



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-98-29/1-T

Date: 12 December 2007

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**IN THE TRIAL CHAMBER III**

**Before:** Judge Patrick Robinson, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Frederik Harhoff

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 12 December 2007

**PROSECUTOR**

v.

**DRAGOMIR MILOŠEVIĆ**

**PUBLIC**

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**JUDGEMENT**

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## CONTENTS

|   |          |
|---|----------|
| <b>I. INTRODUCTION</b> .....  | <b>1</b> |
| <b>II. EVIDENCE</b> .....   | <b>3</b> |
| A. RELEVANT FACTUAL BACKGROUND .....  | 3        |
| 1. Sarajevo.....  | 3        |
| 2. Historical Background .....  | 4        |
| (a) The 1990 Elections.....   | 4        |
| (b) Military Preparations for War .....   | 8        |
| 3. United Nations in Sarajevo .....   | 10       |
| (a) Structure of United Nations Mission.....  | 10       |
| (b) United Nations Area of Responsibility .....   | 12       |
| (c) Mandate.....  | 12       |
| 4. Peace Initiatives .....  | 15       |
| (a) Demilitarised Zone - 14 August 1993 .....   | 16       |
| (b) Total Exclusion Zone (TEZ) - 9 February 1994 .....  | 17       |
| (c) Anti-sniping Agreement - 14 August 1994 .....   | 18       |
| (d) Comprehensive Cessation of Hostilities Agreement - 23 December 1994.....                                    | 20       |
| (e) Collapse of TEZ Arrangements and NATO Attacks.....  | 21       |
| B. MILITARY STRUCTURES AND CONFRONTATION LINES .....  | 23       |
| 1. Structure of Military Units.....   | 23       |
| (a) VRS and SRK.....  | 23       |
| (b) ABiH and 1 <sup>st</sup> Corps .....  | 25       |
| 2. Weaponry .....   | 26       |
| (a) Weaponry Available to the VRS and ABiH.....   | 26       |
| (b) Specific Weapons.....   | 30       |
| (i) Mortars.....  | 30       |
| (ii) Modified Air Bombs.....  | 31       |
| a. The Possession of Air Bombs by the VRS and the ABiH.....   | 35       |
| Findings.....   | 37       |
| (iii) Snipers and Sniper Rifles .....   | 38       |
| 3. Areas of Responsibility and Confrontation Lines – SRK and 1 <sup>st</sup> Corps of the ABiH.....             | 39       |
| (a) Central Parts of Sarajevo: Grbavica, Marindvor, Hrasno, Novo Sarajevo and Elevations ...                    | 40       |
| (b) South-East: Debelo Brdo, Zlatište, Čolina Kapa, Mount Trebević.....   | 41       |
| (c) South-West: Dobrinja, Nedarići, Mojmililo Hill, Ilidža, Lukavica, Hrasnica, Sokolovići,<br>Mount Igman..... | 42       |
| (d) North-West: Sokolje Hill, Vogošća, Ilijaš, Žuč Hill, Hum Hill.....  | 44       |
| (e) North-East: Sedrenik, Špicasta Stijena, Grdonj, Hreša .....   | 46       |
| Findings .....  | 48       |
| C. SARAJEVO 1992 TO AUGUST 1994.....  | 49       |
| 1. SRK Sniping and Shelling of Areas within the Confrontation Lines .....                                       | 50       |
| 2. Effect on the Civilian Population within the Confrontation Lines .....                                       | 53       |
| 3. Defence Evidence of ABiH Activities from 1992 to 1994 .....  | 58       |
| D. CHALLENGE TO THE RELIABILITY OF THE INVESTIGATION BY BIH POLICE AND BIH POLICE<br>REPORTS.....               | 60       |
| E. EVIDENCE PERTAINING TO THE “CAMPAIGN” IN THE INDICTMENT PERIOD .....   | 67       |
| 1. Patterns of Sniping and Shelling of Sarajevo .....   | 67       |
| 2. Sniping and Shelling by the SRK .....  | 69       |
| 3. Sniping during the Indictment Period.....  | 71       |
| (a) Sniping by the SRK.....   | 72       |
| (i) Public Transport.....   | 74       |

|  |     |
|--|-----|
| (ii) Marindvor and Zmaja od Bosne .....  | 77  |
| (iii) Other Sniping Locations .....  | 79  |
| (b) Anti-sniping Measures .....  | 80  |
| (c) Sniping by the ABiH .....  | 81  |
| 4. Sniping Incidents Representative of the “Campaign” .....                          | 84  |
| (a) Unscheduled Sniping Incidents .....  | 84  |
| Finding .....  | 85  |
| (b) Scheduled Sniping Incidents .....  | 86  |
| (i) Sniping of Targets on Zmaja od Bosne .....                                       | 86  |
| a. Sniping of Alma Čutuna on 8 October 1994 .....                                    | 86  |
| Findings .....   | 90  |
| b. Sniping of Hajrudin Hamidić on 21 November 1994 .....                             | 91  |
| Findings .....   | 93  |
| c. Sniping of Hafiza Karačić and Sabina Šabanić on 23 November 1994 .....            | 94  |
| Findings .....   | 97  |
| d. Sniping of Senad Kešmer, Alma Čehajić and Alija Holjan on 27 February 1995 .....  | 97  |
| Findings .....   | 103 |
| e. Sniping of Azem Agović and Alen Gičević on 3 March 1995 .....                     | 104 |
| Findings .....   | 108 |
| f. Sniping of Dženana Sokolović and Nermin Divović on 18 November 1994 .....         | 109 |
| Findings .....   | 114 |
| (ii) Sniping of Targets in Sedrenik .....  | 115 |
| a. Sniping of Sanela Dedović on 22 November 1994 .....                               | 115 |
| Findings .....   | 118 |
| b. Sniping of Derviša Selmanović on 10 December 1994 .....                           | 118 |
| Findings .....   | 121 |
| c. Sniping of Tarik Žunić on 6 March 1995 .....                                      | 122 |
| Findings .....   | 126 |
| (iii) Sniping of Targets Elsewhere in Sarajevo .....                                 | 126 |
| a. Sniping of Adnan Kasapović on 24 October 1994 .....                               | 127 |
| Findings .....   | 131 |
| b. Sniping of Fata Guta on 8 November 1994 .....                                     | 133 |
| Findings .....   | 135 |
| c. Sniping of Šemsa Čovrk on 3 May 1995 .....  | 136 |
| Findings .....   | 138 |
| 5. Shelling during the Indictment Period .....                                       | 139 |
| (a) Shelling by the SRK .....  | 139 |
| (b) Shelling by the ABiH .....   | 145 |
| 6. Shelling Incidents Representative of the “Campaign” .....                         | 147 |
| (a) Unscheduled Shelling Incidents .....   | 147 |
| Finding .....  | 148 |
| (b) Scheduled Shelling Incidents .....   | 149 |
| (i) Shelling of Livanjska Street on 8 November 1994 .....                            | 149 |
| Findings .....   | 155 |
| (ii) Shelling of Baščaršija Flea Market on 22 December 1994 .....                    | 156 |
| Findings .....   | 159 |
| (iii) Shelling of a Residential Area in Hrasnica on 7 April 1995 .....               | 159 |
| Findings .....   | 165 |
| (iv) Shelling of Safeta Zajke Street on 24 May 1995 .....                            | 166 |
| Findings .....   | 169 |
| (v) Shelling of Majdanska Street on 24 May 1995 .....                                | 170 |
| Findings .....   | 173 |
| (vi) Shelling of Safeta Hadžića Street on 26 May 1995 .....                          | 174 |
| Findings .....   | 177 |
| (vii) Shelling of the UMC and Oncology Department, Dositejeva, on 16 June 1995 ..... | 178 |
| Findings .....   | 179 |

|  |     |
|--|-----|
| (viii) Shelling of Trg Medunarodnog Prijateljstva on 16 June 1995 .....      | 180 |
| Findings .....   | 183 |
| (ix) Shelling of Čobanija Street on 16 June 1995 .....                       | 184 |
| Findings .....   | 185 |
| (x) Shelling of a Water Distribution Point in Dobrinja on 18 June 1995 ..... | 186 |
| Findings .....   | 191 |
| (xi) Shelling of TV Building on 28 June 1995 .....                           | 192 |
| Findings .....   | 205 |
| (xii) Shelling of Bunički Potok Street on 1 July 1995 .....                  | 206 |
| Findings .....   | 211 |
| (xiii) Shelling of Bjelašnička Street in Sokolovići on 23 July 1995 .....    | 212 |
| Findings .....   | 215 |
| (xiv) Shelling of the BITAS Building on 22 August 1995 .....                 | 216 |
| Findings .....   | 220 |
| (xv) Shelling of the Markale Market on 28 August 1995 .....                  | 220 |
| a. Number of dead and wounded .....  | 221 |
| b. Investigation of the Incident; Type of Shell .....                        | 224 |
| c. Direction of Fire .....   | 225 |
| d. Origin of Fire .....  | 227 |
| e. Military Activities on 28 August 1995 .....                               | 230 |
| f. Defence Submission of Tampering .....                                     | 230 |
| g. Evidence of Col. Andrey Demurenko .....                                   | 234 |
| Findings .....   | 238 |
| 7. Effects of Shelling and Sniping on Civilians .....                        | 241 |
| (a) Daily Life .....   | 242 |
| (b) Physical Impact .....  | 245 |
| (c) Psychological Impact .....   | 247 |
| (d) Ability to Leave Sarajevo .....  | 249 |
| 8. “Campaign” Strategy .....   | 251 |
| 9. The Defence Challenge to the Prosecution Allegation of a “Campaign” ..... | 254 |
| (a) Shelling of SRK-held Territories .....                                   | 255 |
| (b) Sniping into SRK-held Territories .....                                  | 257 |
| (i) Specific Sniping Incidents against Bosnian Serbs .....                   | 258 |
| (c) Defence Allegations of Provocation by the ABiH .....                     | 259 |
| (d) ABiH Offensives .....  | 261 |
| (e) Effect of Conflict on Bosnian Serbs .....                                | 264 |
| General Findings on Sniping and Shelling .....                               | 266 |
| F. EVIDENCE RELATING TO ROLE ACCUSED .....                                   | 267 |
| (a) Leadership of the Accused .....  | 267 |
| (b) Involvement in and Awareness of Shelling and Sniping .....               | 270 |
| (i) Effective Control .....  | 270 |
| a. Effective Control over Sniping .....                                      | 271 |
| b. Effective Control over Shelling .....                                     | 273 |
| c. Effective Control over the Use of Modified Air Bombs .....                | 274 |
| (ii) Evidence Relating to the Defence of ‘Alibi’ .....                       | 275 |
| (iii) Orders of the Accused .....  | 277 |
| (iv) Orders by the Accused to Prevent the Shooting of Civilians .....        | 278 |
| (v) Involvement in Attacks on UNPROFOR .....                                 | 279 |
| (vi) Intent and Awareness of Crimes .....                                    | 280 |
| a. Awareness of Crimes .....   | 280 |
| b. Intent of the Accused .....   | 282 |
| (c) Investigations and Disciplinary Measures .....                           | 284 |

### **III. FINDINGS ON THE COUNTS AND CRIMINAL LIABILITY OF THE ACCUSED ... 287**

|   |     |
|---|-----|
| A. COUNT 1: TERROR .....                                  | 287 |
| 1. General Requirements of Article 3 of the Statute ..... | 287 |

|   |            |
|---|------------|
| 2. The Crime of Terror.....   | 288        |
| (a) <i>Actus Reus</i> .....   | 289        |
| (b) <i>Mens Rea</i> .....   | 290        |
| (c) The Concept of “Terror” .....   | 291        |
| 3. Evaluation of the Evidence .....   | 293        |
| (a) Civilian Status of the Population.....  | 293        |
| (b) Terror .....  | 298        |
| 4. Counts 2 and 5: Murder .....   | 301        |
| (a) Attack .....  | 302        |
| (b) Nexus between the Acts of the Perpetrator and the Attack.....   | 302        |
| (c) Directed against any Civilian Population.....   | 303        |
| (d) Widespread or Systematic.....   | 304        |
| (e) <i>Mens Rea</i> .....   | 305        |
| 5. Counts 3 and 6: Inhumane Acts .....  | 306        |
| 6. Counts 4 and 7: Unlawful Attacks against Civilians .....   | 308        |
| (a) Attack on Civilians.....  | 308        |
| (b) <i>Actus Reus</i> .....   | 309        |
| (c) <i>Mens Rea</i> .....   | 311        |
| <b>B. INDIVIDUAL CRIMINAL LIABILITY OF THE ACCUSED .....</b>  | <b>312</b> |
| 1. Findings on Planning and Ordering .....  | 313        |
| (a) Defence of “Alibi” .....  | 317        |
| (b) Conclusions.....  | 318        |
| 2. Has the Prosecution Charged the Individual Criminal Responsibility of the Accused under Article 7(3) of the Statute as an Alternative to his Liability under Article 7(1) of the Statute?..... | 319        |
| <b>IV. SENTENCING.....</b>  | <b>320</b> |
| 1. Gravity and Individual Circumstances of the Convicted Person .....   | 320        |
| 2. Aggravating and Mitigating Factors .....   | 322        |
| (a) Aggravating Circumstances .....   | 322        |
| (b) Mitigating Circumstances .....  | 324        |
| 3. General Practice Regarding Sentencing in the Former Yugoslavia.....  | 325        |
| <b>V. DISPOSITION .....</b>   | <b>326</b> |
| <b>VI. ANNEX.....</b>   | <b>327</b> |
| A. GLOSSARY.....  | 327        |
| General Abbreviations .....   | 327        |
| ICTY .....  | 329        |
| ICTR .....  | 331        |
| SCSL.....   | 332        |

## I. INTRODUCTION

1. The Accused, Dragomir Milošević, is a Bosnian Serb, who was the commander of the Sarajevo Romanija Corps (“SRK”) of the Army of the Republika Srpska (“VRS”) from August 1994 to November 1995. This case relates to alleged crimes that took place during the alleged siege of Sarajevo in that time period.

2. Before the armed conflict started, the Accused was an officer in the Yugoslav People’s Army (“JNA”). He served as a regimental Chief of Staff and Chief of Staff of the 49<sup>th</sup> Motorised Brigade at Lukavica, which was part of the 4<sup>th</sup> Corps, 2<sup>nd</sup> Military District, based in Sarajevo.<sup>1</sup> Sometime in 1990, the Accused became the Commander of the 216<sup>th</sup> Mountain Brigade of the JNA.<sup>2</sup> From 19 May 1992 onwards, he served as Commander of the 1<sup>st</sup> Romanija Infantry Brigade.<sup>3</sup> From February 1993 until approximately April 1993, he was a staff officer in the VRS Drina Corps.<sup>4</sup> From on or about 6 July 1993, the Accused served as Chief of Staff and Deputy Commander in the SRK under its commander Gen. Stanislav Galić.<sup>5</sup> The Accused became Commander of the SRK on or about 10 August 1994 and remained in that position until on or about 21 November 1995.<sup>6</sup> He then held the rank of Major General and was immediately subordinate to the Main Staff of the VRS, and Gen. Ratko Mladić.<sup>7</sup>

3. The Accused was originally indicted with Stanislav Galić.<sup>8</sup> On 26 March 1999, the Prosecution filed a revised Indictment with Dragomir Milošević as the only Accused. The Accused voluntarily surrendered to the authorities of Serbia and Montenegro and was transferred to the United Nations Detention Unit in The Hague on 3 December 2004.<sup>9</sup> At his initial appearance on 7 December 2004, the Accused pleaded not guilty to all counts insofar as they pertained to charges against him.<sup>10</sup> Following the decision of the Trial Chamber on a requested amendment of the

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<sup>1</sup> Agreed Facts, admitted into evidence by decisions of the Trial Chamber on 10 April 2007 (“Agreed Facts”), 2.

<sup>2</sup> Agreed Fact 3; Stevan Veljović, 30 May 2007, T. 5815 – 5816; Stevan Veljović, 24 May 2007, T. 5712.

<sup>3</sup> Agreed Facts 4, 5; Stevan Veljović, 24 May 2007, T. 5712, 30 May 2007, T. 5817.

<sup>4</sup> Agreed Fact 6.

<sup>5</sup> Agreed Fact 7. *See also, e.g.*, P661, Order by the SRK deputy commander, dated 16 July 1993; P662, Order by SRK deputy commander, dated 17 January 1994; P208, Order by SRK deputy commander, dated 29 July 1994.

<sup>6</sup> Agreed Fact 8. *See also, e.g.*, T-15, 13 July 2007, T. 8307; Vaso Elez, 7 June 2007, T. 6323; Zoran Samardžić, 13 June 2007, T. 6630; Zoran Trapara, 26 June 2007, T. 7300 – 7301; T-52, 28 June 2007, T. 7436.

<sup>7</sup> *See infra*, Section II.F(b)(i) Effective Control

<sup>8</sup> *Prosecutor v. Stanislav Galić and Dragomir Milošević*, Case No. IT-98-29-I, Indictment, confirmed on 24 April 1998.

<sup>9</sup> Initial Appearance Hearing, 7 Dec 2004, T. 3; Decision on Defence Motion for Provisional Release, 13 July 2005, paras 13 - 19.

<sup>10</sup> Initial Appearance Hearing, 7 Dec 2004, T. 1 – 15.

Indictment and on the application of Rule 73bis (D) of the Rules of Procedure and Evidence,<sup>11</sup> the Prosecutor filed the Amended Indictment on 18 December 2006 (“Indictment”).

4. The trial opened on 10 January 2007 and the presentation of evidence and the arguments of the Parties ended with the Closing Arguments on 10 October 2007. In total, the evidence of 138 witnesses was presented; there were 84 witnesses for the Prosecution and 53 witnesses for the Defence. In addition, two persons appeared as witnesses for the Trial Chamber. A total of 935 exhibits for the Prosecution were admitted into evidence, as were 522 exhibits for the Defence. Finally, 16 sets of photographs were admitted into evidence as court exhibits.

5. The Indictment charges the Accused with one count of terror as a violation of the laws or customs of war, two counts of murder as a crime against humanity, two counts of inhumane acts as a crime against humanity and two counts of unlawful attacks on civilians as a violation of the laws or customs of war.

6. The Prosecution alleged that the Accused, as commander of the SRK, inherited, from Gen. Stanislav Galić, and perpetuated a “campaign of shelling and sniping” of civilians, civilian areas and the civilian population of Sarajevo. This “campaign” was allegedly conducted by Bosnian Serb forces comprising or attached to the SRK or affiliated with the VRS. It alleged that the attacks were deliberate, indiscriminate or excessive and disproportionate in relation to the anticipated concrete and direct military advantage. Also, according to the Prosecution, the alleged “campaign” had the primary purpose of spreading terror within the civilian population of Sarajevo. The Prosecution clarified that the incidents enumerated in the schedules to the Indictment are representative of the “campaign”.

7. The Defence submitted that the Accused is not guilty and should, therefore, be acquitted. The main Defence argument was that during the entire conflict in Bosnia and Herzegovina, the area of Sarajevo and its environs was the theatre of serious conflict and heavy fighting. Accordingly, in the Defence submission, one “cannot characterise this as a civilian area and speak of civilians as the sole target at the time of the Indictment.”<sup>12</sup>

8. In accordance with Article 21(3) of the Statute, the Accused is presumed innocent until proven guilty. The Appeals Chamber recently clarified that a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved beyond reasonable doubt each element of

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<sup>11</sup> *Prosecutor v. Dragomir Milošević*, Case No IT-98-29/1-PT, Decision on Amendment of Indictment and Application of Rule 73bis (D), 12 December 2006.

<sup>12</sup> Defence Closing Arguments, T. 9525.

that crime and the mode of liability and any fact which is indispensable for the conviction.<sup>13</sup> The Prosecution, therefore, bears the burden of proving the guilt of the Accused and it must do so beyond reasonable doubt. In evaluating circumstantial evidence, the Trial Chamber recalls that any conclusion drawn from such evidence “must be the *only* reasonable conclusion available.”<sup>14</sup> Findings in this Judgement are made on the basis of proof beyond reasonable doubt.

9. In its assessment of the case, the Trial Chamber considered the entirety of the trial record and evaluated all the evidence that was presented and duly apportioned the weight to be given to it. It emphasises that if a piece of evidence is not mentioned in this Judgement, that does not mean that it has not been considered.

## II. EVIDENCE

### A. Relevant Factual Background

#### 1. Sarajevo

10. The city of Sarajevo is the capital of the Republic of Bosnia and Herzegovina (“BiH”) and is situated in a valley on an east-west axis along the Miljacka River.<sup>15</sup> The city is a densely-populated urban area, surrounded by steep slopes.<sup>16</sup> To the East, the city centre is constituted by the residential and commercial old town, which spreads up the adjacent hillsides.<sup>17</sup> To the West, there are new municipalities comprising residential and commercial areas on more open ground.<sup>18</sup> The central area of Sarajevo is composed of six municipalities, namely Sarajevo Centar, Ilidža, Novi Grad, Novo Sarajevo, Stari Grad and Vogošća.<sup>19</sup> The broader Sarajevo area includes four other municipalities, which are Hadžići, Ilijaš, Pale and Trnovo.<sup>20</sup> By 1990, the city had over half a million residents.<sup>21</sup>

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<sup>13</sup> *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-A, Judgement, 16 October 2007 (“*Halilović* Appeal Judgement”), para. 125.

<sup>14</sup> *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 458.

<sup>15</sup> David Harland, 15 Jan 2007, T. 364, 369 – 370; W-138, 1 Feb 2007, T. 1432 – 1433; P104, Street map of Sarajevo; Agreed Fact 16.

<sup>16</sup> Agreed fact 17; W-138, 1 Feb 2007, T. 1432 – 1433; Sanjin Hasanefendić, 16 Feb 2007, T. 2291; W-50, 28 Feb 2007, T. 2889; Stevan Veljović, 24 May 2007, T. 5719 – 5721.

<sup>17</sup> Agreed fact 18.

<sup>18</sup> Agreed fact 19.

<sup>19</sup> Ewa Tabeau, 1 May 2007, T. 5442 – 5443, 5457 – 5458; Adjudicated Facts, admitted into evidence by decisions of the Trial Chamber on 10 April 2007 and 18 July 2007 (“Adjudicated Facts”), 19. Milorad Katić testified that in 1994, the city of Serb Sarajevo was established, consisting of six municipalities, all bearing the same name as the municipalities of the central area of Sarajevo, Milorad Katić, 1 June 2007, T. 6007. *Cf.* Zoran Samardžić, 13 June 2007, T. 6638 – 6639.

<sup>20</sup> Ewa Tabeau, 1 May 2007, T. 5442 – 5443, 5457 – 5458; Adjudicated Fact 19.

<sup>21</sup> P472, Expert report Robert Donia on the making of the Sarajevo siege 1990 – 1994, dated December 2006 (“Expert report Robert Donia”), p. 6.



11. Sarajevo was well-known as a multi-ethnic, multi-religious city, with a long history of religious and cultural tolerance.<sup>22</sup> Robert Donia, who testified for the Prosecution as an expert on the history of Bosnia and Herzegovina, stated that a “multiethnic life” flourished in Sarajevo.<sup>23</sup> Several Defence witnesses testified that no problems existed between the different ethnic groups in Sarajevo.<sup>24</sup> In 1991, the ethnic composition of the population of Sarajevo was similar to the population of Bosnia and Herzegovina in general; according to Robert Donia, it was “simply impossible” to define areas of Bosnia and Herzegovina on the basis of ethnicity.<sup>25</sup> However, in Sarajevo, the percentage of Bosnian Muslims was somewhat higher and the city housed considerably less Bosnian Croats.<sup>26</sup> The municipalities of Hadžići, Ilijaš, Pale and Trnovo had, compared to the rest of Sarajevo, a somewhat higher percentage of Bosnian Serbs.<sup>27</sup>

## 2. Historical Background

### (a) The 1990 Elections

12. The first multi-party elections in the Socialist Federal Republic of Yugoslavia (“SFRY”) were held in the republics of Croatia and Slovenia in April and May 1990.<sup>28</sup> Elections in the other republics, including Bosnia and Herzegovina, took place in November and December 1990.<sup>29</sup> According to Robert Donia, the elections took place in a context of differing views as to whether the republics should have greater autonomy from the SFRY or whether the SFRY should be further strengthened.<sup>30</sup>

13. In the November 1990 elections in Bosnia and Herzegovina, the three nationalist parties prevailed.<sup>31</sup> The Serb Democratic Party (“SDS”) won the majority of votes of the Bosnian Serbs, the Croatian Democratic Party (“HDZ”) won most of the votes of Bosnian Croats and the Party of Democratic Action (“SDA”) was supported by the majority of Bosnian Muslims.<sup>32</sup> In Sarajevo, the percentage of people who voted for non-nationalist candidates was higher than in the Republic as a

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<sup>22</sup> Milan Mandilović, 18 Jan 2007, T. 609; Dženana Sokolović, 22 Jan 2007, T. 763 – 764.

<sup>23</sup> P472, Expert report Robert Donia, p. 7.

<sup>24</sup> Siniša Krsman, 5 June 2007, T. 6232, 6 June 2007, T. 6247; Vaso Elez, 6 June 2007, T. 6304 – 6305; Zoran Samardžić, 13 June 2007, T. 6614 – 6615; Luka Jović, 14 June 2007, T. 6694 – 6695; T-2, 20 June 2007, T. 6961.

<sup>25</sup> Robert Donia, 16 Mar 2007, T. 3927 – 3928; P472, Expert report Robert Donia, pp 6 - 8, Appendix B. According to the 1991 census, approximately 1.4 million Serbs, about 770,000 Croats, and approximately two million Muslims, lived in Bosnia and Herzegovina, *ibid.* See also Adjudicated Fact 2.

<sup>26</sup> P472, Expert report Robert Donia, p. 7. Approximately ten per cent of Sarajevans referred to themselves as “Yugoslavs”, P472, Expert report Robert Donia, pp 7 – 8.

<sup>27</sup> P472, Expert report Robert Donia, p. 8. See also Adjudicated Facts 20 – 21 and, in relation to Rajlovac, Siniša Krsman, 5 June 2007, T. 6231.

<sup>28</sup> P472, Expert report Robert Donia, p. 5.

<sup>29</sup> P472, Expert report Robert Donia, p. 5.

<sup>30</sup> Robert Donia, 16 Mar 2007, T. 3949 – 3951; P472, Expert report Robert Donia, p. 9.

<sup>31</sup> P472, Expert report Robert Donia, p. 5; Adjudicated Fact 3.

<sup>32</sup> P472, Expert report Robert Donia, p. 5.

whole.<sup>33</sup> Still, together the three nationalist parties won over 50 per cent of seats in the city council of Sarajevo.<sup>34</sup> After the elections, the leaders of the SDA, the SDS and HDZ divided key positions amongst themselves.<sup>35</sup> In November 1990, Alija Izetbegović became President of the Bosnia and Herzegovina Republic.<sup>36</sup>

14. Robert Donia gave evidence that shortly after the 1990 elections, the SDS leaders started to promote regional “communities of municipalities” with the purpose of securing control over the Bosnian Serb-inhabited areas of Bosnia and Herzegovina.<sup>37</sup> In April 1991, SDS delegates in the municipal assembly of Pale, which was the Sarajevo municipality with the highest percentage of Bosnian Serb inhabitants and SDS municipal assembly delegates, announced their intention to secede from “the city of Sarajevo.”<sup>38</sup>

15. In the autumn of 1991, the Serb Autonomous Region (“SAO”) Romanija-Birač was proclaimed in the Sarajevo area.<sup>39</sup> In December 1991, the SDS Main Board directed SDS municipal boards throughout Bosnia and Herzegovina to establish Bosnian Serb institutions, including a “Crisis Staff of the Serb People” and an “Assembly of the Serb People” or a “Serb Municipality”.<sup>40</sup> At the end of 1991 and the beginning of 1992, Bosnian Serb nationalists in the area of Sarajevo created separate, parallel Bosnian Serb institutions at the city and municipal levels.<sup>41</sup> On 24 December 1991, the SDS formed a Crisis Staff for Sarajevo.<sup>42</sup> Also in December 1991, the SAO Romanija was created as a separate entity from SAO Birač so that it could focus on Sarajevo and its surrounding areas.<sup>43</sup>

16. At the same time, leaders of the SDA and the HDZ took steps towards greater sovereignty or independence for Bosnia and Herzegovina.<sup>44</sup> In October 1991, President Alija Izetbegović led SDA

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<sup>33</sup> P472, Expert report Robert Donia, p. 8.

<sup>34</sup> P472, Expert report Robert Donia, p. 8. Regarding Novo Sarajevo, see Milorad Katić, 31 May 2007, T. 5959, 5962.

<sup>35</sup> P472, Expert report Robert Donia, p. 9; Adjudicated Fact 3.

<sup>36</sup> Adjudicated Fact 4.

<sup>37</sup> P472, Expert report Robert Donia, p. 10.

<sup>38</sup> P472, Expert report Robert Donia, p. 10. This followed shortly after SDS leaders formally declared the first Bosnian Serb-led regional body, the “Community of Municipalities of Bosnian Krajina”, in north-west Bosnia and Herzegovina, *ibid.*

<sup>39</sup> P472, Expert report Robert Donia, p. 11. At the same time, three other SAOs were proclaimed, *ibid.*; Adjudicated Fact 6.

<sup>40</sup> P472, Expert report Robert Donia, pp 13 - 14. SDS members dominated these institutions, *ibid.* Rade Ivanović testified that a Crisis Staff was created in Trnovo. He was questioned extensively on the matter, but denied knowledge of P757, SDS instructions on the organisation of the Serbian people, as did Rade Ivanovic, 4 July 2007, T. 7653 – 7655, 6 July 2007, T. 7796 – 7809; Milorad Katić, 4 June 2007, T. 6123 – 6124. Cf. P808, Minutes of SDS Crisis Staff Trnovo meeting held on 29 April 1992 (“Minutes Trnovo Crises Staff”); P810, Minutes of Territorial Defence Command of the Serbian people; P758, Report on activities by Serbian municipality of Novo Sarajevo, dated 5 June 1992.

