.[12286] Finally, aside from the general direction Šabanić and Karačić were facing when shot, there is no evidence as to the specifics of their body positions, such as whether they were standing with their arms down next to their bodies or whether they were holding onto the handrails, which would have been necessary to know in order to draw definitive conclusions about the bullet's trajectory. Thus, the Chamber does not accept that the approximate angle at which the bullet struck the tram can be determined from the description of the victims' injuries, particularly since the investigators found no traces of the bullet's entry point on the tram and since there is a possibility that the bullet fragmented before striking the victims. For all those reasons, the Chamber does not accept Poparić's conclusion that the fire came from east and from the Executive Council building or Golo Brdo.

3744. The Chamber, relying on the adjudicated facts and the evidence of Šabanić and Palo, is convinced that the bullet that wounded Šabanić and Karačić came from the south, from the SRK positions in Grbavica, most likely from one of the four white high-rises. Given that the SRK snipers in Grbavica, and particularly the snipers located in the four white high-rises, had an excellent view of the area in front of and around Maršal Tito Barracks,[12287] and given that there was no ongoing fighting at the time of the incident, the Chamber is also convinced that the SRK shooter deliberately targeted the tram, while fully aware that it was a civilian vehicle. This is in line with the general evidence the Chamber heard about the prevalence of the SRK sniping in the area of Zmaja od Bosne street and about SRK sniper nests in the white high-rises.[12288]

(7) Zmaja od Bosne street, 27 February 1995 (Scheduled Incident F.15)

3745. According to the Indictment, on 27 February 1995, Senad Kesmer (also referred to as Senad Kešmer), a 31 year old man, Alma Čehajić, a 19 year old woman, Alija Holjan, a 55 year old man, and others were shot and wounded while travelling in a westbound tram on Zmaja od Bosne street, when the tram was near the Maršal Tito Barracks.[12289] In its Final Brief, the Prosecution claims

12285 *See* para. 3730, fn. 12235.

12286 The Chamber also notes that Poparić appears to have assumed when assessing victims' injuries that the bullet struck the tram at a right angle. However, the angle was never established and the victims' injuries in fact appear to be consistent with fire coming at an acute angle.

12287 *See* paras. 3666–3667.

12288 *See* paras. 3621, 3656, 3662. In addition, the Chamber also recalls that it rejected the Accused's arguments that ABiH forces were sniping at Bosnian Muslim civilians throughout Sarajevo. *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

12289 Indictment, Scheduled Incident F.15.

that five persons were wounded in this incident and that the fire on the tram was opened from the white high-rises in Grbavica.[12290] The Accused claims, however, that the fire came from nearby buildings such as the Museum for example, which were under the ABiH control.[12291]

3746. On 27 February 1995, KDZ289 was on a tram on Zmaja od Bosne, travelling westbound from the centre of Sarajevo in the direction of Ilidža.[12292] Also on the tram was Alma Mulaosmanović-Čehajić, who testified that the tram was fairly crowded.[12293] Alija Holjan, a foreman of a street cleaning crew, was sitting on the right-side of the tram, next to an exit.[12294] While the day was cloudy and cold, the weather conditions allowed for good visibility.[12295] The day was also relatively quiet as cease-fire was in place.[12296]

3747. Around noon, while in the area of the Maršal Tito Barracks stop, the tram was shot at.[12297] KDZ289 did not realise at first that the noise she was hearing were shots but then heard passengers scream and felt bullets hit the left hand side of the tram, starting at her seat and moving down towards the back of the tram.[12298] As the shooting continued, the tram kept on driving for a while

12290 Prosecution Final Brief, Appendix C, para. 21.

12291 Defence Final Brief, paras. 2289–2291.

12292 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (Witness statement of KDZ289 dated 2 March 1996), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1616; Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1652; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 73. *See also* Adjudicated Fact 2976.

12293 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1657; Alma Mulaosmanović-Čehajić, T. 6759 (14 September 2010); D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1. *See also* Adjudicated Fact 2979.

12294 Adjudicated Fact 2979.

12295 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1657; Alma Mulaosmanović-Čehajić, T. 6759 (14 September 2010); D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2. *See also* Adjudicated Fact 2978.

12296 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2. *See also* Adjudicated Fact 2977.

12297 Alma Mulaosmanović-Čehajić thought that the tram was just before the Maršal Tito Barracks, when she first heard the shots, although she admitted that she was unable to give the precise location. *See* Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1652–1655, 1661–1664; P1553 (Map of Sarajevo marked by Alma Mulaosmanović-Čehajić); P1554 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić); P1555 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić); D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1. KDZ289 thought that the tram had just left the Maršal Tito Barracks stop when shot, thus placing it further west than Mulaosmanović-Čehajić did. P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (Witness statement of KDZ289 dated 2 March 1996), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1620–1622, 1633; P445 (Map of Sarajevo marked by KDZ289); P446 (Aerial photograph of Sarajevo marked by KDZ289); P447 (Aerial photograph of Sarajevo marked by KDZ289). Mirza Sabljica, while stating that the tram was shot at as it left the Maršal Tito Barracks stop, placed it further to the west than KDZ289. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 73; P1718 (Photograph of Sarajevo marked by Mirza Sabljica).

12298 P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (Witness statement of KDZ289 dated 2 March 1996), p. 2; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1625–1626, 1629–1630.

and then stopped to let the passengers off.[12299] KDZ289 observed a woman who was injured in the leg, as well as an eight or nine year old girl with a wound on her face.[12300]

3748. Mulaosmanović-Čehajić stated that when fired upon, the tram was located somewhere between the two Museums.[12301] She was 18 years old at the time and was wearing a green blouse, a light purple jacket, and blue jeans.[12302] She was standing in the last section of the tram facing the Maršal Tito Barracks,[12303] and was wounded by the bullet which entered her left elbow, "passed through the muscle, slid down the bone and then exited" through her lower arm.[12304] Once she got off the tram, she was taken to the "first aid station" where she saw an elderly woman and an elderly man being brought in too.[12305] Like Mulaosmanović-Čehajić, Holjan was also seriously injured in the incident and taken to the first-aid station of the State Hospital.[12306]

3749. UNPROFOR and the local police arrived at the scene soon after the incident and conducted an investigation[12307] at which point KDZ289 noticed that the left hand side of the tram was riddled with some 30 bullet holes and marks.[12308] KDZ289 testified that because the shots came from her left, they must have come from the "Serbian Army" positions in Grbavica, but she could not say

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12299 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1620–1621, T.1629–1634; P445 (Map of Sarajevo marked by KDZ289); P446 (Aerial photograph of Sarajevo marked by KDZ289); P447 (Aerial photograph of Sarajevo marked by KDZ289); KDZ289, P485 (Transcript from *Prosecutor v. Perišić*), T. 619–622; P468 (Map of Sarajevo marked by KDZ289). Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1662; D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1.

12300 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1.

12301 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1652–1655, 1661–1664; P1555 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić); Alma Mulaosmanović-Čehajić, T. 6754–6755, 6764–6766 (14 September 2010); P1553 (Map of Sarajevo marked by Alma Mulaosmanović-Čehajić); D623 (Map of Sarajevo marked by Alma Mulaosmanović-Čehajić); D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1.

12302 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1657–1658.

12303 Alma Mulaosmanović-Čehajić, T. 6759–6760 (14 September 2010), T. 6789–6790 (15 September 2010); Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1652, 1661–1662.

12304 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1654, 1656, 1658; P1247 (Medical report for Alma Čehajić). *See also* D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1.

12305 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1658; D626 (Alma Mulaosmanović-Čehajić's statement to BiH authorities, 14 April 1995), p. 1. The Prosecution tendered for admission a number of medical records, through Bakir Nakaš, submitting that they were related to this incident, namely, P1546 (Medical record for Rabija Jerlagić); P1549 (Medical report for Senad Kešmer); P1248 (Medical report for Sead Bečić).

12306 *See* Adjudicated Facts 2979, 2980; P1249 (Medical report for Alija Holjan). According to his medical report, Alija Holjan was born in 1939 and thus was around 56 years old at the time of the incident.

12307 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2.

12308 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2; KDZ289, P485 (Transcript from *Prosecutor v. Perišić*), T. 625. *See also* Adjudicated Fact 2983.

where exactly the sniper was located.[12309] During cross-examination in the *Dragomir Milošević* case, she accepted that the territory immediately to her left and up to Miljacka River was in the area of responsibility of the ABiH but also noted that UNPROFOR was stationed in the area around Marin Dvor.[12310] KDZ289 denied that ABiH units were present in the centre of the city.[12311] When faced with an UNPROFOR report[12312] stating that there was an exchange of fire between the ABiH and VRS at the time of this incident, KDZ289 first noted that the report may not be describing the incident she was involved in, and also added that as far as she knew there was no exchange of fire between the two warring factions at the time, although she admitted that she could not be sure.[12313] This was confirmed by Fraser, who having been shown the report, also interpreted it as involving two different incidents, namely a deliberate sniping on a tram and an exchange of fire that took place some 300 metres away at Vrbanja Bridge.[12314]

3750. Mulaosmanović-Čehajić testified that the shots came from behind her, that is, from the direction of Miljacka River, and the neighbourhoods of Grbavica and Vraca, stating that "the firing was not that close, because the sound of it would have been louder."[12315] She identified the origin of fire as being under control of the "Serbian army" on the basis that "everybody knew that".[12316] When asked during cross-examination, if she heard other shots being fired before she heard bullets hitting the tram, Mulaosmanović-Čehajić responded that she thought she may have, but said that she could not be absolutely certain and could not confirm where those initial shots were fired from.[12317] She testified that she heard two bursts of fire, the second one being the one that struck the tram, but denied that this meant that the shots were fired from an automatic rifle with a shorter range and thus could have come from the tall buildings on the northern side of Miljacka River.[12318] Like KDZ289, she too was presented with the UNPROFOR report, which referred to the exchange

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12309 P2413 (Witness statement of KDZ289 dated 2 March 1996), p. 2; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1620, 1622; P445 (Map of Sarajevo marked by KDZ289); P446 (Aerial photograph of Sarajevo marked by KDZ289); KDZ289, P485 (Transcript from *Prosecutor v. Perišić*), T. 617–618.

12310 KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1635–1637, 1640–1641; P448 (Map of Sarajevo marked by KDZ289). *See also* Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1664–1665; Alma Mulaosmanović-Čehajić, T. 6766–6767 (14 September 2010); D624 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić).

12311 KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1637.

12312 *See* P435 (UNPROFOR daily report, 27 February 1995), p. 2.

12313 KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1641–1645.

12314 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 46–50; David Fraser, T. 8129–8131, 8164–8168 (19 October 2010). .

12315 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1652–1655; Alma Mulaosmanović-Čehajić, T. 6754–6755, 6761–6763 (14 September 2010); P1552 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić); P1553 (Map of Sarajevo marked by Alma Mulaosmanović-Čehajić).

12316 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1657.

12317 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1662, 1666–1667.

12318 Alma Mulaosmanović-Čehajić, T. 6762–6763, 6768 (14 September 2010), T. 6786 (15 September 2010).

of fire on that day, but denied any knowledge of such an exchange.[12319] In addition, when told that the exchange of fire took place near Vrbanja Bridge, at first she testified that this location was not far away.[12320] She later noted that Vrbanja Bridge was far enough from the buildings so that she did not hear any cross-fire "as the tram was passing" the buildings adjacent to it.[12321] She then confirmed that there was generally a lot of fighting throughout Sarajevo.[12322]

3751. KDZ289 testified that there was one ABiH soldier on the tram, who was standing next to her at the time the shots were fired but could not remember any others in the tram or in its vicinity before the incident happened.[12323] During her testimony in the *Dragomir Milošević* case, Mulaosmanović-Čehajić testified that she did not remember seeing any soldiers on the tram nor could she remember any combat activity surrounding it,[12324] and explained this fact by noting that she was standing in the last section of the tram, while the soldier in question appears to have been standing next to KDZ289.[12325]

3752. This incident had a major psychological impact on KDZ289. After a medical assessment, she was moved to another job within the company.[12326] Mulaosmanović-Čehajić still suffers from anxiety due to the fear experienced during the conflict although her fears have subsided due to her faith.[12327] After his injury, Alija Holjan was unable to use his right hand for extended periods of time and experienced pain when the weather changed.[12328] He was declared 20% disabled.[12329]

3753. The Chamber received a CSB Sarajevo's case file relating to this incident, containing a number of reports prepared by the CSB Sarajevo investigating team, including those prepared by witnesses Kučanin and Sabljica.[12330] Kučanin, a criminal inspector within CSB Sarajevo, prepared

12319 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1668–1672. *See* P435 (UNPROFOR daily report, 27 February 1995).

12320 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1675–1677; P1552 (Photograph of Sarajevo marked by Alma Mulaosmanović-Čehajić).

12321 Alma Mulaosmanović-Čehajić, T. 6785–6786 (15 September 2010).

12322 Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D Milošević*), T. 1674.

12323 P2413 (KDZ289's statement to BiH authorities, 1 March 1995), p. 1; P2413 (Witness statement of KDZ289 dated 19 April 2006), p. 2; KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1623–1624; KDZ289, P485 (Transcript from *Prosecutor v. Perišić*), T. 624–625.

12324 Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1656.

12325 Alma Mulaosmanović-Čehajić, T. 6759–6760 (14 September 2010), T. 6789–6790 (15 September 2010).

12326 KDZ289, P485 (Transcript from *Prosecutor v. D. Milošević*), T. 1626–1627. *See also* Adjudicated Fact 2982.

12327 Alma Mulaosmanović-Čehajić, P1551 (Transcript from Prosecutor v. *D Milošević*), T. 1659–1660.

12328 *See* Adjudicated Fact 2981.

12329 *See* Adjudicated Fact 2981.

12330 *See* P1729 (BiH MUP Reports re sniping incident of 27 February 1995 on Zmaja od Bosne street).

his report on 28 February 1995.[12331] He testified that the tram was hit by eight bullets, four of which passed through the tram causing entry and exit holes.[12332] Because of the damage caused, the investigators were unable to move it back to the position it was in when hit.[12333] Nevertheless, by interviewing the driver of the tram and determining the angle and direction of fire, the investigators concluded that the fire had come from the "fourth skyscraper in Grbavica" on the Lenjinova street, that is, from the westernmost building.[12334] The report also notes that the tram was found some 100 metres away from where it was shot.[12335] It also reports that five people were injured in this incident,[12336] and that a "deformed 7.62 mm calibre bullet jacket" was found, as well as other bullet fragments, which were then sent for analysis.[12337]

3754. As stated above, Sabljica also participated in the investigation of this incident.[12338] In his earlier testimony in the *Perišić* case he testified, like Kučanin, that the team was able to determine the origin of fire as being one of the four skyscrapers in Grbavica.[12339] However, the ballistics report signed by him on behalf of Međedović, provides that the exact origin of fire could not be determined as the tram could not be moved back to the exact location where it was hit; it also notes that the bullets came from the left hand side of the tram, from the front backwards, from the left to the right, and from above downwards.[12340] When asked in the present case to explain the discrepancy between Kučanin's report and his own ballistics report, Sabljica stated that he stood by the latter and that the most that could be established, given that the tram could not be returned to the location where it was when hit, is that the bullets came from the south, from the direction of

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12331 Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4712–4714; P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 2; P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court pp. 2, 4–6.

12332 P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court pp. 2, 4–5. Mirza Sabljica testified, however, that only two bullets were found inside the tram and had entry and exit holes. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 73.

12333 P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 2.

12334 P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court pp. 2, 5. *See also* Barry Hogan, T. 11219–11220 (3 February 2011); P2209 (Photograph of Sarajevo marked by Barry Hogan).

12335 P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 4.

12336 In addition to Alma Mulaosmanović-Čehajić, the other victims listed are Rabija Jerlagić, Alija Holjan, Senad Kešmer, and Sead Bečić. *See* P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court p. 6. This is confirmed by their medical records, namely, P1546 (Medical record for Rabija Jerlagić); P1549 (Medical report for Senad Kešmer); P1248 (Medical report for Sead Bečić).

12337 P21 (Witness statement of Mirsad Kučanin dated 21 February 1996), e-court pp. 4–6.

12338 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 72–74.

12339 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 73; P1719 (Aerial photograph of Sarajevo marked by Mirza Sabljica).

12340 The report also states that the bullets came in at the angles of 16, six, and seven degrees in relation to the ground. P1729 (BiH MUP Reports re sniping incident of 27 February 1995 on Zmaja od Bosne street), e-court p. 23. According to Sabljica, sometimes reports prepared following an incident would not be consistent with the ballistics report, mostly because the investigators would not wait for the final ballistics report and would instead draw conclusions on the basis of their own findings and observations. Sabljica denied, however, that he and his team were under pressure of any kind to identify particular buildings as the origin of fire. *See* Mirza Sabljica, T. 7693 (11 October 2010), T. 7735 (12 October 2010).

Grbavica.[12341] He could not explain how Kučanin reached the conclusion about the fourth skyscraper.[12342] He also testified that it would be impossible for bullets fired from Vrbanja Bridge to reach the location of the tram incident at the moment at which it was shot due to a number of obstacles and the lack of visibility.[12343]

3755. Hogan visited Zmaja od Bosne with one of the victims of this incident[12344] who, while standing at the intersection between Franje Račkog and Zmaja od Bosne streets, indicated that the location of the incident was between the School of Technology and the Holiday Inn, which is further east from the incident site as recounted by the witnesses above.[12345]

3756. Van der Weijden then visited the incident site, using the co-ordinates given to him by the Prosecution, as well as Grbavica.[12346] In his report, he placed the location of this incident at the intersection of Franje Račkog and Zmaja od Bosne streets, that is the stretch of Zmaja od Bosne between the Museum and the Faculty of Philosophy, instead of further to the west, near the Maršal Tito Barracks, as recounted by the witnesses on the tram.[12347] During cross-examination, however, Van der Weijden recognised this discrepancy and marked the location of the incident so that it coincided with the witnesses' accounts, conceding that for the purposes of his investigation it would have been important for him to know the exact location of the tram when it was hit.[12348]

3757. Noting that there were multiple victims in this incident and having regard to their injuries, Van der Weijden concluded that most likely automatic fire was used to shoot at the tram, and that

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12341 Mirza Sabljica, T. 7689–7693 (11 October 2010).

12342 Mirza Sabljica, T. 7694 (11 October 2010). The Chamber notes that Kučanin's report is dated 28 February 1995 while the other reports in the dossier related to this incident were prepared on the day of the incident, namely 27 February. Thus, it appears that Kučanin had at his disposal all of the information prepared by the investigation team, including witness statements and Sabljica's ballistics report. *See* P1729 (BiH MUP Reports re sniping incident of 27 February 1995 on Zmaja od Bosne street).

12343 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 74.

12344 The Chamber notes that the identity of the victim in question is not clear from the evidence. In the video footage recorded by Hogan he is referred to only as "Witness 61".

12345 In addition, while standing at the intersection between Franje Račkog and Zmaja od Bosne streets, and before the victim indicated the location of the incident, Hogan recorded the co-ordinates of what he referred to as "this location" implying that the co-ordinates taken were those of the location at which he and the victim were standing. Barry Hogan, T. 11204–11206, 11217–11218, 11255–11256 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); D1007 (Video footage re sniping incident of 27 February 1995 on Zmaja od Bosne street); D1008 (Video footage re sniping incident of 27 February 1995 on Zmaja od Bosne street).

12346 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 98.

12347 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 98. Because of this, Van der Weijden visited the Metalka building and noted that the rooms in the building offer direct and clear views of the stretch of Zmaja od Bosne, between the Museum and the Faculty of Philosophy. P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 98.

12348 Patrick van der Weijden, T. 7032–7034 (28 September 2010); D651 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

the weapons used would have been either M84 or M53 machine-guns in 7.62 mm calibre, mounted on a bipod or a tripod.[12349] He noted that machine-guns are more effective against moving targets, such as trams, that are only temporarily visible.[12350]

3758. Poparić analysed this incident and concluded that the bullets came from a small distance, from a nearby building, such as the Museum of Revolution, for example, and not from Grbavica.[12351] He came to this conclusion on the basis of the photographs taken by the CSB Sarajevo investigation team, in particular the photographs showing the entry and exit point of one of the bullets that hit the tram.[12352] According to him, the photographs indicate that what was marked by the investigation team as the exit point of the bullet[12353] was not an exit point but a dot drawn by a felt-tip pen,[12354] whereas in fact the real exit point could be seen below the drawn dot.[12355] The real exit point, according to Poparić, was between 20 and 25 centimetres lower than the bullet's entry point meaning that the bullet entered at a high angle of descent, which would not have been possible from the white high-rises in Grbavica.[12356]

3759. Poparić also recalled that four out of the eight bullets seem to have remained in the panelling of the tram, which indicated to him that they had not come from the white high-rises but rather at a great angle.[12357] Furthermore, the differences in heights between the bullet entry points

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12349 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 97. *See* fn. 12122.

12350 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 97.

12351 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 155, 156. *See also* Mile Poparić, T. 39281–39282 (5 June 2013). When put to him that a gunman shooting from the top of the Museum of Revolution would have been visible from SRK positions in the white high-rises, Poparić stated that the gunman could have opened fire and then hid immediately. *See* Mile Poparić, T. 39281–39282 (5 June 2013); P1738 (Photographs of sniper nests), e-court p. 109.

12352 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 153–155, Images 107, 108, and 109.

12353 The CSB Sarajevo report described that exit point as being "in the same place" as the entry point only on the inside of the tram, thus making the trajectory relatively horizontal. *See* P1729 (BiH MUP Reports re sniping incident of 27 February 1995 on Zmaja od Bosne street), e-court p. 10, Mark 3. *See also* Mile Poparić, T. 38998 (30 May 2013).

12354 Poparić explained that he came to that conclusion because the dot was of the same thickness and colour as the arrow drawn by the investigation team. He did not, however, want to speculate whether that meant that the team on the scene manipulated the evidence on purpose. Mile Poparić, T. 38998–38999 (30 May 2013), T. 39279–39281 (5 June 2013).

12355 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 154, Image 108.

12356 Mile Poparić, T. 38998–39000 (30 May 2013); D3641 (Photograph of a tram marked by Mile Poparić); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 155. Poparić explained that had the bullets come from the white high-rises, they would have had a trajectory of 90 degrees in relation to the axis of the tram. *See* Mile Poparić, T. 38996 (30 May 2013), T. 39184 (4 June 2103).

12357 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 152; Mile Poparić, T. 38997 (30 May 2013), T. 39284–39285 (5 June 2013). Poparić argued that the angle would be even higher if the trace marked with a number 9 on Image 108 in his report was from a bullet. However, the Chamber notes that, according to the CSB Sarajevo report, number 9 marks traces of blood of one

on the panelling of the tram were "very small" according to Poparić, and would have been "far greater" if they had been fired from the white high-rises.[12358] He further stated that these holes were a result of a burst of fire and not due to sniper fire.[12359]

3760. In addition to the evidence outlined above, the Chamber has also taken judicial notice of the following adjudicated facts which go to the origin of fire and which provide as follows: (i) the shots came from the high-rise buildings in Grbavica, to the south of the tram, from SRK-held territory;[12360] (ii) the shots were fired by a member of the SRK;[12361] and (iii) there was a clear view from the high-rise buildings on Lenjinova street in Grbavica onto the intersection at the Maršal Tito Barracks.[12362]

3761. As far as the exact location of the incident is concerned, the Chamber notes that the majority of the evidence before it places the tram somewhere near the Maršal Tito Barracks at the moment it was shot.[12363] The Chamber has no reason to doubt that this is where the incident happened. While Hogan's evidence suggests otherwise, the Chamber recalls that it is based on a recollection of a victim some 11 years after the incident took place. In addition, the Chamber does not have any information as to who this victim was. As a result, and given the weight of the other evidence, the Chamber does not accept Hogan's evidence on this point as accurate.

3762. The Chamber further considers that this tram was a civilian vehicle, with mainly civilians travelling onboard who were not taking direct part in hostilities at the time of the incident. While one ABiH soldier was riding in the front section of the tram, this does not change the fact that on the day of the incident the tram was a civilian vehicle used to transport civilians and as such provided no military advantage to the ABiH, all of which would have been obvious to the shooter.[12364] In addition, the evidence indicates that the tram was fairly crowded at the time, which would have made it difficult– from the SRK positions in Grbavica–to gauge the status of just one of its many passengers. The Chamber is also satisfied, relying on the CSB Sarajevo reports and the medical records, that five people were wounded in this incident, including civilians Alma Mulaosmanović-Čehajić and Alija Holjan.

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of the victims. Mile Poparić, T. 39285–39287 (5 June 2013); D3647 (Photograph showing part of a tram marked by Mile Poparić); P1729 (BiH MUP Reports re sniping incident of 27 February 1995 on Zmaja od Bosne street), e-court p. 11.

12358 Mile Poparić, T. 38997–38998 (30 May 2013).

12359 Mile Poparić, T. 39000 (30 May 2013).

12360 Adjudicated Fact 2984.

12361 Adjudicated Fact 2984.

12362 Adjudicated Fact 2985.

12363 *See* para. 3747, fn. 12297.

12364 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 99.

3763. In terms of the origin of fire, the Chamber recalls that Poparić reached his conclusion that the bullet came from the Museum or any other nearby building, on the basis of a number of speculations, some of which were highly questionable. For example, using a photograph of one of the bullets' exit holes, he posited a theory that somebody drew that hole, thus implicating CSB Sarajevo members in a large-scale conspiracy. In doing so, he relied purely on the visual observation of the thickness and the colour of the dot in relation to the thickness and the colour of the arrow drawn next to it. The Chamber notes, however, that it is simply impossible to make such a definitive conclusion from the photograph in question, and there is nothing on the photograph that suggests that the CSB Sarajevo team drew an exit hole on the tram wall. Further, if Poparić's speculation were true, presumably the investigators would not have at the same time photographed the actual exit point of the bullet according to Poparić. Thus, the Chamber considers it more likely, that the mark on the inside of the tram located below the mark indicated by the arrow as the exit point could have been related to an earlier incident or even completely unrelated to sniping incidents in Sarajevo. The Chamber will therefore not accept Poparić's conclusions as to the origin of fire in this incident.[12365]

3764. While there is a question mark as to whether the fourth white high-rise was the origin of fire in this incident, the Chamber is convinced that the burst of fire that struck the tram came from the south, namely from Grbavica.[12366] In this respect the Chamber notes that the majority of the evidence, including the witness testimony and the ballistics report, clearly indicates that Grbavica was the origin of fire, as do the adjudicated facts. While the Accused also attempted to suggest during cross-examination of KDZ289 and Mulaosmanović-Čehajić that the tram was struck by the bullets due to the exchange of fire on Vrbanja Bridge, the Chamber does not consider this to have been the case in light of Sabljica's evidence that the number of obstacles between the incident site and Vrbanja Bridge makes the Accused's position impossible to maintain.

3765. In terms of the origin of fire, the Chamber is convinced, relying on the evidence outlined above and the adjudicated facts, that the fire came from one of the four white high-rises. This is

12365 The Chamber notes that Poparić does not explain why the fact that four bullets lodged in the tram wall suggested a high angle of descent. The Chamber considers that it is also likely that some of the bullets became lodged in the tram's wall due to the strength of the wall and/or the distance between the shooter and the tram. Indeed, of the eight bullets that hit the tram, only four pierced the tram, three of which did so by passing through the windows. This means that only one of the five bullets that hit the tram wall managed to pierce that wall and reach the inside of the tram. In addition, as noted earlier in fn. 12340, Sabljica determined the angles of descent for three of the bullet marks and they were low rather than high, namely, 16, six, and seven degrees. However, Poparić does not appear to have considered any of this when he made his conclusion as to the high angle of descent. Accordingly, the Chamber finds his evidence entirely unreliable in relation to this incident.

12366 The Chamber is also satisfied, relying on Van der Weijden's evidence, that a machine gun, most likely an M84, was used in this incident and that it had the necessary range to accurately target the tram at that distance. The

consistent both with the approximate location of the tram when shot, the trajectory of the bullets and their angle of descent as described in the CSB Sarajevo report, and the witnesses' testimonies. In addition, it is also consistent with the evidence the Chamber heard throughout this case about the prevalence of SRK sniping on Zmaja od Bosne and the presence of SRK snipers in the four white high-rises.[12367] The Chamber is also satisfied that a machine gun, most likely an M84, was used in this incident and that it had the necessary range to accurately target the tram at that distance. Both the 1st Sarajevo Mechanised Brigade and the 1st Romanija Infantry Brigade had such a machine gun in its arsenal.[12368] Finally, given the visibility between the white high-rises and the location of the incident, the Chamber is also satisfied that the tram was deliberately targeted by the shooter, who would have been fully aware that it was carrying a large number of civilians.

(8) Zmaja od Bosne street, 3 March 1995 (Scheduled Incident F.16)

3766. The Indictment alleges that on 3 March 1995 Azem Agović, a 46 year old man, and Alen Gičević, a 33 year old man, were shot and wounded while travelling in the eastbound tram on Zmaja od Bosne street. According to the Indictment, the tram was near the Holiday Inn when shot.[12369] In its Final Brief, the Prosecution argues that the bullets were fired from the SRK-controlled area of Grbavica.[12370] The Accused claims, however, that the fire came from locations in the ABiH-held territory.[12371]

3767. On 3 March 1995, Slavica Livnjak, a tram driver by profession, was driving her tram on the Zmaja od Bosne street, travelling eastbound in the direction of Baščaršija, with Miljacka River to the right of the tram.[12372] There was another tram in front of her.[12373] The day was bright and sunny.[12374] It was the first day of the Bajram holiday.[12375] Livnjak's tram was full, as it was a

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Chamber is further convinced that both the 1st Sarajevo Mechanised Brigade and the 1st Romanija Infantry Brigade had such a machine gun in its arsenal. *See* fn. 11948.

12367 *See* paras. 3621, 3656, 3662. In addition, the Chamber also recalls that it rejected the Accused's arguments that ABiH forces were sniping at Bosnian Muslim civilians throughout Sarajevo. *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

12368 *See* fn. 11948.

12369 Indictment, Scheduled Incident F.16.

12370 Prosecution Final Brief, Appendix C, para. 22.

12371 Defence Final Brief, paras. 2292–2296.

12372 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 855–856; Slavica Livnjak, P493 (Transcript from *Prosecutor v. Perišić*), T. 643–644; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 8; P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4. *See also* Adjudicated Fact 2987.

12373 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 855–856, 859–860; Slavica Livnjak, P493 (Transcript from *Prosecutor v. Perišić*), T. 644; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 8.

12374 P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 8.

12375 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4. *See also* Adjudicated Fact 2986.

period of cease-fire,[12376] and there were approximately 100 passengers on board, all of whom, according to Livnjak, were civilians.[12377] Alen Gičević and his girlfriend were passengers on this tram.[12378] Also on the tram was Azem Agović.[12379] Gičević, who was an ambulance driver for the ABiH until July 1994,[12380] was standing on the tram's right-hand side, near the third door, facing Vraca, Grbavica, and the Jewish cemetery.[12381] He was wearing black trousers.[12382] Around noon, as the first tram slowed down to take the S-curve in front of the Holiday Inn, its right-hand side came under sniper fire.[12383] Immediately thereafter, the right hand-side of Livnjak's tram also came under sniper fire.[12384] Gičević confirmed that, as the tram was passing the area of the Holiday Inn and the S-curve, he heard two to three shots and was wounded above his right knee.[12385] There was panic on the tram, everybody fell on the floor, and, according to Livnjak, an older man was badly injured in his neck.[12386] Livnjak wanted to get cover for the tram so she continued driving and brought it to a stop near the Executive Council building.[12387]

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12376 In fact, according to Slavica Livnjak, the trams were not in operation from the start of the war to March 1994, when they began operating again, but only in a limited circle line around the centre of Sarajevo, Skenderija, and Baščaršija. Nevertheless, in March of 1995, they would pass the Holiday Inn every four minutes or so. *See* P493 (Transcript from *Prosecutor v. Perišić*), T. 641–643; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 9; Alen Gičević, T. 7650 (11 October 2010). The Accused confronted Alen Gičević with a combat report from the VRS Main Staff which stated that on 3 March 1995 the enemy opened fire in the area of Vrbanja bridge but that the VRS forces were unaffected. When asked if he could see this in the report, Gičević answered in the affirmative and made no other comment about it. *See* Alen Gičević, T. 7650–7653 (11 October 2010); D730 (VRS Main Staff combat report to RS President, 3 March 1995), p. 2.

12377 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 859–860; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 8; P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4.

12378 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4. *See* also Adjudicated Fact 2988.

12379 *See* Adjudicated Fact 2988.

12380 Alen Gičević, T. 7616–7617, 7621–7623 (11 October 2010). *See also* Adjudicated Fact 2989.

12381 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4.

12382 *See* Adjudicated Fact 2989.

12383 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 857–858; P438 (Aerial photograph of Sarajevo marked by Slavica Livnjak); P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), paras. 7–9.

12384 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 857–862; Slavica Livnjak, P493 (Transcript from *Prosecutor v. Perišić*), T. 645; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), paras. 7–9; P438 (Aerial photograph of Sarajevo marked by Slavica Livnjak); P439 (Aerial photograph of Sarajevo marked by Slavica Livnjak); P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 6 March 1995), p. 1; KDZ289, P485 (Transcript from *Prosecutor v. Perišić*), T. 625–626. *See also* Adjudicated Fact 2990.

12385 Alen Gičević, T. 7610–7612 (11 October 2010), 7640–7641; P1690 (Witness statement of Alen Gičević dated 16 February 2010), pp. 4–7; P1691 (Photograph of Sarajevo marked by Alen Gičević); P1693 (Map of Sarajevo marked by Alen Gičević); P1694 (Photograph of Sarajevo marked by Alen Gičević); P1532 (Medical record for Alen Gičević); P1547 (Medical records for Azem Agović and Alen Gičević).

12386 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 7; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 9; P1547 (Medical records for Azem Agović and Alen Gičević). *See* Adjudicated Fact 2992.

12387 P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 9.

3768. Gičević, helped by his girlfriend, went to the nearby State Hospital.[12388] He was operated on seven days after the incident and a fragment of the bullet was removed from his knee.[12389] He continues to feel pain when walking, and also has Hepatitis C, which he believes he contracted through a blood transfusion he received after either this incident or after the sniping incident he was the victim of in 1995.[12390] Furthermore, he is "struggling somehow with the psychological effects" stemming from the "1.000 days of such uncertainty".[12391] Agović was brought by a car to Koševo Hospital where he stayed for a month, 16 days of which were in intensive care.[12392] He required treatment for another three years and initially could not walk far, drive a car, or carry heavy things.[12393]

3769. Gičević was cross-examined by the Accused on the exact location of the tram when it was struck by fire. Despite his first statement to the Prosecution, in which he appeared to be saying that the tram had already passed the Executive Council building when hit,[12394] Gičević remained adamant that the tram was hit before it entered the S-curve (and thus before it passed the Executive Council building).[12395] He explained that he must have made a mistake and that he had always maintained that, once hit, the tram passed the Executive Council building and stopped at Marin Dvor.[12396] Gičević was also asked about another discrepancy in relation to his position in the tram. While in his original statement he had stated that he was standing on the left hand side of the tram when the tram was struck,[12397] in his later statement and testimony in these proceedings, he maintained that he was standing on the right hand side of the tram.[12398] On cross-examination, Gičević remained adamant that he was standing on the right-hand side of the tram when wounded and that, from that position, he could see the Jewish cemetery and Vraca.[12399]

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12388 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 7; Alen Gičević, T. 7641, 7666–7667 (11 October 2010); P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 9. *See also* Adjudicated Fact 2993.

12389 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 8. *See also* Adjudicated Facts 2992, 2993.

12390 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 10. *See also* Adjudicated Fact 2993.

12391 Alen Gičević, T. 7614 (11 October 2010).

12392 *See* Adjudicated Fact 2994.

12393 Adjudicated Fact 2994.

12394 D727 (Witness statement of Alen Gičević dated 15 November 1995), p. 2.

12395 Alen Gičević, T. 7630–7633, 7642–7648, 7667 (11 October 2010); D728 (Photograph of Sarajevo marked by Alen Gičević); D729 (Map of Sarajevo marked by Alen Gičević).

12396 Alen Gičević, T. 7630–7633, 7642–7648, 7663–7666 (11 October 2010); D726 (Photograph of Sarajevo marked by Alen Gičević); D728 (Photograph of Sarajevo marked by Alen Gičević); D729 (Map of Sarajevo marked by Alen Gičević); D736 (Photograph of Sarajevo marked by Alen Gičević).

12397 D727 (Witness statement of Alen Gičević dated 15 November 1995), p. 2.

12398 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 4. *See also* Alen Gičević, T. 7666–7667 (11 October 2010).

12399 Alen Gičević, T. 7633–7634, 7636–7637 (11 October 2011).

3770. Immediately following the incident, the trams travelling behind Livnjak's tram were signalled by the local police and UNPROFOR soldiers at the scene to continue and stop at a safer spot.[12400] As one UNPROFOR soldier was taking a statement from Livnjak,[12401] shots were fired at the incident site again and UNPROFOR returned fire. The exchange lasted for about 15 minutes, resulting in the wounding of an UNPROFOR soldier.[12402]

3771. Livnjak testified that the sniper fire came from her right-hand side, and more specifically from the Metalka building.[12403] KDZ289 (who was present during this incident) and Livnjak both testified that the second round of fire also came from VRS-held positions in Grbavica.[12404] Livnjak also confirmed that the confrontation line was some 50 to 100 metres away from the scene of the incident, across Miljacka River, and that there were no military facilities in the vicinity of the location at which her tram was attacked, nor was there any fighting at the time of the incident.[12405] On cross-examination, she reiterated that there were no uniformed soldiers (other than UNPROFOR soldiers) or any tanks or mortar/artillery pieces where her tram was shot.[12406] Also during cross-examination, she confirmed that her tram consisted of two cars, with two doors each, connected by an "accordion" and that, as it entered the S-curve, it adopted the shape of a crescent and the second car of the tram was then hit, between the accordion and the third door from the front.[12407]

3772. Gičević testified that he was sure that shots came from the south, either from Grbavica or the Jewish cemetery. He also identified two buildings in that area, namely the Metalka building and the tall white high-rise from where he thought the shots could have come from.[12408] He believed that the bullets were fired from one of these two buildings because these buildings were

12400 P2413 (KDZ289's statement to BiH authorities, 6 March 1995), p. 1.

12401 P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 10.

12402 P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 6 March 1995); p. 1; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court pp. 2, 4, 5.

12403 P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 9. *See also* Barry Hogan, T. 11219–11220 (3 February 2011); P2208 (Photograph of Sarajevo marked by Barry Hogan); P2209 (Photograph of Sarajevo marked by Barry Hogan).

12404 P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P2413 (Witness statement of KDZ289 dated 16 November 1995), p. 2; P2413 (KDZ289's statement to BiH authorities, 6 March 1995), p. 1.

12405 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 862–863; Slavica Livnjak, P493 (Transcript from *Prosecutor v. Perišić*), T. 649–650; P495 (Witness statement of Slavica Livnjak dated 20 November 1995), p. 2; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), paras. 9, 12–13. *See also* Adjudicated Facts 2986, 2991.

12406 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 874, 877–878. *See also* Adjudicated Fact 2991.

12407 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 865–869.

12408 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 5; P1693 (Map of Sarajevo marked by Alen Gičević); Alen Gičević, T. 7634–7638 (11 October 2010). *See also* Barry Hogan, T. 11219–11220 (3

fired from before.[12409] He also stated that there were no military installations near the incident site except for the Maršal Tito Barracks, some 400 to 500 metres away, where UNPROFOR was based.[12410] Further to the west of the Maršal Tito Barracks was the building of the traffic police.[12411] He conceded that the Executive Council building, the Museum complex, the Assembly building, and the Faculty of Philosophy were all in the area of responsibility of the ABiH but said they were "merely observation posts manned by few soldiers".[12412]

3773. The incident was investigated by a CSB Sarajevo team, including, *inter alia*, an investigating judge, two ballistics experts, Međedović[12413] and Sabljica,[12414] and an investigator, Mioković.[12415] Mioković was the team leader for the on-site investigation,[12416] and the site was also visited by the investigating judge.[12417] According to the reports prepared by this team, the incident happened at the cross-roads of Franje Račkog and Zmaja od Bosne streets, and resulted in injuries to three persons, namely Alen Gičević, Azem Agović, and another man.[12418] The investigation was conducted at the Marin Dvor stop, some 200 to 300 metres from the site of the incident.[12419] The

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February 2011); P2208 (Photograph of Sarajevo marked by Barry Hogan); P2209 (Photograph of Sarajevo marked by Barry Hogan).

12409 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 6.

12410 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 6; P1694 (Photograph of Sarajevo marked by Alen Gičević).

12411 P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 6; P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 30–31; P1831 (Photograph of Sarajevo marked by Dragan Mioković).

12412 Alen Gičević, T. 7628–7631, 7638–7639 (11 October 2010); D725 (Photograph of Sarajevo marked by Alen Gičević).

12413 P129 (Witness statement of Zlatko Međedović dated 20 November 1995), p. 3; P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 5. For Zlatko Međedović's qualifications, *see* P129 (Witness statement of Zlatko Međedović dated 20 November 1995), pp. 2–3; P130 (Witness statement of Zlatko Međedović dated 5 September 2000), pp. 3–5.

12414 P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 7.

12415 P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court pp. 5, 7. This team did not investigate the wounding of the French UNPROFOR soldier as that soldier's command wanted to conduct its own investigation. *See* Mirza Sabljica, T. 7683 (11 October 2011); P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 5.

12416 Dragan Mioković, T. 8610–8612 (29 October 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 25, 29. For Dragan Mioković's qualifications, *see* Dragan Mioković, T. 8544–8545, 8548–8551 (28 October 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 2, 28–29.

12417 Dragan Mioković, T. 8612 (29 October 2010); P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 4.

12418 P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street). *See also* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 32; P1832 (Photograph of Sarajevo marked by Dragan Mioković); Dragan Mioković, T. 8613–8615, 8624 (29 October 2010); D846 (Photograph of Sarajevo marked by Dragan Mioković).

12419 Dragan Mioković, T. 8613–8615, 8624, 8632–8633 (29 October 2010); D846 (Photograph of Sarajevo marked by Dragan Mioković); D847 (Photograph of Sarajevo marked by Dragan Mioković); D848 (Photograph of Sarajevo marked by Dragan Mioković). *See also* P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 3.

team found a hole with an entry and exit points in the right hand side of the tram's body.[12420] Međedović concluded that this damage was caused by a bullet which was fired from the right side of the tram, "from back to front, from right to left, and from above downwards".[12421] The trajectory of this bullet, in relation to the right side of the tram, was 80 degrees, while, in relation to the ground, it was 4 degrees.[12422] Međedović testified that, since the tram was moving when fired upon, the team could not identify the precise location at which it was hit, and, as a result, could not determine the precise origin of fire.[12423] However, it was able to determine that the fire came from the south, from "enemy positions in Grbavica".[12424] Mioković, like Međedović, testified that the team was unable to pinpoint the exact location of the sniper in this incident, and he could not say from which side of Miljacka River the bullet came.[12425] Mioković also conceded that the area in and around Franje Račkog street, south of Zmaja od Bosne and north of Miljacka River, was in the area of responsibility of the ABiH,[12426] but testified that the team never investigated the possibility that the bullet may have come from one of the buildings in the ABiH controlled territory.[12427] When asked if the fact that three people were injured by what appeared to be one bullet meant that a fragmentation bullet was used in this attack, Mioković responded that he could not say this with certainty on the basis of BiH MUP reports, as the three victims could have been injured by regular bullet ricocheting.[12428]

3774. When visiting Zmaja od Bosne street with one of the victims, Hogan recorded the co-ordinates of the location of the incident, placing it at the intersection between Zmaja od Bosne and Franje Račkog streets.[12429] He also testified that both Metalka and the four white high-rises in Grbavica had a view of this site.[12430] Van der Weijden also visited the incident site, the Jewish

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12420 P157 (BiH MUP Report re sniping incident of 3 March 1995 on Zmaja od Bosne street); P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 13. *See also* Dragan Mioković, T. 8634, 8638–8637 (29 October 2010).

12421 P157 (BiH MUP Report re sniping incident of 3 March 1995 on Zmaja od Bosne street).

12422 P157 (BiH MUP Report re sniping incident of 3 March 1995 on Zmaja od Bosne street).

12423 P129 (Witness statement of Zlatko Međedović dated 20 November 1995), p. 3.

12424 P1727 (BiH MUP Reports re sniping incident of 3 March 1995 on Zmaja od Bosne street), e-court p. 2. *See also* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 32; Dragan Mioković, T. 8625–8627 (29 October 2010); D846 (Photograph of Sarajevo marked by Dragan Mioković).

12425 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 28.

12426 Dragan Mioković, T. 8635–8636 (29 October 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 27.

12427 Dragan Mioković, T. 8636 (29 October 2010).

12428 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 26.

12429 Barry Hogan, T. 11204–11206, 11217–11218 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

12430 Barry Hogan, T. 11218–11220 (3 February 2011); P2208 (Photograph of Sarajevo marked by Barry Hogan); P2209 (Photograph of Sarajevo marked by Barry Hogan).

cemetery, and Grbavica.[12431] Having done so he did not consider the Jewish cemetery to have been the source of fire in this incident because of the "lack of warning" for approaching trams coming from the west, which is the direction from which the two trams were travelling on 3 March 1995.[12432] Van der Weijden visited the Metalka building noting that the rooms in the building offer direct and clear views of the stretch of Zmaja od Bosne, between the Museum and the Faculty of Philosophy.[12433] He also determined that the tram would be exposed to the shooter located in the Metalka building for at least eight seconds.[12434] Noting that there were multiple victims in this incident and having seen the medical reports relating to their injuries, Van der Weijden concluded that most likely automatic fire was used to shoot at the tram, and that the weapons used would have been either an M84 or an M53 machine-gun in 7.62 mm calibre, mounted on a bipod or a tripod.[12435] He noted that machine-guns are more effective against moving targets, such as trams, that are only temporarily visible.[12436]

3775. Poparić testified that the tram was not hit from the Metalka building but from locations in ABiH-held territory.[12437] According to him, the wound sustained by Agović, while sitting in a specific seat in the tram, did not correspond with the incoming trajectories of a projectile fired from the Metalka building.[12438] He based this finding on the specific seat which was photographed by the CSB Sarajevo investigation team and was at an angle of 45 degrees vis-à-vis the tram wall, as well as on the injuries Agović described in his evidence in another case before this, namely that the bullet entered above his left hip, passed through his body, and exited on his right side.[12439] Poparić did concede, however, that he did not know the specific position Agović was seated in and simply assumed that Agović's sitting position was "normal", that is, that he was facing directly forward while in his seat.[12440] Poparić also pointed out that the witnesses all gave contradictory statements

12431 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 101.

12432 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 101.

12433 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 101. Van der Weijden states in his report that the branches of trees "in the street" will have grown since the war and now obstruct some of the windows that at the time would have also offered an unobstructed view. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 101.

12434 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 102.

12435 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 100. *See* fn. 12122.

12436 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 100.

12437 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 159–160.

12438 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 159.

12439 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 157, Image 110; Mile Poparić, T. 38930–38931 (29 May 2013). *See also* Mile Poparić, T. 38933–38936 (29 May 2013); D3633 (Diagram re sniping incident of 3 March 1995 on Zmaja od Bosne marked by Mile Poparić).

12440 Mile Poparić, T. 39240–39241 (4 June 2013).

as to the location of the tram when hit and stated that even if Gičević's first statement was correct and the tram was hit after it passed the Executive Council building, the fire would have still come from the ABiH-held positions.[12441]

3776. In addition to the evidence outlined above, the Chamber has also taken judicial notice of the following adjudicated facts which go to the origin of fire: (i) more than one bullet hit the tram and injured Azem Agović and Alen Gičević;[12442] (ii) the shots came from Grbavica, which was SRK-held territory;[12443] (iii) the shots were fired by a member of the SRK;[12444] and (iv) the visibility on the day of the incident was sufficient for a shooter to identify the victims as civilians.[12445]

3777. As far as the exact location of the incident is concerned, the Chamber notes that the evidence before it places the tram at the intersection of Franje Račkog and Zmaja od Bosne streets at the moment it was shot.[12446] Contrary to Poparić's testimony that the witnesses were inconsistent as to the tram's location, Gičević and Livnjak were in fact consistent on that issue. While at first he seemed to indicate a different location, the Chamber is satisfied with Gičević's explanation as to why that happened and notes that he was adamant that the tram was hit when passing the Holiday Inn and entering the S-curve. The Chamber also notes that Livnjak's evidence was given from the vantage point of a tram driver with another tram targeted in front of her. She first saw the sniping of that tram, as it slowed down to enter the S-curve, and then anticipated that the same would happen to her as she entered the S-curve. The Chamber finds her evidence on the location particularly credible and corroborative of Gičević's evidence. Accordingly, the Chamber is not convinced by Poparić's evidence that all witnesses testified to a different location.

3778. The Chamber further considers that this tram was a civilian vehicle, with around 100 civilians travelling onboard and that both Gičević and Agović were civilians, not taking direct part in hostilities at the time of the incident.

3779. The Chamber does not accept Poparić's evidence that the fire in this incident came from the locations in the ABiH territory. Poparić based this conclusion on the location and nature of Agović's injuries in relation to the location of his seat in the tram and his seating position. He also conceded that he simply assumed Agović's seating position was "normal". However, as noted

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12441 Mile Poparić, T. 38928–38930, 38931–38933 (29 May 2013); D3631 (Satellite image of Sarajevo marked by Mile Poparić); D3632 (Satellite image of Sarajevo marked by Mile Poparić); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 156.

12442 Adjudicated Fact 2996.

12443 Adjudicated Fact 2995.

12444 Adjudicated Fact 2995.

12445 Adjudicated Fact 2997.

12446 *See* paras. 3768–3769.

above, the Chamber heard that the tram was full, with approximately 100 passengers onboard. Thus, it is also possible that Agović was sitting in his chair squeezed into the wall of the tram and thus with his left hip parallel to the wall. However, Poparić does not seem to have even considered that possibility. Further, Poparić never spoke to Agović to determine his actual seating position and the exact nature of his injuries. Accordingly, the Chamber does not accept the conclusions Poparić drew about the origin of fire as they were, at best, highly speculative.

3780. The Chamber is satisfied that the fire originated from Grbavica and more specifically from the Metalka building, which was held by the SRK at the time. In this respect, the Chamber relies on the adjudicated facts as well as the ballistics report which found an angle of descent to have been four degrees, which is in turn consistent with fire coming from Metalka.[12447] Furthermore, the witnesses were all consistent that the source of fire was Metalka. While Gičević thought that the fire could have also come from the Jewish cemetery, Van der Weijden excluded that possibility due to lack of visibility. The Chamber also recalls that following the shooting on the tram, some of the witnesses were able to observe the exchange of fire between UNPROFOR and the SRK in Grbavica thus confirming that the fire on the tram came from SRK-held positions in Grbavica. Given the visibility on the day and relatively small distances involved, the Chamber is also convinced that the SRK shooter deliberately targeted the tram in question while fully aware of its civilian status. The Chamber notes that all these findings are consistent with the evidence it heard about the preponderance of SRK sniper fire in the area of Zmaja od Bosne.[12448]

(B) Southwestern suburbs: Dobrinja, Nedžarići, Alipašino Polje

3781. Dobrinja is a suburb of Sarajevo that lies to the western end of Sarajevo, close to the Butmir airport, and was constructed for the Winter Olympics in 1984.[12449] It is divided into several apartment blocks, namely Dobrinja 1, 2, 3, 4, 5, C4, and the Airport Settlement.[12450] It is a predominantly residential area with a number of high-rises, most of which are six storeys high and some of which have seven or eight storeys.[12451] The Lukavica Barracks are located to the east of Dobrinja, Butmir airport is to the south of Dobrinja, the suburb of Nedžarići is to the west and northwest of Dobrinja, and Mojmilo Hill and Alipašino Polje are located to the north of

12447 The Chamber recalls that Van der Weijden calculated that the angle of descent of a bullet fired from Metalka would have been around four or five degrees. *See* Patrick van der Weijden, T. 7015–7017 (27 September 2010), T. 7059 (28 September 2010).

12448 *See* paras. 3621, 3656, 3662. In addition, the Chamber also recalls that it rejected the Accused's arguments that ABiH forces were sniping at Bosnian Muslim civilians throughout Sarajevo. *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

12449 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 8. *See* Adjudicated Fact 89.

12450 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 8.

12451 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 8.

Dobrinja.[12452] Like Dobrinja, Alipašino Polje is a residential neighbourhood.[12453] Nedžarići consisted mostly of low buildings, one or two storeys high.[12454]

3782. Until mid-June 1992, the Serb Forces held the Butmir airport and Mojmilo Hill, and were also positioned in Nedžarići and the Lukavica Barracks, thus cutting off communications between Dobrinja and the Sarajevo centre.[12455] In mid-June 1992, the ABiH took control of Mojmilo Hill thus establishing contact with the city, while the airport was handed over to UNPROFOR in late June 1992.[12456] In addition, after July 1993, Dobrinja was connected to Butmir via a tunnel built by the ABiH under the airport runway; many people would pass through the tunnel, including ABiH units, even though the entrance and the exit were frequently shelled by the Bosnian Serbs.[12457] The purpose of the tunnel was to make it easier to get in and out of Dobrinja and Sarajevo proper, for both soldiers and civilians, and to get humanitarian aid into the city.[12458] People who were not using the tunnel would run across the airstrip to come to Butmir and would get targeted.[12459]

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12452 P1739 (Map of Dobrinja); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 10; Youssef Hajir, T. 8787 (1 November 2010).

12453 *See* Adjudicated Fact 82.

12454 *See* Adjudicated Fact 84.

12455 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 10–11; Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3515; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 62; Aernout van Lynden, T. 2413–2414 (19 May 2010); P2019 (BBC news report Dobrinja, with transcript). *See* Adjudicated Fact 90.

12456 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 10, 12, 30; Youssef Hajir, T. 8804–8805 (1 November 2010); D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 5; Milenko Inđić, T 32418–32419 (22 January 2013); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 62; Aernout van Lynden, T. 2413–2414 (19 May 2010). *See* Adjudicated Facts 11, 2834. *See also* para. 339.

12457 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 36; D856 (Excerpts from Nedžad Ajnadžić's book entitled "Odbrana Sarajevo"), p. 2; Mirsad Kučanin, P17 (Transcript from *Prosecutor v. S. Milošević*), T. 28974; P27 (Witness statement of Mirsad Kučanin dated 4 September 2000), p. 4 (testifying that the tunnel opened shortly before October 1993); P2414 (Witness statement of KDZ182), pp. 84–86 (under seal); Dragomir Milošević, T. 32799–32800 (29 January 2013); Stanislav Galić, T. 37380 (18 April 2013), T. 37565 (23 April 2013); P1056 (UNPROFOR letter to Ratko Mladić, 31 May 1993); KDZ185, T. 4276–4277 (29 June 2010) (private session); P2407 (Witness statement of KDZ304), pp. 34–35. Asim Džambasović testified that ABiH units would pass through the tunnel after it was opened. *See* Asim Džambasović, T. 15261–15262 (23 June 2011). The total length of the tunnel was 672 metres whereas its height ranged between 150 and 170 centimetres. D856 (Excerpts from Nedžad Ajnadžić's book entitled "Odbrana Sarajevo"), p. 3.

12458 Youssef Hajir, T. 8838–8842 (2 November 2010); D856 (Excerpts from Nedžad Ajnadžić's book entitled "Odbrana Sarajevo"); Adrianus van Baal, T. 8516 (28 October 2010); Michael Rose, T. 7573 (8 October 2010); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 127; Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4204; John Wilson, T. 4117–4118, 4119 (23 June 2010); David Harland, T. 2113 (7 May 2010); Dušan Zurovac, T. 30295 (14 November 2012); Colm Doyle, T. 2867 (27 May 2010).

12459 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 36; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6176–6177; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 19; Hussein Abdel-Razek, T. 5658–5660 (21 July 2010) (testifying that Galić told him that UN should stop the crossings otherwise the SRK would continue to fire); D523 (UNPROFOR daily report, 10 January 1993); P6060 (Record of interview with KDZ185), e-court p.17; P1054 (UNPROFOR protest letter to Stanislav Galić, 10 February 1993); D2870 (Official note of Ilidža SNB, 25 November 1992); D2871 (Official note of Ilidža SNB, 3 December 1992) (noting that both civilians and military personnel were crossing across the airport runaway). In order to prevent the killings at the airport, UNPROFOR managed to negotiate an

3783. The conflict in Dobrinja began on the night between 2 and 3 May 1992 after which the shelling and sniping did not cease until the end of the war.[12460] Dobrinja residents, some 25,000 to 30,000 of them during the conflict,[12461] would spend nights in cellars of their apartments but would get out during the day, when it was peaceful, to get some food.[12462] According to Youssef Hajir, a doctor who established and worked in Dobrinja Hospital during the conflict,[12463] there were no organised military units in the area in May 1992, only about 100 "unorganised people who were armed".[12464]

3784. Around the end of 1992, after the confrontation line became established, residents of the ABiH-controlled part of Dobrinja became aware of sniping incidents at certain intersections.[12465] Sniping would come mainly from Mojmilo, Lukavica, and Dobrinja 4.[12466] As a result, barricades, usually bags filled with sand, containers, metal sheeting, or blankets, were erected as protection against sniper fire at those locations.[12467] Even with those barricades, however, walking around the neighbourhood and between the buildings was very dangerous.[12468] In addition, the people who went down to the Dobrinja river to fetch water for cooking and washing would get fired at.[12469]

3785. There was no water in Dobrinja during the conflict, but there were five wells where people would line up to get water.[12470] These water lines were shelled about 15 or 20 times.[12471] There

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agreement with the Bosnian Serbs and Bosnian Croats to allow UNPROFOR to transport people out of Sarajevo through the airport. However, the agreement was never implemented as the Bosnian Muslim side opposed it, in particular whent it came to Bosnian Serbs living in Sarajevo. *See* P6060 (Record of interview with KDZ185), e-court pp. 17–18; P5908 (Record of interview with KDZ185), para. 4; P1064 (SRK combat report, 10 February 1993), p. 2; KDZ185, T. 4231–4234 (28 June 2010) (private session). *See also* Hussein Abdel-Razek, T. 5662–5665 (21 July 2010) (testifying that UN was not allowed to cater to requests for people to leave the city as that was considered a type of ethnic cleansing); Pyers Tucker, T. 23233 (18 January 2012).

12460 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 12, 17; Youssef Hajir, T. 8805 (1 November 2010). For example, Slavica Livnjak who lived in Dobrinja testified that some time in July of 1992, her husband was wounded when a bullet hit a wall of their apartment and then hit her husband on his right cheek. *See* Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 872–873; P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 5.

12461 Hajir testified that before the war Dobrinja had around 40,000 residents but this number reduced to between 25,000 and 30,000 people during the war. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), fn. 91; Youssef Hajir, T. 8836–8837 (2 November 2010).

12462 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 12, fn. 91.

12463 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 1–2, 25–33; Youssef Hajir, T. 8786–8787, 8808 (1 November 2010); P1870 (Excerpts from Youssef Hajir's book entitled "Dobrinja Hospital").

12464 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 14; Youssef Hajir, T. 8845–8846 (2 November 2010). *See also* John Wilson, T. 3993–3994 (21 June 2010); D330 (Ilidža Police Station note re Green Berets in Dobrinja, 23 May 1992).

12465 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3516–3517.

12466 According to Hajir, a large number of snipers were located in Dobrinja 4 as they had a good view from there. P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 19–20.

12467 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3517, 3533.

12468 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3534. *See* Adjudicated Facts 114, 128.

12469 Sanija Dževlan, T. 11744–11745 (14 February 2011).

12470 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 48.

were also fuel and food shortages, especially at the beginning of the conflict, but UNPROFOR eventually provided aid—the French Battalion at the airport and the UN at the PTT building regularly provided food, fuel, and medical supplies to the hospital, which allowed it to survive throughout the war.[12472]

3786. People killed in Dobrinja were buried close to where they were killed, often in parks and people's yards, as the one cemetery in the area was full and it was too dangerous to give them a proper burial.[12473]

(1) Confrontation lines and snipers in the area

3787. Dobrinja was divided between ABiH and VRS units and the confrontation line ran along the road between the apartment blocks referred to as Dobrinja 3 and Dobrinja 4.[12474] Dobrinja 1, Dobrinja 4, and the Airport Settlement were under Serb control.[12475] The SRK's Ilidža Brigade was positioned in the area and its zone of responsibility ran from Dobrinja, across the Airport Settlement, Nedžarići, along the Dobrinja river, Pijačna street, and the railroad to Miljacka River.[12476] The other side of Dobrinja, namely the area between Dobrinja and Lukavica, was first in the zone of responsibility of the 2nd Sarajevo Light Infantry Brigade and then was transferred, after August 1993, to the responsibility of the 1st Sarajevo Mechanised Brigade of the SRK.[12477]

3788. Alipašino Polje was on the ABiH side of the confrontation line which separated it from Nedžarići,[12478] which was under Serb control.[12479] The line at this point extended from west to east

12471 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 48.

12472 Hajir explained that the aid depended on the airport being open so during the periods when the Serbs closed the airport the situation was more difficult for the population in Dobrinja. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 51.

12473 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 55; Youssef Hajir, T. 8796–8797 (1 November 2010), T. 8854–8855 (2 November 2010); P803 (Sky Newsreport, with transcript).

12474 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 873; Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), 3515–3516, 3528–3529; P2294 (Map of Sarajevo marked by Sanija Dževlan); D1254 (Decision on the Formation of the Serbian Municipality of Ilidža, 8 May 1992).

12475 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 20; Youssef Hajir, T. 8806 (1 November 2010); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac); Neđeljko Prstojević, T. 13561–13562 (17 March 2011); Adjudicated Facts 91, 2832.

12476 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 14; D2589 (Map of Sarajevo marked by Vladimir Radojčić); Stanislav Galić, T. 37162–37168 (15 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); D3382 (Map of Sarajevo).

12477 D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 11–12; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2790 (Map of Sarajevo marked by Dragomir Milošević).

12478 *See* Adjudicated Fact 83; Richard Mole, T. 5842–5845 (17 August 2010); P1430 (Map of Sarajevo marked by Richard Mole); D537 (Map of Sarajevo marked by Richard Mole).

12479 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30563–30564 (28 November 2012); P6009 (Map of Sarajevo marked by Mile Sladoje); D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), paras. 34–35; D2555 (Map of

and curved into ABiH controlled territory.[12480] The result was that Nedžarići was bordered on three sides by territory controlled by the ABiH; a west-running corridor connected this neighbourhood with the more expansive SRK-controlled territory to the west.[12481] The portion of Nedžarići east of Ante Babića street and south of Đure Jakšića street (now renamed Adija Mulaobegovića), where there are higher buildings, was controlled by the ABiH, together with Alipašino Polje.[12482]

3789. Mile Sladoje, who was with the 1st Battalion of the Ilidža Brigade in Nedžarići throughout the war,[12483] and Svetozar Guzina, who commanded that Battalion from 1993 onwards,[12484] both testified that the 1st Battalion's zone of responsibility included buildings such as the Faculty of Theology and the School for the Blind, as well as the Nedžarići Barracks and a check-point on Kasindolska street.[12485] Guzina explained that both the School for the Blind and the Faculty of Theology were very important facilities in the area—the former was a dominant building and faced the Oslobođenje building and the student dormitories, while the latter was not very tall but dominated that part of the area and had a view of Mojmilo Hill and Dobrinja.[12486] In the area of the School for the Blind, the ABiH and SRK forces were only a few metres apart.[12487] On the other side of Dobrinja, towards Lukavica, was an Orthodox Church, which could be seen from the three bridges that linked Dobrinja 2 to Dobrinja 3.[12488] The church was in the zone of responsibility of the 1st Sarajevo Mechanised Brigade of the SRK.[12489]

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Sarajevo marked by Svetozar Guzina); D2556 (Map of Sarajevo marked by Svetozar Guzina). *See* Adjudicated Fact 2833.

12480 *See* Adjudicated Fact 83.

12481 *See* Adjudicated Facts 83, 84.

12482 *See* Adjudicated Fact 85.

12483 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 2, 5; Mile Sladoje, T. 30562 (28 November 2012).

12484 Guzina was the Commander of the 5th Battalion until 1993 when the Ilidža Brigade was re-organised thus turning the 5th Battalion into the 1st Battalion. *See* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), paras. 34–35.

12485 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30563–30564 (28 November 2012); P6009 (Map of Sarajevo marked by Mile Sladoje); D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), paras. 34–35; D2555 (Map of Sarajevo marked by Svetozar Guzina); D2556 (Map of Sarajevo marked by Svetozar Guzina). Nedžarići Barracks was located some 300 to 350 metres away from the School for the Blind and some 150 to 200 metres from the Faculty of Theology. *See* Mile Sladoje, T. 30563 (28 November 2012). Guzina testified that the area around Kasindolska street was surrounded by Muslims on all three sides which meant that the battalion suffered more casualties than any other battalion in the brigade. *See* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 35.

12486 According to Guzina, the tallest building in Nedžarići, namely the Old People's Home, was occupied by an UNPROFOR observation post. It was located some 100 metres in front of the Faculty of Theology. *See* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 36; D2557 (Map of Sarajevo marked by Svetozar Guzina), Svetozar Guzina, T. 31153–31155 (6 December 2012), T. 31173, 31190 (11 December 2012); P6037 (Map of Sarajevo marked by Svetozar Guzina).

12487 *See* Adjudicated Fact 86.

12488 *See* Adjudicated Fact 93.

12489 Blagoje Kovačević, T. 29041 (18 October 2012).

3790. The 1st Battalion numbered about 300 men[12490] and had infantry weapons, 82 and 120 mm mortars, a tank, and two APCs.[12491] In terms of infantry weapons, the 1st Battalion had M48 and M76 rifles with scopes.[12492] Vladimir Radojčić, the Commander of the Ilidža Brigade from January 1993,[12493] testified that the whole Ilidža Brigade had about 30 snipers, half of whom used M76 rifles, while the other half used M48 rifles with improvised sights.[12494] As for the mortars, those were located around the Faculty of Theology, while the tank was at the Nedžarići Barracks.[12495] The Battalion also had machine guns, as well as a recoilless gun, which were positioned at the Faculty of Theology and were used to open fire on Dobrinja 2 and 3 and Alipašino Polje.[12496] Radojčić testified that the Faculty was not used as a sniper nest but rather as an observation post.[12497]

3791. While the Ilidža Brigade had snipers in the section of Dobrinja it held, according to Stanislav Galić, the Commander of the SRK between September 1992 and August 1994,[12498] the ABiH controlled the high-rise in Mojmilo and thus had better control and over-view of the area.[12499] Galić also testified that ABiH was most active in the direction of Dobrinja and Nedžarići[12500] and confirmed that parts of ABiH-held Dobrinja were under constant fire.[12501]

3792. The units opposing the 1st Battalion belonged to the 101st Brigade of the 1st Corps of the ABiH, positioned in Alipašino Polje and Vojničko Polje, and the 102nd Brigade of the 1st Corps of

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12490 Sladoje testified that there was not a single professional officer in his battalion. *See* D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 6, 20.

12491 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 6; Vladimir Radojčić, T. 31236 (11 December 2012).

12492 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 21; P6014 (Reply of Ilidža Brigade to SRK order, 31 October 1993). Guzina at first denied having sniper rifles or trained sniper shooters in the battalion, stating that there was no need for them given the proximity of warring parties on the confrontation line. He later explained that the 4th Company of his battalion had three snipers with M76 rifles, which were positioned towards Butmir airport. *See* Svetozar Guzina, T. 31156–31158 (6 December 2012), T. 31161–31162, 31165–31166 (11 December 2012).

12493 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 1–2.

12494 Radojčić confirmed that these snipers were deployed mostly in the area of responsibility of the 2nd and 3rd Battalions, that is, outside the built-up areas, because they were more efficient there. *See* Vladimir Radojčić, T. 31224 (11 December 2012).

12495 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 6; D2481 (Map of Sarajevo marked by Mile Sladoje).

12496 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 6; D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 36; D2557 (Map of Sarajevo marked by Svetozar Guzina); Svetozar Guzina, T. 31192 (11 December 2012); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 65.

12497 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 116.

12498 Stanislav Galić, T. 37154–37155 (15 April 2013), T. 37528 (22 April 2013). *See* Adjudicated Fact 27.

12499 Stanislav Galić, T. 37162–37168 (15 April 2013); T. 37466 (22 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); Svetozar Guzina, T. 31193 (11 December 2012); Youssef Hajir, T. 8844 (2 November 2010).

12500 Stanislav Galić, T. 37189–37190 (15 April 2013).

12501 Stanislav Galić, T. 37522–37533 (22 April 2013), T. 37831–37834 (7 May 2013).

the ABiH located in Stup.[12502] The 155th Brigade of the 1st Corps, formerly known as the Dobrinja Brigade and then as the 5th Brigade, was located in Mojmilo and Dobrinja 5 where there were mainly high-rises from which the ABiH snipers would target 1st Battalion's positions.[12503] Indeed, Hajir testified that the "local BiH command building" was located some 150 to 200 metres to the west from the Dobrinja Hospital but clarified that the ABiH was never in the hospital itself.[12504] He also explained that at the beginning of the war there was no real army on the Bosnian Muslim side and that the army "in the true sense of the word" was formed later, around August or September 1992.[12505] Galić testified that a larger part of Dobrinja was in the zone of responsibility of the 5th Brigade, later 155th, of the ABiH 1st Corps, which had been estimated to have had some 3,000 troops in the area.[12506] According to him this brigade had a sniper unit since ABiH used specialised sniper units at the brigade level.[12507]

3793. According to Sladoje, all ABiH positions were in civilian areas where people lived in apartment buildings and there was not a single "entirely civilian settlement" that did not have a military target in it.[12508] Nevertheless, according to Sladoje and Guzina, the battalion never received or issued any orders to target civilians and the soldiers were explicitly told that civilians

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12502 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30569 (28 November 2012); P6011 (Photograph of Sarajevo marked by Mile Sladoje); P6012 (Photograph of Sarajevo). *See also*Adjudicated Fact 83. According to Sladoje, these ABiH forces had infantry weapons, 82 and 120 mm mortars, a tank in depth of the Alipašino Polje, APCs mounted with 14.7 mm anti-aircraft guns, hand-held launchers, and rifle grenades. They were also supported by artillery from Mt. Igman. D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 10.

12503 Emir Turkušić, T. 9040–9041 (4 November 2010); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 6, 9, 25; Mile Sladoje, T. 30566–30569 (28 November 2012); P6008 (Photograph of Sarajevo marked by Mile Sladoje); P6010 (Photograph of Sarajevo marked by Mile Sladoje); P6012 (Photograph of Sarajevo); D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 46. This is confirmed by D4586 (SRK Report, 10 May 1994) in which SRK Command informed the VRS Main Staff that the Ilidža Brigade was receiving fire from Dobrinja 5. Radojčić testified that the 155th Brigade of the ABiH's 1st Corps was deployed in high-rises in Dobrinja and Mojmilo. *See* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 16–17; D2591 (Map of Sarajevo marked by Vladimir Radojčić). *See also* Youssef Hajir, T. 8850 (2 November 2010); D2649 (Map of Sarajevo marked by Milorad Šehovac); D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.4.

12504 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 24, 33; Youssef Hajir, T. 8779, 8783–8786 (1 November 2010), T. 8847–8848, 8850 (2 November 2010); P1867 (Map of Sarajevo marked by Youssef Hajir).

12505 Youssef Hajir, T. 8814–8817 (1 November 2010); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 34.

12506 Stanislav Galić, T. 37496–37498 (22 April 2013); D3445 (SRK combat report, 7 June 1993), pp. 1–2.

12507 Stanislav Galić, T. 37497–37498 (22 April 2013). He relied on the SRK combat report of 7 June 1993, which refers to sniper fire being opened from Dobrinja 1, 2, and 3 on the positions of the 1st Sarajevo Mechanised Brigade. *See* D3445 (SRK combat report, 7 June 1993), pp. 1–3.

12508 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30571 (28 November 2012). According to Sladoje and Guzina, the following were military targets located in the territory controlled by the ABiH: Standard, Zora, Bitumenka, Oslobođenje, student dormitories, the Geodesic Institute, the Vodovod building in Majdan street, Prvomajska street, Geteova street, Radio Television building, and Fatima Gunić School. *See* D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 18, 25; D2482 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30571–30573 (28 November 2012);

should not be targeted.[12509] Instead, soldiers were allowed to open fire only in response to enemy fire and only at observed firing positions, which, Sladoje conceded, meant that given the environment there was a high risk of "civilian collateral casualties".[12510] When cross-examined, Guzina conceded that he had said, back in 2003 during his interview with the Prosecution, that any man or woman close to the confrontation lines was considered a threat.[12511] He also conceded that the targeting by his troops improved as the war went on.[12512]

3794. The goal of the 1st Battalion was to prevent the ABiH from reaching Ilidža and connecting with the ABiH forces outside of the Sarajevo ring.[12513] Guzina testified that the lines of disengagement in the 1st Battalion's zone of responsibility were often only street-width apart, which meant that observation was difficult.[12514] He also stated that his soldiers had the right to use a firearm independently, without command, if they or their location were under attack and there was no other way to repel the attack.[12515]

3795. The UNPROFOR was based in the PTT building in Alipašino Polje, while the Radio Television building was nearby.[12516]

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D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 46. *See also* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 23.

12509 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 12–13, 15, 17; Mile Sladoje, T. 30571 (28 November 2012); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 25, 28–30; D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 39; Svetozar Guzina, T. 31192 (11 December 2012). During cross-examination, Guzina was confronted with his 2003 interview with the Prosecution in which he said that the battalion was never told not to shoot at civilians. He could not recall saying this and accused the Prosecution of playing word games. *See* Svetozar Guzina, T. 31181–31183 (11 December 2012); P6039 (OTP information report, 5–6 October 2003). On re-examination, however, he confirmed that the Accused issued orders to protect civilians. *See* Svetozar Guzina, T. 31195–31197 (11 December 2012); D2561 (SRK Order, 15 May 1993); D314 (Radovan Karadžić's letter to SRK, undated). Radojčić, Guzina's commander, testified that Ilidža Brigade received brochures from superior commands which contained explanations of the provisions of international humanitarian law and stated that he personally issued orders to the Ilidža Brigade soldiers that civiliant were not to be attacked. *See* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 15, 31–32.

12510 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 12, 15, 17; Mile Sladoje, T. 30571–30574 (28 November 2012); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 30. Guzina explained that sometimes civilians in his zone of responsibility would turn up on the frontlines in order to visit their houses and speculated that the same happened on the ABiH side of the confrontation line thus resulting in civilian casualties. *See* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 39; Svetozar Guzina, T. 31151–31152 (6 December 2012).

12511 Svetozar Guzina, T. 31170–31172 (11 December 2012); P6039 (OTP information report, 5–6 October 2003).

12512 Svetozar Guzina, T. 31184–31185 (11 December 2012); P6039 (OTP information report, 5–6 October 2003).

12513 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 8.

12514 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 37.

12515 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 38.

12516 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 18; D2482 (Map of Sarajevo marked by Mile Sladoje). *See also* Adjudicated Fact 14.

(2) Dobrinja, 11 July 1993 (Scheduled Incident F.3)

3796. The Indictment alleges that on 11 July 1993 Munira Zametica, a 48 year old woman, was shot dead while collecting water from the Dobrinja river in the area of Dobrinja.[12517] According to the Prosecution, the fire originated from the SRK-held territory in the area of the Orthodox Church, the tower of which was a "notorious sniping location".[12518] The Prosecution also argues that Zametica was deliberately targeted.[12519] The Accused argues that Zametica could not have been deliberately targeted from the Orthodox Church as it was too far from the incident site.[12520] He also argues that the SRK forces in the area were at the time deployed for operation Lukavac 93, taking place on the other side of the Butmir airport.[12521]

3797. On 11 July 1993, Munira Zametica was filling her bucket with water from the Dobrinja river when she was shot.[12522] It was too dangerous for Sadija Šahinović and for Vahida Zametica, the 16 year old daughter of the victim, to leave the protection of the bridge over the Dobrinja River in order to assist the victim[12523] as the perpetrator repeatedly shot toward Munira Zametica, preventing rescuers from approaching her.[12524] Vahida Zametica heard the shooting continue and saw the bullets hitting the water near her mother.[12525] Munira Zametica was lying face down in the river, blood coming out of her mouth.[12526] ABiH soldiers passing by the bridge saw what had happened, positioned themselves on the bridge behind sandbags and shot in the direction of the Orthodox Church.[12527] The victim, Munira Zametica, was pulled out of the water and taken to hospital; she died later that afternoon.[12528]

3798. Hogan visited the site of the incident and recorded the exact position of the victim when shot, as recounted to him by an eyewitness to the incident.[12529] Hogan testified that he was told by witnesses that, when shot, Munira Zametica was kneeling on the concrete embankment of the river,

12517 Indictment, Scheduled Incident F.3.
12518 Prosecution Final Brief, Appendix C, paras. 26–27.
12519 Prosecution Final Brief, Appendix C, para. 4.
12520 Defence Final Brief, paras. 2194–2198.
12521 Defence Final Brief, para. 2198.
12522 Adjudicated Fact 165.
12523 *See* Adjudicated Fact 165.
12524 *See* Adjudicated Fact 171.
12525 Adjudicated Fact 165.
12526 Adjudicated Fact 165.
12527 Adjudicated Fact 166.
12528 Adjudicated Fact 167.
12529 Barry Hogan, T. 11209, 11257 (3 February 2011); P2196 (Photograph re sniping incident of 11 July 1993 in Dobrinja marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

facing the river and trying to reach towards it with a bucket.[12530] She was located some five metres away downstream from the bridge.[12531]

3799. Van der Weijden also visited the incident site, and described it as a canal forming a "natural trench", thus preventing the victim from being seen from all the buildings lining the canal.[12532] He explained that he was given the exact location of the victim, who was standing on the river bed on the north bank of the canal, by the Prosecution, but had no information as to which direction she was facing.[12533] According to Van der Weijden, the only buildings with a line of sight on the incident site are the apartment block, which is 636 metres away, and the Orthodox Church, which is 1104 metres away.[12534] Van der Weijden was told by the Prosecution that the apartment block was occupied by the ABiH at the time of the incident while the SRK troops occupied the red roofed apartment buildings across the street, the latter offering no view on the incident site.[12535] He thus concluded that the shooter was most likely located in the Orthodox Church tower since (i) ABiH troops were unlikely to have their focus on the canal with their enemy so near by in the red roofed apartment buildings; (ii) the tower of the church was under construction at the time, thus providing a good location for a sniper nest or even a machine gun emplacement; and (iii) the church offered a clear unobstructed view of the incident site.[12536] Van der Weijden never visited the Orthodox Church tower, however.[12537]

3800. During cross-examination, Van der Weijden accepted that his conclusion gave only the "most likely" position of the shooter.[12538] However, he rejected the Accused's contention that Zametica was killed as a result of the exchange of fire,[12539] noting that the civilians collecting water

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12530 Barry Hogan, T. 11258 (3 February 2011).

12531 Barry Hogan, T. 11258–11259 (3 February 2011); D993 (Video footage re sniping incident of 11 July 1993 in Dobrinja).

12532 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 42.

12533 Patrick van der Weijden, T. 7156–7157 (29 September 2010).

12534 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 42. *See also* Barry Hogan, T. 11209 (3 February 2011); P2196 (Photograph re sniping incident of 11 July 1993 in Dobrinja marked by Barry Hogan). Van der Weijden also observed that there was some scrub lining the canal in places when he visited but noted that it would have not been there at the time of the incident to block the view. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 43.

12535 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 43. This is confirmed by the evidence before the Chamber, namely that the confrontation line at Dobrinja ran along the road separating Dobrinja 3 and Dobrinja 4. *See* para. 3787.

12536 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 43.

12537 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 43.

12538 Patrick van der Weijden, T. 7165 (29 September 2010).

12539 The Accused based this claim on the statement of Sadija Šahinović in which she said that on her way to the river she heard "sniper fire" and was told by the people hiding under the bridge that the bullets were hitting the water. She also stated that two people managed to get water without being hit before Munira Zametica was shot. *See* Patrick van der Weijden, T. 7162–7163 (29 September 2010).

were located under ground level so the ABiH forces would have had to have been in the water for there to have been an exchange of fire and, if so, would have been exposed to the SRK fire.[12540]

3801. Van der Weijden further opined that the calibre of the bullet used in this incident was either 7.62 mm or 7.92mm and would not have been greater than 7.92mm as that would have caused far more serious damage.[12541] Thus, the most likely weapon used was a semi-automatic rifle, probably an M76 or M91, although the distance of 1,100 metres would be an extreme range for those rifles.[12542] This is why, according to Van der Weijden, the people saw bullets hitting the river before the incident as the shooter probably tried to target them but failed because of the great distance involved; in other words, according to Van der Weijden, the shooter was simply bracketing the distance.[12543] Van der Weijden concluded, based on all of the above, that the shooter would have been able to identify the victim as an adult woman fetching water from the canal.[12544]

3802. Poparić accepted that there was a line of sight between the top of the Orthodox Church and the incident site.[12545] However, he testified that Zametica most likely died as a result of an exchange of fire between the two forces positioned in the area, although not from the Orthodox Church.[12546] He based his conclusion on several grounds. First, even though the time of the incident was uncertain,[12547] Poparić argued that regardless of whether the incident took place in the afternoon or in the evening, the shooter would not have been able to identify the victim as a civilian

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12540 Patrick van der Weijden, T. 7162–7165 (29 September 2010).

12541 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 41. On cross-examination, Van der Weijden conceded that his conclusion on the calibre of the bullet was only a possibility as he had no access to the victim's medical records or any data on whether the bullet was retrieved from the victim. *See* Patrick van der Weijden, T. 7156, 7159 (29 September 2010).

12542 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 41. According to Van der Weijden's report, the "maximum effective range" for these two rifles is 800 metres. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, p. 1.

12543 Patrick van der Weijden, T. 7163–7164 (29 September 2010).

12544 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 43.

12545 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 66; Mile Poparić, T. 38947 (29 May 2013).

12546 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 65, 67. Poparić also thought that the bullets that hit her most probably ricocheted off of the concrete river bed. *See* Mile Poparić, T. 38948–38949 (29 May 2013).

12547 With respect to the uncertainty of the time of the incident, Poparić refers to Šahinović's testimony in the *Galić* case where she first said that she and Zametica went to fetch water as the night was about to fall but then corrected herself when prompted by the Prosecution, saying that they went to the river between 2 and 3 p.m.. Poparić also refers to the official BiH MUP report, which has not been tendered into evidence by the parties in this case, and which records the time of the incident as being between 7 and 7:30 p.m.. Poparić further refers to Zametica's death certificate which records the time of death as 4 p.m. and the evidence of her daughter in the *Galić* cases who was at the scene and who testified that the incident took place between 2 and 2:30 p.m.. Having outlined all of the above evidence, Poparić concluded that the BiH MUP's official report was the most reliable source and thus is of the view that the incident happened between 7 and 7:30 p.m.. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 63–64, 67; Mile Poparić, T. 38947–38948 (29 May 2013), T. 39199–39201 (4 June 2013).

nor hit her twice from a distance of 1,100 metres[12548] because she would have been in the shadow in the afternoon or because, at twilight, the visibility would have been bad.[12549] Second, Poparić points out that, according to eyewitness's evidence, there was sniper fire throughout that day but two people nevertheless summoned the courage and collected water, one by one, before Zametica went to collect the water herself; to Poparić this meant that people knew that the bullets hitting the river were not intended for them but were the result of exchanges of fire.[12550] Third, Poparić argues that the two ABiH soldiers who returned fire were not simply passing by, as testified to by Šahinović in the *Galić* case, but were on duty, positioned on the bridge.[12551] This, he argues, is confirmed by the fact that the bridge was protected by sandbags which were up to two metres high, according to the witnesses, leading him to conclude that there were holes in the sandbags through which soldiers could shoot; in other words, the sandbags were not there to protect the civilians but to protect the ABiH forces.[12552] Finally, Poparić testified that he went to the Orthodox Church tower and that he would never place a sniper there as the space was too small to be secured by sandbags and was exposed so that it could easily be destroyed by a rocket-launcher.[12553] He did concede, however, that he did not know what the church tower looked like at the time of the incident.[12554] He was also not privy to the report from the ABiH intelligence organ, dated 2 October 1993, which provides as follows:

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12548 According to Poparić, this distance alone meant that the probability of targeting Zametica was low as the sniper rifle's best results are at 800 metres whereas anything above that would yield poorer results. *See* Mile Poparić, T. 38951–38952 (29 May 2013); D3635 (Map of Sarajevo marked by Mile Poparić). This was confirmed by Van der Weijden. *See* fn. 12542.

12549 Poparić argues that if the incident happened in the afternoon, the place where Zametica was collecting water would have been under a shadow, created by the sandbags, which in turn would have "greatly interfered" with the shooter's ability to identify her as a civilian and strike her from that distance. Similarly, if the incident happened during twilight, conditions would have been such that the shooter would not be able to deliberately target a person who was bending over. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 66–67; Mile Poparić, T. 38951–38952 (29 May 2013). When cross-examined on this conclusion, Poparić conceded that he did not take any photographs of this shadow when he visited the incident site but explained that that would have been pointless as the sandbags were not there. *See* Mile Poparić, T. 39210–39213 (4 June 2013).

12550 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 64–65.

12551 Poparić reached this conclusion by arguing that the ABiH was organised "under the same principles as the JNA" and thus the transfer of duty would normally take place in the mornings, meaning that these two men could not have been reporting for or returning from duty. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 65, 67. When cross-examined on this conclusion, he conceded that he never participatyed in combat and never served in the ABiH. When asked if ever identified the two ABiH soldiers in question or tried to interview them, he responded in the negative but explained that he thought they were probably on duty because they were armed. *See* Mile Poparić, T. 39206–39209 (4 June 2013).

12552 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 65–67.

12553 Mile Poparić, T. 38953 (29 May 2013).

12554 Mile Poparić, T. 39201–39202 (4 June 2013).

> From Dobrinja IV towards the [Orthodox Church], the enemy has made a connection trench, and in the area behind the garage, a bunker was built from which they open fire only at night. The area around the church towards our positions is mined with anti-personnel mines. The enemy uses the church at Veljine exclusively as an observation post. According to our information till now in the church there are 6 observers per shift. The observers are armed with snipers and pam /anti-aircraft machine-gun/ which is in a well fortified nest in the church. From the church fire is rarely being opened, and when it is opened, a sniper with a silencer is used.[12555]

3803. When asked if this report contradicted his opinion that a sniper should not be placed in the church tower, Poparić insisted that the report classified the post as an observer's post from which fire was seldom opened.[12556]

3804. Dragomir Milošević testified that according to his information there was no "activity" from the Orthodox Church and denied that the origin of fire that killed Zametica was the Orthodox Church as soldiers were not allowed to climb the church tower.[12557] He also excluded the possibility that Zametica was deliberately targeted and noted that if this were the case then it did not come about as a result of an order or permission from the SRK.[12558] Galić testified that he never received reports about sniping incidents such as the one involving Zametica and noted that he did not remember his soldiers ever going to the Orthodox Church because it was a new building at the time and was damaged by recoilless gun-fire from Mojmilo Hill.[12559] Galić also stated that he never ordered or received a report that one of his subordinates ordered this attack.[12560] When asked why a combat report sent by the SRK Command to the VRS Main Staff, on 11 July 1993 at 5 p.m. provides that "provocative enemy fire" was opened "along most of the corps' defence line" but makes no mention of the incident involving Zametica, Galić explained that this was a time of the Lukavac 93 operation, which meant that all forces on both sides were engaged on the other side of the airport, near Dobrinja.[12561]

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12555 P6360 (ABiH 1st Motorised Battalion report, 2 October 1993), p. 2. The information in this report was confirmed by Thomas, who visited an ABiH sniping location in a school in Dobrinja, which was located opposite to the Orthodox Church from which, according to Thomas, the Serbs were firing into Dobrinja. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 1, 64. *See* Adjudicated Fact 92.

12556 Mile Poparić, T. 39201–39205 (4 June 2013). Poparić was also referred to his conclusion that Šahinović's claim in the *Galić* case that she did not hear the bullets meant either that her hearing was impaired or that a silencer was used. When asked if the ABiH report of 3 October 1993 confirmed his theory that a silencer was used and responded that this was a possibility. *See* Mile Poparić, T. 39205–39206 (4 June 2013).

12557 Dragomir Milošević, T. 33117–33118 (4 February 2013).

12558 Dragomir Milošević, T. 33118 (4 February 2013).

12559 Stanislav Galić, T. 37495–37496 (22 April 2013). Another report of the SRK Command indicates that the ABiH had a recoilless gun in Dobrinja 2. *See* T. 37408 (18 April 2013); D3424 (SRK combat report, 13 August 1993).

12560 Stanislav Galić, T. 37496 (22 April 2013).

12561 Stanislav Galić, T. 37498–37500 (22 April 2013); D3418 (SRK combat report, 11 July 1993). The next day, on 12 July 1993, Galić ordered the continuation of operation Lukavica 93 but never ordered any activity against Dobrinja. *See* T. 37391–37393 (18 April 2013); D3419 (SRK Order, 12 July 1993).

3805. The Chamber also took judicial notice of a number of adjudicated facts which provide as follows: (i) there was a line of sight between the tower of the Orthodox Church and the incident site;[12562] (ii) the area of the Orthodox Church from where the fire came was within SRK-controlled territory;[12563] (iii) at a distance of 1,100 metres, a well-equipped perpetrator would have been able to observe the civilian appearance of Zametica;[12564] and (iv) on 11 July 1993, Zametica, a civilian, was deliberately shot from SRK-held territory.[12565]

3806. The Chamber notes that, in addition to the unpersuasive evidence of Galić and Milošević,[12566] the only substantive evidence the Accused brought to rebut the above adjudicated facts was that of Poparić. However, the Chamber finds his analysis unconvincing as it is based on numerous tenuous speculations, often on issues that are completely outside of his area of expertise. For example, the Chamber is not convinced by Poparić's claim that because people ventured to the riverbank after having seen bullets hitting the river, they knew this was not sniper fire but thought it was an exchange of fire. The Chamber considers this to be pure speculation as it is equally plausible that the people in question, including Zametica, saw sniper fire but decided to wait until they felt it was safe to approach the river. The Chamber also cannot accept Poparić's claim that the two ABiH soldiers who returned fire were on duty at the time of the incident as he bases it on the fact that they were armed and that in the JNA, on which ABiH was supposedly based, the soldiers would transfer duty in the mornings. Having not served in the ABiH or even the SRK, Poparić's musings on when ABiH soldiers would transfer their duty and/or carry their weapons is baseless and outside of his expertise. Indeed, his opinions on military strategy in general were proven wrong when he was shown a document clearly indicating—contrary to his opinion—that the SRK had a post in the Orthodox Church tower from which it opened sniper fire, albeit seldomly. The Chamber also does not accept Poparić's analysis that the incident must have happened in the evening as opposed to the afternoon, given that he relies on the BiH MUP official note which was, as shown during his cross-examination, corrected by Sadija Šahinović during her testimony in the *Galić* case. Furthemore, his claim that if the incident happened in the afternoon Zametica would have been hidden by a shadow of the sandbags is pure speculation as the sandbags were not there

12562 *See* Adjudicated Fact 168.

12563 *See* Adjudicated Fact 169.

12564 *See* Adjudicated Fact 170.

12565 *See* Adjudicated Fact 172.

12566 The Chamber acknowledges that both Galić and Milošević testified that the Orthodox Church could not have been the source of fire in this incident because it was not used by the SRK soldiers. However, the Chamber is more persuaded by the report of the ABiH intelligence organ, dated 2 October 1993, in which the church is mentioned as an observation post and an occasional source of sniper fire, particularly as this seems to be corroborated by the evidence of Thomas. *See* para. 3802.

when he visited the incident site. For all those reasons, the Chamber has decided to discount most of Poparić's analysis on this incident.

3807. The Chamber notes, however, that both Poparić and Van der Weijden agree that there was a line of sight between the Orthodox Church tower and the incident site, and is therefore satisfied that such line of sight did exist.[12567] The Chamber also acknowledges that Poparić and Van der Weijden are united in their view that the distance of 1,100 metres was somewhat extreme for the sniper rifle most likely used in this attack. The Chamber recalls, however, that neither Poparić nor Van der Weijden testified that it would have been impossible to hit Zametica from that distance, only that the probability of hitting her deliberately was lower than it would have been if she were 800 metres away from the origin of fire.[12568] Further, Van der Weijden thought that the shots fired by the sniper prior to the killing of Zametica were indicative of the sniper "bracketing" or judging the distance immediately prior to the incident, thus preparing to hit his target when it appeared.

3808. Bearing all of the above in mind, and particularly recalling Van der Weijden's evidence that only one other building had a line of sight onto the location of the incident, which he discounted as the origin of fire in this case, the Chamber is persuaded that the origin of fire was the Orthodox Church, which was in the SRK's zone of responsibility at the time. The Chamber is further reinforced in this view by the fact that the two ABiH soldiers who were at the scene promptly returned fire and were also seen to be shooting in the direction of the Orthodox Church.

3809. The Chamber also finds, based on the evidence above, that Munira Zametica was a civilian who was simply attempting to collect water from the river and thus was not taking direct part in the hostilities at the time of the incident. In addition, given Van der Weijden's evidence, which the Chamber accepts, that the shooter was bracketing the distance immediately prior to the incident, the Chamber is convinced that an SRK sniper located in the Orthodox Church deliberately targeted Zametica, fully aware that she was a civilian collecting water at the river.

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12567 In addition, the Chamber has been to the incident site during the site visit and confirmed that the line of sight does exist. The Chamber recalls that in its Order on Submissions for a Site Visit, dated 15 November 2010, at paragraph 6, it stated that the purpose of its site visit to Sarajevo was not be to gather evidence or receive any submissions from the parties but to permit the Chamber to become more familiar with the topography of certain key locations and thus assist it in its determination of the charges in the Indictment related to Sarajevo.

12568 As noted above, Poparić's conclusion that it was impossible for Zametica to be deliberately targeted by a sniper located in the Orthodox Church tower was based on the combination of two factors, namely great distance and lack of visibility due to either a shadow or twilight conditions. *See* para. 3802. However, as noted by the Chamber above, in paragrah 3806, the Chamber considers that the incident happened in the afternoon and it also does not accept Poparić's analysis as to the shadow.

(3) Nikole Demonje street, 6 January 1994 (Scheduled Incident F.6)

3810. The Indictment alleges that, on 6 January 1994, Sanija Dževlan, a 32 year old woman, was shot and wounded in her buttocks while riding a bicycle across a bridge on Nikole Demonje street in Dobrinja.[12569] According to the Prosecution, Dževlan was hit while on the northwest side of the bridge by fire that originated from the SRK positions in the direction of the Orthodox Church some 800 metres away.[12570] The Accused argues that Dževlan was not hit by fire that originated at the Orthodox Church as she would have been difficult to detect from that distance.[12571]

3811. On 6 January 1994, Sanija Dževlan was cycling home from the Dobrinja Hospital where she had gone to pick up medication for her mother.[12572] When crossing the bridge over the Dobrinja river, connecting Dobrinja 2 with Dobrinja 3, on Nikole Demonje street,[12573] she was shot at and wounded in the buttocks.[12574] Dževlan felt a blow but only realised she had been wounded once she saw three or four more bullets ricocheting from the concrete on the street.[12575] She did not know how many bullets had struck her,[12576] but the medical report relating to her injuries noted "an entry-exit wound through both gluteal areas".[12577] She managed to cycle home where she was helped by her neighbours and taken to the hospital, from which she was discharged ten days later.[12578] The day after Dževlan was shot, another person was brought to the hospital, having been shot in the same location.[12579]

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12569 Indictment, Scheduled Incident F.6.

12570 Prosecution Final Brief, Appendix C, paras. 26, 28–29.

12571 Defence Final Brief, paras. 2213–2219.

12572 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3517. *See also* Sanija Dževlan, T. 11748–11749 (14 February 2011). *See also* Adjudicated Fact 189.

12573 While the witness did not know the name of the street on which the bridge was located, the maps provided to the Chamber indicate that Nikole Demonje is the name of the street. *See* Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3535.

12574 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T3517–3519; P2295 (Video footage re sniping incident of 6 January 1994 on Nikole Demonje street); Sanija Dževlan, T. 11751–11752, 11758–11760 (14 February 2011); D1048 (Aerial photograph of Dobrinja marked by Sanija Dževlan); D1049 (Photograph of Dobrinja marked by Sanija Dževlan); D1050 (Video footage re sniping of Nikole Demonje street of 6 January 1994). *See also* Adjudicated Fact 189.

12575 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3519. *See also* Sanija Dževlan, T. 11754 (14 February 2011).

12576 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3519.

12577 P1893 (Discharge form for Sanija Dževlan). During cross-examination Sanija Dževlan indicated that she thought that she was hit with two bullets, even though originally she said she did not know how many bullets had hit her. However, on the basis of the medical report the Chamber is of the view that there was only one entry-exit wound rather than two and that therefore only one bullet hit and injured Sanija Dževlan. *See* Sanija Dževlan, T. 11761–11763 (14 February 2011).

12578 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3519–3520. *See also* Sanija Dževlan, T. 11748 (14 February 2011). *See also* Adjudicated Fact 190.

12579 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3529.

3812. Dževlan was the only person in the area at the time of the shooting and was wearing brown pants and a yellow jacket; she had very long hair which was not tied up, carried no weapon, and there was no military equipment nearby.[12580] Dževlan testified that the day was "exceptionally quiet" as there was no sniping or shelling,[12581] and that it was still daylight and the visibility was good.[12582] During her testimony in the *Galić* case, Dževlan testified that the shooting happened sometime between 3 and 4 p.m..[12583] However, in her earlier statement to the BiH police, dated 30 September 1994, she stated that the incident occurred at 4:30 p.m..[12584] When asked about this discrepancy, she explained that she did not know the exact time of the incident as she was not wearing a watch when she was wounded.[12585] However, she noted that it must have been daylight, as it would have been impossible to move at night time due to the lack of electricity in the neighbourhood, and also explained that she had left her house around 3 p.m. to go to the nearby hospital and pick up the medication.[12586]

3813. As for the direction from which the bullets came, Dževlan testified that they came from her right as she was cycling, that is, from the direction of Dobrinja 4, either from the high-rise buildings or the Orthodox Church in that area.[12587] According to her, this area was under the control of the VRS,[12588] while the ABiH controlled Dobrinja 3, as well as the summit and the left side of the Mojmilo Hill, which was in front of her as she was cycling home.[12589] Dževlan

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12580 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3518, 3530; Sanija Dževlan, T. 11747, 11769 (14 February 2011).

12581 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3518–3519, 3536; Sanija Dževlan, T. 11764 (14 February 2011). *See also* Adjudicated Fact 194. When confronted with an UNMO report suggesting that throughout the week of 31 December 1993 to 6 January 1994, the ABiH fired some 10 to 50 rounds in the areas of Lukavica, Grbavica, and Vogošća, she remained adamant that she could not hear any sniping or shelling on the day in question and that if she had, she would not have left the house. *See* Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3536–3545; P2293 (UNMO weekly report, 7 January 1994). *See also* Sanija Dževlan, T. 11764–11766 (14 February 2011).

12582 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3517–3518. *See also* Sanija Dževlan, T. 11743–11744, 11757 (14 February 2011).

12583 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3518.

12584 D670 (Statement of Sanija Dževlan to BiH MUP, 30 September 1994).

12585 Sanija Dževlan, T. 11745–11746, 11755 (14 February 2011).

12586 Sanija Dževlan, T. 11743, 11745–11746, 11755, 11757 (14 February 2011).

12587 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3523–3529; P2292 (Photograph of Dobrinja marked by Sanija Dževlan); P2294 (Map of Sarajevo marked by Sanija Dževlan); P2295 (Video footage re sniping incident of 6 January 1994 on Nikole Demonje street). *See also* Sanija Dževlan, T. 11742 (14 February 2011). When asked on cross-examination why she identified Dobrinja 4 as the area from which the fire came, Dževlan explained that it was because Serb forces were there and there was, therefore, no other place the fire could have come from. *See* Sanija Dževlan, T. 11763–11764 (14 February 2011).

12588 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3527. This is confirmed by Adjudicated Fact 192.

12589 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3515-3516, 3546–3547. *See also* Sanija Dževlan, T. 11751–11752 (14 February 2011); D1048 (Aerial photograph of Sarajevo marked by Sanija Dževlan).

explained that there were barricades on both sides of the bridge, and noted that she was shot as soon as she emerged from behind them, while getting off the bridge on its northern side.[12590]

3814. Hogan visited the site of the incident and recorded Dževlan's exact location when she was shot.[12591] Van der Weijden visited the same location and noted, bearing in mind that the shots came from the victim's right, that is east-southeast,[12592] that while the bridge was largely screened off from view to the east and southeast, there were "uncovered stretches at both sides of the bridge".[12593] He thought that the shooter must have seen Dževlan when she was getting on the bridge on the south side, as there was also a non-screened part on that side, and then waited for her to get off the bridge on the north side.[12594] The only buildings located east of the bridge that had a line of sight on the bridge were the apartment block, which is 355 metres away, and the Orthodox Church, which is 820 metres away.[12595] Van der Weijden was told that the apartment block was occupied by the ABiH at the time of the incident while the SRK troops occupied the red roofed apartment buildings across the street, the latter offering no view of the incident site.[12596] Van der Weijden concluded that the shooter was most likely located in the Orthodox Church tower since (i) ABiH troops were unlikely to have their focus on the bridge with their enemy so near by in the red roofed apartment buildings; (ii) the tower of the church was under construction at the time, thus providing a good location for a sniper nest or even a machine gun emplacement; and (iii) the church offered a clear unobstructed view of the incident site.[12597] As noted earlier,[12598] Van der Weijden

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12590 Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3525, 3527; P2292 (Photograph of Sarajevo marked by Sanija Dževlan); P2295 (Video footage re sniping incident of 6 January 1994 on Nikole Demonje street). *See also* Sanija Dževlan, T. 11742–11743, 11745, 11753, 11754–11755 (14 February 2011). Following the two incidents at this location, more barricades made of sandbags were placed on the bridge to make the location safer. *See* Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), T. 3529.

12591 Barry Hogan, T. 11211–11212 (3 February 2011); P2200 (Photograph re sniping incident of 6 January 1994 on Nikole Demonje street marked by Barry Hogan); P2201 (Map of Sarajevo marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

12592 Patrick van der Weijden, T. 7133 (29 September 2010).

12593 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 48.

12594 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49; Patrick van der Weijden, T. 7138 (29 September 2010).

12595 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49. *See also* Patrick van der Weijden, T. 7133 (29 September 2010). This is confirmed by the evidence before the Chamber, namely that the confrontation line at Dobrinja ran along the road separating Dobrinja 3 and Dobrinja 4. *See* para. 3787. *See also* Barry Hogan, T. 11211–11212 (3 February 2011); P2200 (Photograph re sniping incident of 6 January 1994 on Nikole Demonje street marked by Barry Hogan); P2201 (Map of Sarajevo marked by Barry Hogan).

12596 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49. *See also* Barry Hogan, T. 11211–11212 (3 February 2011); P2200 (Photograph re sniping incident of 6 January 1994 on Nikole Demonje street marked by Barry Hogan); P2201 (Map of Sarajevo marked by Barry Hogan).

12597 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49.

12598 *See* para. 3799.

never visited the Orthodox Church tower.[12599] Noting all of the information above, he concluded that the shooter would be able to identify the victim as an adult woman on a bike.[12600]

3815. Van der Weijden also noted that the calibre of the bullet used in this incident would not have been greater than 7.92 mm as bullets of such calibre would have caused far more serious damage.[12601] He recalled Dževlan's evidence that she heard multiple bullets and assumed that this was a reference to automatic fire, which led him to conclude that the weapon used was a medium machine-gun, either an M84 or an M53 which can fire with 7.62 mm or 7.92 mm bullets.[12602] He also explained that these machine-guns can be mounted on a tripod and fitted with a telescopic sight which makes them suitable for long-range engagements.[12603] Van der Weijden conceded that his conclusions in relation to the calibre of the bullet used were speculative, but denied the Accused's suggestion that the VRS did not possess 7.92 mm calibre bullets, noting that he personally saw "Serbian troops" with machine guns in that calibre.[12604] The Chamber recalls that Galić confirmed that SRK had various M48 rifles of 7.92 millimetre calibre, which had optical sights and which were referred to as sniping rifles.[12605]

3816. On cross-examination, Van der Weijden was asked why he excluded the possibility that the shooter was located between the apartment block and the victim, and responded that that area was an open field, which meant that the shooter would be exposed to fire from all sides, and thus would be risking his own life.[12606] Van der Weijden also confirmed that the confrontation line was around 400 metres to the east from the location of the incident and that the view of the bridge from that confrontation line was obstructed by the apartment block mentioned above.[12607] When asked if he would conclude that the victim simply cycled into the line of fire given that she was shot as soon as she left the confines of the metal screen on the bridge, Van der Weijden, conceding that this was a possibility, said that he would not necessarily conclude so since the victim was visible before she cycled onto the bridge and thus the shooter could have been waiting for her to come out on the other side.[12608] The Accused cross-examined Van der Weijden on visibility in the Sarajevo valley

12599 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49.
12600 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 49.
12601 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 47.
12602 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 47.
12603 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 47.
12604 Patrick van der Weijden, T. 7138–7139 (29 September 2010).
12605 Stanislav Galić, T. 37463–37464 (22 April 2013).
12606 Patrick van der Weijden, T. 7133–7134 (29 September 2010).
12607 Patrick van der Weijden, T. 7135–7136 (29 September 2010); D668 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).
12608 Patrick van der Weijden, T. 7136–7138 (29 September 2010); D669 (Witness statement of Sanija Dževlan dated 24 September 2001).

at 4:30 p.m. but the latter was only able to agree that the surroundings would impact on visilibity and that the time of day would be relevant to a shooter but that the shooter's efficacy would also depend on the equipment used.[12609]

3817. Poparić testified that in his view Dževlan was shot from a much shorter distance then the Orthodox Church and by a bullet that was directed at the asphalt but then richocheted, which to him implied that this was an accident and that the shooter was trying to scare her.[12610] He based his conclusion on several grounds. First, in his view the incident took place around 4:30 p.m. as first stated by Dževlan in her statement to the BiH MUP,[12611] which meant that visibility was low, such that a sniper located at a distance of over 800 metres away would not have been able to see her.[12612] Second, even if visibility was good at the time of the incident, Poparić concluded that she could not have been shot from the church because the sniper would have had to start shooting some 0.99 seconds before Dževlan came into his view.[12613] Third, Poparić noted that Dževlan testified that she was hit by two bullets which would not have been possible given the time needed for each of those bullets to reach the incident site and the time she would have been visible and exposed to the sniper.[12614] Finally, Poparić observed that the incident site was not a location known for being exposed to sniping from VRS positions and that, therefore, this incident did not involve a sniper but an automatic weapon.[12615]

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12609 Patrick van der Weijden, T. 7139–7142 (29 September 2010).

12610 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 95.

12611 Poparić bases this conclusion on the fact that Dževlan went to visit her mother in the Dobrinja Hospital after 3 p.m. and that, since the visiting hours officially finished at 4 p.m. (but would often be "prolonged by an extra 15 minutes or so"), it was more likely that she was cycling back home around 4:30 p.m.. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 88–89. However, Dževlan never went to visit her mother in the hospital – instead she went to buy medication for her mother. *See* para. 3811. *See also* Mile Poparić, T. 39164–39168 (4 June 2013); T. 39259–39260 (5 June 2013).

12612 To establish poor visibility, Poparić compiled a number of photos of the area taken on 6 January 2012 around 4:30 p.m.. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 88–91; Mile Poparić, T. 38963–38964 (29 May 2013).

12613 Poparić bases this analysis on (i) the distance between the church and the incident site (which he says is 855 metres according to Google Maps), (ii) Dževlan's position when shot (which he obtained from the video footage of Barry Hogan with Dževlan) and the estimated distance between her and the protective fence on the bridge, (iii) the estimated distance she must have covered to go from one exposed side of the bridge to another, (iv) the estimated time Dževlan would have taken to cycle through that distance (based on average cycling speed of a female cyclist aged 35), and (v) the estimated time a bullet fired by an M84 rifle and travelling at its highest velocity would take to reach the incident site. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 92–93; Mile Poparić, T. 38961–38963 (29 May 2013).

12614 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 93.

12615 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 93.

3818. Galić, in addition to his testimony about the Orthodox Church referred to above,[12616] testified that he did not receive a report about this incident or issued orders to fire on that area.[12617] When shown a regular combat report sent by the SRK Command to the VRS Main Staff on 6 January 1994 at 5 p.m. which makes no mention of the incident, Galić stated, noting that this was the eve of the Orthodox Christmas, that the SRK respected all religious holidays and would refrain from activities on such days.[12618] On cross-examination, when confronted with an UNMO summary of events for the week ending on 6 January 1994, showing that the VRS was shelling northern and western areas of the city, together with the centre, all week long, Galić explained that all of the shelling happened outside of Dobrinja and that he could not see any link to the incident in which Dževlan was wounded.[12619] In any event, according to him, the SRK was engaged in defensive action at the time as it had been attacked by the ABiH on 5 January.[12620]

3819. The Chamber has also taken judicial notice of the following adjudicated facts: (i) Dževlan's clothing, the activity she was engaged in (riding a bicycle), and the fact that she was unarmed were indicia of her civilian status and would have put a perpetrator on notice of her civilian status;[12621] (ii) the bullet, coming from Dževlan's right-hand side, came from the direction of the Orthodox Church located approximately 800 metres from the site of the incident,[12622] and (iii) Dževlan was a civilian who was deliberately targeted from SRK-controlled territory.[12623]

3820. The Chamber notes that, in addition to the unpersuasive evidence by Galić and Milošević relating to the Orthodox Church,[12624] the only substantive evidence the Accused brought to rebut the above adjudicated facts and the evidence tendered by the Prosecution was that of Poparić. However, the Chamber finds his analysis problematic. First, he mistakenly concluded that Dževlan was on the bridge at around 4:30 p.m. whereas Dževlan testified that she was on the bridge somewhere between 3 and 4 p.m. which was in line with her activities on that day. More importantly, she confirmed that it was still daylight at the time, with good visibility. Second,

12616 *See* para. 3804.

12617 Stanislav Galić, T. 37517–37518 (22 April 2013).

12618 Stanislav Galić, T. 37519–37522 (22 April 2013); D3452 (SRK combat report, 6 January 1994).

12619 Stanislav Galić, T. 37827–37831 (7 May 2013); P2293 (UNMO weekly report 31 December 1993 - 6 January 1994).

12620 Stanislav Galić, T. 38045 (9 May 2013); D3523 (SRK combat report, 5 January 1994), p. 1.

12621 *See* Adjudicated Fact 191.

12622 *See* Adjudicated Fact 195.

12623 *See* Adjudicated Facts 196, 197.

12624 As noted earlier (*see* fn. 12566), the Chamber acknowledges that both Galić and Milošević testified that the Orthodox Church was not used by the SRK soldiers for sniping. However, the Chamber is more persuaded by the report of the ABiH intelligence organ, dated 2 October 1993, in which the church is mentioned as an observation post and an occasional source of sniper fire, particularly as this seems to be confirmed by the evidence of Francis Roy Thomas.

Poparić's calculations as to the time Dževlan would have taken to cross the bridge are based on the average cycling speed of a woman aged 35. However, there is nothing to suggest that this is the speed at which Dževlan cycled on that day and he never spoke to her to confirm that fact. Accordingly, Poparić's analysis that a sniper located on the Orthodox Church tower would not have been able to deliberately target Dževlan is misguided. For the same reason, his argument that it was even less likely for her to be hit by two bullets is equally flawed, particularly given that the gun most likely used in this incident was a semi-automatic gun. Accordingly, the Chamber does not accept Poparić's evidence in relation to this incident.

3821. Bearing in mind her clothing and the fact that she was cycling, the Chamber is satisfied that Dževlan was a civilian and was not taking direct part in hostilities at the time of the incident. The Chamber is also satisfied that there was a line of sight between her location on the bridge—when she cycled outside of the protective barrier–and the Orthodox Church. In addition, the distance between the two locations was such that a sniper positioned in the Orthodox Church would have been able to observe Dževlan's civilian status. The Chamber also accepts Dževlan's evidence that it was daylight at the time of the incident and that the visibility was good and finds that, contrary to Poparić's claim, she would have been an easy target for a sniper located in the Orthodox Church, particularly given the range of the gun most likely used in this incident. The Chamber recalls Dževlan's evidence that the day was quiet and that she did not hear fire prior to getting shot. Accordingly, the Chamber is not convinced by the Accused's claim that she cycled into the line of fire, nor is it convinced by Poparić's conclusion that the incident happened by accident while the shooter was trying to scare her, as there appears to be no basis for that conclusion other than that Dževlan heard a bullet ricochet. Bearing in mind Van der Weijden's analysis as to why the Orthodox Church tower was the most likely origin of fire, and coupling that with Dževlan's testimony as to the direction the fire came from, the Chamber is of the view that she was hit by a bullet that originated from the Orthodox Church. Further, given that the church was located in the SRK-held territory, the Chamber finds that Dževlan was shot by an SRK sniper. Finally, since that sniper needed to carefully plan his shot from the moment Dževlan cycled onto the bridge until the moment she left the safety of the protective barrier, the Chamber has no doubt that the SRK sniper deliberately targeted her, fully aware that she was a civilian.

#### (4) Nikole Demonje street and Bulevar AVNOJ, 25 May 1994 (Scheduled Incident F.7)

3822. The Indictment alleges that, on 25 May 1994, Sehadeta Plivac, a 53 year old woman, and Hajra Hafizović, a 62 year old woman, were both shot and wounded in their legs while travelling in a crowded bus near the junction of Nikole Demonje and Bulevar AVNOJ (currently Bulevar

Branioca Dobrinje) in Dobrinja.[12625] According to the Prosecution, the fire came from Nedžarići which was an SRK-held area and from which there was a direct sight to the incident location.[12626] The Accused denies that the fire came from the VRS positions and argues that the bullet must have come from a "relatively short distance".[12627]

3823. In 1994, Ramiz Grabovica, an ABiH conscript in logistics, was employed by the public transport company to drive civilians on a regularly scheduled bus route between the Alipašino bridge and Dobrinja during cease-fires.[12628] On 25 May 1994, a sunny day, at approximately 11:40 a.m., Grabovica reached his last stop at the intersection of Nikole Demonje street and Omladinskih Brigada street in the centre of Dobrinja, stopped the red and white bus, opened the three doors of the bus and turned off the engine to save fuel.[12629] The bus was visibly a civilian vehicle, which only functioned during cease-fires along a regularly scheduled bus route.[12630] As he waited for passengers to board, Grabovica heard a single shot coming from the direction of Nedarići, which was controlled by the SRK, precipitating panic on the bus.[12631] Ramiz Grabovica saw that two middle-aged women had been injured.[12632] The one sitting on the right side of the bus was holding her knee and the other sitting in the opposite side of the aisle was bleeding profusely.[12633] The victims, Sehadeta Plivac and Hajra Hafizović, were taken off the bus and remained at the hospital where they received medical assistance.[12634] Medical documentation in evidence records that Hafizović was wounded in "both lower legs (through-and-through wounds)", while Plivac was wounded by a sniper bullet in the "upper part of the right lower leg" and had to have surgery so that a "foreign object retained in popliteal area" could be removed.[12635]

3824. Hogan visited the site of the incident with Ramiz Grabovica and filmed the visit while Grabovica indicated the exact location of the bus when shot at, as well as the location of the two victims when wounded.[12636] Grabovica can be seen in the video footage indicating that the front of

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12625 Indictment, Scheduled Incident F.7.

12626 Prosecution Final Brief, Appendix C, para. 34.

12627 Defence Final Brief, paras. 2224–2225.

12628 Adjudicated Fact 198.

12629 Adjudicated Fact 199.

12630 Adjudicated Fact 203.

12631 Adjudicated Fact 200.

12632 Adjudicated Fact 201.

12633 Adjudicated Fact 201.

12634 Adjudicated Fact 202.

12635 P1892 (Medical records for Sehadeta Plivac and Hajra Hafizović).

12636 Barry Hogan, T. 11213–11214, 11274–11276 (3 February 2011); P2202 (Photograph re sniping incident of 25 May 1994 in Dobrinja marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); D1004 (Video footage re sniping incident of 25 May 1994 in Dobrinja); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

the bus was facing southwest, that the shots hit the right hand-side of the bus and came from the northwest, that is, from the direction of Nedžarići.[12637]

3825. Van der Weijden also went to the site of the incident where he was told by the Prosecution that the bus was parked with its nose orientated south/southwest and its right side exposed down the Branioca Dobrinje street to the northwest.[12638] According to his report, the bullet that wounded the victims penetrated the wall of the bus on its right hand side, struck the knee of one of the victims, and then hit the other victim on the other side of the bus.[12639] Van der Weijden noted that there were no possible shooting positions for some 550 metres away from the incident in the direction of the northwest, including between the protective barricades that were located at the end of the Branioca Dobrinje street and the incident site, as the shooter would have had to lean outside one of the buildings lining the street in order to shoot.[12640] Therefore, the shooter must have been beyond that distance and above ground level to be able to see the bus.[12641] While his report notes that the alleged shooting position was the Faculty of Theology in Nedžarići, Van der Weijden testified that he never visited that location and was in fact unable to determine the precise location of the shooter because the area had been heavily rebuilt since the time of the incident.[12642]

3826. Since there was a lack of possible shooting positions closer than 550 metres away, the bullet that was used was most probably of a 7.62 mm or 7.92 mm calibre. Furthermore, given the distance and the fact that only one shot was heard, it is most likely that a sniper rifle, either an M76

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12637 Barry Hogan, T. 11724–11726 (3 February 2011); D1004 (Video footage re sniping incident of 25 May 1994 in Dobrinja).

12638 Patrick van der Weijden, T. 7961–7062 (28 September 2010).

12639 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 52.

12640 In response to a question by the Chamber, Van der Weijden conceded that if located on the top of one of the high-rise buildings lining the Branioca Dobrinje street on the ABiH side of the confrontation line, the shooter could have had a view of the incident site. *See* Patrick van der Weijden, T. 7066–7069 (28 September 2010); P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 53–54. The Chamber notes that in its Final Brief the Prosecution argues that the building mentioned by the Chamber during this questioning did not exist at the time. *See* Prosecution Final Brief, Appendix C, para. 35. While that may be so, the Chamber also notes that Van der Weijden's answer to the question seemed to be broader, referring to "a high-rise" and that it therefore covered any of the high-rise buildings lining the street in existence at the time of the incident.

12641 Patrick van der Weijden, T. 7066–7069 (28 September 2010); P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 53–54. On cross-examination, Van der Weijden conceded that he did not know which part of the right hand side of the bus was penetrated by the bullet and did not have access to any forensic or criminal investigation reports in relation to the incident, but claimed that this information was not necessary as he never established the exact location of the origin of fire, only a general direction and the general area from which it came. He also denied that he was told to place the origin of fire on the Serb side of the confrontation line. Patrick van der Weijden, T. 7062, 7066–7068 (28 September 2010); P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 53.

12642 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 52, 54; Patrick van der Weijden, T. 7071–7073 (28 September 2010); D662 (Photograph of Faculty of Theology in Sarajevo).

or an M91, was used.[12643] According to Van der Weijden, it would have been impossible to identify the passengers inside the bus from that distance but given that the bus was coloured in red and was stationary it would have been easily identifiable as a civilian vehicle.[12644] On cross-examination, Van der Weijden conceded that the only conclusion he was able to reach about this incident, based on the information provided to him by the Prosecution, was that the bullet could have come down the Branioca Dobrinje street and that it was "probably of a certain calibre".[12645]

3827. In his report Poparić focused on the Faculty of Theology arguing that the bullet could not have come from there, as alleged by Grabovica in the *Galić* case, because the faculty was 1,527 metres away (and thus too far for either a sniper rifle or machine-gun to reach) and there was also no line of sight between the two locations.[12646] However, the Chamber notes that the evidence tendered by the Prosecution in relation to this incident does not suggest that the fire came from the Faculty of Theology.[12647] Instead, as noted above, the Prosecution argues that the fire came from Nedžarići generally.[12648] Accordingly, the Chamber will not focus solely on the Faculty of Theology as the origin of fire.

3828. Poparić then argued that the fire could not have come from the VRS side of the confrontation line in the area because, according to a map marked by Ismet Hadžić in the *Galić* case, the confrontation line was some 250 metres behind the protective screens and the VRS

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12643 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 52. *See also* Patrick van der Weijden, T. 7065–7066 (28 September 2010). Van der Weijden reiterated that he saw weapons that use those bullets at Serb check-points in Sarajevo throughout the war. Patrick van der Weijden, T. 7070–7071 (28 September 2010). In addition, Guzina testified that his battalion, which was located in the Nedžarići area, had three M76 sniper rifles. *See* fn. 12492.

12644 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 54.

12645 Patrick van der Weijden, T. 7072 (28 September 2010).

12646 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 95–104; Mile Poparić, T. 38969, 38971–38974 (30 May 2013), T. 39241–39246 (4 June 2013); P6365 (Photograph of a building marked by Mile Poparić). Sladoje also testified that there was no line of sight between the Faculty of Theology and the incident site, and that the distance between the two was around 1,500 metres. He further noted that his battalion did not have a sniper with such a range and denied that there was a sniper in the Faculty of Theology. According to him, his battalion placed a recoilless gun at the Faculty in order to be able to neutralise enemy positions and sniper nests in high-rises in Vojničko Polje and Mojmilo. *See* D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 6, 29; Mile Sladoje, T. 30577 (28 November 2012). On the other hand, Guzina testified that the 1st Battalion had machine guns in the Faculty of Theology. He did confirm, however, that the Faculty was some 1,500 metres away from the location of the incident site and that the latter was not visible from the former. D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 44. *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 116.

12647 Indeed, Poparić was aware of that but testified that he nevertheless chose to examine that location as it was often mentioned as the source of fire for this incident. Mile Poparić, T. 38970, 38974–38975 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 103.

12648 *See* para. 3822. Indeed, the adjudicated facts related to this incident, namely Adjudicated Facts 204, 206, and 207, do not suggest that the Faculty of Theology was the origin of fire.

soldiers did not have a line of sight from those positions.[12649] Furthermore, the protective screens were placed on Nikole Demonje street in order to protect the command of the ABiH Brigade which was located in the street, which meant that armed ABiH soldiers must have been in the area securing the facility.[12650]

3829. Sladoje, an assistant commander of the 1st Battlion of the Ilidža Brigade positioned in the area of Nedžarići at the time of the incident,[12651] testified that no one from his battalion's command issued orders to fire at the street where the incident happened.[12652] While conceding during cross-examination that the very front of his battalion's defence position was approximately 550 metres from the incident site, Sladoje denied that the fire on the bus could have come from that position because the ABiH forces in Dobrinja 5 were only 100 to 150 metres away and, in addition, Dobrinja 5 was "sheltering" Dobrinja 2 and 3.[12653] Guzina, however, conceded that it was possible that the fire came from the VRS side of the confrontation line but not from the Faculty of Theology.[12654] Radojčić testified that he never received any information about this incident.[12655] Similarly, Stanislav Galić testified that he received no reports about this incident and noted that there was a general ban on opening fire on public transport as it was well known that passengers were civilians.[12656]

3830. The Chamber has also taken judicial notice of a number of adjudicated facts which state that: (i) the passengers of the bus were targeted from the area of Nedžarići;[12657] (ii) there was one line of sight between the site of the incident and Nedžarići;[12658] and (iii) the area of Nedžarići was controlled by the SRK at the time of the incident.[12659] The final adjudicated fact concludes that on

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12649 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 101–102, 104; Mile Poparić, T. 38970–38971, 38975 (30 May 2013).

12650 Mile Poparić, T. 38971 (30 May 2013).

12651 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 2, 5; Mile Sladoje, T. 30562 (28 November 2012).

12652 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 29. This was confirmed by Vladimir Radojčić, the Ilidža Brigade commander. *See* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 116.

12653 Mile Sladoje, T. 30578–30580 (28 November 2012). Guzina also testified as to the distance between the incident site and the confrontation line. When asked during cross-examination if that distance 550 metres, Guzina responded "If you say it's that way, then it's probably that way." Svetozar Guzina, T. 31162 (11 December 2012).

12654 Svetozar Guzina, T. 31164–31165 (11 December 2012).

12655 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 116.

12656 Stanislav Galić, T. 37522–37523 (22 April 2013). On the date of the incident the Accused received a report from the VRS Main Staff, but it made no mention of the incident. Galić testified that had he had information on the incident he would have sent it to the VRS Main Staff and the Main Staff would have probably sent it on to the Accused. *See* Stanislav Galić, T. 37524–37525 (22 April 2013); D3453 (VRS Main Staff report, 25 May 1994).

12657 Adjudicated Fact 204.

12658 Adjudicated Fact 206.

12659 Adjudicated Fact 207.

25 May 1994 civilian passengers of a civilian vehicle were deliberately targeted from SRK-controlled territory and such targeting resulted in the wounding of Sehadeta Plivac and Hajra Hafizović.[12660]

3831. Having weighed the above listed adjudicated facts against the evidence related to this incident, the Chamber is unable to come to the same conclusion beyond reasonable doubt. As noted above, the Prosecution does not allege a specific location for the origin of fire in this incident and instead argues that the fire came down the Branioca Dobrinje street, from Nedžarići and from the SRK side of the confrontation line, which was 550 metres away from the incident site and thus within the range of a number of sniper rifles at the SRK's disposal.[12661]

3832. It appears that the Prosecution's main argument as to the distance to the confrontation line is Van der Weijden's report in which he marked a location just behind the protective barriers which was 550 metres away from the incident site.[12662] However, Van der Weijden never claimed that this particular location was the confrontation line and instead testified that it signified a distance within which it would have been physically challenging or impossible for a shooter to have a position from which to take an accurate shot at the bus.[12663] While Guzina and Sladoje both appeared to concede during cross-examination that the confrontation line was approximately 550 metres away, their concessions did not appear to have been based on precise knowledge of the distances involved.[12664]

3833. Further throwing doubt on the Prosecution's suggestion that the distance between the incident site and the confrontation line was 550 metres is the evidence led by the Accused. For example, Guzina marked the relevant confrontation lines on a map,[12665] which in turn correspond to the confrontation lines marked on a map Poparić used to suggest that the distance was bigger than 550 metres.[12666] Thus, both maps suggest that the distance to the confrontation lines was more than 550 metres. In addition, in the Chamber's own assessment of the maps in evidence, it would

12660 Adjudicated Fact 208.

12661 *See* para. 3822.

12662 *See* T. 30579 (28 November 2012) where Prosecution referred to Van der Weijden's report during Sladoje's cross-examination to prove to Sladoje that the confrontation line was 550 metres away. *See also* T. 31163 (11 December 2012) where it did the same with Guzina.

12663 Indeed, Van der Weijden specifically said that he did not know where the confrontation line was in that area. Patrick van der Weijden, T. 7066 (28 September 2010).

12664 For example, when asked if the distance was 550 metres, Sladoje said that "perhaps" he could agree with that but only in relation to one part of the confrontation line. *See* Mile Sladoje, T. 30578–30580 (28 November 2012). Similarly, Guzina simply accepted the Prosecution's suggestion as to the distance, assuming it was correct. *See* Svetozar Guzina, T. 31162 (11 December 2012).

12665 D2556 (Map of Sarajevo marked by Svetozar Guzina).

indeed appear that the confrontation lines in the area were more than 550 metres away from the incident site. Accordingly, the Chamber has serious doubt as to the approximate distance between the incident site and the confrontation line. Not knowing how far or where the SRK soldiers were located from the incident site, the Chamber is also unable to conclude that they had a line of sight to the bus from their positions particularly given that the evidence the Chamber received indicates that Nedžarići consisted of low-rise buildings, one or two storeys high.[12667]

3834. Accordingly, the Chamber considers that the Accused has successfully rebutted the adjudicated facts listed above, through both his cross-examination of Van der Weijden and the evidence he brought during his case.

3835. Additionally, the Chamber recalls that Van der Weijden conceded that the only conclusion he could come to from the information available to him was that the bullet could have come down the Branioca Dobrinje street and that it was "probably of a certain calibre".[12668] The Chamber also acknowledges that the Prosecution managed to extract an admission from Guzina that it was possible that the fire came from the VRS side of the confrontation line.[12669] However, those two pieces of evidence are insufficient for the Chamber to be satisfied, beyond reasonable doubt, that the bullet fired on the bus came from the SRK's side of the confrontation lines and that it was fired in order to deliberately target civilians.

3836. For the foregoing reasons, the Chamber is not satisfied beyond reasonable doubt that the bullet that hit the bus came from SRK positions in the area of Nedžarići.

(5) Adija Mulaobegovića street (formerly Đure Jakšića street), 26 June 1994 (Scheduled Incident F.9)

3837. The Indictment alleges that, on 26 June 1994, Sanela Muratović, a 16 year old girl, was shot and wounded in her right shoulder while walking with a girlfriend on Đure Jakšića street (presently Adija Mulaobegovića street) in the west end of Sarajevo.[12670] In its Final Brief, the Prosecution argues that Muratović was shot from the SRK positions in the area of the School for the Blind,

12666 The Chamber notes that the map Poparić relied on was created by Ismet Hadžić, one of the ABiH commanders in the area at the time. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 102, Image 70.

12667 *See* para. 3781.

12668 Patrick van der Weijden, T. 7072 (28 September 2010).

12669 Svetozar Guzina, T. 31164–31165 (11 December 2012).

12670 Indictment, Scheduled Incident F.9. The incident occurred in Alipašino Polje, an area located in the southwest of Sarajevo, just northwest of Dobrinja and east of Nedžarići. *See e.g.* P1803 (Map of Alipašino Polje); D2556 (Map of Sarajevo marked by Svetozar Guzina); Adjudicated Fact 82.

approximately 200 metres away.[12671] The Accused argues that the wounding of Sanela Muratović can be attributed to the fact that it happened very near the confrontation line during active combat between the two sides, when no soldiers would have expected civilians to be present in the area.[12672]

3838. On 26 June 1994, between 7 and 7:30 p.m., on a sunny early evening, Sanela Muratović, age 16, and Medina Omerović, age 17, were walking to Omerović's apartment at Đure Jakšića street 17 on the eastern side of Lukavička Cesta in Novi Grad[12673] when some uniformed soldiers warned them of incoming sniper fire.[12674] Muratović was shot in her right shoulder, while Omerović, walking to the left, was not injured.[12675] Only one single shot was fired and it directly hit Muratović.[12676] There was no fighting in the area at the time of the incident.[12677]

3839. Hogan visited the site of the incident and recorded the exact location where the victim was shot.[12678] Van der Weijden also visited the incident site but not the upper floor of the School for the Blind in Nedžarići, which is 190 metres away from the location of the incident site and which offers a clear view of that location, according to the photograph provided to him by the Prosecution.[12679] When at the site Van der Weijden considered other potential origins of fire and eventually concluded, eliminating all other possibilities, that the shot did indeed come from the School.[12680] Van der Weijden was of the opinion that any bullet up to the 7.92 mm calibre was capable of causing the victim's injuries; however, he concluded that, given the distance between the alleged origin of fire and the site of the incident and the fact that the material provided to him by

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12671 Prosecution Final Brief, Appendix C, para. 36.

12672 Defence Final Brief, para. 2243–2244.

12673 The incident occurred in the suburb of Sarajevo called Alipašino Polje, an area located in the southwest of Sarajevo, just northwest of Dobrinja and east of Nedžarići. *See e.g.* P1803 (Map of Alipašino Polje); D2556 (Map of Sarajevo marked by Svetozar Guzina).

12674 *See* Adjudicated Facts 222, 223.

12675 *See* Adjudicated Facts 224, 225. *See also* P1880 (Discharge sheet for Sanela Muratović).

12676 *See* Adjudicated Fact 228.

12677 *See* Adjudicated Fact 229.

12678 Barry Hogan, T. 11214–11215 (3 February 2011); P2204 (Photograph re sniping incident of 26 June 1994 on Đure Jakšića street marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

12679 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 67–69. *See also* Barry Hogan, T. 11214–11215 (3 February 2011); P2204 (Photograph re sniping incident of 26 June 1994 on Đure Jakšića street marked by Barry Hogan).

12680 Van der Weijden denied that his task was simply to confirm that the School for the Blind was the location of the shooter. He conceded, however, that he did not know where the confrontation line was in the area between the School and the site of the incident, but noted that since the ABiH soldiers helped the victim they were probably in the buildings next to the incident site. He also conceded that he had no information as to the position of the victim's body when she was hit, or any information on the exact location of her wound. Patrick van der Weijden, T. 7142–7152 (29 September 2010); D671 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

the Prosecution suggested that "only single shots or perhaps semi automatic fire were generally fired in that area", he thought that the most likely weapon used in this incident was an M79, an M91, or a civilian bolt action hunting rifle or an older generation rifle such as an M48.[12681] In addition, given the short distance between the School for the Blind and the incident site, the victim would have been easily identifiable as a young woman; furthermore, the fact that she did not use a trench which was there to protect the people crossing the street, would have indicated to the shooter that she was not "tactically aware" and thus not a combatant.[12682]

3840. Poparić testified that there was very little information for this incident, most of it coming from Omerović.[12683] He argued, based on Omerović's evidence in the *Galić* case and some of the images taken in the area, that it was clear that the location of the incident was right on the separation line between the warring parties and that Omerović's building was used by the ABiH soldiers.[12684] He also pointed out that there was an inconsistency in the evidence as to the precise location of the girls when Muratović was shot.[12685] According to Poparić, Omerović did not accurately show her location to Hogan since she indicated to him that she and Muratović were already in front of the trench when Muratović was wounded, whereas in her testimony in the *Galić* case she said that they ran to the trench only after Muratović was wounded.[12686] This is a crucial detail to Poparić since, unlike the location shown to Hogan, the location from which the girls ran to the trench was not visible from the School for the Blind.[12687] Poparić also argued that no evidence was presented that there was a firing position at the School for the Blind window, which had the view on the incident site and that it would be illogical to have a firing position in that location as it would make an easy target.[12688] Poparić concluded that if the girls were already running before

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12681 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 67.

12682 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 70.

12683 Mile Poparić, T. 38981 (30 May 2013).

12684 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 114–115.

12685 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 115–116.

12686 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 116; Mile Poparić, T. 38979–38980 (30 May 2013).

12687 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 116–117; Mile Poparić, T. 38979–38980 (30 May 2013). The photograph of the view from the School for the Blind to the incident site was shown to Guzina during re-examination. He first claimed that the small building partially blocking the view to the Đure Jakšića street was new but then changed his mind when prompted by the Accused. *See* Svetozar Guzina, T. 31193–31194 (11 December 2012); D2560 (Photograph of building in Sarajevo, undated). The Chamber is not convinced by Guzina's testimony in this regard, but notes that even if the small building was not new, the photograph shows that there was still a partial view from the School for the Blind onto the Đure Jakšića street. Furthermore, this was conceded by Poparić who testified that the area around the trench was visible from the School for the Blind.

12688 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 117. Poparić in fact argued that there was no evidence that the School for the Blind as a whole was used as a sniper nest. *See* Mile Poparić, T. 38980 (30 May 2013). When confronted with an UNMO report

Muratović was shot then they were not shot from the School for the Blind and there must have been an exchange of fire or a ricochet.[12689] If, however, the girls were just next to the trench when shot at, there was a "theoretical possibility" that the shooter was at the level of the ceiling in the room of the School that had the view onto the trench but this, according to Poparić, was improbable.[12690] During cross-examination, when presented with a photograph of the School for the Blind taken in 1996 and shown a number of openings in the wall of the School on the side which was exposed to the incident location, Poparić denied that they were consistent with firing positions.[12691]

3841. Radojčić testified that he never issued an order to any unit of his brigade to open fire on Đure Jakšića street and that he never received any information about this incident.[12692] He did note, however, that he had information that one of the units of the 102nd Brigade of the ABiH 1st Corps was positioned on that street.[12693]

3842. Guzina confirmed that the location of the incident was "just behind the first line" which was the "worst line during the conflict" and stated that it was not logical to assume that civilians would be at that location.[12694] He also testified, based on the SRK's daily combat report of 26 June 1994, that there was fighting in the area in the evening and night of 25 June 1994 as the ABiH "fired infantry weapons provocatively on all the lines of disengagement" of the Ilidža Brigade and its units responded in order to protect themselves.[12695] Thus, according to Guzina, Muratović could have been wounded during the battles in the area.[12696] Guzina opined, however, that a civilian should not have been in this location as both sides were under obligation to remove civilians from

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stating that the Commander of the 1st Battalion of the Ilidža Brigade admitted that sniper fire was opened from the School for the Blind, Poparić responded that it was not clear that this was related to the incident involving Muratović. *See* Mile Poparić, T. 39271–39272 (5 June 2013); P1601 (UNMO report, 13 July 1994), p. 4.

12689 Mile Poparić, T. 38982 (30 May 2013).

12690 Mile Poparić, T. 38982 (30 May 2013).

12691 When told that he made conclusions in his report as to the presence of ABiH sniping nests based on a similar photograph of a building in the ABiH-held territory (Image 6 in his report), Poparić explained that there was a difference in the photographs as he was not able to see the openings properly in the photograph of the School for the Blind. Mile Poparić, T. 39272–39277 (5 June 2013); P6368 (Photograph of a building). The Chamber agrees with Poparić that the detail on the two photographs is different.

12692 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 117. Stanislav Galić also testified in relation to this incident that no one ordered this attack. Stanislav Galić, T. 37532–37533 (22 April 2013).

12693 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 117.

12694 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 45; Svetozar Guzina, T. 31167–31168 (11 December 2012). On cross-examination, Guzina did agree that civilians lived in that area but noted that there was fighting on that day. Svetozar Guzina, T. 31169–31170 (11 December 2012).

12695 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 45; D2554 (SRK combat report, 26 June 1994), p. 1. When told that the SRK combat report of 26 June 1994 referred to the fighting that happened the day before and not on the day of the incident and when confronted with Adjudicated Fact 229 which provides that there was no fighting on 26 June 1994, Guzina remained adamant that the fighting lasted all day on 26 June as he had checked this fact in his diaries. Svetozar Guzina, T. 31174–31177 (11 December 2012).

12696 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 45.

the frontline, and explained that in such circumstances every soldier had to make a decision as to whether he was under threat and whether to shoot on an observed target or not.[12697] When Galić was shown the same SRK report, which provides that the SRK would "continue to strictly implement the cease-fire agreement and refrain from combat actions", he noted that a restraint from combat activities meant that there was to be no firing so that if an incident occurred it would have to be reported and processed in some way.[12698] Galić also testified that two days prior to the incident an SRK combat report was sent to the VRS Main Staff, informing the latter that the SRK units were under orders to "consistently implement" cessation of hostilities.[12699]

3843. As noted above, Guzina conceded that the 1st Battalion had three snipers but claimed that those were positioned towards Butmir and not towards the site of this incident.[12700] When confronted with an UNMO report dated 11 July 1994 which indicates that there has been yet another sniping incident at a location near the School for Blind, whereby a 17 year old man was the third civilian casualty in the same spot in the last few days, Guzina responded that the UNMO report did not establish that this was sniper fire, and maintained that no professional snipers were located in that position.[12701] When confronted with an UNMO report dated 13 July 1994, in which he is recorded as having admitted to the sniping activity from the School for the Blind and as having promised that this would not happen again, Guzina denied ever making that admission and claimed that the UN liaison officers were able to write whatever they pleased.[12702]

3844. The Chamber has also taken judicial notice of a number of adjudicated facts which suggest that: (i) the bullet did not hit Muratović by mistake nor was there a ricochet;[12703] (ii) the shot which hit her originated from the area of the School for the Blind;[12704] (iii) UNMO and other witnesses had found that the School for the Blind was a "sniping nest" from where civilians were shot at;[12705] and (iv) the distance between the area of the School for the Blind and the position of the victim at

12697 Svetozar Guzina, T. 31170–31172 (11 December 2012).

12698 Stanislav Galić, T. 37533–37535 (22 April 2013); D2554 (SRK combat report, 26 June 1994), p. 3.

12699 Stanislav Galić, T. 37536–37537 (22 April 2013); D3455 (SRK combat report, 24 June 1994), p. 3. The report also notes, at page 1, that SRK units are at a heightened level of combat readiness and that they have been warned of the need to stop unnecessary opening of fire along the lines.

12700 *See* fn. 12492.

12701 Svetozar Guzina, T. 31177–31179, 31194–31195 (11 December 2012); P1600 (UNMO report, 11 July 1994), p. 5.

12702 Svetozar Guzina, T. 31180–31181 (11 December 2012); P1601 (UNMO report, 13 July 1994), p. 4.

12703 Adjudicated Fact 230.

12704 *See* Adjudicated Fact 226.

12705 *See* Adjudicated Fact 227.

the time of the incident was about 200 metres.[12706] Further, Adjudicated Fact 233 states that Muratović was a civilian and that she was deliberately targeted from SRK-controlled territory.[12707]

3845. The Chamber considers, given Muratović's age at the time of the incident and the fact that she was walking with Omerović to Omerović's house on Đure Jakšića street without much tactical awareness, that both girls were civilians and were not taking direct part in hostilities at the time of the incident. Further, it is clear from the evidence outlined above[12708] that civilians lived near the confrontation line in the area of Đure Jakšića street. It follows therefore that the civilian presence in the area was not unusual and that civilians had to, at times, move around the area, contrary to Guzina's evidence. This would have undoubtedly been known to the SRK units located in the area, including Guzina, and the Chamber does not accept his evidence that civilians should not have been there. Thus, it is completely logical that Muratović and Omerović, and other civilians, would have ventured outside whenever there was a cease-fire or a lull in fighting. As also noted above, the two SRK reports sent to the VRS Main Staff just before and on the day of the incident indicate that there was a cease-fire in place at the time, which further explains why the two girls were walking in the area even though it was close to the confrontation line.[12709] Finally, contrary to Guzina's evidence, the Chamber is convinced that there was no fighting on the day of the incident as two young girls would not be out on the street in such a case. Furthermore, as also recounted above,[12710] the girls were explicitly warned by the ABiH soldiers about sniper fire.

3846. The Chamber is also satisfied, based on the evidence above, that the School for the Blind was some 200 metres away from the incident site and that it had a line of sight to Đure Jakšića street. The Chamber does not accept Poparić's analysis as to discrepancies in Omerović's story since the description of the incident she gave in her evidence in the *Galić* case – as recounted by Poparić – is not necessarily inconsistent with the location of the incident shown to Hogan. The fact that Muratović was shot first and only then started running towards Omerović's house and found refuge in the trench does not mean that she was not shot when near the trench. In other words, other than saying that Muratović was not in the line of sight of the School for the Blind when shot, Poparić does not provide any explanation or visual information as to where she was in fact standing

12706 *See* Adjudicated Fact 232.

12707 *See* Adjudicated Fact 233.

12708 *See* paras. 3784, 3787–3788, fn. 12694.

12709 While the SRK report issued on the day of the incident does refer to some exchange of fire in the Ilidža Brigade's zone of responsibility, the Chamber notes that these exchanges took place mainly during the night of 25 June and in areas that were not close to Đure Jakšića street. *See* D2554 (SRK combat report, 26 June 1994), p. 1.

12710 *See* para. 3838.

when shot. Thus, the Chamber accepts the evidence of Hogan as to the location of the victim when shot and is satisfied that she could be seen from the School for the Blind at that location.

3847. The Chamber is further satisified, based on the evidence of Guzina outlined above, that the 1st Battalion of the Ilidža Brigade of the SRK had positions in the School for the Blind. It is also satisfied that the soldiers located in the School opened sniper fire at the civilians in the area and thus possessed either a sniper rifle or an M48 rifle with an optic sight, which is in line with Van der Weijden's evidence as to the gun used in this incident.[12711] Finally, the Chamber is satisfied that Sanela Muratović was deliberately targeted by one of those soldiers and that this soldier would have undoubtedly been aware of her civilian status given the short distance beween the School for the Blind and the location of the incident.[12712]

(C) Sedrenik

3848. Two of the 16 scheduled sniping incidents took place in a suburb of Sarajevo called Sedrenik. The Prosecution alleges in relation to both that the origin of fire was a rock-faced ridge called "Špicasta Stijena" or "Sharpstone", which overlooks Sedrenik.[12713]

3849. Sedrenik is a settlement located in the northeastern part of Sarajevo.[12714] It is a residential area which was frequently targeted throughout the war by small arms fire, as well as shells and mortars, resulting in a number of casualties.[12715] This made it difficult to live in Sedrenik during the conflict and Sedrenik's inhabitants were often forced to leave their houses early in the morning or late at night, while it was dark.[12716] The areas known for being frequently exposed to sniper fire were protected by bed sheets and blankets, which would be hung from wires, all in order to block

12711 *See* P1600 (UNMO report, 11 July 1994), p. 5. This is further confirmed by the SRK combat report of 24 June 1994 which provides that SRK units have been "warned of the need to stop unnecessary opening of fire along the lines", thus implying that such was the practice of those units. D3455 (SRK combat report, 24 June 1994), p. 1.

12712 The Chamber does not consider that Muratović was caught in cross-fire as she was warned that there was sniper fire in the area. *See* Adjudicated Fact 223.

12713 Scheduled Incidents F.2 and F.17; Prosecution Final Brief, Appendix C, paras. 23–25. Scheduled Incident F.13 also took place in this area but was struck out of the Indictment pursuant to Rule 73 *bis* of the Rules.

12714 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 10. *See* Adjudicated Fact 2844.

12715 P496 (Witness statement of Tarik Žunić dated 21 April 2006), pp. 2–3; P496 (Witness statements of Tarik Žunić dated 10 November 1995), p. 2; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24, 26; David Fraser, T. 8015–8016 (18 October 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 16, 19–20; Nedžib Đozo, T. 9598–9609, 9642–9646 (10 December 2010); D911 (ABiH map of Sarajevo marked by Nedžib Đozo); P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), p. 8. *See also* P1991 (Stari Grad Police Station war diary) generally for the various incident reported in Sedrenik.

12716 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 22.

the line of sight to snipers.[12717] The situation was such that many people left Sedrenik and moved to safer areas of Sarajevo.[12718]

3850. A team consisting of six to ten UNMO observers was based in a civilian house located in Sedrenik.[12719] The base had a UN flag on the roof but it was nevertheless targeted by sniping fire on an almost daily basis, as were their cars.[12720]

3851. Two main locations featuring in the evidence relating to this area of the city were two elevations above Sedrenik, namely Grdonj Hill and Špicasta Stijena.[12721] Špicasta Stijena is a bare rock, some 50 to 100 metres high, overlooking Sedrenik.[12722] According to a number of witnesses, it was the origin of much of the sniping fire on Sedrenik.[12723]

(1) Confrontation lines in the area

3852. Slavko Gengo, the Commander of the 7th Infantry Battalion of the 1st Romanija Infantry Brigade of the SRK,[12724] testified that his battalion was in control of the nine kilometre long confrontation line in the area, in the Kadrijina Kuća – Mala Tvrđava – Špicasta Stijena – Pašino Brdo – Velika Tvrđava – Pašino Brdo – Donje Bioško – Faletići – Zečija Glava – Borije –

12717 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 22. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 24.

12718 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 22.

12719 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 10–12; Harry Konings, T. 9300 (7 December 2010); P1961 (Photograph of Sarajevo hillside); P152 (Witness statement of Thomas Knustad dated 21 May 1996), pp. 2, 7; Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 1985–1986.

12720 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 40; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2 ; Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 2011.

12721 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 37–38; Slavko Gengo, T. 29786 (6 November 2012); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 16; Nedžib Đozo, T. 9590–9591 (10 December 2010); D909 (Photograph of Sarajevo marked by Nedžib Đozo) (marking Grdonj Hill with the number 1 and Špicasta Stijena with the number 2).

12722 Nedžib Đozo, T. 9545–9548 (9 December 2010), T. 9619–9621; P1980 (Photographs of Špicasta Stijena); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 12; P1961 (Photograph of Sarajevo hillside).

12723 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 40; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 4; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66; P496 (Witness statement of Tarik Žunić dated 21 April 2006), pp. 2–3; P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), p. 8; P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 15. Knustad also testified that he even saw a modified air bomb being launched from Špicasta Stijena during his time in Sarajevo, namely after 21 June 1995. *See* P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 2; Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 1990, 2028–2029.

12724 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 3.

Tabakovo Guvno sector.[12725] The Battalion numbered some 800 men[12726] and consisted of the command, six companies, one independent platoon, a logistics platoon, and a communication detachment.[12727] There was a deficit of professional officers; most of the soldiers in the battalion were locals, which had effect on the command's ability to control the units.[12728]

3853. According to Gengo, Špicasta Stijena was held by the VRS throughout the conflict.[12729] Blaško Rašević, commander of a platoon and later a company in Mrkovići,[12730] which was part of the 1st Romanija Infantry Brigade,[12731] confirmed this saying that from 5 April 1992 his platoon, as well as another Mrkovići platoon, took up positions on the Velika Tvrđava-Špicasta Stijena axis and "successfully defended that line until the end of the war".[12732] According to Rašević, his unit carried out only defensive tasks and never received an order to attack.[12733] Stanislav Galić, who was the SRK Commander until 1994, testified that Špicasta Stijena was around one kilometre away

12725 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 13; D2384 (Map of Sarajevo marked by Slavko Gengo); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo). The Chamber notes that Mala and Velika Tvrđava were also known and referred to as Mala and Velika Kula throughout the evidence.

12726 650 of those men were in infantry companies while the rest belonged to logistics support. *See* Slavko Gengo, T. 29766 (6 November 2012).

12727 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 13.

12728 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 25–26. However, according to Gengo, disciplinary problems happened mostly when parts of the unit were dispatched on assignments outside the battalion's zone of responsibility. *See* D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 26.

12729 Slavko Gengo, T. 29786 (6 November 2012). Two UNMO observers stationed in the area, namely Konings and Knustad, also testified to that effect. Knustad even saw a Bosnian Serb flag on Špicasta Stijena. *See* P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 40; Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 2036. Furthermore, senior UNMO observer, Francis Roy Thomas, visited the Serb positions on Špicasta Stijena. P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66.

12730 Rašević was the company commander between 31 January 1993 and September 1994. *See* D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 16–17. Mrkovići is a village north of Grdonj Hill and Sarajevo city. *See* D2794 (Satellite image of Sarajevo marked by Dragomir Milošević).

12731 With the formation of the VRS, the two Mrkovići platoons first became part of the 2nd Romanija Brigade and then later the 1st Romanija Infantry Brigade, which was part of the SRK. The commander of the 1st Romanija Brigade was Dragomir Milošević, followed by Vlado Lizdek. *See* D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 20; Blaško Rašević, T. 30911 (4 December 2012).

12732 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 20, 29; D2528 (Map of Grdonj marked by Blaško Rašević). Siniša Maksimović, who briefly replaced Rašević as the Commander of Mrkovići Company in 1994, testified that the company's positions were located to the north of the Grdonj Hill, at the level of Mala Kula but he did place Špicasta Stijena in the Mrkovići Company's zone of responsibility. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 5, 9; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357 (Photograph of Sarajevo from Grdonj Hill); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 17.

12733 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 21. Rašević also testified that from their positions they could see the firing positions of the ABiH in the city, including near the Faculty of Physical Education, the Koševo Hill tunnel, the Koševo stadium, Nemanja Vlatković School, and Koševo Hospital grounds. *See* D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 23. *See also* D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 23.

from Sedrenik, that it was partly under SRK control at one point, and that it then came under ABiH control.[12734] However, he provided no detail as to when the change-over happened.[12735]

3854. Contrary to the evidence outlined above, Dragomir Milošević testified that the SRK forces were not located on Špicasta Stijena but in the area of Mala Kula, just behind Špicasta Stijena.[12736] He went so far as to claim that Špicasta Stijena was not in the zone of responsibility of the SRK.[12737] However, when questioned by the Chamber, he conceded that the SRK would have had "conditions from [Špicasta Stijena] to execute possible fire", and that "possible fire was executed to the degree required for [the units] to protect themselves".[12738]

3855. Accordingly, the Chamber is satisfied that, with the exception of a few days around mid-1994, when it was temporarily taken over by the ABiH, Špicasta Stijena was in the zone of responsibility of the SRK, more precisely the 7th Battalion of the 1st Romanija Infantry Brigade, and that the SRK soldiers were able to open fire from that feature.[12739] In addition, the Chamber is also satisfied that, since it is situated on a steep slope, Sedrenik could be easily seen from both Špicasta Stijena and the adjacent Grdonj Hill.[12740]

3856. The ABiH units opposing the 7th Battalion, including the Mrkovići Company, belonged to the 105th and 110th Mountain Brigades and held the top of the Grdonj Hill, with the area of Sedrenik behind them, as well as the extensive views towards the city.[12741] According to Nedžib

12734 Stanislav Galić, T. 37467, 37478–37479 (22 April 2013).

12735 The Chamber received evidence there was a temporary take over of Špicasta Stijena by Bosnian Muslim forces, which took place in mid-September 1994 and lasted for about two days. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 10; Siniša Maksimović, T. 29303 (23 October 2012); Blaško Rašević, T. 30914–30915 (4 December 2012); Slavko Gengo, T. 29786 (6 November 2012). In addition, Gengo testified that two trenches on Špicasta Stijena were taken from the SRK in summer of 1994. *See* D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 33.

12736 Dragomir Milošević, T. 32567–32568 (23 January 2013), T. 33187–33188 (5 February 2013); D2794 (Satellite image of Sarajevo marked by Dragomir Milošević).

12737 Dragomir Milošević, T. 33189–33195 (5 February 2013).

12738 Dragomir Milošević, T. 33196–33197 (23 January 2013).

12739 Indeed, even the Accused's expert witness, Mile Poparić, prepared his report working on that assumption. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 41. In his report, Mile Poparić provides photographs of various trenches on Grdonj and Špicasta Stijena. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), Images 13–17. *See also* Adjudicated Facts 101, 102, and 160.

12740 Slavko Gengo, T. 29786 (6 November 2012); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 37–38. In addition, according to the witnesses, all the trees from Špicasta Stijena towards Sedrenik were cut by the civilians who needed firewood. D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 34; Nedžib Đozo, T. 9546–9547 (9 December 2010), T. 9593–9595 (10 December 2010). The Chamber notes that Nedžib Đozo also testified that sniping fire on Sedrenik could only be opened from Špicasta Stijena as Sedrenik was not visible from Grdonj Hill. *See* P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 16. However, in light of Poparić's report, the Chamber does not accept this part of his testimony.

12741 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 26; D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 5; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357

Đozo, who was a police investigator in the Stari Grad police station,[12742] the ABiH units were not positioned directly below or at the foot of Špicasta Stijena as that would have been too close and too dangerous; instead, they were positioned to the left, towards Grdonj, and to the right, towards the forest.[12743] Đozo also testified these were not proper lines but rather two or three positions protecting the area from the "onslaught of Serb forces towards Sedrenik."[12744] Gengo also testified that in the area of Špicasta Stijena and Velika and Mala Tvrđava, the 7th Battalion was deployed higher than the ABiH units.[12745]

3857. The positions of the 105th Mountain Brigade were some 20 to 100 metres away from the positions of the Mrkovići Company and the line of disengagement on Špicasta Stijena was, in certain places, as narrow as 20 metres.[12746]

(2) Snipers in the area

3858. Milošević denied that the SRK had any snipers on Špicasta Stijena, explaining that the distances involved were great that any type of infantry weapons in that position would have been useless.[12747] Gengo confirmed this, stating that there were no trained snipers in the 7th Battalion and that opening fire towards Sedrenik was impossible because of the distances involved, the configuration of the terrain, and the fact that trenches on Špicasta Stijena were "always under cross-fire".[12748] Gengo did concede, however, that the 1st Romanija Infantry Brigade had over sixty 7.62 and 7.9 mm sniper rifles in its arsenal.[12749] While claiming that the Mrkovići Company did not have professional snipers or sniper rifles, Rašević testified that they had optical devices placed on hunting rifles, which then had a targeting accuracy of up to 1,000 metres, with the greatest accuracy

(Photograph of Sarajevo from Grdonj Hill); Dragomir Milošević, T. 32567, 32570 (23 January 2013); D2794 (Satellite image of Sarajevo marked by Dragomir Milošević); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16; Slavko Gengo, T. 29838 (6 November 2012); Asim Džambasović, T. 15194, 15207, 15238–15240 (22 June 2011); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); P1058 (ABiH map). According to Džambasović, the command post of the 105th Brigade was located in the Šipad building in Trampina street. *See* Asim Džambasović, T. 15207 (22 June 2011).

12742 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 4.

12743 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 16, 18. *But see* Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1723–1724, 1726–1727, 1741–1742.

12744 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 16.

12745 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16.

12746 D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 5, 10; Asim Džambasović, T. 15240, 15251 (22 June 2011); Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 2045.

12747 According to Milošević, there were some artillery weapons in Mrkovići but they were withdrawn and placed under the command of UNPROFOR. *See* Dragomir Milošević, T. 32571 (23 January 2013).

12748 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 35; Slavko Gengo, T. 29787 (6 November 2012).

12749 Slavko Gengo, T. 29788, 29794–29796 (6 November 2012); P5945 (Report of 1st Romanija Infantry Brigade to SRK, 29 October 1993); P1279 (SRK request to VRS Main Staff, 10 July 1995).

between 300 and 400 metres.[12750] Siniša Maksimović, who briefly replaced Rašević as the Commander of Mrkovići Company in 1994,[12751] conceded that his unit would open fire from Špicasta Stijena but only when attacked and only on ABiH positions.[12752]

3859. Contrary to Gengo and Milošević's evidence as to the presence of snipers on Špicasta Stijena, Thomas testified that due to a large number of sniping incidents originating from Špicasta Stijena, he tried to negotiate UNMOs' presence there and in the course of his negotiations with the SRK was able to visit their positions in the area some time after February 1994.[12753] According to him, Špicasta Stijena was a "very well dug in position" such that there was "no need for special facilities for the snipers."[12754] The SRK soldiers could "just pick a trench and prepare themselves, shoot, and then move on to another trench" as they had a clear view.[12755] Ultimately, negotiations to have UNMO presence on Špicasta Stijena were unsuccessful despite Thomas taking the matter to Major Indić and thus bringing it to Galić's attention.[12756] Thomas' evidence is confirmed by an UNMO report of 6 March 1995, according to which two civilians and the APC of the UNPROFOR's Egyptian battalion came under sniper fire from the positions of Špicasta Stijena; when the APC returned fire and engaged the SRK shooter, the UNMO Vogošća team was threatened by the Commander of the SRK's Radava Battalion[12757] and told to leave his "target practice area (Sedrenik)" or it would be fired upon.[12758]

3860. In terms of the disposition of fire in Sedrenik, Fraser testified that it was the Serbs that fired more in the area, which is why protective screens were set up.[12759] However, Galić testified that ABiH was constantly attacking SRK positions on the axis Sedrenik-Zlatište and that ABiH forces

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12750 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 29. *See also* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 8. The Chamber also recalls here Van der Weijden's evidence that a substantial number of combatants in Sarajevo had hunting rifles fitted with scopes, which were suitable for sniping. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, pp. 3–4.

12751 At the time of the incident, however, Maksimović was a member of the intervention platoon in the 4th Battalion of the Igman Brigade and held the line on Igman, which is far from Sedrenik. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 3–5; Blaško Rašević, T. 30914–30915 (4 December 2012).

12752 When shown the UNMO report of 6 March 1995 referring to two civilians being wounded by fire from Špicasta Stijena, Maksimović explained that this happened when he was no longer the commander in the area. Siniša Maksimović, T. 29297–29298 (23 October 2012); P1619 (UNMO report, 6 March 1995).

12753 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66.

12754 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66. *See also* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 20.

12755 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66.

12756 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 66.

12757 Radava is a village not far from Mrkovići. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 4; D2355 (Map of Sarajevo marked by Siniša Maksimović).

12758 P1619 (UNMO report, 6 March 1995).

12759 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 24, 26; David Fraser, T. 8015 (18 October 2010).

would even open sniper fire on Sedrenik itself.[12760] Rašević confirmed that ABiH forces launched several attacks on his positions between April 1992 and January 1993, noting that the area was deemed important because it was a dominant elevation that could cut off the connection between Vogošća and Hresa and leave all Serb-held municipalities in encirclement.[12761] Dragomir Milošević also testified that the area was of strategic importance to the SRK, which is why the ABiH would regularly launch attacks on Mrkovići and the road leading from Pale to Vogošća via Špicasta Stijena.[12762] Finally, Gengo too mentioned such attacks on the positions of his battalion, including by ABiH sniper fire—he then stated that he and his forces would return fire in retaliation, and in doing so would use both machine gun and mortar fire.[12763]

3861. In Poparić's view, in terms of safety for Sedrenik, the positions at Špicasta Stijena and Grdonj were "very disadvantageous" because Sedrenik was situated on a steep incline, meaning that almost every bullet fired from Špicasta Stijena and Grdonj would have had a ricocheting angle, so that in an exchange of fire a substantial number of projectiles would fly in the direction of the inhabited area.[12764]

3862. Taking all the above evidence into account, particularly the evidence of Thomas, Milošević, and Gengo, the Chamber is satisfied that the SRK positions above Sedrenik were of strategic importance to the SRK and that the SRK was able to and would open fire both from Špicasta Stijena and from its positions around it. Additionally, it is also satisfied, relying on Gengo, Rašević and the SRK documents cited above,[12765] that the SRK soldiers in the area had machine guns, sniper rifles, and hunting rifles with optic sights. Finally, relying on the evidence of UNMO witnesses, Žunić, Đozo, and in particular the UNMO report of 6 March 1995,[12766] the Chamber is satisfied that the SRK soldiers would open small arms and/or sniper fire at the civilians in Sedrenik, and that Sedrenik was used by the SRK for "target practice".

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12760 Stanislav Galić, T. 37190 (15 April 2013), T. 37411 (18 April 2013), T. 37541–37542 (22 April 2013); D3425 (SRK combat report, 2 September 1993); D3457 (SRK combat report, 27 July 1994).

12761 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 22, 26, 27; Blaško Rašević, T. 30906–30909 (4 December 2012); D2529 (Map of Sarajevo marked by Blaško Rašević).

12762 Dragomir Milošević, T. 32568–32569 (23 January 2013).

12763 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 10, 27–28, 33; Slavko Gengo, T. 29782–29783 (6 November 2012).

12764 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 42.

12765 *See* fn. 12749.

12766 *See* paras. 3849–3851, 3859–3860.

(3) Sedrenik, 17 April 1993 (Scheduled Incident F.2)

3863. The Indictment alleges that, on 17 April 1993, a nine year old girl was shot and wounded in the back while playing in the front garden of her house in the Sedrenik area of Sarajevo.[12767] In its Final Brief, the Prosecution argues that the fire originated from Špicasta Stijena, which was controlled by the SRK and which had an unobstructed view of the location where the girl was hit.[12768] The Accused argues, however, that the girl could not be seen from Špicasta Stijena when shot whereas she could be seen from the ABiH positions at Grdonj Hill.[12769]

3864. The Chamber has also taken judicial notice of a number of adjudicated facts relating to the events on the day of this incident. According to those, the weather was sunny and a nine year old girl,[12770] who was wearing dark trousers and a blue jacket, had gone outside into her front yard to play underneath a window of her house in Sedrenik.[12771] The bullet hit the girl in "the area of [her] shoulder blade [...] went through [her] body and ended up in the wall" behind her.[12772] Some unspecified time thereafter that day, the girl was transported in a car to a hospital in Sarajevo with the help of neighbours.[12773] A shot was fired at the car as it pulled away from the girl's house, hitting it in the back.[12774]

3865. Hogan visited the site of the incident and recorded the exact position of the girl when she was shot.[12775] Van der Weijden also visited the incident site, as well as Špicasta Stijena, which is 1,108 metres away, towards the northwest.[12776] He noted that the bullet that wounded the victim exited her body and struck the wall behind her, leaving a trace, which meant that its path could be roughly traced to the position of the shooter.[12777] While observing the environment from the exact location and height at which the girl was located when shot, he found that there was only one possible location for the origin of fire, namely Špicasta Stijena.[12778] When he visited Špicasta

12767 Indictment, Scheduled Incident F.2.

12768 Prosecution Final Brief, Appendix C, paras. 23–24.

12769 Defence Final Brief, paras. 2188–2193.

12770 As noted in Adjudicated Fact 157, the nine year old girl was known as Witness E in the *Prosecutor v. Galić* case. *See also* P5068 (Pseudonym sheet for Witness E in *the Prosecutor v. Stanislav Galić* case) (under seal).

12771 *See* Adjudicated Fact 157.

12772 *See* Adjudicated Fact 158.

12773 *See* Adjudicated Fact 159.

12774 Adjudicated Fact 159.

12775 Barry Hogan, T. 11208–11209 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2195 (Photograph re sniping incident of 17 April 1993 in Sedrenik marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo).

12776 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 20–21.

12777 In his report, Van der Weijden attaches a photograph of that view, showing unobstructed view from the incident site to Špicasta Stijena. P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 22–23.

12778 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 22.

Stijena, he found that it offered an unobstructed view towards the incident site and, like Thomas, thought that it was an obvious location for a sniper position or a machine-gun emplacement.[12779] Van der Weijden also noted that a tree in a garden close to the incident site obscured the view somewhat but that this would not have been the case more than 15 years ago.[12780]

3866. As for the weapon used in this incident, Van der Weijden thought that the bullet that struck the victim could not have been greater than 7.92 mm as such a calibre would have caused greater damage.[12781] Given that there was no evidence of multiple shots, Van der Weijden concluded that probably an M76 or M91 semi-automatic sniper rifle was used to shoot the girl, although he conceded that the range here would have been extreme for those rifles.[12782] According to Van der Weijden, the shooter would have been able to conclude that the victim was a small child because (i) the weather was sunny on the day of the incident; (ii) the girl was standing next to her house, which would have indicated her size; (iii) she had long hair and was wearing civilian clothing; and (iv) she was playing in the garden for one and a half hours before being shot which would have made her visible to the shooter occasionally.[12783]

3867. Poparić, while acknowledging that the girl's house is visible from Špicasta Stijena, testified that the exact spot she was located at when shot[12784] was not visible from the "outermost trench of the [VRS]" on Špicasta Stijena but was instead visible from Grdonj Hill.[12785] In support of this claim, Poparić produced two photographs of the view on the house from both Špicasta Stijena and Grdonj Hill.[12786] Another method Poparić used to prove his claim was to calculate the site angle between the incident site and the VRS trenches and then, based on the assumption as to the potential height of the house adjacent to the girl's house, calculate the distance the adjacent house would have to have been located at from the girl's house for the girl's exact location to be visible

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12779 *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 20, 22. This was confirmed by Barry Hogan and the photograph he took at the exact location where the girl was playing when shot. *See* Barry Hogan, T. 11208–11209 (3 February 2011); P2195 (Photograph re sniping incident of 17 April 1993 in Sedrenik marked by Barry Hogan).

12780 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 22.

12781 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 20.

12782 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 20.

12783 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 23.

12784 Poparić obtained that location from a photograph the girl marked during her testimony in the *Galić* case. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 59, Image 34. In contrast, Van der Weijden used the GPS location obtained by Barry Hogan. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 20.

12785 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 61–63; Mile Poparić, T. 38945 (29 May 2013).

12786 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 61; Mile Poparić, T. 38942–38943, 38945–38946 (29 May 2013); D3634 (Two photographs of houses marked by Mile Poparić). Poparić also used Google-earth images. Mile Poparić, T. 38943–38944 (29 May 2013).

from Špicasta Stijena.[12787] That distance, according to him, was much bigger than the actual distance between the two houses (which he again gauged from photographs), thus proving in his view that the girl was not visible from Špicasta Stijena when shot.[12788] Poparić also noted that the girl's house was far from Špicasta Stijena, over 1,100 metres away, which made it very difficult to see the girl, regardless of the optical equipment being used.[12789] He also expressed a view that in his personal opinion no one targeted the girl deliberately, but that she was hit by a stray bullet, which could not have come from Špicasta Stijena.[12790]

3868. In cross-examination, Poparić conceded that he did not visit the girl's house or examine the bullet trace in the wall because (i) he assumed the changes had been made to the house and the examination would not have been useful and (ii) soon after visiting Špicasta Stijena, he realised that the location of the victim was not visible from there.[12791] He also clarified that the girl was a protected witness in a previous case and therefore the defence team did not consider contacting her.[12792] When shown a photograph taken from Špicasta Stijena in 1996 and asked if it showed a much clearer line of sight to the victim's house than photos taken by him, Poparić argued that the house was indeed more visible but that the ground floor, where the girl was located when shot, still could not be seen.[12793]

3869. Rašević, who commanded the SRK's Mrkovići Company at the time of the incident, testified he held the positions on Špicasta Stijena, but that he never received an order to shoot at civilians or civilian targets, and that he never issued such orders to his subordinates.[12794] Furthermore, his company never opened fire at civilians in Sedrenik.[12795] In cross-examination, Rašević was shown the UNMO report of 6 March 1995.[12796] When asked to comment how this information squared with his answer that his units never fired from Špicasta Stijena, Rašević

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12787 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 61–63.

12788 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 62–63; Mile Poparić, T. 38945 (29 May 2013).

12789 Mile Poparić, T. 38941 (29 May 2013).

12790 Mile Poparić, T. 38945 (29 May 2013). *See also* Siniša Maksimović, T. 29306 (23 October 2012).

12791 Mile Poparić, T. 39222–39224 (4 June 2013). According to the Prosecution, Poparić's analysis of the origin of fire was undermined because of his failure to analyse the actual impact point of the bullet. *See* Prosecution Final Brief, Appendix C, para. 9.

12792 Mile Poparić, T. 39304 (5 June 2013).

12793 Mile Poparić, T. 39225–39227 (4 June 2013); P6362 (Photograph of houses in Sarajevo marked by Mile Poparić).

12794 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 21, 29.

12795 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 29. In fact, Rašević testified that SRK never fired from Špicasta Stijena at all. *See* Blaško Rašević, T. 30917 (4 December 2012).

12796 *See* para. 3859; P1619 (UNMO report, 6 March 1995).

responded that this incident happened after he left Mrkovići but conceded that, based on that report, he could not exclude that there was no firing from the SRK positions at Špicasta Stijena.[12797]

3870. Siniša Maksimović, the Commander of Mrkovići Company after this incident took place,[12798] testified that the positions of the company were the same even before he arrived to the area and that, based on a photograph given to him by the Accused's defence team, these positions had no view onto the exact location of the incident.[12799] When shown a different photograph, taken by Hogan at the precise location the victim was located when shot, which shows a different view towards the alleged origin of fire, he testified that if that was indeed the origin of fire then it was under control of another VRS unit—unit that was his neighbour on the left flank.[12800]

3871. Maksimović also explained that the distance between the incident site and the position of SRK units was somewhere between 800 and 1,000 metres and that, to his knowledge, the units at that location did not have soldiers trained for sniper fire, or guns of that range.[12801] When shown a report from the 1st Romanija Infantry Brigade to the SRK command, dated 29 October 1993, and reporting on the brigade's sniping capabilities, including that it possessed about 50 M76 7.92 mm calibre rifles, Maksimović conceded that those rifles have a range of about 1,000 metres.[12802]

3872. Maksimović also testified that the position of his units was under constant fire by the ABiH units as Grdonj Hill was in a dominant position in relation to his company's positions.[12803] Nevertheless, he conceded that SRK soldiers would open fire from Špicasta Stijena.[12804] Finally, he

12797 Blaško Rašević, T. 30917–30920 (4 December 2012).

12798 At the time of the incident Maksimović was a member of the intervention platoon in the 4th Battalion of the Igman Brigade and held the line on Igman, which is far from Sedrenik and only replaced Rašević briefly in 1994. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 3–5; Blaško Rašević, T. 30914–30915 (4 December 2012). For that reason, the Prosecution submits that his evidence is irrelevant to this incident. *See* Prosecution Final Brief, Appendix C, para. 24.

12799 Maksimović was able to make that conclusion based on the photograph given to him by the Accused's team and said to have been taken from the approximate location of the victim when shot. He marked this photograph, placing the location of his units behind the roof of the house adjacent to the victim's house. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 7; D2358 (Photograph of Sedrenik marked by Siniša Maksimović).

12800 Siniša Maksimović, T. 29299–29300 (23 October 2012); P2207 (Images re scheduled sniping incidents in Sarajevo).

12801 He explained that his units only had 7.62 mm automatic rifles which were most accurate at 300 to 400 metre range and for which 800 metres would be the extreme range. *See* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 8; Siniša Maksimović, T. 29301, 29305–29306 (23 October 2012); P2193 (Map of Sarajevo).

12802 Siniša Maksimović, T. 29301–29304 (23 October 2012); P5945 (Report of 1st Romanija Infantry Brigade to SRK, 29 October 1993).

12803 D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 8, 10.

12804 Siniša Maksimović, T. 29297 (23 October 2012).

testified that he never issued orders for civilians to be fired on in the area and that he never heard that civilian targets were fired on by the members of his unit.[12805]

3873. Galić testified that he had no knowledge about this incident at the time, but that he realised during his trial that SRK positons on Špicasta Stijena did not have a view of the area where the girl was located when shot.[12806] Further, he stated that he never issued orders to target civilians in the area of Sedrenik and if anyone did open such fire, it was done unbeknownst to him.[12807]

3874. The Chamber has also taken judicial notice of a number of adjudicated facts going to the origin of fire, which state that (i) the bullet that injured the nine year old girl was fired from the area of Špicasta Stijena;[12808] (ii) there was no military equipment or personnel near the girl at the time;[12809] (iii) the girl, along with others, was targeted again from the direction of Špicasta Stijena as she was being taken to the hospital;[12810] and (iv) the girl was a civilian and was deliberately targeted from SRK-controlled territory.[12811]

3875. The Chamber considers, given the girl's age at the time of the incident and the fact that she was playing in front of her house, that she was a civilian and that she was not taking direct part in hostilities at the time of the incident nor was she around soldiers or military targets when it happened. Contrary to Poparić's opinion that the girl was hit by a stray bullet from an exchange of fire, the Chamber is satisfied that there was no fighting at the moment she was playing in her yard as she would not have been engaging in such an activity if that were the case.

3876. The Chamber is also satisfied, based on the evidence above, that the area of Špicasta Stijena had a line of sight to the exact location where the girl was playing. In fact, the Chamber accepts Van der Weijden's evidence that Špicasta Stijena was the only location that had a view of the girl at the time. The Chamber is persuaded by his analysis because he personally observed the environment from the girl's position when shot and he also examined the bullet traces on the wall. In contrast, the Chamber does not accept Poparić's analysis of this incident as it is based on a number of speculations. First, unlike Van der Weijden, Poparić did not visit the victim's house nor was he able to observe the view from the house to Špicasta Stijena, which should have been the very first step for an expert to take. Second, his claim that the view between the location of the

12805 D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 9.
12806 Stanislav Galić, T. 37478–37482 (22 April 2013); D3439 (VRS Main Staff Order, 17 April 1993).
12807 Stanislav Galić, T. 37478–37479 (22 April 2013).
12808 *See* Adjudicated Fact 161.
12809 *See* Adjudicated Fact 162.
12810 *See* Adjudicated Fact 163.
12811 *See* Adjudicated Fact 164.

victim when shot and Špicasta Stijena was obstructed is based on (i) various calculations based on the height of the adjacent house and its distance to the victim's house, and (ii) a photograph of the victim's house taken from Špicasta Stijena. Having considered his ground (i), the Chamber finds it unconvincing as it is based on a number of speculations as to the measurements involved—not having been to the location of the incident, Poparić is merely guessing the height of the adjacent house and the distance between the two houses. As for (ii), while the photograph does appear to show that the tree near the victim's house is obstructing the view of the location of the girl when shot, the Chamber also recalls Van der Weijden's testimony that when he visited Špicasta Stijena, he found that it offered an unobstructed view of the incident site.[12812] He noted the existence of the said tree and partially obstructed view due to its branches, but concluded that the view would not have been so obstructed more than 15 years ago.[12813] Accordingly, the Chamber is persuaded by Van der Weijden's analysis that Špicasta Stijena was the only possible origin of fire for this incident.

3877. The Chamber is further satisified, based on the evidence of local SRK commanders, that the 7th Battalion of the 1st Romanija Infantry Brigade of the SRK had positions in the area of Špicasta Stijena and would open fire from that area, as attested to by a number of witnesses, including Thomas, Milošević, and Gengo. Relying, among other things, on the UNMO report of 6 March 1995, the Chamber is also satisfied that the SRK soldiers located in the area would open sniper fire at the civilians in Sedrenik, as they used the area for "target practice". It is also satisfied, relying on the evidence above,[12814] that the SRK soldiers in the area possessed either sniper rifles or hunting rifles with optic sights, which would have had the range needed to reach the victim in this case.[12815] Finally, given the distance between the incident site and the area of Špicasta Stijena, which would have required a careful shot on the part of the shooter, as well as the fact that the car taking her to the hospital was also shot at, the Chamber is satisfied that the girl was deliberately targeted by one

12812 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 20, 22. *See also* Barry Hogan, T. 11208–11209 (3 February 2011); P2195 (Photograph re sniping incident of 17 April 1993 in Sedrenik marked by Barry Hogan).

12813 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 22. Indeed, this is confirmed by the photograph of the area taken in 1996, namely P6362, where the ground floor of the girl's house can be seen from Špicasta Stijena. The Chamber also notes that Poparić acknowledged Van der Weijden's evidence about the tree but testified that he "personally" thought that the bullet could not have come from Špicasta Stijena. Mile Poparić, T. 38945 (29 May 2013). However, in light of the evidence on visibility that Van der Weijden gave, which in turn was supported by the evidence of Barry Hogan, the Chamber does not accept Poparić's view that the fire could not have come from Špicasta Stijena.

12814 *See* para. 3858.

12815 The Chamber also recalls here Van der Weijden's evidence that a substantial number of combatants in Sarajevo had hunting rifles fitted with scopes, which were suitable for sniping. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), Appendix A, pp. 3–4.

of the SRK soldiers. This soldier would have undoubtedly been aware of her civilian status, for all the reasons outlined above by Van der Weijden.[12816]

(4) Sedrenik street, 6 March 1995 (Scheduled Incident F.17)

3878. The Indictment alleges that on 6 March 1995, Tarik Žunić, a 14 year old boy, was shot and wounded in the hand while walking home from school at Sedrenik street, in the northeast of Sarajevo. The Indictment also alleges that he was hit as he emerged from behind a protective screen about 100 metres from his house.[12817] In its Final Brief, the Prosecution submits that the shot came from Špicasta Stijena and that the most likely weapon used was M84 machine-gun.[12818] The Accused counterclaims that the location of the incident was not visible from the SRK positions in the area and that sniper fire was not possible due to distances involved and field configuration.[12819]

3879. On 6 March 1995, Tarik Žunić, then 14 ½ years old, was walking home from school, which he would attend only on days when there was no shelling or fighting.[12820] At around 1 p.m., he was on Sedrenik street, some 100 metres from his house, and had just passed a canvas erected on the street as protection against sniper fire,[12821] when he heard two shots.[12822] He immediately took shelter on the edge of the street and, while the shooting continued, realised that he had been hit in the right hand.[12823] A civilian car tried to stop and help him but was also targeted by the sniper so drove on.[12824] Another man also tried to help but he too was shot at.[12825] Some five minutes later

12816 *See* para. 3866.

12817 Indictment, Scheduled Incident F.17.

12818 Prosecution Final Brief, Appendix C, para. 25.

12819 Defence Final Brief, paras. 2297–2303.

12820 Žunić also explained that when there was no shelling or sniping he would use the "main street" to get to school and back. There was also a more sheltered but more difficult route he would take in case fire started when he was coming back from school. On the day of the incident he was taking the main street route. *See* P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2. *See also* Adjudicated Fact 2998.

12821 Žunić also testified that there was a "canvas" along the street he was walking on, erected in order to shield the people from the snipers. However, the canvas did not shield the whole length of the street. In addition, there were trees lining the street which provided protection in summer. However, given that this was early March, the trees has no leaves on their branches. *See* P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2.

12822 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1707–1715, 1748–1754; P457 (Map of Sarajevo marked by Tarik Žunić); P449 (Aerial photograph of Sarajevo marked by Tarik Žunić); P450 (Aerial photograph of Sarajevo marked by Tarik Žunić); P451 (Photograph of Sarajevo marked by Tarik Žunić); P452 (Photograph of Sarajevo marked by Tarik Žunić); P453 (Photograph of Sarajevo marked by Tarik Žunić), P460 (Photograph of Sarajevo marked by Tarik Žunić).

12823 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1725–1728, 1734, 1737–1738. *See also* Adjudicated Fact 3000.

12824 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2.

an APC driven by Egyptian UNPROFOR soldiers arrived and Žunić managed to get on board, after which he was transported to the Koševo Hospital where his wound was attended to.[12826]

3880. On the day of the incident, which was cloudy but not foggy, Žunić was wearing jeans and a green jacket and carrying a blue rucksack on his right shoulder.[12827] Žunić maintained during his evidence that his jacket was not olive-drab green but rather "Benetton-green",[12828] and that he never fought in the ABiH as he was too young at the time.[12829] Once in the hospital, he noticed two holes on the front of his jacket.[12830] The bullet had first entered the left side of his jacket, then exited through the right side of his jacket and then passed through his right hand.[12831]

3881. Žunić testified that the shots came from Serb positions on Špicasta Stijena, to his left, because this location was the only location from which the snipers had a perfect sight of the Sedrenik street.[12832] According to him, the ABiH forces were located at the foot of Špicasta Stijena and their positions were not visible from where he was walking when shot.[12833] He believed, based on how loud the shots were and his experience with sniper fire until that point, that they were fired from an M84 machine-gun.[12834] According to Žunić, there were no military installations or trenches in the vicinity of the location where he was shot, and the confrontation line was some 700 to 900 metres away.[12835] Finally, he testified that he had been fired upon on two other occasions, also from Špicasta Stijena.[12836]

3882. The UNMO observers reported on this incident on the same day, as well as on another incident in the area some 25 minutes earlier, and concluded that the fire in relation to both had

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12825 P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1744–1745.

12826 Žunić testified that he does not suffer from the consequences of his wound except when the weather is about to change. *See* P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2.

12827 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2. *See also* Adjudicated Facts 2998, 2999.

12828 Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1724–1725.

12829 Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1741, 1745–1746.

12830 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; P496 (Addendum to Tarik Žunić's witness statement of 10 November 1995, 25 April 2010), p. 1; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1725, 1740–1741.

12831 P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1725, 1741; P1548 (Medical report for Tarik Žunić); P1534 (List of medical records of sniping victims), p. 3. *See also* Adjudicated Fact 3000.

12832 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1725, 1738–1739, 1753–1754; P453 (Photograph of Sarajevo marked by Tarik Žunić); P460 (Photograph of Sarajevo marked by Tarik Žunić).

12833 Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1723–1724, 1726–1727, 1741–1742.

12834 P496 (Witness statement of Tarik Žunić dated 10 November 1995), p. 2; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1740.

12835 P496 (Witness statement of Tarik Žunić dated 10 November 1995), pp. 2–3; P496 (Witness statement of Tarik Žunić dated 21 April 2006), p. 2; Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T. 1709, 1712–1715, 1746–1748; P450 (Aerial photograph of Sarajevo marked by Tarik Žunić).

come from Špicasta Stijena.[12837] The observers also reported that, while assisting the victims of those two incidents, they came under occasional small arms fire, as a result of which the Egyptian battalion's anti sniping APC at that location returned fire on the Bosnian Serb positions on Špicasta Stijena.[12838] Following this, the UNMO team from Vogošća received a phone call from the Bosnian Serb commander of the Radava Battalion,[12839] stating that if the APC "in his target practice area (Sedrenik) is not removed within 30 mins it will be fired upon".[12840] As a result, the APC was moved to another position from which it continued to monitor the Špicasta Stijena positions.[12841]

3883. Hogan visited the site of the incident and recorded Žunić's exact location when shot.[12842] Van der Weijden then visited the incident site on 29 November 2006.[12843] He noted that the ridgeline on Špicasta Stijena was in clear view and some 650 to 900 metres away from the incident site.[12844] While the road on which Žunić walked before being shot had a metre high wall on the side of Špicasta Stijena and there was some growth hiding him from view, this offered little protection.[12845] Van der Weijden also observed that the fence near which Žunić stood when hit had more bullet holes strengthening his opinion that the shots came from the direction of Špicasta Stijena.[12846] Van der Weijden thought it possible for a boy of Žunić's age to be confused for a combatant; however, because there were protective screens on the street at the time when the incident happened, giving the shooter a limited time to see him, it would have been impossible for the shooter to determine in such a short time whether Žunić was a combatant or not.[12847] Furthermore, given that this was a residential civilian area, under constant observation from SRK positions, there was no reason for the shooter to identify Žunić as a combatant.[12848] Van der Weijden also commented on the UNMO report referred to above, noting that the SRK commander in question clearly saw this area as his target practice area.[12849]

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12836 Tarik Žunić, P494 (Transcript from *Prosecutor v. D. Milošević*), T 1728.

12837 P1619 (UNMO report, 6 March 1995), para. 8.

12838 P1619 (UNMO report, 6 March 1995), para. 3.

12839 As noted earlier, Radava is a village near Mrkovići. *See* fn. 12757.

12840 P1619 (UNMO report, 6 March 1995), para. 3.

12841 P1619 (UNMO report, 6 March 1995), para. 3.

12842 Barry Hogan, T. 11220–11221 (3 February 2011); P2211 (Photograph re sniping incident of 6 March 1995 on Sedrenik street marked by Barry Hogan); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2193 (Map of Sarajevo).

12843 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 32.

12844 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 31–32.

12845 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 32.

12846 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 32.

12847 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 32. *See also* Appendix B to this report where Van der Weijden discusses target identification in urban settings.

12848 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 32.

12849 Patrick van der Weijden, T. 6956–6957, 6959 (27 September 2010).

3884. In terms of the weapon used, Van der Weijden agreed with Žunić's assessment that it was probably an M84 as there was a burst of fire at a long range indicating a machine-gun and because the other two machine-guns that could have been used, namely an M87 and an M53, either would have caused a lot more damage or would have had a completely different sound to the M84.[12850]

3885. Poparić testified that there is very little information about this incident[12851] and that in order to determine the direction of the shot it would have been indispensable to determine where Žunić's entry and exit wounds were located.[12852] He also stated that when he visited the incident site, as marked by Žunić, he was assured by a man and a woman who live next door that the incident happened in front of their house and not in front of the house which Žunić had marked as the location of the incident.[12853] According to Poparić, that location is much less visible from Špicasta Stijena than the location marked by Žunić.[12854] Poparić also went to Špicasta Stijena and observed the incident site from there, concluding that the distance was some 700 to 750 metres and that the possibility of observing people in the area where Žunić was shot is small.[12855] In addition, he observed that the incident site was also visible from Grdonj Hill, meaning that Žunić could have been shot from that location as well.[12856] Poparić too referred to the UNMO report from that day, which to him indicated that an ABiH combat unit was deployed in one of the houses on Sedrenik street as another man was wounded in the same area around the same time.[12857] In addition, according to Poparić, the UNMO report also indicated that UNPROFOR forces interfered in the exchange of fire.[12858] When put to him in cross-examination that the UNMO report in fact shows

12850 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 31.

12851 According to Poparić, the BiH MUP did not conduct an investigation at the site due to "combat operations". *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 160. However, in cross-examination, Poparić was shown an official note from the Stari Grad SJB referring to the fact that the investigation could not be conducted due to "firing from the aggressors's positions". He commented that this language did not rule out "the possibility that the fire was returned" but conceded that this was an assumption on his part. *See* Mile Poparić, T. 39213–39215 (4 June 2013); P6361 (Official note of Stari Grad SJB, 10 March 1995). The Chamber considers the language in the official note to be clear and directly contrary to Poparić's assumption. In other words, it is clear from the note that the investigators could not conduct an investigation due to fire from the SRK positions.

12852 Mile Poparić, T. 38925 (29 May 2013). However, the Chamber notes that medical report describing the location of entry and exit wounds suffered by Žunić is in evidence in this case and was in evidence in the *Milošević* case. *See* P1548 (Medical report for Tarik Žunić).

12853 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 161; Mile Poparić, T. 38926–38928 (29 May 2013), T. 39218–39221 (4 June 2013); D3630 (Photograph of houses marked by Mile Poparić).

12854 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 161; Mile Poparić, T. 38927 (29 May 2013).

12855 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 162; Mile Poparić, T. 38925 (29 May 2013), T. 39221 (4 June 2013).

12856 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 162.

12857 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 163; Mile Poparić, T. 38925 (29 May 2013).

12858 Mile Poparić, T. 38925 (29 May 2013).

that the exchange of fire happened during Žunić's rescue and only because UNPROFOR came under sniper fire first, Poparić disagreed saying "if there is no information on any combat with ABiH, there is information on combat with members of [UNPROFOR]."[12859]

3886. Siniša Maksimović, who briefly replaced Rašević as the Commander of Mrkovići Company in 1994 but left before this incident took place,[12860] testified that the positions of the company were more than 1,000 metres from the incident site and that it would be difficult to see the location of the incident site from those positions.[12861] He conceded, however, that he assessed this distance without knowing the address of the incident and on the basis of a photograph given to him.[12862] As noted earlier, Maksimović conceded during his evidence that SRK soldiers opened fire from Špicasta Stijena but claimed that this only happened in response to an attack and that their fire was aimed only at ABiH positions.[12863] When confronted with the UNMO report referring to Žunić and another civilian being wounded by fire from Špicasta Stijena and the exchange of fire between the UNPROFOR and the SRK soldiers that followed, Maksimović refused to comment as this incident took place when he was no longer the commander in the area.[12864]

3887. In addition to the evidence outlined above, the Chamber has also taken judicial notice of a number of adjudicated facts going to the origin of fire, which state that (i) Žunić, a civilian, was shot and seriously wounded by a machine gun from SRK-held positions at Špicasta Stijena when he was walking on Sedrenik street and appeared from behind a sheet of canvas;[12865] and (ii) there was no reason for the sniper to mistake Žunić for a combatant.[12866]

3888. The Chamber considers, given Žunić's age at the time of the incident and the fact that he was dressed in civilian clothing and was walking home from school, that he was a civilian and that he was not taking direct part in hostilities at the time of the incident. Contrary to Poparić's opinion that Žunić was caught in an exchange of fire,[12867] the Chamber considers that there was no fighting

12859 Mile Poparić, T. 39215–39218 (24 June 2013).

12860 At the time of the incident, Maksimović was a member of the Igman Brigade and held the line on Igman, which is far from Sedrenik. D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 3–6; Siniša Maksimović, T. 29296 (23 October 2012). In fact, Maksimović only briefly replaced Blaško Rašević in mid to late 1994 as the company commander. *See* Blaško Rašević, T. 30914–30915 (4 December 2012).

12861 D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 7; Siniša Maksimović, T. 29306 (23 October 2012).

12862 Siniša Maksimović, T. 29300–29301 (23 October 2012).

12863 *See* para. 3872.

12864 Siniša Maksimović, T. 29297–29298 (23 October 2012); P1619 (UNMO report, 6 March 1995).

12865 *See* Adjudicated Fact 3004.

12866 *See* Adjudicated Fact 3005.

12867 The Chamber also does not accept Poparić's testimony that the fact that another man was wounded on the same day and around the same time indicates that there was an ABiH military unit in one of the houses nearby. First, Poparić does not explain how he reached that conclusion given that such a similar incident can also be explained by the same SRK shooter opening fire at the other man, as was eventually found by the UNMO report.

on that day as Žunić was able to go to school which, according to his testimony, he would not have done otherwise. Furthermore, he was walking on the main street to get home, which he would not have used had there been any fighting in the area. The Chamber is also convinced that there was no fighting when Žunić entered the protective screen on Sedrenik street as he would have otherwise stayed behind it for protection.

3889. The Chamber is also satisfied, based on the evidence above, that the area of Špicasta Stijena had a line of sight to the street on which Žunić was walking. Even Poparić's testimony, namely that the chances of seeing people in that area from Špicasta Stijena were small, still allows for that possibility.[12868] In any event, the Chamber accepts Van der Weijden's evidence on this issue, namely that there was a clear view between the incident site and Špicasta Stijena. The Chamber recalls Poparić's testimony that Grdonj Hill also had the view on the incident site and accepts that to be the case. However, relying on the UNMO report of 6 March 1995, which specifically attributes the fire in this incident to the forces on Špicasta Stijena and even refers to an exchange of fire between UNPROFOR and those forces during Žunić's rescue, the Chamber is convinced that the bullet that hit Žunić in fact came from Špicasta Stijena.

3890. The Chamber is further satisfied, based on the evidence of local SRK commanders, that the 7th Battalion of the 1st Romanija Infantry Brigade of the SRK had positions in the area of Špicasta Stijena and would open fire from that area, as attested to by a number of witnesses, including Thomas, Milošević and Gengo. Relying, among other things, on the UNMO report of 6 March 1995, the Chamber is also satisfied that the SRK soldiers located in the area would open sniper fire at the civilians in Sedrenik, as they used the area for "target practice". It is also satisfied, relying on the evidence above,[12869] that the SRK soldiers in the area possessed either sniper rifles or hunting rifles with optic sights, which would have had the range needed to reach Žunić who was around 750 metres away. Finally, given the distance between the incident site and the area of Špicasta Stijena, which would have required a careful shot on the part of the shooter, as well as the fact that the two people trying to help Žunić were also shot at, the Chamber is satisfied that he was deliberately targeted by one of the SRK soldiers on Špicasta Stijena. Given the clothing he was wearing on the day, as well as the fact that he was carrying a blue backpack and was walking in a

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Furthermore, the Chamber recalls that the command post of the 105th Mountain Brigade was located in in the Šipad building in Trampina street and thus was far away from the incident site. *See* fn. 12741.

12868 Poparić also claimed that the incident may have taken place in front of another house, based on what he was told at the scene by two people who claimed to have seen the incident. The Chamber notes that what Poparić heard from people living on Sedrenik street is not evidence in this case and that if the Accused wanted to challenge the precise location of this incident using this information he should have called the two people in question to give evidence. The Chamber therefore accepts Žunić's location as testified to by him and by Barry Hogan.

12869 *See* para. 3858.

residential area, far from the command post of the ABiH's 105th Mountain Brigade, the Chamber considers that the SRK soldier in question had no grounds on which to assume that Žunić was a combatant or that he was taking active part in hostilities.

(D) Central area of Novo Sarajevo

3891. Two of the 16 scheduled sniping incidents took place in the areas of Čengić Vila/Dolac Mala and Hrasno Brdo respectively.[12870] Hrasno Brdo is a hill located just behind the suburbs of Hrasno and Dolac Malta, with Grbavica and Vraca to the east and Novi Grad municipality to the west.[12871] The Prosecution alleges in relation to both scheduled incidents relevant to this area that the fire originated from the SRK positions in the area of Ozrenska street[12872] located on the upper parts of Hrasno Brdo in Novo Sarajevo.[12873]

(1) Confrontation lines in the area

3892. Ozrenska street was inhabited mostly by Serbs who, sometime in April 1992, organised night guards and armed themselves through the Serb TO.[12874] In May 1992, with the formation of the SRK, the 2nd Infantry Battalion was formed in the area;[12875] it was part of the 1st Romanija Brigade until mid-1993 when it became became part of the 1st Sarajevo Mechanised Brigade.[12876]

3893. Slobodan Tuševljak, the Commander of the 1st Platoon of the 4th Company of the 2nd Infantry Battalion from the beginning of the war,[12877] testified that the original line of disengagement between the Bosnian Muslim and Bosnian Serb soldiers in the area of Hrasno Brdo

12870 These are Scheduled Incidents F.4 and F.10.

12871 *See* D2419 (Map of Sarajevo marked by Božo Tomić); Adjudicated Fact 75.

12872 This street is now called Novopazarska street. *See* D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 4.

12873 *See* D2419 (Map of Sarajevo marked by Božo Tomić).

12874 Božo Tomić, a resident of Ozrenska street, was selected to be a squad commander and given an automatic rifle, while the other men had old M48 rifles or semi-automatic rifles. Muslim areas near Ozrenska street also armed themselves. *See* D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 6–8; Božo Tomić, T. 30159–30164 (13 November 2012).

12875 Originally, while part of the 1st Romanija Infantry Brigade, the 2nd Infantry Battalion was known as the 3rd Infantry Battalion but changed its name sometime in mid-1993 to 2nd Infantry Battalion. *See* D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 25–26; Božo Tomić, T. 30178–30179 (13 November 2012).

12876 Tomić later became deputy commander of a platoon and remained in that position until mid-1994 when he moved to the command of the 2nd Infantry Battalion. *See* D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 8. The 2nd Infantry Battalion had five companies, with over 1,000 men in total, and was commanded by a number of men, including Veljko Stojanović and Aco Petrović. *See* Slobodan Tuševljak, T. 29943–29944 (7 November 2012); D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 25; Božo Tomić, T. 30199 (13 November 2012); D2420 (Order of 3rd Infantry Battalion, 3 May 1993); P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 29.

12877 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), paras. 7, 13; Slobodan Tuševljak, T. 29940–29942, 29945–29947 (7 November 2012).

was near Zagorska street[12878] but that on 8 June 1992 the Muslim forces pushed his unit some 200 to 250 metres to the south, thus establishing a confrontation line near Ozrenska street, which did not move until the end of the war.[12879] Dušan Zurovac, who was the Commander of the 4th Company between November 1992 and April 1994,[12880] testified that the area of responsibility of his company was on Ozrenska street, from "Pandurevića Kuća" to the cross-roads on Milinkladska street.[12881]

3894. Thus, the 4th Company was located some 150 to 200 metres below Ozrenska street,[12882] and controlled the summit of Hrasno Brdo.[12883] The 4th Company numbered only around 120 local men who were often exhausted from manning the positions without much rest; as a result the company encountered absenteeism and disciplinary problems.[12884] Božo Tomić, the deputy commander of the 3rd Platoon in the 3rd Company of the 2nd Infantry Battalion,[12885] testified that his platoon was positioned to the east of the 4th Company positions, namely above the football stadium in Grbavica and up Hrasno Brdo towards Ozrenska street and beyond it.[12886] According to Tomić, this part of the confrontation line did not change throughout the war.[12887]

3895. On the other side of the confrontation line were the members of the 101st and 102nd Mountain Brigades of the 1st Corps of the ABiH, which, according to Zurovac and Tuševljak,

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12878 This street is now called Posavska street. Mile Poparić, T. 39236 (4 June 2013); D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 6; D2419 (Map of Sarajevo marked by Božo Tomić).

12879 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), paras. 8–9; D2392 (Map of Sarajevo marked by Slobodan Tuševljak); D2393 (Map of Sarajevo marked by Slobodan Tuševljak). *See also* Slobodan Tuševljak, T. 29948–29949 (7 November 2012).

12880 Dušan Zurovac, T. 30246–30247, 30319 (14 November 2012); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 13.

12881 Dušan Zurovac, T. 30248–30249 (14 November 2012); D2427 (Map of Sarajevo marked by Dušan Zurovac). The Company command was located on Ozrenska street, just behind the lines, while the 2nd Battalion command was on Banjalučka street in Grbavica. *See* Slobodan Tuševljak, T. 29944–29945 (7 November 2012); P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 28.

12882 Slobodan Tuševljak, T. 29956 (7 November 2012). *See also* Dušan Zurovac, T. 30254–30259 (14 November 2012); D2428 (Photograph of Sarajevo); D2429 (Photograph of Sarajevo).

12883 Dušan Zurovac, T. 30254–30259 (14 November 2012); D2428 (Photograph of Sarajevo); D2429 (Photograph of Sarajevo).

12884 Dušan Zurovac, T. 30264–30273 (14 November 2012); D2432 (Report of 2nd Infantry Battalion, 28 December 1993); D2433 (Report of 2nd Infantry Battalion, 1 January 1994); D2434 (Report of 2nd Infantry Battalion, 7 January 1994); D2435 (Report of 2nd Infantry Battalion, 31 August 1993); D2436 (Report of 2nd Infantry Battalion, 5 December 1993). Tuševljak testified that his platoon had 42 men at the beginning of the war and only 20 by the end. *See* D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), paras. 14, 27; Slobodan Tuševljak, T. 29935–29939 (17 November 2012); D2396 (List of members of the 1st Platoon of the 4th Company); D2397 (List of members of the 4th Company). *See also* D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 12; Božo Tomić, T. 30200 (13 November 2012).

12885 D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 8; Božo Tomić, T. 30165–30166, 30178–30179 (13 November 2012).

12886 Božo Tomić, T. 30165–30167 (13 November 2012); D2419 (Map of Sarajevo marked by Božo Tomić).

12887 Božo Tomić, T. 30165–30167 (13 November 2012); D2419 (Map of Sarajevo marked by Božo Tomić).

heavily outnumbered the 4th Company.[12888] In some places the ABiH positions were only between 10 and 20 metres away from the 4th Company's positions.[12889] According to the information Tuševljak had, the command of the 101st Mountain Brigade was located in the building of the Hrasno Brdo local commune and its units had positions in civilian zones.[12890] The goal of the ABiH in this area, in Zurovac's view, was to move the 4th Company further into the depth of the SRK territory and take control of Ozrenska street.[12891]

3896. According to Zurovac, his company respected the cease-fires as the situation on the frontline in the area was very difficult.[12892] In contrast, ABiH soldiers would often provoke the 4th Company's along the entire separation line, following which it would be forced to return fire.[12893] UNPROFOR forces often visited the SRK units in the area as this was one of the most difficult

12888 Dušan Zurovac, T. 30265, 30284 (14 November 2012); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 14; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 16. *See also* Asim Džambasović, T. 15194, 15244 (22 June 2011); D1382 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Dragomir Milošević, T. 32566 (23 January 2013); D2794 (Satellite image of Sarajevo marked by Dragomir Milošević); Alen Gičević, T. 7616–7617 (11 October 2010); Mirza Sabljica, T. 7703–7704 (11 October 2010); David Harland, T. 2086–2087 (7 May 2010); KDZ450, T. 10665 (20 January 2011).

12889 Dušan Zurovac, T. 30248 (14 November 2012); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 16; Božo Tomić, T. 30180–30181 (13 November 2012).

12890 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 18; D2395 (Map of Sarajevo marked by Slobodan Tuševljak).

12891 Dušan Zurovac, T. 30270 (14 November 2012). Zurovac conceded in cross-examination, however, that ABiH was attacking in order to break the siege of Sarajevo. *See* Dušan Zurovac, T. 30294–30301 (14 November 2012); P5989 (SRK Order, 16 December 1993); P5980 (SRK conclusions and tasks, 1 April 1994). However, Tuševljak denied this, saying that ABiH would have nowhere to go as the depth of the territory was all Serb territory. *See* Slobodan Tuševljak, T. 29947–29948 (7 November 2012).

12892 Dušan Zurovac, T. 30273–30284 (14 November 2012); D2436 (Report of 2nd Infantry Battalion, 5 December 1993); D2437 (Report of 2nd Infantry Battalion, 16 December 1993); D2438 (Report of 2nd Infantry Battalion, 11 December 1993); D2439 (Report of 2nd Infantry Battalion, 18 December 1993); D2440 (Report of 2nd Infantry Battalion, 9 January 1994); D2441 (Report of 2nd Infantry Battalion, 3 February 1994); D4627 (Report of 2nd Infantry Battalion, 13 June 1993). Zurovac conceded in cross-examination that ABiH was trying to break the siege of Sarajevo. *See* Dušan Zurovac, T. 30294–30301 (14 November 2012); P5989 (SRK Order, 16 December 1993); P5980 (SRK conclusions and tasks, 1 April 1994). *See also* D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 16; Božo Tomić, T. 30181 (13 November 2012).

12893 In addition, the positions of the 4th Company were also shelled by the ABiH units and SRK-held territory was sniped from the skyscrapers on Pero Kosorić square. *See* Dušan Zurovac, T. 30273–30284, 30325 (14 November 2012); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 15; D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 9, 21; Božo Tomić, T. 30179–30180 (13 November 2012). According to Tuševljak, the attacks were so fierce that it was impossible to endure them mentally and physically so eventually, in September 1994, he stripped himself of his rank and moved to another platoon as a common soldier. *See* D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 17; Slobodan Tuševljak, T. 29962–29963 (7 November 2012). *See also* D4622 (Report of 1st Romanija Infantry Brigade, 14 August 1992) in which Dragomir Milošević reports about infantry fire being opened from Ozrenska street positions.

frontlines.[12894] Indeed, Zurovac testified that he lost 54 men largely due to the activities of the 101st Mountain Brigade of the ABiH.[12895]

3897. Tuševljak testified that he and his men never received orders to attack civilians or civilian objects—they carried out defensive actions alone and were told to open fire only when attacked and only at enemy positions rather than in the depth of the ABiH territory.[12896] He conceded, however, that in October 1992 plans were made to attack ABiH positions in Asimovo Brdo, which was necessary as ABiH snipers would attack the company's positions from there, but clarified that the attack never took place and that ABiH remained in that location throughout the war.[12897]

3898. Based on the evidence above, the Chamber is satisfied that the SRK controlled the positions on and around Ozrenska street on the upper parts of Hrasno Brdo, as alleged by the Prosecution.[12898] In particular, the Chamber finds that this area was in the area of responsibility of the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade. The Chamber is also satisfied that due to the proximity of two warring sides, it was one of the more difficult confrontation lines to man, and that the local SRK commanders in the area faced a number of issues in their units, including shortage of men, absenteeism, and desertion.

(2) Snipers in the area

3899. Initially, according to Zurovac, the 4th Company was better armed than the ABiH units in the area but that changed by the time he left the company in April 1994, insofar as infantry weapons were concerned.[12899]

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12894 Dušan Zurovac, T. 30273–30275 (14 November 2012); D2436 (Report of 2nd Infantry Battalion, 5 December 1993); Božo Tomić, T. 30209–30214 (13 November 2012); D2421 (Order of 2nd Infantry Battalion, 26 May 1993).

12895 Dušan Zurovac, T. 30275–30276 (14 November 2012). According to Tuševljak, around 230 Serb soldiers were killed in Ozrenska street, as well as a few dozen civilians. *See* D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 17. *See also* D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 22.

12896 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), paras. 19–21. *See also* D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 17–18; Božo Tomić, T. 30181–30182, 30198–30199 (13 November 2012).

12897 Slobodan Tuševljak, T. 29949–29950 (7 November 2012). When confronted with an excerpt from Mladić's diary stating that this attack was underway, Tuševljak testified that he was not aware of the attack and that his men remained at the foot of Asimovo Brdo until the end of the war. *See* Slobodan Tuševljak, T. 29950–29951 (7 November 2012); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 241.

12898 *See also* Adjudicated Facts 79, 80.

12899 Dušan Zurovac, T. 30284–30287 (14 November 2012); D2442 (Order of the 101st Brigade, 13 June 1995); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 16. In cross-examination, however, Zurovac confined this claim to infantry weapons alone. *See* Dušan Zurovac, T. 30301–30305 (14 November 2012); P5990 (Map of Sarajevo); P5985 (Request for ammunition of the 4th Infantry Company, 3 December 1993).

3900. Zurovac denied that the 4th Company had snipers and stated that he did not know whether snipers were present in the 2nd Infantry Battalion.[12900] When shown a list he prepared and signed and which contained names of men who had deserted the unit and took weapons with them, he conceded that four such men were recorded as having taken a sniper rifle each, but testified that he did not know how they obtained those rifles since the weapons had been issued before he arrived to the area.[12901] He remained adamant that his company did not have snipers to whom he, as a commander, assigned tasks.[12902]

3901. Tuševljak confirmed this but testified that at the end of 1993, due to constant sniper attacks by the ABiH on Ozrenska street, a trained sniper was sent to his unit in order to eliminate his counterpart on the ABiH side; however, he was killed two days later and no other snipers ever came to Tuševljak's unit.[12903] In addition, he testified that neighbouring platoons also did not have any snipers in their ranks.[12904] He confirmed, however, that his platoon had M84 and M53 machine-guns which used 7.62 mm and 7.9 mm calibre bullets respectively.[12905] The members ofp's Platoon in the 3rd Company also had M84 and M53 machine-guns, as well as other weapons that used 7.62 mm calibre bullets.[12906] Tomić testified, however, that these weapons were used only in case of an attack and could not be used for sniper fire as they did not have optical sights.[12907] While agreeing that in case of short distances the soldiers did not need optical sights, he also explained that one could not fire single shots from those weapons but rather bursts of fire, which made them less precise than a sniper rifle.[12908]

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12900 Dušan Zurovac, T. 30309 (14 November 2012).

12901 Dušan Zurovac, T. 30309–30315 (14 November 2012); P5991 (List of personnel and claimed weapons of the 2nd Infantry Battalion, 15 January 1994).

12902 Dušan Zurovac, T. 30326 (14 November 2012).

12903 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 26; Slobodan Tuševljak, T. 29959–29960 (7 November 2012); P5945 (Report of 1st Romanija Infantry Brigade to SRK, 29 October 1993).

12904 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 26.

12905 Slobodan Tuševljak, T. 29942–29943 (7 November 2012); D2396 (List of members of the 1st Platoon of the 4th Company). Zurovac was also shown a document created and signed by him, requesting ammunition, including 7.62 and 7.9 mm calibre ammunition. It shows that he requested 7.62 mm ammunition for the M84 rifle. *See* Dušan Zurovac, T. 30304–30305 (14 November 2012); P5985 (Request for ammunition of the 4th Infantry Company, 3 December 1993); Božo Tomić, T. 30185–30188 (13 November 2012); P5983 (List of weapons of the 4th Infantry Company, 22 October 1993). Tomić confirmed that M84 had a range of up to 1000 metres if on a tripod, while M53 had a range of up to 1500 metres if on a tripod. He explained, however, that M53 guns his unit had were old and unsafe for use. *See* Božo Tomić, T. 30187–30190 (13 November 2012); P5983 (List of weapons of the 4th Infantry Company, 22 October 1993); P5984 (Ammunition status of the 4th Infantry Company, 8 June 1993); P5985 (Request for ammunition of the 4th Infantry Company, 3 December 1993).

12906 Božo Tomić, T. 30183–30184 (13 November 2012). *See also* P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 50; P1946 (Excerpt of book on military equipment marked by KDZ310). *See also* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 106 (testifying that he and his news crew visited SRK positions in Hrasno, above Grbavica, where his camerman observed an SRK machine-gun position).

12907 Božo Tomić, T. 30233 (13 November 2012).

12908 Božo Tomić, T. 30234–30235 (13 November 2012).

3902. KDZ310 testified that he observed members of a sniping unit shooting from a house on Ozrenska street and could even see their long barrelled rifles with various optical equipment fitted to them.[12909] He also observed them use a machine-gun with an optic sight fitted on it which would open bursts of automatic fire.[12910] These snipers told KDZ310 that they targeted both civilians and soldiers alike.[12911] KDZ310 himself observed that the snipers would usually shoot at intersections and transversals, which were built horizontally around town and could be seen well from the house in question.[12912] While protective barriers and containers were set up in those areas as a shield from sniper fire, KDZ310 noted that he could still see—using his binoculars—people going up to these barriers; the snipers in question also confirmed to him that they would target persons near the barriers.[12913]

3903. Accordingly, the Chamber is satisfied, relying particularly on the list of deserters referred to above, that the SRK units in the area had sniper rifles or at the very least rifles with optical sights. It is also satisfied, based on the above, that they had machine-guns that used both 7.62 and 7.9 mm ammunition. Finally, relying on the evidence of KDZ310, the Chamber finds that a number of professional SRK snipers were also positioned on Ozrenska street and would target civilians and combatants alike.[12914]

(3) Azize Šećerbegović street, formerly Ivana Krndelja street, 3 September 1993 (Scheduled Incident F.4)

3904. The Indictment alleges that, on 3 September 1993, Nafa Tarić, a 35 year old woman, and and her eight year old daughter Elma Tarić, were shot and wounded by a single bullet while walking together on Ivana Krndelja street, in the centre of Sarajevo. According to the Indictment, the bullet wounded the mother in her left thigh and wounded the daughter in her right hand and in her abdomen.[12915] In its Final Brief, the Prosecution submits that the fire came from the SRK-held positions on Ozrenska street, which had a clear and unobstructed view of the incident site.[12916] The

12909 KDZ310 explained that the guns these snipers used had much longer barrels than the guns of regular soldiers he was with. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 48.

12910 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 48. The Chamber also recalls that Maletić testified that there was a sniper squad in his battalion and that it was subordinated directly to the battalion commander rather than to company or platoon commanders. *See* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 31; Dragan Maletić, T. 30846–30848 (3 December 2012), T. 30873–30874 (4 December 2012).

12911 KDZ310 also testified that his own immediate commander told him and the other men in his platoon that they could open fire freely and shoot at anything that moved. *See* P1938 (Witness statement of KDZ310 dated 28 November 2010), paras. 37, 48; KDZ310, T. 9275–9276, 9278 (29 November 2010).

12912 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 48.

12913 P1938 (Witness statement of KDZ310 dated 28 November 2010), para. 49. *See* Adjudicated Fact 128.

12914 *See* Adjudicated Facts 76, 77.

12915 Indictment, Scheduled Incident F.4.

12916 Prosecution Final Brief, Appendix C, para. 31.

Accused submits, however, that the victims could not have been shot from the SRK positions on Ozrenska street.[12917]

3905. On 3 September 1993, Nafa Tarić and her eight year old daughter Elma Tarić were walking from their apartment in Hrasno down Ivan Krndelja street.[12918] They crossed the street holding hands behind a line of containers installed to provide protection against sniper fire.[12919] As they emerged from the cover of the barriers, they were shot.[12920] A single bullet hit Nafa Tarić's left thigh, then grazed her daughter's hand and penetrated her stomach.[12921] They managed to crawl away from the exposed position and were taken to the hospital.[12922]

3906. A police officer, known as Witness J in the *Galić* trial, concluded that the shot had been fired from the SRK positions on Ozrenska street and based his conclusion not only on common knowledge but also on the fact that the police was unable to immediately access the site because of on-going shooting from those positions.[12923]

3907. Hogan visited the site of the incident and recorded the GPS co-ordinates, as well as video footage, of the exact location of the victims when they were shot.[12924] He explained that they had just left the protective barrier and were crossing the open stretch of the footpath when the bullet struck them.[12925]

3908. While investigating this incident, Van der Weijden had access to witness statements of a number of witnesses to this event, including Nafa Tarić, as well as to materials prepared by the Prosecution.[12926] Looking at the victims' injuries first, Van der Weijden thought that any bullet up to the 7.92 mm calibre was capable of causing them, and that a higher calibre was not used as it would have caused more damage.[12927] Given that only one bullet caused the injuries to the victims,

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12917 Defence Final Brief, paras. 2199–2206.

12918 *See* Adjudicated Fact 173.

12919 *See* Adjudicated Fact 174.

12920 Adjudicated Fact 175.

12921 P1245 (Medical record for Nafa Tarić); P1235 (Medical file for Elma Tarić); P1241 (Medical records for Elma and Nafa Tarić); Adjudicated Fact 176.

12922 Adjudicated Fact 177.

12923 *See* Adjudicated Fact 179.

12924 Barry Hogan, T. 11210, 11260–11261 (3 February 2011); P2197 (Photograph re sniping incident of 3 September 1993 on Ivana Krndelja street marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); D994 (Video footage re sniping incident of 3 September 1993 on Ivana Krndelja street); P2192 (Map of Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents). [

12925 Barry Hogan, T. 11260–11261 (3 February 2011).

12926 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 79.

12927 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 74. In cross-examination, Van der Weijden conceded that he was never given any information as to whether the bullet

Van der Weijden concluded that the bullet was most likely fired from a semi-automatic sniper rifle, either an M76 or an M91, both of which are capable of delivering accurate fire at long ranges.[12928] Van der Weijden was told that the alleged shooting position was Ozrenska street, to the south of and 829 metres away from the incident site, which was an extreme range for these types of rifles.[12929] He visited both the incident site and Ozrenska street, and observed that the latter offers clear views of the former.[12930] He opined that the bullet must have come from the south since the shooter located to the north of the incident had a view of the victims and would not have waited that long before firing at them as they were almost behind the cover again when they were shot.[12931] Van der Weijden concluded that the bullet was fired somewhere from the area which was between 200 and 1,104 metres to the south of the incident site.[12932] Further, given that the victims were walking hand in hand, the height of the daughter in relation to her mother would have led the shooter to instantly identify the two victims as civilians.[12933]

3909. During cross-examination Van der Weijden conceded that he was informed that Serbs were holding positions on Ozrenska street but never told that the street itself was a separation line and that ABiH was also there.[12934] He also conceded that the houses on the north side of Ozrenska street would have a better view of the incident site, but explained that some houses on the south side of the street would also have a view on the incident site.[12935] Finally, Van der Weijden accepted in cross-examination that he could not conclude beyond reasonable doubt that the shot came from the Serb side.[12936]

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that injured the victims was recovered, and thus had to guess the calibre. *See* Patrick van der Weijden, T. 7118–7119 (29 September 2010).

12928 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 74.

12929 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 74–75. *See also* Barry Hogan, T. 11210 (3 February 2011); P2197 (Photograph re sniping incident of 3 September 1993 on Ivana Krndelja street marked by Barry Hogan).

12930 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 76.

12931 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 75–76.

12932 Patrick van der Weijden, T. 7121–7122, 7125–7126 (29 September 2010); D665 (Photograph of Sarajevo marked by Patrick van der Weijden). *See also* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 75. In cross-examination, Van der Weijden conceded that knowing the location of the entry and exit wounds on the victims' bodies would have been important, though not crucial, when determining the bullet trajectory. *See* Patrick van der Weijden, T. 7119–7120 (29 September 2010).

12933 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 77.

12934 Patrick van der Weijden, T. 7123–7124 (29 September 2010).

12935 Patrick van der Weijden, T. 7125–7128 (29 September 2010); D666 (Photograph of Sarajevo marked by Patrick van der Weijden).

12936 Patrick van der Weijden, T. 7128–7132 (29 September 2010); D667 (Map of Sarajevo marked by Patrick van der Weijden).

3910. Poparić testified that he visited both the incident site and the area of Ozrenska street[12937] and that the victims could not have been shot from the closest SRK positions in Hrasno Brdo, which he calculated as being 680 metres away,[12938] because they were visible only for about 1.2 seconds after leaving the protective barrier and before being struck by the bullet.[12939] This, according to Poparić, would not have given the shooter sufficient time to spot them and then fire at them.[12940] In other words, the victims could not have been deliberately targeted from SRK positions in Ozrenska street as they would have had to have been shot at before the shooter actually observed them.[12941] The Chamber notes that the Prosecution never cross-examined Poparić on this part of his analysis.

3911. Poparić also testified that there was no line of sight between the incident site and the part of Ozrenska street indicated by Nafa Tarić to Hogan as the origin of fire.[12942] He based this conclusion on the photograph he took of the Hrasno Brdo area from the surroundings of the incident site and which he compared with a photograph of the same area but taken from further away.[12943] Because the relevant part of Ozrenska street indicated by Tarić cannot be seen in the first photograph but can in the second, Poparić concluded that there was no line of sight to the incident site.[12944] When confronted in cross-examination with the photograph taken by Van der Weijden from that alleged sniping location and showing a clear, straight, line of sight to the incident site, he stated that he did not know where the photograph was taken from and that the co-

12937 Poparić explained that he knew the area very well as his wife lived nearby. He visited it a number of times. Mile Poparić, T. 38878–38879, 38892–38893 (29 May 2013).

12938 Poparić calculated this distance on the basis of the ABiH operations map, which outlines the confrontation line in the area. He also testified that the closest SRK positions in fact had no view onto the incident site so the distance between the alleged SRK shooter and the incident site would have to have been even greater than 680 metres. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 73; Mile Poparić, T. 38874, 38892 (29 May 2013), T. 39229 (4 June 2013).

12939 Poparić determined the length of this time on the basis of the footage filmed by Hogan in which Nafa Tarić is seen walking from the area that was protected by the screen to the area where she was standing with her daughter when shot. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 67–69.

12940 Poparić came to this conclusion on the assumption that an M84 machine-gun was used and, using the firing tables for that gun, calculated that the bullet shot by it would have taken 1.21 seconds to reach the victims. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 73–74; Mile Poparić, T. 38872–38874 (29 May 2013).

12941 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 74, 75; Mile Poparić, T. 38872–38889 (29 May 2013); D3616 (Satellite image re sniping incident of 3 September 1993 on Ivana Krndelja street marked by Mile Poparić); D3617 (Photograph of Sarajevo marked by Mile Poparić); D3618 (Photograph of Sarajevo marked by Mile Poparić); D3623 (Photograph of buildings marked by Mile Poparić); D3624 (Map of Sarajevo marked by Mile Poparić).

12942 Tarić made this indication in the video footage recorded by Barry Hogan. While this footage is not in evidence in this case, Poparić produced stills from it in his report. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 70–74.

12943 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 71.

12944 Poparić also calculated, using Google Earth, that 540 metres was the distance between the incident site and the line from which the incident site could actually be seen. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 71–73.

ordinates given by Van der Weijden of that location "do not say a thing about the photograph itself".[12945]

3912. While not accepting that there was a line of sight from the alleged origin of fire as indicated by Tarić, Poparić conceded that there was a line of sight between the victims and the SRK positions on Ozrenska street located further to the east of the origin of fire alleged by Tarić—which he measured to be about 730 or 740 metres away from the incident site.[12946] He also conceded that sniper rifles used by trained snipers would be sufficiently precise to hit a person at that distance.[12947] However, he pointed out that, according to the witnesses, a burst of gunfire was heard in this incident, indicating that sniper rifle was not the weapon used.[12948]

3913. Zurovac testified that the incident site was about 900 metres away from the positions of the 4th Company and that there was no clear line of sight between those two locations, as the company was located in "some sort of a valley" and there were hills in the way, obstructing the view.[12949] However, Zurovac, like Poparić, conceded that a line of sight existed from an area further to the east of the positions of his company.[12950] Tuševljak confirmed this and noted that a line of sight existed to the east of the 4th Company's positions, in the locations manned by the 2nd Company of the 2nd Infantry Battalion.[12951] However, he testified that, as far as he knew, on the day of the incident no fire was opened on civilians from Ozrenska street.[12952] Galić also testified that he did

12945 Mile Poparić, T. 39230–39232 (4 June 2013); P6363 (Photograph of a crossroads in Sarajevo); D666 (Aerial photograph of Sarajevo marked by Patrick van der Weijden). The Chamber recalls that it admitted P6363 only for the purpose of understanding Poparić's evidence and is now citing to it for that purpose alone.

12946 Mile Poparić, T. 38872–38889, 38892 (29 May 2013); D3616 (Satellite image re sniping incident of 3 September 1993 on Ivana Krndelja street marked by Mile Poparić); D3617 (Photograph of Sarajevo marked by Mile Poparić); D3618 (Photograph of Sarajevo marked by Mile Poparić); D3623 (Photograph of buildings marked by Mile Poparić); D3624 (Map of Sarajevo marked by Mile Poparić).

12947 Mile Poparić, T. 38889 (29 May 2013).

12948 Mile Poparić, T. 38889–38890 (29 May 2013). However, the Chamber notes that Poparić recounted Tarić's evidence on this issue, which was that she heard two more shots after she was wounded. In other words, it is not necessarily clear that she heard a burst of fire as opposed to two more single bullets being fired by the shooter. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 69.

12949 The Chamber notes that at this point Zurovac incorrectly claimed that one could not see the incident site in a photograph shown to him by the Accused during examination-in-chief, which he said was taken in a location unfamiliar to him, but somewhere below Ozrenska street. When shown a second photograph, he conceded that the line of sight existed, noting that this photograph was taken from an area further to the east of the positions of his company in a location unknown to him. *See* Dušan Zurovac, T. 30249–30251, 30254, 30260–30262 (14 November 2012); D2430 (Photograph of Sarajevo); D2431 (Photograph of Sarajevo). The Chamber notes, however, that both photographs were taken from the same location and that the incident site is visible in both, as testified to by Poparić. *See* D3623 (Photograph of buildings marked by Mile Poparić). Further, the Prosecution stated on the record, during its cross-examination of Tuševljak, that both photographs were taken from the same location and that one was simply a more zoomed version of the other. *See* T. 29956–29957 (7 November 2012).

12950 Dušan Zurovac, T. 30261–30262 (14 November 2012); D2431 (Photograph of Sarajevo).

12951 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 25; D2394 (Map of Sarajevo marked by Slobodan Tuševljak); Slobodan Tuševljak, T. 29957 (7 November 2012).

12952 Slobodan Tuševljak, T. 29961 (7 November 2012).

not order any activity against the area where the incident took place and had received no information about it at the time.[12953]

3914. In addition to the above, the Chamber has also taken judicial notice of the following adjudicated facts going to the origin of fire: (i) there was an unobstructed line of sight from SRK positions on Hrasno Brdo to the location of the incident;[12954] (ii) Nafa and Elma Tarić were injured by a shot fired from this area;[12955] and (iii) Nafa and Elma Tarić, civilians,[12956] were deliberately targeted from an SRK-controlled position.[12957]

3915. The Chamber considers, given their clothes, age, and gender, as well as the fact that they were walking home when the incident happened, that both Nafa Tarić and her daughter Elma were civilians and that they were not taking direct part in hostilities at the time of the incident. The Chamber is also satisfied that the SRK units, belonging to the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade, were located just below Ozrenska street on the upper parts of Hrasno Brdo and that they had a line of sight to the incident site, both from the location indicated by Nafa Tarić as the origin of fire, and the positions east of that location. In other words, the Chamber accepts Van der Weijden's evidence about there being a clear line of sight from Ozrenska street onto Ivana Krndelja street from the positions alleged to be the origin of fire by Nafa Tarić.[12958] The Chamber is also satisfied, as found above,[12959] that the SRK soldiers in the area possessed either sniper rifles or rifles with optic sights, as well as machine-guns, all of which had the range necessary to reach the incident site, which was between 680 and 900 metres away, depending on the positions. Finally, the Chamber finds that there was no military activity in the area at the time of the incident.

3916. In terms of the identity of the perpetrators in this incident, the Chamber finds that the bullet that struck the victims was fired by the SRK snipers on Ozrenska street and that the victims were deliberately targeted. In this respect, the Chamber recalls KDZ310's evidence according to which SRK snipers located on Ozrenska street would target civilians at major intersections visible from

12953 Galić expressed surprise that someone was hit by a bullet in that area as it was well protected by barriers. *See* Stanislav Galić, T. 37505–37510 (22 April 2013); D3448 (SRK combat report, 3 September 1993); D3429 (SRK combat report, 4 September 1993); D3449 (SRK combat report, 5 September 1993).

12954 Adjudicated Fact 180.

12955 Adjudicated Fact 181.

12956 *See* Adjudicated Fact 178.

12957 *See* Adjudicated Fact 182.

12958 While both Zurovac and Tuševljak testified that their company's positions did not have the line of sight to the incident site, this does not change the Chamber's finding that the units of the 2nd Infantry Battalion were in positions that had such a line of sight on the incident site. Indeed, this was admitted by both Zurovac and Tuševljak, as well as Poparić.

12959 *See* para. 3903.

Ozrenska street, including those that had protective barriers or containers.[12960] In addition, the local police later established that the fire came from SRK positions on Ozrenska street and was unable to immediately access the site because of the on-going fire from those positions.[12961] The Chamber also recalls that, as recounted by Poparić in his analysis of this incident, Nafa Tarić heard two shots after being struck by the bullet.[12962] This indicates that the two victims were deliberately targeted by the shooter even after they were wounded.

3917. While accepting Poparić's evidence that the time during which the victims were visible to the shooter after clearing the barrier would have been quite short, the Chamber also recalls KDZ310's evidence that, despite the protective barriers being set up at different intersections visible from Ozrenska street, the people could nevertheless still be seen by snipers when walking up to the barriers.[12963] Thus, the Chamber considers that the sniper who shot Nafa and Elma Tarić must have seen them already before they walked behind the barrier, and then simply waited for them to leave its protection on the other side.

(4) Ferde Hauptmana street, formerly Miljenka Cvitkovića street, 22 July 1994 (Scheduled Incident F.10)

3918. The Indictment alleges that on 22 July 1994, Seid Solak, a 13 year old boy was shot and wounded in the abdomen while window shopping with his mother and sister on Miljenka Cvitkovića (presently Ferde Hauptmana) street in the Čengić Vila area of Sarajevo.[12964] In its Final Brief, the Prosecution alleges that the fire came from SRK positions on Hrasno Brdo, in the area of the Pržulj house on Zagorska street, which was a notorious sniping nest.[12965] The Prosecution also explains that the site of the incident was erroneously alleged to be on Miljenka Cvitkovića street but is instead at Džemala Bijedića, number 20, which runs parallel to Miljenka Cvitkovića and lies just after a small passage from Miljenka Cvitkovića.[12966] The Accused argues that these are in fact two unrelated incidents and that the boy was wounded on Miljenka Cvitkovića street under circumstances different than those discussed in the evidence.[12967]

12960 *See* para. 3902.
12961 *See* para. 3906.
12962 *See* para. 3912, fn. 12948.
12963 *See* para. 3902.
12964 Indictment, Scheduled Incident F.10.
12965 Prosecution Final Brief, Appendix C, para. 32.
12966 Prosecution Final Brief, Appendix C, para. 32, fn. 208.
12967 Defence Final Brief, paras. 2246–2254.

3919. On 22 July 1994, Seid Solak, a 13 year old boy, and his sister went out with their mother to visit a relative.[12968] It was a clear day.[12969] They stopped to look at a shoe shop window on Miljenka Cvitkovića street.[12970] Seid got off his bicycle and at that moment was shot in the lower part of his stomach.[12971] The bullet tore through his body and shattered the shop window.[12972] He was taken to an emergency unit where he was hospitalised for several days.[12973] There was no military activity in the area at the time of the incident,[12974] as indicated by the fact that several children were playing and a neighbourhood restaurant was open.[12975]

3920. Kučanin prepared an official note[12976] relating to the incident.[12977] When at the scene, he met with UNPROFOR soldiers and they conducted an investigation together.[12978] Kučanin was informed that two shots were fired but that the victim had already been taken to the hospital so it was difficult to determine the position he was in when shot.[12979] However, the investigators were able to get that information from an eyewitness.[12980] According to Kučanin, the first shot hit the boy in the stomach while he was standing on Miljenka Cvetkovića street, at number 4, in front of a shoe shop and next to a passage in a building, which was near the entrance to a café called Arijana.[12981] The other bullet went through the sunshade of the café, then passed through its window, changed direction as a result, hit an inner wall, ricocheted, and finally lodged in the floor

12968 *See* Adjudicated Fact 234. *See also* confidential Prosecution Submission dated 30 January 2015, paras. 9–11.

12969 Adjudicated Fact 235.

12970 *See* Adjudicated Fact 236.

12971 Adjudicated Fact 237.

12972 Adjudicated Fact 237.

12973 *See* Adjudicated Fact 238; P1239 (Sarajevo State Hospital discharge form) (under seal); P1240 (Medical report) (under seal).

12974 Adjudicated Fact 240.

12975 Adjudicated Fact 241.

12976 Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4739; P18 (BiH MUP Report re sniping incident of 22 July 1994 on Miljenka Cvitkovića street). The Chamber notes that this official note is also attached to Kučanin's witness statement, that is, to P23.

12977 Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4739. Mirsad Kučanin was supposed to be in charge of the investigation but handed it over to his colleague from the local police station as soon as he realised that the victim was only wounded; Kučanin remained on the scene, however, as an investigation assistant. *See* P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 2; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4508–4509, 4661.

12978 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court pp. 2, 12; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4509–4510, 4642–4646.

12979 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 2; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4509–4510.

12980 In addition, the investigators found a pool of blood next to the location of the victim when shot. *See* P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 2; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4510, 4514–4515.

12981 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court pp. 2, 12; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4510, 4514–4515, 4661–4662; P19 (Photographs re sniping incident of 22 July 1994 on Miljenka Cvitkovića street), pp. 1–2.

of the café, thus leaving three different bullet impacts for the investigators to consider.[12982] The bullet was removed for forensic analysis and it was established that it was of the 7.62 mm calibre.[12983] By connecting the holes in the sunshade and the window, Kučanin concluded that the bullets came from "the aggressor's positions at Zagorska street, the Pržulja house", which was a "well known [VRS] sniping place" located in Hrasno Brdo, in Novo Sarajevo.[12984] On cross-examination, Kučanin admitted that he did not know where the confrontation lines in Sarajevo were but noted that his task was to establish where the bullet came from, regardless of whether that territory was in control of the ABiH or VRS.[12985] Kučanin and the UNPROFOR team then talked to the doctor who treated the victim and learned that the injury was serious as the bullet had passed from the left to the right side of the victim's stomach, although it did not injure any of his internal organs.[12986]

3921. Hogan visited the site of the incident with the victim and recorded the exact location of the victim when shot, namely in front of the shoe shop next to the passage of a building.[12987]

3922. When investigating this incident, Van der Weijden reviewed the photographs of the incident scene taken by the BiH MUP, as well as the witness statements of Kučanin and the victim.[12988] He also visited the incident site using Hogan's co-ordinates, checked for possible locations from which the shot might have been fired,[12989] and then visited those locations to see which was most

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12982 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court pp. 2, 12; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4510, 4512, 4515–4516, 4647–4648, 4653–4657, 4759–4761, 4762–4767, 4768–4770; P19 (Photographs re sniping incident of 22 July 1994 on Miljenka Cvitkovića street), pp. 1, 4–6.

12983 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 12. *See also* Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4516; P19 (Photographs re sniping incident of 22 July 1994 on Miljenka Cvitkovića street), p. 7.

12984 To connect the impact points of the bullet the BiH MUP investigators used a device devised by their experienced ballistics expert which was akin to an horizontal periscope, which could go through the smallers opening and which allowed them to see the origin of fire in this incident. *See* P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court pp. 3, 12; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4512–4513, 4516–4517, 4657–4659; P19 (Photographs re sniping incident of 22 July 1994 on Miljenka Cvitkovića street), p. 8. *See also* Barry Hogan, T. 11215–11216 (3 February 2011); P2205 (Photograph re sniping incident of 22 July 1994 on Miljenka Cvitkovića street marked by Barry Hogan); P2206 (Map of Sarajevo marked by Barry Hogan).

12985 Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4735–4736.

12986 P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), e-court p. 13. *See also* Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4662.

12987 Barry Hogan, T. 11215–11216, 11270–11271 (3 February 2011); P2205 (Photograph re sniping incident of 22 July 1994 on Miljenka Cvitkovića street marked by Barry Hogan); P2206 (Map of Sarajevo marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); D1003 (Video footage re sniping incident of 22 July 1994 on Miljenka Cvitkovića street) (under seal); P2192 (Map of Sarajevo); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

12988 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 85.

12989 According to Van der Weijden, given that the bullet went through the shop window, it was clear that it came from the direction of the south. *See* Patrick van der Weijden, T. 7080 (28 September 2010).

likely.[12990] He visited the alleged location of the shooter, as provided to him by the Prosecution, and noted that there was now a new building near the incident site removing the line of sight between that particular location and the incident site.[12991] However, he noted that in 1994 there would have been "plenty of view" towards the incident site from Hrasno Brdo.[12992]

3923. Van der Weijden was not able to determine the exact location from which the shot was fired but rather a general area from which it might have been fired, namely the area of Hrasno Brdo.[12993] On cross-examination, he explained that he excluded the high-rise building near the site of the incident as the origin of fire because there was a large group of people present there at the time of the incident which would not have been the case if there was firing from that building.[12994] Recalling that the bullet found on the scene was a 7.62 mm bullet, he noted that it was not possible to tell whether it was 7.62X39 mm or 7.62X54R mm bullet; however, he excluded the former on the basis of the "distance from which [it] was likely fired" and thus concluded that the weapon most likely used was an M76 rifle or a civilian hunting rifle.[12995] Van der Weijden testified that since children were playing at the incident site on the day of the incident, it is unlikely that any fighting would have been ongoing nearby.[12996] In addition, even though the victim could have been confused for an adult, Van der Weijden thought that the presence of his mother, sister, and the other children would have indicated to the shooter that he was not a combatant.[12997]

3924. The Accused put to Van der Weijden and Hogan that a mistake was made during the investigation of this incident because the café that can be seen in the photographs prepared by the BiH MUP is actually on Džemala Bijedića street, the name of which was never changed, and that Miljenka Cvitkovića street is located behind it.[12998] Van der Weijden, having no knowledge of the names of the streets involved, could not comment on this except to say that he visited the location of the incident on the basis of the GPS co-ordinates provided to him by the Prosecution and that he also identified it using the photographs of the BiH MUP.[12999] Hogan was adamant that the location

12990 Patrick van der Weijden, T. 7073, 7080–7082 (28 September 2010).

12991 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 81–82.

12992 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 81.

12993 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 81; Patrick van der Weijden, T. 7074, 7081–7086 (28 September 2010); D663 (Map of Sarajevo marked by Patrick van der Weijden).

12994 Patrick van der Weijden, T. 7087–7089 (28 September 2010); D663 (Map of Sarajevo marked by Patrick van der Weijden).

12995 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 80. *See also* Patrick van der Weijden, T. 7084 (28 September 2010).

12996 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 83.

12997 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 83.

12998 Patrick van der Weijden, T. 7089–7091, 7093 (28 September 2010). *See also* Barry Hogan, T. 11270–11273 (3 February 2011).

12999 Patrick van der Weijden, T. 7090 (28 September 2010).

of the incident, as depicted in the video footage he prepared and on the photographs of the BiH MUP, was correctly recorded, regardless of the address used by the BiH MUP in its reports; he also noted that the location of the incident is known locally as "the hundred meter building on Ferde Hauptmana street" even though Ferde Hauptmana, formerly Miljenka Cvitkovića, is the square behind it.[13000]

3925. Poparić testified that, since all the documents specify that the incident took place on Miljenka Cvitkovića street, he could not accept that this was an accidental mistake, especially given that Džemala Bijedića is one of the best known and longest streets in Sarajevo.[13001] Thus, and also based on the fact that there is no "physical evidence" that the victim was shot in front of the shop window, Poparić testified that he was convinced that the incident in fact occurred in Miljenka Cvitkovića street, not Džemala Bijedića street, under circumstances different to those described in the official BiH MUP report.[13002]

3926. In terms of the origin of fire, Poparić testified that it did not come, as alleged, from the Pržulj house, because when he visited that house there was no view of the incident site from it.[13003] In addition, he explained that the distance between Pržulj house and the incident site is 1,245 metres while the altitude is 95 metres, meaning that the bullet would have to have a low angle of descent and a flat trajectory, which he conceded corresponded to the traces in the café.[13004] However, Poparić then proceeded to argue that those traces were the result of an incident unrelated to the victim's wounding.[13005]

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13000 Barry Hogan, T. 11270–11274 (3 February 2011); D1003 (Video footage re sniping incident of 22 July 1994 on Miljenka Cvitkovića street).

13001 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 125; Mile Poparić, T. 38893–38896 (29 May 2013); D3625 (Satellite image of Sarajevo marked by Mile Poparić).

13002 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 119, 125. In cross-examination, Poparić was asked about the pool of blood seen in front of the shop on one of the contemporaneous photographs taken by the BiH MUP and how it came to be there if the boy was wounded on Miljenka Cvitkovića street. He responded that the boy sustained a small wound and that the pool of blood looked like water to him because it was too big to be blood. Poparić conceded, however, that he was not a doctor. *See* Mile Poparić, T. 39239–39240 (4 June 2013).

13003 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 121–122. In cross-examination, Poparić confirmed that he did not know exactly where Pržulj house was and that he simply went to the most dominant house at the end of Zagorska street, which he assumed to be Pržulj house. *See* Mile Poparić, T. 39236 (4 June 2013).

13004 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 120, 123, 126.

13005 Poparić made that conclusion on the basis of the contemporaneous photograph of the awning of the café and two different holes he detected on that photograph, arguing that the hole higher up in the awning was in fact a bullet hole, whereas the hole the BiH MUP focused on was not a bullet hole at all but a tear made by a sharp object. Analysing the higher hole, Poparić concluded that it was probably the result of a stray bullet fired in the air, which then led him to conclude that the incident involving the café was unrelated to the wounding of the boy. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15

3927. Poparić also criticised the BiH MUP for failing to detect the traces that would indicate origin of fire more accurately and for using an instrument "whose principle of operation [he did] not know" but which he doubted,[13006] instead of determining the angle of descent and incoming trajectory by measuring the co-ordinates of the traces.[13007] Finally, he argued that the distance of 1,245 metres exceeds the capacity of a sniper rifle, meaning that the shot must have been fired by a machine-gun.[13008]

3928. Zurovac testified that his company's positions were some 1.5 kilometres away from the location of the incident and that the boy was standing with his back turned towards those positions when shot, so that there was no theoretical possibility for him to be shot by the soldiers of the 4th Company soldiers.[13009] Tuševljak testified that his platoon never fired on the boy, that their positions were some 1.2 kilometres away from the incident site and that they did not have weapons with that range.[13010] Furthermore, he testified that no line of sight existed between his positions and the incident site and that there were no snipers in his unit.[13011] He conceded, however, that there was a line of sight between the positions of the company to his right, either the 2nd or the 1st Company.[13012] He also conceded that M84 and M53 machine-guns his platoon had could cover the distance of 1.2 kilometres but explained that these machine-guns were located further back in the rear and did not have the optical sights necessary to accurately hit targets at that range.[13013]

3929. Galić explained that he did not know about this incident at the time and only heard about it during his own trial.[13014] He also testified that there were ABiH forces in the area of Čengić Vila where the incident took place.[13015] He could not, therefore, deny that there was firing in the area and/or comment on what sort of firing it was.[13016]

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August 2012), pp. 123–143; Mile Poparić, T. 38896–38898 (29 May 2013). In cross-examination, Poparić conceded that he reached this conclusion on the basis of a photograph but also on the basis of his extensive experience with bullet holes. Mile Poparić, T. 39236–39239 (4 June 2013).

13006 *See* fn. 12984.

13007 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 121.

13008 Mile Poparić, T. 38894–38895 (29 May 2013); D3625 (Satellite image of Sarajevo marked by Mile Poparić).

13009 The Chamber notes that Zurovac was no longer the company commander at the time of this incident. *See* Dušan Zurovac, T. 30251–30253, 30263 (14 November 2012); D2427 (Map of Sarajevo marked by Dušan Zurovac).

13010 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 25; D2394 (Map of Sarajevo marked by Slobodan Tuševljak); Slobodan Tuševljak, T. 29961 (7 November 2012).

13011 D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 25.

13012 Slobodan Tuševljak, T. 29957–29958 (7 November 2012).

13013 Slobodan Tuševljak, T. 29958–29959 (7 November 2012); D2397 (List of members of the 4th Company).

13014 Stanislav Galić, T. 37538–37541 (22 April 2013); D3456 (SRK combat report, 22 July 1994).

13015 Stanislav Galić, T. 37538–37539 (22 April 2013).

13016 Stanislav Galić, T. 37538 (22 April 2013). When confronted with Blagoje Kovačević's evidence that the one area from which the SRK was never fired upon was the area of Čengić Vila, he responded that he was not in the

3930. In addition to the above, the Chamber has also taken judicial notice of a number of adjudicated facts going to the origin of fire, namely: (i) Seid Solak was not hit by a stray bullet but was deliberately targeted;[13017] (ii) a clear line of sight existed between the site of the incident and SRK positions;[13018] and (iii) Seid Solak, a civilian,[13019] was injured by a shot deliberately fired at him from SRK-controlled territory on Hrasno Brdo.[13020]

3931. Looking at the location of the incident first, the Chamber is satisfied that the location recorded by Hogan and seen in BiH MUP contemporaneous photographs is the actual location at which the incident happened.[13021] It is also satisfied that it was erroneously noted in the official BiH MUP report and in the Indictment as being on Miljenka Cvitkovića street rather than on Džemala Bijedića street. This error occurred due to the fact that Miljenka Cvitkovića street is on the other side of the passage close to which Solak was standing when shot. However, this being an error as to the street name alone, it did not in any way affect the investigations done at the time of the incident, or subsequently, and does not therefore affect the evidence outlined above. Furthermore, this error was clarified during the trial and did not in any way undermine the Accused's notice of the allegations against him in relation to this incident. Finally, the Chamber finds Poparić's claim that the incident happened somewhere other than where the victim said it happened completely unreasonable. In making such a claim Poparić chose to ignore a number of factors, including (i) the fact that Kučanin and his colleagues, including ballistics experts, conducted an investigation at the location on the day of the incident, and that this was the location indicated to Hogan by the victim; (ii) that the Chamber has in evidence a contemporaneous photograph clearly showing a pool of blood in front of the shop marked by the victim;[13022] and (iii) that at the time of the incident there would have been a number of eye-witnesses, including the victim's sister and mother, who talked to the police and, later, to Prosecution investigators about this incident and its location. What Poparić is implying by his testimony is a conspiracy of large magnitude, conducted over a number of years and involving various individuals and entities. However, there is not a shred of evidence to support this implication. For all those reasons, the

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position to know and that the SRK commanders insisted that this area should never be targeted as it was the centre of Sarajevo and that museums were located there. *See* Stanislav Galić, T. 37836–37827 (7 May 2013).

13017 *See* Adjudicated Fact 242.

13018 Adjudicated Fact 243.

13019 *See* Adjudicated Fact 239.

13020 *See* Adjudicated Facts 244.

13021 The Chamber recalls that it visited this location during its site visit to Sarajevo. The Chamber also recalls that in its Order on Submissions for a Site Visit, dated 15 November 2010, at paragraph 6, it stated that the purpose of its site visit to Sarajevo was not to gather evidence or receive any submissions from the parties but to permit the Chamber to become more familiar with the topography of certain key locations and thus assist its determination of the charges in the Indictment related to Sarajevo.

13022 The Chamber notes that Poparić uses this photograph in his report. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 120, Image 82.

Chamber finds that Seid Solak was wounded on Džemala Bijedića street, near Miljenka Cvitkovića street.

3932. In terms of the origin of fire, the Chamber once again cannot accept Poparić's analysis as it is based on a number of speculations. For example, while Poparić testified that there was no view between Pržulj house and the incident site, he completely ignored the other evidence which suggests that a new building was built following the incident, blocking the previously existing line of sight between the two locations.

3933. In addition, Poparić's analysis that the damage to the awning of the café came about as a result of another incident is again unreasonable. First, it is based on a photograph of what may or may not be a hole in the awning. There is no close up photograph of that "hole" and it is difficult to see if it is indeed a hole or some entirely different type of trace, such as a stain or a shade. The Chamber notes that this "hole" was not referred to by the investigators on the scene at the time of the incident and there is nothing in the evidence suggesting that it is even a hole, let alone a bullet hole. Furthermore, in conducting this particular analysis, Poparić appears to ignore the fact that the BiH MUP investigators talked to the people in the café on the day of the incident, as well as the people outside of the café who witnessed the shooting.[13023] Therefore, it would have been clear to those investigators that the café suffered the damage right after or around the time when the victim was wounded, which is why they noted this sequence of events in the official report at the time. To claim that the two incidents are unconnected is therefore unreasonable and seriously throws into doubt Poparić's credibility on this incident.

3934. Finally, as far as Poparić's criticism of the investigation method used by the BiH MUP investigators, the Chamber is satisfied that they used the well known and accepted method of tracing a bullet through its impact holes, as described earlier in this Judgement.[13024] Thus, the Chamber does not accept Poparić's criticisms in this regard.

3935. Given the age of the victim, as well as the fact that he was on his bicycle and in the company of his mother and sister when shot, the Chamber has no doubt that he was a civilian and that he was not taking a direct part in hostilities at the time of the incident. Indeed, given the presence of a number of people around the incident site on that day, the Chamber finds that there was no military activity or fighting in the area. Based on the evidence above, the Chamber also considers that the location in which the boy was standing when shot was visible from the upper

[13023] Indeed, in his official note, Kučanin refers to ten people being in the restaurant at the time the bullet struck and notes that it was fortunate that none of them was injured. P18 (BiH MUP Report re sniping incident of 22 July 1994 on Miljenka Cvitkovića street).

parts of Hrasno Brdo, including from the area around Ozrenska and Zagorska streets.[13025] Furthermore, the Chamber accepts Van der Weijden's evidence that at the time of the incident there would have been a clear line of sight between a number of positions on and near Ozrenska street, including the Pržulj house, and the incident site.[13026] The Chamber is also satisfied that Ozrenska and Zagorska streets, as well as the Pržulj house, were in the zone of responsibility of the SRK's 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade and that its units had sniper rifles and machine-guns which had the necessary range to reach the incident site. Furthermore, as noted above,[13027] the Chamber accepts KDZ310's evidence that professional snipers were also positioned on Ozrenska street and would target civilians and combatants alike. Relying further on Van der Weijden's evidence that the shooter could not have been located near the incident site due to the large number of people in the area at the time of the incident, as well as the investigation conducted by the local investigators on the day of the incident, the Chamber is convinced that the shooter was located in the zone of responsibility of the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade, as established by the local investigators. The Chamber is also convinced that the shooter targeted the victim deliberately, as illustrated by the fact that more than one bullet was fired on the incident site.

(E) Scheduled sniping incidents F.1 and F.5

3936. The last two sniping incidents alleged in the Indictment took place in two different parts of Sarajevo, the southeastern suburb of Širokača and the northwestern area of Briješko Brdo respectively. Each is examined by the Chamber below.

(1) Žagrići street, Širokača, 13 December 1992 (Scheduled Incident F.1)

3937. According to the Indictment, on 13 December 1992, Anisa Pita, a three year old girl, was shot and wounded in her right leg on the porch of her residence on Žagrići street in the Širokača area of Sarajevo.[13028] In its Final Brief, the Prosecution argues that the shot that wounded Pita was fired from the SRK-controlled area of Baba Stijena.[13029] The Accused argues that Anisa Pita's

13024 *See* para. 3628.

13025 While both Zurovac and Tuševljak testified that their company's positions did not have the line of sight to the incident site, this does not change the Chamber's finding that the units of the 2nd Infantry Battalion were in positions that had such a line of sight onto the incident site. Indeed, as outlined above, this was admitted by Tuševljak during his testimony.

13026 *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 80; Patrick van der Weijden, T. 7074, 7081–7086 (28 September 2010); D663 (Map of Sarajevo marked by Patrick van der Weijden).

13027 *See* para. 3902.

13028 Indictment, Scheduled Incident F.1.

13029 Prosecution Final Brief, Appendix C, paras. 37–38.

house cannot be seen from Baba Stijena and that Pita was wounded in an exchange of fire taking place at the confrontation line.[13030]

3938. Širokača is a suburb located in the southeastern part of Sarajevo south of Miljacka River and east of Grbavica.[13031] Baba Stijena, or Baba Rock, is a ridge on the northern slope of Mount Trebević, just below the Pale-Lukavica road, which overlooks Sarajevo, including Širokača.[13032] During the war, it was in the zone of responsibility of the 2nd Company of the 3rd Infantry Battalion of the 1st Romanija Infantry Brigade of the SRK.[13033] On the other side of the confrontation line was the 10th Mountain Brigade, later 115th Mountain Brigade, of the 1st Corps of the ABiH.[13034]

3939. On 13 December 1992, between 10 and 10:30 a.m., Anisa Pita and her father left their house in the morning as there was no ongoing fighting[13035] and went to a water source about 150 metres from the house, where people were already lining up.[13036] Anisa Pita remained there for a short time as she met another child, named Elma Smajkan, and they decided to go back to the Pitas' house to play.[13037] As Anisa Pita arrived to her house, she was wounded above her right knee by a bullet which subsequently exited her body.[13038] The fog had lifted by that time.[13039]

3940. Hogan visited the site of the incident and recorded Anisa Pita's exact position and location when she was shot, namely at the front door of her house.[13040] Van der Weijden also visited the

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13030 Defence Final Brief, paras. 2182–2186.

13031 P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); D2347 (Map of Sarajevo marked by Miloš Škrba).

13032 Stanislav Galić, T. 37473–37474 (22 April 2013); D2344 (Witness statement of Miloš Škrba dated 14 October 2012), paras. 5, 11; D2347 (Map of Sarajevo marked by Miloš Škrba); D2348 (Photograph of Baba Stijena); Miloš Škrba, T. 29188–29189 (22 October 2012).

13033 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), paras. 5, 11; Miloš Škrba, T. 29189–29190 (22 October 2012). *See* Adjudicated Fact 152. While Škrba testified that the 2nd Company in the area was part of the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade, the Chamber notes that prior to mid-1993, this battalion was called 3rd Infantry Battalion and was part of the 1st Romanija Infantry Brigade. *See* fn. 12875; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 3, 5; D2418 (Witness statement of Božo Tomić dated 5 November 2012), paras. 8, 25–26; Božo Tomić, T. 30178–30179 (13 November 2012). Contrary to Škrba, Galić testified that the SRK forces "may have had access" to one part of the Baba Stijena area, while the ABiH forces had their positions in another part of the area, just below the Lukavica-Pale road. *See* Stanislav Galić, T. 37473–37474 (22 April 2013). Given that he was the local commander in the actual area of Baba Stijena, the Chamber accepts Škrba's evidence over that of Galić, and finds that Baba Stijena itself was under the SRK control.

13034 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 6; Stanislav Galić, T. 37474–37475 (22 April 2013); Asim Džambasović, T. 15224–15225 (22 June 2011); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović).

13035 *See* Adjudicated Fact 147.

13036 *See* Adjudicated Fact 148.

13037 *See* Adjudicated Fact 149.

13038 *See* Adjudicated Facts 150, 151; P1991 (Stari Grad Police Station war diary), pp. 3–4.

13039 Adjudicated Fact 150.

13040 Barry Hogan, T. 11207–11208 (3 February 2011); P2194 (Photograph re sniping incident of 13 December 1992 on Žagrići street marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); P2190

incident site[13041] and examined the doorway of the house; he crouched down to the girl's level, and then observed the surroundings to see where the shot may have originated from.[13042] Since the garden of the house was completely walled off, he was only able to observe Baba Stijena and thus concluded that Baba Stijena was the only possible origin of fire.[13043] He also visited Baba Stijena and observed that it offered a dominating view of the valley below and thus would have been an obvious location for a machine-gun emplacement and/or a sniper position.[13044] Van der Weijden noted two other possible origins of fire which he excluded, namely (i) a house seen in the area between the girl's house and Baba Stijena, which he excluded because it would have made no sense tactically[13045] to have a shooting position in that location and (ii) an area 25 metres away, directly next to Žagrići street, which he excluded because it would have been unlikely for the child to be playing on the street and later on her porch if the soldiers with guns were nearby.[13046]

3941. Van der Weijden also thought that the calibre of the bullet used in this incident would not have been greater than 7.92 mm as greater damage would have been caused to Anisa Pita's right leg in that case.[13047] Noting the distance between Baba Stijena and the incident site, namely 920 metres, and noting also that "one or more" shots were heard, Van der Weijden concluded that either a semi-automatic sniper rifle (M76 or M91), or a machine-gun (M84 or M53) was used, although the range would have been extreme for sniper rifles.[13048]

3942. As for the identification of the victim by the shooter, Van der Weijden was told that she was wearing a red top and blue bottoms, and that she was standing in the doorway of her house when

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(GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

13041 As noted above, Van der Weijden testified that he visited the sites relevant to the Indictment in November 2006 and January 2009. *See* para. 3634.

13042 Patrick van der Weijden, T. 6973–6974 (27 September 2010); D637 (Photograph of a house).

13043 Patrick van der Weijden noted that the trees in the area have grown since the incident and now obscure the view somewhat, but he was nevertheless of the view that this was the location from which the fire originated. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 15; Patrick van der Weijden, T. 6995–6996 (27 September 2010). *See also* Barry Hogan, T. 11207–11208 (3 February 2011); P2194 (Photograph re sniping incident of 13 December 1992 on Žagrići street marked by Barry Hogan).

13044 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 13–14.

13045 Van der Weijden explained that it would have made no sense from a tactical point of view to have a shooting position down the hill, just below the enemy's shooting position. *See* Patrick van der Weijden, T. 7173 (29 September 2010).

13046 Patrick van der Weijden, T. 6995–6996 (27 September 2010), T. 7172–7173 (29 September 2010).

13047 Van der Weijden thought that both 7.62 mm and 7.9 mm bullets could have been used in this incident, although the former was less likely due to distances involved. He also noted that given the small size and mass of a three year old's leg, the bullet would not lose much energy while going through and thus would not have caused the same "devastation" as in the case of an adult. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 13; Patrick van der Weijden, T. 6996–7004 (27 September 2010).

13048 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 13. *See also* Adjudicated Fact 153 in relation to the distance involved.

shot, meaning that she did not reach above half of the doorway.[13049] These factors, according to him, would have made her easily distinguishable as a civilian, even with the distances involved.[13050]

3943. On cross-examination, Van der Weijden rejected the Accused's submission that the shot may have been fired from the Muslim cemetery located southwest of the Pita house because it was clear that this location offered no view of the exact site where Anisa Pita was shot.[13051] He explained that during his visit, he in fact stopped at the cemetery to see if there was a line of sight to the incident site but could see none and so drove higher up the mountain.[13052] He also conceded that he did not know where the line of separation was in that area and noted that the only information he was provided with by the Prosecution was that the VRS controlled Baba Stijena.[13053]

3944. Poparić testified—relying on a number of photographs he took from Baba Stijena and from the incident site—that there was no line of sight between the two locations.[13054] He also stated that this was confirmed when he physically visited Baba Stijena in September 2010 and May 2011.[13055] He further argued that Van der Weijden mistakenly identified as Baba Stijena a small rock on a clearing under Baba Stijena, which had a line of sight and which was under the ABiH control.[13056] Finally, he argued that there is no line of sight between the incident site and Baba Stijena because there is a natural obstacle, namely a terrain elevation, of two metres, at a distance of 403 metres from the incident site in the direction of Baba Stijena, which obstructs the view.[13057] In cross-examination, Poparić conceded, however, that Anisa Pita's house had been renovated by the time he was at the scene so that it was no longer possible to stand or crouch at the specific location she

13049 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 16.

13050 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 16. *See also* Patrick van der Weijden, T. 6987–6988 (27 September 2010).

13051 Patrick van der Weijden, T. 6976–7005 (27 September 2020), 7172–7173 (29 September 2010); D638 (Map of Sarajevo marked by Patrick van der Weijden); D639 (Photograph of a house marked by Patrick van der Weijden); D640 (Map of Sarajevo marked by Patrick van der Weijden); D641 (Photograph of a cemetery); D642 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); D643 (Aerial photograph of Sarajevo marked by Patrick van der Weijden); D644 (Aerial photograph of Sarajevo); D645 (Aerial photograph of Sarajevo); D646 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

13052 Patrick van der Weijden, T. 6996 (27 September 2010).

13053 Patrick van der Weijden, T. 6976, 6984 (27 September 2010); D642 (Aerial photograph of Sarajevo marked by Patrick van der Weijden).

13054 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 51–52.

13055 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 52; Mile Poparić, T. 38937–38939 (29 May 2013).

13056 In addition, he argued that even if Van der Weijden had accurately marked the location of Baba Stijena, it was still clear that there was no line of sight to the incident site due to the density of the trees in the area. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 52–54; Mile Poparić, T. 39287–39288 (5 June 2013).

13057 In making this claim, Poparić relied on three different topographical maps of the area. D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 54–56; Mile Poparić, T. 38937–38939 (29 May 2013), T. 39266–39267 (5 June 2013).

was at when shot.[13058] When shown two different photographs taken from the incident site prior to the renovations, one marked by Anisa Pita's father and the other used by Van der Weijden in his report, Poparić denied that either of the photographs showed Baba Stijena and argued that, like Van der Weijden, Anisa Pita's father wrongly marked Baba Stijena.[13059]

3945. Even disregarding the fact that there was no line of sight, Poparić argued that it cannot be "realistically assumed" that Anisa Pita was deliberately targeted from Baba Stijena given that she was a three year old in a crouching position and thus too small to be detected and successfully hit from a distance of some 880 metres in overcast weather.[13060] Poparić also observed that no medical records existed that would make it possible to identify the bullet track and thus determine the bullet's trajectory.[13061] Using the statements of Anisa Pita's parents that they heard several shots at the time of the incident and the fact that Anisa Pita's injury was not serious,[13062] Poparić theorised that she was probably struck by a ricocheted projectile as a result of an exchange of fire.[13063]

3946. Miloš Škrba, who was the Commander of the 2nd Company of the 3rd Infantry Battallion of the 1st Romanija Infantry Brigade of the SRK at the time of the incident, testified that there were no sharpshooters or snipers in his company[13064] and that he never issued orders to anyone to open fire at civilians from Baba Stijena.[13065] He conceded that his company had rifles, as well as automatic and semi-automatic weapons, but claimed that it did not have optical equipment, such as binoculars and optical sights, because it did not need them.[13066] In addition, according to Škrba, the 2nd

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13058 Mile Poparić, T. 39266–39267 (5 June 2013).

13059 Mile Poparić, T. 39267–39269, 39287–39288 (5 June 2013); P6367 (Three photographs); D3648 (Three photographs marked by Mile Poparić).

13060 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 56; Mile Poparić, T. 38937 (29 May 2013).

13061 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 56; Mile Poparić, T. 38937 (29 May 2013).

13062 While Poparić claimed that Anisa Pita did not require hospital treatment, his account of her parents' evidence, namely that they took her to an emergency clinic and that she was then referred to the Koševo Hospital, seems to contradict that. While he does follow up this account by saying that there was no medical record of Pita's treatment, this is insufficient to conclude that no hospital treatment was required. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 49.

13063 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 57.

13064 The Chamber recalls here that Maletić testified that there was a sniper squad in the battalion, which was directly subordinated to the commander. *See* D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 8–9, 31; Dragan Maletić, T. 30846–30848 (3 December 2012), T. 30873–30874 (4 December 2012).

13065 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), paras. 9, 11, 16; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 11–13, 15. When confronted with a report of the 1st Sarajevo Mechanised Brigade sent to the SRK Command on 29 October 1993, informing the SRK Command that it was in possession of a number of sniper rifles and optical sights which were issued to combatants in subordinated units, Škrba responded that he could not speak as to the weapons at the level of his brigade and that his company did not have the weapons mentioned in the report. Miloš Škrba, T. 29186–29188 (22 October 2012); P5930 (Report of 1st Sarajevo Mechanised Brigade to SRK, 29 October 1993).

13066 Miloš Škrba, T. 29193–29194 (22 October 2012).

Company did not have "determined targets"; its only targets were ABiH soldiers and only when they opened fire on the company's positions.[13067] He also explained that Baba Stijena was exposed to frequent ABiH fire, which is why it was a fortified position,[13068] and that ABiH units had positions in depth, in civilian facilities and houses.[13069] In cross-examination, he conceded that his company would return fire "in most cases", but denied that it would open fire on civilian houses—instead, he said, the fire was directed "at their lines".[13070]

3947. Stanislav Galić, the SRK Commander at the time, testified that no one issued an order to open fire on Anisa Pita, explaining that the positions and trenches of the 10th Mountain Brigade of the 1st Corps of ABiH were near her house and that ABiH soldiers would have been "moving around" the house to get to their positions.[13071] He said that he never received any reports about this incident and that at that time there was fighting in Oteš, on the opposite side of the frontline, so there should have been no major activity in Širokača on that day.[13072]

3948. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of two adjudicated facts which go to the origin of fire and provide as follows: (i) Anisa Pita was injured by a shot fired from the area of the ridge known as Baba Stijena;[13073] and (ii) on 13 December 1992 Anisa Pita, a three and a half years old civilian, was deliberately targeted and injured by a shot from an area that SRK soldiers had access to.[13074]

3949. The Chamber finds, given Anisa Pita's age at the time of the incident that she was a civilian and that she was obviously not taking direct part in hostilities at the time of the incident. Further, while Galić suggested that soldiers would have been moving around her house, he provided no specific evidence that soldiers were there when Anisa Pita was shot. Contrary to Poparić's opinion that she was hit by a ricocheted bullet as a result of an exchange of fire, the Chamber is satisfied

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13067 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 16; Miloš Škrba, T. 29189–29193 (22 October 2012).

13068 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 11; Miloš Škrba, T. 29189–29190 (22 October 2012); P5938 (Video still of Baba Stijena); D4622 (Report of 1st Romanija Infantry Brigade, 14 August 1992). Škrba marked two photographs showing positions from which ABiH opened sniper fire on various SRK-controlled areas, including Grbavica and Vraca. *See* D2344 (Witness statement of Miloš Škrba dated 14 October 2012), paras. 7–8; D2349 (Photograph of Sarajevo marked by Miloš Škrba); D2350 (Photograph of Sarajevo marked by Miloš Škrba); Miloš Škrba, T. 29190–29191 (22 October 2012).

13069 D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 6; Miloš Škrba, T. 29191–29192 (22 October 2012).

13070 Miloš Škrba, T. 29191–29192 (22 October 2012).

13071 Galić stopped short of saying that ABiH soldiers were moving in the area on the day of the incident and acknowledged that this would have been speculation on his part. *See* Stanislav Galić, T. 37474–37475 (22 April 2013).

13072 Stanislav Galić, T. 37474–37476 (22 April 2013); D3436 (SRK combat report, 13 December 1992).

13073 Adjudicated Fact 154.

13074 Adjudicated Fact 155.

that there was no fighting when she was shot because the morning was quiet, as illustrated by people lining up to get water near her house, and by the fact that she was walking home with another child and without her father. Neither would have been likely had there been fighting in the area at the time.

3950. The Chamber is also satisfied, based on the evidence above, that there was a line of sight between Baba Stijena and the exact location where Anisa Pita was located when shot, as testified to by Van der Weijden and illustrated by the photographs in his report. These photographs clearly show that line of sight, despite Poparić's claim to the contrary.[13075] The Chamber further notes that Van der Weijden visited the area before the alterations were made to the incident site and thus was able to observe the environment from the girl's position when shot. In contrast, Poparić's evidence is based on his visits in 2010 and 2011, that is, after the relevant alteration took place. In terms of the origin of fire, the Chamber is also persuaded, again relying on Van der Weijden's evidence, that Baba Stijena was in fact the location from which the shot was fired in this incident. While Van der Weijden noted two other possible locations, he excluded them for reasons the Chamber finds persuasive.

3951. The Chamber is further satisfied, based on Miloš Škrba's evidence, that the 2nd Company of the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade of the SRK had fortified positions in the area of Baba Stijena and that its soldiers possessed automatic and semi-automatic weapons. While Škrba testified that his company did not have binoculars or other optical instruments, the Chamber finds it difficult to believe that an SRK company would not have—at the very least—one pair of binoculars, and therefore does not accept his evidence in this respect.[13076]

3952. Relying again on Škrba's evidence, the Chamber is satisfied that SRK soldiers would frequently open fire from Baba Stijena. While Škrba claimed that they only opened fire on ABiH soldiers and their lines, he also testified that the ABiH positions were in depth of the Muslim territory, in civilian houses and facilities, thus confirming that the fire was opened on civilian houses and other civilian facilities. The Chamber does not find his denials as to the fire being opened on civilian areas and civilians themselves to be genuine.

3953. Finally, given the distance between the incident site and the area of Baba Stijena, which would have required a careful shot on the part of the shooter, the Chamber is satisfied that Anisa

13075 In this respect, the Chamber does not accept Poparić's claim that Van der Weijden wrongly identified Baba Stijena in the said photograph, something that would have been highly unlikely given that he visited Baba Stijena, using GPS co-ordinates of the relevant position, and given that he examined the area carefully.

13076 In addition, as testified by Maletić, the battalion itself had a sniper squad responsible directly to the battalion command. *See* fn. 13064.

Pita was deliberately targeted by one of the SRK soldiers located on Baba Stijena.[13077] This soldier would have undoubtedly been aware of her civilian status, for all the reasons outlined above by Van der Weijden.[13078]

(2) Briješko Brdo street, 2 November 1993 (Scheduled Incident F.5)

3954. The Indictment alleges that on 2 November 1993, Ramiza Kundo, a 32 year old woman, was shot and wounded in her left leg while carrying buckets of water across Briješko Brdo street (presently Bulbulistan street) in the west end of Sarajevo.[13079] In its Final Brief, the Prosecution argues that the fire originated from a field, referred to as "Polje", in the Bačići and Briješće area in SRK-held territory, which had an unobstructed line of sight on the incident site.[13080] The Accused argues that given the inconsistent evidence related to this incident it is impossible to determine even the direction from which the bullet was fired.[13081] He also argues that ABiH forces deployed in the area were in dominant positions and that the scene of the incident was not "sufficiently visible" from SRK positions.[13082]

3955. Briješko Brdo or Briješko Hill is a hilly area on the northwestern edge of Sarajevo, located between Rajlovac, which is to its north, and Briješće, which is to its south.[13083]

3956. The Chamber took judicial notice of a number of adjudicated facts related to the circumstances of this incident. They provide that (i) on 2 November 1993, at around 4 pm, Ramiza Kundo, 38 years old at that time, and Rasema Menzilović, were hurrying back from a well located about 50 metres away from Menzilović's house carrying full 10-litre canisters in each hand along Briješko Brdo street;[13084] (ii) the ABiH confrontation line was between 300 and 400 metres away from the site of the incident;[13085] and (iii) Ramiza Kundo was wounded by a shot fired from the direction of "Polje," a field in the area of Bačići and Briješće.[13086]

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13077 The Chamber does not accept Poparić's evidence that the nature of Anisa Pita's injuries meant that it was caused by a ricocheted bullet. To the contrary, the Chamber is persuaded by Van der Weijden's conclusion that given the size of a three year old's leg, her injuries would not have been as devastating as they would have been with an adult.

13078 *See* para. 3942.

13079 Indictment, Scheduled Incident F.5.

13080 Prosecution Final Brief, Appendix C, para. 39.

13081 Defence Final Brief, paras. 2207–2211.

13082 Defence Final Brief, para. 2212.

13083 P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P1803 (Map of Alipašino Polje); P2199 (Map of Sarajevo marked by Barry Hogan); D2788 (Map of Sarajevo marked by Dragomir Milošević).

13084 *See* Adjudicated Fact 183.

13085 Adjudicated Fact 184.

13086 Adjudicated Fact 185.

3957. According to Kundo's medical records, due to an entry-exit wound through her left calf, she was admitted to Koševo Hospital on 2 November 1993, where she was treated and then released several days later.[13087]

3958. Hogan visited the site of the incident with Ramiza Kundo and recorded her exact location and position when shot, as well as the direction from which she said the bullet came. The video footage of that reconstruction shows her walking on a hill, towards the well, and indicating to Polje, located down the slope to her left, as being the direction of fire.[13088] The Chamber notes that this reconstruction contradicts one of the adjudicated facts referred to above, as it indicates that Kundo was on her way to the well when she was shot, not on her way back from the well.

3959. Van der Weijden investigated this incident after the Prosecution gave him the location of the incident and the alleged location of the shooter, namely "Polje".[13089] He was of the view that the calibre of the bullet that struck the victim would not have been more than 7.92 mm as it would have caused greater damage.[13090] He also noted that the road where the incident took place is lined on one side with houses and a concrete wall topped by a fence, while there is an earthen wall on the other side, thus creating a tunnel limiting the view of the incident site to locations in line with the street.[13091] Van der Weijden visited Polje and noted that there were several locations offering an unobstructed view of the incident site from the ground level and that the houses in those locations would offer an even better view.[13092] He believed that the shooter would have been at a maximum distance of 825 metres from the incident site.[13093] From that location, the victim would have been easily identifiable as a female carrying water containers.[13094] Given the possible calibres of the bullet, the range involved, and the fact that only one shot was heard, Van der Weijden concluded that a semi-automatic rifle was probably used, either an M76 or an M91, although this range would have been extreme for those rifles.[13095]

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13087 P1026 (Medical records for Ramiza Kundo).

13088 Barry Hogan, T. 11210–11211, 11261–11262 (3 February 2011); P2198 (Photograph re sniping incident of 2 November 1993 on Briješko Brdo street marked by Barry Hogan); P2199 (Map of Sarajevo marked by Barry Hogan); P2207 (Images re scheduled sniping incidents in Sarajevo); D995 (Video footage re sniping incident of 2 November 1993 on Briješko Brdo street). For the still of Kundo pointing to her left, in the direction of the field, *see* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 76, Image 50.

13089 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 34.

13090 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 34.

13091 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 36–37.

13092 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 36. *See also* Barry Hogan, T. 11210–11211 (3 February 2011); P2198 (Photograph re sniping incident of 2 November 1993 on Briješko Brdo street marked by Barry Hogan).

13093 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 36.

13094 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 37.

13095 P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), p. 34.

3960. Poparić testified that the information relating to this incident was so contradictory that it was impossible to establish what happened.[13096] He explained that Kundo gave conflicting statements as to whether she was shot when on her way to the well or when returning from the well and that Menzilović's recollection was that they were on their way back.[13097] Poparić further recounted the testimonies of both Kundo and Menzilović, from the *Galić* case, and noted that both testimonies failed to make clear whether the shot came from Polje or from a depot further west of the incident site.[13098] Poparić also pointed out that Kundo conceded in her testimony in the *Galić* case that an ABiH tank was located some 500 metres above her house.[13099]

3961. Relying on an ABiH map showing confrontation lines in the area,[13100] Poparić noted that the confrontation line was some 500 to 600 metres away from Kundo's house and that the incident site was thus also visible from a "rather wide area" controlled by the ABiH.[13101] In cross-examination, he conceded that the configuration of terrain was such that it created a natural "tunnel" in terms of the line of sight to the incident site, as well as the fact that Kundo was visible from the Serb positions in the area.[13102] When pointed out to him that his potential field of fire was much larger than the potential field of fire as assessed by Van der Weijden, he explained that Van der Weijden only marked what was visible from the SRK positions and did not check the visibility from the ABiH positions.[13103]

3962. Finally, referring to Kundo's medical records, Poparić observed that they do not identify the position of the entry and exit wounds or the orientation of the bullet track, thus adding to the

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13096 Mile Poparić, T. 38954–38955 (29 May 2013).

13097 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 75–76; Mile Poparić, T. 38955, 38958 (29 May 2013).

13098 When visiting the site, Poparić ruled out the depot as the origin of fire because it "did not afford a line of sight which would make it possible to shoot a person on the [Briješko Brdo] street in their lower leg." *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 77–79, 81.

13099 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), p. 79; Mile Poparić, T. 38959–38960 (29 May 2013). In cross-examination, when told that he failed to mention that Kundo also testified that this tank was there only for a week and that she could not remember when that was, Poparić explained that he mentioned the tank only to show that there were ABiH troops in the area. *See* Mile Poparić, T. 39168–39173 (4 June 2013).

13100 In cross-examination, Poparić conceded that the map he relied on was operative in the period 1 March to 14 September 1995 and explained that he used it nevertheless because the evidence he saw suggested that the confrontation line in the area did not change throughout the war. He denied that he deliberately omitted this information in order to mislead the Chamber and stated that he simply accepted the situation as alleged by the Prosecution insofar as the confrontation lines were concerned. *See* Mile Poparić, T. 39196–39198 (4 June 2013); P1764 (ABiH Map of Sarajevo).

13101 D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 79–81; Mile Poparić, T. 38955–38956 (29 May 2013). Poparić explained that the ABiH-controlled area from which Kundo could be seen was in fact bigger than the area from which the SRK units could see her. *See* Mile Poparić, T. 38958–38959 (29 May 2013).

13102 Mile Poparić, T. 39233–39236 (4 June 2013).

13103 Mile Poparić, T. 39234–39235 (4 June 2013); P6364 (Two satellite images of Sarajevo).

difficulty in determining the direction of fire already made complicated by Kundo's inconsistent statements as to the direction in which she was walking when shot.[13104]

3963. Stanislav Galić testified that he received no reports about this incident at the time but pointed out that ABiH had forces in the area of Briješko Brdo and that the incident site was not "sufficiently visible" from the SRK positions, which were located in the area of Azići, towards Dobrinja river.[13105] According to Galić, the SRK positions were at the foot of the hill on which the incident happened, meaning that the ABiH forces that controlled the hill were in a dominant position in that area.[13106]

3964. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of three more adjudicated facts which go to the origin of fire and provide as follows: (i) Ramiza Kundo was injured by a bullet fired from SRK-held territory in the field area, where Briješće and Bačići are;[13107] (ii) Ramiza Kundo was not hit by a stray bullet or a ricochet as a consequence of regular combat activity;[13108] and, (iii) on 2 November 1993, a civilian Ramiza Kundo was targeted from an SRK-controlled area in full awareness of the high risk that the target was a civilian.[13109]

3965. Having reviewed the evidence on this incident, as well as the adjudicated facts outlined above, the Chamber is unable to conclude, beyond reasonable doubt, that Ramiza Kundo was wounded by a shot fired by an SRK soldier positioned in the location of Polje. First, the Chamber is of the view that the Accused was successful in rebutting some of the adjudicated facts related to this incident, including those related to the direction and origin of fire. The Chamber recalls here the Accused's cross-examination of Hogan in relation to the direction in which Kundo was walking when shot, as well as Poparić's evidence on the various versions of the event given by Kundo in the *Galić* case. Despite being aware of inconsistencies in relation to that issue, the Prosecution chose

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13104 Poparić also explained that, given the configuration of the terrain (that is, the difference in altitude of 100 metres between Kundo and the SRK positions), it would have been important to know how high up on Kundo's calf was her wound located, as that would have allowed him to check whether that part of the leg was visible from where the bullet had been fired. Poparić also referred to a police report on the incident, which is not in evidence in this case, and which provides that Kundo was wounded in her right leg. *See* D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 82–83, 85; Mile Poparić, T. 38955–38958 (29 May 2013); D3636 (Photograph re sniping incident of 2 November 1993 on Briješko Brdo street marked by Mile Poparić).

13105 Stanislav Galić, T. 37513–37516 (22 April 2013); D3451 (SRK combat report, 1 November 1993).

13106 Stanislav Galić, T. 37515 (22 April 2013).

13107 Adjudicated Fact 186.

13108 Adjudicated Fact 187.

13109 Adjudicated Fact 188.

not to call Kundo as a witness in this case.[13110] Instead, it decided to rely on adjudicated facts, which in turn contradict the evidence of Hogan, the Prosecution's own investigator. The Chamber is therefore left with a situation in which it has adjudicated facts on one hand (which contradict the Prosecution's own evidence) and Poparić's recounting of Kundo's evidence on the other (which suggests a number of inconsistencies in her evidence).[13111] Thus, the Chamber cannot rely on the adjudicated facts relating to this incident and in particular to the origin of fire.

3966. Turning then to the Prosecution evidence on this incident, it consists of Van der Weijden's observations as to the potential field of fire and Hogan's geo-positioning of the incident and the shooter as recounted to him by Kundo. Given, however, that Van der Weijden never made a determination that the bullet necessarily came from SRK positions,[13112] while Hogan's evidence was not concerned with the exact origin of fire,[13113] the Chamber deems the available evidence simply insufficient to conclude that the bullet that wounded Kundo came from the SRK positions. In that respect, the Chamber also notes the Prosecution's own admission that Polje was not one of the well-known sniping positions of the SRK.[13114]

3967. For these reasons, the Chamber finds that the Prosecution has failed to prove, beyond reasonable doubt, that the shot that hit and wounded Ramiza Kundo was fired by one of the SRK soldiers in the area.

iv. *Findings on sniping in Sarajevo*

3968. Having considered all the evidence presented in this case in relation to sniping in Sarajevo the Chamber is convinced that throughout the conflict SRK units deliberately shot at civilians in

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13110 Calling Kundo as a witness would have allowed the Chamber to assess her credibility and the reliability of her evidence, and to come to its own conclusions as to the way in which the incident unfolded, including the direction in which she was walking when shot.

13111 The Chamber recalls its observation during trial that Poparić is an expert on ballistic matters and therefore not an expert on credibility of victims of the incidents. *See* Mile Poparić, T. 38905 (29 May 2013). While that remains the case, the adjudicated facts and the evidence presented by the Prosecution in this particular incident are not only scarce but also internally inconsistent. The Prosecution did not discuss this incident with Van der Weijden and it never cross-examined Poparić on this aspect of his analysis. It also appeared to ignore his overall assessment that the information about this incident was very inconsistent. In addition, in contrast to the other incidents, the Chamber has received no contemporaneous documents that would allow it to resolve the various inconsistencies in the evidence before it. Thus, Poparić's recounting of various inconsistencies in Kundo's evidence in the *Galić* case simply reinforced the inconsistencies already present between the evidence led by the Prosecution and adjudicated facts.

13112 Indeed, as suggested by Poparić, it would appear that when determining the potential field of fire, Van der Weijden limited his observations only on what was visible from Polje as there is no suggestion that he checked the line of sight between the incident and the areas east of Polje, which were controlled by the ABiH. *See* P1621 (Expert Report of Patrick van der Weijden entitled "Sniping Incidents in Sarajevo '92–'94"), pp. 35–36.

13113 *See* Barry Hogan, T. 11231 (3 February 2011).

13114 Prosecution Final Brief, Appendix C, para. 2.

Sarajevo, including at trams and other means of public transport.[13115] This was confirmed not only by the witnesses who lived and worked in Sarajevo and who experienced sniper fire on daily basis from notorious sniping locations but also by the evidence indicating that thousands of civilian casualties were caused by sniper or small arms fire in Sarajevo.[13116] The Chamber was particularly persuaded by the evidence of international witnesses working with the UN on this issue as they not only observed the sniping within the city but also had a more complete picture of the situation through constant dealings with both sides to the conflict as well as through the reports of UNPROFOR forces tasked with anti-sniping operations.

3969. The Chamber is also satisfied that the evidence shows beyond reasonable doubt that the SRK soldiers' deliberate sniping of civilians was not particularly unusual in the Sarajevo battlefield. It was, in fact, persistent, took place on an almost daily basis, and continued unabated during the entirety of the conflict. Sarajevo civilians were shot while fetching water, walking in the city, and when using public transport (particularly trams). Furthermore, children were sniped at while playing in front of their houses, walking with their parents or walking home from school, and even when cycling. The fact that UNPROFOR had to set up anti-sniping barriers throughout the city and establish an anti-sniping unit which would, at times, exchange fire with SRK snipers is a clear proof of this. The evidence shows that the SRK used sniper rifles that both Galić and Milošević admitted were in the SRK arsenal. They also used machine guns, which allowed them to hit targets at much longer ranges than normally possible with sniper rifles.

3970. The Chamber is also convinced, relying particularly on the evidence of KDZ310 and Maletić, that the SRK had specialised sniping units or squads which were commanded at a battalion level or higher and in which the SRK Command took special interest, as indicated by its orders relating to snipers outlined above.[13117] Futhermore, the Chamber has no doubt that these units were under the control of the SRK Command, despite Manojlović's claim that the sniping was out of control in Sarajevo. This is cofirmed not only by the SRK Command's orders and training exercises referred to above, but also by the events on the ground, such as, for example, the reduction in sniping following the signing of the Anti-sniping Agreement, as discussed in Section IV.B.1.a. The fact that these sniper units operated from professionally set up sniper nests which were located in buildings along the confrontation lines for a number of years, as amply illustrated by the sniper nests in the white high-rises in Grbavica, makes it unlikely that the SRK Command

[13115] In reaching this conclusion, the Chamber relied not only on the findings on Scheduled Sniping Incidents discussed above, but also on the general evidence relating to the sniping situation in the city and specifically in the areas notorious for sniping, such as Sniper Alley, for example.

[13116] *See also* paras. 4588–4591.

[13117] *See* para. 3623.

did not have control over the said sniper units. Instead, it confirms that the SRK Command was reliant on, and regularly used, professional sniper teams, positioning them at most opportune locations.[13118] SRK units also used most convenient nature-made elevations along the confrontation lines around the city, such as Špicasta Stijena and Baba Stijena, to position their snipers, again indicating the involvement of the higher levels of the SRK. While the Chamber does not exclude the possibility that there may have been some rogue shooters on the SRK side, the Chamber considers their activities to have been insignificant in light of the evidence on the sustained campaign of sniping against the civilian population in the city from notorious sniper locations and on the overall control over snipers exhibited by the SRK commands.

3971. In coming to the above conclusions, the Chamber has carefully assessed the evidence of former SRK soldiers and officers who denied the SRK practice of deliberate sniping on civilians in Sarajevo. The Chamber found these denials to be untenable and completely at odds with the reality on the ground when considered in combination with the accepted Prosecution evidence outlined above, as well as the evidence specifically related to the scheduled sniping incidents. The Chamber therefore considers that the evidence of these witnesses was self-serving and dishonest, seriously calling into question their credibility.

3972. The Chamber is also satisfied that the ABiH units and special police forces within the confrontation lines in Sarajevo had snipers, as claimed by the Accused, which they used against the SRK positions and against civilian targets on the Bosnian Serb side of the confrontation line. However, this being the Accused's trial, the sniping practices of the ABiH units and special police forces are only relevant to this case insofar as they allow the Chamber to determine whether the fire coming from the Bosnian Serb side was opened in response to ABiH sniper fire and, if so, whether that response was selective and proportionate. In other words, while regrettable that Bosnian Serb civilians were sniped by the ABiH forces and special police units located in the city, such activities are not part of the Indictment in this case and are also not an excuse for the Bosnian Serb side's targeting of Sarajevo civilians.

3973. On the other hand, the Accused's argument that the Bosnian Muslim units within the city opened sniper fire on their own civilians in order to lay the blame on the Serbs is relevant to the Indictment in this case. However, the Chamber has by and large rejected this claim for the reasons outlined in more detail in the later section of the Judgement.[13119]

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13118 The other notorious sniping locations are discussed above in the sections relating to specific Scheduled Sniping Incidents.

13119 *See* Section IV.B.A.d: Bosnian Muslim side targeting own civilians.

c. Shelling

3974. The Prosecution alleges that the Accused, together with a number of others, participated in a joint criminal enterprise to establish and carry out a campaign of shelling against the civilian population of Sarajevo between April 1992 and November 1995, the primary purpose of which was to spread terror.[13120] To illustrate that campaign[13121] the Prosecution presented, *inter alia*, detailed evidence in relation to 15 shelling incidents listed in Schedule G of the Indictment.[13122] These incidents allegedly included opening mortar fire on residential areas in the city and using modified air bombs later in the conflict. As with the scheduled sniping incidents, they are all alleged to have been perpetrated by the Sarajevo Forces. In addition, the Prosecution brought general evidence on the nature of heavy weapon fire in Sarajevo and referred to a number of unscheduled shelling incidents to establish a pattern of conduct by the Bosnian Serb military and political authorities.[13123]

3975. In response, the Accused denies that the SRK deliberately shelled civilians, stating that there were military targets deep in ABiH-held territory in the city and that the ABiH units "abused for military purposes premises of civilian and protected buildings", including UN facilities.[13124] Nevertheless, according to the Accused, the SRK units took precautionary measures to prevent opening fire on civilians, such as 24-hour observation by artillery scouts and using more precise weapons when "returning fire on urban areas".[13125] Further, the Accused submits that the SRK units were informed of the provisions of international humanitarian law and the laws of war, and that orders were issued requiring soldiers to act in accordance with these laws.[13126] Finally, the Accused claims that ABiH units targeted their own civilians by opening mortar fire on them in order to bring about international intervention in BiH.[13127]

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13120 Indictment, paras. 15–17.

13121 Indictment, para. 82 (referring to the shelling incidents in Schedule G as being "illustrative examples" of the campaign).

13122 Originally, the Indictment contained four additional scheduled shelling incidents but these were withdrawn by the Prosecution pursuant to Rule 73*bis*. *See* Rule 73 *bis* Decision.

13123 As indicated to the parties during the case, the Chamber will not be making beyond reasonable doubt findings as to the responsibility of the Accused for specific unscheduled incidents. *See* T. 5480 (19 July 2010); fn. 11204.

13124 Defence Final Brief, paras. 1954–1955.

13125 Defence Final Brief, paras. 1909–1911, 1944–1945, 1960–1961.

13126 Defence Final Brief, paras. 1850–1853.

13127 Defence Final Brief, paras. 1968, 1972–1974.

i. *Shelling in general*

3976. With respect to shelling, the Chamber heard from several experts in this case. Richard Higgs, an expert on the operational use and technical and ballistic capabilities of mortars,[13128] and Berko Zečević, an expert on ballistics, rockets, and warheads,[13129] were both called by the Prosecution. Zorica Subotić, ballistics expert on firearms and white arms,[13130] and Derek Allsop, an expert on conventional barrelled weapons and their ballistics,[13131] were called by the Accused. The Chamber also admitted evidence from fact witnesses who provided information on the general mechanics of various shelling weapons, as well as shelling and crater analysis methodology.[13132]

3977. During the trial, the Chamber heard evidence about a number of shelling weapons, including (i) infantry weapons, such as mortars, (ii) artillery weapons, such as howitzers, guns, and cannons, and (iii) a weapon system used specifically in Sarajevo, namely modified air bombs. Categories (i) and (ii) will be discussed in this section, while the features of the modified air bombs will be discussed in the section dealing with specific Scheduled Incidents that involved modified air bombs.[13133]

3978. The Chamber heard that mortars can vary in calibre from light to heavy classes; the 60 mm mortar is classified as a light mortar, the 81/82 mm mortar is classed as medium and the 120/122 mm mortar is a heavier class.[13134] Each mortar consists of a sight, indicating bearing and elevation; a barrel or tube; a bipod/tripod adjustable stand; and a platform on which the barrel rests known as the base plate.[13135] The mortar rounds or "shells" are generally fired by placing each shell in the barrel—tail first—after which the shell strikes the firing pin, initiating the charge, and is then

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13128 Richard Higgs, T. 5916–5918 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 1.

13129 Berko Zečević, T. 12149–12150 (22 February 2011). *See also* the Chamber's oral decision of 22 February 2011. Hearing, T. 12145–12146 (22 February 2011).

13130 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 2–23. In addition, Mile Poparić, a ballistics expert also commissioned by the Accused to give evidence about sniping, helped Subotić draft her report on mortar attacks in the Sarajevo area. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012).

13131 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 1.1, Appendix A.

13132 One of those witnesses was John Hamill, an artillery officer in the Irish Army and UNMO in BiH from May 1993 to July 1994. John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6059–6060.

13133 *See* Section IV.B.1.c.iii.D: Scheduled modified air bomb incidents.

13134 *See* P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 2; Richard Higgs, T. 5981 (19 August 2010); Vlade Lučić, T. 30787 (3 December 2012); John Hamill, T. 9699 (13 December 2010); Berko Zečević, T. 12150 (22 February 2011).

13135 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 2–3. *See also* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6065, 6072–6075; D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 2.1–2.2.

propelled out of the barrel.[13136] Higgs explained that mortar shells travel at a high trajectory and, with an adept crew, have an accuracy of less than 40 metres from their target and a maximum range of between 4,500 and 7,500 metres dependant upon, *inter alia*, the amount of propellant used and the elevation of the barrel.[13137] Additional propellant or "charge" can be added starting from a small amount, charge 1, to a maximum amount, charge 6.[13138] At minimum charge, the range of the shell is reduced but the mortar is more accurate.[13139] Mortar shells are stabilised by tail fins and their accuracy generally depends on a number of factors, including the charge used and the stability of the base plate.[13140]

3979. Mortars are capable of both direct and indirect fire.[13141] Direct fire is when the target is directly visible to the unit and the sight of the mortar is used to aim at the target.[13142] Conversely, indirect fire is where the target cannot be seen by the crew and the battery aims at a given target using instrumental methods, such as making adjustments to the bearing or azimuth on the horizontal plane and to the elevation of the barrel on the vertical plane.[13143] The type of terrain, angle of descent, round velocity, calibre, and weather conditions are all determining factors in whether a crater will be formed by the explosion of a shell and whether the mortar's stabiliser will be found embedded within such a crater.[13144] Mortar crews can also "pre-record" information about a given target from their position, such as the bearing, elevation, charge, and type of target.[13145]

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13136 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 2–3; D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 2.1–2.3.

13137 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 2–3. *See also* John Hamill, T. 9704 (13 December 2010); Mirza Sabljica, T. 7720 (12 October 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 5–6.

13138 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 2; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6074. Different charges will also affect the velocity of the projectile. *See* D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 2.3.

13139 The mortar battery also has less chance of being detected by Cymbeline radar at minimum charge. *See* Richard Higgs, T. 5933, 5935 (18 August 2010).

13140 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 3. Having the base plate of a particular mortar in the same position for a long time increases the accuracy of the mortar and thus allows the mortar crew to engage or strike its target with only one round. *See* P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6.

13141 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 2.

13142 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 4–5.

13143 Richard Higgs, T. 5986 (19 August 2010). *See also* D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 2.2.

13144 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 5–6. *See also* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6075. When a mortar is fired at the higher charges the increased velocity of the round increases the likelihood that the shell's stabiliser will be embedded within the crater. Conversely, at the low to medium charges the stabiliser will generally be blown away from the initial impact area. *See* Richard Higgs, T. 5980–5981 (19 August 2010). *See also* Zorica Subotić, T. 38457 (16 May 2013); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 14.

13145 Richard Higgs, T. 5918 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4.

This enables the crew to engage these "pre-recorded" targets in the future with a higher degree of accuracy.[13146]

3980. In terms of effectiveness, mortar shells are used against manpower as they generally make only a small crater on impact but will fragment and spread shrapnel over a wide area.[13147] According to Higgs, in an urban area where there is a lot of cover, one would need to fire around five rounds as quickly as possible if the intention is to cause maximum casualties.[13148] Thus, firing one to three rounds would serve no military purpose other than perhaps creating "harassing fire" designed to force the enemy to keep their head down and prevent movement.[13149] Higgs explained that using that type of fire on a civilian area would serve only to cause casualties and inflict terror.[13150] Fraser agreed and testified that mortars are not a good weapons system when used in an urban, densely-populated, area as they inflict little damage on urban buildings but cause a lot of damage to unprotected people who are in the open.[13151]

3981. Hamill testified that conventionally both mortars and guns/howitzers are used to "support the combat troops" even though they have their own distinct features.[13152] According to him, guns and howitzers are generally used for their long-range ability to fire at distant targets and are therefore positioned farther from the frontline than mortars.[13153] Mortars, due to their shorter range, are generally positioned closer to the frontline than guns and howitzers, but are used in what is termed a "shoot and scoot" fashion.[13154] This means that they will fire a number of rounds in quick succession and then immediately move to another position in order to prevent "counter battery fire".[13155] According to Hamill, the skill of firing a mortar can be learnt "relatively quickly".[13156]

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13146 Richard Higgs, T. 5918 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4.

13147 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4. *See also* P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 15–16; David Fraser, T. 8008 (18 October 2010).

13148 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4.

13149 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4.

13150 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 4.

13151 David Fraser, T. 8008–8010 (18 October 2010).

13152 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6064. *See also* David Fraser, T. 8007–8008 (18 October 2010). Hamill uses the terms gun and howitzer interchangeably. *See* John Hamill, T. 9694 (13 December 2010).

13153 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6064.

13154 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6064, 6072–6073.

13155 "Counter battery fire" is where "fire [is] directed by artillery at artillery". John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6064. *See also* KDZ185, T. 4283 (29 June 2010).

13156 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6066.

3982. Hamill observed that theoretically the maximum angle of elevation for a mortar battery of any calibre is 90 degrees,[13157] but that firing at this angle would be rather precarious.[13158] He observed that a mortar shell is designed to suppress activity over a wide area and that the "danger radius" is considered to be 500 metres for a 120 mm mortar and 250 metres for an 81 mm mortar.[13159] Similarly, Galić testified that the minimum "safety or security zone" for smaller calibre mortars is 200 metres and that for larger calibre mortars, such as the 120 mm mortar, it is around 400 metres.[13160]

ii. *Shelling in Sarajevo*

3983. Due to its topography, the city of Sarajevo was well suited for the use of indirect fire weapons such as mortars because it is located in a valley, facilitating target observation by forces located on the surrounding hills.[13161] The city's features, such as buildings and roads, were also good reference points that a mortar crew could use to make adjustments to their sights.[13162]

3984. Fraser testified that while both sides of the conflict used shelling, often against civilians, the ABiH forces in Sarajevo "couldn't hold a candle" to the artillery the SRK had.[13163] Similarly, Harland confirmed that both sides used shelling against civilians, but explained that this was done according to each side's resources, which meant that the Serb side used such shelling much more.[13164] When formed, the SRK was composed of nine light brigades, a mixed anti-armour regiment, a mixed armour artillery regiment, a light artillery regiment, a communications battalion, a medical battalion, and a transport battalion.[13165] Each of these brigades had their own armaments,

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13157 John Hamill, T. 9703 (13 December 2010).

13158 John Hamill, T. 9703 (13 December 2010) (agreeing with the Accused that in practical terms the maximum angle of elevation is probably 86 degrees). According to Allsop, the maximum angle of launch is 85 degrees, which will result in a minimum range of the shell, while the minimum angle of launch is 45 degrees, which will give the shell a maximum range. D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 2.1.

13159 John Hamill, T. 9703 (13 December 2010). The danger radius is the area within which splinters will travel from the point of detonation and can cause harm to those present. Within this radius, there is a smaller, "lethal radius" where it is highly likely that those within it will be fatally injured. For a 120 mm mortar shell this would be 54 metres from the point of impact. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6191.

13160 Stanislav Galić, T. 37857 (7 May 2013), T. 38052 (9 May 2013).

13161 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 6.

13162 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 6.

13163 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 52, 75. *See also* D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), p. 3 (providing that the initial period of the war was characterised by the fact that the SRK was superior to the ABiH when it came to heavy weapons).

13164 P820 (Witness statement of David Harland dated 4 September 2009), para. 290; David Harland, T. 2280 (10 May 2010). *See also* P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 56–57; P2407 (Witness statement of KDZ304), p. 8 (adding that while superior to the ABiH forces in tank and artillery power, the SRK's arsenal was of mediocre quality and the SRK had difficulty with maintenance and replenishment).

13165 Stanislav Galić, T. 37157 (15 April 2013). On 1 November 1992, two brigades, the 1st Romanija and the Rogatica Brigades, left the SRK for the Drina Corps. *See* Stanislav Galić, T. 37157 (15 April 2013).

which their respective unit commander controlled.[13166] The basic assets of each brigade were 100 mm howitzer and 60, 82, 105, and 120 mm mortars.[13167] In contrast, the corps level controlled heavier weapons, such as 155 mm howitzers.[13168] According to Wilson, the Bosnian Serbs had "something in the vicinity of 200 artillery and mortar barrels that they could direct at the city".[13169] KDZ185 estimated that the SRK had around 300 pieces of heavy weaponry around Sarajevo, with calibre greater than 14.5 mm and ranging up to 152 mm, including multiple rocket launchers.[13170] On 12 May 1992 during a Bosnian Serb Assembly session, Mladić in fact proclaimed that Sarajevo could not be taken "by spitting at it from a mortar or a howitzer" and that in order to make the Bosnian Muslims surrender they would have to densely plant 300 guns around Sarajevo, including rocket launchers.[13171] From early on, the SRK therefore had large quantities of artillery and heavy weapons, with most of those weapons pointing towards the city.[13172]

3985. The SRK's mortar batteries surrounding Sarajevo remained in their positions throughout the conflict.[13173] This meant that the SRK had the whole city pre-recorded and therefore had "very accurate weapon platforms".[13174] Another feature of the SRK weapon sites was that the weapons

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13166 Stanislav Galić, T. 37195, 37200–37201 (15 April 2013); D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 31.

13167 Dragomir Milošević, T. 32759–32760 (28 January 2013).

13168 Dragomir Milošević, T. 32759–32760 (28 January 2013); Stanislav Galić, T. 37195, 37200–37201 (15 April 2013). The SRK generally used their mortar assets, these mainly being 82 and 120 mm mortars. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 53.

13169 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 48. *See also* P1599 (UNMO report re VRS weapons, 16 January 1994); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), pp. 26–27, 63 (under seal).

13170 P6060 (Record of interview with KDZ185), e-court pp. 15–16; KDZ185, T. 4207 (28 June 2010). *See also* Colm Doyle, T. 2737–2740 (26 May 2010); David Harland, T. 2295–2297 (11 May 2010); D173 (UNSG's letter to Ed Koch, 27 January 1993); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 83, 119; P1568 (UNMO assessment of forces in BiH), e-court pp. 5–6; P1599 (UNMO report re VRS weapons, 16 January 1994). Once the TEZ was established, the VRS placed 282 weapons in WCPs. *See* P2447 (Witness statement of KDZ182), p. 63. In June 1994, the UN reported that the SRK had around 500 weapons within the TEZ in violation of the cease-fire agreement of February 1994. *See* P892 (UNPROFOR Weekly Situation Report (Sarajevo), 24 June 1995), p. 3.

13171 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 35–36.

13172 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 21, 37, 39, 41, 83; Aernout van Lynden, T. 2467 (19 May 2010); P1998 (BBC news report re interview with Colonel Bartula, with transcript); KDZ185, T. 41804181 (28 June 2010) (private session); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 295; KDZ304, T. 10454 (18 January 2011). *See* Adjudicated Fact 2811.

13173 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 6; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6065. One example where Hamill observed that the SRK mortars appeared to have been permanently stationed was at Gornji Kotorac, a hill overlooking the airport, Vojkovići, Hrasnica, Igman, Stup, and Mojmilo. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6064–6066. *See also* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 11.

13174 Richard Higgs, T. 5918 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 4, 6. *See also* P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; Savo Simić, T. 30047 (12 November 2012).

were not camouflaged, indicating that they were not perceived as being under threat.[13175] Fraser, who himself commanded mortar platoons, thought that the mortar crews in Sarajevo were competent and could generally hit the area they wanted to hit.[13176] KDZ182 was of the opinion that the SRK artillery and mortars were controlled at the "highest level" because of the media scrutiny in Sarajevo; thus, the orders from Pale, and from Mladić in particular, would be transmitted directly by the SRK commander through the channels of communication.[13177] According to KDZ182, leeway was also given to "underlings" in the field to use their weapons at any opportunity in order to generate a climate of terror.[13178]

3986. In terms of the ABiH fighting capabilities, while it outnumbered the SRK in terms of manpower, the number of heavy weapons available to the ABiH within the city was much smaller than that of the SRK, the majority of its arsenal being small arms and mortars with small quantities of artillery weapons.[13179] The ABiH also had mortars mounted on trucks, which were thus mobile

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13175 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 38. *See also* P6060 (Record of interview with KDZ185), e-court p. 15 (testifying that the most surprising fact about the SRK batteries around Sarajevo is that they were not guarded very carefully); Aernout van Lynden, T. 2423–2424 (19 May 2010) (testifying that the SRK positions he visited in the east of Sarajevo were not under threat from the city); Jeremy Bowen, T. 10216–10218 (14 January 2011); D942 (BBC news report re Sarajevo, with transcript).

13176 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 52. *See also* John Wilson, T. 4079–4080 (22 June 2010); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 11. *See* Adjudicated Fact 2807.

13177 P2447 (Witness statement of KDZ182), p. 53; P2414 (Witness statement of KDZ182), pp. 11–13, 16, 20–22, 54 (under seal); KDZ182, T. 13046–13051, 13070 (9 March 2011); P2419 (VRS Main Staff Order, 6 November 1994); P2420 (Report of 2nd Light Infantry Brigade re VRS Main Staff order, 7 November 1994). *See also* P6060 (Record of interview with KDZ185), e-court p. 14; KDZ185, T. 4216–4218 (28 June 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 27–29, 73, 75; KDZ304, T. 10453–10454 (18 January 2011); P2407 (Witness statement of KDZ304), p. 8; P2110 (SRK Order, 22 May 1995).

13178 P2414 (Witness statement of KDZ182), p. 54 (under seal).

13179 According to Mole, the ABiH had three T-54 tanks and a few anti-aircraft weapons and little ammunition to operate those and other weapons, in contrast to the SRK. *See* P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 39, 59–63. *See also* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 133; KDZ450, T. 10597–10598 (19 January 2011). KDZ185 estimated that there were about 50 heavy weapons within Sarajevo, most of which were 82 mm mortars, and one multiple rocket launcher. However, this excluded the weapons on Mt. Igman, which he deemed as being outside of Sarajevo city. *See* P6060 (Record of interview with KDZ185), e-court p. 15; KDZ185, T. 4256–4264 (29 June 2010). *See also* P1029 (Witness statement of John Wilson dated 4 November 2008), para. 50; P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 83; Francis Roy Thomas, T. 6828–6829, 6858, 6880–6885 (15 September 2010), T. 6910–6913 (16 September 2010); P1568 (UNMO assessment of forces in BiH); P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 79, 82–83; KDZ450, T. 10652 (20 January 2011); D633 (Order of ABiH 1st Corps, 25 October 1993); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 56; Martin Bell, T. 9863–9864 (15 December 2010); D924 (ICFY Agreement for Peace in BiH, 3 March 1993), p. 20; KDZ304, T. 10463–10464 (18 January 2011); P892 (UNPROFOR Weekly Situation Report (Sarajevo), 24 June 1995), p. 3 (indicating that in June 1994 there were some 100-150 ABiH weapons within the TEZ, which were in violation of the February cease-fire agreement); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 158; Aernout van Lynden, T. 2444–2445, 2447–2458 (19 May 2010) (testifying that he saw no artillery weapons on the ABiH side). *But see* D192 (Transcript of 17th June 1992 session of the BiH Presidency), pp. 5–6 (indicating that already in June 1992 the BiH TO in the "Sarajevo region" had some artillery weapons in its possession); D338 (SRK combat report, 31 May 1993); D339 (Order of ABiH 1st Corps, 16 February 1993); D632 (Order of ABiH 1st Corps, 8 December 1993); D634 (Order of ABiH 102nd Motorised Brigade, 1 February 1994); Radovan Radinović, T. 41407–41408 (17 July 2013); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), p. 26 (under seal). *See also* Adjudicated Fact 2810.

and would move around the city, making it very difficult for the SRK to respond as the mortars would be in the middle of civilian areas.[13180] UNPROFOR tried to find these mortars but was never successful.[13181]

3987. Mole testified that the coverage of the city by UNMO's Papa observation posts was successful in that it covered 95% of the city, whereas the OPs on the Lima side did not necessarily cover all the weapon sites that UNMOs knew of, including between eight to ten unmonitored SRK batteries; this in turn resulted in discrepancies in the numbers of recorded rounds landing in Sarajevo versus outgoing rounds from the SRK side.[13182]

(A) Nature of shelling in Sarajevo

3988. The Chamber notes that the witnesses called by the Prosecution were consistent when testifying about the nature of the SRK shelling of Sarajevo. For example, Wilson explained that from the beginning of the conflict in Sarajevo, the SRK would fire large quantities of heavy weapons into the urban areas of the city and that the SRK fire, while often in response to some threat posed by the ABiH, would be "undoubtedly disproportionate" and indiscriminate, striking most major buildings in the city.[13183] In many cases, there seemed to be no military value in the targets that were selected, while the fire itself was spread out rather than focused on one area.[13184] The fact that the SRK forces had an overwhelming superiority in heavy weapons made their

13180 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 59; David Fraser, T. 8062–8063, 8072–8073 (18 October 2010) (adding that in cases where ABiH used mobile mortars, the SRK's only option was to fire at known military positions rather than at the mobile mortar itself); P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 53–54; Francis Roy Thomas, T. 6841–6843 (15 September 2010) (explaining that if the ABiH mortars were moved too far into the city they could not be used against the SRK due to their limited range of fire; thus, contrary to the Accused's suggestion, any SRK fire deep into the city and out of the range of the ABiH mortars could not have been targeting those mortars); KDZ185, T. 4227 (28 June 2010).

13181 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 74. *See also* KDZ185, T. 4283–4284 (29 June 2010).

13182 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 15–17, 19–20, 111 (testifying also that the Papa OPs did not record any of the ABiH weapons which would fire outside of the city limits); P1429 (UNMO report for December 1992), pp. 1–10; Richard Mole, T. 5808, 5810, 5815–5817, 5847–5848, 5850–5851 (17 August 2010); D538 (UNMO report, 21 December 1992). *See also* Hussein Abdel-Razek, T. 5593–5596 (20 July 2010) (giving similar evidence in relation to the limitations of UNPROFOR reports); D509 (UNPROFOR daily report, 30 January 1993).

13183 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 49, 51–52 (testifying also that when this was raised with the Accused, Mladić and Plavšić during airport negotiations, the response was that this type of fire was legitimate as they were defending the Serbs); John Wilson, T. 3977–3978, 3988–3990 (21 June 2010), T. 4131–4133, 4151–4154 (23 June 2010). *See also* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 15–16, 20–21, 27 (testifying that during his time in Sarajevo, the SRK shelling was constant and used indiscriminately against civilian targets); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 41, 57; P2015 (Video footage of Sarajevo).

13184 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 57; John Wilson, T. 4132–4133 (23 June 2010); D335 (SRK Order, 23 June 1992); Francis Roy Thomas, T. 6798–6799, 6802–6803, 6830–6832 (15 September 2010); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), pp. 81, 83–86 (under seal); KDZ088, T. 6320–6322 (7 September 2010) (closed session); P1502 (SRK Order, 15 July 1992), para. 2.

responses more extreme.[13185] Indeed, the weapons supremacy of the SRK was not really an advantage in urban fighting as the resort to "terror shelling" to discourage infantry attacks "in reality played into the hands of the Bosnians" according to Thomas.[13186] Other witnesses testified that the SRK's use of indirect weapons, such as mortars, within the city was "entirely illegitimate".[13187]

3989. During his time in Sarajevo, Harland observed three distinct forms of shelling by the SRK in Sarajevo: (i) tactical use of heavy weapons in support of the SRK combat units, which occurred when the ABiH was trying to conduct an operation along the confrontation line; (ii) tit-for-tat shelling whereby the ABiH would fire some rounds into SRK-held territory, resulting in a "strong response" by the SRK directed against the area from which the ABiH fired; and (iii) "background terror shelling", which had no identifiable military tactical purpose but seemed intended to keep the population of Sarajevo vulnerable, fearful, and isolated.[13188] Harland testified that at the time of his arrival in June 1993,[13189] on average around 1,000 shells a day landed in the city, and sometimes up to 2,000.[13190] Thereafter and until the end of the conflict, there was constant but relatively low level shelling by the SRK; on average there were several hundred shells fired every day throughout the whole war, the large bulk of those being fired by the SRK.[13191] Tucker also testified that by far the majority of fire came from the Bosnian Serbs into the city rather than from the other side.[13192]

3990. According to Fraser, the shelling in the city was directed mostly at the BiH Presidency and various parts of the city, but "not principally [at] any military position".[13193] Thus, while there were various military headquarters of the warring parties in Sarajevo, such as the SRK Command in Lukavica or the ABiH 1st Corps Command in the city itself, during his time in Sarajevo these

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13185 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 135. *See also* Jeremy Bowen, T. 10215 (14 January 2011).

13186 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 71.

13187 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 301; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 80–81 (explaining that he as a commander never would have used indirect weapons in the city but only guided munition and direct weapons); David Fraser, T. 8070, 8083 (18 October 2010).

13188 P820 (Witness statement of David Harland dated 4 September 2009), paras. 32–33, 291; David Harland, T. 2023–2026 (6 May 2010), T. 2335–2336, 2351 (11 May 2010). *See also* John Wilson, T. 3947–3951 (21 June 2010); Rupert Smith, T. 11907–11909 (15 February 2011); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 71; Francis Roy Thomas, T. 6830–6832 (15 September 2010); KDZ185, T. 4182–4183, 4187–4188 (28 June 2010); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 300.

13189 P820 (Witness statement of David Harland dated 4 September 2009), para. 25.

13190 P820 (Witness statement of David Harland dated 4 September 2009), paras. 34, 290.

13191 P820 (Witness statement of David Harland dated 4 September 2009), para. 34; David Harland, T. 2335 (11 May 2010).

13192 Pyers Tucker, T. 23297–23298 (18 January 2012).

13193 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 51, 75.

headquarters were never engaged as targets.[13194] He also stated that whenever the ABiH fired out of the city, the SRK would always fire back, usually in a disproportionate manner.[13195] Thus, if the ABiH fired a few mortar rounds, the SRK would respond with a "tremendous amount of shelling", on both military and civilian targets.[13196] In his view, most of the SRK fire in response to the ABiH was disproportionate and indiscriminate, although sometimes the SRK responses were proportionate.[13197] While acknowledging that the ABiH had mobile mortars, which in turn made it "very difficult" for the SRK to respond because the mortars were intermingled with civilians, Fraser noted that he would have refrained from firing as it would have been impossible to find the target and the collateral damage would have been too high.[13198] Fraser also conceded that fighting in an urban setting is extremely difficult for any military, and stated that while he was in Sarajevo it was "particularly difficult for both parties".[13199]

3991. Mole testified that the background noise of weapons firing in the city was "persistent" and "never ceased", so that the UNMOs would consider it a quiet day if around 100 rounds of high explosives had landed in the city, whereas a fairly active day would involve 400 to 500 rounds, with an extremely active day involving upwards of 600 rounds.[13200] Mole estimated that, on average, around 14 or 15 civilians would die in Sarajevo per day.[13201] According to him, it was almost impossible to record all incoming and outgoing fire in Sarajevo.[13202] While there were times when the frontlines were extremely active, there was also constant pressure on the city, and the only thing that varied was the intensity of shelling; thus the whole city was an extremely dangerous

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13194 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 51. One exception to that, according to Fraser, was in 1995 when the ABiH fired at the Lukavica Barracks, which then resulted in a heavy barrage of fire back from the SRK and into the city as a whole. According to Fraser this response was completely disproportionate to the fire opened by the ABiH. David Fraser, T. 8006–8007, 8074–8088 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 51–52, 56–59, 75–77; D771 (SRK combat report, 22 June 1994). Dragomir Milošević confirmed that ABiH command posts were "mainly not targeted" as there was no danger emanating from them, such as fire being opened, for example. *See* Dragomir Milošević, T. 33124–33129, 33137 (4 February 2013).

13195 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 52. According to Fraser, proportionate fire means returning sniper fire with sniper fire and mortar fire with mortar fire. If a military object was located in a predominantly civilian area, Fraser would not use indirect weapons at all because of the collateral damage but only direct weapons against a specific target. P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 54–56, 80–81; David Fraser, T. 8069–8072, 8087–8092 (18 October 2010); D772 (ABiH General Staff list of ABiH units in Sarajevo, 10 April 1995).

13196 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 52, 56.

13197 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 56–59; David Fraser, T. 8102–8108 (19 October 2010); D774 (UNPROFOR report re Sarajevo TEZ violations, 18 September 1994).

13198 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 59, 61; David Fraser, T. 8062–8063, 8072–8074 (18 October 2010) (adding that in cases where ABiH used mobile mortars, the SRK's only option was to fire at known military positions rather than at the mobile mortar itself);

13199 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 61–63.

13200 Richard Mole, T. 5819 (17 August 2010).

13201 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 77–78 (adding a caveat that sometimes it was difficult to tell who was a civilian, as the ABiH forces did not always wear uniforms).

13202 Richard Mole, T. 5848 (17 August 2010).

place to live, even for UN members and their clearly marked vehicles.[13203] The PTT building, where the UNPROFOR and UNMOs were located,[13204] and the surrounding area, were hit by shell-fire on many occasions, sometimes having been specifically targeted.[13205] In terms of damage to the city, Mole confirmed that the areas around the frontlines were heavily damaged but also testified that the remaining areas of the city "showed immense damage from incoming munitions", such that even apartment buildings suffered destruction.[13206] He also testified that he observed random fire into the city's civilian areas that had no specific purpose and was not directed at a specific target.[13207] According to him, if the Serbs failed to achieve their objective anywhere in BiH, the general perception was that Sarajevo would suffer as a result; this sometimes came as a specific threat from Galić or from the RS liaison officer in the PTT building.[13208] On most days they met, Mole would protest to Galić about the indiscriminate fire observed by the UNMOs, usually focusing on the most serious incidents.[13209]

3992. KDZ185 testified that, in his first few months in Sarajevo, the average number of shells per day was about 1,200, and that this "really kept a climate of terror".[13210] The VRS was firing at the city "in a totally random fashion" so as to "increase psychological pressure on the population and

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13203 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 74–76; Richard Mole, T. 5819–5820, 5822–5823 (17 August 2010).

13204 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 7, 67, 69 (testifying also that there were no military installations or activities near the PTT building).

13205 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 66, 68. The Chamber heard evidence, however, that the ABiH would often fire at the SRK from the vicinity of the PTT building in order to draw a response. *See also* Stanislav Galić, T. 37571 (23 April 2013) (testifying that the SRK never deliberately targeted the UN or their equipment); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 102–103, 105 (testifying that ABiH forces shelled the UN residency on two occasions); P4220 (UNPROFOR documents (reports and letters), 26 December 1992).

13206 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 71–73. *See also* P6060 (Record of interview with KDZ185), e-court p. 16; KDZ185, T. 4220–4224 (28 June 2010) (private session) (testifying that most buildings in Sarajevo bore traces of fire but were not completely destroyed indicating that the fire opened on them was random); Hussein Abdel-Razek, T. 5535 (20 July 2010). Mole also explained that the damage to buildings caused by high-calibre artillery was not as extensive as one would expect from an aircraft bomb. *See* Richard Mole, T. 5820–5821 (17 August 2010).

13207 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 79–82, 84–85, 108–109, 113–116,118–119; P1434 (UNMO report for November 1992), p. 8; P1429 (UNMO report for December 1992), pp. 3–5; P1435 (UNMO report, 11 December 1992), para. 12; Richard Mole, T. 5817–5820, 5833–5836 (17 August 2010).

13208 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 91–92, 94–96, 105, 107, 112; P1433 (UNMO report for October 1992), p. 4; P1434 (UNMO report for November 1992), p. 3; P1429 (UNMO report for December 1992), p. 3; Richard Mole, T. 5833–5836 (17 August 2010). *See also* Jeremy Bowen, T. 10105 (13 January 2011); P820 (Witness statement of David Harland dated 4 September 2009), para. 35; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 98; P1678 (BBC news report re attacks on Sarajevo and Bihać); P2017 (BBC news report re Sarajevo and Bihać, with transcript); Martin Bell, 9798 (14 December 2010); P2414 (Witness statement of KDZ182), p. 30 (under seal).

13209 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 97.

13210 KDZ185, T. 4187–4188 (28 June 2010).

also on the Bosnian government".[13211] The fact that the shelling was so random and hardly ever targeted military objects "kept the population in a state of terror".[13212]

3993. Van Lynden testified that people in Sarajevo lived as much as they could in the basements of their apartments or in bomb shelters as they could be hit by shells or gunfire at any moment.[13213] Shells would land in civilian areas in a random and unpredictable way—they were often not followed up by any movement of infantry or armour.[13214] According to Van Lynden, the most sustained and concentrated shelling he witnessed bearing down on Sarajevo happened in June 1992;[13215] thereafter there was persistent shelling (except in March 1994) but it was sporadic, with few shells landing here and there.[13216] KDZ182 testified that the SRK shelled not only military targets but also purely residential areas, with the aim of scaring the population; even in areas with military targets, the shelling was not focused on those targets exclusively.[13217]

3994. Harry Konings, another UNMO who was on duty in Sarajevo from 4 May to 23 October 1995,[13218] investigated about 100 shelling and sniping incidents in Sarajevo and much of that fire was determined to have originated in SRK-held territory with "40 or 50 of the investigations concern[ing] civilian casualties".[13219] He opined that mortar and artillery fire in Sarajevo was "overwhelmingly" of SRK origin but that only by doing a site investigation could the UNMOs actually determine direction of fire.[13220]

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13211 KDZ185, T. 4182–4183 (28 June 2010).

13212 P6060 (Record of interview with KDZ185), e-court p. 16.

13213 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 21; Aernout van Lynden, T. 2394–2395 (19 May 2010).

13214 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 24; Aernout van Lynden, T. 2468–2475 (19 May 2010) (conceding that he did not know of all the military targets in the city); D193 (RS MUP Report on Sarajevo, 20 July 1992).

13215 *See also* discussion on Scheduled Incident G.2.

13216 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 52–58, 122–126; P929 (Sky news report re Sarajevo, with transcript); P930 (Sky Newsreport re Sarajevo, with transcript); P931 (Sky news report re Sarajevo, with transcript); P954 (Sky news report re Sarajevo, with transcript); P936 (Sky Newsreport re Sarajevo, with transcript); P932 (Sky Newsreport re Sarajevo, with transcript); Aernout van Lynden, T. 2401–2413, 2427–2431, 2469–2470 (19 May 2010), T. 2479–2484, 2489–2498 (20 May 2010), T. 2598–2611, 2618–2619 (21 May 2010), T. 3055–3057, 3062–3064 (31 May 2010) (conceding that he did not observe the firing in all parts of the city nor claim that all of the shelling in that period came from the SRK, but remaining adamant that the fire he and his crew observed came from the southern hills overlooking Sarajevo and thus from the SRK positions); D195 (SRK Report, 8 June 1992); D196 (Aerial photograph of Sarajevo marked by Aernout van Lynden); P808 (Sky Newsreport re Sarajevo, with transcript). *See also* P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 54.

13217 KDZ182, T. 13038–13039 (9 March 2011). *See also* P1263 (UNPROFOR report re Presidency talks, 18 October 1992) (indicating that the SRK shelled the flour mill in the city).

13218 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 9.

13219 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 20–21; Harry Konings, T. 9327 (7 December 2010).

13220 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 34.

3995. According to Tucker, the Bosnian Serbs subjected the inhabitants of Sarajevo to incessant, "daily random shelling of various parts of the city", and incoming fire from the surrounding Serb forces would land "arbitrarily around the city, [for] no military purpose".[13221] No half hour would go by without the sound of shells or mortar bombs.[13222] Tucker observed a pattern whereby there would be an ABiH infantry attack in a particular area and the SRK would initially respond using heavy weapons in order to stabilise the situation and push back the ABiH forces.[13223] However, it would then also carry out a "punitive shelling" of the area of the city from which the attack had been mounted.[13224] According to Tucker, because the SRK had less infantry forces than the ABiH 1st Corps, Mladić felt that he had to use his "heavy artillery" to defend against ABiH infantry attacks.[13225]

3996. Jeremy Bowen, a journalist who was reporting from Sarajevo between July 1992 and 1995,[13226] testified that the city had an almost constant sound of gunfire and explosions.[13227] He reported on, and personally saw, a lot of shelling during his time in Sarajevo noting that the shells could fall anywhere and at any time, even on cemeteries during funerals.[13228] There was a pattern in the attacks in that nothing much would happen on the days when weather was bad, but these quiet periods would then be followed up by a sudden surge in shelling that would cause casualties.[13229] In terms of the locations that were shelled, generally there was no pattern and the shelling was random.[13230] In his view, the Bosnian Serbs were responsible for the bulk of the shelling, particularly since he personally observed SRK weaponry pointing towards the city, as well as empty shell cases nearby.[13231]

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13221 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 6, 22–23, 44, 49 (testifying that he observed two types of shelling in the city – concentrated fire with multiple shells landing in a short space of time on one area and the single shells landing arbitrarily around the city).

13222 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 22.

13223 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 91.

13224 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 91, 295; Pyers Tucker, T. 23197–23198 (17 January 2012).

13225 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 299.

13226 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 5, 13.

13227 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 14.

13228 Jeremy Bowen, T. 10115–10121, 10164–10165, 10167–10187 (13 January 2011); P2077 (BBC news report re Sarajevo, with transcript); P2078 (BBC news report re Sarajevo, with transcript); D936 (Excerpt from Jeremy Bowen's book entitled "War Stories"), e-court p. 6; D937 (Map of Sarajevo marked by Jeremy Bowen); D938 (Map of Sarajevo marked by Jeremy Bowen).

13229 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 32. *See also* P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 54.

13230 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 33; Jeremy Bowen, T. 10236–10237 (14 January 2011).

13231 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 29; Jeremy Bowen, T. 10186 (13 January 2011), T. 10216–10218, 10222–10224 (14 January 2011) (conceding at the same time that there were times when ABiH launched offensives on the SRK); D942 (BBC news report re Sarajevo, with transcript); D944 (BBC news report re Sarajevo, with transcript); D945 (BBC news report re Sarajevo, with transcript).

3997. Confirming the evidence above about the shelling causing civilian casualties within the confrontation lines in Sarajevo, Ewa Tabeau produced a number of reports in which she analysed the numbers of civilian casualties in that area using several different sources. She came to the conclusion that in the period between 1 April 1992 and August 1994 at a very minimum some 1,482 civilians died as a result of shelling in the Bosnian-held parts of Sarajevo, while around 5,745 were wounded.[13232] As for the period between September 1994 and November 1995, Tabeau used different sources of information and was able to conclude that, at a minimum, some 449 individuals died from war-related causes, including shelling, within the confrontation lines of Sarajevo.[13233] In addition, in this period, an absolute minimum of 254 civilians were wounded due to shelling.[13234]

3998. In contrast to the evidence above, the Chamber heard from a number of SRK soldiers and officers who testified that the SRK troops did not open fire on civilians but were instead ordered to shell only military targets and only in response to enemy fire.[13235] Dušan Škrba testified that the

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13232 Tabeau reached these numbers by using two main sources of information in the said period, namely the Households Survey conducted in September 1994 in ABiH-held Sarajevo and the records of the Bakije Funeral Home, the largest funeral home in Sarajevo. She then compared them to the 1991 census and, in order to distinguish between military and civilian casualties, to the ABiH lists of fallen soldiers. *See* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), pp. 1–2, 4–7; P4998 (Ewa Tabeau's expert report entitled "Population Losses in the 'Siege' of Sarajevo 10 September 1992 to 10 August 1994", 10 May 2002), pp. 1–4; Ewa Tabeau, T. 28173–28176, 28196–28197 (26 April 2012). Tabeau explained that the real number of civilian deaths is most likely higher because the number of those reported as soldiers in the Household Survey was higher than the numbers seen in ABiH lists of fallen soldiers, due to, among other things, families hoping to obtain a military pension. *See* P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), p. 8.

13233 For this period, Tabeau's main source of information in relation to the wounded civilians were patient records of three main Sarajevo hospitals. This source was somewhat incomplete as it did not include the records of a number of smaller hospitals in the city and because it included only hospitalised patients. Tabeau also used a number of different sources relating to those killed in Sarajevo, including again the Bakije Funeral Home records. For this period, however, she was unable to determine which deaths were attributed to shelling and which to sniping since, unlike the Household Survey, the sources she used here did not contain that type of information. She therefore classified 449 deaths as being war-related. *See* P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 3–5, 11–12, 17–18, 23, 51–54; Ewa Tabeau, T. 28206–28209 (26 April 2012).

13234 P5002 (Ewa Tabeau's expert report entitled "Killed and Wounded Persons from the Siege of Sarajevo: August 1994 to November 1995", 19 March 2007), pp. 6–7, 51–57, 62–65 (adding that the real number was probably more around 819 civilians, based on the comparison she made to other partially overlapping sources).

13235 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 15; Savo Simić, T. 30048–30049, 30139–30140 (12 November 2012); D2417 (SRK Order, 4 April 1995), para. 2; D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 30; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras.11, 18; Vlade Lučić, T. 30817 (3 December 2012); Stanislav Galić, T. 37204–37205 (15 April 2013), T. 37384 (18 April 2013); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 23; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 12, 17; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 11; D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 43; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 33, 35; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 21; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 18; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 17; Siniša Maksimović, T. 29297 (23 October 2012); D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 25; D2344 (Witness statement of Miloš Škrba dated 14 October 2012), paras. 16, 20; Miloš Škrba, T. 29192–29193 (22 October 2012); Nikola Mijatović, T. 30728–30730, 30735–

members of the Mixed Artillery Battalion for the 1st Sarajevo Mechanised Brigade which he commanded[13236] were ordered to use heavy weapons, including 120/122 mm mortars, only in self-defence or on the order of the "superior command", and only in respect of specific military targets.[13237] Izo Golić and Savo Simić also testified that their units had strict orders not to open fire without authorisation by the brigade or corps command.[13238] Furthermore, the SRK witnesses testified that the SRK commands took measures to ensure that SRK forces complied with orders to fire only at military targets,[13239] such as for example, repeatedly conveying orders on selectivity of fire to their units.[13240] Vlade Lučić, who served in (and later was in the command of) the 1st Romanija Brigade,[13241] testified that the meaning of military target and the prohibition on attacking civilians were also explained to his unit.[13242] According to Stean Veljović, an officer in the SRK's 1st Romanija Brigade,[13243] the preservation of Baščaršija, an area in the old part of the city, was evidence of this selectivity of the SRK artillery use.[13244]

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30736 (30 November 2012); Slavko Gengo, T. 29781 (6 November 2012); Dragomir Milošević, T. 32582, 32585 (23 January 2013), T. 32758 (28 January 2013).

13236 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 7.

13237 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 7, 14; Dušan Škrba, T. 29113, 29123 (18 October 2012). When confronted with the testimony of Richard Mole, an UNMO at the Lima 5 position where Škrba was commander, that he would be given trivial, irrational, and vague rationales by Škrba for the firing of weapons, such as being told that "the three rounds that had been fired were one for each finger of the Serb salute", Škrba denied this, claiming that Mole had never made any kind of oral or written objection about these reports. *See* Dušan Škrba, T. 29155–29156 (22 October 2012).

13238 D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 25; Izo Golić, T. 31554 (17 December 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 17.

13239 *See e.g.* Stanislav Galić, T. 37192 (15 April 2013); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 23, 30; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 32; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 23; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 9; D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 43; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 27; Miloš Škrba, T. 29192–29193 (22 October 2012). Blagoje Kovačević testified that his unit acted under orders to investigate and punish incidents of opening fire on civilians, and that individuals were punished for improper opening of fire despite no evidence that the fire "caused any consequences". However, on cross-examination, he was unable to provide any specific example of investigations conducted in cases of sniping or shelling civilians in ABiH controlled territory. *See* D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 33–34; Blagoje Kovačević, T. 29075–29078 (18 October 2012).

13240 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 20; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 15; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 26; Vlade Lučić, T. 30817 (3 December 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 17; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 18; Miladin Trifunović, T. 30439 (27 November 2012); Dragomir Milošević, T. 32843 (29 January 2013).

13241 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 6.

13242 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 18; Vlade Lučić, T. 30817 (3 December 2012). The Chamber heard that members of the SRK were given training on the rules and laws of war. *See* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 13, 25

13243 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 12, 15; Stevan Veljović, T. 29234–29236 (23 October 2012).

13244 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 26. When shown an UNPROFOR report of 3 November 1993 stating that the old town of Sarajevo received almost 500 shells in a one-hour period on 27 October 1993, he testified that 500 shells would have razed the old town to the ground, and that the entire

3999. Most of the above-mentioned witnesses also testified that in addition to being selective, SRK fire was also always proportionate,[13245] as illustrated by orders issued to use ammunition rarely and sparingly.[13246] When confronted with the Accused's order of 7 February 1994 issued to the VRS Main Staff and all SRK Commands referring to there being "evidence that Serbs are not responding in equal measure to Muslim artillery provocation—sometimes twenty to thirty or even seventy times more", Gengo testified that the Accused's statement was "absolutely impossible" as the SRK did not have enough ammunition to respond even in equal measure to the fire opened by the opposing side.[13247] Similarly, when Dragomir Milošević was confronted with his own warning to SRK units from July 1995 noting that the SRK was "spending ammunition as if [it] had it in abundance, trying at any cost to outfire the enemy artillery" and that its units would "very often fire at inhabited settlements and specific buildings when there are no combat actions whatsoever", he claimed that the warning referred to small abandoned settlements outside Sarajevo.[13248] Galić testified that because ABiH units were commingled with civilians, the SRK would primarily seek to neutralise their targets, rather than destroy them, and the quantity of ammunition required to

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VRS did not have 500 shells. He concluded that the UNPROFOR report was "grossly untrue". *See* Stevan Veljović, T. 29279–29281 (23 October 2012); P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 7.

13245 *See e.g.* Stanislav Galić, T. 37191–37192, 37205, 37208 (15 April 2013), T. 37342–37343 (16 April 2013); Dragomir Milošević, T. 33144–33145 (4 February 2013) (testifying that indiscriminate and disproportionate fire would have razed Sarajevo to the ground); Savo Simić, T. 30059 (12 November 2012); D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 16; Dušan Škrba, T. 29121–29123 (18 October 2012) (describing proportionate fire as responding with one or two shells at the target in order either to drive them away or to stop their fire); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 35; Blagoje Kovačević, T. 29071 (18 October 2012) (explaining that the basic principle for engagement and selection of targets was for artillery to target artillery, infantry to target infantry, and anti-tank units to engage anti-tank units); Dušan Škrba, T. 29136–29138 (22 October 2012); P1614 (Order of 2nd Sarajevo Light Infantry Brigade, 14 August 1994), p. 1. Galić testified that he proposed the removal of Dunjić, the Commander of the Igman Brigade, and Radivoje Grković, the battalion commander in the Nedžarići Brigade, because of their disproportionate use of artillery. *See* Stanislav Galić, T. 37810–37814 (7 May 2013), T. 37895–37897 (8 May 2013).

13246 D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 39; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 35; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 42; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 13; Zoran Kovačević, T. 30606–30607 (28 November 2012); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 19; D2813 (VRS Main Staff Order, 8 August 1995), p. 2; Slavko Gengo, T. 29825–29826 (6 November 2012); Savo Simić, T. 30059 (12 November 2012); D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 16; Dragomir Milošević, T. 32745–32746 (28 January 2013).

13247 Slavko Gengo, T. 29825–29826 (6 November 2012); P846 (Radovan Karadžić's Order to VRS, 7 February 1994), para. 1.

13248 Dragomir Milošević, T. 33146–33148 (4 February 2013); P2668 (Warning of SRK, 19 July 1995), p. 1. Lučić and Kovačević testified that they had never seen this warning. However, Savo Simić acknowledged that there were probably cases where certain troops spent more ammunition than necessary and targeted targets that they should not have. *See* Vlade Lučić, T. 30797–30798 (3 December 2012); Zoran Kovačević, T. 30607–30608 (28 November 2012); Savo Simić, T. 30084 (12 November 2012). *See also* P1501 (SRK Order, 14 July 1992); [REDACTED]; D2587 (SRK instructions, 12 June 1993) (in which the SRK Deputy Commander first noted that they all wished to liquidate as many Bosnian Muslims as possible but not at the political price caused by firing a few shells on Sarajevo with minimal consequences, and then instructed the SRK commanders that the first priority was to save ammunition).

destroy a target can be six times higher than the quantity needed to neutralise a target.[13249] He gave an example of refraining from responding to fire on 5 June 1993 because a cease-fire was in effect at the time and because a response would have been likely to cause unnecessary losses of civilians.[13250] Galić also testified that if the SRK received fire from the ABiH, then the best response was to return fire with the same kind of assets; if this was mortar fire there were clearly options to return fire with a number of assets but the "best way to return fire [was] from mortars".[13251] Savo Simić, Chief of Artillery of the 1st Sarajevo Mechanised Brigade,[13252] testified that, when authorising return of artillery fire into the city, he "always selected the most precise weapon in the division in order to avoid civilian casualties and the unnecessary destruction of surrounding buildings".[13253] According to Mihajlo Vujasin, the SRK units also warned opposing forces before opening fire on military targets located in civilian zones.[13254]

4000. Some of the SRK witnesses also testified that their units never fired into the depth of Sarajevo.[13255] The others who did, claimed to have done so only when they had reliable information that combat elements of the opposing brigades were located there.[13256] According to Dragomir Milošević, the SRK forces were told to fire only when they were "certain that they would

13249 *See* Stanislav Galić, T. 37192 (15 April 2013), T. 37507–37508 (22 April 2013) (testifying that whether fire is "effective" is determined by whether the goal is to "neutralise" or "destroy" the target and whether that is achieved), T. 37897 (8 May 2013), T. 38043 (9 May 2013). *See also* Izo Golić, T. 31550–31551 (17 December 2012); Dragomir Milošević, T. 32747–32749 (28 January 2013) (testifying that there is a large difference in the amount of ammunition required to neutralise a target or destroy a target, because at best there is a "mere chance" to destroy something "in totality").

13250 Stanislav Galić, T. 37488–37489 (22 April 2013); D3443 (SRK combat report, 3 June 1993).

13251 Stanislav Galić, T. 37192 (15 April 2013). *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 54–56.

13252 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

13253 D2412 (Witness statement of Savo Simić dated 4 November 2012), paras. 20, 29; Savo Simić, T. 30046 (12 November 2012). When shown an intercepted telephone conversation of 25 May 1992 in which Mladić stated that he would "retaliate against [Sarajevo]", that "Sarajevo is going to shake" and that "more shells will fall on [Sarajevo] per second than in the entire war so far", Simić responded that he never received order to punish the population of Sarajevo by shelling them. *See* Savo Simić, T. 30059, 30070, 30074–30075 (12 November 2012); P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), p. 1. *See also* P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992); P1511 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992); P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992), pp. 2–3.

13254 D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 36. *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 35.

13255 For example, Dušan Zurovac testified that the 4th Company of the 2nd Battalion of the VRS never used mortars to fire deep into the city of Sarajevo, and Vlade Lučić testified that it was not the task of the 1st Romanija Infantry Brigade to respond to fire from the depth of the city, and it did not do so. *See* Dušan Zurovac T. 30247, 30308 (14 November 2012); Vlade Lučić, T. 30789–30792 (3 December 2012). *See also* D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 8; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 18; Božo Tomić, T. 30182, 30191 (13 November 2012).

13256 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 27; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 18; Miladin Trifunović, T. 30441–30442 (27 November 2012).

hit the target" because "[o]ne cannot do anything running blind".[13257] Thus, a number of brigades had orders to fire on a "sighted target"alone.[13258] A number of witnesses also gave evidence about the SRK system of observation of fire.[13259] This system, which according to Milošević was in operation at all times,[13260] provided information about the firing positions of the ABiH, including whether civilians were located at the targets.[13261] Simić confirmed this by testifying that he required details of the position from which the enemy fire had originated before he would consider authorising return fire.[13262] Dušan Škrba also explained that every military target had to be marked and described in terms of its size, location, and the kind of enemy assets located there but acknowledged that in cases of retaliatory artillery and mortar fire, his unit would employ "simple preparation", which could be done within five minutes of receiving enemy fire and which only required the topographical information about the target.[13263] When shown an intercepted conversation in which Mladić issued an order to Potpara to fire at the railway station and "hit them with something and scatter them around", Škrba conceded that this was not a precise order but

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13257 D2813 (VRS Main Staff Order, 8 August 1995), p. 2; Dragomir Milošević, T. 32745–32748 (28 January 2013). *See also* D2617 (SRK Order, 30 April 1995), para. 10; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 26. This evidence was contradicted by Defence expert witness Radovan Radinović, who testified that, as a general pattern, enemy fire would be observed by a VRS observer and then fire would be opened on those targets. However, this fire was opened without any tracking or correction of fire because that was impossible in the circumstances, which resulted in unplanned dispersion of shots. Since most of the targets in Sarajevo could not be observed visually, it was not possible to monitor the return of fire or perform accurate targeting. *See* D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), para. 301. Similarly, Galić testified that the SRK returned fire on mobile mortars in civilian zones. *See* Stanislav Galić, T. 38055–38059 (9 May 2013).

13258 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 30, 90; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 12; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 9. Miloš Škrba and Željko Bambarez testified that similar orders existed in the 2nd Infantry Company of the 2nd Infantry Battalion of the 1st Sarajevo Mechanised Brigade, and in the 2nd Platoon of the 2nd Company of the1st Sarajevo Mechanised Brigade respectively. *See* Miloš Škrba, T. 29192–29193 (22 October 2012); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 3, 5, 17.

13259 *See e.g.* D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 14; Dušan Škrba, T. 29108, 29111, 29119–29120 (18 October 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 23, 30; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 35; Slavko Gengo, T. 29840–29841 (6 November 2012); Dragomir Milošević, T. 32745–32747 (28 January 2013); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 18; Savo Simić, T. 30128–30129 (12 November 2012).

13260 Dragomir Milošević, T. 32746–32747 (28 January 2013).

13261 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 18; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 23, 34; Dragomir Milošević, T. 32584–32585 (23 January 2013) (testifying that if there was a chance of civilian casualties, fire would not be opened), T. 32702, 32750, 32757–32758 (28 January 2013), T. 33137–33138 (4 February 2013); Dušan Škrba, T. 29108, 29111 (18 October 2012), D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 12. Dragomir Milošević testified that once fire was observed from an area, it was necessary to narrow down the area, to identify the target, establish the type of weapon, the type of fire, and the number of weapons, and identify the surroundings and consider the damage that could be inflicted on the surroundings. *See* Dragomir Milošević, T. 32757–32758 (28 January 2013).

13262 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 29; Savo Simić, T. 30050–30051, 30053 (12 November 2012). *See also* D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25.

13263 Dušan Škrba, T. 29108, 29111 (18 October 2012), T. 29134–29135 (22 October 2012).

testified that he never received such an order during his time with the SRK.[13264] Similarly, Mijatović testified that Serb observers would report where the firing came from and confirm that, within a diameter of about 200 metres, everything was clear except for the target.[13265] He later added that one could not rely on this as a rule when one's forces were under attack.[13266]

4001. However, most of the evidence of the SRK witnesses outlined above is directly contradicted by the July 1994 report analysing the combat readiness of the SRK's artillery rocket units prepared by the SRK's Chief of Artillery, Colonel Tadija Manojlović, in which he described the issues faced by the units from the beginning of the conflict up to July 1994. In that report, he stated the following:

> The initial period of the war was also characterised by the fact that we were superior to the enemy when it comes to the equipment and ammunition [...]. The commanders of the general military provenance carried out their assignments mainly by use of the artillery, *with an increased consumption of ammunition, which was normally used for hitting the targets in Sarajevo*.
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> [...]
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> Basic shortcomings and defects in the [control and command] involve the following: [...] shortage of commanding officers, poor knowledge about the equipment, poor choice of [firing positions], *pounding the targets without necessary observation, high consumption of ammunition*, poor maintenance.
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> [...]
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> However, the precision of shooting was greatly influenced by the defects and shortcomings in the training process, as well as by an inadequate level of skilfulness attained by the marksmen, reckoners, reconnaissance teams and commanding officers; as a result of thus reduced preparations, *they all were erring in determining the targets, as well as in reckoning and establishing the shooting elements and in launching the artillery attacks without prior observation of the targets*. Group shooting used to be carried out without any corrections being made, so that the results, especially by night, were *rather poor*.
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> [...]

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13264 Dušan Škrba, T. 29109–29110 (18 October 2012); P1511 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992). When also shown intercepted conversations in which Mladić asked whether there was a gun pointed at "some target" in Velešići and, on the following day, asked whether Velešići had been shelled, Dušan Škrba rejected the suggestion that Mladić had no information on any particular targets. *See* Dušan Škrba, T. 29141–29143 (22 October 2012); P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992); P1522 (Intercept of conversation between Rako Mladić and Potpara, 29 May 1992), p. 1.

13265 When asked why observers were not mentioned in his statement, Mijatović said that he had mentioned it in his interview with the Defence. *See* Nikola Mijatović, T. 30737–30739, 30744, 30760 (30 November 2012). Dušan Škrba testified that the 1st Sarajevo Militarised Brigade never fired at or within 1 kilometre of hospitals or other "areas where larger groups of civilians tend to gather". *See* Dušan Škrba, T. 29123 (18 October 2012), T. 29131–29132 (22 October 2012).

13266 Nikola Mijatović, T. 30744–30745 (30 November 2012).

> The stocks of basic and other MTS have been used up, since the consumption of ammunition and fuel in the initial stages of the war exceeded the amounts that had been planned beforehand. Some of the officers and soldiers were of the opinion that the reserves of ammunition and fuel were unfathomable and that the war would not last. *The measures to restrict the consumption yielded no results. Intensive use of the artillery and intensive shelling caused a considerable reduction of available resources* [...].[13267]

(B) ABiH firing practices

4002. As for the ABiH firing practices,[13268] the Chamber heard that ABiH units in Sarajevo used their heavy weapons mostly for harassing fire and with the intention to draw a response, by for example, firing from civilian buildings such as hospital grounds or from the vicinity of the PTT building where the UN was located.[13269] KDZ182 confirmed that ABiH troops would position themselves very close to the UN forces, particularly on confrontation lines,[13270] while KDZ185 called this practice a "part of the game".[13271] Indeed, on a number of occasions the UNMOs had to ask the Bosnian Muslim side to move its mortars away from UNMO positions as they were too close.[13272] According to Tucker, the ABiH strategy above all was to antagonise and provoke the Bosnian Serbs into over-reacting.[13273] However, Harland disputed that the Bosnian Muslims purposely fired mortars from the vicinity of the PTT building in order to draw Serb fire against UNPROFOR; rather, he felt the UN was simply close to the scene of a major battle, and the Serbs were already firing shells in the area.[13274] Both Abdel-Razek and Richard Gray, who was a senior

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13267 D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), pp. 3–4, 7 (emphasis added).

13268 On this issue, *see* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

13269 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 70; Francis Roy Thomas, T. 6830–6831, 6874–6876 (15 September 2010); D631 (UNMO report, 10–11 January 1994), p. 1; Yasushi Akashi, T. 37697 (24 April 2013); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 110; D3442 (SRK combat report, 17 May 1993), p. 2 (reporting that the ABiH was trying to provoke Serb fire onto their positions); Stanislav Galić, T. 37486–37487 (22 April 2013) (testifying that the ABiH forces had "both a political and military interest to provoke" Serb fire); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 12; D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 37.

13270 KDZ182, T. 13142–13145 (10 March 2011); D1132 (UNPROFOR report, 28 June 1995), p. 5. *See also* David Fraser, T. 8061 (18 October 2010).

13271 P6060 (Record of interview with KDZ185), e-court p. 18; KDZ185, T. 4228–4229 (28 June 2010), T. 4335 (29 June 2010); D354 (UNPROFOR protest letter to ABiH, 20 February 1993).

13272 Francis Roy Thomas, T. 6812 (15 September 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 47. According to Thomas, whenever UNMOs protested about the Serb response to the ABiH fire from near the UNMO OPs and asked that they stop firing, Inđić was unsympathetic and would simply respond to UNMO protests by telling them to get the ABiH units out of the area. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 56. This was confirmed by Abdel-Razek who testified that Galić openly admitted to shelling the UN building because UN allowed ABiH to shell at the SRK from the building. *See* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 15, 21.

13273 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 302 (explaining also that ABiH would also arrange a media briefing and then carry out an infantry attack on the Bosnian Serbs nearby who would then respond with heavy weapons, which the media would see and condemn).

13274 P820 (Witness statement of David Harland dated 4 September 2009), paras. 207–208; P837 (UNPROFOR Update on Sarajevo, 30 June 1995); David Harland, T. 2303–2306 (11 May 2010). *See also* P2407 (Witness statement of KDZ304), p. 32; Hussein Abdel-Razek, T. 5580–5581 (20 July 2010) (testifying that when he

UNMO in Sarajevo in 1992,[13275] thought the ABiH was using the UN headquarters as a shield to protect them from being attacked by return Serb fire.[13276]

4003. In addition to using UN facilities, Colonel Andrey Demurenko, Chief of Staff of Sector Sarajevo,[13277] testified that he saw ABiH units also provoking Serb fire onto civilian buildings.[13278] Similarly, Rose was certain that ABiH forces would fire on the Serbs at particularly important political moments, in order to provoke retaliatory Serb fire on Sarajevo.[13279] He believed that there was only a fine line between such a tactic and directly firing upon their own citizens.[13280] KW570 testified that with these practices and through drawing a response, the BiH government was trying provoke an international intervention on their side.[13281] Bell also testified that Bosnian Muslims used "sacrificial attacks" to provoke an international reaction and would provoke the Bosnian Serbs into using their heavy weapons.[13282] Galić testified that the ABiH would fire from schools, hospitals, and locations where the UN forces resided.[13283]

(C) Shelling investigations in Sarajevo

4004. A number of witnesses testifying before this Chamber participated in investigating shelling incidents in Sarajevo. These investigations were conducted by the BiH MUP and also by UNPROFOR and the UNMOs. With respect to the BiH MUP investigations, CSB Sarajevo's unit for serious criminal acts was tasked with investigating shelling incidents involving fatalities.[13284] This department was notified of any such incident by the local police station concerned and would in turn inform an investigative judge of the Sarajevo Supreme Court who would become the head

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brought up the issue of ABiH fire from civilian and UN areas with Ganić, the latter told him "where can we go to defend ourselves?").

13275 D2398 (Witness statement of Richard Gray dated 22 April 2012), paras. 4–5.

13276 D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 12; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 15, 20; Hussein Abdel-Razek, T. 5538–5541 (20 July 2010); D501 (ABiH report re meeting with UNPROFOR, 29 August 1992).

13277 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 4.

13278 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 37.

13279 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 215.

13280 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 215.

13281 D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 15.

13282 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 57; Martin Bell, T. 9901–9902 (15 December 2010); D921 (Witness statement of Martin Bell dated 7 February 1996), p. 14.

13283 Stanislav Galić, T. 37419 (18 April 2013).

13284 KDZ485, T. 8886 (3 November 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 4. Initially, the CSB Sarajevo teams went out to investigate every larger shelling incident regardless of whether there were casualties or not but this practice ceased at the end of 1993 or beginning of 1994, and the department focused only on incidents which resulted in one or more deaths. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 7–8., 10–11; P130 (Witness statement of Zlatko Mededović dated 5 September 2000), p. 4; Ekrem Suljević, T. 5683–5684 (21 July 2010).

of the investigating team.[13285] A team was then formed, including an investigator, criminal technicians, and a ballistics expert.[13286] The investigative judge was in charge of the investigation and was responsible for ensuring that no legal mistakes were made and for conveying instructions to the investigator who would then pass them on to the other members of the team.[13287] The criminal or forensic technicians were tasked with visually inspecting the scene, taking photographs, creating sketches of the scene, and collecting fragments of projectiles.[13288] In more serious cases, involving a large number of casualties, the scene would also be video recorded.[13289] The ballistics experts' task was to determine the direction rather than the origin of fire, as well as the calibre of the weapon used.[13290] The team would come to the site as soon as it was informed of the incident by the local police and as soon as it was safe to do so.[13291] At most incident sites, by the time the team arrived, the dead and wounded would already have been moved to the hospitals and the morgue.[13292] The local police would usually inform the team what the security situation was at the scene, including whether there had been military activity in the area immediately prior to the incident taking place.[13293] At the request of CSB Sarajevo, members of the counter-sabotage protection unit of the BiH MUP would on occasion also assist in these investigations.[13294] Ekrem Suljević, a member of that unit who participated in approximately 50 to 60 investigations of shelling incidents during the conflict, testified that the difficult conditions in which the incidents

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13285 The investigating judge could authorise an investigator to conduct the investigation on his behalf. *See* P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 2, 4; P1905 (Witness statement of KDZ485), para. 5.

13286 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), pp. 4–5; P1905 (Witness statement of KDZ485), paras. 5–6. Mirza Sabljica testified that in most serious cases the investigation team would include two ballistics experts rather than one. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 9.

13287 P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 5; P1905 (Witness statement of KDZ485), para. 6. *See also* Dragan Mioković, T. 8555 (28 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 67–68; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4643–4644; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 5; P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 2–3.

13288 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 2–3; KDZ166, T. 8288–8289, 8291 (26 October 2010). In order to become a forensic technician, one needed to finish secondary engineering school and then attend a special police course which lasted six months. *See* KDZ166, T. 8288 (26 October 2010).

13289 KDZ166, T. 8295–8296 (26 October 2010).

13290 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 10, 18; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 16; P130 (Witness statement of Zlatko Mededović dated 5 September 2000), p. 4; P1905 (Witness statement of KDZ485), para. 10.

13291 KDZ166, T. 8290–8291 (26 October 2010).

13292 KDZ485, T. 8883–8884 (3 November 2010); P1905 (Witness statement of KDZ485), para. 7; KDZ166, T. 8291–8294 (26 October 2010).

13293 KDZ485, T. 8886–8887 (3 November 2010).

13294 *See* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 4–5, 8, 13 (stating that this unit was tasked with, *inter alia*, providing security at meetings and doing on-site investigations of explosions, and included chemical, electrical, and mechanical engineers who were not trained in crater analysis but learned from colleagues and literature).

were investigated influenced the detail of the work these teams were able to provide.[13295] However, he also noted that they never left the incident site with any doubt as to the established direction of fire.[13296]

4005. At the scene of a shelling incident, a ballistic expert would look at the mechanical traces resulting from the impact of the projectile and its fragments, which would be contoured on the asphalt or any other surface. The expert would also assess whether the shell stabiliser (also referred to as the tail fin of the shell) was embedded at the point of impact.[13297] The ballistics expert would then conduct an "analysis of the central axis" or "axis of symmetry" to determine the direction from which the projectile came.[13298] The central axis method is where the outer edges of a given crater's two most pronounced shrapnel traces are drawn back to the centre of the crater.[13299] The angle that these two 'forks' create is then bisected along their central axis and this bearing is measured to determine the incoming trajectory of the projectile.[13300] Having visually established the direction of fire, the team would also use high precision compasses to determine the azimuth, that is, the angle measured clockwise from the line of magnetic north to the line of the central axis or axis of symmetry.[13301] For mortars, this method has a margin of error of plus or minus five degrees in relation to the direction of the shell.[13302] The calibre of the weapon used was usually determined on

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13295 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 3, 8–11. He was involved in determining the direction of fire, removing trace evidence, and analysising it in the laboratory. P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 35–36. *See also* Ekrem Suljević, T. 6232–6233 (6 September 2010); Nedžib Đozo, T. 9584–9585 (10 December 2010); KDZ485, T. 8895–8899 (3 November 2010) (testifying also that he was unaware of any of his colleagues being the victim of shelling whilst attending an incident site); P1905 (Witness statement of KDZ485), para. 8.

13296 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 10.

13297 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 11–12, 14; P1703 (Photograph re shelling incident on 8 November 1994 marked by Mirza Sabljica). The recovery and the analysis of traces would be easier when projectiles hit hard surfaces such as concrete or asphalt. *See* Mirza Sabljica, T. 7816 (13 October 2010); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 30.

13298 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 11–14; P1717 (Photograph re shelling incident on 8 November 1994 marked by Mirza Sabljica); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 19–20. *See also* Mirza Sabljica, T. 7714–7715, 7721–7731 (12 October 2010); P1723 (Sketch drawn by Mirza Sabljica); P1730 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1731 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1732 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1733 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica).

13299 Zorica Subotić, T. 38357–38359 (15 May 2013); John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6092.

13300 Zorica Subotić, T. 38357–38359 (15 May 2013).

13301 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 22. Suljević testified that the investigators were well aware of the interference effect of metal on the process of recording an angle using a compass; accordingly, they did not wear flak jackets and paid attention to any metal objects in the area. *See* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 23.

13302 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 13; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 25. Sabljica testified that the margin of error using this method could never result in the miscalculation of the direction of fire by 40 to 50 degrees. He also testified that in 90% of the shelling incidents he investigated, that is over 50 cases, he was dealing with mortar projectiles. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 10–11, 13; Mirza Sabljica, T. 7721–7722,

the basis of the shell stabiliser which would embed in the surface in about 95% of the cases.[13303] The form and type of the traces and of the damage also helped in establishing the calibre of the mortar.[13304]

4006. The on-site investigation teams did not determine the range of fire, which depends on the type of the projectile used, as well as the charge with which it was fired.[13305] Sabljica explained that it was possible to determine the distance from which the mortar was fired, based on the angle of descent of the projectile and the type of weapon used.[13306] This determination however was not done by Sabljica's unit as they had neither the knowledge nor the equipment necessary; instead, they had a special team supported by persons with an expertise in rocket science and ballistics.[13307] Sabljica explained that the angle of descent is the angle at which the projectile descends and can be determined by placing a stick into a fuse furrow, which has to be of a certain depth for the method to produce accurate results, and then by determining the resulting angle through geometry.[13308] Suljević, testified however that determining the distance from which a shell was fired was impossible without knowing the propelling charges.[13309] According to him, determining the origin of fire can be done through taking statements from witnesses who heard or observed the projectile, but since he and his colleagues were not able to interview witnesses on VRS-held territory, they

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7729, 7740 (12 October 2010). The Chamber notes however that Subotić testified that the central axis method has a defined margin of error of plus or minus ten degrees. *See* Zorica Subotić, T. 38359–38360 (15 May 2013).

13303 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 12, 14, 16–17; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 29–31.

13304 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 12, 14.

13305 Mirza Sabljica, T. 7719–7720 (12 October 2010); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 17; KDZ166, T. 8295 (26 October 2010). Thomas Knustad also confirmed that determining the precise range of fire was very difficult due to the impossibility of knowing the charge with which the projectile was fired. Thomas Knustad, P123 (Transcript from Prosecutor v. *D. Milošević*), T. 2040–2041.

13306 Mirza Sabljica, T. 7718–7720 (12 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 17–18.

13307 Mirza Sabljica, T. 7718–7720 (12 October 2010); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 17–18. One of the members of that team was Berko Zečević whose evidence on his method for determining the relevant distance is discussed later, in relation to Scheduled Incident G.8. Another witness relevant to this issue is Emir Turkušić who used the method in his investigation of Scheduled Incident G.9, which is also discussed below.

13308 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 14–16; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 15; P1701 (Photograph re shelling incident on 8 November 1994); Mirza Sabljica, T. 7714–7716 (12 October 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 6. Sabljica determined an angle of descent only once whereby he used the embedded stabiliser to create an imaginary axis. Mirza Sabljica, T. 7715–7720 (12 October 2010); P1722 (Sketch drawn by Mirza Sabljica); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 14–16; P1716 (Photograph of mortar impact marked by Mirza Sabljica); P1702 (Sketch of mortar impact marked by Mirza Sabljica). Sabljica admitted that this method was imprecise, with a margin of error of plus or minus ten degrees. Mirza Sabljica, T.7717–7718, 7740 (12 October 2010).

13309 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 17. *See also* John Hamill, T. 9694 (13 December 2010).

could not determine the origin of fire in the cases they investigated.[13310] Međedović, a ballistics expert at CSB Sarajevo, noted that, when determining the direction of fire, the ballistics experts did not interview any victims or witnesses.[13311]

4007. Every time there was a shelling incident, UNPROFOR would also try to investigate it; usually the Sector Sarajevo headquarters undertook the investigation because they had the technical expertise.[13312] Thus, UNPROFOR soldiers were at many of the incident sites, either at the beginning of or during the investigation by the CSB Sarajevo.[13313] In addition to conducting their own investigations, UNPROFOR soldiers also monitored the work of CSB Sarajevo teams.[13314] At the end, the findings of both UNPROFOR and CSB Sarajevo would be compared and, according to Suljević, there was no deviation between those as far as direction of fire was concerned.[13315]

4008. UNMOs also investigated shelling incidents alongside the CSB Sarajevo, but kept their investigations separate.[13316] They would travel to incident sites and investigate what they saw and evidence they found, and then file a written report.[13317] Konings testified that UNMOs would exchange information with the CSB Sarajevo during these investigations but that in contrast to the police investigators they were not actually collecting evidence, just data.[13318]

4009. The Accused argues that both the BiH MUP and the UN investigators working on scheduled shelling incidents were "exceptionally unreliable" as they were biased and their work was riddled

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13310 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 18. Richard Higgs testified that sound on its own would not confirm a firing position, only an approximate direction. He stated, however, that the time delay between the fire and burst can give an approximate range to the firing position. *See* P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 5.

13311 P130 (Witness statement of Zlatko Međedović dated 5 September 2000), pp. 3–4.

13312 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 50 (testifying also that all UNPROFOR reports on the incidents went back to the Sector Sarajevo Headquarters and those relating to more sensitive incidents were forwarded to the BiH Command); P2447 (Witness statement of KDZ182), p. 48; P6060 (Record of interview with KDZ185), e-court p. 18; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 72. Fraser conceded that these were not criminal investigations. *See* David Fraser, T. 8055 (18 October 2010).

13313 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 34.

13314 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 34.

13315 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 34.

13316 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 14, 18; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 662.

13317 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 15–16; Thorbjorn Overgard, P2058 (Transcript from Prosecutor v. *D. Milošević*), T. 637–638. Fraser testified that he had reservations about UNMOs' utility and their reports, as their reliability was dependent on their country of origin. *See* David Fraser, T. 8034–8036 (18 October 2010).

13318 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 14. Thomas, testified that UNMOs in Sarajevo would investigate the number of people who were killed or wounded as a result of a particular shelling incident and that during this procedure an UNMO officer would personally see the victims either in hospital or in the morgue. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 33. *See also* P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 16–17.

with mistakes.[13319] The Prosecution responds that this is a broad allegation based on mis-characterisation of the evidence of the relevant witnesses.[13320] As already explained in relation to the sniping investigations[13321] and as will be seen below, in its analysis of the scheduled shelling incidents, the Chamber has considered and analysed a number of CSB Sarajevo and UN reports prepared on the basis of the investigative methods outlined above. These were produced by ballistics experts and/or criminal technicians who were, in most cases, on site soon after the incident and who used accepted ballistics methods to determine the direction of fire. They had access to the scene, contemporaneous information, and eye-witnesses, as well as general knowledge about the shelling in Sarajevo. Thus, the Chamber generally gave considerable weight to the CSB Sarajevo and UN reports when analysing the scheduled shelling incidents. In doing so, the Chamber was also cognisant of the shortcomings of the investigations conducted during the war, such as the difficulties faced by investigators working under threat of fire and their inability to determine the exact origin of fire. Whenever issues arose with respect to particular reports, they were considered by the Chamber in relation to each particular incident. Accordingly, while finding this type of evidence to be generally reliable and credible, the Chamber approached it with caution and as one piece of the puzzle assessed against the totality of evidence tendered in relation to each incident.

4010. As mentioned above,[13322] the Chamber heard from Prosecution investigator, Barry Hogan, who visited Sarajevo on multiple occasions and prepared various materials relating to the incidents listed in Schedule G of the Indictment.[13323] He visited the locations relevant to that schedule in the company of a victim or an eyewitness and used a GPS unit to produce an accurate reading of the position where the shells impacted.[13324] These recordings were then used to produce a map depicting the incident sites.[13325] Hogan also recorded video footage of these visits, which show the individual eyewitnesses and/or victims indicating the location where they believed the shells landed, based purely on their own recollection of the incidents.[13326] As stated earlier, the Chamber

13319 Closing Arguments, T. 47954–47959, 47989–47991 (2 October 2014).

13320 Closing Arguments, T. 48056–48059 (7 October 2014).

13321 *See* para. 3632.

13322 *See* para. 3633.

13323 Barry Hogan, T. 11192–11193, 11196–11205 (3 February 2011).

13324 Barry Hogan, T. 11204–11205, 11230–11231, 11255 (3 February 2011). If multiple shells were involved in a particular incident, Hogan chose a particular impact site and took a reading from that position. *See* Barry Hogan, T. 11204–11205 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo).

13325 Barry Hogan, T. 11204–11206 (3 February 2011); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

13326 Barry Hogan, T. 11207, 11232 (3 February 2011). These witnesses did not have access to their own prior witness statements or to other supporting material such as the original investigation reports or footage of an incident or its aftermath. Barry Hogan, T. 11288 (3 February 2011).

has considered Hogan's evidence and found that he was a reliable and truthful witness but that his mandate was limited to simply recording the locations of the incident sites. Thus, and for the reasons explained in more detail Section IV.B.1.b.II.C while accepting Hogan's evidence as credible, the Chamber was aware of its limitations and of the fact that his activities were dependent on the recollections of others.

4011. As noted above, the Chamber heard from three experts in relation to shelling in Sarajevo.[13327] For the Prosecution, Higgs conducted investigations into scheduled shelling incidents G.4, G.5, G.6, G.7, G.8, and G.19 looking at the alleged origin of fire, as well as the military value of the target.[13328] He visited the relevant incident sites years after and due to the passage of time did not conduct any measured crater analysis or take photographs.[13329] Instead, at each site he looked at the general area and surrounding features, as well as the remnants of craters.[13330] He was provided the forensic data of the relevant BiH and UN investigation teams for each incident by the Prosecution, and then opined as to the appropriateness of their methodology and accuracy of their conclusions.[13331] In doing so, he checked the information contained within the original investigation reports against photographs of the area and his own site visits.[13332] Higgs testified that, in the absence of grossly inaccurate facts, he had to believe that the original investigators described their methodology and findings honestly in their reports.[13333]

4012. The Accused argues that his expert witnesses identified deficiencies in Higgs' work.[13334] He also asserts that the basic methodology of Higgs' investigation was to trust the prior investigations conducted by either the BiH authorities and/or the UN.[13335] The Prosecution argues, on the other hand, that the entirety of the Accused's case in relation to shelling was "false, pretextual and invalid".[13336] The Chamber has analysed Higgs qualifications and testimony and is

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13327 One of the Prosecution experts, Berko Zečević, testified about scheduled incident G.8 and the incidents involving modified air bombs. His evidence and credibility will be discussed below, in the section dealing specifically with scheduled incident G.8 and the section dealing with incidents involving modified air bombs, respectively.

13328 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 1.

13329 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 6–12, 18; Richard Higgs, T. 6005–6007, 6015, 6025 (19 August 2010).

13330 Richard Higgs, T. 6006, 6025 (19 August 2010).

13331 Richard Higgs, T. 5946 (18 August 2010), T. 6015, 6023–6025 (19 August 2010). *See* P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 7–12, 18.

13332 Richard Higgs, T. 6025 (19 August 2010).

13333 Richard Higgs, T. 6007 (19 August 2010).

13334 Defence Final Brief, para. 2387.

13335 The Accused presented this argument during the testimony of Richard Higgs. *See* T. 6009 (19 August 2010). Subotić also asserted that Higgs' acceptance of the conclusions of an UN investigation was a sign of bias. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 69.

13336 Prosecution Final Brief, paras. 787–791.

satisfied that he is an expert, as well as a reliable witness, and that his evidence about the operational use, technical and ballistic capabilities of mortars, and the methodology of crater analysis can be accepted as credible. The Chamber also found Higgs reliable and credible in relation to his evidence on a number of scheduled incidents alleged in the Indictment. However, already during trial, the Chamber made clear that Higgs' evidence is of a limited nature as it does not substantiate the findings of the original investigations, but simply appraises their methodology and the conclusions that were drawn.[13337] Indeed, the majority of Higgs' testimony was based on interpretations of reports compiled by the investigation teams during or immediately after the incidents in question occurred. Accordingly, Higgs' evidence was approached by the Chamber as merely one piece of the puzzle and, at times, as having relatively limited value in the Chamber's determination on the origin of fire in the incidents alleged.

4013. Zorica Subotić visited the sites of the scheduled shelling incidents in and after 2010.[13338] She testified that the central axis method was the most accurate and reliable method to determine the incoming trajectory of a projectile, save for the use of specialised radar.[13339] Subotić's conclusions in relation to the scheduled shelling incidents were based on the investigations of the original investigators, such as the CSB or UNPROFOR, as well as witness testimony, footage and photographs relating to the incidents, documents and statements from previous trials before the Tribunal, and any physical traces that remained at the incident sites.[13340] When challenged on cross-examination as to her use of contemporaneous photographs to conduct her analysis and calculations, Subotić explained that contemporary technology allows for the angle from which a photograph was taken to be removed by computer analysis, which in turn allows for more precise measurements.[13341] However, Subotić did concede that there was a noticeable difference between *de visu* examination of mortar traces and what can be discerned from a photograph.[13342]

4014. The Prosecution argues that Subotić is of highly questionable credibility and that her analysis was the product of scientifically unsound methods, using secondary evidence, such as photographs and video footage, or degraded physical evidence.[13343] According to the Prosecution, she revealed an "extraordinary bias" in her analysis and her conclusions were implausible in the

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13337 Richard Higgs, T. 6008–6009, 6011 (19 August 2010). *See also* the Chamber's oral decision of 18 August 2010 on the time allocated for the cross-examination of Richard Higgs and the Accused's request to admit the underlying reports that Higgs relied on as source documents. Hearing, T. 5943–5944 (18 August 2010).

13338 Zorica Subotić, T. 38363 (15 May 2013).

13339 Zorica Subotić, T. 38357–38361 (15 May 2013).

13340 Zorica Subotić, T. 38183–38184 (13 May 2013).

13341 Zorica Subotić, T. 38362–38363 (15 May 2013).

13342 Zorica Subotić, T. 38363 (15 May 2013).

13343 Prosecution Final Brief, Appendix C, paras. 43, 46.

face of the totality of the Prosecution evidence.[13344] The Accused argues in response that Subotić based her analysis on the "laws of physics" and the ballistic characteristics of the weapons involved in the incidents.[13345] Further, according to the Accused, the "advocacy" arguments made by the Prosecution in relation to Subotić's credibility could not make up for the lack of evidence or override the laws of physics.[13346]

4015. Having analysed both Subotić's expert report and her testimony on the various scheduled shelling incidents alleged in the Indictment, the Chamber notes that she often advanced theories of her own to neutralise the Prosecution evidence, some of which strained credulity and others which were blatantly misleading.[13347] In some instances on cross-examination, Subotić was also evasive and would sidestep questions.[13348] Ultimately, as will be seen from the Chamber's analysis in relation to each scheduled shelling incident, the Chamber found that in many instances Subotić's evidence was compromised by her partisanship. Accordingly, it has found her evidence to be of limited value.

iii. *Scheduled shelling incidents*

4016. The Prosecution submits in its Final Brief that all scheduled shelling incidents constituted acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities, including indiscriminate and disproportionate attacks.[13349] In addition, it alleges that in all of the incidents the impact locations were within civilian, residential, or commercial areas; that there were no ongoing combat activities in the vicinity at the time of the incidents; and that the shelling in question had no military purpose.[13350]

4017. As was the case in the section of the Judgement dealing with sniping incidents, each scheduled shelling incident is discussed below according to the broad geographical area of Sarajevo where it took place.

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13344 The Prosecution argues that Subotić got her facts wrong on a number of occasions, that she often made bare assertions and unfounded assumptions, and that she either disregarded or misinterpreted available evidence. *See* Prosecution Final Brief, Appendix C, paras. 43–46; Closing Arguments, T. 47727 (30 September 2014).

13345 Defence Final Brief, paras. 2387, 2391.

13346 Defence Final Brief, para. 2391.

13347 *See e.g.* discussion on Subotić in relation to Scheduled Incidents G.4, G.5, G. 7, and G.13.

13348 *See e.g.* Zorica Subotić, T. 38458 (16 May 2013).

13349 Prosecution Final Brief, Appendix C, para. 40.

13350 Prosecution Final Brief, Appendix C, paras. 40–41.

(A) Scheduled Incidents G.1 and G.2

4018. The Indictment alleges that from on or about 28 May 1992, the city of Sarajevo was heavily shelled, damaging and destroying civilian targets, causing the deaths of several civilians and injuring others.[13351] In its Final Brief, the Prosecution describes Scheduled Incident G.1 as a "24-hour bombardment of the entire city of Sarajevo on 28–29 May 1992".[13352]

4019. The Indictment also alleges that from on or about 6 June 1992, another massive bombardment of the city was carried out with a variety of artillery fired from positions all around the city, and that as a result of this bombardment, civilian targets were damaged and destroyed and a number of civilians were killed and wounded.[13353] In its Final Brief, the Prosecution describes Scheduled Incident G.2 as the "second massive bombardment of the city centre on or about 6 June 1992".[13354]

4020. The Accused challenges the vagueness of Scheduled Incidents G.1 and G.2 and argues that the Indictment fails to define the geographic and temporal scope of these incidents.[13355] In relation to Scheduled Incident G.1, the Accused first submits that the only incident which took place on 27 May 1992 was the shelling of Vase Miskina street and presents arguments to the effect that there is no evidence that the shelling was done by the Bosnian Serb Forces.[13356] Second, the Accused challenges the Prosecution's allegations that Mladić ordered indiscriminate shelling of Sarajevo and the "alleged civilian neighbourhood of Velešići" on 28 and 29 May 1992, referring to two intercepted conversations.[13357] Further, the Accused submits that even if Mladić had ordered the shelling of Velešići, this shelling would not have been illegal because the area concerned had a heavy concentration of ABiH military hardware and personnel.[13358] In relation to Scheduled Incident G.2, the Accused argues that around 6 June 1992, ABiH initiated infantry and artillery

13351 Indictment, Scheduled Incident G.1.

13352 Prosecution Final Brief, para. 640. *See also* Prosecution Final Brief, paras. 727–728.

13353 Indictment, Scheduled Incident G.2.

13354 Prosecution Final Brief, para. 728. The Prosecution also describes Scheduled Incident G.2 as "another massive and indiscriminate shelling of the city". *See* Prosecution Final Brief, para. 640.

13355 Defence Final Brief, paras. 1980, 1998–1999. The Accused submits that the impermissibly broad nature of Scheduled Incident G.2 prevents him from effectively refuting the allegations. *See* Defence Final Brief, para. 1999.

13356 Defence Final Brief, paras. 1980–1994. However, as noted earlier, the mortar attack of 27 May 1992 in Vase Miskina street is outside the scope of Scheduled Incident G.1. *See* Hearing, T. 37992–37993 (9 May 2013). The Chamber recalls that the Accused himself submitted that the shelling of Vase Miskina street is not charged in the Indictment. *See* Hearing, T. 6394 (8 September 2010) (closed session). *See also* Accused's Statement Pursuant to Rule 84 *bis*, T. 28867 (16 October 2012).

13357 Defence Trial Brief, paras. 1995–1996 (referring to P1041 and D207).

13358 Defence Trial Brief, para. 1997.

attacks against Serb positions around Sarajevo such as Grbavica and Vraca, and that the combat operations on the part of the SRK were directed at repelling these attacks.[13359]

4021. The Chamber notes that in May 1992, about 800 to 900 JNA personnel and their family members were stationed in the Jusuf Džonlić Barracks, the Maršal Tito Barracks, and the Viktor Bubanj Barracks.[13360] There were plans by the JNA to evacuate these soldiers and their families out of BiH but Bosnian Muslim forces blockaded all three barracks before they could be evacuated.[13361] As a result, on the basis of a proposal advanced by Mladić, Bosnian Serb military and political leaders discussed moving armed units northwards, from Grbavica all the way up to the Maršal Tito Barracks; this operation was intended to allow for the evacuation of the JNA personnel from the Maršal Tito Barracks.[13362] However, the military operation did not materialise at that time, in part due to the refusal of Mićo Stanišić to have MUP forces participate in it.[13363]

4022. On 19 May 1992, Lieutenant-Colonel Janković of the JNA reported to Mladić that the ABiH was threatening the barracks and the JNA personnel inside; Mladić responded that if Jovan Divjak, a Serb General in the ABiH, attacked the Maršal Tito Barracks, Divjak "would sentence first himself and then [the] entire Sarajevo to death."[13364] As noted earlier, on the same day, Šipčić was chosen by Mladić to be the new SRK Commander.[13365]

4023. In a continued effort to evacuate the JNA personnel, some time between 20 and 28 May 1992, most probably in the last week of May, there was a meeting between, among others, the Accused, Mladić, Krajišnik, Plavšić, Koljević, [REDACTED] during which Mladić proposed to use "all the equipment and arms" available to "massively bombard Sarajevo".[13366] [REDACTED] prior to this time, the Bosnian Serbs had selectively chosen targets that they considered to be military

13359 Defence Trial Brief, paras. 2000–2001.

13360 [REDACTED]; P928 (Sky News report re Sarajevo, with transcript); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 36.

13361 [REDACTED]; P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 17–18.

13362 [REDACTED]; P968 (Interview with Jovan Tintor on Pale TV, 1 August 1994, with transcript), e-court p. 2.

13363 [REDACTED].

13364 P6070 (Intercept of conversation between Milosav Gagović, Janković, and Ratko Mladić, 19 May 1992), p. 2; KDZ185, T. 4347 (30 June 2010); Milosav Gagović, T. 31872–31873 (15 January 2013); Michael Rose, T. 7291–7292 (5 October 2010). Also on 19 May 1992, Mladić reassured Miloš Baroš, a JNA general at the Maršal Tito Barracks, by stating that "[a]nything they deprive you of, we will deprive Sarajevo of! If a bullet is fired at you, you will see what will be fired at Sarajevo." *See* P5672 (Intercept of conversation between Miloš Baroš, Ratko Mladić, and Gagović, 19 May 1992), p. 2; [REDACTED]. Mladić spoke about retaliating against the city of Sarajevo in other conversations with members of VRS. *See e.g.* P5693 (Intercept of conversation between Ratko Mladić and Potpara, 11 May 1992), pp. 1–2; P5657 (Intercept of conversation between Zdravko Tolimir, Ratko Mladić, and "Jerko Doko", 24 May 1992), p. 2.

13365 *See* para. 3557.

13366 [REDACTED].

assets.[13367] [REDACTED].[13368] [REDACTED] the members of the Bosnian Serb leadership present at the meeting, including the Accused, did not oppose Mladić's proposal.[13369] [REDACTED].[13370] Following the meeting, preparatory measures went on for 10 to 15 days; weapons were deployed, ammunition supplied, and targets selected.[13371] During that time, Mladić toured all of the artillery units deployed around Sarajevo and issued orders as to which weapons should be used.[13372]

4024. On 25 May 1992, Mladić informed an unidentified JNA officer that "[i]f a single bullet is fired [...] at Jusuf Džonlić barracks or Maršal Tito Barracks, or if a single soldier is wounded either at the front or in the barracks" he would "retaliate against the town".[13373] He further stated:

> Sarajevo will shake, more shells will fall on per second than in the entire war so far. [...] You can endure more than they can. It is not my intention to destroy the town and kill innocent people.[...] They should pull out the civilians, and if they want to fight we'll fight. It would be better to fight in the mountains than in the town, though.[13374]

4025. On the same day, during a meeting where Plavšić was also present, Mladić informed Wilson that if the JNA personnel in the military barracks around Sarajevo were not evacuated to safety within three days, he would "level the city."[13375] Mladić also told UNPROFOR representatives that any discussion concerning the reopening of Sarajevo airport, the unblocking of the supply routes to Sarajevo, and the safeguarding of the chemical plants in Tuzla could only take place after the evacuation of JNA personnel and their families from the barracks around Sarajevo had been completed.[13376] Mladić added that international military intervention would only result in the destruction of Sarajevo.[13377] He then requested that Wilson convey his words to the BiH Presidency.[13378] Since Plavšić did not show any opposition, Wilson took this as a very serious

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13367 [REDACTED].
13368 [REDACTED].
13369 [REDACTED].
13370 [REDACTED].
13371 [REDACTED].
13372 [REDACTED].
13373 P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), p. 1; [REDACTED].
13374 P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), p. 1.
13375 John Wilson, T. 3921–3922 (21 June 2010), T. 4053–4057 (22 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 6–7, 72–73; P1040 (UNPROFOR report re meeting with Biljana Plavšić and Ratko Mladić, 25 May 1992), para. 2.
13376 P1040 (UNPROFOR report re meeting with Biljana Plavšić and Ratko Mladić, 25 May 1992), paras. 2, 4, 6, 8.
13377 P1040 (UNPROFOR report re meeting with Biljana Plavšić and Ratko Mladić, 25 May 1992), para. 3.
13378 John Wilson, T. 4053–4054 (22 June 2010); P1040 (UNPROFOR report re meeting with Biljana Plavšić and Ratko Mladić, 25 May 1992), para. 2.

threat and, afterwards, communicated Mladić's message to the Presidency as well as to his own superior, General Nambiar.[13379]

4026. On 27 May, while in Lisbon, the Accused declared that the Bosnian Serb leadership was ready to open the airport to humanitarian flights on the condition that it functioned under the command and control of the UN until such time that its final status was determined by the interested parties at a peace conference to be convened in the future.[13380] On the same day, Bosnian Muslim forces attacked the Maršal Tito Barracks with, *inter alia*, rifles, hand-held rocket launchers, anti-tank weapons, and Molotov cocktails.[13381]

4027. On 28 May 1992, at around 9 p.m., a JNA convoy which was withdrawing from the Jusuf Džonlić Barracks pursuant to an agreement between representatives from the FRY and the BiH Presidency was attacked by Bosnian Muslim forces; during this attack, a number of JNA officers were killed and several others were captured by the Muslim forces.[13382] That same day at 8:50 p.m., Bosnian Muslim forces attacked the Maršal Tito Barracks and Slaviša Vajner Čiča Barracks, as well as SRK positions in Hadžići, the Sarajevo airport, and the Jewish cemetery with, *inter alia*, anti-aircraft guns and mortars; as a result, two SRK soldiers were killed and a number were wounded.[13383]

4028. In a conversation on 28 May 1992, Mladić enquired of Colonel Mirko Vukašinović whether he could reach Velešići and Baščaršija from his position in Hreša.[13384] Mladić then ordered Vukašinović to "[f]ire a salvo at Baščaršija" to which Vukašinović replied: "Yes, Sir!"[13385] In another conversation, also on 28 May 1992, Mladić ordered Vukašinović to fire at Velešići and

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13379 John Wilson, T. 4054 (22 June 2010).

13380 P949 (Announcement of SDS leadership re Sarajevo airport and humanitarian supplies, 27 May 1992); Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25299–25300. On 20 May 1992, the Accused travelled to Lisbon for about a week to attend the peace negotiations there. *See* Colm Doyle, P918 (Transcript from *Prosecutor v. S. Milošević*), T. 25299–25300.

13381 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 24.

13382 [REDACTED]; P1477 (Ratko Mladić's notebook, 14 February–28 May 1992), p. 392; D207 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 5; D2974 (Letter from Momčilo Krajišnik to Jose Cutileiro and others, 28 May 1992), p. 1.

13383 [REDACTED]; P1477 (Ratko Mladić's notebook, 14 February–28 May 1992), pp. 393–394; D574 (SRK combat report, 28 May 1992), para. 1.

13384 P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992), p. 2; [REDACTED]. Veljović testified that no Serb bombardment of Baščaršija ever happened because Dragomir Milošević specifically prohibited it, given Baščaršija's cultural and historic significance. *See* Stevan Veljović, T. 29230, 29279–29280 (23 October 2012). However, in light of the credible evidence that bombardment of Baščaršija did take place in 1992 and given the numerous contradictions in Veljović's testimony, the Chamber rejects his assertion.

13385 P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992), p. 3.

Pofalići and added "there is not much Serb population there".[13386] In the same conversation, Mladić ordered Vukašinović to continue firing "so that they can not sleep, that we roll out their minds".[13387] Before the end of the conversation, Mladić ordered the firing of "one more salvo at the Presidency."[13388]

4029. Wilson testified that the shelling that began in the evening of 28 May in Sarajevo was "heavy even by Sarajevo standards", widespread, and scattered around the city, but at the same time focused on the centre of the city and not related to any conflict on the confrontation line.[13389] Wilson also described it as a "heavy artillery bombardment" by the SRK, which to him was another example of an "undoubtedly disproportionate and indiscriminately directed fire" at the city, whereby there was no military value in the targets that were selected.[13390]

4030. At that time, Fadila Tarčin was 16 years old and living with her family in Širokača, a residential area on the southern side of Sarajevo which overlooks Stari Grad and Bistrik.[13391] Tarčin testified that her home was not near any military positions; the barracks at Bistrik, located one and a half kilometres away, were the only military facility nearby, and the confrontation line was around one kilometre away.[13392] When the shelling began in the evening of 28 May 1992, Tarčin, her mother, and other relatives moved to the cellar and waited for the shelling to stop.[13393] After some two hours, for about a 20-minute period, the shelling abated.[13394] However, just after midnight, shrapnel came through the cellar door, injuring Tarčin's right foot and bruising her left

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13386 P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992); P470 (Witness statement of Ašida Fazlić dated 1 November 2008), paras. 1–6; D2 (Supplemental statement of Ašida Fazlić dated 22 April 2010), e-court p. 4. However, during a telephone conversation with Fikret Abdić on 29 May 1992, Mladić denied that the SRK had shelled the city on 28 May 1992, in particular Baščaršija and the Archive building. Mladić also complained that the Bosnian Muslim forces had attacked Kolonija, Pofalići, the Viktor Bubanj Barracks, and the Jusuf Džonlić Barracks. The two interlocutors then accused each other of breaking cease-fire agreements in the previous weeks and insisted that their forces were only firing after having been fired upon first. Abdić cautioned Mladić against responding with disproportionate fire. Mladić in turn insisted that Abdić's forces return equipment and vehicles which they confiscated from the Jusuf Džonlić Barracks and that his forces allow peaceful evacuation of the Maršal Tito Barracks. *See* P5663 (Intercept of conversation between Ratko Mladić and Fikret Abdić, 29 May 1992), pp. 1, 4–15, 20–21. In light of the vast body of accepted evidence to the contrary, the Chamber is of the view that Mladić's denials as to the shelling of Sarajevo on 28 May 1992, which was unfolding as the conversation was taking place, did not reflect the situation on the ground.

13387 P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992).

13388 P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992).

13389 John Wilson, T. 3922 (21 June 2010).

13390 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 51–52, 57. *See also* Savo Simić, T. 30076–30077 (12 November 2012) (agreeing that civilians were injured in this attack but arguing that the SRK was returning fire).

13391 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), paras. 1–3.

13392 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), paras. 2, 11.

13393 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), paras. 5, 7–8.

13394 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), para. 7.

knee.[13395] Tarčin waited in the cellar until 4:30 a.m. for the shelling to stop.[13396] At around 5 a.m., a neighbour took her to the Koševo Hospital where they fitted a cast for her right leg; there she remained for two days.[13397] When she returned from the hospital, she could see that the shell which had wounded her had caused extensive damage to three houses in the neighbourhood.[13398] On 28 May 1992 and throughout the rest of the war, Tarčin's "neighbourhood remained under constant shelling", and her house was hit twice more with projectiles.[13399]

4031. Shortly after midnight during the night of 28 May 1992, Ašida Fazlić, an employee of the State Hospital who was living with her son and husband in a room at the same hospital, was severely injured in the head and leg by shrapnel from a shell that hit the third floor of the hospital as shelling of the city was well underway.[13400]

4032. Van Lynden arrived in Sarajevo in late May 1992 and was living on the top floor of the State Hospital from which he was able to film shelling throughout the city.[13401] He saw that the State Hospital had been targeted already and was badly "shot up"; he then personally witnessed the hospital being targeted by anti-aircraft guns at that time.[13402] While living in the hospital, Van Lynden found no indication that Bosnian Muslim forces were using the building or its immediate surroundings for military purposes.[13403]

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13395 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), paras. 2, 7–9; P1991 (Stari Grad Police Station war diary), pp. 71–72.

13396 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), para. 9.

13397 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), paras. 9–10 (stating that to this day she cannot walk properly due to her injuries).

13398 P498 (Witness statement of Fadila Tarčin dated 2 November 2008), paras. 2–3.

13399 P498 (Witness statement of Fadila Tarčin dated 24 February 2004), para. 5.

13400 P470 (Witness statement of Ašida Fazlić dated 1 November 2008), paras. 4–6; P1022 (Medical records for Ašida Fazlić), e-court p. 1. *See also* Adjudicated Facts 2883, 2884. For the next 16 months, Fazlić underwent a series of operations and stayed in the State Hospital. In November 1993, UNHCR evacuated her to Norway where she underwent three surgeries, including plastic surgery to replace the destroyed bone in the frontal region of her skull but post-surgery meningitis prevented her from undergoing all the other necessary operations. P470 (Witness statement of Ašida Fazlić dated 1 November 2008), paras. 8–10; P1022 (Medical records for Ašida Fazlić), e-court p. 3.

13401 Aernout van Lynden, T. 2387–2394 (19 May 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 4, 31–32; P927 (Aerial photograph of Sarajevo marked by Aernout van Lynden).

13402 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 31; Aernout van Lynden, T. 2392 (19 May 2010).

13403 Aernout van Lynden, T. 2390–2391 (19 May 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 33. *But see* the assertion of Savo Simić who was the Chief of artillery in the 1st Sarajevo Mechanised Brigade at the time that the ABiH's 1st Corps had mortar firing positions in the State Hospital which were used for attacking his brigade in May 1992, thereby rendering the hospital a legitimate military target. *See* D2412 (Witness statement of Savo Simić dated 4 November 2012), paras. 3, 16, 23; Savo Simić, T. 30074–30076 (12 November 2012). The Chamber, however, rejects Simić's assertion in light of its findings in Section IV.B.1.e: Hospitals in Sarajevo, and in light of his evasiveness and the contradictions that tainted his evidence on this point.

4033. Velešići was also shelled at that time.[13404] It consisted mostly of private houses and 60% of its population was Muslim while the rest were Serbs.[13405] Two individuals were wounded in Pogledine and one in Močila due to shelling.[13406] The shelling also inflicted extensive damage on the Old Town.[13407] In Vratnik, one person was killed, two houses caught fire, and a number of housing facilities and passenger vehicles were damaged.[13408]

4034. On 29 May 1992 at around 8 a.m., Wilson met with General Bošković, Colonel Cađo, and Lieutenant Colonel Janković, all from the JNA, who told him that Mladić had ordered the firing of artillery rockets and mortars in response to an attack on Lukavica by the Bosnian Muslim forces.[13409] According to Wilson, during the meeting, the JNA commanders sought to dissociate themselves from the shelling of the city and expressed their disapproval, noting that Mladić was acting independently of the JNA.[13410] Later, a BiH delegation joined the meeting to discuss the evacuation of the JNA barracks and played a taped radio intercept from the previous night, showing that Mladić personally directed artillery attacks on the city.[13411]

4035. On the same day, Mladić informed Potpara, an artillery officer from the JNA, and Baroš that the attacks by Muslim forces on the barracks had been intended to provoke the Serbs to open fire on Sarajevo.[13412] Mladić then advised Potpara to be careful and act with restraint.[13413]

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13404 Almir Begić, T. 9956–9958 (15 December 2010); Dušan Škrba, T. 29141 (22 October 2012); P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 1.

13405 Dušan Škrba, T. 29141 (22 October 2012); Almir Begić, T. 9956 (15 December 2010). While accepting that the Bosnalijek Factory was located just southeast of his home, Begić denied that it manufactured explosives during the war. *See* Almir Begić, T. 9979 (16 December 2010). *See also* D930 (Map of Velešići marked by Almir Begić).

13406 P1991 (Stari Grad Police Station war diary), pp. 71–72. Considering that the Stari Grad Police Station war diary does not provide any information as to the status or the activities of these wounded individuals during the shelling, the Chamber is not convinced beyond reasonable doubt that they were civilians and, if so, that they were not taking direct part in hostilities at the time.

13407 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 76. *See also* P1042 (UNPROFOR report re conversations with BiH and JNA delegations, 29 May 1992), paras. 1–3.

13408 P1991 (Stari Grad Police Station war diary), p. 72. As with the wounded individuals mentioned in fn. 13406, the Chamber is unable to find beyond reasonable doubt that the person killed during this shelling was a civilian and, if so, that he was not taking direct part in hostilities at the time.

13409 John Wilson, T. 3909–3910, 3923–3924 (21 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 76; P1042 (UNPROFOR report re conversations with BiH and JNA delegations, 29 May 1992), para. 3.

13410 John Wilson, T. 3924 (21 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 76; P1042 (UNPROFOR report re conversations with BiH and JNA delegations, 29 May 1992), paras. 3, 6. *See also* P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 18 (suggesting that there was a rift between the Serbian and Bosnian Serb contingents); P5663 (Intercept of conversation between Ratko Mladić and Fikret Abdić, 29 May 1992), p. 10 (indicating that Mladić did not see himself as belonging to the Serbian military or state).

13411 John Wilson, T. 3924 (21 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 76; P1042 (UNPROFOR report re conversations with BiH and JNA delegations, 29 May 1992), paras. 4–6.

13412 D207 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), pp. 2–3; P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 24.

However, Mladić also told Potpara and Baroš that if the attacks by Muslim forces continued, he would no longer show restraint and would shell Sarajevo.[13414] Later that day, Mladić asked Potpara where there had been shelling and Potpara replied "towards the tobacco factory [...] Pofalići."[13415] Mladić also asked Potpara whether Velešići had been shelled and after receiving an affirmative answer, commented that there will be more shelling there.[13416] In the same conversation, he asked if Potpara had "the means to fire at the station".[13417] When Potpara responded that he did have the means, Mladić then ordered Potpara to fire.[13418] On the same day, Potpara reported to Mladić that his unit had returned fire towards "a museum, the hospital, and Crni Vrh" with 82 mm shells.[13419] Mladić then ordered Potpara to fire at the railway station, "[a]nd scatter them around."[13420] According to a regular combat report issued by the SRK Command on 29 May 1992, SRK units had used 70 shells of 60 mm calibre, 140 shells of 82 mm calibre, 272 shells of 105 mm calibre, and 131 shells of 120 mm calibre, as well as various other types of projectiles and bullets on that day.[13421]

4036. On 30 May 1992, there were intense negotiation efforts to end the shelling of Sarajevo.[13422] Wilson met with Mladić in order to convey the Secretary General's appeal to bring an end to it.[13423] During the meeting, Mladić stated that the Maršal Tito Barracks were under constant fire by Bosnian Muslim forces, maintained that he was simply defending the Serb people, and insisted that the JNA personnel be allowed to leave the barracks.[13424] On the same day, around noon, Morillon met with Slobodan Milošević, to convey the Secretary General's appeal to bring an end to shelling

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13413 In the same intercepted conversation, Mladić informed Potpara and Baroš that the conversation was being intercepted by Bosnian Muslims. *See* D207 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), pp. 2–3.

13414 D207 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), pp. 4–8.

13415 P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 1.

13416 P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 1.

13417 P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 2. The Chamber notes that it is clear from the context of the conversation that an error in the transcription of the conversation led to a number of statements by Mladić being attributed to Potpara and vice versa.

13418 P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 2.

13419 P1511 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992); [REDACTED].

13420 P1511 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992). As noted earlier, Dušan Škrba, who was with the SRK during the war, testified that this was not a precise order. *See* para. 4000.

13421 P1514 (SRK combat report, 29 May 1992), p. 2; [REDACTED]. The Chamber notes that while the translation of P1514 indicates that this combat report is dated 20 May 1992, the original version refers to 29 May 1992.

13422 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 81.

13423 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 77; John Wilson, T. 3924–3926 (21 June 2010); P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992); P5050 (UN Press Release, 30 May 1992).

13424 During the meeting, Mladić also requested that a meeting between the Accused and Izetbegović be arranged, as numerous Serb attempts to organise one had failed. The attendees then discussed the issue of the hand-over of JNA weapons to the BiH forces in return for de-blocking the barracks but Mladić stated that this deal was made with the JNA and not with him. *See* P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992), paras. 2–4.

in Sarajevo and ask Milošević to exercise his influence over Mladić; during the meeting, Milošević stated that he disagreed with Mladić's actions and that he had been trying to contact the Accused to see if the Accused could use his influence to stop the "bloody, criminal" bombardment.[13425]

4037. Then, at around 2:30 p.m., Morillon met with the Accused and Koljević.[13426] During the meeting, the Accused told Morillon that he would be able to convince Mladić to agree to a cease-fire.[13427] The Accused also stated that the "Serb forces" were inexperienced and self-organised and therefore tended to over-react to attacks by the Green Berets; the Accused stated further that sometimes the Serbs were being blamed for attacks for which they were not responsible.[13428] It was agreed at the meeting that the Accused would be responsible for seeing Mladić in person in order to stop the bombardment and implement a cease-fire starting "Monday at 1800 hrs".[13429] The Accused did not manage to see Mladić but reached him by phone and the latter indicated that the bombardment would stop.[13430] On 30 May 1992, the SRK reported that its units had fired 20 shells of 120 mm calibre and 15 shells of 122 mm calibre that day.[13431]

4038. On 3 June 1992, discussions began between UNPROFOR representatives, the Bosnian Muslim leadership and the Bosnian Serb leadership, including the Accused, on the question of the opening and control of Sarajevo airport.[13432] On 5 June 1992, in a letter to José Cutileiro, the Accused asserted that despite the good will shown by the Bosnian Serb leadership in expressing their readiness to open Sarajevo airport, the Bosnian Muslims had threatened the lives of JNA personnel and their families who were present in the Maršal Tito Barracks and during the night, Bosnian Muslim forces had shelled residential areas of Sarajevo inhabited by Serbs.[13433]

4039. During the night of 5 June 1992, JNA personnel and their families, who had hitherto been blockaded inside the Maršal Tito Barracks, were finally evacuated to Bosnian Serb positions; the

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13425 P1035 (UNPROFOR report re meeting with Slobodan Milošević, 30 May 1992), paras. 1–3; P5050 (UN Press Release, 30 May 1992).

13426 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992).

13427 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 7–8, 11.

13428 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 3, 5.

13429 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para.11.

13430 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 15.

13431 P1513 (SRK combat report, 30 May 1992), p. 3.

13432 P1039 (UNPROFOR report re airport meetings in Sarajevo, 3 June 1992), e-court p. 1.

13433 D333 (Radovan Karadžić's letter to Jose Cutileiro, 5 June 1992). The Accused repeated this allegation to the UN Secretary General a few days later. *See* D1509 (Radovan Karadžić's letter to UN Secretary General, 10 June 1992), p. 1.

JNA's heavy weaponry and ammunition was, however, left behind.[13434] Immediately after the completion of the evacuation of the JNA personnel, a number of Bosnian Muslims entered the barracks in order to take hold of the weaponry left behind by the JNA.[13435] Soon after, the barracks became the target of heavy artillery fire by the SRK.[13436] The intensity of the shelling forced the Bosnian Muslims who had entered the barracks to flee.[13437]

4040. At the same time, various neighbourhoods of Sarajevo were shelled, including the old city centre, Vratnik, Baščaršija, Logavina, Bistrik, Sedrenik, Vasin Han, and Hrid-Jarčedoli.[13438]

4041. On or about 6 June 1992, Bosnian Muslim forces initiated a military operation to "de-block" Sarajevo from the north and the west.[13439] On 6 June, Mladić issued Directive 1, informing the commands of the various VRS corps that Bosnian Muslim forces had launched a military operation in order to "de-block Sarajevo from the north and west".[13440] With Directive 1, Mladić defined the immediate task of the VRS as using offensive action with a view to improving the operational and tactical position of the VRS in the wider area of Sarajevo and in northern and western Bosnia.[13441] More particularly, Mladić ordered the securing and mopping up of Serb-inhabited parts of Sarajevo, including Zlatište, Dobrinja, Butmir, Sokolović Kolonija, Mojmilo, and the area around the airport, as well as the opening of the Sarajevo-Trnovo-Kalinovik communication line.[13442] On the basis of

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13434 D577 (SRK combat report, 6 June 1992), p. 1; D333 (Radovan Karadžić's letter to Jose Cutileiro, 5 June 1992); P929 (Sky News report re Sarajevo, with transcript); P930 (Sky News report re Sarajevo, with transcript); Aernout van Lynden, T. 2405–2407 (19 May 2010), T. 2610–11 (21 May 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 52–58; D1509 (Radovan Karadžić's letter to UN Secretary General, 10 June 1992), p. 1; P2760 (SerBiH MUP performance report, April to June 1992), p. 3; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 66; Dragomir Milošević, T. 32558–32559 (23 January 2013); Milosav Gagović, T. 31865, 31872 (15 January 2013); D2738 (Witness statement of Milosav Gagović dated 7 March 2014), paras. 29–30.