<sup>41</sup> P472, Expert report Robert Donia, pp 12 - 14.

<sup>42</sup> P472, Expert report Robert Donia, p. 14. This Crisis Staff included members of the SDS Main Board, *ibid.*

<sup>43</sup> P472, Expert report Robert Donia, p. 12.

<sup>44</sup> P472, Expert report Robert Donia, p. 12.

and HDZ delegates in promoting a “Platform of the Presidency of the Socialist Republic of BiH” and a “Declaration of Sovereignty” in the Bosnian Assembly, which was opposed by the SDS members.<sup>45</sup> In the early hours of 15 October 1991, and in the absence of SDS delegates, the Platform and the Declaration were approved by HDZ and SDA delegates.<sup>46</sup>

17. On 9 and 10 November 1991, the SDS held a plebiscite, asking voters whether they wished to remain in the SFRY.<sup>47</sup> In his report, Robert Donia stated that “few non-Serbs voted” and that Bosnian Serbs voted overwhelmingly to remain in the SFRY.<sup>48</sup> The outcome of the plebiscite was cited by SDS as justification for establishing a separate Serb state within Bosnia and Herzegovina.<sup>49</sup>

18. The above events were taking place in the context of the establishment of the European Community Conference on Yugoslavia and the invitation from the European Community’s (“EC”) Arbitration Commission, headed by Robert Badinter (“Badinter Commission”), to SFRY republics to apply to be recognised as independent states.<sup>50</sup> The Presidency of Bosnia and Herzegovina voted to apply to the Badinter Commission on 20 December 1991, which led to the SDS leaders taking further steps to establish a separate Bosnian Serb state.<sup>51</sup> On 9 January 1992, the Bosnian Serb Assembly proclaimed the “Serb Republic of BiH.”<sup>52</sup>

19. On 11 January 1992, the Badinter Commission recommended that Bosnia and Herzegovina hold a referendum on its independence.<sup>53</sup> Despite denunciations by the Bosnian Serb Assembly against such a referendum, it was held at the end of February 1992.<sup>54</sup> Bosnian Muslims and Croats voted overwhelmingly for independence, while a large number of Bosnian Serbs boycotted the referendum.<sup>55</sup> Following the referendum, the EC declared its intent to recognise Bosnia and Herzegovina as an independent state.<sup>56</sup>

20. On 2 March 1992, SDS members and supporters took up arms and set up barricades at key transit points throughout Sarajevo.<sup>57</sup> SDA members also erected barricades, often directly opposite

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<sup>45</sup> P472, Expert report Robert Donia, p. 12; Adjudicated Fact 7.

<sup>46</sup> P472, Expert report Robert Donia, p. 12.

<sup>47</sup> P472, Expert report Robert Donia, p. 13.

<sup>48</sup> P472, Expert report Robert Donia, p. 13; Adjudicated Fact 8.

<sup>49</sup> P472, Expert report Robert Donia, p. 13.

<sup>50</sup> P472, Expert report Robert Donia, pp 20 - 21.

<sup>51</sup> P472, Expert report Robert Donia, p. 21. *See also* D134, Minutes from 189<sup>th</sup> session of the President of the SFRY on 2 March 1992.

<sup>52</sup> P472, Expert report Robert Donia, pp 20 - 21; Adjudicated Fact 10.

<sup>53</sup> P472, Expert report Robert Donia, p. 21.

<sup>54</sup> P472, Expert report Robert Donia, p. 21.

<sup>55</sup> P472, Expert report Robert Donia, p. 21.

<sup>56</sup> P472, Expert report Robert Donia, p. 21.

<sup>57</sup> P472, Expert report Robert Donia, pp 21 -22; Luka Jović, 14 June 2007, T. 6693 – 6694; Adjudicated Fact 23.

the SDS barriers.<sup>58</sup> SDS party leaders said that the erection of the barricades was a spontaneous response to a shooting at a wedding in Sarajevo's Old Orthodox Church, in which the bridegroom's father was killed and an Orthodox priest was injured.<sup>59</sup> T-48, a SRK soldier during the Indictment period, testified that "after the killing at the wedding in Sarajevo, things escalated".<sup>60</sup> There was a large protest in Sarajevo on 2 March 1992 demanding the removal of the barricades.<sup>61</sup> The barricades were removed that night, but some were re-erected on 3 March 1992.<sup>62</sup> Also on 3 March 1992, the Presidency of Bosnia and Herzegovina declared the Republic an independent state.<sup>63</sup>

21. Peace demonstrations occurred intermittently over the next month.<sup>64</sup> However, Defence witness Dražen Maunaga, a SRK soldier, gave evidence describing how there were "groupings in the town along ethnic lines" and spoke of distrust arising between ethnic groups.<sup>65</sup>

22. BiH became independent on 7 April 1992, according to Robert Donia "by virtue of EC and United States recognition".<sup>66</sup> Just prior to its recognition, large scale violence broke out in Sarajevo.<sup>67</sup> Milorad Katić, the President of the Novo Sarajevo municipal assembly during the Indictment period, heard reports of clashes and, when shots were heard in his home district of Vraca, "people started to gather spontaneously and started asking for weapons because they panicked".<sup>68</sup> A peace march that had begun on the night of 5 April 1992 was broken up when gunfire from the roof of the Holiday Inn Hotel ("Holiday Inn"), which for some weeks had been the SDS headquarters, killed some demonstrators.<sup>69</sup> When the BiH police entered the building, they arrested six gunmen but "Karadžić, his entourage, and other gunmen had already left the hotel."<sup>70</sup> On the night of 6 April 1992, the central tramway depot and the old city were shelled and JNA units took control of Sarajevo Airport.<sup>71</sup>

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<sup>58</sup> P472, Expert report Robert Donia, pp 21 p 22; Luka Jović, 14 June 2007, T. 6693 – 6694; Adjudicated Fact 23. Bakir Nakaš did not agree with the Defence submission that the SDS barricades were erected in response to this killing and barricades put up by the SDA. Rather, he said, the SDS put up barricades in response to the referendum, Bakir Nakaš, 29 Jan 2007, T. 1131 – 1132.

<sup>59</sup> P472, Expert report Robert Donia, p. 22. *See also* D134, Minutes from 189<sup>th</sup> session of the President of the SFRY on 2 March 1992. According to Siniša Krsman, "he was killed only because he was carrying a Serb flag", Siniša Krsman, 5 June 2007, T. 6232.

<sup>60</sup> T-48, 22 June 2007, T. 7057 – 7058, 7130.

<sup>61</sup> P472, Expert report Robert Donia, p. 22.

<sup>62</sup> P472, Expert report Robert Donia, p. 22.

<sup>63</sup> Adjudicated Fact 15.

<sup>64</sup> P472, Expert report Robert Donia, p. 22.

<sup>65</sup> Dražen Maunaga, 11 June 2007, T. 6468 – 6469, 6470 – 6471, 6477.

<sup>66</sup> P472, Expert report Robert Donia, p. 21.

<sup>67</sup> P472, Expert report Robert Donia, p. 23; Adjudicated Fact 25.

<sup>68</sup> Milorad Katić, 31 May 2007, T. 5965 – 5966, 5976 – 5977. *See also* Dražen Maunaga, 11 June 2007, T. 6474. Robert Donia mentions, in his report, that the police academy in Vraca was attacked on 5 April 1992, P472, Expert report Robert Donia, p. 23. Adjudicated Fact 26 states that it was the JNA that attacked the academy in Vraca.

<sup>69</sup> P472, Expert report Robert Donia, p. 23.

<sup>70</sup> P472, Expert report Robert Donia, p. 23.

<sup>71</sup> P472, Expert report Robert Donia, p. 23.

23. On 27 April 1992, the SFRY was re-organised so that it consisted of only the republics of Serbia and Montenegro, along with Kosovo and Vojvodina, and a new constitution was adopted.<sup>72</sup> On the same day, the BiH Presidency ordered the JNA to withdraw from BiH, and when it failed to do so, special police of the BiH Ministry of Interior (“MUP”) and other units loyal to the BiH Government surrounded some of the JNA facilities in Sarajevo.<sup>73</sup> The JNA soldiers and the army command were deprived of food and electricity, and some clashes ensued, resulting in casualties.<sup>74</sup> According to Dražen Maunaga, “the barracks were constantly under pressure and there were attempts to break into them, to take and seize weapons”.<sup>75</sup> In addition, Radomir Visnjić, Assistant Commander for Logistics in the SRK 1<sup>st</sup> Sarajevo Brigade, testified that there was a “massacre” of officers, non-commissioned officers and other staff in Skenderija.<sup>76</sup> The JNA troops and their equipment were hostages in the negotiations that followed to ensure their withdrawal from BiH.<sup>77</sup>

24. According to Col. Luka Dragičević, Assistant Commander for Morale, Religious and Legal issues in the SRK during the Indictment period, when the JNA were withdrawing from BiH, incidents took place in which JNA soldiers were killed. The “most outstanding example” was the pullout of the command of the “2<sup>nd</sup> Army” under the auspices of UNPROFOR, during which “a marching column and a convoy of vehicles was cut in two and over 100 men were killed on Dobrovoljačka Street” on 2 May 1992.<sup>78</sup> On 4 May 1992, the Yugoslav Presidency also ordered the withdrawal of JNA forces from BiH within 15 days, which resulted in the JNA leaving “most heavy weaponry” and the vast majority of troops in the hands of the Bosnian Serb forces.<sup>79</sup> On 22 May 1992, BiH became a member state of the United Nations.<sup>80</sup>

(b) Military Preparations for War

25. From 1990 onwards, the JNA gradually became dominated by Serb and Montenegrin officers; members from other nationalities left the JNA, often to join the forces that the JNA were

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<sup>72</sup> P472, Expert report Robert Donia, p. 31.

<sup>73</sup> P472, Expert report Robert Donia, pp 31 – 32; Bakir Nakaš, 29 Jan 2007, T. 1134; Milan Mandilović, 18 Jan 2007, T. 611; Stevan Veljović, 24 May 2007, T. 5709 – 5710; Goran Kovačević, 12 June 2007, T. 6545.

<sup>74</sup> Luka Dragičević, 26 Mar 2007, T. 4005 – 4006; Stevan Veljović, 24 May 2007, T. 5711 – 5712; Bakir Nakaš, 29 Jan 2007, T. 1134.

<sup>75</sup> Dražen Maunaga, 11 June 2007, T. 6476.

<sup>76</sup> Radomir Visnjić, 25 June 2007, T. 7228 – 7229, 7236.

<sup>77</sup> P472, Expert report Robert Donia, p. 32.

<sup>78</sup> Luka Dragičević, 26 Mar 2007, T. 3970, 4006 – 4007; Bakir Nakaš, 29 Jan 2007, T. 1133 – 1134; Stevan Veljović, 24 May 2007, T. 5711; Dragan Simić, 5 June 2007, T. 6163; Dražen Maunaga, 11 June 2007, T. 6475 – 6476.

<sup>79</sup> P472, Expert report Robert Donia, p. 24; Stevan Veljović, 24 May 2007, T. 5710 – 5711; Milosav Gagović, 23 July 2007, T. 8689, 8691; Rupert Smith, 7 Mar 2007, T. 3359; Džemaludin Luinović, 1 Mar 2007, T. 2966; Luka Dragičević, 26 Mar 2007, T. 4007; W-156, P625, p. 35 (under seal); Dražen Maunaga, 11 June 2007, T. 6476–6477, 12 June 2007, T. 6513; Momčilo Gojković, 13 July 2007, T. 8246; P819, Excerpt from Bosnian Serb Assembly 50<sup>th</sup> session on 15 and 16 April 1995.

<sup>80</sup> Agreed Fact 21; Adjudicated Fact 45.

fighting.<sup>81</sup> Robert Donia noted that the “inclination” of many JNA officers to support the Bosnian Serbs became well-known.<sup>82</sup>

26. In 1991 and early 1992, the three nationalist groups, the SDS, the HDZ and the SDA began to prepare militarily for war.<sup>83</sup> While the SDS, co-ordinating with JNA units in Bosnia and Herzegovina, secured political control in Bosnian Serb-inhabited areas, “[t]he JNA’s redeployment of arms to the SDS was to bestow military advantages on the Bosnian Serb nationalists when armed conflict began in April 1992.”<sup>84</sup> In a speech to the 50<sup>th</sup> Bosnian Serb Assembly session in April 1995, Radovan Karadžić said: “[d]istribution of arms was carried out thanks to the JNA. What could be withdrawn was withdrawn and distributed to the people in Bosnian Serb areas, but it was the SDS which organised the people and created the army.”<sup>85</sup>

27. Evidence was also presented concerning Territorial Defence (“TO”) units and paramilitary groups. Robert Donia explained that the locally organised TO constituted an integral component of the SFRY’s system of defence.<sup>86</sup> TO units were designed to operate even in the absence of the JNA and were, consequently, provided with light weapons.<sup>87</sup> In May 1990, the JNA ordered the removal of weapons from the control of local TO units to its own armoury, citing concerns about the security of the weapons.<sup>88</sup> According to Robert Donia, while this order was largely complied with, many TO units in Bosnia and Herzegovina either retained their weapons or acquired new weapons in 1991 and early 1992.<sup>89</sup>

28. Bosnian Muslim leaders of SDA “sponsored the creation of two paramilitary groups”: the Patriotic League and the Green Berets.<sup>90</sup> The Patriotic League was formally established as a party instrument of the SDA on 10 June 1991 and it was effectively organised by January 1992.<sup>91</sup> Robert Donia noted that the Patriotic League had a large number of volunteers, but that there was a “great paucity of weaponry and ammunition.”<sup>92</sup> Col. Dragičević, on the other hand, testified that the Patriotic League and the Green Berets came from Croatia and went to Bosnia and Herzegovina

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<sup>81</sup> Robert Donia, 16 Mar 2007, T. 3958; P472, Expert report Robert Donia, p. 17.

<sup>82</sup> P472, Expert report Robert Donia, p. 18.

<sup>83</sup> P472, Expert report Robert Donia, p. 16.

<sup>84</sup> P472, Expert report Robert Donia, pp 16, 20.

<sup>85</sup> P472, Expert report Robert Donia, pp 19 - 20.

<sup>86</sup> Robert Donia, 16 Mar 2007, T. 3959 – 3960; P472, Expert report Robert Donia, p. 17. *See also* Goran Kovačević, 13 June 2007, T. 6576 – 6577.

<sup>87</sup> Robert Donia, 16 Mar 2007, T. 3959 – 3960; P472, Expert report Robert Donia, p. 17.

<sup>88</sup> P472, Expert report Robert Donia, p. 17.

<sup>89</sup> P472, Expert report Robert Donia, p. 17. *See also* Radomir Visnjić, 25 June 2007, T. 7225 – 7226; Goran Kovačević, 13 June 2007, T. 6566 – 6567.

<sup>90</sup> Robert Donia, 16 Mar 2007, T. 3951; P472, Expert report Robert Donia, p. 16.

<sup>91</sup> Robert Donia, 16 Mar 2007, T. 3951, 3952 – 3953; Dražen Maunaga, 11 June 2007, T. 6470 – 6472; D133, Excerpts from the book “The Cunning Strategy” by Sefer Halilović. *Cf* Vahid Karavelić, 27 Mar 2007, T. 4139.

<sup>92</sup> Robert Donia, 16 Mar 2007, T. 3952 – 3953.

“already trained and with battle experience.”<sup>93</sup> Defence witnesses testified about the fear that resulted from the arming of Bosnian Muslims and the behaviour of the Green Berets and the Patriotic League.<sup>94</sup>

29. In the two months following the outbreak of violence on 6 April 1992, civilian leaders of all groups consolidated their military organisations. This resulted in the establishment of the Croatian Defence Council (“HVO”), the Armed Forces of the Republic of Bosnia and Herzegovina (“ABiH”) and the VRS.<sup>95</sup> The first step in the creation of the ABiH was an order from the BiH Presidency consolidating the armed units under the Republic’s TO command.<sup>96</sup> Radomir Visnjić, testifying for the Defence, noted that the HVO and the ABiH co-operated until 1993, when conflict broke out between the BiH and Croatia.<sup>97</sup>

### 3. United Nations in Sarajevo

30. The Trial Chamber heard the evidence of many former members of United Nations Protection Force (“UNPROFOR”) and United Nations Military Observers (“UNMO”) as to the mandate and tasks of the international forces deployed in Sarajevo during the Indictment period. The evidence set out in this section is largely uncontested.

#### (a) Structure of United Nations Mission

31. During the Indictment period, Gen. Bertrand Janvier was the commander of UNPROFOR for the entire SFRY.<sup>98</sup> The UNPROFOR headquarters for the SFRY were in Zagreb.<sup>99</sup> There were subordinate commanders for Croatia, Macedonia and BiH, the latter being situated in Sarajevo.<sup>100</sup> During the Indictment period, Gen. Michael Rose was the UNPROFOR Commander for BiH until 23 January 1995, at which point he was succeeded by Gen. Rupert Smith.<sup>101</sup> Brig. Gen. Brinkman

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<sup>93</sup> Luka Dragičević, 26 Mar 2007, T. 4004.

<sup>94</sup> Siniša Krsman, 6 June 2007, T. 6239 – 6240; Vaso Elez, 6 June 2007, T. 6303 – 6304; Dražen Maunaga, 11 June 2007, T. 6470 – 6471, 6472 – 6475; Luka Jović, 14 June 2007, T. 6694 – 6695; Miroslav Pejić, 16 July 2007, T. 8362, 8364; T-9, 16 July 2007, T. 8341 – 8342.

<sup>95</sup> P472, Expert report Robert Donia, p. 24; Siniša Krsman, 6 June 2007, T. 6245; Ljuban Mrković, 12 July 2007, T. 8134; Vaso Elez, 7 June 2007, T. 6320; T-7, 18 June 2007, T. 6802; Adjudicated Facts 17, 48.

<sup>96</sup> P472, Expert report Robert Donia, p. 24. *See also* Radomir Visnjić, 25 June 2007, T. 7226 – 7227.

<sup>97</sup> Radomir Visnjić, 25 June 2007, T. 7227; Martin Bell, 27 Apr 2007, T. 5282.

<sup>98</sup> Andrey Demurenko, 5 July 2007, T. 7684; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 931; Rupert Smith, P334, p. 7.

<sup>99</sup> P472, Expert report Robert Donia, p. 33.

<sup>100</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 931; Rupert Smith, 7 Mar 2007, T. 3295 – 3297.

<sup>101</sup> David Fraser, 7 Feb 2007, T. 1758; Rupert Smith, 7 Mar 2007, T. 3339. At the time Rupert Smith arrived in Sarajevo, he held the rank of Lt. Col., Rupert Smith, P334, p. 2.

was the UNPROFOR Chief of Staff for Bosnia and Herzegovina from mid-1994 onwards.<sup>102</sup> He was replaced by Maj. Gen. Cornelis Hendrik Nicolai on 28 February 1995.<sup>103</sup>

32. The UNPROFOR mission in Bosnia and Herzegovina was divided into three main sectors, Sector Sarajevo, Sector North-East and the Sector South-West, each with its own commander.<sup>104</sup> The headquarters of Sector Sarajevo was located in the PTT Building in Sarajevo.<sup>105</sup> Sector Sarajevo had deputy commanders, one of whom was the Chief of Staff.<sup>106</sup>

33. UNMO for BiH was organised in three sectors: Sector North, Sector South and Sector Sarajevo.<sup>107</sup> The UNMO Chief for Bosnia and Herzegovina also had a liaison officer in Pale.<sup>108</sup> The UNMO headquarters of Sector Sarajevo was also located in the PTT Building.<sup>109</sup> The UNMO Sector Sarajevo was headed by a senior military observer, in a one-year rotation.<sup>110</sup> In Sector Sarajevo, UNMOs in SRK barracks in Lukavica acted as liaison officers.<sup>111</sup>

34. According to Maj. Gen. Nicolai, UNMOs were part of the UNPROFOR command structure but reported directly to the UNMO headquarters in Zagreb.<sup>112</sup> Maj. Ronald Eimers, a Dutch UNMO, recalled that, unlike higher command levels, UNPROFOR Sarajevo did not exercise much control and command over UNMO Sarajevo.<sup>113</sup> However, as the operations rooms of the UNPROFOR Sector Sarajevo headquarters and UNMO Sector Sarajevo headquarters were next to each other in the same building, there were frequent contacts between the UNMO Chief for BiH and the UNPROFOR Commander in Sarajevo.<sup>114</sup>

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<sup>102</sup> Rupert Smith, P334, p. 2; For tasks of a Chief of Staff, see Cornelis Hendrik Nicolai, 24 Jan 2007, T. 936, 970.

<sup>103</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 930.

<sup>104</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 930 – 931; David Fraser, 7 Feb 2007, T. 1757 – 1758; W-46, P387, p. 7 (under seal). In addition, there was a small command for the Bihać area, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 931. The sector commanders were subordinated to the UNPROFOR commander for Bosnia and Herzegovina, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 930.

<sup>105</sup> Agreed Facts 22, 41; David Harland, 15 Jan 2007, T. 342; Louis Fortin, P27, p. 15; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>106</sup> Andrey Demurenko, 5 July 2007, T. 7725 – 7728; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 936, 25 Jan 2007, T. 1045.

<sup>107</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 700. Sector North was based in Tuzla, Sector South was based in Konjić. There were also teams in Goražde, Žepa, and Srebrenica, *ibid.*

<sup>108</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 699 – 700.

<sup>109</sup> Per Anton Brennskag, 8 Mar 2007, T. 3478; Thomas Knustad, 13 Feb 2007, T. 1986; Asam Butt, 14 Feb 2007, T. 2159; Harry Konings, 12 Mar 2007, T. 3555.

<sup>110</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 700.

<sup>111</sup> Ronald Eimers, 20 Apr 2007, T. 4788. The call sign to contact these liaisons officers was “Lima”, *ibid.*

<sup>112</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 932. See also Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 699 – 700, who testified that his immediate superior was in Zagreb but that his tasks included advising the UNPROFOR Commander.

<sup>113</sup> Ronald Eimers, P585, pp 2 - 3; Louis Fortin, P27, p. 6; W-46, 16 Mar 2007, T. 3900 (closed session).

<sup>114</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 699; Thomas Hansen, 2 Apr 2007, T. 4383 – 4384. Ronald Eimers stated that when he reported to the PTT Building, he saw personnel from the UNMO headquarters and sector command going into each other's offices, which implied a sharing of information, but that he did not know of any formal sharing of information, Ronald Eimers, P585, p. 3.



(b) United Nations Area of Responsibility

35. The UNPROFOR area of responsibility included the area within the confrontation lines, as well as the surrounding area, extending up to 20 kilometres.<sup>115</sup> UNPROFOR Observation Posts (“OPs”) were mainly situated on the confrontation lines between the territories held by the ABiH and the SRK.<sup>116</sup> Additional posts were situated in the area of the Grbavica Stadium and on Mojmiro Hill.<sup>117</sup> From this latter OP, several places, particularly Sarajevo Airport, were monitored.<sup>118</sup> UNPROFOR also held positions on Mali Hum, on Igman Road, Debelo Brdo and the Vrbanja Bridge.<sup>119</sup>

36. UNMO teams were stationed on Bosnian Serb territory as well as on Bosnian Muslim territory.<sup>120</sup> However, most of the United Nations presence was in ABiH-controlled areas, where there was sufficient freedom of movement to allow the UNMOs to carry out their mandate.<sup>121</sup> There were four UNMO teams stationed in Sector Sarajevo. Each UNMO team was assigned to a different part of the city. One team was located in the eastern part of Sarajevo; two teams were deployed in the centre of Sarajevo, one of those inside the confrontation lines and the other in Grbavica; and a final team was in the western part of the city.<sup>122</sup> As it was with UNPROFOR OPs, many of the UNMO OPs were situated on the confrontation lines between the two warring factions.<sup>123</sup>

(c) Mandate

37. UNPROFOR was initially mandated to operate as a peacekeeping force in Croatia to monitor compliance with the Vance Plan of January 1992.<sup>124</sup> This mandate was later expanded to include the territory of BiH.<sup>125</sup> By 1993, UNPROFOR’s mandate as it applied throughout BiH, including Sarajevo, was expanded to allow it to “deter attacks against the safe areas, monitor the cease-fire, promote the withdrawal of military or paramilitary units other than those of the

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<sup>115</sup> Andrey Demurenko, 5 July 2007, T. 7664 – 7665; D285, Map of Sarajevo marked by Andrey Demurenko.

<sup>116</sup> Louis Fortin, 17 Jan 2007, T. 516.

<sup>117</sup> Louis Fortin, 17 Jan 2007, T. 516, 521; Asam Butt, 15 Feb 2007, T. 2179; P223, Photograph marked by Asam Butt.

<sup>118</sup> Louis Fortin, 17 Jan 2007, T. 521; Ismet Hadžić, 6 Mar 2007, T. 3215. *See also* P331, Map of Sarajevo, for the location of this OP.

<sup>119</sup> David Harland, 16 Jan 2007, T. 442; David Fraser, 7 Feb 2007, T. 1766; Asam Butt, 15 Feb 2007, T. 2179, 2221 – 2223; Milorad Katić, 4 June 2007, T. 6071; P5, Codicil to the Anti-sniping Agreement, dated 1 October 1994 P752, Photograph of Sarajevo.

<sup>120</sup> Asam Butt, 14 Feb 2007, T. 2159 – 2160.

<sup>121</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 712.

<sup>122</sup> Thomas Knustad, 13 Feb 2007, T. 1986 – 1987; Asam Butt, 14 Feb 2007, T. 2152 – 2153.

<sup>123</sup> W-46, 16 Mar 2007, T. 3867 – 3868 (closed session).

<sup>124</sup> P472, Expert report Robert Donia, p. 33. *See also* Adjudicated Fact 13.

<sup>125</sup> P472, Expert report Robert Donia, p. 33; Adjudicated Facts 36 – 37.

Government of the Republic of Bosnia and Herzegovina, and to occupy some key points on the ground”.<sup>126</sup>

38. UNPROFOR Sector Sarajevo was responsible, *inter alia*, for observing the confrontation lines, facilitating the provision of humanitarian relief to the population and standing impartially between the two warring factions.<sup>127</sup> UNPROFOR considered it one of its tasks to create conditions conducive to ending the hostilities.<sup>128</sup> It tried to reach agreements with all parties and supervised compliance with these agreements.<sup>129</sup> It talked to both warring factions about sniping and shelling incidents and about freedom of movement for the inhabitants of Sarajevo.<sup>130</sup> In case of violations of agreements, UNPROFOR sent protest letters to the parties.<sup>131</sup> Military force could be deployed in order to enforce compliance with the agreements but was considered as the ultimate measure.<sup>132</sup>

39. UNMOs were unarmed.<sup>133</sup> Their tasks were to observe, investigate and report on the general situation, including the military and humanitarian situation, in the areas where they were deployed.<sup>134</sup> According to Maj. Gen. Nicolai, UNMOs played an important role in monitoring the compliance with agreements and cease-fires by the warring parties.<sup>135</sup> In Sarajevo, UNMOs were also tasked with observing and investigating shelling and sniping incidents.<sup>136</sup>

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<sup>126</sup> P472, Expert report Robert Donia, p. 33; P931, Security Council resolution 836 (1993), 4 June 1993, para. 5. By Security Council resolution 824 of 6 May 1993, the “protected zones”, one of which was Sarajevo, became part of UNPROFOR’s mandate, David Harland, 15 Jan 2007, T. 358; P930, Security Council resolution 824 (1993), 6 May 1993, para. 3.

<sup>127</sup> P472, Expert report Robert Donia, p. 33; P931, Security Council resolution 836 (1993), 4 June 1993, para. 5; Louis Fortin, 17 Jan 2007, T. 514; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 983; W-46, 16 Mar 2007, T. 3867 (closed session); Adjudicated Fact 39.

<sup>128</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 956.

<sup>129</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 933; Louis Fortin, 17 Jan 2007, T. 528 – 529. *See e.g.* P3, UNPROFOR cable on Anti-sniping Agreement, dated 15 August 1994; P4, Memo on implementation of Anti-sniping Agreement, dated 18 August 1994.

<sup>130</sup> In Sarajevo, UNPROFOR forces tried to deter both sides, though primarily the Bosnian Serbs, from shooting at civilians, David Fraser, 7 Feb 2007, T. 1771 – 1772, 8 Feb 2007, T. 1814; P202, UNPROFOR report on anti-sniping measures, dated 25 June 1994 (“UNPROFOR report, 25 June 1994”). *See also* David Harland, 15 Jan 2007, T. 358, 364; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 955; P630, Report of meeting between Sector Sarajevo and SRK, dated 18 September 1995; P19, UNPROFOR situation report (“sitrep”), dated 2 July 1995; P20, UNPROFOR sitrep, dated 8 July 1995.

<sup>131</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 933 – 934.

<sup>132</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 933 – 934, 954 – 955, 983.

<sup>133</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 932; Thomas Hansen, 2 Apr 2007, T. 4388. UNMOs were traditionally not armed. However, John Jordan gave evidence that occasionally, military observers carried handguns, John Jordan, 22 Feb 2007, T. 2693. Also, Lt. Col. Brennskag testified that he was an armed military observer, Per Anton Brennskag, 8 Mar 2007, T. 3449.

<sup>134</sup> Thorbjorn Overgard, 18 Jan 2007, T. 629; Ronald Eimers, 20 Apr 2007, T. 4784; Thomas Hansen, 2 Apr 2007, T. 4378 – 4379; Hussain Ijaz, 27 Apr 2007, T. 5405 – 5406. In this regard, Lt. Col. Konings testified that UNMOs lived in civilian areas so that they could be approached directly by the civilians. Harry Konings, 12 Mar 2007, T. 3552 – 3553.