13435 P930 (Sky News report re Sarajevo, with transcript); Aernout van Lynden, T. 2599 (21 May 2010); P973 (Robert Donia's expert report entitled "Bosnian Serb Leadership and the Siege of Sarajevo, 1990–1995", January 2010), pp. 85–86; D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 29; P6358 (Excerpts from transcript of 114th session of BiH Presidency, 9 June 1992), pp. 3.

13436 P930 (Sky News report re Sarajevo, with transcript). The initial shells failed to hit the barracks, instead falling along the railway behind it. Subsequently, however, the shells hit the barracks, which then went up in flames. *See* P930 (Sky News report re Sarajevo, with transcript); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 55, 58; Aernout van Lynden, T. 2405–2406 (19 May 2010).

13437 Aernout van Lynden, T. 2599 (21 May 2010). The Chamber is not satisfied that the Bosnian Muslims who entered the barracks were civilians.

13438 P930 (Sky News report re Sarajevo, with transcript); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 55–57; P1991 (Stari Grad Police Station war diary), pp. 77–80.

13439 D577 (SRK combat report, 6 June 1992), p. 1; D232 (Directive 1, 6 June 1992), p. 1; P998 (SRK instructions, 7 June 1992), p. 1; P1498 (Order of 2nd Motorised Brigade, 8 June 1992), p. 1; P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 128; P1038 (John Wilson's report to Australian Government, 15 June 1992), para. 1.

13440 D232 (Directive 1, 6 June 1992), p. 1.

13441 D232 (Directive 1, 6 June 1992), p. 1.

13442 D232 (Directive 1, 6 June 1992), pp. 2–4. During his testimony, Krajišnik, while casting doubt on the existence of a direct connection between the fifth Strategic Goal and Directive 1, stated that at the time, Serb areas around Sarajevo were disjointed and that the objective of Directive 1 was to link these areas together and to secure the roads that connected them. Krajišnik added that Directive 1 contained military instructions about the airport

Directive 1, Šipčić ordered SRK units to, *inter alia*, continue to maintain the blockade of Sarajevo by barricading and reinforcing its positions, and to cut through the city by moving troops along the Nedžarići-Stup-Rajlovac axis.[13443] The Muslim offensive lasted several days and despite some early successes, was in the end neutralised by Serb infantry and artillery.[13444]

4042. On 6 June 1992, Zilha Granilo lived on Bjelave street, in the Bjelave neighbourhood of Sarajevo.[13445] She recalled that the whole city seemed to be shelled that day.[13446] Between 4 and 5 p.m., she stopped to pick a few cherries in her yard on her way to the shelter in the basement of a nearby bank building.[13447] A shell fell into her neighbour's shed, 10 or 15 metres away from where she was standing.[13448] The impact threw her two or three metres away; shrapnel was lodged into her leg and back, and created a small puncture in her neck.[13449] A neighbour drove her to the hospital where she received treatment.[13450]

4043. On the morning of 6 June 1992, Fatima Palavra, a 14 year old, and four members of her family, were sitting in the living room of her uncle's apartment, located on the top floor of a building known as "Papagajka", on Hamdije Kreševljakovića street, in the Skenderija neighbourhood of Sarajevo.[13451] While looking at Miljacka River from the living room, Palavra suddenly saw a bright shining light, followed by an explosion which rendered her unconscious.[13452] Palavra regained consciousness in the children's surgical ward of the Koševo Hospital and saw that her sister was also there.[13453] Palavra had suffered shrapnel injuries to her right leg and temple and

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because the security of the airport had been compromised and the flow of humanitarian aid into the area interrupted. *See* Momčilo Krajišnik, T. 43798–43801 (19 November 2013). However, for reasons that have been given in paragraph 2902, the Chamber does not accept Krajišnik's evidence on Directive 1 and its underlying basis.

13443 P998 (SRK instructions, 7 June 1992), pp. 1–2.

13444 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 128; D195 (SRK Report, 8 June 1992), pp. 1–2; D611 (SRK Order, 11 June 1992), p. 1; D427 (Minutes of 23rd session of Government of SerBiH, 8 June 1992), p. 1.

13445 P499 (Witness statement of Zilha Granilo dated 30 October 2008), para. 2; D123 (Map of Sarajevo marked by Fatima Zaimović); D731 (Map of Sarajevo marked by Alen Gičević).

13446 P499 (Witness statement of Zilha Granilo dated 30 October 2008), para. 3.

13447 P499 (Witness statement of Zilha Granilo dated 30 October 2008), paras. 3-4.

13448 P499 (Witness statement of Zilha Granilo dated 30 October 2008), para. 4.

13449 P499 (Witness statement of Zilha Granilo dated 30 October 2008), paras. 4-5.

13450 P499 (Witness statement of Zilha Granilo dated 30 October 2008), paras. 5–6. Granilo testified that her daughter Jasna Granilo, a member of the police at the time of the incident, was killed as a result of the shelling of Breka street, near the local commune office. *See* P499 (Witness statement of Zilha Granilo dated 30 October 2008), paras. 1, 6–7. Considering that Jasna Granilo was a member of the police and that the exact circumstances of her death in another shelling incident on that day are unknown, the Chamber is unable to conclude beyond reasonable doubt that she was not taking direct part in the hostilities when she was killed.

13451 P497 (Witness statement of Fatima Palavra dated 30 October 2008), paras. 2–3, 5.

13452 P497 (Witness statement of Fatima Palavra dated 30 October 2008), paras. 6–7.

13453 P497 (Witness statement of Fatima Palavra dated 30 October 2008), paras. 7–8.

had undergone surgery.[13454] At the hospital, Palavra's uncle told her that the explosion had killed his partner and had injured the rest of the family members.[13455] As a result of the explosion, Palavra's uncle's apartment was completely destroyed.[13456]

4044. On the same day, Ziba Avdić, and her husband, Muhamed, were at an apartment in a residential complex situated on Koševo Hill.[13457] There were no barracks, police stations or factories in the vicinity of this complex.[13458] Avdić recalled that the shelling of her neighbourhood that day began at 8 a.m. and forced her and her husband to take shelter in the basement.[13459] The shelling abated for a period; as it got dark, however, Avdić saw that illumination flares were fired from the direction of Poljine.[13460] After this, two shells landed in the parking area in front of her building, setting a number of parked vehicles on fire.[13461] Muhamed and four other individuals from the building went outside to extinguish the fires.[13462] At 9:30 p.m., as these individuals were standing near the entrance of the building, a shell landed in front of them, killing some of them instantly and injuring Muhamed and some others.[13463] Muhamed and the other injured individuals were taken by the TO to a hospital; however, Muhamed died from his injuries later that evening.[13464]

4045. On 7 June 1992, forces of the Vogošća Brigade shelled the UNIS towers and as a result, one of the towers was set ablaze.[13465] Filming the UNIS towers from the State Hospital which was about 200 metres away, Van Lynden did not see any outgoing fire coming from the towers.[13466] He also did not see any Bosnian Muslim forces there during a visit to the towers with his film crew a few days earlier.[13467] What he could see and film with his crew on 7 June 1992 was machine gun fire directed at the lower part of the UNIS towers, coming from the south, which were positions

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13454 P497 (Witness statement of Fatima Palavra dated 30 October 2008), paras. 7–8.
13455 P497 (Witness statement of Fatima Palavra dated 30 October 2008), para. 10.
13456 P497 (Witness statement of Fatima Palavra dated 30 October 2008), para. 11.
13457 P500 (Witness statement of Ziba Avdić dated 31 October 2008), paras. 1, 3.
13458 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 1.
13459 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 3.
13460 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 4.
13461 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 5.
13462 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 6.
13463 P500 (Witness statement of Ziba Avdić dated 31 October 2008), para. 7.
13464 P500 (Witness statement of Ziba Avdić dated 31 October 2008), paras. 7–8.
13465 Aernout van Lynden, T. 2408–2410 (19 May 2010); P931 (Sky News report re Sarajevo, with transcript); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 59; P1154 (Witness statement of KDZ088 dated 27–29 April 2010) (under seal), p. 82.
13466 Aernout van Lynden, T. 2410 (19 May 2010); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 59.
13467 Aernout van Lynden, T. 2474 (19 May 2010).

held by the SRK.[13468] Van Lynden also filmed the Parliament building being hit by artillery fire.[13469]

4046. On 8 June 1992, Fahra Mujanović and her four year old son were in the yard of their family house, situated in Barica which was a purely residential area very close to Sarajevo and in the vicinity of Žuč Hill.[13470] Suddenly, an 82 mm mortar shell landed in the yard and exploded, lodging shrapnel in Mujanović's legs, left arm, back, chest, and head and throwing her across the yard, onto the ground.[13471] The shelling continued for another hour or so, preventing Mujanović's neighbours from coming to her aid; during this time, Mujanović who was lying on the ground, lost and regained her consciousness several times.[13472] Eventually, a female neighbour approached her and after changing her blood-soaked clothes, asked a young man to take Mujanović to Koševo Hospital in his car.[13473] During the ride from Barica to Koševo Hospital, the car was hit by sniper fire several times.[13474] At the hospital, Mujanović saw approximately 150 other people who had been admitted due to "terrible and shocking injuries" resulting from the shelling in and around Sarajevo on that day.[13475] She underwent surgery to remove the shrapnel from her body.[13476]

4047. The heavy shelling of the city continued well into the night of 8 June 1992.[13477]

4048. [REDACTED] around 1,000 to 1,500 members of the SRK bombarded Sarajevo during this operation[13478] and that the SRK used grenade launchers, 82 to 130 mm mortars, anti-aircraft guns, tanks, and multiple rocket launchers.[13479] Due to the nature of the weaponry and Sarajevo's dense

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13468 P931 (Sky News report re Sarajevo, with transcript); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 59.

13469 P931 (Sky News report re Sarajevo, with transcript).

13470 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), paras. 4, 8; Fahra Mujanović, T. 8770 (1 November 2010). In April 1992, Barica had been regularly subjected to shelling from Serb-held positions in Žuč, Krivoglavci, Kromolj, Vogošća, Poljine, and Tihovići. *See* P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), paras. 4–6, 8, 12; Fahra Mujanović, T. 8751–8752, 8761 (1 November 2010).

13471 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), paras. 8–9; Fahra Mujanović, T. 8754–8756, 8765, 8767, 8770 (1 November 2010).

13472 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 9.

13473 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 10.

13474 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 10.

13475 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 12; Fahra Mujanović, T. 8756 (1 November 2010).

13476 P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 11. Despite her surgery, many pieces of shrapnel were not removed and, as a result, Mujanović suffers from constant pain and recurring headaches. *See* P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 11; Fahra Mujanović, T. 8756–8757 (1 November 2010).

13477 P931 (Sky News report re Sarajevo, with transcript); P932 (Sky News report re Sarajevo, with transcript).

13478 [REDACTED].

13479 [REDACTED]; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 48.

urban environment, "[e]verything was being hit," including housing and accommodation buildings.[13480]

4049. As a result of the shelling of Sarajevo between the night of 5 June and 8 June 1992, a number of civilians, including women, children and the elderly, were killed or seriously wounded.[13481] This shelling also caused extensive damage to civilian buildings and infrastructure, including the Music Academy, and a number of houses in Baščaršija.[13482]

4050. On the morning of 9 June 1992, during a session of the BiH Presidency in which Izetbegović was also present, Halilović referred to the continuous shelling of the city by Serb Forces during the previous days and stated that the Serb side had 150 artillery pieces in its possession whereas the Bosnian Muslims had only ten pieces, of which only five functioned properly.[13483]

4051. On the same day, after a detailed discussion during a meeting of the Bosnian Serb Presidency, attended by the Accused, Plavšić, Krajišnik, Koljević, Đerić and Mladić, it was concluded that "the heavy artillery fire on the city [should] be halted".[13484] The next day, the Accused conveyed to the Secretary General that he was ready to bring to a halt "any artillery fire around Sarajevo".[13485]

4052. As noted earlier, the Accused challenges the vagueness of Scheduled Incidents G.1 and G.2. However, the Chamber considers that Scheduled Incidents G.1 and G.2 are geographically limited to the city of Sarajevo and temporally limited to a "24 hour bombardment" on 28 to 29 May 1992 and to a bombardment which began on or about 6 June 1992, respectively. Throughout the trial,

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13480 [REDACTED].

13481 Based on all the evidence before it, the Chamber was able to conclude beyond reasonable doubt that the following individuals were civilians and that they were not participating in hostilities when they were killed: Osman Kapetanović, Abdulah Ferhatović, Muhamed Avdić, Hasija Neimarlija (67 years old), and Emir Arnautović (17 years old). Similarly, the Chamber was able to conclude beyond reasonable doubt that the following individuals were civilians and that they were not participating in hostilities when they were wounded: Fatima Palavra (14 years old), Ivan Onešćuk, Fahra Mujanović, Zilha Granilo, Jasmina Sandaktarević (13 years old), Nezira Mušić (80 years old), Vasvija Hodić (62 years old), Ismeta Bećirević, Fatima Hajdini (15 years old), Hikmet Maletović, Senada Meletović, Simo Petrović (64 years old), and Sabina Bećirević (10 years old). *See* P1991 (Stari Grad Police Station war diary), pp. 77, 79–80, 82, 86; P497 (Witness statement of Fatima Palavra dated 30 October 2008), paras. 5–8, 10; P500 (Witness statement of Ziba Avdić dated 31 October 2008), paras. 3, 6–7; P499 (Witness statement of Zilha Granilo dated 30 October 2008), paras. 1–3; P1865 (Witness statement of Fahra Mujanović dated 5 November 2008), para. 12; P819 (Extracts from Fatima Zaimović's diary), p. 3. On 7 June 1992, while at the morgue of Koševo Hospital, Van Lynden saw an eight or nine year old boy on a stretcher who had died from shrapnel wounds. *See* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 59; Aernout van Lynden, T. 2408–2409 (19 May 2010); P931 (Sky News report re Sarajevo, with transcript).

13482 P1991 (Stari Grad Police Station war diary), pp. 79–80, 82.

13483 P6358 (Excerpts from transcript of 114th session of BiH Presidency, 9 June 1992), pp. 1, 3.

13484 D428 (Minutes of 4th expanded meeting of Bosnian Serb Presidency, 9 June 1992).

the Prosecution limited the evidence it presented on these two Scheduled Incidents to those specific geographical and temporal frames. The Chamber therefore rejects the Accused's argument in this regard.

4053. The Chamber also recalls the Accused's contention that any potential shelling of Velešići on 28 and 29 May and the combat operations by the SRK around 6 June 1992 were in any event lawful either because the areas that were targeted had a heavy concentration of ABiH military hardware and personnel or because there were ongoing Bosnian Muslim military attacks against the SRK. The Chamber first notes that any military action launched in response to military attacks by the opposing party should be directed at military targets and proportionate. In this regard, the Chamber notes that Scheduled Incidents G.1 and G.2 occurred in a purely urban setting where large concentrations of civilians and civilian buildings were closely intermingled with a number of military targets. In this context, particular military prudence was warranted. Instead, as described above, the massive shellings conducted by the SRK on 28 and 29 May and around 6 June 1992 indiscriminately targeted entire civilian neighbourhoods of Sarajevo, without differentiating between civilian and military targets. [REDACTED]. Further, contrary to the Accused's reliance on the intercepted conversation of 25 May 1992 between Mladić and the unidentified JNA officer to show that the shelling of Velešići was not indiscriminate, it is clear that in this conversation, Mladić declares that "Sarajevo will shake" with more shells fired than in the entire war so far, while at the same time acknowledging the urban context of Sarajevo and the presence of civilians there. Three days later, large parts of urban Sarajevo were indeed hit with heavy artillery fire. Further, even if initially launched in response to Bosnian Muslim attacks originating from specific locations in Sarajevo, the Chamber finds, relying in particular on the evidence of Wilson, that the shellings by the SRK on 28 and 29 May and around 6 June 1992 were carried out in a disproportionate manner. Accordingly, the Chamber rejects the Accused's assertions in this regard.

4054. Based on the foregoing, the Chamber finds that from 28 May to 29 May 1992, in response to attacks by the ABiH, the SRK subjected the entire city of Sarajevo, including the largely Bosnian Muslim populated areas of Pofalići, Vratnik and Velešići to indiscriminate and disproportionate shelling and that as a result of this shelling, a number of civilians were injured, and various civilian buildings and structures, including the State Hospital, were extensively damaged or destroyed.

4055. The Chamber also finds that between the night of 5 June and 8 June 1992, in response to an ABiH attack, the SRK subjected the entire city of Sarajevo, including the old city centre, Vratnik, Baščaršija, Logavina, Bistrik, Sedrenik, Vasin Han, and Hrid-Jarčedoli to indiscriminate and

[13485] D1509 (Radovan Karadžić's letter to UN Secretary General, 10 June 1992), p. 1.

disproportionate shelling, as a result of which a number of civilians were killed or injured, and various civilian buildings and structures, including the Music Academy, were extensively damaged or destroyed.

### (B) Southwestern suburbs: Dobrinja and Alipašino Polje

#### (1) Confrontation lines and artillery in the area

4056. The Chamber has already discussed above, in the section on Scheduled Sniping Incidents in Sarajevo's southwestern suburbs, the exact location and the lay out of those suburbs, as well as the confrontation lines in the area during the conflict.[13486] For that reason, the Chamber will not repeat the same evidence here but recalls that the confrontation line ran along the road between the apartment blocks referred to as Dobrinja 3 and Dobrinja 4.[13487] Dobrinja 1, Dobrinja 4 and the Airport Settlement were under Serb control,[13488] as the Ilidža Brigade's zone of responsibility ran from Dobrinja, across the Airport Settlement, Nedžarići, along the Dobrinja River, Pijačna street, and the railroad to Miljacka River.[13489] The 1st Battalion of the Ilidža Brigade was positioned in Nedžarići,[13490] while the 5th Battalion was positioned to the southeast of the 1st Battalion, near the airport.[13491] To the west of Dobrinja the confrontation line ran through the former "Energoinvest" complex in Ilidža and Stup.[13492] The 1st Sarajevo Mechanised Brigade of the SRK had its positions to the southeast of Dobrinja in the direction of Lukavica, and to the northeast, in Grbavica.[13493]

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13486 *See* Section IV.B.1.b.iii.B: Southwestern suburbs: Dobrinja and Alipašino Polje.

13487 Slavica Livnjak, P493 (Transcript from *Prosecutor v. D. Milošević*), T. 873; Sanija Dževlan, P2291 (Transcript from *Prosecutor v. Galić*), 3515–3516, 3528–3529; P2294 (Map of Sarajevo marked by Sanija Dževlan).

13488 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 20; Youssef Hajir, T. 8806 (1 November 2010); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac). *See* Adjudicated Fact 91.

13489 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 14; D2589 (Map of Sarajevo marked by Vladimir Radojčić); Stanislav Galić, T. 37162–37168 (15 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); D3382 (Map of Sarajevo).

13490 D2479 (Witness statement of Mile Sladoje dated 25 November 2012) para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 14; Mile Sladoje, T. 30562–30563 (28 November 2012).

13491 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 34; D2555 (Map of Sarajevo marked by Svetozar Guzina).

13492 Milomir Šoja, P1633 (Transcript from Prosecutor v. *D. Milošević*), T. 5122–5124, 5126, 5144–5145; Milomir Šoja, T. 7215–7217, 7219 (30 September 2010) (stating that Osjek and Ilidža were under the control of the SRK, but most of Stup, including the cold storage facility, was occupied by the ABiH); D676 (Map of Sarajevo marked by Milomir Šoja). *See also* David Harland, T. 2018 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 30; P842 (VRS map of Sarajevo, 31 August 1995); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 6, 14, 16–17; D2589 (Map of Sarajevo marked by Vladimir Radojčić).

13493 D2412 (Witness statement of Savo Simić dated 4 November 2012) para. 12; D2413 (Map of Sarajevo marked by Savo Simić); D2341 (Witness statement of Dušan Škrba dated 14 October 2012) para. 8; D2342 (Map of Sarajevo marked by Dušan Škrba).

4057. The 1st Battalion of the Ilidža Brigade had in its arsenal 82 and 120 mm mortars.[13494] The mortar batteries of the battalion were located around the Faculty of Theology.[13495] The 1st Mechanised Sarajevo Brigade's mixed artillery division was equipped with a collection of armaments, including three 120 mm D30 howitzer batteries, two 122 mm self-propelled Gvozdika howitzer batteries, one 128 mm Plamen multiple rocket-launcher (VBR) battery, and two 120 mm mortar batteries.[13496]

4058. Alipašino Polje was on the ABiH side of the confrontation line, which separated it from the Serb-held Nedžarići.[13497] As discussed earlier,[13498] the ABiH units opposing the Ilidža Brigade belonged to the 101st Brigade of the 1st Corps of the ABiH, positioned in Alipašino Polje and Vojničko Polje, and the 102nd Brigade of the 1st Corps of the ABiH located in Stup.[13499] The 5th Motorised Brigade of the 1st Corps, later known as the 155th Brigade, was located in Dobrinja.[13500] Beyond the Sarajevo airport, to the southwest of the Ilidža Brigade's positions, the 104th Brigade of the 1st Corps of the ABiH occupied the areas of Butmir and Sokolović Kolonija.[13501] According to

13494 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 6; Vladimir Radojčić, T. 31236 (11 December 2012).

13495 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 6; D2481 (Map of Sarajevo marked by Mile Sladoje). There were some inconsistencies in the evidence of the witnesses called by the Accused as to whether the brigade had mortars around the Institute for the Blind. *See* D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 27; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 1–2; 111. *See also* P1058 (ABiH map).

13496 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 9. The command post of the mixed artillery division and a battery of the division rocket launchers were located in the Uzdojnica village sector. The brigade's 120mm mortar batteries were based in Prljevo Brdo and Uzdojnica sectors, and the howitzer artillery pieces were located in Tilava, Petrovići, and Klek villages. D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 12; D2413 (Map of Sarajevo marked by Savo Simić).

13497 *See* Adjudicated Facts 83, 84; Richard Mole, T. 5842–5845 (17 August 2010); P1430 (Map of Sarajevo marked by Richard Mole); D537 (Map of Sarajevo marked by Richard Mole); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30563–30564 (28 November 2012); P6009 (Map of Sarajevo marked by Mile Sladoje); D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), paras. 34–35; D2555 (Map of Sarajevo marked by Svetozar Guzina); D2556 (Map of Sarajevo marked by Svetozar Guzina). The portion of Nedžarići east of Ante Babića street and south of Đure Jakšića street (now renamed Adija Mulaobegovića) was under the ABiH control, however. *See* Adjudicated Fact 85.

13498 *See* paras. 3787–3788, 3792.

13499 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 7; D2480 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30569 (28 November 2012); P6011 (Photograph of Sarajevo marked by Mile Sladoje); P6012 (Photograph of Sarajevo); D1384 (Map of ABiH positions in Sarajevo marked by Asim Džambasović). *See* Adjudicated Fact 83. Džambasović testified that a number of ABiH units changed their names throughout the war but in 90% of the cases did not change their disposition. The 6th Mountain Brigade and the 105th Brigade merged to form the 101st Brigade while the 3rd Motorised Brigade became the 102nd Brigade. Asim Džambasović, T. 15194, 15200, 15202 (22 June 2011).

13500 Asim Džambasović, T. 15194, 15220 (22 June 2011); D1379 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Mirza Sabljica, T. 7835–7836 (13 October 2010); Dragomir Milošević, T. 32523 (23 January 2013).

13501 Asim Džambasović, T. 15229–15230 (22 June 2011); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović).

Sladoje, all ABiH positions were in civilian areas where people lived in apartment buildings and there was not a single "entirely civilian settlement" that did not have a military target in it.[13502]

4059. Rose testified that by February 1994, Dobrinja had been "utterly destroyed" as the Bosnian Serbs had it completely surrounded and would fire directly into Dobrinja, thus forcing the residents to live in their basements.[13503]

(2) Dobrinja, 1 June 1993 (Scheduled Incident G.4)

4060. The Indictment alleges that on 1 June 1993, two shells were fired upon a crowd of approximately 200 persons who were watching and participating in a football game in a parking lot bordered on three sides by residential apartment blocks and on the fourth side by the Lukavica road in residential settlement, Dobrinja IIIB.[13504] The Indictment further alleges that the origin of fire was VRS/SRK-held territory approximately to the east-southeast and that over 10 people were killed and approximately 100 were wounded.[13505] In its Final Brief, the Prosecution alleges that two 81 or 82 mm calibre mortar shells exploded in this incident, killing 10 and wounding approximately 100 people.[13506] The Accused argues that the incident did not actually take place at the site where it is alleged to have occurred.[13507] He also argues, that the shells did not come from SRK-held territory and further, regardless of their origin, that the location of the incident was a legitimate military target.[13508]

4061. On 1 June 1993, a sunny day, a football tournament was organised in Dobrinja IIIB.[13509] The football pitch was set up in the corner of a parking lot, which was bounded by six-storey apartment blocks on three sides and on the fourth side, which faced the north, by Mojmilo Hill; it was not visible from any point on the SRK side of the confrontation line.[13510] Around 200 spectators, including women and children, gathered to watch the teams play.[13511] There were ABiH

13502 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30571 (28 November 2012). According to Sladoje and another officer Svetozar Guzina, the following were military targets located in the territory controlled by the ABiH: Standard, Zora, Bitumenka, Oslobođenje, student dormitories, the Geodesic Institute, the Vodovod building in Majdan street, Prvomajska street, Geteova street, Radio Television building, and Fatima Gunić School. D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 18, 25; D2482 (Map of Sarajevo marked by Mile Sladoje); Mile Sladoje, T. 30571–30573 (28 November 2012); D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 46.

13503 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 36.

13504 Indictment, Scheduled Incident G.4.

13505 Indictment, Scheduled Incident G.4.

13506 Prosecution Final Brief, Appendix C, para. 50.

13507 Defence Final Brief, paras. 2003–2005.

13508 Defence Final Brief, paras. 2007–2011

13509 *See* Adjudicated Facts 245, 246.

13510 *See* Adjudicated Facts 247, 268.

13511 *See* Adjudicated Fact 248.

soldiers present at the parking lot, who were off-duty, unarmed, and not engaging in any military activity.[13512] Ismet Fazlić was the referee of the second match.[13513] About 10 to 20 minutes into that game, shortly after 10 a.m., the first shell landed among the players in the centre of the pitch.[13514] Fazlić was hit by shrapnel and sustained serious injuries in both legs and other parts of his body.[13515] There were eleven young men on the ground, eight of whom died on the spot.[13516] Omer Hadžiabdić who was 15 years old at the time, was watching the match from the overturned cars when the first shell struck the football pitch.[13517] He was wounded by shrapnel in his leg.[13518] Nedim Gavranović, who was 12 years old at the time, was standing behind one of the goals when he heard the first explosion and felt a very strong blow.[13519] He sustained an entry and exit wound in his right lower leg caused by shrapnel.[13520] A second shell landed at almost the same spot within seconds of the first shell.[13521] It fell in front of a young man and tore his leg off.[13522] There were many wounded people on the ground.[13523]

4062. On the same day, the 5th Motorised Brigade of the ABiH sent its daily report to the Command of the 1st Corps of the ABiH in which it reported that two 82mm mortar shells had fallen in its zone of responsibility on a parking lot where football was being played.[13524] It was reported that six soldiers and five civilians lost their lives, whilst 55 soldiers and 32 civilians were wounded.[13525] Similarly, the National Security Service of the RS MUP's Ilidža War Department reported on the incident on the same day, noting that 10 to 20 persons were killed and 50 ABiH soldiers were wounded when 2 shells fell during a football match on a parking lot in Dobrinja III.[13526]

4063. The next day, the BiH Presidency ordered the ABiH Supreme Command Staff to investigate this incident.[13527] The Supreme Command reported back to the Presidency on 6 June that the

13512 *See* Adjudicated Fact 267.
13513 *See* Adjudicated Fact 250.
13514 *See* Adjudicated Fact 251.
13515 *See* Adjudicated Fact 252.
13516 *See* Adjudicated Fact 253.
13517 Adjudicated Fact 254.
13518 *See* Adjudicated Fact 255.
13519 Adjudicated Fact 256.
13520 Adjudicated Fact 257.
13521 *See* Adjudicated Fact 258.
13522 Adjudicated Fact 259.
13523 Adjudicated Fact 260. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 44; P1868 (BBC news report re shelling of Dobrinja on 1 June 1993).
13524 D1272 (5th Motorised Brigade combat report, 1 June 1993), pp. 1–2.
13525 D1272 (5th Motorised Brigade combat report, 1 June 1993), pp. 1–2.
13526 D341 (RS MUP Ilidža report re ABiH, 1 June 1993).
13527 D1397 (Letter from BiH Presidency to ABiH Supreme Command Staff, 2 June 1993).

football tournament was organised by a group of ABiH soldiers from the 5th Motorised Brigade, that the game was attended by a large number of civilians, children, and ABiH soldiers, and that 12 people (seven of whom were soldiers) were killed, while 101 people (51 of them combatants) were injured; the report also noted that the shells were fired from the direction of Lukavica.[13528] Former ABiH General Asim Džambasović[13529] testified that he knew about this incident and that the superior command criticised assembling of that type, as it was not reasonable at that time to organise sports activities.[13530]

4064. The UNPROFOR soldiers went to the site to perform shell crater analysis as soon as they heard of the incident.[13531] Captain Houdet conducted the analysis[13532] and found that the splinter pattern in what he referred to as "Crater 1" indicated that the projectile was at least an 81 mm mortar shell and that it had a bearing to the origin of fire of 143 degrees (2500 mils).[13533] He found that the splinter pattern in what he termed "Crater 2" indicated a mortar shell of the same calibre, but with a bearing to the origin of fire of 138 degrees (2420 mils).[13534] Houdet concluded that due to the crater fragments and the buildings surrounding the football pitch, the projectiles could only have been mortar shells with the only possible origin of fire in the direction of the SRK-held territory, to the south, southeast.[13535] Houdet observed that there was no fuse furrow in either of the craters due to macadam surface, which is why the precise angle of descent and the range of the shells could not be determined.[13536] Nevertheless, he concluded that if fired at the minimum range, the 81 mm shell that created Crater 1 would have originated approximately 300 metres south of Lukavica Barracks.[13537] UNPROFOR commander, Lieutenant-General Morillon, faxed the

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13528 D1398 (Report of ABiH Supreme Command Staff, 6 June 1993). *See also* Adjudicated Fact 261. The second ABiH Supreme Command report of 9 June 1993 clarified that Fazlić was one of the eight organisers of the game, and that the Supreme Command was taking steps to document the responsibility of the organisers of the event. D1399 (Report of ABiH Supreme Command Staff, 9 June 1993).

13529 From November 1992 Džambasović served as Chief of Staff of the 1st Corps of the ABiH. In August 1993 he transferred to the General Staff of the ABiH. *See* Asim Džambasović, T. 15188 (22 June 2011).

13530 Asim Džambasović, T. 15288 (23 June 2011).

13531 P6060 (Record of interview with KDZ185), e-court p. 20; KDZ185, T. 4213 (28 June 2010).

13532 KDZ185, T. 4214 (28 June 2010) (private session); T. 4268 (29 June 2010) (private session); P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 9–11.

13533 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 9.

13534 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 9.

13535 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 9–11; KDZ185, T. 4215 (28 June 2010); T. 4268–4269 (29 June 2010) (private session); P6060 (Record of interview with KDZ185), e-court p. 20.

13536 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 9.

13537 Houdet calculated that for a shell to clear the buildings surrounding the incident site it would have to have a minimum angle of descent of 40.5 degrees. Noting that the minimum angle of descent for 81 and 120 mm mortars is around 45 degrees, he calculated that at that angle the minimum range for an 81 mm mortar would have been 1,120 metres. P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 2, 9–11.

Accused just after midnight on 2 June 1993 informing him that "the shelling this morning in D[obrinja] caused the deaths of a number of innocent women and children".[13538]

4065. The UN Commission on War Crimes investigated the incident some 27 days later and published a preliminary report on 7 July 1993 prepared by two Canadian officers.[13539] Having analysed Houdet's report, they concluded that the incident occurred at approximately 10:20 a.m., that two mortar shells of minimum 81 mm calibre fell at the scene of the incident, and that they were fired from the direction of SRK-held Lukavica.[13540]

4066. The officers also interviewed two men wounded in the incident, namely Zlatan Steković and Eldin Zornić.[13541] Steković told them that the day of the incident was clear and sunny, with good visibility.[13542] He also told them that despite the frontline being only 100 to 150 metres away, the site could not be seen from the Serb positions due to the height of the apartment buildings around the parking lot where the game was played.[13543] Zornić told the officers that he was in the ABiH and knew that there were no military targets within one kilometre of the scene.[13544] He corroborated Steković's remarks that there was no direct line of sight from the Serb positions to the scene of the incident.[13545] Zornić also speculated that the shells came either from Lukavica or Nedžarići.[13546]

4067. The officers were given a casualty list by the Bosnian State Commission for War Crimes from which they concluded that 13 persons were killed in this incident, while 133 were injured.[13547] During their investigations, the two officers used a copy of the UNPROFOR map of Dobrinja, which indicated that the ABiH had mortars approximately 500 metres from the site of the incident,

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13538 P5059 (Fax from UNPROFOR to Radovan Karadžić, 2 June 1993). The SRK Liaison Officer to UNPROFOR, Milenko Inđić, testified that he did not receive any protests in relation to this incident. D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 130.

13539 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 1–2, 9–11. *See also* KDZ185, T. 4268 (private session), T. 4285–4286 (29 June 2010).

13540 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 7, 9.

13541 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 2–3, 12–35. Another eye-witness to the incident also provided information that the first shell fell near the perimeter, whilst the second fell almost in the centre of the football pitch. He further told them that at first he thought they were 82 mm mortar shells but he later found parts of a 60 mm mortar shell at the site. P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 6–7, 57–59.

13542 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 3–4.

13543 He also opined that the cheering of the substantial crowd could have been heard at the confrontation lines and that there were no military targets in the area. *See* P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 3–4.

13544 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 4.

13545 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 4.

13546 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 4.

13547 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 4.

outside of the Dobrinja Hospital.[13548] However, when inspecting the area the two officers did not see the mortars in question.[13549] When asked about these mortars, KDZ185 testified that ABiH mortar positions continually moved and had no fixed location.[13550]

4068. The CSB Sarajevo could not conduct the forensic investigation of this incident during the war due to "incessant attack operations" but conducted it two years later,[13551] in November 1995 upon request of the Prosecution.[13552] Ballistic experts Sabljica, Međedović, and Kučanin, amongst others, conducted the investigation in the presence of an eyewitness to the event, Refik Sokolar, and a Prosecution investigator.[13553] According to Sabljica and Međedović's ballistics report, two shells fell on the parking lot, one landing on the parking lot tarmac surface and the other on the soil surface next to the parking lot.[13554] Based on the size of the marks on the tarmac surface, it was determined that the shell that landed on the tarmac was an 82 mm shell.[13555] Using the central axis analysis, the investigators concluded that the shell came from a southeasterly direction (the azimuth being 110 degrees from the north).[13556] The point of impact of the second shell was not examined

13548 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 6, 52, 55–56.

13549 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 6.

13550 KDZ185, T. 4283 (29 June 2010). *See also* John Hamill, P1994 (Transcript from Prosecutor v. *Galić*), T. 6168; John Hamill, T. 9697–9698 (13 December 2010).

13551 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 3. The Chamber notes that the report of the UN Commission on War Crimes states that CSB Sarajevo did not conduct an investigation because it considered the UNPROFOR's investigation sufficient. *See* P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 5; KDZ185, T. 4282 (29 June 2010).

13552 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 3; Mirza Sabljica, T. 7726 (12 October 2010). Sabljica conceded that having an investigation two or three years later posed certain problems but explained that there was no mechanical intervention with the crater that they examined at the time of the on-site investigation; it was only later on that a red substance was poured into it, as was done all over Sarajevo (making the so-called "roses of death"), which made the crater more visible but also removed some of the traces. Mirza Sabljica, T. 7842, 7873–7874, 7881, 7883 (13 October 2010).

13553 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 3. *See also* Mirza Sabljica, T. 7836 (13 October 2010).

13554 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 3. *See also* Mirza Sabljica, T. 7849–7854, 7867 (13 October 2010); D757 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); D761 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica).

13555 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 5. *See also* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 18–19. Sabljica confirmed on cross-examination that he was not informed that an eye-witness had reported finding fragments of 60 mm calibre shell on the scene. *See* Mirza Sabljica, T. 7867–7870 (13 October 2010); P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court p. 57.

13556 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), pp. 4–5. *See also* Mirza Sabljica, T. 7724–7731 (12 October 2010), T. 7840–7844 (13 October 2010); P1730 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1731 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1732 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1733 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); D753 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 18–19.

due to the changed appearance of the soil surface.[13557] Sabljica confirmed that the report purposefully did not state which of the two armies fired the shell.[13558]

4069. Sabljica further testified that the separation line was some 300 to 400 metres away from the incident site, noting that Dobrinja was divided between the two sides.[13559] He also explained that Mojmilo Hill, which is north and northwest of the incident site, was under ABiH control, while the "Aerodromsko naselje" in Dobrinja, which is west and southwest of the incident, was under SRK control.[13560] Finally, he explained that the minimum distance from which an 82 mm mortar shell can be fired is 600 to 650 metres, but that it gives "best results" at 4,200 metres.[13561] During cross-examination he conceded that with a zero charge an 82 mm calibre mortar has a range of 80 metres.[13562]

4070. Higgs visited the incident site accompanied by the Prosecution and "examined the two craters in question",[13563] which were filled in with a red substance thus making a detailed crater analysis impossible.[13564] However, he also noted that "enough of the crater is still present to draw some conclusion," namely the minimum angle of descent necessary to clear the surrounding buildings.[13565] Having examined the two craters, Higgs agreed with the findings made by Houdet.[13566] He noted that eye-witnesses said they heard the sound of a weapon firing and that the confrontation line was some 200 metres away from the incident site.[13567] In his view, this meant

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13557 P1699 (BiH MUP Report re shelling of Dobrinja on 1 June 1993), p. 5. *See also* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 19.

13558 Mirza Sabljica, T. 7878 (13 October 2010).

13559 Mirza Sabljica, T. 7858–7865 (13 October 2010); D759 (Map of Sarajevo marked by Mirza Sabljica); D760 (Map of Sarajevo marked by Mirza Sabljica).

13560 Mirza Sabljica, T. 7858–7860, 7867 (13 October 2010); D757 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica); D758 (Map of Sarajevo marked by Mirza Sabljica); D761 (Photograph re shelling of Dobrinja on 1 June 1993 marked by Mirza Sabljica).

13561 Mirza Sabljica, T. 7866–7867 (13 October 2010).

13562 Mirza Sabljica, T. 7869–7872 (13 October 2010); D762 (Excerpt from JNA manual).

13563 Richard Higgs, T. 6012 (19 August 2010) (testifying that both rounds fell in the area of the improvised football pitch made of tarmac).

13564 Richard Higgs, T. 6005–6006 (19 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 7. Sabljica agreed with the Accused that Higgs' reference to two craters was unusual, because only one shell landed on the tarmac according to his recollection. He opined that the craters examined by Higgs may be related to other incidents. *See* Mirza Sabljica, T. 7881–7883 (13 October 2010).

13565 Richard Higgs, T. 6006–6007 (19 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 7.

13566 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 7.

13567 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 7. Sabljica testified that in order for a witness to hear a shell being fired, they would have to be some 50 to 100 metres away from the origin of fire. However, he explained that information about witnesses hearing the firing was usually not taken into account by his team because it was a subjective opinion that should be taken with a grain of salt. *See* Mirza Sabljica, T. 7855–7858, 7872–7873 (13 October 2010).

that the mortar was not far away and was firing on low charge to reduce the time of flight and increase accuracy.[13568]

4071. Higgs was also of the view that the purpose of those firing the mortar was to "harass" those present at the incident site because more than two shells would have been fired if the intention was to neutralise a certain target or the nearby water plant.[13569] He thought that, rather than being an accident, this was a deliberate attack as the frontline was not far and the football match was not carried out covertly.[13570] Higgs commented that given the closeness of the two rounds it was probable that the same mortar battery fired both rounds and agreed with Houdet's conclusion that the mortar rounds must have been fired from the Serb side of the confrontation lines.[13571] Based on the statements of witnesses who heard the mortar fire, he came to the conclusion that the mortar battery may well have been situated in an area hidden from observation in the area of Lukavica Barracks to the southeast of Dobrinja.[13572]

4072. Hogan, accompanied by Fazlić, recorded the GPS co-ordinates and filmed the locations where the shells impacted in this incident.[13573] On cross-examination, he testified that he was aware of—and disagreed with—the conclusion by the CSB Sarajevo team in 1995 that the second shell fell in soft soil next to the parking lot.[13574]

4073. John Hamill, an officer in the Artillery Corps of the Irish Army who served as an UNMO in Sarajevo from May until June 1993[13575] visited the site at the request of the Prosecution on 18 September 2001.[13576] He stated that the craters were old but largely preserved, despite having been filled with red substance.[13577] He found that the easternmost crater, which he termed "Crater

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13568 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 7.

13569 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 4, 7–8 (also observing that the water plant was too far away from the point of impact).

13570 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8.

13571 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8.

13572 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8.

13573 D1005 (Video footage re shelling of Dobrinja on 1 June 1993); Barry Hogan, T. 11205–11206, 11277–11278 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

13574 Barry Hogan, T. 11278–11281 (3 February 2011).

13575 During his time in Sarajevo, Hamill worked exclusively in the SRK–held territory to the north and south of the city P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2; John Hamill, T. 9673–9674 (13 December 2010); John Hamill, P1994 (Transcript from *Prosecutor v. Galić*). T. 6111, 6114.

13576 Hamill was accompanied by Hogan and Fazlić. *See* P1995 (Supplemental information sheet for John Hamill, 18September 2001), e-court p. 2; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*). T. 6114; John Hamill, T. 9689 (13 December 2010).

13577 Hamill thought that the red substance preserved the crater and enabled him to do a reasonable job of determining what type of weapon was used and from where. *See* John Hamill, T. 9689–9693 (13 December 2010); P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2; John Hamill, P1994 (Transcript from Prosecutor v. *Galić*). T. 6114, 6116–6117.

1", was better preserved than the other crater, which he termed "Crater 2", but that the red substance now prevented the precise determination of whether the craters were made by gun or mortar.[13578] With Crater 1, Hamill observed traces characteristic of a gun or howitzer shell, but also noted that this did not mean that the crater was not caused by a mortar.[13579] He determined that the projectile that created Crater 1, be it a gun or a mortar shell, was fired from an approximate direction of 2,200 mils, plus or minus 150 mils, that is generally east-southeast of the impact site.[13580] With respect to Crater 2, Hamill was only able to conclude, based on its shape that it appeared to have come from the same direction as Crater 1.[13581] In relation to the exact origin of fire, Hamill observed that both rounds originated from a bearing that runs through the area of Toplik, where SRK forces had a battery of 122 mm guns which were monitored by the UNMOs at the time.[13582] He believed that the SRK also operated 82 mm mortars in Toplik.[13583]

4074. Hamill testified that the minimum angle of descent necessary for the projectiles to have cleared the surrounding buildings and landed on the site indicates that they could have been fired from either a mortar or a howitzer.[13584] He further commented that the UN team came up with two different bearings, indicating that the weapons may have been fired at some distance from each other.[13585] He equated this to his own findings, noting that he had a specific bearing for Crater 1 and a more indeterminate bearing for Crater 2 but that both rounds generally came from the same direction.[13586] When asked to compare the bearing determined by the CSB Sarajevo team to the bearings determined by him and by the UNPROFOR investigators, Hamill stated that the difference

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13578 P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2. Hamill could not explain why the CSB Sarajevo investigation team in 1995 only found and examined one crater in the asphalt. He was adamant that he saw two craters in the tarmac in 2001, one more obvious than the other. *See* John Hamill, T. 9708 (13 December 2010).

13579 Hamill also stated that if Crater 1 was created by a mortar, a medium mortar was probably used. P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*). T. 6114–6115, 6172; John Hamill, T. 9693—9694, 9713, 9722 (13 December 2010).

13580 P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*). T. 6114–6117; John Hamill, T. 9693 (13 December 2010).

13581 P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2.

13582 P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*). T. 6115, 6123, 6172–6173.

13583 P1995 (Supplemental information sheet for John Hamill, 18 September 2001), e-court p. 2.

13584 John Hamill, T. 9699–9700 (13 December 2010). Hamill also testified that the higher the angle of descent, the shorter the range from which the projectile was fired. When shown a photograph of the more preserved crater taken by the CSB Sarajevo investigators two years after the incident, he confirmed that its pattern was consistent with a higher angle of descent—assuming the damage was caused by a shell. However, if caused by a "mortar bomb" then the pattern did not indicate a high angle of descent. *See* John Hamill, T. 9700–9701, 9707–9710, 9716–9719 (13 December 2010).

13585 John Hamill, T. 9699–9700 (13 December 2010). When asked by the Chamber to comment on the firing capabilities of mortars, Hamill testified that it is possible to fire two rounds from the same tube within seconds of each other and then to have these rounds come down quite a distance away from each other. *See* John Hamill, T. 9702 (13 December 2010).

13586 John Hamill, T. 9700 (13 December 2010).

was not as large as it seemed as all of these bearings would fall in the same area, that is "somewhere in east of southeast".[13587]

4075. Zorica Subotić visited the site of the incident in September 2010.[13588] She challenged the alleged location of the incident, stating that the match was not played on the parking lot but rather "on a five-a-side pitch located near the parking lot",[13589] leading her to conclude that Fazlić falsely indicated the location of the football pitch to investigators.[13590] She argued that, in addition, instances of imprecision within Houdet's report cast doubt on the accuracy of his analysis and even on whether he actually visited the scene of the incident at all.[13591] Further, a number of witnesses who provided locations of the craters to investigators were contradicted by the CSB Sarajevo report which referred to only one crater on the asphalt surface of the parking lot.[13592] Subotić argued that the second crater "was probably made by hand after 21 November 1995" and thus was not in existence when Houdet examined the scene.[13593]

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13587 John Hamill, T. 9715–9716 (13 December 2010).

13588 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 63.

13589 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 55–62, 72–73, 156. Subotić based this claim on eyewitness statements and the Fédération Internationale de Football Association ("FIFA") rules of the game. According to her, the game roughly corresponded to FIFA's "five-a-side football game". Given that there was a sports pitch beside the parking lot, which met the requirements specified by FIFA, she thought that the game, and thus the incident, took place on that pitch. While acknowledging that video footage recorded immediately after the incident shows two goal posts on the parking lot, next to a large blood stain, she proceeded to discount this location as the scene of the incident because the size of the goal post did not correspond to the FIFA rules. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 55–62, 72–73, 156; Zorica Subotić, T. 38249–38251 (14 May 2013); D1005 (Video footage re shelling of Dobrinja on 1 June 1993).

13590 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 60–61, 157. She also claimed that the fact that the parking lot was presented by Fazlić and others as the scene of the incident could be construed "as a bid to cover up evidence". D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 65, 73.

13591 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 61–62, 68, 156–157. These imprecisions were: (i) his reference to "macadam surface" which is a road laid with crushed stone and which was not present at the incident site and (ii) Houdet's grid references for the craters which indicated a location 200 metres away from the parking lot. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 61–62; Mirza Sabljica, T. 7878–7879, 7883 (13 October 2010). With respect to (i), while Higgs testified that the English term macadam is equivalent to tarmac or asphalt, Subotić refused to accept that this was a case of linguistic confusion and maintained that macadam surface had multiple definitions. *See* Zorica Subotić, T. 38410–38412 (16 May 2013); Richard Higgs, T. 6013 (19 August 2010). As for (ii), she admitted on cross-examination that she did not know what map system Houdet used. *See* Zorica Subotić, T. 38409–38411 (16 May 2013).

13592 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 62–63, 67. These witnesses, namely Ismet Fazlić, Nedim Gavranović, and Omer Hadžiabdić, testified in the *Galić* case.

13593 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 64.

4076. While Subotić agreed on the direction of fire for this incident, namely that it came from the southeast of the incident site, she thought that it originated from ABiH-held territory.[13594] She confirmed Houdet's findings as to Crater 1, but found that the azimuth of Crater 2 was 108 degrees and claimed that it was not related to this particular incident and was also not the crater identified by Houdet as Crater 2.[13595] In addition, she noted that Houdet based his conclusions about the distance from which the shells were fired on the minimum angle of descent whereas he should have used the maximum angle.[13596] Furthermore, according to her, all the trajectories up to the maximum angle of descent could have struck the scene of the incident, meaning that the 82 mm mortar shell could have been fired from any range between 80 and 4,850 metres.[13597] She also argued that investigators from CSB Sarajevo incorrectly determined the azimuth of the crater that they examined, as they arrived at 110 degrees compared to the 143 degrees calculated by Houdet and accepted by her.[13598] Finally, Subotić concluded on the basis of the likely angle of descent of the shell, it being greater than 65 degrees,[13599] and the distance to SRK positions,[13600] that the shell that produced the crater in the parking lot during this incident was not fired from SRK positions.[13601] On cross-examination she conceded that for the shell to have been fired from ABiH

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13594 Zorica Subotić, T. 38407 (16 May 2013); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 67–74, 156–157.

13595 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 67–68.

13596 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 68–69. During cross-examination, the Prosecution agreed with Subotić that Captain Houdet should have looked at the maximum angle of descent and determined the minimum firing distance on that basis. *See* Zorica Subotić, T. 38412 (16 May 2013).

13597 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 68–69.

13598 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 72. Subotić argued that, according to a photograph of the CSB Sarajevo investigation, the investigators positioned their magnetic compass incorrectly while determining the azimuth of the crater. *See* Zorica Subotić, T 38251–38252 (14 May 2013), T. 38417–38420 (16 May 2013). The Chamber notes that the photograph in question is not clear enough to show where exactly the compass was placed by the CSB Sarajevo team. In addition, even if that was the case, it does not mean that the measurements were taken at the exact moment at which the photograph was taken.

13599 Subotić thought it was greater than 65 degrees on the basis of the appearance and the dimensions of the crater. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 70.

13600 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 57 (stating that the confrontation line was 270 metres away). *See also* Adjudicated Fact 263 which provides that the distance from the pitch to the confrontation lines in the direction of fire was approximately 300 metres. According to Subotić, the closest SRK position where a mortar could have been positioned was 400 metres to the southeast. At this range, an 82 mm shell can be fired with either primary, first, or second charge. She excluded the first and second charges because the resulting angle of descent would have been too high. She then argued that given the height of the surrounding buildings, the SRK mortars were likely to be at minimum 425 metres away from the scene, leaving a subsequent angle of descent on primary charge of 58.7 degrees, which was "manifestly smaller" than the angle at which the shell landed. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 57, 68–71.

13601 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 68–71.

held-territory to the southeast, the furthest distance from the incident site that it could have been fired from was 200 metres.[13602]

4077. Noting the different data about the number of casualties, Subotić used the report of the Supreme Command of the ABiH of 6 June 1993 to point out that 58 out of 114 casualties, or 51.8%, were ABiH personnel.[13603] She also argued that the BiH security organs suspected the incident had been staged.[13604]

4078. Galić testified that on the day of the incident a cease-fire was in place in Sarajevo.[13605] Commenting on his regular combat report for 1 June 1993, which provides that the SRK did not open fire that day, he stated that SRK forces respected the cease-fire and that had they been active in the area, this would have been stated in the report.[13606] He also stated that he neither received an order nor gave one to fire on the area, and that his command received no reports of fire being opened in the area.[13607] Galić stressed that the incident occurred "perhaps 150 metres in-depth from the confrontation line at the positions of the [ABiH]" and that close to the parking lot there was an atomic shelter which was used to house soldiers and military material, thus making the area where the mortars landed a justified and legitimate military target.[13608] In cross-examintion, however, he testified that he did not know if the fire was opened on the SRK position from the incident site on the day of the incident.[13609] He also confirmed that under normal circumstances he would not place a mortar on or even near a confrontation line nor would he fire a mortar at a target that was some 150 metres away because for calibres of up to 120 mm, the "safety zone" from which they must fire is at least 200 metres away from the target, while for larger calibres it is 400 metres.[13610] When

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13602 Zorica Subotić, T. 38407 (16 May 2013). The Chamber notes that Hamill testified that the danger radius for a 120 mm mortar is 500 metres and for an 82 mm mortar it is 250 metres. John Hamil, T. 9703 (13 December 2010). *See also* para. 3982.

13603 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 52; D1398 (Report of ABiH Supreme Command Staff, 6 June 1993), e-court p. 2.

13604 Subotić relies here on the two ABiH reports that state that the military police placed into custody a number of persons who were "suspected in connection with the mentioned shelling". *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 55. These reports make it clear that the ABiH wanted to find persons responsible for organising the tournament and therefore make no mention of ABiH soldiers staging this incident. *See* D1398 (Report of ABiH Supreme Command Staff, 6 June 1993), e-court p. 2; D1399 (Report of ABiH Supreme Command Staff, 9 June 1993), e-court p. 2.

13605 Stanislav Galić, T. 37367–37368 (18 April 2013).

13606 Stanislav Galić, T. 37370, 37373–37380 (18 April 2013); D340 (SRK combat report, 1 June 1993); D3414 (Combat report of ABiH Igman Operations Group, 1 June 1993). *But see* KDZ185, T.4272–4273 (29 June 2010).

13607 Stanislav Galić, T. 37373 (18 April 2013).

13608 Stanislav Galić, T. 37368 (18 April 2013). *See also* Adjudicated Fact 265 which provides that a nuclear shelter was located approximately 100 metres away from the parking lot behind a block of flats.

13609 Stanislav Galić, T. 37854–37855 (7 May 2013).

13610 Stanislav Galić, T. 37855–37857 (7 May 2013) (explaining that doing so would be possible where there is a large obstacle, such as a high-rise building, that would then prevent fragments from reaching the forces that opened the fire but stated that even this would be too risky).

asked if he would fire at his own faction located some 150 metres away as part of a conspiracy, he stated that it was possible but risky, and maintained that he would never order the shelling of civilians.[13611] According to Galić, given the state of affairs in Sarajevo, it was "not normal" to have a football match or similar public gatherings so close to the confrontation lines.[13612]

4079. In terms of the casualties of this incident, the Chamber received evidence that on 1 June 1993 at least 122 people were brought to the Dobrinja Hospital as a result of the incident.[13613] Due to the number of casualties, both the hospital and the morgue were over-crowded.[13614] A number of victims were thus transferred to the Koševo Hospital[13615] and State Hospital,[13616] and at least three children were taken to the surgery ward of the Children's Department at the Koševo Hospital.[13617] From the Dobrinja Hospital records it is clear that at least 27 of the victims were under the age of 18, including 4 children who died as a result of their injuries.[13618] As noted earlier,[13619] the ABiH Supreme Command investigated this incident at the request of the BiH presidency and concluded that 12 persons died in the incident, including 7 who were ABiH personnel, and that 101 persons were injured, 51 of which were ABiH soldiers.[13620] The medical records available to the Chamber also indicate that 12 people died in this incident.[13621]

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13611 Stanislav Galić, T. 37857–37860 (7 May 2013).

13612 Stanislav Galić, T. 37372–37373 (18 April 2013).

13613 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 42–51; P1869 (List of patients from Dobrinja Hospital, 1 June 1993); P1898 (List of patients admitted to Dobrinja Hospital on 1 June 1993); P1896 (Medical record for Omer Hadžiabdić). Youssef Hajir, who was the director of the Dobrinja General Hospital, testified that the hospital received "about 130 to 140 persons injured" and it is evident that it was difficult to keep adequate medical records during this period. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 2, 41–43, 63–64, 69–70.

13614 Youssef Hajir, T. 8789–8790 (1 November 2010); P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 42.

13615 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 43; Faris Gavrankapetanović, P473 (Transcript from Prosecutor v. *Galić*), T. 12615–12616, 12632; P461 (Admission records from Koševo Hospital), pp. 60–64; P462 (Surgery records from Koševo Hospital), pp. 2–4. *See also* P1868 (BBC news report re shelling of Dobrinja on 1 June 1993).

13616 P1243 (Medical reports of victims of shelling in Dobrinja III on 1 June 1993); P1873 (Medical records from Sarajevo State Hospital); P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 83; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 118.

13617 P818 (Extracts from Fatima Zaimović's diary), p.12; Fatima Zaimović, T. 1876–1878 (5 May 2010); P1869 (List of patients from Dobrinja Hospital, 1 June 1993), pp. 7, 11–12.

13618 P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 42–51.

13619 *See* para. 4063.

13620 D1398 (Report of ABiH Supreme Command Staff, 6 June 1993); D1399 (Report of ABiH Supreme Command Staff, 9 June 1993); D1397 (Letter from BiH Presidency to ABiH Supreme Command Staff, 2 June 1993). The Chamber also notes that RS MUP acquired intelligence about the incident and was informed that between 10 and 20 persons were killed, including nine of whom were ABiH soldiers, and additionaly 50 ABiH members were wounded in the incident. *See* D341 (RS MUP Ilidža report re ABiH, 1 June 1993).

13621 These individuals were Dragan Osadcij, Asim Zagorica, Adnan Mirvić, Refik Ramić, Alija Gojak, Jusuf Ražić, Atif Bajraktarević, Marko Žižić, Damir Trebo, Adel Selmanović, Mirza Deljković and Munir Šabanović. P1053 (UN Report re shelling of Dobrinja on 1 June 1993), e-court pp. 42, 46, 48, 51; P1869 (List of patients from Dobrinja Hospital, 1 June 1993), pp. 2, 5–6, 12–14; P1872 (Death certificates from Dobrinja Hospital); P1888 (Death certificate for Asim Zagorica); P1889 (Death certificate for Atif Bajraktarević); P463 (Koševo Hospital

4080. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of the following adjudicated facts that go to the origin and the nature of fire in this incident: (i) the shells that hit the football pitch were of at least 81-82 mm calibre and originated from the direction east-southeast, within SRK-held territory;[13622] (ii) the headquarters of ABiH 5th Motorised Brigade was not in the area of the parking lot in Dobrinja IIIB settlement where the football pitch was set up, but in the Dobrinja II settlement;[13623] and (iii) the atomic shelter was not the intended target of the attack.[13624].

4081. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that two shells of at least 81 mm calibre struck the parking lot in the Dobrinja IIIB residential settlement on 1 June 1993. The Chamber recalls that Subotić challenged this location, claiming that the football match was played on a purpose-built sports pitch beside the lot. Her claim, however, ignores the considerable evidence indicating that the match was in fact played on the parking lot. Furthermore, the Chamber considers her proposition that the residents of Dobrinja would have being playing soccer governed by the FIFA rules unacceptable given the wartime circumstances at the time and the fact that the primary concerns of the organisers was to find a location that would be protected from the view of the SRK forces. Accordingly, the Chamber considers that this type of analysis has seriously damaged Subotić's credibility both generally and specifically with respect to this incident.

4082. Relying on the medical evidence and the ABiH Supreme Command investigation discussed above, the Chamber finds that the explosion caused by the two shells on 1 June 1993 resulted in 122 casualties, at least 12 of whom died as a result of their injuries.

4083. In terms of the direction and origin of fire, the Chamber recalls that the UNPROFOR investigators came to the scene on the day of the incident and thus were able to observe the traces of the two points of impact, arriving at the conclusion that the shells originated from the south-southeast of Dobrinja.[13625] As noted above, a team from CSB Sarajevo conducted forensic examination at the incident site in November 1995 but examined only one point of impact, also

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morgue records), pp. 9–10. *See also* D1398 (Report of ABiH Supreme Command Staff, 6 June 1993); D1399 (Report of ABiH Supreme Command Staff, 9 June 1993).

13622 *See* Adjudicated Fact 262.

13623 *See* Adjudicated Fact 264. The headquarters of the 5th Motorised Brigade was in the northwest of Dobrinja, approximately 150 to 200 metres west of Dobrinja Hospital. *See* Youseff Hajir, T. 8783–8786 (1 November 2010); P1867 (Map of Sarajevo marked by Youssef Hajir); Asim Džambasović, T. 15247–15249 (22 June 2011); D1384 (Map of ABiH positions in Sarajevo marked by Asim Džambasović).

13624 *See* Adjudicated Fact 266.

13625 The Chamber does not accept Subotić's suggestion that a second crater on the parking lot was made by mechanical intervention as it is clear from the evidence that both shells landed on the asphalt surface of the parking lot.

concluding that the projectile in question originated from a southeasterly direction. This was then confirmed by Higgs and Hamill who thought that southeast was the direction from which the fire came. Finally, even Subotić agreed that at least one of the incident-related shells originated from the southeast. Accordingly, the Chamber is convinced that both shells came from that direction.

4084. As far as the origin of fire is concerned, the precise angle of descent for the shells could not be determined at the incident site and therefore the shells may have originated anywhere along this trajectory to the southeast of Dobrinja. The Chamber notes that the UNPROFOR, CSB Sarajevo, and Hamill all concluded that the shells originated from the SRK-held positions to the south of Lukavica. In contrast, Subotić concluded that the fire originated from ABiH-held positions along this same trajectory. Given the location of the incident site and the confrontation line to the southeast,[13626] the furthest distance from the incident site that the shells could have been fired from if they had originated in ABiH-held territory was 200 metres.[13627] In this respect, the Chamber recalls the evidence of Hamill and Galić in relation to danger radii and safety zones and that it would have been unsafe and extremely risky to fire a medium calibre shell at a target that is less than 200 metres away.[13628] Thus, the fire must have originated in an area that was further than 200 metres away from the incident site in the approximate direction of fire to the southeast. This places it firmly within the SRK-held territory.

4085. As recounted above, Galić testified that the SRK did not open fire on Dobrinja on 1 June 1993. However, the Chamber cannot accept this evidence in light of the evidence analysed above in relation to this incident, as well as the evidence about the general situation in Dobrinja and the shelling its civilian inhabitants were exposed to on a regular basis during the conflict.[13629]

4086. In terms of the nature of the area and the status of the victims, the Chamber recalls that the incident site was a parking lot within a residential settlement and that it was not visible from any point of the SRK side of the confrontation line. While an atomic shelter was located approximately 100 metres away from the parking lot, no fire was opened on the SRK from that location that day. In addition, even if it was housing soldiers and military equipment at the time as suggested by Galić, the Chamber does not consider that this shelter was the intended target in this incident as

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13626 *See e.g.* D759 (Map of Sarajevo marked by Mirza Sabljica); D760 (Map of Sarajevo marked by Mirza Sabljica). *See also* paras. 4069, 4076.

13627 *See* para. 4076.

13628 *See* para. 3982. The Chamber acknowledges that the apartment building in between the incident site and the confrontation line may have offered some protection for an ABiH unit to fire at the incident site from a position within the weapon's danger radius. It does not however consider that it is reasonable that the ABiH would have fired in the direction of its own territory, at short distance and at high elevation, as part of some conspiracy to garner international support against the VRS.

13629 *See* paras. 3783, 4059.

more than two mortar rounds would have been necessary to destroy it.[13630] Furthermore, assuming that there was an ABiH mortar battery approximately 500 metres away from the incident site, as suggested by one of the UNPROFOR maps, given the distance involved the Chamber does not consider it to have been the intended target either.

4087. The Chamber recalls that 58 of the casualties in this incident were members of the ABiH and thus were a legitimate military target. However, the Chamber also notes that, in total, around 200 spectators, including women and children, were watching the game and that an almost equivalent number of casualties in this incident were civilians not taking direct part in hostilities at the time. The Chamber recalls that the presence of soldiers within the civilian population does not deprive the population of its civilian character and that the *mens rea* of a person responsible for an attack is to be assessed according to the knowledge that he or she had at the time of launching the attack.[13631] There is no evidence as to whether the SRK units responsible for this incident knew at the time when they launched the attack that ABiH soldiers would be present at the football event or how many of them would attend, but the evidence shows that the SRK units were not able to see the incident site from their positions. However, even if the presence and the number of ABiH soldiers were known to the SRK units in advance, it must have been obvious to those launching the attack that large numbers of civilians would inevitably gather at the event given (i) that the event involved a football match, that is, a purely civilian activity; (ii) the time of the event, that is, daytime and during a period of cease-fire; and (iii) the location of the event, that is, the middle of a residential area, surrounded by residential apartment blocks. Further, the SRK's decision to fire two mortar shells at such an event, those shells being designed to suppress activity over a wide area,[13632] shows in turn that the SRK units in question did not take any precautionary measures in accordance with the laws of war. Therefore, the Chamber is convinced that this incident is an example of indiscriminate fire.

(3) Hakije Turajlića, Dobrinja, 12 July 1993 (Scheduled Incident G.5)

4088. The Indictment alleges that on 12 July 1993, an 82 mm mortar shell was fired at about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakije Turajlića (previously Aleja Branka Bujića[13633] then Spasenije Cane Babović), in Dobrinja,

13630 The Chamber also recalls that the two shells fell in quick succession to one another, landed at almost the same position, and that the second shell did not land any closer to the atomic shelter.

13631 *See* paras. 453, 457.

13632 *See* para. 3982.

13633 Indictment, Scheduled Incident G.5. While the Indictment provides that the street was called "Aleja Branka Bulića" at the time of the incident, the documentation received by the Chamber refers to "Aleja Branka Bujića", which is the correct spelling of that street's name.

which was a residential settlement.[13634] The Indictment further alleges that the origin of fire was VRS/SRK-held territory approximately to the west-northwest and that 13 people were killed and 14 were wounded.[13635] In its Final Brief, the Prosecution submits that the shell exploded at approximately 3 p.m. on a group of approximately 50 to 60 civilians queuing to gather water from a well, killing more than ten and wounding more than ten others.[13636] The Accused acknowledges that on 12 July 1993 an 82 mm calibre shell exploded in the settlement of Dobrinja leaving 27 casualties.[13637] He argues, however, that the fire originated from the north-northeast area controlled by ABiH forces.[13638] He also submits that the incident occurred about 100 metres from an ABiH command post and that no orders were issued to SRK forces during this period to open fire at this location.[13639]

4089. The Chamber has taken judicial notice of the fact that due to a water cut-off in Dobrinja, inhabitants of "C5", a settlement in Dobrinja, replenished their water supply at well-known emergency water points,[13640] one of which was located in Hakije Turajlića street.[13641] In the middle of the afternoon of 12 July 1993, a fairly clear day until 5 p.m., there were 100 or more canisters in that street.[13642] People, mostly elderly, were waiting for their turn to enter into the front yard of the house through an iron gate guarded by Enver Taslaman.[13643] Rasim Mehonić, a retiree who had been queuing with his wife and two daughters since dawn, was crouched next to Taslaman, waiting for his turn to collect water when, at approximately 3 p.m., a mortar shell exploded,[13644] and Mehonić felt the left side of his body hit by shrapnel.[13645] Next to Mehonić, Taslaman was hit on the arm and the left leg.[13646] The area around the well was then repeatedly shelled.[13647]

4090. According to the report on this incident prepared by CSB Sarajevo, on 12 July 1993, at around 3:27 p.m., in front of a family house at Aleja B. Bujića 155 in Dobrinja,[13648] a shell

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13634 Indictment, Scheduled Incident G.5.

13635 Indictment, Scheduled Incident G.5. *See also* Prosecution Final Brief, Appendix C, para. 51.

13636 Prosecution Final Brief, Appendix C, para. 51.

13637 Defence Final Brief, para. 2013.

13638 Defence Final Brief, para. 2015.

13639 Defence Final Brief, paras. 2013, 2017–2019.

13640 *See* Adjudicated Fact 271. Hajir testified that civilians in Dobrinja were deliberately targeted while waiting in line for water at those points. *See* Youseff Hajir, T. 8853 (2 November 2010).

13641 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 2.

13642 *See* Adjudicated Fact 272.

13643 *See* Adjudicated Fact 273.

13644 *See* Adjudicated Fact 274.

13645 *See* Adjudicated Fact 275.

13646 Adjudicated Fact 276.

13647 *See* Adjudicated Fact 281.

13648 The official CSB Sarajevo report refers to the site of the incident as being in front of a family house at Aleja B. Bujića 155, across the street from a block of flats at S.C. Babović street Number 6, in Dobrinja V. Later, it

impacted and exploded against the body of Zorka Simić, who was, together with around 30 others, lining up to get water.[13649] The report also provides that the CSB Sarajevo investigation team, including the ballistics expert Hamdija Čavčić, was dispatched to the scene some two hours after the incident.[13650] The team eventually found that the explosion killed 12 people, including Simić, while 15 others were injured.[13651] The report notes that the people queuing for water were warned by the police just before the incident that they should not stay at this location as the frontline was only 200 metres away.[13652]

4091. A shell stabiliser was found at the scene of the explosion, next to Simić's body, which Čavčić determined belonged to an 82 mm calibre mortar shell.[13653] Čavčić also concluded that the shell exploded some distance from the ground, "most probably upon impact with person" as there was no explosion crater at the scene, only the heavily damaged body.[13654] Further, he thought that the shell had been fired from the northwest-west, that is, from the direction of Nedžarići.[13655] According to the report, Čavčić made this conclusion on the basis of (i) traces of powder burns and mechanical damage from mortar shell fragments evident on the fence occupying the eastern side of the street; (ii) similar traces he observed on the rear seat of a green Škoda car, which was parked close to this section of the fence, facing eastwards; and (iii) the fact that the pavement to the northwest of the damaged fence showed mechanical damage forming an irregular arc towards the northwest-west.[13656]

4092. Members of the UNPROFOR also conducted an investigation at the site and prepared a report, concluding that the projectile was an 82 mm mortar shell, that it was highly probable that it came from "the Serbian party", and that it "could have been shot from corridor Nedžarići-Ilidža nord."[13657] The UNPROFOR report also noted that "the absence of a characteristic crater and

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describes the location as "B. Bujića 6", and then "155 Aleja B Bujića across the street from the entrance to apartment house at 6, Spasenija-Cana Babović street". The report of the forensic technician refers to Spasenije-Cane Babović next to number 6, while the report of the ballistics expert refers to Spasenije Cane Babović street, next to 115. *See* P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court pp. 2–6. Given that the incident took place at an intersection, the Chamber does not consider these discrepancies as to the actual address where it happened to have any bearing on the CSB Sarajevo's analysis and conclusions.

13649 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

13650 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

13651 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court pp. 3–4.

13652 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 4.

13653 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

13654 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

13655 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

13656 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

13657 P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

furrow" and the spray pattern of damage to the asphalt showed the direction of 5100 mils (northwest-west).[13658]

4093. Higgs visited the incident site and noted that, "due to the lapse of time and the fact that the mortar hit a person before striking the ground little or no evidence still exists at this site."[13659] Thus, he commented mostly on the forensic report prepared by CSB Sarajevo and agreed with the findings made therein, concluding that the calibre of the weapon fired was an 82 mm mortar from the direction of west northwest.[13660] He noted that the methodology used by CSB Sarajevo, as mentioned in the official report, was appropriate but that there would be a slightly larger margin of error because there was no crater to examine so that only the "approximate direction" from which the round came could be determined, as was indeed done.[13661] Higgs also opined that, as this area was an emergency water supply, it would be "fair to assume" that it was well known and "recorded"[13662] that it would be full of civilians.[13663] Given that only one shell was fired, which is not something that would happen if the aim was to neutralise a large area or a military target, Higgs concluded that "it is most probable that harassment was intended on the people at that location."[13664] The possibility that there was a sniper operating in the area approximately 200 metres away did not affect his opinion as the round would have been too inaccurate to target the sniper.[13665] Higgs also commented on the discovery of the shell's tail fin next to the body of one of the victims, stating that "the body would have probably stopped the fins from being blown away any further".[13666]

4094. When asked by the Accused to explain the slight difference between the directions of fire as determined by the CSB Sarajevo and UNPROFOR teams, he said that only general bearings could be determined due to the type of crater on the scene.[13667] Higgs marked two contemporaneous photographs of the scene taken by CSB Sarajevo with the evident shrapnel marks, pieces of debris,

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13658 P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court pp. 2–3, 5.

13659 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8; Richard Higgs, T. 5994 (19 August 2010). Hogan also visited the site in 2009 and took GPS readings of the location where the shell impacted. *See* Barry Hogan, T. 11205–11206 (3 February 2011); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

13660 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8; Richard Higgs, T. 5994 (19 August 2010).

13661 Richard Higgs, T. 5920 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9; P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993).

13662 On the issue of "prerecorded" targets, *see* Richard Higgs, T. 5918 (18 August 2010).

13663 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8.

13664 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 8–9.

13665 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

13666 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

13667 Richard Higgs, T. 5995–5996, 6028 (19 August 2010).

and also the explosion's likely direction of force.[13668] While doing so, Higgs opined that the shell exploded very close to the Škoda, slightly to the rear of the car, but that a definite angle of the direction of the force was impossible to determine on the basis of the photograph, including whether the force came from above or below the car.[13669]

4095. Zorica Subotić first visited the site of the incident in 2010.[13670] She testified that in her opinion the shell had come from the north or northeast, an area under ABiH control, rather than the west or northwest.[13671] In coming to this conclusion, Subotić used the azimuth of the street, which she calculated using Google Earth, as well as the central-axis method that she applied to the pattern of the damage on the pavement shown in the photographs taken by CSB Sarajevo.[13672] She argued that Čavčić misinterpreted the fragment marks that were left on the asphalt and also on the Škoda car, and that the true direction bisecting these marks actually slanted slightly eastward in relation to the pavement.[13673] In addition, according to Subotić, the analysis undertaken by Čavčić to determine the centre of the explosion was done using an unacceptable "imaginary lines" methodology.[13674] Subotić also observed that Simić's remains were located beside the rear right-

13668 D549 (Photograph marked by Richard Higgs); D550 (Photograph marked by Richard Higgs). Higgs stated that he did not use photographs as part of his analysis because of their poor quality and because some of the markings and the debris may not be visible. *See* Richard Higgs, T. 5996–5998, 6001, 6003 (19 August 2010).

13669 Higgs eventually stated, however, that the boot of the car did give the impression that some force pushed down on the boot in the right hand corner, which "may indicate that the blast could have been slightly higher than the level of the boot of the car". *See* Richard Higgs, T. 5998–5999 (19 August 2010); D549 (Photograph marked by Richard Higgs).

13670 Zorica Subotić, T. 38363 (15 May 2013).

13671 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 89, 91, 158; Zorica Subotić, T. 38367 (15 May 2013).

13672 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 81–83, 85, Figure 46; Zorica Subotić, T. 38255–38256 (14 May 2013). Subotić conducted this analysis by marking the traces of damage visible on a photograph of the scene taken by the CSB Sarajevo team. On cross-examination, she denied that she was at a disadvantage compared to Čavčić who conducted a *de visu* examination. *See* Zorica Subotić, T. 38357–38363, 38374–38379 (15 May 2013). When it was put to her that she marked more shrapnel marks at the scene (as seen on her photograph of the scene taken in 2010) than she did in the contemporaneous CSB Sarajevo photograph which she had used to determine the direction of fire, Subotić responded that she could see all the marks in the latter but only marked those necessary to show an approximate trajectory, the trajectory that was partly based on the damage to the car. *See* Zorica Subotić, T. 38380–38384 (15 May 2013), T. 38627–38630 (22 May 2013); P6319 (Photograph showing shrapnel marks marked by Zorica Subotić); D3557 (Photograph of a street marked by Zorica Subotić).

13673 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 83. In relation to the Škoda, Subotić testified that the deformation to the rear of the vehicle seen in photographs and video footage indicates that the shell exploded from a direction to the east of north. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 85–88, 92, 158; Zorica Subotić, T. 38256–38258, 38267 (14 May 2013), T. 38377 (15 May 2013). When put to her on cross-examination that the video footage was of such low quality that it was impossible to determine all those things from it, Subotić responded that she viewed it in the context of all the evidence. *See* Zorica Subotić, T. 38396–38399 (16 May 2013); P6320 (Excerpt from video footage re shelling of Hakije Turajlića on 12 July 1993).

13674 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 84–85. The Chamber notes that this methodology is not outlined in Čavčić's report but rather in his statement in the *Galić* case, which is not in evidence in this case. In his statement, as quoted in Subotić's report, Čavčić explicitly says that the team managed to determine the direction of fire based on the damage on the

hand side of a Škoda car, which indicated to her that the shell had come from the direction slightly east of the north—had the shell come from the direction as determined by Čavčić, the force of the blast would have pushed the victim either onto the car or to its left hand side.[13675] Finally, Subotić also noted that in his report Čavčić stated that the stabiliser was found next to the victim's body whereas in the video footage of the aftermath of the incident it can be seen next to the rear left tyre of the Škoda.[13676] According to Subotić, had the shell come from the west or northwest as determined by CSB Sarajevo, the stabiliser would have been on the right hand side of the car, on Simić's body.[13677]

4096. In relation to the UNPROFOR investigation, Subotić argued that their conclusions, like those of CSB Sarajevo, ran counter to evidence at the scene.[13678] In addition, she expressed concern that the UNPROFOR investigators relied on information given to them by CSB Sarajevo and therefore did not run an independent investigation.[13679]

4097. Subotić also referred to a number of witness testimonies from the *Galić* case in relation to the disposition of forces on 12 July 1993, arguing that the scene of the incident was about 120 metres from an ABiH command post.[13680] She also argued that the large numbers of canisters seen in the contemporaneous photographs and footage of the scene indicate that there was a conspiracy

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asphalt which indicated where the centre of explosion may have been. It is then that he drew imaginary lines from the damaged parts of the asphalt and noticed that they all converged on the victim's body.

13675 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 82–83, 86.

13676 P6320 (Excerpt from video footage re shelling of Hakije Turajlića on 12 July 1993); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 88–89, Figure 51.

13677 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 88; Zorica Subotić, T. 38267 (14 May 2013). In cross-examination, when it was put to her that the stabiliser could have easily ricocheted off an object after the explosion and/or could have been moved by people in the immediate aftermath of the incident, Subotić accepted that this was possible but explained that the stabiliser was just one piece of the puzzle in addition to the damage caused by the shell, which pointed her to the incoming trajectory of north or northeast. *See* Zorica Subotić, T. 38399–38406 (16 May 2013).

13678 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 81, 83, 85, 92, 158.

13679 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 81, 158. The Chamber notes that the UNPROFOR report provides that an 82 mm mortar shell fin found at the site was given to the UN officers by local police officials. *See* P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court, p. 2. In cross-examination, Subotić conceded that she did not have access to the testimony of the UNPROFOR officer who, according to the Prosecution, testified in the *Galić* case in relation to the conduct of this investigation and who explained that the direction of fire was arrived at independently by two separate members of the UNPROFOR team. *See* Zorica Subotić, T. 38369–38373 (15 May 2013) (private session).

13680 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 75–76, 157. Džambasović confirmed that the command post of the 2nd Battalion of the 155th Brigade of the ABiH was located in the Šipad building in the centre of Dobrinja. The map he marked showing the command post suggests that it was to the north of the incident site and several blocks away. *See* Asim Džambasović, T. 15220 (22 June 2011); D1379 (Map of ABiH positions in Sarajevo marked by Asim Džambasović).

to show that "the water supply situation in Sarajevo was dramatic".[13681] Further, she recalled that, shortly before the incident, local authorities warned people not to loiter in the area due to the proximity of the confrontation lines, which to her indicated that they had knowledge of the possibility of shelling.[13682]

4098. Galić testified that he did not remember issuing any orders to fire on Hakije Turajlića street and could not remember any subordinates informing him of such activities.[13683] He also stated that during this period the SRK forces were engaged in operation Lukavac 93 and "it was not necessary to engage in any active operations towards the centre of the city."[13684]

4099. Radojčić testified that he never issued an order to open fire at Hakije Turajlića street to any unit of his brigade.[13685] Sladoje testified that no orders to target civilians were issued and further that there was no line-of-sight between his unit's positions and the scene of the incident in Dobrinja C5.[13686] He also testified that the battalion positions in Nedžarići "were frequently targeted from high-rises in Dobrinja C5" during July 1993.[13687] On cross-examination, Sladoje confirmed that the suburbs of Vojničko Polje, Mojmilo, Dobrinja, and Alipašino Polje were all within the range of the 1st Battalion's weaponry.[13688] He also acknowledged that civilians lived in these areas but stated that "among the civilians it was the [ABiH] using practically all buildings for their purposes".[13689]

4100. Guzina testified that he never issued an order to fire at civilians, nor was he aware of any of his subordinates or superiors issuing any such orders.[13690] In relation to the incident he stated that he was engaged in Operation Lukavac 93 and therefore had no information about it.[13691]

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13681 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 76–79, 91, 157.

13682 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 76-79, 157-158. When cross-examined in relation to the suggestion that there may have been a conspiracy to shell, Subotić conceded that it "was merely an indication of a possibility'". *See* Zorica Subotić, T. 38367–38369 (15 May 2013).

13683 Stanislav Galić, T. 37387–37388 (18 April 2013). Dragomir Milošević agreed in principle that the shelling of a water line was an unacceptable example of direct targeting of a group of civilians. In relation to this incident he testified that it had to have been properly investigated and that this was within Galić's remit. *See* Dragomir Milošević, T. 33120—33121 (4 February 2013).

13684 Stanislav Galić, T. 37390–37393 (18 April 2013); D3418 (SRK combat report, 11 July 1993); D3419 (SRK Order, 12 July 1993).

13685 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 110.

13686 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 26; D2483 (Map of Sarajevo marked by Mile Sladoje). Sladoje suspected that the ABiH shelled the area on purpose in order to accuse the Serbs. With respect to his evidence on the line of sight, he acknowledged that mortars are indirect fire weapons and explained that he simply meant to say that they could not see people gathering at the incident site. *See* Mile Sladoje, T. 30574–30576 (28 November 2012).

13687 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 25.

13688 Mile Sladoje, T. 30570 (28 November 2012).

13689 Mile Sladoje, T. 30570 (28 November 2012).

13690 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 42.

4101. Savo Simić, Chief of Artillery in the 1st Sarajevo Mechanised Brigade from 29 May 1992 till the late May 1994,[13692] commented that in his opinion the shell fired in this incident was "fired from the Butmir sector, from positions under the control of the [ABiH] forces".[13693] However, he never explained the basis of this opinion and the Chamber is unable to assess its reliability. On cross-examination, speaking of the situation in Sarajevo generally, Simić testified that it was the ABiH's responsibility to take into account whether a location was inhabited when they placed their firing positions.[13694]

4102. In terms of casualties in this incident, the CSB Sarajevo report lists the following 12 individuals as having been killed: Ljiljana Matić, Ibro Talić, Enisa Talić, Jasna Tvrtković, Stela Tvrtković, Rahima Mehonić, Sedajeta Mehonić, Nedžiba Mehonić, Ajdin Kirlić, Dragica Mičanović, Zora Simić, and Sulejman Selinović.[13695] It also lists the following 15 persons as wounded: Ilhan Jelovac, Rasim Mahonić, Enver Taslaman, Ahmed Milić, Hamid Džozo, Vinka Kneht, Husein Grebić, Džulsuna Mršović, Derviš Fazlić, Majda Alihodžić, Kasim Čaušević, Enes Turhan, Manojlo Dangubić, Izet Čolaković, and Fehma Kurić.[13696] Medical records from Dobrinja Hospital show that all of the 27 casualties listed in the CSB Sarajevo report on 12 July 1993 were admitted to that facility on the day of the incident.[13697] Koševo Hospital morgue records further indicate that Ilhan Jelovac and Vinka Kneht were then placed in the morgue having eventually died in the Koševo Hospital.[13698]

4103. The Chamber has also taken judicial notice of a number of adjudicated facts which go to the origin of fire in this incident. They provide as follows: (i) the mortar shell which landed on 12 July

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13691 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 42; D2559 (Medical certificate, 2 March 1994) (stating that he was engaged in Operation Lukavac 93, on the Jahorina-Trnovo-Bjelašnica-Igman axis, that he spent 45 days there, and was wounded on 25 July 1993).

13692 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

13693 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 26. The Chamber recalls that Butmir and Sokolović Kolonija are to the southwest of the Sarajevo Airport and were occupied by the ABiH. Dragomir Milošević, T. 32565 (23 January 2013); T. 32792–32793 (29 January 2013). *See also* para. 4058.

13694 Savo Simić, T. 30058 (12 November 2012).

13695 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3 *See* Adjudicated Fact 277. The Chamber has received death certificates for six of those individuals, all of which state that they died as a result of injuries sustained in an explosion on 12 July 1993. *See* P1881 (Death certificate for Stela Trtković); P1882 (Death certificate for Jasminka Trtković); P1883 (Death certificate for Nedžiba Mehonić); P1884 (Death certificate for Rahima Mehonić); P1885 (Death certificate for Sadeta Mehonić); P1886 (Death certificate for Sulejman Selimović).

13696 P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 4. *See* Adjudicated Fact 277.

13697 P1890 (Medical records from Dobrinja Hospital, 12 July 1993), e-court pp. 1–6; P1887 (Medical records from Dobinja Hospital).

13698 P461 (Admission records from Koševo Hospital), p. 54; P463 (Koševo Hospital morgue records), e-court p. 5; P462 (Surgery records from Koševo Hospital), e-court p. 8; Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12603–12604.

1993 in Dobrinja "C5" and which caused civilian casualties was of a caliber of 82 mm;[13699] (ii) the mortar shell which landed on 12 July 1993 in Dobrinja "C5" and which caused civilian casualties was fired from the direction west-northwest to the point of impact of the mortar shell;[13700] (iii) there were no immediate military objectives near the well, which could have explained the firing of a shell in that area;[13701] and (iv) the water queue of civilians in Dobrinja "C5" was deliberately targeted on 12 July 1993 by an 82 mm mortar shell fired from SRK-held territory.[13702]

4104. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that the mortar that struck the water line on 12 July 1993 was of 82 mm calibre. The Chamber is also convinced, based on the traces left by the explosion and the CSB Sarajevo report, that the mortar struck Zorka Simić, killing her on the spot. Relying on the medical evidence and the CSB report discussed above, the Chamber finds that the explosion caused by the said mortar resulted in 27 casualties, 14 of whom—including Simić—died as a result.

4105. In terms of the direction and origin of fire, the Chamber recalls that both the CSB Sarajevo and the UNPROFOR investigators came to the scene on the day of the incident and were thus able to observe the traces of the impact, and that they all found the same direction of fire, namely northwest-west. This was confirmed by Higgs who thought that all the investigators were consistent in their conclusions and who also added that the methods they used were appropriate. In contrast, Subotić concluded that the fire came from the direction of north or northeast. The Chamber finds her conclusions in relation to this incident unreliable as they were mainly based on her analysis of the photographs taken at the time of the incident and thus highly speculative. For example, having confirmed that, aside from having radar, the central axis methodology performed on the day of the incident is the most reliable method to determine the direction of fire, she nevertheless proceeded to conduct her own central axis analysis using the photographs of the traces at the incident site.[13703] However, as noted by Higgs who decided not to use the photographs in his analysis, they are of poor quality and thus unreliable since some of the markings and the debris may not be seen on them. Accordingly, the conclusions Subotić drew from the traces shown on the photographs cannot be considered reliable. Furthermore, Subotić also based her conclusions on the damage to the Škoda car observed on another photograph taken by the CSB Sarajevo. However, as noted by Higgs, it is impossible to determine a definite angle of the direction of fire on the basis of

13699 Adjudicated Fact 278.
13700 Adjudicated Fact 279.
13701 Adjudicated Fact 280.
13702 Adjudicated Fact 282.
13703 *See* fn. 13672.

that photograph.[13704] Finally, Subotić also discussed the location of the stabiliser as seen in one of the photographs and noted that it was in a different location to the one described in Čavčić's report. She then proceeded to make conclusions assuming that the stabiliser was found in the location seen on the photograph. However, she failed to consider in the report the possibility that the stabiliser may have been moved at some point during the investigation to the location seen on the photograph.[13705] Indeed, this would have been highly likely given that its original location was next to Simić's body which was, by the time the photograph was taken, covered by a sheet.[13706]

4106. The Chamber also does not accept Subotić's insinuations that the scene was staged so as to show that the water supply in Sarajevo was dire, or that the authorities warned people queuing for water about the possibility of shelling because they knew it was definitely coming. Her insinuations simply ignore the evidence to the contrary, namely that this was a well known water-hole where people often gathered to collect water and that there was a lot of shelling all over Dobrinja, which would have prompted the authorities to warn the inhabitants not to congregate in that or any other area. The fact that Subotić was so quick to resort to conspiracy theory conclusions while wilfully ignoring evidence to the contrary is a serious stain on her credibility and yet another reason why the Chamber has decided not to accept any of her evidence in relation to this incident.

4107. As far as the origin of fire is concerned, the Chamber notes that both the CSB Sarajevo and the UNPROFOR investigators concluded that the fire came from the SRK-held positions in or around Nedžarići. Given the location of the incident site and the fact that the confrontation line in the direction of west and northwest was around 200 metres away from that location,[13707] the Chamber is also convinced that the shell originated in the SRK-held territory. In this respect, the Chamber recalls Hamill and Galić's evidence about safety zones and that it would have been unsafe and risky to fire an 82 mm calibre mortar at a target that is less 200 metres away.[13708] Thus, the fire must have originated in the area that was further than 200 metres away from the incident site in the direction of fire as determined by the CSB Sarajevo and UNPROFOR investigators. This places it firmly within the SRK-held territory.

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13704 While Higgs eventually did express an opinion as to the direction of fire based on the damage to the car, he did so after having made a disclaimer, more than once, that it was not possible to be sure of this or the direction of fire based on the photographs alone. *See* Richard Higgs, T. 5995–5999 (19 August 2010).

13705 She did admit during cross-examination that that was possible however, thus invalidating her own analysis in her report in relation to the stabiliser. *See* fn. 13677.

13706 Furthermore, the location of the stabiliser as recorded by Čavčić places it to the right-hand side of the car, which in fact confirms that the fire came from the west-northwest direction, as explained by Subotić. *See* para. 4091.

13707 *See e.g.* D3381 (Map of Sarajevo marked by Stanislav Galić); D3382 (Map of Sarajevo). *See also* para. 4090.

13708 *See* para. 3982.

4108. As recounted above,[13709] a number of SRK witnesses, including Galić and Sladoje, testified that they never ordered this particular shelling or the shelling of civilians in Dobrinja in general, and seemed to imply that fire was not opened on civilians on that day as the SRK units were engaged in operation Lukavica 93.[13710] However, while there is indeed no evidence of a specific SRK order to open fire on Hakije Turajlića, in light of the evidence above, the Chamber cannot accept the implication of their evidence that no fire was opened on that area.

4109. In terms of the nature of the area and the status of the victims, the Chamber recalls that the incident site was a well-known water collection point, located in the yard of a private house, at which civilians would get water. Accordingly, the house and the area around it were not military targets. In addition, the 27 casualties who died or were wounded in this incident were all civilians and, having come to collect water, were not taking direct part in hostilities at the time the shell exploded in the area. While the command of the 2nd Battalion of the 5th Motorised Brigade of the ABiH was several blocks away to the north of the incident site, the Chamber considers that this was too far away to explain the firing of the particular shell that landed at the incident site. In addition, had the command post been the intended target, the SRK soldiers, having missed it, would have presumably fired again until it was hit and destroyed. Thus, the Chamber does not consider that the command post was in fact the intended target.[13711] To the contrary, given that only one shell was fired, the Chamber is convinced that it was the water collection point that was deliberately targeted by the SRK. This is also confirmed by the fact that this area was shelled again later during the conflict.[13712]

(4) Alipašino Polje, 22 January 1994 (Scheduled Incident G.6)

4110. The Indictment alleges that on 22 January 1994, three mortar shells landed in the area of Alipašino Polje. The shells are alleged to have landed at the front and rear of residential apartments located at 3 Cetinjska street (currently Geteova street) and at 4 Klara Cetkin street (currently Bosanska street), where children were playing. The Indictment further alleges that the origin of fire was from VRS/SRK-held territory approximately to the west and that six children were killed and five other people wounded.[13713] In its Final Brief, the Prosecution claims that two 82 mm and one

13709 *See* paras. 4098–4101.

13710 *See* para. 4098.

13711 Furthermore, the Chamber recalls Sladoje's testimony that the ABiH used "practically all" civilian buildings in Dobrinja for its purposes, thereby implying that most if not all of Dobrinja was considered to be a military target by the SRK soldiers and officers in the area. Similar attitude was exhibited by Simić. *See* para. 4099.

13712 The Chamber also recalls Hajir's evidence that water collection points in Dobrinja were deliberately targeted by the SRK on many occasions. *See* para. 3785; Adjudicated Fact 281.

13713 Indictment, Scheduled Incident G.6. The Indictment alleges that the first shell landed in a park behind the apartments and that the second and third landed in front.

120 mm mortar shells landed amongst two groups of children who were playing in the snow, killing six children and injuring other civilians, and that the shells originated either from Nedžarići (the Institute for the Blind) or from the area of Stup in the Serb part of Ilidža.[13714] The Accused argues that, absent data about the size and shape of the relevant craters, it is "impossible" to determine the calibre of the shells but submits that at least two of the shells were of 120 mm calibre and they all originated from the southwest in ABiH-held territory near the UPI Institute.[13715] He also argues that the UNPROFOR investigation was inconclusive and that no order was issued by the SRK to fire on Alipašino Polje at the time.[13716] In addition, regardless of the origin of fire, the location of the incident was a legitimate military target as it was within the zone of operation of the ABiH and there were military units stationed in the area.[13717]

4111. On 22 January 1994, Muhamed Kapetanović, who was nearly ten years old at the time and lived at 2 Cetinjska street, was playing with four friends in a parking lot.[13718] Another group of children was playing in Klara Cetkin street.[13719] It was a quiet day during a lull in hostilities.[13720] No activity of a military nature was underway in the neighbourhood nor was any soldier to be seen.[13721] Suddenly there was a loud explosion, whereupon the children ran for cover.[13722] Just before Kapetanović reached the entrance of his building, another shell exploded 10 metres behind the child following Kapetanović; it killed him and wounded three others including Kapetanović, who suffered serious injuries to his leg.[13723] Goran Todorović, a 12 year old boy, ran towards the buildings for cover and just as he started climbing the staircase to his apartment at 6 Klara Cetkin street, another shell exploded 10 to 15 metres away and wounded him.[13724] A man was walking along Klara Cetkin street where he lived and heard two explosions at a distance of approximately 100 metres.[13725] Before he could take cover, a third shell fell three to five metres to his left; the explosion threw him into the air and seriously wounded him in the face.[13726] Refik Aganović was in his apartment on the 14th floor of the building at 4 Klara Cetkin street when, at around 1 p.m., he

13714 Prosecution Final Brief, Appendix C, para. 52.
13715 Defence Final Brief, paras. 2022, 2024–2026, 2028–2033. The Accused submits that the UPI Institute was also known as the "Butmir agricultural estate". Defence Final Brief, para. 2034.
13716 Defence Final Brief, paras. 2035–2036. He also argued that the Ilidža Brigade stationed in Nedžarići did not have any mortars stationed at the Institute for the Blind. Defence Final Brief, para. 2037.
13717 Defence Final Brief, para. 2038.
13718 *See* Adjudicated Fact 284.
13719 Adjudicated Fact 285.
13720 *See* Adjudicated Fact 298.
13721 *See* Adjudicated Fact 299.
13722 *See* Adjudicated Fact 286.
13723 *See* Adjudicated Fact 287.
13724 *See* Adjudicated Fact 283.
13725 *See* Adjudicated Fact 288.
13726 *See* Adjudicated Fact 289.

heard the "usual" hissing sound of a shell and then a loud explosion nearby.[13727] About a minute or two later a second shell exploded.[13728] Aganović opened a west-facing window to see what had happened and a third explosion in front of his entrance threw him back.[13729] He rushed downstairs to the entrance where he saw a 13 year old boy stagger over and die.[13730] Another younger boy whom Aganović said he tried to assist also died in those moments.[13731] Other children, whom Aganović did not recognise because they were covered in blood and were missing parts of their bodies, had also been killed.[13732]

4112. Sabljica participated in the investigation of this incident on 22 January 1994, together with another ballistics expert, Boris Stankov, and the rest of the CSB Sarajevo team.[13733] Sabljica and Stankov concluded that two 82 mm and one 120 mm calibre mortar shells landed respectively in Cetinjska street, Klara Cetkin street, and in the park between the Klara Cetkin and Rade Končar square.[13734] They found that the shell that fell in front of the building at number 3 Cetinjska street was an 82 mm mortar shell and that it came from a westerly direction, "where Nedžarići is located i.e. the Institute for the Blind."[13735] One child was killed by this shell.[13736] As for the shell that landed at number 4 Klara Cetkin street, it was found to be an 82 mm mortar shell, that came from "a slightly northerly direction in relation to the west", where the Institute for the Blind is located.[13737] Five children were killed by this shell.[13738] The tail fin of a 120 mm shell was also

13727 *See* Adjudicated Fact 290.

13728 Adjudicated Fact 291.

13729 *See* Adjudicated Fact 292.

13730 *See* Adjudicated Fact 293.

13731 Adjudicated Fact 294.

13732 *See* Adjudicated Fact 295.

13733 P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3, 5; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19–20; Mirza Sabljica, T. 7802–7803 (12 October 2010). *See also* D978 (Map of Sarajevo marked by KDZ477).

13734 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 19; Mirza Sabljica, T. 7805–7808 (12 October 2010), T. 7815, 7825 (13 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica).

13735 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1697 (BiH MUP photographs re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 20–21, 25, 27. Sabljica could not comment on why more detailed photographs, including those showing the craters after they had been cleaned up, were not available but noted that he believed they existed. Mirza Sabljica, T. 7810 (12 October 2010), T. 7816, 7826–7831 (13 October 2010); D751 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica).

13736 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 28–29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).

13737 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1697 (BiH MUP photographs re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 24, 27–28; Mirza Sabljica, T. 7844–7850 (13 October 2010); D754 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D755 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D756 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica). Mirza Sabljica agreed that Stankov did not establish the

found near the area where the shell landed but, on the basis of the traces, it was concluded that the tail fin must have come from another location, most probably from the roof of a nearby building where, according to eyewitnesses, another shell had exploded at the time of the incident.[13739] The impact sites in Klara Cetkin and Cetinjska streets were said to be within a radius of 50 to 100 metres from one another.[13740] The shell that landed in the park between Klara Cetkin street and Rade Končar square, was found—based on the general shape of the crater and visible blast traces—to have been a 120 mm mortar shell.[13741] The ballistics report notes that it is "possible to claim" that this shell came from the west, from the direction of Nedžarići and the Institute for the Blind.[13742] Further, according to the report, this shell did not injure or kill anyone.[13743] Sabljica confirmed that there is no line of sight between the Institute for the Blind and the incident site.[13744]

4113. KDZ477, who was a resident of Alipašino Polje during the conflict, testified that the suburb was "a strictly residential area [with] many high rises".[13745] Both he and Sabljica testified that there were no military installations in the general area of Alipašino Polje and Sabljica was not aware of the existence of any reserve police stations in the settlement.[13746] Mojmilo Hill, where ABiH troops were positioned, was located west of the incident site, as was Vojničko Polje.[13747] Kučanin testified that a personnel department for an ABiH unit called Kulin Ban was located "some 200 metres away" from Rade Končara square, but that mostly women worked there and none of the personnel wore a uniform.[13748]

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azimuth but instead simply described the direction the shell had come from. *See* Mirza Sabljica, T. 7810 (12 October 2010).

13738 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 28–29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).

13739 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19, 23, 25.

13740 KDZ477, T. 11018 (1 February 2011).

13741 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19, 25–26. Sabljica explained that this shell was not analysed because there were no casualties and because it landed on the unpaved surface. *See* Mirza Sabljica, T. 7816 (13 October 2010).

13742 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2.

13743 P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2.

13744 Mirza Sabljica, T. 7821–7822 (13 October 2010).

13745 KDZ477, T. 10918 (31 January 2011); P2165 (Map of Sarajevo marked by KDZ477).

13746 KDZ477, T. 10918–10923 (31 January 2011); P2165 (Map of Sarajevo marked by KDZ477); D977 (Map of Sarajevo marked by KDZ477). KDZ477 stated that this may have been the reason why the children who were killed or injured during the incident had been out playing in the snow. *See* KDZ477 T. 10923 (31 January 2011). *See also* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26.

13747 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26; Mirza Sabljica, T. 7822 (13 October 2010); D749 (Photograph of Vojničko Polje).

13748 Mirsad Kučanin, P16 (Transcript from Prosecutor v. *Galić*), T. 4499, 4522, 4663–4665, 4687–4689.

4114. Sabljica admitted that he did not know precisely where the confrontation line was but noted that the ABiH controlled the "Oslobođenje" building (now Crowne Plaza), located immediately to the north of the Institute for the Blind, as well as the student dormitories, located northeast of the Institute,[13749] which meant that three out of the four Institute walls were exposed to the confrontation line.[13750] He admitted that it would be unusual to place two mortars at the Institute given that it was exposed to the confrontation line but reiterated that the ballistics experts on the site were not able to establish the exact origin of fire but gave a "general direction", which in this particular case "involved Nedžarići and the Institute for the Blind."[13751]

4115. When it was put to Sabljica that another report for this incident, prepared by a forensic technician on the scene at the time, referred to two 120 mm shells falling on Cetinjska and Klara Cetkina streets, Sabljica responded that this report was inaccurate.[13752] He further explained that the technician in question had not consulted the ballistics experts when he finalised his report.[13753]

4116. The UNPROFOR also reported on this incident; it noted that, on 22 January 1994, some 40 shots were fired by the VRS while three were fired by the ABiH, and that six children were killed and nine wounded while playing in the snow.[13754] The UNPROFOR further notes that it was too early to tell who was responsible, but that, "according to reports", at least four 82 mm shells fell in the area and that the Sarajevo radio station was reporting that the shells had come from the nearby Serb-held neighbourhood of Nedžarići.[13755] However, an UNPROFOR ballistics report prepared by Captain Verdy the next day notes that three 120 mm mortar shells were fired in succession from a single tube over a period of several minutes.[13756] It also states that the "angle of fall" was over

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13749 Mirza Sabljica, T. 7806–7807 (12 October 2010), T. 7819–7821 (13 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica); D748 (Map of Sarajevo marked by Mirza Sabljica). *See also* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26.

13750 Mirza Sabljica, T. 7820–7821, 7823–7824 (13 October 2010); D750 (Photograph of the Institute for Blind in Sarajevo). Sabljica also conceded that, based on the map he was asked to look at, the Institute for the Blind is in fact located southwest of the broad area on which the shells fell, while the Oslobođenje building is west and the student dormitories are northwest of that area. Mirza Sabljica, T. 7808–7810 (12 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica).

13751 Mirza Sabljica, T. 7818, 7821, 7824 (13 October 2010).

13752 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).

13753 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 29–30. *See also* P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 70; KDZ477, T. 10922, 10945–10946 (31 January 2011), T. 11018–11019 (1 February 2011).

13754 P1700 (UNPROFOR report re Sarajevo, 21–23 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 30.

13755 P1700 (UNPROFOR report re Sarajevo, 21–23 January 1994), p. 1. *See also* D3432 (Report of ABiH 1st Corps, 24 January 1994), p. 2.

13756 D752 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994); P1439 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), e-court p. 8. The Chamber notes that P1439 is a duplicate of D752 but that it contains both the original version of Verdy's report in French and an English translation. D752, on the other hand, is only the translation of the report and lacks the photographs attached to the original report.

1,100 mils, the "angle of approach" was between 4,200 and 4,250 mils, and the maximum range was between 2,000 and 3,000 metres.[13757] Finally, the report concludes that the shells "could have been fired from the Stup or Ilidža neighbourhood on the Serb side", which are to the west and southwest of the incident site.[13758] The Chamber notes that, in its Final Brief, the Prosecution chose not to rely on this report as Verdy only came to the scene one day after the incident and because his methodology was questioned by his superiors.[13759] Nevertheless, as will be seen below, Zorica Subotić argues that Verdy's findings were for the most part accurate and relies on them in her analysis.[13760] Therefore, the Chamber has examined his report as well.

4117. Higgs visited the incident site and noted that the crater locations, though still visible, had deteriorated to the extent that a detailed examination was not possible.[13761] He, therefore, based his opinion on the data collected at the time, in particular on the report prepared by CSB Sarajevo.[13762] He concurred with the conclusion in that report that 82 mm mortar bombs "were involved to the street side of the building with a 120 mm bomb falling on the other side".[13763] Higgs then compared this report with Verdy's ballistics report, noting that he would accept the former as it was prepared on the day of the incident and by those with experience in dealing with mortars in the area.[13764] He observed that both reports agreed on the direction of fire and that there was nothing he would disagree with in that respect.[13765]

4118. Higgs also noted that it was difficult to ascertain the purpose of firing in this incident, given that two different calibres were used.[13766] However, focusing on the two 82 mm mortar shells, Higgs concluded that they constituted "harassing" fire aimed at causing maximum casualties

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The Chamber considers the English translation in P1439 to be less accurate than the translation in D752 and will therefore use D752, unless it is referring to the photographs in question. *See also* Mirza Sabljica, T. 7832–7834 (13 October 2010).

13757 P1439 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 4–8 (where Verdy indicates that the shell that landed on the curb in Klara Cetkin street had an azimuth of 4,200 mils while the shell that landed in Cetinjska street had an azimuth of 4,250 mils).

13758 D752 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), p. 2

13759 Prosecution Final Brief, Appendix C, para. 52, fn. 330. *But see* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 96 (stating that Captain Verdy "did a very good job in this particular matter").

13760 *See* para. 4121.

13761 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9. Hogan also visited the site in 2009 and took GPS readings of the location where the shells impacted and plotted this on a map of Sarajevo. *See* P2190 (GPS locations for shelling and sniping incidents in Sarajevo), p. 6; P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); Barry Hogan, T. 11205–11206 (3 February 2011).

13762 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

13763 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

13764 Richard Higgs, T. 5921–5924 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

13765 Richard Higgs, T. 5921–5923 (18 August 2010).

13766 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 9–10; Richard Higgs, T. 6020–6021 (19 August 2010).

because they landed in front of building entrances.[13767] Furthermore, the distance between the two rounds was greater than Higgs would expect in case of an error by the mortar crew.[13768] In other words, the two shells fell exactly where the mortar crew intended them to fall and they originated from the direction of Nedžarići.[13769]

4119. KDZ450 who was with the UNPROFOR in Sarajevo between 1993 and 1994, testified that the incident was particularly striking to him as it occurred opposite the Sector Sarajevo Headquarters and "led to the death of six children in a residential area".[13770] He testified that due to technical reasons the UNPROFOR could not definitively determine the origin of fire but that there were considerable "suspicions" the shells originated from SRK-held territory.[13771]

4120. Zorica Subotić visited the incident site in September 2010 and based on the available evidence, determined that the first shell exploded in Rade Končara square, the second in front of 3 Cetinjska street, and the third in front of 4 Klara Cetkin street.[13772] She analysed in detail the two shells that landed in front of 4 Klara Cetkin and 3 Cetinjska streets and placed considerable emphasis on the inconsistencies between the original investigations as to the precise number and calibre of mortar shells involved and also on the fact that Sabljica and Stankov were at odds with one of their forensic technicians with respect to the calibre of the two shells.[13773] Based on the distance between the two impact sites examined, namely "about 200 metres", she concluded that there was a deliberate adjustment of fire by the mortar crew that fired the shells.[13774]

4121. In relation to the crater in Klara Cetkin street, Subotić determined, using the central axis method on preserved marks at the scene, that the shell originated from an azimuth of 238 degrees and thus in an area about 30 degrees south of the Institute for the Blind in Nedžarići.[13775] The

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13767 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10. (Higgs also opined that two 82 mm mortar shells could not "achieve any military objective").

13768 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13769 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13770 KDZ450, T. 10618 (20 January 2011).

13771 KDZ450, T. 10618–10620, 10694–10697 (20 January 2011). *See also* D964 (ABiH 1st Corps combat report, 24 January 1994) (under seal).

13772 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 93, 108, 158–159; Zorica Subotić, T. 38260 (14 May 2013).

13773 Zorica Subotić, T. 38260 (14 May 2013); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 92–96, 108, 159.

13774 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 107–108; Zorica Subotić, T. 38266 (14 May 2013).

13775 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 96–99. 109–110, 160–161. Subotić also stated that Sabljica agreed with how this trajectory was established based on a photograph of her investigation, implying that he was affirming the result despite it being contrary to the direction he established during the CSB Sarajevo investigation. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 99; Zorica Subotić, T. 38262 (14 May 2013); T. 38423–38426 (16 May 2013). The Chamber notes, however, that Sabljica

Chamber notes that this is almost identical to the azimuth established by Verdy. She observed, in contrast to CSB Sarajevo, that the radial marks left by the explosion extended towards the middle of the street, to a length of about three metres.[13776] Acknowledging that the impact site on the curb had been repaired, she opined that the crater was about 60 centimetres in diameter and thus caused by a 120 mm calibre mortar shell, which was the calibre established by Verdy.[13777] Subotić also noted that the azimuth from 4 Klara Cetkin street to the Institute for the Blind was 266 degrees, which to her reinforced the fact that the CSB Sarajevo ballistics investigators simply guessed the origin of fire.[13778]

4122. In respect of the Cetinjska street crater, Subotić did not conduct any physical examination because the road had been resurfaced.[13779] Using contemporaneous CSB Sarajevo photographs, however, she determined that the crater had a diameter of approximately 90 cm, meaning that a 120 mm mortar shell impacted the scene—again agreeing with Verdy.[13780] She also expressed the opinion that the forensic technician from CSB Sarajevo who concluded that both shells were 120 mm shells must have relied on the size of the crater he observed.[13781] Using footage taken by Hogan in 2001 before the road had been resurfaced, Subotić also observed that there was a "central

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did not agree to the direction but rather that the method used, as seen in the photograph, appeared to be accurate and thus could indicate the direction from which the projectile came. *See* Mirza Sabljica, T. 7846–7850 (13 October 2010); D755 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D756 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica).

13776 Zorica Subotić, T. 38260–38262 (14 May 2013). Subotić argued that the CSB Sarajevo description of the scene was therefore inaccurate and yet Higgs gave his "unreserved trust" towards their investigation as he did not notice that the shrapnel marks extended further than 120 cm from the crater. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 96–97;

13777 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 97, 108, 159. Subotić accepted that she did not investigate how the curb was repaired noting that the fragmentation pattern on the road meant that the shell could not have been an 82 mm mortar shell, regardless of the diameter of the crater. *See* Zorica Subotić, T. 38420–38423 (16 May 2013); T. 38632–38633 (22 May 2013); D3558 (Photograph depicting point of impact of shell marked by Zorica Subotić).

13778 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 98 (noting that the CSB Sarajevo's determination of origin to the west, or from a direction slightly north of west, translates into an azimuth of 270 degrees or more, rather than 266 degrees). *See also* Mirza Sabljica, T. 7810 (12 October 2010).

13779 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 99; Zorica Subotić, T. 38262–38263 (14 May 2013).

13780 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 100–101; Zorica Subotić, T. 38262–38263 (14 May 2013) (wherein Subotić admitted that the photograph of the crater was blurry and using another image that depicts the broader street to confirm her calculation of the crater dimension. She explained that a manhole cover, which is substantially smaller in size when compared to the crater, can be seen in that photograph. Noting that the standard diameter of such covers is 70 cm, she concluded that the crater must have been bigger than 70 cm). The Chamber notes, however, that the quality of both photographs is poor and is therefore not persuaded that it is possible to determine the size of the crater from them. In addition, Subotić is not an expert on manholes and the Chamber has no evidence to verify her claim that the average size of a manhole is 70 cm. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 103.

13781 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 102. *But see* P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 70; KDZ477, T. 10922, 10945–10946 (31 January 2011), T. 11018–11019 (1 February 2011).

hole" within the crater, which was surrounded by a larger crater, and that the CSB investigators measured the smaller central hole thus mistakenly concluding that the crater was smaller than it actually was.[13782] Using stills from Hogan's footage and a computer application, Subotić then concluded that this shell originated from a direction with an azimuth that was "slightly less than 240 degrees".[13783]

4123. While essentially agreeing with Verdy's opinion as to the azimuth and the calibre of the two shells, Subotić argued that he made a mistake when assigning the azimuths of the shells to the two craters.[13784] She then plotted the adjusted trajectories on Google Earth and saw that they intersected at a point 3,270 metres southwest of the impact site in Klara Cetkin street; namely in the ABiH-held territory, near the UPI institute in Sokolović Kolonija.[13785] Subotić agreed with Verdy's determination as to the shells' angle of descent and calculated, using the firing tables for 120 mm mortars, that they were most probably fired using charge four.[13786]

4124. Galić testified that Alipašino Polje was in ABiH-held territory and that as far as he could remember at the time he did not order fire to be opened on the settlement.[13787] He observed that there were some military targets within Alipašino Polje and specifically he recalled that there was a unit of the 1st Corps of the ABiH stationed in the area at a place called Kulin Ban, approximately "110 to 150" metres away from the incident site.[13788] He suggested that this may have been the reason behind fire being opened but that—due to a cease-fire—he did not think the SRK had in fact

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13782 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 102–103.

13783 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 103–104; Zorica Subotić, T. 38263–38264 (14 May 2013) (arguing that the shadow cast by an electricity pole within the footage had a similar trajectory to the central axis of the fragment pattern of the crater and calculating the azimuth of the sun to determine the azimuth of the shadow).

13784 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 102, 104–5. According to Subotić, Verdy correctly determined a direction of fire towards the southwest for both shells. Since all three shells landed within the "range error margin" for mortars, all three were fired from the same mortar. This meant that Verdy's trajectories should intersect at their origin, to the southwest. Verdy marked the azimuth beside the photograph of the shell that landed at Klara Cetkin street as 4,200 mils and for the shell that landed at Cetinjska street as 4,250 mils. When plotting these trajectories, she found that they intersected at a point to the northeast of the incident site, which is impossible and thus indicates that Verdy swapped the azimuths when ascribing them to the respective craters. *See* Zorica Subotić, T. 38264–38265 (14 May 2013); T. 38426–38427, 38430–38436 (16 May 2013).

13785 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 106–107; Zorica Subotić, T. 38265–38266 (14 May 2013) (explaining that UPI Institute was an agricultural institute).

13786 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 107.

13787 Stanislav Galić, T. 37436 (18 April 2013). *See also* Dragomir Milošević, T. 32710 (28 January 2013).

13788 Stanislav Galić, T. 37436 (18 April 2013); T. 38036–38040 (9 May 2013). *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 9; D2499 (Map of Alipašino Polje marked by Nikola Mijatović).

opened fire.[13789] He testified that the decision for further SRK operations on 23 January 1994 was for the Corps to adopt a defensive posture and that he did not receive a report or protest from the UNPROFOR in relation to the incident.[13790] He also testified that regardless of the faction that fired the shells, there was "no [valid] reasons or justifications" for the incident.[13791] When asked about this incident, Milošević testified that he could not recall it but that the SRK "did not open fire [on areas] inhabited by the civilian population" or do anything that was prohibited.[13792]

4125. Sladoje testified that the ABiH units positioned in Vojničko Polje, Alipašino Polje, and Stup, had, *inter alia*, 82 and 120 mm mortars and a tank in depth of Alipašino Polje; they were also supported by artillery from Mt. Igman.[13793] Sladoje's 1st Battalion was equipped with 82 and 120 mm mortars, four or five of which were located near the Faculty of Theology; according to him, military targets in the area included the Oslobođenje building, the student dormitories, and a building located a few blocks from Cetinjska street in the vicinity of Prvomajska street, where civilians were also living.[13794] He categorically denied, however, that the SRK had any mortars at the Institute for the Blind and further that anyone ordered this particular shelling.[13795] Accepting that there was a substantial risk of civilian casualties when firing on any urban areas with military presence, such as Alipašino Polje, he nonetheless wondered "how can [the SRK] not open fire [on enemy soldiers] if [its] positions [are] jeopardized".[13796]

4126. Contrary to Sladoje, Radojčić, commander of the Ilidža Brigade, testified that there was an 82 mm mortar platoon positioned close to the Institute for the Blind but that there were no 120 mm

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13789 Stanislav Galić, T. 37436 (18 April 2013), T. 37936 (8 May 2013).

13790 Stanislav Galić, T. 37436–37437 (18 April 2013); D2806 (SRK combat report, 23 January 1994). *See also* Dragomir Milošević, T. 32710 (28 January 2013).

13791 Stanislav Galić, T. 37441–37442 (18 April 2013). Galić also testified that numerous incidents during this period, including this particular incident, were part of the Sarajevo media campaign against the SRK and the VRS in general. *See* Stanislav Galić, T. 37442 (18 April 2013).

13792 Dragomir Milošević, T. 32710 (28 January 2013).

13793 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 5, 7, 10 (stating that the ABiH units in the area were the 101st and 102nd Brigades of the 1st Corps of the ABiH). *See also* Milomir Šoja, T. 7214–7216 (30 September 2010) (stating that ABiH would open small arms fire on the Ilidža Brigade positions from the cold storage plant in Stup). The Chamber notes that it appears from the evidence before it that the cold storage plant was part of the UPI Institute. *See* D676 (Map of Sarajevo marked by Milomir Šoja); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 106, Figure 62.

13794 Mile Sladoje, T. 30563–30566, 30571–30573 (28 November 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 6–7; D2481 (Map of Sarajevo marked by Mile Sladoje); D2482 (Map of Sarajevo marked by Mile Sladoje); P6009 (Map of Sarajevo marked by Mile Sladoje). *See also* P1058 (ABiH map) (indicating that the SRK had mortars both near the Faculty of Theology and near the Institute for the Blind).

13795 D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 27. Sladoje confirmed that Alipašino Polje was within the range of his battalion's weaponry and further that he was aware that civilians lived in the area but stated that the ABiH used most of the buildings. *See* Mile Sladoje, T. 30570, 30573 (28 November 2012).

13796 Mile Sladoje, T. 30573–30574 (28 November 2012).

mortars at this location.[13797] He also stated that he never issued an order to open fire on the incident location and that he did not receive information from subordinates about such an attack.[13798]

4127. Savo Simić, who was with the 1st Sarajevo Mechanised Brigade positioned towards Lukavica, stated that the shells in this incident originated from ABiH-held territory in the direction of Butmir.[13799] Dušan Škrba, Simić's subordinate, stated that, in his opinion, the "most probable" location of the origin of fire towards the southwest was the "Butmir agricultural estate" as this was an ideal place to fire mortars.[13800]

4128. In terms of casualties in this incident, the CSB Sarajevo report provides that the following children had been killed: Danijel Jurenić, Admir Subašić, Nermin Rizvanović, Jasmina Brković, Indira Brković, and Mirza Dedović.[13801] The report also notes that the following persons were wounded, the majority of whom were children: Elvir Ahmethodžić, Admir Ahmethodžić, Muhamed Kapetanović, Nedžad Topel, Goran Todorović, and Samir Sarač.[13802] The medical records available to the Chamber indicate that six persons died, and at least five persons were injured during the incident.[13803]

4129. In addition to the evidence and the adjudicated facts outlined above, the Chamber has also taken judicial notice of the following adjudicated facts which go to the direction and origin of fire, as well as the calibre of the shells used in this incident: (i) three mortar shells (two 82 mm and one 120 mm calibre) were fired into the residential neighbourhood of Alipašino Polje around noon on 22 January 1994, killing six children and injuring other civilians, including children;[13804] (ii) the

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13797 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 1–2; 111. *See also* P1058 (ABiH map).

13798 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 111.

13799 D2412 (Witness statement of Savo Simić dated 4 November 2012), paras. 3, 12, 26. The Chamber notes that Simić does not explain the basis for this opinion. The Chamber is therefore unable to assess its reliability and will not rely on this evidence.

13800 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 7, 20.

13801 P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3–6, 8, 11–12, 15–16.

13802 P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3–7, 10, 13–16.

13803 P463 (Koševo Hospital morgue records), pp. 1–4; P461 (Admission records from Koševo Hospital), p. 50; P818 (Extracts from Fatima Zaimović's diary), p. 21; P1025 (Medical records for Muhamed Kapetanović); P1236 (Medical reports for Elvir and Admir Ahmethodžić); P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 10–12. The Chamber notes that Adjudicated Fact 296 states that the investigative Judge Zdenko Eterović "established by interviewing witnesses and by observation of bodily remains at the site, as well as by visiting the hospitals where the casualties had been taken" that six children were killed and another three children and one adult were seriously injured, bringing the total number of casualties to ten. However, Eterović did not include Goran Todorović among the list of casualties in his report even though Todorović was also wounded in the incident. The Chamber will therefore rely on another part of the CSB Sarajevo report which includes Todorović among the victims, as well as Samir Sarač. *See* P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 4, 15–16.

13804 Adjudicated Fact 297.

impact traces were considerably more pronounced to the west of the craters;[13805] (iii) it can be safely concluded that the shells came in from either the west or north of west;[13806] (iv) the impact traces were strongly elliptical and significantly displaced to the west;[13807] (v) the three shells were fired from SRK positions somewhere to the west of Alipašino Polje;[13808] and (vi) the sequence of explosions, together with the fact that the shelling ceased after just three volleys were fired, all of which landed wide of Kulin Ban (two at a distance of at least 150 metres) allowed for the conclusion that Kulin Ban was not the intended target of this attack.[13809]

4130. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that at least three mortar shells exploded in the area of Alipašino Polje on 22 January 1994. One of the shells landed in front of 3 Cetinjska street, another in front of 4 Klara Cetkin street, and a third in Rade Končara square behind these two locations. With respect to the calibre of the shells involved, the Chamber is more persuaded by the CSB Sarajevo findings than Subotić's analysis and her reliance on Verdy. First, Sabljica and Stankov conducted a detailed *de visu* examination on the day of the incident and were thus able to see the scene and fresh traces caused by the three shells in question. This was not the case with Verdy who only examined two of the three traces one day later, while Subotić examined the scene over a decade later. Second, Subotić's conclusions in relation to the craters are highly speculative, to the point of being unreasonable at times. For example, with respect to the Klara Cetkin street shell, she based her conclusions on the examination of a repaired curb, without knowing anything about the nature of those repairs or how much the repairs had affected the size of the crater. This means that her conclusions about the size of this crater carry no persuasive value. Similarly, with regard to her analysis of the site in Cetinjska street, Subotić relied on the footage taken by Hogan in 2001 and the contemporaneous photographs taken by the CSB Sarajevo, which were of a clearly inferior quality. Her analysis of these secondary sources, involving concepts such as the average size of a manhole cover and the relative size of an object in photographs, is highly speculative and unpersuasive. Therefore the Chamber does not accept that all of the shells in the incident were 120 mm in calibre and finds that at least two 82 mm and one 120 mm mortar shells exploded in Alipašino Polje on 22 January 1994.

4131. Relying on the medical evidence and the CSB Sarajevo investigation discussed above, the Chamber finds that the explosion caused by the three shells on 22 January 1994 resulted in 12 casualties, six of whom died (all children) and six of whom (majority children) were injured.

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13805 Adjudicated Fact 300.
13806 Adjudicated Fact 301.
13807 Adjudicated Fact 302.
13808 Adjudicated Fact 303.
13809 Adjudicated Fact 304.

4132. In terms of the direction of fire, the Chamber recalls that the CSB Sarajevo investigators concluded that the shells originated from a general direction to the west of Alipašino Polje, while Verdy thought that the projectiles in Cetinjska and Klara Cetkin streets originated from the same mortar, positioned in either Stup or Ilidža, that is either to the west or southwest of the incident site. The Chamber recalls that, to Higgs, the two investigations were not far apart in terms of direction as they both essentially concluded that the shells originated from approximately the west of Alipašino Polje in the direction of Nedžarići. However, Higgs considered that the CSB Sarajevo investigation would have been more accurate as it was more contemporaneous. The Chamber agrees with his analysis.

4133. While Subotić thought that the two shells analysed by both Verdy and CSB Sarajevo originated from approximately the southwest of Alipašino Polje, her conclusions were based on an examination of what was a substantially altered scene, as well as secondary sources such as unclear photographs and video footage of the scene. For example, with regard to the Cetinjska street shell, she calculated the azimuth using the 2001 video footage of Hogan standing next to the crater, as well as the azimuth of the sun and the shadows cast by objects in the footage. The Chamber considers that this type of analysis is unacceptable and further that it seriously damages her credibility in relation to both this incident and generally. Accordingly, the Chamber does not accept any of her evidence in relation to the direction of fire in this incident.

4134. The Chamber finds that the shells originated from the area approximately west of the incident site.

4135. As far as the precise origin of fire is concerned, the angle of descent for the shells was not determined by either the CSB Sarajevo investigators or Subotić, while Verdy concluded that it was more than 1,100 mils and that the shells had a maximum range of between 2,000 and 3,000 metres, thus placing the origin of fire in the SRK-held territory. Given that it is unclear from his report how Verdy managed to calculate the maximum range of the shells, the Chamber is unable to assess his method and thus cannot accept those findings. At the same time, the Chamber does not accept Subotić's analysis that the fire came from the UPI Institute southwest of the incident site either. This is because she based her analysis on Verdy's azimuths being absolutely accurate at 236 and 239 degrees, albeit reversed. However, the Chamber notes that Verdy also concluded in his report that the azimuths were "between" 236 and 239 degrees. In other words, the trajectories plotted by Subotić, which intersect at the UPI Institute, predicate an absolute accuracy. The Chamber finds this to be unrealistic in light of the margin of error with which ballistic experts have to work.

4136. With respect to the origin of fire, the Indictment alleges that the shells came from the SRK-held territory to the west of the incident site and does not specify the exact origin of fire. The Prosecution Final Brief then refers to Nedžarići and the Institute for the Blind, or alternatively the Stup area in the Serb part of Ilidža, as the origin of fire.[13810]

4137. However, taking all of the above into account, as well as the adjudicated facts relating to this incident, the Chamber is not satisfied beyond reasonable doubt that the origin of fire was Nedžarići and the Institute for the Blind. First, the CSB Sarajevo report does not conclude that the fire came from there but only that it came from a westerly direction where Nedžarići and the Institute for the Blind are located. In addition, as noted earlier,[13811] Sabljica conceded that CSB Sarajevo did not establish the azimuth of the shells, as was normal practice. Finally, the adjudicated facts do not provide that the origin of fire was Nedžarići or the Institute for the Blind.

4138. With respect to Stup, the Chamber notes that the adjudicated facts do not state that it was the origin of fire in this incident. In addition, as noted above, this area was mostly under the control of the ABiH, while a small part was controlled by the SRK.[13812] On the basis of the evidence before the Chamber, Verdy is the only person who determined the angle of descent and calculated the potential distance the shells had travelled, and thus placed the origin of fire in the SRK territory in Stup. However, in its Final Brief, the Prosecution states that it has chosen not to rely on his report as Verdy's methodology was criticised by his superiors and he did not come to the scene on the day of the incident.[13813] The Chamber is therefore unable to conclude, beyond reasonable doubt, that the origin of fire was the Serb-held part of Stup, as neither the evidence before it nor the adjudicated facts indicate this location as the origin of fire.

4139. While Adjudicated Fact 303 states that the shells came from the SRK positions "somewhere to the west of the incident site", both ABiH and SRK held positions to the west of the incident site. Given the above findings with respect to Nedžarići and Stup, both of which are locations to the west of the incident site, and bearing in mind that the only report which placed the origin of fire in the SRK territory on the basis of something other than mere guesswork was discredited by the Prosecution, the Chamber is unable to rely on Adjudicated Fact 303. The Chamber therefore cannot conclude beyond reasonable doubt that the fire came from SRK positions.

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13810 Prosecution Final Brief, Appendix C, para. 52.

13811 *See* fn. 13737.

13812 *See* para. 4056, fn. 13492. *See also* P1058 (ABiH map).

13813 *See* Prosecution Final Brief, Appendix C, para. 52, fn. 330. While Subotić does rely on Verdy's report to a large extent, she concludes that he made a mistake when determining the exact origin of fire. Accordingly, as neither party relies on his report with respect to the origin of fire and he did not give evidence before the Chamber explaining and defending his methodology, the Chamber cannot rely on it in this regard.

(5) Dobrinja, 4 February 1994 (Scheduled Incident G.7)

4140. The Indictment alleges that on 4 February 1994, a salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential settlement.[13814] The first shell is alleged to have landed in front of a block of flats at Oslobodilaca Sarajeva street, hitting persons who were distributing and receiving humanitarian aid and also children attending religious classes.[13815] The second and third shells are alleged to have landed amongst persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina street and Oslobodilaca Sarajeva street.[13816] The shells are alleged to have originated from VRS/SRK-held territory to the east of Dobrinja, and to have resulted in the death of 8 persons and the wounding of at least 18 others.[13817] In its Final Brief, the Prosecution submits that the 120 mm mortar shells were fired with at least three charges and originated from the direction of SRK-held territory to the east of Dobrinja, in the vicinity of Lukavica, possibly the Energoinvest complex.[13818] The Accused argues that in fact four 120 mm mortar shells exploded at the scene, and that they originated from the ABiH-held positions.[13819]

4141. On 4 February 1994, humanitarian aid was being distributed along Oslobodilaca Sarajeva street in Dobrinja where a large number of people had gathered waiting for the aid when a number of shells exploded causing a number of casualties.[13820] One of those present in the area was Sabahudin Ljuša who did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca Sarajeva street.[13821] The Chamber also took judicial notice that Ismet Hadžić, commander of the Dobrinja Brigade of the ABiH, stated that on that date there were no ABiH military units close to the site.[13822]

4142. Sabljica and Međedović participated in the investigation of this incident on 4 February 1994, together with a team from CSB Sarajevo, led by an investigating judge, Zdenko Eterović, and including a number of forensic technicians, such as Bešić and KDZ166.[13823] According to the

13814 Indictment, Scheduled Incident G.7.

13815 Indictment, Scheduled Incident G.7.

13816 Indictment, Scheduled Incident G.7.

13817 Indictment, Scheduled Incident G.7.

13818 Prosecution Final Brief, Appendix C, para. 53.

13819 Defence Final Brief, paras. 2040–2046.

13820 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 5; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 54. *See also* KW570, T. 32220 (18 January 2013) (private session).

13821 *See* Adjudicated Fact 318.

13822 *See* Adjudicated Fact 319.

13823 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 8–9. *See also* P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), p. 49; P129 (Witness statement of Zlatko Međedović dated 20 November 1995), p. 3; P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 14–15. Before the on-site investigation was conducted the bodies and the wounded people were removed and

report prepared by Eterović on the day of the incident, three 120 mm shells landed in the area, the first two almost simultaneously at 11:30 a.m.[13824] One of the two hit the ground floor of an apartment building at number 8 Oslobodilaca Sarajeva street, injuring a boy but causing no deaths.[13825] The other hit a retaining wall in the backyard of an apartment at number 3 Mihajla Pupina street and a 120 mm shell stabiliser was found on the scene.[13826] A boy and a woman were killed by this shell.[13827] The third shell landed a few minutes later, hitting the playground located next to a covered parking lot and surrounded by buildings in the vicinity of Oslobodilaca Sarajeva street.[13828] More specifically, the report states that this shell landed on the "asphalt sidewalk", on the side closer to the playground.[13829] A 120 mm shell stabiliser was found embedded in the asphalt.[13830] The report also notes that altogether six persons were killed on the scene and two more people died on admission to the Koševo Hospital;[13831] while 22 others were seriously wounded.[13832] The official report CSB prepared the following day lists eight killed and 18 wounded.[13833]

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taken to either Dobrinja or Koševo Hospitals. *See* P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

13824 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 2–3, 5.

13825 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3. This shell "hit the window frame" of an apartment at the ground floor of the building which was being used as a Muslim primary school. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

13826 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 10–13; P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 1–4; D998 (Video footage re shelling of Dobrinja on 4 February 1994); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

13827 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

13828 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 2–9; P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 5–10; D1001 (Video footage re shelling of Dobrinja on 4 February 1994); D1002 (Video footage re shelling of Dobrinja on 4 February 1994); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995). *See* Adjudicated Fact 316.

13829 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3. Pools of blood, pieces of flesh, spilled flour and a damaged boot were also found at the scene. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 5, 7. *See* P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal); P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), pp. 49–50; P1707 (Photographs re shelling of Dobrinja on 4 February 1994).

13830 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

13831 While the report notes that three other individuals died on admission to the Koševo Hospital, the Chamber notes that one of the three listed is Sabahudin Ljuša who in fact survived the attack and is also listed in Eterović's report as one of the seriously wounded victims. Ljuša was 10 years old at the time of the attack. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 5–6. Adjudicated Fact 318 makes it clear that Ljuša survived and went on to give evidence in the *Galić* case.

13832 While Eterović's report refers to 23 seriously wounded victims, the number is actually 18 as a number of persons appear to have been listed twice. The Chamber notes that "Mukšija Pribinja"/"Muskija Pubinja"–who appears to be the same individual–is listed both among those who died in the hospital and among those who were seriously wounded. The official report, prepared the next day, clarifies that this individual was among the dead and that 18 people were wounded in this incident. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3–6. *See also* Adjudicated Fact 317, which provides that Eterović's report found that altogether eight people had been killed by shells and 22 were wounded. The Chamber notes, relying on the

4143. Sabljica and Međedović examined only two out of the three impact sites, namely those that resulted in significant casualties.[13834] They concluded, based on the size and shape of the shrapnel traces and on the recovered stabiliser, that a 120 mm calibre mortar shell landed in the backyard of number 3 on Mihajla Pupina street, from the direction of east-northeast, "where Lukavica, that is, the Energoinvest complex of buildings is located."[13835] For the same reasons, the projectile that landed on the footpath beside the playground was also found to have been a 120 mm calibre mortar shell and the team concluded that it had originated "from the east", again where Lukavica and the Energoinvest complex were located.[13836] When asked about the lack of reference to the shell that landed at number 8 Oslobodilaca Sarajeva street in his report, Sabljica explained that Eterović "insisted" on including in his official report some analysis relating to that shell, despite the fact that Sabljica and Međedović did not analyse it.[13837] Commenting on Eterović's reported sequence in which the shells landed, Sabljica stated that he and Međedović did not know the sequence as all they did was look at the traces of the explosion.[13838] Assuming that the sequence was correct, however, Sabljica could not explain why the children would still be on the playground when the third shell landed, if the two other shells had already landed nearby several minutes before it.[13839]

4144. Sabljica testified that the confrontation line to the north and northeast of Dobrinja was between 350 to 400 metres away from the incident site.[13840] He acknowledged that there was a certain difference in his findings as to the origins of the two shells, namely east and northeast, and explained that the Energoinvest complex that is mentioned in the report was only used as an

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available evidence, that the number of wounded was in fact 18 people. As a result, the Chamber will not rely on this particular Adjudicated Fact in its findings below.

13833 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 5–6.

13834 P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), p. 49; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 8–9; P129 (Witness statement of Zlatko Međedović dated 20 November 1995), p. 3; Mirza Sabljica, T. 7768–7769 (12 October 2010); Sead Bešić, T. 9488–9489 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 3–7.

13835 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 50; P1816 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), p. 1; P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

13836 P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 51; P1816 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), p. 1; P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

13837 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 53–54; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9.

13838 Mirza Sabljica, T. 7791–7795 (12 October 2010).

13839 Mirza Sabljica, T. 7793–7794 (12 October 2010). On cross-examination, Sabljica testified that this site was what Eterović referred to as the third shell in the sequence, which in the CSB sketch was marked with number one. Mirza Sabljica, T. 7790–7791, 7795–7797 (12 October 2010); D744 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica); D743 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica).

13840 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 52. According to Sabljica, the confrontation line ran east and northeast of Dobrinja, in the direction of Lukavica. *See* Mirza Sabljica, T. 7771–7772 (12 October 2010); D741 (Map of Dobrinja marked by Mirza Sabljica).

"orientation point" rather than as the actual calculated origin of fire.[13841] Međedović testified that there were only one or two buildings between the incident site and the Serb lines.[13842]

4145. As part of the official report one of the CSB Sarajevo, a forensic technician drew a sketch of the incident site marking the three impact sites and noting the direction of the north.[13843] However, during cross-examination of Sabljica, the Accused successfully established that the sketch was inaccurate, as was the direction of north marked on it.[13844] KDZ166 explained that this mistake occurred because the forensic technician was unfamiliar with Dobrinja and under pressure to work fast.[13845] Despite this error, Sabljica remained of the view that the second shell came from the east, while the third shell came from the northeast.[13846] Both he and KDZ166 testified that the direction of fire was not determined on the basis of this sketch, nor was it indicated on it; rather it was determined on the basis of the traces at the scene.[13847]

4146. Shortly after the shelling, having heard about it from a journalist, Rose went to the incident site and ordered that the crater analysis be carried out.[13848] The UNPROFOR determined that between 11 a.m and 11.02 a.m on 4 February 1994, three 120 mm mortar rounds exploded in Dobrinja.[13849] The UNPROFOR found that the "presumed" origin of fire for all three shells was the

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13841 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 52–53; Mirza Sabljica, T. 7768 (12 October 2010).

13842 P129 (Witness statement of Zlatko Međedović dated 20 November 1995), p. 3.

13843 P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

13844 Sabljica drew the correct direction of north on the sketch that was rotated in order to show accurate illustration of the area. *See* Mirza Sabljica, T. 7768–7773, 7777–7789 (12 October 2010), T. 7947–7951, 7953–7957 (14 October 2010); D741 (Map of Dobrinja marked by Mirza Sabljica); D742 (Sketch re shelling of Dobrinja on 4 March 1994 marked by Mirza Sabljica); P1739 (Map of Dobrinja); P1740 (Aerial photograph of Sarajevo marked by Mirza Sabljica); P1741 (Sketch re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica); D768 (Composite images of P1740 and P1741 marked by Mirza Sabljica); D900 (Map of Dobrinja marked by Sead Bešić).

13845 KDZ166 also marked the correct direction of north on the image, which coincides with that marked by Sabljica. *See* KDZ166, T. 8281–8283, T. 8298–8299 (26 October 2010); P1802 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal).

13846 Mirza Sabljica, T. 7798–7799 (12 October 2010); D742 (Sketch re shelling of Dobrinja on 4 March 1994 marked by Mirza Sabljica).

13847 Mirza Sabljica, T. 7800–7801 (12 October 2010), T. 7829–7830 (13 October 2010); KDZ166, T. 8297–8315 (26 October 2010); D798 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D799 (Map of Dobrinja marked by KDZ166); D800 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D801 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D802 (Photograph re shelling of Dobrinja on 4 February 1994 marked by KDZ166).

13848 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 5, 35. *See also* KW570, T. 32220 (18 January 2013) (private session).

13849 P1597 (UNPROFOR report, 4 February 1994). The report lists three distinct UN grid reference points in relation to the location of the incident. It also records the damage at the scene as follows: shell one, hole on the tar lane; shell two, bedroom window; shell three, in front of a building. *See* P1597 (UNPROFOR report, 4 February 1994), e-court p.1. Thomas stated that based on his experience and under the circumstances the analysis conducted by the UNPROFOR appears to have been conducted in a thorough and professional manner. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 13, 108.

SRK-held territory, in the general location of Lukavica.[13850] Akashi informed journalists on 5 February 1994 that the UNPROFOR had confirmed that the mortar attack in Dobrinja on 4 February definitely originated from the SRK-held territory.[13851] Rose also telephoned the VRS and wrote letters of protest to the Accused and Mladić.[13852]

4147. KDZ450 who was with the UNPROFOR in Sarajevo between 1993 and 1994, testified that this incident demonstrated to him that the SRK targeted the civilian population of Sarajevo.[13853] On cross-examination, when put to him that Dobrinja was a military target given the presence of the 155th Brigade, KDZ450 acknowledged that Dobrinja was on the confrontation line but maintained that the shells arrived in a residential area and caused only civilian casualties.[13854]

4148. Higgs went to the incident site and due to the scene not being well preserved decided to base his conclusions on the reports and data collected at the time of the incident.[13855] Having examined the CSB Sarajevo report, Higgs testified that he had no reason to doubt any of the findings, including the fact that the mortars were of 120 mm calibre and that the direction of fire was from the east.[13856] He also observed that the distance between the three rounds on the ground was within a 40 metre radius, which can be expected from one barrel firing all three rounds.[13857] Given the time delay between the firing of the rounds, as provided by the witness statement he had at his disposal, Higgs concluded that the aim of the fire was to harass those present at the incident site, disrupt whatever was going on, and prevent movement.[13858] According to Higgs, this was a classic example of a harassing mission.[13859]

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13850 Without referring to a specific crater, the UNPROFOR report lists the angle of descent as 1200 mils, angle of approach as 2000 mils, and the maximum range of 3500 to 4000 metres. Attached to the report is a map of Sarajevo depicting the three areas of impact and also an arrow from the likely point of origin, indicating the approach of the projectiles from the southeast of Dobrinja. *See* P1597 (UNPROFOR report, 4 February 1994).

13851 D4473 (UNPROFOR report re mortar bomb explosions in Sarajevo on 4 and 5 February 1994, 6 February 1994), e-court p. 2. Lieutenant Colonel Shadbolt of the UNPROFOR informed Akashi of the Crater Analysis on 6 February 1994. D4473 (UNPROFOR report re mortar bomb explosions in Sarajevo on 4 and 5 February 1994, 6 February 1994), e-court pp. 3–4. *See also* Michael Rose, T. 7352–7353 (6 October 2010); KW570, T. 32220 (18 January 2013) (private session); D682 (UNPROFOR report re local press summary, 7 February 1994). KDZ450 also testified that the UNPROFOR clearly established that the SRK shelled Dobrinja on 4 February 1994 and further that these actions led only to civilian death. *See* KDZ450, T. 10618, 10621, 10695 (20 January 2011).

13852 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35.

13853 KDZ450, T. 10617–10618 (20 January 2011).

13854 KDZ450, T. 10620–10623 (20 January 2011). *See also* D965 (UNPROFOR report, 3 February 1994).

13855 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13856 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13857 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13858 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

13859 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

4149. Hogan visited the incident site in 2001 with several victims of the shelling[13860] and on the basis of their recollections recorded the GPS co-ordinates and filmed the locations where two of the shells impacted on 4 February 1994.[13861] He conceded that one of the victims made a mistake in relation to one of those locations, namely the point of impact for the shell that landed on or near the playground in the immediate vicinity of Oslobodilaca Sarajeva street, explaining that seven years had passed after the incident and that at the time of the incident this victim probably would not have been in a position to even see the precise point of impact.[13862]

4150. Zorica Subotić visited the incident site on 17 September 2010.[13863] She confirmed that the CSB Sarajevo team incorrectly marked the position of north on their sketch, meaning that the fire coming from what was in fact the direction of north-northeast would look on the sketch as originating from the direction of east-southeast, namely the SRK positions.[13864] In Subotić's opinion all of the 120 mm mortar shells that exploded on 4 February 1994 in fact originated from ABiH-held positions to the north and northeast.[13865]

4151. Focusing first on the shell that struck the building at no 8 Oslobodilaca Sarajeva street and for which CSB Sarajevo conducted no analysis,[13866] Subotić observed that the façade of the

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13860 *See* D996 (Video footage re shelling of Dobrinja on 4 February 1994); D1000 (Video footage re shelling of Dobrinja on 4 February 1994). The Chamber notes that it is not clear who the victims in question are from the evidence before it. However, it is clear that they were not witnesses in this case. The Chamber notes that Subotić provides in her expert report that two of those victims were Sabahudin Ljuša and Fata Spahić. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 118, 123

13861 Barry Hogan, T. 11204–11206, 11263–11269 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); D996 (Video footage re shelling of Dobrinja on 4 February 1994); D997 (Video still re shelling of Dobrinja on 4 February 1994); D998 (Video footage re shelling of Dobrinja on 4 February 1994); D999 (Video still re shelling of Dobrinja on 4 February 1994).

13862 Barry Hogan, T. 11268–11269 (3 February 2011); D1000 (Video footage re shelling of Dobrinja on 4 February 1994); D1001 (Video footage re shelling of Dobrinja on 4 February 1994); D1002 (Video footage re shelling of Dobrinja on 4 February 1994).

13863 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 122; Zorica Subotić, T. 38363 (15 May 2013). Subotić based her conclusions on the documents produced by CSB Sarajevo and the remaining physical evidence at the scene in 2010. There were no remains of the craters, however. Zorica Subotić, T. 38437 (16 May 2013).

13864 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 120–121, 138, 164; Zorica Subotić, T. 38270–38271 (14 May 2013). On cross-examination, it was put to Subotić that she was misleading the Chamber when she asserted that the CSB findings were inaccurate based on this error as their ballistics experts did not use the sketch in any of their official calculations. She explained that she was not trying to mislead anyone and that without a correct reference point in the sketch and given the limited nature of the CSB investigation documentation it would be impossible to reconstruct and verify their results. Zorica Subotić, T. 38446–38452 (16 May 2013).

13865 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 120–121, 137–139, 162–164.

13866 Subotić contended that it was suspicious that no analysis was conducted for this impact point as, according to her, and contrary to the CSB Sarajevo report, one person was in fact killed and five were injured by this shell. Subotić then lists the names of the relevant casualties in her report. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 112. However, it appears that

building was not repaired after the incident and proceeded to argue that its physical appearance indicates that the shell landed with a large angle of descent and that it originated from the right-hand side of the building, namely to the northeast.[13867] Despite having conceded that she could not determine an accurate origin of fire given the lack of sufficiently preserved evidence, Subotić argued that the UNPROFOR findings for this impact were not accurate and further that the shell was fired from ABiH-held territory.[13868]

4152. Subotić determined that the shell that impacted at number 3 Mihajla Pupina street landed in front of a retaining wall, on pavement extending about 80 to 90 centimetres into the back yard.[13869] Whilst the pavement had been repaired, she thought that the building's façade remained in the same condition as it had been when contemporaneously photographed by the CSB Sarajevo.[13870] She then argued that Sabljica's description of the size of the shrapnel marks exceeded the size of the pavement which led her to conclude that his observations were not based on any physical evidence.[13871] Subotić also thought that Sabljica's crater analysis was incorrect and that this particular shell was fired from ABiH-held positions approximately to the north of Dobrinja.[13872] She argued that the shell fragment dispersion pattern on the building's façade dispproved Sabljica's findings, as there were fewer shrapnel marks on the left-hand side of the building, which would not have been the case had the shell originated from the direction of Lukavica.[13873] She also disparaged the CSB's use of a magnetic compass and a map to accurately determine the origin, and argued that

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Subotić reached this conclusion simply on the basis that the people she lists lived on the Oslobodilaca Sarajeva street itself (their addresses are listed in the report). Given that the evidence shows that a large number of people were congregating in the area outside, queuing for humanitarian aid, the Chamber finds Subotić's assumption unacceptable. It shows her propensity to ignore contemporaneous evidence in order to reach completely unreasonable conclusions based on assumptions. This seriously brings into question her credibility as a legitimate and reliable expert witness.

13867 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 122–124, 138, 163–164.

13868 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 122, 138–139, 163–164.

13869 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 124–125. *See also* P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9

13870 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 124–130. *See also* P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 2–4.

13871 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 125.

13872 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131, 138-139, 163-164.

13873 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 125-127; Zorica Subotić, T. 38271–38272 (14 May 2013). On cross-examination, it was put to Subotić that she was misleading the Chamber as the shell would have landed at a downwards angle of 45 degrees or greater, and that shrapnel would have been dispersed at the scene accordingly and not on a horizontal axis. She responded that her point was simply that most of the shrapnel damage would have to have been on one side of the point of impact, dependant upon origin. *See* Zorica Subotić, T. 38452–38455 (16 May 2013); P6323 (Diagram depicting point of impact of shell marked by Zorica Subotić).

the stabiliser that was recovered at this site did not support their findings.[13874] Subotić also argued that the soot traces on the snow at this location, were misinterpreted by the CSB and that Sabljica wrongly marked the origin of fire during his testimony before the Chamber.[13875]

4153. Coming to the final impact point, Subotić argued that the material before her indicated that two shells landed there, thus bringing the total to four mortar shells involved in the incident.[13876] She used photographs and footage from the CSB Sarajevo investigation to argue that some of the damage to the footpath and the soil traces around it could not have been caused by a singular shell exploding.[13877] Using these soil traces and the damage to the footpath in a contemporaneous CSB photograph, she calculated that the second shell came from an incoming azimuth of 220 to 240 degrees or smaller, meaning that it had been fired from the northeast and that only ABiH forces could have fired it.[13878] While noting that the stabiliser was found at the scene fully embedded into the soil with an almost vertical angle, Subotić thought that the shell could not have been fired at an almost maximum angle of elevation since the marks on the footpath did not correspond to that angle, indicating thus that the stabiliser changed its position when it penetrated the soil.[13879] She

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13874 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 127, 131; Zorica Subotić, T. 38451 (16 May 2013). Subotić argued that contemporaneous photographs of the scene show that parts of the stabiliser not in contact with the surface were deformed, indicating that the stabiliser had changed its position on impact, having already hit the surface and then rebounded to its final resting place. According to Subotić, this meant that it could not have been of use in determining origin of fire. *See* Zorica Subotić, T. 38276 (14 May 2013); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 127–128; P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court p. 3; D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

13875 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 129–130; Zorica Subotić, T. 38272–38273 (14 May 2013). On cross-examination, Sabljica was asked by the Accused to mark the incoming direction of fire on a contemporaneous photograph of the scene. He marked it with an arrow, but did not align the arrow with the impact point. *See* Mirza Sabljica, T. 7797–7798 (12 October 2010); D745 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica). The Chamber notes, however, that Sabljica was simply asked during cross-examination to indicate direction of fire, not to be absolutely accurate or align that direction of fire to the actual point of impact.

13876 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 115–116, 137–139, 162–164; Zorica Subotić, T. 38270 (14 May 2013). The Chamber notes, however, that the CSB Sarajevo photograph she used to come to this conclusion is not sufficiently clear to be able to determine with certainty where the arrow is pointing exactly.

13877 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 115–119; Zorica Subotić, T. 38437–38438 (16 May 2013); P6321 (Photograph of damage caused by shell explosion marked by Zorica Subotić).

13878 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 119, 131–133; Zorica Subotić, 38274 (14 May 2013), T. 38438–38444 (16 May 2013); P6322 (Photograph depicting incoming trajectory of shell marked by Zorica Subotić). Using a map of the disposition of forces in Sarajevo, Subotić conjectured that the boundary line between the SRK and the ABiH was about 239 degrees, and that given the hilly terrain to the northeast of Dobrinja, in her opinion it was impossible that the SRK would have operated a 120 mm mortar battery in that area. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131–133.

13879 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 134. She further opined that the video footage taken by the CSB Sarajevo team shows that the stabiliser was marked with the roman letter N, which would not have been the case if it belonged to an SRK shell. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15

acknowledged, however, that it was practically impossible to verify the accuracy of Sabljica's findings in relation to this shell with any precision, due to the photograph of his investigation being a side view of the footpath and crater.[13880]

4154. Noting that the number of casualties recorded in relation to the incident varied, Subotić highlighted the casualty list provided by Eterović where some victims' names are listed among both the injured and the dead, and argued that these mistakes indicate that the investigation was conducted 'sloppily'.[13881] She further challenged references made to Džavarhal Nehrua street within the CSB Sarajevo report arguing that there was intent to cover up the inconsistent presence of an eye-witness at the actual scene of the incident, namely the playground near the Oslobodilaca Sarajeva street.[13882]

4155. On cross-examination, Subotić agreed that the mortar shells would have to have been fired with a minimum of charge "three" as this is when a mortar shell penetrates the ground and one of the shell stabilisers had been recovered fully embedded in the footpath.[13883] However, she did not want to accept, without first consulting the relevant firing tables, that the corresponding minimum firing distance for the shells would therefore have to have been roughly 600 metres.[13884]

4156. Galić testified that he did not order an attack on civilians waiting for humanitarian aid in Dobrinja on the day of the incident.[13885] He testified that he was informed of the incident on the day it took place and that he ordered all of the relevant units in the area to report on what happened.[13886] The SRK Command's regular combat report for 4 February 1994, sent at 6 p.m., states that the UNPROFOR did not send any kind of protest in relation to the incident but that

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August 2012), pp. 133–136; 138–139; 164; Zorica Subotić, T. 38275–38276 (14 May 2013). On cross-examination, it was put to Subotić that the letter N was not visible on a CSB Sarajevo photograph of the stabiliser but she maintained that she could not be sure as that photograph was not clear. Zorica Subotić, T. 38457–38460 (16 May 2013); P6324 (Photographs comparing stabilisers in the crater). The Chamber notes that contrary to Subotić's evidence the photograph is in fact clearer than the footage and clearly shows that the letter N is not engraved on the stabiliser.

13880 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131–132; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court p. 6; Zorica Subotić, T. 38274 (14 May 2013).

13881 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 111–112, 137, 162.

13882 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp 113–114, 137, 162, 164; Zorica Subotić, T. 38268 (14 May 2013).

13883 Zorica Subotić, T. 38456 (16 May 2013).

13884 Zorica Subotić, T. 38457 (16 May 2013); P5921 (Firing tables for M74 120 mm light mortar), p. 12. *See also* P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar).

13885 Stanislav Galić, T. 37442 (18 April 2013).

13886 Stanislav Galić, T. 37442–37443 (18 April 2013).

"after checking, it was established that no fire had been opened" by the SRK in Dobrinja.[13887] Galić commented on the report stating that the UNPROFOR did not submit a protest at that time because it did not have enough information about the incident.[13888] To Galić this incident was simply one of the examples of BiH propaganda directed against the SRK, with the Sarajevo media reporting in a politicised manner.[13889] He further opined that UN protests during the conflict were not based on accurate and precise information.[13890]

4157. Dragomir Milošević also testified that the SRK did not open fire on Dobrinja on the day of the incident. Instead, the SRK used the period 4 to 10 February 1994 only to reinforce its positions and did not respond to ABiH "provocations".[13891] Savo Simić stated that at the time of the incident all of the artillery weapons of the 1st Sarajevo Mechanised Brigade were under the control of the UNPROFOR who would record each instance of an artillery weapon being fired.[13892] Dušan Škrba testified that there were twelve 120 mm mortar weapons in his command,[13893] but that his forces did not open fire on 4 February 1994 as these weapons could not have been fired without his order, which he did not give, and because there were "UNPROFOR observers" at his command who would have heard the firing of shells.[13894] He also testified that neither he nor the members of his unit ever intended to cause civilian casualties or terrorise civilians on the Muslim side.[13895] On cross-examination, Škrba described Dobrinja as a neighbourhood that was exclusively residential.[13896] He disagreed with the Prosecution's proposition that the UNMOs who were based with his brigade only had information about attacks if informed by local SRK commanders.[13897]

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13887 D1515 (SRK combat report, 4 February 1994). Milošević testified that Colonel Kosovac made inquiries into the incident on behalf of the SRK Command and concluded that the SRK had not opened fire on Dobrinja. *See* Dragomir Milošević, T. 32711–32712 (28 January 2013).

13888 Stanislav Galić, T. 37442–37443 (18 April 2013); D1515 (SRK combat report, 4 February 1994). *See also* D2774 (Witness statement of Milenko Inđić dated 19 January 2013), paras. 133–134. The Chamber recalls Rose's testimony that he personally protested to the VRS about the incident. *See* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35. *See also* KDZ450, T. 10548 (19 January 2011) (private session).

13889 Stanislav Galić, T. 37441–37442 (18 April 2013), T. 38007 (9 May 2013).

13890 Stanislav Galić, T. 38008 (9 May 2013).

13891 Dragomir Milošević, T. 32711–32714 (28 January 2013). *See also* D1515 (SRK combat report, 4 February 1994); D2807 (SRK Order, 4 February 1994). Two other SRK regular combat reports from 1994 state that the SRK respected cease-fire agreements and further that the ABiH violated these truce agreements. *See* D4582 (SRK Report, 24 April 1994); D4588 (SRK Report, 19 May 1994).

13892 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 27.

13893 Dušan Škrba, T. 29111–29113 (18 October 2012); P5934 (Map of Sarajevo marked by Dušan Škrba).

13894 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 14, 21; Dušan Škrba, T. 29153 (22 October 2012). Škrba also testified that his brigade did not target the areas where larger groups of civilians tend to gather such as hospitals, bus stations, railway stations, and schools. Dušan Škrba, T. 29131 (22 October 2012).

13895 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 14–15.

13896 Dušan Škrba, T. 29152–29153 (22 October 2012).

13897 Dušan Škrba, T. 29153–29156 (22 October 2012) (stating that the 1st Sarajevo Mechanised Brigade provided information such as the direction of fire and the number of shells fired to UNMOs and further that he never

4158. The Chamber has received medical records indicating that on 4 February 1994, 26 injured persons were received at Dobrinja Hospital as a result of this shelling incident.[13898] A number of these victims were transferred to Koševo Hospital, including Sabahudin Ljuša who was transferred to the Children's ward,[13899] and "Muškija Pribinja" who was taken directly to surgery after receiving first aid at the scene.[13900] The available medical records indicate that eight people died as a result of the shelling incident in Dobrinja on 4 February 1994 and that 18 persons were injured.[13901]

4159. In addition to the evidence and adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts which go to the origin of fire and other controversial issues in this incident: (i) on 4 February 1994 around 11 a.m. three mortar shells struck a residential neighbourhood in Dobrinja killing at least eight civilians including a child and injuring at least 18 people including two children;[13902] (ii) three shells struck civilians engaged in peaceful activities;[13903] (iii) the origin of fire was SRK-held territory in relation to the two shells that were investigated in detail;[13904] and (iv) the first shell to strike formed part of the same attack and therefore also originated in SRK territory.[13905]

4160. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that, on 4 February 1994, three 120 mm mortar shells struck two of the buildings and the playground in the immediate vicinity of Oslobodilaca Sarajeva and Mihajla Pupina streets in Dobrinja. The Chamber is also convinced that these shells struck near persons who had gathered at

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received a protest in relation to these reports). This was contradicted by the evidence of UNMO Richard Mole, however. *See* P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 79–81.

13898 P1878 (List of patients from Dobrinja Hospital, 4 February 1994); P1891 (Medical record for Edlar Hafizović); P1895 (Medical record for Rajko Maksimović); P1879 (Medical record for Sevda Hasanović); P1899 (Medical record for Džanko Zumreta); P1024 (Medical records for Sabahudin Ljuša).

13899 P461 (Admission records from Koševo Hospital), p. 2; P1024 (Medical records for Sabahudin Ljuša); Fatima Zaimović, T. 1879–1880 (5 May 2010); P818 (Extracts from Fatima Zaimović's diary), p. 22; P462 (Surgery records from Koševo Hospital), p. 15.

13900 P462 (Surgery records from Koševo Hospital), p. 15; P463 (Koševo Hospital morgue records), p. 13; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 6, 66–70. The Chamber notes that she was initially recorded as "Huskija Dubinja" in the Dobrinja Hospital records. *See* P1878 (List of patients from Dobrinja Hospital, 4 February 1994), p. 1.

13901 These individuals were Jadranka Tenžera, Selma Spahić, Enver Mustagrudić, Saida Balićević, Emin Kolar, Aiša Šito, Mirsad Spahić, and "Muškija Pribinja". *See* P1874 (Death certificate for Jadranka Tenžera); P1875 (Death certificate for Enver Mustagrudić); P1876 (Death certificate for Emin Kolar); P1877 (Death certificate for Aiša Šito); P463 (Koševo Hospital morgue records), p. 13; P462 (Surgery records from Koševo Hospital), p. 15; P461 (Admission records from Koševo Hospital), p. 2. *See also* Adjudicated Facts 317, 320; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 7–8, 14–21; P1878 (List of patients from Dobrinja Hospital, 4 February 1994).

13902 Adjudicated Fact 320.

13903 Adjudicated Fact 322.

13904 Adjudicated Fact 321.

13905 Adjudicated Fact 322.

the incident site to receive humanitarian aid. The Chamber does not accept Subotić's evidence that there were actually four 120 mm mortar shells. Her conclusion was based principally on secondary evidence, such as traces and debris she identified in the contemporaneous video footage and photographs and is therefore not as reliable as the *de visu* examination that was conducted by CSB Sarajevo and the UNPROFOR. Furthermore, the Chamber considers, as discussed above, that her proposition that one of the two recovered 120mm mortar stabilisers was engraved with a Roman letter "N" is blatantly false. The Chamber also does not accept Subotić's insinuations that references made to a nearby street contained within the amalgamated CSB Sarajevo report are indicative of some sort of conspiracy to pervert the truth. This insinuation simply ignores the evidence to the contrary, namely that the other CSB Sarajevo reports, including the official and on-site investigation reports, all refer to the incident site as being in the immediate vicinity of Oslobodilaca Sarajeva and Mihajla Pupina streets. The Chamber considers that this type of analysis, and Subotić's readiness to resort to conspiracy theory has seriously damaged her credibility both generally and specifically with respect to this incident.

4161. Relying on the medical evidence and the CSB Sarajevo report discussed above, the Chamber finds that the explosions caused by the mortar attack on 4 February 1994 resulted in 26 casualties, eight of whom died as a result.

4162. In terms of the direction of fire, the Chamber recalls that both the CSB Sarajevo and the UNPROFOR investigators came to the scene on the day of the incident and were thus able to observe traces of the impact, and further that they all arrived at the same general direction of fire, namely towards Lukavica, to the east of Dobrinja. The Chamber also notes that Higgs examined the incident site and the CSB Sarajevo investigation and concluded that there were no reasons to doubt any of their findings. In contrast, Subotić concluded that the fire came from the direction of the north and northeast. The Chamber however finds her conclusions in relation to this incident unreliable as they were mainly based on the analysis of secondary evidence or the remains of traces that were found at the scene in 2010 and thus are highly speculative. For example, having conceded that due to a lack of examinable evidence she could not accurately determine the origin of fire in relation to the impact site on Oslobodilaca Sarajeva street, she nevertheless concluded that the UNPROFOR findings were not accurate and that ultimately this shell, like the other shells, was fired from ABiH-held territory.

4163. As for the origin of fire, the Chamber notes that both the CSB Sarajevo and the UNPROFOR investigators concluded that it came from the SRK-held positions in the general direction of Lukavica. Given the location of the incident site and the fact that the confrontation line

in the direction of Lukavica was between 350 to 400 metres away from that location,[13906] the Chamber is also convinced that the shells originated in the SRK-held territory. In this respect, the Chamber recalls that Subotić agreed with the Prosecution that the 120 mm mortar shells related to this incident would have to have been fired with a minimum of charge 3 and that this would have increased the minimum firing distance for the shells.[13907] This places the origin of fire firmly within SRK-held territory.

4164. As recounted above, a number of SRK witnesses, including Galić and Milošević, testified that no fire was opened by the SRK on Dobrinja on the day of the incident.[13908] The Chamber cannot accept this evidence, however, in light of the evidence analysed above, as well as the evidence about the general situation in Dobrinja and the shelling that its civilian inhabitants were exposed to on a regular basis during the conflict.[13909]

4165. In terms of the nature of the area and the status of the victims, the Chamber recalls that the incident site was a residential neigbourbood in Dobrinja where humanitarian aid was being unloaded and distributed. The Chamber also recalls that there were no ABiH military units close to the site.[13910] In addition, the 26 casualties who died or were wounded in this incident were all civilians, including three children, and were all engaged in peaceful activites. The Chamber concludes based on the location of the incident, the lack of ongoing combat and military presence at the time, and the nature of the activity in which the victims were engaged, that the ultimate nature of the area and the population that was gathered on or near the playground on 4 February 1994 was civilian. The Chamber recalls that there was a time delay between the three rounds and is thus convinced that the purpose of fire was to harass those present and prevent movement rather than to destroy any target. The Chamber also has no doubt that the SRK deliberately targeted whomever may have gathered in this residential area.

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13906 *See e.g.* D741 (Map of Dobrinja marked by Mirza Sabljica). *See also* para. 4144.

13907 *See generally* P5921 (Firing tables for M74 120 mm light mortar); P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar). *See also* para. 4155.

13908 *See* paras. 4156–4157.

13909 *See* paras. 3783, 4059. The Chamber also recalls here Sladoje's testimony that the ABiH used "practically all" civilian buildings in Dobrinja for its purposes, thereby implying that most if not all of Dobrinja was considered to be a military target by the SRK soldiers and officers in the area. Similar attitude was exhibited by Simić. *See* paras. 4049, 4101.

13910 *See* Adjudicated Facts 318, 319.

(C) Stari Grad (Old Town)

4166. Three of the shelling incidents alleged in the Indictment took place in Stari Grad (Old Town) of Sarajevo.[13911] Two of those happened in the area of the Markale market (namely Scheduled Incidents G.8 and G.19) and one in Baščaršija fleamarket (Scheduled Incident G.9). According to the Prosecution, these incidents were consistent with the pattern of SRK attacks on Stari Grad, the aim of which was to target large gatherings of civilians or locations with a significant number of civilians present.[13912]

4167. Đozo testified that from the very beginning of the conflict, the central part of Stari Grad, particularly the area around Mula Mustafe Bašeskije street was constantly shelled.[13913] According to him, the SRK was targeting places where the most civilians would gather.[13914] When asked why only two shells hit the area of the Markale market during the whole period of the conflict, he explained that many shells fell around the Markale market area and on nearby streets.[13915] Indeed, the Chamber heard that in the three months leading up to the first Markale incident the area was shelled between 10 to 12 times.[13916] Similarly, in the months prior to the second Markale incident, the area had also been shelled several times.[13917]

4168. The Chamber heard that in 1992 the SRK artillery firing plan included Baščaršija and other areas in its vicinity, although Galić explained that it was merely a plan in case of possible attacks by the ABiH and therefore did not mean that fire was in fact opened on the areas mentioned.[13918] In May 1995, most of Stari Grad was placed under "fire control" by the SRK, which, according to Savo Simić, meant that the SRK endeavoured to improve its tactical positions so that it could

13911 Stari Grad is one of the ten constitutive municipalities of Sarajevo, located in the east part of the city and encompassing the areas of Baščaršija and Bistrik. *See* P966 (Map of Sarajevo marked by Robert Donia); P2362 (Map of Vogošća municipality with photographs); P973 (Robert Donia's expert report entitled "Bosnian Serb Leadership and the Siege of Sarajevo, 1990–1995", January 2010), e-court pp. 11, 126; Robert Donia, T. 3130 (1 June 2010); P2345 (Witness statement of KDZ020 dated 17 February 2011), para. 3. *See also* Adjudicated Fact 2.

13912 Prosecution Final Brief, Appendix C, para. 54.

13913 Nedžib Đozo, T. 9578 (10 December 2010).

13914 Nedžib Đozo, T. 9582 (10 December 2010).

13915 Nedžib Đozo, T. 9581–9583 (10 December 2010).

13916 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 24.

13917 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 24–35.

13918 P1009 (Order of Chief of Artillery of SRK, 11 October 1992), p. 2 (referring to "offensive combat operations"); P2656 (SRK order, 26 November 1992), p. 2; Stanislav Galić, T. 37937–37942 (8 May 2013). Galić also explained that fire was opened on his troops in Stari Grad from the residential area of Velešići. *See* Stanislav Galić, T. 37937 (8 May 2013).

control the ABiH fire in that area; in other words, it did not mean that fire was in fact opened on the area.[13919]

4169. Galić testified that the SRK endeavoured not to target certain areas, such as Baščaršija, as it was a symbol of Sarajevo.[13920] He did not deny, however, that the SRK forces shelled Stari Grad, noting that it was a municipality that covered a wide area, including Bistrik, from which fire was opened on the SRK forces.[13921] Contrary to Galić's evidence, as discussed above,[13922] by 28 May 1992, Mladić had already ordered that Velešići and Baščaršija be shelled.[13923]

(1) Confrontation lines in the area

4170. The Chamber has already described some of the confrontation lines that surrounded Stari Grad in Sections IV.B.1.b.iii.A and C: Zmaja od Bosne Street (formerly Vojvode Putnika) and Sredrenik and shall not repeat the same evidence here.

4171. It suffices to recall that the 1st Romanija Infantry Brigade and the 1st Sarajevo Mechanised Brigade of the SRK held the area of Grbavica and the positions south and east of Grbavica towards Stari Grad.[13924] The area from Vrbanja Bridge towards the Jewish cemetery up to the foot of Debelo Brdo was held by the 3rd Infantry Battalion of the 1st Sarajevo Mechanised Brigade of the SRK.[13925] This battalion was positioned on the western side of the Jewish cemetery while the ABiH was stationed along its northeastern wall—the two sides were separated only by the width of the cemetery.[13926] The 1st Romanija Brigade (and later the 1st Sarajevo Mechanised Brigade) held

13919 Savo Simić, T. 30084–30090 (12 November 2012); P5940 (SRK Order, 9 May 1995), pp. 1–2. *See also* Miloš Škrba, T. 29200–29202 (22 October 2012). However, when discussing the Hreša-Vogošća road, which was controlled by the SRK and fired upon by the ABiH, Simić also appeared to agree that the term "fire control" meant that the road was kept under constant fire. *See* Savo Simić, T. 30059–30061 (12 November 2012).

13920 Stanislav Galić, T. 37836–37837 (7 May 2013), T. 37929–37931 (8 May 2013).

13921 Stanislav Galić, T. 37931–37934 (8 May 2013).

13922 *See* para. 4028.

13923 P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992). *See also* D582 (SRK Order, undated), p. 1 (indicating the Baščaršija was one of the SRK targets).

13924 Stanislav Galić, T. 37184 (15 April 2013); D3382 (Map of Sarajevo); P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), paras. 5–6; D2628 (Map of Sarajevo marked by Željko Bambarez); Adjudicated Facts 66 and 2826.

13925 *See* Adjudicated Facts 2828; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević).

13926 *See* Adjudicated Fact 73; D3382 (Map of Sarajevo); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); Blagoje Kovačević, T. 29054–29056 (18 October 2012). *But see* P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992), p. 4 (stating that in September 1992 the 1st Battalion of the 1st Romanija Infantry Brigade was manning the positions on Jewish cemetery).

the area south of Debelo Brdo, including Zlatište Hill, which overlooked the city.[13927] Much of Mt. Trebević, with the exception of the area to its north and northwest, lay in those brigades' zone of responsibility, thus covering also the areas of Bistrik Kula and Vidikovac.[13928] The ABiH held positions on the northern base of Mt. Trebević.[13929] In addition to the eastern side of the Jewish cemetery, it also controlled Debelo Brdo and Čolina Kapa.[13930]

4172. As far as positions to the north of the city are concerned, the 7th Infantry Battalion of the 1st Romanija Infantry Brigade of the SRK was in control of the nine kilometre long confrontation line in the Kadrijina Kuća—Mala Tvrđava—Špicasta Stijena—Pašino Brdo—Velika Tvrđava—Pašino Brdo—Donje Bioško—Faletići—Zečija Glava—Borije—Tabakovo Guvno sector.[13931] Blaško Rašević, a commander of a platoon and later a company in Mrkovići,[13932] which was part of the 1st Romanija Infantry Brigade,[13933] testified that from 5 April 1992 his platoon, as well as another Mrkovići platoon, took up positions on the Velika Tvrđava—Špicasta Stijena axis and

13927 *See* Adjudicated Fact 2831; Stanislav Galić, T. 37358–37359 (18 April 2013); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 12; Stevan Veljović, T. 29249–29250 (23 October 2012); Alen Gičević, T. 7664–7665 (11 October 2010); D736 (Photograph of Sarajevo marked by Alen Gičević); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac); D584 (SRK combat report, 23 June 1992), p. 1; D2671 (SRK combat report, 30 May 1993), p. 1. It was from Zlatište that the area of Stari Grad was placed under fire control in 1995, with 82 and 120 mm mortar batteries. *See* Savo Simić, T. 30084–30090 (12 November 2012); P5940 (SRK Order, 9 May 1995), pp. 1–2; Miloš Škrba, T. 29200–29202 (22 October 2012).

13928 *See* Adjudicated Facts 106 and 107; Stanislav Galić, T. 37358–37359 (18 April 2013). *See also* P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; Stevan Veljović, T. 29249–29250 (23 October 2012); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac); D2149 (Aide mémoire of Manojlo Milovanović), p. 24; P1641 (SRK proposal re artillery, 10 February 1994), p. 2 (indicating that the SRK had self-propelling guns in the area of Zlatište and Vidikovac); P1496 (ABiH map of Sarajevo marked by KDZ088) (indicating that the SRK had a tank on Vidikovac); D850 (UNMO report, 17 June 1995), p. 11 (also indicating that the SRK had a tank in Vidikovac); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 91; Aernout van Lynden, T. 2425 (19 May 2010).

13929 *See* Adjudicated Fact 104. *See also* P1764 (ABiH Map of Sarajevo); P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Alen Gičević, T. 7657–7663 (11 October 2010); D733 (Photograph of Sarajevo marked by Alen Gičević); D734 (Photograph of street sign in Sarajevo); D735 (Photograph of Sarajevo); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac).

13930 *See* Adjudicated Facts 105 and 2830; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac).

13931 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 13; D2384 (Map of Sarajevo marked by Slavko Gengo); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo). The Chamber notes that Mala and Velika Tvrđava were also known and referred to as Mala and Velika Kula throughout the evidence.

13932 Rašević was the company commander between 31 January 1993 and September 1994. D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 16–17, 29. Mrkovići is a village north of Grdonj Hill and the city of Sarajevo. *See* D2794 (Satellite image of Sarajevo marked by Dragomir Milošević).

13933 With the formation of the VRS, the two Mrkovići platoons first became part of the 2nd Romanija Brigade and then later part of the 1st Romanija Infantry Brigade, which was part of the SRK. The commander of the 1st Romanija Brigade was Dragomir Milošević, followed by Vlado Lizdek. *See* D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 20; Blaško Rašević, T. 30911 (4 December 2012).

"successfully defended this line until the end of the war".[13934] The ABiH units opposing the 7th Battalion, including the Mrkovići Company, belonged to the 105th and 110th Mountain Brigades and held the top of the Grdonj Hill, with the area of Sedrenik behind them, as well as the extensive views towards the city.[13935]

(2) Markale Market, 5 February 1994 (Scheduled Incident G.8)

4173. The Indictment alleges that, on 5 February 1994, a 120 mm mortar shell hit the crowded open-air market called "Markale" situated in Old Town, killing 66 people and wounding over 140.[13936] It further alleges that the origin of fire was VRS/SRK-held territory approximately to the north-northeast.[13937] In its Final Brief, the Prosecution claims that the mortar shell struck the market between 12 and 12:30 p.m. and exploded when it hit the ground.[13938] In response, the Accused puts forth three different arguments: (i) the shelling incident was staged; (ii) alternatively, it was orchestrated by the Bosnian Muslim side; (iii) in a further alternative, he argues that the evidence presented by the Prosecution does not allow for a conclusion beyond reasonable doubt that the shell was fired by the Bosnian Serb Forces.[13939]

4174. In late January and early February 1994 the situation in Sarajevo was difficult as the Bosnian Muslim side had rejected the Owen-Stoltenberg plan and there was no explicit threat by NATO to use force against the Bosnian Serbs.[13940] Thus, neither side had any reason to restrain its military activity, resulting in a period characterised by a high level of shelling and sniping, as well

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13934 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 18, 20, 29; D2528 (Map of Grdonj marked by Blaško Rašević). *See also* D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 5, 9; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357 (Photograph of Sarajevo from Grdonj Hill).

13935 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 26; D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 5; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357 (Photograph of Sarajevo from Grdonj Hill); Dragomir Milošević, T. 32567, 32570 (23 January 2013); D2794 (Satellite image of Sarajevo marked by Dragomir Milošević); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16; Slavko Gengo, T. 29838 (6 November 2012); Asim Džambasović, T. 15194, 15207, 15238–15240 (22 June 2011); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); P1058 (ABiH map). According to Džambasović, the command post of the 105th Brigade was located in the Šipad building in Trampina street. Asim Džambasović, T. 15207 (22 June 2011). *See also* D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.

13936 Indictment, Scheduled Incident G.8. The Chamber notes that the Prosecution Final Brief refers to "over 60" dead. *See* Prosecution Final Brief, Appendix C, para. 55.

13937 Indictment, Scheduled Incident G.8.

13938 Prosecution Final Brief, Appendix C, para. 55.

13939 Defence Final Brief, paras. 2054–2076, 2098–2105. The Trial Chamber notes that throughout the trial the Accused led extensive evidence through, *inter alios*, his expert witness Subotić, seeking to establish that the incident was staged. Although he does not specifically address this line of argument in his Final Brief, the Chamber will nevertheless consider it and the related evidence in its analysis.

13940 David Harland, T. 2038–2039 (6 May 2010).

as tight controls on utilities and convoys.[13941] On 26 January 1994, Galić ordered the SRK units to "continue with offensive activities and liberate the Serb part of the city of Sarajevo".[13942]

(a) The incident

4175. On 5 February 1994, around noon, many people were shopping in the Markale open-air market.[13943] Around 12:20 p.m. a projectile exploded at the market.[13944] The Chamber took judicial notice of the fact that Witness AF testified in the *Galić* case that between 12 and 12:30 p.m. he heard the sound of a heavy weapon like a mortar being fired from behind Špicasta Stijena, at Mrkovići.[13945] It also took judicial notice of the fact that Vahid Karavelić, commander of the 1st ABiH Corps, testified in the *Galić* case that the nearest location of a brigade headquarters appeared approximately 300 metres away from the market.[13946]

(b) BiH MUP investigation

4176. The CSB Sarajevo team that investigated this shelling included, *inter alios*, an investigative judge; ballistics experts Sabljica and Čavčić; a crime technician, Bešić; and a criminal investigator, Kučanin.[13947] The team arrived at the scene at around 1:20 p.m., after all the bodies had been cleared away and only a few people remained in the area.[13948] The market was already secured by the police, the stalls were overturned and body parts, human tissue, and bloodstains could be seen.[13949] The site was video-recorded and sketched, and Bešić took

13941 David Harland, T. 2038–2039 (6 May 2010). *See also* P1562 (UNMO report, 4-5 February 1994).

13942 P5968 (SRK Order, 26 January 1994), o. 6. *But see* Slavko Gengo, T. 29831–29837, 29841–29842 (6 November 2012) (arguing that these were defensive activities).

13943 *See* Adjudicated Facts 324 and 342.

13944 P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 2.

13945 *See* Adjudicated Fact 332. The Chamber also took judicial notice of the fact that "weapons specialists indicate that the noise made by the firing of a mortar can be used to determine the approximate direction of fire". *See* Adjudicated Fact 334.

13946 *See* Adjudicated Fact 336. *See also* Sead Bešić, T. 9425–9426, 9429–9430 (8 December 2010) (testifying that there was an "army hall" some 500 metres from the incident site).

13947 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 30–31; Mirza Sabljica, T. 7694–7695 (11 October 2010), T. 7907 (13 October 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 2, 8–9; Sead Bešić, T. 9436 (8 December 2010); Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4747.

13948 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 31; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8–9; Mirza Sabljica, T. 7907–7908 (13 October 2010), T. 7930 (14 October 2010); Sead Bešić, T. 9437–9440 (8 December 2010).

13949 Mirza Sabljica, T. 7911, 7927–7928 (14 October 2010); Sead Bešić, T. 9436, 9440–9441 (8 December 2010), T. 9458 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 9; D767 (Photograph re shelling of Markale on 5 February 1994 marked by Mirza Sabljica).

photographs of the scene.[13950] The team also went to the morgue and video-recorded the bodies of the victims.[13951]

4177. Having examined the scene, Sabljica and Čavčić prepared a report noting that one projectile landed on the asphalt in the northeast part of the market area, 4.16 metres away from the buildings of the "UPI supermarket" and 11.1 metres away from the 22 December building.[13952] The UPI supermarket buildings are to the north of the impact site and are 3.65 and 5.25 metres tall, while the 22 December building is to the east of the impact site and is 18.45 metres tall.[13953] At the time of the impact, there were 18 rows of stalls, all located close to each other.[13954]

4178. To determine the direction of fire, Sabljica and Čavčić used the central axis method because, according to Sabljica, that was the only method that could be used in this case.[13955] The projectile, the stabiliser of which was found in the centre of the crater,[13956] was found to be a 120 mm calibre mortar shell that came from the north-northeast, that is, 18 degrees from the north

13950 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 31, 37–40; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 9–10, 16. *See also* Sead Bešić, T. 9418 (8 December 2010); P1709 (Photographs re shelling of Markale on 5 February 1994); P1970 (Photographs re shelling of Markale on 5 February 1994); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5.

13951 Sead Bešić, T. 9415–9416 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

13952 P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 1; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 12; Sead Bešić, T. 9456 (9 December 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 6–7; D895 (Photograph re shelling of Markale on 5 February 1994 marked by Sead Bešić); P1970 (Photographs re shelling of Markale on 5 February 1994). Sabljica conceded that if the margin of error in placement of the point of impact was in metres rather than centimetres it could affect the conclusions as to the direction of fire. However, he was confident that his measurements were accurate and that the margin of error here would have been some five centimetres. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp.45–46; P1712 (Sketch re shelling of Markale on 5 February 1994). *See also* Mirza Sabljica, T. 7917–7925 (14 October 2010); D766 (Sketch re shelling of Markale on 5 February 1994 marked by Mirza Sabljica).

13953 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 41–43, 45–46; P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5; P1712 (Sketch re shelling of Markale on 5 February 1994). *See also* Mirza Sabljica, T. 7917–7918, 7925–7926 (14 October 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), photograph 4.

13954 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 43–44; P1713 (Sketches re shelling of Markale on 5 February 1994). For discussion of the size of the stalls, *see also* Mirza Sabljica, T. 7926–7928 (14 October 2010); D767 (Photograph re shelling of Markale on 5 February 1994 marked by Mirza Sabljica); Sead Bešić, T. 9444–9447 (8 December 2010); D891 (Sketch re shelling of Markale on 5 February 1994 marked by Sead Bešić).

13955 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 37–38; Mirza Sabljica, T. 7698 (11 October 2010), T. 7912–7913 (14 October 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 12–13; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 8–11; P1970 (Photographs re shelling of Markale on 5 February 1994); Sead Bešić, T. 9412–9413 (8 December 2010).

13956 P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 8–12. Both Sabljica and Bešić testified that the stabiliser was discovered only once Bešić cleaned the surface layer of the tarmac by hand. *See* P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 12–14; Sead Bešić, T. 9418–9419 (8 December 2010); P1970 (Photographs re shelling of Markale on 5 February 1994); Mirza Sabljica, T. 7911–7912 (14 October 2010).

(plus or minus five degrees).[13957] It was activated at the moment of contact with the asphalt surface.[13958] The depth between the asphalt surface and the top of the stabiliser in the crater was nine centimetres, but the team did not measure the depth of the crater once the stabiliser was removed from it.[13959] Instead, this measurement was taken the next day by Zečević.[13960] Sabljica also explained that his team did not try to determine what type of charge was used for this shell as this was very difficult and also not necessary in order to determine the direction of fire.[13961]

4179. Both Sabljica and Bešić testified that by the time the UNPROFOR had arrived that day,[13962] some 10 to 15 minutes after the arrival of the CSB Sarajevo team, they had already determined the direction of fire and washed off the blood and debris at the centre of the impact.[13963] However, the team left the stabiliser in the crater, which was then dug out by the UNPROFOR soldiers and eventually returned to CSB Sarajevo by Bešić.[13964] Bešić identified the said stabiliser in court and testified that it was not tampered with at any time while in his possession; furthermore, its serial number was photographed at the scene in order to enhance the

13957 P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), pp. 1–2; P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5; P1967 (Mortar stabiliser from Markale I); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 37, 40–41, 44–45; P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 11; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court p. 5; P1711 (Video footage re shelling of Markale, 5–6 February 1994). *See also* Mirza Sabljica, T. 7913 (14 October 2010); Sead Bešić, T. 9416–9417 (8 December 2010); Richard Higgs, T. 5924–5926 (18 August 2010).

13958 P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 40–41; Mirza Sabljica, T. 7914 (14 October 2010); Sead Bešić, T. 9417 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994). This was confirmed by an expert in ballistics, Richard Higgs. *See* Richard Higgs, T. 6028–6031 (19 August 2010); P1451 (Video footage of Markale, 5 February 1994); P1452 (Video footage of Markale, 5 February 1994); P1453 (Video footage of Markale, 5 February 1994).

13959 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 36; Mirza Sabljica, T. 7913 (14 October 2010).

13960 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 18, 36.

13961 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 41.

13962 Sabljica explained that CSB Sarajevo team would usually wait for UNPROFOR every time there was an incident causing a great number of civilian casualties. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 33–34.

13963 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 32–33; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 20, 21–22; Mirza Sabljica, T. 7912 (14 October 2010); Sead Bešić, T. 9410–9412 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

13964 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 33–35; Mirza Sabljica, T. 7699–7701 (11 October 2010), T. 7912 (14 October 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp 8, 13–14, 17, 19–20; P1711 (Video footage re shelling of Markale, 5–6 February 1994); Sead Bešić, T. 9413–9414 (8 December 2010), T. 9456–9457 (9 December 2010). Sabljica could not say, however, whether the stabiliser, as well as the fragments of the projectile collected at the scene, were analysed by the CSB Sarajevo's crime laboratory but presumed this to be the case as it was part of the procedure. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 34–35. *See also* Sead Bešić, T. 9420 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 13–14.

reliability of the chain of custody.[13965] Bešić also testified that the markings on the stabiliser indicated it had been manufactured in the Krušik Factory in Valjevo, Serbia, in 1987.[13966] He measured the stabiliser in the courtroom and stated that it was around 17 centimetres long, which was some three centimetres less than what could be seen in the photograph of the same stabiliser taken by his team back in 1994.[13967] He explained this difference by the fact that the stabiliser was so damaged that it had to be held at an angle when photographed.[13968]

4180. As for the origin of fire, Kučanin testified that it was established that the shell had come from the direction of Mrkovići but did not provide any further explanation as to how this conclusion was reached.[13969] Bešić compiled a criminal technician's report the day after the incident, without having access to Sabljica's ballistics reports, wherein he stated that the shell was fired from the "aggressor's position", basing this conclusion on the direction from which the mortar shell came as established by the ballistic experts on the scene.[13970] He did confirm, however, that in the part of the town from which the shell came, the confrontation lines were such that the SRK and ABiH were close to each other.[13971]

4181. Sabljica explained that he and Čavčić did not establish the angle of descent, the range of fire, or the origin of fire that day, but he confirmed that another team went to Markale the following day, 6 February, and that this team included Čavčić, Zečević, and an investigative judge.[13972] Zečević's team brought the stabiliser back to the scene and placed it into the crater by first removing a few little stones that had fallen into the hole.[13973] Zečević then removed the

13965 Sead Bešić, T. 9420–9421 (8 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 15; P1967 (Mortar stabiliser from Markale I); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14.

13966 P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 15, 22–23. *See also* Berko Zečević, T. 12190–12191 (22 February 2011).

13967 Sead Bešić, T. 9458–9460 (9 December 2010); P1967 (Mortar stabiliser from Markale I); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14.

13968 Sead Bešić, T. 9461–9464 (9 December 2010).

13969 Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4747.

13970 P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 14–15, 20–21.

13971 P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 21.

13972 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 47–48; Mirza Sabljica, T. 7913–7916 (14 October 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994). *See also* P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p 3. Berko Zečević testified that he and another three colleagues volunteered to investigate the incident, having heard the then-UNPROFOR commander say that the direction of fire could not be established. Zečević also claimed that they were appointed by the investigative judge. *See* Berko Zečević, T. 12278–12291 (23 February 2011); D1093 (Information on engagement of Berko Zečević).

13973 Berko Zečević, T. 12159–12160 (22 February 2011), T. 12375–12376 (24 February 2011) (stating that the stabiliser could be lowered back into the crater without any difficulty); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 5; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 19 Sead Bešić, T. 9415–9417 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

stabiliser from the crater once more and measured the depth of the penetration of the stabiliser, which he found to be at 25 centimetres.[13974] He used this depth to determine the angle of descent, as well as the direction and the origin of fire.[13975] Within 36 hours of starting the investigation, Zečević and his team had compiled a report in which they confirmed that the shell came from the direction of north-northeast, that is, 18 degrees from the north, plus or minus five degrees, with an angle of descent of 60 degrees, plus or minus five degrees.[13976] They also determined that the projectile was a 120 mm shell that detonated upon contact with the ground[13977] and that its destructive power corresponded to the number of victims and the type of injuries they suffered in this incident.[13978] His report concluded that, depending on the charges used to launch it, the shell could have come from six different areas, the first one being between 1,640 and 1,840 metres away[13979] and the last one between 6,170 and 6,546 metres away; only the first one was in the territory held by the ABiH in the area of Grdonj Hill.[13980]

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13974 Berko Zečević, T. 12159–12160 (22 February 2011), T. 12338–12340, 12357 (24 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 5.

13975 Berko Zečević, T. 12159–12160 (22 February 2011), T. 12338–12340, 12357 (24 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 5. Zečević conceded that the method he used to establish the angle of descent was not standard at the time but stated that it has now been adopted in urban zones. *See* Berko Zečević, T. 12340 (24 February 2011).

13976 Berko Zečević, T. 12161–12162, 12173 (22 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court pp. 5, 8. The Chamber notes that while e-court page 5 of the English translation of the report refers to a direction of "northwest", this is clearly a mistake in translation as the original BCS version of the report refers to a "north-east" direction.

13977 Berko Zečević, T. 12162–12163 (22 February 2011), T. 12332–12338, 12355–12357 (24 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court pp. 5–6, 8.

13978 P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 8; Berko Zečević, T. 12311–12318 (24 February 2011); D1095 (Sketch re shelling of Markale on 5 February 1994).

13979 The range in the distances outlined here takes into account the range in the established angle of descent. In other words, if the angle of descent at the lowest spectrum, namely 55 degrees, and the shell was fired on charge one, then it came from 1,840 metres away. If however the angle of descent was 65 degrees, then it came from 1,640 metres away. Zečević used the same method for all other points he listed. The ranges were therefore as follows: on charge two, between 2,972 and 2,577 metres away, on charge three between 4,120 and 3,622 metres away, on charge four between 5,110 and 4,570 metres away, on charge five between 5,979 and 5,500 metres away, and on charge six between 6,546 and 6,170 metres away. These values also show that the higher the angle of descent, the shorter the distance the shell has to travel on a particular charge.

13980 P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court pp. 6, 8; Berko Zečević, T. 12172–12173 (22 February 2011). The Chamber notes that, unlike the English version, the BCS version of P2317, at e-court page 17, contains a map on which Zečević marked the six locations and that the first location is near Grdonj, which was in the ABiH zone of responsibility during the conflict. *See* para. 3856. Although the Accused challenged Zečević's expertise in relation to his ability to conduct the above analysis, the Chamber found that Zečević had the necessary expertise. *See* Hearing, T. 12145–12146, 12171–12172 (22 February 2011); Berko Zečević, T. 12282–12284 (23 February 2011).

(c) UN investigations

4182. On the day of the incident, Harland was at the Sarajevo airport, meeting with Krajišnik and Koljević.[13981] Upon receiving news of the incident, he immediately sent a local doctor to the scene while he returned to UN headquarters to make contact with Rose and debrief him once he heard back from the local doctor and the investigators.[13982] Rose was in Mostar on the day of the incident; on his return to Sarajevo the next day, the BiH government had already accused Bosnians Serbs of firing the shell, which was denied through a statement by the Accused, wherein he accused the Bosnian Muslims of firing on their own people.[13983]

4183. The UN conducted two sets of investigations into the incident.[13984] The first investigation was conducted on the day of the incident and consisted of three separate crater analyses, done by FreBat's Major Cazaux, Sector Sarajevo's Captain Verdy, and Major Russell respectively; the second investigation took place on 11 through 13 February 1994 and was conducted by another UN team, which performed seven different crater analyses.[13985]

4184. Cazaux's team excavated the stabiliser fin from the crater and performed the first crater analysis, finding that the bearing of the shell was 620 mils (34.8 degrees).[13986] It also noted that the fin belonged to a 120 mm mortar round and that it was buried approximately eight centimetres below the surface of the asphalt.[13987]

4185. Verdy conducted the second analysis for the UN and determined that the bearing of the shell was somewhere between 800 and 1,000 mils (45 to 56.2 degrees), while its angle of descent was 1,400 mils (78.7 degrees) and its maximum range somewhere between 2,000 and 3,500 metres; he further concluded that a 120 mm shell hit Markale market at 12:10 p.m., by first impacting on a market stall and then hitting the ground from short range, low-angle fire.[13988] He

13981 David Harland, T. 2039 (6 May 2010).

13982 David Harland, T. 2039 (6 May 2010).

13983 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 37–38.

13984 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39; Michael Rose, T. 7340–7342 (6 October 2010); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 16.

13985 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 15–17; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 1; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 5, 7. *See also* Adjudicated Fact 331.

13986 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17–18.

13987 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 18. *See also* Adjudicated Fact 330.

13988 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 2. According to the later UN report on the incident, Verdy did not measure the angle of descent due to the crater being disturbed, but instead found the minimum possible angle of descent in order for the shell to clear the building along the calculated bearing. *See* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 16.

informed his command that because of the prior impact on the market stall, the analysis was very difficult.[13989]

4186. Major John Russell, who—at the relevant time, was deployed as Military Assistant to Sergio de Mello, the representative of the Secretary-General in Sarajevo, and possessed some experience in crater analysis[13990]—was asked to go to the scene of the explosion by UNPROFOR Chief of Staff Ramsey.[13991] He arrived at the incident site at about 4:30 p.m. on 5 February 1994, after the above two analyses had been completed, and observed blood and human remains, as well as the crater and a thoroughly swept impact site.[13992] Concluding that the round had come in from east-northeast, at a bearing of 450 mils (25.3 degrees) and with an angle of descent between 1,200 and 1,300 mils (67.5 and 73.1 degrees), he was struck by how steep the angle of decent must have been in order to clear the adjacent large building, which led him to believe that it had come in from a location close to the crater.[13993] At the time, he concluded that it was not possible to determine which side had fired the round as the minimum/maximum range straddled the confrontation line.[13994] That evening, he noted in his diary that he believed that the ABiH had "shot at themselves" given the close distance from which the round must have been fired.[13995] When put to him that firing tables for 120 mm shells indicate that the angle of descent remains the same regardless the distance from which the shell is fired on different charges, Russell accepted that, had he known this, he would have likely come to a different conclusion about the distance from which the shell was fired at the time.[13996]

4187. On 8 February 1994, Rose met with ABiH representatives Generals Divjak and Hajrulahović, and Colonel Dakić at the ABiH headquarters, where he told them that evidence was

13989 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 2.

13990 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 4, 7–9; John Russell, T. 29381 (30 October 2012).

13991 D2364 (Witness statement of John Russell dated 17 October 2012), para. 12. *See also* David Harland, T. 2325–2328 (11 May 2010); KDZ450, T. 10676–10677 (20 January 2011).

13992 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 12–14 (explaining that he was not aware at the time that the stabilizer had been removed from the crater); John Russell, T. 29382–29383 (30 October 2012); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 41.

13993 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 20–23 (explaining also that he did not recall measuring the angle of the descent at the scene but had no reason to doubt the UN report's references to his measurements). *See also* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 17.

13994 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 23, 31; D2367 (Handwritten notes of John Russell on UNPROFOR report re shelling of Markale on 5 February 1994) e-court p. 2; John Russell, T. 29406 (30 October 2012); D2365 (UNPROFOR report, 6 February 1994), e-court p. 2.

13995 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 33–36; D2366 (Excerpt of John Russell's diary, 5 February 1994); John Russell, T. 29397 (30 October 2912).

13996 John Russell, T. 29397–29400 (30 October 2012); P5921 (Firing tables for M74 120 mm light mortar).

emerging which indicated that the incident may have been caused by their side.[13997] Rose conceded in cross-examination that after he told the Bosnian Muslim side of the results of the first UNPROFOR investigation, they decided to accept the cease-fire which they were initially refusing.[13998]

4188. Because of the significance of the incident, UNPROFOR headquarters in Zagreb ordered that a second investigation be carried out.[13999] The UNPROFOR team was headed by Colonel Michel Gauthier and began its work on 11 February 1994.[14000] The team also included, among others, Lieutenant Colonel Rumyantsev and technical advisers John Hamill and Eric Dubant.[14001] According to Gauthier, the team was instructed to confine its investigation to crater analysis and related technical aspects of the explosion.[14002] The investigation was concluded on 15 February and the team reported that the bearing of what was confirmed to have been a 120 mm mortar shell was somewhere between 330 and 420 mils (18.5 and 23.6 degrees).[14003] The team further concluded that the crater analyses conducted by Cazaux and Verdy were flawed and that all of their associated findings were therefore questionable.[14004] The report notes that Hamill measured the angle of descent at between 950 and 1,100 mils, (53.4 and 61.8 degrees), which meant that the shell must have come in from between 950 and 5,450 metres, depending on the charge used.[14005] However, in its final conclusion, the team noted that the angle of descent measured by Hamill was

13997 Michael Rose, T. 7342 –7344 (6 October 2010); D2770 (Witness statement of KW570 dated 21 November 2012) (under seal) para. 11; D2772 (Redacted diary of KW570) (under seal) e-court pp. 3–4. KW570 explained that in fact Rose and the UNPROFOR Command were not that interested in who fired on Markale but rather wanted to use this opportunity to achieve something positive, such as a peace deal. *See* KW570, T. 32232 (18 January 2013).

13998 Michael Rose, T. 7339–7340 (6 October 2010).

13999 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39. *See also* Yasushi Akashi, T. 37687–37688 (24 April 2013).

14000 D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 5, 7.

14001 D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 5; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 13.

14002 D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 7; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 9.

14003 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 14–18.

14004 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6096–6098; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 8–11; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 10, 16, 19 (stating that Verdy's analysis was flawed because he made a mathematical error when calculating the bearing and because he estimated the angle of descent using the height of the buildings in the direction of fire he established, while FreBat's bearing was wrong because they used an unconventional method to determine it). *See also* Richard Higgs, T. 5928 (18 August 2010).

14005 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17, 19, 25 (stating that the angle of descent was "probably between 950 and 1,100 mils" but that it is not possible to be "more accurate" due to the fact that a several days elapsed between the impact and the analysis); D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 20.

not "beyond suspicion" due to the crater having been excavated.[14006] Therefore, using the height of the buildings in the area to estimate that the minimum angle of descent necessary to clear those buildings was 870 mils (48.9 degrees), the team concluded that the possible range for the mortar shell was between 300 and 5,551 metres in the established direction of fire.[14007]

4189. In cross-examination, Gauthier confirmed that there were no known fixed mortar positions on the ABiH held-territory along the direction of fire from which the Markale shell had originated and in which the UNMOs were free to move about as they wished, whereas he could recall that the Bosnian Serb side had one such position in the identified area.[14008] However, Gauthier also explained that mortars are mobile weapons that can be moved relatively quickly and leave little trace of their use and that, at the time, his team did not go to Bosnian Serb-held territory to investigate, given the extremely low probability of identifying a possible firing point.[14009]

4190. As noted above, Hamill was one of the technical advisers on the UNPROFOR team participating in the second investigation and was the person who prepared the UNPROFOR report.[14010] According to him, the team conducted a detailed technical analysis based on the physical evidence gathered, crater analysis, and interviews with eyewitnesses and the UN personnel who conducted the first investigation.[14011] Hamill personally analysed the crater twice, the first time using a "fuse tunnel method",[14012] followed by the central axis method, through which he determined that the shell came from a north-northeasterly direction.[14013]

4191. Hamill concluded that the explosion took place between 12:10 and 12:15 p.m. and was caused by a "conventional factory-produced 120 mm high explosive mortar bomb" which was

14006 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 19; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 21.

14007 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 19, 26. *See also* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39.

14008 Michel Gauthier, T. 29417 (30 October 2012).

14009 Michel Gauthier, T. 29414, 29418 (30 October 2012).

14010 John Hamill, T. 9680 (13 December 2010); John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6075–6079.

14011 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6077–6078, T. 6083–6085; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 10; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 1.