<sup>135</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 930, 933 – 934; Thomas Knustad, 13 Feb 2007, T. 1988; T-52, 28 June 2007, T. 7471; Per Anton Brennskag, 8 Mar 2007, T. 3501; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 698 – 699.

<sup>136</sup> Thomas Knustad, 13 Feb 2007, T. 1988; T-52, 28 June 2007, T. 7471.

40. According to Brig. Ghulam Muhammad Mohatarem, UNMO Chief in BiH from February 1995 to January 1996, UNPROFOR personnel and UNMOs could react to sniping or shelling incidents by sending out protest letters and by investigating the incidents.<sup>137</sup> However, the Trial Chamber notes the protest letters it received in evidence were all sent by UNPROFOR, not by UNMOs.

41. UNPROFOR wrote protest letters in response to incidents of sniping or shelling of civilians and situations of non-compliance with intervention measures of the parties about which it was informed.<sup>138</sup> There were two types: “regular protests” and “strong protests”, which could be either written or oral.<sup>139</sup> According to Maj. Gen. Nicolai, the purpose of protest letters was twofold: they served as an official confirmation carrying “a bit more authority than a message by phone”, and they had registration purposes.<sup>140</sup> With the filing of these protests an administrative record was established as to how often the parties were warned.<sup>141</sup>

42. Protest letters were most frequently sent to the SRK,<sup>142</sup> but were also sent to the ABiH.<sup>143</sup> According to Lt. Col. Fortin, Military Assistant to the UNPROFOR Commander of Sector Sarajevo, UNPROFOR always sought confirmation as to whether the Bosnian Serbs had received the protest letters. If the letter was not hand-delivered, confirmation would be sought via telephone.<sup>144</sup>

43. Some witnesses did not recall UNPROFOR ever receiving a response to a letter of protest.<sup>145</sup> Maj. Gen. Nicolai testified, however, that he normally received responses to protest letters from the SRK, either in written form or by telephone, usually consisting of denial of involvement in the actions in relation to which the protest letter had been sent.<sup>146</sup> At other times it was said that the actions were a response to provocation “by the other side”, either by weapons fire or by the preparation of an offensive.<sup>147</sup> David Harland, a Civil Affairs Officer with UNPROFOR,

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<sup>137</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 698, 709.

<sup>138</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 933 – 934; W-156, P625, p. 10 (under seal); David Harland, 15 Jan 2007, T. 347 – 348, P1, MT, T. 27003; Louis Fortin, 16 Jan 2007, T. 480 – 481. Protest letters to the SRK would be sent in Serbian and English, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 944 – 945. P30 is a protest letter concerning the treatment of captured UN soldiers, P30, Protest letter, dated 3 June 1995. P32 is an example of a protest letter written by Gen. Gobillard to the Accused, Louis Fortin, 16 Jan 2007, T. 482 – 483; P32, Protest letter, dated 3 June 1995.

<sup>139</sup> W-156, P625, p. 10 (under seal). The Sector had a section in charge of preparing and transmitting the protests.

<sup>140</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

<sup>141</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 935.

<sup>142</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 953. *See also* David Fraser, 8 Feb 2007, T. 1814; W-156, P625, p. 10 (under seal).

<sup>143</sup> *See e.g.* D111, Letter by Gen. Van Baal to the Deputy Commander of the ABiH, dated 12 August 1994. The letters to the ABiH were sent to the ABiH corps commander, Louis Fortin, 16 Jan 2007, T. 479.

<sup>144</sup> Louis Fortin, 16 Jan 2007, T. 484.

<sup>145</sup> Louis Fortin, 16 Jan 2007, T. 484; W-156, 27 Apr 2007, T. 5347 (closed session).

<sup>146</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

<sup>147</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950; David Harland, 15 Jan 2007, T. 347 – 349.

and Maj. Eimers noted that, in general, the protest letters did not lead to any change in the behaviour of the Bosnian Serbs.<sup>148</sup>

44. UNPROFOR could also respond by use of force; for example, in sniping incidents, its troops could return fire.<sup>149</sup> It could only respond to firing, including shelling, with small-calibre weapons because it did not possess heavy weaponry.<sup>150</sup> In addition, armoured personnel carriers (“APCs”) were dispatched to dangerous parts of the city for monitoring and protection purposes.<sup>151</sup> These vehicles also functioned as a mobile protective screen behind which people could walk in some safety from sniping.<sup>152</sup>

45. UNPROFOR had radars at its disposal with which movements and the positions of the VRS could be followed.<sup>153</sup> It could threaten the use of air force.<sup>154</sup> Although, according to United Nations Security Council Resolution 824, air force could be used in defending safe areas, the actual use of air force was deemed disproportionate in most cases as it involved the danger of collateral damage.<sup>155</sup> Attacks by air force had to be authorised under a “dual-key system”, in which NATO and UNPROFOR agreed to initiate the attacks.<sup>156</sup>

#### 4. Peace Initiatives

46. Evidence of various peace initiatives launched by UNPROFOR, both before and during the Indictment period, was presented during trial.<sup>157</sup> Many of these agreements co-existed. In its Final Brief, the Defence argued that the “stance of the leaders of the BH Army was to fake a defence in order to better attack and never to accept a truce or the demilitarisation of Sarajevo.”<sup>158</sup>

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<sup>148</sup> David Harland, 15 Jan 2007, T. 321, 347 – 349; Ronald Eimers, P585, pp 6, 10.

<sup>149</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 708 – 709; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 956; Louis Fortin, 16 Jan 2007, T. 487.

<sup>150</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

<sup>151</sup> Louis Fortin, 16 Jan 2007, T. 487 – 489; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 956; Martin Bell, 26 Apr 2007, T. 5248; Asam Butt, 14 Feb 2007, T. 2161 – 2162; W-156, 27 Apr, T. 5325 – 5326 (closed session). *See also* P35, Map marked by Louis Fortin; P613, Videoclip of sniping on Zmaja od Bosne. There were also patrols in certain areas, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 956.

<sup>152</sup> *See* P612, Videoclip of events in Sarajevo; P613, Videoclip of sniping on Zmaja od Bosne; Asam Butt, 14 Feb 2007, T. 2161 – 2162.

<sup>153</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 737. For more evidence regarding these radars, *see infra*, I.E.6.(b)(xv) Shelling of the Markale Market on 28 August 1995.

<sup>154</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

<sup>155</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 955, 25 Jan 2007, T. 1042; David Fraser, 7 Feb 2007, T. 1798. *See also* P44, Memorandum on meeting between Gen. Smith and Gen. Meille, dated 26 June 1995.

<sup>156</sup> David Harland, 16 Jan 2007, T. 434 – 435, 437 – 438, P2, MT, T. 28688 – 28689; Rupert Smith, 7 Mar 2007, T. 3375, 3415 – 3416, P334, p. 22.

<sup>157</sup> *See* for peace-initiatives during the pre-Indictment period, P472, Expert report Robert Donia, pp 33 - 38, mentioning the establishment of the International Conference on the Former Yugoslavia (“ICFY”) and agreement by Radovan Karadžić, the Vance Plan, Vance-Owen Peace Plan, the Owen-Stoltenberg Plan, the Washington Agreement; *see also* Stevan Veljović, 29 May 2007, T. 5740.

<sup>158</sup> Defence Final Brief, paras 78 – 83.

47. There were periods of cease-fire throughout the war.<sup>159</sup> In its Closing Brief, the Prosecution submitted that cease-fires were meaningless, noting that all the scheduled sniping incidents, in which a tram was shot, took place during cease-fires.<sup>160</sup> Evidence of both Prosecution and Defence witnesses showed that the cease-fires did not last more than a few days and that there was no guarantee that one would not be wounded or killed during a cease-fire.<sup>161</sup> There is evidence that the SRK violated cease-fires,<sup>162</sup> as did the ABiH.<sup>163</sup>

(a) Demilitarised Zone - 14 August 1993

48. A demilitarised zone (“DMZ”), which included Sarajevo Airport and a “large part” of Mount Igman, was established in Sarajevo on 14 August 1993.<sup>164</sup> The area of the DMZ overlapped with the Total Exclusion Zone (“TEZ”), discussed below.<sup>165</sup> In its Final Brief, the Defence argued that the DMZ in the Igman area was under *de facto* control of the ABiH from the time of its creation until the end of the conflict and was, consequently, a “legitimate military objective”.<sup>166</sup> In this regard, the Trial Chamber notes, for example, an UNPROFOR memorandum that describes the use of the DMZ as assembly and refuge areas for ABiH troops.<sup>167</sup> However, the evidence indicates violations of the DMZ by both parties.<sup>168</sup>

<sup>159</sup> Alija Holjan, P526, p. 2; Fikreta Pačariz, P643, p. 9; Slavica Livnjak, P95, p. 2.

<sup>160</sup> Prosecution Closing Brief, para. 50.

<sup>161</sup> Zoran Samardžić, 13 June 2007, T. 6629, 6630; Slobodan Bjelica, 24 July 2007, T. 8777; Milan Pejić, 21 June 2007, T. 7038 – 7039; Hafiza Karačić, P115, p. 1; W-118, 6 Feb 2007, T. 1637 – 1638; Alija Holjan, P526, p. 2; Fikreta Pačariz, P643, p. 9; Slavica Livnjak, P95, p. 2.

<sup>162</sup> See e.g. Sniping of Alma Čutuna; Sniping Dženana Sokolović and Nermin Divović; Sniping of Afeza Karačić and Sabina Šabanić; Sniping of Azem Agović and Alen Gičević; Sniping of Senad Kešmer, Alma Mulaosmanović and Alija Holjan; Sniping of Šemsa Čovrk; Shelling of Livanjska Street. Cf. Vaso Elez, 7 June 2007, T. 6327 – 6328.

<sup>163</sup> Luka Dragičević, 26 Mar 2007, T. 401; Milorad Košarac, 26 July 2007, T. 8870 – 8871, 8879 – 8881; Vaso Elez, 7 June 2007, T. 6326.

<sup>164</sup> David Harland, P2, MT. 28650; W-46, 16 Mar 2007, T. 3877 – 3878 (closed session).

<sup>165</sup> W-46, 16 Mar 2007, T. 3877 (closed session). See also Louis Fortin, 17 Jan 2007, T. 545 – 546; David Harland, 15 Jan 2007, T. 340, who testified that TEZs were sometimes “neutrally known” as DMZs.

<sup>166</sup> Defence Final Brief, paras 36, 59 – 60. The Defence cites David Harland who stated that the DMZ came *de facto* under ABiH control because the ABiH transited through the zone and established points of control beyond it. The latter did not take place until “probably” the end of 1994. It also argued that the ABiH was “constantly violating the DMZ to realise its strategy” of counter-attacking from outside of Sarajevo, para. 106.

<sup>167</sup> D5, Notes on meeting between Gen. Gobilliard and Ejup Ganić, dated 2 October 1994 (“Notes on meeting, dated 2 October 1994”), p. 2; W-46, 16 Mar 2007, T. 3881 – 3882 (closed session); Stevan Veljović, 29 May 2007, T. 5756 – 5757, 5762; D187, Report on 1<sup>st</sup> Corps combat achievements, dated 1 November 1994. See also on another violation of the DMZ David Fraser, 8 Feb 2007, T. 1889; W-46, 16 Mar 2007, T. 3884 – 3885 (closed session), P387, p. 19 (under seal); T-41, 18 July 2007, T. 8530 – 8531, 8533; D132, UNPROFOR memorandum on Mount Igman incident, dated 7 October 1994, p. 2; D131, Statement of Yasushi Akashi, dated 7 October 1994; P867, UNPROFOR daily sitrep, 14 December 1994, p. 2; D336, Photograph; D337, Photograph.

<sup>168</sup> W-46, 16 Mar 2007, T. 3877, 3879 – 3880, 3894 (closed session), P387, pp 19, 21 – 22 (under seal); David Harland, P2, MT. 28651. See also Stevan Veljović, 29 May 2007, T. 5757; P7, UNPROFOR message about meeting with Bosnian Serb leaders, dated 19 November 1994, p. 2; P8, UNPROFOR memo, dated 23 November 1994, p. 1.

(b) Total Exclusion Zone (TEZ) - 9 February 1994

49. On 9 February 1994, the VRS and the ABiH agreed, *inter alia*, to a cease-fire, the establishment of a TEZ in Sarajevo, the interposition of UNPROFOR between the two sides and the placement of heavy weapons in so-called Weapons Collection Points (“WCPs”), which were monitored by UNPROFOR.<sup>169</sup> The TEZ encompassed the area within a 20-kilometre radius around Sarajevo.<sup>170</sup> Within the TEZ, all heavy weapons had to be withdrawn to the WCPs.<sup>171</sup> In this respect, QMS Richard Higgs, Prosecution expert on mortars, testified that mortars of a calibre of around 85 mm are classed as medium weapons; 120 mm mortars are classed as heavy weapons.<sup>172</sup> There were nine WCPs in and around Sarajevo; two were in ABiH-controlled territory and seven were in SRK-held territory.<sup>173</sup> Failure by either side to comply with this agreement could result in NATO air strikes or the imposition of sanctions.<sup>174</sup>

50. The Defence submitted in its Final Brief that “the SRK withdrew most of its heavy weapons from the Nišići zone to the north and from the Trnovo zone to the south of its area of responsibility” and that “the SRK generally respected the agreement, but during the offensive of the BH Army in the spring of 1995, they took some weapons to respond to the artillery attacks carried out by the BH Army.”<sup>175</sup> The withdrawal of heavy weapons from the TEZ during the command of the Accused was confirmed by two Defence witnesses.<sup>176</sup> However, the evidence showed that neither the SRK nor the ABiH adhered to the TEZ and that they kept heavy weaponry within the 20-kilometre zone around Sarajevo, and outside WCPs, at times throughout the Indictment period.<sup>177</sup>

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<sup>169</sup> See e.g. Cornelis Hendrik Nicolai, 24 Jan 2007, T. 941 – 942; Rupert Smith, 7 Mar 2007, T. 3395; David Harland, 15 Jan 2007, T. 340, P1, MT. 26944, P2, MT. 28673 – 28674; Louis Fortin, 17 Jan 2007, T. 514, 545 – 546, P27, p. 4; W-46, P387, p. 8 (under seal); D6, UNPROFOR weekly BH political assessment, dated 17 February 1994 (“UNPROFOR weekly BH political assessment, 17 February 1994”), pp 2, 6.

<sup>170</sup> W-46, 16 Mar 2007, T. 3876 – 3877 (closed session); Vahid Karavelić, 28 Mar 2007, T. 4229; David Harland, 15 Jan 2007, T. 340; Milorad Katić, 4 June 2007, T. 6135 – 6136; P917, SRK map showing the TEZ.

<sup>171</sup> Louis Fortin, 17 Jan 2007, T. 546; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 941 – 942; Rupert Smith, 7 Mar 2007, T. 3388, 3395; W-46, 15 Mar 2007, T. 3828 (closed session), P387, pp 6, 8 (under seal); Vahid Karavelić, 28 Mar 2007, T. 4229; W-156, 27 Apr 2007, T. 5363 (closed session); David Harland, P2, MT. 28674; Siniša Krsman, 6 June 2007, T. 6251 – 6252. Siniša Krsman acknowledged in cross-examination 20-millimetre guns mounted on vehicles were also excluded, Siniša Krsman, 6 June 2007, T. 6274. The Trial Chamber notes that Brig. Mohatarem testified that the WCPs were established pursuant to the COHA, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 707. See also *infra*, II.A.4.(d) Comprehensive Cessation of Hostilities Agreement - 23 December 1994.

<sup>172</sup> Richard Higgs, 23 Apr 2007, T. 4999; P588, Report by Richard Higgs, dated 3 August 2006 (“Expert report Richard Higgs”), p. 2.

<sup>173</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 707; W-46, 15 Mar 2007, T. 3828 (closed session); P869, UNPROFOR daily sitrep, dated 10 December 1994.

<sup>174</sup> Rupert Smith, 7 Mar 2007, T. 3395; W-46, 15 Mar 2007, T. 3879 (closed session). The Trial Chamber notes, however, that the warring factions did have access to their heavy weaponry and permission to conduct maintenance under the supervision of “UN personnel”, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 941 – 942; D6, UNPROFOR weekly BH political assessment, 17 February 1994, pp 2 - 3.

<sup>175</sup> Defence Final Brief, para. 72.

<sup>176</sup> Stjepan Đukić, 3 July 2007, T. 7506; Rade Ivanović, 4 July 2007, T. 7642.

<sup>177</sup> As to the SRK, see David Harland, 15 Jan 2007, T. 340, P1, MT. 26945 – 26946; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 707 – 708; Rupert Smith, 7 Mar 2007, T. 3387; Ronald Eimers, P585, p. 7; D213, Report by SRK

51. Shortly after the cease-fire came into force, UNPROFOR reported that the agreement was “working well”, being interrupted by only minor violations.<sup>178</sup> However, the Defence argued that by August 1994, the February 1994 cease-fire was “already a dead letter.”<sup>179</sup> David Harland confirmed that the ABiH often violated the cease-fire during the period of 10 February 1994 to 24 April 1994.<sup>180</sup> He commented that ABiH fire drew return fire of the SRK onto the city.<sup>181</sup> An order, dated 1 January 1995, from Gen. Rasim Delić, Commander of the ABiH, shows that the ABiH also violated agreed terms relating to WCPs.<sup>182</sup>

52. Evidence was presented that the SRK violated the WCP arrangements both before and during the Indictment period.<sup>183</sup> On 21 August 1994, the Accused ordered the camouflage of heavy weapons in the TEZ.<sup>184</sup> The Accused “strictly” prohibited “unauthorised appropriation and use of heavy weapons kept at the collection points under UNPROFOR control. If the need arises to appropriate and use these weapons, the Command of the Sarajevo Corps Command will seek approval from the Main Staff of the Army of Republika Srpska.”<sup>185</sup> Evidence shows that the SRK weapons in the WCPs could be, and “very often” were, used from those positions “to fire onto the city.”<sup>186</sup>

(c) Anti-sniping Agreement - 14 August 1994

53. UNPROFOR initiated negotiations on an anti-sniping agreement in response to civilian casualties on both sides that were caused by sniping.<sup>187</sup> Negotiations were carried out from the end

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Commander, dated 19 September 1994, p. 1; D4, Memo on meetings in Pale and Sarajevo, dated 20 September 1994, p. 3; P760, UNPROFOR sitrep, dated 10 December 1994, p. 2; P339, Notes of meeting between Gen. Smith and Radovan Karadžić, dated 5 April 1995. Cf. Siniša Krsman, 6 June 2007, T. 6274 – 6275, 6277.

As to the ABiH, see David Harland, 15 Jan 2007, T. 390; W-46, 16 Mar 2007, T. 3881 – 3882 (closed session); Luka Dragičević, 26 Mar 2007, T. 4010; D3, UNPROFOR memo on ABiH attack on 18 September 1994, dated 19 September 1994; D4, Memo on meetings in Pale and Sarajevo, dated 20 September 1994, p. 2; D5, Notes on meeting, 2 October 1994, p. 2; D53, ABiH Order on procedure towards UNPROFOR, dated 30 September 1994 (“ABiH order, 30 September 1994”), p. 1; D150, Order by Vahid Karavelić, dated 12 November 1994, p. 1.

<sup>178</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

<sup>179</sup> Defence Final Brief, para. 73.

<sup>180</sup> David Harland, P2, MT. 28675. See also Vahid Karavelić, 28 Mar 2007, T. 4229 – 4230.

<sup>181</sup> David Harland, P2, MT. 28675.

<sup>182</sup> D303, Order by Rasim Delić on the implementation of COHA, dated 1 January 1995, pp 2, 4.

<sup>183</sup> See e.g. Rupert Smith, 7 Mar 2007, T. 3316 – 3317; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 941 – 942; Ronald Eimers, P585, p. 7; P844, UNMO daily sitrep, dated 4 June 1995, p. 12; P877, UNMO daily sitrep, dated 28 February 1995, p. 10; P918, List of technical and material equipment, dated 21 February 1995. Cf. Milan Mandić, 4 July 2007, T. 7585 – 7586 7600 – 7601.

<sup>184</sup> P667, Order by the SRK Commander to Camouflage Weapons, 21 August 1994, p. 2. See also P802, Proposal by SRK Deputy Commander, 10 February 1994, pp 1 - 2.

<sup>185</sup> P667, Order by the SRK Commander to Camouflage Weapons, 21 August 1994, p. 2.

<sup>186</sup> W-46, 15 Mar 2007, T. 3828 (closed session), P387, p. 23 (under seal); Rupert Smith, P334, p. 13; Louis Fortin, P27, p. 10; P102, Protest letter, dated 26 April 1995.

<sup>187</sup> David Fraser, 8 Feb 2007, T. 1820, 1872 – 1873; David Harland, 15 Jan 2007, T. 334 – 336. See also T-52, 28 June 2007, T. 7468 – 7469; P13, Report on anti-sniping project, dated 24 April 1995.

of July 1994 until 14 August 1994.<sup>188</sup> On 14 August 1994, the “Agreement on Elimination of Sniping Activities in Sarajevo Region” (“Anti-sniping Agreement”) was signed by Maj. Gen. Vahid Karavelić and the Accused.<sup>189</sup> In its Closing Brief, the Prosecution cite “negotiating, signing and implementing an anti-sniping agreement”, as well as “local cease-fire agreements”, as an indication of the Accused’s effective control.<sup>190</sup>

54. The Anti-sniping Agreement was followed up by meetings about implementation measures, some implementation agreements and a codicil to the Anti-sniping Agreement, which were intended to increase the effectiveness of the Agreement.<sup>191</sup> An UNPROFOR memorandum dated 18 August 1994 noted that, “the authorities of the two [warring parties] have declared they gave orders to their own forces to stop sniping activities [...]”<sup>192</sup>

55. In the month following the coming into force of the Anti-sniping Agreement, UNPROFOR reported that it “had many positive results [...] but that this result is not totally satisfactory.”<sup>193</sup> David Harland testified that sniping stopped as a result of the Anti-sniping Agreement for a period of at least six weeks after it was signed, and that the reduction in sniping continued over several months.<sup>194</sup> However, several UNPROFOR reports document violations of the Anti-sniping Agreement by both sides.<sup>195</sup>

56. Col. Dragičević, while denying that the SRK violated the Anti-sniping Agreement, testified that there were civilian casualties on both sides as a result of sniper fire.<sup>196</sup> According to Brig. Gen. David Fraser, Military Assistant to the Commander of UNPROFOR Sector Sarajevo from April

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<sup>188</sup> David Harland, 15 Jan 2007, T. 334 – 335. They were attended by Mustafa Hajrulahović, and Gen. Karavelić and Hasan Muratović on the “Bosnian side”, and Dragomir Milošević, “who was relatively new at that stage”, Professor Koljević and Gen. Tolimir on the “Serb side”. Others “came and went.” UNPROFOR wanted large-scale, continuous plastic screens erected in areas of ABiH and SRK territory to prevent sniping, *see* P13, Report on anti-sniping project, 24 April 1995. Ultimately, this was not agreed upon by the parties, David Harland, 15 Jan 2007, T. 337, 393.

<sup>189</sup> P206, Anti-sniping Agreement, dated 14 August 1994; David Harland, P2, MT. 28683.

<sup>190</sup> Prosecution Closing Brief, para. 469.

<sup>191</sup> David Harland, 15 Jan 2007, T. 338; P666, Memorandum to SRK command, dated 15 August 1994, p. 2; P4, Memo on implementation of Anti-sniping Agreement, 18 August 1994; P5, Codicil to the Anti-sniping Agreement, 1 October 1994.

<sup>192</sup> P4, Memo on implementation of Anti-sniping Agreement, 18 August 1994, p. 1; David Harland disagreed with the proposition that the ABiH did not honour the commitment to publicly promote the Anti-sniping Agreement, while the SRK did, David Harland, 15 Jan 2007, T. 394 – 395.

<sup>193</sup> P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, dated 15 September 1994, p. 3.

<sup>194</sup> David Harland, 15 Jan 2007, T. 337, 16 Jan 2007, T. 408, P1, MT. 26952; W-46, P387, p. 14 (under seal); P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, 15 September 1994.

<sup>195</sup> P6, UNPROFOR cable on violations of Anti-sniping Agreement, dated 12 September 1994 (“UNPROFOR cable, 12 September 1994”); P24, UNPROFOR report on meetings with Bosnian Government officials, dated 12 March 1995 (“UNPROFOR report, 12 March 1995”); P204, Protest letter, 9 October 1994; P793, UNPROFOR report on violations of Anti-sniping Agreement, dated 8 September 1994. *See also* W-156, P625, pp 19, 27 (under seal); D64, Order by Fikret Prevljak, dated 19 September 1995.

<sup>196</sup> Luka Dragičević, 26 Mar 2007, T. 4031 – 4032. *See also* T-52, 28 June 2007, T. 7469 – 7470.



1994 to May 1995, sniping posed “a significant problem” before the Anti-sniping Agreement, and after it, sniping continued to be a problem.<sup>197</sup>

(d) Comprehensive Cessation of Hostilities Agreement - 23 December 1994

57. A comprehensive Cessation of Hostilities Agreement (“COHA”) was signed on 23 December 1994.<sup>198</sup> There is evidence that the SRK command ordered its troops to comply with the COHA.<sup>199</sup> Col. Dragičević testified that the SRK abided by the terms of the COHA.<sup>200</sup>

58. On 28 December 1994, UNPROFOR reported that “the cease-fire agreement seems to be holding, generally, with incidents of fire reduced by over 90% from pre-24 December levels”, but that “Sarajevo remains tense, with concern that BiH activity will provoke a BSA reaction.”<sup>201</sup> David Harland testified that the cessation of hostilities lasted approximately four months.<sup>202</sup> However, Milan Mandilović, Chief of the Ear, Nose and Throat Surgery Department of the State Hospital in 1994 and 1995, rejected this, stating that, “it was completely impossible to have such a long period of peace in the besieged town of Sarajevo.”<sup>203</sup>

59. In this respect, there is evidence that the SRK violated the COHA. Gen. Smith testified that the Bosnian Serbs initiated the breakdown of the COHA.<sup>204</sup> Towards March 1995, there was an “alarming upsurge in military activity.”<sup>205</sup> In March 1995, Gen. Smith concluded that both the ABiH and the VRS had decided that the COHA was finished.<sup>206</sup>

60. There is also evidence of violations of the COHA by the ABiH.<sup>207</sup> On 1 January 1995, in respect of the COHA, Gen. Delić ordered: “Should the agreement be observed, the time should be

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<sup>197</sup> David Fraser, 8 Feb 2007, T. 1822 – 1823. *See also* P11, Report on implementation of COHA, dated 29 March 1995, p. 2.

<sup>198</sup> Ronald Eimers, P584, p. 4. Parties to the Agreement were Alija Izetbegović, Rasim Delić, Radovan Karadžić, Ratko Mladić, and Krešimir Zubak and Vladimir Šoljić and witnessed by Yasushi Akashi and Michael Rose. *See also* Goran Kovačević, 13 June 2007, T. 6562; Stevan Veljović, 29 May 2007, T. 5763.

<sup>199</sup> D214, Order on ceasefire, dated 25 December 1994; D137, SRK Command Instructions, dated 26 December 1994. *See also* Siniša Krsman, 6 June 2007, T. 6255; Goran Kovačević, 12 June 2007, T. 6554.

<sup>200</sup> Luka Dragičević, 26 Mar 2007, T. 4018.

<sup>201</sup> P836, UNPROFOR daily sitrep, dated 28 December 1994, pp 1, 2.

<sup>202</sup> David Harland, 16 Jan 2007, T. 407 – 408. *See also* Vljajko Božić, 17 July 2007, T. 8430 – 8432; Martin Bell, 26 Apr 2007, T. 5235 – 5236, 5243 – 5244, 5246, 5251; T-53, 11 June 2007, T. 6399; Dražen Maunaga, 12 June 2007, T. 6497.

<sup>203</sup> Milan Mandilović, 18 Jan 2007, T. 620. He continued “[y]ou would have maybe a couple of days of cease-fire and then the hostilities would escalate and the international community would intervene; then there would be more escalation, *ibid.*

<sup>204</sup> Rupert Smith, 7 Mar 2007, T. 3310.

<sup>205</sup> Ronald Eimers, 20 Apr 2007, T. 4809, 4813, P584, p. 4; P11, Report on implementation of COHA, 29 March 1995. *See also* Rupert Smith, 7 Mar 2007, T. 3310.

<sup>206</sup> Rupert Smith, P334, pp 8, 10. *See also* Ronald Eimers, 20 Apr 2007, T. 4809, 4813. P339, Notes of meeting between Gen. Smith and Radovan Karadžić, 5 April 1995; P25, UNPROFOR cable on meetings with Bosnian Government officials, dated 14 March 1995 (“UNPROFOR cable, 14 March 1995”), p. 3.

<sup>207</sup> *See* UNMO sitreps referring to ceasefire violations by the ABiH: P850, UNMO daily sitrep, dated 9 July 1995, pp 2, 11 - 12; P841, UNMO daily sitrep, dated 19 August 1995, p. 12.

used for the training of soldiers, units and commands [...] and preparations for ensuing combat activities.”<sup>208</sup> In response to questions by the Defence, Maj. Gen. Nicolai testified that he was not aware of the ABiH preparing for an offensive during the period the cease-fire was in force.<sup>209</sup> According to David Harland, UNPROFOR protested heavily against violations of cease-fires by the ABiH and threatened to use air strikes.<sup>210</sup> However, the ABiH was not sanctioned for breaches of the COHA by the use of NATO air force.<sup>211</sup>

(e) Collapse of TEZ Arrangements and NATO Attacks

61. Gen. Smith and Lt. Col. Fortin testified that the TEZ arrangements collapsed in May 1995.<sup>212</sup> An UNPROFOR report, dated 19 May 1995, states that, “[a]s widely predicated, the heavy weapons Total Exclusion Zone around Sarajevo has largely collapsed. Following the decision of UNPROFOR headquarters not to call on NATO air power to enforce the zone, both sides have begun using their heavy weapons with vigour. More than 1,500 detonations were recorded around the city on Tuesday; and more than 1,200 on Wednesday. The daily average until two weeks ago was less than 20.”<sup>213</sup>

62. On 24 May 1995, the SRK removed weapons from WCPs, following an increase in the fighting, and refused to return them.<sup>214</sup> Gen. Smith issued an ultimatum to re-establish the TEZ but this was ignored, resulting in NATO air strikes on bunkers in an ammunition depot outside Pale on 25 May 1995.<sup>215</sup> During the night of 25 May 1995, the shelling of safe areas in BiH, including Sarajevo, by the VRS, continued.<sup>216</sup> On 25 and 26 May 1995, the SRK again took a number of heavy weapons from WCPs.<sup>217</sup> NATO again targeted the ammunition depot outside Pale on the 26

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<sup>208</sup> D303, Order by Rasim Delić on implementation of COHA, 1 January 1995, p. 4. *See also* Stevan Veljović, 29 May 2007, T. 5766, 5771 – 5772; T-53, 11 June 2007, T. 6402; Dražen Maunaga, 12 June 2007, T. 6504 – 6505; Ljuban Mrković, 12 July 2007, T. 8148 – 8149.

<sup>209</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 976 – 977.

<sup>210</sup> David Harland, P2, MT. 28651 – 28652. *See also e.g.* P391, UNPROFOR report on ABiH and SRK shelling and sniping, dated 17 November 1994 (“UNPROFOR report, 17 November 1994”).

<sup>211</sup> Luka Dragičević, 26 Mar 2007, T. 4021; Louis Fortin, 17 Jan 2007, T. 544; Harry Konings, 13 Mar 2007, T. 3654.

<sup>212</sup> Louis Fortin, 17 Jan 2007, T. 546; Rupert Smith, 7 Mar 2007, T. 3316 – 3317, P334, pp 12, 13. *See also* David Harland, P1, MT. 26945 – 26946.

<sup>213</sup> D12, UNPROFOR weekly sitrep, dated 19 May 1995 (“UNPROFOR weekly sitrep, 19 May 1995”), p. 2. On these NATO air strikes, *see* Rupert Smith, 7 Mar 2007, T. 3352 – 3354, P334, p. 12; D451, UNPROFOR daily info summary, dated 8 May 1995, pp 1 - 2.

<sup>214</sup> Rupert Smith, P334, p. 13; David Harland, P1, MT. 26957.

<sup>215</sup> Rupert Smith, 7 Mar 2007, T. 3394 – 3396, P334, p. 13; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 942 – 943, 25 Jan 2007, T. 1041; Luka Dragičević, 26 Mar 2007, T. 4021 – 4022, 4052 – 4054; T-7, 19 June 2007, T. 6852; W-46, P387, p. 30 (under seal); Louis Fortin, 17 Jan 2007, T. 543, P27, pp 7, 10; P340, Outgoing code cable, dated 26 May 1995, p. 1.

<sup>216</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 943; Rupert Smith, 7 Mar 2007, T. 3395 – 3397, P334, pp 13 – 14; P340, Outgoing code cable, 26 May 1995, p. 1; W-46, P387, p. 30 (under seal); Louis Fortin, P27, p. 11.

<sup>217</sup> Luka Dragičević, 26 Mar 2007, T. 4021 – 4022.

May 1995.<sup>218</sup> Col. Dragičević testified that the SRK removed the weapons from the WCPs because of the threat to the SRK by the ABiH.<sup>219</sup>

63. On 18 June 1995, UNPROFOR withdrew from all WCPs around Sarajevo because UNPROFOR units could no longer be deployed safely in isolated parts of SRK-held territory.<sup>220</sup> After the shelling of the Markale Market on 28 August 1995, new NATO air attacks were ordered.<sup>221</sup> During the night of 29 August 1995, air attacks against Bosnian Serb positions began.<sup>222</sup> These attacks lasted until 1 September 1995.<sup>223</sup> They were stopped until 4 September 1995 to allow meetings between UNPROFOR Commander, Gen. Janvier, and Gen. Mladić regarding, *inter alia*, the withdrawal of all heavy weapons from the TEZs.<sup>224</sup> The NATO attacks, targeting the wider area of Sarajevo, resumed on 5 September 1995 and lasted until 14 September 1995.<sup>225</sup> In these attacks, NATO was supported by a major bombardment of Bosnian Serb positions around Sarajevo by the UNPROFOR Rapid Reaction Force.<sup>226</sup> In response to Defence questions, Gen. Smith and David Harland testified that the targets were chosen “quite precisely” and that they were all of military character.<sup>227</sup> According to Milorad Katić, two barracks at Lukavica were hit by NATO attacks, but no targets in Grbavica were.<sup>228</sup> On 13 September 1995, a 72-hour pause was agreed and extended until 20 September 1995.<sup>229</sup>

64. On 15 September 1995, representatives of the VRS, including the Accused, and UNPROFOR representatives agreed a cease-fire and withdrawal of VRS troops from the area surrounding Sarajevo.<sup>230</sup> On the same day, the Accused ordered the “pull-out of 50 per cent of

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<sup>218</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1041; Rupert Smith, 7 Mar 2007, T. 3394 – 3397, P334, p. 14; T-7, 19 June 2007, T. 6852; Louis Fortin, P27, p. 10; P340, Outgoing code cable, 26 May 1995, pp 1 - 2.

<sup>219</sup> Luka Dragičević, 26 Mar 2007, T. 4021, 4052, 27 Mar 2007, T. 4075 – 4076. *See also* Milorad Katić, 1 June 2007, T. 6050. The Trial Chamber notes that it also heard evidence of a Defence witness who recalled having artillery support during the ABiH summer 1995 offensive at Golo Brdo, Milorad Košarac, 26 July 2007, T. 8879, 8902 – 8903, 8904.

<sup>220</sup> W-156, 27 Apr 2007, T. 5352 (closed session); P16, UNPROFOR sitrep, dated 24 June 1995.

<sup>221</sup> David Harland, 16 Jan 2007, T. 434 – 435, 437 – 438, P2, MT. 28688 – 28689; Rupert Smith, 7 Mar 2007, T. 3375, 3415 – 3416, P334, p. 22; *See also* confirming 29 August 1995 as the date of the decision, Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1021 – 1022. *See infra*, II.E.6(b)(xv) Shelling of the Markale Market on 28 August 1995.

<sup>222</sup> David Harland, 16 Jan 2007, T. 437, P2, MT. 28687. According to witness Milorad Katić, the bombing started the 31 August 1995, Milorad Katić, 1 June 2007, T. 6050. *See also* Harry Konings, 13 Mar 2007, T. 3654.

<sup>223</sup> David Harland, 16 Jan 2007, T. 438; Rupert Smith, P334, p. 23.

<sup>224</sup> Rupert Smith, 7 Mar 2007, T. 3412 – 3413, P334, p. 23.

<sup>225</sup> Rupert Smith, P334, p. 23.

<sup>226</sup> David Harland, 16 Jan 2007, T. 438.

<sup>227</sup> David Harland, 16 Jan 2007, T. 439; Rupert Smith, 7 Mar 2007, T. 3415 – 3416.

<sup>228</sup> Milorad Katić, 1 June 2007, T. 6050, 6052 – 6053.

<sup>229</sup> Rupert Smith, P334, p. 23.

<sup>230</sup> Rupert Smith, P334, p. 23; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 736; W-156, 27 Apr 2007, T. 5364 – 5366 (closed session), P625, pp 6 - 7 (under seal).

heavy weapons from the Sarajevo exclusion zone [...].”<sup>231</sup> In the following days, most of the heavy weapons were withdrawn from Sarajevo.<sup>232</sup>

65. On 5 October 1995, a 60-day cease-fire was agreed upon; this was to come into force on 10 October 1995, on the condition that the utilities in Sarajevo were reconnected.<sup>233</sup> On 11 October 1995, the parties agreed to the cease-fire as of 12 October 1995.<sup>234</sup> The fighting subsided by 14 October 1995.<sup>235</sup>

## **B. Military Structures and Confrontation Lines**

66. The Trial Chamber received extensive evidence about the military units deployed in and around Sarajevo, namely the SRK and the 1<sup>st</sup> Corps of the ABiH. Witnesses gave evidence about the establishment and command structure of the different military units as well as the weaponry and equipment available. In addition, numerous documents relating to the military units were admitted into evidence.

### **1. Structure of Military Units**

#### **(a) VRS and SRK**

67. On 12 May 1992, the Bosnian Serb Assembly voted to establish the VRS and designated Gen. Mladić as its commander.<sup>236</sup> The VRS was formed from parts of the JNA, and TO and volunteer units.<sup>237</sup> As President of the Republic, Radovan Karadžić was the Supreme Commander of the VRS.<sup>238</sup> Gen. Mladić commanded the VRS from the centre and did not delegate much.<sup>239</sup> According to Gen. Smith, he was always familiar with events that were occurring in Sarajevo.<sup>240</sup>

68. Each of the JNA corps in BiH was renamed while retaining most of its personnel and weaponry.<sup>241</sup> The Sarajevo-based 4<sup>th</sup> Corps of the JNA became the SRK,<sup>242</sup> which had its

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<sup>231</sup> P736, Order by the SRK Commander on pull-out of weapons from exclusion zone, dated 15 September 1995.

<sup>232</sup> W-156, 27 Apr 2007, T. 5365 (closed session), P625, pp 7, 8 (under seal); Rupert Smith, P334, p. 23; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 736.

<sup>233</sup> Rupert Smith, P334, p. 24.

<sup>234</sup> Rupert Smith, P334, p. 24; David Harland, P1, MT T. 26983.

<sup>235</sup> Rupert Smith, P334, p. 24.

<sup>236</sup> Agreed Fact 20; Adjudicated Fact 44; Stevan Veljović, 29 May 2007, T. 5730; P472, Expert report Robert Donia, p. 24.

<sup>237</sup> Ljuban Mrković 12 July 2007, T. 8136; Vahid Karavelić, P492, p. 17. *See also* Rupert Smith, 7 Mar 2007, T. 3360 – 3361; Luka Dragičević, 26 Mar 2007, T. 4005; Milosav Gagović, 23 July 2007, T. 8706 – 8707; P770, Order by Tomislav Šipčić, dated 22 May 1992.

<sup>238</sup> Agreed Fact 9; Rupert Smith, 7 Mar 2007, T. 3366 – 3367; P336, VRS directive, dated 17 March 1995. *See also* Rupert Smith, 7 Mar 2007, T. 3304, 3306 – 3307, P334, p. 4.

<sup>239</sup> Gen. Mladić respected the chain of command in the VRS and “his influence could be felt at a very low level”, Rupert Smith, 7 Mar 2007, T. 3298 – 3299, 3301, 3373.

<sup>240</sup> Rupert Smith, 7 Mar 2007, T. 3299, 3300.

<sup>241</sup> P472, Expert report Robert Donia, p. 24. *See also* Desimir Gagović, 23 Aug 2007, T. 9157 – 9158.

headquarters in the Lukavica Barracks.<sup>243</sup> Apart from the SRK, the VRS was comprised of five other corps.<sup>244</sup> Nearly all soldiers of the VRS were Serbs, most of whom had been living in BiH.<sup>245</sup> There is evidence that many officers of the VRS were officers of the former JNA.<sup>246</sup> However, some Defence witnesses testified that their particular SRK units had only a few former JNA officers or none at all.<sup>247</sup> The VRS was supported by the government in Belgrade with logistics, money and matériel.<sup>248</sup>

69. During his tenure as Corps Commander, the Accused was in charge of approximately 18,000 troops.<sup>249</sup> The SRK brigades varied in size according to the communities from which they were established.<sup>250</sup> The troops were mostly reservists who had been recruited locally.<sup>251</sup> Police units sometimes assisted SRK units at the confrontation lines.<sup>252</sup> The SRK had professional mortar crews.<sup>253</sup> Maj. Eimers stated that both sides could handle mortars very well and could hit what they were targeting if they had the grid references.<sup>254</sup> The SRK also had snipers.<sup>255</sup> However, several Defence witnesses testified that their particular military units did not have any snipers.<sup>256</sup>

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<sup>242</sup> Agreed Fact 14; P472, Expert report Robert Donia, p. 24; Milosav Gagović, 23 July 2007, T. 8703 – 8704. *See also* Radomir Visnjić, 25 June 2007, T. 7233.

<sup>243</sup> David Fraser, 8 Feb 2007, T. 1805, 1807, 1832 – 1833; Stevan Veljović, 29 May 2007, T. 5770; T-53, 11 June 2007, T. 6425 – 6426; W-156, P625, p. 8 (under seal); John Jordan, P267, p. 9; D207, Map marked by Dragan Simić.

<sup>244</sup> *See e.g.* P335, Order on combat readiness, dated 23 January 1995; P337, VRS directive, dated 31 March 1995.

<sup>245</sup> Luka Dragičević, 26 Mar 2007, T. 4007 – 4008; Rupert Smith, 7 Mar 2007, T. 3360 – 3361; Vaso Elez, 7 June 2007, T. 6322 – 6323.

<sup>246</sup> W-156, P625, p. 36 (under seal). *See also* Rupert Smith, 7 Mar 2007, T. 3359.

<sup>247</sup> Ljuban Mrković, 12 July 2007, T. 8135 – 8136, 13 July 2007, T. 8203 – 8205, 8208 – 8210; Vljako Božić, 17 July 2007, T. 8403; Milosav Gagović, 23 July 2007, T. 8693 – 8694. *See also* Borislav Kovačević, 9 July 2007, T. 7888.

<sup>248</sup> David Harland, P1, MT. 26968 – 26969, 27008 – 27009; P817, Report to SRK command, dated 30 June 1994; P819, Excerpt from Bosnian Serb Assembly 50<sup>th</sup> session on 15 and 16 April 1995.

<sup>249</sup> Agreed Fact 11; Stevan Veljović, 24 May 2007, T. 5718, 5719; Ljuban Mrković, 13 July 2007, T. 8200 – 8201.

<sup>250</sup> Borislav Kovačević, 10 July 2007, T. 7930, 7960. Ilijaš Brigade had 1,500-1,700 “combatants”.

<sup>251</sup> W-156, 27 Apr 2007, T. 5367 (closed session), P625, p. 24 (under seal). *See also* Siniša Krsman, 6 June 2007, T. 6236; T-53, 7 June 2007, T. 6386; Zoran Trapara, 26 June 2007, T. 7326; Stjepan Đukić, 28 June 2007, T. 7498; Miroslav Pejić, 16 July 2007, T. 8365. The Trial Chamber heard evidence of “weekend warriors” or irregular units being present in and around Sarajevo, mostly in the early stages of the conflict, Martin Bell, 27 Apr 2007, T. 5288 – 5289; Vahid Karavelić, P492, p. 17; David Harland, P1, MT. 26952 – 26953. *See also* Milosav Gagović, 23 July 2007, T. 8708 – 8711; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1002 – 1003, 25 Jan 2007, 1044; John Jordan, 22 Feb 2007, T. 2695 – 2696, P267, p. 10; Ismet Hadžić, 6 Mar 2007, T. 3230 – 3232; P913, Intercepted conversation, dated 13 May 1992. *Cf.* Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 708; Ronald Eimers, 20 Apr 2007, T. 4791 – 4792, P585, p. 8. The Trial Chamber notes that the Defence made no specific submissions as to rogue elements operating from territory held by the SRK.

<sup>252</sup> Rade Ivanović, 4 July 2007, T. 7632, 7643, 7647, 6 July 2007, T. 7808 – 7813; Vlastimir Glavaš, 24 July 2007, T. 8729, 8731 – 8732; T-15, 13 July 2007, T. 8299, 8315 – 8316. *Cf.* Simo Tuševljak, 11 July 2007, T. 8044.

<sup>253</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 961 – 962; John Jordan, 21 Feb 2007, T. 2642 – 2643, P267, p. 7; W-12, 2 Mar 2007, T. 3058; Ronald Eimers, 20 April 2007, T. 4785 – 4786.

<sup>254</sup> Ronald Eimers, P585, p. 5. *See also* John Jordan, 21 Feb 2007, T. 2642 – 2643, P267, p. 7.

<sup>255</sup> David Harland, 16 Jan 2007, T. 459; Vahid Karavelić, 27 Mar 2007, T. 4100 – 4101; Martin Bell, 27 Apr 2007, T. 5288; Stevan Veljović, 30 May 2007, T. 5835; Ljuban Mrković, 13 July 2007, T. 8211; P680, Order for Training, dated 5 January 1995; P684, Order on assigning and dispatching sniper instructors, dated 19 January 1995; P688, Order by the SRK Commander to train SRK units, dated 29 January 1995; P763, Request for equipment and snipers, dated 25 June 1992.

<sup>256</sup> Siniša Krsman 6 June 2007, T. 6288 – 6289, 6291, 6293; Milan Mandić, 4 July 2007, T. 7594, 7595; Borislav Kovačević, 10 July 2007, T. 7935; Momčilo Gojković, 13 July 2007, T. 8269, 8275; Vljako Božić, 17 July 2007, T. 8404 – 8405, 8445 – 8447.

(b) ABiH and 1<sup>st</sup> Corps

70. The ABiH was formed in 1992 from TO units, parts of the Patriotic League and other military and paramilitary units.<sup>257</sup> The ABiH was primarily Bosnian Muslim.<sup>258</sup>

71. President Alija Izetbegović was Supreme Commander of the ABiH.<sup>259</sup> Gen. Delić was the Commander of the General Staff of the ABiH.<sup>260</sup> The ABiH had eight corps.<sup>261</sup> A report by the Chief of Administration of the ABiH on manning levels stated that the ABiH had a total number of 227,256 troops on 1 August 1994.<sup>262</sup>

72. According to David Harland, Gen. Delić only had limited control of forces in Sarajevo at the beginning of the war but, as time went on, command and control in the ABiH improved, although it never reached the high level maintained in the VRS.<sup>263</sup> Maj. Gen. Karavelić also testified that up until some time in 1994, the ABiH General Staff did not have proper command and control over its corps.<sup>264</sup> ABiH troops and officers were poorly educated and trained, in comparison to the SRK.<sup>265</sup> The weaponry was scarce and not well-maintained and this sometimes led to soldiers accidentally wounding themselves.<sup>266</sup>

73. Maj. Gen. Karavelić was the Commander of the 1<sup>st</sup> Corps of the ABiH from summer 1993 until September 1995.<sup>267</sup> The Commander of the 1<sup>st</sup> Corps was directly subordinate to the Commander of the General Staff of the ABiH.<sup>268</sup> According to Maj. Gen. Karavelić, the 1<sup>st</sup> Corps was organised along JNA doctrinal lines.<sup>269</sup>

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<sup>257</sup> Stevan Veljović, 24 May 2007, T. 5714; Milosav Gagović, 23 July 2007, T. 8672; Vahid Karavelić, P492, p. 5.

<sup>258</sup> T-52, 28 June 2007, T. 7477 – 7478; D106, Report on manning levels in the ABiH, dated 24 August 1994, p. 1.

<sup>259</sup> Vahid Karavelić, 28 Mar 2007, T. 4159; T-7, 19 June 2007, T. 6844.

<sup>260</sup> Stevan Veljović, 29 May 2007, T. 5760; Rupert Smith, P334, p. 3.

<sup>261</sup> D106, Report on manning levels in the ABiH, 24 August 1994, p. 1. The Trial Chamber notes that a VRS directive dated 17 March 1995 stated that the ABiH was organised in six corps, 112 brigades, and 45 independent battalions, artillery battalions, numbering approximately 270,000 men, P336, VRS Directive, dated 17 March 1995, p. 4.

<sup>262</sup> D106, Report on manning levels in the ABiH, 24 August 1994, p. 1.

<sup>263</sup> David Harland, 15 Jan 2007, T. 374.

<sup>264</sup> Vahid Karavelić, P495, GT. 18097. In the words of Vahid Karavelić, the General Staff was more or less “excluded from plans for combat activities” and the corps themselves were mostly engaged in the planning of combat activities, *ibid.* See also D157, Letter by Rasim Delić, dated 19 September 1994.

<sup>265</sup> Vahid Karavelić, P495, GT. 17654; Rupert Smith, 7 Mar 2007, T. 3360. See also Ronald Eimers, 20 Apr 2007, T. 4788 – 4789, P585, p. 8; Stevan Veljović, 29 May 2007, T. 5767 – 5768, 30 May 2007, T. 5824, 5837.

<sup>266</sup> Ljuban Mrković, 12 July 2007, T. 8156 – 8158; Maj. Gen. Karavelić estimated that, by the first half of 1993, less than one third of the man-power of the ABiH had weapons, Vahid Karavelić, P492, p. 7, P495, GT. 18154.

<sup>267</sup> Vahid Karavelić, P492, p. 4.

<sup>268</sup> Vahid Karavelić, P495, GT. 17982. See also Ismet Hadžić, 6 Mar 2007, T. 3222 – 3223.

<sup>269</sup> Vahid Karavelić, P495, GT. 18084 – 18086, 18088 – 18090.

74. The headquarters of the 1<sup>st</sup> Corps was in the centre of Sarajevo, in Daniela Ozme Street, number 7.<sup>270</sup> It was surrounded by civilian buildings so that “it would be very difficult [...] to engage.”<sup>271</sup> In fact, the building was never hit.<sup>272</sup>

75. The 1<sup>st</sup> Corps was created from TO units and parts of the Patriotic League on 1 September 1992.<sup>273</sup> It had some 75,000 troops during the conflict, of which approximately 40,000 to 45,000 were stationed in Sarajevo.<sup>274</sup>

76. From the end of 1994, the 1<sup>st</sup> Corps consisted of the 12<sup>th</sup>, 14<sup>th</sup>, and the 16<sup>th</sup> Divisions. The 12<sup>th</sup> Division was in Sarajevo and had between 30,000 and 40,000 soldiers.<sup>275</sup> Gen. Fikret Prevljak was the Commander of the 12<sup>th</sup> Division.<sup>276</sup>

77. According to Maj. Gen. Karavelić, the 1<sup>st</sup> Corps had its own sharpshooters, but no separate sniper unit. Sometimes, depending on the combat situation, sniper groups were created.<sup>277</sup> Witnesses testified that the 1<sup>st</sup> Corps of the ABiH, like the SRK, had good command and control over their snipers.<sup>278</sup>

## 2. Weaponry

### (a) Weaponry Available to the VRS and ABiH

78. Col. Dragičević testified that from the beginning of the war, the ABiH and the SRK had essentially the same type of weaponry, “depending on the depots that were under their control”.<sup>279</sup>

79. The JNA had a “whole array of truly powerful weapons” and the VRS took over the majority of those weapons.<sup>280</sup> It also took over weapons from the reserve forces of the police.<sup>281</sup>

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<sup>270</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 741; David Fraser, 8 Feb 2007, T. 1832. Vahid Karavelić stated that, “for the greater part of the war,” the command headquarters was in the city of Sarajevo, Vahid Karavelić, 27 Mar 2007, T. 4086 – 4087, P492, pp 5, 7. W-57 testified that the ABiH command headquarters was a forward command post in the Igman area outside the city and that an administrative part was in Sokolović Kolonija, W-57, 17 Apr 2007, T. 4571; D165, Map marked by W-57.

<sup>271</sup> David Fraser, 8 Feb 2007, T. 1832. *See also* David Fraser, 8 Feb 2007, T. 1835.

<sup>272</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 741; David Fraser, 8 Feb 2007, T. 1832.

<sup>273</sup> Vahid Karavelić, P492, p. 5, P494, GT. 11904 – 11905, P495, GT. 17625.

<sup>274</sup> Adjudicated Fact 53; Stevan Veljović, 24 May 2007, T. 5719; Vahid Karavelić, P492, p. 7, P493, p. 5, P494, GT. 11787, P495, GT. 17629. *See also* Ljuban Mrković, 13 July 2007, T. 8201; D106, Report on manning levels in the ABiH, 24 August 1994, p. 1.

<sup>275</sup> Ismet Hadžić, 6 Mar 2007, T. 3272 – 3273; Vahid Karavelić, 27 Mar 2007, T. 4148, P492, p. 5, P495, GT. 18122, 18134, 18135.

<sup>276</sup> Ismet Hadžić, 6 Mar 2007, T. 3223. *See also* David Fraser, 8 Feb 2007, T. 1831 – 1832.

<sup>277</sup> Vahid Karavelić, P493, p. 8, P494, GT. 11949 – 11953. *See also* Ismet Hadžić, 6 Mar 2007, T. 3228 – 3232, 3284; John Jordan, P267, p. 8; W-156, P625, p. 34 (under seal); D251, Order from Safet Zajko on more effective engagement of snipers, dated 5 March 1993 (“Order, 5 March 1993”).

<sup>278</sup> David Harland, 16 Jan 2007, T. 459.

<sup>279</sup> Luka Dragičević, 26 Mar 2007, T. 4045, 4050 – 4051. *See also* Branislav Dukić, 18 Jun 2007, T. 6788.

<sup>280</sup> Džemaludin Luinović, 1 Mar 2007, T. 2966; Milosav Gagović, 23 July 2007, T. 8691.

The SRK had more heavy weaponry than the 1<sup>st</sup> Corps of the ABiH.<sup>282</sup> Apart from tanks, APCs and other combat vehicles, its weaponry included howitzers, guided missiles, guns, multiple rocket launchers and mortars.<sup>283</sup>

80. Defence witnesses testified that the battalions, companies and platoons of the SRK had mostly infantry weapons and no heavy weapons.<sup>284</sup> SRK units also had precision rifles, in particular, “7.9 millimetre calibre sniper 76” weapons.<sup>285</sup> The Trial Chamber was also shown written requests for large amounts of “sniper bullets”.<sup>286</sup>

81. The 1<sup>st</sup> Corps of the ABiH possessed howitzers, guns, rocket launchers, anti-armour and anti-fortification launchers, anti-aircraft machine guns, different types of cannons, up to 100 mortars, as well as a large quantity of hand-grenades.<sup>287</sup> The evidence of the number of tanks

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<sup>281</sup> Vlajko Božić, 17 July 2007, T. 8402 – 8403.

<sup>282</sup> Rupert Smith, 7 Mar 2007, T. 3360; David Harland, P2, MT. 28701.

<sup>283</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 752; Harry Konings, 12 Mar 2007, T. 3561; Vahid Karavelić, 27 Mar 2007, T. 4105, P493, p. 4; Martin Bell, 26 Apr 2007, T. 5261; Stevan Veljović, 29 May 2007, T. 5805, 30 May 2007, T. 5835; Siniša Krsman, 6 June 2007, T. 6268 – 6269, 6298; Vaso Elez, 6 June 2007, T. 6313; Zoran Samardžić, 13 June 2007, T. 6625; T-2, 20 June 2007, T. 6933 – 6934; T-48, 22 June 2007, T. 7134, 7148 – 7149; Predrag Trapara, 27 June 2007, T. 7390 – 7391; Stjepan Đukić, 3 July 2007, T. 7506; Milan Mandić, 4 July 2007, T. 7577; Borislav Kovačević, 9 July 2007, T. 7900 – 7901, 7903; Ljuban Mrković, 13 July 2007, T. 8198 – 8200; Miroslav Pejić, 16 July 2007, T. 8372, 8386 – 8387; David Harland, P2, MT. 28701; John Jordan, P267, p. 7; P502, Military map of Sarajevo marked by Vahid Karavelić; W-156, P625, pp 23 - 24 (under seal); P669, Order by SRK Commander, dated 27 August 1994; P707, SRK report, dated 15 May 1995; P817, Report to SRK command, dated 30 June 1994. *See also* T-53, 11 June 2007, T. 6391 – 6393; P392, Protest letter, dated 3 December 1994; P620, Videoclip.

<sup>284</sup> Dragan Simić, 5 June 2007, T. 6182 – 6183, 6195; Vaso Elez, 6 June 2007, T. 6304, 6313; Zoran Samardžić, 13 June 2007, T. 6625; Anđelko Dragaš, 22 June 2007, T. 7071, 7121; T-48, 22 June 2007, T. 7134, 7150; Predrag Trapara, 27 June 2007, T. 7377, 7390 – 7392; Milan Mandić 4 July 2007, T. 7577; Borislav Kovačević, 9 July 2007, T. 7900 – 7901; 7903; Momčilo Gojković, 13 July 2007, T. 8257, 8272; T-15, 13 July 2007, T. 8319; T-9, 16 July 2007, T. 8348; Vlajko Božić, 17 July 2007, T. 8408 – 8409, 8468 – 8471; Milorad Košarac, 26 July 2007, T. 8878.

<sup>285</sup> Vahid Karavelić, P494, GT. 11796; Ismet Hadžić, 6 Mar 2007, T. 3230. According to Prosecution expert Patrick van der Weijden, the Dragunov and M76 rifle were the most common sniper rifles in the inventory of the VRS with the majority being the M76 type, P514, Report of Patrick van der Weijden on sniping incidents in Sarajevo 94-95, dated 23 March 2007 (“Expert report Patrick van der Weijden”), pp 58, 60. *Cf.* Ivan Stamenov, 22 Aug 2007, T. 9023, 9058; D360, Forensic ballistics expert report by Ivan Stamenov, dated July 2007 (“Expert report Ivan Stamenov”), pp 2 - 3, 8 - 9.