14012 Hamill placed a stick in the fuse tunnel which then gave him a direction of the shell, the bearing of which he then measured using a compass. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6087–6089. *See also* D2759 (Witness statement of KW571 dated 27 March 2012) (under seal), paras. 5–6.

14013 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6087–6088, 6092, 6095–6096; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17, 25. To KW571, the shape of the crater indicated that the shell had come in "following a curve" before hitting the ground, whereas a static explosion on the ground would have left different traces. *See* KW571, T. 32018 (16 January 2013).

launched from a 120 mm heavy mortar tube and which detonated on impact with the ground.[14014] The team was certain that the crater was formed by the explosion of a mortar shell.[14015] While it was determined that the shell came from the northeast, it was not possible for the investigators to determine the exact distance from the firing point, other than that it was fired between 300 and 5,551 metres from the point of detonation.[14016] Since this distance "clearly overlaps each side of the confrontation line" and since "both parties are known to have 120 mm mortars" the team concluded that the shell could have been fired by either side.[14017] The report clarifies that determining the origin of fire was impossible because a number of days had passed since the incident, during which the crater had been tampered with by various personnel making it impossible to determine the angle of descent accurately.[14018] Hamill testified that these findings were the most comprehensive possible, given the limitations of the methods used and events surrounding the incident, as well as the distance between the explosion and the frontlines of the warring parties.[14019] The team was certain, however, that the explosion was not caused by a "booby trap" and that the shell could not have been hand-launched from one of the nearby buildings.[14020]

4192. Hamill explained that the UNMOs who were interviewed during the investigation indicated that they had been denied freedom of movement by the VRS in the northeast part of Sarajevo since October 1993.[14021] Additionally, Hamill testified that he and others from the team personally met with Colonel Cvetković, the Commander of the SRK artillery regiment based in Mrkovići, to the north-northeast of Markale.[14022] According to Hamill, Cvetković confirmed that there were 120 mm mortars in Mrkovići but stated that his unit had not fired the round, while at the same time admitting that in the previous year it had fired 30,000 to 40,000 rounds into the

14014 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6085–6086, 6092–6093; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 11, 18–20, 25; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 3.

14015 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 18, 23–25.

14016 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 11, 20, 23, 25, 33. *See also* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39.

14017 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 11; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6083–6084; John Hamill, T. 9732 (13 December 2010); Francis Roy Thomas, T. 6832 (15 September 2010); Yasushi Akashi, T. 37687–37688 (24 April 2013). The results of this report were then forwarded to the Security Council by the UN Secretary General, while Akashi reported to Koffi Annan. *See* D179 (Letter from UNSG to the President of UNSC, 16 February 1994); D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994), pp. 1–2.

14018 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 23. *See also* D2759 (Witness statement of KW571 dated 27 March 2012) (under seal), paras. 8–9.

14019 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6084–6085.

14020 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 25, 29; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6086, T. 6206. *See also* Michel Gauthier, T. 29416 (30 October 2012).

14021 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6105–6107. *See also* Michel Gauthier, T. 29417–29418 (30 October 2012).

city.[14023] The Chamber also has in evidence a report on this meeting, sent to the VRS Main Staff and the SRK Command by Cvetković himself, which somewhat contradicts Hamill's evidence.[14024] According to this report, Cvetković informed the VRS Main Staff and the SRK Command that he was told by Gauthier that the shell was of 120 mm calibre, that the angle of descent was not established with precision, and that the shell could have been fired by either side.[14025] Cvetković also reported that he "strongly denied" that the shell was launched by the Serbian side, offered that the commission visit the "suspected place", and asserted that the SRK did not have 120 mm mortars on this part of the frontline.[14026] According to Gauthier, however, the team did not go to the SRK-held territory in the established direction of fire because the area to be inspected was vast and the team judged that they would not be able to locate the position from where the mortar was fired.[14027]

4193. While the team was not shown any ABiH mortar positions, the Deputy Chief of Staff of Sector Sarajevo, Colonel Pardon, visited two such positions and an ammunition storage facility on 9 February 1994, which included what appeared to be locally-produced 120 mm mortar bombs.[14028] However, according to Hamill, because Pardon was working off of the results of the first flawed analysis by UNPROFOR, he examined the wrong area.[14029]

4194. Having conducted the investigation outlined above, Hamill and his team concluded that there were six possible firing locations in a line along the established direction of fire, two of which were on the ABiH side of the frontline and four on the SRK side.[14030] He confirmed on cross-examination that because it was impossible to determine the charge with which the mortar was fired, it was also not possible to say which of these locations the round came from.[14031] As

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14022 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109.

14023 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109.

14024 While this report does not name Hamill as one of those present at the meeting, the Chamber notes that it does refer to Gauthier and two other members of the investigation "committee". The Chamber considers that one of these two members was Hamill. *See* D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), p. 1.

14025 D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), pp. 1–3.

14026 D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), p. 3.

14027 Michel Gauthier, T. 29418 (30 October 2012).

14028 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6107; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 44. Russell also testified that around 9 February 1994, he accompanied UNPROFOR personnel to an ABiH ammunition depot where they found 120 mm mortar shells after having been told that there were no such shells in this depot. *See* D2364 (Witness statement of John Russell dated 17 October 2012), paras. 36–37; John Russell, T. 29401, 29403 (30 October 2012); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 48–49.

14029 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6108–6109.

14030 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109–6110; John Hamill, T. 9726 (13 December 2010).

14031 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6189–6190; John Hamill, T. 9694 (13 December 2010).

for the fuse tunnel in Markale, Hamill claimed that, while not "completely intact" it was "intact enough" for him to estimate the angle of descent.[14032] In addition, he explained that the team also used other methods to establish the direction, and that there was a remarkable consistency across the results despite the fact that various investigators in his team did their tests independently and used different methods.[14033]

4195. Hamill also thought that the market hit was a fluke since a 120 mm mortar is not a terribly accurate weapon and no adjusting rounds were fired in this particular case.[14034] He did concede, however, that if the market was indeed the target, the probability of hitting it would have been slightly higher the closer the market was to the weapon.[14035] Having looked at the report prepared by Sabljica and the others at the CSB Sarajevo, Hamill confirmed that the methodology used was good and the results consistent with the results he and his team produced.[14036]

4196. Colonel Steven Joudry, a trained artillery officer and instructor in gunnery and field techniques for crater analysis in the Royal Canadian Army who, at the relevant time, served at UNPROFOR headquarters in Croatia, stated that he was informally asked by "an UNPROFOR authority" to review the report of Colonel Gauthier's team, given his extensive experience in crater analysis.[14037] Having done so, Joudry had serious reservations, although he had never seen the crater himself, about the procedures used in the Markale crater analysis, as it was neither conducted on a fresh, undisturbed crater, nor was crater analysis generally an exact-enough method "to determine culpability".[14038] Joudry further considered that it would have been "virtually impossible" for a single mortar round to fire at the market and hit it,[14039] and that,

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14032 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6194; John Hamill, T. 9729, 9732–9733 (13 December 2010). On cross-examination, Hamill and Rose conceded that the best time to investigate an incident such as this would have been immediately after, and that interference with evidence would make such an investigation "less than perfect". *See* Michael Rose, T. 7340–7342, 7359 (6 October 2010); John Hamill, T. 9692–9693 (13 December 2010). Hamill denied, however, that any forensic evidence had been removed by the Bosnian Muslims as FreBat was on the scene soon after the explosion. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6198–6201.

14033 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6194.

14034 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6191, T. 6218; John Hamill, T. 9722–9724, 9729–9732 (13 December 2010).

14035 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6192–6193; John Hamill, T. 9726–9727 (13 December 2010).

14036 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6098–6102.

14037 D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 1–3, 13. Upon cross-examination, Joudry conceded that most of the analyses he had carried out were training exercises. *See* Stephen Joudry, T. 29329 (30 October 2012).

14038 D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 10, 14, 16–24; Steven Joudry, T. 29339 (30 October 2012). Joudry stated that the fact that much of the information was gathered hours or even days after the explosion (rather than from a hot undisturbed crater) in a public area, rendered many of the results questionable. He added that in other field situations, such analyses would have been discarded.

14039 D2363 (Witness statement of Steven Joudry dated 14 August 2012), para. 24(c); Steven Joudry, T. 29354–29355, 29369 (30 October 2012).

alternatively, the mortar shell could have been dropped from one of the surrounding buildings and the stabiliser inserted into the crater in the "first few moments of confusion".[14040]

4197. Rose testified that following the incident he stated to the press that, as with the Dobrinja incident of the day before—which had been determined by the UNPROFOR to have been committed by the Serb side—it was most likely that the shell that landed on Markale market had also come from the Serb side.[14041] When shown the report prepared by Gauthier's team, including the statement that the measured angles were not "beyond suspicion" because of the crater disturbance, Rose refused to comment saying that he was not involved in the investigation or the writing of the report.[14042]

4198. Harland wrote the portion of the UN's weekly assessment relating to this incident in which he reported that 68 people were killed and up to 200 injured, almost all of whom were civilians.[14043] While this assessment provided that the mortar bomb was fired from the northeast, from near the confrontation line, it also stated that it was not possible to say with certainty that it came from the Serb positions.[14044] However, in Harland's view, the circumstantial evidence pointed to the Serbs because (i) the incident resembled the incident of the day before which was confirmed by UNPROFOR experts as having been perpetrated by the Serbs; (ii) public claims made by Krajišnik after the incident that body parts had been flown in by the United States or that mannequins were used as a part of an elaborate hoax were completely bizarre and outlandish; and (iii) the Bosnian Muslims gave access to UNPROFOR to all areas and personnel in the course of the UNPROFOR's investigation of this incident, whereas the Serbs did not.[14045]

(d) Firing positions northeast of Markale

4199. The Chamber recalls that the closest confrontation line in the north-northeastern area of Sarajevo was in the area above Sedrenik and around Špicasta Stijena, on the ABiH-held Grdonj

14040 D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 24(c), 25–28; Steven Joudry, T. 29364–29368 (30 October 2012).

14041 Michael Rose, T. 7343–7344 (6 October 2010). When shown a UN summary of the media reports from 7 February 1994, where he is quoted as saying only that it was uncertain at that point who fired the shell, he commented that this report was incomplete because he had also said that it was most likely that the Serbs had shelled the market. *See* Michael Rose, T. 7363–7364 (6 October 2010), T. 7591–7592 (8 October 2010); D682 (UNPROFOR report re local press summary, 7 February 1994), e-court p. 4.

14042 Michael Rose, T. 7350–7354 (6 October 2010); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 19.

14043 P820 (Witness statement of David Harland dated 4 September 2009), para. 73; P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), pp. 1–2.

14044 P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), pp. 1–2.

14045 P820 (Witness statement of David Harland dated 4 September 2009), para. 75. *See also* David Harland, T. 2040–2041 (6 May 2010), T. 2320–2325, T. 2331–2332 (11 May 2010); P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), p. 5; P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), p. 7.

Hill.[14046] Hogan measured the distance to this point as being some 2,300 metres from Markale.[14047] He also measured the distance to the confrontation line on the bearing of 18 degrees plus or minus five degrees, and testified that it was approximately 2,800 metres away.[14048] Hogan also testified that Markale market was at an altitude of 556 metres above sea level while Špicasta Stijena was at 874 metres.[14049] According to Adjudicated Fact 335, the distance between Markale market and the SRK side of the confrontation line to the north-northeast at the time of the incident was approximately 2,600 metres.[14050]

4200. The Chamber further recalls its findings in Section IV.B.1.b.iii.C: Sedrenik that, with the exception of a few days around mid-1994, Špicasta Stijena was in the zone of responsibility of the SRK, more precisely the 7th Battalion of the 1st Romanija Infantry Brigade and that the two sides were very close to each other.[14051] According to Gengo, the 7th Battalion was deployed at a higher altitude than the ABiH forces in the sector of Špicasta Stijena, Mala Tvrđava, and Velika Tvrđava, whereas the forces at Borije, Faletići, and other sectors were mostly at the same level.[14052] He further stated that the ABiH forces opposed to his battalion were in possession of a variety of infantry weapons, including 120 mm mortars, which changed positions often.[14053] According to Gengo, the ABiH units fired at his battalion mostly from the area of Koševo and from the Jajce Barracks.[14054]

4201. As regards SRK mortar positions, Milorad Džida, then-Assistant Commander for Intelligence and Security of the 7th Battalion of the 1st Romanija Infantry Brigade,[14055] stated that the SRK had two fixed mortar positions, one at Debelo Brdo and one at Mrkovići, each equipped

14046 *See* paras. 3852–3857, 4172.

14047 Barry Hogan, T. 11221–11224 (3 February 2011); P2212 (Map of Sarajevo marked by Barry Hogan).

14048 Barry Hogan, T. 11221–11224 (3 February 2011); P2212 (Map of Sarajevo marked by Barry Hogan).

14049 Barry Hogan, T. 11221–11224 (3 February 2011).

14050 *See* Adjudicated Fact 335.

14051 *See* para. 3855.

14052 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16. Gengo also testified that the 7th Battalion was bordered by the Koševo Battalion. The border between the two was "spread in the middle between the village of Mrkovići". *See* D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 37.

14053 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 17. *But see* P1058 (ABiH map) (indicating that ABiH had mortars in Breka but not near Špicasta Stijena); P6301 (Reference table of military symbols).

14054 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 18, 23; Slavko Gengo, T. 29772–29773, 29775–29780 (6 November 2012); P2193 (Map of Sarajevo); P5967 (Map of Sarajevo marked by Slavko Gengo). The Chamber notes that Jajce Barracks were located east of Stari Grad while the Koševo Hospital complex is located northwest of Stari Grad.

14055 D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 5.

with two 82 mm and two 120 mm mortars.[14056] According to Gengo, there were no 120 mm mortars beyond Mrkovići[14057] and Mrkovići mortars were used to respond to incoming fire from the Mala Tvrđava-Velika Tvrđava axis, whereas the Debelo Brdo mortars were used when the Faletići-Zečija Glava sectors were attacked; he asserted that the mortars' positions were not used on any other axes, including towards the city.[14058]

4202. Galić testified that he never issued an order for the SRK to fire on Markale on that day and also stated that he never received a report from subordinate units that any of them ordered this fire.[14059] On the day of the incident, he ordered a strict ban on fire into urban parts of Sarajevo, in which he stated that "[r]ecently, despite explicit orders, certain units, individuals and artillery weapons' crews have, arbitrarily and without approval, been opening fire on urban parts of Sarajevo, without need".[14060] As a result, according to the order, the units were to fire into urban parts of Sarajevo only when given a special order of the SRK Commander.[14061] In the order, Galić also mentioned that Sarajevo was the focus of media attention and that every action would be used for "propaganda purposes" against the Serbs.[14062]

4203. Similarly, on 7 February 1994, the Accused issued an order to the VRS Main Staff and the SRK, stating first that "there is evidence that Serbs are not responding in equal measure to Muslim artillery provocations—sometimes twenty to thirty, or even seventy times more" and ordering as a result that the VRS introduce "the strictest possible control of retaliation to provocations", respond only when threatened and against military targets, and strictly at the commander's commands.[14063] Harland recalled that this order corresponded to his recollection of events after the Markale market incident, namely that an effective cease-fire did occur.[14064]

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14056 D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 15, 28; Milorad Džida, T. 29577–29581 (1 November 2012); P5952 (Map of Sarajevo marked by Milorad Džida). *See also* P1058 (ABiH map) (indicating that SRK had 120 mm mortars in Mrkovići); P6301 (Reference table of military symbols).

14057 Slavko Gengo, T. 29772–29775, (6 November 2012); P5966 (Map of Sarajevo marked by Slavko Gengo); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 38.

14058 Slavko Gengo, T. 29772–29774, (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 38. *See also* D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 15, 28; Milorad Džida, T. 29589–29591 (1 November 2012).

14059 Stanislav Galić, T. 37443–37445 (18 April 2013).

14060 P5970 (SRK Order, 5 February 1994).

14061 P5970 (SRK Order, 5 February 1994).

14062 P5970 (SRK Order, 5 February 1994).

14063 P846 (Radovan Karadžić's Order to VRS, 7 February 1994).

14064 P820 (Witness statement of David Harland dated 4 September 2009), paras. 77–78.

(e) Bosnian Serb calls for joint investigation

4204. Milovanović testified that, in the evening of 5 February 1994, Ramsey phoned him and claimed that the Serbs fired an 82 mm mortar shell killing 96 Muslims and wounding 213 civilians in Markale market.[14065] Milovanović in turn asked that a joint commission, comprising of UN, ABiH, and SRK representatives, go to the scene the next day together with ballistics experts to ascertain objectively who was to blame.[14066] Milovanović followed up on his exchange with Ramsey with an official request for the establishment of a joint commission addressed to Rose.[14067] In the follow-up he stated that if this request was refused, the VRS would suspend all co-operation with UNPROFOR and humanitarian organisations and would block any movement of humanitarian organisations and foreign nationals until further notice.[14068] Later that evening, Ramsey informed Milovanović that the Muslim side was refusing to participate in the joint commission.[14069] At around 2 a.m. on 6 February 1994, Ramsey finally informed him that there would be no such joint investigation.[14070] Thus, neither the Serb nor the Muslim side was represented during the UN investigations of this incident, although their liaison officers were "permitted to maintain contact with the investigation team".[14071]

4205. On 6 February 1994, Rose met Milovanović at Lukavica Barracks.[14072] During this meeting Milovanović adamantly denied that the shell had been fired from the Serb side and repeated his request for a joint investigative commission; however, Rose was "not interested" in

14065 Manojlo Milovanović, T. 25731–25732 (5 March 2012).

14066 Manojlo Milovanović, T. 25732 (5 March 2012); D683 (Intercept of conversation between General Ramsey and General Milovanović, 5 February 1994).

14067 Manojlo Milovanović, T. 25732–25733 (5 March 2012); D2182 (Letter from Manojlo Milovanović to General Rose, 5 February 1994). *See also* P1638 (Witness statement of Michael Rose dated 26 March 2009, para. 38; P1652 (Letter from VRS Main Staff to Michael Rose, 5 February 1994), paras. 1, 5.

14068 P1652 (Letter from VRS Main Staff to Michael Rose, 5 February 1994), paras. 1, 5; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 38; Michael Rose, T. 7364–7370 (6 October 2010).

14069 D2183 (Public statement of Manojlo Milovanović, 5 February 1994).

14070 Manojlo Milovanović, T. 25732–25733 (5 March 2012). *See also* D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 136; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109; Stanislav Galić, T. 37444 (18 April 2013), T. 37529–37530 (22 April 2013), T. 38065 (9 May 2013) (adding that General Gvero made a similar request to the level of command of the UNPROFOR Sector and that this request was also refused on the basis that the commission's safety could not be guaranteed); D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570's witness statement. The one cited in this footnote is the second one.

14071 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 55–56; Michael Rose, T. 7592–7593 (8 October 2010); John Hamill, T. 9681–9682 (13 December 2010).

14072 D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570's witness statement. The one cited in this footnote is the second one.

the proposal.[14073] In the days following this incident, Rose also met with the Accused, who denied Serb responsibility for the Markale incident.[14074]

4206. According to Milovanović, the Serb side carried out its own investigation into the incident under the leadership of Colonel Ljuban Kosovac, concluding that the explosion was not caused by a shell but rather by an explosive device detonated at ground level.[14075] The Chamber has not received any other evidence about this investigation or its results. However, it did hear from Radojčić, who testified that he was appointed on 5 February 1994 to a mixed commission together with Lugonja and Cvetković, but that this commission was not allowed to work, and that he was then ordered by Dragomir Milošević to establish who had fired the shell.[14076] He was subsequently transferred to the SRK Command in Lukavica in order to go to the scene to establish the trajectory of the shell, but the Muslim side did not allow it.[14077]

4207. Contrary to Milovanović and Radojčić, who testified about an internal SRK investigation, Džida and Gengo claimed that a mixed commission, including an UNPROFOR delegation, "cleared" the SRK upon inspection of SRK mortar positions on 6 February 1994.[14078] According to Gengo and Džida, they were informed on 5 and 6 February 1994, respectively, by the command of the 1st Romanija Motorised Brigade that an inspection team escorted by UNPROFOR would come to visit the battalion.[14079] This visit took place in the morning of 6 February 1994 and a report thereon was compiled by Jakovljević for the SRK.[14080] Members of UNPROFOR and the VRS Main Staff arrived to inspect the Mrkovići mortar positions and while doing so spoke to

14073 D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570's witness statement. The one cited in this footnote is the second one.

14074 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 41.

14075 Manojlo Milovanović, T. 25735–25736 (5 March 2012). *See also* Savo Simić, T. 30065 (12 November 2012); Stanislav Galić, T. 37862–37866 (7 May 2013) (testifying that the commission headed by Kosovac was established before Markale for the purposes of investigating every incident).

14076 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109. *See also* D2774 (Witness statement of Milenko Inđić dated 19 January 2013), paras. 136–137.

14077 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109. *But see* Manojlo Milovanović, T. 25735 (5 March 2012) (testifying that Kosovac managed to visit Sarajevo during his investigation).

14078 D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 16–18, 29; Milorad Džida, T. 29573–29577, 29582, 29585–29590 (1 November 2012); Slavko Gengo, T. 29803–29809 (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32.

14079 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32; D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 16, 29; Milorad Džida, T. 29573–29575 (1 November 2012); Slavko Gengo, T. 29803–29804 (6 November 2012).

14080 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32; D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 17; Milorad Džida, T. 29574–29576, 29591–29593 (1 November 2012); Slavko Gengo, T. 29805 (6 November 2012).

those who were on duty on the day of the incident.[14081] Gengo could not remember anything about the members of the UN who attended this visit, including their number, nationality, and/or names while Džida remembered that one of the UNPROFOR officers was Russian.[14082] When confronted with daily combat reports of the SRK of 5, 6, and 8 February, which made no mention of any UNPROFOR visit, Gengo remained adamant that the visit did take place.[14083] The Chamber notes that the UN report of the second UN investigation specifically states that the Mrkovići positions had not been visited by the UN in at least four months and that they could not be located with accuracy.[14084]

4208. Gordan Milinić, the Accused's Security Adviser at the time,[14085] testified that when the Accused heard about the incident on the day, he expressed astonishment and said that it was "yet another Muslim hoax"; he then immediately called the "military experts" who explained to him that the shell could not have been fired from the SRK positions and that this was a hoax by the Muslim side.[14086] On 6 February, the Accused met with Akashi and told him that it was the other side that fired the shell.[14087] On 10 February 1994, the Accused gave a press statement calling for a joint commission to investigate the incident, reminding the public that the Muslim side had previously staged shelling incidents and stating that the Serbs had no reason to continue with peace negotiations until a joint commission was established and findings on the incident were made.[14088]

(f) Post-war investigations

4209. Years later, in January 2003, for the purposes of the *Galić* case,[14089] Zečević carried out an additional analysis of the Markale market incident and concluded that the first three of the six possible charges could not have been used to fire the shell because the speed of the shell would

14081 D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 17; Milorad Džida, T. 29576–29577, 29582, 25985–25990 (1 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32.

14082 Slavko Gengo, T. 29805–29807, 29831 (6 November 2012); Milorad Džida, T. 29585 (1 November 2012).

14083 Slavko Gengo, T. 29809–29810, 29815–29824, 29826–29827 (6 November 2012); P5969 (SRK combat report, 5 February 1994); P5971 (SRK combat report, 6 February 1994); P5972 (SRK combat report, 6 February 1994); P5973 (SRK combat report, 8 February 1994).

14084 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 44. *See also* Milorad Džida, T. 29590–29599 (1 November 2012).

14085 D3682 (Witness statement of Gordan Milinić dated 8 June 2013), para. 9.

14086 D3682 (Witness statement of Gordan Milinić dated 8 June 2013), para. 15. *See also* D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 32–35 (testifying that the Supreme Defence Council in FRY was informed by General Momčilo Perišić that the incident was caused by the Muslim side).

14087 Yasushi Akashi, T. 37688–37689 (24 April 2013); D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994), e-court p. 1; Michael Rose, T. 7547–7549 (8 October 2010).

14088 P5974 (Video footage of Radovan Karadžić press conference in Geneva, 10 February 1994).

14089 Berko Zečević, T. 12304–12306, 12373–12375 (24 February 2011).

have been slower than necessary to embed the stabiliser in the crater.[14090] Using the angle of descent and having calculated the speed of impact of the shell,[14091] Zečević determined that it came from between 4,500[14092] and 6,400 metres away, and thus from three areas that would correspond to the three highest charges all of which were located in SRK-held territory.[14093]

4210. When asked by the Accused why he did not conduct this analysis back in 1994, Zečević explained that there had not been sufficient time.[14094] He denied that he changed the original conclusion because he wanted to blame the Serbs for the incident or because he feared for his own safety.[14095] When asked how it was possible that he alone was able to establish the origin of fire when all the other teams that worked on this incident could not, Zečević stated that the UNPROFOR investigators were soldiers and not engineers who worked on the design of the ammunition and its effects.[14096]

4211. Higgs also investigated this incident after the war. He visited the site years later but noted that it offered little evidence due to redevelopment.[14097] Higgs agreed with Sabljica's report, noting that the UNPROFOR analyses corroborate it.[14098] Like many others, Higgs also noted that while the calibre of the mortar and the direction of fire could be determined through crater examination, the distance from which the mortar was fired was more difficult to ascertain as a mortar can be fired using different charges.[14099] According to Higgs, if the aim was to hit

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14090 Berko Zečević, T. 12173–12175 (22 February 2011), T. 12303–12308 (24 February 2011).

14091 Based on the fact that the stabiliser was embedded in the crater and certain calculations relating to penetration into what he called "soft barriers", Zečević calculated that the minimum speed of the incoming shell would have been over 200 metres per second, with a margin of error of 20 metres. *See* Berko Zečević, T. 12164–12170 (22 February 2011); P2316 (Diagram of impact of stabiliser marked by Berko Zečević). Turkušić testified that the tarmac in the open area of Markale market where the shell landed is softer than the tarmac on the Mula Mustafe Bašeskije street, namely the location of the second Markale incident, as it was not designed for heavy vehicles to pass over it. *See* Emir Turkušić, T. 9075–9076 (4 November 2010). *See also* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 28–29 (where Dubant explains that the first layer is asphalt and below it is a mix of soil and pebbles).

14092 The Chamber notes that at first Zečević referred to a distance of 5,400 metres but then was asked and answered a question referring to a distance of 4,500 metres. Later on, he mentioned 4,950 metres. *See* Berko Zečević, T. 12169, 12174 (22 February 2011), T. 12304 (24 February 2011). Given that the distance of a shell fired at charge four would have been between 4,570 and 5,110 metres and that he did not exclude charge four, the Chamber considers that the reference to 5,400 metres was probably a mistake and that he intended to say 4,500 metres.

14093 Berko Zečević, T. 12169–12175 (22 February 2011), T. 12303–12305, 12349–12352 (24 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 6.

14094 Berko Zečević, T. 12305–12306 (24 February 2011).

14095 Berko Zečević, T. 12310–12311, 12341–12343, 12375 (24 February 2011).

14096 Berko Zečević, T. 12358–12360 (24 February 2011).

14097 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

14098 Richard Higgs, T. 5924–5929 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20.

14099 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

Markale, this would not have been too difficult to achieve as it is easily identified from a distance by other landmarks, especially since parts of the town were "pre-recorded".[14100]

4212. Higgs visited all six potential locations from which the shell could have been fired, depending on the charge used, including the area of Mrkovići located northeast of the incident site and in which he found many suitable sites for placing a mortar, as well as routes that could be used to supply it.[14101] In his view, Mrkovići was the area from which the mortar shell was "possibly fired".[14102] Elaborating further, Higgs explained that if the shell had been fired using two medium charges this would have placed the mortar in the area right on top of the confrontation line, which was not a good place for tactical reasons.[14103] If the two lowest charges had been used, this would have placed the mortar within the confrontation lines and within the built up area of Sarajevo; yet, no shell fire noise was reported.[14104] Finally, as for the two highest charges, which place the origin of fire farther behind the confrontation line, in Mrkovići, Higgs noted, like Zečević, that the stabiliser of a mortar shell fired on higher charges will usually embed itself into a crater, which is what happened in Markale.[14105] Furthermore, he had the statement of a witness who heard a mortar being fired in the direction of fire, which indicated that higher charges were used.[14106] According to Higgs, this witness[14107] was in a good position to hear mortar fire in the vicinity and "[d]ue to the fact of distance from mortar to target the weapon would probably have been firing on a medium to high charge and therefore making a louder noise".[14108] Since the attack consisted of only one round fired into the centre of the town, Higgs was of the view that its purpose was to "harass" the population.[14109] He also noted that, while

14100 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

14101 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 11–12; Richard Higgs, T. 5955–5957 (18 August 2010), T. 6026–6027 (19 August 2010).

14102 Richard Higgs, T. 6026–6028 (19 August 2010).

14103 Richard Higgs, T. 6027 (19 August 2010).

14104 Richard Higgs, T. 6027 (19 August 2010).

14105 Richard Higgs, T. 6027 (19 August 2010). Higgs explained that the type of terrain, angle of descent, round velocity, calibre, and the weather conditions are all determining factors in whether a crater will be formed by the explosion of a shell and whether the mortar's stabiliser will be found embedded within such a crater. If a projectile is fired at the lower to medium charges a higher percentage of explosions would cause the stabiliser to be blown away from the impact site, while there would be a higher percentage chance that the stabiliser would embed in the crater if the projectile is fired with charges five and six, as those charges would result in higher velocity of the projectile. *See* P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 5–6; Richard Higgs, T. 5980–5981, 5983 (19 August 2010). *See also* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6075.

14106 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

14107 The Chamber notes that Higgs did not identify this "witness" in his evidence. Further, this person did not testify in the present case. While the Prosecution implies in its Final Brief, in footnote 387 of Appendix C, that he is "Witness AF" (referred to in Adjudicated Fact 332), there is nothing in the evidence before the Chamber that allows it to make that connection between Higgs' evidence and Adjudicated Fact 332.

14108 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 11–12.

14109 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

possible to hit the market with a single "initially sighted round", it is more likely that the market was "pre-recorded".[14110]

4213. Zorica Subotić investigated this incident and based her conclusions on the previous investigation reports, photographs taken by the different investigation teams, a video recording of the incident and its aftermath, and her own site visit in 2010.[14111] In her opinion, the events as established by the various investigation teams do not correctly reflect what happened in Markale as the shell was most likely detonated on site through static activation by means of a timer or remote control device.[14112] She believed that the stabiliser could have been dug into the ground prior to the explosion, using a household tool such as a spade, and then compressed into the ground by the explosion.[14113] In particular, it was Subotić's contention that the shell could not have hit the market from the air without first destroying the stall roofs,[14114] as the area was almost completely covered by stall roofs.[14115] She further put forth that the material she examined suggested that the incident did not in fact occur "all at once" or "in some sort of natural process".[14116]

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14110 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 12.

14111 Zorica Subotić, T. 38363 (15 May 2013).

14112 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 86, 111, 115, 120–121, 170–172; Zorica Subotić, T. 38317, 38319–38320 (15 May 2013), T. 38536, 38538–38539, 38560, 38566 (21 May 2013).

14113 Zorica Subotić, T. 38321–38322 (15 May 2013), T. 38558 (21 May 2013); D3548 (Photograph of a stall at Markale Market marked by Zorica Subotić).

14114 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 105–107, 113, 116, 119, 170. Subotić further argued that a reconstruction of the stall lay-out based on video-recordings and police footage of the incident indicates that the sketches made at the scene do not correctly reflect the actual lay out at the time of the incident. *See* Zorica Subotić, T. 38298, 38317 (15 May 2013), T. 38564, 38565 (21 May 2013).

14115 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 41; Zorica Subotić, T. 38294 (15 May 2013).

14116 Zorica Subotić, T. 38325–38326 (15 May 2013). Asserting that the incident did not occur naturally, Subotić pointed to the presence of: (i) persons with ID badges whom she asserted to have been officials of some sort; (ii) a military truck; and (iii) civilian vehicles arriving at the Maršala Tita street entrance of Markale market from the prohibited traffic direction of the one-way street, in what she identified as the immediate aftermath of the explosion. She inferred from the presence of the "officials" around the Markale market area that they "were at the location on assignment". Similarly, from the "well-organised" evacuation of the wounded from both the Dženetića Čikma and Maršala Tita street market entrances she inferred that they "had known in advance that [they] should go in that direction" and that it was "also possible that taxi drivers had a work obligation to be at disposal in situations like that". *See* D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 51, 52, 54; P1986 (BiHTV Video footage of Markale, 5 February 1994); P6327 (Excerpt from video footage re shelling at Markale Market); Zorica Subotić, T. 38540–38543 (21 May 2013). The Chamber finds all these assertions to be pure speculation and completely groundless. Furthermore, contrary to Subotić's suggestions, the Chamber considers the presence of officials on the scene, and of vehicles arriving from all sides, to be perfectly reasonable in the circumstances.

4214. Subotić also questioned whether the incident occurred at 12:15 p.m. as recorded in the UN report, preferring the time recorded by UNMO observers, namely 12:30 p.m..[14117] She concluded that it was possible for the first wounded to have arrived at Koševo Hospital at 12:35 p.m..[14118] Relying on the CSB Sarajevo report of 5 February 1994 as well as witness testimony from the *Galić* case, Subotić concluded that the evacuation of the dead and the wounded was completed around 12:50 p.m.,[14119] whereas the Stari Grad police station was only informed of the explosion at 12:45 p.m.[14120] She thus inferred that the bodies of the dead and the wounded were removed from the site before the police were informed, and within no more than 20 minutes, while photographers and cameramen appeared at the scene almost immediately after the explosion.[14121] Based on the way in which dead and mutilated bodies were shown to photographers and cameramen on the scene, the repeated showings of severed legs, a prosthetic leg seen in different locations around the market area, the speed at which the evacuations were carried out, and the fact that a military medical vehicle arriving at the scene already contained a dead body, Subotić concluded that the entire incident was planned, staged, and exploited for its impact through media coverage.[14122] In her opinion, the staging of the incident required professional preparation, including placing dead bodies at the scene of the explosion to amplify the media impact.[14123]

4215. As to the point of impact, Subotić referred to video footage which, according to her, shows that the impact site is covered with several objects, which is contrary to a typical explosion of a mortar shell where the detonation blows objects away from the crater.[14124] According to Subotić,

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14117 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 45–46.

14118 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 46.

14119 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 47, 54 (relying on P1708 and the testimony of Esad Hadžimuratović from the *Galić* Case who did not testify in this case).

14120 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 47 (relying on P1708).

14121 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 47, 48; Zorica Subotić, T. 38540–38544 (21 May 2013).

14122 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 61–77, 114, 165; Zorica Subotić, T. 38550–38552 (21 May 2013). Subotić suggested, *inter alia*, that photo material depicting a prosthetic leg in a number of different locations around the market in the aftermath of the explosion, a woman seen assisting in the loading of dead bodies onto a truck who later on appeared at the Koševo Hospital dispensary giving an account of what she saw at the market to the reporter, and the fact that a woman seen to have been killed in the incident has not been officially recorded as a victim of the incident, lead to the conclusion that the incident and its documentation were staged. In relation to the prosthetic leg, Subotić did not deny that its owner was killed at Markale that day but claimed that the prosthesis differed from the prosthesis shown in the courtroom as belonging to Ćamil Begić. *See* Zorica Subotić, T. 38550 (21 May 2013).

14123 Zorica Subotić, T. 38537–38538 (21 May 2013), T. 38644 (22 May 2013).

14124 Zorica Subotić, T. 38303–38304 (15 May 2013); D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012),

the surroundings of the crater should have been littered with soil, pebbles, asphalt, and everything else that may have been pushed out by the embedding of the stabiliser, while the stabiliser should have been partially or fully visible.[14125] However, when it was later cleared of the rubble, the Markale crater did not have the typical appearance of a crater penetrated by the full length of a stabiliser but rather looked like it had been manually dug out.[14126] She concluded, therefore, that a hole was dug out, after which the stabiliser was either buried in the ground prior to the explosion or placed there after the explosion.[14127] In her opinion, it was during the investigation of 6 February 1994 that a "bigger and wider crater was made in which the stabiliser was later lowered".[14128] The Chamber notes that in her analysis of another, unscheduled incident, Subotić opined that the stabiliser of an 82 mm mortar shell must embed when fired at charges four to six.[14129] Furthermore, when providing an opinion on the second Markale incident of 28 August 1995, Subotić explained that it is "well-known" that a stabiliser, in that case a 120 mm stabiliser, would penetrate the ground when it is fired at a charge of three or higher, whereas shallow craters would be created by shells fired at low speed, such as on a charge one.[14130]

4216. Subotić also argued that Zečević's method of re-inserting the stabiliser into a disturbed crater to determine the angle of descent is not a recognised method as its accuracy is dependent on a variety of factors, which would make it impossible to determine a margin of error.[14131] She also

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pp. 85–87, 118, 169, Figure 66; P1711 (Video footage re shelling of Markale, 5–6 February 1994). Subotić also found it suspicious that the crater was initially seen in the video footage as fully covered with rubble but later on, after a 20 or 30 minute break in the footage, the recording jumped to Zečević's investigation, showing a fully visible crater together with the re-inserted stabiliser, affixed with a number of small stones. *See* Zorica Subotić, T. 38309–38314 (15 May 2013).

14125 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 86–87, 118; Zorica Subotić, T. 38304–38307 (15 May 2013).

14126 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 86–87, 96; Zorica Subotić, T. 38304–38309 (15 May 2013); D3546 (Photographs depicting penetration of stabiliser and crater marked by Zorica Subotić). Subotić found further support for this position in the fact that the recovered stabiliser did not show any traces of scratches it should have born from the impact and in the video footage showing two layers of asphalt under which the crater was located. *See* D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 98, 168–169; Zorica Subotić, T. 38315–38316 (15 May 2013).

14127 Zorica Subotić, T. 38554 (21 May 2013).

14128 Zorica Subotić, T. 38309–38312 (15 May 2013); D3547 (Video clips re Markale). The Chamber notes that this contradicts the evidence of Derek Allsop, an expert also called by the Accused (see below), who testified that the depth of the crater appeared to be similar on both days. *See* D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 7.3; Derek Allsop, T. 29461 (31 October 2012).

14129 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 48–49.

14130 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; Zorica Subotić, T. 38341–38342 (15 May 2013).

14131 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 93, 96–97 (stating also that Zečević's

criticised the measurements and estimates of the angle of descent calculated by other investigators and argued that the trajectory of the penetration of the stabiliser does not generally follow the trajectory of the mortar shell.[14132] However, using another method, namely the density of the lateral beam of the fragment markings or splinter patterns on the asphalt, she calculated the angle of descent at between 64.6 and 70.32 degrees, that is, still within the range estimated by Zečević.[14133]

4217. With regard to the incoming trajectory, Subotić recalled that different investigation teams determined a variety of different bearings of the shell.[14134] Based on the fragmentation effect on the UPI supermarket building, she established the baseline azimuth as being between 18 and 23, and up to 25 degrees, and thus was more or less consistent with the findings of CSB Sarajevo team, Zečević's team, and those of the second UN investigation.[14135]

4218. Derek Allsop was commissioned by the Accused to review Zečević's method of predicting the impact velocity of the stabiliser of the mortar shell based on its depth of penetration.[14136] Allsop testified that, in order to determine where a projectile is fired from, its impact velocity and impact angle[14137] must be established and compared with trajectory calculations or range tables.[14138] According to Allsop, when a mortar shell hits the ground, the fuse at the tip of the mortar shell is driven into the ground and creates a hole—the so-called "fuse furrow"—with parts of the fuse embedded in it; the stabiliser is then either driven backwards or also gets embedded in the ground depending on whether or not its velocity is less than the forward velocity of the mortar bomb.[14139] In addition, if the forward velocity of the stabiliser is greater than its ejection velocity,

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method could produce an accurate result but that it would be necessary to show, using another method, that the results are reliable); Zorica Subotić, T. 38313–38315 (15 May 2013).

14132 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 104.

14133 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 104, 105.

14134 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 167.

14135 Zorica Subotić, T. 38300, 38302–38303, 38362, 38364 (15 May 2013); D3544 (Photograph depicting crater at Markale Market marked by Zorica Subotić).

14136 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 1.1; Derek Allsop, T. 29424–29425, 24927–24928, 29463–29464 (31 October 2012); D2369 (Derek Allsop's *curriculum vitae*).

14137 Allsop clarified in court that "impact angle" and "angle of descent" are synonymous terms. *See* Derek Allsop, T. 29473–28474, 29533 (31 October 2012).

14138 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 3.1–3.2; Derek Allsop, T. 29436–29439 (31 October 2012) (stating further that working out impact velocity from the evidence on the site of impact alone is extremely difficult).

14139 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 5.1–5.3, 9.1; Derek Allsop, T, 29439–29441, 29453–29456, 29471 (31 October 2012); D2370 (Diagram marked by Derek Allsop). *See also* KW571, T. 32015 (16 January 2013); D2759 (Witness

it may also fragment the fuse and disperse it sideways so that no fuse fragments remain in the furrow.[14140] In the case of an embedded stabiliser, its impact velocity will consist of the impact velocity of the mortar bomb itself minus the velocity at which the stabiliser was ejected upon impact.[14141] However, according to Allsop, the latter velocity is almost impossible to determine.[14142] In addition, since the stabiliser will eject upon detonation of the explosive on impact, its final angle would generally be different from the impact angle of the mortar bomb itself so that measuring it would not in fact provide the angle of the impact of the mortar bomb.[14143] Like the other experts, Allsop also testified that a high impact velocity would make it more likely for the stabilising fin to get embedded into the ground,[14144] meaning that an accurate measurement of the stabiliser penetration would still help calculate the impact velocity of the mortar shell, assuming one took into account a number of factors, such as density of the soil and moisture levels, for example.[14145]

4219. With respect to the Markale crater, Allsop concluded that: (i) there was little evidence on which to base a forensic investigation into where the mortar shell was fired from; (ii) Zečević's method of calculating the ejection velocity of the stabiliser was "over simplistic" and incapable of producing reliable results; (iii) similarly, the method of calculating the impact velocity was flawed because no consideration was given to the fuse furrow or the fact that it would not have been possible to insert the stabiliser at the same depth from which it was removed;[14146] and (iv) with the information available on the scene of the incident, it would not be possible to accurately calculate the range from which the mortar was fired.[14147] With respect to (iii) above, he conceded however

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statement of KW571 dated 27 March 2012) (under seal), paras. 8–9. The Chamber notes that there are two paragraphs 9.1 in Allsop's report. The one cited in this footnote is on page 7 of the report.

14140 Derek Allsop, T. 29445–29446, 29523 (31 October 2012).

14141 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), para. 5.3, 9.2; Derek Allsop, T. 29436–29442 (31 October 2012).

14142 Furthermore, according to Allsop, predicting velocities at which the stabiliser would be ejected is not sufficiently developed. D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 6.1–6.7, 10.2–10.3; Derek Allsop, T. 29443, 29466–29467 (31 October 2012).

14143 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 5.3–5.7; Derek Allsop, T. 29446–29453, 29460 (31 October 2012).

14144 Derek Allsop, T. 29441–29442, 29471–29472 (31 October 2012).

14145 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 8.1–8.5 (stating also that those factors were not considered during the investigation in Markale); Derek Allsop, T. 29458–29461, 29503–29505 (31 October 2012). The Chamber notes that there are two paragraphs 8.5 in Allsop's report. The one cited in this footnote is on page 6 of the report.

14146 D2372 (Derek Allsop's expert report entitled "Shelling of Markale Market in Sarajevo 5th February 1994", 20 January 2012), paras. 7.1–7.5, 8.5, 10.7, 11.1–11.5; Derek Allsop, T. 29456–29459 (31 October 2012); D2371 (Photograph marked by Derek Allsop). The Chamber notes that there are two paragraphs 8.5 in Allsop's report. The one cited in this footnote is on page 7 of the report. Further, paragraph 10.7 follows after paragraph 11.5 and should have in fact been paragraph 11.6.

14147 Derek Allsop, T. 29428 (31 October 2012); D2372 (Report by Derek Allsop on the shelling of Markale Market in Sarajevo on 5 February 1994), paras. 10.7, 11.1–11.5. Allsop conceded, however, that he never visited

that he was not aware that investigators at the scene looked for but found no fuse fragments in the crater so that it was possible that the fuse fragmented into several pieces upon impact, rather than ending up in the fuse furrow.[14148] He also conceded, in line with the evidence of Zečević, Higgs, and Subotić, that in cases where the stabiliser embeds into the ground, it is likely that a higher charge was used, although in practice it may not always be the case for every impact as this will depend on the characteristics of the particular mortar bomb used.[14149] Similarly, if the launching position was located at a higher altitude than the altitude of the target/impact, the higher launching altitude would increase the acceleration of the bomb.[14150]

4220. Allsop did not think that it was possible to drop the mortar bomb onto Markale from one of the surrounding buildings since a mortar bomb requires set-back forces created through its launch to initiate the fuse.[14151] Dropping it would also have caused it to hit the ground vertically, which was not the case given the appearance of the crater.[14152] Similarly, Allsop did not consider it possible that a shell could have been activated in a static explosion, since the only way the stabilising fin could have become embedded into the ground was by travelling through the air at a higher velocity than its ejection velocity.[14153] To Allsop, the Markale impact site displayed all characteristics of a conventional 120 mm mortar bomb strike.[14154] Finally, Allsop explained that it would have been extremely difficult to achieve an exact hit of Markale from a very close range given that it would have been very dangerous for the launching crew.[14155]

4221. The Accused also called Poparić, who sought to specifically counter Higgs's suggestion that it would be possible to hit Markale market with a single round if the target was pre-

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Markale and had no reason to dispute the observations of the people who were on the scene at the time of the incident. *See* Derek Allsop, T. 29505–29511 (31 October 2012); P5951 (Three photographs re shelling of Markale on 5 February 1994).

14148 Derek Allsop, T. 29491–29499, 29523 (31 October 2012); P5950 (Fuse and shell body fragments from shelling of Markale 5 February 1994). Allsop agreed that firing tests of mortar bombs for research and testing purposes would usually be carried out under controlled conditions on soft surfaces where the crater would be less defined than the crater in Markale was. He also agreed that testing materials for 120 mm mortars suggested high fragmentation of the fuse, with the stabiliser remaining intact. *See* Derek Allsop, T. 29485–29490, 29522–29523 (31 October 2012); P5947 (Photograph of crater formed by 120 mm mortar projectile); P5948 (Photograph of 120 mm light mortar projectile fragments); P5949 (Results of fragmentation of five 120 mm projectiles).

14149 Derek Allsop, T. 29470–29484 (31 October 2012); P5946 (Excerpt from firing tables for 120 mm mortar).

14150 Derek Allsop, T. 29479–29480 (31 October 2012).

14151 Derek Allsop, T. 29465–29466 (31 October 2012). *But see* D2363 (Witness statement of Steven Joudry dated 14 August 2012), pp. 5, 6

14152 Derek Allsop, T. 29465–29466 (31 October 2012).

14153 Derek Allsop, T. 29467 (31 October 2012.

14154 Derek Allsop, T. 29467 (31 October 2012).

14155 Derek Allsop, T. 29468–29469 (31 October 2012).

recorded.[14156] Based on the dimensions of the market and looking at the different charges and resulting ranges of the 120 mm mortar shell, he calculated the probability of the initial shell striking the market to be between 0.1% and 0.09%, the lowest charge having the highest probability.[14157] On cross-examination, Poparić was asked to consider the estimated impact area around a set target if a shell were fired at a charge five from a maximum range of 5,782 metres and agreed that the area struck would be within an ellipse of 58 by 24 metres, which would virtually cover the entire area of the market place, assuming the target point was the centre of the market; however, he also explained that these statistics were based on the firing of a group of projectiles, 50% of which would have hit the determined area.[14158] Thus, according to him, these statistics could not be used to determine the probability in relation to the first and only shell fired, such as happened in Markale.[14159]

(g) Casualties

4222. Sabljica's report notes that 69 persons died in the explosion, while 197 sustained serious or minor injuries.[14160] Bešić's report refers to 66 dead and 200 wounded.[14161] Bešić also testified that the number of 68 dead was initially registered in the Koševo morgue and that more people died later.[14162] Rose testified that early reports on the incidents provided that more than 200 people had been injured and at least 50 killed, while the final toll came to 68 casualties.[14163]

4223. In addition to his own father Ćamil, Almir Begić identified a number of victims who died in the Markale market incident on 5 February 1994, namely Muhamed Borovina, Nura Odžak, and

14156 D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p.116. *See also* Mile Poparić, T. 39073–39080 (31 May 2013), T. 39313 (5 June 2013).

14157 D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p.117

14158 Mile Poparić, T. 39073–39080 (31 May 2013).

14159 Mile Poparić, T. 39073–39080 (31 May 2013); P6349 (Diagram of stalls at Markale on 5 February 1994 marked by Mile Poparić).

14160 P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 1. During his testimony in the *Galić* case, Sabljica stated that there were over 90 wounded. *See* P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p.47.

14161 P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5. *See also* Sead Bešić, T. 9441 (8 December 2010).

14162 Sead Bešić, T. 9450–9453 (9 December 2010).

14163 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 37. *See also* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6103–6105.

Ruždija Trbić.[14164] Furthermore, he identified two wounded victims, namely Muradif Čelik and Kenan Suvalija.[14165] According to him, 67 people lost their lives in this incident.[14166]

4224. Faris Gavrankapetanović, the general manager of Koševo Hospital,[14167] authenticated a number of records, including admission records, relating to patients brought to the Hospital on the day of this incident.[14168] These records show that on 5 February 1994, at 12:35 p.m., Koševo Hospital received around 90 victims from Markale market, including both the dead and the wounded.[14169] Gavrankapetanović also produced a list of persons who had surgery on the day of the incident,[14170] as well as the records from the Koševo morgue,[14171] both of which show that over 50 people were received by the Koševo morgue in relation to the incident in Markale on 5 February 1994.[14172] A document with the names of all the victims related to the incident, namely 125 people treated at or registered by the Koševo Hospital,[14173] as well as five victims transferred to other hospitals and eight victims transferred to the UNPROFOR hospital, was created shortly after the incident and used to provide information to the relatives of those wounded or killed.[14174] Gavrankapetanović conceded that some victims could have appeared on different records if they were moved from one Hospital department to another.[14175]

4225. In addition to the above evidence, the Chamber also heard evidence on the lethal effect of mortar bombs. In particular, the second UN investigation team concluded that with a single 120 mm mortar shell fired into a dense crowd surrounded by metal-framed stalls, together with the

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14164 Almir Begić, T. 9968 (15 December 2010); P2047 (List of the dead and injured re shelling of Markale on 5 February 1994).

14165 Almir Begić, T. 9968 (15 December 2010); P2047 (List of the dead and injured re shelling of Markale on 5 February 1994).

14166 Almir Begić, T. 10000 (16 December 2010).

14167 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12517–12519.

14168 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12525–12527.

14169 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12525–12526, 12616–12617, 12634–12635; P461 (Admission records from Koševo Hospital), pp. 4–44.

14170 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12529–12530; P462 (Surgery records from Koševo Hospital).

14171 P463 (Koševo Hospital morgue records), pp. 15–23.

14172 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12603–12604, T. 12630–12632.

14173 While the list contains 127 names, Gavrankapetanović testified that two of those names were mistakenly included on the list as they were not victims of the shelling of Markale market. *See* Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12634–12637.

14174 P464 (Admission records from Koševo Hospital, 5 February 1994); Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12611–12613, 12620–12622, 12632. Explaining the discrepancy between the admission records referred to above and the document containing the list of all victims of the Markale market shelling, Gavrankapetanović stated that, unlike the former, the latter was based on all the records of the hospital, including those of the morgue. *See* Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12620–12622.

14175 Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12622–12623. He also conceded that the Koševo Hospital staff was unable to perform post mortems except in very rare cases *See* Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12625–12626.

chaotic evacuation that followed, casualties of the magnitude of 275 dead and wounded are conceivable.[14176] Allsop also explained that the lethal effect of a mortar bomb would vary according to its size and the presence of obstacles in its vicinity.[14177] While smaller projectiles could be stopped by barriers, larger projectiles could go a long way, pass trough a number of soft targets, and even create secondary projectiles, such as splinters.[14178] He added that tests on the effects of suicide bombs for instance showed that larger projectiles could even pass "through the equivalent of three people".[14179]

4226. In contrast, Subotić disputed the high number of victims. She noted that the video footage shows traces of blood and destruction of market stalls in a circle of approximately 10 to 11 metres around the point of impact of the mortar shell.[14180] Having taken into account the lay-out of the market stalls, Subotić calculated that 40 market stalls were in the "lethal radius" of 10.56 metres from the point of impact of the detonation.[14181] Based on these figures, and assuming there was one shopper per square metre and a seller at each stall, Subotić calculated that there were 164 persons within the impact zone—that is, 45 persons less than the number of casualties recorded in the official report on the incident.[14182] Furthermore, Subotić opined that, given that "only one dead person" and "one trace of blood" could be seen in the video showing the area between Dženetića Čikma and Maršala Tita streets, the number of 164 casualties was unrealistic.[14183]

(h) Adjudicated facts

4227. The Chamber notes that in addition to the evidence and adjudicated facts outlined above, it has also taken judicial notice of the following adjudicated facts that go to the issue of the origin of fire and other challenged issues in this incident: (i) the 120 mm mortar was fired from the

14176 P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 11. *See also* P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 8; Berko Zečević, T. 12311–12318 (24 February 2011); D1095 (Sketch re shelling of Markale on 5 February 1994).

14177 Derek Allsop, T. 29534 (31 October 2012).

14178 Derek Allsop, T. 29534–29535 (31 October 2012).

14179 Derek Allsop, T. 29535 (31 October 2012).

14180 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 81.

14181 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 82; Zorica Subotić, T. 38561 (21 May 2013).

14182 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 82; Zorica Subotić, T. 38562 (21 May 2013). *See also* Derek Allsop, T. 29531–29535 (31 October 2012).

14183 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 83; Zorica Subotić, T. 38549 (21 May 2013), T. 38644–38645 (22 May 2013).

direction north-northeast of the market or at a bearing of approximately 18 degrees;[14184] (ii) the shell could not have been fired from any place on the ABiH side of the confrontation lines in a direction north-northeast of Markale market;[14185] (iii) the mortar shell which exploded at Markale market on 5 February 1994 was fired from SRK-controlled territory;[14186] and (iv) there was no reason to consider the market area as a military objective.[14187]

(i) Staged incident and static explosion theories

4228. As noted earlier, two alternative defences the Accused put forward in relation to this incident is that it was staged or that the local authorities detonated an explosive device in the market either by a remotely controlled device or by dropping a mortar shell from one of the surrounding buildings.[14188]

4229. In support of the staged incident theory, the Accused relied on various factors, including the fact that the video footage of the aftermath of the incident shows (i) a large number of empty stalls which in turn implied that the market could not have been so crowded that day; (ii) a man carrying a prosthetic leg around the empty, clean market, with no other traces of the explosion, implying therefore that the leg must have been planted there; and (iii) that the stabiliser cannot be seen in the earliest footage of the crater while Bešić can be heard instructing someone to look for it on the roof of one of the surrounding buildings.[14189] He also argued that there was a gap of about an hour between the time the incident occurred and the time at which Bešić and his colleagues were informed of it.[14190]

4230. However, witnesses testified that Markale market was usually crowded whenever there was no shelling in the city and that the same would have been the case on the day of the incident.[14191] Bešić, who was at the scene around an hour after the incident, strongly rejected the idea that the video footage of its aftermath shows that the incident was staged and that a prosthetic

14184 Adjudicated Fact 339.

14185 Adjudicated Fact 340.

14186 Adjudicated Fact 341.

14187 Adjudicated Fact 342.

14188 *See* para. 4173.

14189 *See e.g.* Hearing, T. 10001 (16 December 2010) (where the Accused makes a claim that the market was empty); Hearing, T. 9468, 9476 (9 December 2010) (where the Accused makes a claim that the debris and the leg prosthesis were brought to the market); Hearing, T. 2321–2323 (11 May 2010) (where the Accused makes a number of claims about the planting of evidence); Hearing, T. 12352 (24 February 2011) (where the Accused makes a claim that the original video footage indicates that the stabiliser was not embedded but might be on the roof of a nearby building).

14190 *See e.g.* Hearing, T. 9451–9452 (9 December 2010).

14191 *See e.g.* Almir Begić, T. 10000–10001 (16 December 2010); Sead Bešić, T. 9447 (8 December 2010); Berko Zečević, T. 12313 (24 February 2011).

leg had been planted there.[14192] In addition, Almir Begić testified that the prosthetic leg visible in the video footage of the aftermath of the incident belonged to his father, Ćamil Begić, who died in the incident and whose body he identified in the Koševo morgue on the day of the incident.[14193] The Chamber notes that during his cross-examination of Almir Begić, the Accused attempted to show that the prosthetic leg seen in the Markale market footage could not have belonged to his father Ćamil by using Ćamil's old photograph to show that the prosthetic leg found at the scene was too big for him.[14194] The Chamber found this line of questioning completely unconvincing and misplaced and finds, in light of the evidence given by Almir Begić, that the prosthetic leg seen in the video footage belonged to his father Ćamil. The Chamber—having reviewed the video footage of the aftermath—further rejects as unfounded the contention that the prosthetic leg was purposely placed in different locations around the market.[14195]

4231. Concerning the Accused's claims as to the timing of the incident, Bešić confirmed that one of the reports on this incident states that the CSB Sarajevo investigation team was informed of the shelling only at around 1:20 p.m. and was at the scene by 1:30 p.m.; however, Bešić was adamant that the information about the incident was received much earlier, namely some 10 to 15 minutes after the explosion, and that it took the team around 40 minutes to come to the scene.[14196] Contrary to the Accused's position that there was a gap of about one hour before the investigating team was informed of the incident, the Chamber is of the view, based on the timeline given by Bešić and all the other evidence to the effect that the explosion happened some time after 12 p.m., that the time recorded as "1320 hours" in the report as being the time when the CSB Sarajevo investigation team was informed of the shelling incident is in fact a typographical error.

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14192 Sead Bešić, T. 9468–9479, 9530–9533 (9 December 2010); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995); D897 (Photograph re shelling of Markale on 5 February 1994 marked by Sead Bešić); D898 (Photograph re shelling of Markale on 5 February 1994); D899 (Photograph re shelling of Markale on 5 February 1994); P1983 (Video footage of Markale, 5 February 1994); P1984 (Video footage of Markale, 5 February 1994); P1985 (Video footage of Markale, 5 February 1994); P1986 (Video footage of Markale, 5 February 1994).

14193 P2050 (Witness statement of Almir Begić dated 15 April 2010), paras. 1–9; P2051 (Supplemental statement of Almir Begić dated 14 December 2010); P2052 (Photograph of Ćamil Begić); P2053 (Death certificate for Ćamil Begić); P2054 (Burial certificate for Ćamil Begić); P2055 (Death certificate for Ćamil Begić); P2056 (Certificate of invalid status for Ćamil Begić); P2057 (Decision granting Sadika Begić status as a civilian war victim family member, 24 December 1996). *See also* Almir Begić, T. 9958–9959, 9961–9974 (15 December 2010), T. 9998–10000 (16 December 2010); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995); P2046 (Video stills of prosthetic leg); P2048 (Photographs of prosthetic leg); P2049 (Photographs of prosthetic leg).

14194 Almir Begić, T. 10002–10008 (16 December 2010); P2052 (Photograph of Ćamil Begić); D932 (Video still of prosthetic leg); D933 (Video still of prosthetic leg).

14195 P6327 (Excerpt from video footage re shelling at Markale Market).

14196 Sead Bešić, T. 9436–9438 (8 December 2010), T. 9457–9458 (9 December 2010); D892 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 4.

4232. Harland also denied the suggestion that the incident was staged, calling it "completely bizarre" and noting that he personally sent out a member of his team, who was a doctor, to the scene immediately after the incident and who confirmed that there were many dead and wounded victims at the scene.[14197] KDZ450 was also there an hour after the incident after all the wounded and injured had been removed but testified that he saw "a staggering number of blood traces" and that he spoke to a physician from Sector Sarajevo who had gone straight to the hospital and seen the injured and the dead.[14198] The continuing presence of blood and human remains in the market area was further confirmed by Russell, who attended the scene at around 4:30 p.m. on 5 February 1994.[14199] Thus, relying on the above evidence, and having analysed video footage of the immediate aftermath of the explosion in which substantial amounts of blood, human tissue, body parts and injured or dead persons can be seen, the Chamber finds that a large number of persons were killed and injured during the incident.[14200] Accordingly, the Chamber dismisses the claim that the incident was staged.

4233. With respect to his theory that the explosion was caused by a static device placed on the scene by the local authorities or by a shell dropped from a nearby building, the Accused relied primarily on Subotić, as well as on several other witnesses. One such witness was KW554, who worked as an intelligence officer for UNPROFOR in Zagreb and who testified that an American soldier showed him a photograph of a mortar shell being dropped from a window overlooking the market, which he did not examine closely.[14201] Similarly, Sergey Moroz, a member of the UKRBAT, testified that Rumyantsev, who was part of Gauthier's team, told him that "it was definitely proved that it could not be a mortar explosion from [the] Serbian side" but that a special explosive device had been brought in.[14202] The Chamber found this evidence tenuous at best, particularly since KW554 said that he did not examine the alleged photograph closely and given that Rumyantsev was part of the team that unequivocally concluded that a 120 mm mortar bomb struck the market after being fired in a conventional manner.

4234. As noted earlier, the Accused's expert Subotić was the main proponent of the static detonation theory. However, she based her analysis on secondary material, such as photographs, video footage, previous investigation reports, and a visit to a substantially altered location 16 years after the incident. This renders her findings less reliable than the conclusions reached by the

14197 David Harland, T. 2040–2041 (6 May 2010).
14198 KDZ450, T. 10677 (20 January 2011).
14199 D2364 (Witness statement of John Russell dated 17 October 2012), para. 14.
14200 P6327 (Excerpt from video re shelling at Markale Market).
14201 D2762 (Witness statement of KW554 dated 14 September 2012), para. 11; KW554, T. 32036 (16 January 2013).

investigation teams that investigated the scene immediately or shortly after the incident. Furthermore, much of her analysis in relation to this incident was based on highly speculative assumptions and conclusions, such as her assumption that there would be only one market vendor per stall in the market.[14203] The Chamber also found some of her claims and resulting conclusions blatantly unreasonable and/or incorrect. For example, her claim that only one dead person and one trace of blood could be seen in the area between Dženetića Čikma and Maršala Tita streets is obviously inaccurate as can be seen from the video footage available to the Chamber. In addition, her theory about the appearance and manipulation of the crater clearly illustrates that she went to great lengths to fabricate conspiracy theories while wilfully ignoring other evidence such as the fact that none of the witnesses, including some of those called by the Accused, thought that the crater was manually created. Indeed, there is simply nothing in the evidence to suggest that the crater was manually created as opposed to simply disturbed during the excavation of the stabiliser. This has been confirmed by Allsop, who thought that the crater, as seen in the footage of 6 February, was very similar to the crater seen on the video footage of 5 February. This type of analysis on the part of Subotić is a serious stain on her credibility and resulted in the Chamber deciding not to accept her evidence in relation to this incident except when it was corroborated by other evidence.

4235. The Chamber further recalls that a number of witnesses, including Zečević, testified that the damage caused to the scene was consistent with the explosion of a 120 mm mortar, that throwing the mortar bomb from one of the surrounding buildings was unrealistic as it would have exposed the person throwing it to the explosion, and, further, that no one would be strong enough to embed a stabiliser into the asphalt without anyone at the market noticing.[14204] He was supported in this by Allsop's opinion that a stabiliser would embed into the ground only if fired at a higher charge,[14205] as well as Allsop's evidence regarding the lethal effect of the mortar shrapnel.[14206] Finally, neither Sabljica nor Zečević saw anything unusual in Bešić instructing someone to look for the stabiliser on a roof.[14207]

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14202 Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18145, 18169; D2374 (Notification re the death of Nikolay Rumyantsev, 13 October 2011).

14203 *See* para. 4206, fn. 14116.

14204 *See e.g.* Berko Zečević, T. 12163–12164 (22 February 2011), T. 12318–12320, 12330–12332, 12352–12353 (24 February 2011); D1096 (Photograph re shelling of Markale on 5 February 1994 marked by Berko Zečević).

14205 *See* paras. 4219–4220.

14206 *See* para. 4225.

14207 P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 46–47 (noting that Bešić, due to his lack of expertise, would not be able to immediately determine whether the stabiliser was embedded in the ground or not); Berko Zečević, T. 12327–12328 (24 February 2011); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

4236. For all of these reasons, the Chamber does not accept the Accused's claim that the shell was detonated remotely at ground level or that it was dropped from an adjacent building.

(j) Other defences

4237. The Accused further sought to show during the case that the shell was fired by the ABiH in order for it to be imputed to the Serb side, so as to advance the Bosnian Muslim side's political agenda.[14208] He also claims that there is not enough evidence to conclude beyond reasonable doubt that the SRK fired the shell that struck Markale on 5 February 1994.[14209]

4238. The Accused relied on a number of witnesses in this respect. For example, KW570 stated that the Serb side was blamed for the shelling of Markale even before the investigation had been carried out, whereas the first crater analysis showed that it could not be determined which side had fired the shell.[14210] He personally formed the opinion that it was highly unlikely that the Serbs would have fired a single round, given their pattern of trying to hit their targets with multiple mortar rounds[14211] [REDACTED].[14212] [REDACTED] when Rose confronted the ABiH delegation on 8 February and told them that evidence was emerging which suggested that they had fired the shell on Markale, they reacted with complete silence before "produc[ing] a number of excuses, which included a claim that they had taped a conversation involving the Serbs to the effect that they had confessed to the atrocity".[14213] [REDACTED] UNPROFOR never received any evidence of such taped conversation.[14214]

4239. The Accused also relies on the evidence of Milovanović and KDZ185. The former testified that incidents such as Markale were a "way of stopping negotiations by way of carrying out combat or turning the whole situation against [...] the Serb delegation" by the Muslim side whenever they did not like the direction in which international negotiations were heading.[14215]

14208 Defence Final Brief, para. 2098.

14209 Defence Final Brief, para. 2115, fn. 5073.

14210 D2770 (Witness statement of KW570 dated 21 November 2012), para. 10 (under seal); D2772 (Redacted diary of KW570), e-court p. 3 (under seal). The Chamber notes that there are two consecutive paragraphs 10 in KW570's statement. The one cited in this footnote is the first of the two paragraphs.

14211 D2770 (Witness statement of KW570 dated 21 November 2012), para. 6 (under seal). KW570 explained that mortars are indirect fire weapons whereby the person launching them cannot see the target and has to fire them more than once in order to account for factors such as the atmospherics and to bed the mortar tube into the ground, thus increasing its accuracy. He also testified that the Serbs would usually fire a number or rounds in order to hit a target. It was for these reasons that he formed the opinion that it was highly unlikely that the Serb side had fired the mortar round on that day. KW570 did accept, however, that he had no experience commanding mortar units. *See* KW570, T. 32223–32226 (18 January 2013).

14212 [REDACTED].

14213 [REDACTED].

14214 [REDACTED].

14215 Manojlo Milovanović, T. 25580–25581 (1 March 2012). *See also* Momčilo Krajišnik, T. 43334 (12 November 2013).

KDZ185, an UNPROFOR commander at the time, also testified that the Muslim side wished to keep Sarajevo the focus of international attention and tried to make up for their military inferiority by staging a "kind of media war", an example being the shelling of a courtyard of a residential block near Markale for which the UNPROFOR carried out a crater analysis and determined that the fire had most likely come from the Muslim territory to the north, close to the frontline.[14216]

4240. The Accused also called KW586, who, at the relevant time, was a member of Izetbegović's security detail and testified that a few days prior to the Markale market incident, he overheard a secret meeting between Izetbegović, Reis-ul-ulema Cerić, Sefer Halilović, Mustafa Hajrulahović, and others as to what "could happen" if the Markale market, being full of people, was hit by a shell.[14217] After this meeting, two attempts to shell Markale ensued, the first "failed" attempt occurring only a few days prior to 5 February 1994 during which the roof of a building in its periphery was hit.[14218] KW586 further stated that another meeting was held after the failed attempt, during which it was said that the shell had been fired from Špicasta Stijena near the location of the Serb artillery in Mrkovići and very close to the separation line, so as to ensure that the Serbs would be blamed for it; it was then also decided to try and hit Markale again, which happened several days later.[14219] According to KW586, also involved in this conspiracy were the members of the Pakistani UNPROFOR team who had agreed not to register any shells fired from the ABiH side.[14220]

4241. Savo Simić, Chief of Artillery of the 1st Motorised Brigade of the SRK at the time,[14221] claimed that the Markale shell could not have been fired from a Bosnian Serb-held position.[14222] He testified that it was not possible for the first shot to hit that target, and that, in any event, in order to hit such a small area encircled by high buildings it would have had to have been fired

14216 KDZ185, T. 4226–4230 (28 June 2010).

14217 KW586, T. 47192 (17 February 2014); D4375 (KW586's SRBiH SUP ID) (under seal); D4376 (KW586's BiH MUP ID card) (under seal); D4378 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 14 February 2014) (under seal); D4374 (Witness statement of KW586 dated 20 September 2013), paras. 5, 8 (testifying also that he attended many such meetings during which it was said that a military reaction from the international community had to be provoked through drawing attention to the suffering of the Bosnian Muslims, and that incidents were specifically provoked by opening fire from mobile positions so as to "cause the shelling of buildings such as hospitals and the like" and having TV crews ready in the vicinity to record the incidents).

14218 KW586, T. 47221 (17 February 2014); D4374 (Witness statement of KW586 dated 20 September 2013), para. 8.

14219 D4374 (Witness statement of KW586 dated 20 September 2013), paras. 4–5, 8; KW586, T. 47224–47225 (17 February 2014);

14220 D4374 (Witness statement of KW586 dated 20 September 2013), para. 8. During cross-examination, KW586 testified that he was referring to only one crew, consisting of two to three Pakistani UNPROFOR members, who were chosen because they were not as attentive as other UNPROFOR crews. *See* KW586, T. 47222–47224 (17 February 2014).

14221 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

14222 Savo Simić, T. 30121 (12 November 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 30.

from a position close by to achieve the almost vertical angle of 85 degrees.[14223] Furthermore, according to Simić, there was also no observation point on the Serb side from which the market could be seen, and therefore, it could not have been accurately targeted.[14224]

4242. Blaško Rašević, the Commander of the Mrkovići Company at the time of the incident, testified that "there was a firm conviction" in his unit that the SRK forces, particularly the forces from Mrkovići, did not fire the shell that landed in Markale.[14225] On the day of the incident, Gengo was in Hreša, which is some seven kilometres away from Mrkovići, and testified that he did not hear a missile launch nor saw any reports on such use of weapons from his battalion.[14226] He was adamant that his unit was not involved in this incident.[14227]

(k) Final analysis and conclusion

4243. Having considered the evidence presented to the Chamber as well as the adjudicated facts recounted above, and having discounted the staged incident and planted explosive theories, the Chamber finds that a 120 mm mortar shell exploded in Markale market on 5 February 1994. Relying on the hospital records, which the Chamber accepts were not entirely accurate given the chaotic situation at the time they were compiled, Adjudicated Fact 338, and the technical evidence regarding the lethal effect of mortar shells, the Chamber also finds that the explosion caused by the shell on 5 February 1994 caused the death of at least 67 people and injured over 140. Given its view of Subotić's credibility with respect to this incident, and in light of accepted contemporaneous video footage and hospital records, the Chamber rejects her claim that the number of victims is exaggerated and that dead bodies were brought to the scene.

4244. With respect to the nature of the area and the status of the victims of this shelling incident, the evidence clearly shows that Markale market was an open-air market frequented by the civilian population to buy and sell food and other goods. In addition, the Chamber recalls that it has taken judicial notice of the fact that there was no reason to consider it a military objective.[14228] The Chamber therefore concludes that Markale market and the surrounding area was not a legitimate

14223 Savo Simić. T. 30121–30122 (12 November 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 30. *See also* D2770 (Witness statement of KW570 dated 21 November 2012), para. 7 (under seal); KW570, T. 32229–32230 (18 January 2013).

14224 Savo Simić, T. 30121 (12 November 2012).

14225 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 29.

14226 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 36.

14227 Slavko Gengo, T. 29805 (6 November 2012).

14228 Adjudicated Fact 342.

military target and that the casualties caused by the shelling were almost all civilians who were not taking direct part in the hostilities.[14229]

4245. In terms of the direction of fire, having regard to the majority of the evidence it received from expert witnesses and witnesses otherwise familiar with crater analysis, the Chamber is convinced that the shell hit Markale market from above ground level and was fired from a north-northeasterly direction. The Chamber recalls that CSB Sarajevo conducted a forensic examination at the incident site on 5 February 1994, as did a number of UNPROFOR investigators on the same day or shortly afterwards. All of these teams, with the exception of FreBat and Verdy who made errors in their calculations, concluded that the shell originated from a north-northeasterly direction along the confrontation line at the angle of 18 degrees, plus or minus five degrees. Even Subotić's calculations produced an azimuth that is in line with those investigators. Accordingly, the Chamber finds that the shell that struck Markale market had an azimuth of 18 degrees, plus or minus five degrees.

4246. With respect to the angle of descent, which is relevant to the origin of fire, the Chamber recalls that the second UN investigation established that this angle had to be higher than 49 degrees in order to clear the buildings around Markale. The Chamber also recalls that different experts provided five different estimates as to the angle of descent, most of which were expressed in terms of ranges. All of those experts, with the exception of Subotić, were at the scene either soon after the incident or six or seven days later. Although Verdy was at the scene, the Chamber will not rely on his estimate due to the flaws in his method.[14230]

4247. While the Chamber heard evidence to the effect that measurements and estimates of the angle of descent are unreliable in this incident due to the crater having been disturbed, the Chamber, by majority, Judge Baird dissenting was also struck by the fact that all but one of the estimated angle ranges are relatively close to each other and in fact overlap. The one exception is the angle of descent measured by Russell, which is slightly higher than all the other estimated angles. However, unlike Zečević and Hamill, who were brought into the investigation later and purely on the basis of their extensive technical expertise,[14231] Russell made his estimate quickly on

14229 The Chamber heard evidence that one of the victims of this incident wore a uniform. *See* Sead Bešić, T. 9429–9430 (8 December 2010). While he may have been a soldier, his presence alone does not change the fact that most of those injured in this incident were civilians who were not taking direct part in hostilities but instead came to the market to buy goods. Indeed, many of the victims were women and elderly. *See also* para. 4330.

14230 *See* fn. 14004.

14231 Hamill was a technical adviser to the investigation team as he had extensive knowledge of artillery weapons and was also an instructor in gunnery in a military school. Zečević is a mechanical engineer with years of experience in the weapons industry, including testing of weapons. *See* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6077; P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs

the day of the incident and, when testifying before the Chamber, could not remember having done so or having taken these measurements. At the time, he was a military adviser in Sector Sarajevo and was asked by Ramsey to examine the scene because he had some experience with crater analysis which, according to his own evidence, was not extensive.[14232] Accordingly, the Chamber, by majority, Judge Baird dissenting, is more persuaded by Zečević's and Hamill's estimates, which—with their margins of error—overlap to a great extent. Even the angle of descent determined by Subotić on the basis of the fragment traces on the scene is in line with the angles provided by Zečević and Hamill. Given that Zečević's estimate contained the largest margin of error, the Chamber, by majority, considers that the angle of descent of the shell that struck Markale was somewhere between 55 and 65 degrees. This also means that the shell could have come from one of the six positions established by Zečević in his report. The Chamber, by majority, Judge Baird dissenting, has no reason to doubt the credibility of Zečević and the reliability of his report in this respect.

4248. While the Chamber cannot be sure that the speed of the shell as determined by Zečević is absolutely accurate, particularly in light of Allsop's evidence, the Chamber, by majority, Judge Baird dissenting, is satisfied that the margin of error in his calculations was such that it took into account all possible factors Allsop mentioned as having a significant impact on the calculations. Further, in this respect, the Chamber notes a common feature in the evidence of Zečević, Higgs, Allsop, and Subotić, which is that a mortar bomb fired at one of the higher charges would typically result in the stabiliser penetrating the ground and embedding therein.[14233] While Higgs referred to two highest charges in this respect, and Zečević to charges four, five, and six, Subotić considered it "well-known" that a stabiliser would embed when fired with charge three or higher.[14234] The Chamber recalls that, given the angle of descent of between 55 and 65 degrees, even if the mortar shell that landed on Markale was fired with charge three, this would have still placed the firing position squarely in the territory of the SRK, namely just below the area of Mrkovići.[14235] As noted above, in this particular case, the stabiliser was found embedded into the ground with its top at a depth of around nine centimetres from the surface, thus leading to the

during the siege of Sarajevo, 1994–1995"), p. 1; Berko Zečević, T. 12156–12157 (22 February 2011); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 47–48 .

14232 D2364 (Witness statement of John Russell dated 17 October 2012), paras. 7–9, 12.

14233 *See* Berko Zečević, T. 12173–12175 (22 February 2011), T. 12303–12308 (24 February 2011); Richard Higgs, T. 5980–5981, 5983, 6027 (19 August 2010); D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 48–49; Derek Allsop, T. 29470–29484 (31 October 2012). *See also* para. 3979.

14234 *See* D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

14235 *See* fn. 13980.

conclusion that the shell was fired on a charge higher than charge one or charge two. While the ABiH forces could have fired the shell on charge three or higher, which then may have resulted in the embedded stabiliser, they would have had to launch it at a much steeper angle in order not to overshoot Markale. As testified by Allsop,[14236] launching a shell from a closer distance, and thus at a steeper angle, and achieving an accurate hit of Markale would have placed the launching crew at a significant risk. In addition, it would have necessarily resulted in a higher angle of descent than the one measured on the scene.

4249. The majority notes that other evidence also indicates that the shell was fired from the SRK side of the confrontation line, more particularly, from the SRK positions in Mrkovići. For example, the Chamber heard that the SRK's 7th Battalion of the 1st Romanija Infantry Brigade had 120 mm mortars in the area of Mrkovići, which is north-northeast of Markale, whereas the evidence before the Chamber was consistent that the ABiH had no mortars in the area of Grdonj, which it held in the determined direction of fire.[14237] In addition, Gengo testified that, rather than firing from Grdonj, the ABiH would open fire mostly from the area of Jajce Barracks and Koševo.[14238] Similarly, Gauthier could not recall any ABiH mortar positions in the established direction of fire.[14239] While Gauthier also suggested that ABiH could have used mobile mortars, the Chamber, by majority, Judge Baird dissenting, is not convinced that it would have been possible for the ABiH to fire at the market area from a mobile mortar, without being seen, given the densely populated area in the direction of fire and given the proximity of the residential area of Sedrenik to the ABiH positions in Grdonj. The majority also recalls the absence of any evidence as to the sighting of mobile mortars on that day or shell fire noise coming from within the city. In the majority's view, achieving an accurate hit of Markale market from a mobile mortar which has been placed on the back of a truck and the base plate of which has not been static for a period of time, by forces which have not pre-recorded this target and who are also trying to remain unseen and undetected, would have been extremely difficult, bordering on impossible.[14240]

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14236 *See* para. 4220.

14237 *See* P1058 (ABiH map) (indicating that ABiH had mortars in Breka but not in Grdonj or near Špicasta Stijena); P6301 (Reference table of military symbols). *See also* Asim Džambasović, T. 15220–15221, 15239–15240 (22 June 2011).

14238 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 18, 23; Slavko Gengo, T. 29772–29773, 29775–29780 (6 November 2012).

14239 Michel Gauthier, T. 29417 (30 October 2012).

14240 The Chamber recalls that having the base plate of a particular mortar in the same position for a long time increases the accuracy of the mortar and thus allows the mortar crew to engage or strike its target with only one round. *See* P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 3; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6. *See also* fn. 13140.

4250. Further, the Chamber received evidence that the SRK would open fire on the area of Stari Grad from the SRK positions above Sedrenik.[14241] Hamill also testified about Cvetković's admission that the SRK fired a large number of mortar rounds into Stari Grad prior to the incident in Markale.[14242] Even on the morning of 5 February, just prior to the Markale incident, the UNMOs reported that the city centre was shelled on the night of 4 and 5 February.[14243] The SRK's use of mortar fire on the urban parts of Sarajevo is indirectly confirmed by Galić's stern ban on fire issued on 5 February 1994, as well as the Accused's order of 7 February that the VRS respond only when threatened and do so against military targets and strictly at the commander's commands.[14244] All of this activity on the Bosnian Serb side around the time of the incident suggests to the Chamber that the upper echelons of power were trying to exert and ensure strict control over the undisciplined firing of the SRK forces into the city.

4251. The Chamber unanimously rejects Gengo and Džida's denials of SRK's responsibility in relation to this incident and in particular their evidence as to the alleged visit by the UN to the positions in Mrkovići which apparently cleared the SRK side of any wrong-doing. The Chamber finds them not to be credible with respect to this incident as they were clearly contradicted by the UN report compiled following the second investigation, which specifically states that Mrkovići positions were not visited by the UN as it would have been difficult to locate the mortar positions there and that the Mrkovići positions had not been visited in at least four months prior to the incident.[14245] This is in line with Gauthier's evidence, namely that his team chose not to visit the SRK positions in the direction of fire due to the area being vast.[14246] Furthermore, even the SRK's own combat reports, issued after the incident, make no mention of any such visit. Similarly, the SRK's and the Accused's calls for the joint commission in the days after 6 February also suggest that such a visit never took place. Finally, while Gengo and Džida are consistent with each other as to a visit by a delegation, neither of them could say much about the UN members within that delegation and neither had the names of those members. Thus, the Chamber is convinced that even if the SRK positions in Mrkovići were indeed visited by a certain delegation on 6 February, that delegation did not include any UN members.

4252. While the Chamber accepts the general evidence given by KDZ185, KW570 and Milovanović that the Bosnian Muslim side tried to gain sympathy from the international

14241 *See e.g.* P6028 (UNPROFOR Situation Report (Sarajevo), 22 August 1995), e-court p. 6.
14242 *See* para. 4192.
14243 P1562 (UNMO report, 4–5 February 1994).
14244 *See* paras. 4202–4203.
14245 *See* para. 4207.
14246 *See* para. 4192.

community and would provoke attacks by the SRK with that goal in mind, it is of general nature and does not, as such, cast doubt on the majority's finding above that the shell came from the SRK positions. Furthermore, the Chamber, by majority, Judge Baird dissenting, does not accept the evidence of KW586 that the Bosnian Muslim side then deliberately targeted Markale so as to achieve international condemnation of the Serbs and thus further its own political agenda. The majority found KW586 to be lacking credibility in relation to this evidence for a number of reasons. The majority found it unlikely that someone in KW586's position would have been privy to such high-level meetings where such sensitive matters were discussed. Furthermore, KW586 exhibited a high degree of animosity towards the current political leadership in BiH, which obviously played a part in his coming forward with his evidence.[14247] There were also inconsistencies between his testimony in court and his witness statement, such as his evidence about the level of involvement of members of the Pakistani UNPROFOR contingent in the Markale incident and the involvement of Halilović, who the witness acknowledged had been removed from his position by Izetbegović at that time. Essentially, KW586's evidence implies a conspiracy of a large scale. However, in the majority's view, such conspiracy is not supported by any other evidence on the record. Finally, if true, it would have meant that the ABiH was able to make a successful hit on Markale market in only its second attempt. Recalling the evidence the Accused led on the low likelihood of such an intentional hit, the Chamber finds this to be impossible.

4253. Thus, for all of the above reasons, the Chamber, by majority, Judge Baird dissenting, is persuaded beyond reasonable doubt that the shell that struck Markale market on 5 February 1994 was fired on one of the higher charges and thus came from the SRK-held territory, having been fired by SRK soldiers. While the market itself may not have been deliberately targeted on that specific day, the majority finds that the SRK forces deliberately targeted the area around it in full knowledge that there were no military targets there and in reckless disregard of potential civilian victims that such fire would cause.[14248]

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14247 KW586 repeatedly referred to the leadership as "gang" or "bandits" and at times even "scum". *See* KW586, T. 47208–47211 (17 February 2014).

14248 The Chamber recalls that Poparić testified about the very low probability of the first mortar shell striking the market, while Higgs testified that it would not have been very difficult to target the market given that it was visible from the surrounding hills and because the city was pre-recorded. While accepting that the shot would have been a difficult one to make, given the majority's view that it was the general area around the market that was targeted, Poparić's evidence on probabilities of intentionally striking the market itself is ultimately irrelevant.

(3) Baščaršija fleamarket, 22 December 1994 (Scheduled Incident G.9)

4254. According to the Indictment, two 76 mm shells hit a flea market in the old commercial quarter of Baščaršija in Stari Grad in quick succession, killing two persons and injuring seven others. The Indictment further states that the fire originated from Trebević, in SRK-held territory.[14249] In its Final Brief, the Prosecution further explains that the shells were fired from an M48 76mm B-1 artillery cannon which was in the SRK's possession, including at Vidikovac and Hreša, and which the ABiH did not have.[14250] The Accused argues, however, that the incident scene was manipulated and that the two explosions were staged.[14251] Further, the Accused notes that the Appeals Chamber in the *Dragomir Milošević* case overturned the Trial Chamber's findings that the SRK fired the shells in question on the basis that it was impossible to determine the source of fire because both armies had positions in the direction from which the shells arrived.[14252] According to the Accused, no additional evidence was led in this case and thus this Chamber has no basis to conclude that the SRK fired the shells in question.[14253]

4255. On the foggy morning of 22 December 1994 at around 9:10 a.m., two shells exploded on the Baščaršija flea market.[14254] The explosions resulted in civilian casualties; two civilians were killed and seven or eight were injured, three of them seriously.[14255] Investigations into this incident were carried out by the BiH MUP, the FreBat, and two UNMOs, Major Hanga Tsori Hammerton and Major Ilonyosi.[14256]

4256. Suljević participated in the investigation of this incident, along with Bešić, Đozo, and others.[14257] According to the official report prepared by CSB Sarajevo on the day of the incident, two shells landed on the Baščaršija flea market, on Petra Kočića street (now Telali street) and

14249 Indictment, Scheduled Incident G.9.

14250 Prosecution Final Brief, Appendix C, para. 61.

14251 Defence Final Brief, paras. 2119–2121.

14252 Defence Final Brief, para. 2122. The Accused also adds that, similarly, in the *Perišić* case the Trial Chamber was unable to conclude beyond reasonable doubt that the two shells that hit the flea market originated from VRS-held positions. *See* Defence Final Brief, para. 2123.

14253 Defence Final Brief, paras. 2122, 2124.

14254 *See* Adjudicated Fact 3029. Hogan visited the site of the incident and recorded the GPS co-ordinates of the location. *See* Barry Hogan, T. 11204–11207, 11217 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2193 (Map of Sarajevo); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

14255 Adjudicated Fact 3030.

14256 *See* Adjudicated Fact 3031. However, the Chamber does not have before it any UN reports related to this incident. The CSB Sarajevo report before the Chamber notes that members of the FreBat were on the scene, as were UNMOs. *See* P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3; D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3.

14257 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 44; P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 2; P1978 (Witness statement of Nedžib Đozo dated 7 December

Danila Ilića street (now Oprkanj street) around 9:10 a.m.[14258] The explosions killed two and wounded seven persons.[14259] The report also states that "judging by the incoming descent angle of the shells and the damage they inflicted, it was established that the shells had been fired from the south at Trebević where the aggressor forces are located."[14260] While noting that the fragments indicate that they were fired from a B-1 76 mm calibre cannon, the report also notes that "after the required evaluation, officials of the [CSB Sarajevo] will forward the final findings on the type and the calibre of the artillery weapon, direction and place from where the shells were fired" to the judge in charge of the investigation.[14261] Suljević then prepared a report concluding that the fragments collected at the scene, including a part of the UTI M68 fuse, belonged to two M70 76 mm calibre shells and that they were fired from the direction of the "enemy's positions in the area of Trebević", the azimuth angle being 159 degrees from the north, with a margin of error of five degrees.[14262] According to Suljević, the UNPROFOR soldiers, who were also present at the scene, agreed with his assessment as to the direction of fire but disagreed on the calibre of the projectiles, coming to the conclusion that they were most probably mortar shells of 82 mm calibre.[14263]

4257. Suljević explained that the order in which the shells fell could only be established on the basis of witness statements, noting that according to some of the eye-witnesses, the first shell fell

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2010), paras. 42–45; Nedžib Đozo, T. 9637 (10 December 2010); P1905 (Witness statement of KDZ485), para. 17; KDZ485, T. 8925 (3 November 2010).

14258 P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3; P1319 (Map of Sarajevo depicting Baščaršija shelling). *See also* Ekrem Suljević, T. 6196–6199, 6201–6203 (6 September 2010); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), e-court pp. 16–17 (of the BCS version); D553 (Photograph of Baščaršija marked by Ekrem Suljević); KDZ485, T. 8927–8929, 8931–8932, 8944–8945 (3 November 2010); D863 (Photograph of Baščaršija marked by KDZ485); D865 (Photograph of Baščaršija marked by KDZ485).

14259 Mirsad Delić and Hasan Hadžić died in the incident, while Remzija Kihić, Ismeta Pačariz, Saliha Lukšija, Envera Sadović, Samir Mujković, Kasim Krka, and Ramiz Hodžić are recorded as having been wounded. *See* P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 3–4. In addition to the CSB Sarajevo report referring to the number of victims of this incident, the Chamber has also received medical certificates relating to some of those victims. *See* P1550 (Medical record for Remzija Kikić); P1556 (Medical referral for Remzija Kikić); P1253 (Medical report for Ramiz Hodžić); P1246 (Medical report for Ramiz Hodžić); P1535 (Medical record for Ismet Pačariz); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 14 (medical report related to Saliha Lukšija).

14260 The report also contains statements of two eye-witnesses (Bajraktarević and Bećirević) who claimed that they heard the firing of the shells before the explosions and that this firing sound originated in the area of Vidikovac in Trebević. Two other eye-witnesses (Subasić and Ibrulj) stated they heard the shells being fired somewhere in the area of Trebević. *See* P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3; D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 5–7, 21–22, 25.

14261 P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3.

14262 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 45–46; P1318 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 2; P1319 (Map of Sarajevo depicting Baščaršija shelling); P1320 (Photographs relating to Baščaršija shelling); P1905 (Witness statement of KDZ485), para. 18; KDZ485, T. 8930–8931, 8936–8938 (3 November 2010); D864 (Photograph related to incident at Baščaršija flea market marked by KDZ485).

14263 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 47; P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3. The Chamber notes that no UN report on this incident was tendered by either of the parties and thus it is unable to confirm and/or assess the findings of the UN in relation to this incident.

on the curb of Danila Ilića street while the second fell near a window of a house located on Petra Kočića street.[14264] KDZ485 testified that the shells fell "in a strictly civilian area, without any military activity".[14265] He also stated that when the CSB Sarajevo team arrived, all bodies had been removed from the scene and denied that the scene was altered in any other way.[14266] Another investigator on the team, Đozo, was asked about the possibility that the explosion was a result of a device placed at the scene; he explained that the team found shrapnel, which came from a projectile that was not a mortar shell and thus discounted the theory of an explosive device at the scene.[14267] Suljević also denied that anything other than projectiles exploded at the scene of this incident.[14268]

4258. With respect to the 76 mm calibre shells, Suljević testified that CSB Sarajevo had samples of fragments from such projectiles, which were collected after they were fired on the city by the SRK.[14269] The Chamber has also received a number of VRS and SRK documents, which show that the SRK was in possession of a large number of M48 B1 cannons that fired 76 mm projectiles, including one such cannon in the area of Hreša and Vidikovac.[14270] In contrast, the ABiH appears to have had only a handful of such cannons, all of which were located to the south and southwest of Ilidža and thus outside the control of the ABiH inside the city itself.[14271]

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14264 Ekrem Suljević, T. 6191–6192 (6 September 2010); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 22–23; KDZ485, T. 8930–8931 (3 November 2010); D862 (Sketch of Baščaršija marked by KDZ485).

14265 P1905 (Witness statement of KDZ485), para. 18. The Stari Grad police station was located a number of blocks away from the incident site. *See* Nedžib Đozo, T. 9637–9638 (10 December 2010); D915 (Map of Sarajevo marked by Nedžib Đozo).

14266 KDZ485 confirmed that the soil around one of the craters was cleared but noted that this was done after the traces were examined and photographed as the same crime scene would be photographed at various stages of the investigation. *See* KDZ485, T. 8929, 8935–8936, 8938–8943, 8947–8948 (3 November 2010); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), e-court pp. 35–38 of the BCS version. Đozo also confirmed that the bodies were removed by the time the team arrived on the scene, which was some 15 minutes after the shells exploded. *See* P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 46; Nedžib Đozo, T. 9639–9641 (10 December 2010).

14267 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 47.

14268 Ekrem Suljević, T. 6204–6206 (6 September 2010); D555 (Photograph of crater at Baščaršija marked by Ekrem Suljević).

14269 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 29; Ekrem Suljević, T. 5684–5685, 5687–5688 (21 July 2010). In addition, Suljević explained that one could distinguish between a crater created by a mortar shell and the crater created by an artillery projectile. *See* Ekrem Suljević, T. 5735–5738 (22 July 2010); D525 (Sketch drawn by Ekrem Suljević).

14270 P5056 (Letter from Manojlo Milanović to General Hayes, 15 August 1993), p. 2; P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); P1593 (SRK map of Sarajevo showing weapon sites); P1594 (SRK map of Sarajevo showing weapon sites); P1595 (SRK map of Sarajevo showing weapon sites); P1279 (SRK request to VRS Main Staff, 10 July 1995), p. 2; P1282 (SRK request to VRS Main Staff, 18 April 1995), p. 1; P1303 (SRK request to VRS Main Staff, 22 June 1995), p. 1; P5940 (SRK Order, 9 May 1995), p. 2; P5941 (Document re artillery fire and tanks), p. 1. *See also* P1058 (ABiH map); P6301 (Reference table of military symbols).

14271 P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); P1058 (ABiH map); P6301 (Reference table of military symbols); D779 (SRK Order, 27 March 1995), pp. 2, 3. According to Dragomir Milošević, the 104th Motorised Brigade of the ABiH had 76 mm cannons and would use them to target the Famos Factory located near Lukavica. *See* Dragomir Milošević, T. 32787–32788 (29 January 2013). The Chamber notes that the zone

4259. Zorica Subotić agreed that two explosions occured at the incident site but disputed the manner in which they happened and argued that the scene was manipulated.[14272] She claimed that the first explosion, the one related to the crater on the curb of Danila Ilića street, did not take place at that location, but at a location nearby, and that the crater near the curb was manually dug out.[14273] She concluded this using the contemporaneous photographs made by the CSB Sarajevo team arguing that they show, *inter alia*, that (i) the crater was too big for a 76 mm round, (ii) the quantity of the debris expelled from the crater onto the left-hand side of the curb (as seen from the alleged incoming direction of the round) was disproportionately greater than the quantity on the right-hand side of the curb, (iii) some of the items surrounding the crater were still covered by snow even though the impact would have blown that snow away, (iv) the pattern of the soil traces and of a number of metal fragments and other objects seen near the crater indicates that the explosion actually occurred some metres away from the crater, and (v) on the house near the crater, damage was limited to the window shutters and not the façade surrounding those shutters, which is inconsistent with the laws of physics.[14274] According to Subotić, this crater and its surroundings were manipulated in order to give the impression that a "fragmentation artillery round" exploded at that location, when in fact the actual explosion near the crater was caused by a "quantity of explosive"; the manipulation also intended to make the scene compatible with the direction of fire eventually determined by the investigators.[14275]

4260. With respect to the second explosion, Subotić noted that the crater was too big to have been caused by a 76 mm round and also too shallow when compared to the crater related to the first explosion.[14276] She further noted that the shape of the crater was similar to craters caused by

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of responsibility of the 104th Motorised Brigade was south of the airport, in the area of Hrasnica and Mt. Igman. *See* P1058 (ABiH map).

14272 Zorica Subotić, T. 38277 (14 May 2013).

14273 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 145–150.

14274 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 145–146, 148–150; Zorica Subotić, T. 38277–38280 (14 May 2013); D3541 (Photograph of crater marked by Zorica Subotić). Subotić also argued that her claim was confirmed by the fact that the contemporaneous photographs show that the scene was "altered substantially for no reason that could be explained to facilitate the collection of physical evidence in the course of the on-site investigation". Further, she claimed that it was an "incontrovertible fact" that the incoming direction of fire was determined following the alteration of the scene. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 147–148.

14275 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 148, 153.

14276 According to Subotić, the difference in sizes between the two craters was strange given that the rounds that caused them were meant to have been fired from the same weapon and from the same location. *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 150; Zorica Subotić, T, 38280–38281 (14 May 2013). In cross-examination, Subotić confirmed that her claim that the crater was too big was the result of her comparison of this particular crater to the craters caused by 82 mm mortar shells. She then acknowledged that the 76 mm cannon projectile weighs over 8 kilograms, while an

rounds exploding at low angles of descent or even rounds lying on the ground.[14277] Recalling that a part of the fuse was found on the scene, Subotić opined that one of the contemporaneous photographs showing the fragments of the projectile also showed an intact fuse without the detonator, which in her view is "absolutely impossible" given that the fuse activates once it impacts the ground.[14278] The only way in which this could happen, according to Subotić, was if the round was detonated while stationary, using an explosive charge.[14279]

4261. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of one additional Adjudicated Fact which goes to the direction of fire and provides that both shells were fired from the southeast.[14280]

4262. Having considered the evidence and the adjudicated facts outlined above, the Chamber is convinced that two projectiles struck the fleamarket in Baščaršija on 22 December 1994. Relying in particular on the CSB Sarajevo report and the evidence of Suljević and Đozo, the Chamber is of the view that both projectiles were 76 mm calibre shells and that they came from the direction of southeast. While Suljević noted that the UN established that the projectiles in question were 82 mm mortar shells, the Chamber is persuaded by the CSB Sarajevo team's conclusions on this issue. First, no traces of a mortar shell, such as its fin, appear to have been found at the scene. Second, the CSB Sarajevo ballistic experts, who were experienced with the ammunition and weapons used in the Sarajevo conflict, conducted a thorough ballistics analysis of the fragments collected at the scene, including a part of a fuse, and concluded that these fragments belonged to a 76 mm projectile. Third, the spray pattern of the craters at the scene tends to suggest that mortar shells did not strike the area. Finally, even the Accused's expert witness, Subotić, implicitly agreed that the fragments on the scene came from a 76 mm projectile.[14281]

4263. The Chamber recalls Subotić's claim that the scene was manipulated and the explosions caused by a device planted at the scene. The Chamber finds her claim plainly unacceptable for a number of reasons. First, Subotić made many of her assumptions solely on the basis of contemporaneous photographs of the scene, which were not of sufficient clarity and thus not

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82 mm mortar shell weighs around 3 kilograms. *See* Zorica Subotić, T. 38461–38465 (16 May 2013); P6325 (Excerpt from ammunition manual of SFRY Federal Secretariat for National Defence).

14277 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 150.

14278 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 150–151; Zorica Subotić, T. 38281 (14 May 2013).

14279 D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 151–154; Zorica Subotić, T. 38281 (14 May 2013), T. 38466–38469 (16 May 2013).

14280 Adjudicated Fact 3032.

14281 *See* D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 151–152.

particularly reliable. In other words, she was never able to examine the craters in question and yet was able to comment on their size, depth, and even conclude where the actual site of the first explosion was. Second, Subotić claimed that the incoming direction of fire was determined following the alteration of the scene and that the scene was "altered substantially for no reason that could be explained to facilitate the collection of physical evidence in the course of the on-site investigation". The Chamber finds her claim about substantial alteration untenable as the photographs of the scene all seem consistent and merely indicate that the craters were cleaned at some stage of the investigation, something that was done by CSB Sarajevo in many other scheduled incidents discussed in this judgement.[14282] Finally, with respect to Subotić's evidence that the fuse found on the scene was intact, the Chamber notes that she reached that conclusion on the basis of an unclear photograph of the various projectile fragments found on the scene.[14283] At the same time, she did not explain sufficiently why she thought that one of the fragments depicted was an intact fuse.[14284] Furthermore, the Chamber sees no reason to doubt the CSB Sarajevo report which records that only a part of the fuse was found rather than an intact fuse. For all of the reasons above, the Chamber rejects Subotić's theory that this incident was staged.

4264. Relying on the CSB Sarajevo report, the medical evidence before it, and the adjudicated facts, the Chamber is also convinced that the explosions at the fleamarket resulted in two killed and seven wounded persons, all of whom were civilians and were not taking direct part in hostilities. Furthermore, the fleamarket was located in the residential part of Stari Grad and there were no military targets in or near the area at the time of the incident.

4265. In terms of the origin of fire, the Chamber recalls the Accused's contention that in both the *Dragomir Milošević* and *Perišić* cases, the evidence was found not to have been sufficient to conclude that the shells originated from SRK-held territory. However, contrary to his claim that no additional evidence was led in this case on this particular issue, the Chamber recalls that the Prosecution brought additional evidence, namely the fact that SRK had a large number of cannons that fired 76 mm projectiles in its arsenal, including one in the area of Vidikovac, identified by the

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14282 *See e.g.* P1709 (Photographs re shelling of Markale on 5 February 1994); P1926 (Photographs re shelling of Markale on 28 August 1995). In addition, in relation to Scheduled Incident G.6, Sabljica testified about the established procedure of CSB Sarajevo technicians clearing and preparing impact locations, which in turn enables the ballistic experts to determine the direction of fire. *See* P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), pp. 20–21, 32. *See also* P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 12, 20, 34; KDZ485, T. 8947–8948 (3 November 2010).

14283 The Chamber also notes that the annotation made on the photograph itself makes no mention of the fuse being one of the fragments depicted there.

14284 While Subotić included a photograph of an unexploded 76 mm round in her report—to illustrate that one of the fragments in the CSB Sarajevo photograph was the fuse—it is not obvious to the Chamber that one of the fragments depicted in the CSB Sarajevo photograph is indeed the intact fuse of a 76 mm round. *See* D3542

CSB report as the origin of fire. In addition, the evidence before the Chamber also clearly shows that the ABiH did not possess such cannons in the direction of southeast from which the shells originated, but rather in the outer circle of Sarajevo in the area of Mt. Igman. Accordingly, the Chamber is convinced beyond reasonable doubt that the two 76 mm shells that struck the fleamarket originated in SRK-held territory, in the area of Vidikovac and Trebević. Given that only two shells were fired and that there was no military target nearby, the Chamber is convinced that the SRK forces deliberately targeted the area of Baščaršija, including the fleamarket, and the civilians therein.

(4) Mula Mustafe Bašeskije street, 28 August 1995 (Scheduled Incident G.19)

4266. According to the Indictment, on 28 August 1995, a 120 mm mortar shell landed on Mula-Mustafe Bašeskije street outside the entrance to the city market, killing 43 and injuring 75 people.[14285] The Indictment also alleges that the shell came from the SRK-held territory of Trebević.[14286] In its Final Brief, the Prosecution argues that the shell killed "at least 35 people" and injured "at least 78 others", the vast majority of whom were civilians.[14287]

4267. The Accused argues in his Final Brief that the shell could not have come from the SRK positions, thus suggesting, without explicitly saying so, that the shell came from the ABiH.[14288] While the Final Brief does not outline how the ABiH caused the incident, the majority of the evidence led by the Accused throughout his case was that a static explosive device was planted at the scene.[14289] Additionally, as with the first Markale incident, although he makes no mention of it in his Final Brief, the Accused claimed during the case that the incident was staged and bodies

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(Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 151–152.

14285 Indictment, Scheduled Incident G.19.

14286 Indictment, Scheduled Incident G.19.

14287 Prosecution Final Brief, Appendix C, para. 62. The Prosecution seems to be relying on Adjudicated Fact 3081 for these numbers. However, Appendix H in which the Prosecution list the names of those wounded and killed refers to 43 killed and 73 wounded, thus contradicting Adjudicated Fact 3081, at least as far as the wounded are concerned. *See* Prosecution Final Brief, Appendix H, pp. 20–27.

14288 Defence Final Brief, paras. 2125–2162.

14289 The Chamber notes that in his Final Brief the Accused simply summarises the evidence of his witnesses, but then stops short of recounting their ultimate conclusions as to what happened in Markale on 28 August 1995. For example, after outlining much of Subotić's evidence he fails to state her ultimate conclusion, namely that a static explosive device was planted at the scene. The same is the case with other witnesses, such as Demurenko and Veljović. While there is no explanation in the Final Brief, the Chamber assumes that the position the Accused took in relation to the first Markale incident, as outlined in footnote 5073 of the Final Brief, is the same in relation to this incident. Nevertheless, as with the first Markale incident, in its analysis, the Chamber will consider the evidence the Accused led in relation to this incident in its totality and will therefore consider the conclusions of his witnesses, both in assessing their credibility and in order to determine what happened in Markale on 28 August 1995. *See* fn. 13939.

brought to the scene.[14290] Given that these two theories were not explicitly abandoned in the Final Brief, the Chamber will consider them below, as it did with the first Markale incident.

(a) The incident

4268. The morning of 28 August 1995 was quiet, as a result of which a large number of people went to the Markale market area.[14291] Between 10:50 and 11 a.m., four shells landed in succession on a square near Markale market, approximately 200 to 300 metres away from the market.[14292] Just after 11 a.m.,[14293] a fifth shell landed in front of the main entrance to the Markale market building, about 100 to 150 metres away from the location that had already been shelled on 5 February 1994.[14294] Đula Leka, who was standing five to seven metres from the point of impact, was wounded in her left breast and upper left arm, while her brother-in-law was killed.[14295] Ismet Svraka was standing in front of the indoor market building with his two friends, Ramo Herceglija and Ibrahim Hajvaz, both pensioners, no more than three to four metres away from the impact.[14296] Svraka lost his left leg in the blast and also sustained injuries to his right foot and stomach, while his two friends were killed.[14297] He testified that there was no warning before the explosion and

14290 *See e.g.* Hearing, T. 6396 (8 September 2010) (closed session) (wherein he put this case to a witness).

14291 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 4, 6.

14292 Harry Konings, T. 9307–9308 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 65; P1959 (Map of Sarajevo marked by Harry Konings); P1905 (Witness statement of KDZ485), paras. 24–29. *But see* Emir Turkušić, T. 9061 (4 November 2010) who thought, but was not entirely sure, that these shells hit after the Markale incident.

14293 During the trial the Accused pointed out that one of the reports prepared by the authorities following this incident—namely a report prepared by the Sarajevo High Court—refers to the time of incident as being 1:05 p.m., while the CSB Sarajevo report refers to CSB Sarajevo being informed of the incident at 11:30 a.m.. The Accused's implication was therefore staged. *See* Emir Turkušić, T, 9059–9064 (4 November 2010); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court pp. 1, 6. However, the Chamber notes that not only is all other evidence consistent with the victims' evidence that the incident happened around 11 a.m., the Sarajevo High Court report itself refers to the investigation commencing at 11:50 a.m.. Accordingly, the Chamber is satisfied that the time of "13:05" mentioned at the beginning of that report is a typographical mistake. *See e.g.* P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 24; P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 1; P906 (UNPROFOR daily report, 28–29 August 1995), p. 2; P1444 (UNMO report, 30 August 1995), p. 20; P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2; Adjudicated Fact 3078. The Chamber also notes that the English translation of P1449 refers to the time of incident as being 13:03, which the Chamber considers to have been a typographical error made by the translator as it is clear that the BCS version refers to 13:05.

14294 P141 (Đula Leka's statement to BiH authorities, 29 August 1995); P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2; Sead Bešić, T. 9428–9429 (8 December 2010); P1450 (Video footage of Markale, 28 August 1995). For the exact location, *see* P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2193 (Map of Sarajevo); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); D617 (Map of Sarajevo). *See also* discussion on Scheduled Incident G.8.

14295 P141 (Đula Leka's statement to BiH authorities, 29 August 1995); P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2.

14296 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 6; Ismet Svraka, T. 9658, 9661–9664, 9668 (13 December 2010); P1450 (Video footage of Markale, 28 August 1995).

14297 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 8, 11; Ismet Svraka, T. 9655 (10 December 2010).

that he did not hear the other four shells prior to the Markale shell impacting.[14298] Sulejman Crnčalo's wife, who had gone to the market to look for powdered milk, was also killed in this blast.[14299] When she did not come home at the arranged time, Crnčalo went to the market to look for her and, once he arrived there at around noon, saw great commotion, blood traces everywhere, and pieces of human flesh scattered all over the area.[14300] Crnčalo did not see any investigating organs or officials at the scene.[14301] He was told to go to the Koševo Hospital and, when he could not find his wife on the list of the wounded there, he went to the morgue where he finally learned that she was dead and saw her body.[14302]

4269. Following the explosion, Leka was taken to the Koševo Hospital where she spent some four or five days; in 1996, she still suffered from some pain in her shoulder and chest.[14303] While fading in and out of consciousness after the incident, Svraka was driven to the Koševo Hospital where he saw a lot of injured people; he was operated on several times and released 45 days later.[14304] Following that treatment, he had to undergo extensive reconstructive surgery in order to be able to step on his right foot and is now deemed to have a 90% disability.[14305]

(b) CSB Sarajevo and UNMO investigations

4270. Soon after the explosion Đozo was instructed to go to the scene with his colleagues and all available vehicles in order to assist in transporting the injured.[14306] Đozo testified that the scene was handled and secured mostly by the Centar police station as the shell had landed in the area between that station and the Stari Grad station.[14307] By the time he and his colleagues arrived at the scene, some of the injured had already been taken away while the dead were still lying around the

14298 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 7; Ismet Svraka, T. 9669 (13 December 2010).

14299 P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), paras. 6, 94–96; Sulejman Crnčalo, T. 1167–1168 (14 April 2010).

14300 Sulejman Crnčalo, T. 1167, 1173–1176 (14 April 2010).

14301 Sulejman Crnčalo, T. 1173–1174 (14 April 2010).

14302 Sulejman Crnčalo, T. 1167–1168, 1178–1179 (14 April 2010), T. 1279–1280 (15 April 2010); P740 (Autopsy certificates for victims from Markale, 28 August 1995), e-court p. 35.

14303 P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), p. 21; P1229 (Medical certificates for Ajkuna Cocalić, Đula Leka, Razija Čolić, Janja Pašić, and Adisa Duran). *See also* Adjudicated Fact 3083.

14304 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 8–10; Ismet Svraka, T. 9655–9656 (10 December 2010), T. 9662–9663, 9669–9671 (13 December 2010); P1225 (Medical certificate for Ismet Svraka); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), p. 20.

14305 Ismet Svraka, T. 9656–9657 (10 December 2010); P1993 (Medical certificates for Ismet Svraka).

14306 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41. Đozo testified that the Stari Grad police station is less than one kilometre away from Markale market. *See* Nedžib Đozo, T. 9542–9544 (9 December 2010); P1979 (Map of Sarajevo marked by Nedžib Đozo).

14307 Nedžib Đozo, T. 9636 (10 December 2010).

market.[14308] In addition, the scene was so chaotic that Đozo and his colleagues could not get through to provide assistance so they returned to the police station.[14309] Other than taking a few statements from eyewitnesses later, Đozo did not participate in the investigation of this incident.[14310] He did, however, testify that prior to this incident he investigated two other shelling incidents, one on 25 June and another on 1 July 1995, where the shells landed in the immediate vicinity of Markale.[14311] It was established in the first of these incidents, that the two or three shells that had landed came from the Serb positions in the north, from the settlements of Barice and Mrkovići, while in the later incident four shells came from the direction of Lukavica or Vraca which were also controlled by the SRK.[14312] According to Đozo, fire was slowly being adjusted by the SRK until it finally reached Markale market on 28 August 1995.[14313] When put to him that it was unusual that, despite this adjustment of fire, Markale was ultimately only hit twice, once in 1994 and once in 1995, Đozo stated that it was certain that the busiest streets of Sarajevo were targeted and that most people circulated around the Mula Mustafe Bašeskije street.[14314]

4271. KDZ304 was at the scene "roughly" 10 minutes after hearing the explosions.[14315] He testified that by the time he arrived most of the victims had already been removed.[14316]

4272. Emir Turkušić, a ballistics expert from CSB Sarajevo,[14317] was on his way to Markale market to buy some goods when he saw cars passing by, full of dead bodies and injured persons.[14318] He therefore immediately returned to the base where he was instructed by his boss to take the necessary ballistics equipment and go to the incident site with another member of the team,

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14308 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

14309 Nedžib Đozo, T. 9634–9636 (10 December 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

14310 Nedžib Đozo, T. 9635–9636 (10 December 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

14311 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 24–34; Nedžib Đozo, T. 9548–9552 (9 December 2010), T. 9553–9558, 9562–9564 (10 December 2010); P1990 (BiH MUP Report re shelling incident of 1 July 1995).

14312 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 25–34.

14313 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 35. *See also* Nedžib Đozo, T. 9548–9552 (9 December 2010), T. 9553–9562, 9564–9565, 9577–9586 (10 December 2010); P1981 (Sketch drawn by Nedžib Đozo); P1982 (Map of Sarajevo marked by Nedžib Đozo); P1988 (Sketch drawn by Nedžib Đozo); P1989 (Map of Sarajevo marked by Nedžib Đozo).

14314 During cross-examination Đozo agreed with the Accused that the Orthodox Church was located near Markale market and the area where the shells landed on 25 June and 1 July 1995. *See* Nedžib Đozo, T. 9577–9586 (10 December 2010); D908 (Sketch re shelling of Markale on 28 August 1995 marked by Nedžib Đozo).

14315 P2407 (Witness statement of KDZ304 undated), p. 16; KDZ304, T. 10528 (19 January 2011).

14316 KDZ304, T. 10528 (19 January 2011); P2407 (Witness statement of KDZ304), p. 16.

14317 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 3.

14318 Emir Turkušić, T. 9001–9002, 9059–9062 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.

Nedim Bosnić.[14319] Turkušić and Bosnić were at the market approximately 10 minutes later, when most bodies had been cleared away and some UNPROFOR members, and personnel from CSB Sarajevo were already there.[14320] Turkušić described the scene as the "last deepest circle of Dante's hell" with huge pools of blood, severed body parts, and panic and fear among the people present.[14321]

4273. Konings, an UNMO from the Sedrenik team, heard about the incident on the radio and soon after received a phone call from the "Bosnian police" asking the UNMOs to come to the scene.[14322] Konings and two other UNMOs were on location near the market approximately 30 minutes after the incident where they met with the Bosnian police, including ballistics experts and the investigative judge.[14323] The whole group was at the scene of the incident approximately 40 minutes after the explosion.[14324] By that time, all the victims had been taken away but there was still a lot of glass on the street, large pools of blood, and a large number of severed body parts.[14325]

4274. By around noon—at which point the scene was sealed off by the police from the Centar police station and the wounded and the killed had been removed from the site— the CSB Sarajevo team, along with the three UNMOs commenced the onsite investigation.[14326] Turkušić's role was to collect and analyse all relevant data that would indicate, among other things, the bearing and the type of the projectile.[14327] Bešić, being a criminal technician, was tasked with taking photographs of the scene, while his colleague was video-recording the scene.[14328] Already present at the scene

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14319 Emir Turkušić, T. 9001–9002, 9009 (4 November 2010) (testifying further that he did not hear the explosion as he was in another building at the time); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.

14320 Emir Turkušić, T. 9083–9085 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 13, 14. Bešić testified that whenever there was a large number of casualties, it was normal procedure to take the wounded to a hospital and the dead to the morgue. *See* Sead Bešić, T. 9423–9425 (8 December 2010); P1969 (Video footage of Markale on 28 August 1995).

14321 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 14. *See also* Emir Turkušić, T. 9002–9004 (4 November 2010); P1450 (Video footage of Markale, 28 August 1995).

14322 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 49–51.

14323 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 52.

14324 Harry Konings, T. 9302, 9372 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 53.

14325 Harry Konings, T. 9302, 9372–9374 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 53.

14326 KDZ485, T. 8882–8883 (3 November 2010); Sead Bešić, T. 9430–9431 (8 December 2010), T. 9481–9484 (9 December 2010); P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1 (under seal); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 23–24; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13; P1450 (Video footage of Markale, 28 August 1995).

14327 Emir Turkušić, T. 9009 (4 November 2010).

14328 Sead Bešić, T. 9422–9423 (8 December 2010), T. 9481 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 24–25; P1926 (Photographs re shelling of Markale on 28 August 1995); P1968 (Photograph re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995).

were FreBat soldiers, who were conducting their own investigation.[14329] Later in the day Harland came to the scene as well, at which point the blood had been washed away.[14330]

4275. Turkušić very quickly detected the crater on Mula Mustafe Bašeskije street, near the entrance to the market building and relatively close to the pavement, and testified that it would have been impossible to disturb it at that point since it would have required a lot of manual work that would have been noticed by the dozens of people who were present.[14331] Konings and the other UNMOs also spotted and investigated the crater, and Konings did not notice any sign of tampering with the crater; to him it was immediately obvious that it was caused by a mortar rather than an artillery projectile.[14332] The UNMOs also found the stabiliser, which, according to Konings, was located 10 to 20 metres away from the point of impact, and which had bent fins and writing in Cyrillic on its back.[14333] Bešić testified that the stabiliser was located some 25 to 45 metres away from the point of impact.[14334] Turkušić confirmed that he did not personally find the stabiliser, although he did see it, and explained that it was marked with letters "KB" in Cyrillic, signifying that the shell was produced in the Krušik Factory in Valjevo, Serbia.[14335] According to the CSB Sarajevo report, the stabiliser had "KB 9307" and "MK M74" inscribed on it.[14336] Konings testified that the stabiliser was taken by the "Bosnian police".[14337]

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14329 Emir Turkušić, T. 9007–9008 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13; Harry Konings, T. 9302 (7 December 2010); P2407 (Witness statement of KDZ304), p. 16.

14330 David Harland, T. 2042–2043 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 229; P906 (UNPROFOR daily report, 28–29 August 1995).

14331 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 14; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 25–26; P1974 (Photograph re shelling of Markale on 28 August 1995 marked by Sead Bešić); Sead Bešić, T. 9423–9425, 9428–9429 (8 December 2010); P1969 (Video footage of Markale on 28 August 1995); P1450 (Video footage of Markale, 28 August 1995).

14332 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 58, 60; P1968 (Photograph re shelling of Markale on 28 August 1995); Harry Konings, T. 9303–9306 (7 December 2010); P1958 (Photograph re shelling of Markale on 28 August 1995 marked by Harry Konings).

14333 Harry Konings, T. 9306 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 56–57. On cross-examination, it transpired that Konings was not entirely certain as to exactly how far the stabiliser was from the crater and admitted to giving different distances on different occasions. *See* Harry Konings, T. 9378–9379 (7 December 2010).

14334 Bešić could not explain why the stabiliser was so far away from the point of impact but speculated that it may have been pushed away by the tires of the automobiles. *See* P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 28–30; Sead Bešić, T. 9504–9505 (9 December 2010); P1926 (Photographs re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); P1975 (Sketch re shelling of Markale on 28 August 1995); D903 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).

14335 Emir Turkušić, T. 8994, 9076–9078 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.

14336 P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal). Sead Bešić testified that the first two digits following "KB" indicated the year and the second two the month of manufacture. *See* P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 15, 22–23. This means that this shell was produced in Krušik in July 1993.

14337 Harry Konings, T. 9379–9380 (7 December 2010).

4276. According to the CSB Sarajevo report prepared on the basis of the initial information obtained on the day of the incident,[14338] as well as Turkušić's ballistics report prepared following his and Bosnić's investigation, the stabiliser belonged to a 120 mm calibre shell which, based on the measurements of the crater, came from the south, its azimuth being 170 degrees, plus or minus five degrees.[14339] This azimuth corresponded to "aggressor positions at the Trebević area."[14340] The CSB Sarajevo report also provides that the fact that the "UN observers in the southern part of the city did not notice any artillery actions from the areas controlled by [ABiH] confirms that the shell was fired from the area temporally controlled by the aggressor."[14341] According to Turkušić, the shell impacted against the road directly without hitting anything along its trajectory.[14342]

4277. As for the origin of fire, while the team calculated the angle of descent of the shell to have been 70 degrees,[14343] Turkušić stated that the team was unable to say exactly from which point the shell was fired, as that determination depended on the number of charges used to fire it.[14344] However, based on the UNMOs' information that on that particular day the ABiH did not fire any mortar shells from its positions on the northern side of Trebević, the CSB Sarajevo team concluded that the shell had originated from the part of the Trebević slopes held by the Serb forces.[14345] He also noted that many factors indicated that the shell was launched with three charges, which suggests an approximate distance of 2,400 to 2,500 metres from Markale.[14346] When it was put to

14338 P1905 (Witness statement of KDZ485), para. 26.

14339 P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); P1934 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court pp. 2–4. *See also* Emir Turkušić, T. 9019–9024, 9066–9067 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 13, 16–30, 32–33; P1936 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1929 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1930 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1931 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1935 (Maps re shelling of Markale on 28 August 1995); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 27–28, 30–32; P1976 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).

14340 P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal).

14341 P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); P1905 (Witness statement of KDZ485), para. 28. *See also* P1977 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1.

14342 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 15.

14343 Emir Turkušić, T. 9012–9019, 9072–9075 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 30–32; P1927 (Sketch re shelling of Markale on 28 August 1995); P1928 (Sketch re shelling of Markale on 28 August 1995 marked by Emir Turkušić). *See also* Richard Higgs, T. 5939–5940 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995).

14344 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 19–20 (claiming also that even the most renowned military and artillery experts would be unable to provide the precise origin of fire for this incident).

14345 Emir Turkušić, T. 9071–9072 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 19–20. *See also* Barry Hogan T. 11283–11284 (3 February 2011).

14346 Emir Turkušić, T. 9019 (4 November 2010).

him that the UNMO's radar did not register any fire coming from the Serb side, Turkušić responded that this depended on the area the radar was adjusted to monitor.[14347]

4278. According to the UNMO report dated 29 August 1995, UNMO team from Sedrenik was tasked with investigating the Markale incident that took place at 11:10 a.m. on 28 August 1995, as well as the other four shells that fell nearby earlier that day, and it did so in conjunction with the local authorities.[14348] As confirmed by Konings during his testimony in this case, this team concluded that all five impacts were 120 mm mortar projectiles, all bearing the same marks, namely "KB 9307" and "MK M74", and that the one that landed on Markale was fired from 170 degrees plus or minus five degrees from the north, with a minimum "angle of impact" of 67 degrees.[14349] As for the other four rounds, the team found that they were fired from 220-240 degrees from the north and impacted the ground 200 to 300 metres from the shell that landed on Markale.[14350] An accurate origin of fire for all five shells could not be determined because it was not known with which charge they were fired.[14351] Following the investigation on the scene, the UNMO team went to the morgue where it confirmed that 31 persons had been killed.[14352] In the morgue, Konings could see that the people had been killed by shrapnel and that their bodies were fresh.[14353] Some hours later, the number of casualties was amended to 34 killed and 84 wounded.[14354] Following a meeting with the Bosnian police at the police station, Konings submitted his report to his superiors.[14355] He explained that during the meeting the Bosnian authorities wanted the UNMOs to

14347 Emir Turkušić, T. 9071–9072 (4 November 2010).

14348 P1446 (UNMO report, 29 August 1995), p. 20. *See also* P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 17; P1444 (UNMO report, 30 August 1995), p. 20; Harry Konings, T. 9339–9340, 9372 (7 December 2010).

14349 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 17–19; P1446 (UNMO report, 29 August 1995), pp. 20–22; P1444 (UNMO report, 30 August 1995), pp. 20–21. *See* Harry Konings, T. 9306–9307, 9373–9375 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010); paras. 61–63, 80; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998–2002; P151 (Map marked by Thomas Knustad).

14350 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 17–18; P1444 (UNMO report, 30 August 1995), pp. 20–22; Harry Konings, T. 9307–9308 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 64–65.

14351 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 17; P1444 (UNMO report, 30 August 1995), p. 21. *See also* P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 80–81.

14352 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 66; Harry Konings, T. 9333–9337 (7 December 2010).

14353 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 66; Harry Konings, T. 9337–9339 (7 December 2010).

14354 P1446 (UNMO report, 29 August 1995), p. 21.

14355 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 68; P150 (UNMO report, 28 August 1995). *See also* Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998–2000.

declare that the Markale shell had been fired by the Bosnian Serbs but that he was unable to do so at that moment as there was a possibility that the shell had been fired from ABiH-held territory.[14356]

4279. Konings testified that the next day, on 29 August 1995, Thomas Knustad and Paul Conway, two UNMOs who had been manning OP-1 on the day of the incident, told him that they did not observe or hear any outgoing shots from the ABiH-held territory or from the part of the VRS-held territory they could see.[14357] OP-1 was located in the south of Sarajevo, on Čolina Kapa Hill, approximately 200 metres north of the ABiH side of the confrontation line and approximately 1,500 metres away from the SRK lines.[14358] Hogan testified that, based on the measurements he made by GPS, the distance between Markale market and the frontline in that area was approximately 1,600 metres.[14359]

4280. Knustad confirmed during his testimony that, on the morning of 28 August 1995, which was warm and clear, he was sitting at the UNMO house near OP-1 while Conway was manning the OP.[14360] At around 11 a.m., they saw smoke rising from the area of Markale market and then heard the sound of an impact explosion in the city, which Knustad thought sounded like a mortar impact.[14361] Knustad heard only one impact and thought that the mortar did not pass very close to OP-1 otherwise he and Conway would have heard it.[14362] He also explained that the mortar had not been fired from "within the confrontation line" because he would have heard that too.[14363] Conversely, he testified that, if fired from behind the SRK lines, it is possible that he would not

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14356 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 68–70; Harry Konings, T. 9390–9393 (7 December 2010); P150 (UNMO report, 28 August 1995).

14357 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 72; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998, 2004–2008. *See also* Harry Konings, T. 9308–9310 (7 December 2010); P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

14358 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1987–1988, 1994, 1996, 2001, 2006–2008, 2024–2026; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3; P151 (Map marked by Thomas Knustad); Paul Conway, T. 29000, 29004–29006 (17 October 2012); P5927 (Map of Sarajevo marked by Paul Conway). Konings, on the other hand, placed the location of OP-1 some 500 to 600 metres away from the confrontation line. *See* Harry Konings, T. 9298–9302 (7 December 2010); P1954 (Map of Sarajevo marked by Harry Konings); P1955 (Photograph of Sarajevo marked by Harry Konings); P1956 (Photograph of Sarajevo); P1957 (Photograph of Sarajevo and uniformed men marked by Harry Konings); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 72; P1964 (Map of Sarajevo marked by Harry Konings).

14359 Barry Hogan, T. 11284–11285 (3 February 2011); D1006 (Aerial satellite image of Sarajevo marked by Barry Hogan).

14360 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1993–1994; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3. Conway testified, however, that he believed that Knustad was taking a walk with their Bosnian interpreter at the time of the explosion. *See* D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 16.

14361 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1994–1998, 2023–2024; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

14362 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2023–2024, 2039; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

14363 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2003–2005, 2048–2049; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

have heard it, as the SRK-held territory was on the other side of the hill.[14364] Accordingly, Knustad excluded the possibility of any mortar being fired from the ABiH-held territory.[14365]

4281. Conway testified that he heard the sound of several muffled explosions at around 11 a.m. on 28 August 1995 from OP-1 and that when he looked towards the city he saw several plumes of smoke; he was unable to say, however, if the muffled sounds were from incoming or outgoing fire.[14366] He also testified that he may have missed other explosions from incoming or outgoing fire as he was going in and out of a shed near OP-1.[14367] He noted that the sound of the explosions had been relatively low given that the impacts were only around three kilometres from the OP-1.[14368] Accordingly, he did not agree that if someone at OP-1 did not hear sounds of outgoing mortar fire, then that fire must have come from the SRK side of the confrontation line.[14369] He conceded, however, that if mortar was fired from a reasonably close distance to the listener, one would hear a "very distinctive 'vrmph' and 'trmph' sound".[14370]

4282. Following his meeting with Knustad and Conway, Konings attended another meeting with the Bosnian authorities where they discussed the results of their investigations and, based on all the information in his possession, he came to the conclusion that the fire originated in the SRK-held territory.[14371] He explained that if the round had been fired from the ABiH-held territory, then in combination with all the other parameters, this could only have been done using either charges zero or one.[14372] Using charge zero would have placed the origin of fire near the OP-1 and the UNMOs manning that post would have heard or seen it being fired.[14373] As for charge one, Konings testified

14364 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2005–2006; Barry Hogan T. 11283–11284 (3 February 2011).

14365 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2005–2007.

14366 D2329 (Witness statement of Paul Conway dated 7 November 2011), paras. 12–15 (explaining that it is sometimes impossible to say whether a blast sound is from an outgoing or incoming fire and that the acoustics in Sarajevo often made that determination unreliable); Paul Conway, T. 29012–29014 (17 October 2012).

14367 D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 13; Paul Conway, T. 29004–29005 (17 October 2012).

14368 D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 13; Paul Conway, T. 28999–29000, 29009–29011 (17 October 2012).

14369 D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 15.

14370 Paul Conway, T. 29011 (17 October 2012). This was also confirmed by Konings who testified that the firing of a 120 mm mortar shell produces a "very loud bang". *See* Harry Konings, T. 9309–9310 (7 December 2010). *See also* Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2004 (testifying that a 120 mm mortar is louder than a 82 mm mortar); Savo Simić, T. 30065–30066 (12 November 2012) (testifying that it would be impossible to conceal the firing of a round from UN observers located in the vicinity of firing positions); John Wilson, T. 4111 (23 June 2010) (testifying that if it was a quiet day, one could hear the outgoing fire of a mortar at more than one kilometre away); Stanislav Galić, T. 37860 (7 May 2013); Thorbjorn Overgard, T. 10031 (16 December 2010).

14371 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 68–72; P1960 (UNMO report, 29 August 1995); Harry Konings, T. 9308–9312, 9314–9316 (7 December 2010).

14372 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 88–90.

14373 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 89–90, 95; Harry Konings, T. 9308–9310, 9385–9386 (7 December 2010).

that in his experience it is not normally used with 120 mm mortars, as doing so can result in the round exploding in the vicinity of the firing troops.[14374]

(c) UNPROFOR investigation

4283. In addition to the investigation by the UNMOs referred to above, the UN conducted an investigation by its Engineer Cell Sector Sarajevo, after which a follow-up analysis was conducted by Lieutenant Colonel Brian Powers, from the "G2 HQ UNPROFOR", who considered and analysed both the UNMO and the Engineer Cell Sector Sarajevo reports.[14375] All three reports were then sent to the UNPROFOR Sarajevo HQ Commander by Lieutenant Colonel Baxter who summarised their findings in the final UN official report.[14376]

4284. The Engineer Cell Sector Sarajevo came to the conclusion similar to that reached by the Bosnian police and the UNMO teams, finding that the 120 mm mortar shell—of "[S]erb manufacture"—was fired from 2,850 mils, or 160 degrees, from the north.[14377]

4285. As for Powers' analysis, noting that the shell that landed on Markale was found to have a bearing different from the other four shells that fell in the vicinity, he reported on 29 August 1995 that the "analysis of the fuse farrow [*sic*] shows the bearing of [the Markale] round was most likely from 220–240 degrees and would have been fired from the same position as the other four rounds", namely from somewhere between Lukavica and Miljevići.[14378] Powers also noted that there must have been some kind of an anomaly with the Markale shell, which was later explained by Baxter to have probably been the result of the shell first striking a building on its flight path.[14379]

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14374 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 88; Harry Konings, T. 9391–9393 (7 December 2010).

14375 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2. *See also* Richard Higgs, T. 5938–5941 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995) (showing the Engineer Cell working on the scene). The Chamber notes that the Engineer Cell Sector Sarajevo report is dated 6 September 1995 even though the Engineer Cell conducted the crater analysis on 28 August and even though Powers ought to have analysed their report by 29 August 1995. The Chamber notes, however, that Demurenko can be seen in his interview of 2 September holding the original French version of the Engineer Cell report in his hand. *See* fn. 14399. Thus, the Chamber considers the date of 6 September to be the date of the English translation of the original Engineer Cell report rather than the date when the report itself was first prepared or submitted.

14376 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 2–4.

14377 P2407 (Witness statement of KDZ304), p. 17; P2114 (UNPROFOR report re shelling of Markale on 28 August 1995); P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 6–7. *See also* Richard Higgs, T. 5948–5950 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995).

14378 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21. *See also* P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 1–2. The Prosecution submits that this analysis of the bearing should be disregarded as unreliable since Powers "applied the fuse-funnel method without a clear fuse funnel". *See* Prosecution Final Brief, Appendix C, para. 64.

14379 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 3, 21.

4286. Powers' report also provided that the UN radar was operating at the time but that it did not detect any of the mortars fired and that "[a]t least several of the five rounds would have been detected if fired close to the [confrontation line]."[14380] According to the report, if the shells were fired from a longer range, the arc of the trajectory would have most likely been below the beam of the radar and therefore not detected.[14381] Powers further noted that the height of the buildings at the market was also considered and that, in order for a round to clear the top of the buildings on the south side of the street, it would have required either a high trajectory from close to the confrontation line or a low trajectory mortar shell fired from a middle to a long range.[14382] However, none of the staff manning the UN OPs in the area along the confrontation line observed or heard any firing at the time of the Markale incident.[14383] Based on all this data, Powers concluded that the firing position of the five shells was in the SRK territory, and probably fired from the Lukavica area at a range of between 3,000 and 5,000 metres.[14384] Powers' conclusions were presented to Harland and Smith, who from that point on had no doubt that the shell was fired by the Bosnian Serbs.[14385]

4287. On 8 September 1995, Baxter reported to the UNPROFOR Zagreb HQ, attaching all the above reports and noting that Powers' report has attempted to clarify the "apparent discrepancy" between the direction of the Markale shell and the direction of the preceding four shells.[14386] His report also noted that the UN radar would have detected any mortar fired at a range of 950 metres or less so that the "assessment was that the mortars were fired at a lower trajectory which passed under the radar beam"; this in turn meant that the round would have come from a firing position, dependent on the charge, at a range between 1,550 and 3,500 metres, whereas the confrontation line

14380 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 1 (noting that the angle od the radar would detect high, but not low, trajectories). *But see* D2762 (Witness statement of KW554 dated 14 September 2012), para. 12 (where KW554 testified that he "was informed that the round had been recorded" on the UN radar but that "it could not be determined from which side of the confrontation line it had been fired".)

14381 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 1–2.

14382 P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

14383 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

14384 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21.

14385 P820 (Witness statement of David Harland dated 4 September 2009), para. 231; P821 (Supplemental witness statement of David Harland dated 4 May 2010), para. 15; P828 (UNPROFOR Report re shelling of Markale on 28 August 1995). *See also* David Harland, T. 2043–2044 (6 May 2010) (testifying further that the report was presented in the "hours and day or two that followed" but not giving the specific time at which that happened). Baxter's report states that Smith was briefed verbally in the evening of 28 August and then received a written report at 8 a.m. on 29 August 1995. *See* P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

14386 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 2–4.

was 1,050 metres from the impact point.[14387] The report concluded "beyond reasonable doubt" that all five shells were fired from Bosnian Serb territory.[14388]

(d) Andrey Demurenko's investigation

4288. Demurenko, Chief of Staff of Sector Sarajevo at the time of the incident,[14389] testified that he heard about the Markale incident within 30 minutes after it happened.[14390] He went to the incident site two hours later and observed both the crater and the experts working at the site, as well as blood on the street and the pavement.[14391] Having spent around 30 minutes at the site and having given instructions to the teams working there, Demurenko returned to the headquarters and about an hour later learned that a spokesperson for UNPROFOR, a British Lieutenant-Colonel, had organised a press conference in which he blamed the SRK for the incident.[14392] Demurenko thought that this was completely groundless as the investigation was still ongoing at that time.[14393] As a result, in the evening of 28 August he proposed to his superior, at the time General Bachelet, to organise an investigation, to which Bachelet agreed.[14394] Demurenko then selected his closest aids and, relying on the ballistic results he had at the time, they went to inspect possible firing locations both on the confrontation line, which was around 2,000 metres from the incident site, and in SRK-held territory, compiling photographs of those locations.[14395] Their investigation lasted from 29 August to 1 September 1995, following which Demurenko prepared a report concluding that there were no suitable firing positions on the SRK side of the confrontation line; however,

14387 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.

14388 P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.

14389 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 4.

14390 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 42.

14391 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 67–68.

14392 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 68–71, 74–75 (explaining that he could not remember the names or the battalions of the UN members working at the site and testifying that he did not remember interacting with Konings); D2272 (Supplemental information sheet for Harry Konings, 20 April 2009), para. 25.

14393 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 138, 140.

14394 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 44, 55, 76, 78–79.

14395 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 51, 63, 76–77, 80–81, 90, 95, 100–103, 110–111, 116, 122–123, 126, 135 (explaining that he had two ballistics reports, one prepared by a Dutch officer who was a ballistics expert and the other by a local expert from BiH, as well as somewhere between ten and 20 different sources of information); D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko); D2274 (Map of Sarajevo marked by Andrey Demurenko); D2273 (Photograph of Andrey Demurenko); D2277 (Photograph of Andrey Demurenko); D2284 (Letter from SRK to VRS Main Staff, 29 August 1995) (indicating that Demurenko sought and the SRK granted permission for him to visit Trebević); Andrey Demurenko, T. 28990–28991 (17 October 2012).

when he came to present his report to Bachelet, he was told by Bachelet's aide that the report would never be published due to its conclusions.[14396]

4289. As a result, Demurenko contacted the Associated Press and, on 2 September 1995, gave them an interview outlining his conclusions.[14397] In the interview, Demurenko explained that he personally went to the positions from which the shell could have been fired had it been fired with charges three to six and found that these locations were unsuitable for firing positions, as were those found on the bearing line of the other four shells that fell on that day.[14398] The Chamber notes that the video footage shows that Demurenko used a bearing of 176 degrees from the north, rather than 160 degrees as determined by UNPROFOR investigators or 170 plus or minus five degrees as determined by CSB Sarajevo and the UNMOs.[14399] Demurenko testified that having given this interview, he was threatened by an ABiH officer and disciplined by his own command in Sector Sarajevo.[14400]

4290. Demurenko explained that in three of the four possible positions he visited, the ground was made up of stones, while the fourth position was forested, which is why he concluded that not a single one of these positions was suitable for mortar placement.[14401] He also stated that he and his team did not have GPS but went to the relevant sites using "traditional old fashioned instruments to determine the location".[14402] When asked if the margin of error with which the ballistic experts were working meant that the firing positions would have encompassed an area bigger than the specific positions he visited, Demurenko at first testified that the deviation would have been about

14396 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 51–55, 81–85 (testifying also that the report was in his personal archive but that he was reluctant to provide it as it was a confidential UN document).

14397 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 56, 85, 96.

14398 D1010 (Video footage of Colonel Demurenko's interview, with transcript).

14399 D1010 (Video footage of Colonel Demurenko's interview, with transcript); D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 99, 104–105, 109, 117–119, 122, 136; D2280 (Map of Sarajevo); D2285 (Satellite photograph of Sarajevo); Andrey Demurenko, T. 28912–28920 (16 October 2012), T. 28986–28990 (17 October 2012) (testifying that when he started his investigation he did not have the UNPROFOR report referring to 170 degrees and that the discrepancy in any event did not matter because ultimately his team looked at a broad area to the right and to the left of the precise location, thus encompassing the margin of error). The Chamber notes, however, that contrary to his evidence, Demurenko can be seen in his interview holding the very UNPROFOR report he claimed he did not have or use during his investigation. Later, in re-examination, Demurenko testified that the team also explored the area starting from 160 degrees. *See* Andrey Demurenko, T. 28991 (17 October 2012). The Chamber notes that Demurenko had not mentioned a visit to the areas covered by the direction of fire of 160 degrees despite having given detailed evidence about his investigation in the *Dragomir Milošević* case. In addition, he did not mention it in the interview he gave following his investigation. Accordingly, the Chamber does not find his evidence on this matter credible.

14400 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 56, 64, 88; D2311 (Interview with Andrey Demurenko, 6 September 1995).

14401 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 57, 90–91, 112–114; D2277 (Photograph of Andrey Demurenko); D2278 (Photograph of Andrey Demurenko); Andrey Demurenko, T. 28991 (17 October 2012) (explaining in court that the majority of the terrain was covered by forest).

14402 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 90, 107, 116.

15 metres alone; later he conceded that the margin of error in the azimuth (of plus or minus five degrees) meant that each of the locations he visited would have had a radius of between 175 and 315 metres, depending on the charge.[14403] He said that he visited those wider areas and conceded that some of them would have been suitable for placing a mortar, but testified that those showed no traces of mortar placement when he inspected them.[14404] On cross-examination, when put to him that this is not what he said previously, in the *Dragomir Milošević* case, Demurenko agreed, explaining that he wanted to focus on the specific four locations in his testimony but that in fact the team went to many more.[14405]

4291. Demurenko further conceded that he used firing tables for an M52 120 mm mortar but denied that this would have resulted in different positions to the positions given in firing tables for an M74 120 mm mortar, which was said to have been used in Markale.[14406] During cross-examination in this case, he conceded that he did not know which shell was used in Markale when he conducted his investigation, but that this made no difference to his team because they checked the entire slope.[14407] The Chamber notes that according to his Associated Press interview, Demurenko placed charge three at 2,000 metres, rather than at 2,400 to 2,500 metres as done by Turkušić.[14408]

4292. Commenting on the UNPROFOR conclusions relating to the UN radar, Demurenko testified that they were "absolutely wrong" because mortars that fired from middle to long range would have had a higher, not lower, trajectory and thus would have been detected by the UN radar.[14409] He also

14403 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 97–99, 113, 122; Andrey Demurenko, T. 28921–28935 (16 October 2012). While Demurenko testified that his evidence on the deviation of 15 metres or less was misunderstood by the *D. Milošević* Chamber, the Chamber considers this not to be the case. Instead, Demurenko has simply changed his evidence following the *Milošević* judgement.

14404 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 106–109, 115, 124; D2282 (Photograph of a meadow); D2283 (Photograph of a meadow); D2285 (Satellite photograph of Sarajevo); D2279 (Photograph of Andrey Demurenko); Andrey Demurenko, T. 28913–28914, 28936–28939 (16 October 2012), T. 28941–28943 (17 October 2012); P5918 (SRK Order, 23 August 1995) (indicating that SRK was using temporary firing positions at the time).

14405 Andrey Demurenko, T. 28927–28935 (16 October 2012), T. 28952–28953 (17 October 2012).

14406 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 92.

14407 Andrey Demurenko, T. 28946–28961 (17 October 2012); P5919 (Excerpt of Drina Corps inventory sheet); P5920 (Excerpt of mortar firing table); P5921 (Firing tables for M74 120 mm light mortar); P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar).

14408 *Compare* D1010 (Video footage of Colonel Demurenko's interview, with transcript) *and* D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko) *with* Emir Turkušić, T. 9019 (4 November 2010).

14409 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 125, 133; D2276 (Drawing by Andrey Demurenko).

noted that, contrary to the report's conclusion that the confrontation line was 1,050 metres away from the incident site, it was in fact around 2,000 metres away.[14410]

4293. Demurenko thought that the incident was a "terrorist attack" organised within Sarajevo, as the 120 mm mortar shell could not have caused that many casualties and was not heard or registered by anyone.[14411] Conceding that mortars were designed to hit targets behind obstacles, he also thought that the chances of the first shell hitting Markale was "one in a million" though the market was struck twice during the war.[14412] According to Demurenko, it would have been very easy to create a crater by a detonation device placed in an urn, although he acknowledged that he had no evidence for this.[14413]

4294. Hogan testified that he tested Demurenko's evidence by going—as close as possible—to the positions visited by him in 1995 and took photographs and GPS readings of them.[14414] The Chamber notes that a number of these photographs show locations which are not covered by forest and look suitable for the placement of mortars. The Chamber also notes that Zorica Subotić, while criticising Hogan for checking the positions on this trajectory and implying that he did so in order to find a suitable firing position, contradicted Demurenko's conclusion by testifying that there was in fact a suitable firing position on the trajectory of 176 degrees.[14415]

(e) Aftermath and NATO air strikes

4295. After the incident and before he went to the scene that day, Harland spent much of his time discussing with Smith what the next steps would be and the fact that if it were determined that the shell was fired by the Serbs, there would have to be a major military response.[14416] On the day of the incident itself and the following day, Smith had three conversations with Mladić, during which they discussed the circumstances surrounding the incident.[14417] In the first conversation, which

14410 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 133; D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko).

14411 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 54, 65, 139; Andrey Demurenko, T. 28926–28927, 28936–28938 (16 October 2012).

14412 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 58, 60, 65; D2286 (Drawing of shell trajectory re shelling of Markale on 28 August 1995); D2328 (Photograph of Sarajevo from Trebević); Andrey Demurenko, T. 28936–28939 (16 October 2012).

14413 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 65–66; Andrey Demurenko, T. 28971 (17 October 2012) (conceding that he was not an expert in terrorism and static explosions).

14414 Barry Hogan, T. 11225–11230, 11283–11284 (3 February 2011); P2214 (Aerial satellite image of Sarajevo); P2215 (Photographs re shelling of Markale on 28 August 1995.

14415 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 139.

14416 P820 (Witness statement of David Harland dated 4 September 2009), para. 229.

14417 Rupert Smith, T. 11454–11455 (9 February 2011); P2289 (UNPROFOR report re conversations with Ratko Mladić, 25-29 August 1995), e-court p. 3.

took place at 2:13 p.m. on 28 August 1995, Smith explained to Mladić the seriousness of the situation and that all facts at that point were indicating that the incident was committed by the VRS.[14418] Mladić agreed to carry out a comprehensive assessment to ensure that no weapons had been fired without authority but also claimed that this was an attack by the Bosnian Muslims designed to discredit the VRS.[14419] Mladić also urged Smith to set up a joint investigation team comprising both warring factions and the UNPROFOR.[14420]

4296. On the same day, at around 1 p.m., Colonel Čedomir Sladoje issued an order on behalf of the SRK Command ordering a ban on use of fire and asking all SRK brigades to inform the Command, by 2 p.m. whether they had opened fire on Sarajevo between 10 a.m. and 12 p.m. that day.[14421] Later that day the VRS Main Staff reported to the Accused that the SRK brigades did not open fire on Sarajevo between 10 a.m. and 12 p.m..[14422]

4297. At 6:23 p.m. that day, Mladić reported to Smith that no VRS forces were involved in the incident.[14423] In return, Smith told Mladić that the UNMO investigation had established that the round was a 120 mm mortar round probably fired from the south.[14424] On the evening of 28 August 1995, while Janvier was on leave, Smith decided to initiate the NATO bombing campaign.[14425] He testified that he was confident at that point that the Bosnian Serbs were responsible for this incident based not only the findings on the direction of fire he received from the various UN investigators but, more significantly, on the fact that none of the UN personnel had heard these shells being fired from within the proximity of Sarajevo.[14426]

4298. The next day, 29 August at 10 a.m., Smith informed Mladić that it was now beyond reasonable doubt that the shells had come from the VRS territory and that the investigation had revealed that the origin of fire was approximately 3.5 to 4 kilometres southwest of the impact

14418 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

14419 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25-29 August 1995), e-court p. 3. *See also* Rupert Smith, T. 11544–11545 (10 February 2011); D1013 (SRK Order, 28 August 1995).

14420 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

14421 D1013 (SRK Order, 28 August 1995).

14422 D2313 (VRS Main Staff Report, 28 August 1995).

14423 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25-29 August 1995), e-court p. 3. *See also* Rupert Smith, T. 11565–11571 (10 February 2011); D1015 (Intercept of conversation between Ratko Mladić and Unknown, undated), e-court pp. 3–4.

14424 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

14425 Rupert Smith, T. 11456 (9 February 2011) , 11505–11509 (10 February 2010); D1009 (Excerpt from Rupert Smith's book entitled "The Utility of Force: The Art of War in the Modern World"), pp. 367–368.

14426 Rupert Smith, T. 11456–11458 (9 February 2011). When it was put to Smith during cross-examination that, in light of the first UNMO report prepared by Konings on 28 August, he could not have known on that day that the Bosnian Serbs were responsible for the Markale incident, Smith explained that he had other sources of reporting in his office. *See* Rupert Smith, T. 11509–11511 (10 February 2011); P150 (UNMO report, 28 August 1995).

point.[14427] Mladić responded that he had checked all SRK firing positions and that the shell had not been fired by his soldiers; he once again urged Smith to set up a joint commission claiming there were a number of indications to suggest that the incident had been "orchestrated by the BiH".[14428] When shown a report Janvier sent to Kofi Annan on 29 August 1995 at 10:36 a.m.—half an hour after Smith's third conversation with Mladić—in which Janvier informed Annan that the origin of fire was still being investigated and was difficult to establish due to the impossibility of determining the charge with which the shell was fired, Smith stated that he could not comment on what was going on in the UN Headquarters.[14429] When asked why he was sure "beyond reasonable doubt" that the Bosnian Serbs were responsible for the incident given the fact that the UN reports were using more careful language, such as "most likely", Smith explained that while his conclusion was not an "absolute positive", it meant that it was "most likely to be positive" and reiterated that it was based on a number of factors, including that no one heard a round being fired from the proximity of Sarajevo.[14430]

4299. Also on 29 August, at 4:30 p.m., the Accused, Mladić, Plavšić, Krajišnik, Tolimir and Gvero, among others, met with the FRY leadership, including Slobodan Milošević, Momir Bulatović, and Momčilo Perišić, to discuss the upcoming peace conference.[14431] During this meeting, Milošević proposed that the Bosnian Serb leadership criticise the shelling and the killing of innocent civilians in Sarajevo "in a more severe way" to which Tolimir reacted saying that by 11 a.m. on that day, no one had precise information on where the shell had come from.[14432] Milošević retorted, however, that Akashi had informed him at 2:30 p.m. that the shell came from the Bosnian Serb side to which Mladić said that the shells had come from two different directions (170 and 220 degrees) neither of which could have been from the Serb positions but only from the Muslim

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*See also* Rupert Smith, T. 11922–11924 (15 February 2011); D1063 (UNPROFOR daily situation report, 29 August 1995), p. 2.

14427 Rupert Smith, T. 11511–11512 (10 February 2011); P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p.3.

14428 P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3. Smith explained that he was not inclined to accept Mladić's proposal for a joint commission as it would have only prolonged the process but nevertheless wanted to be absolutely sure as to who had fired the shells before ordering the attacks. *See* Rupert Smith, T. 11456–11457 (9 February 2011).

14429 Rupert Smith, T. 11512–11514 (10 February 2011); P906 (UNPROFOR daily report, 28–29 August 1995), p. 2. During cross-examination, Smith was shown Demurenko's interview and conceded that he never visited these positions. He testified that he did not take Demurenko into account at the time, as the interview was filmed some days after Smith had already made the decision to initiate the bombing. *See* Rupert Smith, T. 11520–11526 (10 February 2011). *See also* P820 (Witness statement of David Harland dated 4 September 2009), para. 232; David Harland, T. 2320 (11 May 2010).

14430 Rupert Smith, T. 11514–11515 (10 February 1995), T. 11905–11906 (15 February 2011); P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.

14431 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 35A–35C; D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 1.

14432 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 8.

mobile launching pads.[14433] Mladić also voiced his doubt about the number of victims given the size of the crater, which he deemed to be "not bigger than an ashtray".[14434]

4300. On 30 August 1995 at around 2 a.m., the NATO air strikes began and letters were sent to Mladić, the Accused, and Slobodan Milošević informing them of this fact.[14435] The letter to Mladić was written by Janvier, informing him that a thorough investigation was conducted and found that the fire on Markale came from the VRS positions south-southwest of Sarajevo[14436] thus resulting in the initiation of the air strikes, that the object of the air strikes was to prevent further shelling of Sarajevo, and that the attacks would cease once Janvier was convinced that the threat of further shelling by the SRK had been eliminated.[14437] Letters to Milošević and the Accused were written by Akashi, wherein he informed them what the UN teams concluded with respect to Markale and about the initiation of the air strikes; in the letter to the Accused Akashi also wrote that the "key to stopping the air action" was in the Accused's and Mladić's hands and strongly urged him to ensure that the attacks on Sarajevo stopped.[14438]

4301. On 1 September 1995, the air strikes stopped and Janvier and Banbury met with Mladić, Perišić, Gvero, and Tolimir in Mali Zvornik to discuss the current situation; they told Mladić that the investigation results clearly identified the Bosnian Serbs as the perpetrators, to which Mladić responded that Markale was "a pretext to gain a corridor for the Muslims to Sarajevo".[14439]

4302. Smith also conceded that the preparations for military action against the Bosnian Serbs began before the Markale incident, namely following the London Conference, when he started withdrawing UN troops from Goražde, and that he was waiting for an "event to occur", such as an attack on a safe area, that would lead to a military action.[14440] He testified that in the immediate

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14433 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), pp. 8–9; D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 35C.

14434 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 9.

14435 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995); D2815 (SRK report, 30 August 1995); *see* Adjudicated Fact 2798.

14436 The Chamber notes that the reference to the south-southwest direction in the letter, indicates that Janvier was relying on the conclusion that the shell came from a bearing of 220 to 240 degrees, rather than the findings made by the CSB Sarajevo and UNMO teams.

14437 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court p. 2.

14438 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court pp. 3–4.

14439 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 183–192; P2509 (Anthony Banbury's notes, 1 September 1995), e-court p. 18–19, 22; Adjudicated Fact 2798.

14440 Rupert Smith, T. 11503–11508, 11531–11533 (10 February 2011); D1009 (Excerpt from Rupert Smith's book entitled "The Utility of Force: The Art of War in the Modern World"), pp. 363, 366–369.

aftermath of the incident he was under pressure from UNPROFOR Headquarters in Zagreb, BiH authorities, and the NATO itself to make the "decision that was required of him".[14441]

4303. On 2 September 1995, Janvier sent a telegram to Annan, wherein he addressed speculation in the media that the shell could not have come from the Bosnian Serbs.[14442] According to this telegram, "[t]here is no disagreement about the difficulty of deliberately hitting [that area]" but that it is "most likely that the shot was just fired in the general area" and that it was "blind fire"; the fact that it then landed in the market was a "great misfortune".[14443] It also provides that "[a]fter 40 months of shelling the City, it should not be a cause of surprise that one should eventually find such a tragic target."[14444] Finally, the telegram summarises the findings that point to the VRS being responsible for the incident, namely that (i) all five shells had the same markings on the stabiliser; (ii) the radar was observing the area at an elevation of 960 metres 24 hours a day such that anything fired above that height would have been detected; and (iii) had the mortar rounds been fired from the ABiH side, the UNMOs, FreBat 4, EgyBat, would have heard the fire and it would have been picked up by the radar.[14445] The telegram also notes that the idea that the shell was fired from few streets away is not supported by the entries in the logs of the neighbouring OPs.[14446]

4304. Harland testified that the principal doubt as to who fired the five mortar shells arose because Smith made a statement to the press, on Harland's advice, that UNPROFOR's investigation showed that it was unclear who fired the shell.[14447] Harland advised Smith to make a neutral statement even though both men already knew that the Bosnian Serbs were found to be responsible.[14448] According to Harland, this was a "necessary deception" as they were about to initiate large-scale air strikes against the Bosnian Serbs for which they had been preparing for some time in order to end the war, and therefore did not want to make any public statements that would allow the Bosnian Serbs to prepare by, for example, taking international hostages.[14449] While still convinced that it

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14441 Rupert Smith, T. 11528–11531 (10 February 2011); D1011 (Intercept of conversation between Rupert Smith and Ratko Mladić, undated).

14442 D1014 (UNPROFOR report, 2 September 1995). Smith denied ever seeing this telegram. *See* Rupert Smith, T. 11549–11553 (10 February 2011).

14443 D1014 (UNPROFOR report, 2 September 1995), p. 2.

14444 D1014 (UNPROFOR report, 2 September 1995), p. 2. Smith also thought that it was not Markale specifically that was being targeted but civilians in general. *See* Rupert Smith, T. 11547–11553 (10 February 2011); T. 11906–11907 (15 February 2011). Similarly, Konings testified that the shell may have been a "lucky shot" since a 120 mm mortar shell is an "area weapon" and not a specific pinpoint targeting system. *See* P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 96.

14445 D1014 (UNPROFOR report, 2 September 1995), pp. 2–3.

14446 D1014 (UNPROFOR report, 2 September 1995), p. 2.

14447 P820 (Witness statement of David Harland dated 4 September 2009), para. 233.

14448 David Harland, T. 2044–2046 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 233.

14449 P820 (Witness statement of David Harland dated 4 September 2009), para. 233. *See also* David Harland, T. 2124–2126 (7 May 2010).

was the right course of action to take, Harland noted that it has been a cause of distress to him that he may have contributed to an "enduring myth" that there was doubt about who was responsible for this incident.[14450]

4305. On 4 September 1995, Mladić sent an angry letter to Smith, suggesting again a joint commission of experts for an investigation of the incident, and posing the following questions, among others:

> Why do you not inform the public of the role which the Muslim side and a foreign country's Intelligence experts had in the screenplay 'Markale-2'? Why the public has never been informed about the scenario of 'Markale-1'? Are you hiding from the public the truth about 'Markale-1' and 'Markale-2' in order to justify the aggression against the [RS] made by NATO [...]?[14451]

4306. Prvoslav Davinić, director of the UN Centre for Disarmament Affairs at the time,[14452] testified that he heard about the incident on the day it happened in a meeting with Under Secretary Goulding, who told the attendees that there were no clear indications at the time that the shell came from the Serb side and that one could not exclude the possibility that it came from the ABiH.[14453] According to Davinić, Goulding then instructed one of his staff to follow the developments on the ground and the next day the staff member filed a report in which she emphasised that the aim of the investigation on the ground was to show that the Bosnian Serbs fired the shell as it made no sense that the other side would; according to Davinić, once the Bosnian Serb side was blamed, there was talk in the UN corridors that the incident was not investigated properly and that political considerations had prevailed.[14454]

(f) Firing positions south and southeast of Markale

4307. The Chamber has already outlined the positions of the SRK units in the area south and southeast of Stari Grad and Markale, and recalls that much of Mt. Trebević was in the zone of responsibility of the 1st Romanija Brigade and later the 1st Sarajevo Mechanised Brigade.[14455] In early August 1995, the SRK was re-organised again and the 4th Sarajevo Light Infantry Brigade

14450 P820 (Witness statement of David Harland dated 4 September 2009), para. 234.

14451 D2310 (Letter from Ratko Mladić to UNPROFOR, 4 September 1995), pp. 2, 5. On the same day Mladić also met with SRK commanders to discuss the situation on the ground. *See* P1489 (Ratko Mladić's notebook, 28 August 1995–15 January 1996), e-court pp. 11–18. The air strikes resumed on 5 September and lasted until 14 September. *See* Adjudicated Fact 2799.

14452 D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 1, 5.

14453 D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 5–6.

14454 D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 6–8; Prvoslav Davinić, T. 45522–45528, 45537–45543 (16 January 2014) (conceding, however, that he was not privy to the various UN reports relating to the investigations conducted by the UN into this incident).

14455 *See* para. 4171. *See also* P1058 (ABiH map); P1052 (VRS map of Sarajevo); P1021 (VRS map of Sarajevo).

was created, which incorporated the Trebević and other battalions of the 1st Romanija Brigade, with Stevan Veljović as the Commander of the new brigade.[14456] The zone of responsibility of this new brigade included the area of Trebević and Vidikovac, and its weapons arsenal included a 120 mm and 82 mm mortar battery with firing positions in the Brus sector, southeast of Sarajevo on Mt. Trebević.[14457] According to Veljović, on 24 August, on the order of the SRK Commander,[14458] he sent the whole battery, together with its firing crew, to Trebinje to assist the Herzegovina Corps dealing with attacks from Croatia, and they remained there until mid-September.[14459] Veljović was adamant that at the time of the Markale incident there was therefore not a single 120 mm mortar pointed in the direction of Markale.[14460]

4308. Dušan Škrba, at the time the Chief of Artillery in the 1st Sarajevo Mechanised Brigade,[14461] testified that no fire was opened on the day of the incident from his zone of responsibility southwest of Markale, particularly not from 120 mm mortars as those were relocated outside of the 20 kilometre circle around Sarajevo; thus, there were no firing positions for 120 mm mortars on the Miljevići axis or on the road towards the tower of Trebević.[14462] Contrary to Veljović, however, he did not deny that smaller calibres, such as 82 mm mortars, remained in the area south of Sarajevo.[14463]

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14456 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 28–29; Stevan Veljović, T. 29248–29250 (23 October 2012). While Veljović referred to this brigade as the "4th Serbian Brigade", the documents indicate that the brigade's official name was 4th Sarajevo Light Infantry Brigade. *See e.g.* P5944 (Report of 4th Sarajevo Light Infantry Brigade to SRK, 31 August 1995).

14457 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 29–30. *See* P1058 (ABiH map) and P1052 (VRS map of Sarajevo) for the location of Brus.

14458 At this time, the Commander was Čedo Sladoje because Dragomir Milošević had been wounded. *See* Stevan Veljović, T. 29262 (23 October 2012).

14459 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 31–33; Stevan Veljović, T. 29265 (23 October 2012).

14460 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 34; Stevan Veljović, T. 29262–29267 (23 October 2012). When shown his report to the SRK command, dated 31 August 1995, and listing the available weapons including a number of 120 mm mortars, Veljović stated that the mortars were at his disposal even though they were located in Trebinje. *See* Stevan Veljović, T. 29267–29268 (23 October 2012); P5944 (Report of 4th Sarajevo Light Infantry Brigade to SRK, 31 August 1995).

14461 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 7; Dušan Škrba, T. 29107–29108 (18 October 2012) (testifying that he became the chief of artillery in 1994, having replaced Savo Simić).

14462 D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 24; Dušan Škrba, T. 29117 (18 October 2012).

14463 Dušan Škrba, T. 29117 (18 October 2012). Also contradicting Veljović's evidence was Miloš Škrba, a member of the 1st Sarajevo Mechanised Brigade, who lived in Petrovići and had relatives in the village of Studenkovići, south of Markale. He testified that while he never saw 120 mm mortars in Studenkovići or in the vicinity of the road connecting Petrovići and Studenkovići, he saw one 82 mm mortar on that road in August 1995. *See* D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 10; D2346 (Map of Sarajevo marked by Miloš Škrba); Miloš Škrba, T. 29195–29198 (22 October 2012) (appearing to then contradict his witness statement by testifying that his evidence about the lack of 120 mm mortars in the area concerned mostly 1992 and 1993 and that he did not in fact know about 1995); P5939 (Map of Trebević marked by Miloš Škrba). Miloš Škrba's witness statement is also contradicted by the SRK order of 9 May 1995 in which Dragomir Milošević refers to

4309. Prior to becoming Chief of Artillery, Dušan Škrba was the Commander of the Mixed Artillery Battalion of the brigade, which had four firing positions, that included, among other weapons, 120 mm mortars; these mortars were located east of Lukavica, in the Prljevo Brdo and Uzdojnica sectors (that is, southwest of Markale), and were permanently positioned there until they had to be relocated outside of the TEZ in August 1995.[14464] Contradicting Dušan Škrba was Blagoje Kovačević, whose unit's zone of responsibility covered the area at 220 degrees from the north, and who testified that there was no SRK artillery on that line, not even 82 mm mortars.[14465]

4310. Dragomir Milošević testified that following the incident he was told by Čedo Sladojević, Lugonja, and other SRK officers that on the day of the incident no fire was opened on Markale by the SRK.[14466]

4311. As noted earlier,[14467] the ABiH held positions on the northern base of Mt. Trebević.[14468] Asim Džambasović testified that the 10th Mountain Brigade of the ABiH 1st Corps held the area roughly from Miljacka River to the south up to the northern slopes of Trebević, and all the way up to Zlatište and the Vraca Monument beyond the Jewish cemetery; its zone of responsibility covered the areas of Soukbunar, Skenderija, Bostarići and the neighbourhood of Cicin Han Lipa.[14469] Debelo Brdo and Čolina Kapa were also held by the ABiH.[14470] Conway recounted that in December 1995, as the UNMO mission was coming to a close, he came across four ABiH mortars "at the bottom of a steep hill in the southern hills of Sarajevo", an area in which the UNMOs had not been permitted to patrol; the four mortars were pointed north, towards the city, and appeared to

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an 82 mm mortar platoon and a 120 mm mortar battery located in Trebević-Palež sector. *See* P5940 (SRK Order, 9 May 1995), pp. 4–5.

14464 See D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 7, 9; D2342 (Map of Sarajevo marked by Dušan Škrba); D2343 (Map of Sarajevo marked by Dušan Škrba); Dušan Škrba, T. 29104–29108, 2911129113 (18 October 2012); P5933 (Map of Sarajevo marked by Dušan Škrba); P5934 (Map of Sarajevo marked by Dušan Škrba); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 12; D2413 (Map of Sarajevo marked by Savo Simić).

14465 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 51; D2333 (Topographical map of Sarajevo).

14466 Dragomir Milošević, T. 32756 (28 January 2013).

14467 *See* para. 4171.

14468 *See* Adjudicated Fact 104; P1764 (ABiH Map of Sarajevo); P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Alen Gičević, T. 7657–7661 (11 October 2010); D733 (Photograph of Sarajevo marked by Alen Gičević); D734 (Photograph of street sign in Sarajevo).

14469 Asim Džambasović, T. 15223–15225 (22 June 2011) (noting also that the 10th Mountain Brigade later merged with the 1st Mountain Brigade to form the 115th Brigade); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović). *See also* Stanislav Galić, T. 37184, 37188 (15 April 2013), T. 37417 (18 April 2013), T. 37474 (22 April 2013), T. 37934 (8 May 2013).

14470 *See* Adjudicated Facts 105 and 2830; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21.

have been there for a considerable period of time as they were sandbagged and maintained.[14471] At first Conway indicated, by placing them just north-east of Mrakuša, that these mortars were positioned south-southeast of Markale market.[14472] However, when shown a more detailed map on cross-examination, he placed them north of Mrakuša, and thus south-southwest of Markale.[14473]

4312. The Chamber notes that an ABiH working map for the period relevant to the incident does show an ABiH mortar position in the relevant area; however, that position was located immediately northeast of Čolina Kapa, and thus southeast of Markale, rather than north of Mrakuša as testified to by Conway.[14474]

(g) Post-war investigations

4313. Higgs was asked by the Prosecution to investigate this incident based on many of the reports and investigative materials referred to above, including BiH MUP reports and videos, the statements of Konings and Knustad, and the UNPROFOR and UNMO reports.[14475] He confirmed that the stabiliser found at the scene indicated the projectile was a 120 mm shell, the range of which spanned from 300 to 6,200 metres.[14476] Higgs thought that Powers' report was incorrect as its conclusion was based on the fuse furrow despite the furrow not being of the best quality due to the nature of the ground and the shell's angle of descent.[14477] Since there was no visible or reliable fuse furrow, the correct methodology for determining the bearing was to use the crater shape as the primary source of information, which was done by all the other investigation teams, who all came to the conclusion that the bearing was 170 degrees from the north.[14478] Higgs commented on the four other shells that landed near Markale on the day of the incident, noting that the fact that they came from 220 to 240 degrees from north is what may have caused the confusion because the

14471 D2329 (Witness statement of Paul Conway dated 7 November 2011), paras. 17–23. Conway also testified that during his time as a patrolling UNMO, namely between 19 August and late September 1995, he never observed any mortar fire into the city from the south but did observe rocket, sniper, and rifle fire. *See* Paul Conway, T. 29001, 29016–29022 (17 October 2012). *But see* P5929 (UNMO report, 1 September 1995), pp. 3, 17 (indicating that on 30 August 1995 a 120 mm mortar round impacted inside the Maršal Tito Barracks, coming from a bearing of 160 degrees); P5928 (Map of Sarajevo marked by Paul Conway).

14472 D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 18; D2330 (Map of Sarajevo marked by Paul Conway); Paul Conway, T. 28999–29000 (17 October 2012).

14473 Paul Conway, T. 29005–29007, 29015–29016 (17 October 2012); P5927 (Map of Sarajevo marked by Paul Conway).

14474 P1058 (ABiH map); P6301 (Reference table of military symbols).

14475 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 18; Richard Higgs, T. 5929–5930 (18 August 2010).

14476 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 19.

14477 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 19; Richard Higgs, T. 5932 (18 August 2010).

14478 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 19–20, 23. *See also* Richard Higgs, T. 5936–5938 (18 August 2010); P1448 (BiH MUP Report re shelling of Markale on 28 August 1995); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 2.

UNPROFOR investigators simply presumed that all five shells must have come from the same firing position.[14479] Finally, Higgs conducted his own analysis of the bearing using the data supplied to him and came to the conclusion that the bearing of the Markale shell was one of 175 degrees.[14480]

4314. As for the angle of descent, while difficult to ascertain, Higgs thought it probable that it was between 67 and 75 degrees and probably nearer 70 degrees, as determined by Turkušić.[14481] Using that angle, Higgs identified several locations as the possible origin of fire, namely 900, 1,600, 2,400, and 3,000 metres away from Markale in the established direction of fire, starting with charge one and ending with charge four respectively.[14482] Plotting these locations on the map, and noting the shallow crater and the fact that the UNMOs did not hear the shell being fired and that their radar did not detect it, Higgs concluded, again confirming Turkušić's testimony, that the shell was most likely fired from 2,400 metres away using charge three, as this would have put the firing position out of the ear shot of the UNMOs.[14483] In this position, the mortar was also much higher than the target, giving it a large range and steeper angle of descent.[14484]

4315. According to Higgs, the firing of one single shell meant that there was only one objective to the fire, namely to "harass the enemy" by preventing free movement, causing casualties—which in urban environment will nearly always be civilian—and "pray[ing] on the minds of the people."[14485] Due to the nature of the conflict in Sarajevo, Higgs noted that it was simple to have the targets pre-recorded all over the city and to know where the main meeting points were.[14486] Thus, if one

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14479 Richard Higgs, T. 5929–5932 (18 August 2010). Based on the traces around the crater, Turkušić also excluded the possibility of the bearing in the case of the Markale shell being between 220 and 240 degrees from the north. *See* Emir Turkušić, T. 9020–9022 (4 November 2010); P1929 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1930 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić). Konings conceded that the team had to work very quickly and that there may have been a margin of error in the established bearing of 170 degrees. However, he thought that this was not sufficient to account for the difference between the bearing of the shell that hit Markale and the four earlier shells, concluding that the difference arose simply because the Markale shell was fired from a completely different location. *See* Harry Konings, T. 9328–9329, 9375–9377 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 77–79, 82–87.

14480 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 20–21, 23. *See also* Richard Higgs, T. 5960–5977 (19 August 2010); D543 (Map of Markale); D544 (Map of Markale marked by Richard Higgs); D545 (Richard Higgs' report re shelling of Markale on 28 August 1995), pp. 10, 12; D546 (Photograph marked by Richard Higgs); D547 (Photograph marked by Richard Higgs).

14481 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 21, 23.

14482 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 23. The Chamber received evidence that a 120 mm mortar shell cannot be fired on charge zero. *See* P5946 (Excerpt from firing tables for 120 mm mortar).

14483 Richard Higgs, T. 5932–5936 (18 August 2010), T. 5980–5982 (19 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 23–24.

14484 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 24.

14485 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20.

14486 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20. *See also* P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 96.

wanted to cause maximum effect from a single shell, then Markale would have been a prime target.[14487] With respect to the other four shells that landed near Markale on the same day, Higgs noted that it is a common ploy to fire a shell that causes casualties in one area and then shortly afterwards fire others nearby where people may be gathering.[14488] While it was not possible to determine that this was the case here, Higgs stated that the circumstances on that day were "similar and suspicious".[14489]

4316. Zorica Subotić analysed this incident as well. Observing that it was the last of the nine Sarajevo incidents in which a large group of civilians died, she claimed that they all had in common a projectile of "unbelievable accuracy", with explosions occurring in places where many people were gathered.[14490] According to her, while statistically possible for this to happen in one case, it is "statistically very improbable" and "for practical purposes [...] impossible" in nine separate cases.[14491]

4317. Subotić also thought, having analysed the video footage of the incident, that it was difficult to find a "valid technical explanation" for certain scenes.[14492] For example, she claimed that the nature of injuries sustained by some of the wounded persons "cannot be accepted as correct" given their respective proximity to the point of impact, so that it was inexplicable that they even survived the explosion, let alone were conscious, moving, and sitting up straight.[14493] She dismissed Turkšić's evidence that a man seen hanging over a fence, with a large chest wound, was injured by mortar shell fragments, asserting that his injury could only have been caused by a "dense narrow

14487 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20.

14488 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 21.

14489 P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 21. Konings testified that the four shells which landed some 10 minutes before the Markale incident could have been adjusting fire for the Markale shell and were fired into a different area in order to mask the intention of firing at the market. However, he thought it equally possible that the four shells were aimed at a completely different target. When asked during cross-examination how it was possible that the four shells landed near Markale without having been heard by the people in Markale, Konings stated that he did not know what the people in Markale market heard or did not hear that day. *See* Harry Konings, T. 9313–9314, 9387 (7 December 2010). *See also* P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 65; P1959 (Map of Sarajevo marked by Harry Konings). However, Savo Simić, Dušan Škrba's predecessor, noted that the four shells that preceded the Markale shell could not have been adjusting fire for the Markale shell as they came from a different position, and that therefore Markale was struck on the first attempt, which he thought virtually impossible. *See* D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 32; Savo Simić, T. 30120–30122 (12 November 2012).

14490 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 122.

14491 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 123.

14492 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 123.

14493 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 123–125, 159; Zorica Subotić, T. 38345 (15 May 2013), T. 38596–38598 (22 May 2013).

beam" of fragments, which is not how a mortar shell fragments.[14494] She added that his injuries were even less realistic in view of the fact that there was "almost no blood under this body on the pavement."[14495] Another example, according to her, was the presence of glass in front of the market hall building and up to the point of impact, which Subotić claimed was unusual as the glass should have been pushed into the market hall due to the detonation wave created in the street.[14496] She also pointed out the presence of persons wearing camouflage uniforms, arguing that these were most likely members of the ABiH who were not there by accident but were organised, with one person issuing orders.[14497]

4318. With respect to the other four other mortar shells that fell on that day, Subotić noted that they struck the area of the National Theatre, some 235 metres from Markale market, and yet were not heard by any of the 71 witnesses interviewed by the police or by the UNMOs at Sedrenik's OP-1, including Knustad.[14498] Thus, Subotić claimed that the four explosions did not precede the Markale explosion.[14499]

4319. Noting that the video footage of the impact site shows that the crater and the traces of shrapnel can hardly be seen, Subotić thought that this was because the traces in the asphalt were shallow, which is typical of cases where the mortar shell has very low speed or when it is activated in static conditions.[14500] She thus concluded that if the crater was caused by a mortar shell, that shell impacted at very low speed and thus could not have been fired with a charge larger than charge one.[14501] According to her, the fact that the stabiliser was not found near the crater supported this conclusion, since the stabiliser of a shell fired at a charge higher than three is usually

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14494 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 125; Zorica Subotić, T. 38345–38346 (15 May 2013).

14495 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 125, 159; Zorica Subotić, T. 38598–38603 (22 May 2013).

14496 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 127, 159; Zorica Subotić, T. 38346–38347 (15 May 2013).

14497 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 128.

14498 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 134–136; Zorica Subotić, T. 38331 (15 May 2013).

14499 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 136.

14500 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; Zorica Subotić, T. 38332–38333 (15 May 2013).

14501 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

embedded in the ground.[14502] On the other hand, a shell fired at charges one or two will usually propel the stabiliser into the immediate vicinity of the crater or is propelled back along the approximate trajectory of the shell.[14503]

4320. In Subotić's opinion, the conclusion of the final UNPROFOR report that all five shells were fired from the same weapon as part of the same salvo has no technical merit as it is inconceivable that the Markale shell could have travelled more than 200 metres farther than the other shells.[14504] She further rejected the conclusion that the projectile hit a building first because the shell would have been activated upon the first impact and would have left a visible trace on the building; however, such trace was not registered.[14505]

4321. Subotić submitted that, while his method was acceptable, Higgs made a deliberate error when calculating the angle of the trajectory of the shell, as he took into account the wrong azimuth of the kerb on Maršala Tita street.[14506] Correcting this mistake, she found that the trajectory of the shell was 155 degrees rather than 175 degrees, the former being within the margin of error of the azimuth determined by the Engineer Cell, namely 160 degrees plus or minus five degrees.[14507]

4322. Recalling that the minimum angle of descent had to be 67 degrees for the shell to clear the buildings, Subotić disputed the angle of descent determined by CSB Sarajevo and, using the specifications of an M62 120 mm mortar shell, calculated that the angle of descent was in fact 64

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14502 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; Zorica Subotić, T. 38341–38342 (15 May 2013). Turkušić, however, denied that one could tell from the location of the stabiliser, some metres away from the point of impact, that the speed of the shell was low. *See* Emir Turkušić, T. 9078–9079 (4 November 2010) Higgs testified that the stabiliser could have landed any distance away from the crater and also could have bounced back off buildings to end up where it did. *See* Richard Higgs, T. 5982 (19 August 2010).

14503 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

14504 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 139; Zorica Subotić, T. 38337–38338 (15 May 2013).

14505 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 139; Zorica Subotić, T. 38337–38338 (15 May 2013).

14506 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 139–141, fn. 388 (Subotić believed that Higgs did not commit this error accidentally, because "there [were] indications that he also manipulated photos in other cases in order to prove the guilt of the accused, such as in the case of the mortar shell crater in Livanjska street [in the *Milošević* case]."); Zorica Subotić, T. 38330, 38334–38337 (15 May 2013); D3549 (Map of Sarajevo marked by Zorica Subotić).

14507 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 141–142 (relying also on photographs and video footage depicting the damage to the kerb in front of the Market Hall to confirm that the azimuth of the incoming trajectory was smaller than 160 degrees); Zorica Subotić, T. 38330, 38339–38341 (15 May 2013). *See also* D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 113–114; Mile Poparić, T. 39055–39057 (30 May 2013), T. 39061–39064 (31 May 2013).

degrees.[14508] Thus, the shell could not have landed in the location where the crater was but must have been statically activated or "reached the pavement in front of the Market Hall in some other way".[14509]

4323. With respect to the stabiliser, Subotić claimed that because it was found 29 metres away from the crater, "laterally to the incoming trajectory", the explosion could not have occurred in a "regular" way, in which case the stabiliser would have been either embedded or located at the point of impact, or it would have been propelled back in the approximate direction from which it came.[14510] Subotić also noted that the stabiliser fins were deformed in an unusual way and showed signs of erosion in some of the video footage, whereas the stabiliser in evidence, namely P1454, does not bear such traces.[14511] Further, she thought that the holes on the cap of the stabiliser[14512] which is in evidence, namely P1454, were differently aligned when compared to the video footage of the stabiliser at the scene, thus confirming that P1454 was not the stabiliser that hit Markale.[14513] Looking at the video footage of the scene, Subotić saw an object marked by the police and thought that it was another stabiliser, which was purposefully not reported on by the police and the UN investigators; she also asserted that this stabiliser could not have been in that place as a result of an explosion.[14514]

4324. In order to support its case that P1454 is the stabiliser that was found in Markale on 28 August 1995, the Prosecution used it during Subotić's cross-examination to show that its cap was loose so that screwing it in or out would change the alignment of the holes; having confirmed this to be the case, Subotić claimed that when she had earlier looked at the stabiliser, in preparation

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14508 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 143–145; Zorica Subotić, T. 38332 (15 May 2013).

14509 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 145.

14510 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 147; Zorica Subotić, T. 38333–38334 (15 May 2013). When put to her in cross-examination that the stabiliser could have hit a building after it ejected and then landed in the location seen on the photograph, Subotić thought that this was not very likely given the distance from the crater. *See* Zorica Subotić, T. 38571–38572 (21 May 2013).

14511 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 146–149; Zorica Subotić, T. 38348–38351 (15 May 2013); D3550 (Photograph of stabiliser marked by Zorica Subotić).

14512 The cap of the stabiliser is the casing for the standard charge of the shell. *See* Zorica Subotić, T. 38612–38613 (22 May 2013).

14513 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 148–150; Zorica Subotić, T. 38351–38352 (15 May 2013) (testifying that the position of the holes could not be changed once fixed).

14514 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 150–152 (Subotić also calculated the azimuth of the second stabiliser, basing her calculations on the assumption that it was some 20 metres away

for her report, the cap was either not loose or she did not notice that it was.[14515] The Prosecution also tendered a document indicating that the "KB 9307" series of shells was tested in Serbia in March 1994.[14516]

4325. Subotić challenged UNPROFOR's conclusion that the shell came from between 1,550 to 3,500 metres away, arguing that had that been the case, it would not have attained the minimum angle of descent necessary to clear the buildings.[14517] Looking at the ranges used by the UNPROFOR in its analysis in relation to the UN radar, Subotić guessed which firing tables they used and then used the same tables to determine the height at which the radar beam would detect a shell, namely 550 metres or higher.[14518] Analysing the possible trajectories, based on the angles of descent of 67 and 70 degrees, she found that the UN radar would have detected every shell fired from the SRK positions.[14519] Arguing further that the shell would have been heard if fired from the ABiH positions, that is, with charges one and two, she concluded that the explosion at Markale market must have been static, the mortar shell having been activated in "one of the known ways" or thrown from a roof.[14520] Nevertheless, she visited sites that corresponded to charges three and four for all the trajectories relevant to this incident and found no suitable firing positions due to hilly and forested terrain, except in one location, at the trajectory of 175 degrees and a distance of 3,800

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from the point of impact; the azimuth she determined was around 250 degrees, which was similar to the azimuth of the other four shells that no one heard); Zorica Subotić, T. 38330, 38352–38353 (15 May 2013).

14515 Zorica Subotić, T. 38572–38580, 38586–38587, 38592–38593 (21 May 2013), T. 38612–38614 (22 May 2103); P6329 (Screenshot of a stabiliser); P6330 (Screenshot of a stabiliser). Later in re-examination, Subotić noted another difference between the photographs of the stabiliser found on the scene and P1454, namely the positioning of the imprint made by the firing pin, which to her indicated that the two stabilisers were fired from different assets. *See* Zorica Subotić, T. 38612–38621 (22 May 2013); D3553 (Photograph of a stabiliser marked by Zorica Subotić); D3554 (Photographs comparing two stabilisers marked by Zorica Subotić); D3555 (Photographs of stabilisers).

14516 Zorica Subotić, T. 38580–38581 (21 May 2013); P6328 (Technical Test Centre note of weapon performance test, 28 March 1994). *See also* D3560 (Report of Nikinci Technical Testing Centre, 3 January 1994).

14517 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 153–157, 163; Zorica Subotić, T. 38331 (15 May 2013).

14518 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 153–154; Zorica Subotić, T. 38342–38345 (15 May 2013), T. 38568–38571 (21 May 2013). The Chamber notes that while Subotić claimed that the firing tables she used were those for M49P1 120 mm mortar shell fired by the M75 light 120 mm mortar, the table she attached to her report refers to M74 mortar. *See* D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 154, Figure 112. *See also* Mile Poparić, T.39065–39073 (31 May 2013) (also claiming that he and Subotić had looked at M49 shell).

14519 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 156. *See also* D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 114–115.

14520 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 156–157, 179; Zorica Subotić, T. 38342–38344, 38353–38354 (15 May 2013), T. 38588–38591, (21 May 2013), T. 38607 (22 May 2013).

metres.[14521] In cross-examination, she conceded that she did not "comb every step of the area" as that was considered unnecessary due to her opinion that the shell could not have originated from any of these directions.[14522]

(h) Casualties

4326. In terms of casualties, both Milan Mandilović and Bakir Nakaš, doctors at the Sarajevo State Hospital at the time, testified that following the explosion at Markale market, which was about a kilometre away from the hospital, cars started "flowing in" bringing in large numbers of seriously wounded persons.[14523] Mandilović could immediately see that their injuries were caused by shell shrapnel.[14524] He testified that in total approximately 40 persons arrived at the hospital, most of whom were civilians; he did see a "military person here and there" but testified that their number was "negligible".[14525] Nakaš also confirmed that most of the victims were wearing civilian clothes.[14526] Mandilović authenticated a number of medical records from both the State and Koševo Hospitals relating to the victims of this incident, including autopsy reports.[14527] These autopsy reports refer to 43 dead victims, one of whom is Crnčalo's wife.[14528] Nakaš also authenticated a number of State Hospital's medical records relating to the victims of the Markale incident.[14529]

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14521 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 158; Zorica Subotić, T. 38338–38340 (15 May 2013).

14522 Zorica Subotić, T. 38582–38585 (21 May 2013), T. 38594–38595 (22 May 2013).

14523 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 4–5, 87–89; P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 4–10, 65.

14524 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 87.

14525 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 89.

14526 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 66.

14527 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 117–118; P1225 (Medical certificate for Ismet Svraka); P1226 (Medical report for Ruža Galić); P1227 (Medical report for Samir Marevac); P1228 (Medical reports for Rasim Koso, Ferid Kanlić, Mensuda Klarić, and Ferid Bajrić); P1229 (Medical certificates for Ajkuna Cocalić, Đula Leko, Razija Čolić, Janja Pašić, and Adisa Duran); P1230 (Admission records for Osman Leventa, Mehmed Ahmetović, Fatima Čulesker, Mumo Kadrić, Mirza Hodžić, Bilal Habibović, Muhidin Begić, and Mustafa Karkelja); P1231 (Medical certificates for Dževad Hodžić and Edhem Husović); P1232 (Medical report for Zijad Bejtić and Hasib Bjelak); P1233 (Sarajevo State Hospital documentation re patients admitted between 28 August and 1 September 1995); P1234 (Medical reports for patients admitted to the Sarajevo State Hospital on 28 August 1995); P740 (Autopsy certificates for victims from Markale, 28 August 1995).

14528 P740 (Autopsy certificates for victims from Markale, 28 August 1995). While the English translation of this document contains 47 certificates, four of those are duplicates (relating to Zeno Bašević and Salko Duraković, Najla Duraković, and Husein Duraković), thus leaving 43 autopsy certificates. In addition, two of those certificates, namely those related to Najla Duraković and Husein Duraković are in fact certificates for Najla Fazlić and Husein Bektašević. The Chamber considers this to have been a typographical error during translation.

14529 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 94–95; P1531 (Medical records from Sarajevo State Hospital).

4327. The CSB Sarajevo report notes that on the day of the incident 35 persons were confirmed dead and 78 wounded, which was verified by KDZ485 who went to the hospitals and the morgue and identified the individuals in question.[14530] Turkušić's ballistics report differs slightly as it notes that 34 persons were killed and 84 wounded in the explosion.[14531] Both Bešić and KDZ485 testified that more people died later, with Bešić estimating that 30 other individuals later died from their injuries.[14532] While in the morgue, Crnčalo saw, in addition to his wife, another eight bodies, most of whom were female.[14533] He testified that around 40 people died in this incident and noted that they were brought to another part of the same morgue.[14534]

4328. With respect to casualties, Subotić argued that the final list of 118 casualties does not match what the findings of the police and the investigating judge during the on-site investigation, as the latter registered 35 dead and 78 wounded persons on 28 August 1995, which is a total of 113 casualties.[14535] According to Subotić, the final total of 118 victims was eventually determined, albeit without explanation, by the CSB Sarajevo in a report under the codename "Action Truth" sent to the SDB that same day, whereby it was specified that 33 persons were killed, eight of whom could not be identified, and 85 wounded.[14536] Thus, according to her, the final number of victims was in fact not determined by the teams investigating the incident.[14537] Based on her own calculations of the parameters of the affected area,[14538] she asserted that the final number of victims was exaggerated and that the number reported by the UNMOs, namely 90 casualties in total, is

14530 P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); KDZ485, T. 8884–8885 (3 November 2010).

14531 P1934 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1.

14532 P1905 (Witness statement of KDZ485), para. 27; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 33; P1977 (BiH MUP Report re shelling of Markale on 28 August 1995). *See also* KDZ485, T. 8884–8885 (3 November 2010).

14533 Sulejman Crnčalo, T. 1179–1180 (14 April 2010).

14534 Sulejman Crnčalo, T. 1175, 1180 (14 April 2010); P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), para. 6.

14535 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129.

14536 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129; P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 10 (BCS version). The Chamber notes that the BCS version of this document does not fully correspond to the translation, however, the Chamber was able to discern the lists of victims from the BCS version as well as the reference to the "Action Truth" and thus was able to follow Subotić's reasoning. The Chamber notes that Subotić's claim that there is no explanation as to the discrepancy in numbers is plainly incorrect as the report in question clearly states that CSB Sarajevo was in constant contact with medical staff in different hospitals who are still working on identifying patients. Thus, it is clear that at that point the information was still being updated.

14537 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129.

14538 In making this calculation, Subotić assumed that the main street on which the trams were running must have been empty at the time and not crowded, which then meant that the remaining area was too small to contain all the people who were wounded or killed. D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 130. The Chamber finds this calculation extremely speculative.

more likely to be correct.[14539] Relying on the evidence of a doctor who testified in the *Dragomir Milošević* case, but not in this case, Subotić then asserted that based on the photo documentation of the 35 persons killed in the incident, two of these persons were not killed by shrapnel but by a bullet from a small firearm.[14540] In addition, she claimed that in the video footage, the appearance of two wounds on the body of another victim cast doubt on whether he was killed by shrapnel from the explosion.[14541]

4329. According to the Adjudicated Fact 3081, at least 35 persons died and at least 78 persons were wounded, many of them seriously, in Markale market. The great majority of those wounded were civilians, while one of the deceased was a soldier of the ABiH.[14542]

(i) Markale area as a potential military target

4330. Addressing whether there was a military target at or nearby the market, Konings testified that the area was a civilian area, noting that he had passed by the location that morning at around 9 or 10 a.m. and that it was crowded with mostly civilians.[14543] Leka testified that the shell landed in a "strictly civilian area" and that there was no military activity in the neighbourhood.[14544] Svraka also testified that he had never seen any military installations or activities in the Markale area.[14545] He was never personally in the ABiH but was under a work obligation and would dig trenches at the frontlines, including at Mt. Igman and Žuč Hill.[14546] Đozo also testified that there were no army facilities in that part of town but that he did not know whether ABiH used any civilian facilities there.[14547] Turkušić explained that, while there may have been some soldiers passing through Markale, the highest concentration of people there were civilians, usually people selling or buying goods.[14548] He was of the view that the shell was fired for its psychological impact, namely in order to cause terror and put pressure on the authorities.[14549] Bešić stated that Markale was frequented by a large number of people—both civilians and those wearing military uniforms—and

14539 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 130.

14540 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 130–131.

14541 D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 131–132.

14542 Adjudicated Fact 3081.

14543 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 74.

14544 P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2.

14545 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 6.

14546 P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 3. *See also* Ismet Svraka, T. 9665–9666 (13 December 2010).

14547 P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 39–40.

14548 Emir Turkušić, T. 9006–9007 (4 November 2010).

14549 Emir Turkušić, T. 9001–9003, 9025–9026 (4 November 2010).

noted that he was not aware of any ABiH military facilities nearby but that there may have been some in the former military hall which was 400 to 500 metres away from Markale, separated by a park.[14550] Bešić denied that a nearby building called Semberija was used by the ABiH as a storage area, stating that it was in fact used as a bakery where bread was made for the ABiH.[14551]

(j) Accused's defence theories

4331. As with the first Markale incident, while not referring to this theory in his Final Brief, the Accused attempted to show throughout the trial that this incident was staged such that the bodies were brought from elsewhere in order to provoke NATO into bombing the Bosnian Serbs.[14552] However, as with the first Markale incident, most witnesses rejected this theory.[14553] For example, Konings was adamant that the incident could not have been staged because he had passed Markale earlier that morning, at around 9 or 10 a.m., and did not see a crater there, noting that making a crater artificially would have taken a long time, longer than one or two hours.[14554] Furthermore, he stated that he saw fresh bodies in the morgue and noted that there were no reports that morning that such a large number of people had been killed somewhere else.[14555] Bell testified that his cameraman filmed some of the very graphic footage at the scene, which BBC would not broadcast due to viewer discretion concerns.[14556] Bell stated that this was one of the scenes that could not be replicated in a movie and that it was real.[14557]

4332. One of the bases for the Accused's contention was the type of injuries sustained by the victims and, in particular, those of one man who can be seen in the footage of the aftermath of the incident lying over the rail near the point of impact without much blood around him. In addition, Subotić mentioned a number of victims who, according to her, had small arms wounds on their bodies. However, Turkušić convincingly testified that the damage to the area, as well as the

14550 Sead Bešić, T. 9425–9426, 9429–9430 (8 December 2010), T. 9500–9502, 9506–9507 (9 December 2010); P1969 (Video footage of Markale on 28 August 1995); P1450 (Video footage of Markale, 28 August 1995); D902 (Photograph re shelling of Markale on 28 August 1995 marked by Sead Bešić).

14551 Sead Bešić, T. 9507–9508 (9 December 2010); D904 (Photograph re shelling of Markale on 28 August 1995).

14552 *See e.g.* Emir Turkušić, T. 9082, 9094–9095 (4 November 2010) (where the Accused put forward his theory to Turkušić and confirmed this position to the Chamber). *But see* Martin Bell, T. 9921 (15 December 2010) (where the Accused stated to the witness that the Bosnian Muslims did not dare stage such an event again after the first Markale incident).

14553 *See e.g.* Emir Turkušić, T. 9082 (4 November 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 92; Martin Bell, T. 9920–9921 (15 December 2010). *But see* KDZ088, T. 6394–6398 (8 September 2010) (closed session) (conceding, however, that everything he knew about Markale came from the media and rumours).

14554 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 92.

14555 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 94.

14556 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 104–107; P2013 (BBC news report re shelling of Markale on 28 August 1995, with transcript).

14557 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 107.

injuries sustained by the victims, were consistent with what one would expect from an impact of a 120 mm mortar shell at that particular place, in particular that those closest to the impact would have serious blast and shrapnel injuries to their lower limbs while those further away would suffer upper body injuries from shrapnel.[14558] He also pointed out that the bodies were taken to the Koševo Hospital where anyone, including journalists, was able to see them and check how fresh they were.[14559] Bešić too confirmed that the footage of the scene as well as the diversity of injuries that can be seen on people is consistent with what one would expect following such an explosion.[14560] Furthermore, noting that he had experience with exchanges of dead bodies, Bešić stated that the bodies visible on the photos taken at the morgue and in the video footage were all fresh, with no soil on them or puckered up skin.[14561] Konings testified that a single mortar shell could cause all these casualties given the area in which it happened, namely between two buildings.[14562]

4333. Another reason put forward by the Accused for claiming that the scene was staged is that the stabiliser can be seen in one place in Bešić's photographs of the scene and yet is seen in a different place in the footage of the aftermath of the incident at the point when it is being photographed by the UNPROFOR soldiers.[14563] Bešić could not explain this discrepancy, stating that in all his photographs the stabiliser can be seen in the same place and that he had no knowledge of what the UNPROFOR soldiers did with it when photographing it.[14564] The Accused then showed additional footage of the investigation in which the stabiliser is shown located in one place first, the same place in which it was photographed by Bešić and, five minutes later, the stabiliser can be seen in another location, close to the location where the UNPROFOR soldiers photographed

14558 Emir Turkušić, T. 9004–9006, 9010–9012, 9018–9019, 9080–9082, 9086–9101 (4 November 2010); P1450 (Video footage of Markale, 28 August 1995); P1926 (Photographs re shelling of Markale on 28 August 1995); P1928 (Sketch re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1971 (Photographs re shelling of Markale on 28 August 1995); D874 (Video still re shelling of Markale on 28 August 1995); D875 (Video still re shelling of Markale on 28 August 1995); D876 (Video still re shelling of Markale on 28 August 1995). *See also* Richard Higgs, T. 5938–5939, 5947–5948 (18 August 2010), T. 5983–5984, 6031–6032 (19 August 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 67.

14559 Emir Turkušić, T. 9094–9096 (4 November 2010).

14560 P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 26, 34–35.

14561 Sead Bešić, T. 9427–9428 (8 December 2010); P1450 (Video footage of Markale, 28 August 1995).

14562 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 67, 93.

14563 *Compare* P1926 (Photographs re shelling of Markale on 28 August 1995), photograph 1 *with* P1450 (Video footage of Markale, 28 August 1995).

14564 Sead Bešić, T. 9511–9512 (9 December 2010).

it.[14565] However, Bešić stated that the stabiliser was a "mobile artefact" which was moved around in the commotion of the investigation.[14566]

4334. The Accused also claimed that the condition of the stabiliser provided to the court and admitted as exhibit P1454 indicated that it was not damaged due to the explosion but was instead modified manually. However, Konings, Higgs, Turkušić, and Bešić all testified that the stabiliser that was found on the scene looked exactly as a stabiliser of an exploded shell should look like, and explained that its fins could have been deformed due to a car running over it.[14567] When shown P1454 in the courtroom, both Turkušić and Bešić testified that it seemed to be the stabiliser shown on the video footage of the incident and described in the reports.[14568] Bešić, who personally photographed the stabiliser on the scene on the day of the incident, was in fact adamant that P1454 was identical to the stabiliser on the scene despite agreeing with the Accused that the holes on its cap looked to be in a slightly different position from the holes on the pictures of the stabiliser at the scene.[14569] He theorised, however, that it was possible that the stabiliser cap was unscrewed in the lab following its removal from the scene, thus shifting the position of the holes on the cap.[14570]

4335. The Accused's alternative defence was that the ABiH was responsible for the incident by either firing the shell or planting an explosive device at the scene in order to garner sympathy from the international community and provoke NATO air strikes.[14571] As noted above, the main proponent of the planted explosive device theory was Subotić. In addition, Veljović testified that it was impossible for a 120 mm mortar shell to hit Markale, which is why the SRK thought that the

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14565 *See* D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

14566 Sead Bešić, T. 9519–9525 (9 December 2010); D907 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).

14567 Emir Turkušić, T. 9155 (5 November 2010); Sead Bešić, T. 9482–9483, 9511–9512 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 29–30; P1926 (Photographs re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); D905 (Photograph of mortar stabiliser from Markale II). *See also* Richard Higgs, T. 5951–5952 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 57; Harry Konings, T. 9380–9381, 9383–9385 (7 December 2010).

14568 Emir Turkušić, T. 9153–9155 (5 November 2010); Sead Bešić, T. 9512–9517 (9 December 2010). *See also* Richard Higgs, T. 6033–6034 (19 August 2010); P1454 (Stabiliser tail fin from 120 mm mortar re shelling of Markale on 28 August 1995).

14569 Sead Bešić, T. 9512–9517 (9 December 2010); P1454 (Stabiliser tail fin from 120 mm mortar re shelling of Markale on 28 August 1995); D906 (Photographs of mortar stabiliser from Markale II).

14570 Sead Bešić, T. 9517 (9 December 2010).

14571 Defence Final Brief, paras. 2158–2162. *See e.g.* D79 (US Senate Report re smuggling of Iranian arms into BiH, 16 January 1997), p. 11; D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 5–8; Prvoslav Davinić, T. 45522–45526, 45537 (16 January 2014) (suggesting that the investigation into the incident was not done properly in order to justify NATO air strikes).

Muslims had planted an explosive device and activated it by remote control in order to gain sympathy and to ensure that the Bosnian Serbs were bombed.[14572]

(k) Final analysis and conclusions

4336. Looking first at the Accused's suggestion that the incident of 28 August 1995 in Markale was staged, the Chamber is convinced, as with the first Markale incident, that this was not the case. In this respect, the Chamber accepts the evidence of the witnesses who were at the scene at the time of the incident or in its immediate aftermath and who were adamant that what they saw could not have been staged. Any suggestion to the contrary by the Accused and/or his witnesses is simply preposterous.