<sup>286</sup> *See e.g.* P765, Report on expenditure of ammunition, dated 11 January 1995 (under seal), authenticated by T-53, 11 June 2007, T. 6408 – 6409, 6420; P766, Request for ammunition, dated 16 June 1995, authenticated by T-53, 11 June 2007, T. 6452; P775, Request for ammunition, dated 28 June 1995; P729, Request by SRK Commander, 27 July 1995. According to Prosecution expert Lt. Van der Weijden, both 7.62 mm and 7.92 m bullets could be used with the M76; the Dragunov rifle could be used with 7.62 mm bullets, P514, Expert report Patrick van der Weijden, p. 58. Col. Stamenov also testified that the 7.62 mm calibre could be used by automatic rifles, Kalashnikov, light machine-guns, machine-guns M84 and by M76 sniper Dragunov, Ivan Stamenov, 22 August 2007, T. 9058. Col. Stamenov further testified that 7.9 mm bullets could be used with light machine guns, and with M76, Ivan Stamenov, 22 Aug 2007, T. 9023. *See also* Stevan Veljović, 30 May 2007, T. 5835.

<sup>287</sup> David Fraser, 8 Feb 2007, T. 1851, D46, Military map marked by David Fraser; W-137, 19 Feb 2007, T. 2480; Ismet Hadžić, 6 Mar 2007, T. 3216 – 3217; Stevan Veljović, 29 May 2007, T. 5754, 5761, 5795, 5804 – 5806; Dražen Maunaga, 12 June 2007, T. 6487; T-48, 22 June 2007, T. 7169; T-60, 25 July 2007, T. 8789; Vahid Karavelić, P493, p. 6, P494, GT. 11961 – 11964; John Jordan, P267, p. 8; D187, Report on 1<sup>st</sup> Corps combat achievements, 1 November 1994; D225, Order by Rasim Delić, dated 18 December 1994; D144, Order by Fikret Prevljak, dated 11 June 1995; D195, Order of Sifet Podžić, dated 13 June 1995; D193, combat report by Rasid Sobo, dated 16 June 1995; D217, Interim combat report by Fikret Prevljak, dated 1 July 1995 (“Interim combat report by Fikret Prevljak, 1 July 1995”).



available to the ABiH in Sarajevo ranges from one tank to twelve tanks.<sup>288</sup> There is evidence that the ABiH also had mortars mounted on vehicles.<sup>289</sup>

82. Berko Zečević, Prosecution expert on modified air bombs, testified that 82 mm shells, made of cast steel, were produced in the Livnica foundry in the broad area of Alipašino Polje. The maximum calibre that could have been produced within Sarajevo was 120 mm, but these were not produced at the foundry.<sup>290</sup> According to Maj. Gen. Karavelić, the 1<sup>st</sup> Corps used ammunition from countries such as the United States of America, Croatia, Germany and some Islamic countries, and ten to 20 per cent came from old JNA stores.<sup>291</sup>

83. With regard to sniper weapons, some witnesses denied that the ABiH had modern precision rifles appropriate for sniping and testified that normal hunting rifles were used instead.<sup>292</sup> However, there is evidence that before and during the Indictment period, the ABiH did have sniper weapons, including sniper rifles with optical sights.<sup>293</sup> T-53, a member of the SRK, testified that optical sights for sniper rifles were manufactured in Zrak Factory under ABiH control in Sarajevo.<sup>294</sup> In the opinion of Lt. Patrick van der Weijden, Prosecution expert on sniping, it is very likely that the same sniping weapons were available to the ABiH and the VRS.<sup>295</sup>

84. There is evidence that neither the SRK nor the 1<sup>st</sup> Corps of the ABiH removed all heavy weaponry when the TEZ came into force.<sup>296</sup> Requests for ammunition for heavy weapons in 1994 and 1995 show that the SRK used their heavy weaponry during the Indictment period.<sup>297</sup> For example, on 25 July 1995, a request from 1<sup>st</sup> Sarajevo Mechanised Brigade for, *inter alia*, 40 pieces of 120 mm rounds was approved. According to an order issued, the ammunition was intended for

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<sup>288</sup> Vahid Karavelić, P494, GT. 11792, 11794, 11960, P495, GT. 18105, 18115 – 18116, 18153; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 752; Per Anton Brennskag, 8 Mar 2007, T. 3489; T-7, 19 June 2007, T. 6848; D34, Report to the ABiH Supreme Command Staff, dated 12 August 1994, p. 1; D187, Report on 1<sup>st</sup> Corps combat achievements, 1 November 1994.

<sup>289</sup> Stevan Veljović, 29 May 2007, T. 5807.

<sup>290</sup> Berko Zečević, 20 Apr 2007, T. 4886 – 4887, D171, pp 1 - 2.

<sup>291</sup> Vahid Karavelić, P493, p. 6. *See also* Stevan Veljović, 24 May 2007, T. 5714 – 5715; Goran Kovačević, 12 June 2007, T. 6538 – 6541; Ljuban Mrković, 12 July 2007, T. 8151; Vljako Bozić, 17 July 2007, T. 8402; Milosav Gagović, 23 July 2007, T. 8689 – 8691.

<sup>292</sup> Ismet Hadžić, 6 Mar 2007, T. 3230 – 3231; Vljako Bozić, 17 July 2007, T. 8402. *See also* Sanjin Hasanefendić, 16 Feb 2007, T. 2405 – 2406; W-12, 2 Mar 2007, T. 3069 – 3070.

<sup>293</sup> Ismet Hadžić, 6 Mar 2007, T. 3256; W-156, 27 Apr 2007, T. 5395 – 5396 (closed session), P625, p. 34 (under seal); Radomir Visnjić, 26 June 2007, T. 7289; D250, Order by Esad Paldn concerning use of cold storage depot, dated 18 September 1993 (“Order, 18 September 1993”); D99, Order by Nedžad Ajnadžić, dated 14 February 1994; D107, Report by Fikret Prevljak to 1<sup>st</sup> Corps command, dated 26 June 1995, pp 1 - 2 (“Report by Fikret Prevljak, 26 June 1995”); D64, Order by Fikret Prevljak, dated 19 September 1995.

<sup>294</sup> T-53, 11 June 2007, T. 6422 – 6423.

<sup>295</sup> Patrick van der Weijden, 29 Mar 2007, T. 4318.

<sup>296</sup> Rupert Smith, 7 Mar 2007, T. 3357; Stevan Veljović, 29 May 2007, T. 5754; Ljuban Mrković, 12 July 2007, T. 8138. *See supra*, para. 50.

<sup>297</sup> P766, Request for ammunition, dated 16 June 1995; P776, Request for ammunition, dated 1 July 1995; P805, Order to issue ammunition, dated 25 July 1995.

“the replenishment of your units on the inner ring”.<sup>298</sup> There is evidence that the SRK also had access to and used heavy weapons which were stored in the WCPs.<sup>299</sup>

85. Several Prosecution witnesses testified that the SRK had better equipment and weapons than the 1<sup>st</sup> Corps of the ABiH and that their troops and officers were better trained.<sup>300</sup> For example, the legend to a map used by the SRK showed an imbalance in available weaponry between the ABiH and the SRK.<sup>301</sup>

86. The Bosnian Muslims had a numerical advantage in troop strength over the Bosnian Serbs.<sup>302</sup> Maj. Gen. Karavelić testified that the “inferiority” of the 1<sup>st</sup> Corps in terms of weaponry was not compensated by manpower because equipment and technological development was a decisive factor.<sup>303</sup>

87. However, there is also evidence that the equipment of the SRK was of mediocre quality and the SRK had difficulties with maintenance and replenishment.<sup>304</sup> According to Col. Dragičević, when he became assistant commander on 22 November 1994, there was a shortage of food, fuel and ammunition and weapons, especially large calibre weapons.<sup>305</sup> T-53 testified that there were problems with ammunition, but that the VRS Main Staff in most cases approved requests for ammunition for infantry weapons.<sup>306</sup> According to T-53, supplies of spare parts, fuel and ammunition were problematic but the principal problem was “how to get fuel to the units” in 1994.<sup>307</sup> However, Maj. Eimers did not believe that the Bosnian Serbs encountered any logistical problems.<sup>308</sup> Defence witnesses also testified that the Pretis Factory in Vogošća, which was under the control of the SRK, produced ammunition during the war.<sup>309</sup>

88. Evidence was presented that the ABiH received better equipment and weaponry at the end of 1994 or in 1995 and that this put the Bosnian Serbs in a relatively weaker position.<sup>310</sup> T-53

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<sup>298</sup> P805, Order to issue ammunition.

<sup>299</sup> See *supra*, paras 50, 52.

<sup>300</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 752; Rupert Smith, 7 Mar 2007, T. 3358; David Harland, P1, MT. 26971; Vahid Karavelić, P495, GT. 17654; Ronald Eimers, P585, p. 8; W-156, P625, p. 24 (under seal).

<sup>301</sup> P506, Text area cut-out of map.

<sup>302</sup> David Harland, 16 Jan 2007, T. 415, P1, MT. 26961; Rupert Smith, 7 Mar 2007, T. 3359; Luka Dragičević, 26 Mar 2007, T. 4050; Stevan Veljović, 24 May 2007, T. 5718; Goran Kovačević, 13 June 2007, T. 6565; Borislav Kovačević, 9 July 2007, T. 7893, 7895, 7902.

<sup>303</sup> Vahid Karavelić, 29 Mar 2007, T. 4270.

<sup>304</sup> W-156, P625, pp 24, 30, 35 (under seal). See also Anđelko Dragaš, 22 June 2007, T. 7073 – 7074; Ljuban Mrković, 13 July 2007, T. 8197 – 8198; Vahid Karavelić, P493, p. 9.

<sup>305</sup> Luka Dragičević, 26 Mar 2007, T. 4009 – 4010, 4015 – 4016.

<sup>306</sup> T-53, 11 June 2007, T. 6396 – 6397, 6403 – 6405, 6432 – 6433.

<sup>307</sup> *Ibid.*, T. 6399, 6403.

<sup>308</sup> Ronald Eimers, P585, p. 9.

<sup>309</sup> T-53, 11 June 2007, T. 6440 – 6441; Goran Kovačević, 12 June 2007, T. 6538 – 6540, 13 June 2007, T. 6601.

<sup>310</sup> David Harland, 16 Jan 2007, T. 415 – 416, P1, MT. 26961; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 751; Rupert Smith, 7 Mar 2007, T. 3359; Luka Dragičević, 26 Mar 2007, T. 4050 – 4051; W-156, 27 Apr 2007, T. 5356

testified that the supply for the ABiH was “far better” at a time when the SRK was facing a supply shortage.<sup>311</sup> Maj. Eimers testified that, during the winter of 1994 and 1995, the ABiH was obviously getting support and equipment from other nations.<sup>312</sup> David Harland testified that by the end of the war, the ABiH was “reasonably well equipped, organised and trained”.<sup>313</sup> A VRS directive of 17 March 1995 listed a multitude of weapons possessed by the ABiH.<sup>314</sup> However, Gen. Smith testified that he saw no evidence to support that amount of weapons in the city of Sarajevo.<sup>315</sup> Many witnesses testified that the increase in weapons was primarily confined to light weapons and that the ABiH never completely rectified the imbalance in heavy weapons.<sup>316</sup>

(b) Specific Weapons

(i) Mortars

89. Prosecution witnesses testified that mortars are generally used to target areas, rather than individual targets.<sup>317</sup> Prosecution and Defence witnesses testified that mortars are designed to kill personnel.<sup>318</sup> QMS Higgs, expert for the Prosecution on mortars, testified that the maximum range of an 82 mm mortar is approximately 4,500 metres, whereas the maximum range of a 120 mm mortar is between seven and eight kilometres.<sup>319</sup> In his report, Maj. Gen. Desimir Garović, the Defence expert on mortars, lists 4,850 metres as the maximum range for 82 mm mortars and 6,340 metres for 120 mm mortars.<sup>320</sup>

90. QMS Higgs testified that the use of mortars tends “to be controlled very closely” by the military command because mortars are valuable assets.<sup>321</sup> He added that “medium and heavy mortars are controlled at command level.”<sup>322</sup> In his opinion, mortars are not moved unless this is ordered “by the commander.”<sup>323</sup>

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(closed session); Vaso Elez, 7 June 2007, T. 6333 – 6334; D183, Sitrep on update of situation in Sarajevo, dated 1 July 1995 (“UNPROFOR HQ sitrep, 1 July 1995”); P19, UNPROFOR sitrep, dated 2 July 1995, p. 3.

<sup>311</sup> T-53, 11 June 2007, T. 6412, 6440.

<sup>312</sup> Ronald Eimers, 20 Apr 2007, T. 4807, P585, p. 9.

<sup>313</sup> David Harland, P2, MT. 28702.

<sup>314</sup> P336, VRS Directive, dated 17 March 1995, p. 4.

<sup>315</sup> Rupert Smith, 7 Mar 2007, T. 3368 – 3370.

<sup>316</sup> David Harland, 16 Jan 2007, T. 415 – 416, P2, MT. 28701 – 28702; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 752; Rupert Smith, 7 Mar 2007, T. 3358, 3407 – 3408.

<sup>317</sup> Thorbjorn Overgard, 19 Jan 2007, T. 695 – 696; Harry Konings, 12 Mar 2007, T. 3561 – 3562.

<sup>318</sup> W-138, 30 Jan 2007, T. 1210; Richard Higgs, 23 Apr 2007, T. 5000; T-48, 22 June 2007, T. 7150 – 7152; Desimir Garović, 24 Aug 2007, T. 9184 – 9185.

<sup>319</sup> Richard Higgs, 23 Apr 2007, T. 5001. *See also* Vlajko Božić, 17 July 2007, T. 8470.

<sup>320</sup> D366, Expert report on incidents of mortar and aircraft bomb shelling by Desimir Garović, dated 2007 (“Expert report Desimir Garović”), pp 4, 6.

<sup>321</sup> Richard Higgs, 23 Apr 2007, T. 5005.

<sup>322</sup> *Ibid.*, T. 5006.

<sup>323</sup> *Ibid.*, 24 Apr 2007, T. 5077 – 5078.

91. Some witnesses testified that mortars are accurate weapons.<sup>324</sup> According to QMS Higgs, “a proficient detachment with training can easily hit targets, throughout its ranges, to an accuracy of less than 40 metres.”<sup>325</sup> The Defence put to QMS Higgs that the deviation of the first shells in relation to the target could go up to “128 metres in direction and up to 312 metres in distance.”<sup>326</sup> He explained that all mortars have deviations and that, in general, the first mortar shells fired at a target are less accurate than later shells.<sup>327</sup> QMS Higgs, and W-137 and Nedžib Đozo, both BiH police officers, gave evidence as to factors that contribute to the precision of mortars, such as experience of a mortar crew, the experience and skills of the observer, the stability of the base plate, the pre-recording of targets and the weather.<sup>328</sup> When a mortar remains located in one place for an extended period of time, the stability of the base plate increases and, as a result, so does the accuracy of the mortar, unless it was not fired for some time and the weather conditions changed.<sup>329</sup> Maj. Gen. Garović, testified that artillery is often moved, sometimes two or three times a day, because the warring factions try to detect the firing positions and destroy the artillery weapons at those positions.<sup>330</sup> QMS Higgs testified that during the conflict in Sarajevo, mortars remained in the same position for some time in order to achieve higher stability.<sup>331</sup>

(ii) Modified Air Bombs

92. The Trial Chamber heard evidence that among the weapons used for shelling Sarajevo, the VRS used modified air bombs.<sup>332</sup> An air bomb is ordinarily dropped from an aeroplane flying over an area.<sup>333</sup> However, several Prosecution witnesses testified that the VRS attached rockets to air bombs and fired them from launch pads on the ground.<sup>334</sup>

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<sup>324</sup> W-137, 19 Feb 2007, T. 2416 – 2417; Richard Higgs, 23 Apr 2007, T. 5002, 24 Apr 2007, T. 5084 – 5085. Cf. Thorbjorn Overgard, 19 Jan 2007, T. 680 – 681; Stevan Veljović, 30 May 2007, T. 5876 – 5877.

<sup>325</sup> P588, Expert report Richard Higgs, p. 2. See also W-138, 30 Jan 2007, T. 1211.

<sup>326</sup> Richard Higgs, 24 Apr 2007, T. 5084.

<sup>327</sup> *Ibid.*, T. 5084.

<sup>328</sup> W-137, 19 Feb 2007, T. 2417; Richard Higgs, 23 Apr 2007, T. 5003 – 5005, 24 Apr 2007, T. 5075 – 5077, 5084 – 5085, P588, Expert report Richard Higgs, p. 3; Nedžib Đozo, P363, p. 3.

<sup>329</sup> Richard Higgs, 23 Apr 2007, T. 5003 – 5004, 24 Apr 2007, T. 5081 – 5083; Nedžib Đozo, P363, p. 3.

<sup>330</sup> Desimir Garović, 23 Aug 2007, T. 9109. Cf. Richard Higgs, 24 Apr 2007, T. 5077 – 5078.

<sup>331</sup> Richard Higgs, 23 Apr 2007, T. 4997, 5004, 24 Apr 2007, T. 5055 – 5056.

<sup>332</sup> The Trial Chamber notes the term ‘žKREMA’ was also used to describe modified air bombs, W-156, 27 Apr 2007, T. 5330, 5344 – 5345 (closed session). See also Berko Zečević, 20 Apr 2007, T. 4824, 4827, 23 Apr 2007, T. 4982.

<sup>333</sup> Thorbjorn Overgard, 18 Jan 2007, T. 639; Thomas Knustad, 13 Feb 2007, T. 1989; Asam Butt, 15 Feb 2007, T. 2193; Desimir Garović, 23 Aug 2007, T. 9152.

<sup>334</sup> Thorbjorn Overgard, 18 Jan 2007, T. 640; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 715; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 963; David Fraser, 8 Feb 2007, T. 1826; Thomas Knustad, 13 Feb 2007, T. 1989 – 1991; Bogdan Vidović, 14 Feb 2007, T. 2084 – 2085; W-137, 19 Feb 2007, T. 2421 – 2422; Per Anton Brennskag, 8 Mar 2007, T. 3450; Berko Zečević, 20 Apr 2007, T. 4822 – 4823, 4829 – 4830; W-57, P539, p. 3 (under seal). See also P716, Report by Ilidža Brigade, dated 10 June 1995.

93. The explosive charge of the air bombs varied between 100 kilograms and 250 kilograms.<sup>335</sup> Two types of air bombs were used in Sarajevo: the FAB-100 and the FAB-250.<sup>336</sup> The numbers in the name indicate the approximate weight of the bombs.<sup>337</sup> Evidence showed that air bombs were produced in the Pretis Factory, which was used by the SRK during the Indictment period.<sup>338</sup> Berko Zečević, Prosecution expert on modified air bombs, testified that the FAB-100 had TNT as its explosive charge, whereas the typical explosive charge for a FAB-250 was a fuel-air mixture.<sup>339</sup>

94. In his report, Berko Zečević explained that fuel-air explosions cause a lethal wave of overpressure and destroy everything and everyone in the blast.<sup>340</sup> He noted that the effects of a blast wave of a fuel-air explosion could vary, depending on the type of location it hit as well as weather conditions.<sup>341</sup> Also, due to the blast wave, strange phenomena could occur: areas in the middle of a building could stay completely intact because the blast wave hit both sides of the area.<sup>342</sup> As a special characteristic, he mentioned that a bomb with a fuel-air explosive left little to no shrapnel around the point of detonation and left remnants of the casing of the bomb after the explosion.<sup>343</sup> Such a bomb differed from a bomb carrying TNT, which resulted in a lot of shrapnel around the point of detonation but no remnants of the bomb's body.<sup>344</sup> According to Bakir Nakaš, a doctor at the State Hospital at the time, he received patients with the "so-called blast syndrome", which meant that the patient suffered injuries to their internal organs. This type of injury is not necessarily accompanied by shrapnel wounds or blood.<sup>345</sup>

95. The modified air bombs were launched from improvised systems on the back of trucks.<sup>346</sup> Berko Zečević listed the effective range of a FAB-100 as 4,145 to 5,560 metres and the effective range of a FAB-250 as 5,820 to 7,680 metres.<sup>347</sup>

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<sup>335</sup> Berko Zečević, 20 Apr 2007, T. 4820. *See also* Bogdan Vidović, 14 Feb 2007, T. 2085; Asam Butt, 15 Feb 2007, T. 2194.

<sup>336</sup> Berko Zečević, 20 Apr 2007, T. 4820.

<sup>337</sup> *Ibid.*; P586, Expert report by Berko Zečević on modified air bombs, dated February 2007 ("Expert report Berko Zečević"), p. 9.

<sup>338</sup> Berko Zečević, 20 Apr 2007, T. 4822, 4825 – 4826; Milomir Šoja, 24 Apr 2007, T. 5115 – 5116; P714, Requisition of 50 air bombs, dated 4 June 1995; P716, Report by Ilidža Brigade, dated 10 June 1995; P720, Combat report, dated 27 June 1995, p. 2; P721, Order by VRS Main Staff, dated 28 June 1995; P719, Report to SRK Command, dated 23 July 1995; P731, Order by SRK Head of Artillery, dated 10 August 1995.

<sup>339</sup> Berko Zečević, 23 Apr 2007, T. 4942 – 4943.

<sup>340</sup> *Ibid.*, 20 Apr 2007, T. 4821 – 4822, 23 Apr 2007, T. 4943 – 4946; P586, Expert report Berko Zečević, pp 105 - 114.

<sup>341</sup> P586, Expert report Berko Zečević, p. 106.

<sup>342</sup> P586, Expert report Berko Zečević, p. 106.

<sup>343</sup> Berko Zečević, 23 Apr 2007, T. 4821 – 4822, 4946, 4960 – 4961. *See also* W-138, 30 Jan 2007, T. 1210.

<sup>344</sup> Berko Zečević, 23 Apr 2007, T. 4946; P586, Expert report Berko Zečević, pp 107 - 109.

<sup>345</sup> Bakir Nakaš, 29 Jan 2007, T. 1107 – 1108.

<sup>346</sup> Berko Zečević, 20 Apr 2007, T. 4843; P586, Expert report Berko Zečević, p. 101; W-116, P548, p. 3 (under seal). *See also* W-57, 17 Apr 2007, T. 4552, P539, p. 4 (under seal); Milomir Šoja, 25 Apr 2007, T. 5150; Stevan Veljović, 29 May 2007, T. 5801, 31 May 2007, T. 5909 – 5910; P731, Order by SRK Head of Artillery, 10 August 1995.

<sup>347</sup> Berko Zečević, 20 Apr 2007, T. 4837, 4841 – 4842; P586, Expert report Berko Zečević, pp 87 - 88. *See also* Thomas Knustad, 13 Feb 2007, T. 1990.

96. Witnesses described modified air bombs as having some very distinct characteristics. They described seeing a smoke trail from the rockets propelling the air bomb through the air.<sup>348</sup> They recalled that the bombs were slow-moving and made a distinctive, loud sound; some witnesses described hearing a sound which resembled a low-flying aeroplane just before one of these bombs landed.<sup>349</sup> Berko Zečević testified that this sound was caused by air going through the rockets and that this sound could only be heard if one stands “laterally” from the flight path of the bomb.<sup>350</sup> According to Ekrem Suljević, a member of the BiH Counter Sabotage Protection Department (“KDZ”) during the Indictment period, modified air bomb craters were distinct from craters caused by other weaponry; a modified air bomb left a big hole if it hit the ground, and it left “large scale ruin” if it hit a building.<sup>351</sup>

97. Several witnesses testified that once a modified air bomb was launched, its flight path could not be managed; it could only be directed at a general area.<sup>352</sup> As a result, modified air bombs were described as “a highly inaccurate weapon, but nonetheless a weapon with extremely high explosive force.”<sup>353</sup> Lt. Com. Thomas Knustad, a Norwegian UNMO in Sarajevo, estimated that a modified air bomb could deviate from its intended target by as much as one kilometre.<sup>354</sup> Berko Zečević noted that in addition to the inherent inaccuracy of air bombs and unguided missiles, the unprofessional way the rockets were mounted under the air bomb increased the risk of deviation of the bomb while in flight.<sup>355</sup> He testified that modified air bombs were “uncontrollable.”<sup>356</sup> According to Maj. Stevan Veljović, testifying for the Defence, modified air bombs were “completely inaccurate” and “highly destructive”.<sup>357</sup>

98. Several witnesses with military backgrounds testified that modified air bombs were inappropriate weapons and served no military purpose.<sup>358</sup> Lt. Col. Asam Butt, while commenting that in a purely military environment a modified air bomb would have a negligible effect, testified

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<sup>348</sup> Per Anton Brennskag, 8 Mar 2007, T. 3450 – 3451; Thomas Hansen, 2 Apr 2007, T. 4357 – 4358.

<sup>349</sup> Thorbjorn Overgard, 19 Jan 2007, T. 676; Thomas Knustad, 13 Feb 2007, T. 1990 – 1991; Bogdan Vidović, 14 Feb 2007, T. 2084, 2108; W-137, 19 Feb 2007, T. 2423; Džemaludin Luinović, 1 Mar 2007, T. 2965; W-107, 12 Mar 2007, T. 3513, 3516; Anda Gotovac, 3 Apr 2007, T. 4463; Berko Zečević, 23 Apr 2007, T. 4968; David Harland, P1, MT. 26959; W-95, P520, p. 2 (under seal).

<sup>350</sup> Berko Zečević, 23 Apr 2007, T. 4983 – 4984.

<sup>351</sup> Ekrem Suljević, 2 Mar 2007, T. 3096. *See also* W-138, 30 Jan 2007, T. 1209.

<sup>352</sup> Thorbjorn Overgard, 18 Jan 2007, T. 643 – 644, 19 Jan 2007, T. 679 – 680, 695; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 717; David Fraser, 8 Feb 2007, T. 1826; Thomas Knustad, 13 Feb 2007, T. 1990; Asam Butt, 15 Feb 2007, T. 2193 – 2194; W-137, 19 Feb 2007, T. 2422; Thomas Hansen, 2 Apr 2007, T. 4357 – 4358; Ekrem Suljević, P310, p. 3; W-116, P548, p. 3 (under seal).

<sup>353</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 963. *See also* Thomas Knustad, 13 Feb 2007, T. 1990; W-137, 19 Feb 2007, T. 2422; Ekrem Suljević, P 310, p. 3; Nedžib Đozo, P 364, p. 2; W-116, P548, p. 3 (under seal).

<sup>354</sup> Thomas Knustad, 13 Feb 2007, T. 1990.

<sup>355</sup> Berko Zečević, 20 Apr 2007, T. 4830 – 4832, 4849 – 4850.

<sup>356</sup> *Ibid.*, T. 4905. *See also* Stevan Veljović, 31 May 2007, T. 5912.

<sup>357</sup> Stevan Veljović, 31 May 2007, T. 5912.

<sup>358</sup> David Fraser, 8 Feb 2007, T. 1826; Thomas Knustad, 13 Feb 2007, T. 1990, 1992; Asam Butt, 15 Feb 2007, T. 2194; Martin Bell, 26 Apr 2007, T. 5262 – 5263.

that the weapon could be used to hit buildings in populated areas, giving some “kind of profit” to the side using the weapon.<sup>359</sup> Maj. Thorbjorn Overgard, a Norwegian UNMO, and Brig. Gen. Fraser could not think of any situation in which a commander of an army would choose to use a modified air bomb.<sup>360</sup> Similarly, according to Lt. Com. Knustad, any forces deployed around Sarajevo would have known that the use of modified air bombs in such a densely-populated city, full of civilian houses very close to each other, would result in a lot of destruction and damage to the civilian population and infrastructure.<sup>361</sup> Lt. Com. Knustad was of the opinion that modified air bombs were designed to create fear.<sup>362</sup>

99. Maj. Gen. Garović contested the evidence on modified air bombs and, in particular, the evidence on technical aspects as provided by Berko Zečević. He asserted that the JNA possessed FAB-250s and FAB-100s, but only filled with conventional TNT explosives.<sup>363</sup> Further, he testified that fuel-air explosives did not cause casualties in the manner described in Berko Zečević’s report. Rather, he said, fuel-air explosives were designed to kill personnel, while causing very little damage to structures.<sup>364</sup> If an air bomb were to hit a city, or a market, he would expect “hundreds of casualties, even up to a thousand people.”<sup>365</sup> Similarly, another Defence witness who testified about modified air bombs, Capt. 1<sup>st</sup> Class Ljuban Mrković, said that the destructive power of an air bomb was such that “within a radius of 150 metres nothing would remain standing.”<sup>366</sup> According to Maj. Gen. Garović, several witnesses claimed to have been in the epicentre of the explosion without suffering any consequence, which he deemed impossible.<sup>367</sup> In his opinion, persons exposed to the explosion of FAB-250s, filled with conventional TNT or fuel-air explosives, within the radius of 150 metres outside a reinforced concrete shelter, would suffer fatal injuries.<sup>368</sup> He concluded that despite material evidence found on the sites of shelling incidents, “such as parts of rocket engines and other traces, the manner in which the explosion occurred and the marks left on the objects, cannot be accepted as FAB-250 explosion sites”, and noted that rocket motors “can be placed at a location with a purpose.”<sup>369</sup> In relation to the absence of shrapnel, he commented that when there

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<sup>359</sup> Asam Butt, 15 Feb 2007, T. 2194.

<sup>360</sup> Thorbjorn Overgard, 18 Jan 2007, T. 643 – 644, 19 Jan 2007, T. 696; David Fraser, 8 Feb 2007, T. 1826. *See also*, W-57, P539, p. 3 (under seal).

<sup>361</sup> Thomas Knustad, 13 Feb 2007, T. 1991 – 1992. *See also*, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 963 – 964; Asam Butt, 15 Feb 2007, T. 2194; Sanjin Hasanefendić, 16 Feb 2007, T. 2326.

<sup>362</sup> Thomas Knustad, 13 Feb 2007, T. 1990. *See also*, Berko Zečević, 20 Apr 2007, T. 4904; W-57, P539, p. 3 (under seal).

<sup>363</sup> D366, Expert report Desimir Garović, p. 16.

<sup>364</sup> Desimir Garović, 23 Aug 2007, T. 9152 – 9153.

<sup>365</sup> *Ibid.*, T. 9153.

<sup>366</sup> Ljuban Mrković, 13 July 2007, T. 8233. The Trial Chamber notes that the witness testified that before the conflict, he held the rank of Captain 1<sup>st</sup> Class in the JNA. There is no evidence as to what rank he held in the SRK during the conflict.

<sup>367</sup> Desimir Garović, 23 Aug 2007, T. 9154; D366, Expert report Desimir Garović, p. 16.

<sup>368</sup> *Ibid.*

<sup>369</sup> D366, Expert report Desimir Garović, p. 16.

were no shrapnel marks, that meant that an explosive device without a case exploded and that “a certain quantity of classical explosive detonated in a certain way can create an explosion that causes destruction but does not generate fragments that would kill personnel.”<sup>370</sup>

100. When asked to comment on the alleged inaccuracy of modified air bombs, Maj. Gen. Garović testified that, if the evidence of Berko Zečević were to be accepted, “taking into account the deployment of the forces on both sides, one could give no guarantees and one could not even begin to guess what site such a projectile could hit.”<sup>371</sup>

101. The Trial Chamber notes that, in his report, Maj. Gen. Garović referred to publications pertaining to FAB-250 air bombs but he did not specify exactly what publications provided the basis for his findings. An examination of his sources does not enable the Trial Chamber to determine what section pertains to air bombs and fuel-air explosives. His evidence as to the result of an explosion of an air bomb with a fuel-air explosive is contradicted by the evidence of witnesses and documentary evidence discussed above.<sup>372</sup>

a. The Possession of Air Bombs by the VRS and the ABiH

102. When asked about the availability of air bombs and the use of modified air bombs by the SRK, a number of witnesses testified that they had never heard about modified air bombs or that they did not know whether air bombs were launched from the ground.<sup>373</sup> However, there is extensive documentary evidence showing that the SRK requested and received “100/105 kilogram”, 150 kilogram and 250 kilogram air bombs in 1994 and 1995.<sup>374</sup> Evidence also shows that the SRK possessed and constructed modified air bombs and air bomb launchers.<sup>375</sup> For example, on 10 June

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<sup>370</sup> Desimir Garovic, 23 Aug 2007, T. 9155.

<sup>371</sup> *Ibid.*, T. 9151.

<sup>372</sup> For the documentary evidence, *see also supra*, Section II.B.2.(b)(ii) Modified Air Bombs; *infra*, II.E.6. Shelling Incidents Representative of the “Campaign”.

<sup>373</sup> Luka Dragičević, 27 Mar 2007, T. 4069, 4071 – 4075; Siniša Krsman, 6 June 2007, T. 6278 – 6280, 6284 – 6286; T-53, 11 June 2007, T. 6405 – 6407, 6457 – 6459; Zoran Trapara, 26 June 2007, T. 7343 – 7345; Milan Mandić, 4 July 2007, T. 7596 – 7599, 7615 – 7616; Borislav Kovačević, 10 July 2007, T. 7939; Ljuban Mrković, 13 July 2007, T. 8222 – 8225; Miroslav Pejić, 16 July 2007, T. 8387; Vlajko Božić, 17 July 2007, T. 8472 – 8476.

<sup>374</sup> P765, Report on expenditure of ammunition, 11 January 1995 (under seal); P790, Report by Milivoj Šolar to VRS, dated 12 May 1995; P714, Requisition of 50 air bombs, 4 June 1995; P761, Order to deliver air bombs, dated 17 June 1995; P767, Request for ammunition, dated 22 June 1995; P720, Combat report, 27 June 1995; P721, Order by VRS Main Staff, 28 June 1995; P776, Request for ammunition, 1 July 1995; P907, Order by SRK commander, dated 11 July 1995; P722, Request by the SRK Commander, dated 15 July 1995; P724, Order by VRS Main Staff, dated 20 July 1995; P727, Request by the 3<sup>rd</sup> Sarajevo Infantry Brigade, dated 25 July 1995; P729, Request by the SRK Commander, 27 July 1995; P768, Order issuing SRK units, dated 4 August 1995; P936, Report of the receipt of material supplies and funds, dated 5 August 1995; P732, Order by the SRK command, dated 27 August 1995. *See also* David Harland, P1, MT. 26959; David Fraser, 8 Feb 2007, T. 1825; Asam Butt, 15 Feb 2007, T. 2193.

<sup>375</sup> Milomir Šoja, 25 Apr 2007, T. 5121 – 5127; P506, Text area cut-out of map; P508, Request by SRK artillery commander, dated 8 June 1995; P509, Report by Igmán Brigade, dated 9 June 1995; P510, Report by First Romanija Brigade, dated 10 June 1995; P511, Report by Ilidža Brigade, dated 12 June 1995. P508 to P511 were shown to Vahid Karavelić, 27 Mar 2007, T. 4119. P716, Report by Ilidža Brigade, dated 10 June 1995; P512, Report of 3<sup>rd</sup> Sarajevo



1995, the Ilidža Brigade reported to the SRK command that they had provided all means for the production of air bombs and requested the SRK command to provide them with 90 engines for air bombs.<sup>376</sup> On 11 July 1995, several brigades were ordered to issue air bombs and a certain Maj. Simić was ordered to request another two air bombs from the Pretis Factory and prepare a deployment plan for an air bomb launcher.<sup>377</sup> Some Defence witnesses testified that they had heard about attempts to use air bombs and that SRK soldiers were killed during these attempts.<sup>378</sup>

103. The Defence alluded to the possibility of the possession of modified air bombs by the ABiH. Maj. Veljović testified that intelligence organs informed him during the war, especially in 1994 and 1995, that the ABiH imported or manufactured air bombs. However, he never saw documents relating to this.<sup>379</sup> The Defence produced a transcript of the 291<sup>st</sup> session of the Presidency of the BiH recording a debate concerning an expected delivery of 800 aerial bombs by 26 aircraft. The transcript also documents President Alija Izetbegović saying that these aircraft had not yet arrived.<sup>380</sup> David Harland did not confirm the Defence suggestion put to him that the ABiH procured 800 air bombs.<sup>381</sup>

104. Several other witnesses testified that the ABiH did not have air bombs or air bomb launchers.<sup>382</sup> Furthermore, Maj. Gen. Karavelić said that neither the ABiH nor the 1<sup>st</sup> Corps had any other weapons as powerful or of the same calibre as modified air bombs.<sup>383</sup> The legend to a map used by the SRK indicated that the SRK had two air bomb launchers whereas the ABiH did not have any.<sup>384</sup>

105. Both Berko Zečević and W-137, a member of the BiH KDZ during the Indictment period, testified that air bombs would have been useless because the ABiH did not have the necessary components to modify them. Moreover, electricity, fuel and proper machinery were lacking.<sup>385</sup> Berko Zečević further testified that it was not possible to import the components, in particular, the

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Infantry Brigade, dated 14 June 1995; P663, Report from SRK Command, dated 15 June 1995; P907, Order by SRK commander, dated 11 July 1995; P719, Report to SRK command, 23 July 1995; P731, Order by SRK Head of Artillery, 10 August 1995; P803, Request by 1<sup>st</sup> Sarajevo Mechanised Brigade, dated 20 August 1995; P804, Order to deliver air bomb launcher, dated 22 August 1995.

<sup>376</sup> P716, Report by Ilidža Brigade, 10 June 1995.

<sup>377</sup> P907, Order by SRK commander, 11 July 1995.

<sup>378</sup> Stevan Veljović, 29 May 2007, T. 5801, 31 May 2007, T. 5909 – 5910; Ljuban Mrković, 13 July 2007, T. 8223 – 8224. *See also* Milomir Šoja, 25 Apr 2007, T. 5121 – 5123; T-2, 20 June 2007, T. 6950.

<sup>379</sup> Stevan Veljović, 31 May 2007, T. 5916 – 5917. *See also* Goran Kovačević, 12 June 2007, T. 6538 – 6539.

<sup>380</sup> D305, Transcript of the 291<sup>st</sup> session of the BiH Presidency, dated 10 August 1995, pp 5, 7.

<sup>381</sup> David Harland, 16 Jan 2007, T. 440.

<sup>382</sup> Thorbjorn Overgard, 18 Jan 2007, T. 647; David Fraser, 8 Feb 2007, T. 1826 – 1827; Asam Butt, 15 Feb 2007, T. 2195, 2217 – 2218; W-137, 19 Feb 2007, T. 2476 – 2477, 20 Feb 2007, T. 2517; Berko Zečević, 20 Apr 2007, T. 4851 – 4852, 4898 – 4899; Vahid Karavelić, 27 Mar 2007, T. 4109 – 4111; Milomir Šoja, 25 Apr 2007, T. 5126; Martin Bell, 26 Apr 2007, T. 5263; John Jordan, P267, p. 8.

<sup>383</sup> Vahid Karavelić, 27 Mar 2007, T. 4109 – 4111, P493, p. 7.

<sup>384</sup> P506, Text area cut-out of map.

<sup>385</sup> W-137, 19 Feb 2007, T. 2477; Berko Zečević, 20 Apr 2007, T. 4851 – 4852, 4896 – 4898.

rocket motors and the fuel-air mixture, into Bosnia and Herzegovina, and that it was not possible to transport air bombs and launchers through the tunnel.<sup>386</sup> While he confirmed that there was a fuse factory in Bugojno, Croatia, which was under the control of the ABiH, Berko Zečević testified that even if the bombs and rockets were available or purchased from Serbia and Croatia, as suggested by the Defence, and if a launcher got to Sarajevo, the fuel-air explosive would still not be available.<sup>387</sup>

106. W-137 testified that unexploded modified air bombs were totally unusable and could not be re-launched. Rather, the bombs were disarmed in order to retrieve at least “some crumbs of explosive”.<sup>388</sup> This was confirmed by Berko Zečević.<sup>389</sup> Out of every kilogram of explosive taken from such a weapon, his unit was able to manufacture ten rifle grenades but not an air bomb.<sup>390</sup> The ABiH also had surrogate explosives, but Berko Zečević testified that the supply of explosives to the territory under the control of the ABiH remained problematic in 1994.<sup>391</sup>

### Findings

107. The Trial Chamber finds that air bombs were modified in order to enable their launch from the ground. It is also established that some of these modified air bombs carried fuel-air explosives, rather than only TNT. The Trial Chamber bases its finding on the evidence of expert witness Berko Zečević, whose evidence on air bombs and fuel-air explosives and their effects was supported by UNMOs, BiH police investigation reports and Bakir Nakaš. The Trial Chamber further finds that the SRK possessed such modified air bombs and launchers in 1994 and 1995. The Trial Chamber bases this finding on the extensive documentary evidence and the testimony of witness Maj. Veljović. The Trial Chamber is not convinced that the ABiH also had modified air bombs during the Indictment period. The Defence suggestion to this effect was consistently rejected by all Prosecution witnesses who were asked about it. They said that the ABiH could neither produce air bombs, nor transport them through the tunnel and did not possess any rockets to attach them to air bombs. The evidence of Defence witnesses Maj. Veljović and Goran Kovačević, a soldier in the SRK, does not indicate that the ABiH was in possession of modified air bombs. The Trial Chamber, therefore, finds that the ABiH did not possess modified air bombs.

108. Although this finding may be considered to be sufficient to dispose of the incidents of shelling involving the use of modified air bombs, which will be discussed in Section II.E.6 below,

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<sup>386</sup> Berko Zečević, 20 Apr 2007, T. 4851 – 4853, 4897 – 4898.

<sup>387</sup> *Ibid.*, T. 4897 – 4898.

<sup>388</sup> W-137, 19 Feb 2007, T. 2480 – 2481.

<sup>389</sup> Berko Zečević, 20 Apr 2007, T. 4895 – 4896, D173, p. 10.

<sup>390</sup> *Ibid.*, T. 4895 – 4896, 4900 – 4901, D173, p. 10.

<sup>391</sup> *Ibid.*, T. 4900. *See also* D174, Order by Enver Hadžihanović, dated 3 November 1994.

the Trial Chamber will nonetheless make a determination about the responsibility for those incidents on the basis of all the evidence.

(iii) Snipers and Sniper Rifles

109. Lt. Van der Weijden testified for the Prosecution as an expert on sniping. He explained in his report that snipers are expert marksmen who are adept at detecting, observing, stalking and neutralising key enemy personnel or equipment.<sup>392</sup> Essential material for a sniper is a precision rifle with an optical scope.<sup>393</sup> Brig. Gen. Fraser said the following about the qualities of a sniper:

“A very specialised, highly skilled shooter who has an excellent field-craft in the ability to move in and out of places without being seen. And his targets are of a particularly high value. And we want to use him to capitalise on his marksmanship and his field-craft to get in and out of positions”.<sup>394</sup>

110. According to Lt. Van der Weijden, shooting ranges in built-up areas were at an average of 75 metres and long shots were possible only from dominating positions with an overview from above.<sup>395</sup> Snipers had a choice of weapons and used a heavier calibre for longer ranges.<sup>396</sup> Gen. Smith testified that a sniper generally uses a rifle with a range of about 400 to 600 metres.<sup>397</sup> In an overview of available weapons, provided by Lt. Van der Weijden, the M70 rifle is listed as having the lowest maximum effective range: 250 to 400 metres.<sup>398</sup> During cross-examination, he dismissed the possibility that the M70 rifle was the weapon most likely used for all incidents listed in the schedules to the Indictment; he maintained that position because of the M70's lack of accuracy both at distances over 200 metres and, when used in its automatic mode, in hitting targets over 50 metres away from the shooter.<sup>399</sup> Lt. Van der Weijden's report shows that the highest maximum effective range for rifles, 800 metres, could be achieved with the Zastava M76 and the SVD Dragunov or its Yugoslavian copy M91.<sup>400</sup> For these two weapons, he noted that, in normal circumstances, the maximum effective range was “more towards 600 m[etres].”<sup>401</sup> He also listed three machine guns, the M53, the M84 and the M87, which were used by the VRS, with a maximum effective range between 600 and 2,000 metres.<sup>402</sup> Col. Stamenov, appearing as an expert on sniping for the

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<sup>392</sup> P514, Expert report Patrick van der Weijden, p. 4.

<sup>393</sup> P514, Expert report Patrick van der Weijden, p. 5. *See also* W-46, 16 Mar 2007, T. 3912 (closed session). Brig. Gen. Fraser gave evidence that to rifles used by snipers are normally referred to as “sniper rifles”, David Fraser, 8 Feb 2007, T. 1859; *see also* W-138, 1 Feb 2007, T. 1406.

<sup>394</sup> David Fraser, 8 Feb 2007, T. 1859.

<sup>395</sup> Patrick van der Weijden, 29 Mar 2007, T. 4294 – 4295; P514, Expert report Patrick van der Weijden, p. 6.

<sup>396</sup> David Fraser, 8 Feb 2007, T. 1860.

<sup>397</sup> Rupert Smith, 7 Mar 2007, T. 3318 – 3319. *See also* W-46, 16 Mar 2007, T. 3912 (closed session).

<sup>398</sup> P514, Expert report Patrick van der Weijden, p. 58.

<sup>399</sup> Patrick van der Weijden, 29 Mar 2007, T. 4311 – 4318.

<sup>400</sup> P514, Expert report Patrick van der Weijden, p. 58. *See also* Ivan Stamenov, 22 Aug 2007, T. 9023.

<sup>401</sup> P514, Expert report Patrick van der Weijden, p. 58.

<sup>402</sup> P514, Expert report Patrick van der Weijden, p. 58.

Defence, confirmed the firing range for many of the guns discussed by Lt. Van der Weijden.<sup>403</sup> Two Defence witnesses put the maximum range at which one can use automatic weapons for precise targeting at between 100 and 300 metres.<sup>404</sup> When not used for precise targeting, the reported ranges were between 1,000 and 2,000 metres.<sup>405</sup> The Trial Chamber notes that both these witnesses were SRK soldiers and did not testify to possessing special knowledge in relation to sniping.

### 3. Areas of Responsibility and Confrontation Lines – SRK and 1<sup>st</sup> Corps of the ABiH

111. The Trial Chamber heard several witnesses and received documentary evidence, such as military maps from both Parties, pertaining to the areas of responsibility of the SRK and the ABiH. The Trial Chamber notes that, with the exception of the confrontation line at Špicasta Stijena, the location of the confrontation lines in and around Sarajevo and the areas of responsibility of the two armies were largely uncontested. In this respect, it is also noted that the Defence, in cross-examination and during the presentation of its case, led evidence mostly pertaining to the hills and elevations that were within the confrontation lines.

112. Overall, the SRK was responsible for a triangular zone in Central Bosnia around Sarajevo between Višegrad, Kladanj and Igman.<sup>406</sup> The area of responsibility of the SRK included the following places: the south of Sarajevo, including Lukavica, Vraca, Grbavica, Zlatište, parts of Dobrinja and the area up to Mount Trebević,<sup>407</sup> the hills south and south-west of Sarajevo,<sup>408</sup> the Rajlovac area in the north-west of Sarajevo towards Mrkovići, including Špicasta Stijena, also known as Sharpstone,<sup>409</sup> the north-east of Sarajevo<sup>410</sup> and the area of Pale.<sup>411</sup> According to Maj. Gen. Karavelić, the SRK had four main artillery positions in the hills surrounding Sarajevo from which they could reach any part of town.<sup>412</sup>

<sup>403</sup> D360, Expert report Ivan Stamenov, pp 5 - 10. The Trial Chamber notes that in his report, he did not list the effective range for the M76 and the Dragunov sniping rifles.

<sup>404</sup> T-48, 22 June 2007, T. 7170; Milan Mandić, 4 July 2007, T. 7603.

<sup>405</sup> T-48, 22 June 2007, T. 7170; Milan Mandić, 4 July 2007, T. 7603.

<sup>406</sup> W-156, P625, p. 8 (under seal); D59, Military map of Sarajevo area.

<sup>407</sup> Stevan Veljović, 30 May 2007, T. 5819 – 5821; Milorad Katić, 1 June 2007, T. 6032, 4 June 2007, T. 6071; Zoran Trapara, 26 June 2007, T. 7321 – 7322; P740, Map marked by Stevan Veljović; P789, Cut-out of military map of Sarajevo; P194, Military map of Sarajevo; D59, Military map of Sarajevo area.

<sup>408</sup> T-39, 21 June 2007, T. 6996 – 6997; P588, Expert report Richard Higgs, 28 August 1995, p. 14; P789, Cut-out of military map of Sarajevo; P194, Military map of Sarajevo; D59, Military map of Sarajevo area.

<sup>409</sup> Siniša Krsman, 6 June 2007, T. 6294 – 6295; Goran Kovačević, 13 June 2007, T. 6592 – 6593; T-9, 16 July 2007, T. 8347, 8359 – 8360; D316, Map marked by T-9; P788, Military map of Sarajevo; D59, Military map of Sarajevo area; D293, Map marked by T-37 (under seal).

<sup>410</sup> Stevan Veljović, 29 May 2007, T. 5744; Borislav Kovačević, 10 July 2007, T. 7909 – 7910, 7931, 7962; P788, Military map of Sarajevo; D59, Military map of Sarajevo area; P194, Military map of Sarajevo.

<sup>411</sup> P788, Military map of Sarajevo; D59, Military map of Sarajevo area.

<sup>412</sup> Vahid Karavelić, 27 Mar 2007, T. 4101 – 4105, 4108 – 4109; P502, Map of Sarajevo marked by Vahid Karavelić; *see also* P802, Proposal by SRK Deputy Commander, 10 February 1994, p. 2; P504, Map of Sarajevo marked by Vahid Karavelić; D59, Military map of the area of Sarajevo; P788, Military map of Sarajevo; P789, Military map of Sarajevo.

113. The ABiH held the eastern part of the city of Sarajevo, including very densely-populated parts of Sarajevo, such as the area of Stari Grad and Centar, part of Grbavica,<sup>413</sup> and the south-western part of Sarajevo,<sup>414</sup> Hrasnica, Sokolović Kolonija, and Butmir,<sup>415</sup> and the hills in the north of Sarajevo.<sup>416</sup>

(a) Central Parts of Sarajevo: Grbavica, Marindvor, Hrasno, Novo Sarajevo and Elevations

114. Most of Grbavica was controlled by the SRK, but was surrounded on three sides by the ABiH: Hrasno, part of Hrasno Hill in the West, the northern bank of the Miljacka River and Debelo Brdo in the East were held by the ABiH.<sup>417</sup> In the Grbavica area, the Miljacka River constituted the northern confrontation line, with the ABiH north of the river and the SRK south of the river.<sup>418</sup> According to Maj. Veljović, the positions in Grbavica remained more or less unchanged during the war.<sup>419</sup>

115. North of that area, Marindvor was ABiH-held territory.<sup>420</sup> The separation line along the Miljacka River was about 200 to 300 metres from the Holiday Inn, on the street named Zmaja od Bosne, also known as ‘Sniper Alley’.<sup>421</sup> The stretch of land opposite Grbavica, and between the confrontation line and the Zmaja od Bosne, was quite heavily built and was controlled by the ABiH.<sup>422</sup>

116. On the eastern confrontation line, in Grbavica, the area from Vrbanja Bridge towards the Jewish cemetery up to the foot of Debelo Brdo was held by the SRK.<sup>423</sup> The Jewish Cemetery is

<sup>413</sup> W-12, 1 Mar 2007, T. 3042, 2 Mar 2007, T. 3065; P194, Military map of Sarajevo; D46, Map marked by David Fraser; P500, Map marked by Vahid Karavelić. *See also* P588, Expert report Richard Higgs, 28 August 1995, p. 14.

<sup>414</sup> Ismet Hadžić, 5 Mar 2007, T. 3193 – 3194, 3196; P194, Military map of Sarajevo.

<sup>415</sup> W-57, 17 Apr 2007, T. 4573 – 4574; T-2, 20 June 2007, T. 6959. *See also infra*, paras 899-900, 904.

<sup>416</sup> P194, Military map of Sarajevo; D59, Military map of Sarajevo area.

<sup>417</sup> David Harland, 15 Jan 2007, T. 369 – 370, P2, MT. 28631; W-12, 2 Mar 2007, T. 3066; Milan Mandilović, 17 Jan 2007, T. 564; Slavica Livnjak, 23 Jan 2007, T. 860, 872; Luka Dragičević, 26 Mar 2007, T. 4012; Vaso Elez, 7 June 2007, T. 6324 – 6325; Mirza Sabljica, 19 Apr 2007, T. 4742, 4743; T-41, 18 July 2007, T. 8515 – 8516; D177, Map marked by Milomir Šoja; D197, Map marked by Milorad Katić; D200, Map of Sarajevo marked by Milorad Katić; D215, Map marked by Vaso Elez; D264, Map marked by Radomir Visnjić. *See also* Louis Fortin, 17 Jan 2007, T. 518.

<sup>418</sup> David Fraser, 7 Feb 2007, T. 1774 – 1775, 8 Feb 2007, 1855; Slavica Livnjak, 23 Jan 2007, T. 860; W-54, 12 Feb 2007, T. 1967 – 1968; Vaso Elez, 6 June 2007, T. 6309, T. 6312 – 6313, 7 June 2007, T. 6352; W-118, 6 Feb 2007, T. 1636; Milorad Katić, 5 June 2007, T. 6157 – 6158; W-35, 22 Jan 2007, T. 831 – 832; David Harland, P2, MT. 28631; D215, Map marked by Vaso Elez; D218, Photograph marked by Vaso Elez; P201, Photograph marked by David Fraser; P223, Photograph marked by Asam Butt.

<sup>419</sup> Stevan Veljović, 29 May 2007, T. 5734.

<sup>420</sup> W-54, 12 Feb 2007, T. 1962 – 1963, 1970 – 1971, Asam Butt, 15 Feb 2007, T. 2251 – 2252; Afeza Karačić, 30 Jan 2007, T. 1193; Milorad Katić, 4 June 2007, T. 6092; T-61, 9 July 2007, T. 7838; D68, Photograph marked by Asam Butt; D49, Map marked by David Fraser; D79, Photograph marked by John Jordan; D218, Photograph marked by Vaso Elez.

<sup>421</sup> Alen Gičević, 5 Feb 2007, T. 1558 – 1559, 1561, 1569; P163, p. 2; P165, Map marked by Alen Gičević; P166, Photograph marked by Alen Gičević. *Cf.* Slavica Livnjak, 23 Jan 2007, T. 860; P95, p. 3. *See also infra*, Section II.E.3.(a)(i) Public Transport and II.E.3.(a)(ii) Marindvor and Zmaja od Bosne, for more information on ‘Sniper Alley’.

<sup>422</sup> David Fraser, 8 Feb 2007, T. 1867; D49, Map marked by David Fraser.

<sup>423</sup> Stevan Veljović, 30 May 2007, T. 5858, 5860 – 5861; Vaso Elez, 6 June 2007, T. 6306, 6311–6312; D218, Photograph marked by Vaso Elez.

located on the slopes of Debelo Brdo, towards the south-east of Grbavica.<sup>424</sup> Witnesses testified that the area of the Jewish Cemetery was held by the SRK throughout the war.<sup>425</sup> However, Maj. Veljović and Sanjin Hasanefendić, a BiH police officer, testified that the SRK did not hold the Jewish Cemetery completely, but only the part facing Grbavica.<sup>426</sup> T-7, who lived inside the confrontation lines before the Indictment period, testified that both armies' trenches were about "one block of flats or one wall" apart.<sup>427</sup>

(b) South-East: Debelo Brdo, Zlatište, Čolina Kapa, Mount Trebević

117. The hills Debelo Brdo and Čolina Kapa were at the foot of Mount Trebević.<sup>428</sup> Čolina Kapa was one of the hills or ridges belonging to Mount Trebević.<sup>429</sup> Zlatište Hill was to the west of Čolina Kapa and overlooked Debelo Brdo.<sup>430</sup>

118. Debelo Brdo, from where Grbavica and the Jewish Cemetery were visible, was held by the ABiH.<sup>431</sup> Čolina Kapa was held by the ABiH.<sup>432</sup> Both Debelo Brdo and Čolina Kapa overlooked Sarajevo.<sup>433</sup> Debelo Brdo dominated Marindvor, Grbavica and the Jewish Cemetery and provided a clear view of, for example, Zmaja od Bosne.<sup>434</sup> The SRK held Mount Trebević and Vidikovac, at the peak of Mount Trebević.<sup>435</sup> The SRK held the area south of Debelo Brdo and the Zlatište Hill,

<sup>424</sup> Ghulam Mohammed Mohatarem, 19 Jan 2007, T. 747.

<sup>425</sup> Milan Mandilović, 17 Jan 2007, T. 564; Afeza Karačić, 29 Jan 2007, T. 1184 – 1185.

<sup>426</sup> Stevan Veljović, 30 May 2007, T. 5823; Sanjin Hasanefendić, 16 Feb 2007, T. 2382 – 2385. *See also* Mirza Sabljica, 19 Apr 2007, T. 4743 – 4744; Vaso Elez, 6 June 2007, T. 6306, 7 June 2007, T. 6324 – 6325.

<sup>427</sup> T-7, 18 June 2007, T. 6801 – 6802.

<sup>428</sup> W-12, 2 Mar 2007, T. 3066; Predrag Trapara, 27 June 2007, T. 7398; P752, Photograph of Sarajevo overlooking Debelo Brdo; P791, Map marked by Siniša Krman.

<sup>429</sup> Bakir Nakaš, 29 Jan 2007, T. 1126.

<sup>430</sup> Stevan Veljović, 24 May 2007, T. 5726, 30 May 2007, T. 5862; D328, Photograph marked by T-41; D208, Photograph marked by Dragan Simić; D310, Map marked by Momčilo Gojković.

<sup>431</sup> W-12, 1 Mar 2007, T. 3042; Bakir Nakaš, 29 Jan 2007, T. 1125 – 1126; David Fraser, 7 Feb 2007, T. 1767, 8 Feb, T. 1846–1847; Asam Butt, 15 Feb 2007, T. 2234; Mirza Sabljica, 19 Apr 2007, T. 4739; Stevan Veljović, 30 May 2007, T. 5852, 5858; *See also* Stevan Veljović, 24 May 2007, T. 5726, 29 May 2007, T. 5734; Vaso Elez, 7 June 2007, T. 6325; Milorad Katić, 1 June 2007, T. 6011, 4 June 2007, T. 6071–6072, 6074–6075; Dragan Simić, 5 June 2007, T. 6185; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 746; Zoran Trapara, 26 June 2006, T. 7301–7302; T-41, 18 July 2007, T. 8516; D328, Photograph marked by T-41; P209, Map marked by Thomas Knustad; P742, Map marked by Stevan Veljović.

<sup>432</sup> W-12, 1 Mar 2007, T. 3039, 3042; Huso Palo, 5 Feb 2007, T. 1545–1546; Thomas Knustad, 13 Feb 2007, T. 2025 – 2026; Vahid Karavelić, 28 Mar 2007, T. 4228; Zoran Trapara, 26 June 2006, T. 7301, 7302; Predrag Trapara, 27 June 2007, T. 7373 – 7374. *Cf.* Mirza Sabljica, 19 Apr 2007, T. 4739; Kemal Bučo, 2 Feb 2007, T. 1509 – 1510.

<sup>433</sup> W-138, 1 Feb 2007, T. 1432–1433; Thomas Knustad, 13 Feb 2007, T. 2025 – 2026.