4337. The Chamber, relying on Konings, Higgs, Turkušić, and Bešić and having examined the stabiliser in its possession, is also convinced that it is the stabiliser that was found in Markale on 28 August 1995. As eventually accepted by Subotić, it is clear that the cap of the stabiliser is loose and that it can be screwed in and out, thus resulting in a different alignment of the holes to the one seen in the photographs taken by the CSB Sarajevo. The Chamber therefore rejects Subotić's evidence, reliant as it was on these photographs and video footage, that this was a different stabiliser than the one seen in those secondary materials. Further, the Chamber does not accept her evidence that there was one more stabiliser at the scene as the photograph she based this conclusion on is so unclear that it is impossible to determine what the object seen therein is. The Chamber, therefore, finds Subotić's conclusion that this was a second stabiliser arbitrary and bordering on dishonest. Given that she was quick to resort to conspiracy theories based on photographs and video footage, to the point of seeing another stabiliser in them, the Chamber has decided not to accept any of her evidence relating to this incident unless corroborated by other credible evidence. The Chamber also rejects her theories about what she thought were inexplicable scenes and injuries seen in the video footage and photographs of the incident, as well as her conclusion that having nine incidents involving such mass casualties was impossible.[14573]

4338. Finally, the Chamber rejects her evidence, as well as the evidence of Veljović, Demurenko, and others, that the explosion was a result of an explosive device planted at the scene. The Chamber found this proposition untenable given the weight of the evidence to the contrary,

14572 Stevan Veljović, T. 2926229265 (23 October 2012). *See also* Nikola Mijatović, T. 30702–30706 (30 November 2012); D2514 (Video clip of Nikola Mijatović's speech, with transcript); Momčilo Krajišnik, T. 43330–43332, 43334 (12 November 2013).

14573 The Chamber found this particular suggestion, namely that having nine incidents with mass casualties would have been impossible, simply unreasonable, particularly when one takes into account the fact that the conflict lasted from 1992 to 1995 and considers the number of shells that fell on the city in that period.

including the fact that the 120 mm stabiliser was found on the scene. In addition, a number of witnesses who were on the scene immediately after the incident, such as Turkušić, Bešić, and Konings, testified that the damage to the people and the buildings could have been the result of the explosion of a 120 mm mortar bomb, given the enclosed space in question and the large number of people present. The Chamber found their evidence particularly convincing because they had by that point dealt with countless shelling incidents in the city.[14574] Accordingly, the Chamber is satisfied that the explosion on 28 August 1995 in the Markale area was caused by the 120 mm mortar bomb that struck the Mula Mustafe Bašeskije street.

4339. Relying on the autopsy reports in evidence, the Chamber finds that 43 people died in this explosion. Relying further on CSB Sarajevo reports and various lists of wounded provided therein, the Chamber also finds that this explosion resulted in at least 70 wounded. The Chamber is satisfied that the great majority of those casualties were civilians who were not taking active part in hostilities at the time of the incident. Only one of those killed in the incident was a soldier.[14575]

4340. As found above in relation to the first Markale incident, the Chamber is also satisfied that there were no military facilities or targets in the area of Markale market. It was a market frequented by the civilian population in order to buy and sell food and other goods. In addition, the Chamber recalls that it has taken judicial notice of the fact that there was no reason to consider it a military objective on the day in question.[14576] While there may have been some soldiers passing through Markale at any given time, the majority of people gathering there were civilians.

4341. In terms of the direction of fire, the Chamber recalls that the CSB Sarajevo team, the UNMOs, the UNPROFOR team that conducted the crater analysis, and Subotić, all came to the conclusion that the 120 mm shell came from the general south-southeasterly direction. According to the various calculations, it had an azimuth of between 155 and 175 degrees and a minimum angle of descent of 67 degrees, with the most likely angle of descent being 70 degrees.[14577] The Chamber accepts this evidence and therefore rejects the final conclusion made by UNPROFOR's Powers and

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[14574] The Chamber notes that the only witness who was at the scene in the aftermath of the incident and yet testified that the explosion was caused by an explosive device was Demurenko. However, as will be seen below, the Chamber has found him to be unreliable in relation to this incident and thus does not accept his evidence that it was a "terrorist" attack. The other witnesses who thought it was a planted explosive device were neither on the scene at the time nor had the sufficient grounds, other than rumour and self-serving motives, to make that conclusion.

[14575] *See* Adjudicated Fact 3081; P1450 (Video footage of Markale, 28 August 1995) (showing a victim in camouflage uniform).

[14576] Adjudicated Fact 342.

[14577] The Chamber rejects the angle of descent determined by Subotić, both due to her weak credibility and because it considers that the local investigators would have been better able to establish the angle of descent having observed the scene and the crater first hand in the immediate aftermath of the incident.

Baxter that the Markale shell probably came from the same direction as the other four shells that hit an area near Markale on that day, namely from 220 to 240 degrees from the north. The Chamber agrees with both Higgs and Subotić that Powers and Baxter's analysis was speculative and ultimately wrong, particularly given Turkušić's evidence that the shell that struck Markale area was a direct hit and not a ricochet. Accordingly, the Chamber considers that the four shells came from a different direction and thus were fired by a different mortar.[14578] That being the case, they cannot be considered to have been adjusting fire for the shell that hit Markale.

4342. Turning back to the Markale shell, as noted above, both the ABiH and SRK had positions in the established direction of fire, with the confrontation line located approximately 1,600 metres from Markale. Given the vastness of the area covered by the established direction of fire and the margin of error involved, the Chamber is convinced that there were many positions on the SRK side of the confrontation line suitable for placing a 120 mm mortar. Indeed, Veljović testified that he had a mortar battery in the Brus sector, which is in the established direction of fire. Thus, the Chamber did not find Demurenko credible when he testified that no suitable positions existed on the SRK side of the confrontation line nor did it believe him when he testified that he in fact examined an area much larger than the one he discussed in his interview of 2 September 1995 and in his evidence in the *Dragomir Milošević* case. The Chamber considers that examining an area covering all of the directions of fire established at the time, together with the margin of error, would have been impossible in the limited amount of time Demurenko had. In addition, the Chamber finds it telling that he only mentioned this broader inspection after the Trial Chamber in the *Dragomir Milošević* case had dismissed his investigation as having been too narrow. The Chamber is, therefore, convinced that Demurenko simply changed his testimony in order to counteract the findings of that Trial Chamber. Thus, the Chamber considers that Demurenko's investigation was based solely on the azimuth of 176 degrees from north as he had indicated in his interview at the time, which was ultimately the wrong azimuth. As such, his investigation was somewhat irrelevant to this incident. In addition, even if 176 degrees was the direction from which the Markale shell originated, the Accused's own expert witness, Subotić, contradicted Demurenko's evidence by testifying that there was one suitable mortar position in that direction of fire. For all these reasons, the Chamber does not accept Demurenko's evidence as credible and finds that there were a number

[14578] As a result of this finding, the Chamber will not rely on the UN analysis relating to the UN radar as that analysis was based on the direction of fire of 220 to 240 degrees from the north and on the distance to the confrontation line in that direction. Furthermore, the evidence does not indicate where the radar was located, how high or low it was emitting radio-waves, or whether it covered only the area in the direction of 220 to 240 degrees or also the area of the direction of fire established in relation to the Markale shell. Similarly, the Chamber does not accept Subotić's analysis relating to the radar as it is based on pure speculation as to its location and effectiveness. Unlike Subotić, the Chamber does not exclude the possibility of the radar failing to record a shell fired from far

of suitable positions for placing a mortar, both in the area of the established direction of fire, namely between 155 and 175 degrees, and in the area actually examined by Demurenko.

4343. As also noted above, the ABiH too had positions in the established direction of fire, including mortar positions near Čolina Kapa.[14579] Nevertheless, the Chamber is convinced beyond reasonable doubt that the Markale shell was fired from the SRK side of the confrontation line.[14580] First, the Chamber notes that the markings on the shell indicate that it came from Krušik Factory in Valjevo, Serbia, while its serial number indicates that it was tested in Serbia towards the end of the conflict, namely in 1994. The same is true for the other four shells that landed near Markale market on that day, all of which bear the same markings. This in turn means that the five shells were not part of the JNA arsenal in 1991 and thus could not have been part of the ABiH weapons arsenal at the time of the incident. All five therefore must have been fired by the SRK.

4344. Second, focusing on the Markale shell alone, the Chamber is persuaded by the evidence of Knustad and Konings that no firing sound—which would have been loud and distinctive in the case of a 120 mm mortar—was heard near OP-1 on the day of the incident, thus indicating that the shell was not fired from ABiH mortar positions near Čolina Kapa, or anywhere near the confrontation line. While Conway challenged the idea that one could draw such conclusion from the sounds of the explosions he had heard, he also conceded, in line with other witnesses,[14581] that the sound of a mortar firing nearby would have been distinct whereas he had only heard muffled sounds on the morning of the incident. Given that the morning was quiet, it is clear from Conway's evidence and the description of the events he provided that the muffled sounds he heard were the sounds of the explosions in the centre of the city rather than the sound of a 120 mm mortar firing near OP-1.[14582] Even the Accused's expert witness Subotić thought that the firing noise would have been heard had

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away (as outlined by the UN), particularly given the configuration of the terrain and the elevation from which it would have been fired.

14579 While Conway testified that in December 1995 he saw ABiH mortars positioned north of Mrakuša and facing the city, this does not necessarily mean that these mortars had also been there in August 1995 or that they had been turned towards the city at that time. Even if this were the case, the Chamber notes that those positions were not in the established direction of fire but were located southwest of Markale.

14580 The Chamber notes that part of the Accused's case was that ABiH fired the shell (or staged the incident) in order to provoke NATO air strikes, which indeed took place following the incident. He outlined this theory mostly during his cross-examination of Smith and Harland. While the evidence of these two witnesses does show that the NATO attacks were initiated by Smith before the higher echelons of power within the UN were absolutely convinced that the SRK was responsible, this does not, contrary to the Accused's position, lead to the conclusion that the ABiH was responsible for the attack.

14581 *See* para. 4281.

14582 The Chamber also notes that at that time of the incident Conway had only been in Sarajevo for nine days and thus was not as familiar as Knustad was with the sounds in and around the city.

the ABiH fired the shell in question, which in turn led her to conclude that the explosion was caused by a planted explosive device.[14583]

4345. Finally, while the SRK soldiers and officers called by the Accused testified that no 120 mm mortars were located in the established direction of fire, the Chamber found their evidence unpersuasive and insincere as they were inconsistent when explaining why the 120 mm mortars were not there in August, despite their presence earlier in the year when the 4th Sarajevo Light Infantry Brigade was formed. For example, Veljović testified that he sent all his mortars from the Brus sector to another frontline, while Dušan Škrba testified that 120 mm mortars were simply moved outside of the 20 kilometre heavy weapons exclusion zone. They were also inconsistent as to the calibres that did remain in the area. In general, the Chamber found the evidence of these witnesses, as well as the evidence of Dragomir Milošević, to have been largely self-serving—their credibility was affected by their desire to minimise the responsibility of the SRK for the incident.

4346. While Mula Mustafe Bašeskije street and the Markale market may not have been deliberately targeted on the day of the incident, the Chamber is convinced on the basis of the evidence above, including Đozo's evidence about earlier incidents in the area and the fact that another four shells landed near Markale on the day of this incident, that the SRK deliberately targeted the general area of the market, in full knowledge that there were no military targets there and with reckless disregard as to potential civilian victims such fire would create.

(D) Scheduled modified air bomb incidents

4347. Thoughout this case, the Chamber heard evidence about the nature and the use of so-called "modified air bombs" in Sarajevo during the conflict as six of the 16 shelling incidents charged in the Indictment, namely Scheduled Shelling Incidents G.10, G.11, G.12, G.13, G.14, and G.15, are alleged to involve such bombs.[14584]

4348. The Prosecution argues that the evidence establishes that modified air bombs were (i) possessed solely by the SRK; (ii) used by the SRK in the above mentioned incidents; and

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14583 Subotić reached this conclusion arguing that a shell fired on a charge three or higher would have resulted in an embedded stabiliser at the scene. As discussed in the section dealing with the first Markale shelling incident, the other experts, who were found by the Chamber to be more credible than Subotić, thought that a stabiliser will embed if a shell is fired on charges higher than charge three. *See* para. 4248. Thus, Subotić's analysis that the lack of embedding in this particular case necessarily excludes the possibility that the shell was fired on charge three is not persuasive. The Chamber finds it perfectly plausible that the SRK fired the shell using charge three as testified by Higgs and Turkušić, resulting in the stabiliser being ejected at the moment of impact and landing near the impact site. The Chamber also notes that the location of the stabiliser as photographed by the CSB Sarajevo some 40 minutes after the incident is not necessarily the location at which the stabiliser first landed, as it could have been pushed around in the chaos of the evacuation of the wounded.

14584 Indictment, Schedule G.

(iii) inherently incapable of targeting anything more specific than a general neighbourhood in a densely-populated Sarajevo.[14585] The Prosecution also claims that because of their great destructive power and because of their imprecision, these bombs were a "quintessential urban weapon of terror, used deliberately to that end in Sarajevo".[14586] In addition, according to the Prosecution, the SRK also used these bombs in retaliation against the population in response to ABiH or NATO actions, often on areas where there was no combat activity.[14587]

4349. The Accused argues that the VRS used modified air bombs against military targets on the ground as a defensive measure due mainly to a shortage of artillery and mortar ammunition in 1994 and 1995 and because the ABiH grew in manpower and equipment at that point.[14588] The Accused further claims that the modified air bombs were tested by expert engineers and were perfected such that they could be considered precise.[14589] Finally, he claims that the ABiH also used modified air bombs in Sarajevo.[14590]

(1) Expert evidence

4350. The parties called a number of expert witnesses to testify about the nature of modified air bombs and to give their opinions as to the above-mentioned shelling incidents. Zečević was called by the Prosecution, while Subotić, Poparić, and Mirjana Anđelković-Lukić were called by the Accused.

4351. Earlier in the Judgement, the Chamber discussed the professional qualifications of both Subotić and Poparić and provided its assessments of these witnesses' credibility and of the reliability of their evidence.[14591] These general assessments are equally applicable in relation to this section of the Judgement and will not be repeated here.[14592]

4352. Zečević is an expert in rocket motors and warheads who also worked in the Pretis Factory in Vogošća until April 1992.[14593] This factory produced artillery and rocket ammunition, rocket

14585 Prosecution Final Brief, Appendix C, paras. 68–69.
14586 Prosecution Final Brief, Appendix C, para. 69.
14587 Prosecution Final Brief, Appendix C, para. 71 (referring to Scheduled Incidents G.10, G.13, and G.15).
14588 Defence Final Brief, para. 2348.
14589 Defence Final Brief, paras. 2349–2354, 2356.
14590 Defence Final Brief, paras. 2357–2358.
14591 *See* paras. 3642, 4015.
14592 However, the Chamber will provide further credibility assessments below, where relevant specifically to modified air bombs.
14593 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 1; Berko Zečević, T. 12155–12157 (22 February 2011).

projectiles, and aircraft bombs, and was under VRS control during the conflict.[14594] Zečević prepared a report and gave evidence on (i) the nature of modified air bombs, (ii) his involvement in investigating their mechanics during and after the conflict in Sarajevo, and (iii) his analysis of the above-mentioned scheduled incidents.[14595] All three experts called by the Accused challenged Zečević's evidence and produced a joint report pointing out inconsistencies in his report.[14596] Because of his expertise in rocket motors and warheads and given that he had an opportunity to examine the remnants of modified air bombs in Sarajevo, the Chamber has found Zečević to be a knowledgeable and trustworthy witness, particularly in relation to the process of modification of air bombs and their operation. The Chamber also found that many of the challenges outlined in the joint report prepared by Defence experts bordered on trivial and were at times completely irrelevant to the issues in this case.[14597] On the other hand, some of the more relevant aspects of Zečević's evidence remained unchallenged, including his findings that modified air bombs were used in Scheduled Incidents G.10 to G.15.[14598] Accordingly, the Chamber accepted much of Zečević's evidence as credible and reliable. On occasion, the Chamber rejected some of his conclusions as they were either contradicted by other accepted evidence or not sufficiently persuasive in light of other, more convincing, evidence.[14599] This, however, did not affect the Chamber's assessment of Zečević's credibility in other aspects of his testimony.

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14594 Berko Zečević, T. 12149, 12154–12158 (22 February 2011); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 41; Dragomir Milošević, T. 32762 (28 January 2013); Miladin Trifunović, T. 30378 (15 November 2012), T. 30443, 30459–30461 (27 November 2012) (testifying that Pretis Factory was in the zone of responsibility of the Vogošća Brigade, which later became 3rd Sarajevo Infantry Brigade); D2447 (Satelite image of Sarajevo marked by Miladin Trifunović).

14595 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"). Zečević prepared this report for the purposes of the *Dragomir Milošević* case. *See* Berko Zečević, T. 12175 (22 February 2011).

14596 D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012). The Chamber notes that it ordered the redaction of a large part of this report. *See* Decision on Prosecution's Request to Exclude Portions of Reports of Mile Poparić, 12 March 2013, paras. 26–29. The Chamber also notes that the remaining analysis in D3644 contains more or less identical challenges to those outlined in Anđelković-Lukić's report (D2662).

14597 For example, in their report, at page 67, Poparić *et al* point out inconsistencies in Zečević's report regarding the weights of aircraft bombs discussed therein. In the Chamber's view, those inconsistencies are minor and ultimately irrelevant to the major issues in this case. Poparić *et al* also argue on pages 66, 67, and 70 that many of the weapons and technical concepts discussed in Zečević's report are irrelevant to this case. The Chamber notes that in his report Zečević clearly acknowledges that such weapons and concepts are used simply as examples and therefore does not mislead the Chamber in any way. Accordingly, being able to discern for itself the most relevant parts of Zečević's report, the Chamber does not consider that his analysis of additional weapons and ballistics concepts undermines his credibility in relation to the issues relevant to this case.

14598 The major challenge raised by the Accused regarding the Scheduled Shelling Incidents relates to Zečević's conclusions as to the type of modified air bomb used and the Chamber has dealt with this challenge in relation to each specific incident.

14599 *See e.g.* the Chamber's discussion of Scheduled Incidents G.10 to G.15 where the Chamber rejected Zečević's evidence that the bomb used was a fuel-air bomb.

4353. Anđelković-Lukić is an expert on explosives who participated in the testing of various explosive weapons for the JNA.[14600] The Prosecution asserts that her arguments regarding the weight and in some cases the explosive composition of the bombs were not credible and were ultimately irrelevant, given the overall destructiveness of all the types of modified air bombs used in Sarajevo.[14601] The Chamber found Anđelković-Lukić evasive at times. In addition, some of her evidence was contradicted by other evidence on the record, including on one occasion by her own report, prepared jointly with Poparić and Subotić.[14602] Nevertheless, the Chamber analysed her evidence on modified air bombs and each related scheduled incident separately and, as will be seen below, at times accepted certain parts thereof.

(2) Modified air bombs in Sarajevo

4354. Modified air bombs were first used in Sarajevo in early 1994 and then again at the end of 1994 and throughout 1995.[14603] A modified air bomb is an aircraft bomb to which rocket motors have been attached so that it does not have to be dropped from an aircraft, as originally intended, but can instead be delivered from a launching pad.[14604] It is comprised of three primary components: (i) a bomb intended for aircraft use; (ii) a rocket system made of rockets from a multiple rocket launcher; and (iii) the "adapting plate" joining the two.[14605]

14600 D2661 (Mirjana Anđelković-Lukić's curriculum vitae); Mirjana Anđelković-Lukić, T. 31467–31470 (14 December 2012). The Chamber notes that Mile Poparić worked at the Technical Testing Centre around the same time as Anđelković-Lukić and that he also worked in Pretis, like Berko Zečević. *See* Mile Poparić, T. 38850–38551 (28 May 2013), T. 39029 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 2–3.

14601 Prosecution Final Brief, Appendix C, para. 72.

14602 *See e.g.* paras. 4360–4361, 4413, fn. 14612.

14603 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 2–3, 65, 180–181, 186–195; Berko Zečević, T. 12150–12151, 12206–12210 (22 February 2011); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 39; Ekrem Suljević, T. 5723–5724, 5732–5733 (22 July 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 63; P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 55, 100; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 36; Per Anton Brennskag, T. 8656–8657 (29 October 2010). *See also* Adjudicated Fact 2816.

14604 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 37; Ekrem Suljević, T. 5683 (21 July 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1989, 1991; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 63; David Fraser, T. 8010–8011 (18 October 2010), T. 8133 (19 October 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; KDZ477, T. 10952 (31 January 2011); P2407 (Witness statement of KDZ304), pp. 18–19; Zorica Subotić, T. 38479 (16 May 2013); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 183; Dragomir Milošević, T. 32769 (28 January 2013); Savo Simić, T. 30091–30092 (12 November 2012). *See also* Adjudicated Facts 2815, 2816.

14605 Ekrem Suljević, T. 5684 (21 July 2010); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 39; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; P2407 (Witness statement of KDZ304), p. 18; KDZ304, T. 10444–10445 (18 January 2011); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 183; Savo Simić, T. 30092–30095 (12 November 2012).

4355. Several different weight categories of general purpose aircraft bombs, or "FABs" as they were referred to in the SFRY, were modified during the Sarajevo conflict. "FAB" is a Russian term to which a number is added to indicate the nominal value of the bomb mass; thus, a FAB-250 refers to an aircraft bomb with a nominal weight of 250 kilograms.[14606] The explosive charge, which makes up around 40% of the aircraft bomb's nominal mass and usually consists of solid TNT or a mixture of TNT and other ingredients, is located within the casing of the FAB.[14607] According to Zečević, Pretis produced FAB-100 and FAB-250 general purpose aircraft bombs.[14608]

4356. The aircraft bombs can also contain fuel-air explosive instead of TNT, which is a gaseous, liquid, or powder fuel dispersed into the air by a small explosion and then oxidised; the oxidation initialises the second explosion—a massive detonation wave.[14609] According to Zečević, these types of modified air-bombs produce a longer lasting but less intense blast than bombs with solid explosive charges.[14610] Zečević also explained that the best-known Russian fuel-air bomb is ODAB-500 aircraft bomb, which has a nominal mass of 520 kilograms and a fuel-air charge of 193 kilograms.[14611] Prior to the war, Pretis was developing a fuel-air bomb called FAB-275, but the development was transferred to Belgrade in 1991.[14612]

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14606 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 5–6, 24; Berko Zečević, T. 12210 (22 February 2011). *See also* Adjudicated Fact 2817.

14607 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 3, 5, Mirjana Anđelković-Lukić, T. 31479, 31500 (14 December 2012); Vladimir Radojčić, T. 31248–31249 (11 December 2012); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 4–5; Ekrem Suljević, T. 5724, 5747 (22 July 2010), T. 6175 (6 September 2010) (explaining that the weight of the bomb does not denote the quantity of the explosives but rather the actual weight of the bomb, without taking into account the propelling rocket; thus, a 250-kilogram air bomb would contain around 100 kilograms of explosives).

14608 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 8, 93; D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 41–42; Dragomir Milošević, T. 33150 (4 February 2013); D797 (Sketch of air bomb). *See also* Adjudicated Fact 2818.

14609 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 58–59, 101; Berko Zečević, T. 12183, 12200–12201 (22 February 2011); Mirjana Anđelković-Lukić, T. 31477–31481, 31484–31485 (14 December 2012) (explaining that these bombs were made primarily for destruction of personnel and that it is impossible to survive the blast if enveloped by a cloud created by the first explosion).

14610 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 58, 60–64, 103; Berko Zečević, T. 12199–12200 (22 February 2011). *See also* Adjudicated Fact 2820.

14611 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 59.

14612 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 65, 93 (explaining that the first 50 of those bombs were produced in 1990); Berko Zečević, T. 12151–12152, 12211, 12213–12214 (22 February 2011); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43; Zorica Subotić, T. 38476–38477 (16 May 2013) (testifying that only 60 FAB-275 bombs were produced by Pretis, of which 58 were destroyed after the war, thus suggesting that only two were used but that it is not known where). *But see* D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 6, 10, 13 (arguing that there was no evidence that Pretis was developing this bomb and that neither the JNA nor

4357. Based on the fragments found around the city and the photographs of the bombs obtained from the Dutch team tasked with the disposal of various weapons systems after the war, Zečević determined that FAB-100 and FAB-250 aircraft bombs, as well as a fuel-air bomb based on ODAB-500, which was given a code-name KREMA, were all modified by the Bosnian Serbs in order to be launched from the ground and used in Sarajevo.[14613] In addition, according to Zečević, the damage to some of the sites in Sarajevo indicated that a fuel-air explosive was often used with FAB-250 modified air bombs.[14614] Based on the recovered fragments he determined that various types of rockets were used to assist the flight of the air bombs, including 122 mm GRAD rockets.[14615] Thus, the modified FAB-100 had either one or three rocket motors, the FAB-250 had three rocket motors, and the bomb based on ODAB-500 had four rocket motors attached to it.[14616] According to Zečević, the three-rocket motor system was extremely primitive and inferior to the four-rocket system because it would deviate from the direction of flight due to the slightly non-parallel alignment of the rocket motors.[14617] Zečević testified that he examined the fragments of the

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the VRS had a fuel-air bomb in its arsenal); Mirjana Anđelković-Lukić, T. 31481–31482, 31515–31517, 31527 (14 December 2012) (basing this claim on the fact that testing of such a bomb never reached her desk at the testing centre, and was therefore never tested for the JNA); D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 72, 75–76. Anđelković-Lukić therefore seems to contradict Subotić's evidence on the issue of Pretis' work on a fuel-air bomb, as well as Subotić's report to which she contributed.

14613 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 65–74, 101–102; Mirjana Anđelković-Lukić, T. 31502 (14 December 2012); Ekrem Suljević, T. 5722–5723, 5746 (22 July 2010) (explaining that he also knew about the existence of the 500-kilogram modified air bomb); P2407 (Witness statement of KDZ304), pp. 18–19 (explaining that the SRK referred to some of the modified air bombs as KREMA rockets); P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995). *See also* Adjudicated Fact 2817 (stating that there were two types of air bombs used in Sarajevo, namely the FAB-100 and the FAB-250, and making no mention of a 500-kilogram bomb).

14614 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 77, 102; Berko Zečević, T. 12184–12186, 12210 (22 February 2011) (explaining that he reached this conclusion because in a large number of cases where the FAB-250 modified air-bomb was used, the significant fragmentation effect one would encounter with bombs using solid TNT was absent). *See also* Adjudicated Fact 2819 (which provides that the typical explosive charge for FAB-250 was a fuel-air mixture).

14615 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 91–93, 103 (explaining that 122 mm GRAD rockets were not produced at Pretis but were imported and then modified); Berko Zečević, T. 12177 (22 February 2011); Ekrem Suljević, T. 5685–5686 (21 July 2010); P1277 (Request from Pretis Factory to VRS Main Staff, 10 May 1994); Zorica Subotić, T. 38479–38480 (16 May 2013), T. 38640 (22 May 2013); Vladimir Radojčić, T. 31251–31252 (11 December 2012). *But see* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 42, 212 (stating that Pretis did produce 122 mm GRAD rockets for the Iraqi armed forces). *See also* Mile Poparić, T. 39029–39030 (30 May 2013) (testifying that he participated in the development of GRAD 122 mm rockets when he worked for Pretis).

14616 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 83–85, 101–102; Berko Zečević, T. 12194–12196 (22 February 2011); Ekrem Suljević, T. 5688–5689 (21 July 2010); P1280 (VRS Main Staff Order, 18 June 1995); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43; Zorica Subotić, T. 38479–38487 (16 May 2013); P6348 (Excerpt from Mile Poparić's expert report entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012); Mirjana Anđelković-Lukić, T. 31502–31503 (14 December 2012); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18.

14617 *See* Berko Zečević, T. 12175–12178 (22 February 2011).

first modified air bomb ever launched into Sarajevo and that it was a fuel-air bomb with four 122 mm GRAD rocket motors.[14618]

4358. According to Poparić, attaching rockets to aircraft bombs essentially turned those bombs into rocketised projectiles from a ballistics point of view, meaning that the dispersion of fragments was larger at a shorter range than when fired at a longer range.[14619] Poparić also testified that 122 mm GRAD rockets had a long range of up to 21 kilometres, were not recommended for use in ranges under five kilometres, and would usually be used from the rear and over friendly troops to target a larger area and provide fire support.[14620]

4359. While accepting that FAB-100 and FAB-250 aircraft bombs were modified and used in Sarajevo, Subotić testified that there is no evidence, in the form of material traces, that a single fuel-air bomb was used in Sarajevo.[14621] Anđelković-Lukić also challenged Zečević's evidence on this issue, arguing that removing the solid explosive charge from the FAB-250 and filling its casing with fuel-air explosives would have been arduous, pointless, and dangerous work, and almost impossible to perform in war-time conditions.[14622] She also stated that in case of the explosion of a fuel-air bomb, large parts of the bomb's metal casing should be found at the incident site, but that, according to materials available to her, no such pieces were found anywhere in Sarajevo.[14623]

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14618 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 65, 180.

14619 Mile Poparić, T. 39024, 39036–39037 (30 May 2013); P6347 (Excerpt from firing tables for M-21-OF 122mm and Vulkan 122mm).

14620 Mile Poparić, T. 39034–39038, 39048 (30 May 2013). When put to Poparić that attaching a 122 mm GRAD rocket to an aircraft bomb and then firing the resulting modified air bomb at targets less than five kilometres away was highly irresponsible, he responded that aircraft bombs have a much smaller range than GRAD rockets, meaning that modified air bombs could not be compared to the rockets when looking at the appropriate range. *See* Mile Poparić, T. 39047–39048 (30 May 2013). *See also* Savo Simić, T. 30107–30112 (12 November 2012).

14621 Zorica Subotić, T. 38230 (14 May 2013); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43; Zorica Subotić, T. 38476–38477 (16 May 2013); D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 6; D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p. 72. *See also* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 47; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 57; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 54; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 21.

14622 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 9–11; D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 71–72; Mirjana Anđelković-Lukić, T. 31471–31472, 31476–31477, 31481, 31488–31490 (14 December 2012) (also arguing that Zečević did not attempt to disassemble the unexploded modified air bombs found in Sarajevo to show that they in fact contained fuel-air explosive). When asked if Pretis would have had empty casings which it could then fill with fuel-air explosives, Anđelković-Lukić responded that there was no need to stock empty casings due to the longevity of TNT. *See* Mirjana Anđelković-Lukić, T. 31520–31522 (14 December 2012).

14623 Mirjana Anđelković-Lukić, T. 31485–31486, 31489–31491 (14 December 2012) (adding also that the injuries sustained by the victims did not correspond to injuries caused by fuel-air bombs). Anđelković-Lukić also denied that one could easily confuse the remains of FAB-250 modified air bombs with those of FAB-275 modified air bombs, as the former has thicker walls. *See* Mirjana Anđelković-Lukić, T. 31512–31513 (14 December 2012).

Finally, she claimed that the SRK had no launchers for bombs based on ODAB-500 due to their heavy weight and thus discounted the existence of 500-kilogram bombs.[14624] In addition, she challenged Zečević's evidence about the existence of KREMA bombs as baseless.[14625]

4360. On cross-examination, however, Anđelković-Lukić was confronted with a number of documents contradicting her evidence. For example, when confronted with an SRK document referring to a launcher for bombs weighing 500 kilograms, she observed that the document also noted that the testing had yet to be done.[14626] When shown an article and a photograph describing and depicting the disposal of 58 modified and regular FAB-275 fuel-air bombs in Glamoč after the war, she concluded that this meant that all the FAB-275 that were produced prior to the war were disposed of after the war and thus had not been used in the conflict.[14627] When further shown two SRK documents referencing preparation for the use of FAB-275 modified air bombs, she remained adamant that she never encountered any evidence about the use of this bomb.[14628] She conceded, however, that she did not go to Sarajevo, including to the sites struck by modified air bombs, and did not inspect any of the recovered fragments of modified air bombs.[14629]

4361. As for the issue of KREMA rockets, the Chamber notes that Anđelković-Lukić is also contradicted by an UNPROFOR report, in which Captain Guegan reported to Sector Sarajevo that on 9 July 1995 the Liaison Officer of the Ilidža Brigade, Captain Novak Prodanović, acknowledged that around 12 "KREMA rockets" had been fired on Sarajevo, including on the TV building, as part of the "psychological warfare aimed at upsetting the Bosnian soldiers on the Treskavica front who would be worried about the safety of their families in Sarajevo".[14630] According to this report, Prodanović referred to the weapon as "Terror".[14631]

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14624 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 8–9; Mirjana Anđelković-Lukić, T. 31491–31492 (14 December 2012).

14625 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 7–8; Mirjana Anđelković-Lukić, T. 31489–31490 (14 December 2012); D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 71, 73–74.

14626 Mirjana Anđelković-Lukić, T. 31506–31508 (14 December 2012); P1313 (SRK request for launcher testing, 23July 1995).

14627 Mirjana Anđelković-Lukić, T. 31509–31512 (14 December 2012); P6052 (Photograph of bombs); P6053 (Article from UXB International entitled "UXB Balkans Disposes of Hazardous Ammunition in BiH", 24 January 2011).

14628 Mirjana Anđelković-Lukić, T. 31517–31519 (14 December 2012); P1296 (VRS Main Staff Order, 19 April 1995); P2652 (Letter from VRS Main Staff to Igman Infantry Brigade, 17 November 1994).

14629 Mirjana Anđelković-Lukić, T. 31522–31524 (14 December 2012).

14630 P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995), pp. 3–4; KDZ304, T. 10446–10447 (18 January 2011) (private session); P2407 (Witness statement of KDZ304), pp. 26–27.

14631 P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995), pp. 3–4.

4362. Having considered the evidence above, the Chamber is convinced that modified FAB-100 and FAB-250 general purpose air bombs were used on targets in Sarajevo. The Chamber also finds, relying in particular on the documentary evidence outlined above and Zečević's evidence, that Pretis produced FAB-275 fuel-air bomb before the war, that such bombs also featured in the Sarajevo theatre of war. However, as indicated by the article shown to Anđelković-Lukić, a large number of FAB-275 bombs seem to have been disposed of—unused—after the war. In addition, the Chamber saw only two SRK documents referring to the use of these bombs in Sarajevo.[14632] Finally, as will be seen below, the Chamber is not convinced that a fuel-air bomb was in fact used in any of the scheduled shelling incidents, either because the evidence was clear that another type of bomb was used or because it was insufficient to conclude beyond reasonable doubt that a fuel-air bomb was used. Accordingly, the Chamber finds that while these fuel-air bombs may have been used in Sarajevo, their use was not prevalent during the war.[14633]

4363. As for the reasons behind the SRK's use of modified air bombs, while the Chamber accepts that the lack of ammunition may have prompted their creation and usage, the Chamber is also convinced that the SRK found them to be a valuable means of psychological warfare, knowing full-well that they had a devastating effect on the civilian population as well as the ABiH forces. It also used them in retaliation against the civilian population in response to ABiH actions, often on areas where there was no combat activity. This is shown not only by the witnesses who testified about the devastating psychological effect these bombs had but also by (i) documentary evidence, such as the UNPROFOR report of 9 July 1995 referred to above; (ii) the intercepted conversation between Momčilo Krajišnik and Milorad Motika of 17 June 1995; and (iii) evidence outlined below in relation to several Scheduled Incidents.[14634]

(3) Who possessed modified air bombs?

4364. It is clear from the evidence before the Chamber that the SRK had and used modified air bombs in Sarajevo. Many of the witnesses called by the Accused, including the SRK Commander Dragomir Milošević, confirmed this fact.[14635] In addition, UNMOs Knustad and Per Anton

14632 *See* P1296 (VRS Main Staff Order, 19 April 1995); P2652 (Letter from VRS Main Staff to Igman Infantry Brigade, 17 November 1994).

14633 The Chamber also does not accept Zečević's evidence that FAB-250 bombs were modified such that the solid explosive charge was removed and fuel-air explosive inserted. The Chamber finds the evidence of Anđelković-Lukić more persuasive on this matter. It is likely that Zečević simply confused the fragments of FAB-275 with the fragments of FAB-250 and thus came to the conclusion that a FAB-250 was filled with fuel-air explosive.

14634 *See* paras. 4417, 4468–4469.

14635 Dragomir Milošević, T. 32768–32769 (28 January 2013); Stanislav Galić, T. 37960 (8 May 2013); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 46; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 54; Vladimir Radojčić, T. 31236 (11 December 2012); D2412 (Witness statement of

Brennskag personally observed SRK forces launching modified air bombs into Sarajevo from Špicasta Stijena and Ilidža, respectively.[14636] Milomir Šoja also observed one such launch by the Ilidža Brigade of the SRK from the area of Kasindolska street across Energoinvest.[14637] A number of witnesses called by the Accused observed similar launches.[14638] Not all SRK Brigades had modified air bombs in their arsenal; only the Ilidža, Ilijaš, and Vogošća Brigades did, as well as the brigades that had facilites near Pretis.[14639]

4365. In addition, a large number of documents issued by the VRS Main Staff and the SRK also indicate that modified air bombs were assembled by Pretis and that their use was directed by the SRK Commander and strictly controlled by the VRS Main Staff.[14640] Pretis would assemble the aircraft bombs and rockets, some of which were obtained from the FRY.[14641] Lieutenant-Colonel

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Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30118–30120 (12 November 2012); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 14; Zoran Kovačević, T. 30613 (28 November 2012); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 17. *See also* Adjudicated Fact 2862.

14636 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2037; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 36; Per Anton Brennskag, T. 8656–8657 (29 October 2010).

14637 Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5121–5125, 5134–5146, 5152–5154, 5157–5158 (explaining that he also saw a modified air bomb in Osjek, which was under the SRK control); Milomir Šoja, T. 7211–7228 (30 September 2010); D674 (Map of Sarajevo marked by Milomir Šoja); D675 (Photograph of Sarajevo marked by Milomir Šoja); D676 (Map of Sarajevo marked by Milomir Šoja); D677 (Order of ABiH 102nd Motorised Brigade, 9 November 1993); D634 (Order of ABiH 102nd Motorised Brigade, 1 February 1994); D679 (Order of ABiH 102nd Motorised Brigade, 1 December 1993).

14638 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30090–30091 (12 November 2012); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; Mihajlo Vujasin, T. 31793–31794 (20 December 2012); Stevan Veljović, T. 29291 (23 October 2012); Nikola Mijatović, T. 30746 (30 November 2012).

14639 Stevan Veljović, T. 29290 (23 October 2012); Nikola Mijatović, T. 30746–30747 (30 November 2012).

14640 P1199 (VRS Main Staff Order, 16 June 1994); D782 (SRK Order, 4 April 1995); P1201 (SRK Order, 6 April 1995); P1782 (SRK combat report, 7 April 1995); P1316 (VRS Main Staff Order to Pretis Factory, 12 April 1994); D322 (SRK Order, 19 April 1995); P1309 (SRK Order, 21 April 1995), p. 2; P1299 (VRS Main Staff request for information from SRK, 26 April 1995); P1292 (SRK Order, 4 June 1995); P1198 (SRK Order, 16 May 1995); P1311 (Request from 1st Ilidža Infantry Brigade to SRK, 10 June 1995); P1301 (SRK request for approval of use of aerial bombs, 18 June 1995); P1280 (VRS Main Staff Order, 18 June 1995); P1302 (VRS Main Staff Order, 20 June 1995); P1284 (VRS Main Staff Order, 21 June 1995); P1303 (SRK request to VRS Main Staff, 22 June 1995); P1287 (VRS Main Staff Order, 4 June 1995); P1294 (VRS Main Staff Order, 12 June 1994); P1295 (VRS Main Staff request for information, 7 June 1995); P1298 (VRS Main Staff Order, 16 May 1995); P1312 (SRK combat report, 27 June 1995), p. 2; P1626 (Request from 1st Ilidža Infantry Brigade to SRK Command, 28 June 1995); P1300 (SRK Order, 11 July 1995); P1286 (SRK request to VJ Main Staff, 15 July 1995); P1308 (VRS Main Staff order to Pretis Factory, 20 July 1995); P1307 (VRS Main Staff order to Pretis Factory, 23 July 1995); P1314 (Request from 3rd Sarajevo Infantry Brigade to SRK, 25 July 1995); P1306 (SRK request to VRS Main Staff, 27 July 1995); P1305 (Report of 1st Sarajevo Mechanised Brigade to SRK re weapons, 5 August 1995); P1203 (SRK Order, 24 August 1995); P1315 (SRK Order, 27 August 1995); P1202 (SRK Forward Command Post 2 reports to SRK, 3 August and 3 September 1995); P1304 (SRK request to VRS Main Staff, 11 September 1995); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 94; Radovan Radinović, T. 41516 (18 July 2013); Stevan Veljović, T. 29271 (23 October 2012); David Fraser, T. 8014–8015 (18 October 2010); P5048 (Letter from Pretis Vogošća to Manojlo Milanović, 19 February 1994). *See also* Adjudicated Facts 2863 to 2871 (stating that Dragomir Milošević was directly involved in the deployment of modified air bombs and outlining a number of his orders to that effect).

14641 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 93–94, 181; Berko Zečević, T. 12193–12199, 12211–12213 (22 February 2011); P2320 (VRS

Milan Ugrešić, the Chief of Anti-Aircraft Defence in the SRK,[14642] was in charge of dealing with weapons experts who were working on the assembly of the bombs and on modifying launchers for their use.[14643]

4366. In addition to the modified air bombs themselves, the SRK also had a number of launchers produced for the specific purpose of launching such bombs.[14644] In spring of 1995, Milomir Šoja, an electrical engineer and a former Ilidža Brigade member,[14645] was asked by members of the Ilidža Brigade to go to Pretis and make certain modifications to the modified air bomb launchers.[14646] The modifications were ordered and made—despite the protest from Major Krsmanović who headed the aircraft bombs department at Pretis[14647]—in order to solve ignition problems experienced up until that point.[14648] However, Šoja's modifications were unsuccessful and Krsmanović demanded the removal of electrical components placed on the launchers.[14649] Thus, it is also clear that the SRK faced problems with modified air bomb launchers. These events also confirm Zečević's opinion, based on the photographs he inspected, that launchers used by the SRK were simple, with no capacity for precise adjustment of angles of elevation and azimuth, which in turn meant that their precision was not on par with standard rocket launchers.[14650]

4367. The Chamber also heard that the SRK decided to use modified air bombs due to the shortage of ammunition within its units and because the ABiH forces were getting stronger and

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Main Staff letter to Pretis Factory, 18 January 1995); P2321 (VRS Main Staff Order, 3 June 1995); P1277 (Request from Pretis Factory to VRS Main Staff, 10 May 1994); P1280 (VRS Main Staff Order, 18 June 1995); Ekrem Suljević, T. 5685–5686, 5692 (21 July 2010); P1286 (SRK request to VJ Main Staff, 15 July 1995); P1295 (VRS Main Staff request for information, 7 June 1995); P5064 (Decision of the VJ General Staff issued by Momčilo Perišić, 16 February 1994).

14642 Stevan Veljović, T. 29238 (23 October 2012).

14643 Dragomir Milošević, T. 32770–32771 (28 January 2013).

14644 P1283 (SRK report to VRS Main Staff, 15 June 1995); P1285 (SRK request for information, 8 June 1995); P1288 (Report of 3rd Sarajevo Infantry Brigade to SRK, 14 June 1995); P1290 (Report of Igman Infantry Brigade to SRK re weapons, 9 June 1995); P1293 (1st Ilidža Infantry Brigade report to SRK re weapons, 12 June 1995); P1295 (VRS Main Staff request for information, 7 June 1995); P1297 (Report of 1st Romanija Infantry Brigade to SRK, 10 June 1995); P6051 (SRK Order, 2 September 1995); Vladimir Radojčić, T. 31236 (11 December 2012) (testifying that Ilidža Brigade had a launcher for modified air bombs); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5125–5126 (testifying that the SRK had modified air bomb launchers in Ilidža, Ilijaš, Vogošća, and Blažuj); Zoran Kovačević, T. 30613–30614 (28 November 2012). *See also* Adjudicated Fact 2868.

14645 Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5112, 5160–5162.

14646 Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5115–5120, 5149–5151.

14647 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 1.

14648 Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5116, 5120–5121 (explaining that Krsmanović did not want the modifications to be made because he thought that bringing electrical components would make the whole system unreliable).

14649 Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5134–5144.

14650 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 95, 97–100; Emir Turkušić, T. 5689–5691 (21 July 2010); P1281 (Request from Technical

better-equipped towards the end of the conflict.[14651] In addition, Milošević explained that the SRK considered these bombs to be useful in situations which could not be resolved with smaller caliber weapons.[14652]

4368. As far as the ABiH is concerned, most of the witnesses, including some of those called by the Accused, consistently testified that ABiH did not have modified air bombs because it had no means to modify or launch aircraft bombs in Sarajevo, particularly fuel-air bombs.[14653] Milošević claimed that ABiH had air bombs at its disposal because in mid-April 1992 the special forces of the BiH MUP led by Dragan Vikić entered Pretis and took away ammunition, including a stock of general purpose aircraft bombs.[14654] In addition, according to Milošević, three air bombs landed on Vraca but did not explode, although he did not know what method was used to launch them.[14655] The Accused also put forward an audio recording of the 291st session of the BiH Presidency, held in August 1995, in which mention was made of 800 aerial bombs which were yet to arrive.[14656]

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Overhaul and Repairs Institution to Ilijaš Ironworks, 26 May 1994); P1289 (SRK request for launcher testing, 23 July 1995); P1291 (SRK Order, 10 August 1995); P1313 (SRK request for launcher testing, 23 July 1995).

14651 Dragomir Milošević, T. 32769 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 54; D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 22; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 14; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 17.

14652 Dragomir Milošević, T. 32768–32769 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 93–94; P1311 (Request from 1st Ilidža Infantry Brigade to SRK, 10 June 1995); P1626 (Request from 1st Ilidža Infantry Brigade to SRK Command, 28 June 1995).

14653 P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 38; Per Anton Brennskag, T. 8730–8732 (1 November 2010); Ekrem Suljević, T. 6174–6175 (6 September 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 63–64; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 647; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; Harry Konings, T. 9350 (7 December 2010); P2407 (Witness statement of KDZ304), pp. 19, 24; P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 183–184; Berko Zečević, T. 12181–12182, 12185–12186 (22 February 2011); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5125–5126; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 54; Mihajlo Vujasin, T. 31793 (20 December 2012); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 101.

14654 Dragomir Milošević, T. 32762–32764 (28 January 2013); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 42. *See also* Emir Turkušić, T. 9045–9046 (4 November 2010) (accepting that these forces attacked Pretis in April 1992 but testifying that they took a number of hand-held rocket launchers); KDZ020, T. 12613–12614, 12621 (1 March 2011); D2678 (Witness statement of Svetozar Stanić dated 16 December 2012), paras. 7, 22 (testifying that a lorry full of artillery shells was taken); Svetozar Stanić, T. 31708, 31714 (18 December 2012); D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 10 (providing the list of the ammunition taken, which did not include air bombs); D3065 (Witness statement of Aleksandar Vasiljević dated 26 February 2013), para. 187 (testifying that "rocket systems" were taken); D2681 (Report of Vogošća Municipal Secretariat for National Defence, 18 April 1992); D3069 (JNA 2nd Military District report, 20 April 1992).

14655 Dragomir Milošević, T. 32763–32766 (28 January 2013) (adding also that he heard at the time that the person responsible for creating those three bombs was Berko Zečević). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 59, 129 (stating that the ABiH had modified projectiles, such as modified naval bombs); D2602 (Report of 1st Ilidža Infantry Brigade, 1 April 1994).

14656 D2816 (Extract from transcript of 291st session of RBiH Presidency, 10 August 1995).

Nikola Mijatović, Chief of Security and later Chief of Staff in the Ilidža Brigade,[14657] was the only witness who testified that the ABiH had modified air bombs and stated that his knowledge on this came from a documentary he saw after the war.[14658]

4369. Based on the evidence above, the Chamber is convinced that only the SRK possessed modified air bombs of the type discussed in this part of the judgement. The evidence is clear that only the SRK had the means to modify and then launch the air bombs in their possession, while the ABiH simply lacked such means. The Chamber does not accept Milošević's evidence that Vikić and his forces took air bombs from Pretis, as none of the witnesses, including those called by the Accused, confirm this. Instead, the evidence shows that Vikić and his forces removed artillery projectiles from Pretis. Similarly, the Chamber does not believe Milošević's evidence about three air bombs that landed in Vraca, particularly since he could not explain how they were launched by the ABiH and finds Mijatović's evidence equally unpersuasive. Thus, although there is some evidence that suggests that ABiH may have had (or was waiting to obtain) air bombs in its arsenal, there is no credible evidence that it modified them in the way described above or that it used them against targets in Sarajevo.

(4) Accuracy and range of modified air bombs

4370. As noted above, the Accused argues that modified air bombs were an accurate weapon properly tested by expert engineers. In addition, according to a number of SRK soldiers and officers, modified air bombs were used exclusively against military targets and with no intention to target or terrorise civilians.[14659] Milošević suggested that the fact that only five people were killed in all the modified air bomb incidents alleged in the Indictment meant that these bombs were used selectively on non-residential targets.[14660]

4371. However, the Chamber heard a plethora of evidence indicating that modified air bombs were highly inaccurate because of the way in which they were constructed and because they were propelled by unguided rockets.[14661] The trajectory of such bombs did not follow the classic ballistic

14657 D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 11.

14658 D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 20.

14659 Dragomir Milošević, T. 32773–32775, 32781–32782 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 58; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 53; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 53, 55; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 19.

14660 Dragomir Milošević, T. 32781–32782 (28 January 2013).

14661 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 23, 86–89; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 40; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; Emir Turkušić, T. 8998–9000, 9053–9054 (4 November 2010); David Fraser, T. 8133 (19 October 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 42–44; Thomas Knustad, P123 (Transcript from *Prosecutor v. D.*

arc of an artillery round; rather, the bomb would travel until the rocket motors stopped and then it would fall down to the ground.[14662] Furthermore, the precision of modified air bombs was affected by their multiple rockets, which would not always ignite simultaneously and by the fact that the rocket motors would fire for different durations; these factors also affected the direction of the bomb.[14663] Accordingly, while the forces firing such bombs would have some idea of the direction in which the bombs would be propelled, they could not be sure of the exact location where it would eventually land.[14664] Veljović also confirmed that modified air bombs were not precise and could be off target by two kilometres, which is why the SRK forces were authorised to use them only outside of the urban areas.[14665] In fact, according to Veljović, because these bombs were "completely inaccurate", they caused panic even among the SRK troops.[14666] In his interview with the Prosecution, Neđeljko Prstojević, the Commander of the Ilidža Crisis Staff,[14667] stated that one of the SRK unit commanders told him that another name for modified air bombs was "wherever it lands" because it was so imprecise.[14668]

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*Milošević*), T. 1990; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34–35; KDZ304, T. 10444–10445 (18 January 2011); Per Anton Brennskag, T. 8705–8706 (1 November 2010) (stating that mortars were more precise than modified air bombs); P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), p. 2 (referring to these weapons as "highly inaccurate, indiscriminate, highly destructive weapons of terror"); Zorica Subotić, T. 38477, 38480 (16 May 2013).

14662 P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 34; Per Anton Brennskag, T. 8716–8723 (1 November 2010) (stating also that the trajectory of the modified air bomb was slightly more horizontal than that of an artillery projectile); Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990 (stating that modified air bombs could travel for a maximum of 7,000 metres); Nikola Mijatović, T. 30749–30750 (30 November 2012); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 695.

14663 Emir Turkušić, T. 8998–9000 (4 November 2010); Berko Zečević, T. 12177–12178 (22 February 2011). *But see* Zorica Subotić, T. 38492–38495 (16 May 2013) (accepting that non-simultaneous ignition and/or different duration of work of the engines would affect the direction of the bomb but denying that it would result in the projectile being unstable); Mile Poparić, T. 39038–39040 (30 May 2013) (testifying that absolutely synchronous ignition was impossible but that the difference in ignition would be in milliseconds and thus would have no impact on the trajectory of the bomb); Nikola Mijatović, T. 30750 (30 November 2012).

14664 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 40; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; Emir Turkušić, T. 8998–9000 (4 November 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; Thorbjorn Overgard, P2058 (Transcript from Prosecutor v. *D. Milošević*), T. 643–644; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 42. Turkušić also added that it is "absolutely impossible" given the combination of an air bomb and the rocket motors to achieve "sufficient precision in the parallel nature [...] of the rocket motors with the axis of the air bomb" so that every deviation in the angle would lead to imprecision in the direction. Emir Turkušić, T. 8999 (4 November 2010). *See also* Berko Zečević, T. 12178–12179 (22 February 2011); Adjudicated Fact 2821.

14665 Stevan Veljović, T. 29269–29270 (23 October 2012). *See also* Nikola Mijatović, T. 30750 (30 November 2012).

14666 Stevan Veljović, T. 29270–29271 (23 October 2012).

14667 Neđeljko Prstojević, T. 12961 (8 March 2011), 13658–13660 (18 March 2011).

14668 P2516 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio); P2517 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio). Later, during his testimony in this case, Prstojević rejected the interview, arguing that his words were not interpreted correctly. Having reviewed the relevant audio portions of those interviews, the Chamber found that they were accurately interpreted and transcribed. Accordingly, the Chamber finds Prstojević's statements in the interviews to have been accurately recorded and reliable. *See* Neđeljko Prstojević, T. 13570–13577 (17 March 2011). *See also* fn. 15005.

4372. According to Zečević, the inaccuracy was to be expected because modified air bombs did not pass through any of the normal phases for the adoption of new weapon systems (which normally take five to seven years) and thus no stable production process was established.[14669] Zečević conceded that he had no proof that this was the case, but explained that based on his knowledge of procedures for testing weapons, such testing could not have been done in the BiH at the time due to wartime conditions.[14670] This was indeed confirmed by Veljović, who testified that modified air bombs were not tested, resulting in a few deaths among the firing crews.[14671]

4373. On the other hand, all three Defence experts argued in their joint report that Zečević could not be sure that modified air bombs were not tested.[14672] When asked how long it would have taken the VRS to develop a modified air bomb, Poparić speculated that three years would have been enough because it was an integration of two properly tested weapons.[14673] Further, Šoja testified that he heard of a testing exercise in an area where there were no residential buildings.[14674] Sometime in 1994, Mihajlo Vujasin, Chief of Engineers in the SRK,[14675] also observed a testing exercise of a modified air bomb in Nišići Plateau, which was unsuccessful as the bomb failed to launch due to rocket motors failing to ignite.[14676] Radojčić testified that both "the missile engines and the whole aerial bomb kit were tested" in Kalinovik, following which his brigade received

14669 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 91, 96; Berko Zečević, T. 12180–12181 (22 February 2011). *See also* Mirjana Anđelković-Lukić, T. 31493–31498, 31504–31506 (14 December 2012) *and* D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p. 76, which both confirm that testing usually takes five to seven years.

14670 Berko Zečević, T. 12220–12229 (23 February 2011).

14671 Stevan Veljović, T. 29270–29271, 29286 (23 October 2012).

14672 D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 74–75 (the exception being 122 mm GRAD rockets which were produced in Russia).

14673 Mile Poparić, T. 39041–39044, 39051–39052 (30 May 2013).

14674 Milomir Šoja, T. 7217–7218 (30 September 2010).

14675 D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 11–13.

14676 D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; Mihajlo Vujasin, T. 31793–31794 (20 December 2012). *See also* D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21 (explaining that he saw modified air bombs for the first time in the latter part of 1994 at the Nišići plateau); Savo Simić, T. 30090 (12 November 2012).

"temporary firing tables".[14677] Zečević himself acknowledged that there probably existed some "basic firing tables" for firing conditions of the rocket motors.[14678]

4374. Whether tested or not, Zečević claimed that none of the three types of modified air bombs was designed for firing at individual targets as they could only be used for firing at "area targets with lengths and widths of hundreds of meters".[14679] Additionally, these bombs were very sensitive to cross-winds, changes in the impulse of the rocket engines, and air temperature changes.[14680] Finally, all three types of modified air bombs would ricochet if the impact angle was less than 25 degrees.[14681] Thus, according to Zečević, the use of these bombs in urban areas would inevitably lead to civilian casualties.[14682] Similarly, a number of UN witnesses thought that modified air bombs had no military value as they were an indiscriminate weapon that had more detrimental effects on civilians and infrastructure,[14683] and that its use in Sarajevo was inappropriate,

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14677 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; Vladimir Radojčić, T. 31249–31250, 31252–31253 (11 December 2012) (explaining that he did not know what kind of testing was done and/or how many times the modified air bombs were fired during that testing), T. 31262–31266 (12 December 2012); P6040 (Excerpt from M-63 Plamen fire tables). When asked if he had the temporary firing tables in his possession, Radojčić responded that only the chief of artillery of Ilidža Brigade had them. Vladimir Radojčić, T. 31250–31251 (11 December 2012). *See also* Savo Simić, T. 30096–30100 (12 November 2012) (who also testified that he saw such firing tables for the modified air bombs); Stevan Veljović, T. 29285 (23 October 2012).

14678 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 95.

14679 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 77–80, 86; Berko Zečević, T. 12179–12180 (22 February 2011), T. 12220 (23 February 2011). According to Zečević, the modified FAB-100 could only target an area measuring 500 metres by 200 metres, on the condition that no changes were made to the rocket motors and that firing was done in salvos. As for the FAB-250, it was only possible to target an area measuring 600 metres by 250 metres, so long as the same conditions mentioned above applied. *See* P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 79–80. *See also* P1309 (SRK Order, 21 April 1995), p. 2 (showing that the SRK Commander at the time, Dragomir Milošević, recognised that salvos of fire would be needed to hit the target using a modified air bomb); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995) (indicating that the SRK refrained from launching a modified air bomb at a certain target because UN soldiers were some 200 metres from the target and SRK troops were 500 metres from that target); Emir Turkušić, T. 5712–5713 (22 July 2010); Dušan Škrba, T. 29160–29161 (22 October 2012). *But see* D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 72–73 (challenging the area measurements on the ground that they were taken out of context and do not represent the characteristics of an rocket artillery system). *See also* Dragomir Milošević, T. 33165–33166 (4 February 2013), T. 33185–33186 (5 February 2013) (explaining that his order in P1309 was a question of terminology and that it was impossible to carry out given that only one modified air bomb could be launched at a time, after which two hours were needed to prepare for the next launch).

14680 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 77–80; Zorica Subotić, T. 38470–38473 (16 May 2013).

14681 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 81–84, 87.

14682 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 88. *See also* Mirjana Anđelković-Lukić, T. 31500–31502 (14 December 2012) (testifying that modified air bombs are to be used on lightly fortified targets, such as bunkers and other fortified enemy facilities).

14683 David Fraser, T. 8010–8011 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 63–64; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 643–644; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 35; Thomas Knustad, P123

particularly given that the city was populated by civilians and that civilian houses were everywhere.[14684]

4375. Dragomir Milošević, on the other hand, claimed that the weapon experts working on modified air bombs perfected their design such that the bombs were precise and could pinpoint and hit a target.[14685] He also argued that making these bombs precise was essential because they were fired from behind the SRK lines and over Serb residential areas.[14686] Radojčić also testified that the precision of the modified air bombs was "satisfactory" as shown by the testing done in Kalinovik and that the deviation range in these bombs was, on average, 10 metres per 1,000 metres.[14687] According to Savo Simić, Chief of Artillery of the 1st Sarajevo Mechanised Brigade of the SRK,[14688] there was almost no deviation in the trajectory of the modified air bombs.[14689] Zečević claimed, however, that modifications made on the FAB-100 and FAB-250 at the Pretis Factory, as shown by documents found there in early 1996, fell well below the professional standards of Pretis and were inferior in comparison to the modifications made to the bomb based on ODAB-500.[14690] This meant that it was in fact impossible to fire FAB-100 and FAB-250 modified air bombs in accordance with any firing tables.[14691]

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(Transcript from *Prosecutor v. D. Milošević*), T. 1990, 1992. *But compare* KDZ477's evidence to the effect that, being an anti-personnel weapon, mortar shells would cause more casualties due to the fragmentation of the shell. On the other hand, modified air bombs would cause more damage to physical structures. P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 31–33; KDZ477, T. 10949–10950 (31 January 2011).

14684 Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1992.

14685 Dragomir Milošević, T. 32773 (28 January 2013) (stating that the testing was done in Kalinovik), T. 33185–33186 (5 February 2013) (stating that modified air bombs were more accurate than air bombs dropped from the planes). *See also* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 54.

14686 Dragomir Milošević, T. 32773–32774 (28 January 2013), 33150–33151 (4 February 2013). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18.

14687 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; Vladimir Radojčić, T. 31249–31250, 31252–31253 (11 December 2012) (explaining that he did not know what kind of testing was done or how many times the modified air bombs were fired during that testing), T. 31262–31266 (12 December 2012); P6040 (Excerpt from M-63 Plamen fire tables). When asked if he had the temporary firing tables in his possession, Radojčić responded that only the chief of artillery of Ilidža Brigade had them. Vladimir Radojčić, T. 31250–31251 (11 December 2012). *See also* Savo Simić, T. 30096–30100 (12 November 2012) (who also testified that he saw such firing tables for the modified air bombs).

14688 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

14689 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30090–30091, 30096–30099, 30106–30112 (12 November 2012) (explaining that he based his opinion on the accuracy of modified air bombs on the fact that he observed them being used twice). *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18, Nikola Mijatović, T. 30750 (30 November 2012) (testifying that if the rocket motors were checked and working properly, which they were, there was a chance of only a minimal deviation in the trajectory due to meteorological conditions).

14690 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 74–75, 86–87, 91–92, 94 (explaining, among other things, that for FAB-250 the stabilising fins were fixed to rocket engines in an unstable way and the fins themselves were substandard).

14691 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 76–77.

4376. Subotić also claimed that modified air bombs were accurate and based this claim on her analysis of 16 modified air bomb incidents in Sarajevo, whereby she compared the locations at which the bombs landed with what she thought were the most likely targets, assuming that each bomb had an average range of 6,000 metres.[14692] She concluded that in all incidents but one, the projectiles met the "general exterior ballistics demands for unguided rockets".[14693] She conceded, however, that for any rocket-assisted projectile firing tables are necessary to hit the target.[14694] In terms of the rockets themselves, she agreed that they were not designed for a simultaneous launch but thought that rocket motors on a modified air bomb launched "almost" simultaneously.[14695] She also conceded that general purpose aircraft bombs were designed and tested for air-to-surface delivery, rather than surface-to-surface delivery, but then argued that there was not much difference between those bombs and mortar bombs in terms of their design.[14696] She also agreed that for the modified air bomb to be accurate it was vital that each rocket was parallel to the longitudinal axis of the air bomb.[14697]

4377. Finally, she agreed that modified air bombs, including their rocket motors and the launchers, would have to be thoroughly tested before they were approved for use and conceded that she never participated in any such testing or saw any such test data for modified air bombs.[14698] She denied that in her analysis of the incidents she simply combined the available testing data for aircraft bombs with the data for rockets and attempted to fuse those into one set of data for modified air bombs.[14699]

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14692 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 187–189; Zorica Subotić, T. 38533–38535 (21 May 2013). On cross-examination, Mile Poparić, who co-authored Subotić's report, conceded that these calculations were made based on the assumption that the modified air bombs were fired six kilometres away from the target. He also explained that this was close to the maximum range for those bombs. Mile Poparić, T. 39022–39033 (30 May 2103); P6346 (Excerpt from Military Lexicon, 1981).

14693 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 189; Zorica Subotić, T. 38229–38230 (14 May 2013) (testifying that according to her analysis 44% of the bombs hit what she thought was the intended target).

14694 Zorica Subotić, T. 38472–38473 (16 May 2013), T. 38523 (21 May 2013).

14695 Zorica Subotić, T. 38480–38484 (16 May 2013), T. 38639–38642 (22 May 2013) (explaining that ignition of multiple rocket motors will differ only in milliseconds).

14696 Zorica Subotić, T. 38478–38479 (16 May 2013). In this regard, Subotić contradicted Poparić who thought that rocket motors on the air bomb essentially turned it into a rocket projectile rather than a mortar. *See* para. 4358. *See also* Mirjana Anđelković-Lukić, T. 31499, 31514–31515 (14 December 2012) (confirming that aircraft bombs were designed to be launched from an aircraft).

14697 Zorica Subotić, T. 38521–38522 (21 May 2013); P6326 (Photograph of four rockets attached together).

14698 Zorica Subotić, T. 38522–38525, 38527–38532 (21 May 2013) (testifying also that she did see some documents which indicated that launchers were sent for testing). Subotić also confirmed that Pretis was testing rocket motors on behalf of the SRK. Zorica Subotić, T. 38634–38637 (22 May 2013); D3559 (Notification of VRS Main Staff Technical Department, 26 July 1995). *See also* Mile Poparić, T. 39052–39054 (30 May 2013).

14699 Zorica Subotić, T. 38526–38528 (21 May 2013).

4378. As for the range of modified air bombs, Zečević determined[14700] that if launched at 45 degrees, the maximum range of the FAB-100 and FAB-250 is 5,560 and 7,680 metres respectively.[14701] As noted above, Subotić assumed that the average range of modified air bombs was 6,000 metres.[14702] Ratomir Maksimović, the Chief for Morale in the SRK Command,[14703] testified that modified air bombs had a range of one to two kilometres.[14704]

4379. Having considered the evidence above, the Chamber is convinced that modified air bombs which were used in Sarajevo by the SRK were an inherently inaccurate weapon system and, as such, were not capable of targeting specific targets but only large areas. This is shown not only by witnesses who testified to that effect but also by the SRK's own documents indicating that the SRK was fully aware of the weapon's inaccuracy.[14705] Indeed, even Veljović spoke of the panic the use of this weapon would produce among the SRK forces located in its flight path. The witnesses who testified to the contrary were SRK soldiers and officers, including Milošević, all of whom had a personal interest in minimising the danger these bombs posed to both the civilian population and their own troops. The Chamber therefore rejects their evidence on the accuracy of modified air bombs as unconvincing and marked by bias.

4380. While some test launches of modified air bombs were conducted by the SRK and its ballistics experts, the Chamber is of the view that they were inadequate as far as ensuring the necessary precision and optimal performance of the weapon was concerned. Given that all expert witnesses agreed that adequate testing of a new weapon system would take around five to seven years, any testing that was performed was obviously rushed and therefore deficient. The Chamber also rejects Poparić's evidence that three years of testing would have been sufficient to ensure the accuracy of this weapon system. Furthermore, even if correct, there is no evidence that the SRK did in fact spend three years doing so. Instead, the Chamber received evidence of only a few occasions on which modified air bombs were tested, sometimes unsuccessfully. The Chamber

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14700 Zečević made this determination on the basis of the "nominal parameters of the rocket and the rocket motors, and a standard atmosphere with no wind". *See* P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 81.

14701 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 81–85 (stating also that the range would depend on the type of rocket motors used on the modified air bomb).

14702 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 55, 67, 187; Zorica Subotić, T. 38488–38489 (16 May 2013).

14703 Ratomir Maksimović, T. 31569–31571 (17 December 2012).

14704 D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53.

14705 *See* P1309 (SRK Order, 21 April 1995), p. 2 (showing that the SRK Commander at the time, Dragomir Milošević, recognised that salvos of fire would be needed to hit the target using a modified air bomb); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995) (indicating that the SRK refrained from launching a modified air bomb at a certain target because UN soldiers were located 200 metres from the target while the SRK troops were 500 metres from that target).

further notes that these few testing occasions took place in wartime conditions, which would not have been an ideal environment for adequate testing, in turn raising doubt as to the reliability of the testing results. Finally, while some firing tables may have been produced to aid the SRK troops in launching modified air bombs, the Chamber does not consider that their existence made modified air bombs precise.

(5) Damage caused by modified air bombs

4381. The quantity of explosive in modified air bombs was much higher than in mortar shells and thus its purpose was to be destructive, in contrast to the mortar shells the purpose of which is to kill personnel with shrapnel.[14706] Zečević explained that standard 250 kilogram aircraft bombs with solid TNT explosive will produce a crater that is between 1.8 and 3 metres deep, with a radius of anywhere between seven and 12 metres, depending on the fuse and the weight of the bomb used.[14707] When they detonate, the primary effects will be caused by the blast wave and the kinetic energy of fragments.[14708] On the other hand, when fuel-air bombs detonate, they do not create a crater and their primary effect is a lower intensity but longer lasting blast wave, with less fragmentation.[14709] Accordingly, if human targets are in the open without any barriers shielding them, the bombs with solid TNT explosive charges would be more efficient at "destroying" them, while the fuel-air bombs would be better at "destroying" human targets hidden in the bunkers or tunnels.[14710] Anđelković-Lukić explained that in case of solid TNT charges, the wounds inflicted on the human body come from shrapnel and thus resemble those inflicted by bullets, whereas fuel-

14706 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 37; Ekrem Suljević, T. 5728 (22 July 2010), T. 5727–5728 (22 July 2010) (explaining that sometimes, a big aerial bomb would be referred to as "krmača" (meaning a "female pig"), exactly because it was intended for destruction); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5147–5148; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; P2407 (Witness statement of KDZ304), p. 18; KDZ304, T. 10444–10447 (18 January 2011); Dragomir Milošević, T. 33149–33150 (4 February 2013); Vladimir Radojčić, T. 31249 (11 December 2012); Stevan Veljović, T. 29270 (23 October 2012); Nikola Mijatović, T. 30745 (30 November 2012); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 102. *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 64 (stating that modified air bombs were much larger than mortars and that they were psychologically devastating for the people in Sarajevo).

14707 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 41; Berko Zečević, T. 12201–12202 (22 February 2011).

14708 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 48, 103–105; Berko Zečević, T. 12182–12186 (22 February 2011) (explaining that the explosion of a FAB-250 bomb will produce over 7,000 fragments with a mass greater than five grams and a range greater than 150 metres). *But see* D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 6, 16 (challenging Zečević's evidence here on the basis that he did not indicate where the analysis of the fragments came from). However, the Chamber notes that Zečević clearly indicates in his report, at page 49, that he made this calculation on the basis of the Mott method.

14709 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 103–105; Berko Zečević, T. 12183, 12201–12202 (22 February 2011), T. 12230–12232 (23 February 2011); Mirjana Anđelković-Lukić, T. 31484 (14 December 2012).

14710 Berko Zečević, T. 12183–12184, 12202–12203 (22 February 2011). *See also* Adjudicated Fact 2820.

air bomb injuries happen due to the blast effect of the cloud; this latter blast can can cause the heart to stop or force the eyes from their sockets, in addition to causing burns and injuries to the internal organs as a result of the pressure of the blast.[14711]

4382. Fraser testified that an air bomb of 250 kilograms landing on a concrete or brick apartment building might punch a hole in the building but would do little to no damage to an apartment block; however, it would probably have a much greater effect on a brick and mortar house, and if it landed on the ground, it would have a great impact because it would send up shrapnel and fragments, and would create a large crater.[14712] According to Konings, modified air bombs had a 50-60 metre radius of destruction and could destroy a complete block of offices.[14713]

4383. Given the large quantity of explosive the modified air bombs contained, the Chamber finds that they were extremely destructive and as such capable of causing large craters and great damage to the surrounding buildings. Given that they were not an anti-personnnel weapon, the Chamber also does not consider that they would necessarily result in a high number of casualties, unless a fuel-air bomb was used.

(6) Investigations of modified air bomb incidents

4384. BiH MUP and UN investigators investigated incidents involving modified air bombs to determine the type of bomb used and the trajectory.[14714] Whether or not a modified air bomb was used could be determined by examining the crater, which would often contain parts of the rocket engines.[14715] An adapting plate connecting the aircraft bomb to the rocket motors was also often found at the site of the explosion.[14716] Other factors that would assist investigators in determining

14711 Mirjana Anđelković-Lukić, T. 31483–31484 (14 December 2012).

14712 David Fraser, T. 8132 (19 October 2010).

14713 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42.

14714 Ekrem Suljević, T. 5737 (22 July 2010); P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 37; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634. *See also* Adjudicated Fact 2895. Because there was a period where a large number of incidents involved modified air bombs, CSB Sarajevo conscientiously collected, documented, and recorded the fragments of those bombs and deposited them in a room which with time became overloaded. *See* Emir Turkušić, T. 8998 (4 November 2010); KDZ477, T. 10950 (31 January 2011). *See also* P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 48.

14715 P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 34; Per Anton Brennskag, T. 8657 (29 October 2010); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 175. In most cases involving air-bombs investigated by Suljević, there were four rocket motors attached to the bomb to carry it to the point of impact. *See* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 38; KDZ477, T. 10952–10953 (31 January 2011).

14716 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 38. Suljević used literature about the 250-kilogram aerial bomb to find the diametre of that bomb and then compared this to the diametre of the adapter plate which was often found at the scene of an incident. This in turn enabled him to identify the type of the aerial bomb used. *See* Ekrem Suljević, T. 5725–5727 (22 July 2010).

whether an explosion was caused by a modified air bomb was the scale of destruction, the type of fuse used (if located), and the presence of shrapnel.[14717]

4385. During their investigations, Suljević and his colleagues did not calculate the impact velocity of these bombs and instead arrived to their conclusions on the basis of fragments found at the incident sites and the damage caused there.[14718] They did not calculate the angle of descent as they did not have the necessary resources and there would be no point given that the bombs were propelled by rocket motors.[14719] However, it was possible to determine the direction from which the modified air bomb came by analysing the crater using the central axis method and by analysing the pattern of the fragments in the crater.[14720] In addition to the central axis method, which for modified air bombs had a margin of error of plus or minus ten degrees,[14721] in some cases it was possible to determine the direction of fire on the basis of the position of embedded rocket motors, as they would face the from which they came.[14722] On occasion, direction of fire was also determined through the statements of witnesses who saw the modified air bomb flying low or heard the distinct sound of its rocket motors.[14723]

4386. As noted earlier, the Chamber generally gave considerable weight to the CSB Sarajevo and UN reports when analysing the scheduled shelling incidents.[14724] In doing so, the Chamber was constantly cognisant of the shortcomings of investigations conducted during the war. Whenever issues arose with respect to particular reports, they were considered by the Chamber in relation to each particular incident. Accordingly, as stated earlier, while finding this type of evidence to be generally reliable and credible, the Chamber approached it as one piece of the puzzle assessed against the totality of evidence tendered in relation to each incident.

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14717 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 50.

14718 Ekrem Suljević, T. 5722–5723, 5725 (22 July 2010) (explaining that he had an occasion to see an unexploded 250-kilogram modified air bomb during one of the investigations and that, following the war, he saw photographs of such 250-kilogram bombs).

14719 Ekrem Suljević, T. 6171–6172 (6 September 2010).

14720 P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34, 45.

14721 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 25.

14722 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; Ekrem Suljević, T. 6170–6171 (6 September 2010); P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), p. 1; P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 175, 178–179.

14723 P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 6–7; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990; P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp 170–173. *See also* P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34, 52; Per Anton Brennskag, T. 8656–8657 (29 October 2010), T. 8714, 8716 (1 November 2010) (stating that modified air bombs also had a smoke trail coming out of the rocket engines); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5171–5174 (explaining that he heard the sound of modified air bombs coming from the SRK controlled area of Poljane at Mt. Igman).

14724 *See* paras. 3632, 4009.

(7) Bosnian Serb leadership and modified air bombs

4387. As addressed earlier in Section IV.B.1.a, during the ABiH offensives, the Accused indicated to Smith that a decision had been made to start a counter-offensive and that the Bosnian Serbs would employ weapons they had not used before.[14725]

4388. On 17 June 1995, Momčilo Krajišnik called Milorad Motika, the Director of Pretis at the time, to inquire about the availability of modified air bombs and whether Motika could arrange their purchase from the Krušik factory,[14726] located in Valjevo, Serbia.[14727]

4389. On 20 June 1995, the Accused issued a decision establishing a team within the state committee for the procurement for armed forces, which included Mirko Krajišnik and Momčilo Mandić, whose task was to transfer the "relevant means" from the FRY and place them in a number of previously agreed upon locations.[14728] Dragomir Milošević testified, however, that he and the Accused never discussed modified air bombs nor was the issue discussed in any meeting attended by the Accused.[14729]

(8) Scheduled incidents involving modified air bombs

(a) Alekse Šantića street, Hrasnica, 7 April 1995 (Scheduled Incident G.10)

4390. The Indictment alleges that on 7 April 1995, a modified air bomb fired from the SRK-held territory in Ilidža hit a residential area in Hrasnica at the foot of Mt. Igman, killing one person and injuring three others, as well as destroying one dwelling while severely damaging 11 others.[14730] The Accused argues that the modified air bomb, a FAB-100 filled with solid explosive, was fired by the SRK in response to the violation of the truce then in force by the ABiH and that the intended

14725 Rupert Smith, T. 11344–11346 (8 February 2011); P2260 (UNPROFOR report re meeting with Radovan Karadžić, 5 April 1995), paras. 9–10, 14.

14726 Krušik Factory in Valjevo was a special purpose factory that produced artillery ammunition. D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43.

14727 P5653 (Intercept of conversation between Milorad Motika and Momčilo Krajišnik, 17 June 1995). While Momčilo Krajišnik denied that the conversation was about modified air bombs specifically and stated that he was simply asking for a bigger weapon to be used in retaliation in Visoko, the Chamber finds his denials in this respect false and is convinced that the conversation concerned modified air bombs, as illustrated by Motika's reference to all rocket motors having been attached to a "250". Momčilo Krajišnik, T. 43905–43911 (20 November 2013), T. 43951–43953 (21 November 2013).

14728 P2322 (Radovan Karadžić Decision, 20 June 1995).

14729 Dragomir Milošević, T. 33300 (6 February 2013). *See also* Stevan Veljović, T. 29284 (23 October 2012).

14730 Indictment, Scheduled Incident G.10. *See also* Prosecution Final Brief, para. 73.

target was the Alekse Šantića School located approximately 20 metres from the dwelling that was destroyed.[14731]

4391. Hrasnica is a civilian settlement located south of the Butmir airport at the foot of Mt. Igman.[14732] It was in the ABiH zone of responsibility during the war, under the control of the 4th (later the 104th) Motorised Brigade of the ABiH, commanded by Fikret Prevaljak.[14733] Slightly north of Hrasnica, but south of Butmir, is Sokolović Kolonija, also in the zone of responsibility of the 4th Motorised Brigade.[14734] This ABiH brigade was also deployed on Mt. Igman.[14735]

4392. To the northwest of Hrasnica is Ilidža, which was under the control of the SRK during the war, more precisely the Ilidža Brigade.[14736] Famos Factory is located to the east of Hrasnica, and was on the confrontation line, but under the control of the 2nd Sarajevo Light Infantry Brigade commanded by Milorad Šehovac.[14737]

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14731 Defence Final Brief, paras. 2359–2362.

14732 *See* Adjudicated Fact 3035; P1792 (Map of Hrasnica).

14733 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 16; Vladimir Radojčić, T.31257 (11 December 2012); D2591 (Map of Sarajevo marked by Vladimir Radojčić); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 15; D2649 (Map of Sarajevo marked by Milorad Šehovac); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634, 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10030 (16 December 2010); David Fraser, T. 8011 (18 October 2010); Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32784 (28 January 2013), T. 32786–32787, 32790 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2765 (Witness statement of Ilija Miščević dated 26 April 2012), para. 3; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25; Stanislav Galić, T. 37164, 37174–37175 (15 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); Asim Džambasović, T. 15236 (22 June 2011) (testifying that the 4th Motorised Brigade later merged with the 10th Mountain Brigade and the Pazarići Brigade, forming the 14th Division based outside of the city but still within the 1st Corps). *See* Adjudicated Fact 2825.

14734 Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32792 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 16; Vladimir Radojčić, T.31257 (11 December 2012); D2591 (Map of Sarajevo marked by Vladimir Radojčić).

14735 Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32791–32792 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 17; P5981 (SRK Order, 26 June 1993); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 17.

14736 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 14; D2589 (Map of Sarajevo marked by Vladimir Radojčić). *See also* para. 3787.

14737 Ekrem Suljević, T. 6151 (6 September 2010); Dragomir Milošević, T. 32787–32789 (29 January 2013), T. 33179–33180 (5 February 2013); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 2, 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac); D2903 (SRK combat report, 25 May 1995); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard).

4393. Thorbjorn Overgard, an UNMO stationed in Hrasnica between October 1994 and May 1995,[14738] testified that Hrasnica was essentially surrounded by the SRK forces and was exposed to shelling and sniping incidents on a daily basis.[14739] According to him, the UNMOs in the area investigated a number of such incidents and established in all instances that the fire had come from SRK-held territory.[14740]

4394. Overgard further testified that the 4th Motorised Brigade of the ABiH had (i) one company headquarters in Hrasnica, close to the confrontation lines with Ilidža;(ii) the brigade command further east, in the centre of Hrasnica; and (iii) four mortars positioned in Kovači, not far from the company headquarters.[14741] While Radojčić also testified that the 4th Motorised Brigade's command was in the centre of Hrasnica, he stated that it was located in the post office building, which he identified as being in a different location to the location marked on the map by Overgard.[14742] Ilija Miščević, a resident of Hrasnica during the war, confirmed that the command of the 4th Motorised Brigade was located in the post office, but placed the post office building in a location further west of the location marked by Radojčić.[14743] In addition, the Accused also tendered, through Radojčić, an official note from Ilidža Brigade dated 16 March 1995, which seemed to suggest that the brigade's headquarters had moved to Sokolović Kolonija by that time.[14744]

4395. The Chamber further heard that the ABiH was digging a tunnel under Butmir with the exit in Sokolović Kolonija, which was often targeted by the SRK forces, and that both civilians and the

14738 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 631–634, 667–669; P2062 (Map of Hrasnica marked by Thorbjorn Overgard).

14739 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634–636, 638–639. Miščević also confirmed that Serbs opened fire on Hrasnica on a daily basis. *See* Ilija Miščević, T. 32088–32089 (17 January 2013).

14740 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634–636, 638–639, 648–650; Thorbjorn Overgard, T. 10027–10029, 10043–10056, 10063 (16 December 2010) (conceding that the team was not able to determine the precise origin of fire, only the direction and the general area from which the fire came).

14741 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634, 641–642, 681–683, 689; P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10030–10031 (16 December 2010). *See also* Ekrem Suljević, T. 6151–6152 (6 September 2010); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25; Nikola Mijatović, T. 30747–30749 (30 November 2012). According to Šehovac, there was no exclusively civilian zone in Hrasnica. D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 23.

14742 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 20; D2590 (Map of Hrasnica marked by Vladimir Radojčić); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994). *See also* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 21; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25.

14743 D2765 (Witness statement of Ilija Miščević dated 26 April 2012), para. 3; D2766 (Map of Hrasnica marked by Ilija Miščević); Ilija Miščević, T. 32078–32082 (17 January 2013). Miščević testified that the location marked by Radojčić as the post office was in fact the community centre in Hrasnica, where food was served for both the residents of Hrasnica and the troops. *See* Ilija Miščević, T. 32085–32086, 32090–32091 (17 January 2013).

14744 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 141; D2614 (1st Ilidža Infantry Brigade official note, 16 March 1995).

ABiH used the road between Mt. Igman and Hrasnica, referred to as the "Blue" or "Convoy" road.[14745] Furthermore, according to the evidence, ABiH soldiers going to their positions on Mt. Igman would have to pass through Hrasnica.[14746]

4396. In April 1995, Ziba Šubo was living with her husband Zemir, twin sons Elmir and Elvir, daughter Emira Brajlović, and grandson Elvis Brajlović in a two-storey house at Alekse Šantića street, number 1, in Hrasnica.[14747] On 7 April 1995, around 8:50 a.m., a projectile exploded at the house.[14748] The projectile injured her and killed her cousin, Ziba Čustović, who was sitting in front of the house in Šubo's courtyard in which she lived.[14749] Present in the house at the moment of the explosion were Šubo's two teenage sons and her grandson, all of whom survived the incident.[14750] Following the explosion, Šubo saw that her 11 year old grandson was bleeding.[14751] Šubo's husband, who was involved with "Civilian Protection", was not at home at the time of the explosion, neither was her daughter, who was a "member" of an ABiH brigade.[14752]

4397. Following the explosion, Šubo was taken to hospital, treated for her injuries, and released on the same day.[14753] Six months after the incident, she still suffered back and arm pain as a result of this incident, as well as high blood pressure, and one of her sons continued to have problems with hearing.[14754] Because their house was completely demolished, the family stayed in a field near

14745 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 650–651, 687 (explaining that the road was used for bringing supplies to Hrasnica and Sarajevo, but also to transport ABiH forces); Thorbjorn Overgard, T. 10060–10063 (16 December 2010); David Fraser, T. 8011–8012 (18 October 2010); P1782 (SRK combat report, 7 April 1995), p. 3; Dragomir Milošević, T. 32791, 32797–32801 (29 January 2013); D2818 (Order of ABiH Supreme Command Staff, 7 November 1992); D4620 (SRK Report, 24 July 1993).

14746 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 685–687; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2774, 2776; Dragomir Milošević, T. 32783–32784 (28 January 2013), T. 32786–32787, 32791, 32797–32798 (29 January 2013).

14747 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7; P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). *See also* Adjudicated Fact 3033.

14748 KDZ166, T. 8266–8267 (20 October 2010); P1792 (Map of Hrasnica); P1796 (Sketch re shelling of Hrasnica on 7 April 1995). *See also* Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 664–665; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 100; Martin Bell, T. 9906 (15 December 2010); D2765 (Witness statement of Ilija Miščević dated 26 April 2012), para. 10; Ilija Miščević, T. 32076–32077 (17 January 2013).

14749 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 7; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2772–2773, 2775–2776; P1536 (Death certificate of Ziba Čustović). *See also* Adjudicated Facts 3034, 3038.

14750 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 7–8.

14751 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8.

14752 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 8.

14753 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8. *See also* Adjudicated Fact 3036.

14754 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8. *See also* Adjudicated Fact 3036.

their house for seven days after the explosion, following which they were given an apartment by her daughter's brigade.[14755]

4398. She also explained that, in the year and a half prior to the incident, there had been a lot of shelling in Hrasnica, often preventing her and her family from leaving their house and that about four shells had impacted within 100 metres of her garden.[14756]

4399. KDZ166, a criminal technician in CSB Sarajevo, was a member of the team that investigated this incident on the day it happened.[14757] He prepared a sketch of the scene, took photographs, and prepared an on-site investigation report.[14758] He testified that Šubo's house was completely demolished by the explosion while 11 surrounding houses were "rendered roofless",[14759] and that the projectile was a modified air bomb fired from the northwest, where Ilidža is located.[14760] He explained that the team came to this conclusion based on the statement provided by an eye-witness who saw "where the projectile was fired from" and "saw it flying and dropping".[14761] The report itself notes that "according to the witnesses", the projectile was fired from "a truck located in the area of the rug weaving factory in Ilidža" and that the "truck left the factory area, fired a projectile and returned to the factory."[14762] KDZ166 also explained that the air bomb struck the house and then detonated inside the house, which caused it to collapse "like a pile of cards".[14763]

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14755 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2772–2774; P465 (Photograph of a collapsed house); P466 (Photograph of a collapsed house). *See also* Adjudicated Fact 3034.

14756 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7.

14757 KDZ166, T. 8267 (20 October 2010), T. 8370 (26 October 2010); P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 3.

14758 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 3–5; KDZ166, T. 8375–8376 (26 October 2010); P1796 (Sketch re shelling of Hrasnica on 7 April 1995); P1794 (Photographs re shelling of Hrasnica on 7 April 1995); P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995); D817 (Sketch re shelling of Hrasnica on 7 April 1995).

14759 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 5–6; P1794 (Photographs re shelling of Hrasnica on 7 April 1995); P1810 (Video footage of shelling incident site in Hrasnica); KDZ166, T. 8268 (20 October 2010). *See also* Adjudicated Fact 3039.

14760 KDZ166 explained that he made a mistake in his report when he referred to the direction of fire as being "southwest" but observed that in the report he also refers to fire coming from Ilidža, meaning that it came from northwest rather than southwest. He confirmed on cross-examination that the projectile flew over the secondary school in Hrasnica. KDZ166, T. 8269–8272 (20 October 2010); P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 1.

14761 KDZ166, T. 8271 (20 October 2010).

14762 P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 2.

14763 KDZ166, T. 8372–8373 (26 October 2010).

4400. According to KDZ166's report, one person, Ziba Čustović, was killed in the incident while three people, Ziba Šubo, Šerif Brajlović, and Gara Sarajkić, were wounded.[14764]

4401. Overgard and another UNMO who, by virtue of being stationed near the incident site, heard the explosion went to the scene immediately.[14765] Once there, they observed a totally demolished house and human legs in a camouflage uniform, protruding under the rubble, as well as a number of other damaged houses.[14766] At that point, the Commander of the 4th Motorised Brigade came to the scene and instructed the UNMOs to go to their base where they were guarded by ABiH soldiers; they were eventually allowed to return to the scene the next day when they conducted their own investigation and consulted with the local ballistics experts.[14767] The next day they went to the morgue and confirmed that one woman died in the incident.[14768] Overgard was told by the local authorities that the legs he saw belonged to a soldier who was wounded but did not die in the incident, which he found difficult to believe.[14769]

4402. Following their investigation, the UNMOs reported that the projectile that fell on Šubo's house was a modified air bomb fired from a truck in Ilidža on the Serb-held side of the confrontation line.[14770] They determined the direction and the origin of fire on the basis of eye-witnesses they spoke to who were on Mt. Igman and who saw and heard the bomb being launched, as well as through traces on the scene, particularly the fact that all the windows in the direction

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14764 P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 1. *See* Adjudicated Fact 3038. While the report refers to a "Šerif Brajlović" as one of the injured victims in this incident, the Chamber recalls Šubo's evidence that her 11 year old grandson, Elvis Brajlović, was bleeding following the explosion. She made no mention of "Šerif" being present. Accordingly, the Chamber considers this reference to a "Šerif" in the report to be a mistake.

14765 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 632–633, 641, 664–669; P2062 (Map of Hrasnica marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10033 (16 December 2010).

14766 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 641, 644–647, 666–667, 674–676; P2060 (Photographs re shelling of Hrasnica on 7 April 1995); P2059 (UNMO report, 10 April 1995), Annex A; Thorbjorn Overgard, T. 10034 (16 December 2010).

14767 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 641–642, 662–663, 667–674 (explaining that after he and his colleague went back to the UNMO base, three ABiH soldiers guarded the house and prevented them from leaving); Thorbjorn Overgard, T. 10033–10035 (16 December 2010).

14768 Thorbjorn Overgard, T. 10036 (16 December 2010) (conceding that he did not see the dead woman's body on the day of the incident but noting also that the scene was chaotic); P2059 (UNMO report, 10 April 1995), para. 1; D934 (Excerpt from Thorbjorn Overgard's testimony in *Prosecutor v. Perišić*), T. 2977.

14769 Thorbjorn Overgard, T. 10039. *But see* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 45–46, Figure 3 (which includes a video still of a wounded man at the scene of the incident who was given help and, who according to Subotić, "in all probability" wore a camouflage jacket). *See also* P1810 (Video footage of shelling incident site in Hrasnica). The Chamber notes that it is unclear from the video footage whether the jacket the man is wearing is a camouflage jacket.

14770 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 640; Thorbjorn Overgard, T. 10019–10020 (16 December 2010); P2059 (UNMO report, 10 April 1995), para. 2, Annex B, Annex C.

from which the bomb came were broken.[14771] Being near the incident site just prior to the explosion, the UNMOs themselves also heard a noise, similar to an airplane flying low, and coming from the direction of Ilidža.[14772] As for the type of the projectile, they concluded it was a modified air bomb on the basis of shrapnel they found on the scene and through having observed one of the rocket motors on the day of the incident.[14773]

4403. In an order issued on 6 April 1995, Dragomir Milošević states that "for the past three days, Muslim forces have been attacking" the positions of the 2nd Sarajevo Infantry Brigade, in particular in the area of the Famos Factory, resulting in the wounding of several soldiers and a number of civilians.[14774] In order to thwart "the enemy" and give them "a warning so they are forced to accept this truce", Milošević ordered the Ilidža Brigade to immediately prepare a "launcher with an aerial bomb and transport the bomb for launching", and to select "the highest yielding target in Hrasnica or Sokolović Kolonija, where there will be greatest human and material losses".[14775]

4404. Milošević explained this order by saying that the units of the Ilidža Brigade and the 2nd Light Infantry Brigade, as well as the Serb villages east of Famos, were constantly under fire, including artillery fire, from Hrasnica and Sokolović Kolonija, an area through which weapons arrived and ABiH units were passing.[14776] Further, the slopes of Mt. Igman controlled by the ABiH towered over those Serb villages and over parts of Lukavica and Dobrinja, thus exposing them to direct fire.[14777] When informed by his subordinates that the ABiH fire was becoming unbearable and advised that the modified air bomb should be used, he decided to follow that advice but asked

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14771 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 640, 676, 678–679, 691–693; P2059 (UNMO report, 10 April 1995), Annexes A, B, and C; Thorbjorn Overgard, T. 10020–10021, 10042–10044 (16 December 2010).

14772 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 676–677, 693; P2059 (UNMO report, 10 April 1995), para. 4; Thorbjorn Overgard, T. 10021 (16 December 2010).

14773 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 676–678; P2059 (UNMO report, 10 April 1995), para. 3, Annex B; Thorbjorn Overgard, T. 10020, 10037–10039 (16 December 2010); D934 (Excerpt from Thorbjorn Overgard's testimony in *Prosecutor v. Perišić*).

14774 P1201 (SRK Order, 6 April 1995). *See* also D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; D782 (SRK Order, 4 April 1995); Milorad Šehovac, T. 31368 (13 December 2012). See *also* Adjudicated Fact 2878.

14775 P1201 (SRK Order, 6 April 1995).

14776 Dragomir Milošević, T. 32783–32784 (28 January 2013), T. 32786–32787, 32791, 32802–32814 (29 January 2013), T. 33179–33180 (5 February 2013); D2819 (SRK combat report, 10 July 1993); D2820 (SRK combat report, 16 July 1993); D2821 (SRK combat report, 3 August 1993); D2822 (SRK combat report, 10 August 1993); D2823 (SRK combat report, 6 November 1994). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 108; Vladimir Radojčić, T. 31274–31276 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; Milorad Šehovac, T. 31384–31385 (13 December 2012); D2765 (Witness statement of Ilija Miščević dated 26 April 2012), para. 9; Ilija Miščević, T. 32087–32088 (17 January 2013).

14777 Dragomir Milošević, T. 32791–32792 (29 January 2013).

them to identify a specific target that would ensure that the ABiH attacks ceased.[14778] Milošević also explained that the reference to the "greatest human and material losses" was not a reference to civilians and that he had in mind only military targets, noting that the language he used was military parlance and that it would have been superfluous for him to provide further instruction on the nature of the targets.[14779] He also thought that the recipient of the order would not have interpreted it in any other way.[14780] This was confirmed by Radojčić who received and implemented this order.[14781] However, during his testimony, Fraser interpreted the order as an order to shoot at the civilian population; even if there were ABiH units in Hrasnica at the time, he considered the use of modified air bomb in this densly populated area completely inappropriate.[14782]

4405. Later on the day of the incident, the SRK Command reported to the VRS Main Staff that in the morning the ABiH opened "fierce fire" on Famos from the area of Gradina-Igman and Lasica with, *inter alia*, infantry weapons and an 82 mm mortar, in response to which the Ilidža Brigade fired one air bomb weighing 250 kilograms "at the centre of Hrasnica".[14783] The VRS Main Staff then sent a combat report to the Accused, informing him of these events, including the attack on Famos, as well as the fact that "[t]he enemy was adequately responded to whereby an A/B /air bomb/ (250kg) was launched on the centre of Hrasnica."[14784]

4406. Contradicting Milošević's order of 6 April and the SRK combat report of 7 April, Overgard testified that he could not remember any unusual military activity in the days prior to the incident, except for some small arms fire in the area of the Famos factory, which was a common

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14778 Dragomir Milošević, T. 32784–32785 (28 January 2013), T. 33163–33165 (4 February 2013), 33171–33174 (5 February 2013) (explaining that the target assessment was made by estimating the possible collateral damage and comparing it to the option of halting the ABiH assets that endangered the SRK).

14779 Dragomir Milošević, T. 32793–32794 (29 January 2013), T. 33178–33183 (5 February 2013), T. 33278–33280 (6 February 2013).

14780 Dragomir Milošević, T. 32794 (29 January 2013). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 89 (explaining that there was no need for Milošević to specify in each of his orders the military targets on which fire was to be opened because the brigades already had that information). Šehovac testified that he suggested the school as one of the potential targets some eight months before the incident. Milorad Šehovac, T. 31369–31370 (13 December 2012); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994).

14781 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 108; Vladimir Radojčić, T. 31254–31257 (11 December 2012) (explaining that the order left it to him to determine where to launch the modified air bomb). *See also* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63.

14782 David Fraser, T. 8013–8014 (18 October 2010). While Subotić also made comments on this order during her testimony, given that she does not have any military background and is not a military expert, the Chamber shall not consider her evidence on this issue. *See* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 56.

14783 P1782 (SRK combat report, 7 April 1995), pp. 1–2.

14784 P5943 (VRS Main Staff Report, 7 April 1995), pp. 4–5.

occurrence.[14785] He could not recall any unusual military activity the morning of the incident, describing it as a quiet morning with only some shooting.[14786] He also did not hear any outgoing fire from the centre of Hrasnica.[14787] However, on 8 April 1995, the UN reported on the incident, stating that the "rocket which impacted in Hrasnica was most likely retaliation for the mortar round fired from Hrasnica some minutes before."[14788]

4407. Šubo testified that there was "some kind of military structure" on her street but that it was not close to her house and that she did not see any mortas in the vicinity of her house.[14789] KDZ166 testified that there was nothing but "family houses" at the incident site, which was in the centre of Hrasnica.[14790] He confirmed on cross-examination that the projectile flew over the secondary school in Hrasnica but denied any knowledge about the school being used to house members of the 4th Brigade of the ABiH.[14791] Overgard explained that the two headquarters of the 4th Motorised Brigade in Hrasnica[14792] were somewhere between 800 and 1,000 metres away from the incident site.[14793] Similarly, the road between Mt. Igman and Hrasnica was over a kilometre away from the incident site.[14794]

4408. In contrast, Milošević testified that four ABiH 120 mm mortars were in the "immediate vicinity" of the incident site.[14795] When confronted with the VRS Main Staff report to the Accused referred to above—in which the ABiH fire on Famos was said to have come from areas outside of Hrasnica—Milošević explained that the modified air bomb was not fired to respond to the forces

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14785 Thorbjorn Overgard, T. 10021–10023 (16 December 2010).

14786 Thorbjorn Overgard, T. 10024–10025 (16 December 2010).

14787 Thorbjorn Overgard, T. 10025, 10031–10032 (16 December 2010) (conceding also that the UNMO base was less than a kilometre away from the Famos Factory while the outgoing fire can be heard 200 to 300 metres from the origin of fire).

14788 D2817 (UNPROFOR report, 8 April 1995), p. 2. *See also* Dragomir Milošević, T. 32796–32797 (29 January 2013), T. 33290–33291 (6 February 2013).

14789 P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2773–2774.

14790 KDZ166, T. 8267–8268 (20 October 2010).

14791 KDZ166, T. 8371–8379 (26 October 2010) D815 (Map of Hrasnica marked by KDZ166); D816 (Photograph of damaged house marked by KDZ166); D817 (Sketch re shelling of Hrasnica on 7 April 1995); D818 (Aerial photograph of Hrasnica and sketch re shelling of Hrasnica on 7 April 1995).

14792 *See* para. 4394.

14793 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 648, 684–685; P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard). The Chamber notes that, according to the scale on the maps marked by Overgard, the company headquarters was located almost two kilometres to the northwest of the incident site, while the brigade headquarters was some 750 metres to the northeast of the incident site. The four mortars were located almost two kilometres away from the incident site.

14794 Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 694–695.

14795 Dragomir Milošević, T. 32795 (29 January 2013), T. 33155–33159, 33162 (4 February 2013); D779 (SRK Order, 27 March 1995). When confronted with D779 showing the locations of ABiH weapons none of which was in the immediate vicinity of the incident site, Milošević claimed that this order was unrelated to the issue of the mortars in Hrasnica.

firing on Famos but to neutralise the four mortars in Hrasnica because those were a long-standing problem for the SRK.[14796] He could not recall, however, if following the incident, the subordinate units confirmed that the mortars had been neutralised; he assumed this to be the case as there was no more fire on the SRK from that area.[14797]

4409. The Chamber also heard from witnesses called by the Accused that the Alekse Šantića School in Hrasnica was used by the ABiH to anneal shells and train members of the 4th Motorised Brigade.[14798] Radojčić testified that this is why he chose the school as the target after receiving Milošević's order of 6 April.[14799] He stated that he used the temporary firing tables the brigade had received to launch the modified air bomb and missed the school by only 20 to 30 metres, striking instead a house in which ABiH guards were billeted.[14800] He further testified that he was told by Overgard that only one soldier was killed, and that Overgard had seen the legs of this soldier.[14801] When a map was shown to him to illustrate that the school was in fact some 150 metres away from the incident site, Radojčić seemed to accept that this was so but disputed that the location marked as the incident site was accurately marked.[14802]

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14796 Dragomir Milošević, T. 33159–33162 (4 February 2013), T. 33168–33171 (5 February 2013) (explaining that he personally observed those four mortars in a park in Hrasnica); P5943 (VRS Main Staff Report, 7 April 1995), pp. 4–5.

14797 Dragomir Milošević, T. 33174–33179 (5 February 2013).

14798 D2765 (Witness statement of Ilija Miščević dated 26 April 2012), paras. 3, 8; Ilija Miščević, T 32086–32087, 32090 (17 January 2013) (explaining that he personally observed shells being annealed in the school). While the other Defence witnesses argued that ABiH in fact produced or manufactured shells in the school, the Chamber does not consider this possible given that this was a school building and, as such, would not have had the equipment necessary for the production of shells. *See* Dragomir Milošević, T. 32796 (29 January 2013), T. 33162–33163 (4 February 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 20, 108; D2590 (Map of Hrasnica marked by Vladimir Radojčić); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994); Vladimir Radojčić, T. 31257–31259 (11 December 2012), T. 31261–31263 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 21, 63. Instead, the Chamber is more persuaded by Miščević's evidence that the school's furnace was used to anneal the shells.

14799 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 20, 108; Vladimir Radojčić, T. 31257–31259 (11 December 2012), T. 31261–31263 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994); Milorad Šehovac, T. 31365–31367, 31371 (13 December 2012) (explaining that even though the school was identified as a target some eight months prior to the incident, it was still used by the ABiH at the time of the incident).

14800 Vladimir Radojčić, T. 31251–31252, 31258–31259 (11 December 2012), T. 31261–31266 (12 December 2012) (explaining that he used Plamen rockets without the explosive charge to propel the air bombs); P6040 (Excerpt from M-63 Plamen fire tables).

14801 Vladimir Radojčić, T. 31258–31259 (11 December 2012), T. 31268–31269, 31272–31273 (12 December 2012).

14802 Vladimir Radojčić, T. 31267–31268 (12 December 2012). The Chamber notes that the map of Hrasnica used with Radojčić was not admitted into evidence but that an almost identical map has been admitted into evidence through KDZ166, Overgard, and Miščević. *See* P1792 (Map of Hrasnica); P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard); D2766 (Map of Hrasnica marked by Ilija Miščević). Using the scale on these maps, the distance between the school and the incident site, which has been correctly marked, does appear to be over 100 metres. This was confirmed by Ilija Miščević. *See* Ilija Miščević, T. 32081–32082 (17 January 2013). *See also* Milorad Šehovac, T. 31370 (13 December 2012).

4410. Zečević reviewed the material compiled by the CSB Sarajevo investigators on the day of the incident and concluded, based on the damage to Šubo's house, namely the undamaged interior wall with the destroyed exterior wall, as well as the damage to the surrounding houses, that the modified air bomb used in this incident must have been filled with fuel-air explosive.[14803] He testified that the azimuth of the modified air bomb was around 320 degrees from the north, as opposed to 305 degrees estimated by KDZ166 in his sketch, because 320 degrees would have placed the launcher in an area that avoided inhabited parts of Ilidža municipality, while KDZ166's azimuth would have placed it in an open area, exposed to fire.[14804] He also established, on the basis of the probable point of impact (the top of one of the windows of the house) and the place where the rocket motors were found, that the angle of descent was around 25 degrees; this in turn enabled him to estimate that the origin of fire was somewhere between 5,820 and 4,800 metres from the incident site, in the area between Rimski Most and Plandište, in Ilidža municipality.[14805]

4411. Contrary to Zečević, both Subotić and Anđelković-Lukić argued that the modified air bomb fired in this incident was a FAB-100 with a solid explosive charge, as indicated by (i) the type of damage caused to the destroyed house and the neighbouring houses; (ii) the fact that two persons inside the house remained uninjured while two were wounded;[14806] (iii) the fact that only two rocket motors were found on the scene of the incident whereas a FAB-250 would have required three; and (iv) the fact that no fragments of an air fuel container were found on the scene.[14807] As for the direction of fire, Subotić agreed with Zečević and the CSB Sarajevo investigators, noting further that the azimuth determined by Zečević meant that the bomb flew over the Aleksa Šantića school, the schoolyard of which was 20 metres away from the incident site and which housed members of the 4th Motorised Brigade of the ABiH.[14808] Finally, Subotić argued that Zečević's estimates as to

14803 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 114.

14804 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 114.

14805 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 112–115.

14806 Anđelković-Lukić added, relying on Zečević's own description of the effects of a fuel-air bomb explosion, that had the house been struck by a fuel-air bomb, there would have been no survivors in the radius of about 20 metres. *See* D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 18.

14807 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 47–51; Zorica Subotić, T. 38183–38186 (13 May 2013); D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 18–20.

14808 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 44–46, 51–54, 182, 188–189 (also arguing that the wounded man treated on the scene as seen in a local TV footage was wearing a camouflage uniform); Zorica Subotić, T. 38186–38187 (13 May 2013).

the distance from which the modified air bomb was fired was highly questionable and made without taking into account the specifications of the modified bomb used.[14809]

4412. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts that go to the origin and the nature of fire in this incident: (i) the projectile that exploded in Hrasnica on 7 April 1995 was a modified air bomb;[14810] (ii) one civilian was killed and three civilians were injured, one of them seriously, in the explosion;[14811] (iii) the modified air bomb was fired from the area northwest of the impact site, in the area of Ilidža, an area that was controlled by the SRK;[14812] and (iv) the modified air bomb was launched by members of the SRK.[14813]

4413. Having considered the evidence and the adjudicated facts outlined above, and in particular the SRK combat report of 7 April, the Chamber is satisfied that the projectile that landed at Alekse Šantića street in Hrasnica on 6 April 1995 was a FAB-250 modified air bomb. The Chamber is also satisfied that it was launched by the members of the Ilidža Brigade, in direct application of the order issued by Dragomir Milošević on 6 April 1995.[14814] Given that the SRK's own report states that the bomb used in this attack was a modified FAB-250, the Chamber does not accept the evidence of Subotić and Anđelković-Lukić that it was in fact a FAB-100. Similarly, it is also not persuaded by Zečević's evidence that the bomb in question was a fuel-air bomb.

4414. The Chamber is further satisfied that one person, Ziba Čustović, died in this incident, while three others, Ziba Šubo, Elvis Brajlović,[14815] and Gara Sarajkić, were wounded. All four were civilians who were in their houses and not taking direct part in the hostilities at the time the incident took place.

4415. The Chamber recalls the Accused's argument that the intended target of the modified air bomb was the Alekse Šantića school, which according to him was some 20 metres away from the incident site and which was used by the ABiH's 4th Brigade. The Chamber further recalls that it was Subotić who measured the distance between the school's backyard and the incident site as being some 20 metres away from the incident site. While the Chamber is satisfied that the school was used by the ABiH, as confirmed by various SRK documents and by both Ilija Miščević and

14809 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 54–56.
14810 *See* Adjudicated Fact 3037.
14811 *See* Adjudicated Fact 3038.
14812 *See* Adjudicated Fact 3040.
14813 Adjudicated Fact 3041.
14814 *See* P1782 (SRK combat report, 7 April 1995), pp. 1–2; P1201 (SRK Order, 6 April 1995).
14815 *See* fn. 14764.

Ziba Šubo, it does not accept Subotić's evidence that the school was 20 metres from the incident site. Instead, as noted above, the evidence shows that the school building itself was over 100 metres away from the incident site.[14816] In addition, all the other ABiH-related locations in Hrasnica, including the four ABiH mortars, were far from the incident site.[14817] The Chamber considers, therefore, that there were no legimitate military targets in the immediate vicinity of the incident site.[14818]

4416. The Chamber recalls that Radojčić testified that he was the one who selected the Alekse Šantića School as the target following Milošević's order of 6 April, thus contradicting the argument that the SRK was targeting civilians in this incident. However, as noted above, the modified air bomb overshot the school by over 100 metres. Given the inherent inaccuracy of modified air bombs and their destructive power, as found by the Chamber above, and the fact that the target selected was located in the central, mainly residential, part of Hrasnica, Radojčić and the other SRK soldiers involved in this launch should have been aware that such an attack would cause casualties among the civilian population and extensive destruction of civilian property.

4417. The Chamber also recalls here the Accused's argument that the launch was made in response to ABiH violation of a truce and its constant attacks on the SRK in the area. However, noting the combat report of 7 April, it is clear that while there was ABiH fire on the Famos Factory in the morning of 7 April, it came from infantry weapons and from an 82 mm mortar, which were fired from the area of Gradina-Igman and Lasica. The SRK response of launching the FAB-250, a highly destructive modified air bomb, was therefore disproportionate. In addition, it was directed at a location different to the one from which the fire was opened. The SRK response thus appears to have been an attempt to exact revenge rather than to neutralise incoming fire or defend the SRK positions at the moment of the attacks. In the Chamber's view the report of 7 April is also indicative of the general mind-set of the SRK units, including its command, according to which no distinction could be or was made between the civilian population and legitimate military targets. This meant that large areas of Sarajevo, such as the centre of Hrasnica, were considered to be legimitate military targets no matter how many civilians lived there.[14819]

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14816 *See* fn. 14802.

14817 In this respect, the Chamber accepts Miščević's evidence as to the location of the post office in Hrasnica which housed the 4th Brigade headquarters.

14818 While there is a possibility that a soldier may have been injured in this incident, given Overgard's testimony, the Chamber does not consider that his presence in the area turned the incident site into a legitimate military target.

14819 *See* D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30571 (28 November 2012) (testifying that all ABiH positions were in civilian areas where people lived in apartment buildings and that there was not a single "entirely civilian settlement" that did not have a military

(b) Safeta Zajke street (formerly 21. Maja street) and Majdanska street, 24 May 1995 (Scheduled Incidents G.11 and G.12)

4418. According to the Indictment, on 24 May 1995, a missile projectile landed on Safeta Zajke street, killing two people and wounding five others.[14820] The alleged origin of fire was the SRK-held territory southeast of the incident site.[14821] In its Final Brief, the Prosecution claims that the projectile was a modified air bomb and that it came from the direction of Lukavica.[14822] According to the Indictment, also on 24 May 1995, a modified air bomb landed on Majdanska street "bb", killing two and wounding five civilians.[14823] As with scheduled incident G.11, the alleged origin of fire was the SRK-held territory southeast of the incident site.[14824]

4419. The Accused argues that there was fierce combat in Sarajevo on the day of these incidents and that the modified air bomb used in both was a FAB-100, filled with solid explosive charge.[14825] With respect to the Safeta Zajke incident he claims that the "most likely target" was the Žica factory, which was a part of an industrial complex and housed a command post of the 102nd Motorised Brigade.[14826] He also argues that the SRK used the bomb to neutralise six ABiH mortars near Stupsko Brdo.[14827] As for the Majdanska street incident, the Accused argues that the intended target was the transformer station, located within an industrial zone and surrounded by military objects, such as the forward command post of the 102nd Motorised Brigade; the point of impact was, according to the Accused, within the expected error range for unguided rocket projectiles.[14828]

4420. In May 1995, Anđa Gotovac lived at 43 Safeta Zajke street, in Alipašino Polje, approximately 100 to 150 metres behind the TV building.[14829] Her house was also close to the power transformer station, the Žica Factory, and the Novi Grad municipality building.[14830] This area was far from the frontlines, so there was no sniper fire, although there was constant

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target in it); Savo Simić, T. 30058 (12 November 2012) (testifying that it was the ABiH's responsibility to take into account whether a location was inhabited when placing their firing positions).

14820 Indictment, Scheduled Incident G.11.

14821 Indictment Scheduled Incident G.11.

14822 Prosecution Final Brief, Appendix C, para. 74, fn. 470.

14823 Indictment, Scheduled Incident G.12. *See also* Prosecution Final Brief, Appendix C, para. 75.

14824 Indictment, Scheduled Incident G.12. *See also* Prosecution Final Brief, Appendix C, para. 75.

14825 Defence Final Brief, paras. 2364, 2367.

14826 Defence Final Brief, paras. 2363–2364.

14827 Defence Final Brief, para. 2365.

14828 Defence Final Brief, para. 2367.

14829 P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T.4465; D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), para. 1; P1807 (Map of Sarajevo marked by KDZ166); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). *See also* Adjudicated Fact 3042.

14830 Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 786–787; D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), para. 3.

shelling.[14831] She could recall two other occasions on which the shells passed over her house, targeting the TV building.[14832]

4421. On 24 May 1995, it was a quiet morning and just after 10 a.m., Gotovac was outside her house when she heard something that sounded like a plane.[14833] Before she could raise her head to see what the sound was, there was an explosion and she was blown over by the blast.[14834] The roof of her house was also blown away and her house was destroyed.[14835] According to Gotovac, as a result of this explosion, two people were killed and at least three, including Gotovac, were injured.[14836] Gotovac sustained a deep wound in her shoulder and ribs from shrapnel, and had to have surgery; after she was discharged from hospital several days later but she had to be visited by a nurse on a daily basis for the next two months.[14837] Two years after the incident, she still had breathing problems and could not lean on her left side.[14838]

4422. Gotovac testified that the explosion was caused by an air bomb and noted that, as she was being taken to hospital, she saw a "barrel" on the ground.[14839] She admitted, however, that she did not know what a modified air bomb looked like.[14840] Gotovac also testified that she never saw any ABiH weapons, positions, or military facilities in her street and that on the day of the explosion she did not see any ABiH soldiers nearby.[14841] She confirmed, however, that ABiH troops were located on Žuč hill, which was to the north of her house, some distance away, and that they had to pass

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14831 P490 (Witness statement of Anđa Gotovac dated 17 May 2006), paras. 3, 5; Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 785.

14832 D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), paras. 2, 4–5. *See also* P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 5.

14833 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. *See also* Adjudicated Fact 3043 .

14834 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 784.

14835 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4454.

14836 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4463; P1541 (Medical record for Anđa Gotovac).

14837 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; P490 (Witness statements of Anđa Gotovac dated 17 May 2006), para. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4454–4455. *See also* Adjudicated Fact 3045.

14838 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. *See also* Adjudicated Fact 3046. Gotovac has also been permanently affected by the effects of war and has trouble sleeping. P490 (Witness statements of Anđa Gotovac dated 17 May 2006), para. 7. *See also* Adjudicated Fact 3046.

14839 Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 781.

14840 Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 781–782.

14841 P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 4; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4455. *See also* Adjudicated Fact 3043.

through her street in order to get to the hill.[14842] Gotovac was told that the projectile came either from Hresa or from Trebević but noted that she did not know if that was really the case.[14843]

4423. On the same day, at around 2 p.m., another projectile exploded, this time on the nearby Majdanska street in Alipašino Polje.[14844]

4424. A team from CSB Sarajevo, which included Kučanin and KDZ166, investigated both incidents.[14845] They first went to Safeta Zajke street and arrived at the incident site at 2:30 p.m.; no ballistics experts were on the scene but they were consulted later.[14846] At Safeta Zajke street, KDZ166 took photographs, sketched the incident site, and marked all the physical evidence.[14847] He concluded, based on the bomb fragments found embedded into the crater in the southeasterly direction, that the projectile came from the southeast.[14848] He also noted that the crater was 250 centimetres long, 110 centimetres wide, and 30 centimetres deep.[14849] In his report dated 26 May 1995, Kučanin stated that the crater made by the projectile was about two metres long and one metre wide, and that it stretched toward the south,[14850] "that is the aggressor's positions in the Lukavica area".[14851] Based on the connecting plate, parts of the fuse of the aircraft bomb, and two

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14842 P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 3. *See also* Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4457–4459; P489 (Transcript from *Prosecutor v. Perišić*), T. 786.

14843 P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. *See also* Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T.4463.

14844 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), p. 3; P1323 (BiH MUP Report re shelling of Majdanska street on 24 May 1995), p. 1.

14845 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995); P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995). *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 49, 52; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8; P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 6.

14846 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1 (stating that CSB Sarajevo was informed about the incident at 2 p.m.); P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 8; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8.

14847 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 7, 10–11; KDZ166, T. 82748275 (20 October 2010), T. 83408341 (26 October 2010); P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); P1800 (Photographs re shelling of Safeta Zajke street on 24 May 1995). On cross-examination, KDZ166 conceded that he made a slight mistake, by some 20 degrees, when marking the direction of north on the sketch. *See* KDZ166, T. 8339–8340 (26 October 2010); D809 (Sketch re shelling of Safeta Zajke street on 24 May 1995 marked by KDZ166).

14848 P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 8; P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); KDZ166, T. 8275–8277 (20 October 2010), 8346–8349 (26 October 2010); P1801 (Photograph of Safeta Zajke street marked by KDZ166); D811 (Photograph re shelling of Safeta Zajke street on 24 May 1995 marked by KDZ166). The tail fins were facing south when found, which also led Kučanin to conclude that the modified air bomb was launched from the Lukavica area. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995).

14849 P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); P1812 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995).

14850 The Chamber notes that while the English translation of this report refers to the direction of "south east", the BCS version refers only to the direction of "south". *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1. *See also* KDZ166, 8356 (26 October 2010).

14851 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1. KDZ166 explained that the conclusion on the origin of fire was based on the assumption that the ABiH would

rocket tail fins found in the crater, it was determined that the projectile was a modified air bomb with four 128 mm multiple rocket launcher rockets and that it weighed between 400 and 450 kilograms.[14852] According to the report, two people were killed and five, including Gotovac, were wounded as a result of this explosion.[14853] KDZ166 testified that they were all civilians.[14854]

4425. Having completed the investigation on Safeta Zajke street, the CSB Sarajevo team then moved to Majdanska street and investigated this incident as well.[14855] As with the previous incident, KDZ166 took photographs, marked the evidence, and prepared a sketch of the scene noting that the incident site overlooked the transformer station.[14856] He observed that the crater was five metres in diameter, two metres wide, and one metre deep, while the surface was soil.[14857] On the basis of the positioning of the crater, he determined that the bomb came from the southeast, that is, from the area of Pavlovac.[14858] Later, during his cross-examination, KDZ166 appeared to agree with the Accused's incorrect assertion that the location he noted in his report was Prljevo Brdo, which is a location northeast of Pavlovac and further east of Lukavica.[14859]

4426. Kučanin also prepared a report, dated 26 May 1995, and noted, based on the fragments found and the damage caused, including a crater that was five metres long, 1.5 metres wide, and about 1.5 metres deep, that the projectile was a modified air bomb with four 128 mm rockets.[14860]

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not fire on its own positions. He also testified that he did not know why Kučanin's report recorded slightly different measurements for the size of the crater and had a slightly different direction of fire. KDZ166, T. 8344–8345, 8354 (26 October 2010); D810 (BiH MUP report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995) (under seal). The Chamber notes, however, that Lukavica is in fact in the southeasterly direction in relation to the incident site. *See* P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

14852 P1812 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995); P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court pp. 1–2.

14853 Aiša Hrustan and Ivo Miletić are listed in the report as having been killed, while Dražen Gelo, Anđa Gotovac, Igor Vučičević, Džemal Kukuljac, and Franjo Tolić are listed as having been wounded. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 2. *See also* P1538 (Autopsy reports for Aisa Hrustan and Ivan Miletić); P1537 (Letter of discharge for Franjo Tolić); P1539 (Letter of discharge for Džemal Kukuljac); P1540 (Medical record for Igor Vučičević); P1541 (Medical record for Anđa Gotovac); Adjudicated Fact 3048.

14854 P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 7.

14855 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995); P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995). *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 49, 51.

14856 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 11–12; KDZ166, T. 8360–8364 (26 October 2010) (correcting the direction of north marked on the sketch slightly); P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); D813 (Sketch re shelling of Majdanska street on 24 May 1995 marked by KDZ166); P1817 (Photographs re shelling of Majdanska street on 24 May 1995).

14857 P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); KDZ166, T. 8359–8360 (26 October 2010).

14858 P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); KDZ166, T. 8361 (26 October 2010). The Chamber notes that Pavlovac is located just below Lukavica. *See* P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

14859 KDZ166, T. 8367–8369 (26 October 2010); D814 (Map of Sarajevo marked by KDZ166).

14860 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. *See also* KDZ166, T. 8366 (26 October 2010) When asked why Kučanin's measurements of the crater did not

According to the report, the crater stretched towards the south, indicating that the modified air bomb came from the same location as the bomb that struck Safeta Zajke street earlier in the day.[14861] The report also notes that two people were killed in the explosion and six were seriously wounded; in addition, serious damage was caused to the Novi Grad power transformer station and one electricity pylon was destroyed.[14862]

4427. The fragments found on both sites were then sent to ballistics experts for analysis. The experts established that both projectiles were modified air bombs made of a destructive FAB-250 aircraft bomb and five 122 mm GRAD type rockets which served as a power unit.[14863]

4428. With respect to the facilities surrounding the incident sites, the Chamber heard that both sites were close to the TV building, the Novi Grad's Municipal Assembly building, Geodesic Institute, Žica Factory,[14864] ŠIK Factory, and Energoinvest.[14865] While the command post of the 102nd Motorised Brigade of the ABiH was located in Žica factory,[14866] Safeta Zajke street itself was

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correspond to what he had noted in his report, KDZ166 stated that he did not know but that he stood by his report. KDZ166, T. 8365–8366 (26 October 2010).

14861 P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. KDZ166 did not know why his conclusion about the direction of southeast was different to the direction noted by Kučanin in the report of 26 May 1995. *See* KDZ166, T. 8365–8366 (26 October 2010). The Chamber notes, however, that Lukavica is in fact in the southeasterly direction in relation to the incident site. *See* P2191 (Map of Sarajevo with scheduled sniping and shelling incidents)

14862 Those listed as killed are Sulejman Prasko and Nezir Huseinović, while those listed as wounded are Fatima Konaković, Goran Jeličić, Enes Jašarević, Salko Slato, Lucija Jurišić, and Mira Lovrić. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. *See also* P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); P1542 (Autopsy report for Sulejman Prasko); P1817 (Photographs re shelling of Majdanska street on 24 May 1995), e-court pp. 1–3, 9–10; Adjudicated Fact 3050.

14863 P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995), e-court p. 2; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8; Emir Turkušić, T. 9103–9110 (4 November 2010); P1323 (BiH MUP Report re shelling of Majdanska street on 24 May 1995), p. 1. *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 51–52.

14864 At first, KDZ166 stated that Žica Factory was about 300 to 500 metres away from the incident site on Safeta Zajke street but when asked to measure that distance on a map agreed that it was just under 100 metres away. *See* KDZ166, T. 8336–8338 (26 October 2010). *See also* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 58, 188. According to the scale on the map used by the Chamber, the distance between the Žica Factory and the Safeta Zajke incident site is approximately slightly over 100 metres. *See* P1803 (Map of Alipašino Polje and surrounding areas).

14865 Ekrem Suljević, T. 5767–5777 (22 July 2010); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial photograph of Sarajevo marked by Ekrem Suljević); KDZ166, T. 8330–8336 (26 October 2010); D808 (Aerial photograph of Sarajevo marked by KDZ166); P1803 (Map of Alipašino Polje and surrounding areas); D986 (Aerial photograph of Sarajevo marked by KDZ477). *See also* Emir Turkušić, T. 9111–9112 (4 November 2010); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 119.

14866 Asim Džambasović, T. 15200–15201, 15214–15215, 15222, 15245–15246 (22 June 2011); D1377 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1379 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1383 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1385 (Locations of ABiH 1st Corps units in Sarajevo, 13 April 1993).

lined with residential houses, with ABiH positions approximately two kilometres behind it.[14867] The Novi Grad police station is located on Prvomajska street.[14868] A number of residential buildings are located some 100 metres away from the incident site on Majdanska street.[14869]

4429. Zečević, Subotić and Anđelković-Lukić all analysed the reports and various witness statements in relation to the two incidents. With respect to the Safeta Zajke incident, Zečević thought that the projectile used was a modified fuel-air bomb with three 122 mm GRAD rocket motors.[14870] He based this conclusion on (i) a "three pointed star" or "three pointed centering system" found on the scene, which was used to centre the three rocket motors; (ii) Gotovac's statement that after detonation she had a burning sensation; (iii) the absence of a large number of fragments on the facades of the surrounding buildings; and (iv) the fact that rocket motors were found in the crater.[14871] Zečević determined, based on the sketch of the incident, that the azimuth of the modied air bomb was 155 degrees, plus or minus five degrees.[14872] According to him, the modified air bomb was launched from a distance greater than 4,800 metres from the incident site as the angle of launch would otherwise have to have been 20 degrees; this would have resulted in the bomb ricocheting.[14873] He testified that it probably came from a distance of about 5,800 metres or more.[14874]

4430. Both Subotić and Anđelković-Lukić argued that the modified air bomb that landed on Safeta Zajke street was most probably a FAB-100 with three rocket motors[14875] because the crater

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14867 KDZ166, T. 8274 (20 October 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 9.

14868 Ekrem Suljević, T. 5767–5777 (22 July 2010); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial image of Sarajevo marked by Ekrem Suljević). *See also* KDZ166, T. 8330–8336 (26 October 2010); D808 (Aerial photograph of Sarajevo marked by KDZ166); P1803 (Map of Alipašino Polje and surrounding areas); P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 123–124. The Chamber notes that according to the scale on map P1803, the police station was located some 800 metres away from the Safeta Zajke incident site.

14869 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 123–124; D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p 68.

14870 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 118, 121.

14871 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 117–119.

14872 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 119.

14873 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 120.

14874 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 120.

14875 Subotić explained that local ballistics experts concluded that the bomb contained five rocket motors because they overlooked the fact that 122 mm GRAD rockets have two chambers each, meaning that the five tubes found on the scene indicated that the projectile had at least three motors. *See* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 62.

was smaller than craters created by FAB-250 bombs and because a three-pointed star was found among the fragments.[14876] Both also thought that the bomb contained conventional explosive rather than fuel-air explosive because, *inter alia*, (i) no large fragments of projectile casing were found, indicating that the casing fragmented from the effects of a solid explosive charge; (ii) traces from the blast, such as blown-off rooftops and broken windows and doors, point to the conclusion that solid explosive was used; and (iii) had it been a fuel-air bomb more people would have been killed as they were near the explosion.[14877]

4431. Noting that the direction of north was marked incorrectly in KDZ166's sketch, Subotić corrected the mistake and determined that the azimuth of the bomb was 146 degrees, rather than 155 degrees as established by Zečević.[14878] She argued that both directions cross over the Žica Factory, which was most likely the intended target.[14879] Finally, Subotić criticised Zečević's analysis in relation to the distance from which the modified air bomb came and argued that it would have been more than 6,200 metres, and probably even farther than 7,000 metres.[14880]

4432. As for the Majdanska street incident, Zečević noted that on the basis of KDZ166's sketch, the azimuth was around 135 degrees from the north, but speculated that the actual azimuth was "probably identical" to the azimuth of the bomb that struck Safeta Zajke street, particularly given the proximity of the two locations.[14881] Subotić disagreed and—having once again corrected the direction of north on KDZ166's sketch—found that the azimuth of the bomb was around 137 degrees.[14882] Noting that the alleged origin of fire, namely Pavlovac, was on a trajectory that had an azimuth of 152 degrees, she concluded that it was impossible to establish with certainty which direction was correct but thought that it was definitely southeast and that it was between 120 and

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14876 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 20; D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 62–64 (testifying also that the small number of fragment traces noted by Zečević can be explained by the FAB-100's smaller size); Zorica Subotić, T. 38188–38189 (13 May 2013).

14877 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 21; D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 64–65.

14878 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 59–61; Zorica Subotić, T. 38189 (13 May 2013). *See also* KDZ166, T. 8354–8355 (26 October 2010); D812 (Map of Alipašino Polje and sketch re shelling incident on 24 May 1995).

14879 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 59, 61, 180–181, 188–189; Zorica Subotić, T. 38189–38190 (13 May 2013).

14880 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 66–67.

14881 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 123.

14882 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 71–72.

150 degrees.[14883] According to her, the analysis of the possible trajectories indicates that the launching site was chosen so that the trajectory of the bomb passed over the least populated part of the city.[14884]

4433. To Subotić and Anđelković-Lukić, the size of the crater in Majdanska street, as measured by KDZ166, indicated that the projectile that landed there was a FAB-100 modified air bomb filled with solid charge.[14885] Noting the discrepancy between KDZ166's report and Kučanin's report on the size of the crater, Subotić thought that Kučanin purposefully enlarged the crater so that it would fit with the damage caused by a FAB-250 bomb.[14886] Further, she recalled that an electricity pylon was destroyed and thought that the most likely target in this incident was the transformer station.[14887]

4434. A number of SRK witnesses called by the Accused testified about these two incidents. According to Radojčić, there was a "fierce" ABiH offensive on 24 May 1995; further, the area surrounding Majdanska street was an industrial zone, packed with military installations, including the forward command post of the 1st Battalion of the 102nd Motorised Brigade of the ABiH located on Prvomajska street.[14888] Dragomir Milošević confirmed that there was an ABiH offensive on 24 May and testified that the ABiH had six 120 mm mortars on Safeta Zajke street with which they opened fire on Ilidža and Nedžarići but which were neutralised with the air bomb.[14889] As part of that offensive, the ABiH forces were also trying to break through from Majdanska street onto Ozrenska street and were thus firing mortars on the SRK positions from there.[14890] Milošević also claimed that the modified air bomb that struck Majdanska street caused no casualties according to

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14883 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 72.

14884 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 73.

14885 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 70–71. *See also* D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 23.

14886 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 70.

14887 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 70, 74, 188.

14888 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 112; D185 (12th Division ABiH combat report, 24 May 1995); D927 (12th Division ABiH combat report, 24 May 1995); D1052 (ABiH 1st Krajina Corps combat report, 31 May 1995). *See also* para. 3609. According to Radojčić this forward command post was located in the Pavle Goranina school building. However, the Chamber heard no other evidence relating to this building, including its exact distance to the incident site.

14889 Dragomir Milošević, T. 32776–32777 (28 January 2013).

14890 Dragomir Milošević, T. 32777–32778 (28 January 2013); D2903 (SRK combat report, 25 May 1995).

"their [ABiH] reports" and that the distance between Majdanska street incident site and the closest residential area, namely over 100 metres, was safe.[14891]

4435. Savo Simić, who had been Chief of Artillery in the 1st Sarajevo Mechanised Brigade positioned in Lukavica prior to the incident,[14892] testified that not a single modified air bomb was launched from the brigade's zone of responsibility.[14893] Similarly, Dušan Škrba, Simić's subordinate, testified that Prljevo Brdo was in his zone of fire and immediately in front of his command post and was adamant that no air bomb was ever fired from there or from Lukavica.[14894] He did concede, however, that his brigade had air bombs in its arsenal.[14895]

4436. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of two adjudicated facts concerning the origin and nature of the fire in the incident on Safeta Zajke street: (i) on the morning of 24 May 1995, a FAB-250 air bomb with fuel-air explosive, propelled by at least three rockets, hit Safeta Zajke street[14896] and (ii) it was fired from the SRK-controlled area of Lukavica by members of the SRK[14897] Similarly, it also took judicial notice of two adjudicated facts going to the incident on Majdanska street, stating that: (i) in the afternoon of 24 May 1995 a FAB-250 modified air bomb exploded on Majdanska street;[14898] (ii) two civilians were killed, and six civilians were injured, five of them seriously, as a result of this explosion;[14899] and (iii) the modified air bomb originated from the SRK-held territory and was launched by members of the SRK.[14900]

4437. Having considered the evidence and the adjudicated facts outlined above, particularly the fragments found at both incident sites, the Chamber is satisfied that the projectiles that landed on those sites were modified air bombs. The Chamber does not accept the evidence of Subotić and Anđelković-Lukić that in both incidents the bombs in question were FAB-100 bombs. Instead, it is more persuaded by the analysis of the local ballistics experts who had the opportunity to examine

14891 Dragomir Milošević, T. 32778–32779 (28 January 2013). When confronted with an SRK document showing that in April 1995 the launch of a modified air bomb was abandoned because UN positions were 200 metres away from the intended target, while SRK positions were 500 metres away, Milošević remained adamant that a person located 100 metres from the explosion of a modified air bomb would not be hurt. *See* Dragomir Milošević, T. 33151–33154 (4 February 2013); P1299 (VRS Main Staff request for information from SRK, 26 April 1995); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995).

14892 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

14893 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 28.

14894 D2341 (Witness statement of Dušan Škrba dated 14 October 2012) paras. 17, 22–23; Dušan Škrba, T. 29156–29157 (22 October 2012).

14895 Dušan Škrba, T. 29156 (22 October 2012).

14896 *See* Adjudicated Fact 3044.

14897 *See* Adjudicated Fact 3047.

14898 *See* Adjudicated Fact 3049.

14899 *See* Adjudicated Fact 3050.

the fragments found at the two incident sites and who reached the conclusion that FAB-250 bombs were used on both occasions.[14901] Subotić showed yet again that she was prone to jumping to conspiracy theories when she speculated that Kučanin purposefully enlarged the description of the size of the crater in Majdanska street in order to implicate a larger modified air bomb. The Chamber does not accept her evidence on this point.[14902] The Chamber is also not persuaded beyond reasonable doubt by Zečević's evidence that the bomb that landed on Safeta Zajke street was a fuel-air bomb. In fact, the Chamber considers that the damage he mentions in support of that conclusion could have equally been the result of an explosion of a modified air bomb with solid charge, as explained by Anđelković-Lukić and Subotić. Accordingly, the Chamber cannot accept as accurate that part of Adjudicated Fact 3044 which refers to the fuel-air explosive. Ultimately, however, the Chamber considers that the type of the charge used in the bombs here is irrelevant given their size and highly destructive nature.

4438. Given the proximity of the two incident sites, and the fact that they are on the same firing line, the Chamber is further of the view that both modified air bombs were launched from the same location and by the same launching crew.[14903] Given the long range from which the two modified air bombs were fired, as testified to by Zečević and Subotić in relation to the Safeta Zajke incident, the Chamber is also satisfied that they were fired by the SRK. Additionally, the fact that the ABiH did not possess such bombs also indicates that they were launched by the SRK. The Chamber is also satisfied, that they were launched from the SRK positions southeast of the incident sites as determined by the CSB Sarajevo. While Dušan Škrba claimed that they were not launched from his zone of fire, namely from Prljevo Brdo, this location was never said to have been the origin of fire; instead, KDZ166 referred to the area of Pavlovac in his report, which is located south of Lukavica and is southeast of the incident sites. Ultimately, however, the Chamber does not consider it necessary to determine the exact origin of fire, given its findings above.[14904]

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14900 *See* Adjudicated Fact 3051.

14901 In addition, the Chamber recalls that both Subotić and Anđelković-Lukić came to the same conclusion in relation to Scheduled Incident G.10, despite the fact that the SRK itself reported that the bomb launched on that occasion was a FAB-250. Accordingly, the Chamber considers that their reliability has been compromised in relation to their assessments of the type of the modified air bomb used in the scheduled incidents.

14902 The Chamber notes that in relation to the Safeta Zajke street incident, Kučanin described a crater that was in fact smaller than the crater measured by KDZ166. Thus, the Chamber considers that the differences between Kučanin and KDZ166 in their descriptions of the incident site were most likely the result of imprecision when describing and/or measuring the crater.

14903 The passage of time between the two modified air bomb launches on 24 May 1995 is in line with Milošević's evidence that launching crews needed at least two hours between launches. *See* fn. 14679.

14904 Thus, even if one were to accept Simić's evidence that no modified air bomb was ever launched from the zone of responsibility of the 1st Sarajevo Mechanised Brigade, this does not exclude the possibility that it was launched from behind the lines of the 1st Sarajevo Mechanised Brigade but still from the SRK-held territory,

4439. With respect to the casualties, based on the evidence and adjudicated facts outlined above, and particularly the medical records and photographs of those killed, the Chamber is satisfied that four people died in these two incidents, while 11 were wounded.[14905] The Chamber is also satisfied that they were civilians and were not taking direct part in hostilities at the time the bombs landed. Accordingly, Milošević's evidence that there were no casualties on Majdanska street is clearly incorrect and rather indicates that he was trying to minimise the damage caused by the SRK's actions on that day.

4440. Finally, with respect to the Accused's argument that both incident sites were located in an industrial zone, close to military facilities, the Chamber accepts that a number of industrial facilities were indeed in the vicinity of the two incident sites. However, this industrial zone was also interspersed with residential areas and many civilians lived and worked there. While the command post of the 102nd Motorised Brigade of the ABiH was located in the Žica Factory, some 100 metres away from the incident site on Safeta Zajke street, the street itself was lined with residential houses and was a purely residential area. Even if, as speculated by Subotić, the Žica Factory had been the intended target of the modified air bomb that eventually struck Safeta Zajke street, the SRK missed it by around 100 metres.

4441. With respect to the Majdanska street incident, the Chamber recalls the Accused's claim that the target was the transformer station, while the forward command post of the 1st Battalion of the 102nd Motorised Brigade was nearby. Assuming that the transformer station was indeed the target, the Chamber does not accept that it was a legitimate military target; rather it was a civilian object, the purpose of which was to provide electricity for the city and its population. The same can be said for the electricity pylon that was destroyed in this incident. As for the presence of the forward command post of the 1st Battalion of the 102nd Motorised Brigade near Majdanska street, the Chamber received no evidence about its precise location or its distance from the incident site. Radojčić only testified that it was in a school building on Prvomajska street. The Chamber notes that this street is some 150 metres away from the incident site.[14906] Once again, assuming that this school was indeed the target of this attack, the SRK missed it by over 100 metres.

4442. Accordingly, while the two modified air bombs were indeed launched on 24 May 1995 into an area with a number of industrial facilities and at least one military target, the Chamber is not

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particularly given Subotić's evidence that the distance from which the Safeta Zajke modified air bomb was launched was over 6,000 metres.

14905 *See* fns. 14853, 14862.

14906 P1803 (Map of Alipašino Polje). *See also* P6009 (Map of Sarajevo marked by Mile Sladoje) (showing location of Prvomajska street).

convinced that they were launched with the aim of neutralising any military targets. Had the SRK sought to destroy the command post located in the Žica Factory, it would have tried to do so with the second modified air bomb it launched later in the afternoon. However, the second bomb landed in the area that was about 600 metres from the Žica Factory. This happened either because the SRK was not in fact intent on destroying the command post in Žica or, if it was, then the second bomb deviated from its target by a large margin, indicating yet again the inherent inaccuracy of this weapon. Either way, given this inaccuracy and noting the destructive power of modified air bombs and the fact that there were residential areas around the above-mentioned industrial facilities, the SRK soldiers and officers who ordered and executed the launch of the two modified air bombs should have been aware that such an attack would cause casualties among the civilian population, as well as the extensive destruction of civilian property.

(c) Safeta Hadžića street, 26 May 1995 (Scheduled Incident G.13)

4443. According to the Indictment, on 26 May 1995, a modified air bomb struck a building near apartment blocks in Safeta Hadžića street (currently Prvomajska street)[14907] destroying the top three floors of an apartment building and was followed by several artillery rounds.[14908] The Indictment alleges that 17 persons were injured, two seriously, and that the fire came from the SRK-held territory in the west-southwest.[14909] The Accused argues that the modified air bomb used in this incident was a FAB-100 and that it ricocheted off of its intended target, namely the TV building, and then struck the building on Safeta Hadžića street.[14910] The Accused also argues that there is no evidence to support the police reports that ten artillery rounds were fired in the area after the modified air bomb; these projectiles, he claims, either did not land in the area or were staged.[14911]

4444. On 26 May 1995, at about 11 a.m., KDZ036 was in the square outside an apartment building on Prvomajska street, in Švrakino Selo.[14912] There were between 40 and 50 people in the square at the time as the weather was fine and there was a lull in the shelling, with no military operations in the area.[14913] KDZ036 heard a noise resembling that of a fast moving plane or a

14907 The address of this building changed several times. It was first Prvomajska street number 52, then it became Safeta Hadžića street 52, and then, in November 1995, it became Prvomajska street 4. *See* P5061 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 10 April 2012).

14908 Indictment, Scheduled Incident G.13.

14909 Indictment, Scheduled Incident G.13. *See also* Prosecution Final Brief, Appendix C, para. 76.

14910 Defence Final Brief, para. 2371.

14911 Defence Final Brief, paras. 2371–2372.

14912 KDZ036, P475 (Transcript from *Prosecutor v. D. Milošević*), T. 4523–4527 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); P456 (Aerial photograph of Sarajevo).

14913 P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*), T. 4538. *See* Adjudicated Fact 3054. *See also* Adjudicated Fact 3053.

helicopter and a couple of seconds later there was a large blast, which knocked him to the ground.[14914] When he looked around, he saw bricks falling down from one of the buildings and people screaming.[14915] He was taken to the Koševo Hospital as he had a deep cut on the right side of his back.[14916] Later KDZ036 learned that the explosion occurred on the roof of a five storey building nearby and destroyed the three top floors; he saw a large crater in the roof of that building.[14917] In addition, all the surrounding buildings had their windows blown out.[14918] No one died as a result of this explosion,[14919] but at least two persons were seriously injured and 14 others were slightly injured.[14920] KDZ036 did not hear any other explosions that day.[14921] He testified that this explosion was the loudest one he ever heard and that it was different from any other type of mortar or shell he had heard previously.[14922]

4445. The incident was investigated by a team from CSB Sarajevo, which included KDZ485 and KDZ477.[14923] Having arrived at the scene at 1:15 p.m., the team examined the incident site and KDZ477 took photographs of the damage.[14924] According to the official report of 1 June 1995, prepared by KDZ485, the investigation established that around ten artillery projectiles and one "highly destructive explosive device" landed on a part of the Švrakino Selo housing development near apartment buildings on Safeta Hadžića and Majdanska streets.[14925] Safeta Hadžića street was a

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14914 KDZ036, P475 (Transcript from *Prosecutor v. D Milošević*), T. 4523–4527 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal). KDZ477 also heard the noise and saw the bomb fly over the Novi Grad police station before it hit the street. According to him, the bomb resembled a small aircraft and came from the west. *See* P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 85–86; D533 (Photographs relating to shelling of Safeta Hadžića street on 26 May 1995), e-court p. 1; KDZ477, T. 10913–10914, 10923–10924 (31 January 2011), T. 11027–11032 (1 February 2011) (testifying in court that he could not be sure now that the bomb he saw was related to this incident as opposed to an incident that happened one month later, but stating that his original statement given in 2006, where he stated that the noise was related to this incident, was the most accurate); D980 (Map of Sarajevo marked by KDZ477).

14915 P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

14916 KDZ036, P475 (Transcript from *Prosecutor v. D. Milošević*), T. 4533–4534 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

14917 P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); P456 (Aerial photograph of Sarajevo marked by KDZ036).

14918 P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

14919 KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*), T. 4536–4537.

14920 *See* Adjudicated Fact 3056.

14921 P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

14922 KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*), T. 4537; P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

14923 P1905 (Witness statement of KDZ485), para. 20; KDZ485, T. 8950–8951 (3 November 2010); P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 84, 87; P2167 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995); D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

14924 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 1; P2167 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995); P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 87–88; KDZ477, T. 10928–10930 (31 January 2011); D533 (Photographs relating to shelling of Safeta Hadžića street on 26 May 1995).

14925 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), pp. 1–2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

residential area with apartment buildings and offices, close to the Majdanska street.[14926] Pieces of artillery projectiles, some of which were marked with a swastika, were examined—the team concluded that they were all 90 mm armour piercing artillery projectiles produced in Nazi Germany and that all were fired from an unspecified weapon located west of the incident site, in the direction of Ilidža.[14927] As for the highly destructive explosive device, the report notes that it hit the roof of the apartment building at 52 Safeta Hadžića street (formerly Prvomajska street),[14928] completely destroyed an apartment on the top floor, and damaged a number of others down to the third floor.[14929] Three GRAD rocket motors were also found on the scene, as well as pieces of the connecting plate.[14930] Upon inspection of its traces, it was determined that the projectile came from the south-southwest, corresponding to the positions of the Serbs in Lukavica.[14931] According to the report, two persons were seriously injured while 16 others, including a two-month old baby, sustained light injuries.[14932]

4446. KDZ477 testified that the artillery shells and the modified air bomb that landed in the area on 26 May 1995 did not appear to be targeting anything in particular and that the area was a purely civilian neighbourhood with civilian buildings and the police station; there were no ABiH weapons there.[14933]

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14926 Adjudicated Fact 3052.

14927 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

14928 As noted earlier, the address of this building changed several times, going from Prvomajska street number 52, to Safeta Hadžića street 52, and then, in November 1995, becoming Prvomajska street 4. *See* P5061 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 10 April 2012).

14929 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995); KDZ485, T. 8952–8957 (3 November 2010); D866 (Aerial photograph of Sarajevo marked by KDZ485); D867 (Aerial photograph of Sarajevo marked by KDZ485). *See also* P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). While P1913 refers to number 152 and not 52 of Safeta Hadžića street, the Chamber is satisfied in light of all the evidence showing the actual location of the impact that, as explained by KDZ485, he simply made a typographical mistake when typing up the report.

14930 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2.

14931 P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 3. *But see* D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995) (a report of an on-site investigation which states that a "highly destructive projectile was fired from the aggressor positions in the west").

14932 The two seriously injured persons were Albina Adrijata and Nura Osmanagić, while the other 15 listed in the report were Zaim Hatić, Ramiz Hevešlija, Alma Hevešlija, Zijada Redžepović, Haris Bešić, Ismet Osmanagić, Muharem Begović, Slavica Gavrilović, Adnan Abaza, Šefik Salčin, Nedžib Perović, Šaban Huremović, Emira Zahiragić, Štefica Kudra, and Hida Bengir. In one of the official notes in the report, an additional person, namely Lejla Redžepović, is also listed as lightly wounded. *See* P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), pp. 3, 14; P1251 (Sarajevo State Hospital discharge certificate for Nura Osmanagić); P1252 (Medical report for Nura Osmanagić); P1250 (Sarajevo State Hospital discharge certificate for Zijada Redžepović).

14933 KDZ477, T. 10924–10928 (31 January 2011); P2168 (Map of Sarajevo marked by KDZ477). When asked if the police station was about 150 metres away from the incident site, KDZ477 responded that he did not know. *See*

4447. Following the investigation at the scene, the CSB Sarajevo asked for an expert opinion on the projectile that was said to have come from the west-southwest and hit an apartment building at 52 Safeta Hadžića street.[14934] As a result, Suljević prepared a report analysing the fragments found and concluded that it was a modified air bomb, consisting of an aircraft bomb, the type of which could not be established, and "many 122 mm calibre GRAD type rocket projectiles used as engines".[14935] When asked about the projectile with a swastika, he observed that it was not part of the material he inspected, but noted that he did encounter such a shell in another incident, where it was established that it was an 88 mm calibre artillery shell.[14936]

4448. Zečević analysed the incident and concluded that the projectile was a modified air bomb, filled with fuel-air explosive.[14937] Noting that the reports of local investigators provided two different directions of fire, namely west (Ilidža) and south-southwest (Lukavica), Zečević thought, relying on eye-witness accounts which are not in evidence in this case, that the bomb in fact came from the direction of Ilidža-Rajlovac.[14938] He speculated that the azimuth was most likely 285 degrees, as that would have avoided the inhabited parts of Ilidža.[14939] Reasoning that the angle of descent had to have been higher than 25 degrees, he determined that the distance the modified air bomb travelled was around 5,800 metres, placing the origin of fire somewhere in Butile.[14940]

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KDZ477, T. 11024–11026, 11053–11056 (1 February 2011); D979 (Map of Sarajevo marked by KDZ477); D986 (Map of Sarajevo marked by KDZ477).

14934 P1325 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), e-court p. 1. The Chamber notes that while the English version of this document refers to "south-south-west", the original document written in BCS refers to the direction of "west-southwest".

14935 P1325 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 8. *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 53; Ekrem Suljević, T. 5782–5784 (22 July 2010). On cross-examination, Suljević conceded that the type of air bomb could not be established but remained adamant that, when taking into account the fragments found on the scene, there was no doubt that this device was a modified air bomb. *See* Ekrem Suljević, T. 5783–5785 (22 July 2010). When asked how the CSB Sarajevo managed to determine the trajectory of the projectile, Suljević did not know and reiterated that he was asked only to determine the type of projectile. *See* Ekrem Suljević, T. 5779–5781 (22 July 2010). *See also* KDZ485, T. 8955–8956, 8958 (3 November 2010) (also testifying that he did not know how the direction of fire was determined and that no member of the team on the scene was a ballistics expert); KDZ477, T. 10923–10924 (31 January 2011).

14936 Suljević also said that it was probably fired from a 90 mm cannon as there were no 88 mm launching pads. *See* Ekrem Suljević, T. 5786–5788 (22 July 2010).

14937 Zečević based this conclusion on the damage to the building and the eye-witness accounts as to the explosion they experienced. P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 125–126.

14938 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 126. The Chamber notes that Rajlovac is located northwest of the incident site and that, prior to 1992, was part of the Novi Grad municipality. *See* Section IV.A.1.c.iii: Novi Grad.

14939 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 126.

14940 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 126–127.

4449. Anđelković-Lukić disputed Zečević's analysis and thought, based on the damage caused, that the modified air bomb that exploded in this incident was a FAB-250 with three rocket motors filled with solid explosive charge.[14941] While Subotić agreed that this was not a fuel-air bomb, she thought, based on the type of damage caused to the fifth floor of the apartment building and the survival of one of the victims who was located there, that it was in fact a FAB-100.[14942] Subotić also challenged the azimuth that Zečević determined, noting that it was speculative and contrary to all local investigators' reports.[14943] Further, based on the image of the damage caused to the fifth floor of the building, she challenged the directions of fire identified by the local investigators and argued that the modified air bomb in fact came from the direction of the TV building, the possible target of the attack, having ricocheted off of that building first.[14944] As for the ten artillery projectiles that also landed in the area on 26 May 1995, Subotić argued that not a single one could be considered "proven" and opined that some of the damage seen in the photographs of the impact points indicated that some craters were dug out manually, while other damage was caused by planted explosive or by fire opened close to the incident site.[14945] She also claimed that the traces on the projectiles with Nazi insignia indicated that they were fired during World War II.[14946]

4450. As with the incidents that took place on 24 May 1995, Radojčić recalled that there was a "fierce" ABiH offensive at the time of the incident[14947] and that the incident site was "in the

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14941 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 23–26.

14942 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 75–79; Zorica Subotić, T. 38202–38203 (14 May 2013).

14943 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 79–81.

14944 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 81–87, 181, 184 (also stating that the distance between the TV building and the building at 52 Safeta Hadžića street is approximately 620 metres, while the difference in height is 45 metres). *See* Zorica Subotić, T. 38194–38199 (13 May 2013). As part of his case that the modified air bomb ricocheted off of the TV building before exploding at 52 Safeta Hadžića street, the Accused challenged Suljević on the trajectory of the modified air bomb established by CSB Sarajevo in the TV building incident, which occurred one month later and which was withdrawn from the Indictment (Scheduled Incident G.17). However, Suljević explained that he only knew the sequence in which the modified air bomb hit the TV building on 28 June, not the precise trajectory in which it travelled before doing so. Ekrem Suljević, T. 5740–5778 (22 July 2010); D526 (BiH MUP report re shelling of RTV Centre on 28 June 1995); D527 (Sketch drawn by Radovan Karadžić's defence team); D528 (D527 marked by Ekrem Suljević); D529 (Photograph 5 from D526 marked by Ekrem Suljević); P1341 (BiH MUP Report re shelling of RTV Centre on 28 June 1995); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial satellite image of Sarajevo marked by Ekrem Suljević). *See also* Berko Zečević, T. 12254–12272 (23 February 2011).

14945 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 87–102, 104–106; Zorica Subotić, T. 38208–38211 (14 May 2013); D3539 (Photograph of shelled building marked by Zorica Subotić).

14946 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 95–99.

14947 The Chamber notes that Radojčić's statement refers to 26 June instead of 26 May 1995. However, given his evidence on Scheduled Incident G.12, the Chamber considers this to be a typographical error and will proceed on the assumption that the witness was referring to the period of 24 to 26 May 1995. The same is the case with

immediate vicinity of the television building and an industrial complex, which was packed with military installations", including the forward command post of the 1st Battalion of the 102nd Motorised Brigade of the ABiH located on Prvomajska street.[14948] He testified that he never issued an order to open fire on the incident site or received information about this incident; he did allow, however, for the possibility that a military target may have been missed.[14949] Milošević testified that the SRK would not have fired had it not been attacked and that at the time of this incident the ABiH forces were attempting a break-through in order to link up with the other ABiH forces through Nedžarići.[14950]

4451. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following facts which go to the origin of fire in this incident and the status of the victims: (i) a modified air bomb hit Safeta Hadžića street on 26 May 1995;[14951] (ii) the victims were all civilians;[14952] (iii) the modified air bomb was fired from the area of Ilidža–Rajlovac, which was in SRK-held territory, having been launched by members of the SRK.[14953]

4452. Having considered the evidence and the adjudicated facts outlined above, the Chamber is satisfied that the projectile that landed on Safeta Hadžića street on 26 May 1995 was a modified air bomb. While CSB Sarajevo did not determine the type of bomb used, the Chamber is convinced, based on the extent of the damage caused to the three floors of a five-storey apartment building, that the bomb in question was larger than FAB-100. Relying on Anđelković-Lukić's evidence, the Chamber considers that this was most likely a FAB-250 modified air bomb with three rocket motors and thus is not convinced that this was a fuel-air bomb, as claimed by Zečević. Ultimately, however, the Chamber considers that the type of the charge used in the bomb is irrelevant given the size and the highly destructive nature of the bomb.

4453. The Chamber is also satisfied, relying on the CSB Sarajevo reports on the incident and the adjudicated facts, that the explosion of this modified air bomb resulted in significant damage to the five-storey residential building as well as the buildings around it. In addition, two persons were seriously wounded, while at least 14 others—including KDZ036 and a two month-old baby—were

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respect to Nikola Mijatović's statement. *See* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 112–113; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 26.

14948 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 112–113. According to Radojčić this forward command post was located in the Pavle Goranina school building. However, the Chamber heard no other evidence relating to this building, including its exact distance to the incident site. *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 26.

14949 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 113.

14950 Dragomir Milošević, T. 32779 (28 January 2013).

14951 *See* Adjudicated Fact 3055.

14952 *See* Adjudicated Fact 3056.

14953 *See* Adjudicated Fact 3057.

lightly wounded. All of them were civilians, who were in their apartments and were not taking direct part in hostilities at the time of the explosion.

4454. The Chamber recalls that the reports of local investigators provided two different directions of fire, namely west-southwest and south-southwest, while Zečević and Subotić thought that the bomb came from west-northwest and north-northwest, respectively. Adjudicated Fact 3057 refers to the direction of Ilidža–Rajlovac, which is the direction established by Zečević. Accordingly, there does not appear to be any agreement on the direction of fire in this incident. Ultimately, however, the Chamber considers this to be irrelevant as it is convinced, beyond reasonable doubt, that it was the SRK that launched the modified air bomb. This conclusion is based on the fact that (i) the SRK positions were located in all those directions of fire;[14954] (ii) the range at which these bombs have to be fired to be effective is long, usually somewhere between 4,000 and 6,000 metres, thus placing the origin of fire within the SRK-held territory;[14955] and (iii) only the SRK had modified air bombs in Sarajevo.[14956]

4455. As noted earlier, Subotić argued that the most probable target in this incident was the TV building, which she measured as being some 620 metres away from the incident site, and that the modified air bomb first ricocheted off of the roof of the TV building and then landed on Safeta Hadžića street. According to Subotić, the traces left by the ricochet were then wrongly assumed to have been part of a modified air bomb incident that took place on 28 June 1995, that is, over a month later. The Chamber rejects that evidence as it was based on secondary materials, such as photographs of the scene, and site visits that took place years later. It also finds it extremely speculative and tenuous. The Chamber is more persuaded by the reports of the local investigators who considered that the relevant traces on the roof of the TV building occurred on 28 June 1995, that is, one month after the incident in Safeta Hadžića street. However, even if Subotić's analysis is correct and the modified air bomb did indeed ricochet off of the roof of the TV building on 26 May 1995, the Chamber considers that the TV building was not a legimitate military target but a civilian object.[14957]

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14954 *See* paras. 3782, 3787, 4470.

14955 *See* paras. 4358, 4378.

14956 *See* para. 4369.

14957 The Chamber notes that it heard no credible evidence that ABiH units were located in the TV building. While Demurenko mentioned in his witness statement that ABiH had units "in and around" the TV building, he did so in the context of an UNPROFOR report of 16 June 1995 which notes the movement of ABiH weapons to a "TV tower" and records ABiH mortar fire coming from a "TV2 building" at 1:45 p.m. on that day. *See* D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), p. 80; D2299 (UNPROFOR daily report, 16 June 1995), p. 19. It is unclear, however, where this "TV2 building" was located and if it is the TV building referred to in Subotić's analysis. Demurenko was not asked to clarify this. The Chamber also recalls that

4456. Furthermore, the Chamber finds that following the explosion of the modified air bomb a number of artillery projectiles were fired by the SRK and landed in the area. The Chamber rejects Subotić's evidence that those projectiles were either planted or fired from nearby, that is, by the ABiH. Once again, she based her conclusion on secondary materials, such as photographs of the damage, while at the same time discounting all of the findings of the local investigators. In addition, if true, her claim would mean that there was a large conspiracy whereby a number of people would have had to plant exploded and unexploded pieces of artillery projectiles in the area, while ABiH was firing other projectiles from its positions nearby, and do all that while remaining unseen. This claim is simply unreasonable and once again indicates that Subotić was not an impartial expert witness and that her evidence was marked with bias in favour of the Accused.

4457. While the witnesses called by the Accused claimed that this incident happened during an ABiH offensive, the Chamber recalls KDZ036's evidence that the area where the incident took place was peaceful on that day and that a number of people were outside in the square before the modified air bomb struck. Thus, even if there had been fighting that day somewhere in Sarajevo, the Chamber does not consider that it was anywhere near the incident site. As for the suggestion that this was an industrial area and that the forward command post of the 102nd Brigade was on Prvomajska street, the Chamber has heard no other evidence about this command post, including its distance to the incident site. Further, while some industrial buildings were in the neighbourhood, the incident site itself was part of a residential complex, strewn with residential buildings and civilians living therein. Accordingly, the Chamber does not consider that the modified air bomb and the artillery projectiles that followed it were aimed at neutralising a specific military target. Rather, the Chamber is convinced beyond reasonable doubt that the SRK soldiers fired this modified air bomb into a generally residential area, and that, given the inaccuracy of modified air bombs and their destructive power, these soldiers should have been aware that such an attack would cause great damage to civilian objects and result in civilian casualties.

(d) UMC/Oncology Department at Dositejeva street, 16 June 1995 (Scheduled Incident G.14)

4458. The Indictment alleges that on 16 June 1995 at about 10 a.m., a modified air bomb was fired from SRK-held territory in the northwest and struck the building of the "UMC and Oncology Department at Dositejeva street 4-a", resulting in substantial damage and in three persons being wounded.[14958] In its Final Brief, the Prosecution alleges that the explosion injured "three or four

KDZ477 testified that he never heard of an ABiH presence in the TV building. *See* KDZ477, T. 11054 (1 February 2011).

[14958] Indictment, Scheduled Incident G.14.

civilians" and that the bomb came from SRK-held territory, without specifying the direction of fire.[14959] The Accused argues that the bomb that struck Dositejeva street was a FAB-100 filled with solid explosive charge, and that the damaged building housed the offices of the Ministry of Defence and was near the command of the 1st Corps of the ABiH, as well as other military targets, including the BiH Presidency.[14960]

4459. On 16 June 1995, a projectile exploded at the University Medical Centre, Institute of Radiology and Oncology ("UMC") at Dositejeva street, number 4a.[14961] CSB Sarajevo conducted an on-site investigation of this incident on 17 June 1995.[14962] Two UNMOs were also present, including Konings.[14963] The report prepared by the CSB Sarajevo noted that a "modified device with rocket projectiles was fired from the northwest direction" and exploded when it hit the window frame of the toilet on the first floor of the Sarajevo UMC/Oncology Department at around 11:03 a.m., wounding three persons and causing great material damage to that and the surrounding buildings.[14964]

4460. Suljević prepared an additional report, upon request from CSB Sarajevo, determining the type of projectile used in this incident as well as the direction from which it came.[14965] He went to the incident site, together with the CSB Sarajevo team, to collect the fragments and examine the traces of the explosion.[14966] His report recounts that a projectile fell at Dositejeva street following the shelling of the Centar municipality; it injured four people and caused great material damage.[14967] Having examined the fragments found at the scene of the incident, including remains of rocket motors and a three-forked metal part, Suljević concluded that they were "remains of a device with three 122 mm calibre GRAD type rocket projectiles, most likely adapted with an aerial

14959 Prosecution Final Brief, Appendix C, para. 77.

14960 Defence Final Brief, paras. 2375–2376.

14961 *See* Adjudicated Fact 3058; P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

14962 P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995).

14963 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 45–46; P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1.

14964 According to the report, the following persons were injured: Ivanka Skalj, Armin Skalj, and Marija Maljić. After they received medical attention they were sent home for further treatment. *See* P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1; P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1; P1963 (Photographs re shelling of Dositejeva street on 16 June 1995).

14965 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 56–57.

14966 Ekrem Suljević, T. 6161–6164, 6166–6167 (6 September 2010).

14967 P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1.

bomb."[14968] A fragment of an irregular shape from the exhaust duct of a 128 mm Plamen rocket was also found, which "most probably was not a part of the device that exploded."[14969] As for the type of air bomb used, Suljević thought it was either a 100- or a 250-kilogram air bomb.[14970]

4461. Suljević determined the direction from which the projectile came, on the basis of the fragments found and the position of the rocket motor parts.[14971] The impact was on the north side of the building so he thought that the azimuth was 348 degrees from the north, plus or minus ten degrees, which coincides with the direction of "enemy positions in the general sector of Pionirska Dolina."[14972] Suljević confirmed that the separation line between ABiH and VRS in that direction was somewhere in Pionirska Dolina.[14973] However, he was adamant that the projectile was a modified air bomb launched by the VRS, as ABiH had no such weapon.[14974]

4462. Konings was also at the scene and testified that it was not possible to use the crater analysis so that the direction of fire, which was a "general northerly" direction, was established from the traces of damage.[14975] Like Suljević, Konings thought that the bomb was fired by the Bosnian Serb side as he had never seen such a bomb on the ABiH side of the confrontation line and because, had it been fired by the ABiH, the sound of firing would have been heard.[14976]

4463. Suljević testified that the BiH Railway Company was in the vicinity of the incident site, as was the Ministry of Foreign Affairs, the CSB Sarajevo, and the BiH Presidency.[14977] He did not know if there were any residential buildings in the area immediately surrounding the incident site but noted that to the south, towards Mis Irbina street, there was a series of residential buildings.[14978]

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14968 P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 5; Ekrem Suljević, T. 6177–6178 (6 September 2010).

14969 P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 5; Ekrem Suljević, T. 6178–6180 (6 September 2010). When asked about this fragment during cross-examination, Suljević explained that people would often collect parts of projectiles so this fragment could have come from somewhere else but denied that it could have come from some ABiH military facility in the street as the building in question was a medical department. *See* Ekrem Suljević, T. 6163, 6180 (6 September 2010).

14970 Ekrem Suljević, T. 6172, 6176–6177 (6 September 2010).

14971 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; Ekrem Suljević, T. 6170–6171 (6 September 2010). Suljević did not calculate the angle of descent as his department did not have the necessary resources and there would be no point given that modified air bombs were propelled by rockets. *See* Ekrem Suljević, T. 6171 (6 September 2010).

14972 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), pp. 4–5; Ekrem Suljević, T. 6170–6174 (6 September 2010).

14973 Ekrem Suljević, T. 6172–6174 (6 September 2010).

14974 Ekrem Suljević, T. 6180, 6183–6186 (6 September 2010).

14975 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 47.

14976 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 48.

14977 Ekrem Suljević, T. 6164–6170 (6 September 2010); D552 (Map of Sarajevo marked by Ekrem Suljević). According to the scale on the map of the area in which the incident took place, the Presidency building was around 100 metres away from the incident site. *See* D617 (Map of Sarajevo).

14978 Ekrem Suljević, T. 6169 (6 September 2010).

KDZ485 testified that the Presidency housed the kitchen of the Ministry of Defence.[14979] According to the letter sent by Alija Izetbegović to Haris Silajdžić, UNPROFOR viewed the building as a military target because of this.[14980]

4464. The official CSB Sarajevo report also provides that later that day, at around 5 p.m., another modified air bomb landed, this time on Čobanija street.[14981] It was also investigated by the CSB Sarajevo team, as well as by Konings and another UNMO.[14982] According to Konings, this bomb came from the same direction in the north as the bomb that struck at Dositejeva street, namely the general northerly direction.[14983]

4465. Having analysed the materials relating to this incident, Zečević concluded that the projectile in question was a modified air bomb with three rocket motors and that it was filled with fuel-air explosive as indicated by the damage caused to the scene.[14984] He disagreed with Suljević's azimuth, as it meant that the launching site was "deep in the canyon within the Pretis [F]actory" where the terrain would not allow for the launch.[14985] He thought that the bomb "most probably" came from the direction of Kobilja Glava, that is, with the azimuth of 315 degrees plus or minus ten degrees (northwest); Zečević based this conclusion on the azimuth he had determined for the incident on Čobanija street because—in his view—both bombs were fired from the same position.[14986] He then determined the distance to the launch site "on the basis of the ballistic analysis" as being around 5,820 metres, placing it inside the Pretis Factory compound.[14987]

4466. Anđelković-Lukić thought, based on the destructive effects at the scene and the fact that the UMC was an old brick building, that the bomb in question was a modified FAB-100, with three

14979 KDZ485, T. 8913–8916 (3 November 2010); D860 (Letter from Alija Izetbegović to Haris Silajdžić, 17 April 1995).

14980 D860 (Letter from Alija Izetbegović to Haris Silajdžić, 17 April 1995).

14981 P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 2. *See also* P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 36–43.

14982 P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 45–46.

14983 P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 47. *But see* P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 36–43 (indicating that there was confusion as to whether the bomb arrived at Čobanija street from northeast or northwest).

14984 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 130.

14985 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 130–131.

14986 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 131, 135–139 (noting that the distance between Dositejeva and Čobanija streets was some 600 metres).

14987 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 131.

rocket motors, filled with solid explosive.[14988] Subotić agreed, arguing that, contrary to Zečević's opinion, the effects on the scene were not typical of damage caused by fuel-air explosive; in addition no large pieces of the metal casing housing the fuel-air explosive were found on the scene.[14989] Subotić also disputed Zečević's azimuth arguing that he failed to explain how he determined it and that he incorrectly dismissed Suljević's azimuth, ignoring the fact that there were other suitable areas for the launch in that direction of fire.[14990] She also challenged the distance to the origin of fire determined by Zečević on the basis that it was pure speculation and that it meant that the launch took place right on the confrontation line, which would not have been wise from a security point of view.[14991] Ultimately, Subotić agreed with the azimuth determined by Suljević, basing her conclusion on the position of the rockets found on the scene.[14992]

4467. While accepting that the area where the bomb struck was in the centre of Sarajevo, Subotić argued that the building itself was not in a residential zone, as the BiH Presidency, CSB Sarajevo, the command of the 1st Corps of the ABiH and the command of the 105th Mountain Brigade were all in the immediate vicinity of the building.[14993] In addition, she claims that the command of helicopter units of the ABiH was located "where this modified bomb landed".[14994] Thus, according to her, the modified air bomb that struck the UMC was "practically directly at the target".[14995] As for the fragments of the 128 mm Plamen rocket found on the scene, Subotić opined that the "only

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14988 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 26–27.

14989 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 109–110.

14990 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 112–114 (noting further that Suljević's azimuth means that the trajectory was of the bomb was such that it passed over the "narrowest residential zone in Sarajevo"). *See also* Zorica Subotić, T. 38207 (14 May 2013).

14991 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 114.

14992 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 114; Zorica Subotić, T. 38204–38205 (14 May 2013).

14993 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 107, 177–178, 183 (stating that the Presidency was 80 metres away from the incident site); Zorica Subotić, T. 38203–38204 (14 May 2013). Asim Džambasović confirmed that the command post of the 1st Corps was located in Danijela Ozme street, at number 7. *See* Asim Džambasović, T. 15192–15193 (22 June 2011). *See* D617 (Map of Sarajevo). As for the command of the 105th Brigade, he confirmed that it was located in the Šipad building in Trampina street. *See* Asim Džambasović, T. 15207, 15210 (22 June 2011); D1377 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.9. According to the scale on the map of the area where the incident occurred, both these locations were around 200 metres away from the incident site.

14994 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 107–108, 183, 188. Relying on the letter from Alija Izetbegović to Haris Silajdžić, namely D860, Subotić also claimed that the Ministry of Defence was "later transferred" to the UMC. The Chamber sees no basis for her claim in the letter cited. Even if true, there is no evidence as to when the transfer happened and whether it was before or after this incident. This, however, did not prevent Subotić from claiming later in her report (on pages 183 and 188) that the Ministry of Defence was located in the UMC building, which was misleading on her part.

14995 Zorica Subotić, T. 38206–38207 (14 May 2013).

logical explanation" was that it was in one of the rooms in the UMC, which to her was further confirmation that ABiH officers were in the building at the time of the incident.[14996]

4468. The Chamber also heard that the ABiH mounted an offensive in mid-June, directed primarily at the SRK positions.[14997] When giving evidence about this incident, Dragomir Milošević testified that, on the night between 15 and 16 June, the ABiH forces moved against the SRK from both the inner and outer circles of Sarajevo as part of the beginning of the offensive to "lift the blockade of Sarajevo".[14998] Thus, on 16 June, he reported to Mladić on the situation, including that the SRK had inflicted heavy losses on the enemy.[14999] During this conversation, Mladić instructed Milošević to "attack the Turks until the last one is gone" and said "they're fighting tooth and nail and they should be made to pay for it".[15000] Mladić also ordered Milošević to "one by one, destroy, attack, only military targets" which, according to Milošević, was the way the war in Sarajevo was waged throughout.[15001] Milošević then vehemently denied that the SRK fired the bombs that landed on Dositejeva and Čobanija streets.[15002] He also testified that the command of the 1st Corps of the ABiH was in the vicinity of the incident site, while a helicopter squadron crew had residence at the incident site.[15003]

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14996 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 108–109.

14997 *See* para. 3611.

14998 Dragomir Milošević, 32532–32533 (23 January 2013), T. 32737–32740, 32779, 32782 (28 January 2013); D2792 (Order of ABiH 12th Division, 11 June 1995). *See also* D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 17. *But see* Harry Konings, T. 9363–9369 (7 December 2010) (conceding that there was a lot of fighting in those days but that it took place on the confrontation lines and that it was not a "massive offensive operation"); Savo Simić, T. 30137–30139 (12 November 2012) (testifying that the ABiH launched an attack "on all the defence lines"); KDZ304, T. 10506–10508 (18 January 2011) (private session) (testifying that the offensive was conducted on the confrontation line); D958 (UNPROFOR Weekly Situation Report, 17 June 1995); P2507 (Anthony Banbury's briefing notes, 1 July 1995), para. 2 (indicating that the attacks were launched along confrontation lines); P1860 (UNMO report, 19 June 1995), p. 2; D890 (ABiH 105th Brigade report on consumption of ammunition, 18 June 1995); P820 (Witness statement of David Harland dated 4 September 2009), paras. 203, 213–214; P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), pp. 1–3. The combat reports before the Chamber confirm Konings' evidence that the fighting on 15 and 16 June 1995 took place on the confrontation lines. *See* D2690 (SRK combat report, 15 June 1995); D2691 (SRK combat report, 15 June 1995); D2692 (SRK combat report, 15 June 1995); D2693 (SRK combat report, 25 June 1995); D2415 (102nd Mountain Brigade ABiH combat report, 16 June 1995); D2416 (12th Army Division ABiH combat report, 16 June 1995); D186 (111th Brigade ABiH combat report, 16 June 1995); D187 (115th Mountain Brigade ABiH combat report, 16 June 1995).

14999 P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995); Dragomir Milošević, T. 32737–32740 (28 January 2013).

15000 P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995).

15001 P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995); Dragomir Milošević, T. 32737–32740 (28 January 2013).

15002 Dragomir Milošević, T. 32779–32780 (28 January 2013).

15003 Dragomir Milošević, T. 32780 (28 January 2013). *But see* Ekrem Suljević, T. 6165 (6 September 2010) (testifying that he did not even know there was a helicopter squadron in Sarajevo); David Harland, T. 2351 (11 May 2010) (testifying that the ABiH did not have any helicopters in Sarajevo).

4469. In another intercepted conversation of 16 June 1995, Prstojević told Rade Ristić, another member of the Ilidža Crisis Staff,[15004] that there was an attack by the Muslim side in Nedžarići but that it was successfully deflected, and that his side "pounded" the "Turks" and sent a "krmača" or two to them, to which Ristić responded: "we need to shake them up a bit by all means".[15005]

4470. The 3rd Sarajevo Infantry Brigade of the SRK, which was created by merging the Vogošća, Rajlovac, and Koševo Brigades,[15006] was located in the northwestern part of the Sarajevo front.[15007] Zoran Kovačević, the Commander of the Mixed Artillery Battalion of the 3rd Sarajevo Brigade at the time of the incident,[15008] testified that the brigade's command post was in Vogošća while its firing positions were located in Blagovac and Krivoglavci and orientated towards the city and Žuč.[15009] Kovačević testified that no one from Pretis or from his brigade launched the bomb that struck the UMC, explaining that he would have heard the launch had it happened.[15010] Kovačević did confirm, however, that his brigade probably had an air bomb launcher.[15011] This is corroborated by an SRK document which shows that Milošević reported to the VRS Main Staff on 15 June 1995 that four aerial bomb launchers were with the brigades in the northwestern part of the front.[15012]

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15004 D1193 (Ilidža Crisis Staff members, 10 April 1992).

15005 P5638 (Intercept of conversation between Neđeljko Prstojević and Radomir Ristić, 16 June 1995). The Chamber notes that during his testimony, Prstojević denied that the term "krmača" was a reference to a modified air bomb, and claimed that it was also used to refer to artillery weapons of higher calibre. Having been confronted with his interview with the Prosecution given in 2006 where he discussed "krmača" bombs and their imprecise nature—which in light of all the evidence about these bombs clearly indicates that he was discussing modified air bombs—Prstojević rejected the 2006 interview, on the basis that it was wrongly interpreted. As noted earlier, the Chamber has reviewed the audio portion of the relevant interview and found that it was accurately interpreted and transcribed. Accordingly, the Chamber does not accept Prstojević's evidence on this matter and is convinced that in this intercepted conversation with Ristić he was referring to modified air bombs. *See* Neđeljko Prstojević, T. 13570–13577 (17 March 2011); P2516 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio); P2517 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio).

15006 *See* fn. 542. *See also* Miladin Trifunović, T. 30443 (27 November 2012).

15007 Zoran Kovačević, T. 30612–30613 (28 November 2012); Stanislav Galić, T. 37539 (22 April 2013); Dragomir Milošević, T. 32569–32570 (23 January 2013).

15008 D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 3. Before that, Kovačević was a soldier in the Vogošća Brigade, and also served in the 1st KK. *See* D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 2.

15009 D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), paras. 4–5; Zoran Kovačević, T. 30593–30595 (28 November 2012); D2486 (Map of Sarajevo marked by Zoran Kovačević); D2487 (Map of Sarajevo marked by Zoran Kovačević); D2488 (Map of Sarajevo marked by Zoran Kovačević). *See also* D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), paras. 12–13; D2445 (Map of Sarajevo marked by Miladin Trifunović); D2446 (Map of Sarajevo marked by Miladin Trifunović); Miladin Trifunović, T. 30378–30387 (15 November 2012).

15010 D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 23; Zoran Kovačević, T. 30617 (28 November 2012).

15011 Zoran Kovačević, T. 30613–30615 (28 November 2012).

15012 P1283 (SRK report to VRS Main Staff re aircraft weaponry, 15 June 1995). *See also* P1300 (SRK Order, 11 July 1995) and P1314 (Request from 3rd Sarajevo Infantry Brigade to SRK, 25 July 1995) (both indicating that the 3rd Sarajevo Infantry Brigade had modified air bombs in its arsenal).

4471. Miladin Trifunović, a former Commander of the Vogošća Brigade and a Director of Transportation at Pretis at the time of the incident,[15013] testified that no modified air bomb was ever launched from Pretis or from the brigade's zone of responsibility.[15014] He stated that he was within the perimeter of Pretis at the time and did not hear anything that would resemble a modified air bomb launch.[15015]

4472. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts: (i) on 16 June 1995, a modified air bomb exploded at the UMC;[15016] (ii) three or four civilians were injured as a result of the explosion and some surrounding buildings were destroyed;[15017] and (iii) the modified air bomb was fired from outside the confrontation lines and within SRK-held territory and was launched by members of the SRK.[15018]

4473. Having considered the evidence and the adjudicated facts outlined above, the Chamber is convinced that a modified air bomb with three rocket motors struck the UMC on 16 June 1995. While Zečević thought that the bomb was a fuel-air bomb (and thus a FAB-250), Subotić and Anđelković-Lukić thought it was a FAB-100. Suljević thought that it was either a 100- or a 250-kilogram modified air bomb. Given that the UMC was indeed made of brick as seen in the photographs of the damage, and given that both FAB-100 and FAB-250 bombs could be mounted with three rocket motors, the Chamber is unable to determine whether a FAB-100 or FAB-250 bomb was used in this incident. The Chamber is also not convinced that the bomb in question was filled with fuel-air explosive as the damage could have also been caused by a bomb filled with solid charge, as argued by Anđelković-Lukić. Ultimately, however, there is no doubt that the projectile in question was a highly destructive modified air bomb, as indicated by the damage caused by the explosion and the fragments gathered at the scene.

4474. Relying on the evidence and Adjudicated Fact 3059, the Chamber is further satisfied that the explosion resulted in the wounding of three civilians who were not taking direct part in hostilities at the time of the incident.[15019]

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15013 D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 1.
15014 D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 22.
15015 Miladin Trifunović, T. 30442–30443 (27 November 2012).
15016 *See* Adjudicated Fact 3058.
15017 *See* Adjudicated Fact 3059.
15018 *See* Adjudicated Fact 3060.
15019 *See also* para. 4976.

4475. In terms of the direction of fire, the Chamber is satisfied that it came from the northwest. While there is some discrepancy between Zečević's and Suljević's azimuths, ultimately the Chamber is convinced beyond reasonable doubt that the modified air bomb was fired from SRK-held territory. This is confirmed by the intercepted conversation on the day of the incident in which Prstojević told Ristić that they had sent over a "krmača" or two to the Bosnian Muslim side. Konings was also convinced that the bomb came from the SRK side of the confrontation line as the launch of a modified air bomb would have been heard had it come from within the city. Furthermore, as noted above,[15020] the SRK positions were located in the established direction of fire, the range at which modified air bombs have to be fired is long, thus placing the origin of fire for this incident squarely within the SRK-held territory, and only the SRK had modified air bombs in Sarajevo.

4476. With respect to the Accused's argument that the bomb landed in a non-residential zone, and on a legitimate military target, the Chamber first recalls that Dositejeva street is in the centre of Sarajevo, not far from Mis Irbina street, and is thus in an area brimming with civilian objects and the civilian population. The Chamber also notes that, aside from the evidence given by Milošević and Subotić, it has heard no other evidence about members of a helicopter squadron residing in the UMC at the time of the incident, or even about the helicopter squadron as such. Further, the Chamber found both Subotić and Milošević to be lacking in credibility, as they both tried to minimise the damage caused by the SRK's activities in Sarajevo and were exceedingly biased during their testimony. Thus, the Chamber is not persuaded, without other corroborating and credible evidence, that a helicopter squadron was in the UMC building at the time of the incident. Furthermore, the Chamber has already dismissed Subotić's claim that parts of the Ministry of Defence were in the building at the time and, as indicated earlier, found her disingenuous on this issue.[15021]

4477. As for the commands of the 1st Corps and the 105th Brigade of the ABiH, the Chamber finds that they were located in Danijela Ozme and Trampina streets respectively, as testified to by Džambasović. However, as noted earlier, both those locations were around 200 metres away from the incident site.[15022] Similarly, the BiH Presidency was some 100 metres away from the incident site. Assuming any one of these locations was indeed the intended target of the bomb that struck the UMC, it was missed by the SRK by around 200 and 100 metres respectively. Yet, when another modified air bomb was launched later in the day, it landed in Čobanija street, which is even

15020 *See* para. 4454.
15021 *See* fn. 14994.
15022 *See* fn. 14993.

farther away from these locations, while another landed in Alipašino Polje.[15023] Accordingly, the Chamber does not consider these locations to have been the intended targets. Even if they were, the fact that they were not hit but were, rather, missed by large margins simply shows the inherent inaccuracy of modified air bombs.

4478. While there may have been some fighting on the day, given that ABiH was in the middle of the offensive in those days, the Chamber is persuaded by Konings who explained that there was a lot of fighting at the time but that it took place on the confrontation lines; as noted earlier, his evidence that the fighting took place on the confrontation lines is confirmed by various combat reports of both the SRK and the ABiH.[15024] Further, the UMC was in the centre of Sarajevo and not on the confrontation line. Accordingly, the Chamber does not consider that the modified air bomb that landed in Dositejeva street was aimed at neutralising a specific military target. Rather, the Chamber is convinced beyond reasonable doubt that it was launched into a generally residential area in retaliation for the attacks mounted by the ABiH on the confrontation lines. This is confirmed by Mladić's instruction to Milošević that the Bosnian Muslim side should be made to pay for fighting. Further, given the inaccuracy of the modified air bombs and recalling their destructive power, the Chamber is of the view that the SRK soldiers launching this modified air bomb into the central area of Sarajevo should have been aware that such an attack would cause great damage to civilian objects and result in civilian casualties.

(e) Trg Međunarodnog Prijateljstva, Alipašino Polje, 16 June 1995 (Scheduled Incident G.15)

4479. According to the Indictment, on 16 June 1995 at about 3:20 p.m., a modified aircraft bomb, fired from SRK-held territory in Lukavica exploded next to 10 Trg Međunarodnog Prijateljstva, lightly injuring seven persons and causing considerable damage to the neighbouring buildings.[15025] The Accused argues that the bomb that exploded in this incident was a modified FAB-250 with three rocket motors and that its "most probable" target was the Bitumenka factory, which was 140 metres away from the incident site and in which ABiH was deployed.[15026] He also argues that a "major ABiH offensive was underway at the time of the incident".[15027]

15023 *See* discussion relating to Scheduled Incident G.15.
15024 *See* fn. 14998.
15025 Indictment, Scheduled Incident G.15. *See also* Prosecution Final Brief, Appendix C, para. 78.
15026 Defence Final Brief, paras. 2379, 2381.
15027 Defence Final Brief, para. 2380.

4480. On 16 June 1995, the weather was fine and there was good visibility.[15028] KDZ079 and four others were at the community centre office located at 10 Trg Međunarodnog Prijateljstva in Alipašino Polje.[15029] That centre was located in a residential area, across the street from the PTT Building, where UNPROFOR Sector Sarajevo Headquarters was based.[15030] Throughout the day, there was sporadic shooting and shelling in the vicinity of Ilidža and, around 3:30 p.m., a bomb exploded near the centre, throwing KDZ079 onto a large table and then into a wall with significant force.[15031] She lost consciousness and was taken to a nearby shelter, where she stayed for three to four days due to intensive shooting and shelling.[15032] She had scratches on the side of her body, her hearing was damaged, and she could not hear properly for a year after the incident throughout which she also suffered from headaches and had pain in her liver and lungs.[15033] No one was killed in the explosion or suffered serious injuries but the whole office was destroyed and only the exterior walls remained standing.[15034] In total, seven people were injured in the explosion.[15035]

4481. KDZ079 described heariong a strange sound, "like a plane coming", just before the explosion.[15036] She also testified that she heard later that the explosion was caused by an air bomb which landed about five to ten metres away from the community centre.[15037] Several weeks later, when she visited this location, KDZ079 saw a large crater and noticed that the balconies and windows of the surrounding buildings were damaged.[15038]

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15028 *See* Adjudicated Fact 3061.

15029 P2922 (Witness statement of KDZ079 dated 12 March 1995), p. 2; P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 3–4; P2922 (Addendum to witness statement of KDZ079, 22 April 2010). *See also* P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3522–3524.

15030 *See* Adjudicated Fact 3062. *See also* P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

15031 P2922 (Witness statement of KDZ079 dated 12 March 1995), p. 2; P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 5–7; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3539.

15032 P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 7, 12; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3516–3518; P454 (Aerial photograph of Sarajevo marked by KDZ079).

15033 P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 7, 13; P2922 (Witness statement of KDZ079 dated 12 March 1995), p. 2; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3516.

15034 P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 8–9; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3517.

15035 *See* Adjudicated Fact 3063.

15036 P2922 (Witness statement of KDZ079 dated 12 March 1995), p. 2; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3513, 3516.

15037 P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 10–11; KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3514, 3519, 3535–3538, 3542–3544; P458 (Photograph of buildings in Sarajevo); P455 (Aerial photograph of Sarajevo marked by KDZ079). *See also* KDZ166, T. 8282–8283 (26 October 2010); P1803 (Map of Alipašino Polje).

15038 P2922 (Witness statement of KDZ079 dated 17 May 2006), para. 11.

4482. KDZ079's witness statement records that at the time of the incident the TO had an office in the community centre.[15039] When giving evidence in the *Dragomir Milošević* case, however, she testified that this office dealt with "civilian protection" or "civilian defence", which was a civilian institution, supplying the civilians with medicine, food, and humanitarian aid.[15040] She also testified that there were no soldiers in the community centre, only civilians; usually these were the elderly people from the neighbourhood, who would come to take shelter in the building and help distribute aid.[15041]

4483. This incident was investigated by the CSB Sarajevo team, including Turkušić and KDZ166, but only 10 days later due to intensive shelling in the area.[15042] The team noted in the official report prepared following the investigation that (i) the scene had been altered, (ii) parts of four rockets were found on the scene, and (iii) the projectile was a modified air bomb, probably fired from around Lukavica.[15043]

4484. As the criminal technician working on the case, KDZ166 took photographs, drew a sketch of the scene, and prepared his own report of the on-site investigation.[15044] According to that report, the projectile landed on a "concrete path which runs above no. 10, Trg Međunarodnog Prijateljstva and leads to Ive Andrića St."[15045] It was "probably a modified aircraft bomb with four in-built rocket engines" which came "from the direction of the aggressor's positions in the west" and created a large crater, over 11 metres long and 2.5 metres deep.[15046] Seven people were wounded as a result.[15047] During cross-examination, KDZ166 testified that the direction of fire was "west, north-west, roughly speaking", which meant that its trajectory was either over the student dormitories or over Bitumenka Factory.[15048] He also slightly corrected the direction of the north on

15039 P2922 (Witness statement of KDZ079 dated 12 March 1995), p. 2.

15040 KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3506, 3508–3509, 3513–3515.

15041 KDZ079, P479 (Transcript from *Prosecutor v. D. Milošević*), T. 3515, 3545–3546.

15042 KDZ166, T. 8316–8317 (26 October 2010); P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 13; P431 (BiH MUP Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995) (under seal).

15043 P431 (BiH MUP Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995) (under seal).

15044 P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 13–14; P1805 (Sketch re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995); P1806 (Photographs re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995); P1814 (BiH Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995) (under seal). *See also* KDZ166, T. 8284–8285 (26 October 2010).

15045 P1814 (BiH Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995), p. 1 (under seal). *See also* KDZ166, T. 8322 (26 October 2010); D803 (Map of Alipašino Polje marked by KDZ166).

15046 P1814 (BiH Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995), p. 1 (under seal). *See also* KDZ166, T. 8284–8286 (26 October 2010); P1805 (Sketch re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995); P1806 (Photographs re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995).

15047 P1814 (BiH Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995), p. 1 (under seal); P431 (BiH MUP Report re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995) (under seal).

15048 KDZ166, T. 8322–8323 (26 October 2010); D804 (Map of Sarajevo marked by KDZ166).

the sketch he prepared, and stated that in his opinion the projectile did not come from Lukavica but, based on the diameter of the crater, from the west or the northwest.[15049]

4485. KDZ166 testified that Alipašino Polje was a residential area.[15050] On cross-examination, he confirmed that Energoinvest was in the vicinity and that the area to the north of the incident site was industrial.[15051] In addition, the TV building was nearby, as was the police station.[15052]

4486. Zečević thought that the damage and the effects experienced by KDZ079 and other victims pointed to a blast wave effect and thus to a fuel-air bomb.[15053] Looking at other incidents in the area, including the one on Safeta Hadžića street, Zečević determined that the azimuth of the modified air bomb in this case was 285 degrees, which corresponds to the area of Butila and Ilidža–Rajlovac, namely to the northwest of the incident site.[15054]

4487. Basing her analysis on the size of the crater, Anđelković-Lukić thought that the bomb used in this case was a modified FAB-250 with three rocket motors and with solid explosive charge as indicated by the strong blast effect on the victims.[15055] She challenged Zečević's determination that this was a fuel-air bomb, arguing that the victims who were in the vicinity of the explosion would not have survived had that been the case.[15056] Finally, she challenged his determination of the azimuth, stating that he used the other incidents because he had no parameters from which he could determine that angle for this specific incident.[15057]

4488. Subotić also thought that the modified air bomb used in this incident was a FAB-250 with solid explosive charge, as the victims would not have otherwise survived and because the shape and the depth of the crater ruled out a fuel-air bomb.[15058] Using the photographs of the rockets found on

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15049 KDZ166, T. 8325–8329 (26 October 2010); D805 (Sketch re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995 marked by KDZ166); D806 (Aerial photograph of Trg Međunarodnog Prijateljstva marked by KDZ166); D807 (Aerial photograph and sketch re shelling of Trg Međunarodnog Prijateljstva on 16 June 1995).

15050 KDZ166, T. 8283–8284 (26 October 2010).

15051 KDZ166, T. 8318–8319 (26 October 2010); D803 (Map of Alipašino Polje marked by KDZ166).

15052 KDZ166, T. 8320–8321 (26 October 2010); D803 (Map of Alipašino Polje marked by KDZ166).

15053 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 132–133.

15054 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 133. *See also* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 121, Figure 58.

15055 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 28.

15056 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 28–29.

15057 D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 29.

15058 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 116–117; Zorica Subotić, T. 38212–38214 (14 May 2013).

the scene, Subotić noted that only three nozzles can be seen and thus concluded that the bomb probably had three rocket motors, rather than four.[15059] She noted the disagreement on the azimuth between KDZ166's report (west) and the official report (Lukavica, which is to the south), and determined based on KDZ166's corrected sketch of the incident site, that the azimuth was north-northwest, and that the bomb's trajectory went over the Bitumenka Factory, which was 140 metres away and was "most probably" the target.[15060] She also claimed that both the CSB Sarajevo and Zečević wanted to "show at any cost that the only target in this attack was a residential area and this is why they determined that the incoming trajectory crossed only the residential area".[15061]

4489. Radojčić testified, like Milošević above,[15062] that this incident occurred in the midst of a "fierce" ABiH offensive and that he "allow[ed] for the possibility that the target may have been the [Bitumenka] building" which housed ABiH forces and mortars.[15063] Moreover, according to him, the building of the Prvi Maj school, now called Fatima Gunić school, accommodated the command of one of the units of the 102nd Brigade of the ABiH.[15064] Finally, he testified that he never ordered that fire be opened on Trg Međunarodnog Prijateljstva nor received any reports about this incident.[15065] Milošević testified that the bomb was used in order to stop the attack of the 102nd Brigade of the ABiH on Nedžarići.[15066]

4490. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following two facts: (i) the projectile that exploded on Trg Međunarodnog Prijateljstva 10 was a modified air bomb;[15067] and (ii) it was fired from an SRK position, having been launched by members of the SRK.[15068]

4491. The Chamber, relying on the evidence and the adjudicated facts recounted above, is satisfied that the projectile that landed on Trg Međunarodnog Prijateljstva on 16 June 1995 was a

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15059 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 118.

15060 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 119–121, 184, 188; Zorica Subotić, T. 38214–38216 (14 May 2013).

15061 D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 121 (adding further that CSB Sarajevo did so by rotating the direction of north, which was "a method frequently used in their investigations").

15062 *See* para. 4468.

15063 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 64, 114.

15064 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 114 (not specifying which unit that was). *See also* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 46 (testifying that the ABiH was located there throughout the war). The Chamber received no evidence, however, as to the location of this school or the distance between it and the incident site.

15065 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 114.

15066 Dragomir Milošević, T. 32780–32781 (28 January 2013).

15067 Adjudicated Fact 3063.

15068 *See* Adjudicated Fact 3064.

modified air bomb. Given the extensive damage caused by the explosion, the Chamber is also convinced that it was a heavier bomb, most likely FAB-250 with three rocket motors. Given the conflicting evidence on this issue, the Chamber is not convinced that it was a fuel-air bomb as claimed by Zečević. Ultimately, however, the Chamber considers that the type of the charge used in the bomb is irrelevant given its highly destructive nature.

4492. In terms of the casualties, the Chamber finds, relying on the evidence and the Adjudicated Fact 3063, that seven people were injured in the explosion, including KDZ079. The Chamber also considers that they were all civilians and that they were not taking direct part in the hostilities at the time of the incident.[15069]

4493. With respect to the direction of fire, while there are some discrepancies among the experts and local investigators, the evidence nevertheless shows that the modified air bomb came from the general northwesterly direction. While Subotić claims that Zečević's direction of fire was closer to the west than to the north because he was trying to show that civilians were the only target, the Chamber does not accept her claim and recalls that Zečević explained the basis on which he determined this direction of fire, namely from his experience of other incidents in the area. Ultimately, as with the incident on Dositejeva street, the Chamber is convinced beyond reasonable doubt that the modified air bomb in this incident was fired from SRK-held territory. This is confirmed by the intercepted conversation in which Prstojević told Ristić that they sent over a "krmača" or two to the Bosnian Muslim side that day. Milošević also admitted that the SRK used the bomb in order to stop the attacks in Nedžarići.

4494. The Chamber further finds that the area of Alipašino Polje was a residential area with a large number of civilians living there. While Radojčić testified that Fatima Gunić School housed an ABiH command, the Chamber has received no evidence about the location of this school or its distance from the incident site. In any event, the Accused's argument is that the most probable target was the Bitumenka Factory, not the school, the factory being about 140 metres away from the incident site. The Chamber notes, however, that it has received no evidence that Bitumenka was used by ABiH or that it otherwise was a legitimate military target. Even if it was, however, the modified air bomb missed it by at least 140 metres, confirming once again the inherent inaccuracy of this weapon.

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15069 While KDZ079 testified that the civilian protection, or civilian defence, was located in the community centre building, the Chamber considers that this did not make the building and the persons located therein a legitimate military target since, according to KDZ079, there were no soldiers in the building. Those in the building were usually the elderly from the neighbourhood who would come to take shelter there and help distribute aid. In addition, none of the Defence witnesses suggested that they considered this building to be a legitimate military target.

4495. Finally, while there may have been some shelling and fighting during the day, KDZ079 testified that it was sporadic and that it took place in the vicinity of Ilidža, on the confrontation line. This is consistent with Konings who explained that there was a lot of fighting in those days but that it took place on the confrontation lines.[15070] The incident site here was not on the confrontation line and there is no evidence that fire was opened from it on the SRK positions that day.

4496. Accordingly, the Chamber does not consider that the modified air bomb was aimed at neutralising a specific military target. Rather, the Chamber is convinced beyond reasonable doubt that the bomb was launched into a generally residential area, in retaliation for the attacks mounted by the ABiH on the confrontation lines. This is confirmed by Mladić's instruction to Milošević that the Bosnian Muslim side should be made to pay for fighting as well as by Milošević's admission that the bomb was used in order to stop the ABiH attacks in Nedžarići. Further, given the inaccuracy of the modified air bombs and recalling their destructive power, the Chamber is of the view that the SRK soldiers launching this modified air bomb into the central area of Sarajevo should have been aware that such an attack would cause great damage to civilian objects and result in civilian casualties.

iv. *Findings on shelling in Sarajevo*

4497. Having considered all the evidence presented in this case in relation to shelling in Sarajevo in the period relevant to the Indictment, the Chamber is convinced that throughout the conflict the SRK units engaged in deliberate, disproportionate, and indiscriminate shelling of the civilian objects and civilians in the city.[15071] They did so using a multitude of heavy weapons, such as 80 and 120 mm mortars, as well as other artillery and higher calibre weapons. These were located, more or less permanently, on the hills surrounding Sarajevo, their permanent placement allowing the firing crews to acquire a certain degree of targeting accuracy. Nonetheless, the evidence of the witnesses who were in the city during the conflict shows that there often seemed to be no military value in the targets that were selected and that fire was often randomly scattered around the city. The evidence is also overwhelming as to the high numbers of shells that fell on the city during the conflict, including on its residential areas and civilian objects. The shells would fall on an almost daily basis, with the exception of a few quiet periods as outlined in Section IV.B.1.a, while the heaviest shelling took place in the early days of the conflict and in the summer of 1992. The fact that this type of shelling of the city continued for over three years indicates to the Chamber that the

15070 *See* fn. 14998.

15071 In reaching this conclusion, the Chamber relied not only on the findings on scheduled shelling incidents discussed above, but also on the general evidence relating to the situation in the city and the types of shelling it was exposed to on a regular basis.

intention of the SRK forces was not in fact to target military targets alone, but rather to target civilians and/or use random and disproportionate fire in the city. Further, as with sniping, the Chamber is particularly persuaded by the evidence of international witnesses who worked for the UN in the city and, therefore, could not only observe the shelling practices of the SRK but were also able to have a more complete picture of the events on the ground through UNPROFOR and UNMO reports and through their dealings with the warring sides. All those witnesses were consistent as to the illegitimate nature of the SRK's shelling of the city and their heavy weapon supremacy. Further, the evidence outlined above clearly indicates that even when used in response to ABiH fire, the SRK fire was usually disproportionate and/or indiscriminate. The specific scheduled shelling incidents discussed in detail above also clearly illustrate the non-selective nature of the SRK fire. Furthermore, on top of the regular artillery weapons and mortars, the SRK used highly destructive modified air bombs, which were imprecise and completely unsuitable for an urban environment such as Sarajevo. Finally, the Chamber's finding that the SRK was shelling Sarajevo civilians, either through deliberate targeting or through indiscriminate and disproportionate attacks, is further reinforced by the high number of civilians who either died or were wounded as a result of the shelling undertaken by the SRK.

4498. In coming to the above conclusions, the Chamber also carefully assessed the evidence of the former SRK soldiers and officers who claimed that they were not deliberately targeting civilians and that their use of heavy weaponry was always selective and proportionate. The Chamber found this evidence disingenuous, as it flies in the face of the overwhelming and highly persuasive Prosecution evidence as to the facts on the ground. It is also contrary to the evidence specifically related to the scheduled shelling incidents. Finally, it is further contradicted by the SRK's own analysis of the targeting practices conducted by the SRK's Chief of Artillery in July 1994, as well as by the orders of the SRK and of the Accused concerning the preservation of ammunition.[15072] All those documents clearly show that SRK units opened disproportionate and non-selective fire, achieving poor results in terms of striking relevant military targets.[15073] The Chamber therefore considers that the evidence these witnesses gave on the issue of selectivity and proportionality was self-serving and dishonest and undermined their credibility. Furthermore, while the Chamber accepts that SRK units would sometimes open fire that was directed at the ABiH forces on the confrontation lines and/or was a proportionate response to ABiH fire, as confirmed by many of the above-mentioned international witnesses, this does not impact on the ultimate finding that much of the heavy weapon fire on the city was neither selective nor proportionate.

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15072 *See* para. 3999.

4499. While the evidence of the above-mentioned SRK witnesses on the selective and proportional nature of SRK fire is unreliable, their evidence on other aspects of SRK targeting shows that KDZ182's assessment that mortar and artillery fire was strictly controlled at higher command levels while leaving some leeway for "underlings" was ultimately accurate. As noted above, Galić and Inđić confirmed that higher calibre artillery was controlled at the corps level while the basic assets of the brigade were controlled by the brigade commanders. Similarly, both Galić and Simić testified that authorisation of the brigade command or of the corps command was necessary before mortar or artillery fire could be opened. In addition, as confirmed by Dušan Škrba and Nikola Mijatović, SRK units were allowed to open fire without permission and using simple preparation, without waiting to hear from the SRK observers, if directly threatened. Finally, as found above in the section dealing with modified air bombs, the use of such bombs was under strict VRS Main Staff control.

4500. In terms of the Accused's arguments that the ABiH was responsible for civilian casualties in the city because it did not remove the civilians from the vicinity of the military objectives or because it abused civilians objects for military purposes, the Chamber recalls that the parties to a conflict are indeed under an obligation to remove civilians, to the maximum extent feasible, from the vicinity of military objectives and to avoid locating military objectives within or near densely populated areas.[15074] However, the failure of a party to abide by this obligation does not relieve the attacking side of its duty to abide by the principles of distinction and proportionality when launching an attack.[15075] The evidence is clear that the SRK units did not abide by those principles.

4501. As for the use of mobile mortars by the ABiH from civilian areas, the Chamber accepts that this practice caused difficulties to the SRK units and that it was illegal. However, the legality or otherwise of ABiH firing practices is only relevant to the allegations made in this case if they go to one of the main allegations in this case, such as showing that the SRK observed the principles of distinction during the conflict in Sarajevo. In that respect, the Chamber agrees with Fraser that given the low probability of the SRK response actually hitting and destroying the mobile mortar in question, the SRK units should have refrained from firing back if the mobile mortar was intermingled with civilians.[15076] In addition, as discussed in a later section of this Judgement, the ABiH would usually fire one or two rounds from those mortars but the SRK would then respond in

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15073 The Chamber finds D2587 particularly telling in this context as it alludes to the fact that the SRK units all wanted to liquidate as many Bosnian Muslims as possible. *See* fn. 13248.

15074 *Galić* Appeal Judgement, para. 194; Article 58 of Additional Protocol I.

15075 *Galić* Appeal Judgement, para. 194.

15076 Indeed, Golić testified that in early June 1992 he received an order from the Chief of Artillery not to fire at a mobile mortar located in the National Museum. *See* D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 29.

a disproportionate manner, indicating that the aim was retaliation rather than that of neutralising the mobile mortar in question.[15077]

4502. Finally, the Accused's argument that the Bosnian Muslim units within the city opened mortar and artillery fire on their own civilians in order to lay the blame on the Serbs has been rejected by the Chamber for the reasons outlined in more detail in the later section of the Judgement.[15078]

d. Bosnian Muslim side targeting own civilians

4503. Throughout this case the Accused argued, both generally and in relation to specific scheduled incidents, that it was the Bosnian Muslim side that sniped and shelled civilians in Sarajevo in order to gain international sympathy and to provoke an international response against the Serbs; he also claimed that the Bosnian Muslims were responsible for all major incidents in the city which resulted in civilian casualties.[15079]

4504. The Prosecution argues that these claims by the Accused should be rejected as "international witnesses" consistently "debunked" them; further, the Prosecution claims that, to the extent it occurred, any such activity was insignificant in light of the frequent sniping and shelling conducted by the Bosnian Serb Forces during the conflict.[15080]

4505. To support his claims, the Accused cross-examined a number of Prosecution witnesses on the topic and also called a number of witnesses, including Edin Garaplija. Soon after the war Garaplija, a former member of the BiH MUP's SDB,[15081] conducted a police interview with Nedžad Herenda, a member of a secret police unit established in 1992 as part of the SDB called Ševe.[15082] According to Garaplija, during this interview Herenda admitted that during the war he operated as a sniper and was tasked with shooting at Serb positions, which he often did from the Executive Council building.[15083] He also admitted that, in 1995, while positioned at the Executive Council building, he shot and killed the FreBat soldier who was erecting an anti-sniping barrier near the

15077 *See* paras. 4535, 4544.

15078 *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

15079 Defence Final Brief, paras. 1968, 1972–1974, 2181; Hearing, T. 10620 (20 January 2011).

15080 Prosecution Final Brief, para. 795.

15081 Edin Garaplija, T. 33381 (7 February 2013).

15082 D2906 (Video clip of interview with Edin Garaplija, with transcript); Edin Garaplija, T. 33382, 33384 (7 February 2013).

15083 Edin Garaplija, T. 33388, 33403, 33410 (7 February 2013) (adding that Herenda would also snipe at Bosnian Serb civilians in Grbavica).

Holiday Inn[15084] in order to cause the UN to "blame the Serbs".[15085] Herenda further admitted that he and other members of Ševe attempted to kill Sefer Halilović by placing explosives in his house and by making it look as if the explosion was caused by a Serb projectile.[15086] Mistaking Halilović's brother-in-law for Halilović, they activated the explosive before Halilović arrived home and killed his wife and brother-in-law instead.[15087] Finally, Herenda confessed that he shot and wounded Ismet Bajramović Čelo, a military police commander in the ABiH who was also involved in organised crime, and that he shot at an ABiH unit that got out of control, killing two of the commander's guards.[15088] Garaplija and his colleagues were shocked by these revelations as up until that point they thought that the Bosnian Serb side alone engaged in such activities.[15089] When asked in cross-examination if Herenda ever confessed to sniping at Bosnian Muslim civilians in the city, Garaplija responded in the negative.[15090]

4506. Gray testified that he believed the ABiH strategy in Sarajevo involved, in part, "the killing of their own citizens" and that the "Presidency was killing their own people for the media".[15091] As an example, he referred to the incident of 13 July 1992 when several mortar shells fell around the PTT building, killing and wounding a number of "young people" who had gathered nearby—

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15084 The death of this soldier has been recounted earlier in the Judgement. *See* para. 3608, fn. 11619.

15085 Edin Garaplija, T. 33387–33389, 33391–33393 (7 February 2013); D2906 (Video clip of interview with Edin Garaplija, with transcript); D2907 (UNPROFOR report, 18 April 1995), paras. 5–6 (stating that both ABiH and VRS forces had sniping positions from which a sniper could have killed the French soldier); P2011 (Video footage of Sarajevo, with transcript); D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 153–157. *But see* P820 (Witness statement of David Harland dated 4 September 2009), para. 172; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 34–36, 72; David Fraser, T. 8016 (18 October 2010); P2414 (Witness statement of KDZ182), pp. 71–73 (under seal); P2407 (Witness statement of KDZ304), p. 10; KDZ304, T. 10514–10515 (18 January 2011) (all testifying that the French soldier was shot by a Serb sniper). Garaplija's evidence is indirectly corroborated by KDZ182's evidence outlined below about a sniper operating in one of the BiH government buildings. Accordingly, the Chamber considers Garaplija's evidence about Herenda being responsible for shooting the French soldier persuasive and therefore rejects the evidence of Harland, Fraser, KDZ304, and KDZ182, that this soldier was shot by the Bosnian Serb Forces. *See* para. 3608.

15086 D2908 (Video clip of interview with Edin Garaplija, with transcript); Edin Garaplija, T. 33393–33397 (7 February 2013). *See also* D171 (ABiH Supreme Command Staff Bulletin, 8 July 1993), p. 2.

15087 D2908 (Video clip of interview with Edin Garaplija, with transcript); Edin Garaplija, T. 33393–33395 (7 February 2013) (speculating that the motive for this incident might have been to retaliate for Halilović's earlier statements opposing the division of BiH).

15088 Edin Garaplija, T. 33411–33414 (7 February 2013) (explaining that both those incidents were politically motivated). *See also* Francis Roy Thomas, T. 6816–6818 (15 September 2010) (testifying that UNMOs heard rumours of political murders within the city).

15089 Edin Garaplija, T. 33387 (7 February 2013). *See also* D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 151–152. When cross-examining Garaplija the Prosecution focused on his conviction relating to the mistreatment of Herenda during the interview. *See* Edin Garaplija, T. 33404–33409 (7 February 2013). However, there was no meaningful challenge by the Prosecution to Garaplija's evidence concerning Herenda's activities. In any event, the Chamber found Garaplija to have been truthful and credible in that respect and accepts his evidence in relation thereto.

15090 Edin Garaplija, T. 33411 (7 February 2013).

15091 D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 14; Richard Gray, T. 29987–29990 (8 November 2012); D2411 (UNPROFOR report, 14 July 1992), para. 2 (reporting that Izetbegović would accept only intervention or death for his people). *See also* P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 73; D593 (VRS Main Staff Order, 22 July 1992), p. 2.

though Gray conceded that he and his team were unable to determine the origin of fire on that occasion, he believed the ABiH was responsible due to (i) the lack of an unobstructed line of sight from the SRK positions to the incident site and (ii) because the accuracy of the round indicated to him that it was fired from close range.[15092] Another example was an incident involving Douglas Hurd, a foreign dignitary who was visiting Izetbegović at the Presidency building. According to Gray, whenever foreign dignitaries were visiting the Presidency, shells would fall just outside of the building.[15093] Gray suspected that this was an ABiH strategy, which he says was confirmed when he started talking to two ABiH officers while waiting on the steps of the Presidency for Hurd to arrive; the two soldiers at one point looked at their watches and swiftly moved inside the Presidency building, following which mortar bombs landed nearby, causing casualties.[15094]

4507. Demurenko stated that he and others in UNPROFOR had the impression that Bosnian Muslims were sniping at their own civilians, but that this was impossible to prove.[15095] According to Demurenko, there was an effort within UNPROFOR not to blame Bosnian Muslims for the fighting in and around Sarajevo.[15096] Demurenko nevertheless reported to his command on a small number of incidents of ABiH forces shelling and sniping at Bosnian Muslim civilians.[15097]

4508. Desimir Šarenac, Chief of Security in the 1st Sarajevo Mechanised Brigade,[15098] testified that the SRK obtained intelligence that ABiH forces occasionally shelled certain facilities and areas in order to portray it as Serb fire.[15099] In addition, it appeared to him that some projectiles were simply makeshift projectiles, which were fired at Serb positions but accidentally exploded on ABiH-held civilian areas.[15100] Dragomir Milošević claimed that there were instances of ABiH targeting their own territory with high-calibre weapons.[15101] Both Galić and Milošević testified that whenever important delegations would come to Sarajevo and visit ABiH-controlled parts, the ABiH

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15092 D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 13; Richard Gray, T. 29979–29981 (8 November 2012). The Chamber notes that this is not one of the scheduled incidents charged in the Indictment.

15093 Richard Gray, T. 29990 (8 November 2012).

15094 Richard Gray, T. 29989–29991 (8 November 2012) (adding that he reported this to General MacKenzie who later spoke to the media about it and shortly after gave up his command of UN headquarters in Sarajevo). This is also not one of the scheduled incidents charged in the Indictment.

15095 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 23.

15096 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 23–24.

15097 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), e-court pp. 75, 86, 89, 90. *See also* D2302 (UNPROFOR daily report, 8 June 1995), p. 5; D2317 (UNPROFOR daily report, 19 July 1995), p. 5; D2312 (UNPROFOR daily report, 30 July 1995), pp. 1, 6; D2326 (UNPROFOR daily report, 7 August 1995), p. 5.

15098 Desimir Šarenac, T. 34921–34923 (6 March 2013).

15099 Desimir Šarenac, T. 34945–34946 (6 March 2013), T. 34972 (7 March 2013).

15100 Desimir Šarenac, T. 34946 (6 March 2013).

15101 Dragomir Milošević, T. 32586–32590 (23 January 2013); D2796 (SRK combat report, 14 August 1993); D2797 (SRK combat report, November 1994), para. 1.

leadership would "try to attribute fire to [the Serbs]"; as a result, they had to warn SRK units to refrain from responding to the ABiH's provocative fire.[15102] Galić further claimed that ABiH forces would shell the Presidency building.[15103] This was confirmed by KW570 who noticed a pattern in Sarajevo such that whenever there were high-level meetings or negotiations there, the ABiH would open mortar fire towards the Presidency.[15104] The Accused himself made a claim in a video interview that Bosnian Muslims were placing explosives on the streets of Sarajevo in order to "kill their own people", particularly when "some high dignitary is coming".[15105]

4509. Some witnesses called by the Prosecution also acknowledged certain incidences of ABiH targeting its own population in order to garner international sympathy. For example, Fraser testified that he was aware of one sniping and one shelling incident where Bosnian Muslims forces targeted their own civilians.[15106] With respect to the sniping incident, Fraser heard stories from UN soldiers that the FreBat soldiers had video footage of ABiH sniper firing on his own people but he himself never saw the tape nor was told when this happened.[15107] As for the shelling incident, Fraser recalled that it started with Serbs firing one shell, followed by the ABiH firing a shell at the same target some 40 minutes later.[15108] A protest was lodged against the Bosnian Muslims forces for such actions.[15109]

4510. Harland agreed that there were some cases of Bosnian Muslims sniping at their own side, but not many—he could recall only two during his time in Sarajevo.[15110] He further recalled the

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15102 Stanislav Galić, T. 37235 (15 April 2013); Dragomir Milošević, T. 32591–32592 (23 January 2013); D2799 (SRK combat report, 30 September 1993).

15103 Stanislav Galić, T. 37232–37233 (15 April 2013), T. 37354–37355 (16 April 2013); D3409 (SRK combat report, 5 May 1993), p. 2.

15104 KW570, T. 32263–32264 (18 January 2013).

15105 P1274 (Video footage of interview with Radovan Karadžić, with transcript), p. 1.

15106 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 67, 77–79 (also describing a third incident where FreBat soldiers came across Bosnian Muslims filming a staged attack); David Fraser, T. 8054 (18 October 2010).

15107 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 77; David Fraser, T. 8051–8054 (18 October 2010); D770 (UNPROFOR report re Dobrinja, 23 September 1994), p. 2. *See also* P2414 (Witness statement of KDZ182), p. 43 (under seal) (testifying that the FreBat soldiers were sure that there was a "Bosnian army sniper" shooting from the "parliament building" in mid 1995 and that, after a few months of suspicion that this was the case, the UN intervened; this led to the shooter stopping to fire sometime in mid-June 1995); KDZ182, T. 13088–13091 (9 March 2011); P2417 (Article from New York Times, entitled "Conflict in the Balkans: in Sarajevo", 1 August 1995), pp. 1–2. This in turn confirms Garaplija's evidence about Herenda sniping from the Executive Council building and shooting a French soldier on 14 April 1995. *See* para. 4505.

15108 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 77–78; David Fraser, T. 8055–8057 (18 October 2010). *See also* Michael Rose, T. 7329 (6 October 2010); D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 197.

15109 David Fraser, T. 8053 (18 October 2010).

15110 P820 (Witness statement of David Harland dated 4 September 2009), paras. 296–297 (testifying also that more than 90% of the sniping victims on the ABiH-held territory appeared to have been shot at from the Bosnian Serb side of the confrontation line); David Harland, T. 2103 (7 May 2010). *See also* D681 (UNPROFOR report re situation in Sarajevo, 27 October 1994).

ABiH statement that such sniping activities in September and October 1993 were carried out by "renegades".[15111] Harland also agreed that the media was a key strategy of the Bosnian Presidency and that they had a need to engage in provocations where the media was present.[15112]

4511. KDZ185 testified that ABiH forces carried out a "media war" in Sarajevo which included staging "dramatic events" around the city and targeting their own citizens.[15113] One such incident involved the firing of a shell into the Markale market area which UNPROFOR investigated immediately after the event and concluded that the shell was likely fired from a position close to the frontline in the north of the city.[15114] In total, he could recall only a few occasions where the UN suspected that ABiH was responsible for firing on the city and also admitted that ABiH would occasionally fire at the airport.[15115]

4512. Other Prosecution witnesses testified, however, that while they were aware of the allegation that ABiH forces sniped or shelled their own civilians, they never personally observed it or received any conclusive proof to that effect.[15116] For example, Mole acknowledged that there was a general perception that the BiH Presidency would gain more if they were perceived as the "beleaguered party" and that there may well have been instances in which ABiH forces fired on their own territory in order to maintain that perception.[15117] However, no UNMO report established this as fact; the most UNMOs were able to establish is that there was doubt as to the origin of fire in certain incidents.[15118] According to Mole, there were "sufficient unknowns" for UNPROFOR members to be "reasonably sure" such allegations were true, emphasising that in war conditions it

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15111 David Harland, T. 2184–2187 (10 May 2010); P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 3.

15112 David Harland, T. 2103 (7 May 2010).

15113 P6060 (Record of interview with KDZ185), e-court pp. 13, 15; KDZ185, T. 4229 (28 June 2010).

15114 P6060 (Record of interview with KDZ185), e-court p. 15; KDZ185, T. 4229–4230 (28 June 2010). *See also* KDZ088, T. 6394–6395 (8 September 2010) (closed session) (testifying that on 27 May an explosion occurred on Vase Miskina street which the Serbs were initially accused of causing but for which UNPROFOR later determined that the explosion was caused by mines placed in basement windows on the street). *But see* P155 (BiH MUP Report re shelling incident on 27 May 1992) (stating that the Bosnian police investigators determined that the explosion was caused by a shell launched from the direction of Trebević). The Chamber notes that neither of these incidents is part of the scheduled incidents charged in the Indictment.

15115 KDZ185, T. 4289 (29 June 2010), T. 4290–4291 (29 June 2010) (private session); D342 (ABiH 1st Corps response to UNPROFOR protest, 10 February 1992).

15116 *See e.g.* Harry Konings, T. 9346–9348 (7 December 2010) (recalling one incident in which ABiH fired 20 mm rounds at his OP which then may have carried into the city); D889 (UNMO report, undated), p. 1; P1953 (Witness statement of Harry Konings dated 11 November 2010), p. 12; Pyers Tucker, T. 23309 (18 January 2012); Francis Roy Thomas, T. 6815–6817 (15 September 2010); Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2042; Herbert Okun, T. 1645 (26 April 2010); Adrianus van Baal, T. 8457–8459 (27 October 2010); D826 (Excerpt from Adrianus van Baal's testimony in *Prosecutor v. Galić*); Hussein Abdel-Razek, T. 5549 (20 July 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 77; KDZ450, T. 10670 (20 January 2011) (private session).

15117 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 121.

15118 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 121; Richard Mole; T. 5890 (18 August 2010).

was impossible to conduct a complete forensic analysis that would conclusively determine whether ABiH forces targeted their own population.[15119]

4513. Rose also stated that, during his time in Sarajevo, allegations were made both in the media and by FreBat members that ABiH forces were firing on their own people; however, he himself never saw evidence of this and testified it was impossible for UNPROFOR to determine conclusively who fired a particular shot.[15120] Further, the incidents in which UNPROFOR suspected Bosnian Muslims of firing at the UN, NATO aircrafts, or their own citizens were "very few".[15121] KDZ182 also testified that in all UNPROFOR investigations of shelling incidents, nearly all fire came from the Bosnian Serb side, although some shells did appear to have come from the Bosnian Muslim side.[15122] According to him, small arms shots originated from both sides, with the larger proportion coming from the Serbs.[15123]

4514. Finally, the Chamber also heard from a number of Prosecution witnesses who vehemently denied that ABiH units would target their own civilians.[15124] For example, Bell testified that he never saw or reported any instances of ABiH forces firing upon themselves or staging incidents, and would give no credence to such allegations.[15125] Bowen testified that he was first introduced to the theory that Bosnian Muslim forces were shelling their own territory in late August 1992 by a military aide to UNPROFOR Sarajevo Sector commander who admitted to having no proof for such theory.[15126] Bowen did not accept this theory, noting that even now, some twenty years after the war, no "smoking gun" evidence of ABiH shelling its own people had come out.[15127] KDZ304 also thought that the allegations that Bosnian Muslims shelled themselves were baseless and

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15119 Richard Mole, T. 5885–5886 (18 August 2010).

15120 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 213–214; Michael Rose, T. 7307–7308 (5 October 2010), T. 7328–7337 (6 October 2010) (testifying also that there were rumours that Ejup Ganić had a secret police unit tasked with sniping at trams in such a way that the Serb side would be blamed for it); D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 197; D680 (UNPROFOR report re shelling incident on 8 November 1994).

15121 Michael Rose, T. 7328–7334 (6 October 2010); D681 (UNPROFOR report re situation in Sarajevo, 27 October 1994) (reporting on a sniping incident involving a tram and that all the evidence suggested that the fire came from the ABiH-held territory). *But see* Mirza Sabljica, T. 7684–7688 (testifying that CSB Sarajevo investigated this incident and determined that the fire came from the Bosnian Serb side).

15122 P2447 (Witness statement of KDZ182), pp. 48–52, 54 (recalling only one instance where this happened).

15123 KDZ182, T. 13085–13088 (9 March 2011) (private session).

15124 *See e.g.* Mirsad Kučanin, P17 (Transcript from *Prosecutor v. S. Milošević*), T. 28971; Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4729–4730; Adrianus van Baal, T. 8462–8463 (27 October 2010), T. 8533 (28 October 2010); KDZ166, T. 8354 (26 October 2010).

15125 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 117; Martin Bell, T. 9920–9921 (15 December 2010).

15126 Jeremy Bowen, T. 10165–10166 (13 January 2011), T. 10196, 10200–10201 (14 January 2011); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 39.

15127 Jeremy Bowen, T. 10184–10185 (13 January 2011), T. 10196, 10200–10201 (14 January 2011); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 39. *See* D936 (Excerpt from Jeremy Bowen's book entitled "War Stories"), e-court p. 6.

testified that during his time in Sarajevo he did not witness any fire from the ABiH frontline against the civilian population of Sarajevo.[15128]

4515. The Chamber has analysed the evidence outlined above in the context of all the evidence it has heard in this case in relation to sniping and shelling in Sarajevo. While the Chamber found Garaplija to be credible, his evidence did not go as far as to show that the Bosnian Muslim side targeted its own civilians, let alone that the Bosnian Muslim side was responsible for all major shelling or sniping incidents in the city. Instead, his evidence merely showed that Herenda, a member of a special police unit, was engaged in political executions of notorious Bosnian Muslim individuals who were not civilians. Garaplija's evidence further revealed that Herenda killed an UNPROFOR soldier in order to blame the Bosnian Serb side and provoke international reaction against them.[15129] However, as recounted above, when asked about the targeting of Bosnian Muslim civilians, Garaplija responded that Herenda did not admit to any such practice.

4516. Having said that, the Chamber accepts the evidence of Fraser, Harland, KDZ185, and other Prosecution witnesses that there were some incidents where Bosnian Muslim side targeted its own territory, usually near the Presidency building, for political purposes. However, all those witnesses limited the occurrence of such incidents to a minuscule number and all were firm in their position that most of the fire on Sarajevo came from the Bosnian Serb side.

4517. Furthermore, Harland testified that these few incidents were attributed to the "renegade forces" on the Bosnian Muslim side. In contrast, the Accused's claim, if true, would have meant a conspiracy on a large scale involving many, if not all, ABiH and police units in the city colluding over a number of years in order to secretly snipe and shell their own people. The Chamber does not accept this. In addition, as seen in preceding sections, in many of the charged sniping and shelling incidents, the Chamber found they were committed by the SRK.[15130] There is therefore no evidence of such a wide scale conspiracy.

4518. Even the witnesses called by the Accused did not go as far as to claim that all or most major incidents in the city involving civilian casualties were caused by the Bosnian Muslim side. As noted earlier, Garaplija's evidence did not concern sniping on Bosnian Muslim civilians at all.

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15128 P2106 (Witness statement of KDZ304), p. 28 (under seal); KDZ304, T. 10517 (18 January 2011).

15129 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), e-court pp. 85–86; D2271 (UNPROFOR daily report, 18 July 1995), pp. 4–5 (indicating that ABiH opened fire on UNPROFOR soldiers); D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 10 (testifying that ABiH units sniped at UN personnel in the PTT building and that he was personally targeted by ABiH fire).

15130 The Chamber also recalls that it has discussed some of the evidence on the issue of ABiH targeting its own civilians in the sections dealing with specific scheduled and sniping incidents, when it was relevant to those.

Demurenko testified of the impression he had that the Bosnian Muslims were sniping their own people, conceding that this impression was difficult to prove. More significantly, while he authored a large number of UN daily reports during his time in the city, many of which were admitted into evidence in this case, only a miniscule number of those recorded specific incidents in which the fire was said to have come from the ABiH-held territory.[15131] Similarly, KW570's testimony was confined to the ABiH's pattern of firing towards the presidency when an important delegation was visiting the city. However, he made no mention of civilian victims resulting from such fire. Gray also mentioned ABiH fire on the Presidency during foreign visits but recalled only one such Presidency incident where civilian casualties were involved.[15132] The SRK soldiers and officers, such as Galić, Milošević, and Šarenac, who testified on this subject, were not located in the city during these incidents and their testimony was based primarily on rumours and intelligence gathered by their units. As such, it is of limited value.

4519. Finally, it is clear from the evidence above that, with the exception of a few individuals, most of the international witnesses present on the ground never received any conclusive proof that the Bosnian Muslim side was sniping or shelling its own civilians. Had there been a large scale conspiracy of the kind alleged by the Accused, there is no doubt that those witnesses would have been informed of or would have reported on such incidents with much greater frequency. They would have also observed some of those incidents first-hand. Thus, for all these reasons, the Chamber rejects the Accused's argument that the Bosnian Muslim side was responsible for all major incidents in the city or was, as part of a general policy, sniping and shelling its own civilians throughout the conflict in Sarajevo. While such incidents may have taken place on a few occasions, this did not occur frequently enough to throw doubt on the other findings made in this Judgement relating to the conflict in Sarajevo.

e. Hospitals in Sarajevo

4520. The Prosecution alleges that as part of the sniping and shelling campaign against civilians in Sarajevo, the "Serb forces" repeatedly targeted ambulances and hospitals, killing and injuring

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One example is the evidence of KW586 who blamed ABiH for the first Markale market incident and whose evidence was rejected, by majority.

15131 *See* fn. 15097. The same is the case with respect to the other UN reports tendered into evidence in this case: the vast majority of those contain no reports of the Bosnian Muslim side targeting its own civilians.

15132 Much of Gray's evidence focused on the ABiH targeting UN personnel, including himself. The Chamber also notes that the shelling incident near the PTT building Gray used as an example of ABiH forces targeting their own civilians was in fact inconclusive as it was not possible to tell where the shell came from. His belief that it was an ABiH shell was based on the assumption that the youths gathered near the PTT building were specifically targeted which would have been impossible for the SRK to do. However, it is equally possible that these youths were victims of a random shell fired by the SRK.

members of staff and patients.[15133] During the trial, the Prosecution called doctors who worked in the State Hospital,[15134] the Koševo Hospital,[15135] and the Dobrinja Hospital; they gave evidence about the fate of those hospitals during the war. Additionally, they authenticated various medical records relating to scheduled incidents and provided general information about Sarajevo casualties.

4521. The Accused in contrast argues that the "ABiH abused for military purposes premises of civilian character, such as hospitals" and that the SRK never fired on the Koševo Hospital.[15136] The Prosecution in turn rejects that claim and argues that it is "misguided" as the hospitals were shelled even when there were no mortars or military targets in their vicinity; further, the Prosecution claims that hospital buildings showed damage which reflects disproportionate attacks by the SRK.[15137]

i. *State Hospital*

4522. Bakir Nakaš, a doctor at the State Hospital, a large building complex located in the centre of Sarajevo in the Marin Dvor area,[15138] testified that the hospital was sniped and shelled from 13 May 1992 onwards, despite its south side being clearly marked with a Red Cross emblem.[15139] He estimated that, between 1992 and 1995, the hospital was hit by over 200 projectiles and was subjected to direct shooting, with the worst shelling taking place right after the departure of the JNA from Sarajevo, namely between 13 and 16 May 1992, when it was hit by around 40 shells.[15140]

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15133 Prosecution Final Brief, paras. 758–759.

15134 Prior to 1992, this hospital was known as the Sarajevo Military Hospital and was run by the JNA. Following the JNA's withdrawal from Sarajevo in May 1992, it was referred to as the Sarajevo State Hospital. *See* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 5, 10; Bakir Nakaš, T. 6700 (14 September 2010).

15135 The Koševo Hospital was a civilian medical facility and was also known to as the "University Clinical Centre" Koševo. *See* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 81; Adjudicated Facts 96, 97.

15136 Defence Final Brief, paras. 1937, 1955 (then stating, based on the evidence of Galić, that "any decision to fire" on buildings such as the Koševo Hospital would have taken into account the surroundings and the presence of any civilians; in doing so, the Accused implies that fire may have been opened on the Koševo Hospital); Closing Arguments, T. 47979 (2 October 2014).

15137 Prosecution Final Brief, para. 794; Closing Arguments, T. 47720 (30 September 2014).

15138 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 12; P1529 (Map of Sarajevo marked by Bakir Nakaš); Aernout van Lynden, T. 2392–2394 (19 May 2010), T. 2580–2583 (21 May 2010); P927 (Aerial photograph of Sarajevo marked by Aernout van Lynden); D211 (Panoramic photograph of Sarajevo marked by Aernout van Lynden). The State Hospital comprised four main buildings, the tallest being twelve storey high, as well as an annex and two other buildings. *See* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 13.

15139 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 22–23, 27; P1526 (Photograph of the Sarajevo State Hospital); Bakir Nakaš, T. 6688–6689 (14 September 2010). *See also* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 35; P954 (SKY news report re Sarajevo, with transcript); Aernout van Lynden, T. 2392 (19 May 2010), T. 2595–2597 (21 May 2010), T. 3057–3059 (31 May 2010); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 25. *See also* para. 4031.

15140 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 23, 34; Bakir Nakaš, T. 6675, 6719–6723, 6741, 6750 (14 September 2010); D619 (Photograph of Sarajevo State Hospital marked by Bakir Nakaš). The Accused challenged Nakaš's evidence about the State Hospital being hit by 200 projectiles on the basis that no extensive damage could be seen in a photograph of the hospital shown to Nakaš in court. However, the

Milan Mandilović, also a doctor at the State Hospital during the war, confirmed that the hospital was shelled with varying levels of intensity by Bosnian Serbs and that it was hit by both infantry and artillery fire.[15141] As it is situated near the Sniper Alley, the hospital was also subjected to sniper fire which injured both the hospital staff and its patients.[15142] Almost 85 to 90% of the fire hit the south side of the State Hospital building which, according to Nakaš, meant that the source of the fire was the VRS-held area of Trebević, Vraca, and Grbavica.[15143] As a result, the front part of State Hospital, facing south, was not operational throughout 1992 to 1995.[15144]

4523. It was determined, on the basis of the fragments found at the hospital, that the shells originated from various tanks and other types of artillery and mortar pieces.[15145] Nakaš thought that "the Serbs were intent on destroying the vital parts of the hospital" once the JNA left, since the very first shelling targeted the pillars on the eighth floor, which were key to the building's stability, and also because the operating theatres were often targeted.[15146]

4524. The shelling negatively affected the functioning of the State Hospital.[15147] Hospital staff and patients were wounded in the hospital on several occasions from September 1992 to mid-1994, and there was a particular incident, sometime in late summer 1994, where two patients in the hospital were injured by sniper fire.[15148] The rooms above the second floor were abandoned as they

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Chamber notes that this photograph was taken in the summer or autumn of 1992, that is, early on in the conflict whereas Nakaš's estimate concerned the whole period of the conflict. *See* Bakir Nakaš, T. 6749 (14 September 2010); P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 22.

15141 Milan Mandilović, T. 5350, 5390 (16 July 2010); T. 5400, 5405, 5407 (19 July 2010); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 42–43, 53–58; P1222 (Photograph of the Sarajevo State Hospital).

15142 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 27, 29–32, 40. Mandilović did not know if the hospital was deliberately sniped at, but testified that it was repeatedly hit with small-arms fire. *See* P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 47.

15143 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 23–25, 33; Bakir Nakaš, T. 6688–6690 (14 September 2010); P1526 (Photograph of the Sarajevo State Hospital). *See also* Milan Mandilović, T. 5350–5351 (16 July 2010); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 46. Mandilović thought that the north side of the hospital was hit by Bosnian Serb shells from Poljine. *See* Milan Mandilović, T. 5388 (16 July 2010), T. 5440 (19 July 2010); P6336 (UNMO report, 2 January 1993), e-court pp. 1–5. *See also* Adjudicated Fact 3016.

15144 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 38; Milan Mandilović, T. 5390 (16 July 2010); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 53.

15145 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 26.

15146 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 48; Bakir Nakaš, T. 6690–6691 (14 September 2010). *See also* Adjudicated Fact 2884. Mandilović believed that the reason for shelling the hospital was to destabilise the city and affect the morale of the people. *See* Milan Mandilović, T. 5383 (16 July 2010).

15147 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 41.

15148 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 48, 50. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 25; Adjudicated Fact 2883. On one occasion Mandilović was on the floor that was hit by a shell, only 10 metres away from the room that was destroyed. *See* P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 43.

were more exposed, and the only operating theatre used regularly was located in the basement.[15149] The intensive care unit was in the gym and the rest of the patients were located in the corridor.[15150] The medical staff could not respond to emergencies properly as only the most vital parts of the State Hospital were provided with electricity and there was lack of medical supplies, food, and water.[15151] The most difficult period was from late July to the beginning of September 1993, when the State Hospital had no water, electricity, or gas.[15152] The number of staff was greatly reduced and the only way the hospital could cope with the high demand for medical services was by only admitting patients with life-threatening conditions and injuries.[15153] Because the higher floors of the State Hospital provided a good position for filming, international TV crews occupied some of them, including Sky News war correspondent Van Lynden.[15154]

ii. *Koševo Hospital*

4525. Koševo Hospital is a large compound containing 36 clinics, located just south of Breka, in the northeastern part of Sarajevo.[15155] Fatima Zaimović, who was the head of nursing at the Children's Surgery ward at the Koševo Hospital,[15156] testified that the main entrance of the hospital was on Bolnička street, close to her ward.[15157] This ward dealt with children up to 14 years of age, but would also occasionally assist with the intake of civilian adults.[15158]

4526. As was the case with the State Hospital, the number of the medical staff in Koševo Hospital was greatly reduced during the war and the hospital itself was often shelled, resulting in death of and injuries to both staff and patients.[15159] As a result, neither the staff nor the patients felt

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15149 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 35–37. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 25; P6336 (UNMO report, 2 January 1993), e-court pp. 1–5.

15150 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 37; P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 25.

15151 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 37, 43–44; Milan Mandilović, T. 5356–5357 (16 July 2010); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 34–35. *See also* Adjudicated Fact 3093.

15152 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 42.

15153 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 46.

15154 Bakir Nakaš, T. 6725–6726 (14 September 2010); D620 (Article from Dani magazine entitled "Sarajevo General Hospital—Hospital in the Line of Fire", 5 April 2002), p. 3; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 31–32, 34, 42; Aernout van Lynden, T. 2389–2391 (19 May 2010).

15155 Fatima Zaimović, T. 1868 (5 May 2010); P816 (Map of Sarajevo); P817 (Aerial photograph of Koševo Hospital marked by Fatima Zaimović); P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 81; P1529 (Map of Sarajevo marked by Bakir Nakaš).

15156 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 1.

15157 Fatima Zaimović, T. 1869–1871 (5 May 2010); P817 (Aerial photograph of Koševo Hospital marked by Fatima Zaimović).

15158 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 6–7.

15159 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 2–4, 11–14, 31; Fatima Zaimović, T. 1888, 1894–1896 (5 May 2010); Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T.

safe.[15160] In addition, during the conflict, Koševo Hospital lacked necessary medical and surgical supplies; there was often no electricity, and very little water.[15161] All this made work conditions, and in particular the operating conditions, extremely difficult.[15162] When Koševo Hospital was shelled or sniped, the children would be taken down to the basement while those who were bed-ridden, would be kept in the corridors and the nursing staff would stay with them.[15163] Zaimović testified that in such times, the children would panic, start screaming, and rush to the nurses for protection.[15164] Many of these children were so traumatised they withdrew into themselves and started wetting their beds.[15165] Zaimović herself had a serious stress-related heart attack at the end of 1995.[15166]

4527. Van Lynden and his TV crew set up a satellite dish in one of the hospital buildings and worked from there from June to August of 1992; he testified that hospital buildings within the Koševo Hospital complex were damaged by the shelling.[15167]

iii. *Dobrinja Hospital*

4528. As stated earlier, Youssef Hajir is a doctor who, based on the needs in the beginning of May 1992, established a medical clinic that eventually became Dobrinja Hospital and worked there during the conflict.[15168] While this hospital was also referred to as a military or war hospital in some documents, the name arose because the Civilian Protection and Ismet Hadžić, who later

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1993. *See also* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 16, 20 (testifying that it was obvious to him that the hospital was not randomly shelled but specifically targeted by professional units); Hussein Abdel-Razek, T. 5637–5638 (21 July 2010); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 95; P1572 (UNMO report, 30 November–1 December 1993) (reporting that Koševo Hospital was shelled during the night, resulting in two deaths); P1576 (UNMO report, 13–14 December 1993); P1429 (UNMO report for December 1992), p. 3; P1584 (UNMO report, 3–4 January 1994); P1275 (UNPROFOR protest letter to Radovan Karadžić, 31 January 1993) (informing the Accused that Koševo Hospital was shelled resulting in injuries to patients and staff); Adjudicated Fact 3018.

15160 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 33–39.

15161 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 20–22.

15162 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 23.

15163 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 27, 32; Fatima Zaimović, T. 1886–1887 (5 May 2010).

15164 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 33.

15165 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 34–37, 41; Fatima Zaimović, T. 1886–1888 (5 May 2010).

15166 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 46.

15167 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 38–39.

15168 Hajir explained that around 5 May 1992 he created an improvised emergency room in a storeroom, which is still a part of the Dobrinja Hospital today. This slowly expanded into a "low level hospital", which became fully operational and staffed by 17 July 1992, since by that time Mojmilo came under the control of the ABiH and Hajir was able to source supplies from the city centre. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 1–2, 25–33; Youssef Hajir, T. 8786–8787, 8808 (1 November 2010); P1870 (Excerpts from Youssef Hajir's book entitled "Dobrinja Hospital").

became the Commander of the 155th Brigade of the ABiH, decided to use that name.[15169] However, this was done against Hajir's will and eventually, in 1993, at Hajir's insistence, the hospital was registered with the Ministry of Health and named the "General Hospital of Dobrinja".[15170]

4529. Dobrinja Hospital was located in the Dobrinja 2 apartment block, on the ground floor of an eight storey building, and was marked by a Red Cross sign above its door.[15171] The medical staff in the hospital was often targeted by sniper fire when coming to and from work, leaving many killed and injured.[15172] Furthermore, the few ambulances the hospital had, which were also marked with the Red Cross sign, were also targeted by sniper fire, leaving two drivers injured and one killed.[15173] The hospital building itself was hit by heavy artillery shells on at least 15 occasions and "countless times by smaller projectiles".[15174]

4530. Initially, Hajir was the only surgeon in the hospital and he would operate day and night in improvised conditions with any tools he could find; later on, additional surgeons and doctors arrived as well as better supplies.[15175]

iv. *Military targets in and around hospitals*

4531. A number of SRK officers and soldiers called to give evidence by the Accused testified that their positions and units were often targeted by both mortar and sniper fire from civilian premises within Sarajevo, including the city's hospitals.[15176] Blaško Rašević of the 1st Romanija Infantry

15169 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 31; Youssef Hajir, T. 8819–8823, 8825–8826 (1 November 2010); P1871 (Medical records from Dobrinja Hospital); P1870 (Excerpts from Youssef Hajir's book entitled "Dobrinja Hospital").

15170 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 31; Youssef Hajir, T. 8819–8823, 8825–8826 (1 November 2010); P1871 (Medical records from Dobrinja Hospital); P1870 (Excerpts from Youssef Hajir's book entitled "Dobrinja Hospital"). Hajir conceded that 43 members of his medical staff were members of the ABiH but explained that, like him they simply worked in the hospital. *See* Youssef Hajir, T. 8868–8869 (2 November 2010).

15171 Hajir explained that because this was an improvised hospital, the red cross sign was placed above the door only some two or three months after the fighting started. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 46; Youssef Hajir, T. 8781–8783 (1 November 2010); P1867 (Map of Sarajevo marked by Youssef Hajir). *See also* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 81; P1529 (Map of Sarajevo marked by Bakir Nakaš).

15172 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 45. The Chamber notes that these killings are not charged in the Indictment.

15173 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 47; Youssef Hajir, T. 8788 (1 November 2010), T. 8867–8870 (2 November 2010); P803 (Sky Newsreport, with transcript). The Chamber notes that these killings are not charged in the Indictment.

15174 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 44.

15175 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 30, 32.

15176 *See e.g.* D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 29; D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 18; D2852 (Witness statement of Srđan Šehovac dated 27 January 2013), para. 14; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 19; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 44; Blagoje Kovačević, T. 29069–29070 (18 October 2012); D2665 (Witness statement of Izo Golić dated 15 December 2012), paras. 17, 24.

Brigade, testified that ABiH maintained a firing position in the Koševo Hospital grounds and would fire from there daily.[15177] Lučić testified that the ABiH used recoilless guns at night from the Koševo Hospital grounds.[15178] Maletić testified that he had information on military targets deep in the territory on the Muslim side, and that these included positions within the perimeter of the State and Koševo Hospitals.[15179] Dragomir Milošević also testified that the ABiH had a position at Koševo Hospital[15180] While Milošević testified that the ABiH used only Koševo Hospital for military purposes,[15181] Galić claimed that several hospitals were "abused" in order to fire at SRK positions.[15182] Radojčić stated that his position was frequently targeted from Dobrinja Hospital.[15183]

4532. On the other hand, Nakaš testified that no armed members of the ABiH were allowed to be inside the State Hospital and that there was not a single military facility in the hospital's vicinity.[15184] He confirmed, however, that towards the end of 1992, two buildings in the State Hospital complex were requisitioned by the 1st Corps of the ABiH and used purely as a rehabilitation centre for ABiH soldiers.[15185] Mandilović also testified that the State Hospital did not have any military positions or combatant personnel located within its premises at any time during the war.[15186] Van Lynden explained that he and his crew made sure that the hospital was not being used by the military as they did not want to have their base on or near a military target.[15187] In the months he was there he never saw the hospital building or its immediate surroundings being used by ABiH forces.[15188] The Chamber notes that an ABiH report from January 1993 indicates that HOS units were located in Avde Jabučice street near the hospital premises.[15189]

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15177 D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 23; Blaško Rašević, T. 30915–30916 (4 December 2012).

15178 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 14.

15179 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 28. *See also* D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 18.

15180 Dragomir Milošević, T. 32581–32582 (23 January 2013), T. 33136–33138 (4 February 2013).

15181 Dragomir Milošević, T. 32581 (23 January 2013).

15182 Stanislav Galić, T. 37419–37421 (18 April 2013); D3429 (SRK combat report, 4 September 1993), p. 1.

15183 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 21.

15184 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 14–15; Bakir Nakaš, T. 6743 (14 September 2010).

15185 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 14; Bakir Nakaš, T. 6698–6701 (14 September 2010); D615 (Map of Sarajevo marked by Bakir Nakaš). Nakaš also testified that there was a police administration building in the Marin Dvor area, near the St. Joseph Church. *See* Bakir Nakaš, T. 6709 (14 September 2010); D616 (Map of Sarajevo marked by Bakir Nakaš).

15186 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 37, 39–40. *See also* Adjudicated Fact 3017.

15187 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 33; Aernout van Lynden, T. 2391 (19 May 2010).

15188 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 33; Aernout van Lynden, T. 2591–2592 (21 May 2010).

15189 Bakir Nakaš, T. 67186719 (14 September 2010); D618 (7th Mountain Brigade report re ABiH positions, 28 January 1993); D617 (Map of Sarajevo). *See also* D622 (ABiH Supreme Command Staff Bulletin, 24 October

4533. As far as the Dobrinja Hospital is concerned, the ABiH command building was some 150 to 200 metres west from the hospital and, according to, there were no ABiH organised military units or barracks in the area around the hospital.[15190]

4534. With respect to the Koševo Hospital, Zaimović claimed that she never saw any ABiH positions, weapons, or ABiH activities close to the complex.[15191] In addition, according to her, there was no military equipment in the hospital itself.[15192] Abdel-Razek also testified that the "main hospital" of Sarajevo contained no military value.[15193] Van Lynden never saw any artillery within the Koševo complex nor did he hear that the hospital was being used "for artillery purposes", although he did see one 82 mm mortar next to the hospital in July 1992.[15194]

4535. A number of international witnesses confirmed, however, that ABiH would position its forces and/or fire at the SRK from Koševo Hospital, using mobile mortars, in order to provoke retaliatory fire.[15195] Richard Gray's military observers witnessed ABiH forces firing from mortars mounted on the back of trucks from the Koševo Hospital car-park, while he personally witnessed ABiH armoured vehicles located in the vicinity of Koševo Hospital.[15196] Rose testified that ABiH "often fired 120 mm mortars at the Serbs in the Jewish cemetery from the grounds of the Koševo hospital".[15197] Tucker recalled that on 11 January 1993 UN soldiers delivering fuel to the hospital's boiler witnessed an 82 mm mortar on the back of a truck being fired from a derelict house on the western side of the Koševo Hospital, some half an hour before a press conference which had been called by the hospital; this was then followed by retaliatory anti-aircraft, artillery, and mortar

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1993) (in which it is reported that on 23 October 1992, members of the 10th Mountain Brigade took positions in front of the State Hospital in order to stop UNPROFOR's fuel tanker).

15190 Youssef Hajir, T. 8845–8846, 8848 (2 November 2010). *See also* para. 3792.

15191 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 29. *See also* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 95.

15192 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 30; Fatima Zaimović, T. 1898–1910 (5 May 2010).

15193 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 16; Hussein Abdel-Razek, T. 5552–5555 (20 July 2010) (testifying that despite going there very often he never saw any mortars near the Koševo Hospital). Throughout his witness statement Abdel-Razek refers to the "main hospital". Based on the context of his evidence in that statement as well as his oral testimony, the Chamber considers that when referring to the "main hospital" he was referring to the Koševo Hospital complex. *See also* Adjudicated Fact 95, which provides that Koševo Hospital was one the two main medical facilities in operation in Sarajevo at the time.

15194 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 39.

15195 *See e.g.* John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6207, 6229; Francis Roy Thomas, T. 6842 (15 September 2010); David Fraser, T. 8060 (18 October 2010); John Wilson, T. 3948 (21 June 2010); D99 (UNPROFOR report re ABiH, 21 January 1993).

15196 D2398 (Witness statement of Richard Gray dated 22 April 2012), paras. 11, 16–18; Richard Gray, T. 29992–29993 (8 November 2012).

15197 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 133. *See also* D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 172.

fire.[15198] Morillon reported this incident to Izetbegović, noting that "this disreputable and cowardly act" was a blatant breach of the Geneva Conventions and urging Izetbegović to take strong measures to stop the reoccurrence of this practice.[15199] Mole testified that the ABiH units used mobile mortars around the Koševo Hospital in order to attract Serb fire.[15200] According to him, the ABiH would fire one or two rounds and leave immediately; the SRK response would then attempt to target the mortar but it was neither immediate nor accurate enough to do so successfully.[15201] In addition, there was a "degree of overkill" such that the SRK would respond in a heavily disproportionate manner.[15202] This indicated to him that the response fire was retaliation rather than a military strategy and it also resulted in the hospital being frequently hit.[15203] Mirko Šošić, another doctor who worked at the Koševo Hospital until summer 1992,[15204] testified that, on several occasions, he saw a "cannon" the ABiH used to fire from the grounds of the Koševo Hospital, which was stored in the underground area below the traumatology clinic.[15205]

4536. Some contemporaneous SRK documents also indicate that Koševo Hospital was used by the ABiH. According to a report of the 1st Romanija Brigade to the SRK Command, dated 1 October 1992, there were two ABiH intervention platoons positioned in the grounds of Koševo Hospital.[15206] On 3 September 1993 the same brigade reported to the SRK Command that a TO unit and an intervention platoon were based in the Koševo Hospital grounds.[15207] Almir Begić testified that his ABiH unit, consisting of around 50 men, was located in a dentistry clinic some 500 metres from the Koševo Hospital.[15208] In a combat report of 15 May 1993, the SRK Command reported to the VRS Main Staff that the ABiH opened mortar fire on SRK positions "from the area

15198 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 303; Pyers Tucker, T. 23301–23303 (18 January 2012); D2034 (UNPROFOR report, 21 January 1993), e-court p. 5. *See also* D507 (Video footage of Lord Owen's statement re shelling of Sarajevo hospital).

15199 D2034 (UNPROFOR report, 21 January 1993), e-court p. 6; D351 (UNPROFOR report re protest letter to Alija Izetbegović, 21 January 1993); Hussein Abdel-Razek, T. 5552–5553 (20 July 2010).

15200 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 122–124; Richard Mole, T. 5891 (18 August 2010). According to Mole, such incidents, when observed, were reported in the UNMOs daily sitreps. *See* P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 128.

15201 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 125–126.

15202 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 125; Richard Mole, T. 5891–5893 (18 August 2010).

15203 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 125–126.

15204 D3138 (Witness statement of Mirko Šošić dated 17 March 2013), para. 2; Mirko Šošić, T. 35772 (21 March 2013).

15205 D3138 (Witness statement of Mirko Šošić dated 17 March 2013), para. 9; Mirko Šošić, T. 35773–35775 (21 March 2013).

15206 Dragomir Milošević, T. 32582–32584 (23 January 2013); D2795 (1st Romanija Brigade report, 1 October 1992), pp. 1–2. *See also* D2880 (Official note of Ilidža SNB, 16 September 1992), p. 1.

15207 P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992), p. 2.

15208 P2051 (Supplemental statement of Almir Begić dated 14 December 2010), para. 3; Almir Begić, T. 9982–9985 (16 December 2010); D930 (Map of Velešići marked by Almir Begić). *See also* Dragomir Milošević, T. 32582–32584 (23 January 2013) (testifying that the SRK identified the dentistry school as a military target); D2795 (1st Romanija Brigade report, 1 October 1992), p. 2.

of Koševo hospital".[15209] On 28 July 1993, the SRK Command reported to the VRS Main Staff that the ABiH fired 82 mm mortar shells from the Koševo Hospital at the SRK positions.[15210] The Chamber also received an ABiH order of 11 June 1995, which states that the forward command post of the 105th Brigade of the 1st Corps of the ABiH was located in the "Koševo hospital sector (building under construction)".[15211]

4537. Some of the SRK soldiers and officers then testified that their units did not return fire on the city hospitals at all, despite being fired on from there. Dušan Šrkba stated that his brigade, namely the 1st Sarajevo Mechanised Brigade, never opened fire on the State and Koševo Hospitals or the area around them as they were afraid of inflicting major civilian casualties.[15212] Izo Golić, a mortar platoon commander in the Rogatica Battalion of the 1st Romanija Brigade, testified that his unit's positions were fired upon from the Koševo Hospital some 10 to 15 times during 1992 but that they were never ordered to return fire on the hospital complex.[15213] However, earlier in his statement he also said that the Koševo Hospital complex was one of the targets at which his unit opened fire in case of large concentration of ABiH forces or in case the ABiH forces fired first.[15214] Similarly, Veljović testified that his unit was not allowed to fire at certain targets in the depth of the territory, such as "the hospital", even though they knew there were military targets there.[15215]

4538. On the other hand, Mirko Šošić testified that SRK shells fell on Koševo Hospital on a number of occasions but that this was a result of the ABiH forces opening artillery fire from within its grounds.[15216] Dragomir Milošević first claimed that the SRK never fired on the Koševo Hospital but then proceeded to explain that if fire was opened from certain locations, such as the hospital, it would be returned, although not before the SRK units assessed the target and the presence of civilians at that location.[15217] Blagoje Kovačević admitted that a response would be forthcoming when fire was opened from schools and hospitals.[15218]

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15209 D3411 (SRK combat report, 15 May 1993), p. 1.

15210 D2798 (SRK combat report, July 1993), p. 1.

15211 D2792 (Order of ABiH 12th Division, 11 June 1995), para. 5.5.

15212 Dušan Škrba, T. 29122–29123 (18 October 2012), T. 29131–29132 (22 October 2012).

15213 D2665 (Witness statement of Izo Golić dated 15 December 2012), paras. 13, 24 (while Golić never explicitly said which brigade his battalion belonged to while in Sarajevo the Chamber notes that the battalion's positions Golić described in paragraph 13 of his statement were part of the positions held by the 1st Romanija Brigade).

15214 D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 17.

15215 Stevan Veljović, T. 29282 (23 October 2012).

15216 D3138 (Witness statement of Mirko Šošić dated 17 March 2013), para. 12.

15217 Dragomir Milošević, T. 33136–33138 (4 February 2013).

15218 Blagoje Kovačević, T. 29069–29070 (18 October 2012).

v. *Protests regarding fire on hospitals*

4539. Abdel-Razek testified that on one occasion, after Koševo Hospital was shelled,[15219] he raised the issue with Galić who responded, as he always did in relation to any civilian target, by saying that the Bosnian Muslims shelled the hospital in order to gain sympathy from the international community.[15220] Abdel-Razek was convinced, however, that the shells came from the hills held by the SRK.[15221]

4540. Abdel-Razek and Tucker were also present during meetings on 18 and 19 December 1992 between Lord Owen on one side and the Accused, Mladić, and Koljević on the other wherein Owen protested about the shelling of the Koševo Hospital and told the attendees that he had visited the hospital and that the situation was a "disgrace" and "very very depressing".[15222] At one stage during these meetings Owen became angry and told Mladić that the shelling of Sarajevo was a disgrace and that it had to stop; Mladić became angry and ended up shouting at Owen.[15223]

4541. The Chamber also heard that during the SerBiH Assembly session of 12 May 1992, Mladić stated that the Muslims would not be allowed to benefit from the State or Koševo Hospitals until they accepted peace.[15224]

vi. *Conclusion*

4542. Having considered the evidence and the adjudicated facts outlined above, the Chamber finds that, just like the rest of the city, the hospitals in Sarajevo were subjected to shelling and sniping by the SRK. This in turn affected their capacity to provide adequate medical care to their patients. In this respect, the Chamber accepts the evidence of the doctors who testified about the difficulties they faced while working in those hospitals and the dangers they, and other medical staff, exposed themselves to on a daily basis, in order to provide medical care to the citizens of Sarajevo. The Chamber also accepts their evidence regarding the frequent shelling and sniping their respective

15219 Abdel-Razek referred to the "main hospital" when discussing this incident. *See* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 16. As noted earlier, the Chamber considers this to have been the Koševo Hospital complex.

15220 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 16, 21. According to Abdel-Razek, this was Galić's usual response, namely to deny that the Serb side conducted the shelling and to accuse the Bosnian Muslim side of it. If or when challenged on this by Abdel-Razek he would acknowledge that the Serbs conducted the shelling but then argue that they had been provoked. *See* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 21.

15221 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 16.

15222 Hussein Abdel-Razek, T. 5504–5505 (19 July 2010), T. 5545–5547 (20 July 2010); P1273 (Video footage of meeting between Lord Owen and Radovan Karadžić, with transcript); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 92–98; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 82; P2034 (BBC news report re meeting between Lord Owen and Radovan Karadžić in Pale, with transcript).

15223 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 95, 98

15224 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 38.

hospital buildings were subjected to. While Dušan Škrba claimed that the 1st Sarajevo Mechanised Brigade never fired on the hospitals, this is clearly contrary to the evidence before the Chamber, namely that the State Hospital was shelled from the south of the city. While it is possible that Škrba's and Veljović's specific units did not open fire on these hospitals, there is no doubt that other SRK units did. Indeed, this was confirmed by Blagoje Kovačević, Šošić, and even Dragomir Milošević. Similarly, while Golić stated that in 1992 his unit never returned fire when fired upon from the Koševo Hospital complex, in doing so he contradicted his earlier statement wherein he accepted that his platoon would open fire on the Koševo complex if fired upon from there.

4543. As noted above, the Accused claims that hospitals were abused by the ABiH for military purposes. However, the majority of the evidence supporting this claim concerned the Koševo Hospital complex and not the State or Dobrinja Hospitals. While military units may have occasionally been located in the vicinity of the State and Dobrinja Hospitals, the Chamber is nevertheless convinced that those hospitals were civilian objects and were not used for military purposes by the ABiH. Furthermore, if the aim of the SRK forces was to target military units in the vicinity of the State and Dobrinja Hospitals, the frequent shelling and the extensive damage caused to those hospitals—particularly to the State Hospital—indicate that they were either deliberately targeted by the SRK forces or, at the very least, hit as a result of an indiscriminate fire onto the city by the SRK.[15225]

4544. In light of the evidence and the adjudicated facts outlined above, the Chamber is also satisfied that the SRK forces deliberately opened fire on the Koševo Hospital. At the same time, it is clear that there were occasions when the ABiH units used the grounds of Koševo Hospital to fire at SRK positions, usually with mobile mortars. In such cases, the SRK response fire was counter-fire aimed at ABiH military targets. However, the Chamber also finds, in light of Mole's evidence above, as well as the general evidence about the nature of the SRK shelling in Sarajevo,[15226] that the SRK response to such mobile mortars was often disproportionate and indiscriminate, targeting the hospital complex as a whole in a retaliatory manner, rather than neutralising the specific mobile mortar that opened fire. Furthermore, while parts of the Koševo Hospital complex may have become a military target whenever the ABiH opened fire from them, the SRK units returned fire without issuing an adequate warning as they were required to do by Geneva Convention IV and Additional Protocols I and II.[15227]

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15225 *See* Adjudicated Fact 3019 which provides that SRK intentionally targeted the State Hospital.

15226 *See* paras. 3984–3986.

15227 *See* Galić Appeal Judgement, paras. 341–346.

f. Siege of Sarajevo

i. *Blockade/Encirclement/Siege*

4545. The Prosecution alleges that, starting from early April 1992, the city of Sarajevo was subjected to "blockade".[15228] It further argues that the campaign of shelling and sniping in Sarajevo furthered the blockade and refers to the city as being "besieged".[15229] The Accused argues that Sarajevo was not under "siege"; instead the SRK practiced a "containment strategy"—directed at the ABiH forces in the city—and tried to maintain the *status quo* rather than alter the positions at the Sarajevo frontlines.[15230] He also claims that the Bosnian Muslim authorities in Sarajevo conducted an "internal siege" by preventing the population from leaving the city.[15231]

4546. Many of the Prosecution witnesses and some witnesses called by the Accused testified that during the Indictment period, Sarajevo was a city kept under "siege" by the Bosnian Serbs and/or that it was "encircled" by them.[15232] Okun stated that the situation in Sarajevo was "obviously a siege" because "Serb forces surrounded the city" and the only way in or out of Sarajevo was "through Serb lines with Serb permission".[15233] Bell thought that the situation in Sarajevo was one of "total siege".[15234] There were "very few" places within Sarajevo that were "entirely safe" and the civilian population suffered shortages of food, water, gas, and electricity.[15235] Doyle stated that in April 1992, Sarajevo was "practically a city under siege" by the Bosnian Serbs and was "in

15228 Indictment, para. 78.

15229 Prosecution Final Brief, paras. 6, 609.

15230 Hearing, T. 13161 (10 March 2011) (explaining that what happened in Sarajevo was not a siege as ABiH units were able to move in and out of the city through the tunnel under the airport), T. 10242 (14 January 2011) (arguing that the objective of the Bosnian Serbs was to contain the ABiH forces in the city); Defence Final Brief, para. 1821–1836.

15231 Hearing, T. 10242 (14 January 2011).

15232 *See e.g.* P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 197–198 (adding that the siege changed the character and demographics of the city by driving out middle-class and moderate Sarajevans who believed in a multi-ethnic BiH); KDZ185, T. 4174–4175 (28 June 2010) (private session) (testifying that by 1993 the city was already besieged by the Bosnian Serbs for about eight months); KDZ240, T. 16122 (5 July 2011) (closed session); P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 49–51; Alma Mulaosmanović-Čehajić, P1551 (Transcript from *Prosecutor v. D. Milošević*), T. 1673; Alma Mulaosmanović-Čehajić, T. 6756 (14 September 2010); Mirsad Kučanin, P17 (Transcript from *Prosecutor v. S. Milošević*), T. 28943; David Harland, T. 2103–2104 (7 May 2010); Radomir Kezunović, T. 13915–13916, 13982 (31 May 2011) (testifying that Sarajevo was the "epitome of a surrounded city"); KW570, T. 32208–32209, 32226 (18 January 2013) (private session); KW570, T. 32216 (18 January 2013); D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 30.

15233 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4204 (adding also that, while Bosnian Muslims did build a tunnel under the airport, the city was in fact "besieged"); Herbert Okun, T. 1782 (28 April 2010).

15234 P1996 (Witness statement of Martin Bell dated 8 March 2010), para, 49 (adding that while occasionally broken by relief flights from the UNHCR, this "didn't make it any less of a siege").

15235 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras, 35–36, 49 (adding that civilians also resorted to cutting down trees for fuel and scooping water out of the river). *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 18 –19, 25, 41 (adding that the Sarajevo citizens were also

turmoil" as there was shelling "from the outside" and "freedom of movement was denied".[15236] When Tucker arrived in Sarajevo in October 1992, he found a city surrounded by hostile forces who prevented the entry of food supplies into the city and cut water, electricity, and gas supplies.[15237] Fraser testified that Bosnian Serbs were "definitely in control of all the movement and the situation inside the city" as they used all means at their disposal, particularly sniping and shelling, to control freedom of movement and the psyche of the population.[15238] Rose recalled that upon his arrival in Sarajevo in January 1994, the whole city had been reduced to a state of siege as there were "no lights, no water, no electricity, no trams", and the city was in "an almost medieval state".[15239] In addition, the Bosnian Serbs frequently interrupted the flow of UN aid into Sarajevo, with the intention of creating a "situation of siege".[15240] Thomas described Sarajevo as a "besieged city".[15241] KDZ182 testified that when he arrived in Sarajevo in 1994 he saw a "total blockade" of the city with the Bosnian Serbs manning the surrounding hills, preventing anyone from moving around—according to him, it was "impossible" for Sarajevo to function normally because it was "circled" and therefore difficult to supply.[15242] Bowen testified that the siege of Sarajevo had an "enormous effect" on the civilian population in the city, depriving them of security and effectively imprisoning them.[15243] When asked on cross-examination whether both sides semi-encircled each other in Sarajevo, Van Lynden was adamant that the city was not semi-encircled, but fully encircled

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denied lack of adequate medical care); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), paras. 27–28; KDZ185, T. 4175 (28 June 2010) (private session).

15236 Colm Doyle, T. 2719–2720, 2736–2737 (26 May 2010), T. 2863, 2866 (27 May 2010), T. 2916–2918 (28 May 2010); D235 (Directive 3, 3 August 1992), p. 5. According to Doyle, there would have been no need for a tunnel under the Sarajevo airport to move supplies and evacuate people if the city was not under siege. When put to him that at the London Conference Bosnian Serbs imposed restrictions around Sarajevo exclusively for military purposes, Doyle responded that this was not his experience. *See* Colm Doyle, T. 2866–2867 (27 May 2010).

15237 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 21, 49, 116; Pyers Tucker, T. 23291 (18 January 2012). Tucker also described how in January and February 1993, hundreds of people tried to escape Sarajevo by crossing the airport at which point they would be shot and wounded or killed—to him, this was "one of the greater tragedies in Sarajevo". *See* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 117, 121.

15238 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 5. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 20, 23 (testifying that Bosnian Serbs decided who came in and who went out of the city).

15239 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 22. *See also* P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), paras. 82–84.

15240 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 22. *See also* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 22.

15241 Francis Roy Thomas, T. 6858 (15 September 2010).

15242 P2414 (Witness statement of KDZ182), p. 28 (under seal). *See also* P23 (Witness statement of Mirsad Kučanin dated 12 November 1995), pp. 4–5; Mirsad Kučanin, P17 (Transcript from *Prosecutor v. S. Milošević*), T. 28937.

15243 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 20, 27 (adding that life was also hard in Bosnian Serb-held areas surrounding the city, but noting that the people there at least "had access to decent food and a way out"); Jeremy Bowen, T. 10105 (13 January 2011) (calling the siege a "noose" around the necks of the people").

and besieged.[15244] When the Accused put to KDZ185 that Sarajevo was a divided rather than a besieged city, KDZ185 responded that Sarajevo proper, that is the central city itself and the area near the airport, were in fact surrounded, and as such under siege.[15245] KW570, a witness called by the Accused, also testified that Sarajevo was, "in reality", under siege, with the Bosnian Serbs dominating the high ground around the city; he considered it a siege even though UN convoys were going in and supplying the people with aid.[15246] Similarly, Demurenko, also called by the Accused, testified that in terms of human suffering, Sarajevo was a case of "a full siege", even though it was not completely encircled, because all the roads were blocked and there was very little space for manoeuvre.[15247] Noting that the tunnel under the airport allowed the Bosnian Muslims to move troops and humanitarian aid in and out of Sarajevo, Demurenko viewed the situation in Sarajevo as "a case of siege with [a] certain qualification".[15248]

4547. Contrary to the evidence above, a number of Defence witnesses, mainly former SRK soldiers and officers, claimed that Sarajevo was not besieged and that the term "siege" was created and misused by the biased media.[15249] For example, Luka Dragičević testified that the "siege of Sarajevo" was a media term that did not accurately describe the situation since SRK positions in Sarajevo were "very disadvantageous", ABiH units were able to pass through the tunnel under the airport, and the SRK had not cut off utilities and humanitarian aid.[15250] While acknowledging that the SRK blockaded part of the ABiH forces inside Sarajevo, he noted that the SRK was in turn completely encircled on the outside ring by the ABiH.[15251] Similarly, Veljović disputed the accuracy of what he termed the "prevailing view" at the time, namely that the SRK had "laid siege to Sarajevo" by being positioned on dominant features around the city and constantly firing upon

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15244 Aernout van Lynden, T. 2464–2465 (19 May 2010).

15245 KDZ185, T. 4366–4367, 4374–4375 (30 June 2010); KDZ185, T. 4387–4388 (30 June 2010) (private session). *See also* P2407 (Witness statement of KDZ304), p. 10; KDZ304, T. 10489–10491 (18 January 2011).

15246 KW570, T. 32208–32209, 32216, 32226 (18 January 2013) (private session) (adding that the Bosnian Muslim government was unable to break the siege using its own forces, and so it "clearly wished" for the siege to be broken through western intervention).

15247 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 30 (stating that the VRS encircled about 90% of the city and that the situation in Sarajevo was akin to the siege of Leningrad in World War II).

15248 D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 30.

15249 *See e.g.* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 8, 67 (stating that the media coverage of the situation was uneven); D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 34 (adding that media reports were biased and malicious); D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 73. In addition, Bell testified that the pattern of the siege, that of ABiH forces attacking outward with small arms and infantry and SRK responding with heavier weapons, gave the world the impression that Sarajevo was subjected to constant and unprovoked bombardment by the Serb side, when the war was in fact being waged by both sides. *See* P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 57.

15250 D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 41.

15251 D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 41. For the evidence on the so-called inside and outside rings of Sarajevo, *see* para. 3557.

anyone within it.[15252] Instead, he claimed that it was the ABiH forces that in fact held a number of elevations in and around Sarajevo, all of which were dominant in relation to SRK positions and from which the ABiH forces opened mortar and sniper fire.[15253] Simić also testified about SRK being at a disadvantage because it was "surrounded doubly, internally and externally" by the ABiH,[15254] while Ratomir Maksimović claimed that the SRK was in an "unfavourable operational position" because it was twice surrounded by a "ring" of the ABiH units inside Sarajevo and outside Sarajevo.[15255] Dragomir Milošević noted that the "encirclement" of Sarajevo by SRK forces was "not complete" because there was a way out of Sarajevo between Butmir and Donji Kotorac (a distance of about one kilometre) where no SRK forces were present.[15256] Zurovac denied that the SRK had a policy of "containment" of Sarajevo or that the objective of his battalion was to keep Sarajevo "under siege".[15257] He claimed that the city was closed from the inside by "criminals" who became high-ranking officers in the ABiH.[15258] However, he then acknowledged that ABiH units would fire out of Sarajevo in order to break out of the "siege".[15259] Milosav Gagović also testified that Sarajevo was under "blockade" from the inside, not from the outside, because the Bosnian Muslim authorities would not allow people to leave the city.[15260]

4548. With respect to the Accused's argument that it was the Bosnian Muslim authorities that in fact prevented the population from leaving the city, KDZ450 indeed confirmed that the civilians were "held hostage" in Sarajevo by their own leaders who were using a strategy of "victimisation"; however, he thought that the population was also "obviously" held hostage by the Bosnian Serbs.[15261] Similarly, while conceding that ABiH forces were preventing people from leaving

15252 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 27.

15253 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 27. *See also* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 16.

15254 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 14. When cross-examined on this issue, Simić conceded that "Muslim forces" were also "encircled" but noted that Sarajevo "had an exit in a certain sense". *See* Savo Simić, T. 30026–30034 (8 November 2012); P5978 (Map of Sarajevo marked by Savo Simić) (marking externally encircled area in blue and internally encircled area, under the control of the Ilidža Brigade, in red); P5979 (SRK Order, 4 August 1992), p. 2 (referring to the "blockade of Sarajevo").

15255 D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 7. *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 6; D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 31, 37.

15256 Dragomir Milošević, T. 32793 (29 January 2013).

15257 Dušan Zurovac T. 30290–30294, 30297 (14 November 2012) (adding that it was not possible for 15,000 Serb troops to hold a siege against 60,000 troops of the ABiH 1st Corps).

15258 Dušan Zurovac T. 30290 (14 November 2012).

15259 Dušan Zurovac T. 30294–30295 (14 November 2012) (denying at the same time that one of the reasons for ABiH attempts to break out of the siege was to allow humanitarian aid into the city).

15260 Milosav Gagović, T. 31918 (15 January 2013). *See also* D3138 (Witness statement of Mirko Šošić dated 17 March 2013), para. 7.

15261 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 65. *See also* Manojlo Milovanović. T. 25559–25600 (1 March 2012) (testifying that Alija Izetbegović prohibited the civilian population from leaving Sarajevo because the ABiH wanted "the civilian population in the vicinity of military targets"); P1483 (Ratko

Sarajevo "up to a point", Van Lynden remained adamant that Sarajevo was "besieged by [Bosnian Serb] forces who would have shot these people or taken them prisoner if they had tried to get out".[15262] UN officials were also aware of the Bosnian Muslim strategy to prevent civilians from leaving the city.[15263]

4549. In terms of the use of the word "siege", the Chamber also heard that in the summer of 1993 the UNPROFOR spokesman was ordered to avoid using the word "siege" and to use phrases like "tactical encirclement", "strategic encirclement" and "containment" instead.[15264] According to Bowen, the rationale for this seemed to be that using the term "siege" would harm negotiations in Geneva, but in his view it had the effect of denying "an obvious reality" and "one of the most straightforward facts of a complicated war".[15265] Richard Phillips, an expert witness called by the Prosecution, testified that he did not use the term "siege" in relation to Sarajevo because it is not a "military term currently in use"; he preferred to describe the events in Sarajevo as either "the battle for Sarajevo", the "encirclement" of Sarajevo, or the "blockade" of Sarajevo.[15266] Radovan Radinović, a military expert called by the Accused, testified that he viewed the situation as one of a "blockade" of the ABiH forces inside Sarajevo.[15267] He further testified that, in the military documents he obtained, there were references by the ABiH to the need to "deblockade" Sarajevo and references by the SRK to "preventing deblockade".[15268] Other witnesses thought that terms such as "encirclement" and "siege" describe the same situation, namely that in which people are kept inside an area and denied the "freedom to go about their daily lives".[15269]

(A) Shortage of utilities

4550. As noted above, a number of witnesses referred to the lack of gas, electricity, and water as one of the reasons they considered the city to have been under siege.[15270] By April 1992, hostilities in BiH had seriously damaged the country's electricity system; as a result, Sarajevo was receiving

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Mladić's notebook, 2 April–24 October 1993), p. 228 (wherein Morillion is recorded as saying in a meeting with Mladić on 25 June 1993 that Izetbegović has put the city under the blockade).

15262 Aernout van Lynden, T. 3013–3016 (31 May 2010). *See also* KDZ185, T. 4365–4366 (30 June 2010). *But see* [REDACTED]; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 47.

15263 Jeremy Bowen, T. 10242–10244 (14 January 2011); D950 (UN report re meeting with General Soubirou, 17 August 1994), p. 2.

15264 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 52; D949 (BBC news report re Sarajevo, with transcript).

15265 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 52; Jeremy Bowen, T. 10239–10240 (14 January 2011). *See also* David Harland, T. 2103–2104 (7 May 2010).

15266 Richard Phillips, T. 3783–3784 (15 June 2010).

15267 Radovan Radinović, T. 41405–41407 (17 July 2013).

15268 Radovan Radinovic, T. 41407 (17 July 2013).

15269 Colm Doyle, T. 2867 (27 May 2010); KDZ088, T. 6385–6387 (8 September 2010) (closed session).

15270 *See* para. 4546.

very little electricity and thus very little running water, which was directly dependent on the supply of electricity.[15271] When Abdel-Razek arrived in Sarajevo in August 1992, there was no water, electricity and gas for the majority of the civilian population.[15272] There were periods in Sarajevo where the utilities situation improved; for example, after the first Markale incident in early 1994 and after the COHA was signed in early 1995.[15273] However, generally speaking, and as reported by the UN, there were severe shortages of electricity, water, and gas in Sarajevo throughout the conflict.[15274] This lack of utilities in Sarajevo made life especially difficult in winter time.[15275] For Rose, the lack of utilities for heating during Sarajevo winters was "catastrophic",[15276] while Van Lynden recalled an "endless" battle to obtain fuel.[15277] Civilians cut down hundreds of trees for firewood, and when trees were depleted, they burned furniture, carpet, shoes, floorboards, doors,

15271 D3321 (Witness statement of Milorad Skoko dated 1 April 2013), paras. 9, 14 (explaining that major thermal and hydro-electric power plants supplying Sarajevo were out of operation, which reduced production capacity by 75%); Youssef Hajir, T. 8860 (2 November 2010); Milenko Indić, T. 32472–32474 (22 January 2013); D2541 (Witness statement of Veljko Lubura 3 December 2012), paras. 6–7; D3325 (Diagram of electric power system in Sarajevo, 1992–1995); Stanislav Galić, T. 37608 (23 April 2013); KDZ185, T. 4174–4175 (28 June 2010); Hussein Ali Abdel-Razek, T. 5623–5624 (21 July 2010); P6270 (UNPROFOR report, 29 July 1993), p. 1 (stating that electricity was the "key of all the utilities" because "all the others are connected with [it]"); Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18128–18129.

15272 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 4; Hussein Abdel-Razek, T. 5610 (21 July 2010). *See also* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 21; D2541 (Witness statement of Veljko Lubura 3 December 2012), para. 6.

15273 *See* Michael Rose, T. 7256–7257 (5 October 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 70; D1124 (UNPROFOR report, 7 April 1995), para. 5; D1166 (UNPROFOR Weekly Situation Report, 18 February 1995), p. 2; KDZ182, T. 13110 (10 March 2011); Anthony Banbury, T. 13488–13489 (16 March 2011).

15274 *See e.g.* P1262 (UN report on Sarajevo, 8 October 1992), para. 2; P835 (UNPROFOR BiH Political Assessment, 16 July 1993), e-court p. 7; P6270 (UNPROFOR report, 29 July 1993), p. 1; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 2; P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 7; P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), p. 3; P850 (UNPROFOR Weekly Political Assessment, 9 March 1994), p. 2; P6068 (Weekly Report of the Special Coordinator for Sarajevo, 19 September 1994), p. 1; P872 (UNPROFOR Weekly Situation Report, 10 December 1994), p. 5; P6275 (UNPROFOR Weekly Situation Report, 28 May 1995), paras. 6, 17; P888 (UNPROFOR Weekly Situation Report (Sarajevo), 3 June 1995), p. 4; P892 (UNPROFOR Weekly Situation Report Sarajevo), 24 June 1995), pp. 4–5; P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), p. 6; P822 (UNPROFOR Weekly Situation Report (Sarajevo), 8 July 1995), p. 5; P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), p. 5; P6276 (UNPROFOR Weekly Situation Report, 31 July 1995), p. 7. *See also* P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 5; Alma Mulaosmanović-Čehajić, T. 6756 (14 September 2010).

15275 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 41; P2922 (Witness statement of KDZ079 dated 17 May 2006), para. 20; P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 5; P1262 (UN report on Sarajevo, 8 October 1992), para. 2; P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras, 51, 53; P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 21.

15276 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 30.

15277 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 23.

and even books to stay warm.[15278] Many vulnerable people, particularly the elderly, died from the cold.[15279]

4551. When the water supply failed, international aid agencies supplied water pumps which were installed at suitable locations around the city and where residents had to wait their turn to fill up their containers, sometimes for the whole day.[15280] Civilians would venture out of their homes at great risk to collect water from Miljacka River or from wells around the city and would be shelled or sniped at, either on the way or while queuing for water.[15281] Indeed, UNPROFOR reported incidents in which dozens of civilians were killed or injured while queuing for water.[15282]

4552. The Chamber heard that water pumps and electricity stations were located on Bosnian Serb territory, which enabled them to shut off the supply of water and electricity.[15283] In addition, the

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15278 P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 23; P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), para. 83; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 49; P2027 (BBC news report re Sarajevo, with transcript); P2016 (BBC news report re Sarajevo, with transcript).

15279 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 53 (recalling several cases of death due to hypothermia at Dobrinja Hospital); P820 (Witness statement of David Harland dated 4 September 2009), para. 87.

15280 *See* Adjudicated Fact 61; Sergey Moroz, T. 29545 (1 November 2012).

15281 KDZ185, T. 4175 (28 June 2010) (private session); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 49–50; P1999 (BBC news report re Sarajevo, with transcript); P2016 (BBC news report re Sarajevo, with transcript); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 19; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 24; Sergey Moroz, T. 29545–29547 (1 November 2012); P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), para. 91; P2923 (Witness statement of KDZ090 dated 19 April 2006), para. 12; P1866 (Witness statement of Youssef Hajir dated 25 February 2010), para. 48; P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 20, 24; Alma Mulaosmanović-Čehajić, T. 6757 (14 September 2010). Examples of this are Scheduled Incidents G.5 and Scheduled Incident F. 3.

15282 *See* P892 (UNPROFOR Weekly Situation Report Sarajevo, 24 June 1995), p. 3 (reporting that 13 civilians were killed and 27 injured in Bosnian Serb attacks on water lines in Dobrinja on 18 June and 21 June 1995); P820 (Witness statement of David Harland dated 4 September 2009), para. 197–198. These killings are not listed in Schedule G of the Indictment. *See also* P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993) (relating to Scheduled Shelling Incident G.5). Milorad Skoko, who was the General Director of the RS Electricity Supply Board, testified that the supply of electricity to ABiH-held Sarajevo was not a power supply disaster because, by his calculations, enough electricity was produced per household to satisfy basic needs. *See* D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 21; Milorad Skoko, T. 36719–36721 (5 April 2013). However, the Chamber notes that in making these calculation Skoko assumed that there were 35,000 to 40,000 households within the confrontation lines in Sarajevo, whereas a household survey conducted within those confrontation lines in 1994 put the number of households as high as 85,000. *See* Milorad Skoko, T. 36727–36730 (8 April 2013) (testifying that he relied on the BiH census for 1991); P4997 (Ewa Tabeau's expert report entitled "Persons Killed and Wounded in Sarajevo During the First Months of the 'Siege' from 1 April to 9 September 1992", 1 May 2009), p. 1, fn. 4. Skoko's evidence also contradicts the overwhelming amount of accepted evidence that the civilian population of Sarajevo was not adequately supplied with electricity throughout the conflict. Indeed, at certain times in the conflict, the only source of electricity for Bosnian Muslim Sarajevo was a cable running over Mt. Igman and under the airport tunnel. *See* P888 (UNPROFOR Weekly Situation Report (Sarajevo), 3 June 1995), p. 4; P897 (UNPROFOR Weekly Situation Report (Sarajevo), 15 July 1995), p. 5; P6276 (UNPROFOR Weekly Situation Report, 31 July 1995), p. 7; D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 20; P6269 (Excerpt from annual report of Elektroprivreda BiH for 1993). Accordingly, the Chamber does not consider Skoko's evidence as to the level of utilities in the city to be reliable.

15283 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 21; KDZ185, T. 4174-4175 (28 June 2010) (private session) (testifying that it was an objective of the Bosnian Serb "siege" to cut

Bosnian Serbs could cut the gas supply because the gas pipeline passed through their territory.[15284] The Bosnian Serbs would therefore cut the supply of utilities in response to ABiH offensives and NATO air strikes, including in mid-June 1994, in response to ABiH offensives in Ozren and on 26 May 1995, following the NATO air strikes.[15285] On the other hand, if the Bosnian Serbs wished to restore utilities to Sarajevo, they could, and they did.[15286]

4553. In addition, Bosnian Serbs also obstructed repairs to utilities.[15287] While in late September 1992, UNPROFOR, the Accused, Plavšić, and Ganić, among others, agreed to create joint groups of technicians for the repair of utilities around Sarajevo, Abdel-Razek recalled that this did not materialise.[15288] Instead, Bosnian Serb forces obstructed repair teams, shot at UNPROFOR

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utilities to the city, particularly electricity which was crucial for heating and pumping water); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 21; Stanislav Galić, T. 37608, 37619 (23 April 2013); D2541 (Witness statement of Veljko Lubura 3 December 2012), para. 5; Veljko Lubura, T. 31052–31053 (5 December 2012). *See also* D3325 (Diagram of electric power system in Sarajevo, 1992–1995) (indicating the electricity stations in the city which were controlled by the VRS and the ABiH respectively).

15284 P2447 (Witness statement of KDZ182), p. 55; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 2; P2457 (UNPROFOR Weekly BiH Political Assessment, 28 August 1994), para. 1; P2471 (UNPROFOR Weekly BiH Political Assessment, 3 September 1994), para. 11; P2470 (UNPROFOR report, 1 September 1994), p. 7; P6068 (Weekly Report of the Special Coordinator for Sarajevo, 19 September 1994), p. 1; P886 (UNPROFOR Weekly Situation Report (Sarajevo), 13 May 1995), p. 3; P2441 (UNPROFOR Weekly Situation Report (Sarajevo), 19 May 1995), p. 4; P4192 (UN Weekly Situation Report, 29 May-4 June 1995), para. 13; P888 (UNPROFOR Weekly Situation Report (Sarajevo), 3 June 1995), p. 4. *See also* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 116; D1502 (Report of humanitarian organisation, 7 October 1992) (under seal), para. 5.

15285 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras, 116, 118; P6276 (UNPROFOR Weekly Situation Report, 31 July 1995), p. 7; Milorad Skoko, T. 36749 (8 April 2013) (testifying that utilities may have been cut off by local fighters but not by the Bosnian Serb authorities); P6274 (UNPROFOR Weekly Situation Report, 26 May 1995), p. 3; P6275 (UNPROFOR Weekly Situation Report, 28 May 1995), paras. 6, 17; P888 (UNPROFOR Weekly Situation Report (Sarajevo), 3 June 1995), pp. 3–4; P4192 (UN Weekly Situation Report, 29 May-4 June 1995), paras. 12–13; D1058 (UNPROFOR report to Marrack Goulding, 30 May 1995), para. 11. In a letter to the Accused, Krajišnik, and Lukić on 27 September 1994, the Assembly of the Serbian City of Sarajevo protested about the cutting of utilities to Sarajevo "for the purpose of raising and lowering tensions", and stated that such activities should only be carried out after consultation with the political organs of the municipalities and the city. *See* P6300 (Letter from City Assembly of Sarajevo to Radovan Karadžić, Momčilo Krajišnik, and RS Prime Minister, 27 September 1994), pp. 4–5; Stanislav Galić, T. 37878–37879 (7 May 2013), T. 38022–38023 (9 May 2013) (who, when confronted with this document, testified that he did not know of any deliberate manipulation of the supply of utilities to Sarajevo as that would have disrupted utilities also to the Bosnian Serb side).

15286 P820 (Witness statement of David Harland dated 4 September 2009), paras. 38, 244; David Harland, T. 2018–2019 (6 May 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 123. *See e.g.* P5058 (Order of the VRS to SRK, 15 July 1993); P6272 (UNPROFOR report, 27 September 1994), p. 1.

15287 *See e.g.* D4764 (Letter from Elektroprivreda to Vladimir Lukić re electricity supply problems, 11 January 1993), pp. 1–2; D2548 (Minutes of a meeting at Sarajevo airport, 7 July 1994), paras. 2.1, 2.4; P6270 (UNPROFOR report, 29 July 1993), pp. 1, 7; P6273 (UNPROFOR report, 11 October 1994), p. 2; P823 (UNPROFOR Weekly Political Assessment, 3 November 1993), p. 7; D2547 (Minutes of meeting at Sarajevo airport, 27 July 1994), p. 1.

15288 Hussein Abdel-Razek, T. 5534 (19 July 2010), T. 5610 (21 July 2010); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 8, 22 (stating that the Accused agreed on 30 September 1992 to create joint working groups and agreed not to use utilities as a "means of war"); P1267 (UNPROFOR report re meeting with Biljana Plavšić, 2 October 1992), para. 3; D2544 (Letter from RS Presidency to UNPROFOR General, 8 October 1992) (stating the names of the people chosen by the Bosnian Serb side to work in the joint working groups); Veljko Lubura, T. 31044, 31054 (5 December 2012). *See also* D4635 (Agreement on restoring public utilities in and around Sarajevo city, 12 July 1993).

engineers, and shelled utilities soon after they were repaired.[15289] They did so because they saw the flow of utilities as benefiting primarily the Bosnian Muslims living in Sarajevo or because they would use the issue of repairs as leverage in negotiations.[15290] That the Bosnian Serbs had a strategy of obstructing repairs is indicated by a speech Mladić gave to the Bosnian Serb Assembly on 12 May 1992, where he declared:

> We are not going to say we are going to destroy the power supply pylons or turn off the water supply, no, because that would get America out of its seat, but gentlemen, please, fine, well, one day there is no water at all in Sarajevo. What is it, we do not know, damage, we should fix it, no, we will fix it, slowly. [...] [W]e have to wisely tell the world, it was [the Bosnian Muslims] who were shooting, hit the transmission line and the power went off, they were shooting at the water supply facilities, there was a power cut at such and such a place, we are doing our best repairing this, that is what diplomacy is [...].[15291]

4554. In contrast to some of the above evidence, the witnesses called by the Accused testified that the Bosnian Serbs did not disrupt, but instead facilitated, the supply of utilities to civilians in Sarajevo.[15292] To Galić's knowledge, the SRK never manipulated electricity, water, and gas supplies to Sarajevo.[15293] Similarly, Dragomir Milošević testified that the SRK respected UNPROFOR's requests to repair utilities and did whatever was necessary to ensure there was

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15289 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 4, 8, 21; Hussein Ali Abdel-Razek, T. 5610, 5619, 5624–5625, 5627 (21 July 2010); KDZ182, T. 13110 (10 March 2011).

15290 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 103; P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 116; P892 (UNPROFOR Weekly Situation Report Sarajevo), 24 June 1995), p. 5; P820 (Witness statement of David Harland dated 4 September 2009), para. 201.

15291 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 38–39.

15292 *See e.g.* D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 27; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 49; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 42; D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 29; Slavko Gengo, T. 29796 (6 November 2012); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 47; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 39, 41; D2541 (Witness statement of Veljko Lubura 3 December 2012), para. 17; Veljko Lubura, T. 31073, 31081–31083 (6 December 2012); D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 230; Vladimir Lukić, T. 38749–38750 (23 May 2013); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 47; Mihajlo Vujasin, T. 31828 (20 December 2012); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 18; Predrag Trapara, T. 29924 (7 November 2012); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012) para. 16; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 23; D116 (Letter from Ministry of Agriculture to RS Presidency re Sarajevo, 20 July 1993) (a discussion of the RS Ministry of Agriculture, Forestry and Water Management about how to increase the supply of water and electricity to Bosnian Muslim Sarajevo); D104 (Radovan Karadžić's Directive to VRS Main Staff, 11 May 1993) (in which the Accused prohibits the VRS from misusing reservoirs and water dams for military purposes); D3478 (SRK combat report, 14 October 1992), p. 2 (reporting that the SRK had "done everything" necessary to supply water, electricity and gas to Sarajevo). *See also* KDZ088, T. 6501 (10 September 2010).

15293 Stanislav Galić, T. 37609 (23 April 2013), T. 37874 (7 May 2013), T. 38022 (9 May 2013). Galić explained that the SRK did not manipulate utilities because the SRK and ABiH were equally affected by power cuts. *See* Stanislav Galić, T. 37878–37879 (7 May 2013); P6300 (Letter from City Assembly of Sarajevo to Radovan Karadžić, Momčilo Krajišnik, and RS Prime Minister, 27 September 1994), pp. 4–5. *See also* D4623 (SRK report, 16 June 1992) (reporting that the SRK Command did not have electricity for its logistics due to a "power cut").

"water, electricity and all the other bare necessities for everybody".[15294] While Skoko acknowledged that there may have been individual incidents of SRK soldiers obstructing repairs to utilities, he denied that there was any "systemic obstruction".[15295] Veljko Lubura, who was the Chief Engineer of the RS Electric Power Supply Company,[15296] testified that if the Bosnian Serb authorities wanted to cut the electricity supply they would have had to ask him, and they never did.[15297] In addition, he and his engineers never encountered problems while repairing transmission lines in Bosnian Serb territory.[15298] In addition, according to Sergey Moroz, who served with UNPROFOR from October 1993 until October 1994 as a mission commander in the engineering section in Sector Sarajevo,[15299] the reason for cuts to utilities was almost always damage on the transmission lines and he could not say whether that damage was deliberate.[15300] While accepting Lubura's and Moroz's evidence, the Chamber considers that they ultimately do not contradict the evidence of Prosecution witnesses, such as that of Abdel-Razek, that SRK soldiers would deliberately obstruct utilities through shooting at UNPROFOR engineers and shelling utilities soon after they were repaired. Even Skoko accepted that this may have been the case, confining it to something individual SRK soldiers would do on their own. The Chamber is therefore convinced that the shortage of utilities in Sarajevo was caused not only by combat activities on confrontation lines and by ABiH activities, but also by deliberate obstruction of utilities by the SRK soldiers.[15301]

4555. The Bosnian Muslim side also interfered with or shelled the supply of utilities in Sarajevo, often to portray themselves as victims.[15302] Harland personally witnessed their refusal to open gas

15294 Dragomir Milošević, T. 32897–32898 (30 January 2013). *See also* D2847 (SRK Order, 26 August 1993), p. 1; D2848 (SRK report, 30 September 1993), p. 1. Moroz testified that during "tense" periods in Sarajevo, such as January and February of 1994, repair missions were often cancelled due to exchanges of fire; however, there were periods of quiet in Sarajevo when repair missions were conducted successfully, such as in the summer of 1994. *See* Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18124–18125, 18132, 18140–18142.

15295 Milorad Skoko, T. 36735–36736, 36749, 36761, 36765 (8 April 2013).

15296 D2541 (Witness statement of Veljko Lubura 3 December 2012), paras. 1–2.

15297 Veljko Lubura, T. 31073 (6 December 2012).

15298 Veljko Lubura, T. 31054 (5 December 2012).

15299 Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18116.

15300 Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18136. This was confirmed by Lubura who explained that the transmission lines supplying the city from SRK-held territory passed over the confrontation lines and thus were often damaged in combat operations during the conflict. *See* D2541 (Witness statement of Veljko Lubura 3 December 2012), paras. 6, 16; Veljko Lubura, T. 31052 (5 December 2012); D2542 (Map marked by Veljko Lubura). *See also* D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 14; Milorad Skoko, T. 36757 (8 April 2013); Mihajlo Vujasin, T. 31809, 31828–31829 (20 December 2012); Milenko Inđić, T. 32472 (22 January 2013); Stanislav Galić, T. 37874 (7 May 2013).

15301 The Chamber notes here that it found the evidence of the SRK soldiers and officers who testified that their brigades or units never interfered with the supply of utilities to Sarajevo self-serving and insincere as it was contradicted by the evidence of credible Prosecution witnesses and UN documents and, most importantly, by some of the contemporaneous Bosnian Serb documents such as P630, P5058, and P6272. It is also inconsistent with the speech Mladić gave during the Bosnian Serb Assembly on 12 May 1992, where he outlined the strategy the Bosnian Serb side would use with respect to utilities.

15302 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 104; Sergey Moroz, T. 29549–29550 (1 November 2012); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 41; D3321

valves; he also witnessed their sniping at electrical insulators on high-voltage lines thus deliberately interrupting the electricity supply.[15303] Another example was the ABiH shelling of the Blažuj power station on 26 November 1992, which cut Sarajevo's electricity and water supply until late January 1993.[15304] There were also instances in which the ABiH obstructed, harassed or otherwise interfered with utility missions.[15305] Despite this, however, Harland was adamant that the Bosnian Serbs were responsible for the majority of deprivations in utilities in Sarajevo.[15306]

(B) Shortage of food and other supplies in Sarajevo

4556. Another reason why the witnesses considered Sarajevo to have been under siege was the lack of food, as well as medical and other supplies, that the city experienced, which they testified was caused by the SRK's obstruction of humanitarian aid designated for Sarajevo.[15307] The Chamber has already recounted above, in Section IV.B.1.a, the ebb and flow of the humanitarian aid into the city during the Indictment period and the procedures used by the SRK to control the convoys going to the city.

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(Witness statement of Milorad Skoko dated 1 April 2013), paras. 18, 24; Milorad Skoko, T. 36767 (8 April 2013); D3563 (Witness statement of Vladimir Lukić dated 18 May 2013), paras. 14, 56; D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 230; Milenko Inđić, T. 32472 (22 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 49; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 47; Stanislav Galić, T. 37613–37616 (23 April 2013); D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 59; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 22; D117 (Letter from Fred Cuny to Morton Abramowitz re Sarajevo, undated), p. 2; David Harland, T. 2110 (7 May 2010); Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18126–18128 (adding that it was very difficult to determine who was firing on transmission lines but that much of the damage occurred on the Bosnian Serb territory as a result of explosions near electricity pylons). *See also* Veljko Lubura, T. 31065 (6 December 2012); D1127 (UNPROFOR report, 15 June 1995), para. 3.

15303 P820 (Witness statement of David Harland dated 4 September 2009), para. 88; David Harland, T. 2110 (7 May 2010), T. 2242–2243 (10 May 2010).

15304 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 104; Richard Mole, T. 5898–5899 (18 August 2010); Milorad Skoko, T. 36730–36731, 36755–36756, 36766 (8 April 2013); D2541 (Witness statement of Veljko Lubura 3 December 2012), para. 15; Stanislav Galić, T. 37613 (23 April 2013); D3479 (SRK combat report, 26 November 1992), p. 1; P921 (Transcript of 24th session of RS Assembly, 8 January 1993), p. 19. For other examples, *see* D3481 (SRK combat report, 19 June 1993), p. 1; D2541 (Witness statement of Veljko Lubura 3 December 2012), para. 10; Veljko Lubura, T. 31075–31076 (6 December 2012); P6270 (UNPROFOR report, 29 July 1993), p. 7; D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 18; Milorad Skoko, T. 36767 (8 April 2013); Stanislav Galić, T. 37871–37873 (7 May 2013); Herbert Okun, T. 1802–1805 (28 April 2010); D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 16; D2510 (Report of Ilidža Brigade, 13 December 1992), para. 1; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 16.

15305 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 104; P1429 (UNMO report for December 1992), p. 8; D1498 (UNPROFOR protest letter to Alija Izetbegović, 23 January 1993), p. 2; KDZ240, T. 16127–16128 (5 July 2011) (closed session); D3480 (SRK combat report, 13 January 1993), p. 1; D2541 (Witness statement of Veljko Lubura 3 December 2012), paras. 12–13; D2548 (Minutes of a meeting at Sarajevo airport, 7 July 1994), para. 2.1.

15306 P820 (Witness statement of David Harland dated 4 September 2009), para. 88; David Harland, T. 2109-2110 (7 May 2010).

15307 *See* para. 4546.

4557. Prosecution witnesses testified that it was those procedures that made it difficult for UNPROFOR, UNHCR, and other humanitarian organisations to deliver humanitarian aid to Sarajevo.[15308] Banbury testified that the Bosnian Serbs exercised "total control" over UN convoys, that convoy requests were rejected many times against UNPROFOR's judgement, and that the Bosnian Serbs provided many different reasons to block convoys, none of which was acceptable to UNPROFOR.[15309] Harland testified that the Bosnian Serbs "never wanted to put in place a clear simple system that allowed [the UN] to have freedom of movement", but instead stole and shot at UN vehicles and abused UN personnel in the convoys.[15310] Okun also confirmed that food convoys under escort from UNPROFOR were "routinely stopped, robbed, [and] made to pay money to get through certain check-points" by Bosnian Serb forces.[15311] KW570, who was called by the Accused, testified that Bosnian Serb forces would often stop convoys, only to let them through when UNPROFOR threatened to use force.[15312] Bowen personally witnessed convoys being held up "many times" by the SRK, sometimes for days.[15313] While some of these witnesses acknowledged that the Bosnian Serbs were entitled to seek assurances from UNPROFOR and UNHCR about the contents of convoys, they claimed that the Bosnian Serbs implemented a very onerous control regime on UNPROFOR and UNHCR, which they used to restrict rather than to facilitate humanitarian aid.[15314]

4558. The Bosnian Muslims also obstructed humanitarian convoys by opening fire on them and then blaming the Bosnian Serb side or by blocking their passage.[15315] However, Rose and Abdel-Razek emphasised that the majority of blocking came from the Bosnian Serbs, who controlled all the major roads into Sarajevo.[15316] Banbury also agreed that the Bosnian Muslim authorities "at times" obstructed the movement of convoys, but claimed that these obstructions were relatively few

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15308 *See e.g.* Michael Rose, T. 7441 (7 October 2010), T. 7598 (8 October 2010); P1685 (UNPROFOR report re convoys, 23 August 1994), p. 7; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 9.

15309 Anthony Banbury, T. 13443–13444, 13451, 13456–13458 (16 March 2011). *See also* Adrianus van Baal, T. 8394–8395, 8413 (27 October 2010); P1685 (UNPROFOR report re convoys, 23 August 1994), p. 7.

15310 David Harland, T. 2168–2169 (10 May 2010).

15311 Herbert Okun, T. 1763 (28 April 2010).

15312 KW570, T. 32217–32218 (18 January 2013). *See also* Michael Rose, T. 7420–7421 (7 October 2010).

15313 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 23.

15314 Anthony Banbury, T. 13504 (16 March 2011); David Fraser, T. 8043 (18 October 2010); Rupert Smith, T. 11647–11648 (11 February 2011).

15315 Stanislav Galić, T. 37409–37410 (18 April 2013); D3424 (SRK combat report, 13 August 1993), p. 2; Vladimir Radojčić, T. 31289 (12 December 2012); D2621 (Letter from VRS to UNPROFOR, 30 July 1995), p. 2; Yasushi Akashi, T. 37767–37768 (25 April 2013); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 16.

15316 Michael Rose, T. 7426–7427 (7 October 2010); P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 9 (testifying that it was "mostly" the Bosnian Serbs that blocked convoys).

and easy to solve; they did not constitute a broad practice of stopping convoys.[15317] KDZ182 testified that while UNPROFOR's freedom of movement was "somewhat limited" by the ABiH within Sarajevo, the restrictions imposed on freedom of movement by the SRK around Sarajevo were far greater.[15318]

4559. The Chamber also heard from Defence witnesses that SRK forces did not hinder but in fact facilitated the passage of humanitarian convoys.[15319] Dragomir Milošević explained that the position of the SRK Command was that "no obstacles should be placed in the way of convoys".[15320] He testified that "very often" there would be a problem with the convoys, but that it was his impression that the flow of humanitarian aid was neither compromised nor obstructed.[15321] Krajišnik agreed that SRK forces obstructed convoys at times, but claimed that they did so because weapons and other prohibited items were being smuggled.[15322] Like Krajišnik, many Defence witnesses testified that humanitarian convoys were used to smuggle weapons, ammunition, and other military equipment to the ABiH in Sarajevo justifying the need to check them.[15323] Contemporaneous documents produced by the Bosnian Serb side at the time also suggest that this

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15317 Anthony Banbury, T. 13483 (16 March 2011). *See e.g.* D1165 (UNPROFOR protest to VRS, 15 September 1994), p. 1; D2621 (Letter from VRS to UNPROFOR, 30 July 1995), p. 2. *See also* KDZ240, T. 16184 (6 July 2011) (closed session).

15318 KDZ182, T. 13187–13188 (10 March 2011). *See also* Herbert Okun, T. 1798 (28 April 2010); P2407 (Witness statement of KDZ304), p. 33.

15319 *See e.g.* D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras. 26–27; Vlade Lučić, T. 30812 (3 December 2012); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 44, 46; Mihajlo Vujasin, T. 31827 (20 December 2012); D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 20; Miladin Trifunović, T. 30376 (15 November 2012); D2451 (Witness statement of Velimir Dunjić dated 12 November 2012), para. 14; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 17; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 22; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 46; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 39; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 44; Ratomir Maksimović, T. 31575 (17 December 2012). However, in his oral testimony, Radojčić acknowledged that the SRK closed the land routes into Sarajevo in July 1995, forcing UN convoys to use the Mt. Igman route. *See* Vladimir Radojčić, T. 31238–31244 (11 December 2012), T. 31278 (12 December 2012).

15320 Dragomir Milošević, T. 32893–32894, 32899 (30 January 2013); D2849 (SRK proposal, 31 August 1993), p. 1.

15321 Dragomir Milošević, T. 32894 (30 January 2013), T. 33228 (5 February 2013). *See also* Stanislav Galić, T. 37571 (23 April 2013), T. 38025 (9 May 2013).

15322 Momčilo Krajišnik, T. 43322 (12 November 2013).

15323 *See e.g.* Stanislav Galić, T. 37573 (23 April 2013); Dragomir Milošević, T. 32893–32894 (30 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 47; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 40; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 45;D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 44; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 20; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 40, 50; D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 59; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 33; D2451 (Witness statement of Velimir Dunjić dated 12 November 2012), para. 14; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 17; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 23; Mile Sladoje, T. 30581 (28 November 2012); Vladislav Jovanović, T. 34280 (26 February 2013); Milenko Inđić, T. 32422, 32424 (22 January 2013); D2745 (Witness statement of Vere Hayes dated 14 January 2013), paras. 5, 7; D3960 (Witness Statement of Tomislav Kovač dated 28 October 2013), para. 69; D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 298.

was the case on certain occasions.[15324] Additionally, Smith confirmed that there was a suspicion that other things were being transported in humanitarian convoys,[15325] while Okun stated that convoys were abused by all sides and that smugglers were active throughout the conflict.[15326] Furthermore, significant amounts of humanitarian aid were diverted to a black market in Sarajevo, instead of reaching the civilian population.[15327]

4560. While accepting that at times weapons or other military equipment may have been smuggled into the city in some of the convoys and that the Main Staff and the SRK had the right to check that convoys were not being so misused, the Chamber also considers that the checks imposed by the Main Staff were too onerous and restrictive, as testified to by a number of witnesses.[15328] As such, they obstructed, rather than facilitated, the passage of humanitarian aid. In addition, in view of the other evidence outlined in this section as well as the evidence discussed in Section IV.B.1.a, the Chamber does not believe the SRK soldiers and officers who testified that their units never prevented or delayed humanitarian convoys from reaching Sarajevo.

(C) Findings on the siege

4561. Having considered all of the evidence above and in all the preceding sections of the Judgement, the Chamber notes that the Prosecution witnesses, including the Sarajevo locals, were

15324 *See e.g.* D1086 (Ilidža Municipal Assembly report, 2 February 1993), p. 2; D2123 (Report on abuses of the mandate of international organisations, 14 February 1994), p. 1; D2747 (VRS Main Staff protest letter, 1993), p. 1; D688 (SRK combat report, 9 April 1994), p 2; D769 (SRK combat report, 12 May 1994), p. 3; D190 (Report re discovery of ammunition in convoy to Butmir, 4 April 1993) (under seal); D3575 (TANJUG news report, 11 April 1993).

15325 D1031 (Excerpt from Rupert Smith's testimony in *Prosecutor v. Popović et al.*), p. 2; Rupert Smith, T. 11644 (11 February 2011).

15326 Herbert Okun, T. 1764, 1798 (28 April 2010). Some Defence evidence also suggested that the UN was implicated or involved in the smuggling of weapons and black market goods in its convoys. *See* D143 (VRS Report on movement of UN convoys, undated), pp. 2–3; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 33; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 45; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 17; Milenko Inđić, T. 32422 (22 January 2013); D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 298. At the same time, however, international witnesses strongly denied that the UN itself was involved in the abuse of the convoys. *See* Michael Rose, T. 7426 (7 October 2010); KDZ185, T. 4211–4212 (28 June 2010); KDZ240, T. 16101–16102 (5 July 2011) (closed session); Adrianus van Baal, T. 8396, 8425 (27 October 2010); D2745 (Witness statement of Vere Hayes dated 14 January 2013), para. 8.

15327 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 20; David Harland, T. 2171, 2185 (10 May 2010); KDZ088, T. 6555 (13 September 2010) (closed session); D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 34; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 47–48; Vladimir Radojčić, T. 31278 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 39, 40–41; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 44–45; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 46–47; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 40; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 24; Vere Hayes, T. 31997 (16 January 2013); Vladislav Jovanović, T. 34280 (26 February 2013); John Zametica, T. 42466–42467 (29 October 2013); D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 165.

15328 Indeed, as shown in D3873, even the RS Minister of Health complained about one of the VRS decisions restricting the movement of humanitarian convoys, albeit on the grounds that it affected the supplies in the RS.

all consistent as to the description of the situation in Sarajevo and the life of the citizens there. They all described a city surrounded by the SRK, shelled continuously, and exposed to constant sniper fire, which in turn had the effect of imprisoning the Sarajevo citizens and led to shortage of food, water, and utilities in the city. The Chamber does not doubt that this was indeed the accurate reflection of the situation in the city.

4562. The fact that some humanitarian aid was coming into Sarajevo during the conflict and that the encirclement of Sarajevo was not complete does not change the reality of that situation. As explained earlier, while an exit out of the city did exist, those attempting to leave Sarajevo had to expose themselves to danger when crossing the airport strip or passing through the tunnel.[15329] Furthermore, while humanitarian aid was indeed coming into Sarajevo throughout the conflict, the Bosnian Serbs controlled and restricted the flow of humanitarian convoys such that the city was rarely fully supplied, as described above in Section IV.B.1.a.[15330] That being the case, the Chamber does not accept the evidence of SRK soldiers and officers who claimed that the situation was not one of siege because the tunnel could be used as an exit and because some humanitarian aid was coming in. Indeed, to imply, as these Defence witnesses did, that the underground tunnel which was created precisely because the city was surrounded by the SRK somehow made the situation less of a siege seriously affects their credibility as a whole. Similarly, the fact that humanitarian aid had to be sent to the city and that the UN required permission of Bosnian Serbs for this clearly indicates that it was an encircled city, a city under siege, and that the SRK controlled the situation. Had the SRK not surrounded the city and stopped supplies from coming in, neither the tunnel nor the humanitarian aid would have been necessary.[15331]

4563. The documentary evidence presented in this case about the situation in the city further confirms the findings above. For example, on 12 May 1992, during the 16th Bosnian Serb Assembly session, Mladić said that "we have to put a ring around the dragon's head of Sarajevo this very moment, and only those whom we let out should be allowed out".[15332] In an intercepted conversation with an unknown male on 25 May 1992, Mladić stated that he had "blocked Sarajevo

15329 *See* paras. 3566, 3782.

15330 *See* paras. *e.g.* 3559, 3562, 3566, 3569, 3577–3578, 3580, 3591, 3593–3594, 3596, 3599, 3603, 3607–3608, 3611–3612.

15331 As for the evidence of Defence witnesses that the SRK was disadvantaged because it was surrounded on the outside ring of Sarajevo by ABiH forces and because the 1st Corps of the ABiH held some elevations within the city, the Chamber considers that this claim, whether accurate or not, ultimately has no real bearing on the relevant issues in this case such as whether the SRK was acting in compliance with international law when conducting its operations in and around Sarajevo.

15332 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 38.

from four corners" and that the "city is trapped, there is no way out".[15333] On 1 April 1994, that is, after the tunnel was built and operational, Galić issued an order to the SRK units, instructing them to "fortify positions around Sarajevo by erecting wire and concrete barriers, which would in turn strengthen the belief that they really are blocked ('*in a camp*')".[15334] A number of VRS directives, as discussed earlier, also refer to the "blockade" of Sarajevo and the SRK's efforts to prevent the lifting of that blockade, as do many SRK orders.[15335] Finally, the Chamber received in evidence a number of contemporaneous military maps, made by both the VRS and the ABiH, showing the confrontation lines in the city at various times.[15336] These maps clearly illustrate that the inner city of Sarajevo was almost completely encircled by the SRK and that the SRK was therefore able to control the fate of the Sarajevo citizens.

4564. In assessing the evidence before it, the Chamber has considered and accepted the Accused's argument that the media was somewhat unfavourable to the Bosnian Serb side when reporting on the situation in Sarajevo. The Chamber also took into account the fact that at one point the UN decided not to refer to the situation in the city as a "siege". Ultimately, however, the Chamber considers both to be of limited weight in light of all the evidence before it.

4565. Furthermore, while the Bosnian Muslim authorities at times prevented civilians from leaving the city or made it difficult for them to do so in order to ensure that the city remained in the news, the Chamber considers that the actions of the SRK forces positioned around the city left the civilian population with very little opportunity to leave Sarajevo safely.

4566. For all these reasons, the Chamber finds that the city of Sarajevo was essentially encircled and besieged by the SRK and, as such, under a blockade. The Chamber will therefore continue to refer alternatively to the terms "blockade", "siege" or "encirclement" where relevant in this Judgement.

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15333 P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), p. 2. *See also* P1103 (Intercept of conversation between Momčilo Mandić and Branko Kvesić/Bruno Stojić/Mićo Stanišić, 5 May 1992), p. 5 (in which Mandić refers to holding the "Turks under siege" to starve them "a bit").

15334 P5980 (SRK conclusions and tasks, 1 April 1994), para. 8 (emphasis added). Dušan Zurovac denied seeing wire or barriers around Sarajevo as described in this document. *See* Dušan Zurovac T. 30301 (14 November 2012). Galić also issed an order on 17 November 1992, that is, two days prior to the issuance of Directive 4, in which he instructed the SRK units to "[f]irmly block Sarajevo". *See* P6297 (SRK conclusions and tasks, 17 November 1992), p. 3.

15335 *See* paras. 3561, 3563, 3572, 3578, 3607, 4041. *See also e.g.* P5968 (SRK Order, 26 January 1994); P3052 (VRS Main Staff Order, 14 December 1993); P6302 (SRK Order, 26 November 1992); P5979 (SRK Order, 4 August 1992).

15336 *See e.g.* D3382 (Map of Sarajevo); D3383 (Map of Sarajevo); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2790 (Map of Sarajevo marked by Dragomir Milošević); P6295 (VRS map of Sarajevo); P6296 (VRS map of Sarajevo); P1058 (ABiH map); P1764 (ABiH Map of Sarajevo) P842 (VRS map of Sarajevo, 31 August 1995).

ii. *Objectives of the siege*

4567. There was also a marked contrast between the evidence of witnesses called by the Prosecution and those called by the Accused regarding the aims or objectives of the SRK forces around Sarajevo.

4568. According to Rose, the objective of the siege was to engineer an advantageous peace deal with the Bosnian Muslims and to demonstrate to the Bosnian Croats the strength of the Bosnian Serb position.[15337] It was also used as a vehicle by Bosnian Serb leaders to exert pressure on the UN and the international community.[15338] Since Bosnian Serbs had fewer infantry forces than the ABiH in Sarajevo and could not have taken the city without significant casualties, their objective, according to Fraser, was to "keep pressure" on the city through sniping, shelling, and controlling access to humanitarian aid.[15339] Mole called this a "policy of containment", and of maintaining the *status quo*, the object of which was to control Sarajevo, not to occupy it.[15340] Thomas thought that there were four objectives to the siege: (i) to create a situation of "out-right terror"; (ii) to shutdown the source of manpower for the ABiH; (iii) to influence politicians who lived in Sarajevo; and (iv) to engage in "sheer retaliatory madness".[15341] Banbury testified that the objectives of the siege were two-fold: first, to deny the BiH government a symbolically important capital city and make it more difficult for it to exercise sovereignty; and second, to punish the people in Sarajevo and cause them "as much pain as possible".[15342] He thought that the Bosnian Serbs also wanted to exercise

15337 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 199. *See also* P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 60; Martin Bell, T. 9770 (14 December 2010); KDZ185, T. 4174–4175 (28 June 2010) (private session).

15338 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 199; Michael Rose, T. 7252–7254, 7256–7257 (5 October 2010) (conceding, however, that there was a route out of Sarajevo via Mt. Igman and also through the tunnel at the airport); Jeremy Bowen, T. 10105 (13 January 2011).

15339 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 5; David Fraser, T. 8030–8031 (18 October 2010). *See also* P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 35–36; KDZ450, T. 10655 (20 January 2011); D949 (BBC news report re Sarajevo, with transcript). On cross-examination, Fraser agreed that a "siege" can be a legitimate military tactic so long as it is not calculated to starve the civilian population. He further conceded that it was a legitimate military tactic for Bosnian Serb forces to encircle Sarajevo in order to prevent ABiH forces from leaving Sarajevo and from being deployed on other fronts in BiH. *See* David Fraser, T. 8062 (18 October 2010). *See also* KDZ088, T. 6425 (8 September 2010) (closed session).

15340 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 35–36, 93–94 (adding that Bosnian Serbs could already achieve their political aims by applying pressure on Sarajevo through the siege, which would not have been the case if they captured the city; according to him Bosnian Serbs could also put pressure on the city in response to events elsewhere in BiH); Richard Mole, T. 5825–5826 (17 August 2010). *See also* KDZ450, T. 10655 (20 January 2011); P1997 (BBC news report re interview with Radovan Karadžić at Trebević, with transcript) (in which the Accused states that the Bosnian Serb side could take the city tomorrow if it wished but that it was willing to negotiate for peace instead).

15341 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 75. *See also* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 49; KDZ185, T. 4174–4175 (28 June 2010) (private session).

15342 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 197–198 (adding that the siege changed the character and demographics of the city by driving out middle-class and moderate Sarajevans who believed in a multi-ethnic BiH). *See also* P27 (Witness statement of Mirsad Kučanin dated 4 September 2000),

"total political control" over areas where Serbs had traditionally lived, including in Sarajevo.[15343] Bowen thought that the siege itself was "as much a weapon of war as the bullets and shells that were fired into Sarajevo".[15344] KDZ450 testified that the Bosnian Serbs wanted to remain present in Sarajevo because it was the "historic capital" of BiH and a city of "great symbolic importance", as well as an area of "great interest for strategic and military reasons".[15345] Thus, their objective was to exert pressure on Bosnian Muslim leaders and force them to accept a division of Sarajevo.[15346] He testified that a frequent method of applying pressure was blocking the flow of humanitarian aid.[15347]

4569. On the other hand, the majority of the witnesses called by the Accused denied the above were the SRK's objectives and claimed that the SRK simply wanted to (i) contain the ABiH forces within the city in order to prevent them from linking up with ABiH forces outside of the city, as that would have led to attacks on Serb territories around Sarajevo and (ii) protect and defend those territories as they belonged to Bosnian Serbs.[15348] Additionally, KW570 thought that the objective of the Bosnian Serb siege was to contain and neutralise the ABiH forces in Sarajevo, in order to force the Bosnian Muslim government to the negotiating table, where a long-term peace settlement

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p. 4 (testifying that in his opinion, the Bosnian Serbs made a "deliberate choice" to keep civilians "trapped" in Sarajevo and set about the "gradual annihilation" of the civilian population).

15343 Anthony Banbury, T. 13310 (15 March 2011).

15344 Jeremy Bowen, T. 10104–10105 (13 January 2011); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 20.

15345 P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 48–49; KDZ450, T. 10553–10554 (19 January 2011) (private session).

15346 P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 48, 140; KDZ450, T. 10553 (19 January 2011) (private session). *See also* P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 53–54 (in which Mladić recounts a meeting in Belgrade on 13 December 1993 where the Accused lists division of Sarajevo as one of the Bosnian Serb goals). A number of witnesses called by the Accused, however, denied that the Bosnian Serb side wanted to divide Sarajevo. *See e.g.* D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 21 (testifying that seizing or dividing parts of Sarajevo was never an objective of the SRK, and that even if there was such a plan at the higher levels, the soldiers "had no such motives").

15347 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 140.

15348 Dragomir Milošević, T. 32574–32577 (23 January 2013); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 14 (stating that the breaktrough by ABiH forces would have freed up a lot of men for use on other fronts in BiH); Savo Simić, T. 30028, 30031 (8 November 2012); D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 22; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 8; Milosav Gagović, T. 31918 (15 January 2013); D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 6; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras. 9, 12 (adding that the ABiH was intent on leaving Sarajevo with "huge military potential" and proceeding across the Romanija plateau to link up with other ABiH units in the upper and middle Drina Valley and Sandžak); Vlade Lučić, T. 30827 (3 December 2012); D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 11; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 4–5, 69; D2650 (Order of 3rd Infantry Battalion of 2nd Sarajevo Light Infantry Brigade, undated); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 9; D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 12; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 7–8; D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 12; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 24; D2686 (Witness statement of Mihajlo Vujasin

for BiH could be worked out.[15349] Milenko Inđić testified that the SRK's basic task was to maintain "the established frontline" held by it.[15350]

4570. As noted earlier, the expert witness Radinović testified that the SRK wanted to keep ABiH forces under blockade and prevent them from breaking through to the Romanija plateau, from which they could access the Drina River valley, while the ABiH's 1st Corps had as its main objectives to keep Sarajevo "under its control" and to "deblockade the city" so that it could link up with ABiH forces in Igman and reach the Romanija plateau.[15351] Accordingly, Radinović opined, the SRK adopted a defensive strategy and the ABiH adopted an offensive strategy, both strategies being legal and legitimate.[15352] According to him, the VRS had an exclusively "defensive strategy" to defend the territory and the people of RS as it had "absolutely no resources to commit aggression".[15353]

4571. Dragomir Milošević testified that by the time he became the SRK Commander in August 1994, the situation on the battlefield crystallised and it was a matter of maintaining the *status quo*.[15354] According to him, the task of the SRK was to defend its area of deployment while the ABiH conducted operations in an attempt to break through SRK lines; these operations included using artillery, conducting night-time and sabotage operations, planting explosives, and sniping, as well as conducting attacks on the SRK from the outside of Sarajevo.[15355] He also denied that the SRK's aim was to divide Sarajevo, as indicated in the supplement to Directive 6,[15356] saying that he

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dated 16 December 2012), paras. 14–18; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), paras. 16–17; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 9.

15349 KW570, T. 32226 (18 January 2013) (private session). KW570 testified that the Bosnian Serbs were willing to end the siege of Sarajevo because it was doing their cause "horrendous damage" and in addition the Bosnian Serbs in Vogošća and Ilidža were subjected to ABiH fire and living under threatening conditions. However, the Bosnian Muslim government resisted all attempts to end the siege. *See* KW570, T. 32261–32262 (18 January 2013) (private session).

15350 D2774 (Witness statement of Milenko Inđić dated 19 January 2013), para. 1.

15351 Radovan Radinović, T. 41399, 41403–41404 (17 July 2013). Asim Džambasović testified that the "priority military objective" of the ABiH's 1st Corps was first to defend the city and only then to create conditions which would enable it to "break out of the siege", which was a "little bit unrealistic" because the ABiH needed seven times the amount of forces and equipment of the VRS to break the siege. *See* Asim Džambasović, T. 15270–15271 (23 June 2011); D1391 (Order of ABiH 1st Corps, 2 January 1993), p. 1.

15352 Radovan Radinović, T. 41404–41405 (17 July 2013). Both Dragičević and Tomić testified that, in contrast to the SRK, the strategy of the ABiH was to "capture all of BiH" through "offensive operations". *See* D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 22; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 21.

15353 Radovan Radinović, T. 41397–41398 (17 July 2013).

15354 Dragomir Milošević, T. 33103–33104 (4 February 2013). *See also* Savo Simić, T. 30028, 30031 (8 November 2012).

15355 Dragomir Milošević, T. 32576–32578 (23 January 2013), T. 32715 (28 January 2013). An example of such operation was the ABiH offensive on 16 June 1995. *See* Dragomir Milošević, T. 32737–32739 (28 January 2013); P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995), p. 4.

15356 For the supplement to Directive 6, *see* para. 3578.

was never given such an order; however, he did acknowledge that by maintaining and improving its position, as ordered in the supplement, the SRK may have been able to affect international negotiations.[15357]

4572. Like Milošević, a large number of former SRK soldiers and officers claimed that the SRK carried out predominantly defensive operations in the city in order to prevent ABiH forces from breaking out, at the same time acknowledging that there were some exceptions, such as operation Lukavac 93 and other offensive actions.[15358] Lučić, for example, acknowledged that the SRK undertook offensive operations "designed to recapture lost positions" and to "neutralise the weapons and manpower" of the ABiH in locations where the ABiH was engaging civilian and military targets.[15359]

4573. On the other hand, Blagoje Kovačević testified that "not a single offensive action had been executed" at his positions as the SRK had no interest in taking areas which were not "ethnically

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15357 Dragomir Milošević, T. 33093, 33099–33103 (4 February 2013) (adding also that such a division would have entailed great losses on both sides); P4925 (Supplement to Directive 6, 12 December 1993), para. 2(a) (referring to the Accused's order to the VRS to seize Žuč and Mojmilo in order to ensure "the most favourable position for dividing" Sarajevo). *See also* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 12; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 12; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 15; Blagoje Kovačević, T. 29088 (18 October 2012); P3052 (VRS Main Staff Order, 14 December 1993). *But see* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 11 and D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 8 (both of whom testified that the final objective of the Bosnian Serb authorities was to have parts of Sarajevo under their control).

15358 D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 15 (also referring to some offensive actions the SRK took to improve the SRK's tactical position, including the liberation of part of the Vraca-Trebević road, and the attempted liberation of part of Šoping); Savo Simić, T. 30033 (8 November 2012), T. 30037–30040 (12 November 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 6; D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 21–22; D2519 (Witness statement of Dragan Maletić dated 9 November 2012), paras. 13–15; Milosav Gagović, T. 31918 (15 January 2013); D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 2; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 6; D2387 (Witness statement of Stojan Džino dated 4 November 2012), paras. 36–37; D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 12; Dušan Škrba T. 29118 (18 October 2012); D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 18; Mihajlo Vujasin, T. 31799–31802 (20 December 2012); P6067 (Order of Rajlovac Infantry Brigade, 30 November 1992), p. 2; D2451 (Witness statement of Velimir Dunjić dated 12 November 2012), para. 7; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 5; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), paras. 11, 15–17; Slobodan Tuševljak, T. 29947–29948 (7 November 2012); D2398 (Witness statement of Richard Gray dated 22 April 2012), para. 19; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 16; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 16; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 12; [REDACTED]; Manojlo Milovanović. T. 25747 (5 March 2012); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 8, 10; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras. 8, 10; Vlade Lučić, T. 30827 (3 December 2012); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 9; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 8.

15359 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 10 (as an example, Lučić identified the SRK offensive on a tower in Zlatište, which had to be taken because ABiH units were continuously targeting the road from Vraca to Trebević to Pale).

defined as Serbian".[15360] Gengo also testified that his battalion made no plans to move its lines forward and that there were "never" plans to undertake offensive operations in the Sarajevo area.[15361] When presented with an order issued by Galić on 26 January 1994 to "continue with offensive activities and liberate the Serb part of the City of Sarajevo", Gengo testified that his battalion never received such an order and that he neither planned nor was involved in offensive activities.[15362] He also explained that the references in the order to "fortifications" and "improving the tactical position" were all defensive in nature.[15363] Milovanović testified that the VRS was "a defensive army with a defensive strategy, from a strategic point of view" and that, as such, it engaged in "active combat activities" only to improve its tactical positions.[15364] Zurovac denied that simply by "encircling" the city, the SRK was engaged in "offensive" measures, explaining that the Serb units around Sarajevo were not the aggressor because it would not make sense to be an aggressor against one's own country.[15365] When shown an SRK order dated 16 December 1993 instructing the units to conduct an "active defence" to prevent ABiH forces from unblocking their part of the town and to establish conditions for the division of Sarajevo into two parts, Zurovac disagreed that "active defence" was another term for offence, but agreed that splitting Sarajevo into two parts would constitute an offensive act "to a certain extent."[15366]

4574. The above can be contrasted with the evidence of KDZ182 who testified that one of the techniques used by Bosnian Serbs during the siege of Sarajevo was to move the confrontation line toward the city "inch by inch".[15367] Similarly, [REDACTED] explained that the encirclement of Sarajevo was only "partly" defensive because it was sometimes necessary to move units and engage in "subversive or sabotage operations" in order to achieve the goal of containing the ABiH forces within Sarajevo.[15368]

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15360 D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 8. When confronted with two post-war statements by Dragomir Milošević referring to SRK carrying out activities to extend its territory, Kovačević claimed that he had no knowledge as to Milošević's position, but testified that one of the SRK objectives was to keep the road from Lukavica to Pale, which required the taking of "small features". *See* Blagoje Kovačević, T. 29090–29094 (18 October 2012); D2901 (Letter from Dragomir Milošević to Ratko Mladić, 19 May 1996), p. 2; D568 (Speech of Dragomir Milošević, 30 March 1996), p. 3.

15361 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 33; Slavko Gengo, T. 29799 (6 November 2012).

15362 Slavko Gengo, T. 29800 (6 November 2012); P5968 (SRK Order, 26 January 1994), p. 8.

15363 Slavko Gengo, T. 29835–29836, 29841–29842 (6 November 2012) (also explaining that the phrase "wider-scale offensive activities" in the order was a reference to combat activities to improve the SRK's tactical position in order to prevent the ABiH from penetrating the external ring).

15364 Manojlo Milovanović, T. 25747 (5 March 2012).

15365 Dušan Zurovac T. 30297 (14 November 2012).

15366 Dušan Zurovac T. 30298–30300 (14 November 2012); P5989 (SRK Order, 16 December 1993), pp. 4–5.

15367 P2414 (Witness statement of KDZ182), p. 29 (under seal).

15368 [REDACTED].

4575. Based on the evidence outlined above, the Chamber is satisfied that the siege or encirclement of Sarajevo by the SRK had a number of objectives, one of which was indeed the containment of the ABiH forces within the city in order to prevent them from linking up with ABiH forces outside of the city. However, the military directives issued by the VRS Main Staff and/or the Accused discussed in an earlier section of the Judgement[15369] clearly indicate a number of additional Bosnian Serb goals and strategies in relation to Sarajevo, namely, (i) to keep it under firm blockade and gradually tighten the encirclement; (ii) to conduct, among other things, offensive operations and liberate remaining parts of "Serbian territory" that would in turn improve tactical positions and normal communication within the RS; (iii) to isolate parts of the city and surrounding settlements; and (iv) to ensure the most favourable position for dividing Sarajevo.[15370] Additionally, in Directive 4, the VRS Main Staff noted that one of the tasks of the VRS as a whole was to "[c]reate conditions for the state leadership of [RS] to participate equally in resolving the crisis in the former [BiH] with other international factors".[15371] This is in line with the evidence outlined above, namely that the siege was used as a means of putting pressure on Bosnian Muslim authorities and the UN in order to ensure the most favourable peace deal for the Bosnian Serb side during international negotiations.[15372] Similarly, the goals listed above are in line with the evidence of Prosecution witnesses that one objective of the siege was to control the city and its people, and to keep those parts of the city deemed to be ethnically Serb under the control of the Bosnian Serb authorities. While some of the Accused's witnesses denied that the SRK's aim was to divide Sarajevo, others, like Radojčić and Šehovac confirmed that the final objective was to keep Bosnian Serb parts of the city under the control of the Bosnian Serb authorities.[15373] Indeed, this aim is clearly outlined in the above mentioned directives and the Chamber also recalls that, by 1993, the frontlines in Sarajevo were more or less set and that certain parts of the city, such as Grbavica and parts of Dobrinja, were under the control of the Bosnian Serb side throughout the war, thus essentially creating a division of the city in certain areas.

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15369 *See* paras. 3561, 3563, 3572, 3578, 3607, 4041.

15370 D232 (Directive 1, 6 June 1992), para. 2; D235 (Directive 3, 3 August 1992), pp. 2–3 ,5; P976 (Directive 4, 19 November 1992), pp. 3, 5; P843 (Directive 5, 25 June 1993), paras. 2, 4–5; P3039 (Directive 6, 11 November 1993), pp. 6, 9–10 (referring to, among other things, the VRS strategic military goal of "liberation" of Sarajevo which was then changed to division of Sarajevo in the supplement to Directive 6); P4925 (Supplement to Directive 6, 12 December 1993), paras. 2(a), 4(e); P838 (Directive 7, 8 March 1995), pp. 7–8, 11–12. *See also* P5981 (SRK Order, 26 June 1993), para. 4 (indicating that as part of the Lukavac 93 operation the SRK units were tasked with "creating conditions for take over of Sarajevo"); P3052 (VRS Main Staff Order, 14 December 1993).

15371 P976 (Directive 4, 19 November 1992), p. 3.

15372 This is also confirmed by the evidence the Chamber heard of fighting in Sarajevo intensifying during peace negotiations.

15373 *See* fn. 15357.

4576. Finally, although most defence witnesses testified that, with the exception of Lukavac 93, the SRK was engaging in defensive activities alone, some then proceeded to describe additional offensive actions their respective units undertook during their time in Sarajevo.[15374] This again is in line with the language in the directives which clearly called for offensive actions by the SRK in order to strengthen and consolidate SRK positions and gain territories deemed ethnically Serb. It also confirms the evidence of KDZ182 who testified that the SRK strategy was to move the frontline inch by inch towards the city and with the evidence of [REDACTED] who characterised the encirclement of Sarajevo as only "partly" defensive. Milošević himself confirmed as much in statements he made following the conflict.[15375] Ultimately, however, whether the VRS conducted offensive or defensive actions in and around the city is irrelevant for the purposes of this case. Instead, what matters—and what is thus addressed throughout this Judgement—is whether the VRS/SRK actions in and around Sarajevo were in compliance with international law.

g. Campaign of sniping and shelling causing terror

i. *Arguments of the parties*

4577. The Prosecution alleges that members of the Sarajevo Forces implemented a military strategy that used sniping and shelling to kill and wound the civilian population of Sarajevo, which in turn resulted in thousands of civilian casualties, including children and the elderly.[15376] The Prosecution further alleges that the sniping and shelling comprised direct attacks on the civilian population or on individual civilians not taking direct part in hostilities, and that these attacks included indiscriminate and disproportionate attacks.[15377] According to the Prosecution, "the only reasonable conclusion that can be drawn from the protracted campaign of sniping and shelling" of Sarajevo civilians is that "its primary purpose was terror".[15378]

4578. The Accused accepts that civilians in Sarajevo experienced terror but argues that civilians on both sides of the confrontation line were terrified as is "always the case in civil wars and street

15374 *See e.g.* D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 15; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 10; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 6; Blagoje Kovačević, T. 29091–29092 (18 October 2012); (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 18; Mihajlo Vujasin, T. 31799–31802 (20 December 2012); P6067 (Order of Rajlovac Infantry Brigade, 30 November 1992), p. 2.

15375 *See* D2901 (Letter from Dragomir Milošević to Ratko Mladić, 19 May 1996), p. 2; D568 (Speech of Dragomir Milošević, 30 March 1996), p. 3.

15376 Indictment, para. 79; Prosecution Final Brief, paras. 714–715. Sarajevo Forces are defined in the Indictment as (i) members of JNA operating in and around Sarajevo until about 20 May 1992, (ii) members of the VRS, in particular the SRK, and (iii) members of other forces operating in or with responsibility over the Sarajevo area. *See* Indictment, para. 18.

15377 Indictment, para. 80.

15378 Prosecution Final Brief, para. 783; Indictment, para. 77.

fights".[15379] He claims that the SRK units did not intend to cause civilian casualties or to spread terror among the civilian population of Sarajevo.[15380] According to him, any psychological pressure experienced by civilians in the city was caused by the Bosnian Muslim authorities who provoked Bosnian Serbs into responding to fire.[15381] In addition, the nature of the conflict in and around Sarajevo meant that the SRK was unable to designate any areas in the city as exclusively civilian since fire was coming from those zones.[15382] The Accused further submits that SRK units were never ordered, verbally or in writing, by SRK commands or civil authorities, to target civilians[15383] and that there was no goal to deliberately make it impossible for the Bosnian Muslim government in Sarajevo to control the living conditions of civilians in the city.[15384] The Accused's final argument, namely that the Bosnian Muslim side targeted its own civilians in order to gain international sympathy has been dealt with in the earlier part of the Judgement.

ii. *Terror in Sarajevo*

4579. A large number of Prosecution witnesses testified that Bosnian Serb Forces sniped and shelled the civilians in Sarajevo in order to instil terror in the civilian population, exert political pressure on their leaders or force them into accepting the *status quo*, and undermine the morale of the ABiH troops whose families were in the city.[15385] Indeed the Chamber heard that already by August 1992, the UN Special Rapporteur on Human Rights reported back to the UN that the city was being shelled on a regular basis and that snipers are killing innocent civilians in what "appears to be a deliberate attempt to spread terror among the civilian population."[15386] Similarly, towards

15379 Defence Final Brief, para. 1969.

15380 Defence Final Brief, paras. 1912, 1917.

15381 Defence Final Brief, para. 1920.

15382 Defence Final Brief, para. 1905.

15383 Defence Final Brief, paras. 1930–1938.

15384 Defence Final Brief, para. 1834.

15385 *See e.g.* P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 99, 101; P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 49; P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 26, 48–49, 140; KDZ450, T. 10553 (19 January 2011) (private session); P2106 (Witness statement of KDZ304), pp.3, 9–10 (under seal); KDZ304, T. 10446–10447 (18 January 2011); P2414 (Witness statement of KDZ182), pp. 28–29, 54 (under seal); KDZ182, T. 13038–13039, 13093 (9 March 2011); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 75; P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 40, 43; Michael Rose, T. 7267 (5 October 2010); P6060 (Record of interview with KDZ185), e-court pp. 13, 16; KDZ185, T. 4175–4177 (28 June 2010) (private session), T. 4177–4179, 4182–4183 (28 June 2010); P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 62; P820 (Witness statement of David Harland dated 4 September 2009), paras. 33–35; Rupert Smith, T. 11333–11334 (8 February 2011); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 25; Aernout van Lynden, T. 2412 (19 May 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 37, 46, 52.

15386 P1265 (Tadeusz Mazowiecki's Report on the situation in the former Yugoslavia, 28 August 1992), para. 17. *See also* Hussein Ali Abdel-Razek, T. 5514–5515 (20 July 2010).

the end of the conflict, in July 1995, the UN was reporting on a "general atmosphere of terror in the city" caused by the Bosnian Serb sniping and shelling.[15387]

4580. More specifically, Fraser testified that this feeling of terror in Sarajevo was caused by a number of factors, including the fact that the city was besieged and that the residents were shelled and sniped so that they "never quite knew what was going to happen to them when they walked out the door".[15388] KDZ304 testified that the SRK sniping and shelling aimed at "terrorising" and demoralising the civilian population[15389] and that various measures were used by the Bosnian Serbs to make the people of Sarajevo "choke"; this included the increased targeting and killing of civilians, the disruption of Blue Routes for the supply of humanitarian aid, the disruption of public transport, and the cutting off of electricity and water supplies.[15390] In Harland's view, terror was caused through several levers of pressure that the Bosnian Serbs used in relation to Sarajevo, such as the shelling and sniping of the civilian population, which he thought was a form of "terrorism directed at the civilians".[15391]

4581. Harland further testified that the application of terror followed a discernible pattern so that when there was an explicit threat of intervention against the Bosnian Serbs, the pressure would be eased, but when the threat subsided, the pressure would be increased.[15392] He gave as an example the events following the SRK's capture of Mt. Igman and the first Markale incident, where NATO action was threatened and resulted in a dramatic decline in the Serb sniping and shelling of the civilian population.[15393] KDZ450 testified that there was also a correlation between the increase in

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15387 P822 (UNPROFOR Weekly Situation Report (Sarajevo), 8 July 1995), p. 2; David Harland, T. 2022–2023 (6 May 2010).

15388 David Fraser, T. 8030 (18 October 2010). *See also* P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 199; KDZ185, T. 4175–4179 (28 June 2010); Rupert Smith, T. 11333–11334 (8 February 2011); P2361 (Witness statement of Eset Muračević dated 24 February 2011), para. 89; P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), paras. 87–88.

15389 P2407 (Witness statement of KDZ304), p. 10. KDZ304 did concede, however, that military positions of the ABiH were interspersed with the civilian areas. *See* P2407 (Witness statement of KDZ304), p. 35; KDZ304, T. 10493–10494 (18 January 2011).

15390 KDZ304, T. 10524–10525 (19 January 2011). *See also* P2361 (Witness statement of Eset Muračević dated 24 February 2011), para. 96; KDZ450, T. 10642–10644 (20 January 2011) (who was adamant that the Bosnian Serb side deliberately targeted civilians in Sarajevo).

15391 P820 (Witness statement of David Harland dated 4 September 2009), para. 38–39, 41; David Harland, T. 2018–2019 (6 May 2010). *See also* Yasushi Akashi, T. 37767–37769 (25 April 2013) (testifying that both sides in the conflict used humanitarian assistance as an instrument to either weaken the position of their opponent or strengthen their own position); D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), p. 26; P6293 (UNPROFOR report, 3 September 1994). Harland did not think that it was the Serb intention to actually capture the city and testified that the Accused admitted to him that it was not politically useful to force the city to surrender. *See* P820 (Witness statement of David Harland dated 4 September 2009), paras. 40–41.

15392 David Harland, T. 2019–2020, 2032–2034 (6 May 2010); P825 (SRK Order, 11 August 1993). *See also* P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 25.

15393 David Harland, T. 2019–2020 (6 May 2010).

ABiH offensives and the attacks directed against civilians in Sarajevo.[15394] Finally, a number of witnesses testified that events at the frontlines outside of Sarajevo also had an effect on the situation in the city.[15395]

4582. According to Fraser, the conditions in Sarajevo were "absolutely the worst conditions for anybody to live in".[15396] During his time in the city, Fraser asked people, including civilians working for him and locals in the shops, what it was like to live in the city and in response people expressed the terror of never knowing what was going to happen next.[15397] Some residents said that life in Sarajevo was even worse than during the German occupation of BiH in the 1940s.[15398] In order to avoid being targeted, civilians in the city would defer the basic life-saving chores, such as collecting wood, to times of reduced visibility, including foggy weather or night-time darkness.[15399] In addition, schools were closed and temporary neighbourhood schools were established in cellars, in order to minimise children's exposure to shelling and sniping.[15400]

4583. Fraser singled out two Bosnian Serb activities that had a devastating psychological impact on the citizens of Sarajevo; the first was the targeting of the trams because if they were not running due to sniper fire it meant that the situation was "grave", which would send "shudders through the city".[15401] The second was the use of modified air bombs by the Bosnian Serbs, as those were "psychologically very devastating" for the civilian population.[15402] KDZ304 also confirmed that modified air bombs were used as part of the psychological warfare and with the aim of terrorising

15394 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 33.

15395 *See e.g.* P2414 (Witness statement of KDZ182), p. 30 (under seal); P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 91–92, 94–96, 105, 107, 112; P1433 (UNMO report for October 1992), p. 4; P1434 (UNMO report for November 1992), p. 3; P1429 (UNMO report for December 1992), p. 3; Richard Mole, T. 5833–5836 (17 August 2010); Jeremy Bowen, T. 10105 (13 January 2011); P820 (Witness statement of David Harland dated 4 September 2009), para. 35; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 98; P1678 (BBC news report re attacks on Sarajevo and Bihać); P2017 (BBC news report re Sarajevo and Bihać, with transcript); Martin Bell, 9798 (14 December 2010); P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 33–37; KDZ450, T. 10550–10551 (19 January 2011)(indicating that the attacks were organised by the higher command).

15396 David Fraser, T. 8031 (18 October 2010).

15397 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 4, 73.

15398 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 73; David Fraser, T. 8031 (18 October 2010). *See also* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 56.

15399 *See* Adjudicated Facts 56, 57. When venturing out for these chores, civilians would often accompany each other so that there would be assistance if they were wounded. *See* Adjudicated Fact 63.

15400 *See* Adjudicated Fact 58. Many civilians would in fact live in cellars of their buildings in order to avoid the shells, and would move as little as possible. *See* Adjudicated Fact 59.

15401 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 39.

15402 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 64.

both the civilian population and the ABiH soldiers whose families lived in the city and were subjected to modified air bomb attacks.[15403]

4584. Like Fraser, Mole testified that the psychological pressure in Sarajevo was intense because of "the constant danger of injury or death from all forms of weaponry and perceived military activity within the city", no matter where one was.[15404] In other words, wherever people of Sarajevo went they were subject to this "incessant fear and concern" that was both "immense and protracted".[15405] Tucker testified that life in Sarajevo was "horrible" for the civilian population as the Bosnian Serbs blockaded the city and "subjected the inhabitants to incessant shelling, sniping, starvation, cold, as well as psychological pressure".[15406] No ten minutes would go by without the sound of small arms fire, and no half hour would go by without the sound of shells or mortar bombs.[15407] He called the activities of the SRK "terrorism by artillery" as its heavy weapons would fire all over the city in an arbitrary fashion and with no military purpose.[15408] For KDZ185, the fact that the shelling was so random and hardly ever targeted military objects "kept the population in a state of terror".[15409]

4585. According to Banbury, the siege of Sarajevo was "clearly a campaign of terror" and the people who lived through it "suffered immensely".[15410] Nakaš, a doctor in the Sarajevo State Hospital, testified that many people in Sarajevo were in fact "visibly traumatised" and suffered from "post-traumatic stress disorder".[15411] Bell confirmed this by stating that he had "never seen such anxiety etched on everybody's faces" and that "some [people] looked almost grey with fear".[15412] Mandilović, another doctor from the Sarajevo State Hospital, testified that Sarajevo's civilian population eventually became "numb to everything going on around them" and that people were in a state of "permanent fear".[15413] Hajir, a doctor working in Dobrinja Hospital, testified that the civilian population suffered deep psychological scars as a result of the siege; life in Sarajevo

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15403 P2407 (Witness statement of KDZ304), pp. 26–27; P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995).

15404 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 4, 8–9, 65. *See also* P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 24, 27–28, 43; Jeremy Bowen, T. 10212 (14 January 2011).

15405 Richard Mole, T. 5823 (17 August 2010). *See also* Adrianus van Baal, T. 8461 (27 October 2010).

15406 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 6, 22–23, 44.

15407 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 22.

15408 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 23, 90.

15409 P6060 (Record of interview with KDZ185), e-court p. 16.

15410 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 199.

15411 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 73; P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 49–58.

15412 Martin Bell, T. 9777–9778 (14 December 2010); P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 52–53; P2000 (BBC news report re Sarajevo, with transcript).

15413 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 108–110.

was hard for everyone and people experienced psychological problems and paranoia.[15414] In addition, they felt fear and anxiety for the safety of their loved ones.[15415] According to Van Baal, when he arrived to Sarajevo in February 1994, the situation was one of "desperation and horror", where people were underweight and had "fear in their eyes".[15416]

4586. Bell testified that of all the conflicts he covered, the Sarajevo battlefield was the only one conducted continuously and intensively over a long period of time in a modern city and an urban environment.[15417] According to him, one of the features of this conflict was the least distinction between soldiers and civilian when it came to targeting as he personally observed civilians being deliberately targeted within the city.[15418] He also testified that there were essentially two conflicts in Sarajevo—one was the conflict between the two armies and the other was bombardment and sniping of civilians which happened constantly and on both sides.[15419] Bogdan Vidović, who was a criminal technician in Sarajevo CSB,[15420] testified that in most cases he investigated during the conflict the casualties were civilians, and were not wearing any uniforms.[15421]

4587. The Chamber also received in evidence a large number of contemporaneous video footage showing civilians in Sarajevo in their everyday lives, under constant shelling and sniping.[15422] This footage shows that the situation in the city was extremely dangerous and that its citizens were afraid. In addition, the citizens of Sarajevo who gave evidence before the Chamber were all consistent about the constant danger and fear they lived with in the city during the conflict.[15423]

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15414 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 56–57; Youssef Hajir, T. 8797–8799 (1 November 2010).

15415 Youssef Hajir, T. 8798 (1 November 2010).

15416 Adrianus van Baal, T. 8461–8462 (27 October 2010).

15417 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 32; Martin Bell, T. 9802 (14 December 2010).

15418 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 32–33, 37–38; P2018 (BBC news report, with transcript); P2010 (Video footage of Sarajevo); Martin Bell, T. 9772–9773 (14 December 2010).

15419 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 57–58; Martin Bell, T. 9861–9862, 9870–9871 (15 December 2010).

15420 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 2, 11–12, 31–32, 34.

15421 P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), p. 35.

15422 *See e.g.* P2077 (BBC news report re Sarajevo, with transcript); P2078 (BBC news report re Sarajevo, with transcript); P1999 (BBC news report re Sarajevo, with transcript); P2016 (BBC news report re Sarajevo, with transcript); P929 (SKY news report re Sarajevo, with transcript); P930 (SKY news report re Sarajevo, with transcript); P931 (SKY news report re Sarajevo, with transcript); P954 (SKY news report re Sarajevo, with transcript); P936 (SKY news report re Sarajevo, with transcript); P932 (SKY news report re Sarajevo, with transcript); P2027 (BBC news report re Sarajevo, with transcript); P1678 (BBC news report re attacks on Sarajevo and Bihać); P1868 (BBC news report re shelling of Dobrinja on 1 June 1993); P2000 (BBC news report re Sarajevo, with transcript); P2074 (BBC news report re Sarajevo, with transcript); P2075 (BBC news report re Sarajevo, with transcript).

15423 *See e.g.* P490 (Witness statement of Anda Gotovac dated 17 May 2006), paras. 5, 7 (testifying that she lived in "constant fear" throughout the war as shells would explode near her home); P2922 (Witness statement of KDZ079 dated 17 May 2006), paras. 17–19, 21–22 (testifying that there was a "constant threat" of shelling and

iii. *Civilian casualties in Sarajevo*

4588. The Chamber also heard throughout the case that a large number of civilians were killed or wounded during the conflict in Sarajevo.[15424] Nakaš provided the statistical breakdown of patients treated in the State Hospital between 1992 and 1995, showing a total of 8,105 patients, 85% of whom were treated for war-related injuries.[15425] According to Nakaš, 3,698 of those were civilians while the rest were military; however, the latter figure was overblown as it included individuals who had military health insurance, such as retired JNA officers and their dependents, as well as the members of police.[15426] Mandilović estimated that the patients he treated were about 80% civilian and 20% soldiers, with 80% of the civilian casualties being shelling-related and 20% small-arms-related.[15427] Between August 1994 and November 1995, the proportion of patients treated for injuries caused by shelling rose to approximately 90% while the rest were wounded by sniper fire.[15428] In addition, between August 1994 and October 1995, the State Hospital treated 115 patients wounded by sniper fire, namely 8 children, 66 "adults", and 41 members of the armed forces.[15429] The State Hospital also treated many people who were suffering from Post-Traumatic Stress Disorder due to the living conditions in Sarajevo.[15430]

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sniping in Sarajevo, which placed "enormous" psychological pressure on her and her family); P2923 (Witness statements of KDZ090 dated 19 April 2006), para. 12 (testifying that life in Sarajevo between 1992 and 1995 was very difficult as people lived in "constant fear"); P492 (Witness statement of Sabina Šabanić dated 22 May 2006), paras. 7–8; P2361 (Witness statement of Eset Muračević dated 24 February 2011), para. 96; P2413 (Witness statements of KDZ289 dated 19 April 2006), p. 3 (testifying that there was no place in Sarajevo where she felt safe from shelling and sniping); Alma Mulaosmanović-Čehajić, T. 6756 (14 September 2010); P495 (Witness statement of Slavica Livnjak dated 25 April 2006), para. 6; P496 (Witness statements of Tarik Žunić dated 21 April 2006), p. 3; Mirza Sabljica, T. 7737 (12 October 2010).

15424 *See e.g.* P1690 (Witness statement of Alen Gičević dated 16 February 2010), p. 2; Alen Gičević, T. 7624–7625 (11 October 2010); Dragan Mioković, T. 8555, 8557–8560 (28 October 2010), 8563–8566 (29 October 2010); P1830 (Witness statement of Dragan Mioković dated 26 October 2010), p. 2; Adrianus van Baal, T. 8461–8462 (27 October 2010).

15425 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 59–60, 63; Bakir Nakaš, T. 6681–6684 (14 September 2010). Nakaš testified that these figures do not distinguish between patients who were hospitalised and those who were sent home immediately after being treated for their injuries, and also do not reflect the exact circumstances in which injuries were sustained, including data on who inflicted them. *See* Bakir Nakaš, T. 6729–6733 (14 September 2010); D621 (RS MUP report re ABiH and HVO, 30 December 1992). *See also* P474 (Witness statement of Faris Gavrankapetanović dated 13 December 2011), e-court p. 10 (testifying that best efforts were made during the war to keep the State Hospital records as complete and as thorough as possible; however, the pressures of operating in a war led to a "small number of omissions and mistakes being made").

15426 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 59, 61; Bakir Nakaš, T. 6675–6676 (14 September 2010). *See also* Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12627–12630; P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 60; P932 (SKY news report re Sarajevo, with transcript); Aernout van Lynden, T. 2410–2413 (19 May 2010).

15427 P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 80–83.

15428 Nakaš also estimated that one third of the soldiers who sustained injuries during this period of time were off duty at the time. *See* P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 64.

15429 P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 91; P1242 (Reports of Surgery Section of Sarajevo State Hospital, 1994–1995), e-court pp. 5–6; Bakir Nakaš, T. 6684–6685 (14 September 2010).

15430 Milan Mandilović, T. 5357 (16 July 2010).

4589. Zaimović testified that 331 children were brought in and treated in the Children's Surgery ward in Koševo Hospital during the war,[15431] most of whom were injured by shrapnel or sniper fire.[15432] In 1992 alone, 163 children were brought to the ward, nine of whom died in the ward itself.[15433] Zaimović also noted that 32 children who were severely injured and for whom the ward could not provide adequate care were taken for treatment outside of the country.[15434] The worst period for her ward was when the Fatima Gunić School was shelled on 9 November 1993, followed by the shelling of Otoka on 10 November, resulting in a number of dead and wounded children.[15435]

4590. Hajir testified that throughout the entire war, Dobrinja Hospital received around 16,000 injured persons and that he performed thousands of major and minor surgeries on injuries related to the conflict.[15436] On average 10 to 15 people would come to the hospital and approximately four minor surgeries were conducted each day.[15437] According to Hajir, at the beginning of the war around 95% of the people treated in the Dobrinja Hospital were civilians.[15438] Later on, that percentage decreased to about 85 %.[15439] Hajir did concede, however, that the hospital never conducted any statistical evaluations and that the numbers were problematic.[15440] At one point Hajir treated a seven or eight year old child who had been shot by a sniper through the heart; he

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15431 She also noted that other hospitals in the city would treat the wounded children. P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 6–10, 16–18; P818 (Extracts from Fatima Zaimović's diary); P819 (Extracts from Fatima Zaimović's diary); Fatima Zaimović, T. 1882–1884, 1892 (5 May 2010).

15432 Fatima Zaimović, T. 1871–1873 (5 May 2010); P814 (Witness statement of Fatima Zaimović dated 26 February 2010), para. 19 (adding that a small number were injured by phosphorous shells or gas explosions, which occurred due to intermittent gas supply in Sarajevo and improvised gas installations); P818 (Extracts from Fatima Zaimović's diary); P819 (Extracts from Fatima Zaimović's diary). *See also* Fatima Zaimović, T. 1882–1884 (5 May 2010).

15433 Fatima Zaimović, T. 1873 (5 May 2010).

15434 Fatima Zaimović, T. 1874 (5 May 2010); P818 (Extracts from Fatima Zaimović's diary), e-court p. 3 (entry 102 referring to a child being discharged from the hospital and sent to France).

15435 P814 (Witness statement of Fatima Zaimović dated 26 February 2010), paras. 16–18. The Chamber notes that these specific killings are not listed in Schedule G of the Indictment and therefore not specifically charged as murder under Counts 5 and 6. *See* Hearing, T. 5479–5481 (19 July 2010); T. 7670–7672 (11 October 2010); T. 10932 (31 January 2011). *See also* Prosecution Rule 73 *bis* Submission, para. 16 (wherein the Prosecution stated that it "will not present evidence in order to secure a conviction in respect of any crime sites or incidents not listed in the Schedules to the Indictment).

15436 According to Hajir, some of the injured person he treated sustained their injuries while trying to pass through ther Dobrinja tunnel. *See* P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 15–16; Youssef Hajir, T. 8794, 8823–8825 (1 November 2010), T. 8838–8839 (2 November 2010); P1900 (Photographs of victims treated at Dobrinja Hospital); P1901 (Photographs of victims treated at Dobrinja Hospital) (under seal).

15437 Youssef Hajir, T. 8824 (1 November 2010), T. 8854 (2 November 2010).

15438 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 15, 34. Hajir explained that in the beginning of the war there were no uniforms and his criteria for identifying a soldier was to see if they were armed. Hajir also explained that he himself was recorded as being in the 155th Brigade of the ABiH but explained that he did not know why that was since he never left the Dobrinja Hospital. *See* Youssef Hajir, T. 8811–8814 (1 November 2010), T. 8870–8871 (2 November 2010); D857 (ABiH 1st Command Corps report on El Mudžahid).

15439 P1866 (Witness statement of Youssef Hajir dated 25 February 2010), paras. 15, 34. Hajir conceded that the hospital treated members of the ABiH's 105th Brigade. *See* Youssef Hajir, T. 8825 (1 November 2010)

15440 Youssef Hajir, T. 8847 (2 November 2010).

also testified that many of his civilian patients were wounded while waiting for water and for humanitarian aid.[15441]

4591. In addition to the evidence of the Sarajevo doctors, Tabeau's demographic evidence outlined earlier shows that, as an absolute minimum, over 10,000 civilians were either killed or wounded in the conflict in Sarajevo during the Indictment period.[15442]

iv. *Evidence of SRK witnesses*

4592. While the Accused conceded during the case that the civilians in Sarajevo felt terror, he denied that there was any intention to cause such terror on the part of the SRK and the Bosnian Serb side. He called a large number of former members of the SRK who testified that there was no intention, at any level of the SRK, to conduct a campaign of terror against civilians, and/or inflict psychological harm on them.[15443] Galić denied that the SRK fired on Sarajevo without any military purpose and solely for the purpose of terrorising civilians, testifying that these kinds of attacks "did not happen" and "were never ordered" because "terror begets terror".[15444] Similarly, Dragomir Milošević testified that the SRK did not create an atmosphere in Sarajevo where "people were being driven crazy" and that the thesis that the Sarajevo civilians were subjected to a "campaign of terror" could not be sustained.[15445] Ratomir Maksimović dismissed reports suggesting that civilians were targeted by the SRK as propaganda,[15446] and Dragomir Milošević claimed that these reports reflected an exaggeration or dramatisation of the situation.[15447] Inđić gave evidence that there was

15441 Youssef Hajir, T. 8843, 8853 (2 November 2010).

15442 *See* paras. 3621, 3997.

15443 *See e.g.* D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 15; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 22–24; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 18; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 24–25; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 25; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 25; Vladimir Radojčić, T. 31192 (11 December 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 13; D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 26; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), paras. 9–11; D2387 (Witness statement of Stojan Džino dated 4 November 2012), paras. 44–46; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 28–30; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 9; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 20; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 17; Božo Tomić, T. 30214 (13 November 2012); D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 13; Svetozar Guzina, T. 31183 (11 December 2012); Milorad Katić, T. 31419 (13 December 2012); D2665 (Witness statement of Izo Golić dated 15 December 2012), paras. 31–32; Izo Golić, T. 31555 (17 December 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 20. *See also* [REDACTED].

15444 Stanislav Galić, T. 37408–37409 (18 April 2013).

15445 Dragomir Milošević, T. 33145 (4 February 2013).

15446 Ratomir Maksimović, T. 31591–31596 (17 December 2012).

15447 Dragomir Milošević, T. 33276–33277 (6 February 2013).

no plan for "low intensity operations with the aim of terrorizing civilians in Sarajevo",[15448] while Milovanović denied that Bosnian Serbs intended or planned to terrorise the civilians in Sarajevo, whether through sniper or artillery fire.[15449] As noted earlier, the SRK soldiers and officers called by the Accused testified that, instead of causing terror, the goal of the SRK was to stand its ground and oppose the ABiH's 1st Corps and prevent their units from linking up with ABiH units outside of the city.[15450] The Accused's military expert, Radinović, also stated that he found no evidence that the purpose of the operations of the Serb forces was to terrorise civilians, relying on the fact that places of worship were not targeted and that there were periods of inactivity and cease-fires in Sarajevo.[15451]

4593. Similarly, many of those SRK soldiers and officers testified that they and their units were never ordered, nor did they ever order, that civilians in Sarajevo be targeted.[15452] Radojčić explained that it was "crystal clear" in SRK orders and reports that the use of phrases like "attack on the city" implied that only military targets were selected, that "reprisal" referred to an appropriate response to enemy fire, while "retaliation" referred to selective retaliation against military targets.[15453] [REDACTED] testified that an order to clear the terrain of remaining individuals referred only to military individuals, not civilians, and that the reference to "mopping up the wider area of remaining groups and individuals" in Directive 1 referred to groups and

15448 D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 128.

15449 Manojlo Milovanović, T. 25735 (5 March 2012).

15450 *See* paras. 4547, 4570–4573; Dragomir Milošević, T. 33145 (4 February 2013).

15451 Radovan Radinović, T. 41408–41409 (17 July 2013); D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), paras. 24–25, 290–292.

15452 *See e.g.* Dragomir Milošević, T. 32833 (29 January 2013), T. 33206–33207 (5 February 2013); Stanislav Galić, T. 37408–37409 (18 April 2013), T. 37472 (22 April 2013); D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 15; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 27; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 18; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 27; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 28; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 28; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 15; D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 49; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 27, 31; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 11; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 18; D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 11; D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 39; D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 9; Siniša Maksimović, T. 29297 (23 October 2012).); D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 21; D2852 (Witness statement of Srđan Šehovac dated 27 January 2013), para. 29.

15453 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 89, 91; D322 (SRK Order, 19 April 1995); D2580 (SRK instructions, 11 May 1995), p. 2; D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994).

individuals belonging to enemy forces.[15454] These witnesses also claimed that they never wanted to control the living conditions of the people in the city.[15455]

4594. According to those witnesses, the SRK troops were explicitly ordered not to target civilians.[15456] They were issued orders to fire only at military targets, which they observed.[15457] When shown an intercepted conversation in which Mladić ordered an attack on "only military targets", Dragomir Milošević testified that this order reflected complete agreement between the SRK Command and the Main Staff that the SRK should only target military targets.[15458] Guzina explained that infantry weapons could be fired without a command or special order only if an SRK

15454 [REDACTED]; D232 (Directive 1, 6 June 1992), paras. 4–5.

15455 *See* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 11; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 20.

15456 Dragomir Milošević, T. 32735–32736 (28 January 2013); Stanislav Galić, T. 37193–37194, 37219 (15 April 2013), T. 37472 (22 April 2013), T. 37846 (7 May 2013); D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 16; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 15; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 21, 50; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 28, 67; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 28; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 31–32; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 17; D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 27; Dragan Maletić, T. 30889 (4 December 2012); D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 11; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 33; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 12; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 21; D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 18; Miladin Trifunović, T. 30439 (27 November 2012); Svetozar Guzina, T. 31181 (11 December 2012); D2812 (Warning of SRK, 27 October 1994), p. 2; D2665 (Witness statement of Izo Golić dated 15 December 2012), para. 25; D2267 (Vlado Lizdek's interview with OTP), p. 52. Milorad Šehovac testified that the Accused "insisted on and demanded" that soldiers follow international humanitarian law and the laws of war. The Chamber heard that orders were issued to this effect. *See* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 13; D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 15; D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 18; D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 16; Stanislav Galić, T. 37193–37194 (15 April 2013).

15457 Stanislav Galić, T. 37472 (22 April 2013), T. 37219 (15 April 2013); D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 15; D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 30; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 29; D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras. 11, 18, 25; Vlade Lučić, T. 30817 (3 December 2012); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 30; D2617 (SRK Order, 30 April 1995); D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 11; Zoran Kovačević, T. 30610 (28 November 2012); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 33; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 12; D2391 (Witness statement of Slobodan Tuševljak dated 5 November 2012), para. 21; D2622 (Witness statement of Željko Bambarez dated 9 December 2012), para. 17; D2267 (Vlado Lizdek's interview with OTP), pp. 35, 48–49, 52; P1000 (SRK Order, 26 June 1992), p. 2; D2417 (SRK Order, 4 April 1995), para. 2; Savo Simić, T. 30051–30052, 30139–30140 (12 November 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 26; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 27;; D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 20; D2379 (Witness statement of Momir Garić dated 2 November 2012), para. 25; D2418 (Witness statement of Božo Tomić dated 5 November 2012), para. 18; Siniša Maksimović, T. 29297 (23 October 2012); D2665 (Witness statement of Izo Golić dated 15 December 2012), paras. 31–32; D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 25; Dragan Maletić, T. 30864 (4 December 2012); Nikola Mijatović, T. 30728 (30 November 2012).

15458 P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995), p. 4; Dragomir Milošević, T. 32739 (28 January 2013).

facility was attacked and there was no other way to repel the attack.[15459] Similarly, Lučić testified that his unit had good means of communication, and therefore it engaged the enemy only on orders, only if necessary, and only against identified actual military objectives.[15460]

4595. A number of SRK witnesses also blamed the ABiH for failing to protect civilians in the area under the ABiH control.[15461] According to them, military targets were located in civilian areas of ABiH controlled territory, and/or in the depth of ABiH controlled territory.[15462] When asked whether it was reasonable to expect civilian casualties when firing on targets in areas where civilians lived, Mijatović answered that it was reasonable to expect a warring party to avoid firing from civilian areas.[15463] Gengo thought that any potential civilian casualties in Sarajevo "could be considered collateral damage" while civilian facilities "could have been endangered" by SRK fire only due to their proximity to military targets.[15464] When asked about precautions he took to minimise civilian casualties, Gengo responded that the "enemy side should have done that" as he and his unit could not see what was going on in Sarajevo from their positions.[15465] Veljović conceded that there might have been civilian casualties from SRK fire in densely populated parts of the city, but only when SRK units were threatened by strong artillery fire from such zones.[15466] After agreeing that there was a "pretty high risk" of civilian casualties when firing in the depth of the city, Sladoje stated that it was not possible for the SRK to fire at military objectives only without jeopardising the civilian population which was living in the city.[15467] According to him, it

15459 D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 38.

15460 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 20.

15461 *See e.g.* Slavko Gengo, T. 29781–29782, 29828–29829 (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 20; Nikola Mijatović, T. 30729 (30 November 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30574 (28 November 2012); Stanislav Galić, T. 38041 (9 May 2013).

15462 D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 23, 29; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 22, 29; D2387 (Witness statement of Stojan Džino dated 4 November 2012), para. 43; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 34, 35; Miloš Škrba, T. 29191 (22 October 2012); Nikola Mijatović, T. 30728, 30737 (30 November 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30571, 30573 (28 November 2012) (testifying that practically not a single neighbourhood was purely civilian); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 8; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 12; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 31.

15463 Nikola Mijatović, T. 30729 (30 November 2012). Prosecution witness Michael Rose testified that "the moral distinction between Bosnian forces firing at the Serbs with the intention of provoking retaliation against civilians and the Bosnians themselves firing on their own people is a fine one". *See* Michael Rose, T. 7330 (6 October 2010); D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), pp. 230–231.

15464 D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 20.

15465 Slavko Gengo, T. 29781–29782, 29828–29829 (6 November 2012).

15466 D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 20. Referring to a UNMO report stating that approximately 80% of fire on both sides was on the frontline and 20% in residential areas, Galić stated that both sides were targeting military targets, some of which were located in depth. Whether 20% landing on civilian areas can be tolerated was therefore in his opinion a question of proportionality. *See* Stanislav Galić, T. 38047–38048 (9 May 2013); D3524 (UNMO report, 4 to 5 January 1994), p. 1.

15467 Mile Sladoje, T. 30573–30574 (28 November 2012).

was "impossible to say practically for any area" that there were no civilians there.[15468] This is contrary to the evidence of Dragomir Milošević who testified that he considered and treated Sarajevo as a civilian area.[15469] Thus, if it was not possible to avoid danger to civilians, an assessment would have to be made as to whether collateral damage would outweigh the military advantage.[15470] Radinović claimed that "it was impossible to distinguish between civilians and soldiers in the Sarajevo theatre of war" because many ABiH soldiers wore civilian clothing.[15471] However, Galić testified that SRK soldiers manning their positions were ordered to be "absolutely certain as to who was a civilian or who was a soldier", despite this being "quite difficult".[15472] Galić and several other SRK witnesses also testified that, if the SRK Command found out about possible civilian casualties during an attack, it would order that the attack be stopped.[15473] He later explained that, ultimately, civilian casualties and collateral damage in the Sarajevo area could have been stopped only by stopping the war, and that collateral civilian damage was a factor to be considered when returning fire into a civilian zone.[15474]

v. *Findings*

4596. Given the testimony of the Prosecution witnesses who lived in the city at various times and noting the Accused's acknowledgement to that effect, the Chamber has no doubt that the citizens of Sarajevo felt terrorised and experienced extreme fear and hardship during the conflict, due primarily to the sniping and shelling they were exposed to by the SRK forces everywhere in the city, including in their own homes. The evidence is clear that Sarajevo was under siege by the SRK

15468 Mile Sladoje, T. 30571 (28 November 2012).

15469 Dragomir Milošević, T. 33122, 33124–33125, 33129–33136 (4 February 2013) (adding that he determined that there were some 275 command posts in the city). The Chamber notes that Milošević came to that number by assuming that each major ABiH unit had three command posts, which was not the case in fact. *See* D633 (Order of ABiH 1st Corps, 25 October 1993).

15470 Dragomir Milošević, T. 33123, 33139–33140 (4 February 2013). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 37; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 12.

15471 D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), para. 25. *See also* D2516 (Witness statement of Vlade Lučić dated 5 November 2012), para. 28; Svetozar Guzina, T. 31151–31152 (6 December 2012), T. 31192 (11 December 2012).

15472 Stanislav Galić, T. 37194 (15 April 2013).

15473 Stanislav Galić, T. 37194 (15 April 2013); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 33; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 26, 30; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 36–37; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 12; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 37; D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 18. However, Zoran Kovačević testified that he did not know of any civilian casualties in Sarajevo during the war. *See* Zoran Kovačević, T. 30612 (28 November 2012); D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 9.

15474 Stanislav Galić, T. 37890 (8 May 2013), T. 38041 (9 May 2013).

forces[15475] and that, with the exception of a few months following the establishment of the TEZ,[15476] its citizens were exposed to continuous small arms and heavy weapon fire. They were in danger of death or serious injury no matter where they were in the city and, as such, spent a number of years under enormous psychological pressure. The high numbers of civilian casualties in the city during the conflict clearly illustrate the enormity of the danger they were exposed to.

4597. As also discussed in the preceding sections of the Judgement,[15477] the fire SRK opened on Sarajevo was deliberate fire, often used to directly target civilians and civilian objects in the city, including hospitals and trams.[15478] This is particularly the case with respect to the sniping incidents discussed earlier in the Judgement, which by their very nature could have been nothing but deliberate attacks on civilians.[15479] In addition, the shelling by the SRK forces was in most cases either indiscriminate or disproportionate and sometimes both, resulting in a high casualty count among the civilian population of Sarajevo.[15480]

4598. The Chamber rejects the evidence of Defence witnesses, outlined in this section and in the preceding sections of this Judgement,[15481] that civilians in Sarajevo were neither deliberately targeted by the SRK forces nor victims of indiscriminate or disproportionate fire. As already indicated in some of the preceding sections of this Judgement, the Chamber found their evidence to be self-serving and far-fetched, designed to blindly absolve the SRK of any responsibility for most (or, in some cases, all) civilian casualties in the city. In the Chamber's view, the credibility of these witnesses, particularly the former SRK members and expert witnesses Subotić and Poparić, was seriously undermined by their descriptions of the SRK's campaign in Sarajevo. Their evidence is in stark contrast with the evidence of those living or working in Sarajevo during the siege, both local citizens and international observers, and with the evidence of high civilian casualty count in the city, particularly women, children, and the elderly. The falsity of their evidence is further illustrated by the specific sniping and shelling incidents discussed above in which the SRK was found to have been deliberately targeting the civilians or opening indiscriminate and/or disproportionate fire on the city.[15482] Further, the claims of SRK witnesses that they only fired at military targets and with principle of distinction firmly etched in their mind, have also been

15475 *See* paras. 4561– 4566.

15476 *See* paras. 3583–3586.

15477 *See* Sections IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.b: Sniping; IV.B.1.c: Shelling; IV.B.1.e: Hospitals in Sarajevo.

15478 *See also* Adjudicated Facts 51, 53.

15479 *See* paras. 3968–3969. *See also* discussion on specific Scheduled Sniping Incidents.

15480 *See* discussion on specific Scheduled Shelling Incidents.

15481 *See* paras. 3625, 3998– 4000. See also individual arguments of Defence witnesses in relation to specific Scheduled Incidents.

15482 *See* discussion on specific Scheduled Shelling and Sniping Incidents.

consistently denied by many Prosecution witnesses. One of the more striking of those was the evidence of Bell who stated that of all the conflicts he covered, the conflict in Sarajevo was one where least distinction was made between civilians and combatants.[15483]

4599. The Chamber accepts the Accused's claim that the civilians on the Bosnian Serb side of the confrontation line also felt terror and experienced hardship due to wartime circumstances. However, the Chamber does not accept the implication of this argument, namely that the terror felt in Sarajevo was a normal state experienced by everyone in times of war. While it is indeed to be expected for any civilian population to be scared during chaotic times of war, the situation of the civilians living in Sarajevo was unique due to the siege perpetrated by the SRK. It was also different to that of the civilians in Bosnian Serb-held areas. The Chamber recalls here and accepts as accurate the evidence of Bowen who testified that the people in the SRK-held areas at least "had access to decent food and a way out" and that their existence was not as fraught with danger as that of the people confined within the city.[15484] Furthermore, as testified to by some SRK witnesses, the SRK often moved Bosnian Serb civilians away from the confrontation lines in order to avoid civilian casualties.[15485] The civilians living in Sarajevo, however, did not have that luxury and had no choice but to stay within the confrontation lines in the city.

4600. Accordingly, on the basis of all the evidence in this case, the Chamber is convinced that the SRK conducted a campaign of shelling and sniping of the city, including of its civilian population, with the intention to, *inter alia*, terrorise the civilian population of Sarajevo. Furthermore, the SRK's use of modified air bombs towards the end of the conflict was clearly aimed at terrorising the citizens as part of the strategy to demoralise the ABiH soldiers and, as such, is one of the clearest examples of the intention to terrorise.[15486] Similarly, every single sniping incident in which a civilian was targeted by SRK snipers, including the specific sniping incidents discussed earlier in the Judgement, is an example of deliberate intention on behalf of the SRK forces to terrorise the civilian population of Sarajevo.[15487]

4601. This intention to terrorise can also be inferred from the pattern in which the terror was applied to the city. For example, it is clear, as explained by Harland and illustrated in the chronology of the events in Sarajevo, that the sniping and the shelling of the civilians in the city

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15483 *See* para. 4586.

15484 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), para. 27.

15485 *See e.g.* D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 39; Nikola Mijatović T. 30760 (30 November 2012); D4619 (SRK report, 18 August 1995), p. 2 (wherein SRK command instructs the SRK units to relocate civilian population in an organized manner to "prevent mass losses in border settlements").

15486 *See* Section IV.B.1.iii.D: Scheduled modified air bomb incidents.

would ease whenever there was an explicit threat of intervention by NATO but would then increase as soon as that threat subsided or in retaliation for ABiH offensives.[15488] One of the most illustrative examples of this is the aftermath of the first Markale incident in February 1994. Similarly, the evidence shows that events elsewhere in BiH had an effect on the level of terror in the city, thus again showing intentional use of sniping and shelling to terrorise the civilian population. Given these patterns, the Chamber is convinced that terror was used intentionally by the SRK forces, both to demoralise the civilian population and to retaliate during times of ABiH offensives in the city and elsewhere. The SRK wanted to show to the Sarajevo residents that no one was safe and that they were helpless.[15489]

4602. The Chamber notes that throughout the case the Accused tendered into evidence a large body of SRK orders and combat reports in order to show that the situation in Sarajevo was one of war, waged equally by both sides. His aim was also to show that the ABiH forces constantly launched attacks on the SRK-held territory, thereby provoking a response which was always selective and proportionate. The Chamber has referred to many of these documents throughout the Judgement. It has also considered them all in coming to the conclusions outlined in this section. However, the Chamber found their value to be fairly limited in terms of the ultimate findings outlined in this section. While noting the location and the nature of the various attacks by the ABiH forces, including the number and types of mortar shells fired for example, these combat reports and orders provide very little information about the nature of the response the SRK units engaged in, which was one of the main issues in this case.[15490] In other words, aside from stating that the SRK returned fire when attacked (or sometimes refrained from returning fire), these documents rarely provide any information on the specific weaponry used to return fire, or the quantity of fire used. They also rarely specify the exact locations targeted by the SRK in response to the ABiH fire and make no mention of most of the scheduled sniping or shelling incidents listed in the Indictment.[15491] All of this makes any analysis regarding proportionality and selective nature

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15487 *See* discussion relating to specific Scheduled Sniping Incidents.

15488 *See* para. 4581.

15489 *See* Adjudicated Facts 137, 138.

15490 *See e.g.* D4563 (SRK combat report, 27 November 1992); D4565 (SRK combat report, 24 January 1993); D4569 (SRK combat report, 18 August 1993); D4573 (SRK combat report, 12 October 1993); D4574 (SRK combat report, 16 October 1993); D4579 (SRK combat report, 14 March 1994); D4581 (SRK combat report, 23 April 1994); D4584 (SRK combat report, 9 May 1994); D4588 (SRK combat report, 19 May 1994); D4592 (SRK combat report, 20 June 1994); D4597 (SRK combat report, 7 July 1994); D4598 (SRK combat report, 10 July 1994); D4599 (SRK combat report, 12 July 1994); D4600 (SRK combat report, 14 July 1994); D4601 (SRK combat report, 15 July 1994); D4603 (SRK combat report, 17 July 1994); D4607 (SRK combat report, 30 July 1994); D4616 (SRK combat report, 29 June 1995); D4621 (SRK combat report, 11 December 1993); D4625 (Report of 1st Romanija Infantry Brigade, 24 December 1992); D4626 (SRK combat report, 22 March 1994).

15491 Indeed, Galić consistently testified that many of the incidents charged in the Indictment were not referred to in SRK reports.

of the SRK response on the basis of these reports impossible. At the same time, given the level of detail as to the activities of the ABiH forces, down to the quantity and calibre of mortar shells the ABiH forces would fire, these documents illustrate that the ABiH engaged mainly in small scale attacks, often using sniper or firearms or limited small calibre mortar fire, and often along the limited number of confrontation lines.[15492] As such, and contrary to the Accused's aim, these SRK orders and combat reports do not counter the evidence of Prosecution witnesses who testified that the SRK responses to ABiH fire were disproportionate and indiscriminate and at times not connected to ABiH attacks at all. They do in turn seem to be consistent with the evidence of the Prosecution witnesses who testified about the limited nature of ABiH attacks due to the ABiH inferior position in terms of heavy weaponry.

4603. The Chamber recalls that the Defence witnesses also claimed that there were no purely civilian areas in the city and/or that the ABiH was at fault for civilian casualties within the city as it did not move the population away from the military targets. However, as found in relation to various scheduled incidents above, the Chamber considers that the presence of certain military facilities in the city did not immediately convert the whole city or its residential areas into military targets or justified indiscriminate attacks by the SRK. Furthermore, while ABiH command posts were indeed present in the city, the evidence shows that the SRK did not seriously target them and/or try to destroy them with sustained fire, despite being aware of their exact location.[15493]

4604. It is worth noting that the intermingling of ABiH forces and facilities with civilians and civilian objects in Sarajevo was mainly due to the nature of the siege and the confrontation lines around Sarajevo. The ABiH sometimes had no choice but to locate its command posts and some of its forces among the civilian population. The claim of the SRK soldiers and officers that ABiH forces should therefore be blamed for all the casualties caused by the SRK fire in the city is not only disingenuous but also illustrates the reckless attitude these soldiers and officers ultimately exhibited towards the fate of the civilian inhabitants of Sarajevo.[15494] Additionally, while possible that at times the SRK units found it difficult to distinguish between soldiers and civilians in the

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15492 *See e.g.* D4570 (SRK combat report, 20 August 1993); D4571 (SRK combat report, 20 September 1993); D4572 (SRK combat report, 21 September 1993); D4582 (SRK combat report, 24 April 1994); D4583 (SRK combat report, 25 April 1994); D4586 (SRK combat report, 10 May 1994); D4587 (SRK combat report); D4589 (SRK combat report, 5 June 1994); D4590 (SRK combat report, 8 June 1994); D4591 (SRK combat report, 14 June 1994); D4593 (SRK combat report, 25 June 1994); D4594 (SRK combat report, 4 July 1994); D4595 (SRK combat report, 3 July 1994); D4596 (SRK combat report, 5 July 1994); D4605 (SRK combat report, 25 July 1994); D4606 (SRK combat report, 26 July 1994); D4629 (SRK combat report, 19 March 1994).

15493 *See* para. 3990. Furthermore, the evidence also shows that most of the ABiH forces were located at confrontation lines. *See* para. 3557.

15494 The Chamber recalls that it has discussed presence of military objects or targets wherever the Defence raised that issue in relation to the specific scheduled incidents discussed above.

city, the Chamber notes that international humanitarian law dictates that in such cases they should have assumed that the individuals in question were civilians.[15495]

4605. Thus, for all the reasons outlined above, the Chamber is satisfied beyond reasonable doubt that the SRK forces embarked on a campaign of shelling and sniping of civilians in Sarajevo in order to terrorise those civilians.[15496]

2. Legal findings on crimes

a. Chapeau requirements for Articles 3 and 5 of the Statute

4606. In the Sarajevo component of the case, the Accused is charged with three counts of violations of the laws or customs of war under Article 3 of the Statute, namely murder, terror, and unlawful attacks on civilians, as well as with one count of crimes against humanity under Article 5 of the Statute, namely murder.[15497] The Prosecution alleges that there was a state of armed conflict at all times relevant to the Indictment.[15498] It also claims that all acts and omissions charged as crimes against humanity that formed part of the sniping and shelling campaign were part of a widespread or systematic attack directed against the civilian population of Sarajevo.[15499]

i. *Article 3*

4607. The Chamber found that there was an armed conflict in BiH throughout the period relevant to the crimes alleged in the Indictment. In Sarajevo, at the latest by early April 1992, heavy firing had erupted in and around the city, and my mid-April shelling had begun.[15500]

4608. For each of the crimes charged under Article 3 of the Statute in relation to the Sarajevo component of the case, namely murder, terror, and unlawful attacks on civilians, the Chamber has examined whether they were closely related to the armed conflict.[15501]

4609. In relation to the four so called "*Tadić* Conditions",[15502] the Chamber refers to the applicable law sections of this Judgement, which expanded on the legal basis for each of the crimes

15495 *See* para. 457 (citing to Dragomir Milošević Appeal Judgement, para. 60).

15496 While the Prosecution alleged that Sarajevo Forces were responsible for the campaign of sniping and shelling, the Chamber is unable to conclude that forces other than the SRK were responsible for the sniping and the shelling of civilians in Sarajevo.

15497 *See* para. 5.

15498 Indictment, para. 89.

15499 Indictment, para. 88.

15500 *See* paras. 3542–3543.

15501 *See* paras. 4618, 4628, 4635.

15502 *See* para. 443.

charged in the Indictment under Article 3 of the Statute.[15503] In relation to murder, the prohibition stems from Common Article 3 which is deemed to be part of customary international law.[15504] Further, the Appeals Chamber has confirmed that violations of the provisions of Common Article 3 entail individual criminal responsibility.[15505] In relation to terror, as mentioned above, the Appeals Chamber has confirmed that the prohibition of terror is part of customary law.[15506] The Appeals Chamber also held that this offence incurs individual criminal responsibility.[15507] Finally the Appeals Chamber has recognised that the prohibition of unlawful attacks on civilians reflects customary international law.[15508] It further held that individual criminal responsibility is incurred for unlawful attacks on civilians if the attacks have resulted in death or serious injury to body or health of the victims in question.[15509] The Chamber is therefore satisfied that the four *Tadić* Conditions are met, and consequently that the chapeau requirements for Article 3 of the Statute are fulfilled, in relation to all of the relevant offences charged in the Indictment.

ii. *Article 5*

4610. As found above, there was an armed conflict in BiH throughout the period of the Indictment. The Chamber is also satisfied that the evidence demonstrates that there was a widespread and systematic attack directed against the civilian population of Sarajevo. In reaching this conclusion, the Chamber had regard to the means and method used in the course of the attack, the status of the victims,[15510] and their number. The SRK carried out a series of acts of sniping and shelling between May 1992 and August 1995 that deliberately targeted civilians and civilian areas in Sarajevo.[15511] Over a period of more than three years, in different locations throughout Sarajevo, there were many sniping and shelling acts conducted by members of the SRK and which resulted in the deaths and injury of a high number of civilians. The Chamber is therefore satisfied that the attack on the civilian population of Sarajevo was both widespread and systematic.

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15503 *See* Section III.A.1: Article 3 of the Statute of the Tribunal.

15504 *Čelebići* Appeal Judgement, para. 143.

15505 *Čelebići* Appeal Judgement, paras. 167, 170, 173–174 (holding at para. 173: "It is universally acknowledged that the acts enumerated in common Article 3 are wrongful and shock the conscience of civilised people, and thus are, in the language of Article 15(2) of the ICCPR, 'criminal according to the general principles of law recognised by civilised nations'.").

15506 *See* para. 458.

15507 *Galić* Appeal Judgement, para. 92.

15508 *See* para. 458.

15509 *Kordić and Čerkez* Appeal Judgement, para. 67. *See also* para. 455.

15510 The Chamber recalls that a population may qualify as civilian as long as it is predominantly civilian and as such considers that the population of the urban areas inside the confrontation lines of Sarajevo between 1992 and 1995 had civilian status as a whole.

15511 *See* Sections IV.B.1.b: Sniping; IV.B.1.c: Shelling.

4611. The Chamber is therefore also satisfied that the chapeau requirements for murder charged under Article 5 of the Statute are met.

b. Crimes

i. *Murder: Counts 5 and 6*

(A) Sniping and shelling incidents

4612. The Chamber recalls its findings in Sections IV.B.1.b and IV.B.1.c above, namely that individuals were killed in Sarajevo by sniping or shelling by Serb Forces, specifically the SRK.[15512]

4613. The Chamber recalls that it found that six children were killed as a result of an explosion caused by three shells on 22 January 1994 but that it could not conclude beyond reasonable doubt that the fire came from SRK positions and therefore that Serb Forces were responsible.[15513] The Chamber also recalls that it received evidence of one person dying in the shelling of 28 and 29 May 1992 but was unable to determine whether he was taking direct part in hostilities when killed.[15514]

(B) Intent of perpetrators

4614. The Chamber recalls its findings that the death of the victims in the incidents recalled above was a result of the acts of Serb Forces, specifically the SRK.[15515] The Chamber finds that the perpetrators of each of these incidents acted with the intent to kill the victims or at least wilfully caused serious injury or grievous bodily harm, which they should reasonably have known might lead to death.

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15512 The killing of Munira Zametica (Scheduled Incident F.3); the killing of Nermin Divović (Scheduled Incident F.12); the killing of a number of people between 5 and 8 June 1992 (Scheduled Incident G.2); the killing of at least 12 people, seven of whom were soldiers (Scheduled Incident G.4); the killing of 14 people (Scheduled Incident G.5); the killing of eight people (Scheduled Incident G.7); the killing of at least 67 people, by majority, Judge Baird dissenting (Scheduled Incident G.8); the killing of two people (Scheduled Incident G.9); the killing of Ziba Čustović (Scheduled Incident G.10); the killing of four people (Scheduled Incidents G.11 and G.12); the killing of 43 people, one of whom was a soldier (Scheduled Incident G.19). The Chamber notes that in the following Scheduled Incidents, the Prosecution alleged that individuals were injured but not killed as a result of the incidents: Scheduled Incidents F.1, F.2, F.4–F.11, F.14–F.17 and Scheduled Incidents G.13–G.15.

15513 *See* Scheduled Incident G.6.

15514 *See* Scheduled Incident G.1, fn. 13408. Similarly, the Chamber received evidence of a number of people dying in Scheduled Incident G.2 but was unable to determine whether some of them were taking part in hostilities when killed. *See* Scheduled Incident G.2, fn. 13481 (wherein the Chamber lists only those for whom it was sure that they were not participating in hostilities at the time and that they were civilians).

15515 The Chamber notes that this excludes Scheduled Incident G.6 as the Chamber was unable to determine, on the basis of evidence before it, who the perpetrators were. The Chamber also recalls, with respect to Scheduled Shelling Incident G.8, that the finding that the SRK was responsible was reached by majority, Judge Baird dissenting.

4615. In reaching that conclusion, the Chamber had regard to the circumstances and the manner in which the victims were killed. With respect to the Scheduled Sniping Incidents, the Chamber found in all instances that the victims were deliberately targeted.[15516] More specifically in relation to Sniping Incident F.3, the Chamber recalls its findings that the perpetrator bracketed the distance immediately prior to the incident and that the perpetrator shot the victim and then repeatedly shot towards her. In relation to Sniping Incident F.12, the Chamber found that the victim and his mother were shot at a crossing where there were no soldiers and at a time when there was no combat in the area and a cease-fire was in place.

4616. With respect to the Scheduled Shelling Incidents, the Chamber also found that the victims were either deliberately targeted or were the victims of indiscriminate and/or disproportionate attacks by the SRK. The Chamber recalls, for example, its findings in relation to Shelling Incident G.5 that only one shell was fired and landed at a well-known emergency water point in the yard of a private house, that the area around the well was shelled again later during the conflict, and that the nearest military presence was too far away from the incident site to explain the firing of the particular shell. In relation to Shelling Incident G.7, the shells exploded in a residential neighbourhood where humanitarian aid was being distributed and a large number of people had gathered waiting for the aid; there was no combat or military presence at the time. In relation to Shelling Incident G.9, only two shells were fired and they exploded on a flea market in a residential area and there was no military target in or near the area at the time. In relation to Scheduled Shelling Incidents G.10, G.11, and G.12, the Chamber noted the indiscriminate nature of the weapon used by the SRK. In relation to Markale incidents, the Chamber found that the SRK fired only one shell in an area it knew housed no military targets and with reckless disregard as to potential civilian victims.[15517] Accordingly, the Chamber is satisfied that the only reasonable inference to be drawn from the circumstances and the manner in which the victims were killed is that the perpetrators had the intent to kill.

(C) Status of victims

4617. The Chamber recalls its findings that the large majority of the victims in these incidents were civilians who were not taking direct part in hostilities at the time of the incidents; otherwise they were part of a civilian population at the time of the incident.[15518]

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15516 *See* paras. 3809, 3728.

15517 With respect to the Scheduled Shelling Incident G.8, however, this finding was that of a majority, as Judge Baird was not satisfied that the SRK fired the shell in question.

15518 The Chamber recalls that those killed in Scheduled Incident G.4 included seven ABiH soldiers while one of those killed in the second Markale shelling was a soldier. In both cases they were located in residential areas,

(D) Conclusion

4618. In addition to the findings in this section, the Chamber refers to its finding that there was an armed conflict in BiH during the period relevant to the Indictment. The Chamber further finds that the killings referred to above are closely related to that armed conflict. The Chamber finds that the Scheduled Incidents referred to above,[15519] constitute murder as a violation of the laws or customs of war against civilians.[15520]

4619. The Chamber refers to its findings above that there was a widespread and systematic attack directed against the civilian population of Sarajevo. The Chamber finds that the killings referred to above were part of this widespread and systematic attack and thus constitute murder as a crime against humanity.[15521] In reaching that conclusion, the Chamber considered the locations, time period, and the status of the victims of these killings, which correspond to the scope of the widespread and systematic attack. Further, given the length, the magnitude, and the intensity of the attack on the civilian populations of Sarajevo, the Chamber finds that the perpetrators knew of the attack and that the killings were part of it.

ii. *Unlawful attack on civilians: Count 9*

(A) Acts of violence causing death or serious injury to body or health

4620. The Chamber recalls its findings in Sections IV.B.1.b: Sniping and IV.B.1.c: Shelling above that individuals were injured and/or killed in Sarajevo by sniping or shelling by Serb Forces, specifically the SRK.[15522] The Chamber finds that these constitute acts of violence causing death or

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where a large number of civilians had gathered. The Chamber also recalls that it was unable to determine (i) the status of the person killed in Scheduled Incident G.1 and (ii) the status of some of the individuals killed in Scheduled Incident G.2.

15519 *See* fn. 15512.

15520 The Chamber will not enter convictions under Count 6 for the seven soldiers killed in Scheduled Incident G.4 and one soldier who died in Scheduled Incident G.19 as they did not lay down their arms nor were they placed *hors de combat* by sickness, wounds, detention, or any other cause. Similarly, it will not enter convictions under Count 6 in relation to (i) Scheduled Incident G.1 as it was not able to determine the status of the person killed during that shelling, and (ii) a number of people killed in Scheduled Incident G.2 as it was unable to determine their status.

15521 The Chamber will not enter convictions under Count 5 in relation to soldiers who died in Shelling Incidents G.4 and G.19 as the Chamber is not satisfied that they had been placed *hors de combat* when they were killed. Similarly, it will not enter convictions under Count 5 in relation to (i) Scheduled Incident G.1 as it was not able to determine the status of the person killed during that shelling, and (ii) a number of people killed in Scheduled Incident G.2 as it was unable to determine their status.

15522 The wounding of Anisa Pita (Scheduled Incident F.1); the wounding of a nine-year-old girl (Scheduled Incident F.2); the killing of Munira Zametica (Scheduled Incident F.3); the wounding of Nafa and Elma Tarić (Scheduled Incident F.4); the wounding of Sanija Dževlan (Scheduled Incident F.6); the wounding of Damir Kučinar, Mensur Jusić, and Belma Sukić née Likić (Scheduled Incident F.8); the wounding of Sanela Muratović (Scheduled Incident F.9); the wounding of Seid Solak (Scheduled Incident F.10); the wounding of Alma Ćutuna (Scheduled Incident F.11); the wounding of Dženana Sokolović and killing of Nermin Divović (Scheduled Incident F.12); the wounding of Afeza Karačić and Sabina Šabanić (Scheduled Incident F.14); the wounding of

serious injury to body or health. For example, the Chamber recalls shelling incidents that took place in Markale market on 5 February 1994 and 28 August 1995 and during which horrific injuries were caused to a large number of people as illustrated by the video footage of those incidents.[15523]

4621. The Chamber notes that, with respect to Scheduled Incidents F.5, F.7, and G.6, it was not satisfied beyond reasonable doubt that fire had come from SRK positions and therefore could not conclude that Serb Forces were responsible.

(B) Directed against a civilian population or individual civilians

4622. The Chamber recalls its findings that, with the exception of Scheduled Incidents F.5 and F.7, the victims of sniping were deliberately targeted by the SRK. In reaching this conclusion, the Chamber considered, for example, that the distance between the incident site and the location from which the shot was fired would have required a skilful shot on the part of the shooter.[15524] For some incidents, there were additional shots after the victims had been hit, such as for example when the victims were being driven to the hospital.[15525] Similarly, in relation to Scheduled Incidents F.8, F.11, F.14, F.15, and F.16, respectively, the Chamber considered, *inter alia*, that the tram was struck by one bullet only; the tram concerned and the tram behind it were shot and struck in the same location and then fire was opened again in that same location at a number of people trying to leave the area; SRK snipers in the relevant area either had an unobstructed view of the incident site or there was sufficient visibility between the location from which the shot was fired and the incident site.

4623. The Chamber also found that, with the exception of Scheduled Incident G.6, the victims of shelling were deliberately targeted by the SRK or were victims of indiscriminate or

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Alma Mulaosmanović-Čehajić, Alija Holjan, and three others (Scheduled Incident F.15); the wounding of Azem Agović and Alen Gičević (Scheduled Incident F.16); the wounding of Tarik Žunić (Scheduled Incident F.17); the wounding of a number of people (Scheduled Incident G.1); the wounding and death of a number of people (Scheduled Incident G.2); the wounding of 122 people, at least 12 of whom died as a result of their injuries (Scheduled Incident G.4); the killing of 14 people and wounding of 13 people (Scheduled Incident G.5); the killing of eight people and wounding of 18 people (Scheduled Incident G.7); the killing of at least 67 people and the wounding of over 140 people, Judge Baird dissenting as to the identity of the perpetrators (Scheduled Incident G.8); the killing of two and wounding of seven people (Scheduled Incident G.9); the killing of Ziba Čustović and the wounding of three other people (Scheduled Incident G.10); the killing of four and wounding of 11 people (Scheduled Incidents G.11 and G.12); the wounding of 16 people, two seriously and 14 lightly (Scheduled Incident G.13); the wounding of 3 people (Scheduled Incident G.14); the wounding of seven people (Scheduled Incident G.15); the killing of 43 and the wounding of at least 70 people (Scheduled Incident G.19).

15523 As noted earlier, the findings in relation to Scheduled Incident G.8 were reached by majority, Judge Baird dissenting.

15524 *See e.g.* Scheduled Incidents F.1, F.2, F.17.

15525 *See e.g.* Scheduled Incident F.2 (the car taking the victim to the hospital was also shot at); Scheduled Incident F.4 (there were two shots after the bullet hit the victims); Scheduled Incident F.17 (a shot was fired at and hit the car carrying the victim as it pulled away from her house).

disproportionate attacks.[15526] In reaching this conclusion, the Chamber considered, for example, in relation to Scheduled Incidents G.5 and G.9 that only one or two shells were fired and landed in a civilian area and there was no military target nearby. In relation to Scheduled Incident G.7, the shells exploded in a residential neighbourhood where humanitarian aid was being distributed and a large number of people had gathered waiting for the aid; there was no combat or military presence at the time. Similarly, in relation to Scheduled Incidents G.8 and G.19, a large number of civilians had gathered to buy goods and there were no military targets in the vicinity of the incident sites. For all the incidents that involved indiscriminate or disproportionate fire by the SRK, the Chamber is satisfied that the only reasonable inference that can be made is that the attacks were directed against civilians.[15527]

4624. The Chamber further found that the large majority of the victims of the Scheduled Incidents were civilians who were not taking direct part in hostilities at the time of the incidents. In relation to Scheduled Incident F.15, the Chamber did not consider the presence of one ABiH soldier on the tram to change the fact that on the day of the incident the tram was a civilian vehicle used to transport civilians. The Chamber recalls that the casualties of Scheduled Incident G.4 included ABiH soldiers but that they were off-duty and involved in or watching a football game together with a large number of civilians. Similarly, one casualty in Scheduled Incident G.19 was found to have been a soldier who was at the Markale market together with a large number of civilians. Accordingly, the presence of these soldiers did not change the character of the population at the game and in the market, respectively, and thus does not undermine the Chamber's conclusion that the attacks in those two incidents were directed against a civilian population.

4625. The Chamber also described the deaths and the wounding of a large number of civilian victims in relation to each incident and thus finds that the victims of those incidents either died or suffered serious injuries.

(C) Intent of perpetrators

4626. The Chamber found that the perpetrators of the Scheduled Incidents were aware or should have been aware of the civilian status of the persons attacked and/or the lack of military targets in the areas subjected to mortar and artillery fire. In reaching these conclusions in relation to

15526 The Chamber recalls that Judge Baird dissented in relation to Scheduled Incident G.8.

15527 For example, in relation to incidents involving modified air bombs, namely Scheduled Incidents G.10—G.15, the Chamber considers that the indiscriminate nature of the weapon which was used in residential areas qualifies those incidents as attacks directed against the civilian population of Sarajevo. With respect to Scheduled Incident G.4, the Chamber found that the firing of the two shells at an event at which a large number of civilians had gathered constituted indiscriminate fire. Accordingly it is satisfied that, in launching this type of attack, the SRK deliberately targeted civilians.

Scheduled Sniping Incidents, the Chamber considered, for example, that the victim's appearance, location, and/or activity—such as a child wearing civilian clothes standing in the doorway or front yard of her house,[15528] an adult woman collecting water at a river,[15529] a woman in civilian clothes cycling,[15530] or a woman with two children crossing a street during a period of cease-fire[15531]—and the sight and distances involved in the given Sniping Incident, would have made the victim or victims identifiable as civilians to the shooter. For the Sniping Incidents in which the target was a tram, the Chamber found that the shooter would have known that the tram was a civilian vehicle carrying civilians.[15532] With respect to the Scheduled Shelling Incidents, the Chamber considered that the nature of the area, with no military targets in the immediate vicinity of the incident sites such as in the case of Markale market for example, and the activities in which the victims were engaged therein would have identified them as civilian objects and/or individual civilians.[15533] In addition, the Chamber is satisfied that in the case of indiscriminate and/or disproportionate attacks, such as those involving modified air bombs for example,[15534] the perpetrators who opened fire should have known that that the attack would result in civilian casualties.

4627. The Chamber finds that the perpetrators in the Scheduled Incidents above wilfully carried out the acts of violence referred to above and made the civilian population or individual civilians not taking direct part in hostilities the object thereof.