<sup>434</sup> David Fraser, 8 Feb, T. 1847; W-138, 1 Feb 2007, T. 1431; Sanjin Hasanefendić, 16 Feb 2007, T. 2384; *See also* Sanjin Hasanefendić 16 Feb 2007, T. 2386 – 2387; Milan Mandilović, 17 Jan 2007, T. 604 – 605; Stevan Veljović, 30 May 2007, T. 5863; Milorad Katić, 4 June 2007, T. 6075; D70, Aerial photograph marked by Sanjin Hasanefendić showing Debelo Brdo, Hrasno and Jewish Cemetery on 28 February 2007 ("Photograph marked by Sanjin Hasanefendić).

<sup>435</sup> Stevan Veljović, 24 May 2007, T. 5720, 5725; Zoran Trapara, 26 June 2006, T. 7301–7302; Andrey Demurenko, 5 July 2007, T. 7728 – 7729; Predrag Trapara, 27 June 2007, T. 7373; W-12, 2 Mar 2007, T. 3068 – 3069.

overlooking the city.<sup>436</sup> The stretch of land between Zlatište and Debelo Brdo was “a buffer zone, a no man’s land”.<sup>437</sup>

(c) South-West: Dobrinja, Nedarići, Mojmiilo Hill, Ilidža, Lukavica, Hrasnica, Sokolovići, Mount Igman

119. The settlement of Dobrinja was split between the warring factions.<sup>438</sup> Ismet Hadžić testified that the settlement had 45,000 inhabitants before the war and that the Bosnian Muslim side had 27,000 inhabitants after it was split.<sup>439</sup> There were two confrontation lines, one running through Dobrinja V and the airport settlement towards Sarajevo Airport, and another one in the eastern part between Dobrinja IV and Oslobođenja.<sup>440</sup> According to Ismet Hadžić, the separation line in the airport settlement was “a road five wide.”<sup>441</sup> In Dobrinja IV, the separation line was the Indira Gandhi Street. SRK soldiers were in high-rise buildings and opposite the Orthodox Church that was on SRK-held territory.<sup>442</sup> Dobrinja II and Dobrinja III were controlled by the ABiH.<sup>443</sup> The ABiH Dobrinja Brigade consisted of approximately 2,200 troops.<sup>444</sup>

120. Ismet Hadžić testified that Dobrinja was encircled by the Bosnian Serb forces, and that the SRK controlled 80 per cent of all movement in Dobrinja.<sup>445</sup> However, the complete encirclement of Dobrinja is not supported by any other evidence. Ismet Hadžić testified that inside the Dobrinja settlement communication trenches for civilian purposes linked various parts of the settlement but that there were no barracks or places where battalions or companies were billeted.<sup>446</sup> He denied that there were firing positions in civilian structures but testified that only abandoned and burned

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<sup>436</sup> David Fraser, 7 Feb 2007, T. 1767, 8 Feb, T. 1846 – 1848; Predrag Trapara, 27 June 2007, T. 7374; Stevan Veljović, 30 May 2007, T. 5852, 5858; Milorad Katić, 4 June 2007, T. 6074 – 6075, T. 6079–6080, 1 June 2007, T. 6011; Radomir Visnjić, 25 June 2007, T. 7235 – 7236; P209, Map marked by Thomas Knustad; D208, Photograph marked by Dragan Simić.

<sup>437</sup> Dragan Simić, 5 June 2007, T. 6185; D210, Photograph marked by Dragan Simić.

<sup>438</sup> W-28, 22 Feb 2007, T. 2762; Slavica Livnjak, 23 Jan 2007, T. 873.

<sup>439</sup> Ismet Hadžić, 5 Mar 2007, T. 3189, 6 Mar 2007, T. 3212. The Trial Chamber notes that, although Ismet Hadžić was commander of the ABiH 155<sup>th</sup> Brigade during the Indictment period, it received no information from the parties about his rank and will therefore refer to him by name, omitting his rank hereinafter.

<sup>440</sup> Ismet Hadžić, 6 Mar 2007, T. 3208 – 3209; Slavica Livnjak, 23 Jan 2007, T. 873; Enes Jašarević, 1 Mar 2007, T. 3020; Stevan Veljović, 29 May 2007, T. 5734; Luka Jović, 18 June 2007, T. 6732 – 6733; W-138, 1 Feb 2007, T. 1412 – 1414; David Harland, P2, MT. 28631; P328, Map marked by Ismet Hadžić; P330, Map marked by Ismet Hadžić; D276, Map marked by Predrag Trapara; D283, Map marked by Rade Ivanović; *see also* Nedeljko Učur, 26 July 2007, T. 8911 – 8912; D323, Photograph of apartment building in Dobrinja.

<sup>441</sup> Ismet Hadžić, 6 Mar 2007, T. 3213.

<sup>442</sup> Nedeljko Učur, 26 July 2007, T. 8919 – 8923; D235, Map marked by Luka Jović. *See also* Luka Jović, 14 June 2007, T. 6705, June 2007, T. 6730 – 6731; W-138, 1 Feb 2007, T. 1412; D237, Diagram marked by Luka Jović.

<sup>443</sup> Ismet Hadžić, 6 Mar 2007, T. 3209 – 3210; Luka Jović, 18 June 2007, T. 6730; P330, Map of Dobrinja marked by Ismet Hadžić; P333, Photograph marked by Ismet Hadžić.

<sup>444</sup> Ismet Hadžić, 5 Mar 2007, T. 3191.

<sup>445</sup> Ismet Hadžić, 5 Mar 2007, T. 3195, 6 Mar 2007, T. 3234. *See also* P329, Map marked by Ismet Hadžić.

<sup>446</sup> Ismet Hadžić, 6 Mar 2007, T. 3219.

buildings on the edges of Dobrinja neighbourhood were used by the military.<sup>447</sup> He further testified that the ABiH trenches on Mojmiilo Hill, dug in 1995, avoided all residential buildings.<sup>448</sup> T-31 testified that he saw armed civilians in Dobrinja but that, more often, he saw soldiers on their way to their positions.<sup>449</sup>

121. Nedarići, north of the airport, was controlled by the SRK, but it was bordered by ABiH-held territory from three sides: Alipašino Polje, Mojmiilo and Stup.<sup>450</sup> Stup Hill to the north-west of Nedarići, was held by the ABiH,<sup>451</sup> and so were Butmir and Kotorac, located south of the runway of the airport.<sup>452</sup>

122. During the Indictment period, the largest part of Mojmiilo Hill was held by the ABiH.<sup>453</sup> The eastern side of Mojmiilo Hill and the area from there up to Vraca were under the control of the SRK.<sup>454</sup> The SRK was on the slopes facing Nedarići in the west.<sup>455</sup> Bosnian Serb forces held lines at the top of the hills and, at the southern foot of Mojmiilo Hill, they occupied one of the barracks in Lukavica.<sup>456</sup> Predrag Trapara, a soldier in the 1<sup>st</sup> Sarajevo Mechanised Brigade, testified that from their positions at Mojmiilo Hill, the ABiH could control the area of Lukavica, all the way up to Toplik, as well as Dobrinja IV, the “Stari Celovac” settlement and Nedarići.<sup>457</sup>

123. The SRK held Iliidža.<sup>458</sup> Milomir Šoja, an electrical engineer who worked at the *Energoinvest* Company during the Indictment period, testified that most of the confrontation line in Iliidža was very close to residential areas.<sup>459</sup> Further to the north-west of Iliidža, Osijek, Butila and

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<sup>447</sup> Ismet Hadžić, 6 Mar 2007, T. 3266 – 3267. *See also*, Ismet Hadžić, 6 Mar 2007, T. 3217; Dražen Maunaga, 12 June 2007, T. 6486.

<sup>448</sup> Ismet Hadžić, 6 Mar 2007, T. 3266 – 3267.

<sup>449</sup> T-31, 14 June 2007, T. 6674 – 6675.

<sup>450</sup> David Harland, 15 Jan 2007, T. 370 – 371; D177, Map marked by Milomir Šoja; D248, Map marked by T-2. *See also*, Louis Fortin, 17 Jan 2007, T. 518; T-2, 20 June 2007, T. 6915; Luka Dragičević, 26 Mar 2007, T. 4012; T-48, 22 June 2007, T. 7135 – 7136, 7186; W-62, 23 Jan 2007, T. 892–893; D260, Map marked by T-48; D278, Map marked by T-52.

<sup>451</sup> Milan Pejić, 21 June 2007, T. 7036; Predrag Trapara, 27 June 2007, T. 7373; Vlastimir Glavaš, 24 July 2007, T. 8746; Mirza Sabljica, 19 Apr 2007, T. 4741; D110, Order by Rizvo Pleh, dated 20 May 1995.

<sup>452</sup> Azra Šišić, 27 Feb 2007, T. 2860; Dražen Maunaga, 12 June 2007, T. 6486; P104, Street map of Sarajevo.

<sup>453</sup> Ismet Hadžić, 6 Mar 2007, T. 3213 – 3215, 3263 – 3264; Milorad Katić, 31 May 2007, T. 5975 – 5976; Vahid Karavelić, 28 Mar, T. 4228; Kemal Bučo, 2 Feb 2007, T. 1510; Milan Pejić, 21 June 2007, T. 7035, 7051 – 7052; T-53, 7 June 2007, T. 6355 – 6356; Dražen Maunaga, 12 June 2007, T. 6481; Predrag Trapara, 27 June 2007, T. 7374, 7413; Mirza Sabljica, 19 Apr 2007, T. 4739; Louis Fortin, 17 Jan 2007, T. 521; David Fraser, 7 Feb 2007, T. 1770, 8 Feb 2007, T. 1848; Zoran Trapara, 26 June 2006, T. 7302; Goran Kovačević, 13 June 2007, T. 6605; Luka Jović, 14 June 2007, T. 6700; Stjepan Djukić, 3 July 2007, T. 7509; Borislav Kovačević, 9 July 2007, T. 7899; Stevan Veljović, 24 May 2007, T. 5720; P194, Military map of Sarajevo.

<sup>454</sup> Ismet Hadžić, 6 Mar 2007, T. 3263–3264; D59, Military map of Sarajevo area.

<sup>455</sup> Dražen Maunaga, 12 June 2007, T. 6481, 6514; D59, Military map of Sarajevo area.

<sup>456</sup> Ismet Hadžić, 6 Mar 2007, T. 3264; Milan Mandić, 3 July 2007, T. 7557–7558; Stevan Veljović, 30 May 2007, T. 5827; D207, Map marked by Dragan Simić. *See also*, para. 68.

<sup>457</sup> Predrag Trapara, 27 June 2007, T. 7378.

<sup>458</sup> Hussain Ijaz, 27 Apr 2007, T. 5403; Luka Dragičević, 26 Mar 2007, T. 4012; Per Anton Brennskag, 8 Mar 2007, T. 3452–3453; P347, Map marked by Per Anton Brennskag.

<sup>459</sup> Milomir Šoja, 25 Apr 2007, T. 5162.



Blažuj were also under the control of the SRK.<sup>460</sup> Evidence shows that there were mortars, air bomb launchers and air bombs in these locations.<sup>461</sup> Sokolovići, also known as Sokolović Kolonija, south of Ilidža, was held by the ABiH.<sup>462</sup> The SRK also held territory between Ilidža and Lukavica.<sup>463</sup>

124. The SRK held Lukavica, which is five or six kilometres east of Ilidža.<sup>464</sup> W-57, a BiH police officer, testified that Golo Brdo, south-east of Lukavica was held by the SRK. He said that it offered a “perfect view” of the whole area under ABiH control, the “free territory”, Hrasnica, Butmir and Sokolovići, and that one could “observe and immediately fire upon any military movement or movement of pedestrians, civilians and vehicles”.<sup>465</sup>

125. Mount Igman overlooked the general area of Hrasnica and beyond.<sup>466</sup> Mount Bjelašnica was in the south-west and, according to Lt. Col. Fortin, also dominated the city.<sup>467</sup> In 1994, the ABiH controlled 80 per cent of Mount Igman.<sup>468</sup> Poljane, an area on Mount Igman, was held by the SRK.<sup>469</sup> W-57 testified that from the part of Mount Igman controlled by the ABiH, there was a good view of the surroundings of Ilidža, where there were areas under the control of both the SRK and the ABiH.<sup>470</sup> Maj. Veljović testified that from its positions on Mount Igman, the ABiH was able to control the Vojkovići and the Ilidža areas.<sup>471</sup> Zoran Trapara, a soldier in the SRK 1<sup>st</sup> Sarajevo Brigade, testified that the ABiH had “full control” over the SRK positions.<sup>472</sup>

(d) North-West: Sokolje Hill, Vogošća, Ilijaš, Žuč Hill, Hum Hill

126. The confrontation line in the north-west of Sarajevo ran from the Miljacka River along the railway tracks towards the north to the Rajlovac Barracks.<sup>473</sup>

127. The ABiH held Briješko Brdo, a little elevation of 100 metres, east of the tracks close to the neighbourhood of Sokolje, which itself was a Bosnian Serb neighbourhood.<sup>474</sup> Further north,

<sup>460</sup> Milomir Šoja, 25 Apr 2007, T. 5122; Siniša Krsman, 6 June 2007, T. 6281; Milomir Šoja, 25 Apr 2007, T. 5126.

<sup>461</sup> Milomir Šoja, 25 Apr 2007, T. 5121 – 5126; P707, SRK report on artillery positions, 15 May 1995.

<sup>462</sup> Goran Kovačević, 13 June 2007, T. 6605.

<sup>463</sup> David Harland, 15 Jan 2007, T. 371; D59, Military map of Sarajevo area.

<sup>464</sup> Thorbjorn Overgard, 19 Jan 2007, T. 658; David Fraser, 8 Feb 2007, T. 1843; David Harland, 15 Jan 2007, T. 371; D45, Map marked by David Fraser; D59, Military map of Sarajevo area.

<sup>465</sup> W-57, 17 Apr 2007, T. 4572. *See also* Milorad Košarac, 26 July 2007, T. 8879.

<sup>466</sup> W-138, 1 Feb 2007, T. 1435 – 1436.

<sup>467</sup> Louis Fortin, 17 Jan 2007, T. 522.

<sup>468</sup> Stevan Veljović, 29 May 2007, T. 5737, 5739; Milan Pejić, 21 June 2007, T. 7052; Borislav Kovačević, 9 July 2007, T. 7899; Ljuban Mrković, 12 July 2007, T. 8141, 8142. *See also* Ronald Eimers, P585, p. 5.

<sup>469</sup> Milomir Šoja, 25 Apr 2007, T. 5173.

<sup>470</sup> W-57, 17 Apr 2007, T. 4573 – 4574.

<sup>471</sup> Stevan Veljović, 29 May 2007, T. 5738.

<sup>472</sup> Zoran Trapara, 26 June 2007, T. 7307.

<sup>473</sup> Siniša Krsman, 6 June 2007, T. 6241; T-2, 20 June 2007, T. 6931; Stevan Veljović, 24 May 2007, T. 5724 – 5725; D211, Map marked by Siniša Krsman.

<sup>474</sup> W-138, 1 Feb 2007, T. 1435; Siniša Krsman, 6 June 2007, T. 6242; Bakir Nakaš, 29 Jan 2007, T. 1127.

Sokolje Hill was also controlled by the ABiH.<sup>475</sup> Capt. 1<sup>st</sup> Class Mrković, a SRK security officer and deployed at the aeronautical institute in Rajlovac, testified that the ABiH could control SRK-held Rajlovac and the Rajlovac Barracks, at the foot of Sokolje and Žuč Hills.<sup>476</sup>

128. Vogošća and the area to the west and north-west of the confrontation line were controlled by the SRK during the Indictment period.<sup>477</sup> The Pretis factory in Vogošća was under the control of the SRK.<sup>478</sup> Ilijaš was also controlled by the SRK.<sup>479</sup> Borislav Kovačević, a member of the SRK Ilijaš Brigade, testified that Breza was within the territory of the ABiH. The positions of the ABiH were on the boundary between Breza and Ilijaš, and remained there until the end of the war.<sup>480</sup>

129. The ABiH controlled Žuč Hill, which overlooked Vogošća.<sup>481</sup> ABiH howitzers were positioned close to Žuč Hill.<sup>482</sup> Ismet Hadžić testified that Bosnian Serb forces were at the outskirts of a settlement at the foot of Žuč Hill and that, throughout the war, the ABiH tried to push them away from the settlement.<sup>483</sup> The SRK held the north-western slopes of Žuč Hill towards Vogošća and Rajlovac.<sup>484</sup> Maj. Veljović testified that Žuč Hill was “a very strong feature” which controlled “the entire area [...] of the south-western front”.<sup>485</sup>

130. Hum Hill was held by the ABiH until the end of the war.<sup>486</sup> Lt. Col. Butt, who was the team leader of an UNMO team on Mali Hum, testified that the slopes towards the city from Žuč Hill and Mali Hum were under the control of the ABiH.<sup>487</sup> He denied the Defence suggestion that units of

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<sup>475</sup> Zoran Trapara, 26 June 2006, T. 7302; T-37, 10 July 2007, T. 7970; Predrag Trapara, 27 June 2007, T. 7373; Ljuban Mrković, 12 July 2007, T. 8141; D302, Map marked by Ljuban Mrković.

<sup>476</sup> Ljuban Mrković, 12 July 2007, T. 8139, 8141; Luka Dragičević, 26 Mar 2007, T. 4012; D302, Map marked by Ljuban Mrković.

<sup>477</sup> Ronald Eimers, 20 Apr 2007, T. 4795; Milomir Šoja, 25 Apr 2007, T. 5126; Bakir Nakaš, 29 Jan 2007, T. 1127; Luka Dragičević, 26 Mar 2007, T. 4012; Milomir Šoja, 25 Apr 2007, T. 5126; P194, Military map of Sarajevo; D59, Military map of Sarajevo area.

<sup>478</sup> T-53, 11 June 2007, T. 6440 – 6442; David Harland, 15 Jan 2007, T. 368; D226, Map marked by Goran Kovačević.

<sup>479</sup> Zoran Samardžić, 13 June 2007, T. 6632; Milomir Šoja, 24 Apr 2007, T. 5125 – 5126.

<sup>480</sup> Borislav Kovačević, 9 July 2007, T. 7904–7905, 8034; D59, Military map of Sarajevo area.

<sup>481</sup> David Harland, 15 Jan 2007, T. 367 – 369; David Fraser, 7 Feb 2007, T. 1770, 8 Feb 2007, T. 1853, 1854; Mirza Sabljica, 19 Apr 2007, T. 4739; W-138, 1 Feb 2007, T. 1434 – 1435; Anda Gotovac, 3 Apr 2007, T. 4458; Stevan Veljović, 24 May 2007, T. 5724, 29 May 2007, T. 5731 – 5732; Milan Pejić, 21 June 2007, T. 7035, 7051 – 7052; Predrag Trapara, 27 June 2007, T. 7373 – 7374; T-37, 10 July 2007, T. 7967 – 7970; T-9, 16 July 2007, T. 8343; Dražen Maunaga, 12 June 2007, T. 6496; Borislav Kovačević, 9 July 2007, T. 7899; Ljuban Mrković, 12 July 2007, T. 8141; Predrag Carčić, 19 June 2007, T. 6870; D47, Military map marked by David Fraser showing the hills Žuč and Hum (“Military map marked by David Fraser”).

<sup>482</sup> David Fraser, 8 Feb 2007, T. 1853; D47, Military map marked by David Fraser.

<sup>483</sup> Ismet Hadžić, 6 Mar 2007, T. 3271; Sanjin Hasanefendić, 16 Feb 2007, T. 2393.

<sup>484</sup> Milan Pejić, 21 June 2007, T. 7052. *See also* T-37, 10 July 2007, T. 7989.

<sup>485</sup> Stevan Veljović, 24 May 2007, T. 5723.

<sup>486</sup> Mirza Sabljica, 19 Apr 2007, T. 4739; Sanjin Hasanefendić, 16 Feb 2007, T. 2392; Harry Konings, 13 Mar 2007, T. 3613; Zoran Trapara, 26 June 2006, T. 7302; Predrag Trapara, 27 June 2007, T. 7373, 7395; T-9, 16 July 2007, T. 8347; Stevan Veljović, 24 May 2007, T. 5724; Dražen Maunaga, 12 June 2007, T. 6496; Predrag Carčić, 19 June 2007, T. 6870 – 6871; Milan Pejić, 21 June 2007, T. 7036; Stjepan Đukić, 3 July 2007, T. 7509; Borislav Kovačević, 9 July 2007, T. 7899.

<sup>487</sup> Asam Butt, 14 Feb 2007, T. 2159, 15 Feb 2007, T. 2224.

the ABiH were on the entire hill Veliki Hum.<sup>488</sup> From Mali Hum, Lt. Col. Butt added, one had an excellent view of Sarajevo, especially of Skenderija, the Jewish Cemetery, Vrbanja Bridge, the Marshal Tito Barracks and Debelo Brdo.<sup>489</sup>

(e) North-East: Sedrenik, Špicasta Stijena, Grdonj, Hreša

131. Sedrenik was a settlement in the north-east of Sarajevo, and was held by the ABiH.<sup>490</sup> The confrontation line in the Sedrenik area ran across the hills.<sup>491</sup> Špicasta Stijena, or Sharpstone, was a ridge located about 300 to 500 metres north-east of Grdonj.<sup>492</sup> Vlajko Božić, Assistant to the Chief of Staff of Operations in the SRK 3<sup>rd</sup> Sarajevo Brigade, testified that Špicasta Stijena was about 60 metres high, 200 metres long and that the top was about 20 metres wide.<sup>493</sup> The Defence argued that the inhabitants of the area did not know or use the name Špicasta Stijena during the conflict. The Trial Chamber does not need to pronounce on the name of the ridge. In this Judgement, it will use the name that was most used by witnesses, which is Špicasta Stijena. Grdonj was the broader feature near Špicasta Stijena.<sup>494</sup> The area was forested, but, during the conflict, some trees were destroyed.<sup>495</sup>

132. The Prosecution contends that “there is no doubt whatsoever that the SRK controlled the Špicasta Stijena ridge line and that they would fire down into the village of Sedrenik, killing and injuring civilians.”<sup>496</sup> Witnesses for the Prosecution and the Defence testified that Špicasta Stijena was held by the SRK but also testified that the confrontation lines between both warring factions were close.<sup>497</sup>

133. Defence witness Maj. Veljović testified that the ABiH had full control of Špicasta Stijena, and that the SRK “did not have a single position on the edge of Špicasta Stijena”.<sup>498</sup> He testified that the SRK was 300 metres behind the ABiH, on the other side of the ridge, 100 metres away

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<sup>488</sup> Asam Butt, 15 Feb 2007, T. 2223.

<sup>489</sup> Asam Butt, 15 Feb 2007, T. 2223, 2224. *See also* Milorad Katić, 1 June 2007, T. 6017.

<sup>490</sup> Vlajko Božić, 17 July 2007, T. 8422. *Cf.* Mirza Sabljica, 19 Apr 2007, T. 4739.

<sup>491</sup> Harry Konings, 13 Mar 2007, T. 3611 – 3613; D59, Military map of Sarajevo area.

<sup>492</sup> Vahid Karavelić, 27 Mar 2007, T. 4089, 4094 – 4096; Nedžib Đozo, 14 Mar, T. 3684, 3725; D123, Photograph marked by Nedžib Đozo; P171, 360° Photograph; P366, Photograph marked by Nedžib Đozo. *See also* Derviša Selmanović, 5 Feb 2007, T. 1594, 1606 – 1607.

<sup>493</sup> Vlajko Božić, 17 July 2007, T. 8415, 8459–8460. The Trial Chamber was not provided with information as to the rank of Vlajko Božić during the Indictment period.

<sup>494</sup> Stevan Veljović, 29 May 2007, T. 5745; D318, Photograph marked by Vlajko Božić; D317, Photograph marked by T-9.

<sup>495</sup> T-15, 13 July 2007, T. 8333, 8334.

<sup>496</sup> Prosecution Closing Brief, para. 155.

<sup>497</sup> David Fraser, 8 Feb 2007, T. 1849; Thomas Knustad, 13 Feb 2007, T. 2046; Nedžib Đozo, 14 Mar 2007, T. 3684, 3685; Vahid Karavelić, 27 Mar, T. 4093; Harry Konings, 13 Mar, T. 3613; Siniša Krsman, 6 June 2007, T. 6295, 6299; Anđelko Dragaš, 22 June 2007, T. 7078.

<sup>498</sup> Stevan Veljović, 30 May 2007, T. 5865 – 5868, 5875, 5891 – 5892.

from the cliff.<sup>499</sup> Vlajko Božić testified that the SRK positions were at least 50 metres behind the ridge and that the ABiH was some 150 metres away from the ridge.<sup>500</sup> According to Vlajko Božić and T-15, a police officer with the RS police, it was impossible to set up an observation post or a position on the ridge because the terrain was said to have been mined in 1992 and it was exposed to cross-fire from both sides.<sup>501</sup> T-15 also testified that he and his fellow soldiers never went up on the ridge to fire onto Sedrenik, except during combat activities.<sup>502</sup> Both T-15 and Anđelko Dragaš, a soldier of the 3<sup>rd</sup> Sarajevo Brigade during the Indictment period, testified that there were no SRK snipers,<sup>503</sup> but Prosecution witnesses, such as Nedžib Đozo, and Tarik Žunić, a civilian who lived in Sedrenik at the time, testified that Špicasta Stijena was a well-known SRK sniper location.<sup>504</sup> According to Lt. Van der Weijden, traces of the Bosnian Serb-held trenches were still visible on the ridgeline in November 2006.<sup>505</sup>

134. The Defence also focused on whether there were ABiH positions on Grdonj Hill.<sup>506</sup> This was confirmed by several witnesses.<sup>507</sup> Maj. Gen. Karavelić testified that the ABiH had a communication trench on the slopes of Grdonj which ran from the very last settlement on the slopes to the houses close to the very top. The ABiH had one-third of the slope of Grdonj under its control, namely, the slope of Grdonj above Sedrenik, facing the town. The rest was held by the SRK.<sup>508</sup> Nedžib Đozo testified that the ABiH was not directly at the foot of Špicasta Stijena, but had trenches to the left and to the right towards Grdonj. The ABiH trenches were facing Špicasta Stijena and the general area towards Barica in the north.<sup>509</sup>

135. According to Maj. Gen. Karavelić, one could observe and cover almost all of the municipalities of Stari Grad and Centar from Grdonj and Špicasta Stijena, which also provided a

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<sup>499</sup> Stevan Veljović, 30 May 2007, T. 5865 – 5867, 5875, 5891, 5892; T-15, 13 July 2007, T. 8304, 8306, 8314, 8317 – 8318; Anđelko Dragaš, 22 June 2007, T. 7083, 7112; P743, Photograph marked by Stevan Veljović; D312, Photograph marked by T-15. *See also* D256, Photograph marked by Anđelko Dragaš; D257, Photograph marked by Anđelko Dragaš; D258, Photograph marked by Anđelko Dragaš.

<sup>500</sup> Vlajko Božić, 17 July 2007, T. 8415, 8450 – 8454.

<sup>501</sup> Vlajko Božić, 17 July 2007, T. 8455 – 8457, 8459 – 8460, 8463 – 8465; T-15, 13 July 2007, T. 8305, 8306, 8320 – 8323, 8330 – 8331, 8336. *See also* Anđelko Dragaš, 22 June 2007, T. 7083, 7112.

<sup>502</sup> T-15, 13 July 2007, T. 8332 – 8333.

<sup>503</sup> Anđelko Dragaš, 22 June 2007, T. 7072; T-15, 13 July 2007, T. 8332 – 8333.

<sup>504</sup> Nedžib Đozo, 14 Mar 2007, T. 3702, 3704; Tarik Žunić, 7 Feb 2007, T. 1738 – 1739; P366, Photograph marked by Nedžib Đozo; D123, Photograph marked by Nedžib Đozo; D320, Photograph marked by Vlajko Bošić. *See also infra*, para. 232 and II.E.4(b)(ii) Sniping of Targets in Sedrenik.

<sup>505</sup> P514, Expert report Patrick van der Weijden, pp 41 - 43.

<sup>506</sup> Defence Final Brief, para. 51.

<sup>507</sup> Nedžib Đozo, 14 Mar, T. 3699, 3725 – 3726; Mirza Sabljica, 19 Apr 2007, T. 4739; D123, Photograph marked by Nedžib Đozo; *see also* Stevan Veljović, 29 May 2007, T. 5731; Zoran Trapara, 26 June 2006, T. 7301 – 7302; Predrag Trapara, 27 June 2007, T. 7373; D46, Military map marked by David Fraser.

<sup>508</sup> Vahid Karavelić, 28 Mar 2007, T. 4228.

<sup>509</sup> Nedžib Đozo, 14 Mar 2007, T. 3688–3689; Anđelko Dragaš, 22 June 2007, T. 7090 – 7091; Vlajko Božić, 17 July 2007, T. 8424; D257, Photograph marked by Anđelko Dragaš; D258, Photograph marked by Anđelko Dragaš.

good view on Sedrenik.<sup>510</sup> The terrain was very steep, and this allowed for a solid defence.<sup>511</sup> Vlajko Božić testified that from Grdonj, one could control the area to the north of Grdonj, which included Mrkovići, and Pionirska Dolina, as well as the area south of the hill, including Sedrenik.<sup>512</sup>

136. Anđelko Dragaš testified that the SRK controlled the area from Poljine to the cross-roads called Smreka behind Špicasta Stijena.<sup>513</sup> He further testified that the SRK positions were just below Grdonj Hill.<sup>514</sup> He explained that the SRK was at a geographical feature called Jagomir at the foot of Grdonj Hill, in the area of Pionirska Dolina.<sup>515</sup> Hreša was further in the east of Sarajevo and a main SRK firing position was located there.<sup>516</sup>

### Findings

137. The evidence shows that the confrontation lines were in the hills surrounding Sarajevo, but they also ran through the central parts of Sarajevo, in particular, in the Grbavica area and around Nedarići and Ilidža, which were very densely-populated areas.<sup>517</sup>

138. In general, the floor of the Sarajevo valley was controlled by the ABiH, while the majority of the surrounding mountains were controlled by the SRK.<sup>518</sup> Evidence shows that the ABiH also controlled several hills and elevations close to the central parts of Sarajevo, such as Debelo Brdo, Čolina Kapa, Mojmiilo Hill, Žuč Hill and Hum Hill. However, most of these hills, or elevations, in particular, those on the confrontation lines in the south and in the south-east, were overlooked by territory controlled by the SRK.<sup>519</sup> The ABiH held most of the Igman area in the south-west.<sup>520</sup>

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<sup>510</sup> Vahid Karavelić, 27 Mar 2007, T. 4090; 4093 – 4096; Nedžib Đozo, 14 Mar, T. 3725; D123, Photograph marked by Nedžib Đozo; P366, Photograph marked by Nedžib Đozo; *see also* Vlajko Božić, 17 July 2007, T. 8452; D46, Military map marked by David Fraser.