(D) Conclusion

4628. In addition to the findings in this section, the Chamber refers to its finding that there was an armed conflict in BiH during the period relevant to the Indictment. The Chamber further finds that the acts of violence referred to above are closely related to that armed conflict. As such, the Scheduled Incidents discussed above constitute unlawful attacks on civilians as a violation of the laws or customs of war.[15535]

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15528 *See* Scheduled Incidents F.1, F.2.

15529 *See* Scheduled Incident F.3.

15530 *See* Scheduled Incident F.6.

15531 *See* Scheduled Incident F.12.

15532 *See* Scheduled Incidents F.8, F.11, F.14, F.15, F.16.

15533 *See* Scheduled Incidents G.4, G.5, G.7, G.8, G.9, G.19. The Chamber recalls that Judge Baird dissents with respect to Scheduled Incident G.8.

15534 *See* Scheduled Incidents G.10 to G.15.

15535 This excludes Scheduled Incidents F.5, F.7, and G.6 for which the Chamber was unable to determine, on the basis of the evidence presented, the identity of the perpetrators. The Chamber also recalls here that Judge Baird issued a dissent in relation to Scheduled Incident G.8.

iii. *Terror: Count 10*

(A) Acts of violence directed against a civilian population or individual civilians

4629. The Chamber refers to its findings above that the cited Scheduled Incidents, with the exception of F.5, F.7, and G.6, constitute acts of violence directed against a civilian population or individual civilians causing serious injury to body or health and/or death.

4630. The Chamber also recalls its finding that the civilian population of Sarajevo and individual civilians therein experienced extreme fear, anxiety, and other serious psychological effects resulting from the campaign of sniping and shelling by the SRK.[15536] Indeed, the Chamber found above that the citizens of Sarajevo in fact felt terrorised during the siege of their city.[15537] The Chamber finds that this psychological harm formed part of the acts of violence directed against a civilian population or individual civilians in Sarajevo.

(B) Intent of perpetrators

4631. The Chamber recalls that the crime of terror requires both general and specific intent. With respect to general intent, the Chamber refers to its findings above in relation to unlawful attacks that the perpetrators wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of acts of violence in the form of the cited Scheduled Incidents.[15538]

4632. The Chamber also finds that the perpetrators intended to spread terror among the civilian population of Sarajevo and that the infliction of terror was the primary purpose of the acts of violence directed against the civilian population upon which the Chamber has made findings above. In reaching that conclusion, the Chamber had regard to the nature, manner, timing, location, and duration of the acts of violence, as well as its finding that the civilians in Sarajevo were in fact terrorised by the SRK. The Chamber considered that some sniping and shelling attacks were carried out during times of cease-fire or during quiet periods, when civilians thought it was safe to walk around and when trams were operating.[15539] In some instances, individual civilians were targeted while at their homes and there was no fighting in the area at the time,[15540] or while they

15536 *See* paras. 4579–4587.

15537 *See* para. 4596.

15538 *See* paras. 4626–4627.

15539 *See* Scheduled Incidents F.8, F.9, F.11, F.12, F.14, F.15, F.16. The Chamber notes that the Appeals Chamber affirmed the *Milošević* Trial Chamber's consideration of attacks during cease-fires as an indicator of the intent to spread terror. *See Dragomir Milošević* Appeal Judgement, para. 37; *Dragomir Milošević* Trial Judgement, para. 881.

15540 *See e.g.* Scheduled Incidents F.1, F.2, F.17, G.2, G.10, G.11.

walked or cycled about the streets with no fighting in the area at the time.[15541] The Chamber also considered that civilians were targeted at sites known to be areas where civilians went to or gathered for activities,[15542] such as collecting water,[15543] receiving humanitarian aid,[15544] commercial activity,[15545] and, in the case of trams, taking public transportation.[15546]

4633. In determining the existence of the intent to spread terror, the Chamber also considered the indiscriminate nature of some of the shelling attacks.[15547] For example, the Chamber recalls its finding that the SRK launched highly destructive modified air bombs on the city, the indiscriminate nature of which was known to the SRK units, as described earlier.[15548] These bombs were used in Scheduled Incidents G.10, G.11, G.12, G.13, G.14, and G.15. The Chamber also recalls that it found, in relation to Scheduled Incidents G.1 and G.2 that the SRK launched disproportionate and indiscriminate shelling attacks on the city resulting in a number of casualties. Further, the Chamber also found, in relation to Scheduled Incident G.5, that firing two shells, which are designed to suppress activity over a wide area, at a football match where a large number of civilians were gathered to watch, and at a time when there was no ongoing combat, constituted deliberate targeting of a civilian area or at the very least indiscriminate fire.

4634. The intent to spread terror was also demonstrated by the duration of the campaign of sniping and shelling, which started in late May 1992 and continued through much of 1995 and many other incidents of shelling and sniping recounted in Section IV.B.1.a. It was also demonstrated through the evidence of a multitude of witnesses on the general nature and pattern of the SRK's sniping and shelling practices in the city.

(C) Conclusion

4635. In addition to the findings in this section, the Chamber refers to its finding that there was an armed conflict in BiH during the period relevant to the Indictment. The Chamber further finds that

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15541 *See* Scheduled Incidents F.4, F.6, F.10.

15542 The Chamber notes that the Appeals Chamber affirmed the *Milošević* Trial Chamber's consideration of targeting and attacks of civilians "at sites, well-known to be frequented by them during their daily activities, such as market places, water distribution points, on public transport, and so on" as indicia of the intent to spread terror. *See Dragomir Milošević* Appeal Judgement, para. 37; *Dragomir Milošević* Trial Judgement, para. 881.

15543 *See* Scheduled Incidents F.3, G.5.

15544 *See* Scheduled Incident G.7.

15545 *See* Scheduled Incidents G.8, G.9, G.19.

15546 *See* Scheduled Incidents F.8, F.11, F.14, F.15, F.16. The Chamber also found, in relation to these incidents, that no military vehicles were present in the close vicinity of the incident sites and no military activity was underway in the area.

15547 The Chamber notes that the Appeals Chamber affirmed the *Dragomir Milošević* Trial Chamber's consideration of the indiscriminate nature of attack as a factor in determining specific intent for terror. *See* para. 454.

15548 *See* paras. 4363, 4379–4380.

the acts of violence referred to above were closely related to that armed conflict. The Chamber therefore finds that the Scheduled Incidents above constitute terror.[15549]

3. Sarajevo JCE and the Accused's responsibility

4636. The Accused is charged under Articles 7(1) and 7(3) of the Statute for his alleged role in the crimes committed in the city of Sarajevo between April 1992 and November 1995. Specifically, he is said to be responsible for murder, a crime against humanity and a violation of the laws or customs of war (Counts 5 and 6 respectively); acts of violence the primary purpose of which is to spread terror among civilian population ("terror"), a violation of the laws or customs of war (Count 9); and unlawful attacks on civilians, a violation of the laws or customs of war (Count 10).[15550]

4637. According to the Indictment, the Accused committed these crimes by virtue of his participation in a JCE to "establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo, the primary purpose of which was to spread terror among the civilian population" ("Sarajevo JCE").[15551] This objective is said to have involved the commission of the crimes of murder, terror, and unlawful attacks.[15552] The Indictment further avers that the Accused shared the intent for the commission of each of these crimes with others[15553] who acted in concert with him in the Sarajevo JCE, including, among others, Momčilo Krajišnik, Ratko Mladić, Biljana Plavšić, Nikola Koljević, Stanislav Galić, Dragomir Milošević, and Vojislav Šešelj.[15554] The said members allegedly implemented their objective by personally committing crimes and/or by using the Sarajevo Forces to carry out those crimes.[15555]

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15549 As with unlawful attacks on civilians, the Chamber excludes here Scheduled Incidents F.5, F.7 and G.6 as it was unable to determine who was responsible for them. The Chamber also recalls that Judge Baird appended a dissent in relation to Scheduled Incident G.8.

15550 Indictment, paras. 65, 76–82.

15551 Indictment, paras. 15–19, 77.

15552 Indictment, paras. 15, 77.

15553 Accordingly, the Sarajevo JCE falls into the first or basic category of joint criminal enterprise where all participants acting pursuant to a common purpose possess the same criminal intention to effectuate that purpose, which in turn involves the commission of murder, terror, and unlawful attacks on civilians. In other words, the Prosecution does not allege that it was foreseeable that some of the crimes charged with regards to Sarajevo might be perpetrated by one or more members of the Sarajevo JCE or by persons they used in order to carry out the *actus reus* of crimes forming the objective of Sarajevo JCE.

15554 Indictment, para. 16. Other alleged members of the Sarajevo JCE are listed in paragraph 17 of the Indictment and include, among others, commanders and senior officers of JNA, VRS, TO, and MUP units responsible for the Sarajevo area.

15555 Indictment, para. 18 (defining "Sarajevo Forces" as (i) members of JNA operating in or with responsibility over the Sarajevo area until about 20 May 1992, (ii) members of the VRS, particularly the SRK; and (iii) members of other elements of Serb Forces operating in or with responsibility over the Sarajevo area).

4638. The Prosecution claims that the Accused significantly contributed to achieving the objective of spreading terror through a campaign of sniping and shelling in a number of ways set out in paragraph 14 (a)–(f), (h)–(j) of the Indictment.[15556]

4639. The Prosecution also avers that, in addition to his liability through his participation in the Sarajevo JCE, the Accused is criminally responsible for planning, instigating, ordering, and/or aiding and abetting the said crimes.[15557] Furthermore, he is alleged to be criminally responsible as a superior as he knew or had reason to know that crimes would be or had been committed but nevertheless failed to take necessary and reasonable measures to prevent them and/or to punish the perpetrators thereof.[15558]

4640. The Chamber will now turn to its assessment of the individual criminal responsibility of the Accused in relation to the events in Sarajevo, in particular the commission through JCE and the issue of whether there was a common plan, design or purpose, as alleged in the Indictment.

4641. As outlined in the Applicable Law section of this Judgement, in order to find an accused criminally responsible on the basis of his participation in the first or basic category of JCE, the Chamber must be satisfied that there existed a common plan, design or purpose which amounts to or involves a commission of crimes, that there was a plurality of persons who acted pursuant to that common purpose, and that the Accused significantly contributed to that common purpose through either his acts or his omissions.[15559] In addition, the Prosecution must prove that the Accused shared the intent to effect the common purpose of the JCE and had the relevant *mens rea* for the crime with which he is charged.[15560]

a. The existence of a common plan

4642. The existence of a common plan can be inferred from the fact that plurality of persons acted in unison; furthermore, the plan need not be previously arranged or formulated but may materialise extemporaneously.[15561] According to the Prosecution, the campaign of sniping and shelling in Sarajevo resulted from a common criminal plan emanating "from the top of the Bosnians Serb political and military hierarchy".[15562] The Prosecution claims that this is evidenced by the (a)

15556 Indictment, paras. 14, 19. *See* para. 3468 for the outline of the relevant subparagraphs of paragraph 14.

15557 Indictment, paras. 30–31.

15558 Indictment, paras. 32–35.

15559 *See* para. 561.

15560 If the Accused is charged with a specific intent crime, he and the other members of the alleged JCE must share the requisite specific intent for that crime. *See* para. 569.

15561 *See* para. 563.

15562 Prosecution Final Brief, para. 604.

nature and pattern of sniping and shelling attacks against civilians; (b) strict command and control of the SRK snipers, mortars, and other artillery; (c) longevity of the campaign; and (d) personal involvement of the Accused and Mladić in Sarajevo events.[15563]

4643. The Accused, on the other hand, claims that the Bosnian Serb side was simply trying to avoid "a unilateral, unlawful, and violent secession from Yugoslavia" by the Bosnian Muslim side and an "attempt to subjugate the Serb people to a hostile Islamist regime".[15564] According to him, the Bosnian Serbs were trying to prevent denial of their "rights of freedom and political life, of self-governance, enjoyment of their resources, and other rights guaranteed by the International Covenants on Human Rights"; had they not been deprived of those rights, "there would not have been any alleged JCE".[15565] The Accused also states that "ultimate self-defense cannot be criminal enterprise" and that this was especially true in the context of the Sarajevo battlefield.[15566]

4644. The Chamber has already made a number of findings in the preceding sections of the Judgement relating to the campaign of sniping and shelling in Sarajevo. The Chamber found that the SRK besieged the city and then engaged in a campaign of sniping and shelling in Sarajevo, which lasted roughly from late May 1992 until October 1995 when hostilities in Sarajevo ceased.[15567] As also found above, during this campaign the SRK targeted civilians in Sarajevo either directly or through the launching of indiscriminate and disproportionate attacks all over the city, resulting in thousands of wounded and killed civilians.[15568] In addition, the Chamber concluded that the SRK conducted the said campaign of sniping and shelling with the intention to terrorise the civilian population and that it conducted the siege of the city with a number of objectives in mind, all outlined in the directives issued by the Main Staff and/or the Accused, including the objective of keeping the city under firm blockade and creating conditions for the Bosnian Serb leadership to participate "equally" in negotiations with the other sides and international community.[15569]

4645. The question then is whether or not this campaign of sniping and shelling, the purpose of which was to spread terror among the civilian population, resulted—as alleged—from a common criminal plan emanating from the Bosnian Serb military and political leadership. The Prosecution

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15563 Prosecution Final Brief, para. 604.

15564 Defence Final Brief, para. 1815; Defence Final Brief, confidential, para. 1816.

15565 Defence Final Brief, para. 1815.

15566 Defence Final Brief, para. 1815.

15567 *See* Sections IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.b: Sniping; IV.B.1.c: Shelling; IV.B.1.f: Siege of Sarajevo.

15568 *See* Sections IV.B.1.b: Sniping; IV.B.1.c: Shelling.

15569 *See* Sections IV.B.1.g: Campaign of terror; IV.B.1.f: Siege of Sarajevo.

has presented a large body of evidence to show the existence of this common plan. Much of that evidence has been analysed and discussed in the preceding sections. Accordingly, the findings that follow rely on and draw from those sections, as well as from the evidence explicitly referred to below.

i. *Pattern and longevity of the campaign of sniping and shelling*

4646. In the Chamber's view the two most persuasive factors in favour of the Prosecution's claim that there existed a common criminal plan to establish the campaign of sniping and shelling with the intention of spreading terror among the civilian population in Sarajevo are the pattern and the longevity of the sniping and shelling in the city.

4647. In terms of the pattern, the Chamber has already discussed the numerous specific incidents of shelling and sniping alleged in Schedules F and G of the Indictment, which spanned a number of years. Furthermore, the Chamber has referred to many other sniping and shelling events in the city in the period between late May 1992 and October 1995.[15570] Based on all those events[15571] the Chamber is convinced that there was a well-established practice of sniping and shelling in the city conducted by the SRK whereby civilians were either specifically targeted, or were subjected to indiscriminate and/or disproportionate attacks. This practice was further confirmed by the more general evidence of various witnesses who lived in the city or were posted there with the UN and other international organisations, and whose evidence the Chamber recounted in the preceding sections.[15572] The willingness of the SRK units and their commanders to engage in the sniping of Sarajevo civilians on an almost daily basis and their deliberate act of launching an indiscriminate and destructive weapon such as modified air bombs on the city are prime examples of that practice. Thus, as concluded in Section IV.B.2, there is no doubt that until October 1995 murder, terror, and unlawful attacks on civilians were committed on numerous occasions by the SRK forces in Sarajevo.

4648. In the Chamber's view, the fact that this state of affairs continued for over three years means that it cannot have been an accident or the work of "rogue" SRK soldiers.[15573] Rather, the fact that the shelling and the sniping of civilians continued, more or less unabated, for such a long

15570 *See* Section IV.B.1: Facts.

15571 The Chamber excludes from this analysis Scheduled Incidents F.5, F.7, and G.6 as it was not satisfied that the evidence presented by the Prosecution was sufficient to establish beyond reasonable doubt that the SRK was responsible for these incidents. In addition, for his part in this analysis, Judge Baird does not rely on Scheduled Incident G.8 due to his dissent in relation thereto.

15572 *See* Sections IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.b: Sniping; IV.B.1.c: Shelling.

time means that it was actively encouraged by some in the military and political hierarchy in the RS and at the very least tolerated by others in that group. The only reasonable inference that can be drawn therefore is that the shelling and the sniping of the civilians, as well as the indiscriminate and/or disproportionate attacks launched against the city, were part of a plan.

4649. Further support for this conclusion can be found in the evidence outlined below regarding the knowledge that the Bosnian Serb military and political leadership had about the events in the city.[15574] As that evidence shows, many of the Bosnian Serb military and political leaders were regularly put on notice that civilians were dying in Sarajevo due to direct targeting or due to indiscriminate and/or disproportionate fire by the SRK, but allowed this type of fire to continue for a protracted period of time.[15575] Had it not been a part of their plan, this practice would not have persisted unabated for so long. Accordingly, the Chamber is convinced that the campaign of sniping and shelling, the primary purpose of which was to cause terror among the civilian population, was planned and that it emanated from the higher military and political structures in the RS. Relying on the preceding sections which describe the events in the city from the start of the conflict to the cessation of hostilities in October 1995, as well as the specific shelling and sniping incidents listed in Schedules F and G of the Indictment, the Chamber finds that this plan materialised in late May 1992, with the events described in relation to the Scheduled Incident G.1 and that it then continued to be implemented until October 1995.

4650. As discussed in previous sections, the Chamber does not doubt that the SRK also sniped and shelled ABiH military positions and military personnel during the conflict in Sarajevo or that the war was being waged by both sides in the city and its surrounding areas.[15576] The witnesses and documentary evidence confirm that this was indeed the case. For example, Harland testified that some of the SRK fire was tactical and used in support of SRK combat units on the confrontation lines or on ABiH military targets.[15577] Similarly, a number of SRK combat reports clearly show that ABiH would launch attacks on the SRK forces and SRK-held territory, including the civilians living there. However, as recounted on many occasions in the preceding sections, the evidence in this case is also replete with examples of SRK fire not being directed at military targets in the city

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15573 The Chamber also recalls here that it has rejected the Accused's claim that the major incidents in the city were caused by the ABiH or members of special police units in Sarajevo. *See* Section IV.B.1.d: Bosnian Muslim side targeting own civilians.

15574 In addition, the Chamber also relies on all the sections that deal with the Accused's contribution to the alleged JCE.

15575 *See* Section IV.B.3.b: Plurality of persons; IV.B.3.c.iii: Accused's knowledge of crimes and the measures he took to prevent them.

15576 *See e.g.* Section IV.B.1.a: Chronology of events in Sarajevo wherein the Chamber outlined a number of attacks and offensives launched by the ABiH.

and/or being opened in a random or disproportionate manner. As noted above, this practice was so widespread and so common during the conflict that the only reasonable conclusion one can draw is that it was planned and encouraged with the aim of terrorising the civilian population. In other words, the longevity of the sniping and shelling directed at the civilian population, including civilian objects such as trams and residential buildings, as well as the high number of civilian casualties cannot be explained by the fact that BiH was engulfed in an armed conflict and that the war in Sarajevo was being waged by both sides. Furthermore, even if the Bosnian Serbs were trying to protect their rights and/or were trying to defend themselves, as claimed by the Accused, the high number of civilian casualties cannot be explained, justified, or excused on that basis.[15578] Instead, as already indicated earlier, the only reasonable inference that can be drawn from the events in the city is that the shelling and sniping of civilians, perpetrated with the intention to terrorise them, was planned.

ii. *Control over snipers and heavy weapons used by the SRK*

4651. As discussed earlier, the Chamber is satisfied that individual snipers and/or sniper units within the SRK were under control of the SRK brigade commanders and ultimately the SRK Command itself.[15579] The Chamber found that the SRK sniper units had well-established, long-standing, professionally equipped sniper nests, from which they sniped at civilians and civilian objects, such as trams, in the city.[15580] This would not have been possible without the involvement of the senior military leaders, particularly the SRK Command and the Main Staff.

4652. Further, the Chamber found that the SRK's heavy weapons, such as mortars and artillery weapons, were also under control of the SRK commanders, such that their use often required authorisation by artillery officers in the SRK brigades or the SRK Command itself.[15581] The Chamber recalls here the evidence of many of the SRK soldiers and officers who were called by the Accused and who described in detail the procedures they followed before they could open mortar or artillery fire on the city.[15582] Furthermore, in the case of modified air bombs, the evidence clearly shows that their use was directly controlled by the Main Staff.[15583] Indeed, in the order of 12 June

15577 P820 (Witness statement of David Harland dated 4 September 2009), paras. 32–33, 291; David Harland, T. 2023 (6 May 2010), T. 2335–2336, 2351 (11 May 2010).

15578 The Chamber notes that the cause of the conflict in BiH, or parties' motives for going to war, do not affect the issue of the Accused's guilt one way or the other. What is determinative is the manner in which that conflict was waged in Sarajevo by the Bosnian Serb side, and by the Accused in particular.

15579 *See* para. 3970.

15580 *See* para. 3970.

15581 *See* para. 4499.

15582 *See* paras. 3998–4000.

15583 *See* para. 4365.

1994 issued by the Main Staff, Milovanović explicitly stated that the Main Staff was to decide on the use of modified air bombs and "possibly a Corps if the [Main Staff] approve[d]".[15584] On 26 April 1995, Mladić, having heard that Dragomir Milošević was about to use two modified air bombs against "enemy targets and settlements in the area of Sarajevo", issued a request for information, "for Commander's eyes only", stating as follows:

> You are to inform me whether the abovementioned information is correct, who ordered and why, the planned use of heavy weapons and beginning of operations in the area of Sarajevo, if it is a question of retaliation and for what reason, or exploitation of operative effects. If the Supreme Command has issued an order to begin combat operations and use heavy weapons in the area of Sarajevo, it is your duty to inform me.[15585]

4653. Additionally, as will be discussed in more detail below, the chain of command within the SRK and up to the Main Staff functioned well. Both Galić and Dragomir Milošević, and Mladić as the Main Staff Commander, exerted strict control over the SRK units.[15586] This again indicates to the Chamber that the crimes committed in the city by the SRK soldiers could not have been the work of ill-disciplined or rogue soldiers and were not one-off, unrelated, incidents. As also noted later, while the various SRK commanders and the Main Staff did face some problems relating to discipline of the SRK units, those were not significant enough to undermine the Chamber's conclusion that the SRK was a professional military force with a well-functioning chain of command and efficient information flow.

4654. Accordingly, the only reasonable inference one can draw from this level of control over SRK soldiers and their infantry and artillery weapons is that the crimes perpetrated by the SRK units in relation to the civilian population in Sarajevo were part of the plan to snipe and shell that population in order to spread terror.

iii. *Strategic importance of Sarajevo*

4655. The Chamber has heard throughout the case that Sarajevo was considered extremely important to the Bosnian Serb side. In Galić's own words, it was "the media centre of the world" and the "war [was] won or lost" there.[15587] Speaking to the Srpski Borac newspaper on 2 August 1995, the Accused himself acknowledged this by saying:

> Before the war we were aware that if it happens it will start in Sarajevo. We decided that if we want to win we have to stay in Sarajevo. The strategic idea was to prevent the

15584 P1294 (VRS Main Staff Order, 12 June 1994).

15585 P1299 (VRS Main Staff request for information from SRK, 26 April 1995).

15586 *See* paras. 4742–4751.

15587 P969 (Article from Sarajevske Srpske Novine entitled "Aggression in Blue", 25 March 1994), p. 6; P1818 (Witness statement of Adrianus van Baal dated 26 October 2010, paras. 31–32; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 48.

> independent Bosnian state from functioning whereas, on the other hand, our state would function. [...] Sarajevo is of special importance to us because of combat, strategic and tactical reasons. [...] Sarajevo is, as you know it, related to our survival, to the survival of our state and I suppose that, if the Muslim entity survives in Sarajevo, Sarajevo will be a melting point of cultures [...]. If the Muslims don't accept peaceful transformation of the city into two entities Sarajevo will suffer the fate of Beirut, where working hours are until noon and gunfire in the afternoon. [...] We need every inch in Serbian Sarajevo, we even claim rights on the centre of Sarajevo, say, the entire left bank of Miljacka river.[15588]

4656. KDZ182 confirmed that Sarajevo was well known around the world as a multiethnic city so that whatever happened there "echoed very strongly"; it was very important to Mladić who, in KDZ182's view, elaborated the general strategy of terror against the Sarajevo population.[15589] Mole explained that the encirclement of the city in and of itself proved to be a significant leverage, which the Bosnian Serb leadership successfully exploited throughout the duration of the conflict in order to obtain wide-ranging concessions.[15590] This is indeed confirmed by the notes of a meeting the Accused, Krajišnik, Plavšić, Koljević, Mladić, Gvero, and Tolimir attended with Slobodan Milošević on 29 August 1995, during which the Accused opposed Milošević's proposal to withdraw heavy artillery from Sarajevo because the Bosnian Muslims would have no incentive to negotiate once the blockade was lifted.[15591]

4657. According to KDZ182, both sides used the symbolic nature of the city to demonstrate their purpose; the Bosnian Serb side used it to show that they could do what they wanted and that they "ruled the game".[15592] One example of that is the 24 April 1995 statement by the Accused on Voice of America, wherein he said that the international community must accept Serb plans or the VRS would invade Sarajevo.[15593] The Bosnian Muslim side, on the other hand, used it to keep the city

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15588 D2660 (Article from Srpski Borac entitled "We are Sovereign over Sarajevo", 2 August 1995), pp. 2, 3, 4–5. *See also* P1410 (Transcript of 51st session of RS Assembly, 14-15 June 1995), p. 329 (wherein the Accused said that whenever the situation escalate around Sarajevo the "internationals come and diplomatic activity speeds up").

15589 P2414 (Witness statement of KDZ182), pp. 16, 33 (under seal). *See also* P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 48.

15590 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 35–36; Richard Mole, T. 5825–5826, 5875 (17 August 2010); P1435 (UNMO report, 11 December 1992), para. 12.

15591 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 9.

15592 P2414 (Witness statement of KDZ182), pp. 33–34 (under seal); KDZ182, T. 13068–13069 (9 March 2011) (private session). *See also* P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 25, 140–141 (testifying that Sarajevo was "both a focal point and a flashpoint" and that it was important also because the Bosnian Muslim leaders were located there); P2130 (UNPROFOR daily report, 25 September 1994), p. 2.

15593 The Accused also said that he had closed the airport over the weekend to show the world who was in control of the airport. *See* P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 143; P2452 (Anthony Banbury's handwritten notes of meeting, 24 April 1995), p. 2; Anthony Banbury, T. 13316 (15 March 2011).

and the rest of BiH in the focus of international attention, namely to carry out a media war in order to make up for their military inferiority and provoke an international reaction.[15594]

4658. The importance of Sarajevo was further illustrated by the fact that around the times of important negotiations and international conferences, as well as official visits, the city would experience an increase in activity, with disproportionate use of artillery on both sides.[15595] Mole testified that it was an "accepted norm" that if the Serb side failed to achieve their objectives anywhere in BiH, Sarajevo would suffer and fire would be opened on the city in response.[15596] In fact, on several occasions, Galić expressly indicated to Mole that any military setback for the Bosnian Serbs, or any rejection of their political demands, even those pertaining to issues in areas far away from Sarajevo, was sufficient reason for the SRK to subject the city to heavy artillery fire.[15597] At one point Galić told Mole that if the ABiH's firing from Mt. Igman did not cease, there would be reciprocal firing by his weapons onto the city.[15598]

4659. The Accused personally considered Sarajevo to be of extreme importance as indicated by the Srpski Borac interview referred to above, as well as some of his other statements about the city. For example, during the Bosnian Serb Assembly sessions in July and September 1992, the Accused identified Sarajevo as the most important battlefield.[15599] Similarly, in a press conference he gave on 18 September 1992 in Geneva, the Accused stated:

> Sarajevo is my state, my country, my city! [...] The entire ground where Sarajevo was built up was Serbian, is Serbian ownership! We are there 200,000 Serbs, 300,000 Muslims and 50 or 60,000 Croats. Sarajevo is my city. I have an apartment in the middle of it [...]. I used to have. Which is broken the second day of the war [*sic*]. And I'll tell you, when they stop posing their own artillery in the city, we will stop responding

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15594 KDZ185, T. 4227, 4229 (28 June 2010). *See also* D336 (John Wilson and Graham Messervy-Whiting's report to ICFY, 22 January 1993), paras. 11, 13(d); D503 (Marrack Goulding's note to UNSG, 7 September 1992), para. 12; P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 65.

15595 KDZ185, T. 4307 (29 June 2010); Hussein Abdel-Razek, T. 5534 (20 July 2010); D502 (SRK combat report, 23 September 1992); KDZ450, T. 10549–10550 (19 January 2011), T. 10615–10616 (20 January 2011); P1673 (UNPROFOR report re Sarajevo heavy weapons exclusion zone, 19 September 1994), para. 3 (indicating that ABiH launched an attack during Izetbegović's visit to New York). Galić testified that it was only the ABiH that partook in these types of activities but that he would warn his units not to respond. *See* Stanislav Galić, T. 37234–37236 (15 April 2013); D3394 (SRK combat report, 31 December 1992).

15596 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 91–98, 105, 107, 116 (adding that Galić would also link the events in Brčko to Sarajevo); P1433 (UNMO report for October 1992), p. 4; P1429 (UNMO report for December 1992), p. 5.

15597 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 91–96.

15598 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 94.

15599 D92 (Transcript of 17th session of SerBiH Assembly, 24-26 July 1992), p. 16; D456 (Transcript of 20th session of RS Assembly, 14–15 September 1992), p. 14. *See also* D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), para. 35 (testifying that the Accused, Koljević, and Plavšić were very concerned about the situation in Sarajevo while other parts of BiH were of secondary importance); D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), paras. 174, 176.

> fire [*sic*]. When they stop to kill our civilians by snipers they pose on the skyscrapers, there will be stop shelling of these buildings [*sic*].[15600]

Koljević, who was also present during this press conference, exclaimed "Sarajevo is a Serbian city, for God's sake!"[15601]

4660. Much earlier, during a session of the Bosnian Serb Assembly on 25 February 1992 and before the conflict started in Sarajevo, the Accused stated that he would never accept Sarajevo as the capital of a Muslim BiH given the number of Serbs in the city and given its enormous wealth.[15602] Thus, during the very early stages of the conflict, the Bosnian Serb political leadership, including the Accused, began entertaining the idea of dividing Sarajevo by assuming control over the south bank of Miljacka River and leaving the areas on the north bank to the Bosnian Muslims.[15603] As a reason for division of Sarajevo into separate and ethnically pure halves, the members of the Bosnian Serb political leadership, in particular Krajišnik and the Accused, would explain at length that coexistence between Bosnian Serbs and Bosnian Muslims had proven to be impossible.[15604] On 16 April 1992, at a meeting attended by Vance, Okun, Koljević, and the Accused, Koljević announced that he and the Accused had agreed to divide Sarajevo; this division of Sarajevo was something that continued to be "repeated endlessly by the Bosnian Serb leadership" according to Okun.[15605] Okun also testified that one of the objectives of the shelling of Sarajevo was to create a "wall of fire" between the Muslim and Serb parts of the city in order to physically divide the city, as it could only be divided by force.[15606]

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15600 P809 (Video footage of Radovan Karadžić's Press Conference at ICFY, 18 September 1992, with transcript), e-court pp. 10–11. *See also* P6688 (Interview with Radovan Karadžić in Duga Magazine, 23 May 1992), p. 4; Herbert Okun, P776 (Transcript from Prosecutor v. *Krajišnik*), T. 4201–4202 (testifying that when he told the Accused that the Bosnian Serbs shelled Sarajevo first, the Accused responded that the Bosnian Muslims started the war by expelling him from his apartment); P784 (First notebook of Herbert Okun's ICFY diary), e-court pp. 45–47; D4474 (Report on visit by Steering Committee to Zagreb, Sarajevo and Belgrade 9–12 September 1992), paras. 18–21.

15601 P809 (Video footage of Radovan Karadžić's Press Conference at ICFY, 18 September 1992, with transcript), e-court p. 9.

15602 D88 (Shorthand Record of 8th session of SerBiH Assembly, 25 February 1992), pp. 11, 20.

15603 P1154 (Witness statement of KDZ088 dated 27–29 April 2010), pp. 92, 94 (under seal); KDZ088, T. 6295–6296 (7 September 2010) (closed session).

15604 P1154 (Witness statement of KDZ088 dated 27–29 April 2010), pp. 94, 114–115, 118–119 (under seal). *See also* Vitomir Žepinić, T. 33586–33590, 33594–33595 (13 February 2013) (testifying that the Accused, Plavšić, and Koljević would all make such proclamations).

15605 P780 (Seventh notebook of Herbert Okun's Vance Mission Diary), p. 69; Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4173–4174, 4204–4205, 4210–4211, 4249–4251, 4354–4355. The Accused had made statements suggesting to divide Sarajevo long before this. For example, on 21 December 1991, during the Bosnian Serb Assembly session, he suggested that Serbs, Croats, and Muslims could each organise their own administration within Sarajevo. *See* D86 (Shorthand Record of 4th session of SerBiH Assembly, 21 December 1991), pp. 41–42.

15606 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4210–4211, 4354–4355.

4661. The Chamber further recalls that Sarajevo also featured among the Bosnian Serb Strategic Goals indicating again the importance of the city to the Bosnian Serb side and the Accused in particular. The Chamber addressed the importance of the Strategic Goals to the Bosnian Serbs in preceding sections of the Judgement[15607] and recalls here that the Accused presented them during the 16th session of the Bosnian Serb Assembly on 12 May 1992 where they were adopted by the Assembly representatives. One of the six goals listed was the division of Sarajevo into Serbian and Muslim parts and the "creation of the efficient state authority in both parts".[15608] Speaking about this particular goal, the Accused stated during the Assembly session that the battle for Sarajevo would be of decisive importance, that "Alija does not have a state while we have a part of Sarajevo", and that the fighting in the city prevented fighting in other areas where there could be conflicts with Bosnian Muslims.[15609] Furthermore, since Sarajevo had been built on Serb land with Serb money, he exclaimed that they would not allow it to be excluded from the SerBiH.[15610] He also stated that the war in Sarajevo had been imposed on the Serbs but that their forces were doing well, holding their enemies in "complete encirclement".[15611] In the same session Mladić made statements, such as "we have to put a ring around the dragon's head of Sarajevo *this very moment* and only those whom we let out should be allowed out".[15612] He further explained that Sarajevo could not be taken "by spitting at it from two mortars" and that in order to make the Bosnian Muslims surrender they would have to densely plant 300 guns around Sarajevo including rocket launchers.[15613]

4662. The Chamber also heard that in September 1992 Van Lynden spent several evenings having informal conversations with the Accused during which he realised that taking Sarajevo was an obsession for the Accused.[15614] According to Van Lynden, the Accused made it clear that in his

15607 The Accused and the Bosnian Serb leadership, including Mladić, formulated and promoted the Strategic Goals, and took steps to ensure that they were implemented and that they continued to be the central element of the Bosnian Serb objectives for the duration of the conflict in BiH. *See* paras. 2895–2903.

15608 *See* para. 2857; P955 (SerBiH Assembly Decision on Strategic Goals of Serbian People in BiH, 12 May 1992).

15609 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 10. *See also* D92 (Transcript of 17th session of SerBiH Assembly, 24–26 July 1992), p. 16 (during which the Accused stated that thanks to the Sarajevo battlefield Izetbegović's government and BiH are not functioning); Robert Donia, T. 3078–3079 (31 May 2010), T. 3144 (1 June 2010).

15610 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 8. *See also* D92 (Transcript of 17th session of SerBiH Assembly, 24-26 July 1992), p. 16.

15611 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 8.

15612 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 38 (emphasis added).

15613 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 36, 38. The Chamber heard evidence that Mladić attempted to ensure the division of Sarajevo in May 1992 by moving the Serb units from Grbavica all the way to Maršal Tito Barracks. [REDACTED]; P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 42 (where the Accused indicated his support for this plan and stated "we must have [...] part of Sarajevo"); P968 (Interview with Jovan Tintor on Pale TV, 1 August 1994, with transcript), e-court p. 2.

15614 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 71–74; Aernout van Lynden, T. 2418, 2445–2447 (19 May 2010).

opinion Sarajevo belonged "solely to the Serbs", stating that "all the ground was actually Serb territory" and that the houses were Serb houses.[15615] During one of these discussions, the Accused also suggested that one of the potential solutions in Sarajevo was to have a version of the Berlin wall in the city since the Serbs could never live with the Muslims again.[15616] The idea of a division similar to the one in Berlin was supported by Mladić who, during a meeting with Morillon on 27 October 1992, offered two solutions to the situation in Sarajevo, one being to divide Sarajevo into two parts, mark the borders and have a split community like in Berlin and with the wall; or, if that was not accepted, for the Muslim side to surrender all weapons to UNPROFOR, at which point he would open the roads into the city.[15617]

4663. During the 34th Assembly session in August 1993, in the context of trying to persuade the Assembly to accept the Owen-Stoltenberg Plan, the Accused stated that the goal relating to Sarajevo, namely to create the "Serb Sarajevo" out of "Serb territory in the town of Sarajevo" had been achieved but that he was ready to compromise as it was in their interests to make "two towns".[15618] Later in the session, after stating that the Serbs could have taken more territory by force, the Accused stated "[w]e can even take Sarajevo" and, having referred to Grbavica, parts of Dobrinja, Vogošća, Ilijaš, and Nedžarići, indicated "[t]his is all ours" explaining that he would not have agreed to the Owen-Stoltenberg Plan if he was not sure that the Serbs would keep everything that was presently theirs in Sarajevo.[15619] The Accused also stated that Sarajevo was not in the Muslim state but in the Serbian state because "everything around is Serbian"; that the Bosnian Serbs would not "cede a single footstep"; and that the most probable outcome was the division of

15615 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), para. 72; Aernout van Lynden, T. 2418 (19 May 2010).

15616 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), para. 73; Aernout van Lynden, T. 2418–2419, 2445–2446 (19 May 2010), T. 2563–2564 (20 May 2010). *See also* P785 (Second notebook of Herbert Okun's ICFY diary), e-court p. 24; Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4204 (indicating that during a meeting on 17 September 1992 in Geneva the Accused told Okun and Vance that he could persuade Serbs to remain in Sarajevo if there were two entities there). Later in the conflict, the Accused proposed a solution that he said would create peace within two weeks in Sarajevo, namely to place the city under the UNPROFOR control and to have a "green line" akin to that in Cyprus. *See* D172 (UNPROFOR report re meeting with Radovan Karadžić, 20 February 1993), p. 2; David Harland, T. 2288 (11 May 2010).

15617 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 26, 32–33.

15618 P1379 (Transcript of 34th session of RS Assembly, 27–29 August, 9–11 September, 29 September to 1 October 1993), p. 15.

15619 P1379 (Transcript of 34th session of RS Assembly, 27–29 August, 9–11 September, 29 September to 1 October 1993), p. 63.

Sarajevo into two cities.[15620] He stressed that "Serbian Sarajevo is of priceless importance" and that the Bosnian Serb side needed to prepare for war to gain Sarajevo.[15621]

4664. Similarly, during the 36th Bosnian Assembly session in December 1993, the Accused stated that it was SDS policy that Sarajevo be preserved, through the fifth Strategic Goal and that the "Sarajevan battlefield has created the state" because, had it broken down, the Bosnian Muslims would have reached the Drina and cut across the corridor.[15622]

4665. On 13 and 14 December 1993, at a meeting in Belgrade with Slobodan Milošević, the Accused outlined the Strategic Goals, including the goal to have "our part of Sarajevo"; he then stated that Sarajevo was a priority and the "key to the war" and that he was afraid that "Islamic culture will try to spread its wings in Sarajevo".[15623] The Accused also advocated capturing more elevation points around Sarajevo, including Mojmilo and Žuč.[15624] To this Slobodan Milošević responded by issuing a reminder that "Sarajevo is primarily a political problem".[15625] Krajišnik backed the Accused and spoke about Sarajevo as a priority, explaining that they were drawing maps of Sarajevo.[15626] Dragomir Milošević, who was also at the meeting, spoke about the need for

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15620 P1379 (Transcript of 34th session of RS Assembly, 27–29 August, 9–11 September, 29 September to 1 October 1993), pp. 64–65.

15621 P1379 (Transcript of 34th session of RS Assembly, 27–29 August, 9–11 September, 29 September to 1 October 1993), pp. 65, 116 (in this session the Accused also stated: "Sarajevo is the greatest problem as there must be water, electricity and gas and no shooting").

15622 P1383 (Transcript of 36th session of RS Assembly, 30–31 December 1993), pp. 128–129.

15623 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 53–54. Mladić's notebooks contain many references to meetings with the Accused during which the Accused emphasised the importance of Sarajevo. *See e.g.* P1477 (Ratko Mladić's notebook, 14 February–28 May 1992), p. 347 (recounting a meeting on 16 May 1992 with the representatives of the Bosnian Serb Government during which the Accused emphasised the importance of Sarajevo); P1480 (Ratko Mladić's notebook, 10–30 September 1992), p. 110 (recounting a meeting with the Accused, Krajišnik, and others, during which the Accused said that the Serbs would not be giving up on Sarajevo); P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 194, 396 (recounting two meetings, one in Jahorina on 2 June 1993, attended by Galić, Mladić, Krajišnik, and the Accused, among others, during which the Accused said that Sarajevo battlefield was the most important, that nothing could be achieved by negotiation, and that Sarajevo had to be taken; the other meeting was that of the Supreme Command on 24 October 1993 during which the Accused again recalled the importance of Sarajevo); P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 133–134 (recounting a meeting in Pale on 14 January 1994 where the Accused emphasised that the Serbs must defeat the Muslims in Sarajevo).

15624 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 54

15625 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 54.

15626 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 56. Okun testified that division of Sarajevo was probably the Strategic Goal that Krajišnik emphasised more than any other. *See* Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4244, 4249–4251, 4275–4276, 4299–4307; P790 (Seventh notebook of Herbert Okun's ICFY diary), e-court pp. 24–25, 30. *See also* P797 (TV Belgrade interview with Momčilo Krajišnik); KDZ240, P2935 (Transcript from *Prosecutor v. Krajišnik*), T. 6769–6772 (under seal); P1477 (Ratko Mladić's notebook, 14 February–28 May 1992), p. 262 (recounting a meeting between the Accused, Krajišnik, and Mladić, during which Krajišnik referred to the Strategic Goals and the division of Sarajevo); P2538 (Patrick Treanor's research report entitled "Radovan Karadžić and the Serbian Leadership 1990-1995", 1 May 2009), para. 261 (recounting an interview that Krajišnik gave to Srpsko Oslobođenje in which he said that the perspective for Sarajevo is such that in the future it will be a Serb town and the Muslims would have to seek a capital without Sarajevo); D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), paras. 17–19 (recounting a meeting between Krajišnik and Izetbegović in May 1992 during which the

fresh forces which would "carry out the whole operation to its completion".[15627] The Accused then said that Sarajevo should be divided so that the Bosnian Serb part of the city can function while Krajišnik stated, "we have to finish Žuč before the conference".[15628]

4666. On 6 April 1994, Akashi met with the Accused, Koljević, and Mladić in Pale.[15629] The Accused indicated the Serbs were considering a new approach to the question of Sarajevo, which would entail two separate cities rather than splitting the present Sarajevo in two as previously demanded, wherein the Serb Sarajevo would be built from satellite Serb towns in the Sarajevo area.[15630] Similarly, in a meeting with De Mello in the evening of 7 May 1994, the Accused presented his vision of Sarajevo, in which the inner city would remain Muslim, with Serb Sarajevo stretching from Ilidža to Lukavica, including the airport and Butmir.[15631] He described this as "[t]wo cities, side by side, communicating and cooperating".[15632] Then, on 10 May 1994, during the 40th session of the Bosnian Serb Assembly he said: "[W]e have to maintain the character of the Berlin kind of corridor in order to get Sarajevo definitely divided and the territories to become compact. Then we will give them square metre of the hill between Vogošća and Vis, and we will take away from them square kilometre on the Drina."[15633]

4667. Even in the later stages of the conflict, as the ABiH forces in Sarajevo were getting stronger and better equipped, the Accused and Mladić were unwilling to give up on the idea of Serb Sarajevo. Thus, on 9 May 1995, Smith reported to Akashi that during a meeting held in Pale earlier in the day, the Accused had made it clear to him that the Bosnian Serbs were not going to let go of Sarajevo.[15634] In July 1995, when asked in an interview with El País what his view on the future of Sarajevo was, the Accused said that the city would be transformed into two neighbouring cities, if the Muslims wished; otherwise, it would be a Serb city, because the entire territory around Sarajevo

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former recommended a temporary division of Sarajevo); P1385 (Transcript of 37th Session of RS Assembly, 10 January 1994), p. 125 (wherein Krajišnik proposed to agree to a two-year mandate of the UN over Sarajevo and then, when the other Serb-held territories are merged, to fight to get Sarajevo back).

15627 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 56.

15628 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 59.

15629 D705 (UNPROFOR report re meetings with Radovan Karadžić and Alija Izetbegović, 7 April 1994), para. 1; Yasushi Akashi, T. 37703–37707 (24 April 2013); Michael Rose, T. 7497 (7 October 2010).

15630 D705 (UNPROFOR report re meetings with Radovan Karadžić and Alija Izetbegović, 7 April 1994), para. 17. *See also* P1486 (Ratko Mladić's notebook, 31 March 1994–3 September 1994), pp. 288–292 (recounting another meeting with Akashi, on 19 August 1994, during which the Accused insisted on splitting Sarajevo); D3500 (UNPROFOR report, 7 October 1994), p. 9 (reporting on a 5 October 1994 meeting between the Accused and Akashi, among others, during which the Accused again proposed that Sarajevo be split into "twin cities"); Yasushi Akashi, T. 37718 (24 April 2013).

15631 P5422 (UNPROFOR report, 8 May 1994), para. 23.

15632 P5422 (UNPROFOR report, 8 May 1994), para. 23.

15633 P1390 (Transcript of 40th session of RS Assembly, 10–11 May 1994), p. 71.

15634 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court p. 3.

and the ground on which it stood was Serb land.[15635] He then stated: "We will either have half the city transformed into a Serbian city or we will have the whole thing".[15636] Similarly, as indicated earlier, on 2 August 1995, in an interview with the Srpski Borac newspaper, the Accused discussed the strategic importance of Sarajevo for the Bosnian Serbs and stated that if the Bosnian Muslims disturbed the Bosnian Serb part of Sarajevo, the Bosnian Serbs will "seize [the city] entirely".[15637] On 28 August 1995, during the 53rd session of the Bosnian Serb Assembly, the Accused said that the Serbs "absolutely cannot leave Sarajevo because then the Muslims would really have a good state".[15638]

4668. On 29 August 1995, one day after the Markale shelling, the political and military leaderships of the FRY and the RS met to discuss a peace initiative; the FRY delegation included Slobodan Milošević, whereas the RS was represented by the Accused, Krajišnik, Plavšić, Koljević, Buha, Mladić, Tolimir, and Gvero.[15639] They discussed a number of issues and, at the end of the meeting, Milošević set forth the Bosnian Serb priorities he would present at the upcoming conference with the Contact Group, namely (i) the north corridor being as broad as possible, especially in Brčko; (ii) compactness of Bosnian Serb territory; (iii) the inclusion of as many towns as possible in territories formally assigned to Bosnian Serbs; and (vi) access to the sea.[15640] At the insistence of the Accused, the list of priorities was amended in the last minute so as to include Bosnian Serb claims to three more areas, including "Serb Sarajevo", once again showing the importance he placed on that issue.[15641]

4669. On 28 November 1995, during an SDC meeting in Belgrade, Slobodan Milošević expressed concern about Mladić's behaviour and reported the following to the others at the meeting:

> Mladić states two days ago: "We're not giving away what belongs to the Serbs, Sarajevo belongs to the Serbs." Please, tell me, when was it in this century that the Serbs were the majority in Sarajevo? When? [...] They got a part of Sarajevo—the south-eastern part; they asked that the entire Sarajevo District be completely separate, and Sarajevo District includes the Municipality of Pale [...] we plucked Pale out, then Lukavica, Vrace, Vojkovići, then down there towards Trnovo, and the remaining part—where the Muslims constitute a vast majority.[15642]

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15635 P2564 (Radovan Karadžić's interview in El País, 16 July 1995), p. 5. *See also* P5063 (Video footage depicting interview of Radovan Karadžić on "Ask the President", undated, with transcript), e-court p. 17 (where the Accused threatens that if the Muslims do not accept the division of Sarajevo into two cities, Sarajevo will eventually be entirely Serb).

15636 P2564 (Radovan Karadžić's interview in El País, 16 July 1995), p. 5.

15637 D2660 (Article from Srpski Borac entitled "We are Sovereign over Sarajevo", 2 August 1995), pp. 2, 6.

15638 P988 (Transcript of 53rd session of RS Assembly, 28 August 1995), p. 26.

15639 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 1.

15640 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 13.

15641 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 13.

15642 P2604 (Minutes of 47th session of SDC, 28 November 1995), pp. 10–11.

4670. As already concluded in Section IV.A.3.a.i.E, the Strategic Goals, including the goal to divide Sarajevo, formed the basis for military operations by the VRS. Thus, Sarajevo was explicitly mentioned in all but one of the seven military directives issued by the Main Staff and/or the Accused.[15643] As early as in Directive 1, which was issued by the Main Staff on 6 June 1992, Mladić stated that the VRS had "received the task to use offensive actions [...] in order to improve operationally-tactical position in the wide area of Sarajevo".[15644] He then tasked the SRK to "mop up parts of Sarajevo" and "cut it out" along the Nedžarići–Stup–Rajlovac axis; he also tasked them with mopping up Mojmilo, Dobrinja, Butmir, and Sokolović Kolonija, and with de-blocking of Sarajevo–Trnovo and Pale–Zlatište communication.[15645] On the same day that Directive 1 was issued, the Accused had met with Mladić, Koljević, Krajišnik, Ostojić, and others in Jahorina and discussed the Strategic Goals, claiming "we have to protect our territories militarily" and that "the birth of a state and the creation of borders does not occur without war".[15646] Following these statements, Ostojić then presented the planned borders of a Bosnian Serb state on a map, including those around Sarajevo, saying that the plan regarding Sarajevo was to include as much industry as possible and most of the fertile land in the area.[15647] The Accused again addressed the issue of Sarajevo and said "we could have gone for a compact and dispersed partition of Sarajevo if there had been the political means" and further "not all our wishes can be fulfilled, we have to be a mature people".[15648]

4671. In Directive 3, issued on 3 August 1992, Mladić outlined the objective of keeping Sarajevo "firmly under blockade" and thus instructed the SRK to "gradually tighten the encirclement".[15649] In Directive 4, dated 19 November 1992, he instructed the SRK to keep Sarajevo and Igman under "full blockade" and "tighten the circle".[15650] As noted earlier,[15651] in that same directive, Mladić also explained that one of the tasks of the VRS was to create conditions for the Bosnian Serb

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15643 For more on the seven directives and their supplements, *see* Section IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.c.iii.A: Scheduled Incidents G.1 and G.2.

15644 D232 (Directive 1, 6 June 1992), para. 2.

15645 D232 (Directive 1, 6 June 1992), para. 5. *See also* [REDACTED].

15646 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 95, 97. The Accused had also met Mladić, Koljević, Plavšić, and Krajišnik the day before, on 5 June, wherein he instructed those attending that "Sarajevo has to be resolved politically *while acting quietly, inch by inch.*" He also instructed them to "clean up" Butmir, Hrasnica, Dobrinja, Sokolović Kolonija, and Hrasno. *See* P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93 (emphasis added).

15647 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 99.

15648 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 104. Krajišnik also got involved during the meeting and outlined the goals in terms of having parts of Sarajevo area under the Bosnian Serb control, including "Dobrinja, if we can take it". *See* P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 108.

15649 D235 (Directive 3, 3 August 1992), pp. 3, 5. The orders relevant to Sarajevo in this directive were relayed the next day to the SRK units by the SRK Command. *See* P5979 (SRK Order, 4 August 1992).

15650 P976 (Directive 4, 19 November 1992), p. 5.

15651 *See* para. 4575.

leadership to "participate equally" in resolving the crisis in BiH with "other international factors".[15652] Sarajevo and its surroundings were also the focus of the Lukavac 93 operation outlined in Directive 5, in which Mladić tasked the SRK to "create conditions to assume control over [Sarajevo]".[15653] He explained in the directive that the VRS had been tasked with preventing the capture of special-purpose facilities and the lifting of the blockade of Sarajevo.[15654] Directive 6 was then issued by the Supreme Command and signed by the Accused in November 1993, wherein he ordered the VRS to create objective conditions for the achievement of "war goals", including the "liberation of Sarajevo", and tasked the SRK units with preventing the "deblockade of Sarajevo".[15655] This was followed by a supplement to the directive, issued by the Accused on 12 December of the same year. In that supplement he noted the impending resumption of talks in Geneva and ordered the VRS to seize Žuč and Mojmilo in order to ensure "the most favourable position for dividing the town".[15656] As noted above, the need to capture these elevation points was then discussed by the Accused, Mladić, Dragomir Milošević, and Slobodan Milošević on 13 December in Belgrade.[15657] While the focus of Accused's Directive 7 was mainly on other areas of BiH,[15658] it also included an order to the SRK, among other things, to prevent the lifting of the blockade of Sarajevo "from without" by using "decisive defence".[15659]

4672. The evidence in this case is also replete with examples of the Accused and Mladić, as well as Koljević, Plavšić, and Krajišnik participating in various meetings with representatives of international community on Sarajevo-related matters, including military matters, the issue of sniping and shelling in the city, cease-fire agreements, the issue of humanitarian convoys and humanitarian airlift to the city, the issue of free movement of UNPROFOR in and around Sarajevo, and flow of utilities.[15660] For example, Abdel-Razek testified that at all times during his meetings with the Bosnian Serbs regarding the situation in the city, a senior Bosnian Serb political figure

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15652 P976 (Directive 4, 19 November 1992), p. 3.

15653 P843 (Directive 5, 25 June 1993), para. 5(a) (ordering also that the SRK is to use "persistent and active defence" to stop the breakthrough of ABiH).

15654 P843 (Directive 5, 25 June 1993), para. 2.

15655 P3039 (Directive 6, 11 November 1993), pp. 6, 9.

15656 P4925 (Supplement to Directive 6, 12 December 1993), p. 1; P3052 (VRS Main Staff Order, 14 December 1993). *See also* Dragomir Milošević, T. 33092–33099 (4 February 2013). A number of SRK soldiers and officers testified, however, that they had no knowledge that the objective of the SRK was to divide Sarajevo. *See e.g.* D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 15; Blagoje Kovačević, T. 29088–29089 (18 October 2012); D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 16.

15657 *See* para. 4665.

15658 *See* paras. 4979–4980.

15659 P838 (Directive 7, 8 March 1995), pp. 7, 11–12.

15660 Many of these are recounted earlier in the Judgement, such as the meetings relating to the creation of the TEZ and the WCPs, the opening and later the closure of Blue Routes, the Anti-sniping Agreement, and the Airport Agreement.

would be present, either the Accused, Plavšić, or Koljević, despite the fact that these meetings were "military to military meetings".[15661]

4673. Furthermore, from the very early days of unrest in and around Sarajevo, the Accused actively participated in organising the Bosnian Serb population and the setting up of the barricades around the city.[15662] As the conflict intensified, he and the other members of the political leadership continued to be involved not only in political but also in military and security matters relating to Sarajevo.[15663] Neđeljko Prstojević testified about frequent meetings with the Accused in Pale involving discussions about the military and political situation in Sarajevo, including logistics and co-operation between civilian authorities, the VRS, and the MUP.[15664] For example, in a meeting in Pale on 14 January 1994, which was attended by the Accused, Krajišnik, Mladić, Galić, Dragomir Milošević, Mićo Stanišić, Prstojević, and other presidents of Sarajevo municipalities, as well as commanders of SRK brigades, the Accused stated that the purpose of the meeting was to discuss the military and political situation in Sarajevo.[15665] During the meeting, the Accused updated everyone on the political negotiations in Geneva and stated that he offered Owen the "Trieste model for Sarajevo", that "the Muslims must not win a single victory in Sarajevo", that the Serbs must secure the Ilidža-Lukavica road, and that they must defeat the Muslims in Sarajevo as the international community will accept the factual situation on the ground.[15666] Following the presentation by the various SRK brigade commanders about the situation on the frontline, Mladić stated that Sarajevo is strategic goal number one, which can be resolved militarily not

15661 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 5; Hussein Abdel-Razek, T. 5486–5487 (19 July 2010), T. 5650–5651 (21 July 2010).

15662 Čedomir Kljajić, T. 42197–42200 (30 July 2013); P6468 (Excerpts from Čedomir Kljajić's interview with OTP), e-court p. 2; P5731 (Intercept of conversation between Radovan Karadžić and Rajko Dukić, 1 March 1992) (in which the Accused instructs Dukić to prepare the people to rise up and "close everything tonight"); D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992); D4506 (Intercept of conversation between Radovan Karadžić and Rade, May 1992).

15663 *See e.g.* D3960 (Witness Statement of Tomislav Kovač dated 28 October 2013), paras. 117, 130–132; P2242 (Radovan Karadžić's agenda, 2 January–25 December 1995), e-court pp. 91–92; P4367 (Excerpt from appointment calendar of Radovan Karadžić, 14 July 1995); Tomislav Kovač, T. 42855–42859 (4 November 2013).

15664 Neđeljko Prstojević, T. 13257–13261, 13264, 13267–13268 (11 March 2011) (recalling a meeting in Jahorina in September 1992 that involved the Accused, Krajišnik, Mladić, SRK Commander, various SRK brigade commanders, and representatives of local authorities; Prstojević also added that, in addition to such meetings, he would have frequent telephone communications with the Bosnian Serb leadership in Pale); P1006 (SRK Order, 12 September 1992) (in which Galić assigned tasks to the SRK in accordance with the decisions made at the Jahorina meeting).

15665 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 133.

15666 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 133–134. *See also* D2660 (Article from Srpski Borac entitled "We are Sovereign over Sarajevo", 2 August 1995), p. 8 (in which the Accused stated that the Serb victories around Sarajevo were important as they would create factual situation on the ground that would have to be recognised by the international community). For more on the issue of importance of factual situation on the ground to the Accused, *see* paras. 2844–2845, 3090–3096.

politically.[15667] Krajišnik then spoke and insisted on Serbs keeping Sarajevo, stating that the whole of Sarajevo must be taken, as one cannot have two masters in such a small area and one cannot share with the Muslims.[15668] Following all these presentations, the Accused agreed with Mladić that "Muslims will break down in Sarajevo", instructed the participants to make sure that the Muslims keep suffering defeats and feel inferiority, and then stated that "retaliation should be 1:1".[15669]

4674. Thus, it is clear on the basis of above, that, from the very beginning of the conflict in BiH, the political and military leadership of the Bosnian Serbs, particularly the Accused, Krajišnik, Koljević, Plavšić, and Mladić, recognised and championed the importance of Sarajevo to the conflict in BiH. The city was important not only because of its symbolism and the fact that without it the Bosnian Muslim side would not be able to have a functioning independent state but also because it carried special significance for the Accused who had lived there up until the start of the war and considered it his hometown. Because of this, the Accused, Krajišnik, Koljević, Plavšić, and Mladić all desired to gain control over Sarajevo, or parts thereof, a project in which they were invested throughout the conflict.[15670] Furthermore, as will be explained in detail below, they were fully informed of the situation on the ground such that the Accused's level of knowledge regarding Sarajevo was said to have been higher than his knowledge about the other parts of BiH.[15671] Ultimately, in the Chamber's view, the Accused, Krajišnik, and Mladić were the "go-to-men" for all the Sarajevo-related issues.

4675. The Chamber is also convinced that this interest and involvement in the Sarajevo-related events by the Accused and the other political and military leaders demonstrates that the campaign of sniping and shelling in the city resulted from a plan which emanated from the top of the Bosnian Serb military and political leadership and was rooted in the idea of dividing Sarajevo. As noted by Okun, the city could have only been divided by a wall of fire.

iv. *Conclusion*

4676. Based on the findings made above as to the pattern and longevity of the campaign, the control that was exercised over the SRK units by the Main Staff and the SRK Command, and the importance of Sarajevo to the Bosnian Serb political and military leadership, and relying also on

15667 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 139–144.

15668 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 147.

15669 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 148–149.

15670 The Chamber notes that this interest also materialised in the take over of a number of Sarajevo municipalities, as outlined in Section IV.A.1.c: Sarajevo area.

the relevant evidence in the sections below dealing with the activities of the Accused and other alleged Sarajevo JCE members throughout the conflict in BiH,[15672] the Chamber finds that there existed a common plan that emanated from the Bosnian Serb political and military leadership, the primary purpose of which was to spread terror among the civilian population of Sarajevo through the campaign of sniping and shelling. Based on the evidence relating to scheduled sniping and shelling incidents, the Chamber is also satisfied that this plan involved the commission of murder, terror, and unlawful attacks against civilians.

b. Plurality of persons

4677. As stated above, in addition to the Accused, the Prosecution specifically names the following individuals as the members of the Sarajevo JCE: Momčilo Krajišnik, Ratko Mladić, Biljana Plavšić, Nikola Koljević, Stanislav Galić, Dragomir Milošević, and Vojislav Šešelj.[15673] Further, it lists other un-named members of the Sarajevo JCE, including members of the Bosnian Serb leadership, commanders and senior officers in the VRS, JNA, TO and MUP units responsible for Sarajevo area, and leaders of Serbian and Bosnian Serb paramilitary forces.[15674] In its Final Brief, however, the Prosecution does not list Šešelj as a member of the Sarajevo JCE but focuses instead on the Accused, Mladić, Galić, Dragomir Milošević, and the members of the RS Presidency.[15675] The Prosecution also avers that, since these Sarajevo JCE members made contributions and worked together with the Accused to lead the campaign of sniping and shelling for the purpose of causing terror, "their shared intent for the underlying crimes similarly follows".[15676]

4678. Based on the foregoing analysis of the evidence relating to Sarajevo, including (i) the chronology of events in the city between 1992 and 1995, (ii) the nature and the objectives of the siege in Sarajevo, (iii) the specific scheduled sniping and shelling incidents, (iv) the general evidence on the nature of the SRK's shelling and sniping in the city, (v) the control the SRK Command and the VRS Main Staff had over the SRK units and their weaponry, and (vi) the importance of Sarajevo to the political and military leadership of the Bosnian Serbs, the Chamber is

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15671 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 69, 281; P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 7.

15672 In addition, the Chamber also relied on other sections of this Judgement, primarily those dealing with the Municipalities and Hostages components of the case, which outlined the actions of the Accused, Mladić, Krajišnik, Koljević, and Plavšić throughout the conflict in BiH.

15673 Indictment, para. 16.

15674 Alternatively, according to the Prosecution, some of those were not members of the Sarajevo JCE but were used by members to carry out crimes committed in the furtherance of the objective. *See* Indictment, para. 17.

15675 *See* Prosecution Final Brief, para. 604.

15676 Prosecution Final Brief, para. 797.

satisfied beyond reasonable doubt that the common plan outlined in the preceding section involved a plurality of persons. Further, in the Chamber's view, it is inconceivable that the SRK's campaign of sniping and shelling of civilians—which lasted more than three years, involved multiple brigades and units of the SRK, and required significant military resources, weaponry, and organisation—would not have involved a number of individuals operating at both the military and the political level. The Chamber is, therefore, satisfied that the common plan emanated from both the Bosnian Serb political and military leadership.

4679. Before turning to the main issue in this case, namely, whether the Accused was one of these individuals, the Chamber will consider the other named alleged Sarajevo JCE members.

i. *Military leadership: Ratko Mladić, Stanislav Galić, and Dragomir Milošević*

4680. Given the factors outlined in the preceding paragraphs, the Chamber is convinced beyond reasonable doubt that Mladić, Galić, and Dragomir Milošević were members of the Sarajevo JCE and shared the intent to effect the common plan outlined above. The fact that, as stated in the preceding paragraph, the SRK's campaign of sniping and shelling lasted more than three years, involved multiple brigades and units of the SRK, and required significant military resources, weaponry, and organisation, when coupled with the control found to have been exercised by the Main Staff and the SRK Command over the units engaging in that campaign, already leads to the inevitable conclusion that, at the very minimum, Mladić, Galić, and Dragomir Milošević were part of that plurality of persons. The only reasonable inference that can be drawn from the evidence relating to the sniping and shelling of civilians in Sarajevo is that Mladić, Galić, and Dragomir Milošević were willing participants in the Sarajevo JCE and that they intended to shell and snipe the civilians in the city and thus intended the common plan outlined above.

4681. In addition, the Chamber has also received evidence going to the acts and conduct of those three men, as well as to their state of mind, including their knowledge of the attacks on civilians in the city. Some of this evidence has already been outlined in the preceding sections of the Judgement,[15677] including for example (i) Mladić's speech on 12 May 1992 at the Bosnian Serb Assembly session where he openly spoke about his intentions for Sarajevo, such as the need to place the ring around the dragon's head and to surround the city with 300 mortars and artillery weapons;[15678] (ii) his involvement in the sourcing and the use of modified air bombs;[15679] (iii) his

15677 In addition, some of that evidence is also discussed later on, in the sections dealing with the Accused's participation in and contribution to the Sarajevo JCE.

15678 *See* para. 4661.

15679 *See* para. 4562. *See also* fn. 14640 (listing a number of VRS orders reling to the use of modified air bombes).

activities in relation to Scheduled Incident G.1, including his orders to shell Baščaršija, Pofalići, and Velešići, and to scatter the shells around Sarajevo, showing in turn his intent to shell the civilian population;[15680] (iv) his directives which consistently ordered the tightening of the blockade of Sarajevo and the idea of "decisive" or "active" defence that in turn involved the shelling and the sniping of civilians and moving of the frontlines in Sarajevo, inch by inch;[15681] (v) Galić's and Dragomir Milošević's implementation of the said directives; and (vi) Dragomir Milošević's orders regarding the use of modified air bombs.[15682] The Chamber will not repeat that evidence here. The following paragraphs therefore outline only the evidence that has not yet been analysed by the Chamber. This evidence relates mainly to their knowledge of the attacks on civilians in the city and their reactions thereto.

4682. For example, the Chamber heard that, in the absence of the Accused,[15683] the sniping and shelling of civilians was consistently raised with other members of the Bosnian Serb military and political leadership by the representatives of the international community and that UNPROFOR would go to the parties responsible anytime there was an incident, be it shelling or sniping.[15684] Thus, in the event of major incidents, the Commander of UNPROFOR Sector Sarajevo would sign the protests which were addressed directly to the SRK Commander.[15685] When the shelling was particularly violent, the Commander of UNPROFOR BiH Command would make oral protests over the phone, followed by written protests, with Mladić or with the political leaders in Pale.[15686]

4683. As far as Mladić's personal knowledge is concerned, the Chamber heard that, as early as 9 May 1992, General Kukanjac of the JNA informed Mladić that Sarajevo was a "ghost town" and

15680 *See* discussion on Scheduled Incidents G.1 and G.2.

15681 *See* paras. 4574, 4576.

15682 *See* discussion on Scheduled Incident G.10.

15683 The occasions where this has happened in the presence of the Accused are discussed later, in Section IV.B.3.iii: Accused's knowledge of crimes and the measures he took to prevent them.

15684 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 21–22, 25, 44–46; David Fraser, T. 8015–8016, 8018, 8056 (18 October 2010), T. 8106, 8110–8011 (19 October 2010); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 201; P6060 (Record of interview with KDZ185), e-court pp. 12, 20; KDZ185, T. 4231 (28 June 2010) (private session); P2106 (Witness statement of KDZ304), p. 17 (under seal) (testifying that the Sarajevo Sector Staff had a section in charge of preparing and transmitting protests); P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 54, 61–62; P2119 (Witness statement of KDZ450 dated 17 January 2011), paras. 35, 59–60 (under seal); KDZ450, T. 10548 (19 January 2011), T. 10659–10660, 10665 (20 January 2011) (private session), KDZ450, T. 10673, 10693 (20 January 2011); P2414 (Witness statement of KDZ182), pp. 31–32, 35 (under seal); P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 57–58, 66; Francis Roy Thomas, T. 6891–6892, 6928–6929 (16 September 2010) (testifying that, while it was difficult to protest before the February 1994 cease-fire, protests were made and "stonewalled" by Indić who would prevent protests getting past him and put up obstacles to see Galić, and that during negotiations with "all levels of the warring factions" it was a "constant theme" that if there was any shooting the fire should be limited to combatants).

15685 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 59, 95; Francis Roy Thomas, T. 6929 (16 September 2010); P2106 (Witness statement of KDZ304), p. 17 (under seal).

the "Serbian leadership" had been shelling it for months with mortar and artillery.[15687] Wilson testified that numerous incidents in which "a number of civilians were killed by artillery or mortars apparently fired from Serb positions" were raised with Mladić and that the latter would generally not deny that the Bosnian Serb side was responsible but would say that the shelling was done for the purpose of "defending the Serbs" or "responding to attacks".[15688] For example, on 30 May 1992, Wilson met with Mladić to convey the Secretary General's appeal to cease or to moderate the shelling of Sarajevo.[15689] Mladić responded that he shared the Secretary General's concern for Sarajevo, but that the Maršal Tito Barracks were under continuous fire and that it was important to evacuate the JNA from there.[15690] He also stated that these attacks on Sarajevo were defending the Bosnian Serbs from attack.[15691]

4684. On 15 September 1992, Nambiar sent a letter to Mladić protesting the "indiscriminate shelling of civilian targets in Sarajevo" on the previous day, asking Mladić to "ensure that, under no circumstances, are non-military targets engaged", and urging him to place "all heavy weapons under UNPROFOR control".[15692]

4685. On 15 November 1992, members of the SRK command and unit commanders, the presidents of a number of municipal assemblies as well as Mladić and Tolimir held a consultation session in Lukavica Barracks.[15693] During the session, Galić raised a number of issues, including poor discipline and performance by troops, wastefulness in the use of ammunition, and involvement in "[g]enocide on other nations".[15694] Marko Lugonja reiterated these concerns, stating that certain individuals and groups in the SRK held the conviction that they were the "masters of life and

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15686 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 54; P2119 (Witness statement of KDZ450 dated 17 January 2011), para. 56 (under seal).

15687 P1477 (Ratko Mladić's notebook, 14 February–28 May 1992), pp. 268–273.

15688 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 55. *See also* David Harland, T. 2037 (6 May 2010) (testifying that incidents of shelling and sniping were protested to Mladić at meetings).

15689 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 77; John Wilson, T. 3924–3926 (21 June 2010); P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992), para. 1; P1044 (UNPROFOR report re attack on UN, 30 May 1992), para. 1; P5050 (UN Press Release, 30 May 1992); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 34–35. This meeting was motivated by Security Council Resolution 757, which placed economic sanctions on the FRY, demanded that all parties create the conditions for the unimpeded delivery of humanitarian aid to Sarajevo and other destinations in BiH, and established a security zone which encompassed Sarajevo and its airport. *See* John Wilson, T. 3926 (21 June 2010); P1031 (UNSC Resolution 757, 30 May 1992); P2284 (UNSG report entitled "The Fall of Srebrenica", 15 November 1999), para. 27. *See also* para. 332.

15690 P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992), para. 2; John Wilson, T. 3926 (21 June 2010).

15691 John Wilson, T. 3926 (21 June 2010); P1029 (Witness statement of John Wilson dated 4 November 2008), para. 126.

15692 P1271 (UNPROFOR report re letter sent to Ratko Mladić, 15 September 1992), p. 2; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 22.

15693 P5065 (Minutes of SRK Command consultation meeting, 15 November 1992).

15694 P5065 (Minutes of SRK Command consultation meeting, 15 November 1992), p. 4.

death" to members of other ethnic groups and that the Geneva Conventions and other relevant instruments were obsolete and unneeded.[15695] In response, Mladić did not address the killing of civilians but urged a crackdown on insubordination and poor discipline and defined the task of the SRK as keeping Sarajevo under blockade and pulling as much of the population as possible out of the city.[15696]

4686. On 10 October 1994, Gobilliard issued a written protest to the Bosnian Serb side in response to the shelling of Sarajevo, which was a "reprisal" or reaction to a 5–6 October 1994 ABiH attack in the DMZ in the course of which 17 Serb soldiers were killed.[15697] In retaliation to the shelling, ABiH gunners fired at Serb civilians in the village of Vogovišći, killing two people.[15698] To avoid an escalation, Gobilliard and Rose issued a joint statement, protesting to both parties but to no effect.[15699] On the same day, Rose, Gobilliard, and Harland met with Mladić and Tolimir at Jahorina.[15700] At the meeting, Rose condemned the sniping incident of 8 October, involving Alma Ćutuna.[15701] Mladić denied Serb responsibility for this incident, claiming that the shots came from the Holiday Inn and that the incident was engineered by the ABiH.[15702] An UNPROFOR technical expert then provided a map and assured Mladić that the shooting did not come from the Holiday Inn side.[15703]

4687. On 5 March 1995, Smith met with Mladić and Tolimir while Koljević joined during the closing stages of the meeting.[15704] In the meeting, Smith questioned Mladić about the upsurge in sniping attacks on civilians in Sarajevo.[15705] During this meeting Mladić told Smith that the

15695 P5065 (Minutes of SRK Command consultation meeting, 15 November 1992), pp. 8–9 (where Lugonja suggested addressing these problems with greater efforts to ensure full subordination of units, the reinstatement of "commissars", and the strengthening and swift application of repressive measures to wrongdoers).

15696 P5065 (Minutes of SRK Command consultation meeting, 15 November 1992), p. 26.

15697 [REDACTED].

15698 [REDACTED].

15699 [REDACTED].

15700 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 155; Michael Rose, T. 7268–7269 (5 October 2010); P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994); P1674 (UNPROFOR report re meeting with Ratko Mladić, 11 October 1994); P820 (Witness statement of David Harland dated 4 September 2009), para. 143; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 44, 68–69; [REDACTED].

15701 P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994), para. 5; P820 (Witness statement of David Harland dated 4 September 2009), para. 143; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 69; [REDACTED].

15702 P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994), para. 5; P820 (Witness statement of David Harland dated 4 September 2009), para. 143; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 69; [REDACTED].

15703 P867 (UNPROFOR report on meeting with Ratko Mladić, 10 October 1994), para. 5; P820 (Witness statement of David Harland dated 4 September 2009), para. 143; Michael Rose, T. 7268–7269 (5 October 2010).

15704 P876 (UNPROFOR Memo re meeting with Ratko Mladić, 6 March 1995), para. 1.

15705 Rupert Smith, T. 11309–11310 (8 February 2011); P876 (UNPROFOR Memo re meeting with Ratko Mladić, 6 March 1995), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 94–95; P2455

increase in sniping by the VRS in Sarajevo was in response to Serb casualties suffered in military offensives launched by the BiH government.[15706] The UNPROFOR weekly report on this meeting noted that the "explicit recognition by Mladić of [VRS] responsibility for sniping is somewhat surprising".[15707]

4688. On 26 June 1995, Smith wrote to Mladić and stated that, on an almost daily basis, he was receiving reports of shelling of the populated parts of safe areas, including Sarajevo.[15708] He stated that "in Sarajevo alone nine civilians were killed yesterday due to sniping and shelling. Five of them were children."[15709] Smith also noted in the letter that despite Janvier raising this issue with Mladić in the past, there had been a noticeable increase in attacks on the civilian population.[15710] Smith did not recall receiving any indication from Mladić in response that there would be a reversal of what was happening and that the attacks on the civilian population would stop.[15711]

4689. On 1 July 1995, Nicolai sent a letter of protest to Mladić in response to the shelling of Sarajevo on 28 and 29 June 1995.[15712] In the letter, Nicolai protested "most strongly about the recent and still continued indiscriminate and deliberate shelling of the residential places of the city of Sarajevo, which unfortunately results in casualties amongst innocent civilian population".[15713] Nicolai then warned Mladić: "[i]n this fashion you breach all international agreements on protection of civilians at a war, including the Geneva Conventions, recognised by all professional armies in the world. These very serious and inexcusable violations and killing of civilians are liable to trials by an international court."[15714] In the letter, Nicolai included a copy of Meille's 30 June 1995 letter of protest to Dragomir Milošević, regarding the same events.[15715]

4690. As recounted earlier, between 28 and 29 August 1995, Smith and Mladić had three telephone conversations, during which the former informed the latter about the 28 August 1995 shelling of Markale market and told him that the Bosnian Serb side was responsible for it, which

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(UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330–13331 (15 March 2011).

15706 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 94; P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330 (15 March 2011).

15707 P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330 (15 March 2011).

15708 P2274 (UNPROFOR letter to Ratko Mladić, 26 June 1995); Rupert Smith, T. 11420 (9 February 2011).

15709 P2274 (UNPROFOR letter to Ratko Mladić, 26 June 1995); Rupert Smith, T. 11420 (9 February 2011).

15710 P2274 (UNPROFOR letter to Ratko Mladić, 26 June 1995).

15711 Rupert Smith, T. 11420–11421 (9 February 2011).

15712 P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995), p. 2; [REDACTED].

15713 P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995), p. 2.

15714 P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995), p. 2.

15715 P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995), p. 3.

Mladić continued to deny.[15716] In addition, on 30 August 1995, at around 2 a.m., letters were sent to Mladić, the Accused, and Slobodan Milošević informing them that NATO air strikes had commenced as a result of the Markale attack.[15717] In the letter to Mladić, Janvier wrote that two separate UN teams had found that the shell that landed on Markale market on 28 August 1995 came from VRS positions south-southwest of Sarajevo, that this resulted in the initiation of air strikes, that the object of the air strikes was to prevent further shelling of Sarajevo, and that the attacks would cease once Janvier was convinced that the threat of further shelling by the SRK had been eliminated.[15718]

4691. On 1 September 1995, the air strikes stopped and Janvier and Banbury met with Mladić, Perišić, Gvero, and Tolimir in Mali Zvornik, in order to discuss the current situation; upon being told again that the investigation results clearly identified the Bosnian Serbs as the perpetrators, Mladić responded that Markale was "a pretext to gain a corridor for the Muslims to Sarajevo".[15719]

4692. The Chamber also heard throughout the case that in addition to Mladić, the SRK Commanders themselves were on notice as to the shelling and sniping in the city. Galić was present on the battlefield of Sarajevo throughout the period 10 September 1992 to 10 August 1994, in close proximity to the confrontation lines, and thus actively monitored the situation in the city.[15720] Not only was he informed personally about both sniping and shelling activity attributed to SRK forces against civilians in Sarajevo, but his subordinates were conversant with such activity.[15721] Similarly, Dragomir Milošević regularly toured the confrontation lines and visited different SRK units at their positions.[15722] He also knew about allegations that SRK forces had targeted civilians.[15723]

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15716 *See* paras. 4295–4298.

15717 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995); D2815 (SRK report, 30 August 1995); Adjudicated Fact 2798.

15718 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court p. 2.

15719 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 183–192; P2509 (Anthony Banbury's notes, 1 September 1995); Adjudicated Fact 2798. On 4 September 1995, Mladić wrote a letter to Janvier protesting the use of NATO air strikes against Bosnian Serb targets, denying that the Bosnian Serbs were responsible for the shelling of Markale on 28 August, and protesting the ultimatum to withdraw heavy weapons. *See* D2310 (Letter from Ratko Mladić to UNPROFOR, 4 September 1995); D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), pp. 91–92 (testifying that he believed Mladić's letter to be sincere as Mladić did not believe that the VRS was responsible for the Markale market shelling and that the questions and requests to Janvier were reasonable).

15720 *See* Adjudicated Facts 31, 33, and 34.

15721 *See* Adjudicated Facts 38, 39, and 41.

15722 *See* Adjudicated Fact 2854.

15723 *See* Adjudicated Fact 2873.

4693. More specifically, Fraser testified that UNPROFOR had "countless engagements" with Galić and Milošević to discuss sniping, and implored them to stop sniping civilians.[15724] At these meetings UNPROFOR would use summaries of the number of Muslims and Serbs wounded and killed by sniper fire, in an attempt to focus the discussion through the use of empirical data and facts.[15725] Fraser noted that when UNPROFOR protested sniping, shelling, or freedom of movement to Dragomir Milošević or Mladić, "it was not uncommon for both parties to say they didn't do it [...] and then they would go away and things would get a little better in most cases".[15726]

4694. Both Galić and Milošević would also imply that the shelling of Sarajevo was linked to other attacks by the ABiH throughout BiH.[15727] The SRK Commanders and the Commander of the ABiH 1st Corps generally ignored UNPROFOR protests and did not take them seriously, while sometimes the parties would send a letter stating that they had nothing to do with it.[15728] In general, Galić only reacted to letters of protest when he was able to provide proof that the firing did not come from his troops, which was "extremely rare".[15729]

4695. Abdel-Razek met with Galić and Plavšić on multiple occasions from 21 August 1992 to 20 February 1993 in his capacity as Commander of UNPROFOR Sector Sarajevo, and testified that the shelling of civilians was one of the major issues he raised with them.[15730] However, there was no progress as they would deny that they were responsible or deny that the shelling and sniping incidents occurred; often they would gradually acknowledge responsibility but then claim that Bosnian Serb actions were justified retaliations against the ABiH.[15731] Galić would also give the impression that the Bosnian Muslim side was conducting the shelling on purpose to attract the sympathy of the world and distort the Serb image; however, he would then gradually acknowledge

15724 Fraser, T. 8018 (18 October 2010).

15725 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 41–42. *See also* P1773 (UNPROFOR report re efficacy of Anti-Sniping Agreement, 15 September 1994); David Fraser, T 8130–8131 (19 October 2010).

15726 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 8–9, 23, 44; David Fraser, T. 8018, 8025 (18 October 2010). *See also* P2414 (Witness statement of KDZ182), p. 35 (under seal).

15727 [REDACTED].

15728 [REDACTED].

15729 [REDACTED]. *See also* P6298 (UNPROFOR protest letter to Stanislav Galić, 13 February 1993); P6299 (UNPROFOR protest letter to Stanislav Galić, 14 February 1993) (indicating that the UN had sent letters of protests on two different occasions in relation to a shelling of the UN OP but received no answer from Galić).

15730 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 2, 12–18, 20–21, 25, 27, 33; Hussein Abdel-Razek, T. 5500 (19 July 2010), T. 5532–5533, 5537, 5580–5581 (20 July 2010).

15731 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 13, 21, 27; Hussein Abdel-Razek, T. 5673 (21 July 2010). Abdel-Razek testified that he raised the issue of the capture of three Muslim drivers by the Bosnian Serbs with the Accused and Plavšić, but never received a "clear-cut" response. *See* Hussein Abdel-Razek, T. 5661 (21 July 2010); P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 8.

that the shelling was retaliation by the Bosnian Serb side.[15732] Galić would also threaten to continue shelling the city if the violations continued from the Bosnian Muslim side.[15733] Abdel-Razek thought that both Galić and the "Serb civilian leadership" knew about the sniping and shelling of the civilian population of Sarajevo.[15734]

4696. Like Abdel-Razek, Mole testified that when he would meet with Galić during his time in Sarajevo, indiscriminate SRK fire was "a topic of discussion most days", although Mole would focus only on the most serious incidents.[15735] Galić's response to protests tended to be tangential and he would constantly respond "that the Muslims [...] were attacking in a particular sector of the city".[15736] Galić also frequently threatened to shell Sarajevo "if a certain event did or did not materialise".[15737]

4697. In terms of sniping, Van Baal testified that every incident that could be attributed to a Bosnian Serb sniper was the subject of an objection by the UNPROFOR Sector Sarajevo to the SRK.[15738] These objections were directed at the leadership of the VRS, including Galić, Inđić, and Milovanović.[15739] According to Van Baal, attempts to contact Galić were only occasionally successful and Inđić and Milovanović would respond to protests by denying that the SRK had snipers under its control and by blaming the Bosnian Muslims for shooting and targeting their own population.[15740]

4698. KDZ182 testified that protests about shelling and sniping incidents were made to Milošević verbally by UNPROFOR liaison officers and in writing; several hours or days later, the written

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15732 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 21 (testifying that, at his last meeting at Lukavica Barracks, he said to Galić, "there are a lot of civilian casualties in the city. Your shelling was heavy and targeting the UN building" to which Galić responded, "we did that because their mortars landed among Serb civilians", and further testifying that while Galić "always" denied the Serb shelling of civilians, at this meeting Galić "was more frank" in stating that the Serbs shelled the UN building because of UNPROFOR actions).

15733 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 15.

15734 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 24–25.

15735 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 97.

15736 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 98–100, 108 (testifying that he could not recall the local tactical situation changing to a marked degree that would realistically justify the response of heavy weaponry firing into the city as appropriate); P1434 (UNMO report for November 1992), p. 15.

15737 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 92, 107; P1434 (UNMO report for November 1992), pp. 5, 7.

15738 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 37.

15739 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 38. *See also* John Hamill, T. 9686 (13 December 2010); P1994 (Transcript from Prosecutor v. *Galić*), T. 6066–6069, 6109, 6115–6116, 6129, 6120–6122, 6146–6149, 6155–6159, 6161–6165 (testifying that he would inform the SRK liaison officers, including Inđić, of incidents of sniping and shelling of civilians or civilian areas, and adding that Galić spoke to his liaison officers "as a commander would").

15740 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 38–39.

protests would often lead to meetings with Milošević.[15741] Generally speaking, in those meetings Milošević would claim that he was responding to ABiH fire.[15742] KDZ304 testified that letters of protest were not an effective method during the time he was in Sarajevo.[15743] [REDACTED] it was impossible to speak directly to Dragomir Milošević because "everything was screened at the level of Major Indić or his deputy".[15744]

4699. In addition to the above evidence, the Chamber heard about many specific meetings during which Galić and Milošević were informed of the sniping and shelling on the city, including attacks on civilians. For example, on 7 October 1992 Morillon met with Galić and Koljević.[15745] The parties discussed lifting the siege of Sarajevo, and Morillon expressed his "disappointment" about recent artillery attacks on Sarajevo.[15746] On 10 February 1993, Valentin sent a letter of protest to Galić regarding the targeting of civilians with mortar fire while they were crossing the airfield at Sarajevo airport between 7 and 9 February 1993.[15747] The letter stated that twenty civilians were injured, three of whom died, and that "[s]uch actions against civilian population run counter to all human norms of morals. We strongly protest against such irresponsible behaviour of your military and intend to inform international community of those facts."[15748] On this topic, Abdel-Razek testified that when he protested the sniping of civilians crossing the airport, Galić stated that "if the civilians continued to cross the airport, his side would continue shooting at them".[15749] Similarly, at a meeting with the Commander of FreBat, Galić said that he would continue shooting at civilians if they continued to move through the airport, blaming FreBat for allowing the civilians to do so.[15750]

4700. On 22 March 1993, Valentin met with Galić to request an explanation as to why Stari Grad was shelled the day before.[15751] Galić denied that the Serbs were responsible for the shelling, despite the UN observers being sure that the shells were fired from Bosnian Serb artillery positions.[15752] Similarly, in response to a rise in sniping incidents in April 1994, Soubirou met with

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15741 P2447 (Witness statement of KDZ182), p. 31.

15742 [REDACTED]; P2447 (Witness statement of KDZ182), p. 31; [REDACTED]. *See also* P2407 (Witness statement of KDZ304), p. 17; [REDACTED].

15743 P2407 (Witness statement of KDZ304), pp. 17–18. According to Fraser, protesting orally by going to the SRK headquarters and dealing directly with the SRK Commander was far more effective than written protests. *See* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 22–23.

15744 [REDACTED]. *See also* P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 20 (testifying that the sole interlocutor of the liaison office at the SRK Command was Indić).

15745 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 23.

15746 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 23.

15747 P1054 (UNPROFOR protest letter to Stanislav Galić, 10 February 1993), p. 2; [REDACTED].

15748 P1054 (UNPROFOR protest letter to Stanislav Galić, 10 February 1993), p. 2.

15749 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 18.

15750 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 18.

15751 P1066 (SRK combat report, 22 March 1993), para. 8.

15752 P1066 (SRK combat report, 22 March 1993), para. 8; [REDACTED].

Galić on a number of occasions in May, June, and July 1994.[15753] One of those meetings took place on 24 June 1994, whereby Soubirou and Fraser met with Galić at Lukavica barracks.[15754] According to Fraser, this meeting was typical of all the meetings with Galić, as the latter would first give a lecture and deny that Bosnian Serbs were engaged in sniping on civilians, and then, over the course of the conversation would acknowledge that some of this was happening but would blame the other side for it.[15755] Nevertheless, Fraser noted that generally there was a noticeable decrease in the level of sniping after talking to Galić.[15756] Sometime between 8 and 12 July 1994, Soubirou met with Galić to improve relations between his office and the SRK.[15757] During this meeting, Soubirou explained that he wanted to come to an agreement on anti-sniping and asked Galić to designate a Bosnian Serb to deal with this subject.[15758] [REDACTED] Galić never acknowledged that there were Bosnian Serb snipers.[15759]

4701. The Chamber also received evidence about a number of specific written protests sent to Dragomir Milošević.[15760] For example, on 2 December 1994, Gobilliard wrote to Milošević to "strongly protest" the shelling of Sarajevo that day.[15761] The letter addressed the launching of four AT3 missiles at the MUP building, a cinema, and the Presidency building from SRK positions.[15762] On 7 May 1995, Gobilliard wrote to Milošević again, protesting the "continuous shootings" against civilians around the city.[15763] Gobilliard sent another letter on 8 June 1995.[15764] This letter concerned violent artillery attacks along the southern side of the confrontation line.[15765] Explaining the context of the letter, KDZ304 testified that the ABiH had launched an attack in the sector of the Jewish cemetery and in Debelo Brdo, and that the SRK retaliated with artillery fire and tanks and launched "several well-targeted counter-attacks"; however, the response was also disproportionate as it disregarded any possible collateral damage or civilians being affected.[15766]

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15753 P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 21–22.

15754 David Fraser, T. 8024–8025 (18 October 2010); P1785 (SRK report re meeting between General Galić and General Soubirou 24 July 1994).

15755 David Fraser, T. 8025 (18 October 2010).

15756 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 21.

15757 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 65.

15758 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 65.

15759 [REDACTED].

15760 The Chamber also took judicial notice of the fact that Milošević received protest letters from UNPROFOR about crimes committed by the SRK. *See* Adjudicated Fact 2876.

15761 P2427 (UNPROFOR protest letter to SRK, 2 December 1994), p. 3.

15762 P2427 (UNPROFOR protest letter to SRK, 2 December 1994), p. 3.

15763 P2415 (UNPROFOR protest letter to SRK, 7 May 1995).

15764 P2134 (UNPROFOR protest letter to Dragomir Milošević, 8 June 1995); P2407 (Witness statement of KDZ304), p. 23.

15765 P2134 (UNPROFOR protest letter to Dragomir Milošević, 8 June 1995).

15766 P2407 (Witness statement of KDZ304), p. 23 (adding that the SRK often shelled the town to "retaliate" against ABiH attacks).

4702. On 30 June 1995, Meille sent a letter of protest to Dragomir Milošević in which he complained of "attacks on civilian targets in the city of Sarajevo, using very powerful bombs" on 28 and 29 June 1995 by the SRK.[15767] Meille strongly protested against these bombardments "carried out on [Milošević's] orders", and demanded that Milošević immediately halt all attacks directed at either the civilian population or UNPROFOR.[15768] The letter provided details of four different events including the date and the time at which they took place, namely, the firing of (i) the "extremely powerful rocket bomb" at the TV building; (ii) four heavy mortar rounds at the Alipašino Polje residential area; (iii) another rocket bomb at the Alipašino Polje residential area; and (iv) three mortar rounds at residential buildings in the city centre.[15769] The letter continued to state that "[t]his ill-considered and irresponsible escalation continued on the evening of 29 June when 3 high-power projectiles struck the PTT building, the HQ of Commander Sector Sarajevo".[15770] Meille also reminded Milošević of the moral and legal obligations to adhere to international humanitarian law.[15771] Despite all the details provided, Milošević did not react to this letter.[15772] As noted earlier, a copy of the letter was also sent to Mladić on 1 July 1995.[15773]

4703. Galić and Dragomir Milošević themselves confirmed that they received information about the sniping and shelling of civilians in Sarajevo. For example, Galić conceded that he received information that SRK shelling and sniping caused civilian casualties from his staff, through Indić, in meetings with UNPROFOR representatives, and through written protests.[15774] Galić testified that he took the protests that were sent to him by UNPROFOR or UNMOs very seriously.[15775] However, he did not remember a single protest being lodged about a sniping incident alone, and in relation to Abdel-Razek's evidence regarding his protests about the SRK shelling of UNPROFOR and civilian structures, he testified that Abdel-Razek was not honest with him and misrepresented

15767 P895 (Letter from UNPROFOR to Dragomir Milošević, 30 June 1995); P820 (Witness statement of David Harland dated 4 September 2009), para. 210; P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995), p. 3; P2407 (Witness statement of KDZ304), pp. 18–20; KDZ304, T. 10448–10452 (18 January 2011) (private session).

15768 P895 (Letter from UNPROFOR to Dragomir Milošević, 30 June 1995).

15769 P895 (Letter from UNPROFOR to Dragomir Milošević, 30 June 1995); P820 (Witness statement of David Harland dated 4 September 2009), para. 210.

15770 P895 (Letter from UNPROFOR to Dragomir Milošević, 30 June 1995).

15771 P895 (Letter from UNPROFOR to Dragomir Milošević, 30 June 1995).

15772 P2407 (Witness statement of KDZ304), p. 20.

15773 P2107 (UNPROFOR protest letters to Ratko Mladić, 1 July 1995, and Dragomir Milošević, 30 June 1995)

15774 Stanislav Galić, T. 37230 (15 April 2013), T. 37788–37792 (7 May 2013). *But see* D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 88, 126, 142–143 (claiming that he never received any protest about deliberate or indiscriminate targeting of civilians, and testifying that, while he received protests about sniper fire being opened, he had never received protests about such fire causing civilians casualties because, after the matter had been "checked", it was determined that the protest concerned fighting and the exchange of infantry fire). The Chamber rejects this evidence, as it contradicts not only Galić's and Milošević's evidence but also all the other evidence presented regarding protests.

15775 Stanislav Galić, T. 37210–37211 (15 April 2013).

himself.[15776] Similarly, Milošević conceded that he had received, from UNPROFOR and the media, allegations about Bosnian Serb soldiers sniping at civilians.[15777] While Milošević considered media reports to be "a certain indicator" and he attempted to see what was true and correct in these reports, he claimed that the media exaggerated or dramatised the situation.[15778] According to Milošević, he also tried to establish whether the information from UNPROFOR was true or not, and if it was true, he issued orders to stop the actions.[15779]

ii. *Political leadership: Momčilo Krajišnik, Nikola Koljević, and Biljana Plavšić*

4704. As noted earlier, the Bosnian Serb political leadership, namely Krajišnik, Koljević, and Plavšić, had strong views as to the importance of Sarajevo to the Bosnian Serb cause, as illustrated for example by Krajišnik's insistence on taking the whole of Sarajevo.[15780] Further, the Chamber heard that they also had knowledge of the sniping and shelling of civilians in the city, as illustrated by many meetings they attended regarding the situation in Sarajevo, both in the presence and in the absence of the Accused.[15781] As noted above, Abdel-Razek met with Galić and Plavšić on many occasions during which he raised the issue of shelling of civilians.[15782] According to him, Plavšić "was unconcerned" about this and viewed the Serb shelling of civilian targets as justified retaliation.[15783] During their meetings she expressed concern only for the suffering of the Bosnian Serbs.[15784] Abdel-Razek specifically recounted a meeting on 10 October 1992 where he discussed the shelling of Sarajevo with Koljević and Plavšić.[15785] Koljević stated that the Bosnian Serbs had decided to stop their shelling of Sarajevo two days before the meeting, but that the propaganda service of BiH radio was saying that the Bosnian Serbs were shelling "in a major way" in an

15776 Stanislav Galić, T. 37397 (18 April 2013), T. 37647–37648, 37652 (23 April 2013), T. 37788–37792 (7 May 2013).

15777 Dragomir Milošević, T. 33276–33277 (6 February 2013). Dragomir Milošević also testified that civilians were never a target of the SRK and that the SRK never fired at civilian areas. *See* Dragomir Milošević, T. 32582–32583 (23 January 2013), T. 32845–32846 (29 January 2013), T. 33136–33137 (4 February 2013). The Chamber notes that it has rejected this argument in the preceding sections of the Judgement.

15778 Dragomir Milošević, T. 33276–33277 (6 February 2013).

15779 Dragomir Milošević, T. 33276–33277 (6 February 2013). *See also* Ratomir Maksimović, T. 31589–31596 (17 December 2012) (dismissing ABiH and media reports that suggested civilians were targeted by the SRK as propaganda).

15780 *See e.g.* paras. 4659, 4665, 4673.

15781 The meetings they attended in the presence of the Accused are discussed later. *See* Section IV.B.3.c: Accused's contribution.

15782 *See* para. 4695.

15783 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 21.

15784 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 5.

15785 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 11–12; P1270 (UNPROFOR report re administrative issues, 10 October 1992), para. 6.

attempt to discredit Serbs.[15786] In turn, Plavšić simply insisted that the UN arrange and facilitate the evacuation of 500 Bosnian Serbs from Sarajevo.[15787]

4705. In addition to the many meetings attended by Koljević and Krajišnik and discussed throughout this Judgement, the Chamber also received evidence of the two men regularly attending meetings about the sniping in the city. For example, in a meeting of 27 June 1994, between Andreev, Rose, Banbury, and Krajišnik in Pale, Rose "forcefully requested" that an anti-sniping agreement be signed.[15788] Krajišnik responded that the situation in Sarajevo had become very precarious because of continued sniping by the ABiH, and because the quality of life was improving so much for the residents of the Bosnian Government controlled areas, which was angering many Serbs outside the city.[15789] Krajišnik then denied that the Bosnian Serbs used snipers.[15790] He also stated that an anti-sniping agreement was not possible,[15791] that an agreement would not solve the problem, but that the Bosnian Serbs were very interested in abolishing sniping, as sniping could lead to an escalation of the conflict.[15792] The negotiations continued and, on 1 August 1994, De Mello met with Krajišnik and Muratović at Sarajevo airport.[15793] At the meeting, Muratović and Krajišnik agreed that the issue of sniping could be "de-linked" from the issues of detainees in Eastern Bosnia and the reopening of the airport routes.[15794] On 12 August 1994, Rose met with Koljević, Gvero, and Tolimir at Pale.[15795] The Bosnian Serbs accepted the wording of a proposed anti-sniping agreement during that meeting and the agreement was eventually signed at Sarajevo airport on 14 August 1994.[15796] On 14 September 1994, Andreev met with Muratović and Koljević at Sarajevo airport.[15797] On the subject of sniping, the parties noted with satisfaction the recent reduction in the incidence of sniping, and agreed to explore the possibility of an expanded

15786 P1270 (UNPROFOR report re administrative issues, 10 October 1992), para. 6(G).

15787 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 11.

15788 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 28–32; P2465 (UNPROFOR report, 28 June 1994).

15789 P2465 (UNPROFOR report, 28 June 1994), para. 7; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 30.

15790 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 31–32 (adding that Krajišnik's denial of Bosnian Serb sniping was patently false).

15791 P2465 (UNPROFOR report, 28 June 1994), para. 7.

15792 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 31.

15793 P2124 (UNPROFOR report re negotiations with parties in BiH, 2 August 1994), paras. 7–10.

15794 P2124 (UNPROFOR report re negotiations with parties in BiH, 2 August 1994), para. 8.

15795 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 136; P1669 (UNPROFOR report re meeting with Nikola Koljević and Milan Gvero, 13 August 1994).

15796 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 136, 139; P1669 (UNPROFOR report re meeting with Nikola Koljević and Milan Gvero, 13 August 1994), para. 2; P820 (Witness statement of David Harland dated 4 September 2009), para. 129; P861 (UNPROFOR report re agreement on elimination of sniping in Sarajevo, 14 August 1994); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 40–41; P2119 (Witness statement of KDZ450 dated 17 January 2011), para. 70 (under seal); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 104.

15797 D1162 (UNPROFOR report, 14 September 1994); Anthony Banbury, T. 13472 (16 March 2011).

agreement which would include all small calibre weapons.[15798] Thus, following the signing of the Anti-Sniping Agreement on 14 August 1994, the number of sniping incidents fell significantly.[15799] This indicated to Harland that the level of sniping in Sarajevo was being "controlled and modulated" by the Bosnian Serb leadership.[15800]

4706. The Chamber also found that Krajišnik was involved in the sourcing of modified air bombs from Serbia for delivery to the Pretis Factory; he did so on 17 June 1995, a day after Scheduled Incidents G.14 and G.15 (and several weeks after Scheduled Incidents G.11, G.12, and G.13) occurred, all of which involved modified air bombs.[15801] It is clear that it was his task, and the task of the special group including his brother, to ensure that VRS had sufficient numbers of this indiscriminate weapon in stock.

iii. *Conclusion*

4707. Based on all the evidence outlined in this section and in the sections that follow (insofar as they concern the alleged JCE members other than the Accused), the Chamber is convinced that Mladić, Galić, Dragomir Milošević, Krajišnik, Koljević, and Plavšić were all fully aware, throughout the conflict, that civilians in Sarajevo were being exposed to deliberate sniping and shelling by the SRK units and to indiscriminate and/or disproportionate attacks.[15802] However not one of them made an effort to stop or prevent this practice, other than when it was in their political interest to do so and/or when they were pressured by the international community. Instead, the evidence shows that they actively sought and encouraged the practice of sniping and shelling in order to achieve their military and political goals, retaliate against the Bosnian Muslim side, and use it as a bargaining chip in their dealings with the international community. Indeed, Mladić himself, at one point, acknowledged that sniping was part of the retaliation for the ABiH attacks.[15803] Similarly, Krajišnik was personally involved in the sourcing of modified air bombs.[15804] In addition, as is clear from their statements and actions, some of which were discussed above, they considered Sarajevo to be important to the achievement of the Bosnian Serb political goals and thus all worked together to effect the siege of the city and ensure that it was

15798 D1162 (UNPROFOR report, 14 September 1994), para. 4(ii); Anthony Banbury, T. 13472–13473 (16 March 2011)

15799 *See* para. 3595.

15800 P820 (Witness statement of David Harland dated 4 September 2009), paras. 133, 300; David Harland, T. 2096–2097 (7 May 2010).

15801 *See* para. 4388.

15802 In coming to this conclusion the Chamber has also considered the evidence concerning these individuals in relation to the other components of this case.

15803 *See* para. 4880.

15804 *See* para. 4388.

divided by the aforementioned wall of fire.[15805] For these reasons, the Chamber considers that all of these individuals intended the execution of the common plan embodied in the Sarajevo JCE.

4708. The Chamber also considers that Mladić, Galić, and Dragomir Milošević were in fact essential to the common plan such that without them, the SRK's campaign of sniping and shelling could not have been conducted and no common plan could have been effectuated.[15806] As testified to by KDZ182, Mladić in particular was instrumental in the implementation of the common plan, being the "strategist" in Sarajevo.[15807] Based on all the evidence in this case, in particular the pattern and the longevity of the campaign of sniping and shelling, the fact that indiscriminate and disproportionate shelling of the city would necessarily bring about civilian casualties, and the above findings in relation to their knowledge and their conduct, the Chamber is satisfied that the only reasonable inference is that the members of the Sarajevo JCE, namely Mladić, Krajišnik, Koljević, Plavšić, Galić, and Dragomir Milošević all shared the intent to commit murder, unlawful attacks, and terror in Sarajevo.

4709. While Šešelj is named in the Indictment as one of the members of the Sarajevo JCE, the Chamber has received very little evidence relating to his activities as far as the Sarajevo JCE is concerned.[15808] Accordingly, the Chamber is not satisfied that Vojislav Sešelj was a member of the Sarajevo JCE as alleged by the Prosecution.

4710. The Chamber will now turn to examine whether the Accused significantly contributed to the Sarajevo JCE.

c. Accused's contribution

4711. In its Final Brief, the Prosecution submits that the ways in which the Accused contributed to the Sarajevo JCE as alleged in the Indictment are all reflected in the following actions and/or omissions of the Accused: (a) he did not end the campaign of sniping and shelling even though he could have by virtue of his control over the VRS and other Bosnian Serb Forces engaged in the campaign but in fact oversaw the strategy and implementation of the campaign;[15809] (b) he modulated the violence against civilians and the level of terror in accordance with the Bosnian Serb

15805 *See* paras. 4659, 4665, 4673.

15806 In this respect, see in particular Sections IV.B.3.c.i: Accused's support for Mladić and SRK; IV.B.3.c.ii: Accused's oversight of military activities in Sarajevo.

15807 *See* para. 4748.

15808 *See e.g.* P2445 (SRT news report re visit of Vojislav Šešelj to Grbavica).

15809 The Prosecution claims that by doing so the Accused contributed to the Sarajevo JCE as alleged in paragraph 14(a), 14(b), 14(d), 14(e), 14(f), and 14(h) of the Indictment. *See* Prosecution Final Brief, paras. 605, 612(1), 612(5).

leadership's political and strategic interests;[15810] (c) he recruited Mladić, supported Mladić's immediate intensification of the campaign, and also promoted and rewarded the key implementers of the campaign;[15811] and (d) he allowed the campaign to continue for almost four years while denying or deflecting international protests and failing to take any genuine steps to punish the perpetrators.[15812] The Chamber will consider each of these alleged contributions below.

4712. According to the Prosecution, as part of the Accused's efforts to modulate the campaign in Sarajevo, he directed and/or authorised the restriction of humanitarian aid to Sarajevo in an effort to create unbearable living conditions for these inhabitants in furtherance of the objectives of the Sarajevo JCE.[15813] The Prosecution then alleges in its Final Brief that the "impact of the sniping and shelling campaign was amplified by restrictions on humanitarian aid and utilities that forced residents to expose themselves to attacks" when searching for fuel or queuing for water or food.[15814] It also alleges that the Accused's "modulation of the campaign of terror" can be seen in the restrictions he imposed on the supply of humanitarian aid and utilities to the city.[15815]

4713. However, the Chamber does not consider restrictions on humanitarian aid to be relevant to the Accused's contribution to the achievement of the objective of the Sarajevo JCE for two reasons.

4714. First, the objective as defined in the Indictment was not to spread terror as such but to "establish and carry out a *campaign of sniping and shelling* against the civilian population of Sarajevo, the primary purpose of which was to spread terror".[15816] Thus, it is the acts of sniping and shelling, the primary purpose of which was to spread terror among the civilian population, that are central to the alleged objective. That being the case, the Chamber does not consider that the

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15810 The Prosecution alleges that by doing so the Accused contributed to the Sarajevo JCE as alleged in paragraph 14(a), 14(d), 14(e), and 14(j) of the Indictment. *See* Prosecution Final Brief, paras. 605, 612(2).

15811 The Prosecution alleges that by doing so the Accused contributed to the Sarajevo JCE as alleged in paragraph 14(a), 14(b), 14(d), and 14(h) of the Indictment. *See* Prosecution Final Brief, paras. 605, 612(4), 612(6).

15812 The Prosecution alleges that by doing so the Accused contributed to the Sarajevo JCE as alleged in paragraph 14(a), 14(c), 14(d), 14(i), and 14(h) of the Indictment. *See* Prosecution Final Brief, paras. 605, 612(3), 612(5).

15813 Indictment, paras. 14(j), 19.

15814 Prosecution Final Brief, paras. 603, 777.

15815 Prosecution Final Brief, para. 622. The Chamber notes that the cutting off of utilities is not mentioned as one of the Accused's alleged contributions in paragraph 14 of the Indictment. In fact, in relation to Sarajevo, utilities are mentioned in the Indictment only once, in paragraph 81, which provides: "The lack of gas, electricity or running water, forced people to leave their homes thereby increasing the risk of death." As such, neither this paragraph, nor the rest of the Indictment, assigns responsibility for the lack of utilities in the city or elaborates on how this practice contributed to the objective of the Sarajevo JCE, which is defined as a "campaign of sniping and shelling" the primary purpose of which is to spread terror. For that reason, the Chamber does not consider that the issue of utilities is relevant to the charges in the Indictment and/or the Accused's contribution to the Sarajevo JCE. Even if that were not the case, the evidence outlined by the Chamber earlier in the Judgement shows that utilities were often cut and obstructed by the Bosnian Muslim side as well as by the Bosnian Serb side. That being the case, it is impossible to determine how significant the contribution of the Accused and other alleged JCE members was to the cutting off of utilities in Sarajevo. *See* Sections IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.f: Siege of Sarajevo.

obstruction of humanitarian aid can have any effect, whether positive or negative, on those acts. Accordingly, restrictions on humanitarian aid, even if perpetrated in an effort to create unbearable living conditions for the inhabitants of Sarajevo, could not have furthered in any way the objective of the Sarajevo JCE as defined in the Indictment.

4715. Second, the Indictment alleges that the objective involved the commission of the crimes of terror and unlawful attacks on civilians.[15817] As discussed earlier, the *actus reus* of these crimes consists of acts or threats of violence directed against the civilian population.[15818] In the Chamber's view, restrictions on humanitarian aid (and also utilities) bear no connection to the "acts or threats of violence". Evidence of such restrictions is therefore not relevant to proving the Accused's contribution to achieving the objective of the Sarajevo JCE.[15819] Accordingly, the Chamber will not consider the allegations in paragraph 14(j) of the Indictment as far as they relate to the Sarajevo component of the case.

i. *Accused's support for Mladić and SRK*

(A) Arguments of the parties

4716. The Prosecution alleges that the Accused recruited Mladić who then, with the approval of the Accused, marked his arrival in the Sarajevo theatre in May 1992 with an immediate intensification of the "terror campaign".[15820] The Prosecution also alleges that the Accused promoted and rewarded the key implementers of the "campaign of terror" against Sarajevo, namely Mladić, Galić, and Dragomir Milošević, despite knowing that they were involved in the commission of crimes.[15821] According to the Prosecution, by rewarding and promoting such individuals, the Accused not only created and sustained "a culture of impunity" but also showed his approval of the campaign of sniping and shelling.[15822]

4717. The Accused submits that Mladić was appointed by the Bosnian Serb Assembly, thus indirectly refuting the Prosecution's allegation that he personally "recruited" Mladić.[15823] Further,

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15816 Indictment, paras. 15–19, 77 (emphasis added).

15817 Indictment, paras. 15, 77. Additionally, the objective of the Sarajevo JCE involved the commission of the crime of murder. As with terror and unlawful attacks on civilians, the Chamber considers that the Accused's alleged contribution to restrictions on humanitarian aid has no connection to the *actus reus* of that crime.

15818 *See* paras. 450, 459.

15819 However, the Chamber has referred to such evidence in earlier sections of the Judgement in order to describe the situation that prevailed in the city throughout the period of the Indictment. *See* Sections IV.B.1.a: Chronology of events in Sarajevo; IV.B.1.f: Siege of Sarajevo.

15820 Prosecution Final Brief, paras. 605, 612(4), 636–642, 797.

15821 Prosecution Final Brief, paras. 612(6), 643, 652, 797.

15822 Prosecution Final Brief, paras. 643, 652.

15823 Defence Final Brief, paras. 1265, 1268.

the Accused does not expressly respond to the allegation that he let Mladić intensify the campaign of sniping and shelling against the city of Sarajevo; instead, he denies that such a campaign ever existed.[15824] The Accused further submits that there is no evidence that he promoted, rewarded, or otherwise decorated VRS officers while knowing that they were involved in criminal conduct.[15825] Instead, he promoted them on the basis of the proposals from commanders of "lower units" in the field and because he had to respect the system of military subordination, which resulted in him rarely knowing whom he was actually promoting.[15826]

(B) Accused's support for Mladić and SRK in relation to Sarajevo

4718. As discussed earlier, on 12 May 1992, at the 16th Session of the Bosnian Serb Assembly, at which point Sarajevo was already encircled by various Bosnian Serb Forces,[15827] the VRS was established and Mladić was appointed as its commander.[15828] The Chamber also outlined how the Accused personally sought out Mladić, having noticed his "blunt statements in the newspapers", discussed the relationship between the two men, and made findings thereon.[15829]

4719. In particular, during the 16th Session of the Bosnian Serb Assembly, after the Accused had announced the Strategic Goals of the Bosnian Serbs and stated that the fighting around Sarajevo would decide the destiny of the BiH, Mladić pleaded with the Bosnian Serb political leadership to enunciate a set of realistic and clearly-defined strategic goals for the Bosnian Serb people.[15830] He then informed those present that Bosnian Muslims in Sarajevo had nowhere to go because the city was facing a blockade, before exclaiming that "the head of the dragon of fundamentalism lies beneath our hammer."[15831] He recounted how he had personally observed from a helicopter that Serb howitzers and tanks around Sarajevo were not adequately positioned and manned and warned the deputies that "[w]e should not spit at Sarajevo with two mortars."[15832] According to Mladić, the surrender of Bosnian Muslims required that 300 guns, including howitzers, and multiple rocket launchers, be positioned around the city.[15833] Other measures advocated by Mladić during this session were denying the population of Sarajevo access to the hospitals located in the city and inhibiting the flow of utilities into Sarajevo while assigning the blame for the resultant shortages to

15824 Defence Final Brief, paras. 2967–2971.
15825 Defence Final Brief, paras. 1335, 1338.
15826 Defence Final Brief, paras. 1335, 1338, 1340, 1342.
15827 *See* para. 3556.
15828 *See* paras. 160, 3115.
15829 *See* paras. 3115–3141.
15830 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 10, 31–32.
15831 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 35.
15832 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 35–36, 38.
15833 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 36.

the Muslim side.[15834] After referring to the fact that pursuant to his orders, vital JNA assets in Croatia had been either evacuated to Serb-held areas or rendered completely useless, Mladić assured the Assembly that the disciplined officers of the JNA's Knin Corps were going to change the picture around Sarajevo and that ultimately, the Bosnian Muslim side was not going to reap any benefit from the city unless it accepted peace.[15835] It is following this speech that the Assembly, including the Accused, voted unanimously to appoint Mladić as the Commander of the VRS.[15836]

4720. Even before these formalities relating to the creation of the VRS and his own appointment were completed, Mladić was engaged in the Sarajevo battlefield, primarily in efforts to evacuate the JNA personnel trapped in the various barracks in the city.[15837] In the process of negotiating those evacuations, Mladić made serious threats against the city and its citizens, revealing his hard-line approach towards the city. For example, on 11 May 1992, Mladić told a JNA General trapped in one of the barracks in Sarajevo that if the other side attacked that would be "the end of them"; he then advised the said General to use artillery fire against anything that posed an immediate threat to the barracks and not to spare either the Bosnian Muslim forces or the town.[15838] On the same day, in a conversation with another trapped JNA officer, Mladić said that he would "tear down all of Sarajevo for you".[15839] Similarly, on 19 May in a conversation with yet another JNA officer, after being told that an ABiH General, Jovo Divjak, had threatened to attack the barracks, Mladić replied that if Divjak did that, he "would sentence first himself and then entire Sarajevo to death."[15840] The next day, Mladić warned two JNA officers about the potential cistern attack and told them that if this attack happened "the city would be burnt down."[15841] He also specifically instructed one of the officers to ensure that any Bosnian Muslim attack against the barracks was responded to with force which was a hundred times greater.[15842] Further, on 24 May 1992, Mladić assured Tolimir that

15834 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 34–35.

15835 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 38–39.

15836 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court pp. 53–54.

15837 Mladić had arrived to Sarajevo on 10 May 1992. *See* fn. 424.

15838 P6069 (Intercept of conversation between Milosav Gagović, Ratko Mladić, and Miloš Baroš, 11 May 1992), pp. 1–2; Milosav Gagović, T. 31872–31873 (15 January 2013). *See also* P5672 (Intercept of conversation between Miloš Baroš, Ratko Mladić, and Gagović, 19 May 1992), p. 2 (wherein the Accused told the same General that "If a bullet is fired at you, you will see what will be fired at Sarajevo").

15839 P5693 (Intercept of conversation between Ratko Mladić and Potpara, 11 May 1992), p. 1.

15840 P6070 (Intercept of conversation between Milosav Gagović, Janković, and Ratko Mladić, 19 May 1992), pp. 2–3 (Mladić also added that the Bosnian Muslims were more vulnerable because they were encircled by Bosnian Serbs); Milosav Gagović, T. 31871–31873 (15 January 2013). *See also* P5670 (Intercept of conversation between Tomčić and Ratko Mladić, 19 May 1992) (during which Mladić said that the other side would not risk having the city destroyed over the JNA personnel in the barracks).

15841 P5673 (Intercept of conversation between Miloš Baroš, Ratko Mladić, and Potpara, 20 May 1992).

15842 P5673 (Intercept of conversation between Miloš Baroš, Ratko Mladić, and Potpara, 20 May 1992), p. 4.

should the latter or any of his men be harmed in anyway, "Sarajevo will be gone!"[15843] The following day, Mladić told an unidentified officer that if a single bullet was fired at Jusuf Džonlić barracks or Maršal Tito Barracks he would retaliate "against the town" such that "Sarajevo will shake, more shells will fall on [sic] per second than in the entire war so far."[15844] He then also stated that it was not his intention to "destroy the town and kill innocent people" and he preferred to fight the war in the mountains rather than in Sarajevo.[15845] As discussed earlier, on the same day, during a meeting with Plavšić and John Wilson, Mladić threatened to "level the city" if JNA barracks were not evacuated and added that international military intervention would only result in the destruction of Sarajevo.[15846]

4721. While these conversations with JNA officers took place in the absence of the Accused, the Accused was, however, privy to a number of other discussions and meetings during which Mladić elaborated his plans in relation to the city and the evacuation of the JNA personnel.[15847] As mentioned earlier, during one such meeting in May 1992, involving [REDACTED], Mladić, the Accused, Krajišnik, Plavšić, and Koljević, Mladić outlined his plan to carry out a widespread artillery attack against the entire city of Sarajevo.[15848] [REDACTED].[15849] Throughout this meeting, the Accused and the others remained silent.[15850] [REDACTED] if those present in the meeting, including the Accused, had been against it the shelling would never have happened.[15851]

4722. Subsequently, Mladić issued direct orders to SRK brigade commands to carry out an indiscriminate and disproportionate artillery attack against Sarajevo on 28 and 29 May 1992, the nature of which has been described in more detail in an earlier section of the Judgement.[15852] For example, on 28 May 1992, Mladić personally ordered Mirko Vukašinović to direct artillery fire at Baščaršija and also against Velešići and Pofalići where "there [was] not much Serb

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15843 P5657 (Intercept of conversation between Zdravko Tolimir, Ratko Mladić, and "Jerko Doko", 24 May 1992), p. 2.

15844 P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), pp. 1–2 (Mladić also emphasised that the Bosnian Muslims were trapped in the city with no way out).

15845 P1041 (Intercept of conversation between Ratko Mladić and unidentified male, 25 May 1992), p. 3. While Mladić did state during this conversation that it was not his intention to destroy the city and that he preferred to fight this war in the mountains rather than in Sarajevo, the Chamber considers that it is clear from this and all the other conversations he had in this period that, if he deemed it necessary, he was prepared to retaliate against the city as a whole, destroy it, and kill civilians.

15846 *See* para. 4025.

15847 *See e.g.* para. 4021. [REDACTED].

15848 *See* para. 4023.

15849 *See* para. 4023.

15850 *See* para. 4023.

15851 [REDACTED].

15852 *See* paras. 4024–4035.

population".[15853] Mladić also ordered Vukašinović to use artillery fire so as to ensure "that they cannot sleep, that we roll out their minds".[15854] The following day, Mladić told Potpara to be careful and not respond to provocations, and that he would not order the shelling of Sarajevo unless the Bosnian Muslims posed a threat to Potpara's men.[15855] Later that day, however, Mladić ordered Potpara to fire at the railway station in Sarajevo and told him to scatter the fire around.[15856] It is clear from these orders that Mladić showed no concern for the civilian population of Sarajevo nor for any civilian casualties that would result from his orders to shell the city, including Baščaršija, Velešići, and Pofalići.

4723. As also discussed earlier, on 30 May 1992, while the bombardment continued, Morillon and Mackenzie met with the Accused and Koljević to discuss these events.[15857] During the meeting, the Accused defended the actions of Mladić and the SRK, saying that due to their inexperience, the forces over-reacted to attacks by the Green Berets and that Mladić did not have all the forces under his command.[15858] In doing so, the Accused showed awareness that the bombardment of the city had been extensive and had gone too far.

4724. Nevertheless, despite the Accused's awareness, another massive attack on the city commenced on the night of 5 June and lasted until 8 June 1992.[15859] It was preceded by a meeting on the same day involving Mladić, the Accused, Krajišnik, Plavšić, Koljević and Đerić, during which the Accused instructed those attending that Sarajevo had to be resolved politically while "acting quietly, inch by inch" and told them to clean up Butmir, Hrasnica, Sokolović Kolonija, and Hrasno.[15860] The following day, while the bombing of the city was taking place, Mladić met the Accused, Koljević, Krajišnik, Ostojić, and others in Jahorina during which the Accused discussed the Strategic Goals, claiming "we have to protect our territories militarily" and that "the birth of a state and the creation of borders does not occur without war".[15861] That same day Mladić issued Directive 1, in which he stated that the VRS had "received the task to use offensive actions [...] in

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15853 P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992), p. 3; P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992).

15854 P1518 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992). *See also* P1042 (UNPROFOR report re conversations with BiH and JNA delegations, 29 May 1992), para. 5.

15855 D207 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 8.

15856 P1511 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992); P1522 (Intercept of conversation between Ratko Mladić and Potpara, 29 May 1992), p. 1.

15857 *See* para. 4037.

15858 P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 3; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; John Wilson, T. 4079–4080 (22 June 2010).

15859 *See* paras. 4039–4048.

15860 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93.

15861 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 95, 97.

order to improve operationally-tactical position in the wide area of Sarajevo".[15862] He then tasked the SRK to "mop up parts of Sarajevo" and "cut it out" along the Nedžarići-Stup-Rajlovac axis; he also tasked them with mopping up Mojmilo, Dobrinja, Butmir, and Sokolović Kolonija, and with de-blocking of Sarajevo–Trnovo and Pale–Zlatište communication.[15863]

4725. There is no doubt, therefore, that at the very beginning of the conflict in Sarajevo the Accused fully supported and actively encouraged the heavy-handed military approach taken by Mladić in Sarajevo, including the shellings that took place between 28 and 30 May and 5 and 8 June 1992. Indeed, [REDACTED], during the first months of the conflict, the Accused, Krajišnik, Koljević, and Plavšić, mainly due to their lack of knowledge of army matters, gave Mladić absolute power over such matters.[15864] Starting in June 1992, however, they began to gradually limit Mladić and eventually the "political power was on top".[15865]

4726. [REDACTED].[15866] [REDACTED].[15867]

4727. Despite this [REDACTED], of which he was fully aware, the Accused nevertheless continued to support Mladić and his plans for the city. For example, in Directive 3, issued by the Main Staff on 3 August 1992, Mladić outlined the objective of keeping Sarajevo "firmly under blockade" and thus instructed the SRK to "gradually tighten the encirclement".[15868] The next day, on 4 August 1992, at a meeting between the Accused, Mladić, Krajišnik, and Koljević, the participants accepted this directive without objection, although Koljević requested a "sabotage operation in Sarajevo" and the "[t]aking of Sarajevo".[15869]

4728. Similarly, in a meeting in Jahorina on 2 June 1993, attended by the Accused, Krajišnik, Prime Minister Lukić, Mladić, the SRK commanders, including Galić, and the presidents of Sarajevo municipalities,[15870] Mladić presented a report on the situation in the SRK's zone of responsibility in which he outlined the problems in the zone, the ABiH's unsuccessful attempts to break the blockade of the city, and then suggested, *inter alia*, that:

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15862 D232 (Directive 1, 6 June 1992), para. 2.
15863 D232 (Directive 1, 6 June 1992), para. 5. *See also* [REDACTED].
15864 [REDACTED].
15865 [REDACTED].
15866 [REDACTED].
15867 [REDACTED].
15868 D235 (Directive 3, 3 August 1992), pp. 3, 5. The orders relevant to Sarajevo in this directive were relayed the next day to the SRK units by the SRK Commander. *See* P5979 (SRK Order, 4 August 1992).
15869 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 24.
15870 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 182–194.

> Activities of sabotage and terrorist groups should be used in the future, as well as ambushes and *surprise elements*, therefore keeping *constant the negative effect on the moral* [*sic*] of Muslim forces and *population, keep them in fear and constant wondering as to the activities of our forces.* It is necessary to develop in them a feeling that their fate depends of [*sic*] the Army of Republika Srpska through tactical actions and our propaganda activities. Through *incessant activities and combat actions with all available SRK forces, cause as many losses as possible to the enemy and develop feelings of dependency, fear and in security* [*sic*].[15871]

At the end of this meeting, the Accused stated that he supported everything that was said at the meeting, that "a wounded animal is the most dangerous one", that nothing could be achieved through negotiations with Izetbegović, and that Izetbegović therefore must be defeated while at the same time the Bosnian Serbs needed to ensure "favourable international conditions".[15872] Following these remarks, Mladić addressed the Accused, Krajišnik, and Lukić, stating that the Main Staff would take into account their remarks and produce appropriate orders.[15873] Thus, on 25 June 1993, Directive 5 was issued, outlining the Lukavac '93 operation, in which Mladić tasked the SRK to "create conditions to assume control over [Sarajevo]".[15874] He explained in the directive that the VRS had been tasked with preventing the lifting of the blockade of Sarajevo and the capture of special-purpose facilities under SRK control.[15875] As discussed earlier, this operation in turn led to the capture of Mt. Igman and the threats of NATO air strikes against the Bosnian Serb side.[15876]

4729. A year and a half later, on 14 January 1994, in a meeting between the Accused, Mladić, Krajišnik, Milošević, Galić, SRK brigade commanders, and Sarajevo municipality presidents, the Accused discussed the military and political situation in Sarajevo as well as the negotiations in Geneva.[15877] During the meeting, Mladić stated that Sarajevo was to be resolved "militarily, not politically".[15878] He called for improvement in the "operative positions" of the SRK.[15879] He also recommended cutting off the tunnel used by the Bosnian Muslims and emphasised "responsibility and discipline in the army".[15880] Once again showing support for Mladić and his resolution to resolve the situation in Sarajevo militarily rather than politically, the Accused stated that Mladić

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15871 P2710 (VRS conclusions, 31 May 1993), pp. 3–5, 9 (emphasis added). The Chamber notes that while the document itself does not contain Mladić's signature, it contains handwritten notes and was seized from Mladić's house, thus suggesting that he was the author. *See* Prosecution's Motion for the Admission of 68 Sarajevo Romanija Corps Documents from the Bar Table with Appendix A, para. 5, Appendix A, pp. 4–5.

15872 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 194.

15873 P2710 (VRS conclusions, 31 May 1993), pp. 9–10.

15874 P843 (Directive 5, 25 June 1993), para. 5(a).

15875 P843 (Directive 5, 25 June 1993), para. 2.

15876 *See* paras. 3572–3275.

15877 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 133

15878 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 144.

15879 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 144.

15880 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 145.

was "100% right" and that the Bosnian Muslims "will break down in Sarajevo".[15881] He then ordered the creation of a "stand-by army" and for all soldiers recruited since April 1992 to remain in the army until the end of the war.[15882] He also ordered that the SRK's "[r]etaliation shall be 1:1".[15883] He ended the meeting by ordering the SRK commanders to "[q]uickly line up the brigades".[15884]

4730. In addition to the Accused's explicit exclamations of support of Mladić's strategy in Sarajevo recounted above, the Chamber has also received a number of Mladić's diaries in evidence which in turn reveal that a number of meetings took place throughout the conflict, which were attended by both the Accused and Mladić and during which the situation in Sarajevo was discussed and a course of action agreed upon. These also show that the two men continued to co-operate throughout the war and continued to agree on the course of action in relation to Sarajevo-related matters.[15885]

4731. As well as lending support to Mladić's activities in the Sarajevo battlefield, the Accused, in accordance with his powers to promote VRS officers,[15886] also granted Mladić an exceptional promotion on 28 June 1994 for his achievements as Commander of the VRS Main Staff, elevating his rank to Colonel General.[15887] By that point, Sarajevo had been under siege for two years and the Accused had been told on a number of occasions about the indiscriminate and disproportionate shelling the city was exposed to by the SRK.[15888]

4732. Similarly, the Accused also issued decrees assigning senior officers to the SRK, promoted them after their assignments, and bestowed decorations on the members of the SRK war units. On 31 August 1992, the Accused appointed Stanislav Galić as Commander of the SRK.[15889] On 16 December 1992, following a difficult period for the city of Sarajevo and particularly heavy indiscriminate shelling in September and October 1992 which resulted in the representatives of the international community protesting to Koljević, Plavšić, and the Accused,[15890] the Accused used his

15881 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 148.

15882 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 148.

15883 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 148–149.

15884 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 149.

15885 *See e.g.* P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 38–40, 42, 308–315; P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), p. 42.

15886 *See* para. 3427.

15887 P3046 (Radovan Karadžić's Decree on promotion of Ratko Mladić, 28 June 1994); Raynaud Theunens, T. 16863 (19 July 2011).

15888 *See* Section IV.B.3.c.iii.B: Accused's knowledge.

15889 P1200 (Decree of President of RS Presidency re Stanislav Galić, 31 August 1992).

15890 *See* para. 3562; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 22; Hussein Abdel-Razek, T. 5507 (19 July 2010) (testifying that he wrote a letter to the Accused requesting him to stop the shelling).

powers of exceptional promotion to promote Galić to the rank of Major General.[15891] Then, on 7 August 1994, just over a month after promoting Mladić, the Accused again granted an early promotion to Galić, giving him a rank of Lieutenant General.[15892] On 12 August 1994, after Mladić initiated a procedure for termination of Galić's professional military service on the basis of Galić's completion of more than 30 years of pensionable service, Galić requested, amongst other things, that the Accused follow through on his promise and award him the highest RS decoration and allocate to him a furnished apartment in the Novi Sad Garrison or in the Banja Luka Garrison.[15893]

4733. The Accused was also imperative in the appointment and successive promotions of Dragomir Milošević. Thus, on 10 July 1993, the Accused assigned Milošević, who at the time was the Chief of Operations and Training in the Drina Corps Command, to the posts of Chief of Staff and Deputy Commander of the SRK.[15894] Then, on 24 March 1994, only a month and a half after the shelling of Dobrinja and Markale on 4 and 5 February respectively, and despite receiving protests from the international community about these two incidents,[15895] the Accused used his powers of exceptional promotion to raise Milošević's rank from that of Colonel to Major General, effective the following day.[15896] Finally, on 8 August 1994, the Accused appointed Milošević as Commander of the SRK, effective as of 15 August 1994.[15897] Within the VRS, Milošević was considered to have been the Accused's man.[15898]

4734. In addition to the above appointments and promotions, the Chamber heard that on 25 June 1995, some two months after Scheduled Incident G.10 for which Ilidža Brigade was responsible and of which the Accused was aware,[15899] Mladić informed the SRK Command that on the occasion of St. Vitus Day, the Accused was going to award Petar Mrkonjić medals to the members of the Ilidža Brigade and the 1st Romanija Infantry Brigade, among others.[15900]

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15891 P2650 (Radovan Karadžić's decree on exceptional promotion, 16 December 1992).

15892 P2649 (Radovan Karadžić's decree on early promotion, 7 August 1994)

15893 P1206 (Record of retirement of Stanislav Galić, 12 August 1994), p. 1. According to the evidence before the Chamber, Galić was relieved of his duty as the SRK Commander because he had agreed to the TEZ and the WCPs against Mladić's wishes. *See* fn. 11476.

15894 P2676 (Radovan Karadžić's decree on appointment of Dragomir Milošević as SRK Chief of Staff, 10 July 1993); D2149 (Aide mémoire of Manojlo Milovanović), p. 24.

15895 *See* paras. 4835–4836.

15896 P2677 (Radovan Karadžić's decree on Dragomir Milošević's promotion, 24 March 1994). The Chamber notes that while the English translation of P2677 refers to the promotion being effective from 25 March 1993, the original in BCS refers to 25 March 1994.

15897 P2678 (Radovan Karadžić's decree on appointment of Dragomir Milošević as SRK Commander, 8 August 1994), p. 2.

15898 D2901 (Letter from Dragomir Milošević to Ratko Mladić, 19 May 1996), p. 2.

15899 *See* para. 4405.

15900 P2814 (VRS Main Staff Order, 25 June 1995).

(C) Conclusion

4735. Based on the foregoing, the Chamber finds that the Accused brought in and appointed Mladić to the post of VRS Main Staff Commander. According to the Accused's own words at the Bosnian Serb Assembly session in April 1995, he personally went into a lot of effort to bring in Mladić, having noticed Mladić's activities in Knin and having taken note of his "blunt statements". Then, during the 16th Session of the Bosnian Serb Assembly and immediately prior to his appointment as VRS Commander, Mladić freely articulated his Sarajevo strategy in front of the Accused and other members of the Bosnian Serb political leadership, specifying in clear terms that in his view, besieging and targeting Sarajevo with large numbers of heavy weapons would compel Bosnian Muslims to accede to the demands made by the Bosnian Serbs. Despite this clear elucidation of what was to come for Sarajevo, the Accused and the other members of the Bosnian Serb leadership voted in favour of Mladić's appointment.

4736. The Chamber further finds that shortly after his appointment Mladić did indeed intensify the campaign against Sarajevo through his involvement in the widespread shelling of the city by the SRK as described above and in sections of the Judgement dealing with Scheduled Incidents G.1 and G.2. Despite this intensification, which various international observers brought to the Accused's attention and which he himself indirectly acknowledged in his meeting with Morillon and Mackenzie on 30 May 1992, the Accused nevertheless lent his unwavering support to Mladić, defending him before the international community and blaming the other side for the intensification of the campaign.[15901] Further, the Accused continued to actively participate in and approve of Mladić's acts and plans for the city, as illustrated by his acceptance of all the military directives signed by Mladić, as well as the 2 June meeting in Jahorina and a number of other meetings where the two men, along with others, discussed their plans for Sarajevo. Indeed, on 28 June 1994, by which stage the Accused was fully aware of the international community's objections to the SRK's and Mladić's activities in Sarajevo,[15902] the Accused decided to use his *de jure* powers to promote Mladić to the rank of Colonel General, thus in fact rewarding his activities on the Sarajevo battlefield. Accordingly, the Chamber has no doubt that the Accused supported Mladić in his efforts to intensify the shelling and the sniping in the city throughout the conflict in Sarajevo and throughout the Indictment period.

15901 *See* para. 4723.

15902 *See* Section IV.B.3.c.iii: Accused's knowledge.

4737. In reaching the above conclusions, the Chamber was cognisant of the tensions that existed at certain times between the Accused and Mladić[15903] but finds that such tensions were not of such intensity and/or scope so as to diminish the level of support which the Accused provided to Mladić's policies vis-à-vis Sarajevo, as clearly shown by the evidence outlined above.

4738. The Chamber further finds that aside from Mladić, the Accused also promoted or otherwise decorated SRK officers and SRK units who were implicated by international observers in the commission of crimes against the population of Sarajevo, thus showing his support for them. As outlined above, the Accused promoted Galić and Dragomir Milošević, despite being constantly informed of problems with disproportionate firing into the city by the SRK units, as outlined later in this Judgement.[15904] Indeed, his relationship with Milošević was particularly close and continued to be one of mutual support, despite the fact that Milošević was directly implicated, among other things, in the use of modified air bombs in the city.[15905] Further, the Accused decorated the members of the Ilidža Brigade in July 1995, even though he was aware that Ilidža Brigade had fired a modified air bomb into the centre of Hrasnica, as found by the Chamber earlier in this Judgement.[15906]

4739. As for the Accused's claim that he hardly ever knew whom he was promoting because he would simply sign off on promotions on the basis of proposals from commanders of "lower units", the Chamber does not consider this to have been the case with regards to Mladić, Galić, and Dragomir Milošević. Indeed, given their high ranks and taking into account the Accused's particular interest and involvement in everything Sarajevo-related, the Chamber does not accept that he would have been unaware of their promotions and/or that he promoted them purely on the basis of the proposals from lower level commanders. Contrary to his submissions, the Chamber is convinced that when appointing and promoting these three men, the Accused was fully aware and supportive of their appointments and promotions, all the while having knowledge that they were implicated in indiscriminate and disproportionate shelling and in sniping attacks on the civilian population in the city. In doing so, he indicated that the criminal actions of Mladić, as well as the actions of the SRK Commanders and their units, were immune from investigation and punishment.

15903 *See* paras. 3122–3141.
15904 *See* Section IV.B.3.c.iii: Accused's knowledge.
15905 *See* paras. 4403–4405.
15906 *See e.g.* para. 4413.

ii. *Accused's oversight of military activities in Sarajevo*

(A) Arguments of the parties

4740. The Prosecution argues that the Accused, as Supreme Commander of the VRS, oversaw the strategy and implementation of the plan through his command and control over the Bosnian Serb Forces in Sarajevo.[15907] It argues that the Accused was at the "apex of control" of the Bosnian Serb Forces through his position as "President of the SDS, President of the Presidency, sole President and Supreme Commander" and that this power was acknowledged by the members of the VRS, including Mladić, Milovanović, Galić, and Dragomir Milošević.[15908]

4741. The Accused in turn argues that no substantial discussions took place during meetings of the RS political leadership and the SRK commanders as these meetings were of a formal nature.[15909] He further claims that Galić and Dragomir Milošević did not receive orders or instructions from the Presidency that applied exclusively to the SRK, and that "any information arriving from the Presidency applied across the board to the VRS".[15910] With respect to Galić, the Accused argues that communication between them was limited and "practically non-existent in terms of carrying out combat activities".[15911] As for Dragomir Milošević, he argues that neither the civilian authorities of the RS nor the political leaders of the SDS ever influenced Milošević's command because they did not interfere in military matters.[15912] He argues that communication on the ground between republican and military authorities was disrupted and that the system of command and control did not work well due to "obsolete technical equipment" of the SRK.[15913] The Accused also argues that due to the shortage of professional officers in the SRK, the VRS faced problems achieving effective control over its units.[15914] Finally, he argues that "in one period of the war" the relationship between the SRK and republican authorities was tense resulting in a refusal by the military to obey orders from the Supreme Command.[15915]

(B) SRK as a professional army

4742. The Chamber recalls that the VRS, including the SRK, was established as a professional army pursuant to a decision by the Bosnian Serb Assembly and enactment of the Defence Act and

15907 Prosecution Final Brief, paras. 612(1), 614–619.
15908 Prosecution Final Brief, paras. 614–615, 618.
15909 Defence Final Brief, confidential, para. 2325.
15910 Defence Final Brief, para. 2325.
15911 Defence Final Brief, para. 2965.
15912 Defence Final Brief, para. 2328.
15913 Defence Final Brief, para. 2962.
15914 Defence Final Brief, paras. 2329–2330.
15915 Defence Final Brief, para. 2327.

the Law of the Army.[15916] The Chamber also recalls its earlier finding that the Accused was involved in the creation of the VRS.[15917]

4743. Throughout the case, the Chamber received evidence that the SRK was a well-organised corps that functioned as a professional army within the structure of the VRS, with an effective command and control structure in place in its units at all levels.[15918] On 19 November 1992, in Directive 4, Mladić himself stated that the SRK "has fully stabilised command and control in the Corps and subordinate units".[15919] A July 1994 analysis on the combat readiness of the SRK artillery rocket units prepared by the SRK Chief of Artillery, Tadija Manojlović, states that while the SRK was debilitated by the departure of officers for the FRY in the early stages of the war which in turn had a negative effect on command and control, it still managed to attain "evident results in [the] protection of the Serbian people and the territory" and that, notwithstanding a number of problems it had faced, such as the lack of trained soldiers and officers, the results attained were "excellent and outstanding".[15920] According to an April 1993 VRS report, during the previous year, the VRS had been under a "single control and command structure" whereby each corps was assigned specific missions, in their zones of responsibility, within a specific time period.[15921]

4744. Thomas testified that from Mladić down to the brigade commanders, "there was a kind of command and control that I would expect to find in a NATO army",[15922] while Van Baal testified that, by 1994, the VRS had a highly centralised command and control structure.[15923] KDZ182 also thought that the chain of command of the VRS and the SRK was "working perfectly" and that "responsibility at each echelon was effectively implemented in the way the actions were actually

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15916 *See* paras. 160– 164.

15917 *See* paras. 162–163, 3098.

15918 *See* Adjudicated Fact 37; Richard Philipps, T. 3755–3756, 3818–3819 (15 June 2010).

15919 P976 (Directive 4, 19 November 1992).

15920 D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), pp. 2, 9. *See also* Richard Philipps, T. 3795–3809 (15 June 2010).

15921 D325 (VRS Main Staff analysis of combat readiness and army activities in 1992, April 1993), pp. 7–8. According to Galić, when he took command of the SRK in September 1992, Šipčić had been gone for approximately one month and there was a lack of discipline on the frontlines in the northwest due to the fact that the JNA had left but the TO units had not yet been sufficiently incorporated into the VRS. *See* Stanislav Galić, T. 37619–37622 (23 April 2013); D3483 (SRK Order, 22 September 1992), pp. 1–3. However, the Chamber recalls its finding made earlier that the TOs were integrated into the VRS in mid-May 1992. *See* para. 3176. According to Prosecution expert Philipps, when Galić took command of the SRK, the training and organisation within the corps improved. *See* Richard Philipps, T. 3807 (15 June 2010); D321 (SRK Order, 13 July 1994); P1616 (SRK Order, 5 January 1995).

15922 P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 50 (adding that he could not recall a single instance where the Bosnian Serb brigade commanders did not follow a corps commander's direction). Thomas also noted that the cease-fire in February 1994 did have a significant impact on the city of Sarajevo and demonstrated the high level of command and control in the VRS. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 107.

carried out".[15924] [REDACTED] Mladić exercised absolute power and complete control over everything that concerned the VRS, such as "fighting, logistics, and a number of other elements" but was not involved in the political agenda of the Bosnian Serb leadership.[15925]

4745. KDZ450 also testified that the chain of subordination of the armed forces in Sarajevo was "very simple", with Mladić being the "high command", then the SRK Commander, and then the brigades.[15926] Military structures worked in a "very typical manner" in that responsibility was very entrenched and the room for individual initiative was "very slim".[15927] On many occasions Mladić demonstrated effective control, for example, by arranging the opening of confrontation line crossing points, implementing temporary cease-fires, and directly commanding military operations.[15928] Wilson testified that Mladić's command was far-reaching and that during the meetings they had together, Mladić never denied that he was in control of the war-like activities conducted by the military forces in Sarajevo.[15929] KDZ182 considered that Mladić was the one who had the real power such that all the incidents in Sarajevo were in fact orchestrated, guided, and designed by him.[15930] In his opinion, Mladić instructed the SRK Commander to exert pressure and terrorise the population.[15931]

4746. As for the SRK Commanders, Galić was very popular, had great authority, and was aware of everything that happened in his area of responsibility.[15932] On the occasions when Abdel-Razek met with Galić at his command centre, he noticed that it was run in a professional manner, with officers who had professional relations.[15933] While Mladić was the "supreme Serb military commander", Galić still had "everyday control over activities in Sarajevo", such that "militia

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15923 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 24.

15924 P2414 (Witness statement of KDZ182), pp. 20, 53 (under seal).

15925 [REDACTED].

15926 KDZ450, T. 10554–10555 (19 January 2011) (private session).

15927 KDZ450, T. 10554 (19 January 2011) (private session).

15928 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 73, 127(adding that Mladić was known for carrying out what he said he would do and that Mladić's threats were taken seriously by Wilson). *See also* John Wilson, T. 4055–4056, 4085 (22 June 2010)

15929 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 126, 128. *See also* D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 114 (testifying that Mladić treated his generals badly and that they were his "yes-men").

15930 P2447 (Witness statement of KDZ182), p. 13; P2414 (Witness statement of KDZ182), pp. 11, 16, 54, 65 (under seal).

15931 P2414 (Witness statement of KDZ182), p. 22 (under seal).

15932 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 34; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 23–24; P6060 (Record of interview with KDZ185), e-court p. 10 (testifying that Galić had effective command and control over the SRK).

15933 Hussein Abdel-Razek, T. 5501 (19 July 2010).

groups" in the Sarajevo area were under his control.[15934] Tucker testified that, when he met with Galić, it was clear that the relationship between Mladić and Galić "was that of a senior commander and a subordinate" whereby Mladić was the highest ranking Bosnian Serb military commander and only considered himself subordinate to the Bosnian Serb Assembly, while Galić was a disciplined and obedient subordinate.[15935] According to Mole, Galić was "extremely emotional", but carried out his military duties extremely well and "could achieve what he wanted" regarding Sarajevo.[15936] Galić would visit the brigades, such as the 3rd Sarajevo Brigade and 1st Romanija Brigade for example, a few times per month, meet the commanders, gain knowledge of the situation on the frontlines, and then sometimes call everyone together for a briefing.[15937] In essence, Galić actively monitored the situation in Sarajevo, was cognisant of the situation in the battlefield, was in a good position to instruct and order his troops, was in full control over the SRK artillery assets, and was aware of the quantity of ammunition being used.[15938]

4747. The SRK continued to operate as a professional military force after Dragomir Milošević took over from Galić as the SRK Commander;[15939] he too was respected and highly esteemed by the SRK soldiers.[15940] As was the case with Galić, Milošević regularly visited the troops and the frontlines.[15941] He would have a briefing with his Chief of Staff and Corps Staff every morning, during which he made decisions and issued orders, and in the evening would receive reports from the Corps Staff.[15942] Once a week or once a fortnight Dragomir Milošević had briefings with the brigade commanders.[15943]

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15934 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 28 (explaining that once his vehicle was stopped and searched by "militia members" dressed in civilian clothes who were clearly under the control of a military officer under Galić's command); Hussein Abdel-Razek, T. 5501 (19 July 2010).

15935 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 41, 55 (adding that the strategic plan for any operation would emanate from Mladić).

15936 P1426 (Witness statement of Richard Mole dated 7 May 2010), para. 46. *See also* P1048 (Record of interview with KDZ185), e-court p. 10 (under seal); KDZ185, T. 4216, 4246 (28 June 2010), T. 4263, 4269 (29 June 2010) (private session). On cross-examination, Mole testified that he did not think that the Accused or Mladić had direct involvement in the day-to-day events in Sarajevo as that was the task of Galić as the Commander; however, Galić would have responded to political pressure and military pressure from those above him. Richard Mole, T. 5906–5907 (18 August 2010).

15937 Ratomir Maksimović, T. 31583 (17 December 2012) (private session); D2267 (Vlado Lizdek's interview with OTP), e-court pp. 24–25.

15938 *See* Adjudicated Facts 33, 34, 36, 38–41.

15939 On the reasons behind Galić's removal, the Chamber recalls that KDZ450 testified that Galić was relieved of his duty as the SRK Commander because he had agreed to the TEZ and the WCPs, against Mladić's wishes. *See* P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 38–39; Stanislav Galić, T. 37449 (18 April 2013).

15940 *See* Adjudicated Fact 2855.

15941 Stevan Veljović, T. 29261–29262 (23 October 2012); Adjudicated Fact 2854.

15942 Stevan Veljović, T. 29245–29247 (23 October 2012).

15943 Stevan Veljović, T. 29248 (23 October 2012). *See also* Adjudicated Fact 2850.

4748. While subordinated to Mladić, Dragomir Milošević was in command in the SRK and, therefore, according to KDZ304, was responsible for SRK operations, including for any SRK attacks against civilians or indiscriminate or disproportionate attacks.[15944] According to Fraser, while Mladić was in charge and directed operations in the whole of BiH, including Sarajevo, "within that little box called Sarajevo, Dragomir Milošević was the guy in command".[15945] KDZ182 considered that "Mladić was the strategist and Dragomir Milošević was the technician in Sarajevo", that is, Mladić had "the power to design" and Dragomir Milošević had "the power to carry out" in that he "kept total mastery of the means needed to implement locally a certain number of actions".[15946]

4749. Inđić was also important in the context of Sarajevo, being "Mladić's eye", a participant in all of the significant meetings held in Sarajevo, and always alongside Galić and Dragomir Milošević at those meetings; thus, while Inđić did not take decisions he had a lot of influence.[15947] Indeed, Dragomir Milošević would not do anything without Inđić by his side and could not take any strategic initiatives.[15948] In other words, Dragomir Milošević carried out orders but had very little freedom to act independently, as he only executed orders of his superiors.[15949]

4750. While the chain of command appeared to function well during the conflict, the Chamber received evidence, mainly from former SRK soldiers and officers, that the SRK had problems which had an impact on its functions as a professional army. For example, Dragan Maletić, Slavko Gengo, Blagoje Kovačević, and Stojan Džino testified that there was a lack of professionally trained soldiers and officers within their units, which in turn affected the command and control structure and combat effectiveness.[15950] On the other hand, Vlade Lučić testified that the shortage of professional officers in his unit, the 2nd Mountain Battalion of the 1st Romanija Infantry Brigade,

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15944 P2407 (Witness statement of KDZ304), pp. 6, 9; KDZ304, T. 10452 (18 January 2011) (private session), T. 10514 (18 January 2011). On cross-examination, KDZ304 conceded that he had not seen a single order from the SRK to target civilians. *See* KDZ304, T. 10514 (18 January 2011).

15945 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 9; David Fraser, T. 8014–8015, 8028–8029 (18 October 2010).

15946 P2414 (Witness statement of KDZ182), pp. 12, 15–19, 48, 65 (under seal); KDZ182, T. 13041–13042, 13046–13049 (9 March 2011); P2419 (VRS Main Staff Order, 6 November 1994); P2420 (Report of 2nd Light Infantry Brigade re VRS Main Staff order, 7 November 1994).

15947 [REDACTED].

15948 [REDACTED].

15949 P2447 (Witness statement of KDZ182), p. 13; [REDACTED]. However, during a meeting with UNPROFOR on 21 March 1995, regarding aircraft arriving and departing from Sarajevo airport that were reportedly being fired upon by the SRK, Dragomir Milošević stated that he would ensure that the SRK refrain from firing at aircraft. It was noted that for the first time Dragomir Milošević appeared more dominant in the meeting with Inđić and Fraser, the drafter, records that this was uncharacteristic of the SRK Commander. *See* P2429 (UNPROFOR report, 21 March 1995); [REDACTED].

15950 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 30; D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 26; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 35; D2387 (Witness statement of Stojan Džino dated 4 November 2012), paras. 52–55.

did not have a major impact on the quality of command because the battalion conducted additional command training and took a professional approach to commanding.[15951] Maletić also conceded that, over time, the level of training and combat proficiency improved because an effective command and control had been established.[15952] This is indeed confirmed by Tadija Manojlović's July 1994 analysis of combat readiness, referred to above.[15953]

4751. Based on all the evidence outlined above, and relying also on the evidence and findings made in the earlier sections of this Judgement,[15954] the Chamber considers that, from its creation and throughout the conflict the SRK, just like the rest of the VRS, functioned as a professional military force. It was fully integrated into the VRS chain of command, it had an effective command and control structure in place with the SRK Command, and it was fully in charge of the SRK brigades and other subordinate units. While the Chamber accepts that some of those units lacked officers and professional soldiers in the beginning of the conflict, as outlined in the July 1994 analysis of the combat readiness of SRK artillery rocket units, the evidence shows that, overall, the SRK was a well-functioning professional corps of the VRS. Galić and Dragomir Milošević were clearly in command of the SRK units during their respective tenures and had effective control over those units. Mladić as the commander of the Main Staff was their superior and exercised effective control over them, through the regular chain of command.

(C) Accused's authority over the SRK

4752. As described previously in this Judgement, the Accused in his capacity as President was also the Supreme Commander of the VRS.[15955] As such, he held the highest *de jure* authority in the VRS.[15956] Further, the Chamber found that from May 1992 and throughout the conflict, the Accused, in fact, exercised this authority over the VRS.[15957] Accordingly, he was involved in the VRS at the strategic level, and when he desired, the operational level as well.[15958]

4753. The Chamber found in Section IV.A.3.a.iii that the Accused maintained his role as Mladić's superior and retained his authority over him throughout the conflict.[15959] Many of the witnesses

15951 D2516 (Witness statement of Vlade Lučić dated 5 November 2012), paras. 6, 22–23 (adding that his unit "sometimes" had problems in achieving effective control over some of its members, but that these problems were not ignored).

15952 D2519 (Witness statement of Dragan Maletić dated 9 November 2012), para. 30.

15953 D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), pp. 4–5.

15954 *See* paras. 3098–3099.

15955 *See* para. 3098.

15956 *See* para. 3098.

15957 *See* paras. 3142–3157.

15958 *See* para. 3157.

15959 *See* para. 3141.

who were in Sarajevo during the conflict and interacted with the Accused and Mladić testified that the Accused, together with and through Mladić, was fully in control over the SRK. For example, Banbury testified that the Accused and Mladić absolutely had the ability to "modulate the level of terror" in Sarajevo as they could stop the shelling and the sniping.[15960] [REDACTED] had the impression that there was a "very tight subordination" that was displayed from the corps commander towards the military commanders higher up and then the political leaders.[15961] As noted earlier, during the first months of the conflict, the Accused, Krajišnik, Koljević, and Plavšić did not deal with issues that related to military affairs but this restraint on their part waned starting in June 1992 when they began to gradually limit Mladić.[15962] The Chamber also recalls that a number of witnesses who were in Sarajevo during the conflict testified about unity between Mladić and the Accused.[15963] Indeed, during his time in Sarajevo, Bowen observed that Mladić usually accompanied the Accused.[15964]

4754. The Chamber received evidence about a number of specific meetings where the Accused exerted control or demonstrated his influence over the forces in Sarajevo. For example, on 30 May 1992, in a meeting with the Accused, Morillon referred to the Secretary General's appeal to Mladić to "stop the bombardment" in Sarajevo.[15965] While noting that the soldiers were inexperienced and self-organised and that Mladić did not have everyone under his command, the Accused nevertheless said he was in a position to stop the bombardment.[15966] Eventually, the Accused informed UNPROFOR that Mladić had indicated by phone that the bombardment would cease.[15967] On the same day, Wilson also met with Mladić to convey the Secretary General's appeal to cease or lessen the shelling of Sarajevo.[15968] When asked for confirmation of the Accused's offer to

15960 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 200.

15961 [REDACTED].

15962 *See* para. 4725. Wilson testified that he attended a meeting on 25 May 1992, in relation to opening the Sarajevo airport. During this meeting, Mladić stated, in the presence of Plavšić, that he was subordinated to the political leadership. *See* P1040 (UNPROFOR report re meeting with Biljana Plavšić and Ratko Mladić, 25 May 1992), para. 7; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 74. *See also* Bogdan Subotić, T. 40050–40051 (19 June 2013) (testifying that the RS Presidency would summon Mladić when necessary and the latter would come and brief the Presidency).

15963 *See* paras. 3117–3120.

15964 P2068 (Witness statement of Jeremy Bowen dated 10 August 2009), paras. 70, 72.

15965 P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 1–2.

15966 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 1–3, 8; John Wilson, T. 4079–4080 (22 June 2010). Wilson testified that while this lack of control may have existed at the very beginning of the conflict, it did not explain the overall strategy of the siege and bombardment of Sarajevo at the time; Wilson believed that Mladić had very firm control over heavy weapons and the firing in Sarajevo. *See* P1029 (Witness statement of John Wilson dated 4 November 2008), para. 82; John Wilson, T. 4079–4080 (22 June 2010).

15967 P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 11, 15; P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80.

15968 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 77; P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992), para. 1; P1044 (UNPROFOR report re attack on UN, 30 May 1992),

withdraw all heavy weapons, Mladić said that he had no knowledge of such an offer but would nevertheless give his advice to his government and abide by any agreement made, essentially confirming that he was responsive to and subordinate to the political leadership.[15969] From this, Wilson concluded that there seemed to be a very comfortable relationship between the Bosnian Serb civilian leadership and Mladić; indeed, Mladić would repeatedly say that he was a soldier with no political ambitions.[15970] While Mladić had a strong personality, and was capable of acting independently, ultimately he did "what his political masters told him to do".[15971]

4755. [REDACTED] a meeting on 16 February 1994 between UNPROFOR, Galić, and Inđić at Lukavica, where WCP sites and number and location of the deployment of UNMO and UNPROFOR personnel in Sarajevo were agreed upon, but the agreement had to be sent to the political authorities for approval; this demonstrated that any discussions with Galić that resulted in proposals could only be considered non-binding, as Galić was not able to commit himself without asking his superiors, both military and political.[15972]

4756. Van Baal recalled an incident on 20 March 1994, in which soldiers from the Ilijaš Brigade surrounded a CanBat contingent which had taken custody of heavy weapons in the TEZ; this prompted Van Baal to telephone the Accused in protest.[15973] The Accused stated that he would give the order not to shoot and some 15 to 20 minutes later the VRS soldiers withdrew.[15974] On the same day, Van Baal became aware of the presence of mines under CanBat APCs and requested that the Accused order their removal.[15975] The Accused assured Van Baal that he would do so and the mines were subsequently removed.[15976] Later that evening, Van Baal discovered that mines were again placed underneath the CanBat APCs.[15977] The next day he met with the Accused and Galić

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para. 1; John Wilson, T. 3924–3925 (21 June 2010). This meeting was motivated by Security Council Resolution 757. *See* John Wilson, T. 3926 (21 June 2010); P1031 (UNSC Resolution 757, 30 May 1992).

15969 P1043 (UNPROFOR report re meeting with Ratko Mladić, 30 May 1992), para. 5; P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 78, 127; John Wilson, T. 3926 (21 June 2010).

15970 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 127, 132, 134.

15971 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 132–133. Wilson cited as another example an incident during the Sarajevo airport negotiations where the Accused took Mladić into an adjoining room and engaged in a heated argument, after which Mladić changed his position and accepted the proposal to hand over the airport. *See* P1029 (Witness statement of John Wilson dated 4 November 2008), para. 134.

15972 [REDACTED]; P2120 (UNPROFOR report re meeting with Stanislav Galić, 16 February 1994).

15973 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 21–22.

15974 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 23–24.

15975 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 25; Adrianus van Baal, T. 8406–8407 (27 October 2010).

15976 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 26; Adrianus van Baal, T. 8406 (27 October 2010). However, upon questioning by the Chamber, Van Baal could not verify that the instructions came directly from the Accused to the SRK soldiers on the ground or whether they came through an intermediary. *See* Adrianus van Baal, T. 8535–8536 (28 October 2010).

15977 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 27; Adrianus van Baal, T. 8406 (27 October 2010), T. 8535–8536 (28 October 2010).

and told them that mines were there; the Accused then told Galić, "you promised me that this would be done last night" and ordered Galić to remove the mines.[15978] Galić left the room and immediately carried out the orders of the Accused.[15979] In the same meeting, the Accused also ordered Galić to remove heavy weapons from the TEZ; Galić implemented the order despite disagreeing with the Accused.[15980] Van Baal deduced that the Accused was in a position to give orders to Galić, that Galić's orders were executed through the command and control system, and that there was immediate feedback through the SRK communications system.[15981] Thus, the Accused was in control and capable of enforcing his political undertakings.[15982]

4757. Some of the witnesses noted, however, that the Accused was not always in control of the forces in Sarajevo and that Mladić would not always do as he was told in relation to Sarajevo. For example, Abdel-Razek explained that the Bosnian Serb political leadership was amenable during the meetings with him, but that there were problems with implementation on the ground resulting from the problems in the chain of command and the fact that the good intentions of the political leadership were not reaching the soldiers.[15983] He later stated that it was a situation of civil war with "civilians who carried weapons and who were armed with strong passions" such that "there was a lack of control by the central command and that there was no full co-ordination between the leadership and the higher command and the subordinates on the ground".[15984] Similarly, Momir Bulatović recalled a meeting of the FRY Council of Co-ordination of State Policy in Belgrade on 18 August 1992 discussing the situation in Sarajevo.[15985] Milan Panić, the FRY Prime Minister, stated "the problem is war, they are shooting. [The Accused] told us yesterday that he did not

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15978 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 28. *See also* Adrianus van Baal, T. 8536 (28 October 2010).

15979 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 28; Adrianus van Baal, T. 8407 (27 October 2010), T. 8535–8536 (28 October 2010). Van Baal testified that the order directly from the Accused to Galić was carried out within 20 minutes and he was notified by Galić, personally, meaning that the "remarks and instructions" from the Accused were being directly carried out. *See* Adrianus van Baal, T. 8536 (29 October 2010).

15980 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 29.

15981 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 30; Adrianus van Baal, T. 8536 (28 October 2010).

15982 P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), para. 76 (according to Van Baal, this was demonstrated by a conversation he had with the Accused wherein the Accused promised him that he would contact General Milovanović and order a cease-fire); P1827 (Intercept of conversation between Adrianus van Baal and Radovan Karadžić, 31 May 1994), p. 2.

15983 Hussein Abdel-Razek, T. 5529–5531, 5534, 5585–5587, 5597 (20 July 2010), T. 5611, 5615–5616, 5618–5620, 5623–5624, 5640, 5676 (21 July 2010).

15984 Hussein Abdel-Razek, T. 5676–5677 (21 July 2010). The Chamber considers that this part of Abdel-Razek's evidence given on cross-examination is inconsistent with much of his testimony on direct examination, particularly the evidence that meetings with Bosnian Serb leaders were difficult and that, on both sides, "leaders manifested cooperation; however, in reality, they acted differently and undertook different actions that were not cooperative". *See* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 7, 18, 22.

command the guns, they do it themselves".[15986] Also at this meeting, the Chief of the VJ General Staff stated, "when [the Accused] was at the talks the other day, you heard him say that he did not have control over the individuals who were doing that, but that he did know that they were doing it. They fire one shell at Sarajevo and it's like they fired a thousand shells. Some people get drunk and say, 'Let's fire one.' It's very damaging for us".[15987] Bulatović also expressed an opinion that the Bosnian Serb leadership did not have "full control over the command" and that it was "somewhat detached from the staff that is working and operating [in Sarajevo]".[15988] Bulatović testified that the FRY political leadership advised the Accused numerous times about the detrimental impact that the shelling of Sarajevo had on the political position of the Bosnian Serbs, which the Accused had agreed with but had been unable to solve.[15989] In Bulatović's opinion, the Accused lacked control over the VRS.[15990]

4758. As for the Accused's relationship with Mladić, Abdel-Razek thought that Mladić was "one of the few people who could stop Karadžić's negations and influence" and that he was the only one who could "refuse or accept any of Karadžić's proposals".[15991] Tucker testified that he, Morillon, and the UNPROFOR staff formed an opinion that, in most cases, Mladić would do what the Accused and the Bosnian Serb Assembly directed him and the VRS to do.[15992] However, if Mladić believed that he was being ordered to do something that would "endanger" the Bosnian Serbs, he did not always do as ordered.[15993] Tucker also stated that although the Accused would often make promises, he needed to speak to the military to actually get things done since the Accused did not know the details of what was going on in the military.[15994] Based on the observations he made at the time, Tucker thought that Mladić "pretended he was subservient to Karadžić", and that the Accused and Koljević had limited power to "actually influence and decide tactical military

15985 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 25; D3054 (Notes of session of Council for Coordinating Positions on State Policy, 18 August 1992), p. 89.

15986 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 25; D3054 (Notes of session of Council for Coordinating Positions on State Policy, 18 August 1992), pp. 10–11; Momir Bulatović, T. 34525–34526 (28 February 2013).

15987 D3054 (Notes of session of Council for Coordinating Positions on State Policy, 18 August 1992), p. 89.

15988 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 26; D3054 (Notes of session of Council for Coordinating Positions on State Policy, 18 August 1992), p. 89; Momir Bulatović, T. 34560–34561 (1 March 2013).

15989 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 29–30; D3055 (Record of 6th session of FRY's SDC, 9 December), p. 24–25 (wherein, in relation to events in Sarajevo, Dobrica Ćosić, President of the FRY, commented, "[h]ow many times have we advised [the Accused] about Sarajevo?").

15990 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 29–30.

15991 P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 12. *See also* D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 115 (testifying that Mladić would belittle the Accused and other members of the RS Government).

15992 Pyers Tucker, T. 23225–23226 (18 January 2012).

15993 Pyers Tucker, T. 23226 (18 January 2012); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 277.

events".[15995] However, after being shown a number of VRS orders and documents showing the involvement of the Accused in military matters, Tucker stated that the Accused's involvement with military planning and co-ordination was much greater than either he or Morillon believed at the time.[15996] Tucker also explained that the Accused's level of knowledge of military detail was greater for Sarajevo than other parts of BiH.[15997]

4759. Tucker gave two specific examples where Mladić seemed to be acting independently of the Accused. The first was the co-ordinated military attack on Sarajevo by the SRK,[15998] which took place while the Accused was at peace talks in Geneva on 31 October 1992 and surprised the Bosnian Muslims side; Tucker thought that the attack appeared to be a military initiative on the part of Mladić and that it was no coincidence that it happened while the Accused was away.[15999] It was Morillon's view that the Accused was unlikely to have approved a military attack while in Geneva.[16000] Tucker believed that the attack was a message from Mladić and possibly "hardliners in the civilian leadership (e.g. Krajišnik)" that the international community had no real power to influence events in BiH.[16001]

4760. The second was a meeting on 15 November 1992, attended by Morillon and Mladić in Lukavica, during which Mladić spoke as if he, and he alone, had the ability to make decisions and implement them and "barely made any effort to conceal the fact that nothing could or would happen in Bosnian Serb held territory without his specific approval"; according to Tucker, it was "very apparent that he made all the practical military decisions that mattered".[16002] Tucker also

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15994 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 278, 280.

15995 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 277–285; Pyers Tucker, T. 23224–23226 (18 January 2012).

15996 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 285; P976 (Directive 4, 19 November 1992); P3037 (VRS Main Staff Order, 20 November 1992); P4248 (Timetable for Military-Political Conference in the Drina Corps, 23 November 1992); P2085 (Order of Drina Corps, 24 November 1992); P4924 (Amendment to Directive 4, 25 November 1992).

15997 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 69, 281; P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 7.

15998 *See* paras. 3562.

15999 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 37, 47.

16000 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 48.

16001 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 47.

16002 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 56, 59; P4214 (UNPROFOR report, 15 November 1992), para. 21. However, Tucker testified that soon after, following a meeting on 20 November 1992 between Morillon and Accused, it became obvious that Mladić deferred to the Accused who had just come back from Geneva and that "in comparison with Mladić's bombastic behaviour at the meeting on 15 November, at this meeting Mladić is 'back in his box'." *See* P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 64–69; P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992); Pyers Tucker, T. 23226–23235 (18 January 2012). Further, on 27 November, Morillon reported that the meeting he had with the Accused and Mladić on that day confirmed a moderately healthy military/political relationship between the two men. *See* D539 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 27 November 1992), para. 11(b); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 72.

noticed inconsistencies in Mladić's own position, recalling that in one meeting Mladić stated he would defer to the Bosnian Serb Assembly, but in another meeting he spoke as if he alone had the ability to implement decisions, and then at a follow-up meeting, he deferred to the Accused.[16003]

4761. On 8 December 1994, Andreev and Banbury met with Koljević in Pale.[16004] During the meeting Koljević conceded that "matters had gone too far and that the behaviour of the [VRS] needed to be fixed".[16005] The meeting involved a serious discussion about UNPROFOR withdrawing due to unacceptable curtailment of freedom of movement, theft of property, and restrictions on re-supply,[16006] and Banbury testified that is was unclear whether Koljević's remarks were genuine or whether it was a means of "shifting the blame".[16007] Following the meeting, Banbury drafted a report to Akashi, noting that there appeared to be a serious split between the political and military leadership of the Bosnian Serbs, with the former advocating a more co-operative approach in the face of resistance from the latter.[16008] However, at a meeting of 12 December 1994, Krajišnik, Koljević, Gvero, and Tolimir protested against this report and denied the existence of any such a split.[16009] Banbury thought that, if there was a split, it was a split on a policy level, which is usual in any institution, and there was nothing to suggest that there was a change or split in the chain of command.[16010]

4762. Galić testified that there was a parallel or dual command structure, where it was possible to receive orders both from the Accused, as the Supreme Commander, and from Mladić as the commander of the Main Staff, which led to confusion as to who actually commanded the VRS.[16011] However, Galić did not remember a single occasion when a direct order came to him from the Supreme Commander as it would usually go through the Main Staff.[16012] Had he received conflicting orders from the Accused and from Mladić, he would have followed the order of his

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16003 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 64–69; P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992); Pyers Tucker, T. 23226–23235 (18 January 2012).

16004 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 76; P2474 (UNPROFOR report, 8 December 1994).

16005 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 77.

16006 P2474 (UNPROFOR report, 8 December 1994), para. 3.

16007 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 77.

16008 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 76; P2474 (UNPROFOR report, 8 December 1994), para. 5. *See also* P2261 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 22 April 1995), para. 8 (reporting that "cracks between the politicians and the military were very clear"); Rupert Smith, T. 11347–11350 (8 February 2011).

16009 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 80; P2476 (UNPROFOR report, 13 December 1994), para. 9.

16010 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 82.

16011 Stanislav Galić, T. 37593–37595 (23 April 2013).

16012 Stanislav Galić, T. 37596–37597, 37602–37603 (23 April 2013). *See also* Manojlo Milovanović, T. 25470 (28 February 2012) (testifying that the Supreme Command did not frequently bypass the Main Staff).

immediate superior, Mladić.[16013] Dragomir Milošević testified that the relationship between the Accused and Mladić was "detrimental" and he blamed Mladić for wanting to be dominant in all situations without respecting authority.[16014] However, like Galić, Milošević did not have specific personal knowledge of Mladić being defiant against the Accused; it was the general impression he had.[16015]

4763. As discussed earlier in the Judgement, many Defence witnesses, including SRK soldiers and officers, testified that the relationship between the Accused and Mladić was strained.[16016] When Kovač met with Mladić in May 1992, they disagreed over the passage of convoys transporting civilians out of Sarajevo, with Kovač allowing the convoys and Mladić preventing them from departing.[16017] The Accused settled the dispute by allowing the convoys to leave Sarajevo.[16018] According to Kovač, as the war progressed, tensions between the civilian and military authorities increased and a particularly noticeable disagreement concerned the number of VRS soldiers deployed around Sarajevo as compared to Srebrenica and Žepa; Kovač thought the Main Staff was "depriving" units of the SRK, suspending delivery of ammunition, in an attempt to make Sarajevo fall.[16019] The Chamber has analysed these tensions earlier in the Judgement and made findings thereon.[16020]

(D) Accused's orders relevant to Sarajevo

4764. The fact that the chain of command between the Accused and the SRK operated as intended and that the Accused was directly involved in Sarajevo-related military operations is confirmed by the evidence that the Accused issued orders directly relevant to the SRK and the Sarajevo

16013 Stanislav Galić, T. 37596, 37606 (23 April 2013).

16014 Dragomir Milošević, T. 32886–32887, 32902–32905 (30 January 2013). *See also* Dragomir Milošević, T. 32887–32891 (30 January 2013) (discussing the Accused's attempt to remove Mladić from his command); D2159 (Letter from VRS Main Staff to RS National Assembly, 5–6 August 1995) (order by the Accused to relieve Mladić of his command which was unanimously disagreed with by the VRS Generals); D2843 (Telegram from VRS Main Staff, 8 August 1995).

16015 Dragomir Milošević, T. 32905–32907 (30 January 2013), T. 33088–33089 (4 February 2013).

16016 *See* D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 62; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 67; D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), paras. 112–115. *See also* para. 3140.

16017 D3960 (Witness Statement of Tomislav Kovač dated 28 October 2013), para. 91.

16018 D3960 (Witness Statement of Tomislav Kovač dated 28 October 2013), para. 91.

16019 D3960 (Witness Statement of Tomislav Kovač dated 28 October 2013), para. 97.

16020 *See* paras. 3113–3114.

battlefield.[16021] For example, as outlined above, the Accused issued Directives 6 and 7, as well as the supplement to Directive 6, all of which concerned Sarajevo.[16022]

4765. On 20 May 1992, the Accused issued an order to the Main Staff, MUP, and Ministry of Defence to establish a military police company within the SRK.[16023] Similarly, on 2 June 1992, the Accused issued an order to send two platoons of special forces from Crepoljsko to Nedžarići to be placed under the command of the SRK where they were to report to Kovač.[16024] He also ordered that the "Presidency as the Supreme Command" be informed of the execution of this task.[16025] [REDACTED] the Accused had an interest in Nedžarići as it was an important part of the frontline.[16026]

4766. On 9 October 1992, the RS Presidency held a session in which it decided to halt the bombing of Sarajevo and do so through the Main Staff.[16027] Thus, on 10 October 1992, Galić issued an urgent order to all SRK units to stop firing on Sarajevo as of 3 p.m. that day, instructing them to open fire only in case of "great necessity", and not before given permission from him or his deputy.[16028]

4767. On 15 July 1993, pursuant to an order from the Accused, Milovanović ordered the SRK Command to immediately take all measures, through the subordinate units, to release water and gas to Sarajevo and enable repairs of the electrical system.[16029] He also banned units from opening fire at the centre of the city, except "in defence of VRS positions", because "unnecessary and uncontrolled opening of fire at Sarajevo greatly damages the RS".[16030] On the same day, Dragomir Milošević issued an order to all units of the SRK that they were "forbidden to fire on Sarajevo proper, unless defending VRS positions".[16031] He also ordered that water, gas, and electricity be

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16021 *See* P3033 (Reynaud Theunens's expert report entitled "Radovan Karadžić and the SRBiH TO-VRS (1992-1995)"), e-court pp. 27–28.

16022 *See* para. 4671. Following the issuance of the supplement to Directive 6, the Main Staff issued an order on 14 December 1993. P4925 (Supplement to Directive 6, 12 December 1993), para. 2(a); P3052 (VRS Main Staff Order, 14 December 1993). *See also* Dragomir Milošević, T. 33093–33099 (4 February 2013). The Accused also examined and approved the other five directives issued by the Main Staff, as discussed in paras. 3152–3156. *See, e.g.*, P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 24 (a meeting between Accused, Mladić, Krajišnik, and Koljević, where they approved Directive 3).

16023 P2645 (Radovan Karadžić's order to VRS Main Staff, MUP, and Ministry of Defence, 20 May 1992).

16024 P1503 (Radovan Karadžić's Order re Nedžarići, 1 July 1992); [REDACTED].

16025 P1503 (Radovan Karadžić's Order re Nedžarići, 1 July 1992); [REDACTED].

16026 [REDACTED].

16027 D431 (Minutes of RS Presidency session, 9 October 1992), p. 2.

16028 P1264 (SRK Order, 10 October 1992); Hussein Abdel-Razek, T. 5507–5508 (19 July 2010).

16029 P5058 (Order of the VRS to SRK, 15 July 1993).

16030 P5058 (Order of the VRS to SRK, 15 July 1993).

16031 P836 (SRK Order, 15 July 1993); David Harland, T. 2243–2245 (10 May 2010); Miladin Trifunović, T. 30388–30389 (15 November 2012).

provided to Sarajevo and stated that the "unnecessary and uncontrolled firing on Sarajevo is causing great harm to the RS".[16032] On 23 July 1993, Milošević urgently informed Galić that the Accused had ordered, through the Main Staff, that the SRK "immediately provide water, electricity and gas supplies" to Sarajevo.[16033]

4768. Following another round of peace talks in Geneva and a cessation of hostilities agreement signed at the Sarajevo airport between Mladić and Delić,[16034] on 30 July 1993, pursuant to consultations with the Accused, Mladić gave an order to cease fire on all frontlines effective on the same day at 12 p.m.[16035]

4769. On 26 September 1993, pursuant to an order of the Accused, Milovanović issued an order to the SRK and Drina Corps commands stating that approval has been given for the transport of "Muslim deputies and other persons from Srebrenica, Žepa, and Goražde" organised by UNPROFOR.[16036] The SRK and Drina Corps Commands would be notified by telephone as to the time of the opening and closing of the corridor.[16037] Milovanović noted that the order "shall be taken very seriously due to the political consequences it might have for [RS]" and the SRK and Drina Corps Commanders were personally responsible to him for implementing the order.[16038]

4770. On 16 January 1994, the Accused issued an order to the VRS in which he strictly prohibited any combat operations in the direction of the Sarajevo airport and against any positions of UNPROFOR, UNHCR, and other international organisations; allowed full protection and freedom of movement for their vehicles and convoys with necessary checks; and instructed that all contentious issues in relation to UNPROFOR and military observers must be processed exclusively by the Corps Commands and Main Staff.[16039] He stated that given the attitude of international factors towards the war existing at the time, particularly during the talks in Geneva, it was necessary to prevent unwanted incidents with the international organisations.[16040]

16032 P836 (SRK Order, 15 July 1993).
16033 P2666 (Radovan Karadžić's order to SRK, 23 July 1993).
16034 *See* para. 378.
16035 D4507 (Summary of intercepted conversation between Milan Gvero and Radovan Karadžić, 30 July 1993).
16036 P5066 (VRS Main Staff Order, 26 September 1993).
16037 P5066 (VRS Main Staff Order, 26 September 1993), p. 1.
16038 P5066 (VRS Main Staff Order, 26 September 1993), p. 2.
16039 D4443 (Radovan Karadžić's Order, 16 January 1994).
16040 D4443 (Radovan Karadžić's Order, 16 January 1994).

4771. On 13 March 1994, the Accused issued an order to the Main Staff instructing that the VRS was to exercise "maximum restraint" during Bajram, not respond to ABiH provocation, and to ensure that convoys safely arrive at their destinations.[16041]

4772. On 23 July 1994, pursuant to an oral order from the Accused, Milovanović issued an order to the SRK Commander to carry out all necessary preparations for the closure of the Blue Route across Sarajevo airport, "in order to prevent the transit of the Muslims- civilians and motor vehicles from Sarajevo and into Sarajevo" and to prevent the movement of UNPROFOR and humanitarian organisations towards Igman and Lukavica.[16042]

4773. On 19 August 1994, the Accused informed the Main Staff that two platoons of UNPROFOR soldiers and a medical unit would be travelling from Sarajevo through Pale and he approved this travel.[16043] Accordingly, he ordered that these units be escorted from Pale to Kopaći and to treat them politely.[16044] In another order relating to the treatment of UN representatives, on 25 August 1994, the Accused ordered the Main Staff to issue an order to the commander of the Ilidža Brigade to return radio communication equipment seized from a UNHCR radio technician.[16045]

4774. At one point during the conflict, the Accused ordered the Main Staff to secure the perimeter and building of the "Pretis-Holding, TAS, UTL, and Energetika" Factories in Vogošća, to ensure safe passage and constant control of the "Sumbulovac-Visojevica-Srednje-Vogošća" road, and to report to him on the results within 48 hours.[16046]

4775. The Accused also issued orders directly to the SRK. For example, on 1 November 1992, the SRK Command issued an order to its units, relaying an order from the Accused regulating the procedures for safe passage for ICRC delegates and vehicles authorised to visit prisons, military camps, and police stations.[16047]

4776. As mentioned earlier, on 7 February 1994, following the incident in Markale market on 5 February, the Accused issued an order to the Main Staff, SRK Commander, and commanders of the SRK brigades stating that there was evidence that the VRS was not responding in equal

16041 D4610 (Radovan Karadžić's Order, 13 March 1994).
16042 P1639 (SRK Order, 23 July 1994); Michael Rose, T. 7259 (5 October 2010) (confirming that this matched the situation as he observed on the ground).
16043 D4611 (Radovan Karadžić's Order, 19 April 1994).
16044 D4611 (Radovan Karadžić's Order, 19 April 1994).
16045 D4829 (Radovan Karadžić's Order, 25 August 1994).
16046 P5036 (Radovan Karadžić's Order, undated).

measure to the ABiH artillery but were responding, "sometimes twenty or thirty, or even seventy times more".[16048] He therefore ordered to:

> (1) Introduce the strictest possible control of retaliation to provocation, respond only when we are threatened and when there is full military justification, respond only against military targets and strictly at the commander's commands and respond in equal measure to the provocation in the 1:1 (one to one) ratio.
>
> (2) Exclude any possibility of uncontrolled shelling. Keep the behaviour under control and sanction offences, urgently and in the strictest manner in keeping with the law.
>
> (3) The Corps Commanders shall answer directly to me for acts of the Corps, while brigade commanders shall answer for the acts of the brigades.
>
> (4) I am to be informed immediately about every incident.[16049]

Milovanović testified that he implemented this order.[16050] He also testified that the Accused addressed the order to SRK Commander and SRK brigades because he wanted the order to reach them as soon as possible but also did not want to bypass the Main Staff order; to Milovanović this was an example of the Accused exercising his command and control as Supreme Commander and making the SRK Commander and brigade commanders directly answerable to the Accused.[16051] As discussed above, there was a period of relative calm in Sarajevo following this order.[16052] On 15 February 1994, at a meeting involving the Accused, Mladić, Krajišnik, Koljević, and Milovanović, Milovanović reported that he had agreed to a cease-fire and the placing of artillery under UNPROFOR, but had not signed anything yet.[16053] Krajišnik expressed concern that nothing had been signed and stated that the Supreme Command must respond to the NATO ultimatum.[16054] The Accused instructed that "three to four artillery positions must be secured at brigade level" and that "[c]oncealment and relocation must be carried out".[16055] In relation to UNPROFOR, the Accused stated that the Bosnian Serbs should not "say no"; instead, they should say "yes, but" as this is what good diplomats do.[16056]

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16047 D4739 (Letter from Radovan Karadžić to all local civilian and police authorities, 31 October 1992); D4740 (SRK Command procedure for ICRC personnel and vehicles signed by Radovan Karadžić, 1 November 1992).

16048 P846 (Radovan Karadžić's Order to VRS, 7 February 1994); P820 (Witness statement of David Harland dated 4 September 2009), paras. 77–78; Reynaud Theunens, T. 16891–16893 (19 July 2011).

16049 P846 (Radovan Karadžić's Order to VRS, 7 February 1994); Manojlo Milovanović, T. 25475, 25477–25478 (29 February 2012).

16050 Manojlo Milovanović, T. 25475–25477 (29 February 2012); P4493 (VRS Main Staff Order, 7 February 1994).

16051 Manojlo Milovanović, T. 25477–25478 (29 February 2012). *See also* P3033 (Reynaud Theunens's expert report entitled "Radovan Karadžić and the SRBiH TO-VRS (1992-1995)"), e-court p. 28.

16052 *See* paras. 386–390, 3582–3587.

16053 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), pp. 105–106.

16054 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 106.

16055 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 108.

16056 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 109.

4777. On 19 March 1994, the Accused informed the Main Staff (Mladić personally) and the SRK Command (Galić personally) that he had given permission for a football match to be played between an UNPROFOR team and a local Sarajevo team on 20 March 1994.[16057] He stated: "it is necessary to prevent the Serbian side from provoking an incident at all costs, as this might bring condemnation from the whole world".[16058] He also stated that the "further normalisation of life in Sarajevo is in our interest, all the more so because it does not cost us anything in terms of territory".[16059] He instructed Mladić and Galić to inform all the brigades in the area that they must absolutely comply with this order.[16060] Rose testified that this match did indeed go on without incident.[16061]

4778. On 2 March 1995, a report from the SRK Colonel Luka Dragičević was sent to all SRK units, raising issues about the leadership of the VRS and Main Staff, and criticising the Accused.[16062] On 9 March 1995, the Accused ordered the SRK Command to urgently send him a copy of that report and information on who sent it to the SRK Command, the identity of its author, and its intended recipients.[16063]

4779. Finally, at some point during the war, the Accused issued a message to the SRK stating that the "shelling of civilian targets is a war crime, which is chastised with the toughest punishment, and the enemy wishes to brush those crimes off on you".[16064] He continued by stating that "we are a disciplined army" and it was not in their interest to provoke military intervention and risk losing their state.[16065] He asked the SRK to keep vigil of the enemies and keep an eye out for "traitors"

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16057 P1643 (Letter from Radovan Karadžić to Ratko Mladić and Stanislav Galić, 19 March 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 64; Michael Rose, T. 7264–7266 (5 October 2010).

16058 P1643 (Letter from Radovan Karadžić to Ratko Mladić and Stanislav Galić, 19 March 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 64; Michael Rose, T. 7264–7266 (5 October 2010).

16059 P1643 (Letter from Radovan Karadžić to Ratko Mladić and Stanislav Galić, 19 March 1994).

16060 P1643 (Letter from Radovan Karadžić to Ratko Mladić and Stanislav Galić, 19 March 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 64; Michael Rose, T. 7264–7266 (5 October 2010).

16061 Michael Rose, T. 7264–7266 (5 October 2010); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 64.

16062 P2691 (SRK report, 2 March 1995); Luka Dragičević, T. 31435–31436 (13 December 2012).

16063 P2679 (Radovan Karadžić's order to SRK, 9 March 1995). Dragomir Milošević submitted an urgent report to the Accused stating that Dragičević's report was "made in a hurry" and that the core members of the SRK Command have not discussed it and he was not even aware of its contents. Milošević stated that it was agreed that the "Main Staff commander would get in touch with you and ask you not to subject the contents of the report to a separate discussion". *See* P2680 (SRK report to Radovan Karadžić, 10 March 1995); P2681 (SRK report, 10 March 1995).

16064 D314 (Radovan Karadžić's letter to SRK, undated). The document is undated and contains no stamp. While the Accused attempted, during Guzina's testimony, to make a connection between D314 and the follow up order of the SRK Command of 15 May 1993 (D2561), Guzina was unclear as to the alleged connection and thus as to the date of D314. *See* Svetozar Guzina, T. 31195–31197 (11 December 2012); D2561 (SRK Order, 15 May 1993). As such, this order has little probative value.

16065 D314 (Radovan Karadžić's letter to SRK, undated).

who would fire mortars without command or permission; everyone was obliged to prevent "such a traitor from doing so, and to bring him to justice".[16066]

4780. In addition to all of the above orders, the evidence also shows that the Accused issued oral orders and instructions in meetings and telephone conversations that were directly relevant to the military activities in Sarajevo. For example, on 31 May 1992, Mladić met with the Accused and other members of the Bosnian Serb political leadership.[16067] In the meeting, the Accused gave a briefing on the negotiations in Lisbon and Belgrade and reported that Cutileiro had asked him to halt operations around Sarajevo and to leave the airport.[16068] The Accused then stated, "[w]e have to issue decisions", including decisions to "determine comprehensible borders" and make the police and army "capable for some tasks".[16069] The meeting concluded with the Accused stating that they needed to talk about Sarajevo and they must have a "part of Sarajevo".[16070]

4781. On 5 June 1992, the Accused met with Mladić, Koljević, Plavšić, Krajišnik, and Đerić and instructed the attendees to "clean up" Butmir, Hrasnica, Dobrinja, Sokolović Kolonija, and Hrasno.[16071] As discussed earlier, the SRK forces launched an attack on Sarajevo later that evening, which was indiscriminate and disproportionate, lasting three days and causing a number of civilian casualties.[16072] On 15 June 1992, at a meeting between Mladić, the Accused, other members of the RS Presidency, and representatives from the Sarajevo municipalities, Koljević raised the problem of the Sarajevo airport which could not be solved "until the road to Ilidža and Nedžarići is sorted out" and urged the others to "treat Dobrinja as our territory into which [Bosnian Muslim] snipers and terrorists have infiltrated".[16073] To this the Accused responded that the issue of Dobrinja must be resolved through co-operation with the police.[16074] Prstojević provided an update on the situation in Ilidža, stating that the ABiH had around 6,500 soldiers in the area and that if the Bosnian Serbs surrendered the airport, "Ilidža would be cut off".[16075] He thus requested the deployment of soldiers to Dobrinja to carry out an operation.[16076] The meeting then concluded with the decision to "clear the Serbian territory", giving priority to Mojmilo and Dobrinja.[16077]

16066 D314 (Radovan Karadžić's letter to SRK, undated).
16067 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 36, 38.
16068 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 38–39.
16069 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 40.
16070 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 42.
16071 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93.
16072 *See* discussion in relation to Scheduled Incident G.2.
16073 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 166–167.
16074 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 169.
16075 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 170.
16076 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 170.
16077 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 171–172.

Following the protests by the Secretary General about the Bosnian Serb forces shelling civilian areas in Dobrinja and his calls for the shelling to cease immediately,[16078] at a meeting on 27 June 1992 with Mladić, Koljević, and Plavšić, among others, Krajišnik stated that the Presidency was "walking on the edge of the abyss" and that operations against Dobrinja "must really stop".[16079] That day, the Accused issued an order to the Main Staff to cease all operations in Dobrinja immediately and warned that disregarding the order would have "political consequences".[16080]

4782. On 21 July 1992, in a meeting between Mladić, the Accused, and other VRS officers, the Accused informed Mladić about the 14-day cease-fire agreement and said that all heavy weapons must be presented to UNPROFOR for inspection, that refugees be allowed to return to their homes, and that people moving from the "zones of operations" be allowed to go wherever they want.[16081] Then, on 29 August 1992, at a meeting with Mladić, the Accused ordered that within 96 hours, UNPROFOR must be given information about heavy weaponry in the territory of Sarajevo excluding warehoused items.[16082] He ordered that within seven days, heavy weapons around Sarajevo should be grouped.[16083] He further ordered Mladić to "preserve the positions around Sarajevo" and to strengthen those positions by transferring 5,000 to 6,000 soldiers from the Bosnian Krajina.[16084] Mladić warned the Accused about how to mobilise this many soldiers, to which the Accused responded: "With the police, forcibly".[16085]

4783. On 19 October 1992, at a meeting with Mladić, Plavšić, Krajišnik, Đerić, Gvero, Dukić, and Tolimir, the Accused reported on the negotiations in Geneva; he stated that the question of Sarajevo "dominated the conference" and that the Bosnian Serbs should ensure that Sarajevo survives the winter because the Bosnian Muslims wanted to create an image of a "drastic and horrible" situation in Sarajevo.[16086] Towards the end of the meeting, the Accused stated that he was "convinced 101% that [NATO] will bomb" and that accordingly it was crucial not to fire on Sarajevo.[16087]

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16078 P1523 (UNSG's statement to UNSC, 26 June 1992); KDZ088, T. 6662–6663 (13 September 2010) (closed session).

16079 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 240.

16080 P1504 (Minutes of 12th session of SerBiH Presidency, 27 June 1992), para. 3; P1154 (Witness statement of KDZ088 dated 27–29 April 2010), paras. 69–70 (under seal); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 240 (stating that the Presidency had sent a letter to the Secretary General informing him that operations against Dobrinja had ceased); D2977 (Letter from Radovan Karadžić to Jose Cutileiro and others, 27 June 1992); D2968 (Witness statement of Jose Cutileiro dated 11 April 2012), para. 30.

16081 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 358–359.

16082 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), pp. 107–108.

16083 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 108.

16084 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 109.

16085 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), p. 109.

16086 P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), pp. 48–50.

16087 P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), p. 59.

4784. On 20 December 1992, at a meeting of the Supreme Command, attended by Mladić, Koljević, Krajišnik, Lukić, Bogdan Subotić, and Milovanović, the Accused stated that the Bosnian Serbs were supposed to end the war in Sarajevo, but that the enemy was "on the rise" and was "conducting a big offensive".[16088] The tasks agreed upon at the conclusion of the meeting included reorganising the army and border units and coming up with a co-ordinated plan with the Ministry of Defence to fulfil the needs of the army.[16089]

4785. On 21 February 1993, in a telephone conversation, the Accused instructed two SRK soldiers to "see to it that Izetbegović's declaration of a one-sided cease-fire be sent to us, Morillon and others have requested that [...] I am asking you that we don't fire anywhere except [...]" and was interrupted by Matišić who informed the Accused that they had received, two hours earlier, an order from Milovanović to carry on doing what has been planned regardless of the cease-fire.[16090] The Accused responded, "absolutely, that's all right, but there is something that has to be done".[16091] The Accused informed them that "we think that shells should not be falling here on the city for no reason" and ordered them to "strictly forbid shelling in the city, except where operations have been planned and where they are in progress".[16092]

4786. On 2 May 1993, in a telephone conversation, the Accused ordered Gvero to "call UNPROFOR to all gas stations to check that the Serbs are keeping this open" and that "nowhere around Sarajevo, there must be nothing firing anywhere".[16093] The Accused said that no one from the VRS was allowed to give any more statements, and ordered the preparation of anti-aircraft defence in case of NATO intervention.[16094] On the same day, the Accused ordered Milovanović to allow UNPROFOR to access Mt. Bjelašnica.[16095]

4787. On 2 June 1993, in another telephone conversation, the Accused ordered Gvero to contact those units responsible for targeting a pontoon bridge stating that they had damaged the good image of the VRS.[16096] In relation to information that the "Zetra" area in Sarajevo had been hit by

16088 P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), pp. 335, 339–340.
16089 P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), p. 349.
16090 D4510 (Intercept of conversation between Radovan Karadžić and Matišić, 21 February 1993).
16091 D4510 (Intercept of conversation between Radovan Karadžić and Matišić, 21 February 1993).
16092 D4510 (Intercept of conversation between Radovan Karadžić and Matišić, 21 February 1993).
16093 D4512 (Intercept of conversation between Milan Gvero and Radovan Karadžić, 2 May 1993), p. 1.
16094 D4512 (Intercept of conversation between Milan Gvero and Radovan Karadžić, 2 May 1993), p. 2.
16095 D4513 (Intercept of conversation between Radovan Karadžić and unidentified general, 2 May 1993). *See also* P5660 (Intercept of conversation between Ratko Mladić and Momčilo Mandić, 25 May 1992) (in which Mandić tells Mladić that the Accused has requested to "arrange this thing over the airport" but Mladić reminds Mandić that they are not supposed to arrange anything over the phone but are supposed to meet instead).
16096 D4511 (Intercept of conversation between Milan Gvero and Radovan Karadžić, 2 June 1993).

mortars, the Accused ordered Gvero to contact Briquemont and inform him that it was not the VRS.[16097]

4788. On 30 July 1993, in another telephone conversation between the Accused and Gvero, the Accused insisted on arresting and initiating criminal proceedings against the individuals who were responsible for firing on the UNPROFOR units in Sarajevo and also wanted to release a public statement to this effect.[16098]

4789. On 2 August 1993, also in a telephone conversation, the Accused ordered Gvero to "release immediately gas, electricity and water" to Sarajevo and "do everything that is in our power" as this was important for the Bosnian Serbs and the negotiations that day.[16099]

4790. On 3 August 1993, Milovanović called the Accused and reported that there was firing around Sarajevo and it came from the ABiH.[16100] The Accused ordered Milovanović to take UNPROFOR observers to the SRK positions in Sarajevo so that UNPROFOR "can confirm who is attacking".[16101] He also ordered Milovanović to inform Mladić to be cautious and not fall for the ABiH provocation because one wrong move and Mladić might "wreck the entire country, the entire nation" and that the "conference will fail, to our detriment".[16102] The following day, in another telephone conversation, the Accused told Milovanović that he was looking for Mladić and that Mladić needed to call him.[16103] The Accused was upset about the shelling of Mt. Igman and the "fallout" between UNPROFOR and Mladić.[16104] The Accused stated, "if I give him some orders, he has to carry it out. He has the right to say that it's not useful and that it's damaging, but if I later make a decision, has to carry that out to the end".[16105] Also on this day, in relation to a concern that Mladić may not order the withdrawal of troops from Mt. Igman, the Accused told Milovanović: "I am the supreme commander and I am ordering; order them to withdraw and tell Mladić to report to me from the airport".[16106]

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16097 D4511 (Intercept of conversation between Milan Gvero and Radovan Karadžić, 2 June 1993).

16098 D4507 (Summary of intercepted conversation between Milan Gvero and Radovan Karadžić, 30 July 1993).

16099 P4796 (Intercept of conversation between Radovan Karadžić and General Gvero, 2 August 1993), p. 2.

16100 D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993), p. 1.

16101 D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993), p. 1.

16102 D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993), p. 3. The Chamber notes this was during the ICFY conference peace talks when the Bosnian Serbs had agreed, in principle, to open the Sarajevo airport by 4 August 1993. *See* para. 379.

16103 D3871 (Intercept of conversation between Radovan Karadžić and Milovanović, 4 August 1993).

16104 D3871 (Intercept of conversation between Radovan Karadžić and Milovanović, 4 August 1993), p. 1.

16105 D3871 (Intercept of conversation between Radovan Karadžić and Milovanović, 4 August 1993), p. 1.

16106 P4786 (Intercept of conversation between Radovan Karadžić and General Milovanović, 4 August 1993), p. 2.

4791. As discussed earlier, on 5 August 1993 at a meeting with UNPROFOR representatives, the Accused agreed to withdraw the SRK forces from Mt. Igman and on 14 August 1993, despite Mladić's protests, an agreement establishing the Mt. Igman DMZ was signed.[16107] On 5 August 1993, at a meeting of the Supreme Command, including Mladić, the Accused reported that NATO had made a decision to conduct air strikes on Bosnian Serb positions.[16108] He stated that, to avoid air strikes, the Bosnian Serbs should withdraw from Mt. Igman and Mt. Bjelašnica, to supply utilities to Sarajevo, allow humanitarian convoys to pass though, supply fuel to Sarajevo (for bakeries), and not to fire any shells at Sarajevo.[16109] On the same day, Milovanović issued an order to the SRK Command, "on the basis of an oral command of the Supreme Commander" in an effort to respect the signed agreement about the cessation of combat actions.[16110] This order outlined measures that should be taken by the SRK in terms of reporting on weapons, ammunition, and rockets in each brigade.[16111] It also ordered that as of 9 August 1993, within the regular combat reports, the SRK Command will report about the "number of fired bullets, grenades, mines and rockets in units that are in direct surroundings of Sarajevo, as well as reason for firing, the name of units where it happened and measures that are taken".[16112]

4792. On 10 August 1993, the Accused issued an order in a telephone conversation with a colonel from the Main Staff that no shell was to land on Sarajevo and that Sarajevo was to be given electricity, water, and gas.[16113] On 11 August 1993, the Accused had a conversation with Prstojević and Gvero over the phone.[16114] First, Prstojević confirmed that he was taking care of the weapons around Sarajevo.[16115] The Accused then ordered him to issue a warning that no one should shoot at

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16107 *See* paras. 379, 3574.

16108 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 262–263.

16109 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 263. *See also* Bogdan Subotić, T. 40060–40061 (19 June 2013) (testifying that Mladić could have taken Sarajevo from Mt. Igman but was prevented from doing so by the Accused).

16110 P5054 (VRS Main Staff Order, 5 August 1993).

16111 P5054 (VRS Main Staff Order, 5 August 1993).

16112 P5054 (VRS Main Staff Order, 5 August 1993), p. 2.

16113 P4802 (Intercept of conversation between Radovan Karadžić and unidentified member of VRS Main Staff, 10 August 1993); Stanislav Galić, T. 37875–37877 (7 May 2013) (testifying that it was impossible to interrupt gas and electricity for only one side and that since it was not addressed to the SRK, but rather the Main Staff, he could not confirm that this order had come to his staff). One day prior, on 9 August 1993, pursuant to an order of the Accused, Vladimir Lukić, the Prime Minister of the RS, issued an order to the Presidents of the Executive Committees of the Municipal Assemblies, Chiefs of the SJBs, and all VRS Commanders to ensure the freedom of movement of humanitarian aid convoys and UNPROFOR, enable "maximum possible flow of electricity, water and gas for the entire area of the City of Sarajevo", and inform him of the execution of this order. D3328 (Order of RS Government, 9 August 1993); Milorad Skoko, T. 36759–36760 (8 April 2013).

16114. P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993).

16115 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 1.

Sarajevo, even if shot at.[16116] Prstojević stated he understood and that his commander had issued an order to Galić.[16117] Gvero then spoke and informed the Accused that the Military Agreement for Peace in BiH had been signed.[16118] The Accused expressed concern about reports that the VRS was returning to Mt. Igman and Mt. Bjelašnica.[16119] On the same day, in a conversation between the Accused and Tomanić, the Accused asked for Gvero because he wanted to know why Bosnian Serb soldiers had returned to Mt. Igman and Mt. Bjelašnica and stated that "all the agencies in the world" and UNPROFOR have reported this.[16120] The Accused then ordered Tomanić to call Galić and "to pass on to him urgently to withdraw the troops regardless of how many UNPROFOR forces went up there".[16121] The Accused also stated angrily that "someone is putting the state at risk [...] from Mladić to I-don't-know-who, I will relieve him of his duty".[16122] He further added that "the army is lying to me. They have been lying to me the whole time. The reports I receive are never accurate."[16123] He ended the conversation by asking Tomanić to tell Galić to urgently call him.[16124] Also on this day, the Accused ordered Miletić to call the director of the SRNA and to release a press statement stating that the information regarding the return of the forces to Igman and Bjelašnica is a lie and that the troops are progressively withdrawing from their positions.[16125] In the evening, the Accused spoke to Gvero to ensure that SRK had moved all soldiers from Mt. Igman.[16126] He also stated that the media from Sarajevo, including foreign media, should be allowed to go there and report that the roads to Sarajevo were open and that there was no siege to speak of.[16127]

4793. In a telephone conversation of 12 August 1993, the Accused ordered Milovanović to withdraw forces from certain lines around Mt. Igman by a strict deadline in an effort to save the

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16116 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 1.

16117 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 1.

16118 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 1.

16119 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 2.

16120 D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993) [NB; duplicate of D2091 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993)]; Ljubomir Obradović, T. 25186–25188 (24 February 2012); Radovan Radinović, T. 41607–41608 (19 July 2013).

16121 D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993).

16122 D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993).

16123 D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993). The Chamber notes the English translation was misspelled as "The army is laying [*sic*] to me. They have been laying [*sic*] to me the whole time." The Chamber has corrected it in the text.

16124 D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993).

16125 P4805 (Intercept of conversation between Radovan Karadžić and Colonel Miletić, 11 August 1993 ).

16126 P4803 (Intercept of conversation between Radovan Karadžić and General Gvero, 11 August 1993), p. 1.

16127 P4803 (Intercept of conversation between Radovan Karadžić and General Gvero, 11 August 1993), p. 2.

current negotiations.[16128] The Accused stated: "General, listen to me and follow the orders. I am telling you how it is. Our side accepted, after convincing and bargaining [...] you should be interested in my orders. Do you want to destroy the entire state?".[16129] Milovanović responded, "yes, sir" and the Accused stated they would talk tomorrow.[16130] The following day, the Accused spoke to Gvero over the phone as he was looking for Milovanović who could not be found.[16131] Gvero responded that Milovanović had gone to meet Hayes.[16132] The Accused then ordered Gvero to pass along his order to Galić to pull back the SRK troops on Mt. Igman "far enough to avoid us having any problems in relation to the international community."[16133] The Accused also stated that the order must be complied with and that such information must reach Owen by 2 or 2:30 p.m.[16134] On the same day, Galić issued an order to SRK commands, in accordance with an order issued by the Accused and "in order to avoid unjust punishment by the [USA] and its allies", to occupy new command positions by 8 p.m. on the same day.[16135] The order outlined where various brigades should position themselves, including an order to the Igman Brigade that "after the take-over of positions in the area of Trešnjevo brdo and Butila by UNPROFOR, shall withdraw to positions in the area of Bresovača".[16136]

4794. On 24 October 1993, at a meeting of the Supreme Command, attended by Mladić, the Accused, Bogdan Subotić, and Gvero, the possibility of shortening VRS frontlines was discussed.[16137] The Accused stated that the Bosnian Serbs must choose "quality" territory and not be overly concerned about the "quantity" of territory.[16138] He stated that Sarajevo was "the most important territory" and that "1 km near Sarajevo is worth more than dozens near Teočak".[16139] He instructed that priority must be given to the areas of Žuč, Orlić, and Mojmilo.[16140]

4795. As mentioned above, on 14 January 1994, in a meeting with Mladić, Krajišnik, Dragomir Milošević, Galić, SRK unit commanders, and Sarajevo municipality presidents, the Accused

16128 P4806 (Intercept of conversation between Radovan Karadžić, General Gvero, and General Milovanović, 12 August 1993).
16129 P4806 (Intercept of conversation between Radovan Karadžić, General Gvero, and General Milovanović, 12 August 1993).
16130 P4806 (Intercept of conversation between Radovan Karadžić, General Gvero, and General Milovanović, 12 August 1993).
16131 P4783 (Intercept of conversation between Radovan Karadžić and General Gvero, 13 August 1993), p. 1.
16132 P4783 (Intercept of conversation between Radovan Karadžić and General Gvero, 13 August 1993), p. 1.
16133 P4783 (Intercept of conversation between Radovan Karadžić and General Gvero, 13 August 1993), p. 1.
16134 P4783 (Intercept of conversation between Radovan Karadžić and General Gvero, 13 August 1993), p. 1.
16135 P5042 (SRK Order, 13 August 1993).
16136 P5042 (SRK Order, 13 August 1993).
16137 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 392
16138 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 396.
16139 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 396.
16140 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 396.

ordered the creation of a "stand-by army" and that all soldiers recruited since April 1992 should remain in the army until the end of the war.[16141] He ordered that the SRK's "[r]etaliation shall be 1:1".[16142] He further ordered that SRK commanders "[i]mpress upon the army [...] a feeling of optimism and concord".[16143] He ended the meeting by ordering the SRK commanders to "[q]uickly line up the brigades".[16144]

4796. On 29 January 1994, the Accused and Mladić met with subordinate officers of the VRS.[16145] At the meeting, the Accused stated that the Bosnian Serbs must create a "single, mobile army" whose sole ideology is Serbian nationalism.[16146] He stated that the "most important point is Sarajevo" and that "[w]ith the blockade of Sarajevo we have created a state", which had forced Izetbegović to negotiate.[16147] He stated that "[w]e must not give out a single war-mongering statement" but instead discuss peace in order to "save the Serbs from the blockade and pressure".[16148] The Accused further ordered the army to "stay where it is" because "minor details may decide the division of BiH".[16149] He finally ordered those present to "[e]nsure civilised conduct at the checkpoints" and to respect UNPROFOR personnel.[16150]

4797. The Chamber also received evidence that even prior to the establishment of the SRK, the Accused was issuing orders to armed forces and influencing the military situation in Sarajevo.[16151] On 13 April 1992, in a telephone conversation he ordered Danilo Veselinović to fire at the sports hall in Mojmilo after being informed it held the Green Berets' weapons and general staff headquarters.[16152] He also told Veselinović that it was important that no people were in the

16141 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 148.

16142 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 148–149.

16143 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 149.

16144 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 149.

16145 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 51.

16146 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 75.

16147 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 78.

16148 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 78.

16149 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 80.

16150 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 80.

16151 *See, e.g.,* P5731 (Intercept of conversation between Radovan Karadžić and Rajko Dukić, 1 March 1992) (the Accused being informed that 'Dragan' has asked that the people in Sarajevo rise up and the Accused ordering "get them to rise up and have things prepared"); D4525 (Intercept of conversation between Radovan Karadžić and Ilić, 3 March 1992) (the Accused being informed on 3 March 1992 of the situation in Sarajevo and ordering that the "[Bosnian Serbs] should all stay in their settlements and set up a defence formation"); D3755 (Intercept of conversation between Radovan Karadžić and Milenko Karišik, 24 April 1992) (the Accused telling Karišik that one of the "white" ones will be coming to see who is violating the cease-fire and thus not to retaliate unless threatened).

16152 D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), p. 2; John Wilson, T. 4002–4005 (21 June 2010). When shown this conversation, Mijatović testified that the Accused was always "very explicit, very imperative" that civilians and civilian facilities should not be fired upon. *See* Nikola Mijatović, T. 30762–30763 (30 November 2012). *See also* D920 (Intercept of conversation between Radovan

building and that no civilians should be killed.[16153] During the conversation, the Accused was informed about the situation around Dobrinja and the airport.[16154]

4798. Similarly, in May 1992, the Accused spoke to "Rade" inquiring about the situation in Sarajevo and was informed there was shelling in Sarajevo and Mojmilo; the Accused ordered the Bosnian Serbs not to fire back unless threatened.[16155] The Accused also ordered Rade to call Plavšić "or someone" before they started shooting and to call UNPROFOR "to tell them that they're [ABiH] threatening you all the time and that you can't hold out".[16156]

(E) Accused receiving information about the military situation in Sarajevo

4799. The Chamber heard that the Accused regularly received reports from the VRS and the SRK as follows: companies to battalions to brigades to the SRK Command to Main Staff, and then from Main Staff on to the Supreme Command.[16157] Accordingly, there was a system of communication which linked the companies, the battalions, the corps, including the SRK, the Main Staff, and the Supreme Command.[16158] While Galić testified that when he took command of the SRK communication was not functioning properly,[16159] Dragomir Milošević explained that although the communication system in the SRK was not working properly in the early period after its establishment, it was constantly worked on and improved upon and, by 1995, it was functioning meticulously.[16160] As early as September 1992, regulations regarding the system of reporting between the units of the SRK and SRK Command were enacted in order to ensure accuracy in the reporting system.[16161] Reports to the SRK Command were to include, "(i) situation and activities of

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Karadžić and Radovan Pejić, 23 April 1992) (wherein the Accused informed Pejić that a cease-fire would be signed that day and that the Bosnian Serb side should not launch any attacks).

16153 D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), pp. 2-3.

16154 D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), pp. 2–5.

16155 D4506 (Intercept of conversation between Radovan Karadžić and Rade, May 1992), p. 1; John Wilson, T. 4047–4051 (22 June 2010) (Wilson did not know anything about this conversation; however, he testified that the Bosnian Serbs did not always notify UNPROFOR when they were forced to respond).

16156 D4506 (Intercept of conversation between Radovan Karadžić and Rade, May 1992), pp. 1–2.

16157 Stevan Veljović, T. 29238–29243 (23 October 2012); D319 (SRK Order, 18 July 1993); KDZ088, T. 6258–6259 (7 September 2010) (closed session), T. 6332 (8 September 2010) (closed session), T. 6622–6624 (13 September 2010) (closed session); P1154 (Witness statement of KDZ088 dated 27–29 April 2010), pp. 109–110, 161–162 (under seal); Richard Philipps, T. 3755–3756 (15 June 2010). According to Van Baal, the VRS had very sophisticated communication equipment and systems. *See* P1818 (Witness statement of Adrianus van Baal dated 26 October 2010), paras. 24, 30, 63–65.

16158 Stevan Veljović, T. 29241 (23 October 2012). *See also* P2414 (Witness statement of KDZ182), pp. 20, 53 (under seal); KDZ182, T. 13071–13073 (9 March 2011) (private session).

16159 Stanislav Galić, T. 37618–37620 (23 April 2013). *See, e.g.,* D2838 (SRK Order, 16 September 1992) (order issued by Galić to regulate the system of reporting); D2839 (SRK instructions, 4 November 1992) (order issued by Dragan Marčetić regulating the times reports are due to the SRK command).

16160 Dragomir Milošević, T. 32871, 32877–32879 (29 January 2013); D2839 (SRK instructions, 4 November 1992) (regulating that reports be sent to the SRK command at specific times daily). *See also* D312 (SRK analysis of combat readiness of artillery rocket units, July 1994), pp. 3–4.

16161 Dragomir Milošević, T. 32875 (29 January 2013); D2838 (SRK Order, 16 September 1992).

the enemy, (ii) combat readiness of units, (iii) security and morale, (iv) decision for further action, (v) situation in the territory of the zone of responsibility, (vi) situation and problems in the rear, (vii) unusual incidents and casualties, and (viii) proposals and requests".[16162] Reports were to be sent to the SRK Command daily at 2:30 p.m. and again at 6:30 p.m.[16163] The reporting system functioned as regulated; daily combat reports from the SRK command would go to the Main Staff every evening[16164] and interim reports would go to the Main Staff daily, usually around 2 p.m.[16165] Simić testified that there was a daily deadline for the brigades submitting reports to the SRK Command, so that it could inform the Main Staff of the situation in its area of responsibility.[16166] As described earlier, the Main Staff would integrate reports from the Corps into its daily combat reports, which were sent to the Supreme Commander on a daily basis.[16167] Therefore, the Accused would receive a daily report from the Main Staff which would summarise the activities and events in the SRK's zone of responsibility.[16168]

4800. In addition to reports sent from the Main Staff, the Accused also received reports from the MUP, the intelligence services, and other sections that were close to the command of the VRS.[16169] Galić recalled that the Accused toured the SRK Command once, talked to officers there, and was

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16162 D2838 (SRK Order, 16 September 1992). *See also* Stevan Veljović, T. 29242–29243 (23 October 2012).

16163 D2838 (SRK Order, 16 September 1992). Stevan Veljović testified that the latest the reports would be sent was 8 p.m. Steven Veljović, T. 29242 (23 October 2012). *See also* D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 30.

16164 *See, e.g.*, D3396 (SRK combat report, 15 January 1993); D3403 (SRK combat report, 12 February 1993); D3404 (SRK combat report, 14 February 1993); D3405 (SRK combat report, 15 March 1993); D3409 (SRK combat report, 5 May 1993); D3410 (SRK combat report, 4 February 1993); D3411 (SRK combat report, 15 May 1993); D3412 (SRK combat report, 19 May 1993); D3413 (SRK combat report, 28 May 1993); D3416 (SRK combat report, 24 June 1993); D3417 (SRK combat report, 5 July 1993); D3418 (SRK combat report, 11 July 1993); D3421 (SRK combat report, 18 July 1993); D3422 (SRK combat report, 25 July 1993); D3423 (SRK combat report, 29 July 1993); D3424 (SRK combat report, 13 August 1993); D3425 (SRK combat report, 2 September 1993); D3426 (SRK combat report, 22 September 1993); D3427 (SRK combat report, 13 October 1993); D3428 (SRK combat report, 26 October 1993); D3452 (SRK combat report, 6 January 1994); D1515 (SRK combat report, 4 February 1994); D2801 (SRK combat report, 19 February 1994); D2802 (SRK combat report, 20 February 1994); D2804 (SRK combat report, 8 December 1993).

16165 Stanislav Galić, T. 37216 (15 April 2013). *See e.g.* D3393 (SRK combat report, 25 December 1992); D3394 (SRK combat report, 31 December 1992); D3395 (SRK combat report, 11 January 1993); D3406 (SRK combat report, 18 March 1993); D3407 (SRK combat report, 22 March 1993); D3408 (SRK combat report, 5 April 1993).

16166 Savo Simić, T. 30004, 30006–30007 (8 November 2012). Simić, who was Chief of Artillery of the SRK's 1st Sarajevo Mechanised Brigade from May 1992 to May 1994, testified that the Chief of Artillery had a counterpart Chief of Artillery in the Main Staff with whom the SRK Chief of Artillery would intermittently communicate, usually over the phone. *See* Savo Simić, T. 30009–30010 (8 November 2012). *See also* Adjudicated Facts 2858, 2872.

16167 *See* para. 207.

16168 *But see* P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993) (during which the Accused stated that the VRS was lying to him and the reports he was receiving were never accurate); D2841 (Warning of SRK, 2 April 1995); D4619 (SRK report, 18 August 1995), para. 6 (Čedomir Sladoje reporting on 18 August 1995 that "false reports, of which there have been unacceptably too many so far, do the greatest damage to combat operations" and to "take all measures for complete, prompt, and correct reporting to the superior command").

16169 Stanislav Galić, T. 37525 (22 April 2013).

informed about various problems.[16170] Further, he recalled that in 1993 the Accused attended a meeting with the SRK Command where the problem of disproportionate use of artillery was discussed as well as the pressure from "the mass media of the world" for such use to be decreased.[16171] Galić stated that the Accused wanted to reduce the amount of artillery to the minimum depending on military necessity and objectives.[16172] Mladić's diary confirms that on 2 June 1993, the Accused, Mladić, Krajišnik, and Lukić met with representatives of the RS authorities and SRK commanders, including Galić.[16173] According to the diary, at the end of the meeting the Accused stated that the "Sarajevo battlefield is the most important today" and that Izetbegović could not be negotiated with but had to be defeated.[16174] He also instructed that the Bosnian Serbs must "take Sarajevo" while ensuring "favourable international conditions".[16175] [REDACTED].[16176] [REDACTED].[16177]

4801. In addition to the official reporting procedure described above, the Accused would also receive information about the military situation in Sarajevo through meetings and telephone calls with various individuals on the ground, including VRS and SRK officers.[16178] For example, following the bombardment of Sarajevo on 28 and 29 May 1992 described earlier in the Judgement,[16179] on 31 May 1992, Mladić met with the Accused and other members of the Bosnian Serb leadership.[16180] In the meeting, the Accused stated that they had to talk about Sarajevo and must have a "part of Sarajevo".[16181] In a meeting a few days later, on 6 June 1992 during another massive bombardment described above,[16182] Mladić met again with the Bosnian Serb political leadership, including the Accused, Krajišnik and Koljević, to discuss, *inter alia*, the borders of the RS.[16183] During this meeting, Krajišnik informed the attendees that Hadžići and Vogošća had been

16170 Stanislav Galić, T. 37883, 37888 (8 May 2013). *See also* [REDACTED].
16171 Stanislav Galić, T. 37883–37889, 37897–37898 (8 May 2013).
16172 Stanislav Galić, T. 37888 (8 May 2013).
16173 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 182–194.
16174 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 194.
16175 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 194.
16176 [REDACTED].
16177 [REDACTED].
16178 *See* paras. 4780–4796. *See also* P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), pp. 172–173; P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), pp. 63–68; P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 259. In addition, even prior to the establishment of the VRS and the SRK, the Accused was being informed about the situation in Sarajevo. *See e.g.* P5604 (Intercept of conversation between Gvozden and Radovan Karadžić, 3 March 1992); P5702 (Intercept of conversation between Branko Kovačević, Momo and Radovan Karadžić, 22 April 1992); D920 (Intercept of conversation between Radovan Karadžić and Radovan Pejić, 23 April 1992); P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), pp. 123–126.
16179 *See* discussion in relation to Scheduled Incident G.1.
16180 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 36, 38.
16181 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 42.
16182 *See* discussion in relation to Scheduled Incident G.2.
16183 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93.

"liberated" and that the goal was to form a Birač–Romanija area, which should also include Dobrinja.[16184]

4802. On 10 July 1992, in a meeting between Mladić, the Accused, Krajišnik, Koljević, Plavšić, Đerić, Buha, Gvero, and Tolimir, the attendees discussed the situation in Sarajevo at length. Koljević produced a map of Sarajevo showing routes for the passage of humanitarian aid and stated: "Let us take a stand regarding Sarajevo".[16185] He also informed the others that Bosnian Serb fighters in Nedžarići were "embittered" with the RS political leadership because the fighters "[did] not know the status of Sarajevo".[16186] Krajišnik stated that the issue of demilitarisation of Dobrinja was a "major problem" for the Bosnian Serbs and cautioned the Accused against offering the UN anything, stating that it was better to "let them ask for it".[16187]

4803. On 24 February 1995, the Accused and Krajišnik met with the commanders and Presidents of the Sarajevo Municipalities and discussed, among other things, the shortage of troops in Rajlovac.[16188] At the meeting, Krajišnik raised the issue of "[h]ow to hold on to Sarajevo".[16189]

4804. On 8 June 1995, at a meeting with Mladić, the Accused stated that the situation was "very serious" and that relationships between certain military officers and the civilian authorities had been "disrupted", and that soldiers were "abandoning the lines".[16190] He stated that the Bosnian Serbs "must keep Sarajevo until a political solution".[16191]

(F) Conclusion

4805. Based on the foregoing evidence, the Chamber finds that the Accused exercised in fact his *de jure* authority over the SRK units in Sarajevo. As the evidence outlined above shows, the Accused had direct contact with Mladić throughout the conflict and was able to issue orders to him, such as in the aftermath of the bombardment in Sarajevo at the end of May 1992, which were then implemented on the ground. Even taking into account disagreements that arose between the Accused and Mladić during the conflict, which were to be expected given their respective positions, the Chamber finds that these disagreements did not undermine the Accused's ultimate authority over the situation in Sarajevo, including over the SRK units. Indeed, neither Galić nor Milošević

16184 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 108.
16185 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 308–310.
16186 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 312.
16187 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 311.
16188 P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), p. 42.
16189 P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), p. 42.
16190 P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), p. 168.
16191 P1473 (Ratko Mladić's notebook, 27 January–5 September 1995), pp. 168–169.

could recall a single occasion where they received two inconsistent orders from Mladić and the Accused regarding combat operations in Sarajevo.[16192] Furthermore, despite the tension that arose in August 1993, when the Accused wanted forces to withdraw from Mt. Igman and expressed concern over Mladić's resistance to that decision, the forces eventually withdrew in accordance with his wishes. Additionally, while the Accused claimed in his conversation with Tomanić on 11 August 1993 that the army was lying to him, he was nevertheless able to obtain the information he sought and eventually removed the forces from the Mt. Igman area.

4806. The Chamber is therefore satisfied that the Accused, as Supreme Commander, commanded the SRK mainly through the Main Staff and Mladić and sometimes directly through the SRK Commander. While Abdel-Razek and Bulatović thought that the Accused did not exercise effective control over the SRK, and his expert witness, Radinović, opined that the Accused failed to exert effective control over the Sarajevo situation because of unauthorised activities of the troops and the inability to control all the renegades on the ground,[16193] this is contrary to the majority of evidence received by the Chamber as recalled above, including the credible observations of Smith, Rose, Banbury, KDZ450, and Van Baal, among others. Furthermore, Radinović's evidence directly contradicts the evidence the Chamber has received in relation to: (i) a number of specific meetings where the Accused successfully exerted control or showed influence over forces in Sarajevo, including the meetings of 30 May 1992 (with Morillon) and 21 March 1994 (with Van Baal); and (ii) orders issued by the Accused relevant to Sarajevo, some of which went directly to the SRK and which were implemented on the ground, including the order that followed the incident in Markale market on 5 February.

4807. The evidence is also clear that the Accused used his authority over the VRS and the SRK to organise and direct operations in and around Sarajevo. He did so through the directives he issued and/or approved, which ensured that the city was kept under blockade and, in turn, allowed for the SRK's sniping and shelling of civilians to continue. He also did it through other types of orders he issued to the Main Staff, all of which were in turn transmitted to the SRK Command and implemented. In addition, at times, the Accused would issue orders directly to the SRK units and

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16192 While there may be some suggestion in Mladić's request for information from the SRK Command, dated 26 April 1995, that the Supreme Command issued an order to the SRK Command to launch a modified air bomb, thus bypassing the Main Staff, the Chamber notes that this was not the case, as reported back to Mladić on the same day. *See* P1299 (VRS Main Staff request for information from SRK, 26 April 1995); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995) (explaining that a decision to launch a modified air bomb had been made at the SRK Command's morning briefing).

16193 *See* D3864 (Radovan Radinović's expert report entitled "The Control Authority of Dr. Radovan Karadžić in the Strategic Command System of the VRS", 2012), paras. 4, 24, 81, 86–87, 90, 114–115, 247–249.

SRK Commanders.[16194] Finally, as illustrated by the various intercepted phone conversations and meetings outlined above, the Accused was also able at all times during the conflict to issue oral orders to VRS and SRK officers since he was in regular contact with Mladić, Milovanović, Gvero, Galić, and Dragomir Milošević. When he did so, these oral orders were relayed to the SRK units around the city. Accordingly, there is no doubt that throughout the conflict, the Accused was closely involved in military matters in Sarajevo, including in SRK operations and other activities, particularly if they concerned agreements he had reached with the representatives of the international community. The most striking example of this was his involvement in the withdrawal of the VRS and SRK soldiers from Mt. Igman and Mt. Bjelašnica. The Chamber is also convinced that the Accused's involvement in the Sarajevo military matters went beyond planning and strategy as the evidence shows that he was involved at the operational level as well. His orders to (i) send two platoons of special forces to Nedžarići, (ii) secure Pretis and other factories in Vogošća, and (iii) conceal artillery around Sarajevo following the first Markale incident are prime examples of that.[16195]

4808. The Chamber also finds that the chain of communication and reporting from the SRK to the Main Staff and to the Accused was functioning properly during the period relevant to the Indictment. The regulations governing the communication and reporting system were detailed and followed by the SRK, enabling the Main Staff and the Accused to receive daily information about the situation on the ground in Sarajevo. Thus, the Accused was constantly informed about SRK operations in Sarajevo through regular combat reports. In addition, he received information from other agencies such as the MUP, the intelligence services, and other sections in the VRS Command. Finally, the many private telephone conversations referred to above show that he was a well-informed, hands on, president who was able to and who often did receive information on military matters from various individuals on the ground.

4809. Based on the findings above, namely (i) that the SRK was a professional corps of the VRS with a fully functioning chain of command, (ii) that the Accused successfully exercised his authority over the SRK units as testified to by a number of witnesses and as amply illustrated by numerous written and oral orders he issued relating to Sarajevo, and (iii) that the Accused was

16194 The Chamber notes that the Accused's orders outlined earlier clearly show that his submission that the SRK did not receive orders from the Presidency which applied exclusively to the SRK is incorrect. Indeed, there were several occasions where that did happen, the most striking being the order he issued in the aftermath of the first Markale shelling, which was implemented and led to a peaceful period in the city.

16195 *See* paras. 4765, 4774, 4776. The Chamber does not accept the Accused's claim that the political authorities never interfered in military matters or that he had no effective control over the SRK units due to the shortage of professional staff. Indeed, the evidence outlined above shows the opposite to have been the case as there are numerous examples of the Accused getting involved in and exerting influence over military matters.

receiving regular reports from the SRK units and other sources about the situation in Sarajevo, the Chamber finds that the Accused was indeed at the apex of control of the forces in Sarajevo, in particular the SRK, despite the occasional tensions that arose between him and Mladić. As such the Accused oversaw the events in Sarajevo, both on a political and military level, and also had the power to stop and prevent the targeting of civilians and the indiscriminate or disproportionate firing on the city by the SRK.

iii. *Accused's knowledge of crimes and the measures he took to prevent them*

(A) Arguments of the parties

4810. The Prosecution alleges that the Accused knew about the nature and extent of the sniping and shelling campaign and its effects on the civilian population of Sarajevo, and allowed the campaign to continue for almost four years while denying or deflecting international criticism and failing to take any genuine steps to punish the perpetrators.[16196] It alleges that the Accused was informed of the campaign through repeated protests from international observers, Security Council resolutions, and media reports.[16197] In contrast, the Accused argues that he was not adequately informed of the crimes of terror and unlawful attacks.[16198] He argues that his receipt of information must be "considered in light of the chaos" as power cuts, interruptions of telephone lines, obsolete technical equipment, and poor roads created problems with the system of command and control throughout the war.[16199] He also submits that SRK combat reports made no mention of the scheduled incidents listed in the Indictment, and contends that communication between himself and Galić was limited to the TEZ, Markale I, and humanitarian issues, and was "practically non-existent in terms of carrying out combat activities".[16200]

4811. The Prosecution further submits that, while the Accused would sometimes acknowledge responsibility for the sniping and shelling of civilians, generally he denied and deflected international criticism, including through false assurances, false denials or excuses, blaming others, cavalier brush-offs, using *tu quoque*, or threatening to do worse.[16201] The Prosecution argues that these denials and deflections were done for the purpose of advancing the campaign of sniping and shelling.[16202] While not making a general argument in relation to this claim, the Accused maintains

16196 *See* Prosecution Final Brief, paras. 605, 612(3), 612(5).
16197 Prosecution Final Brief, paras. 644–649.
16198 Defence Final Brief, paras. 2962–2966.
16199 Defence Final Brief, paras. 2962–2963.
16200 Defence Final Brief, paras. 2965–2966.
16201 Prosecution Final Brief, para. 628.
16202 Prosecution Final Brief, para. 628.

that his denials that the Bosnian Serbs fired at the Markale market on 5 February 1994 were well-founded because the VRS had insisted that they had not fired the mortar.[16203]

4812. The Prosecution also submits that the Accused took no meaningful steps to prevent, investigate, and/or punish SRK unlawful attacks on civilians in Sarajevo.[16204] It argues that, had the Accused wanted to order investigations of SRK crimes occurring in Sarajevo, he could have done so effectively.[16205] Instead, he created and sustained a culture of impunity where those responsible for the campaign were promoted or awarded, and Mladić's plans for the campaign of terror were continually approved.[16206] In contrast, the Accused submits that he took measures to ensure investigations were carried out and sanctions imposed in the event of any potential criminal activities, including ordering that members of the VRS act in accordance with the Geneva Conventions and the other provisions of the international laws of war.[16207]

(B) Accused's knowledge

(1) Accused directly informed of the campaign

4813. A large number of witnesses, mostly representatives of the international community called by the Prosecution, gave evidence that they or their colleagues protested and complained to the Accused about the sniping and shelling of the civilian population of Sarajevo. For example, Okun testified that, on more than one occasion, Lord Owen directly asked the Accused why the Bosnian Serbs continued to shell Sarajevo when it was giving them such bad public press but the Accused never answered him.[16208] In his book "Balkan Odyssey", Owen wrote that when he asked the Accused why the Bosnian Serbs were shelling Sarajevo, the Accused replied: "We're not, it's the Muslims. We're not attacking, just protecting our homes in and around Sarajevo".[16209] Okun and others "implored" the Accused to stop the Bosnian Serb shelling of Sarajevo, but the Accused did not order Mladić to stop the attacks.[16210] The Chamber heard that Morillon repeatedly told the Accused and Mladić that world history would judge them on the way they were using their artillery

16203 Defence Final Brief, para. 2999.
16204 Prosecution Final Brief, para. 643.
16205 Prosecution Final Brief, para. 650.
16206 Prosecution Final Brief, paras. 636–644.
16207 Defence Final Brief, paras. 2974–2983, 2997–3000.
16208 Herbert Okun, T. 1635 (26 April 2010), T. 1694–1695 (27 April 2010), P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4211. *See also* P1482 (Ratko Mladić's notebook, 2–28 January 1993), pp. 59–62 (Owen stating at a plenary meeting attended by the Accused that there was shelling of towns and Silajdžić noting that Sarajevo was shelled by very heavy artillery for 3 hours on the previous day).
16209 P799 (Excerpts from David Owen's book entitled "Balkan Odyssey"), e-court p. 10.
16210 Herbert Okun, T. 1694–1695 (27 April 2010).

against cities, towns, and civilians, and that they had to stop.[16211] [REDACTED] who attended meetings with the Accused, Krajišnik, Koljević, and Mladić on a number of occasions, testified that a primary issue raised in those meetings was the call to cease action against the civilian population.[16212] [REDACTED] during the first months of the conflict, the Accused, Mladić, Krajišnik, Koljević, and Plavšić were fully aware of the general situation in the SRK's zone of responsibility, including the large-scale commission of crimes.[16213] According to Tucker, the Accused's knowledge of military detail was greater for Sarajevo than other parts of BiH.[16214]

4814. Rose frequently met with the Accused during his time as Commander of UNPROFOR BiH Command from 5 January 1994 to 23 January 1995, and testified that when a serious incident occurred, such as the 8 October 1994 sniping of a Sarajevo tram,[16215] it was always raised with the Bosnian Serb side; he personally raised the issue of the sniping and shelling of civilians with "the Bosnian Serb leadership" at every opportunity.[16216] According to Rose, the usual response of the Accused was to blame the Bosnian Muslims for the incident, particularly when accused of a "terrible atrocity", such as the shelling of Markale market; when accused of shelling generally, the "Bosnian Serb leadership" would state that they were responding to ABiH attacks and that this was their method of responding because the ABiH had superior levels of infantry.[16217]

4815. Harland, who attended a number of meetings with the Accused, also testified that during those meetings he heard his superiors protesting about the sniping and shelling of civilians to the Accused or other members of the Bosnian Serb political or military leadership.[16218] The Accused would usually deny that there was a problem, or say that he would look into it or that he had already issued orders that firing should stop.[16219] According to Harland, the Accused and Mladić

16211 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 99.

16212 [REDACTED].

16213 [REDACTED].

16214 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 69, 281; Pyers Tucker, T. 23226–23235 (18 January 2012); P4216 (UNPROFOR report re meeting with Radovan Karadžić, 20 November 1992), para. 7. *See also* Neđeljko Prstojević, T. 13258–13259, 13264, 13267–13268 (11 March 2011) (testifying about frequent meetings with the Accused in Pale involving discussions about the military and political situation in Sarajevo); P1004 (SRK Order, 5 September 1992); P1006 (SRK Order, 12 September 1992), p. 1 (noting that tasks were received at a conference with the RS Presidency in Jahorina held on 6 September 1992).

16215 *See* discussion in relation to Scheduled Incident F.11.

16216 Michael Rose, T. 7269 (5 October 2010); P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 35, 107, 151, 156, 200; P1644 (Letters from Michael Rose to Alija Izetbegović and Radovan Karadžić, 9 October 1994). *See also* P1762 (Witness statement of David Fraser dated 17 October 2010), p. 44.

16217 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 201, 209 (commenting that the disproportionality of Serb responses undermined the credibility of this justification); Michael Rose, T. 7269 (5 October 2010).

16218 David Harland, T. 2037 (6 May 2010). *See also* P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 21 (testifying that Goulding and Morillon discussed "the shootings and shelling" with both the Accused and Galić).

16219 David Harland, T. 2037 (6 May 2010).

reacted to protests in entirely different ways: Mladić was more confrontational, while the Accused would "often link one problem to another, generally ensuring that the problem could never be resolved".[16220] Harland concluded that the protests from the international community, both oral and written, had "very little effect" except at times of explicit military threat from NATO forces against the Serbs, in which case they might be responded to quite positively and decisions might be implemented.[16221]

4816. According to Tucker, the parties were "absolutely aware" of the existence of Security Council resolutions, and these resolutions were frequently discussed during negotiations.[16222] Indeed, on 10 June 1992, the Accused wrote a letter to Secretary General Boutros-Ghali in which he stated that he accepted Security Council Resolution 758 "with satisfaction and great hope".[16223] Similarly, on 5 October 1994, at a meeting between Akashi, the Accused, Mladić and others in Pale, the Accused discussed and expressed some satisfaction with Resolution 942.[16224] While Security Council resolutions in evidence in this case do not explicitly refer to sniping and shelling of civilians in Sarajevo, they allude to the commission of these crimes by expressing deep disturbance at "the situation which now prevails in Sarajevo", repeatedly calling on all parties to comply with the obligations under international humanitarian law and in particular the Geneva Conventions, and expressing alarm at serious violations of international humanitarian law.[16225] In Resolution 824, in which the Security Council declared Sarajevo, Bihać, Srebrenica, Goražde, Tuzla, and Žepa to be safe areas, the Security Council considered that these areas should be "free from armed attacks and from any other hostile acts which endanger the well-being and the safety of their inhabitants" and declared that all Bosnian Serb artillery or paramilitary units should withdraw "to a distance wherefrom they cease to constitute a menace to their security and that of their inhabitants".[16226] One month later, on 4 June 1993, the Security Council reiterated its alarm at the

16220 David Harland, T. 2037–2038 (6 May 2010).

16221 David Harland, T. 2037 (6 May 2010). *See also* para. 4869.

16222 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 288. *See also* KDZ240, T. 16183–16184 (6 July 2011) (closed session).

16223 D1509 (Radovan Karadžić's letter to UN Secretary General, 10 June 1992).

16224 D3500 (UNPROFOR report, 7 October 1994), para. 5(d); Yasushi Akashi, T. 37716–37718 (24 April 2013). *See also* P2489 (UNPROFOR Weekly Situation Report (Sarajevo), 24 April 1995), para. 6 (indicating that the Accused was familiar with Security Council Resolution 988).

16225 P982 (UNSC Resolution 764, 13 July 1992); P983 (UNSC Resolution 770, 13 August 1992); P5424 (UNSC Resolution 941, 23 September 1994); P4209 (UNSC Resolution 819, 16 April 1993); P985 (UNSC Resolution 836, 4 June 1993). *See also* P1031 (UNSC Resolution 757, 30 May 1992) (referring to mortar attacks on UNPROFOR in Sarajevo).

16226 P984 (UNSC Resolution 824, 6 May 1993), pp. 1–2.

grave and intolerable situation in BiH arising from serious violations of international humanitarian law, and its alarm at the plight of the civilian population, particularly in the safe areas.[16227]

4817. Several Defence witnesses also alluded to the Accused's knowledge of the sniping and shelling campaign. John Zametica, who advised the Accused on international relations from February 1994,[16228] recalled that, despite rarely discussing military matters, the Accused told him that Bosnian Serb sniping was "stupid" and did not get the Serbs any military advantage; there were also times when the Accused disapproved of irresponsible shelling or thought that it was senseless or unnecessary.[16229] Momir Bulatović, at the time the President of Montenegro,[16230] testified that he had many conversations with the Accused on the shelling of Sarajevo, during which the Accused recognised that the shelling was a political liability for the Bosnian Serbs and that it damaged their cause in the opinion of the international community.[16231] Bulatović and the Accused also discussed the allegations made by international negotiators that the shelling was not limited to military attacks but was also aimed at civilian areas, to which the Accused stated that he had banned shelling of civilian areas on a number of occasions and had done everything he could to prevent the unnecessary and disproportionate shelling of Sarajevo.[16232] Vladislav Jovanović, the Foreign Minister of Serbia at the time,[16233] questioned the Accused a few times about why Sarajevo was kept under siege for so long and why it was subjected to "all those snipers and misfortunes", and informed the Accused that this was causing a great deal of damage to the Bosnian Serbs and to the Serbians.[16234] He testified that the Accused denied that the Bosnian Serbs had a policy of shelling Sarajevo; rather, he would say either that these incidents were sporadic and caused by "a few frustrated individuals" who had lost family members and who were doing it on their own initiative,

16227 P985 (UNSC Resolution 836, 4 June 1993), pp. 1–2. *See also* P5014 (UNSC Resolution 998, 16 June 1995), pp. 2–3 (condemning the increasing attacks on the civilian population by Bosnian Serb forces and demanding that the parties respect fully the status of the safe areas and in particular the need to ensure the safety of the civilian population therein)

16228 John Zametica, T. 42441 (29 October 2013).

16229 John Zametica, T. 42458–42460 (29 October 2013).

16230 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 2.

16231 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 23.

16232 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 24. In addition, on 18 August 1992, Bulatović attended a meeting of the FRY Council of Co-ordination of State Policy in Belgrade. At this meeting, Milan Panić told the audience that the Accused said he had no control over the guns and the individuals responsible were acting on their own. *See* D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 25; D3054 (Notes of session of Council for Co-ordinating Positions on State Policy, 18 August 1992), p. 11 (Milan Panić was the Federal Prime Minister and Chairman of the Council); Momir Bulatović, T. 34525–34526 (28 February 2013).

16233 D3015 (Witness statement of Vladislav Jovanović dated 22 February 2013), paras. 4–6.

16234 P6150 (Excerpt from record of interview with Vladislav Jovanović), p. 1; Vladislav Jovanović, T. 34333–34336 (27 February 2013).

or that the Bosnian Muslims were responsible because they wanted to draw international attention to the Bosnian Serbs, infuriate the international community, and generate NATO action.[16235]

4818. In addition, the Chamber heard about a number of specific instances on which the Accused knew or was informed of various incidents of sniping and shelling, including those scheduled in the Indictment. For example, as discussed earlier in this Judgement, in the late May 1992 meeting between, *inter alios*, the Accused, Mladić, Krajišnik, Plavšić, Koljević, [REDACTED].[16236] [REDACTED] the members of the Bosnian Serb leadership present at the meeting, including the Accused, did not oppose Mladić's proposal.[16237] On 30 May 1992, while this bombardment was taking place, Morillon and Mackenzie met with the Accused and Koljević to discuss these events.[16238] During the meeting, the Accused indicated that Bosnian Serb forces were inexperienced and self-organised and thus over-reacted to attacks by the Green Berets; in addition, he said that Mladić did not have all the forces under his command.[16239] The Accused also indicated that the Bosnian Serbs were sometimes blamed for attacks for which they were not responsible, and that they were in a no-win situation where they would either be blamed or defeated.[16240] In response, Mackenzie indicated to the Accused and Koljević that an obstacle to progress in negotiations had been the linkage of one problem area to another and that this should be avoided.[16241] When asked during the meeting whether he was in a position to stop the bombardment, the Accused "replied in the affirmative"; this response was qualified by Koljević, who stated that they thought they could persuade the people on the ground to stop the shelling.[16242] The Accused then agreed that he would travel to Sarajevo to contact Mladić in order to stop the bombardment.[16243] The Accused eventually reached Mladić by phone and the latter agreed to stop the bombardment.[16244] On the same day, the Accused spoke to a certain Čedo and instructed him to

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16235 D3015 (Witness statement of Vladislav Jovanović dated 22 February 2013), para. 52; Vladislav Jovanović, T. 34253–34254, 34325–34326 (26 February 2013).

16236 *See* para. 4023.

16237 *See* para. 4023.

16238 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 1–2. *See also* para. 4037.

16239 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 3; John Wilson, T. 4079 (22 June 2010)

16240 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 5–6.

16241 P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 9.

16242 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), paras. 7–8.

16243 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 11.

16244 P1029 (Witness statement of John Wilson dated 4 November 2008), para. 80; P1036 (UNPROFOR report re meeting with Radovan Karadžić and Nikola Koljević, 30 May 1992), para. 15.

try not to use artillery that night but to use infantry weapons and "let them go to hell [...] [i]f they want to die".[16245]

4819. The Chamber also heard that, between 3 and 5 June 1992 Thornberry, Wilson, and Abdel-Razek conducted three days of negotiations with the Bosnian Serbs and the BiH Presidency for the opening of the Sarajevo airport.[16246] Wilson testified that during these negotiations he told the Accused, Plavšić, and Mladić that the Bosnian Serbs hit most of the major buildings in the city, that there did not appear to be any restraint applied to the selection of targets, and that from Bosnian Serb positions looking down on the city, they knew what they were engaging.[16247] According to Wilson, the Accused, Plavšić, and Mladić responded that this type of fire was legitimate and that they were defending Serbs.[16248]

4820. As discussed earlier in the Judgement, the Accused was also aware of the heavy bombardment of the city between the night of 5 June and 8 June 1992, which the Presidency ordered to be halted on 9 June 1992.[16249]

4821. Nenad Kecmanović, a Serb politician who was the President of the Alliance of Reform Forces of Yugoslavia political party and a member of the BiH Presidency from 1 June 1992 until July 1992,[16250] testified that in the summer of 1992 in meetings with leading representatives of the Bosnian Serb leadership, including the Accused, he raised the shelling of Sarajevo "several times".[16251] The response he received was that the ABiH was opening fire against Bosnian Serb positions around the city, that the ABiH artillery was located in the most densely populated parts of the city, and that the Bosnian Serb artillery was therefore forced to respond by firing upon these locations.[16252]

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16245 P2332 (Intercept of conversation between Čedo and Radovan Karadžić, 30 May 1992).

16246 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 84–86; P1039 (UNPROFOR report re airport meetings in Sarajevo, 3 June 1992); P1045 (UNPROFOR report re airport talks, 4 June 1992); John Wilson, T. 4082–4089 (22 June 2010); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 79–93.

16247 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 48–49.

16248 P1029 (Witness statement of John Wilson dated 4 November 2008), paras. 48–49. Wilson testified that he observed the Accused in many meetings, and that the Accused always attempted to justify the actions of the people he claimed to represent. *See* P1029 (Witness statement of John Wilson dated 4 November 2008), para. 122.

16249 *See* para. 4051.

16250 D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), paras. 3, 9; Nenad Kecmanović, T. 39105 (31 May 2013).

16251 D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), para. 50.

16252 D3645 (Witness statement of Nenad Kecmanović dated 27 May 2013), para. 50. *See also* D1509 (Radovan Karadžić's letter to UN Secretary General, 10 June 1992) ("The Muslim side [...] permanently attacks the Serbian side and the Serbian part of the city of Sarajevo"), p. 1; KDZ240, T. 16183–16184 (6 July 2011) (closed session).

4822. On 26 August 1992, Vance, Carrington, and Doyle met with the Accused and Koljević at the London Conference.[16253] Carrington raised Bosnian Serb attacks on Sarajevo, stating that "world opinion was firmly against the Serbs, particularly after the recent escalation of fighting around Sarajevo".[16254] The Accused responded by stating that the Bosnian Muslims were responsible for the escalation as they regularly shelled their own people and only they could have been responsible for the heavy shelling of Sarajevo in the preceding days.[16255] Doyle told the Accused that the UNPROFOR office in Sarajevo had confirmed that Serbian gunners were to blame.[16256] To this the Accused said that he was willing to accept UN monitors at all Serbian artillery positions in and around Sarajevo.[16257]

4823. On 8 September 1992, at a meeting between, *inter alios*, the Accused, Mladić and General Simonović, Simonović stated that the blockade of Sarajevo was justified but mass-scale use of artillery against cities was damaging, and recommended that the Bosnian Serbs should prevent the bombardment of cities.[16258]

4824. On 8 December 1992, the Accused sent a letter to an international organisation in which he claimed that the citizens of Sarajevo had been prevented from leaving the city by the BiH government.[16259] Ten days later he received a response from the representative of that organisation, stating that it was unacceptable for him to hold the international community responsible for the situation in Sarajevo, while the responsible party are those who are "shelling and keeping Sarajevo under siege on an indiscriminate basis".[16260]

4825. On 9 December 1992, members of the SDC, including, *inter alios*, Slobodan Milošević, Bulatović, and Dobrica Ćosić, met to discuss the war in BiH.[16261] At the meeting, Ćosić noted that the Serbian leadership had advised the Accused on numerous occasions that the shelling of

16253 P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992); Colm Doyle, T. 2676–2677 (21 May 2010), T. 2871–2874 (27 May 2010); P1260 (SRK information on ICFY, 30 August 1992).

16254 P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992), para. 4; Colm Doyle, T. 2872 (27 May 2010).

16255 P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992), para. 4; Colm Doyle, T. 2872 (27 May 2010).

16256 P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992), para. 4; Colm Doyle, T. 2872 (27 May 2010).

16257 P941 (London Conference record of a meeting with Radovan Karadžić, 26 August 1992), para. 4; Colm Doyle, T. 2872 (27 May 2010).

16258 P1479 (Ratko Mladić's notebook, 16 July–9 September 1992), pp. 167–173.

16259 [REDACTED].

16260 [REDACTED].

16261 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 28–30.

Sarajevo was detrimental to the political position of the Bosnian Serbs.[16262] Bulatović testified that, although the Accused had fully agreed on every occasion, he was unable to solve the problem.[16263]

4826. As discussed earlier in the Judgement,[16264] on 18 or 19 December 1992, Owen, Morillon, and Abdel-Razek met with the Accused, Mladić, and Koljević in Pale.[16265] The meeting was called due to the intensification of shelling in Sarajevo, including the shelling of the Koševo Hospital.[16266] At the meeting, Owen protested the shelling of the hospital.[16267] Tucker, who was also present, testified that Owen and Mladić had a heated argument during which Owen stated that the shelling of Sarajevo was a disgrace and had to stop.[16268]

4827. Galić testified that sometime during 1993 the Accused met with the SRK command and expressed concern about the disproportionate use of artillery.[16269] According to Galić, at these top-level meetings where the Accused was present, the topic of proportionality was always discussed.[16270] Galić noted that the Accused did not have to inform him that the disproportionate use of artillery by the SRK had caused civilian casualties, because "everybody saw that, there was a war going on and that fire came from both sides".[16271] Galić recalled that the Accused asked to reduce disproportionate fire "to a minimum related to military necessity and military objectives".[16272]

4828. On 28 January 1993, a representative of an international organisation met with the Accused in Geneva and asked him why he did not cease shelling Sarajevo at once.[16273] The Accused

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16262 D3055 (Record of 6th session of FRY's SDC, 9 December), pp. 24–25; D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 29–30.

16263 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 29–30 (adding that this was indicative of the Accused's lack of control over the VRS).

16264 *See* para. 4540.

16265 Hussein Abdel-Razek, T. 5503–5505 (19 July 2010), T. 5545–5547 (20 July 2010); P1273 (Video footage of meeting between Lord Owen and Radovan Karadžić, with transcript); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), paras. 94–98; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 82; P2034 (BBC news report re meeting between Lord Owen and Radovan Karadžić in Pale, with transcript).

16266 Hussein Abdel-Razek, T. 5503–5505 (19 July 2010).

16267 Hussein Abdel-Razek, T. 5546 (20 July 2010); P1273 (Video footage of meeting between Lord Owen and Radovan Karadžić, with transcript); P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 98; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 82; P2034 (BBC news report re meeting between Lord Owen and Radovan Karadžić in Pale, with transcript).

16268 P4203 (Witness statement of Pyers Tucker dated 12 May 2010), para. 95, 98.

16269 Stanislav Galić, T. 37884–37888, 37897–37898 (8 May 2013). Mladić's diary records a meeting, on 2 June 1993, between the Accused, Krajišnik, Mladić, Galić and others. However, the diary does not record the issue of proportionality being discussed. *See* P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 182–194.

16270 When asked how often these meetings took place, Galić failed to answer the question. Stanislav Galić, T. 37886–37887 (8 May 2013).

16271 Stanislav Galić, T. 37888–37889 (8 May 2013).

16272 Stanislav Galić, T. 37888 (8 May 2013).

16273 [REDACTED].

responded that the Bosnian Muslims were attacking Ilidža, that the Bosnian Serbs were merely defending themselves, and that the Bosnian Muslims had produced and provoked "fireworks" when the representative of that organisation was visiting the city.[16274]

4829. As discussed earlier, on 31 January 1993, Morillon sent a letter to the Accused protesting the shelling of the Koševo Hospital "by Serb artillery or mortars".[16275] In the letter, Morillon stated that there can be no excuse for shelling a hospital, and demanded that the Accused take immediate and effective action to ensure that Bosnian Serb gunners respect the Geneva Conventions.[16276]

4830. Just after midnight on 2 June 1993, Morillon faxed the Accused to inform him that the shelling of the football game in Dobrinja which took place that morning and which was discussed by the Chamber earlier in the Judgement[16277] caused the deaths of a number of innocent women and children.[16278]

4831. On 12 October 1993, Andreev, Briquemont, De Mello, and Harland met with the Accused and Krajišnik in Pale.[16279] In the meeting, Briquemont told the Accused that Bosnian Serb shelling of civilian areas in Sarajevo was increasing and that it had no military value but rather caused political damage to the Serbs.[16280] The Accused responded that this was the action of "rogue individuals" and that he would take further action to curb it if the Bosnian Muslim side did the same.[16281] Harland testified that the Accused's comment concerning "rogue individuals" was

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16274 [REDACTED].

16275 P1275 (UNPROFOR protest letter to Radovan Karadžić, 31 January 1993). Morillon also wrote to Izetbegović 12 days earlier to protest against the firing of an 82 mm mobile mortar from a derelict house on the western side of the Koševo Hospital. The Chamber does not accept the Accused's argument that P1275 was an attempt by Morillon to "strike a balance" with respect to the earlier incident; instead the Chamber is satisfied that this is a genuine protest in relation to an incident that occurred on 31 January 1993. *See* D2034 (UNPROFOR report, 21 January 1993), e-court p. 6; D351 (UNPROFOR report re protest letter to Alija Izetbegović, 21 January 1993); Hussein Abdel-Razek, T. 5552–5553 (20 July 2010). A number of international witnesses confirmed that the ABiH would fire at the SRK from around the Koševo Hospital in order to provoke retaliatory fire. *See* para. 4035.

16276 P1275 (UNPROFOR protest letter to Radovan Karadžić, 31 January 1993).

16277 *See* discussion in relation to Scheduled Incident G.4.

16278 P5059 (Fax from UNPROFOR to Radovan Karadžić, 2 June 1993) (Morillon adding that that the world would not continue to tolerate irresponsible behaviour of this type from "your forces"). The SRK Liaison Officer to UNPROFOR, Milenko Indić, testified that he did not receive any protests in relation to this incident. *See* D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 130.

16279 P820 (Witness statement of David Harland dated 4 September 2009), paras. 60–61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993); P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993). While Harland stated that this meeting happened on 15 October 1993 in paragraph 60 of his statement, P845, which is a report on this meeting and is dated 15 October, clearly indicates that the meeting happened on 12 October. The Chamber considers that Harland was mistaken in his testimony and influenced by the date of the report, rather than its content.

16280 P820 (Witness statement of David Harland dated 4 September 2009), para. 61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5; P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), para. 3.

16281 P820 (Witness statement of David Harland dated 4 September 2009), para. 61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5.

disingenuous since often the impugned act was the firing of a heavy weapon such as a howitzer, which required crews of several men to operate.[16282] At the meeting, the Accused also stated that he had given orders for the shelling and sniping to stop while Krajišnik said that he would like to see sniping stop.[16283] The Accused then claimed that Bosnian Muslim shelling and sniping was a major problem and that he might be forced to take the Muslim part of Sarajevo if the sniping did not stop.[16284]

4832. On 4 January 1994, De Mello and Russell met with the Accused in Pale.[16285] De Mello raised the disproportionate retaliation of the SRK to small levels of firing from the ABiH, which served no military purpose, caused tragic civilian casualties, and was highly detrimental to the Serb image and cause.[16286] The Accused agreed that Bosnian Serb retaliation was inappropriate and counter-productive and said that he would discuss the matter with Galić, but stated also that the ABiH was launching fierce ground attacks from inside Sarajevo.[16287]

4833. On 10 January 1994, Akashi met with the Accused and Koljević in Pale.[16288] It was the first meeting between Akashi and the Accused.[16289] Akashi emphasised that the recent excessive retaliations against the ABiH infantry attack were counter-productive, as they killed innocent people and created an unfavourable climate for the negotiations in Geneva.[16290] Akashi recorded that the Accused "took the point", but expressed his impatience with the Bosnian Government's attitude in the Geneva negotiations and later threatened that if a peace agreement could not be reached soon the RS would have to "declare war".[16291]

4834. On 30 January 1994, Rose told the Accused, Krajišnik, Koljević, and Zametica that he was encouraged by the reduction in the shelling of Sarajevo in recent weeks and that he hoped this

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16282 P820 (Witness statement of David Harland dated 4 September 2009), para. 63.

16283 P820 (Witness statement of David Harland dated 4 September 2009), para. 61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5; P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), paras. 3, 5(i).

16284 P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), para. 3; P820 (Witness statement of David Harland dated 4 September 2009), para. 62. Harland observed that the positions adopted by the Accused at this meeting, two weeks after the Bosnian Muslims had rejected the Owen-Stoltenberg agreement, were consistent with the assessment that the Accused sought to increase the pressure on the Bosnians when he wanted to punish the Bosnian government for not having accepted political arrangements acceptable to the Serbs. *See* P820 (Witness statement of David Harland dated 4 September 2009), paras. 61–63.

16285 P5034 (UNPROFOR report re meeting with Radovan Karadžić, 4 January 1994).

16286 P5034 (UNPROFOR report re meeting with Radovan Karadžić, 4 January 1994), para. 7.

16287 P5034 (UNPROFOR report re meeting with Radovan Karadžić, 4 January 1994), para. 7.

16288 D3491 (UNPROFOR report, 10 January 1994); Yasushi Akashi, T. 37680–37683 (24 April 2013).

16289 Yasushi Akashi, T. 37680–37681 (24 April 2013).

16290 D3491 (UNPROFOR report, 10 January 1994), para. 3.

16291 D3491 (UNPROFOR report, 10 January 1994), para. 3.

would prove to be a durable pattern.[16292] He also stated that he believed that demilitarisation was a means to solve the general issue of shelling in Sarajevo.[16293] The Accused said that the continued shelling of Sarajevo was "senseless", that it should stop, and that there should be a global cease-fire starting with the demilitarisation of Sarajevo.[16294]

4835. On 4 February 1994, in protest to the SRK's 4 February 1994 mortar attack in Dobrinja discussed earlier in this Judgement,[16295] Rose telephoned "the [VRS]" and wrote letters of protest to the Accused and Mladić.[16296] However, he received no response to these protests.[16297]

4836. The Chamber also heard that one day after the first Markale incident on 5 February 1994, Akashi and Rose met with the Accused and Gvero at Lukavica Barracks.[16298] During this meeting, the Accused told Akashi that it was the Bosnian Muslims who were responsible for the shelling and not the Bosnian Serbs.[16299] This was followed up by another meeting on or about 7 February 1994, between Akashi, Rose, and the Accused, this time in Belgrade.[16300] During the meeting, the Accused repeatedly denied Bosnian Serb responsibility for the first Markale incident.[16301] On the same day, the Accused issued an order to the VRS Main Staff and the SRK, stating first that "there is evidence that Serbs are not responding in equal measure to Muslim artillery provocations – sometimes twenty to thirty, or even seventy times more" and ordering as a result that the VRS

16292 P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 26, 30 (testifying that, on his arrival in Sarajevo on 23 January 1994, the intensity of the shelling was approximately 1,500–2,000 shells per day, going both ways, and that sniping was common); D700 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 30 January 1994); P1650 (UNPROFOR report on meeting with Radovan Karadžić and Ratko Mladić, 31 January 1994), para. 3.

16293 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 30.

16294 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 31; P1650 (UNPROFOR report on meeting with Radovan Karadžić and Ratko Mladić, 31 January 1994), para. 3; D700 (UNPROFOR report re meeting with Radovan Karadžić and Ratko Mladić, 30 January 1994), para. 3. Rose testified that, at this time, a global cease-fire was in the Bosnian Serb's interests because they held 70% of the territory of BiH, and therefore a cease-fire represented an opportunity for them to consolidate their territorial gains. *See* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 31.

16295 *See* discussion in relation to Scheduled Incident G.7.

16296 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35.

16297 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35.

16298 D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994), e-court p. 1; Yasushi Akashi, T. 37688–37689 (24 April 2013); Michael Rose, T. 7547–7549 (8 October 2010). *See also* para. 4205.

16299 Yasushi Akashi, T. 37688–36789 (24 April 2013).

16300 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 41.

16301 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 41 (adding that Akashi told the Accused that unless he agreed to a cease-fire and pulled his big guns 20 kilometres away from Sarajevo, the UN would bow to mounting international pressure and agree to NATO air strikes; the Accused agreed to consider Akashi's proposal, but stated that the Serbs would not move until the Muslims moved).

introduce "the strictest possible control of retaliation to provocations", respond only when threatened and against military targets, and strictly at the commander's commands.[16302]

4837. On 15 March 1994, at a meeting between, *inter alios*, the Accused, Mladić, and Slobodan Milošević in Belgrade, the Accused complained that "[o]ur idiots are firing on Sarajevo" and described the army as acting like a "pampered prima donna".[16303] In his diary, Mladić stated that the Accused made these statements for the purpose of attacking the VRS.[16304]

4838. On 19 March 1994, Rose sent a letter to the Accused protesting, *inter alia*, the increased level of sniping in Sarajevo, and requesting that the Accused take measures to ensure that the sniping stopped immediately.[16305] On 21 March 1994, the Accused wrote to Akashi in response to Rose's letter, suggesting that it was "extraordinary" that Rose was surprised at the level of sniping in Sarajevo when the UN was not controlling Bosnian Muslim infantry, and stating that Bosnian Serbs were "constantly" the victims of such sniping.[16306]

4839. On 20 September 1994, Rose and Andreev met with the Accused, Koljević, Krajišnik, Milovanović, and Tolimir.[16307] During this meeting Rose reiterated his strong denunciation of VRS involvement in attacks on Sarajevo on 18 September 1994.[16308] The Accused gave an "angry diatribe" about ABiH attacks, and stated that "[i]f the international community treats us like a beast, then we will behave like a beast".[16309]

4840. On 10 October 1994 Rose sent a letter of protest to the Accused in relation to Scheduled Incident F.11, informing the Accused of the incident and requesting that he "take all appropriate measures to identify and prosecute the perpetrators of this crime".[16310]

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16302 P846 (Radovan Karadžić's Order to VRS, 7 February 1994); P3033 (Reynaud Theunens's expert report entitled "Radovan Karadžić and the SRBiH TO-VRS (1992-1995)"), para. 76.

16303 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), pp. 165–179.

16304 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), p. 179.

16305 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 63; P1656 (Letters from Radovan Karadžić to Yasushi Akashi, 21 and 28 March 1994), e-court p. 5.

16306 P1656 (Letters from Radovan Karadžić to Yasushi Akashi, 21 and 28 March 1994), e-court p. 3.

16307 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 151; P820 (Witness statement of David Harland dated 4 September 2009), paras. 134–138; P834 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 20 September 1994); David Harland, T. 2227–2235 (10 May 2010).

16308 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 151.

16309 D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 199; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 151; P820 (Witness statement of David Harland dated 4 September 2009), para. 135; David Harland, T. 2232 (10 May 2010); P834 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 20 September 1994), para. 3.

16310 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 156; P1644 (Letters from Michael Rose to Alija Izetbegović and Radovan Karadžić, 9 October 1994) (Rose also protested to Alija Izetbegović for a sniping incident in Vojkovići for which the ABiH was found to be responsible); P1762 (Witness statement of

4841. In early November 1994, during the 46th Bosnian Serb Assembly session, the Accused himself recounted the "hard time" he had when "that pointless shelling of Sarajevo was going on" and explained that people told him that sometimes soldiers get drunk and fire a number of shells into Sarajevo "without aim and purpose".[16311] The Accused continued by saying:

> [T]hen I call General Galić and ask him whether the members of the Corps are shooting at Sarajevo. He tells me that they are not. I ask him how does he know that and he answers that he did not issue the order. I ask him if it could be done without the order and he says it should not be like that. I tell him to check it out. It happened that he did not issue the order but some idiot gave himself a right to waste the shells, which cost 500 German marks each. These acts do not make us look like a military or even like the people. This does not mean that I am attacking the soldiers but this is a request to improve the situation. Believe me, the line between the total triumph and the total disaster is very delicate.[16312]

4842. The Chamber recalls that, following Scheduled Incident G.10, on 7 April 1995, the SRK Command reported to the VRS Main Staff that in the morning the ABiH opened "fierce fire" on Famos with, *inter alia*, infantry weapons and an 82 mm mortar, in response to which the Ilidža Brigade fired one air bomb weighing 250 kilograms "at the centre of Hrasnica".[16313] The VRS Main Staff then sent a combat report to the Accused, informing him of these events, including the attack on Famos, as well as the fact that "the enemy was adequately responded to whereby an A/B /air bomb/ (250kg) was launched on the centre of Hrasnica."[16314]

4843. On 30 April 1995, Akashi, Janvier, Smith, and Banbury met with, among others, the Accused, Koljević, Krajišnik, Zametica, and Bogdan Subotić in Pale.[16315] After suggesting that the Bosnian Muslims should be told that there will be no more humanitarian aid because they are killing Serb people, the Accused said during this meeting that "retaliation is productive".[16316] Janvier responded by telling the Accused that the Serbs were targeting civilians, to which the Accused replied that they only targeted military targets.[16317] When Janvier disagreed with this,

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David Fraser dated 17 October 2010), pp. 43–44; P1674 (UNPROFOR report re meeting with Ratko Mladić, 11 October 1994); Vlade Lučić, T. 30817 (3 December 2012).

16311 P1403 (Transcript of First Part of 46th session of RS Assembly, 9-11 November 1994), p. 324.

16312 P1403 (Transcript of First Part of 46th session of RS Assembly, 9-11 November 1994), p. 324.

16313 P1782 (SRK combat report, 7 April 1995), pp. 1–2.

16314 P5943 (VRS Main Staff Report, 7 April 1995), pp. 4–5.

16315 P2262 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 30 April 1995), para. 9; Rupert Smith, T. 11350–11352 (8 February 2011); Rupert Smith, T. 11657–11658 (11 February 2011); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 145; P2493 (Anthony Banbury's notes, 30 April 1995).

16316 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 154; P2493 (Anthony Banbury's notes, 30 April 1995), p. 9.

16317 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 154; P2493 (Anthony Banbury's notes, 30 April 1995), p. 9.

citing Tuzla as an example, the Accused laughed and, according to Banbury, stated that "[m]aybe some of our gunners have bad eyes".[16318]

4844. On 9 May 1995, Smith met with the Accused and Zametica at a hotel near Pale.[16319] Smith informed the Accused that he had recommended NATO air strikes in response to a concentrated heavy-weapons attack on Sarajevo and the civilian population on 7 and 8 May 1995.[16320] According to Smith, the Accused did not deny that the Bosnian Serbs had shelled civilian areas, but expressed disillusionment and dissatisfaction with the UN, stated that he had intelligence that the ABiH had begun an offensive to lift the siege of Sarajevo, and threatened that he "could not allow the UN to help them beat us".[16321] The Accused also made clear that in the event of a NATO attack the UN would be treated as enemies.[16322] The Accused expressed his discontent with the international community and emphasised that he would not respect any international bodies or resolutions unless they were in the interest of the Bosnian Serbs.[16323] He then stated that the Serbs would make counter-oves against their enemies, particularly in Sarajevo.[16324]

4845. In an interview on 13 July 1995 in El País, when asked why he approved the shelling of the civilian population of Sarajevo, the Accused responded that the Bosnian Serbs never shelled the civilian population but were targeting the ABiH.[16325] He blamed the ABiH for firing their own artillery from or close to civilian areas, to which the VRS would respond.[16326] The Accused stated that the ABiH were killing the Bosnian Serbs and that the VRS had to "eliminate" them.[16327]

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16318 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 154; P2493 (Anthony Banbury's notes, 30 April 1995), p. 9.

16319 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 1; Rupert Smith, T. 11355–11360 (8 February 2011).

16320 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), paras. 2–3; Rupert Smith, T. 11355–11360 (8 February 2011) (testifying that there was no military justification for this shelling of the civilian population). *See* para. 3609.

16321 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 3; Rupert Smith, T. 11357–11358 (8 February 2011).

16322 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), paras. 2–3; Rupert Smith, T. 11355 (8 February 2011). *See* paras. 5964, 5978.

16323 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 4; Rupert Smith, T. 11358 (8 February 2011).

16324 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 6 (stating that it was "clear that we can expect a further increase in military activity in Sarajevo" and that "a general counter-offensive is not expected but pre-emptive attacks remain likely").

16325 P4359 (Radovan Karadžić's interview in El País, 13 July 1995), p. 4; Tomasz Blaszczyk, T. 27371–27373 (11 April 2012); Mira Mihajlović, T. 24291–24294 (8 February 2012); P2242 (Radovan Karadžić's agenda, 2 January–25 December 1995), p. 91.

16326 P4359 (Radovan Karadžić's interview in El País, 13 July 1995), p. 4.

16327 P4359 (Radovan Karadžić's interview in El País, 13 July 1995), p. 5. The Accused also stated that Sarajevo was a divided city, and predicted that Sarajevo would either be transformed into two cities (Bosnian Muslim and Bosnian Serb), or if the Bosnian Muslims did not agree to split the city, "we would take the whole Sarajevo". *See* P4359 (Radovan Karadžić's interview in El País, 13 July 1995), pp. 5–6.

4846. As discussed in the Judgement,[16328] in the afternoon of 29 August 1995, one day after the second shelling incident at Markale market, the Accused, Mladić, Plavšić, Krajišnik, Tolimir, and Gvero, among others, met with Slobodan Milošević, Bulatović, and Perišić, to discuss the upcoming peace conference.[16329] During this meeting, Milošević encouraged the Bosnian Serb leadership to criticise the shelling and the killing of innocent civilians in Sarajevo "in a more severe way", to which Tolimir reacted saying that by 11 a.m. on that day, no one had precise information as to where the shell had come from.[16330] Milošević retorted, however, that Akashi had informed him that the shell that struck Markale came from the Bosnian Serb side, to which Mladić stated that the shells could have come only from the Muslim mobile launching pads.[16331] Mladić also voiced his doubt about the number of victims, given the size of the crater which he deemed "not bigger than an ashtray".[16332]

4847. As also discussed earlier, on 30 August 1995, at around 2 a.m., letters were sent to Mladić, the Accused, and Slobodan Milošević informing them that NATO air strikes had commenced.[16333] Both Milošević and the Accused were informed of the UN's conclusions with respect to the second Markale incident and about the initiation of the air strikes; in the letter to the Accused, Akashi also wrote that the "key to stopping the air action" was in the Accused's and Mladić's hands and strongly urged him to ensure that the attacks on Sarajevo stopped.[16334]

(2) Accused informed of the campaign through media reports

4848. The Chamber also heard evidence that the sniping and shelling of civilians was widely covered in the press, and that the Accused closely followed this coverage. Events in Sarajevo were particularly well covered by the media, reporters from the international press corps were common in Sarajevo, and the media was critical of violations of international humanitarian law in the city.[16335] Sniping incidents in particular received widespread coverage in the press.[16336]

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16328 *See* para. 4299.

16329 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 35A–35C; D3364 (Witness statement of Dušan Kozić dated 7 April 2013), para. 28; D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995).

16330 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 8; D3364 (Witness statement of Dušan Kozić dated 7 April 2013), para. 28. With respect to paragraph 28 of Kozić's statement, the Chamber notes that P5039 is a duplicate of D3058.

16331 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), pp. 8–9; D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 35C; D3364 (Witness statement of Dušan Kozić dated 7 April 2013), para. 28.

16332 D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 9.

16333 *See* para. 4300.

16334 P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court p. 4.

16335 P5906 (Witness statement of KDZ450 dated 17 January 2011), paras. 131–132. *See also* P2414 (Witness statement of KDZ182), p. 33 (under seal); P2068 (Witness statement of Jeremy Bowen dated 10 August 2009),

Furthermore, UNPROFOR protests would be publicised through journalists and a statement would be made at the daily press point, which sometimes elicited a written response from the Bosnian Serbs or the Bosnian Muslims denying what was said.[16337] [REDACTED] the Accused, Krajišnik, Plavšić, and Koljević had information from television and newspapers at their disposal, and were very well-informed about what the international media was saying about events in BiH.[16338]

4849. Martin Bell also thought that the Accused was well-aware of his reports on the situation in Sarajevo, including the sniping and shelling of civilians, and testified that on one occasion the Accused took issue with a specific BBC report and phoned BBC News to complain.[16339] Similarly, Van Lynden testified that both the Accused and Mladić told him that they watched Sky News and other international broadcasts.[16340] According to Van Lynden, the Accused was eager to speak to Sky News because he considered it important to be able to put his point of view on one of the more important news organisations.[16341] Van Lynden also concluded from meetings with Mladić that Mladić followed the news and was fully aware of what was happening.[16342] In September 1992, Van Lynden referred to Mladić as the "scourge of Sarajevo" in a Sky News report of an interview conducted with Mladić.[16343] Van Lynden testified that when he saw him next, Mladić "seemed very happy with the title" and "rather proud of it".[16344]

4850. According to [REDACTED], the three parties to the conflict were all "very, very concerned about the international coverage of the events" in BiH and "very, very well informed by different means about what was being said about their activities or actions in the conflict".[16345] On the basis of the Bosnian Serbs' comments on news stories by organisations such as BBC or CNN, and on the

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para. 6; Jeremy Bowen, T. 10083, 10106 (13 January 2011) (testifying that he attempted to focus his reporting on the plight of civilians). *See also* para. 4587 (listing various news reports on the situation in Sarajevo).

16336 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 201.

16337 P6060 (Record of interview with KDZ185), e-court p. 12.

16338 [REDACTED] (adding that it was "nonsense" to say that the Accused, Krajišnik, Plavšić, and Koljević did not know anything about the crimes in BiH).

16339 P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 3, 19 (testifying that when he first arrived in Sarajevo, the Accused was courting the international press); Martin Bell, T. 9795–9796 (14 December 2010).

16340 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 12–13; Aernout van Lynden, T. 2417–2418 (19 May 2010).

16341 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 69–70. *See also* D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993); *and* P4803 (Intercept of conversation between Radovan Karadžić and General Gvero, 11 August 1993), p. 2 (both showing that the Accused was able to contact the media when necessary).

16342 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 12–13; Aernout van Lynden, T. 2417–2418 (19 May 2010).

16343 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 13, 72, 76–90; P933 (SKY news report re Sarajevo, with transcript); Aernout van Lynden, T. 2419–2425 (19 May 2010).

16344 P926 (Witness statement of Aernout Van Lynden dated 26 February 2010), paras. 13, 86; Aernout van Lynden, T. 2424 (19 May 2010).

16345 [REDACTED].

basis of his visits to Pale, [REDACTED] thought that the Bosnian Serbs received information through Belgrade, from all the foreign embassies of Yugoslavia, and were also well-informed in terms of press clippings and international television coverage.[16346] [REDACTED] testified that the Accused "normally had with him all these clippings and reports on the international media".[16347] According to [REDACTED], the Accused would blame the international media for being part of a "complex plot against the Bosnian Serbs".[16348]

(C) Accused's deflection of criticism and/or denial of crimes

4851. In discussing various meetings and Accused's statements in the preceding section, the Chamber has outlined some of the ways in which the Accused reacted to specific protests and complaints.[16349] In addition, KW570 testified that the Accused often tried to satisfy the demands of the international community and was a "moderating influence" on other members of the Bosnian Serb leadership and the VRS.[16350] Similarly, Vere Hayes, who travelled with Briquemont to Pale to meet with the Accused, Mladić, Plavšić, and others, found the Accused to be "perfectly civil and reasonable".[16351]

4852. However, many representatives of the international community gave evidence that the Accused attempted to manipulate and deceive them. For example, Banbury's impression was that the Bosnian Serb leadership "constantly played us".[16352] In his opinion, when the Accused made a commitment that was not implemented, this was not because the Accused could not ensure that it was implemented but rather because he, or the Bosnian Serb leaders generally, chose not to do so.[16353] In his book entitled "In the Valley between War and Peace", Akashi suggested that the Accused had a tendency to "twist the truth rather nonchalantly" in negotiations.[16354] According to

16346 [REDACTED] (agreeing that the broadcast media—CNN, Sky News, BBC—were being received in BiH in 1992, and that they covered the shelling of Sarajevo).

16347 [REDACTED].

16348 [REDACTED].

16349 *See* paras. 4813–4847.

16350 D2770 (Witness statement of KW570 dated 21 November 2012), paras. 17–18 (under seal). *See also* D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 47 (testifying that the VRS's "biggest complaint" about the Accused related to his attitude towards the international community and that ordinary soldiers felt that the Accused "made too many concessions to international elements"); D3321 (Witness statement of Milorad Skoko dated 1 April 2013), para. 30.

16351 D2745 (Witness statement of Vere Hayes dated 14 January 2013), para. 34; P824 (UNPROFOR report re meeting with Radovan Karadžić, 5 August 1993); D2752 (Photograph of a group of men in uniform).

16352 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 205.

16353 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 209. *See also* [REDACTED]; D94 (Radovan Karadžić's letter to SDS members, 11 July 1992); D101 (Radovan Karadžić's Order to VRS Main Staff and RS MUP, 19 August 1992). [REDACTED].

16354 D3489 (Excerpt from Yasushi Akashi's book entitled "In the Valley between War and Peace"), e-court p. 43 (giving two examples from the Goražde crisis); Yasushi Akashi, T. 37757–37759 (25 April 2013) (adding that,

Tucker, all three warring parties lied,[16355] while [REDACTED] UNPROFOR received written protests from the commanders of the parties and from the Accused and Mladić, but that these were characterised by "a lot of lies, of fiction" and were in fact attempts at manipulation.[16356]

4853. Okun gave an example where the Accused repeatedly claimed that Sarajevo was a concentration camp for Serbs, whereas Okun considered that to be "just talk" indicating "that the position taken by [the Accused] and the entire Bosnian Serb leadership was not, to put it charitably, was not based on a fair appreciation of how to solve the problem".[16357] When the Accused put to Okun that "none of them said that I was a liar", Okun responded that this was not true since people, such as Carrington, would in fact say that the Accused did not tell the truth and Okun himself had direct experience of that.[16358] When shown passages from Owen's book which referenced the Accused's "bare faced dishonour" and his ability "to deflect and defuse a hostile question with an innocent facial expression and apparent concern in his voice", Okun agreed that Owen was one of those involved in the negotiations who told him that the Accused did not tell the truth.[16359]

4854. On 10 September 1992, Vance, Owen, and Okun met with the Accused.[16360] In response to the Accused's question as to why sanctions were being tightened when the Serbs were doing everything to help, Okun told the Accused that it was the Bosnian Serbs who shelled Sarajevo first.[16361] The Accused responded by stating that it was the Bosnian Muslims who started the war by expelling him from his apartment in Sarajevo.[16362] Okun was surprised that, in light of those already killed or displaced by the conflict and the heavy shelling occurring during this meeting, the Accused considered this to be a convincing argument.[16363]

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as a result, Akashi became much more cautious in relation to the weight given to the Accused's undertakings, representations or agreements).

16355 Pyers Tucker, T. 23264 (18 January 2012).

16356 [REDACTED].

16357 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4191, 4200, 4225–4226; Herbert Okun, T. 1505–1506, 1524–1526 (23 April 2010), T. 1695 (27 April 2010); P809 (Video footage of Radovan Karadžić's Press Conference at ICFY, 18 September 1992, with transcript); D1140 (Letter to UN Secretary General, 2 February 1993), e-court p. 8 (under seal).

16358 Herbert Okun, T. 1662 (27 April 2010) (testifying that this was true on all three sides).

16359 P799 (Excerpts from David Owen's book entitled "Balkan Odyssey"), e-court pp. 10, 14; Herbert Okun, T. 1844–1846 (28 April 2010)

16360 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4198, 4201–4202; P784 (First notebook of Herbert Okun's ICFY diary), e-court pp. 45–47; D4474 (Report on visit by Steering Committee to Zagreb, Sarajevo and Belgrade 9-12 September 1992), paras. 18–21.

16361 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4201–4202; P784 (First notebook of Herbert Okun's ICFY diary), e-court p. 47.

16362 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4201–4202; P784 (First notebook of Herbert Okun's ICFY diary), e-court p. 47.

16363 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4201–4202.

4855. Abdel-Razek testified that the Accused "showed respect to me and to the United Nations", but that there were problems with the implementation on the ground of the points of agreement in meetings, and while the meetings took place in a "positive atmosphere", the practices on the ground were "not at all acceptable" and contrary to what was agreed.[16364] When asked whether this was a result of the nature of the civil war in which it was difficult to control everything in the field, Abdel-Razek responded hat he did not think he was being deceived at these meetings, but that "the problem was in the chain of command", and that the good intentions of the leadership was not reaching the soldiers.[16365] He later clarified that "the discipline and rules of engagement that should be observed" by subordinate soldiers, and their obeying of orders "was loose on the ground" because there was a situation of civil war with "civilians who carried weapons and who were armed with strong passions".[16366]

(D) Accused's measures to deal with crimes in Sarajevo

4856. The Accused issued a number of orders to the VRS, which were also applicable to the SRK, to comply with the laws of war and to initiate proceedings against those who broke those rules. For example, on 13 June 1992, the Accused issued an order on the application of the "rules of international law of war" in the VRS, which stated that the VRS and MUP were to apply and respect the rules of the international law of war and that commanders were responsible for the application of those rules.[16367] The order also stated that it was the duty of superior officers to initiate proceedings for legal sanctions against individuals who "violate the rules of the international law of war".[16368] Pursuant to this order, on 19 August 1992, the Accused issued

16364 Hussein Abdel-Razek, T. 5528–5531, 5534, 5586–5587, 5597 (20 July 2010), T. 5611, 5615–5616, 5618–5620, 5623–5624, 5640 (21 July 2010).

16365 Hussein Abdel-Razek, T. 5585–5587, 5597 (20 July 2010), T. 5611, 5615–5616, 5618–5620, 5676 (21 July 2010).

16366 Hussein Abdel-Razek, T. 5676–5677 (21 July 2010) (concluding that "there was a lack of control by the central command and that there was no full co-ordination between the leadership and the higher command and the subordinates on the ground"). The Chamber considers that this part of Abdel-Razek's evidence should be viewed alongside his other testimony, in particular his testimony that Galić and Plavšić falsely denied Bosnian Serb responsibility for sniping and shelling incidents; that neither side gave any importance to the role of the UN; that, on both sides, "leaders manifested cooperation; however, in reality, they acted differently and undertook different actions that were not cooperative"; and that he sent a letter to the Accused instructing him to stop the shelling, but that Koljević sent a message saying that the letter could not be formally received unless Abdel-Razek properly titled the letter to the Accused as President of the RS. P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court pp. 7, 18, 22 (describing meetings with the Bosnian Serb leaders as "difficult meetings" with difficult discussions "with regard to getting the Serbs to agree to ceasing their activities of shelling, sniping and blocking the UN efforts in the Sarajevo Sector"). *See also* para. 4695.

16367 D434 (Radovan Karadžić's Order on the application of laws of war, 13 June 1992); D1849 (Order of Radovan Karadžić's, 13 June 1992); D4688 (Excerpt from book entitled "Law on Defence and Law on the Army", June 1992). *See also* Momčilo Mandić, T. 5081–5083 (14 July 2010) (testifying that this order was issued due to the shortage of regulations governing the VRS and MUP, with the conflict already two months in progress, directing the VRS and MUP to observe international laws of war and the treaties signed by the SFRY).

16368 D434 (Radovan Karadžić's Order on the application of laws of war, 13 June 1992).

another order to the Main Staff and MUP instructing, *inter alia*, that "all protagonists" fulfil their obligations to observe "international humanitarian law, especially the Third and Fourth Geneva Conventions".[16369] The Chamber recalls here that the Bosnian Serb military courts began to function in August 1992 and that the Accused, as Supreme Commander of the VRS, had influence and authority over the courts.[16370] On 11 May 1993, the Accused issued a directive to the VRS to, *inter alia*, abide by the "Geneva Conventions for the protection of victims of war and their protocols 1 and 2, as well as the Hague Convention on Laws and Customs of Ground War from 1907, and other provisions of International Law of war".[16371] In addition, the Chamber received a number of other examples of the Accused instructing the VRS and the SRK to avoid firing on Sarajevo and to avoid responding disproportionately to ABiH fire.[16372]

4857. The Chamber also received evidence of the Accused's ability to order prompt investigations into SRK activities, such as in relation to an SRK memo that criticised him.[16373] Some Defence witnesses gave evidence of the Accused ordering investigations into alleged crimes against the civilian population of Sarajevo. In relation to the shelling of Markale market on 5 February 1994, Gordan Milinić, the Accused's Security Adviser at the time, testified that when the Accused heard about the incident on the day, he expressed astonishment and said that it was "yet another Muslim hoax"; he then "immediately called the military experts" who explained to him that the shell could not have been fired from the SRK positions and that this was a hoax by the Muslim side.[16374] Similarly, Krajišnik testified that when the Accused received a protest about the shelling of Vase Miskina street on 27 May 1992, he contacted the VRS, and the VRS responded that the shell was

16369 D101 (Radovan Karadžić's Order to VRS Main Staff and RS MUP, 19 August 1992), p. 1.

16370 *See* para. 3412.

16371 D104 (Radovan Karadžić's Directive to VRS Main Staff, 11 May 1993). This directive is referred to in Mladić's order to all the VRS brigades. *See* D3309 (VRS Main Staff Order, 14 May 1993). The Chamber notes that the directive is dated 11 March 1993 but considers this to be a typographical error as the serial number of the directive is referred to in Mladić's follow up order of 14 May. Furthermore, the directive itself refers to a decision of the Accused of 11 May 1993.

16372 *See* Section IV.B.3.ii.D: Accused's orders relevant to Sarajevo.

16373 *See* para. 4778. Another example of the Accused's ability to order prompt investigations took place on 15 May 1995 when he ordered an investigation into the causes and consequences of the "unusual incident with tragic consequences" that happened in the Independent Prača Battalion on 10 May 1995. The following day, on 16 May 1995, Mladić implemented the Accused's order by instructing the SRK Command to, *inter alia*, designate two officers to a joint commission tasked with analysing the facts of the incident and drawing up a report to be submitted to the Accused. *See* P2682 (VRS Main Staff Order, 16 May 1995).

16374 D3682 (Witness statement of Gordan Milinić dated 8 June 2013), paras. 9, 15. *See also* D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 32–35 (testifying that the SDC was informed by Perišić that the incident was caused by the Muslim side). On 10 February 1994, the Accused held a press conference in Geneva calling for a joint commission to investigate the incident, reminding the public that the Muslim side had previously staged shelling incidents and stating that the Serbs had no reason to continue with peace negotiations until a joint commission was established and findings made. *See* P5974 (Video footage of Radovan Karadžić press conference in Geneva, 10 February 1994); Slavko Gengo, T. 29823–29824 (6 November 2012) (maintaining that every incident caused UNPROFOR and representatives of his brigade to attend the scene and that "controls were stepped-up as soon as something happened"). *See* para. 4208.

not launched by them.[16375] According to Krajišnik, the Accused immediately demanded that an inquiry be conducted.[16376] Krajišnik testified that this same procedure was followed after the Markale incidents and after several shellings in Dobrinja.[16377] Indeed, at around 1 p.m. on 28 August 1995, the day of the second Markale incident, Sladoje issued an order on behalf of the SRK Command banning fire on the city without approval, and asking all SRK brigades to inform the Command, by 2 p.m., as to whether they opened fire on Sarajevo between 10 a.m. and 12 p.m. that day.[16378] Later that same day the VRS Main Staff reported to the Accused that the SRK brigades did not open fire on Sarajevo between 10 a.m. and 12 p.m..[16379]

4858. The VRS Main Staff was also able to order investigations into the actions of SRK soldiers. For example, following an order of the VRS Main Staff on 19 August 1993, on 20 August 1993 Galić sent an order to the Ilidža Brigade Command informing it that UNPROFOR had reported mortar fire from Nedžarići over Dobrinja and that there were 14 victims; the order also requested the Ilidža Brigade Command to form a commission to investigate this incident.[16380] The following day, Dragomir Milošević sent a report to the Main Staff stating that no 82 mm mortars were fired from Nedžarići, but that the ABiH had fired 12 "mines" of 82 mm calibre over the High School in Ilidža to endanger the lives of the students, and stating that the ABiH's provocation was responded to with infantry arms meaning that 14 victims was not possible.[16381]

4859. In addition to the above evidence of the Accused's reactions to specific incidents, the Chamber also received evidence of measures taken by him to collect information about crimes in BiH in general and has already outlined those in the preceding section of this Judgement.[16382] The Chamber recalls in particular his attitude that it was important to prevent disagreement among the Serbs, even at the expense of not punishing crimes.[16383] As has also been noted in an earlier section of the Judgement,[16384] in a session on 15 September 1994, the RS Government, with the

16375 Momčilo Krajišnik, T. 43333–43334 (12 November 2013).
16376 Momčilo Krajišnik, T. 43334 (12 November 2013).
16377 Momčilo Krajišnik, T. 43333–43334 (12 November 2013).
16378 D1013 (SRK Order, 28 August 1995).
16379 D2313 (VRS Main Staff Report, 28 August 1995). *See also* para. 4296.
16380 D2586 (SRK Order, 20 August 1993).
16381 D2582 (SRK report, 21 August 1993); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 95, 101 (testifying also that this was an example of his brigade carrying out an investigation on the order of the Main Staff and that the accusations of UNMOs in this instance were unjustified). *See also* P2695 (SRK report, 26 August 1994) (SRK Command response to VRS Main Staff order of two days earlier, explaining that, pursuant to the order, an investigation commission was formed, interviews conducted, and that it had been concluded that there was no disciplinary offence so that the investigation should be suspended with a reprimand issued).
16382 *See* paras. 3212–3215.
16383 *See* para. 3413.
16384 *See* para. 266.

support of the Accused, authorised the MUP and the Ministry of Justice and Administration to collect information on crimes against humanity and other crimes violating international law, irrespective of the ethnicity of the victims of those crimes.[16385] On 4 January 1995, the Accused promulgated the Law on the Mandatory Submission of Information on Crimes against Humanity and International Law.[16386] This law required that anyone in possession of information that could serve as evidence of "crimes against humanity and international law committed during the internal armed conflicts and civil war in [RS] and other parts of the former [BiH] which began in 1992" make the information available for inspection and, if necessary, submit them to the body in charge of gathering information on such crimes, and stated that anyone who refused to do so or thwarted the delivery or availability for inspection of such information would be punished with either a fine or maximum one year's imprisonment.[16387] However, on 17 May 1995, Marko Lugonja on behalf of the Intelligence and Security Department of the SRK Command sent out a request to the Commands of all SRK units to "gather all the data and evidence in the zones of your units on war crimes against humanity and international law *committed by the enemy against the Serbs and Serbian people*".[16388] In the request, Lugonja stated that the evidence will be delivered to the Military Prosecutor's Offices, which will prepare criminal reports in co-operation with the Ministry of Justice depending on jurisdiction.[16389]

4860. The Chamber also recalls its finding that the VRS had a system for investigating and punishing crimes committed by VRS soldiers.[16390] Thus, the SRK had its own military police company, military court, and military prosecutor's office.[16391] Galić testified that, when he received protests of shelling or sniping of civilians, he would check with his subordinate units and would always conclude that "[t]here was nothing to investigate".[16392] From 8 June 1992 to 31 December 1992, the SRK Military Prosecutor requested the VRS Military Prosecutor's Offices to initiate 610 investigations, one of which was a request to investigate an officer for crimes against

16385 D3364 (Witness statement of Dušan Kozić dated 7 April 2013), para. 18; D3373 (Excerpt from minutes of 4th session of RS Government, 15 September 1994), p. 2.

16386 D1424 (Radovan Karadžić's Decree on promulgation of Law on mandatory submission of information on crimes against humanity and international law, 4 January 1995), p. 1; P1405 (Transcript of 48th session of RS Assembly, 29-30 December 1994), p. 129.

16387 D1424 (Radovan Karadžić's Decree on promulgation of Law on mandatory submission of information on crimes against humanity and international law, 4 January 1995), pp. 2–3.

16388 P2646 (Request of SRK's Intelligence and Security Department, 17 May 1995), p. 1 (emphasis added). This request followed a meeting of the Government's "Commission for gathering data on war crimes against humanity [*sic*] and international law committed on the territory of the [RS]", which was organised by the Ministry of Justice. P2646 (Request of SRK's Intelligence and Security Department, 17 May 1995).

16389 P2646 (Request of SRK's Intelligence and Security Department, 17 May 1995).

16390 *See* Section II.D.2: Military justice system.

16391 *See* paras. 282–292; P2645 (Radovan Karadžić's order to VRS Main Staff, MUP, and Ministry of Defence, 20 May 1992); Dragomir Milošević, T. 32859–32860 (29 January 2013).

16392 Stanislav Galić, T. 37807–37809, 37821–37824 (7 May 2013).

humanity and international laws of war.[16393] Dragomir Milošević estimated that, during his time as the SRK Commander, he submitted about 70 criminal reports to the prosecutor for further action.[16394] Milošević did not know, however, whether any of the reports he submitted related to the shelling or sniping of civilians in Sarajevo.[16395] Luka Dragičević confirmed that during his time as Assistant Commander for Moral Guidance, Religious and Legal Affairs in the SRK, from the beginning of December 1994 until the end of the war, he received monthly reports from the military prosecutor's office but never learned of any instances where an SRK commander reported a criminal violation of the international laws of war to the military prosecutor in relation to the firing on Sarajevo.[16396] This was confirmed by SRK soldiers and officers who testified in this case.[16397] Indeed, the Chamber received evidence of numerous reports regarding investigations into and punishments of crimes, none of which relates to the sniping or shelling of civilians in Sarajevo.[16398]

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16393 P3629 (Report on the work of the VRS Military Prosecutor's Offices for 1992, 10 February 1993), pp. 6–12.

16394 Dragomir Milošević, T. 32859–32865 (29 January 2013) (adding that he did not interfere with the work of the military prosecutor or court). *See, e.g.*, D2832 (1st Romanija Brigade combat report, 4 July 1992), p. 2; D2833 (SRK instructions, 15 October 1992, with 1992 Guidelines for the Establishment of Criteria for Criminal Prosecution); Dragomir Milošević, T. 32868–32871 (29 January 2013).

16395 Dragomir Milošević, T. 33211–33213 (5 February 2013), T. 33276–33277 (6 February 2013) (noting that, because of the extent of the activities and tasks he had to carry out as Corps Commander, he did not have the opportunity to personally carry out the full procedure of investigating UNPROFOR allegations about Serb soldiers sniping at civilians; instead, he relied on the assistance of the military police and the prosecutor's office).

16396 Luka Dragičević, T. 31437–31440 (13 December 2012) (confirming his testimony in the *Dragomir Milošević* case), T. 31461–31462 (14 December 2012); Dragomir Milošević, T. 33213–33216 (5 February 2013) (suggesting that some reports of the SRK Command may not have gone through Dragičević, but through Tolimir).

16397 Slavko Gengo, T. 29768, 29829–29830 (6 November 2012); D2267 (Vlado Lizdek's interview with OTP), e-court p. 66; Vlade Lučić, T. 30785–30787, 30803–30804 (3 December 2012) (adding that if the question of whether a soldier had opened fire unnecessarily was raised, the unit would always reach the conclusion that no such thing happened). *But see* Blagoje Kovačević, T. 29075–29077 (18 October 2012) (testifying that while he was not aware of any investigations conducted in his brigade into cases of shelling civilians, there were instances of individuals opening unauthorised fire, whereby despite not knowing whether that fire had caused any consequences or killed or injured any civilians, the individual was punished for breach of discipline).

16398 *See, e.g.* D4755 (Report of VRS Office of Military Prosecutor, November 1992) (noting that only "civilians–members of the enemy armed forces" were prosecuted for crimes against humanity and war crimes); D4880 (Report of Sarajevo Military Court, 2 December 1993); D2836 (SRK information, 23 December 1993) (reporting that, in November 1993, units of the SRK filed a total of 79 criminal reports with the Military Prosecutor's Office, and crimes included willful abandonment and desertion, violation of military duties, property crimes, violent crimes, and other crimes); D4634 (Sarajevo Military Court decision in Šehir Korjenić/Fatuša Korjenić case, 5 July 1993); D3483 (SRK Order, 22 September 1992); D3484 (SRK Order, 22 May 1993), p. 1; D3486 (SRK report, 31 May 1994); Stanislav Galić, T. 37629–37631 (23 April 2013); D2832 (1st Romanija Brigade combat report, 4 July 1992), p. 3; D2834 (Report of 1st Romanija Infantry Brigade, 15 December 1992); D2835 (SRK report, 27 August 1993); Dragomir Milošević, T. 32860–32861, 32865–32866 (29 January 2013); D327 (SRK Order, 18 August 1993); D2610 (Order of the Ilidža Brigade, 26 July 1993); D2568 (Order of 3rd Ilidža Brigade, 11 September 1993) (assaulting the Commander of Herzegovina Company); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 74, 137; P2706 (SRK request to VRS, 25 May 1995) (criminal and disciplinary responsibility against SRK soldiers, officers and commands because of the loss of territory and material and technical equipment and the deaths, wounding and disappearance of combatants in the area of Nišić plateau and Trnovo axis during 1994); P2701 (Report of 4th Military Police Battalion, February 1995); P2702 (SRK order, 18 March 1995); P2705 (SRK Order, 16 April 1995); P2703 (Order of Military Post 7033, 2 April 1995); P2707 (SRK Order, 3 June 1995); P2701 (Report of 4th Military Police Battalion, February 1995); P2708 (Letter from SRK to 4th Military Police Battalion, 4 June

(E) Conclusion

4861. In light of the evidence of numerous representatives of the international community, and even some Defence witnesses, about the regular protests that the Accused received throughout the conflict, the Chamber is convinced that the Accused knew that the SRK was sniping and shelling the civilian population of Sarajevo or launching indiscriminate and/or disproportionate attacks on the city throughout the conflict. This is further confirmed by the fact that he was aware of Security Council resolutions which were discussed at the meetings he attended and thus was fully aware of the international community's statements about the situation in Sarajevo, the plight of civilians, and violations of international humanitarian law. The evidence also shows that the Accused was cognisant of numerous media reports regarding the situation in the city and had interactions with journalists who repeatedly brought to his attention instances of shelling and sniping of civilians, as illustrated in his El País interview. Indeed, the fact that the Accused himself at times raised concerns and attempted to limit disproportionate attacks on the city, according to Galić and some of the orders he issued to the SRK, confirms the Chamber's conclusion that he was fully cognisant of the SRK's firing practices in Sarajevo.

4862. In relation to the Accused's submission that there were problems with the system of command and control during the war and that his receipt of information must be considered in this light, the Chamber already found that the command and control system, as well as the communication channels, within the SRK and the Main Staff through to the Accused, functioned well.[16399] Furthermore, the Chamber recalls that the section discussing the Accused's authority over the SRK and his involvement in Sarajevo-related matters contains a number of examples of him receiving information about the military situation in Sarajevo during meetings with various VRS and SRK commanders and during the meetings of the Supreme Command. Additionally, the Accused was based in Pale, not far from Sarajevo, and had direct access to the SRK Commander and SRK troops. Accordingly, the Chamber does not accept that any problems that might have existed with respect to the system of command and control had a significant effect on the information the Accused was receiving and/or was able to seek out from the VRS and the SRK with respect to Sarajevo.

4863. That notwithstanding, the Chamber accepts the Accused's submission that SRK combat reports did not contain information about many of the specific sniping and shelling incidents for

1995); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 34; Božo Tomić, T. 30199–30200 (13 November 2012); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 33–34.

16399 *See* para. 4808.

which he is now charged. The Chamber has already found this to be the case, with the exception of a few reports which did in fact refer to some of the scheduled incidents.[16400] The Chamber recalls here its finding that SRK combat reports generally stated that the SRK returned fire when attacked, but provided very little information about the nature of the SRK response to ABiH fire; they also rarely detailed the specific weaponry used, the quantity of fire used, the exact locations targeted by the SRK, and made no mention of most of the scheduled sniping or shelling incidents listed in the Indictment.[16401] Nevertheless, as outlined above, the Accused was informed of the occurrence of Scheduled Incidents F.11, G.1, G.2, G.4, G.7, G.8, G.10, and G.19.[16402] Further, it is clear that he was also informed, by the representatives of the international community, that the SRK was the responsible party. For example, with respect to Scheduled Incident G.1, when made aware that the SRK was responsible for the heavy bombardment he retorted that the fire was legitimate and that the SRK was defending Serbs. Further, as indicated by the intercepted conversation of 30 May with Čedo, while instructing that the use of artillery in the city should be halted, he also ordered that infantry fire should continue and to "let them all die". Similarly, with respect to Scheduled Incident G.2, the fact that the RS Presidency was involved in stopping the bombardment of the city and was successful in doing so clearly indicates that the Accused was aware that the SRK was responsible. As for Scheduled Incident G.4, Morillon sent a fax to the Accused, which placed the blame on the SRK, and also stated that the world would not tolerate the irresponsible behaviour of the Accused's troops. Similarly, with respect to Scheduled Incident G.7, Rose wrote a letter of protest to the Accused but received no response. With respect to Scheduled Incident F.11, the Accused was informed by Rose that the SRK was responsible for the sniping of Alma Ćutuna and that he should investigate and prosecute those responsible, but he failed to respond. As for Scheduled Incident G.19, the Accused was informed not only by the representatives of the international community but also by Slobodan Milošević, that the information was that the SRK was responsible for the incident and yet continued to deny it. In addition to the Accused's knowledge about some of the specific incidents charged, the Chamber also recalls that the representatives of the international community persistently informed the Accused of the SRK's general sniping and shelling of civilians for the duration of the campaign. The Chamber is therefore satisfied that the Accused knew that the SRK was committing crimes, including in relation to the incidents listed in Schedules F and G of the Indictment, or alternatively that he had reason to know but did not make a genuine effort to ascertain whether the SRK was responsible for these crimes. Accordingly, the lack of specific information in the SRK reports as to the scheduled

16400 *See* para. 4602.
16401 *See* para. 4602.
16402 *See* Section IV.B.3.iii.B: Accused's knowledge.

shelling and sniping incidents does not undermine the Chamber's conclusion in the preceding paragraph.

4864. The Chamber also notes that the witnesses who gave evidence of protests and complaints directed at the Accused consistently described a pattern of responses characterised by him (i) denying Bosnian Serb responsibility, (ii) blaming the ABiH for perpetrating or orchestrating the incidents, (iii) justifying the actions on the basis of defending Serbs, or (iv) deflecting the criticism by making promises or raising other issues. The evidence shows that the same approach was used by Mladić, Galić, Dragomir Milošević, Krajišnik, Koljević, and Plavšić. There were repeated attempts by the Accused and the Bosnian Serb political and military leadership to justify the existence of the campaign of sniping and shelling and promises made to international representatives to improve the situation. However, the Chamber finds, in light of its factual findings as to the situation in Sarajevo during the siege, that these assurances were completely at odds with the reality on the ground. While Abdel-Razek and KW570 testified that the Accused was genuinely co-operative in his interactions with the international community and that the implementation problem lay in the chain of command, this is contrary to the majority of the evidence received by the Chamber, including Abdel-Razek's own witness statement and the credible observations of many witnesses, such as Akashi, that the Accused dealt with representatives of the international community in a dishonest, disingenuous, and evasive manner.[16403] It is also contrary to the findings above that the chain of command within the SRK and the VRS was functioning well.[16404]

4865. The Chamber does accept KW570's evidence that the Accused was more moderate than some of those around him; however, it is also clear on the basis of the evidence before it that the Accused was moderate only as long as the Bosnian Serb objectives in relation to Sarajevo were not being jeopardised.[16405] Further, the Accused was duplicitous in his dealings with the international community, as illustrated by the aftermath of the shelling of Sarajevo in late May 1992 whereby, having been pressured to do so by the international community, he stopped the shelling, but then ordered a certain Čedo to continue using infantry fire. Accordingly, the Chamber is convinced that while on notice of crimes that formed part of the campaign of sniping and shelling of the civilian

16403 The Chamber notes that KW570's and Hayes' evidence that the Accused was polite and civil is not inconsistent with the Chamber's conclusion. Further, the Chamber notes that KW570 was in Sarajevo for a short period of time, while Hayes based his evidence on one encounter with the Accused.

16404 *See* para. 4751.

16405 *See e.g.* para. 4663. The Chamber also notes here its finding in fn. 11086 that while he did speak in terms which portrayed him publicly as the peaceful negotiator, the Accused always insisted that this peace was conditional on following the objectives of the Bosnian Serbs.

population being committed in Sarajevo by the SRK units, the Accused nevertheless deflected criticism and denied those crimes or provided misleading information about them.

4866. As regards the Accused's alleged failure to prevent or punish the perpetrators of crimes forming part of the campaign of sniping and shelling, the evidence before the Chamber does show that at times he attempted to address the issue of the disproportionate fire on the city and issued a number of orders throughout the conflict to the VRS and/or the SRK to respect the laws of war and stop shelling indiscriminately. However, in the Chamber's view these were few and far between, given that the campaign of sniping and shelling of civilians lasted for over three years. Furthermore, the evidence also shows that despite the existence of a functioning system for investigating and punishing soldiers for criminal actions, there were simply no examples of SRK soldiers being punished for the sniping or shelling of civilians. Multiple Defence witnesses suggested that, as Galić testified, "[t]here was nothing to investigate".[16406] When investigations were conducted, whether pursuant to an order of the Accused or otherwise, the findings invariably stated that the SRK could not have been responsible for the attacks on civilians. However, this is contrary to the Chamber's findings on scheduled shelling and sniping incidents and on the SRK's general conduct which was brought to the Accused's attention continuously and consistently during the conflict.[16407] In light of the Chamber's findings as to the existence of the campaign of sniping and shelling of civilians and the knowledge of the crimes on the part of the Accused and others, this pattern of impunity demonstrates that the orders issued by the Accused, as well as the few investigations and inquiries that were embarked upon by him, were not sincere. Instead, the Chamber is convinced that the Accused made no meaningful attempts to establish the accuracy of allegations made against the SRK. When a serious incident was brought to his attention, he would contact the VRS and then simply accept assurances that the SRK units were not responsible; he would also demand a joint investigation which he knew would never be accepted by the international community or by the Bosnian Muslim side.[16408] This is in stark contrast to his reaction to Dragičević's report of 2 March 1995, following which he immediately ordered that an urgent report be sent to him. In contrast, when informed of the first Markale shelling and before even inquiring with the VRS officials about it, he immediately labelled it "another Muslim hoax".[16409] This approach to the accusations made against his troops signifies a failure on the part

16406 *See* para. 4860.

16407 The Chamber excludes from this analysis Scheduled Incidents F.5, F.7, and G.6 as it was not satisfied that the evidence presented by the Prosecution was sufficient to establish beyond reasonable doubt that the SRK was responsible for these incidents. In addition, for his part in this analysis, Judge Baird does not rely on Scheduled Incident G.8 due to his dissent in relation thereto.

16408 *See* paras. 4208, 4857.

16409 *See* para. 4857.

of the Accused, as Supreme Commander of the VRS, and also on the part of Mladić, Galić and Milošević, to take meaningful steps to investigate and punish the attacks on civilians of which they were well-informed.[16410]

4867. The conclusion above is supported by evidence of a collective attitude of impunity for actions of the SRK taken in furtherance of the campaign as illustrated by Lugonja's call for evidence on crimes "committed by the enemy against the Serbs and Serbian people", which explicitly excluded crimes committed by Serbs.[16411] In effect, the Accused encouraged this impunity by his consistent denials and deflections of international criticism and through his failure to insist on investigations and/or punishment of SRK units responsible for attacks on civilians in the city.[16412]

iv. *Accused's modulation of sniping and shelling*

(A) Arguments of the parties

4868. The Prosecution alleges that the Accused modulated the campaign of sniping and shelling in Sarajevo in accordance with the Bosnian Serb leadership's political and strategic interests.[16413] It alleges that the Accused increased the level of sniping and shelling, and hence the level of terror, to pressure the BiH government into accepting peace on his terms, to influence negotiations, and to retaliate against the civilian population of Sarajevo for ABiH offensives.[16414] It also alleges that he "ratcheted down" the campaign of sniping and shelling in response to international pressure, international agreements, and the threat of NATO military intervention.[16415] The Accused does not respond to the allegation that he modulated the campaign of sniping and shelling; instead, he argues that no such campaign existed.[16416]

16410 The Chamber recalls that for an Accused to contribute to a JCE by omission, he must have had a legal duty to act, and that failure to act pursuant to that legal duty significantly contributed to the JCE. *See* para. 566. In that respect, the Chamber recalls that the Accused was the highest authority in the VRS chain of command during the entire campaign of sniping and shelling in Sarajevo and that he was able to exercise authority over the SRK forces. As such, he had a legal duty to prevent and punish crimes committed by those forces.

16411 *See* para. 4859.

16412 *See* para. 4739.

16413 Prosecution Final Brief, paras. 604–605, 607, 609, 612(2), 620–621, 623–627.

16414 Prosecution Final Brief, paras. 620–621.

16415 Prosecution Final Brief, paras. 620, 623–625.

16416 Defence Final Brief, paras. 2967–2971.

(B) Accused's modulation of the campaign

4869. As discussed above, Sarajevo and its surroundings were strategically important to the Bosnian Serb leadership, who believed that the war would be won or lost in the city.[16417] Harland testified that the overall strategy of the Accused in Sarajevo was to modulate the level of sniping and shelling, and hence the "level of pressure or terror", in order to achieve his political objectives.[16418] According to him, the Accused would increase the level of sniping and shelling to force the Bosnian Muslims to accept peace on terms favourable to the Bosnian Serbs and to punish the Bosnian Muslims for their offensives.[16419] He would also reduce it when necessary, usually in response to the threat of NATO military interventions.[16420] Similarly, Banbury testified that the Accused modulated the level of sniping and shelling in Sarajevo in order to place pressure on the civilian population of Sarajevo, UNPROFOR, and the broader international community.[16421] He testified that the Accused would "squeeze" Sarajevo where the UN was most vulnerable in order to remain "strategically on top".[16422] Bell noted during his evidence that the Accused always struck a balance between military actions in Sarajevo and "peace offensive[s]", and that he applied pressure to the city through the siege in order to force the Bosnian Muslims to accept peace on his terms.[16423] According to KDZ450, the level of sniping and shelling in Sarajevo was closely related to political, diplomatic, and military events elsewhere in BiH, which indicated that it was the Accused who modulated the pressure on Sarajevo in order to achieve his objectives.[16424] KDZ450 further testified that the Accused could order attacks on Sarajevo "just to prove a point" or to "draw media attention to the region".[16425] Similarly, Mole testified that it was an "accepted norm" that if the Bosnian Serb side failed to achieve their political or military objectives in BiH, Sarajevo would be subjected to heavy indiscriminate shelling.[16426] Indeed, the Accused himself acknowledged this, speaking at the Bosnian Serb Assembly session in mid-June 1995, when he said: "[T]he Supreme

16417 *See* Section IV.B.3.a.iii: Strategic importance of Sarajevo.

16418 P820 (Witness statement of David Harland dated 4 September 2009), paras. 36–38, 41; David Harland, T. 2018–2020, 2034 (6 May 2010).

16419 P820 (Witness statement of David Harland dated 4 September 2009), paras. 36–37, 291.

16420 P820 (Witness statement of David Harland dated 4 September 2009), paras. 36–37, 53; David Harland, T. 2019–2020, 2037 (6 May 2010).

16421 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 200; Anthony Banbury 13310–13311 (15 March 2011).

16422 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 73, 205 (testifying that the Bosnian Serb leadership "constantly played" the UN).

16423 P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 60; Martin Bell, T. 9769–9770 (14 December 2010); P1997 (BBC news report re interview with Radovan Karadžić at Trebević, with transcript).

16424 KDZ450, T. 10548–10551, 10571–10573 (19 January 2011), T. 10676 (20 January 2011); P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 33.

16425 P5906 (Witness statement of KDZ450 dated 17 January 2011), para. 33.

16426 P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 91, 96, 116.

Command and I as the Commander and with the Main Staff, we agreed that the worst for us is a war of low intensity, long duration etc., and that we have to heat up the situation, take whatever we can, create a fiery atmosphere and dramatize, threaten an escalation etc. because we noticed that whenever we advance on Goražde, on Bihać or elsewhere or *if the situation escalates around Sarajevo, then the internationals come and diplomatic activity speeds up.*"[16427]

4870. During the trial, the Chamber was presented with a number of examples of the way in which the Accused, and occasionally other alleged JCE members, used the level of sniping and shelling in Sarajevo in order to further their political and strategic interests.

4871. As discussed earlier, in May and June 1992 Sarajevo was subjected to heavy shelling by the SRK.[16428] The aftermath of that shelling and various meetings and measures undertaken by the members of international community to stop it were also discussed earlier and show that the Accused was able to stop the shelling of the city when pressed to do so by representatives of the international community.[16429] As also mentioned earlier, on 15 June 1992, at a meeting between Mladić, the Accused, other members of the RS Presidency, and representatives from the Sarajevo municipalities, the issue of Dobrinja was discussed whereby Koljević urged the others to "treat Dobrinja as our territory into which [Bosnian Muslim] snipers and terrorists have infiltrated".[16430] Following the Accused's instruction that the issue of Dobrinja must be resolved through co-operation with the police and Prstojević's request for deployment of soldiers to Dobrinja to carry out an operation,[16431] the meeting concluded with the decision to "clear the Serbian territory", giving priority to Mojmilo and Dobrinja.[16432] This resulted in the shelling of civilian areas in Dobrinja, as recounted by the 26 June 1992 letter of the Secretary General informing the Security Council that Bosnian Serb forces were shelling civilian areas in Dobrinja and calling for the shelling to cease immediately.[16433] Thus, at a meeting on 27 June with Mladić, Koljević, and Plavšić, among others, Krajišnik stated that the Presidency was "walking on the edge of the abyss" and that operations against Dobrinja "must urgently stop".[16434] That day, the Accused issued an order to the Main Staff to cease all operations in Dobrinja immediately and warned that

16427 P1410 (Transcript of 51st session of RS Assembly, 14-15 June 1995), p. 329 (emphasis added).

16428 *See* discussion relating to Scheduled Incidents G.1. and G.2.

16429 *See* discussion relating to Scheduled Incidents G.1. and G.2.

16430 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 167. The Chamber recalls that Dobrinja was also discussed by the Accused, Mladić, Krajišnik, Plavšić, Koljević, and Đerić several days earlier, on 5 June 1992, and the Accused issued orders to clean up Dobrinja. *See* para. 4781; P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93.

16431 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 169–170.

16432 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 171–172.

16433 P1523 (UNSG's statement to UNSC, 26 June 1992); KDZ088, T. 6662–6663 (13 September 2010) (closed session).

disregarding the order would have "political consequences".[16435] Also that day, the Accused sent a letter to Cutileiro and Carrington informing them of the decision to cease operations in Dobrinja and expressing hope that it would "open possibilities" for the continuation of international negotiations.[16436]

4872. As discussed earlier, in September and October 1992 Sarajevo was again subjected to heavy indiscriminate shelling, resulting in representatives of the international community protesting to Koljević, Plavšić, and the Accused.[16437] On 9 October 1992, at a meeting of the RS Presidency in the Accused's absence, Krajišnik, Koljević, and Đerić decided to order the Main Staff to halt the artillery bombardment of Sarajevo because UNPROFOR was "exerting control".[16438] As a result, on 10 October 1992, pursuant to an order from the Main Staff, Galić prohibited the SRK from using all weapons and artillery with a calibre greater than 7.9 mm until further notice.[16439] On 19 October 1992, at a meeting with Mladić, Plavšić, and Krajišnik, among others, the Accused stated that he was "convinced 101% that [NATO] will bomb" and that accordingly it was "crucial" not to fire on Sarajevo.[16440]

4873. Following the collapse of the Vance-Owen Peace Plan,[16441] the SRK launched an offensive on Mt. Igman and Mt. Bjelašnica in late June 1993 and, while this operation was underway, shelled a water queue in Dobrinja on 12 July 1993, causing a large number of civilian casualties.[16442] Harland testified that, at this time, the Accused was using the Igman offensive to secure as much territory as possible and "ratchet [...] up the pressure" on the Bosnian Muslims in advance of peace talks scheduled for late July in Geneva.[16443] Indeed, on 16 July 1993, UNPROFOR reported that at a meeting with Briquemont and Andreev, the Accused stated that his "first priority" was to get the

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16434 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 240.

16435 P1504 (Minutes of 12th session of SerBiH Presidency, 27 June 1992), para. 3; P1154 (Witness statement of KDZ088 dated 27–29 April 2010), paras. 69–70 (under seal); P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 240 (stating that the Presidency had sent a letter to the Secretary General informing him that operations against Dobrinja had ceased).

16436 D2977 (Letter from Radovan Karadžić to Jose Cutileiro and others, 27 June 1992); D2968 (Witness statement of Jose Cutileiro dated 11 April 2012), para. 30. *See also* para. 338.

16437 *See* para. 3562; P1258 (Witness statement of Hussein Ali Abdel-Razek dated 16 July 2002), e-court p. 22; Hussein Abdel-Razek, T. 5507 (19 July 2010) (testifying that he wrote a letter to the Accused requesting him to stop the shelling).

16438 D431 (Minutes of RS Presidency session, 9 October 1992), p. 2; P1270 (UNPROFOR report re administrative issues, 10 October 1992), p. 4 (reporting that Koljević stated that the Bosnian Serb side had decided to stop shelling Sarajevo).

16439 P1264 (SRK Order, 10 October 1992), para. 1. *See also* Hussein Abdel-Razek, T. 5506–5507 (19 July 2010).

16440 P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), p. 59.

16441 *See* para. 372.

16442 See discussion on Scheduled Incident G.5.

16443 P820 (Witness statement of David Harland dated 4 September 2009), para. 45–48; David Harland, T. 2020 (6 May 2010).

BiH government back to the negotiating table.[16444] On the same day, Dragomir Milošević ordered the SRK to cease firing at central Sarajevo, except in self-defence, because the Accused had "reached an agreement" with UNPROFOR and the Bosnian Muslims.[16445] However, because of the SRK's offensive, Izetbegović requested that the peace talks be postponed and NATO threatened to conduct air strikes.[16446] Harland recalled that these developments "alarmed" the Accused and that consequently he took steps to "rapidly ratchet down" the pressure on the Bosnian Muslims.[16447] On 4 August, the Accused told Milovanović that NATO was planning air strikes and that SRK forces had to withdraw from Mt. Igman and Mt. Bjelašnica as an expression of "good will".[16448] Then, on 5 August, he told Mladić that, to avoid air strikes, SRK forces should withdraw from Mt. Igman and Mt. Bjelašnica and "[n]ot a single shell must fall on Sarajevo".[16449] Also on 5 August, the Accused, Mladić, Krajišnik, Plavšić, and Lukić met with Briquemont, Hayes, and Andreev of UNPROFOR, and the Accused proposed, among other measures, withdrawing SRK forces from Mt. Igman and Mt. Bjelašnica to avoid air strikes.[16450] The Accused then issued a series of orders to effect the withdrawal of SRK forces.[16451] Harland recalled that at around this time there was a "dramatic decline" in SRK sniping and shelling of the civilian population of Sarajevo.[16452]

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16444 P820 (Witness statement of David Harland dated 4 September 2009), para. 47; P835 (UNPROFOR BiH Political Assessment, 16 July 1993), e-court p. 5.

16445 P2661 (SRK Order, 16 July 1993).

16446 *See* para. 3572.

16447 P820 (Witness statement of David Harland dated 4 September 2009), para. 53.

16448 P4786 (Intercept of conversation between Radovan Karadžić and General Milovanović, 4 August 1993), pp. 1, 3. *See also* D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993) (in which the Accused tells Milovanović that "everything should be halted around Sarajevo" in order not to "ruin" the peace negotiations in Geneva), p. 2.

16449 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 262–263.

16450 P824 (UNPROFOR report re meeting with Radovan Karadžić, 5 August 1993), pp. 2–3; David Harland, T. 2029–2032 (6 May 2010).

16451 *See* P5054 (VRS Main Staff Order, 5 August 1993) (in which Milovanović orders the VRS to cease combat operations around Sarajevo pursuant to an "oral command of the Supreme Commander"); D4645 (Letter from Radovan Karadžić to Boutros Boutros Ghali, Bill Clinton, Lord Owen and Stoltenberg, 7 August 1993) (in which the Accused informs the Secretary General that he is prepared to hand over Mt. Igman and Mt. Bjelašnica to the UN and cease all artillery fire around Sarajevo); D3872 (Intercept of conversation between Radovan Karadžić and Tomanić, 11 August 1993) (in which the Accused orders Tomanić to withdraw urgently any remaining troops from Mt. Igman and Mt. Bjelašnica in order to avoid NATO air strikes); P4805 (Intercept of conversation between Radovan Karadžić and Colonel Miletić, 11 August 1993) (in which the Accused orders Miletić to issue a statement to the media that SRK troops are being withdrawn from Mt. Igman and Mt. Bjelašnica); P4806 (Intercept of conversation between Radovan Karadžić, General Gvero, and General Milovanović, 12 August 1993) (in which the Accused orders Milovanović to determine the positions to which SRK troops should be withdrawn); P4783 (Intercept of conversation between Radovan Karadžić and General Gvero, 13 August 1993) (in which the Accused orders Gvero to convey to Galić that SRK troops must be withdrawn far enough to "avoid [...] problems in relation to the international community").

16452 David Harland, T. 2020 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 55 (testifying further that the withdrawal of forces from Mt. Igman was an example of the way the Accused used "military operations for political purposes").

4874. On 10 August 1993, on the eve of signing the Military Agreement on Peace in BiH,[16453] the Accused told Milić from the Main Staff that "no shell" was to land on Sarajevo.[16454] On 11 August 1993, in a conversation with Prstojević and Gvero, the Accused ordered "in the strongest terms" that no one was to fire grenades or shoot at Sarajevo.[16455] That same day, Galić ordered the SRK "not to open fire over Sarajevo, at any price", in order to establish "favourable conditions" for the upcoming peace negotiations in Geneva and to avoid NATO air strikes.[16456] Harland testified that this order from Galić aimed to reduce the level of pressure on Sarajevo and was a clear example of the way the Accused and the Bosnian Serb leadership modulated the level of terror in the city in accordance with their "political interests and conveniences".[16457]

4875. Following the rejection of the Owen-Stoltenberg Plan by the Bosnian Muslims in late September 1993,[16458] the shelling of civilian areas in Sarajevo intensified.[16459] According to Harland, the Accused increased the level of sniping and shelling at this time in order to punish the Bosnian Muslims for not accepting the plan.[16460] On 12 October 1993, Andreev, Briquemont, De Mello, and Harland met with the Accused and Krajišnik, and Briquemont raised this increase in shelling with the Accused.[16461] The Accused responded that the Bosnian Serbs would reduce the level of shelling only if the Bosnian Muslims did the same.[16462]

4876. In January 1994, Sarajevo experienced heavy indiscriminate shelling resulting in a large number of civilian casualties.[16463] In a meeting with the Accused on 10 January, Akashi emphasised that the recent "excessive retaliations" against the ABiH were counter-productive as

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16453 *See* paras. 379, 3575.

16454 P4802 (Intercept of conversation between Radovan Karadžić and unidentified member of VRS Main Staff, 10 August 1993) (the Accused also stating that he had withdrawn 50% of his forces from Mt. Igman and Mt. Bjelašnica).

16455 P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993), p. 1.

16456 P825 (SRK Order, 11 August 1993). *See also* P5042 (SRK Order, 13 August 1993) (in which Galić orders the withdrawal of SRK forces around Sarajevo in accordance with an order from the Accused and to "avoid unjust punishment by the US and its allies").

16457 David Harland, T. 2033–2034 (6 May 2010).

16458 *See* para. 382.

16459 *See* para. 3577.

16460 P820 (Witness statement of David Harland dated 4 September 2009), paras. 35, 63. *See also* KDZ450, T. 10549–10551 (19 January 2011) (testifying that in October 1993 there was a resumption of sniping and shelling because of the failure of the Owen-Stoltenberg Plan).

16461 P820 (Witness statement of David Harland dated 4 September 2009), paras. 60–61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5; P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), para. 3.

16462 P820 (Witness statement of David Harland dated 4 September 2009), para. 61; P830 (UNPROFOR Weekly Political Assessment, 16 October 1993), p. 5; P845 (UNPROFOR report re meeting with Radovan Karadžić, 15 October 1993), para. 3.

16463 *See* para. 3580.

they killed innocent people and created an unfavourable climate for the negotiations in Geneva.[16464] Akashi reported that the Accused "took the point", but expressed impatience with the BiH government's attitude toward the Geneva negotiations, threatening to "declare war" if a peace agreement was not reached soon.[16465] Then, at a meeting on 14 January between the Accused, Mladić, Krajišnik, Milošević, Galić, SRK unit commanders, and Sarajevo municipality presidents, the Accused discussed the negotiations in Geneva, the problem of "[m]edia pressure in the US", and the threat that "NATO will kill Serbs".[16466] The Accused stated in the meeting that the Bosnian Serbs "must reach a victorious peace" and that the SRK's "retaliation" against the ABiH should be in a "1:1" ratio.[16467] On 30 January, at a meeting between Rose and the Accused, Krajišnik, Koljević, and Zametica, the Accused stated that the shelling of Sarajevo was "senseless" and should stop.[16468] He further stated that there should be a global cease-fire starting with the demilitarisation of Sarajevo.[16469] Rose testified that, at this time, a global cease-fire was in the Accused's interests because the Bosnian Serbs held 70% of the territory of BiH, and therefore a cease-fire represented an opportunity for them to consolidate their territorial gains.[16470]

4877. On 7 February 1994, faced with the possibility of NATO air strikes following the first Markale incident of 5 February,[16471] the Accused informed the Main Staff, SRK Commander, and SRK brigade commanders that the "international community" had objected to the SRK's "scale of retaliation".[16472] He ordered the SRK to introduce the "strictest possible control of retaliation" and to "[e]xclude any possibility of uncontrolled shelling".[16473] The Accused also gave Milovanović the authority to negotiate a cease-fire agreement and, on 9 February, at a meeting with Rose, Milovanović agreed to an immediate cease-fire and the withdrawal of all heavy weapons from a 20 kilometre circle around Sarajevo, among other measures, which resulted in a significant reduction

16464 D3491 (UNPROFOR report, 10 January 1994), para. 3; Yasushi Akashi, T. 37680–37683 (24 April 2013).

16465 D3491 (UNPROFOR report, 10 January 1994), para. 3.

16466 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 149.

16467 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 133, 149. *See also* D4443 (Radovan Karadžić's Order, 16 January 1994) (in which the Accused strictly prohibits any combat operations in the direction of Sarajevo airport in consideration of the "attitude" of the international community during the Geneva negotiations).

16468 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 31; P1650 (UNPROFOR report on meeting with Radovan Karadžić and Ratko Mladić, 31 January 1994), para. 3.

16469 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 31.

16470 P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 31.

16471 See discussion on Scheduled Incident G.8.

16472 P846 (Radovan Karadžić's Order to VRS, 7 February 1994); Manojlo Milovanović, T. 25475 (29 February 2012) (testifying that the Accused addressed the order in this way so that it reached SRK units "as soon as possible"). *See also* para. 4776.

16473 P846 (Radovan Karadžić's Order to VRS, 7 February 1994); P820 (Witness statement of David Harland dated 4 September 2009), para. 77–78. *See also* P4493 (VRS Main Staff Order, 7 February 1994) (implementing the Accused's order); Manojlo Milovanović, T. 25475–25476 (29 February 2012).

in sniping and shelling.[16474] According to Harland, these were "dramatic concessions" consistent with the Accused's political strategy of reducing the "pressure" on Sarajevo in the face of Western threats.[16475] Indeed, on 17 February, UNPROFOR reported that Krajišnik stated that the Bosnian Serbs would "do everything to avoid air strikes, except capitulate".[16476]

4878. On 22 September 1994, following the resumption of intense fighting in Sarajevo and the sniping of a civilian and a UN soldier,[16477] the Accused informed the Main Staff that relations with the UNPROFOR were deteriorating and the Bosnian Serbs were "provoking" NATO air strikes.[16478] The Accused ordered that "there be no incidents since our relationships with England and France are improving".[16479] He further stated that "every attack by NATO is a humiliation" and is "getting the world used to the idea that the Serbs are to be bombarded".[16480]

4879. On 19 November 1994, as the military situation in Sarajevo was deteriorating,[16481] the Accused, Krajišnik, Tolimir, Buha, and Zametica met with Andreev, Gobilliard, Brinkman, Banbury, and Fraser.[16482] In the meeting, the Accused stated that if ABiH forces continued to fire on Bosnian Serb forces from within the TEZ, Bosnian Serb forces would retaliate.[16483] He further stated: "The Muslims want a big war in Sarajevo. There is going to be a big war in Sarajevo".[16484] Four days later, the SRK sniped at a tram travelling along Zmaja od Bosne street, injuring two

16474 *See* paras. 387–390, 3582–3587.

16475 P820 (Witness statement of David Harland dated 4 September 2009), paras. 79, 86; David Harland, T. 2020 (6 May 2010) (testifying that there was a "sharp dip in the pressure, the terror" applied to the civilian population of Sarajevo after the first Markale incident). The Accused argued that his order of 14 January 1994, three weeks before the first Markale incident, wherein he instructed the SRK to control its retaliation by applying a "1:1" ratio, meant that his response to the Markale incident cannot be considered modulation. *See* Closing Arguments, T. 47998 (2 October 2014). However, it was only after the Markale incident that the Accused agreed to establish WCPs and withdraw heavy weapons from around Sarajevo. Accordingly, the Chamber agrees with Harland's testimony that the Accused made "dramatic concessions" after the first Markale incident in response to the threat of NATO military intervention.

16476 P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), p. 6; P820 (Witness statement of David Harland dated 4 September 2009), para. 84.

16477 *See* para. 3599.

16478 D3521 (Letter from Radovan Karadžić to VRS Main Staff, 22 September 1994), p. 3.

16479 D3521 (Letter from Radovan Karadžić to VRS Main Staff, 22 September 1994), p. 3.

16480 D3521 (Letter from Radovan Karadžić to VRS Main Staff, 22 September 1994), p. 3.

16481 *See* para. 3603.

16482 P2454 (UNPROFOR report, 19 November 1994), para. 1; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 69; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70; P1776 (UNPROFOR report re meeting with Radovan Karadžić and General Tolimir, 20 November 1994) paras. 1–2.

16483 P2454 (UNPROFOR report, 19 November 1994), para. 3; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70; P1776 (UNPROFOR report re meeting with Radovan Karadžić and General Tolimir, 20 November 1994), p. 1.

16484 P2454 (UNPROFOR report, 19 November 1994), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 69; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70.

women,[16485] and at the beginning of December 1994, the SRK shelled Sarajevo's downtown area with wire-guided missiles.[16486]

4880. On 5 March 1995, the Accused wrote to Akashi and stated that the Bosnian Muslims were "completely ignoring" the COHA and that, if the situation did not change in the next 7 to 10 days, "our patience will have run out".[16487] He further warned Akashi that there would be "calamity" if the Bosnian Muslims did "not abandon their obstructionist policy".[16488] At the same time, in a meeting with Smith on the same day, Mladić explained that the increase in Bosnian Serb sniping in Sarajevo in late February and early March was a response to military offensives launched by the BiH government.[16489] Banbury recalled being "struck" and "surprised" by this comment because it was an overt admission that the Bosnian Serbs were sniping civilians in order to punish the BiH government for its offensives.[16490] He further testified that, like the Accused, Mladić had the ability to modulate the level of sniping and shelling in Sarajevo, which he used to influence negotiations.[16491] Indeed, in a meeting with Akashi on 12 March, the Accused and Mladić indicated their intention to pursue their objectives through "military means" if they were unable to achieve them at the negotiating table.[16492]

4881. On 5 April 1995, in a meeting with Smith, the Accused stated that if the ABiH conducted an offensive to open a land corridor into Sarajevo, his forces would "take Sarajevo".[16493] The Accused further stated that he was prepared to take NATO on and would employ weapons that Bosnian Serb

16485 *See* discussion relating to Scheduled Incident F.14.

16486 *See* para. 3604.

16487 P2245 (Letter from Radovan Karadžić to Yasushi Akashi, 5 March 1995), pp. 1–2.

16488 P2245 (Letter from Radovan Karadžić to Yasushi Akashi, 5 March 1995), p. 2.

16489 *See* para. 3607; P876 (UNPROFOR Memo re meeting with Ratko Mladić, 6 March 1995), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 94; P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330 (15 March 2011).

16490 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 95; Anthony Banbury, T. 13330–13331 (15 March 2011). *See also* P2414 (Witness statement of KDZ182), p. 22 (under seal) (testifying that Mladić ordered the SRK to terrorise the civilian population of Sarajevo and that this was a "line of conduct decided by the Supreme Command").

16491 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 200; Anthony Banbury, T. 13310–13311 (15 March 2011).

16492 P2257 (UNPROFOR Weekly Situation Report, 18 March 1995), para. 3; Rupert Smith, T. 11337–11338 (8 February 2011). *See also* P2245 (Letter from Radovan Karadžić to Yasushi Akashi, 5 March 1995) (in which the Accused states that the Bosnian Muslims were "completely ignoring" the COHA and that, if the situation did not change in the next 7–10 days, the patience of the Bosnian Serbs would "run out").

16493 P2260 (UNPROFOR report re meeting with Radovan Karadžić, 5 April 1995), para. 9(b); Rupert Smith, T. 11344–11346 (8 February 2011).

forces had not yet used.[16494] Two days later, on 7 April, a modified air bomb exploded in Hrasnica, inflicting civilian casualties; this attack was reported to the Accused that evening.[16495]

4882. On 20 April 1995, as sniping and shelling in Sarajevo intensified, the Accused, Koljević, and Krajišnik met with Akashi, Smith, and Banbury; during the meeting, the Accused stated that if Bosnian Muslim sniping continued he would be forced to retaliate, leading to "renewed war" in Sarajevo.[16496] On 30 April 1995, Akashi, Janvier, and Smith met with the Accused, Koljević, and Krajišnik, among others.[16497] At the meeting, the Accused stated: "retaliation is productive. When [the ABiH] shell[s] Doboj and we retaliate, it's effective".[16498] KDZ450 recalled that following offensives by the ABiH in Doboj, Maglaj, and the Brčko corridor, the Accused ordered attacks on Sarajevo in order to deter future offensives.[16499]

4883. On 1 May 1995, in a meeting with Akashi, Smith, Krajišnik, Zametica, and Bogdan Subotić, the Accused stated that the Bosnian Serbs were ready to accept a cessation of hostilities provided that they were treated equally to the Bosnian Muslims and sanctions against them were lifted.[16500] He stated, however, that if the international community treated the Bosnian Serbs like "beasts in a cage", then they would behave that way.[16501] A week later, on 7 and 8 May, the SRK carried out mortar and artillery attacks on civilian areas in Sarajevo.[16502] When Smith explained to the Accused that he had requested NATO air strikes in response to these attacks, the Accused did not deny that attacks against civilians had occurred.[16503] Instead, he explained that he had

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16494 P2260 (UNPROFOR report re meeting with Radovan Karadžić, 5 April 1995), para. 10 (reporting that it was "not at all clear" what the Accused was referring to).

16495 *See* discussion on Scheduled Incident G.10; P5943 (VRS Main Staff Report, 7 April 1995), p. 5.

16496 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 123; P2487 (Anthony Banbury's notes, 20 April 1995), p. 2; D3511 (UNPROFOR report, 22 April 1995), para. 2. *See also* P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 130 (testifying that the general consensus between Akashi, Smith, and himself was that the Accused had made a decision to go for "all-out war"); P883 (UNPROFOR report re Radovan Karadžić's press conference, 22 April 1995), pp. 2–3 (in which the Accused stated that he believed the Bosnian Serbs would be forced to engage in a "drastic counter offensive" to "put an end to the war by military means").

16497 P2262 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 30 April 1995), para. 9; Rupert Smith, T. 11351 (8 February 2011); Rupert Smith, T. 11657–11658 (11 February 2011); P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 145; P2493 (Anthony Banbury's notes, 30 April 1995).

16498 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 154; P2493 (Anthony Banbury's notes, 30 April 1995), p. 9.

16499 KDZ450, T. 10551 (19 January 2011).

16500 P2263 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 1 May 1995), para. 7.

16501 P2263 (UNPROFOR report re meetings with Bosnian Serb and Bosnian Muslim leadership, 1 May 1995), para. 8; Rupert Smith, T. 11353 (8 February 2011).

16502 *See* para. 3609.

16503 *See* para. 3609.

intelligence that the ABiH had begun an offensive to break the siege of Sarajevo and that he would "not allow the UN to help them beat us".[16504]

4884. As discussed earlier, following the second Markale incident on 28 August 1995,[16505] NATO commenced air strikes on Bosnian Serb positions.[16506] In response, the Accused agreed in a meeting with Holbrooke on 14 September 1995 to, *inter alia*, cease all operations within and around the TEZ in Sarajevo and remove all heavy weapons from around the TEZ, which led to an improvement in the situation in the city and the ultimate cessation of hostilities by 14 October 1995.[16507]

(C) Conclusion

4885. In light of the above evidence, as well as the evidence outlined in Section IV.B.1.a, the Chamber is satisfied that the sniping and shelling of Sarajevo was not random but followed a discernible pattern, indicating in turn that it was used by the Bosnian Serb political and military leadership, including the Accused, to achieve their political and military goals. Some of the more striking examples of this, as established by the evidence of international witnesses and contemporaneous UN and other documents, included the events surrounding the SRK's capture of Mt. Igman, the shelling of the city following the rejection of the Owen-Stoltenberg Plan by the Bosnian Muslims, the launch of the modified air bomb on Hrasnica in April 1995, and the aftermath of the Markale shellings. With respect to the first Markale shelling, as outlined above, the Chamber rejects the Accused's claim that he did not reduce the level of sniping and shelling specifically in response to this incident.[16508] Indeed, the evidence outlined above clearly indicates that the Accused used his authority over the SRK to reduce the level of sniping and shelling when it furthered his political objectives, for example in the lead up to important peace negotiations, after the signing of significant agreements, and after NATO threatened to conduct air strikes. Similarly, as discussed above, on several occasions the Accused's threats in meetings with the UN materialised in the form of an increase in the level of sniping and shelling in the city, for example when a modified air bomb fell on Hrasnica on 7 April 1995 just two days after the Accused told the UN that the Bosnian Serbs would employ weapons they had not yet used, and when the city was heavily shelled on 7 and 8 May 1995 just a week after the Accused told Smith that if the

16504 P2264 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), para. 3; Rupert Smith, T. 11358 (8 February 2011).

16505 *See* discussion related to Scheduled Incident G.19.

16506 *See* paras. 425–426, 3614, 4297–4301.

16507 *See* paras. 430, 3614.

16508 *See* fn. 16475.

international community treated the Bosnian Serbs like "beasts in a cage", then the Bosnian Serbs would behave that way.

4886. This evidence indicates that the Accused had the authority to increase the level of sniping and shelling and in fact did so on a number of occasions in order to influence negotiations with the UN and the Bosnian Muslims and to pressure them into accepting his demands. At other times, the Accused simply allowed the campaign of sniping and shelling to continue and, indeed, to intensify, particularly after ABiH offensives and the rejection by the BiH government of peace plans favoured by the Bosnian Serb leadership. He did so despite having *de jure* authority over the VRS and SRK units, which he was able to exercise in fact.[16509] Indeed, the aftermath of the heavy bombardments of the city in late May and early June 1992, the aftermath of the two Markale shelling incidents, and the Accused's order enabling a football match between UNPROFOR and a Sarajevo team to proceed without incident,[16510] are all testaments to the control and influence he was able to exert to stop the shelling and sniping in the city. Accordingly, the Chamber is satisfied that the Accused modulated the level of sniping and shelling in Sarajevo in order to further his political and strategic objectives.

4887. The Chamber notes that in reaching this conclusion, it relied to a significant extent on the evidence of David Harland, Anthony Banbury, and a number of other international witnesses. The Chamber recalls that the Accused argued that Harland's evidence was unreliable because he was a political advisor who was neither qualified nor competent to speak on military matters, he merely took notes at meetings and never exchanged a word with the Accused, he did not attend any of the peace conferences and therefore lacked knowledge of the Accused's political views, his weekly UN reports relied on information from UNMOs which in turn was unreliable, and he made sweeping statements about Sarajevo which were not based on investigations and "not even on superficial knowledge" of the military situation.[16511] The Accused further argued that Harland "manifestly showed himself to be partial" in his UN reports, and that he admitted as much during his testimony when he said that UNPROFOR was more supportive of the BiH government than the Bosnian Serbs.[16512] Similarly, the Accused argued that Banbury's evidence was unreliable because Banbury thought that the BiH government was "always right" while the Bosnian Serbs were "aggressors"

16509 *See* paras. 4805–4809.
16510 *See* paras. 4754, 4776–4777.
16511 Closing Arguments, T. 47975–47977 (2 October 2014).
16512 Closing Arguments, T. 47976 (2 October 2014); David Harland, T. 2121 (7 May 2010), T. 2231 (10 May 2010).

and, like Harland, gave evidence on matters "which [he] did not know anything about nor could have known anything about".[16513]

4888. Addressing first the challenges to Harland, the Chamber notes that Harland served for several years with the UN in Sarajevo, including as a Civil Affairs Officer from May 1993 to January 1995, as Head of Civil Affairs from January to August 1995, and then as a Political Advisor to the UNPROFOR Commander until the end of the conflict. During this time, he was charged with the responsibility of observing and making contemporaneous notes at multiple high-level meetings with the Bosnian Serb leadership, which included the Accused, where the most important political and military matters in Sarajevo were discussed. Accordingly, rather than being a mere note-taker as implied by the Accused, Harland was an important witness to the events in question and as such is more than qualified to provide evidence on what the Accused and other alleged members of the JCE said and how they behaved at the said meetings. Having spent so much time in Sarajevo, he was also able to provide evidence as to how the discussions at these meetings corresponded with the general situation in Sarajevo as he observed it. While the Chamber acknowledges that UNPROFOR's mandate was structured at times to support the BiH government, and that consequently some UN personnel may have sympathised with the Bosnian Muslim side, the Chamber recalls that on numerous occasions during cross-examination, Harland agreed with propositions put by the Accused which reflected poorly on the BiH government and the ABiH.[16514] He was a frank witness and the Chamber was left with the overall impression that he was credible. Furthermore, his evidence on the issue of modulation but also on a number of other issues was generally consistent with the accepted evidence of other credible witnesses.

4889. Like Harland, Banbury, as a Civil Affairs Officer in UNPROFOR and later an assistant to Akashi, participated in many high level meetings with the Bosnian Serb leadership, including the Accused. Thus, Banbury was also able to provide detailed evidence on a number of meetings and discussions involving the Accused and other alleged members of the Sarajevo JCE. Also like Harland, Banbury made significant efforts to remain impartial during his testimony; for example, he modified the evidence he gave in his examination-in-chief when shown evidence to the contrary on cross-examination, while standing firm on other issues.[16515] This demonstrated his sincerity. As a result, the Chamber was left with the overall impression that he was a credible witness.

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16513 Closing Arguments, T. 47974–47975 (2 October 2014)

16514 *See* David Harland, T. 2071–2072, 2075–2077, 2110 (7 May 2010).

16515 *See e.g.* Anthony Banbury, T. 13389–13391 (15 March 2011).

4890. Accordingly, the Chamber rejects the challenges the Accused has made to these two witnesses and is satisfied that the evidence they gave and which was recounted in this section can be relied upon without reservation.

v. *Conclusion on the Accused's contribution*

4891. Relying on the evidence and conclusions outlined above in relation to the actions and omission of the Accused, namely (i) his continuous support of Mladić, who was central in the implementation of the Sarajevo JCE; (ii) his direct involvement in the military matters in and around Sarajevo at the planning and operational levels; (iii) his knowledge of the attacks on civilians in Sarajevo and of indiscriminate or disproportionate SRK fire, together with his persistent denials and deflections of any SRK responsibility; (iv) his failure to prevent the shelling and the sniping of civilians and to punish those responsible, despite being at the apex of control over the VRS and SRK; (v) his support for and promotion of the SRK commanders and units while aware of their involvement in the campaign of sniping and shelling of civilians; and (vi) his modulation of that campaign in accordance with his political goals, the Chamber is convinced beyond reasonable doubt that the Accused shared the common purpose of the Sarajevo JCE and had the intent to spread terror among the civilian population of Sarajevo through the campaign of sniping and shelling. Further, relying on the same evidence, the Chamber finds that the Accused provided a significant contribution to the Sarajevo JCE.[16516] As was the case with Mladić, the Chamber finds that the Accused's contribution was so instrumental that, without his support, the SRK's attacks on civilians could not have in fact occurred.

4892. The Chamber is therefore convinced beyond reasonable doubt that the Accused worked together with Mladić, Galić, Dragomir Milošević, Krajišnik, Koljević, and Plavšić to establish and then to maintain the campaign of sniping and shelling against the civilian population in Sarajevo, the primary purpose of which was to spread terror among that population. In other words, they worked together in furthering the objective of the Sarajevo JCE. Their enterprise started in late May 1992 and continued until October 1995 when the hostilities in Sarajevo ceased.

d. Accused's intent for murder, unlawful attacks on civilians, and terror

4893. The Prosecution claims that the Accused's intent for the crimes underlying the common criminal plan, namely murder, terror, and unlawful attacks, "flows inevitably from [his]

[16516] The Chamber is satisfied that, in contributing in these ways the Accused contributed to the Sarajevo JCE as alleged in paragraph 14(a), (b), (c), (d), (e), (h), and (i). As noted earlier, the Chamber does not consider that the contribution alleged in paragraph 14(j) was in fact relevant to the Sarajevo JCE. *See* paras. 4713–4715. With

contributions" to the Sarajevo JCE.[16517] The Accused denies that he is guilty of murder, terror, and unlawful attacks on civilians, and argues in support that he disapproved of the sniping and shelling in the city and repeatedly issued orders insisting that the soldiers adhere to international laws of war.[16518]

4894. The Chamber has already outlined above some of the Accused's statements relating to his objective for the Bosnian Serbs to have either the whole city of Sarajevo or parts thereof under their control.[16519] These statements clearly show that, as the conflict escalated, the Accused intended either to capture the city entirely or to divide it and assume control over part thereof, thereby gaining as much of the territory in the area as possible. The evidence outlined in preceding sections also shows that, in the pursuit of this objective, he had support from Krajišnik, Mladić, Koljević, and Plavšić. As also referred to earlier and testified to by Okun, given the multi-ethnic nature of the city, the only way to achieve this goal was through the "wall of fire".[16520] In that respect, the Chamber has received evidence recounting some of the Accused's statements concerning the nature of the fighting in Sarajevo, the siege itself, and the use of violence against the civilian population in the city.

4895. For example, in 1991, the Accused was already aware that the encirclement of the city by the Bosnian Serbs was an option when, on 9 September 1991—following the arrest of Milan Martić in the Muslim-inhabited village of Otoka—Malko Koroman, the Chief of the Pale SJB, asked the Accused to tell the Bosnian Muslim side that if Martić was not released promptly, Serbs from the Romanija region would surround Sarajevo.[16521] The Accused promised he would convey that message and, after intimating that he had been in contact with Slobodan Milošević and the JNA General Staff in connection with Martić's arrest, he instructed Koroman to "have the people prepared if [the Bosnian Muslims] fuck around" and later instructed him again as follows: "you have the people prepared [...] we will send them all to fucking hell because of this".[16522] He also

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respect to paragraph 14(f) of the Indictment, the Chamber recalls its finding that the Sarajevo JCE started in late May 1992 and that the campaign of sniping and shelling was perpetrated by the SRK units surrounding the city.

16517 Prosecution Final Brief, para. 797.

16518 Defence Final Brief, paras. 2969, 2971, 2974–2983.

16519 *See* Section IV.B.3.a.iii: Strategic importance of Sarajevo.

16520 *See* para. 4660.

16521 Milan Babić, P741 (Transcript from *Prosecutor v. S. Milošević*), T. 13269, 13279; P962 (Intercept of conversation between Radovan Karadžić and Malko Koroman, 9 September 1991), p. 2; D3528 (Witness statement of Milan Martić dated 7 May 2013), paras. 30–41; D3533 (Intercept of conversation between Radovan Karadžić and Muhamed Čengić, 8 September 1991); D3532 (Intercept of conversation between Radovan Karadžić and Milan Martić, 8 September 1991).

16522 P962 (Intercept of conversation between Radovan Karadžić and Malko Koroman, 9 September 1991), p. 2. *See also* P2224 (Intercept of conversation between Radovan Karadžić and Slobodan Milošević, 9 September 1991). The Chamber notes that while P2224 is dated 20 December 1991, given its context it should in fact be dated 9 September 1991)

instructed a number of other Bosnian Serb interlocutors to prepare the population, while at the same time urging them not to make any hasty moves and stay calm until he ensured Martić's release.[16523] He spoke to Momčilo Mandić as well, and told him that the handover of Martić to Croatia would immediately lead to war as Bosnian Serbs were already gathering in Romanija in order to encircle Sarajevo.[16524] He contacted Vitomir Žepinić, the Deputy MUP Minister at the time, and warned him that Serbs from Romanija and Ilijaš were ready to set up barricades and block Sarajevo such that nobody would be able to leave the city.[16525] Expressing fears that the Bosnian Serbs would rise up because of Martić's arrest, the Accused told Žepinić that if this happened they "will get going, they'll block Sarajevo and then they'll see how it is when Serbs block Sarajevo."[16526] Martić was eventually released, without violent clashes, on 9 September, due to the Accused's efforts.[16527]

4896. The Accused showed his awareness of what encirclement of the city would bring yet again during his telephone conversation of 12 October 1991 with Gojko Đogo in which, angered by the fact that SDA and HDZ delegates in the SRBiH Assembly had proposed a draft declaration of independence, the Accused said: "[T]hey have to know that there are 20,000 armed Serbs around Sarajevo, that's insane, they will, they will disappear, Sarajevo will be a *karakazan* [black cauldron] where 300,000 Muslims will die, they're not right in the head".[16528]

4897. Similarly, in another intercepted telephone conversation, on 14 November 1991, the Accused told Božidar Vučurović:

> Our /position/ is clear. If you want to change the Constitution, the procedure must be followed. We know that they have prepared something for war, we know where they keep it and what they have, *but we must say that the war will not last long and that it will be terrible and that it really will, first of all Sarajevo and several of these Bosnian cities will be destroyed, so to speak.* I think that all of that would be destroyed in three to five days. They can't play around.[16529]

4898. A month and a half later, on 1 January 1992, the Accused complained to Krajišnik that in a recent interview, Izetbegović had spoken openly about a sovereign and independent BiH and then

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16523 D3534 (Intercept of conversation between Radovan Karadžić and Trifko Komad, 9 September 1991); D3537 (Intercept of conversation between Radovan Karadžić and unidentified male, 9 September 1991); D3535 (Intercept of conversation between Radovan Karadžić and unidentified male, 9 September 1991);

16524 P5871 (Intercept of conversation between Radovan Karadžić and Momčilo Mandić, 9 September 1991), pp. 2–3.

16525 D2925 (Intercept of conversation between Radovan Karadžić and Vitomir Žepinić, 9 September 1991); D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), paras. 48–49.

16526 D2925 (Intercept of conversation between Radovan Karadžić and Vitomir Žepinić, 9 September 1991), p. 3; D2923 (Witness statement of Vitomir Žepinić dated 11 February 2013), paras. 48–49.

16527 D3528 (Witness statement of Milan Martić dated 7 May 2013), para. 41. *But see* Milan Babić, P743 (Transcript from Prosecutor v. *Martić*), T. 1626 (testifying that the Accused was in fact trying to raise the tensions during this incident by showing the Serbs dangers they faced from Bosnian Muslims and Bosnain Croats).

16528 D279 (Intercept of conversation between Radovan Karadžić and Gojko Đogo, 12 October 1991), p. 7.

16529 P5817 (Intercept of conversation between Radovan Karadžić and Božidar Vučurović, 14 November 1991), p. 2 (emphasis added).

asked: "Does he want someone to destroy Sarajevo?"[16530] Indicating that he was growing more and more willing to take a hard-line approach, the Accused also added: "[F]uck him [...] We will release our tigers and let them do their job. [...] [W]e've been calming the Serb people for a year because of [Izetbegović's] foolishness. What can I do? I will not be calming anyone anymore, nor can I. [...] We need to release those people, we shouldn't hold them back".[16531] To this, Krajišnik said "we have to use the first opportunity to tell [Izetbegović] that he's playing with fire"; the Accused agreed, stating that they should tell him so in public.[16532]

4899. Indeed, on 2 March 1992, the Accused spoke to Izetbegović on the phone, complaining about Bosnian Muslims attacking Serb settlements, at which point he said:

> What are they doing in Serb settlements? [...] *Believe me Sarajevo can burn, and burn out god forbid, there could be hundreds of thousands of dead people.* [...] Look, we are, we are, *we are making a big effort to hold Serbs from around Sarajevo not to scorch Sarajevo* [...] please propose anything, but this has to stop absolutely [...].[16533]

4900. Similarly, in late April 1992, during his interview with Le Figaro, the Accused publicly issued a veiled threat to the Bosnian Muslim side. He first openly stated during this interview that his plan for Sarajevo was to establish a "clear separation" between the Serb and Muslim parts of the city, claiming that without this separation there will be "horror and terrorism".[16534] When the interviewer asked him what he intended to do given Izetbegović's opposition to the partition of Sarajevo, the Accused stated: "We will not bombard everybody. But if the peace terms are not accepted, *the chaos will continue*. And that means war".[16535]

4901. Thus, as these conversations and statements reveal, by the end of April 1992, the Accused was not only aware of the chaos that would ensue in Sarajevo if the tensions escalated but appeared to take a more militant approach to the situation and in turn encourage the option of resorting to violence, which he knew would result in severe consequences for the city. The evidence above also shows that he tried to use the threats of impending violence to advance his political goals and to scare the other side into abandoning their plans for an independent BiH.

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16530 P5779 (Intercept of conversation between Radovan Karadžić and Momčilo Krajišnik, 1 January 1992), pp. 4–5.

16531 P5779 (Intercept of conversation between Radovan Karadžić and Momčilo Krajišnik, 1 January 1992), p. 5.

16532 P5779 (Intercept of conversation between Radovan Karadžić and Momčilo Krajišnik, 1 January 1992), p. 6.

16533 P5728 (Intercept of conversation between Biljana Plavšić and Radovan Karadžić, 2 March 1992), p. 2. *See also* P5605 (Intercept of conversation between Radovan Karadžić, Goran Milić, Alija Izetbegović, and an unidentified woman, 3 March 1992) (during which Izetbegović denied the Accused's claim that Muslims were attacking Serb settlements, stated that this was just an excuse to attack the city, and accused the Accused of bringing Serbs from outside of Sarajevo to encircle the city).

16534 D1591 (Radovan Karadžić's interview from Le Figaro, 23 April 1992), pp. 1–2.

16535 D1591 (Radovan Karadžić's interview from Le Figaro, 23 April 1992), p. 2 (emphasis added).

4902. Indeed, by 12 May 1992, with Sarajevo already under siege and the shelling and sniping activities by both sides having increased in and around the city, the Accused indicated his support for this state of affairs by telling the Bosnian Serb Assembly at the 16th Assembly session that the Bosnian Serb forces were doing "quite well" as they were holding the enemy in "complete encirclement" in Sarajevo.[16536] As discussed earlier, it was at this session, having heard the Accused enunciate the Strategic Goals, that Mladić then outlined his plan for the city and the fact that Sarajevo could not be taken "by spitting at it from two mortars" but that instead 300 guns should be placed around Sarajevo, including rocket launchers.[16537] The Chamber recalls that the SRK had between 200 and 300 heavy weapons in locations encircling the city and used them not only to fight the ABiH on the confrontation lines but also to target the civilian population in the city.[16538]

4903. On 23 May 1992, in an interview with Duga Magazine, the Accused acknowledged the uncompromising nature of the SRK's fire on the city and argued that the suffering of the civilian population living there was inevitable, saying: "As for the [Sarajevo] ruins, my heart aches about them, but five to six hundred Moslem snipers, who kill non-selectively, cannot expect the Serbian defence to make no response, which is, of course, *more than fiery*. It must be clear to all of us that Sarajevo *must suffer from both sides*".[16539]

4904. In another, undated, interview, the Accused stated that the journalists in Sarajevo were "misinformed" and that it was the Bosnian Muslims who were bombarding Sarajevo and killing their own people in order to "accuse Serbs".[16540] When asked about the comment of Colonel Gray from the UN that the Serbs had enough artillery to "demolish Sarajevo 10 times", the Accused stated:

> But we do not want to conquer Sarajevo, we do not want to tear down Sarajevo. Sarajevo is our city too. But, please, when somebody puts a mortal artillery weapon on some skyscraper, and is hitting us, hitting us, and kills 25 of our men in one day, so to say, we must hit this, to neutralize it [...]. So, *housing objects, religious objects in Sarajevo are turned into military objects and forces us, when we became threatened, our lives, then we have to answer to neutralize that.*[16541]

4905. The Chamber has already described at various points in the Judgement how the Accused, following the intense negotiations at the end of May 1992, used his influence over Mladić to put a

16536 P956 (Transcript of 16th session of SerBiH Assembly, 12 May 1992), e-court p. 8.
16537 *See* paras. 4661, 4902.
16538 *See* para. 3984. See also fn. 13170.
16539 P6688 (Interview with Radovan Karadžić in Duga Magazine, 23 May 1992), p. 6 (emphasis added).
16540 P1274 (Video footage of interview with Radovan Karadžić, with transcript), p. 1.
16541 P1274 (Video footage of interview with Radovan Karadžić, with transcript), p. 2 (emphasis added).

halt to the SRK's heavy bombing of Sarajevo while at the same time justifying his actions, as well as those of the SRK forces.[16542] However, the Chamber also heard that the Accused did not in fact intend for the shooting to stop completely. Instead, in the evening of 30 May 1992, he spoke to a certain Čedo who first reported to the Accused on the military situation in Rajlovac and Vraca and then received the following instructions from the Accused:

| | |
|---|---|
| Karadžić Radovan: | Alright. There is no artillery usage tonight, is there? |
| Čedo: | No, no, no artillery on either side. |
| [...] | |
| Karadžić Radovan: | Try not to use artillery. Has Mladić called? |
| Čedo: | Yes, yes, we've arranged that. |
| Karadžić Radovan: | *But, you should use infantry weapons. Let them go to hell.* |
| Čedo: | Exactly. |
| Karadžić Radovan: | If they want to die, let ... |
| Čedo: | They'll get what they're asking for.[16543] |

Thus, even though he bemoaned to Morillon the inexperience of the forces in Sarajevo and the inability of Mladić to control them, the Accused himself then proceeded to issue instructions to forces on the ground encouraging them to use infantry fire. This in turn shows not only that he did in fact order the use of fire on Sarajevo but also that he was duplicitous in his dealings with the international community.[16544]

4906. This duplicity was openly verbalised in a meeting that took place at 4 p.m., on 5 June 1992, attended by Mladić, Koljević, Plavšić, Krajišnik, and Đerić, where the Accused first reported on the meeting the political leadership had had with Thornberry that day and then instructed them that "Sarajevo has to be resolved politically *while acting quietly, inch by inch.*"[16545] He also instructed the attendees to "clean up" Butmir, Hrasnica, Dobrinja, Sokolović Kolonija, and Hrasno.[16546] The SRK forces launched an attack on Sarajevo later that evening, that was indiscriminate and

16542 *See* e.g. discussion relating to Scheduled Incident G.1.

16543 P2332 (Intercept of conversation between Čedo and Radovan Karadžić, 30 May 1992), p. 3 (emphasis added).

16544 The Accused showed his duplicity again in May 1995 following the SRK's withdrawal of weapons from WCPs described earlier. During a 25 May 1995 telephone conversation with Milovanović, he first urged the latter to return the weapons but when told that the weapons were unaccounted for, he told Milovanović to "give them back something that's old". *See* D987 (Intercept of conversation between Radovan Karadžić and General Milovanović, 25 May 1995).

16545 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93 (emphasis added). *See also* para. 4574.

16546 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 93.

disproportionate, lasting three days and causing a number of civilian casualties.[16547] The next day, while the bombardment of Sarajevo was continuing, the Accused attended a meeting in Jahorina with other political and military leaders, including Krajišnik, Koljević, and Mladić, during which he discussed the Strategic Goals, claiming "we have to protect our territories militarily" and that "the birth of a state and the creation of borders does not occur without war".[16548] The bombing stopped only when the members of the RS Presidency and Mladić decided to put a halt to it.[16549]

4907. As outlined earlier, on 15 June 1992, the Accused met with Mladić, other members of the RS Presidency, and representatives from the Sarajevo municipalities, during which Koljević urged the others to "treat Dobrinja as our territory into which [Bosnian Muslim] snipers and terrorists have infiltrated".[16550] To this, the Accused responded that the issue of Dobrinja must be resolved through co-operation with the police.[16551] Prstojević then requested the deployment of soldiers to Dobrinja to carry out an operation and the meeting concluded with the decision to "clear the Serbian territory", giving priority to Mojmilo and Dobrinja.[16552] As described earlier in the Judgement, Dobrinja was heavily shelled throughout the war by the SRK, such that it was utterly destroyed by February 1994.[16553]

4908. The Chamber also recalls a meeting on 10 September 1992, when Vance, Owen, and Okun met with the Accused and during which the Accused, having been told that his forces shelled Sarajevo first, responded that it was the Bosnian Muslims who started the war by expelling him from his apartment in Sarajevo.[16554] Okun testified that the Accused was portraying an "anomalous picture" as Sarajevo was at that point being mercilessly shelled by the Accused's forces and yet he was complaining about the other side receiving weapons and about being expelled from his own apartment.[16555]

4909. Several days later, on 18 September 1992, the Accused indicated his acceptance of disproportionate fire by the SRK during a press conference in Geneva, when he stated that when the Bosnian Muslims stopped killing Serb civilians with snipers located on buildings, the Bosnian Serb

16547 *See* discussion in relation to Scheduled Incident G.2.

16548 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 95, 97. As also explained earlier, this resulted in the issuance of Directive 1 on the same date. *See* para. 4724.

16549 *See* para. 4051.

16550 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 167.

16551 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), p. 169.

16552 P1478 (Ratko Mladić's notebook, 27 May–31 July 1992), pp. 170–172.

16553 *See* paras. 3783, 4059.

16554 *See* para. 4854.

16555 Herbert Okun, P776 (Transcript from *Prosecutor v. Krajišnik*), T. 4198, 4201–4202.

side would stop shelling those buildings.[16556] Similarly, in a meeting of 29 January 1993, attended by VRS officers, including Galić and Mladić, the Accused stated that the Bosnian Serb objective was to be in conflict with Bosnian Muslims and Croats everywhere and then emphasised importance of Sarajevo after which he stated "the Muslims *should be hit hard enough* for the world to realise it's not worth going to war with Serbs".[16557]

4910. As noted earlier, at a meeting in Jahorina on 2 June 1993 with the SRK commanders, the Accused proclaimed that nothing could be achieved by negotiating with Izetbegović and that Izetbegović had to be defeated militarily, stating "if war is what he wants, we have to defeat him".[16558] As also discussed earlier, it is during this meeting that Mladić advocated for "keeping constant the negative effect on the moral [*sic*] of Muslim forces and population, keep them in fear and constant wondering as to the activities of our forces" and argued for "incessant activities and combat actions with all available SRK forces" in order to "cause as many losses as possible to the enemy and develop feelings of dependency, fear and insecurity".[16559] The Accused then proclaimed that he supported everything that was said at the meeting.[16560] Ultimately, this resulted in the issuance of Directive 5 and the Lukavac '93 operation.[16561] As noted earlier, the directives issued and/or approved by the Accused ensured that the city remained blocked and under siege, which in turn allowed for the sniping and shelling to continue unabated.

4911. In the same vein, during the 34th Bosnian Serb Assembly session in August 1993, the Accused stressed that "Serbian Sarajevo is of priceless importance" and then, in the context of the separation between Muslims and Serbs, stated as follows:

> [T]hey write about the large barbed-wire fences that will be set between us. Furthermore, this implies for both across Bosnia, and in Sarajevo. Sarajevo is the most serious problem, as there must be water, electricity and gas, and no shooting. According to the international war laws we are not allowed to use weapons to move Sarajevo from the front-line television news, and then, for us everything is accomplished with less difficulty. I am convinced that we will not see this for another two years, *as there will be a lot of blood-shed*, and as Njegoš said "sorrow for the one whose forehead breaks". *We have to prepare for two important wars: one to gain Sarajevo,* and another to gain Krajina.[16562]

16556 *See* para. 4659.

16557 P1485 (Ratko Mladić's notebook, 9 January–21 March 1994), e-court pp. 77–78 (emphasis added).

16558 *See* para. 4728; P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), e-court p. 194.

16559 *See* para. 4728; P2710 (VRS conclusions, 31 May 1993), pp. 3–5, 9.

16560 P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 194.

16561 *See* para. 4728.

16562 P1379 (Transcript of 34th session of RS Assembly, 27-29 August, 9-11 September, 29 September to 1 October 1993), pp. 65, 115–116 (emphasis added).

4912. In a meeting in Pale on 14 January 1994, which was attended by the Accused, Krajišnik, Mladić, Galić, Dragomir Milošević, Mićo Stanišić, Neđeljko Prstojević, and other presidents of Sarajevo municipalities as well as commanders of SRK brigades, the Accused stated that "the Muslims must not win a single victory in Sarajevo", that the Serbs must secure the Ilidža–Lukavica road, and that they must defeat the Muslims in Sarajevo so the international community will accept the factual situation on the ground.[16563] Following the presentation by the various SRK brigade commanders about the situation on the frontline, Mladić stated that Sarajevo is "strategic goal number one", to be resolved militarily not politically.[16564] Krajišnik then spoke and insisted on Serbs keeping Sarajevo, stating that the whole of Sarajevo must be taken, as one cannot have two masters in such a small area and one cannot share with the Muslims.[16565] Following all these presentations, the Accused agreed with Mladić that "Muslims will break down in Sarajevo", instructed the participants to make sure that the Muslims keep suffering defeats and feel inferior, and then stated that "retaliation should be 1:1".[16566]

4913. As recounted earlier, following the incidents in Dobrinja and Markale market on 4 and 5 February 1994, the city went through a period of relative peace and improvements in living conditions, which slowly deteriorated in the second half of 1994.[16567] On 19 November 1994, following the ABiH take-over of Mt. Igman, and a number of ABiH offensives,[16568] the Accused and Krajišnik, among others, met with Gobilliard; during the meeting, the Accused expressed his belief that the ABiH was trying to de-block the city and threatened to take the city if the ABiH tried to do so.[16569] The situation in Sarajevo deteriorated again, until 31 December when the COHA was signed.[16570]

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16563 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 133–134. *See also* D2660 (Article from Srpski Borac entitled "We are Sovereign over Sarajevo", 2 August 1995), p. 8 (in which the Accused stated that the Serb victories around Sarajevo were important as they would create a factual situation on the ground that would have to be recognised by the international community). For more on the issue of importance of factual situation on the ground to the Accused, *see* paras. 2844–2845, 3090–3096.

16564 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 139–144.

16565 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 147.

16566 P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), pp. 148–149.

16567 *See* paras. 3582–3587.

16568 *See* paras. 3601–3602.

16569 P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70; P1776 (UNPROFOR report re meeting with Radovan Karadžić and General Tolimir, 20 November 1994), p. 1.

16570 P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 69; David Fraser, T. 8118–8121 (19 October 2010); D778 (UNPROFOR report, 17 November 1994); P2454 (UNPROFOR report, 19 November 1994); P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 168; D162 (Michael Rose's book entitled "Fighting for Peace: Bosnia, 1994"), p. 197; Michael Rose, T. 7485 (7 October 2010); P2414 (Witness statement of KDZ182), pp. 47–48 (under seal); P2419 (VRS Main Staff Order, 6 November 1994); P2420 (Report of 2nd Light Infantry Brigade re VRS Main Staff order, 7 November 1994); D2823 (SRK combat report, 6 November 1994).

4914. As also noted earlier, on 19 November 1994, in a meeting with Krajišnik, Andreev, Gobilliard, Banbury, and Fraser, among others, the Accused stated that if ABiH forces continued to fire on Bosnian Serb forces from within the TEZ, Bosnian Serb forces would retaliate.[16571] He further stated: "The Muslims want a big war in Sarajevo. [...] There is going to be a big war in Sarajevo".[16572] Four days later, the SRK sniped at a tram travelling along Zmaja od Bosne street, injuring two women, and at the beginning of December 1994, the SRK shelled Sarajevo's downtown area with wire-guided missiles.[16573]

4915. The Chamber also heard that in 1995 the Accused was ready to intensify the fighting in BiH, including in Sarajevo. On 5 March 1995, the Accused wrote to Akashi and stated that the Bosnian Muslims were "completely ignoring" the COHA and that, if the situation did not change in the next 7 to 10 days, "our patience will have run out".[16574] He further warned Akashi that there would be "calamity" if the Bosnian Muslims did "not abandon their obstructionist policy".[16575] On the same day, Mladić met with Smith and told him that the SRK's increased in sniping in Sarajevo was in response to Serb casualties suffered in the military offensives launched by the ABiH, which to Smith was an explicit recognition that sniping was used by the SRK as a punitive measure rather than for any military gain.[16576]

4916. In April 1995, UNPROFOR reported that, in response to VRS defeats in BiH, the Accused announced on 26 March 1995 a general mobilisation of the "entire human and material potential, with the goal of defense of the country".[16577] The Accused was further reported as saying that if the "Muslims continue to pursue the war option, a major conflict will erupt" and that the Bosnian Serbs would be willing to fight "for decades".[16578] The UNPROFOR report also recounts that, on 28 March 1995, the Accused stated on Bosnian Serb TV that unless the war was resolved "soon" by peaceful means, his soldiers "will determine the face of the map of former BiH".[16579] He further stated that if the UN called air strikes he would break off all relations with the UN and "consider

16571 *See* paras. 3603, 4879.

16572 P2454 (UNPROFOR report, 19 November 1994), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), para. 69; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 70.

16573 *See* para. 3604. *See also* discussion relating to Scheduled Incident F.14.

16574 P2245 (Letter from Radovan Karadžić to Yasushi Akashi, 5 March 1995), pp. 1–2.

16575 P2245 (Letter from Radovan Karadžić to Yasushi Akashi, 5 March 1995), p. 2.

16576 Rupert Smith, T. 11309–11311 (8 February 2011); P876 (UNPROFOR Memo re meeting with Ratko Mladić, 6 March 1995), para. 3; P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 94–95; P2455 (UNPROFOR Weekly Situation Report (Sarajevo), 11 March 1995), para. 9; Anthony Banbury, T. 13330–13331 (15 March 2011).

16577 P2483 (UNPROFOR Weekly Situation Report (Sarajevo), 1 April 1995), para. 3.

16578 P2483 (UNPROFOR Weekly Situation Report (Sarajevo), 1 April 1995), para. 3.

16579 P2483 (UNPROFOR Weekly Situation Report (Sarajevo), 1 April 1995), para. 7.

them hostile troops".[16580] This was followed up by a meeting between the Accused and Smith, on 5 April, during which the Accused indicated that the Bosnian Serbs would employ weapons they had not used yet.[16581] His threat eventuated when, on 7 April, a modified air bomb was launched on Hrasnica inflicting civilian casualties.[16582] In addition, in April 1995, the situation in Sarajevo escalated with an average of close to 1,000 firing incidents daily.[16583]

4917. Then, on 20 April 1995, the Accused met with Akashi and Smith, together with Gvero, Koljević, and Buha, and told Akashi that the constant sniping by the Bosnian Muslim side "could lead to a renewal of the war" and could force the Bosnian Serbs to retaliate, which would mean a "total war".[16584] On 22 April, the Accused held a press conference, referring to ABiH offensives and stating, "we shall be forced to engage ourselves into a *drastic counter-offensive* i.e. to put an end to the war by military means."[16585] He also added that it was detrimental to the region to maintain the low intensity war and that the Bosnian Serbs were ready to achieve peace through victory.[16586]

4918. On 9 May 1995, Smith reported that during a meeting held in Pale earlier in the day, the Accused had made it clear to him that the Bosnian Serbs were not going to let go of Sarajevo.[16587] Smith explained to the Accused that he had recommended NATO air strikes against VRS positions because of the concentrated artillery attack against Sarajevo and its civilian population.[16588] When Smith questioned the Accused on the military options that the Bosnian Serbs thought were available to them, the Accused stated "we will watch what our enemies do, intend to do or we believe are capable of doing and make counter moves against them particularly in Sarajevo."[16589] On the basis of this meeting, Smith concluded that the Bosnian Serb political and military leadership were confident that they could contain and defeat the ABiH offensives in Sarajevo through vigorous defence and that a further increase in military activities in and around Sarajevo

16580 P2483 (UNPROFOR Weekly Situation Report (Sarajevo), 1 April 1995), para. 7.
16581 *See* para. 3608.
16582 *See* discussion relating to Scheduled Incident G.10.
16583 *See* para. 3608.
16584 D3511 (UNPROFOR report, 22 April 1995), para. 2; Yasushi Akashi, T. 37733–37735 (24 April 2013) (testifying that during their meeting he thought the Accused's position was uncompromising and that he was at that point ready to defy the international community).
16585 P883 (UNPROFOR report re Radovan Karadžić's press conference, 22 April 1995), p. 2.
16586 P883 (UNPROFOR report re Radovan Karadžić's press conference, 22 April 1995), p. 4 (emphasis added).
16587 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court p. 3.
16588 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court p. 6.
16589 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court p. 7.

was to be expected.[16590] Smith also mentioned that during the meeting, the Accused was calm, rational, and less prone to his usual overstatements and wild assertions.[16591]

4919. The Accused himself confirmed that at this time his goal was to escalate the violence in Sarajevo. Speaking at the Bosnian Serb Assembly in mid-June 1995, just a day before a number of modified air bombs were launched on the city,[16592] he said:

> I must say that we decided to opt for an aggravation of the situation, and the Supreme Command and I as the Commander and with the Main Staff, we agreed that the worst for us is a war of low intensity, long duration etc., and that we have to heat up the situation, take whatever we can, *create a fiery atmosphere and dramatise, threaten an escalation* etc. because we noticed that whenever we advance on Goražde, on Bihać or elsewhere or *if the situation escalates around Sarajevo, then the internationals come and diplomatic activity speeds up. We did that around Sarajevo,* we took these artillery pieces, there are four artillery pieces, maybe they weren't crucial, but they resulted in the well-known bombing that unfortunately caused us material damage because we didn't disperse these weapons, although that would have been possible and dreadful had the depots been full, there would have been great, massive damage, which was significant anyway.[16593]

4920. Similarly, in an interview he gave in early June 1995, complaining about the international community's failure to understand that Bosnian Serbs had been in BiH for centuries and therefore had a right to their own state, the Accused stated:

> [W]e are not going to indifferently watch each of our breathing pores being closed; *we are going to close the Muslims theirs.* That is our legitimate right. No one can demand from us that we act in a tolerant and correct manner, and that we are, at the same time, treated as wild beasts in a cage. *If we are treated that way, we are going to treat other people in that manner as well.*[16594]

4921. As recounted earlier, on 2 August 1995, several weeks before the second Markale incident, the Accused gave an interview to Srpski Borac newspaper where he threatened that if the Muslims did not accept "peaceful transformation of the city into two entities Sarajevo will suffer the fate of Beirut, where working hours are until noon and gunfire in the afternoon."[16595]

4922. Accordingly, all these statements and the activities of the Accused show that, while not necessarily issuing orders to target civilians in Sarajevo on a daily basis, he did nevertheless adopt a hard-line position, threatening and encouraging violence on many occasions and particularly during

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16590 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court p. 8.

16591 P2265 (UNPROFOR report re meeting with Radovan Karadžić, 9 May 1995), e-court pp. 3, 6.

16592 *See* discussion relation to Scheduled Incidents G.14 and G.15.

16593 P1410 (Transcript of 51st session of RS Assembly, 14-15 June 1995), p. 329 (emphasis added).

16594 P5063 (Video footage depicting interview of Radovan Karadžić on "Ask the President", undated, with transcript), e-court p. 13 (emphasis added). The Chamber notes that the video footage contains no date but that based on the events discussed in it, namely the downing of the US plane above Bihać, the time period is early June 1995.

16595 D2660 (Article from Srpski Borac entitled "We are Sovereign over Sarajevo", 2 August 1995), pp. 2–5.

meetings with Mladić and the other members of the Sarajevo JCE. This in turn resulted in the perpetuation of, and at times escalation in, the sniping and shelling directed at the city and its civilians throughout the period of the siege. As such it inevitably resulted in the killing and wounding of many Sarajevo civilians.

4923. That is not to say, however, that the Accused never made any attempts to calm dthe fighting in Sarajevo and it is clear that at times he did do so, such as in the aftermath of the first Markale incident. The Chamber also received evidence suggesting that the Accused did not always approve of the SRK's shelling and sniping of civilians in the city. For example, as already mentioned earlier, Galić stated that the Accused wanted to reduce the use of force to a "minimum related to military necessity and military objectives".[16596] He also testified that sometime during 1993 the Accused met with the SRK command and expressed concern about the disproportionate use of artillery.[16597] According to Galić, at these top-level meetings where the Accused was present, the topic of proportionality was always discussed.[16598] Similarly, Dragomir Milošević testified that the Accused and others in the Main Staff were constantly reminding him never to take any military action that would threaten the civilian population in Sarajevo.[16599] As an example, Dragomir Milošević testified that Mladić told him to only destroy military targets.[16600] Vladimir Radojčić, Commander of the Ilidža Brigade from 1993,[16601] also testified that the Accused would repeatedly point out during meetings that any actions against civilians would violate international humanitarian law and the laws of war.[16602] Milorad Šehovac, Commander of the 2nd Sarajevo Light Infantry Brigade,[16603] testified that at the meetings he attended with the Accused, the latter always insisted that the forces act in accordance with the Geneva Conventions and the provisions of international humanitarian law.[16604]

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16596 Stanislav Galić, T. 37888–37890 (8 May 2013).

16597 Stanislav Galić, T. 37884–37888, 37897–37898 (8 May 2013). The Chamber notes that Mladić's diary records a meeting, on 2 June 1993, whereby the Accused met with Krajišnik, Mladić, Galić and others. However, Mladić did not record the issue of proportionality being discussed. *See* P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), pp. 182–194.

16598 When asked how often these meetings took place, Galić failed to answer the question. Stanislav Galić, T. 37886–37887 (8 May 2013).

16599 Dragomir Milošević, T. 32736 (28 January 2013), T. 33115–33116 (4 February 2013).

16600 Dragomir Milošević, T. 32737–32739 (28 January 2013); P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995), p. 4.

16601 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 1–2.

16602 D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 29, 31.

16603 D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 2.

16604 D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 13. *See also* D2658 (Witness statement of Luka Dragičević dated 9 December 2012), para. 16; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 30; Nikola Mijatović, T. 30762–30763 (30 November 2012); D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), p. 2.

4924. The Accused's adviser, Zametica, recalled that the Accused stated once that the sniping by the Bosnian Serb side was "stupid", that it did not get the Serb side a military advantage, and that he was against it.[16605] Similarly, with respect to shelling in Sarajevo, Zametica testified that the Accused disapproved of "irresponsible" or "senseless" shelling.[16606] Bogdan Subotić testified that the Accused never issued an order to shell Sarajevo and that, if there had been such an order, he would have known about it.[16607] He also testified that the Accused wanted a peaceful solution for Sarajevo from the very beginning of the conflict.[16608] According to Krajišnik, there was no one in the civilian authorities that supported the shelling of Sarajevo.[16609] In relation to shelling incidents, Krajišnik testified that the Accused would insist on having an immediate investigation conducted and Mladić, or someone else from the Main Staff, would deny that the shell originated from Bosnian Serb-controlled areas.[16610] The Accused would also issue warnings that the VRS should not attack Sarajevo because that would be a "pretext" to attack the VRS with air strikes.[16611]

4925. Vladislav Jovanović, the Foreign Minister of Serbia, testified that on the occasions when they met, the Accused told him that he did not have a policy of shelling and targeting Sarajevo and that this was not part of the Bosnian Serbs' military aim.[16612] If such incidents did occur, the Accused told Jovanović, they were sporadic and caused by "soldiers, a few frustrated individuals" who had lost family members and he did his best to prevent them.[16613] Jovanović was also told by the Bosnian Serb leadership, including the Accused, that the Bosnian Muslims were responsible for a number of incidents, and that it was a method by which they used to infuriate the international community against the Bosnian Serbs and provoke a NATO reaction.[16614]

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16605 John Zametica, T. 42458–42460 (29 October 2013).

16606 John Zametica, T. 42458–42460 (29 October 2013).

16607 D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), para. 229.

16608 D3695 (Witness statement of Bogdan Subotić dated 16 June 2013), paras. 268–269.

16609 Momčilo Krajišnik, T. 43903 (20 November 2013).

16610 Momčilo Krajišnik, T. 43331 (12 November 2013). Krajišnik gave an example of a shelling on 27 May on Vase Miskina street, after which the Accused was informed about the incident and contacted the VRS. The VRS responded that the shell was not launched by them. The Accused immediately demanded that an inquiry be conducted. According to Krajišnik, the same procedure was followed after the two Markale shellings and the shelling in Dobrinja. *See* Momčilo Krajišnik, T. 43333–43334 (12 November 2013).

16611 Momčilo Krajišnik, T. 43332 (12 November 2013).

16612 D3015 (Witness statement of Vladislav Jovanović dated 22 February 2013), para. 52; Vladislav Jovanović, T. 34325–34326 (26 February 2013). Jovanović also testified that he stood by his previous testimony in the *Slobodan Milošević* case in which he stated that he and Slobodan Milošević condemned the shelling and demanded that "the parts of [RS] cease that activity". Vladislav Jovanović, T. 34325 (26 February 2013).

16613 D3015 (Witness statement of Vladislav Jovanović dated 22 February 2013), para. 52; Vladislav Jovanović, T. 34325–34326 (26 February 2013).

16614 Vladislav Jovanović, T. 34253–34254, 34325–34326 (26 February 2013) (also adding that he personally had doubts about the responsibility of the Bosnian Serbs for the incidents such as those that took place in Markale market).

4926. Momir Bulatović testified that he had many conversations with the Accused on the topic of shelling in Sarajevo during which the latter recognised that the shelling was a political liability for the Bosnian Serbs and that it damaged their cause.[16615] The Accused also told him that he had inquired with Mladić about whether the shelling could be stopped but was told that it was necessary in order to avoid VRS positions being overrun by the ABiH forces.[16616] When Bulatović raised with the Accused the allegations that the shelling was not limited to military attacks, but aimed at civilian areas, the Accused stated that he had banned shelling of civilian areas on a number of occasions and had done everything he could to prevent the unnecessary and disproportionate shelling of Sarajevo.[16617] In Bulatović's opinion, the shelling of civilian areas in Sarajevo was not the result of a policy of the Accused but was perpetrated by local soldiers who were untrained and were protecting their own homes and families.[16618]

4927. It is indeed true that the Accused issued several orders, either written or oral, instructing the forces in Sarajevo not to target civilians and/or to respect the laws of war. The Chamber has outlined these orders in more detail in Sections IV.B.3.c.ii.D and IV.B.3.c.iv. The Chamber notes, however, that almost all[16619] of these orders were issued either while the Accused was engaged in the process of negotiating with foreign diplomats and/or had agreed to cease-fires[16620] or during times when he was being pressured by the international community and/or threatened with air

16615 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 23.

16616 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 23.

16617 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 24.

16618 D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 31.

16619 The Chamber notes that the Accused's message to the SRK units outlined in D314 is one such order but that it does not contain a date or a stamp making it difficult for the Chamber to place it in context. As also indicated earlier, Guzina's evidence on the issue of the date was unclear. *See* fn. 16064. Accordingly, the Chamber considers that the probative value of this order is low.

16620 *See* D920 (Intercept of conversation between Radovan Karadžić and Radovan Pejić, 23 April 1992), p. 2 (wherein the Accused instructed Pejić to refrain from launching any attacks due to a cease-fire being signed that day); D3755 (Intercept of conversation between Radovan Karadžić and Milenko Karišik, 24 April 1992) (wherein the Accused told Karišik that one of the "white" ones will be coming to see who is violating the cease-fire and thus not to retaliate unless threatened); D4491 (SRNA news report, 8 June 1992) (issued following the Accused's meeting in Geneva); D434 (Radovan Karadžić's Order on the application of laws of war, 13 June 1992) (issued one day after the Accused offered a cease-fire in Belgrade); D431 (Minutes of RS Presidency session, 9 October 1992), p. 2 and P1264 (SRK Order, 10 October 1992) (both of which were issued following the Accused's meeting during the ICFY conference in Geneva on 30 September); D4512 (Intercept of conversation between Milan Gvero and Radovan Karadžić, 2 May 1993) (wherein, on the day that he signed the Vance-Owen Plan, the Accused ordered Gvero not to fire anywhere in Sarajevo); D104 (Radovan Karadžić's Directive to VRS Main Staff, 11 May 1993) (issued some days after the Accused had signed the Vance-Owen plan); P5058 (Order of the VRS to SRK, 15 July 1993) *and* P836 (SRK Order, 15 July 1993) (both of which were issued during the Accused's talks with Owen and Stoltenberg); D4507 (Summary of intercepted conversation between Milan Gvero and Radovan Karadžić, 30 July 1993) (issued on the day a cessation of hostilities agreement was signed by the Accused); D4508 (Intercept of conversation between Radovan Karadžić and Manojlo Milovanović, 3 August 1993), p. 3 (which took place during the ICFY conference peace talks when the Bosnian Serbs had agreed, in principle, to open the Sarajevo airport by 4 August 1993); D4610 (Radovan Karadžić's Order, 13 March 1994) (issued during the cease-fire signed following the Dobrinja and Markale incidents in February 1994). *See also* P1643 (Letter from Radovan Karadžić to Ratko Mladić and Stanislav Galić, 19 March 1994) (which the Accused issued in order to appease UNPROFOR).

strikes, such as in the aftermath of the SRK's capture of Mt. Igman in 1993 and in the aftermath of the first Markale incident in February 1994.[16621] As such, the Chamber does not consider that these orders necessarily indicate that the Accused disapproved of the shelling and the sniping directed at the city, but rather that the shelling and sniping conducted by the SRK were at times inconvenient to him.

4928. Having therefore analysed all of the Accused's statements, orders, conversations, and activities mentioned above and bearing in mind all the preceding findings made by the Chamber in relation to the existence of the common plan, as well as the Accused's various contributions to that plan, the Chamber is convinced beyond reasonable doubt that the Accused had the intent to (i) commit unlawful attacks on civilians in Sarajevo, (ii) perpetrate acts of violence designed to cause terror among Sarajevo's civilian population, and (iii) murder civilians in Sarajevo.[16622] His hard-line approach and tendency to, at times, threaten and/or encourage the use of violence against the city for his own political purposes necessarily means that he also intended the consequences of that violence, including the killing, the wounding, and the terrorisation of the civilian population. Accordingly, given the pattern and the longevity of the campaign of sniping and shelling, the fact that indiscriminate and disproportionate shelling of the city would necessarily bring about civilian casualties, and the above findings in relation to his knowledge and conduct, the Chamber is satisfied that the only reasonable inference is that the Accused, together with the other Sarajevo JCE members, had the intent to commit unlawful attacks against civilians, terror, and murder.

4929. This is confirmed by a number of other factors. Starting first with the Accused's plans for the city, namely a division into two ethnically separate parts (as per the fifth Strategic Goal), the Chamber recalls that it could have been achieved only through what Okun labelled the "wall of fire", that is, through the sniping and shelling of the non-Serb parts of the city. While in the very early stages of the war the Accused may have had some concern for the fate of the civilians in the

16621 *See* P1483 (Ratko Mladić's notebook, 2 April–24 October 1993), p. 263; P5054 (VRS Main Staff Order, 5 August 1993); P4802 (Intercept of conversation between Radovan Karadžić and unidentified member of VRS Main Staff, 10 August 1993); P4804 (Intercept of conversation between Radovan Karadžić, Colonel Prstojević, and General Gvero, 11 August 1993); P846 (Radovan Karadžić's Order to VRS, 7 February 1994). Other orders provoked by threats from the international community were: P1504 (Minutes of 12th session of SerBiH Presidency, 27 June 1992), para. 3 (order to stop attacks on Dobrinja); P1481 (Ratko Mladić's notebook, 5 October–27 December 1992), p. 59 (wherein the Accused argued it was crucial to stop firing on Sarajevo due to the danger of a NATO attack); D4510 (Intercept of conversation between Radovan Karadžić and Matišić, 21 February 1993) (wherein the Accused refers to Morillon's request to cease fire); D3521 (Letter from Radovan Karadžić to VRS Main Staff, 22 September 1994), p. 3 (wherein the Accused stated that every attack by NATO was a humiliation).

16622 In addition, based on all the evidence, the Chamber finds that the Accused was aware that his conduct as discussed in the preceding sections was part of a widespread and systematic attack directed against a civilian population.

city,[16623] this subsided once he realised that the wall of fire was the only way in which he could achieve the fifth Strategic Goal. Furthermore, the siege of Sarajevo, as well as the shelling and the sniping directed at the city and its civilians, also had an effect which was highly desired by the Accused: undermining the Bosnian Muslim authorities in Sarajevo and their desire to have Sarajevo be the capital of the independent BiH.

4930. The Accused's statements in 1991 and early 1992, that is, prior to the Sarajevo JCE coming into existence, show that he recognised the possibility of the Bosnian Serbs encircling the city, the chaos that such encirclement would cause, and then used it to threaten the Bosnian Muslim side. By the time the Sarajevo JCE did come into being in late May 1992, the Accused embraced the siege and the very violence he predicted, all in order to retain the Serb-held territory around Sarajevo and undermine the Bosnian Muslim authorities in the city. This is yet another reason why his intent to commit the crimes outlined above is the only reasonable inference to be drawn from the evidence before the Chamber.

4931. The fact that the Accused had the intent to commit the crimes outlined above is further confirmed by his unwavering support of Mladić's strategy in Sarajevo, as illustrated by, among other things, the events surrounding Scheduled Incident G.1. In that respect, the Accused's argument that no one in the higher VRS command ever issued orders to target civilians is plainly wrong as the evidence analysed above shows that Mladić did issue such orders in his telephone conversations on 28 and 29 May 1992.[16624] Further, the Accused himself, after ensuring that the bombing was brought to a halt on 30 May 1992, then issued orders for infantry fire to continue, showing in turn that he was involved in daily operations in Sarajevo, that he would issue orders to troops to open fire on Sarajevo, and finally, that he was duplicitous in his dealings with the international community, as ultimately confirmed by his own witness Akashi.

4932. The Accused's control over, and close involvement with, the SRK forces and their officers continued, as illustrated by numerous oral and written orders he issued to them. This too leads to the inevitable conclusion that the activities those forces engaged in during the period of the siege of Sarajevo were intended by the Accused. This is particularly so given the longevity of the siege and the campaign of sniping and shelling of civilians in Sarajevo as it is simply inconceivable that this state of affairs would have continued for over three years had it not had the active support of the Accused. In this respect, the Chamber recalls the Accused's knowledge of the SRK's targeting of

[16623] *See e.g.* D331 (Intercept of conversation between Danilo Veselinović and Radovan Karadžić, 13 April 1992), pp. 2–3.

civilians in the city from the very beginning of the conflict, his persistent failure to punish the perpetrators and/or stop that targeting, his continued support for various individuals implicated in crimes, such as Mladić, Galić, and Dragomir Milošević, and the control that the VRS and the SRK officers had over the heavy weapons and sniper units encircling the city. The Chamber also recalls the Accused's own admission in mid-June 1995 that creating a "fiery atmosphere" in the city and escalating the conflict inevitably leads to diplomatic activity speeding up and his subsequent efforts to intensify the terror in the city in mid-1995 through, among other things, supporting the use of a new weapon on the city. As found earlier, a number of modified bombs were launched on the city following this threat to use a new weapon. All these facts indicate that there was a clear intent on part of the Accused to support the SRK's shelling and the sniping of the civilians in the city.

4933. Many of the Accused's statements outlined above also show that, from the beginning of the conflict, the approach he adopted with international negotiators and in the public domain was that the Bosnian Serb side was not to blame for anything but was instead to be defended at all costs. Thus, the Accused made numerous claims throughout the conflict that the Bosnian Muslims were at fault for all the major incidents in the city, either because they were launching attacks on the Bosnian Serb-held territory or because they were sniping and shelling their own civilians. In the early stages of the conflict, as illustrated by statements outlined above, he also claimed that the Bosnian Muslims, due to their failure to abandon their political aims, would be and were to blame for the Bosnian Serb violence. This tendency of the Accused to automatically shift the blame to the other side for the civilian casualties in Sarajevo remained his approach throughout the conflict and he rarely acknowledged the SRK's responsibility for anything, even in private conversations with his peers.[16625] However, given that he was physically close to the city and to the SRK forces surrounding it, given the extensive information he would receive in relation to the Sarajevo battlefield from various sources, and recalling the great interest he took in the events there, the Chamber considers that the Accused adopted this approach of shifting blame not because he actually believed that the SRK was not responsible but because he wanted to deflect that responsibility and continue the pursuit of his political goals.

4934. This being his approach, the Accused made no genuine attempts to ensure that the civilian population in Sarajevo was protected from attacks by his own forces, even though he was obliged to do so given his position as the Supreme Commander. While he did occasionally issue orders for

16624 *See* discussion relating to Scheduled Incident G.1. Similarly, Dragomir Milošević issued an order to the Ilidža Brigade to launch a modified air bomb on the centre of Hrasnica, as discussed earlier in the Judgement. *See* discussion relating to Scheduled Incident G.10.

the Bosnian Serb Forces to stop the shelling and sniping attacks on the city and to respect the laws of war, as explained above, this only happened when he was pressured by the international community, under the threat of NATO air strikes, or when it was in his interest to do so in order to achieve his political goals. In other words, he never made any genuine attempts to stop the firing on the city outside of those situations. Furthermore, given the length of the siege of Sarajevo and of the SRK's campaign of sniping and shelling, the Accused's orders to stop the fire, particularly the indiscriminate and disproportionate fire, were few and far between. More importantly, they were never followed up by proper investigation and/or punishment for those who failed to obey his orders and therefore had no practical effect on the situation on the ground.[16626] The fact that the Accused did not exercise his extensive influence more regularly and rigorously, which would have in turn prevented severe physical damage to the city, the terrorisation of civilians, and a large number of civilian casualties, indicates to the Chamber that the cessation of attacks on civilians in the city was not in the Accused's interests. Accordingly, the Chamber does not consider that these orders undermine its ultimate finding that the Accused had the intent to commit the crimes outlined above.

4935. The Chamber was not persuaded by the evidence of various Defence witnesses who testified to the Accused's state of mind. For example, Bogdan Subotić's evidence that the Accused always wanted a peaceful solution to the situation in Sarajevo is clearly incorrect given the various statements the Accused made and the activities he engaged in, such as giving the order to Bosnian Serb Forces to use infantry fire on 30 May 1992, threatening the destruction of Sarajevo, and signalling the use of modified air bombs. Further, while the Accused may have told Jovanović and Momir Bulatović that the shelling and the sniping in Sarajevo was the work of rogue soldiers and elements outside of his control, this clearly was not the case, as outlined earlier in the Judgement.[16627] The Chamber considers that when making these claims the Accused was simply trying to avoid any personal responsibility in front of the various FRY officials.

4936. The Chamber also does not accept Krajišnik's evidence, and the evidence of the various SRK soldiers and officers, that no one in the civilian authorities supported the shelling of Sarajevo.

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16625 An example of this approach is the aftermath of the first Markale incident when, according to Milinić, before even speaking to anyone in the VRS, the Accused concluded that the incident was yet another Bosnian Muslim hoax. *See* para. 4208.

16626 The one occasion when the Accused can be said to have made genuine attempts to prevent the shelling and the sniping of the civilian population in Sarajevo was in the immediate aftermath of the first Markale incident when he issued an order directly to the SRK commanders and units threatening to hold them personally responsible for any attacks on the civilians. This in turn resulted in a period of relative peace for the city. However, as the political pressure on him decreased and the ABiH forces grew more confident, the Accused allowed the shelling and the sniping commence again.

16627 *See* paras. 4648, 4751.

The evidence before the Chamber clearly shows otherwise.[16628] Indeed, Krajišnik himself advocated taking the whole of Sarajevo, something that could not have been achieved without an all-out shelling of the entire city, including of its civilian population.[16629] As noted earlier, he also supported the use of modified air bombs in Sarajevo.[16630] Given the continuous shelling and sniping in the city between late May 1992 and October 1995, the Chamber also does not believe Galić, Dragomir Milošević, and the other SRK witnesses who testified that the Accused always emphasised the protection of civilians in Sarajevo and was genuine in his concern for the civilians. In any event, given the lack of any effect of those instructions on the ground, they must have been understood among all those present that the Accused was, on most occasions,[16631] simply paying lip service to the protection of Sarajevo's civilians. As indicated earlier, his failure to launch investigations and prosecutions against those in the SRK who were sniping and shelling civilians,[16632] coupled with his habit to blame the Bosnian Muslim side for the incidents in the city and for provoking SRK fire, was a clear sign to everyone in the VRS and the SRK that they could continue sniping and shelling at the Sarajevo's civilian population as they wished. Accordingly, none of the Accused's witnesses undermine in any way the Chamber's conclusion that the Accused had the intent to commit murder, unlawful attacks on civilians, and terror in the city of Sarajevo.

e. Conclusion: Accused's individual criminal responsibility

4937. The Chamber found above that the Sarajevo JCE came into existence in late May 1992 and continued until October 1995; that it involved a plurality of persons, including the Accused; that the Accused significantly contributed to, and worked in furtherance of, the common plan embodied in Sarajevo JCE; and that he shared the intent with respect to the common plan and the Sarajevo JCE crimes. The Chamber also found that the crimes of murder, unlawful attack on civilians, and terror were carried out by the members of the SRK units.[16633]

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16628 *See e.g.* P5599 (Intercept of conversation between Momčilo Mandić and Tomislav Kovač, 24 April 1992) (wherein Mandić told Kovač that Sokolović Kolonija should be razed to the ground despite the presence of moderate Muslims there); P5638 (Intercept of conversation between Nedeljko Prstojević and Radomir Ristić, 16 June 1995) (wherein Prstojević told Ristić that his side pounded the "Turks" and sent a "krmača" [modified air bomb] or two to them, to which Ristić responded: "we need to shake them up a bit by all means").

16629 *See* P1484 (Ratko Mladić's notebook, 28 October 1993–15 January 1994), p. 147.

16630 *See* para. 4388.

16631 The Chamber considers that the aftermath of the first Markale incident is one example where the Accused made genuine attempts to stop the firing on the city and its civilian population. As noted earlier, it was prompted by the pressure exerted on him by the international community.

16632 As discussed in relation to the two Markale incidents, the Accused would instead insist on establishing a joint commission comprised of both sides to the conflict, to which he knew the Bosnian Muslims would never agree. *See* paras. 4208, 4857.

16633 The Chamber excludes from this analysis Scheduled Incidents F.5, F.7, and G.6 as it was not satisfied beyond reasonable doubt that the SRK was responsible. In addition, for his part in this analysis, Judge Baird does not rely on Scheduled Incident G.8, due to his dissent in relation thereto.

4938. The Chamber recalls that in order to hold the Accused criminally responsible for crimes committed by non-members of the Sarajevo JCE, in this case the SRK units, there must be a link between the Accused or another JCE member and the criminal conduct, which is established if the Accused or another JCE member used the non-member in accordance with the common objective of the JCE to carry out the *actus reus* of the crimes included therein.[16634] This may be inferred from the close co-operation of the Accused—or any other Sarajevo JCE member—with the non-member in order to further the common criminal plan.[16635] In that respect, the Chamber recalls that it found that the Accused, Mladić, Galić, and Milošević all exercised in fact their *de jure* authority over the SRK forces. Similarly, all of the Sarajevo JCE members used their authority and influence over the SRK units in order to carry out the crimes envisaged by the common plan of the Sarajevo JCE. Accordingly, the Chamber is satisfied that there is a link between the Accused and other Sarajevo JCE members on one hand, and the criminal conduct of the SRK units in Sarajevo on the other. As a result, the acts of murder and terror, as well as the unlawful attacks on civilians committed in Sarajevo can be imputed to the Accused and the other Sarajevo JCE members.

4939. The Chamber therefore finds that the Accused bears individual criminal responsibility pursuant to Article 7(1) of the Statute for murder, a crime against humanity (Count 5); murder, a violation of the laws or customs of war (Count 6); terror, a violation of the laws or customs of war (Count 9); and unlawful attacks on civilians, a violation of the laws or customs of war (Count 10).

4940. As noted earlier, in addition to the Accused's liability through his participation in the Sarajevo JCE, the Prosecution also alleges that the Accused is individually criminally responsible for planning, instigating, ordering, and/or aiding and abetting murder, unlawful attacks on civilians, and terror.[16636] It also charges the Accused with individual criminally responsibility pursuant to Article 7(3) of the Statute.[16637] However, having considered all of the evidence and in light of the findings made above, the Chamber finds that commission through JCE pursuant to Article 7(1) most accurately and appropriately reflects the Accused's responsibility for murder, unlawful attacks on civilians, and terror as charged in the Indictment. The Chamber will therefore not analyse the Accused's responsibility under the other modes alleged by the Prosecution in the Indictment.

16634 *See* para. 567.
16635 *See* para. 567.
16636 Indictment, paras. 30–31; Prosecution Final Brief, paras. 1115–1118.
16637 Indictment, para. 32; Prosecution Final Brief, paras. 1113–1114.