<sup>511</sup> Vahid Karavelić, 27 Mar 2007, T. 4093.

<sup>512</sup> Vlajko Božić, 17 July 2007, T. 8422; Stevan Veljović, 29 May 2007, T. 5745; Anđelko Dragaš, 22 June 2007, T. 7080 – 7082.

<sup>513</sup> Anđelko Dragaš, 22 June 2007, T. 7076–7077; Milorad Košarac, 26 July 2007, T. 8885. *See also* Vlajko Božić, 17 July 2007, T. 8450.

<sup>514</sup> Anđelko Dragaš, 22 June 2007, T. 7077; P743, Photograph marked by Stevan Veljović.

<sup>515</sup> Anđelko Dragaš, 22 June 2007, T. 7059, 7107; D255, Map marked by Anđelko Dragaš.

<sup>516</sup> Predrag Trapara, 27 June 2007, T. 7373; Vahid Karavelić, 27 Mar 2007, T. 4101 – 4102, 4108 – 4109; P502, Military map of Sarajevo marked by Vahid Karavelić.

<sup>517</sup> Luka Dragičević, 26 Mar 2007, T. 4012, 4044; Thomas Knustad, 13 Feb 2007, T. 2045–2046; D59, Military map of Sarajevo area.

<sup>518</sup> David Harland, 15 Jan 2007, T. 367 – 369, P1, MT. 26962 – 26963; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1000; Kemal Bučo, 2 Feb 2007, T. 1509; Richard Higgs, 24 Apr 2007, T. 5055; Mirza Sabljica, 19 Apr 2007, T. 4738 – 4739; Slavica Livnjak, 23 Jan 2007, T. 860; John Jordan, 21 Feb 2007, T. 2631; P194, Military map of Sarajevo. *See also, e.g.,* Harry Konings, 13 Mar, T. 3612; Zoran Trapara, 26 June 2006, T. 7301 – 7302; D285, Map marked by Andrey Demurenko; *but cf.* Stevan Veljović, 30 May 2007, T. 5851, 5852, 5864.

<sup>519</sup> Predrag Trapara, 27 June 2007, T. 7397 – 7398.

<sup>520</sup> *See supra*, para. 125.

139. While the ABiH was in an area within the confrontation lines, the SRK had firing positions all around Sarajevo.<sup>521</sup> Sarajevo was thus encircled by the SRK.<sup>522</sup> This situation lasted throughout the Indictment period.<sup>523</sup>

140. The Trial Chamber concludes from an examination of the evidence as a whole that the Špicasta Stijena ridge was held by the SRK, and the ABiH was located at the foot of the hill. It does so on the basis of the evidence of a vast number of witnesses, some of whom testified for the Defence. Lt. Com. Knustad, a Norwegian UNMO, testified that he saw a modified air bomb being fired from Špicasta Stijena. Other witnesses include Maj. Gen. Karavelić, Lt. Col. Harry Konings and Siniša Krsman. There are two pieces of evidence that might be construed as support for the Defence position that the ridge was held by the ABiH. First, Maj. Veljović testified that the SRK were 200 to 300 metres behind the ridge line. Second, two witnesses, Anđelko Dragaš and T-15 testified that, during the effort of the ABiH to break the siege in 1994 and 1995, the ridge was twice held by the ABiH for a short time. However, their testimony is that within a period of about two days, the ridge was retaken by the SRK. The Trial Chamber does not see the first piece of evidence as disturbing its finding, because, even if the SRK were not on the top of the ridge, but 200 to 300 metres behind, they would still be in a position to access the ridge and utilise it as a firing position. The second item of evidence does not contradict the finding since it indicates that the ridge was retaken by the SRK.

### **C. Sarajevo 1992 to August 1994**

141. The Trial Chamber sees the evidence led by the Prosecution and Defence on the pre-Indictment period as background evidence with varying degrees of importance for the issues in the case.

142. Insofar as the Prosecution is concerned, the evidence is relied on to show that a “campaign of shelling and sniping” existed at that time and that the Accused was aware of it and, more significantly, that he continued it during the Indictment period. The outbreak of the conflict in Sarajevo and the period of between 10 September 1992 and 10 August 1994 were adjudicated upon in the *Galić* case. In this regard, the Trial Chamber follows the Appeals Chamber decision that

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<sup>521</sup> W-138, 1 Febr 2007, T. 1433. *See also* Milosav Gagović, 23 July 2007, T. 8717 – 8719; Ronald Eimers, 20 Apr 2007, T. 4785 – 4786.

<sup>522</sup> *See e.g.* D59, Military map of Sarajevo area; P741, Map marked by Stevan Veljović.

<sup>523</sup> Andrey Demurenko, 5 July 2007, T. 7731; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 961; D285, Map marked by Andrey Demurenko. *See also* Stevan Veljović, 29 May 2007, T. 5740.

proof of knowledge on the part of the Accused of crimes committed under the command of Gen. Galić is to be led separately from judicial notice of their existence.<sup>524</sup>

143. Insofar as the evidence led by the Defence is concerned, the Trial Chamber's understanding is that the evidence was relied on to show that an armed conflict between the ABiH and the VRS existed prior to the Indictment period and that this conflict was fought at a very high level of intensity. This level of intensity, according to the Defence, also characterised the conflict during the Indictment period and many Bosnian Serbs were killed or injured in this conflict; the Defence argued that the many deaths and injuries during the conflict were a direct result of the conflict being waged at this high level of intensity and this is the explanation for the deaths and injuries sustained by the civilian population. In those circumstances, the Defence submits that the Prosecution is wrong to seek to attribute to the SRK an intention to terrorise the civilian population.

144. The Defence led a great deal of evidence on the pre-Indictment period. In the Trial Chamber's view, most of this evidence has no direct bearing on the central issue in the case, that is, the criminal liability of the Accused. Certainly, the Defence was not able at any time, in response to many urgings from the Bench, to demonstrate how the evidence impacted on the criminal liability of the Accused. For that reason, the Trial Chamber decided not to include in the Judgement all of the evidence adduced by the Defence on the pre-Indictment period, but rather to confine itself to what might be described as a representative sample of that evidence. However, the Trial Chamber has considered all of the evidence adduced by the Defence relating to that period.

#### 1. SRK Sniping and Shelling of Areas within the Confrontation Lines

145. As discussed above, large scale violence broke out in Sarajevo just prior to 7 April 1992.<sup>525</sup> According to Robert Donia, the Prosecution expert on the history of Bosnia and Herzegovina, armed fighting took place in Sarajevo on most days of April 1992, although it was "punctuated by internationally-negotiated cease-fires that lasted at most three days."<sup>526</sup> Martin Bell, a journalist for the BBC, explained that the first few days of the conflict were very confusing days of street fighting between armies, militias and gangs.<sup>527</sup> However, by the end of April 1992, "the contour of

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<sup>524</sup> *Prosecutor v. Dragomir Milošević*, Case No IT-98-29/1-AR73.1, Decision on Interlocutory Appeals against Trial Chamber's Decision on Prosecution's for Judicial Notice on Adjudicated Facts and Prosecution's Catalogue of Agreed Facts, dated 26 June 2007.

<sup>525</sup> P472, Expert report Robert Donia, p. 23; Anđelko Dragaš, 22 June 2007, T. 7057. *See supra*, para 22.

<sup>526</sup> P472, Expert report Robert Donia, p. 31.

<sup>527</sup> Martin Bell, 26 Apr 2007, T. 5239.

Sarajevo's siege was largely established" and from then on, the city of Sarajevo was surrounded for most of the war.<sup>528</sup>

146. The city of Sarajevo and its inhabitants inside the confrontation lines were continuously subjected to shelling and sniping, a phenomenon that featured throughout the conflict, although the amount of firing was not at a constant level.<sup>529</sup> According to Martin Bell, the summer of 1992 was one of the periods with the highest casualty numbers and the most intense fighting.<sup>530</sup> David Harland, a UN Civil Affairs Officer, stated that in the period 1993 to 1995, 1993 was the most militarily active year.<sup>531</sup> In a report dated 3 November 1993, David Harland wrote that:

“[t]he Serbs have been militarily more active than usual recently. [...] Sarajevo and Goražde have both been under heavy bombardment in the past week. In response to BiH mortar fire, the Old Town of Sarajevo received almost 500 shells in a one-hour period on the 27<sup>th</sup> of October. The Old Town, which has the highest percentage of Muslims of any Sarajevo area, is densely populated.”<sup>532</sup>

147. Civilians lived very close to the confrontation lines.<sup>533</sup> W-57 stated that given the location of the confrontation lines, Bosnian Serb fire was, in at least 70 per cent of cases, directed against civilians and residential areas.<sup>534</sup> According to W-107, “[...] we had been encircled in Sarajevo from all sides, and we were under fire from all sides. Everybody shot at us constantly, like beasts. They were trying to kill as many of us as they could.”<sup>535</sup> Around mid-May 1992, it became apparent to Martin Bell that the greater number of casualties on the BiH Government-held side of Sarajevo was civilians.<sup>536</sup> Martin Bell testified that most of the shooting went unrecorded and unmarked by the press; “[i]t was part of daily life.”<sup>537</sup> In his view, civilians would not have been casualties if a distinction had been made between them and military personnel.<sup>538</sup>

148. The Trial Chamber heard evidence that civilians were caught in the fighting.<sup>539</sup> However, civilians were also direct targets of shelling and sniping or casualties of indiscriminate firing.<sup>540</sup> On

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<sup>528</sup> See, e.g., David Harland, 15 Jan 2007, T. 344; Ismet Hadžić, 5 Mar 2007, T. 3188 – 3189, 3193, 3433; P472, Expert report Robert Donia, p. 31; Adjudicated fact 27. The presence of the tunnel formed reason for David Fraser and Andrey Demurenko to testify that the encirclement was not complete, David Fraser 8 Feb 2007, T. 1840; Andrey Demurenko, 21 August 2007, T. 9007.

<sup>529</sup> Martin Bell, 26 Apr 2007, T. 5238 – 5240.

<sup>530</sup> Martin Bell, 26 April 1997, T. 5240.

<sup>531</sup> David Harland, P1, MT. 26937.

<sup>532</sup> David Harland, P1, MT. 26939.

<sup>533</sup> W-107, 12 Mar 2007, T. 3529 – 3532; T-60, 25 July 2007, T. 8792 (private session).

<sup>534</sup> P538, W-57, p. 2 (under seal).

<sup>535</sup> W-107, 12 Mar 2007, T. 3511.

<sup>536</sup> Martin Bell, 26 Apr 2007, T. 5239. See also John Jordan, P267, p. 7; P268, Video of interview with John Jordan.

<sup>537</sup> Martin Bell, 27 Apr 2007, T. 5290 – 5291. See also John Jordan, P267, p. 5.

<sup>538</sup> Martin Bell, 26 Apr 2007, T. 5238 – 5239.

<sup>539</sup> Martin Bell, 26 Apr 2007, T. 5268; Alen Gičević, 5 Feb 2007, T. 1566 – 1567.

<sup>540</sup> See for example P785, UNMO daily sitrep, dated 11 July 1994, p. 5; W-12, 2 Mar 2007, T. 3074, P307, p. 2 (under seal).



24 August 1992, Tadeusz Mazowiecki, Special Rapporteur of the UN Commission on Human Rights, visited Sarajevo. He stated in his report:

“The siege, including the shelling of population centres and the cutting off of supplies of food and other essential goods, is another tactic [...] The city is shelled on a regular basis, in what appears to be a deliberate attempt to spread terror among the population. Snipers shoot innocent civilians. The mission visited the hospital, and was able to see many civilian victims. It was also able to see the damage done to the hospital itself, which has been deliberately shelled on several occasions, despite the proper display of the internationally recognized Red Cross symbol.”<sup>541</sup>

149. Evidence indicates that during 1992 and 1993, the SRK had snipers, and civilians were targeted with sniper fire.<sup>542</sup> With respect to shelling, the SRK had positions in the hills around Sarajevo from which they could, and did, shell the city.<sup>543</sup> Milan Mandić, who testified for the Defence, recalled that his involvement in combat actions with the SRK 1<sup>st</sup> Sarajevo Brigade meant that he had to fire at his brother, who resided in Dolac Malta.<sup>544</sup> Other witnesses testified that civilians were sniped and shelled while collecting water, queuing for food or otherwise going about their daily lives.<sup>545</sup>

150. Evidence was presented regarding the shelling of Markale Market on 5 February 1994 (“Markale Market I”), in which 69 people died and over 90 people were wounded.<sup>546</sup> John Jordan, a fire fighter and founder of the Global Operation Fire Rescue Services (“GOFRS”), recalled telling a journalist reporting on Markale Market I that the incident was not unusual because 60 people had died in the previous week, “but they died in twos and threes, not in one large incident.”<sup>547</sup>

151. There were two main civilian hospitals in the ABiH-controlled area of Sarajevo during the conflict, the Koševo Hospital in the north-east of Sarajevo and the State Hospital in the area of Marindvor.<sup>548</sup> The State Hospital was the target of shelling and sniping in the 1992 to 1994 period. There is evidence that following the decision of the JNA to evacuate the hospital on 9 May 1992,

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<sup>541</sup> Cited in P472, Expert report Robert Donia, p. 35.

<sup>542</sup> See e.g. P610, Videoclip of events in Sarajevo; Martin Bell, 27 Apr 2007, T. 5290 – 5291. See also *supra*, II.B.1. Structure of Military Units.

<sup>543</sup> See *supra*, II.B.3. Areas of Responsibilities and Confrontation Lines - SRK and 1<sup>st</sup> Corps of the ABiH. See also Martin Bell, 26 Apr 2007, T. 5256 – 5257; D116, Statement by W-107, 17 May 2006 (“Statement by W-107”), p. 4 (under seal); P815, UNPROFOR cable, dated 30 May 1992.

<sup>544</sup> Milan Mandić, 3 July 2007, T. 7558 – 7559.

<sup>545</sup> Martin Bell, 26 Apr 2007, T. 5259, 27 Apr 2007, 5290; Bogdan Vidović, 13 Feb 2007, T. 2061 – 2062, 14 Feb 2007, T. 2115; Mirza Sabljica, 19 Apr 2007, T. 4700 – 4701, 4703; W-107, 12 Mar 2007, T. 3510 – 3512; W-57, P538, p. 2 (under seal); John Jordan, P267, p. 7.

<sup>546</sup> Sead Bežić, 21 Feb 2007, T. 2609, 2619; Mirza Sabljica, 19 Apr 2007, T. 4703.

<sup>547</sup> John Jordan, P267, p. 5.

<sup>548</sup> Milan Mandilović, 17 Jan 2007, T. 559, 561; Bakir Nakaš, 25 Jan 2007, T. 1066 – 1067, 1068 – 1069; P46, Map marked by Milan Mandilović; P105, Map marked by Bakir Nakaš. The Trial Chamber notes that before the onset of hostilities in Sarajevo, the State Hospital was a JNA military hospital, although around 65 per cent of its capacity was used by civilians, but that from 10 May 1992, it was a civilian hospital, Milan Mandilović, 17 Jan 2007, T. 559 – 560, 18 Jan 2007, T. 614; Bakir Nakaš, 25 Jan 2007, T. 1067, 1068 – 1069, 29 Jan 2007, T. 1141 – 1143. According to Bakir Nakaš, there was a rehabilitation centre in the premises of the Hospital, which was also used by ABiH soldiers, Bakir Nakaš, 25 Jan 2007, T. 1068 – 1069.

the VRS deliberately targeted it and was “intent on destroying vital parts of the hospital.”<sup>549</sup> According to Bakir Nakaš, the Director of the State Hospital, the worst period of targeting of the State Hospital was 13 to 16 May 1992, when the hospital was hit by about 40 shells.<sup>550</sup> The patients’ rooms on the south side of the hospital were no longer used.<sup>551</sup>

152. T-61, a Bosnian Serb doctor who worked at the Koševo Hospital until January 1994, said that Koševo Hospital was “always” shelled after fire by the ABiH from a school located in the Faculty of Civil Engineering, approximately 25 to 65 metres away from the hospital’s traumatology clinic.<sup>552</sup> T-61 said that there was a command post of the Patriotic League located in buildings in the vicinity of the Koševo Hospital, including “in most of the schools and kindergartens I know of”.<sup>553</sup>

153. Following his visit to Sarajevo at the end of August 1992, Tadeusz Mazowiecki noted that “Serb forces” had attacked cultural centres, including mosques, the Olympic Museum, the Oriental Institute, and Muslim, Catholic, and Serbian Orthodox religious institutions from May to August 1992.<sup>554</sup> A day after his departure from Sarajevo, “Serb forces” attacked the National and University Library and the offices of *Oslobodenje*, the daily newspaper.<sup>555</sup> Other landmark buildings, such as the parliamentary office buildings, and the south face of the Holiday Inn were destroyed by shelling.<sup>556</sup>

## 2. Effect on the Civilian Population within the Confrontation Lines

154. The evidence of Prosecution expert Ewa Tabeau and Defence witnesses Maj. Veljović and Milorad Katić was that, at the start of the conflict, the population in the ten municipalities of Sarajevo comprised approximately 500,000 persons.<sup>557</sup> A large body of evidence was presented showing the movement in early 1992 of non-Serb populations out of Bosnian Serb-held areas of Sarajevo and its environs and into Bosnian Muslim-held areas, and this was at least to some extent

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<sup>549</sup> Bakir Nakaš, 29 Jan 2007, T. 1141 – 1143; P472, Expert report Robert Donia, pp 28 - 29, *citing* Dragan Kalinić, Minister of Health of the Serbian Republic of Bosnia and Herzegovina.

<sup>550</sup> Bakir Nakaš, 29 Jan 2007, T. 1141.

<sup>551</sup> Bakir Nakaš, 29 Jan 2007, T. 1141.

<sup>552</sup> T-61, 9 July 2007, T. 7830 – 7831; D289, Record of an interview with T-61, 11 March 1996 (“Interview with T-61”) (under seal), p. 1.

<sup>553</sup> T-61, 9 July 2007, T. 7832. *See also* D289, Interview with T-61 (under seal).

<sup>554</sup> P472, Expert report Robert Donia, p. 35. *See also* Azra Šišić, 27 Feb 2007, T. 2832 – 2833.

<sup>555</sup> P472, Expert report Robert Donia, p. 35.

<sup>556</sup> Martin Bell, 26 Apr 2007, T. 5238, 5260; John Jordan, 21 Feb 2007, T. 2649; P270, Videoclip of fire fighting; Adjudicated Facts 33, 34.

<sup>557</sup> P637, Expert report on the killed and wounded persons from the siege of Sarajevo by Ewa Tabeau and Arve Hetland, dated 19 March 2007 (“Expert report Ewa Tabeau”), p. 67; Stevan Veljović, 29 May 2007, T. 5930; Milorad Katić, 29 May 2007, T. 5959, 5975.

involuntary.<sup>558</sup> In Hrasnica alone, the population increased, from approximately 30,000 to 50,000 persons, due to an influx of Bosnian Muslims from areas such as Trnovo and Eastern Bosnia.<sup>559</sup>

155. In relation to the movement of the population, the Defence brought evidence indicating that people moved from Bosnian Serb areas of Sarajevo to Bosnian Muslim areas, and vice versa, through organised exchanges of people.<sup>560</sup> Milorad Katić testified that on 24 March 1994, the Bosnian Serb and Muslim civilian authorities, with the assistance of UNPROFOR, opened the Brotherhood and Unity Bridge to enable people from both sides of the Miljacka River to cross to the other side.<sup>561</sup>

156. In respect of the possibility for persons to move across the confrontation lines, the Trial Chamber notes that neither the duration of the organised exchanges nor how many persons were exchanged is clear from the evidence. Certainly, the evidence does not suggest that there was any large scale, systematic exchange of persons in the latter part of the conflict.

157. Maj. Veljović testified that during the war “it was also possible to leave the town with the assistance of UN forces, and there were other ways to leave the town since there were people who were well-connected and probably with some kind of remuneration they managed to be sent towards the Serb-held territories.”<sup>562</sup> Capt. 1<sup>st</sup> Class Mrković testified that between 9 April 1992 and June 1992, while he was still with the JNA, he helped organise daily flights from Sarajevo Airport for the evacuation of people from Sarajevo.<sup>563</sup> According to Capt. 1<sup>st</sup> Class Mrković, “nearly 1,000 citizens of Sarajevo”, without distinction as to ethnicity, were evacuated each day from the airport in that period.<sup>564</sup>

158. Similarly, at the start of the conflict there were about 150,000 Bosnian Serbs in Sarajevo.<sup>565</sup> Milorad Katić testified that many Bosnian Serbs left Sarajevo, or went to parts of the city that were

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<sup>558</sup> Ismet Hadžić, 5 Mar 2007, T. 3188 – 3189; W-107, 12 Mar 2007, T. 3506 – 3508, 3529 – 3532, 3541; Zoran Samardžić, 13 June 2007, T. 6640 – 6641, 6644; Luka Jović, 14 June 2007, T. 6695 – 6697; Miroslav Pejić, 16 July 2007, T. 8390 – 8392; W-13, P535, p. 2 (under seal); David Harland, P2, MT. 28635 – 28636; W-57, P538, p. 2 (under seal); W-95, P520, p. 2 (under seal); D116, Statement by W-107, p. 3 (under seal); P472, Expert report Robert Donia, p. 30; P756, UNCIVPOL report, dated 30 September 1992, pp 1 - 2; P772, Order by Tomislav Šipčić, dated 9 June 1992, p. 2; P779, Intercept of conversation on 14 June 1992, p. 3; P808, Minutes Trnovo Crisis Staff. *See also* P758, Report on activities of Serbian municipality Novo Sarajevo, 5 June 1992, p. 3.

<sup>559</sup> W-57, 17 Apr 2007, T. 4548.

<sup>560</sup> T-31, 14 June 2007, T. 6677; D201, Statement of Muvedeta Tanović taken by MUP, date 11 April 1993 (“Statement of Muvedeta Tanović”), p. 3; D2, UNPROFOR weekly BH political assessment, dated 3 November 1993 (“UNPROFOR weekly BH political assessment, 3 November 1993”), p. 3.

<sup>561</sup> Milorad Katić, 1 June 2007, T. 5991 – 5992. *See also*, T-31, 14 June 2007, T. 6677; T-7, 19 June 2007, T. 6851; Predrag Čarkić, 19 June 2007, T. 6884.

<sup>562</sup> Stevan Veljović, 24 May 2007, T. 5713.

<sup>563</sup> Ljuban Mrković, 12 July 2007, T. 8134 – 8135.

<sup>564</sup> Ljuban Mrković, 12 July 2007, T. 8134 – 8135.

predominantly Bosnian Serb, such as parts of Vogošća, Ilijaš and Novo Sarajevo municipalities, and Lukavica.<sup>566</sup> Milan Mandilović said that nobody was forced to stay or to leave but that “quite a few Serbs stayed.”<sup>567</sup> However, David Harland said that many others, Bosnian Serbs and non-Bosnian Serbs alike, who wished to leave the city, were prevented from doing so by the Bosnian Muslim authorities.<sup>568</sup> Witnesses estimated that between 40,000 and 60,000 Bosnian Serbs remained in Sarajevo within the confrontation lines.<sup>569</sup>

159. Similarly, according to David Harland, approximately 100,000 out of 400,000 to 500,000 non-Bosnian Serb or mixed marriage inhabitants of Sarajevo found themselves in Bosnian Serb-held territory at the beginning of the conflict.<sup>570</sup> Many of those 100,000 people fled to Bosnian Muslim-held parts of Sarajevo, while some managed to leave BiH and some others were killed.<sup>571</sup>

160. David Harland testified that, based on information provided to the UN by Bosnian Serb hospitals and information available from within the city, the UN estimated that approximately 90 per cent of all civilians who were killed in Sarajevo were killed inside the confrontation lines, that is, on ABiH-held territory.<sup>572</sup> The Trial Chamber heard of many instances in which witnesses or people they knew were killed or injured as a result of sniping and shelling during the first two years of the conflict.<sup>573</sup> In some of these cases, witnesses specified that the projectile had come from Bosnian Serb-held territory.<sup>574</sup>

161. One of the consequences of the sniping and shelling into the city of Sarajevo was that there was no safe place in Sarajevo.<sup>575</sup> When David Harland arrived in Sarajevo in the first half of 1993, the streets were entirely and “eerily empty” except for some burnt-out vehicles.<sup>576</sup> There was constant background noise, either small-arms fire from the front lines around the city or from the heavy weapons, “detonations from the Serbian bombardment.”<sup>577</sup> People would come out for “very,

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<sup>565</sup> Milorad Katić, 31 May 2007, T. 5975; P637, Expert report Ewa Tabeau, p. 67; David Harland, P2, MT. 28634 – 28635. According to David Harland, a “great majority” of them were in areas that were immediately taken under the control of the “Serb forces”, David Harland, P2, MT. 28635.

<sup>566</sup> Milorad Katić, 31 May 2007, T. 5974 – 5975.

<sup>567</sup> Milan Mandilović, 18 Jan 2007, T. 608 – 610.

<sup>568</sup> David Harland, 15 Jan 2007, T. 358 – 359, P2, MT. 28635 – 28636.

<sup>569</sup> Nedeljko Učur, 26 July 2007, T. 8915; David Harland, P2, MT. 28635.

<sup>570</sup> David Harland, P2, MT. 28634.

<sup>571</sup> Milan Mandilović, 18 Jan 2007, T. 608 – 610; David Harland, P2, MT. 28634.

<sup>572</sup> David Harland, P2, MT. 28677.

<sup>573</sup> W-12, 1 Mar 2007, T. 3035 – 3036, P307, p. 2 (under seal); W-107, 12 Mar 2007, T. 3510 – 3513; Slavica Livnjak, P95, p. 2; Huso Palo, P162, p. 2; Alen Gičević, P164, p. 3; Alma Mulaosmanović, P179, p. 3; Džemaludin Luinović, P298, p. 3; Avdo Vatrić, P647, pp 7, 13; Nedžib Đozo, P363, p. 3; W-95, P520, p. 3 (under seal); Fadila Serdarević, P641, p. 5; Fikreta Pačariz, P643, p. 10.

<sup>574</sup> See, e.g., Alen Gičević, P164, p. 3; Alija Holjan, P526, p. 3; Slavica Livnjak, P95, p. 3; Džemaludin Luinović, P298, p. 3; Avdo Vatrić, P647, p. 7; Nedžib Đozo, P363, p. 3; Fadila Serdarević, P641, p. 5.

<sup>575</sup> Bakir Nakaš, 25 Jan 2007, T. 1075 – 1076.

<sup>576</sup> David Harland, 15 Jan 2007, T. 323.

<sup>577</sup> David Harland, 15 Jan 2007, T. 323.

very short periods” to collect water from water-dispensing points or food and then “they would scurry back into their homes.”<sup>578</sup>

162. The trams in Sarajevo stopped operating during the battle that took place on 2 May 1992 and did not start again until February or March 1994.<sup>579</sup> Alternative routes, or “rat runs”, were established by civilians in Sarajevo so as to minimise the amount of time they needed to be outside and to ensure safe movement from one place to another.<sup>580</sup> Video evidence was presented to the Trial Chamber showing civilians running from one point to another, particularly when they had to cross open spaces.<sup>581</sup>

163. Bakir Nakaš explained how in the period of 1992 to 1994 the way of life changed for the people in Sarajevo:

“[w]e managed to get by using only a litre of drinking water every day. We got used to it. We got used to living, getting on without electricity, without drinking water. There was no such thing as lifts or elevators in the city of Sarajevo because there was not enough electricity to run one, to operate one. Every day on your way to work you ran the risk of being killed or injured. Each day’s work meant exposing yourself to the risk of being added to the long list of the killed and wounded.”<sup>582</sup>

164. The Security Council was concerned about the situation and passed a number of resolutions addressing the matter.<sup>583</sup> On 13 August 1992, the Security Council noted in Security Council resolution 771:

“continuing reports of widespread violations of international humanitarian law including [...] deliberate attacks on non-combatants, hospitals, and ambulances, impeding the delivery of food and medical supplies to the civilian population, and wanton devastation of property.”<sup>584</sup>

165. With regard to fuel, an UNPROFOR report noted that in November 1993, notwithstanding an agreement between the Bosnian Muslims and Bosnian Serbs on the distribution of wood and coal in the Sarajevo region, “the Serbs are still blocking the fuel convoys waiting to come into the city.”<sup>585</sup> UNPROFOR reported in February 1994 that the BiH Government accused the Bosnian Serbs of turning off the gas supply lines; this was denied by the Bosnian Serbs, who said that the

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<sup>578</sup> David Harland, 15 Jan 2007, T. 323.

<sup>579</sup> Martin Bell, 26 Apr 2007, T. 5249.

<sup>580</sup> Martin Bell, 26 Apr 2007, T. 5243; P610, Videoclip of events in Sarajevo.

<sup>581</sup> P609, Videoclip of sniping in Sarajevo; P610, Videoclip of events in Sarajevo; P613, Videoclip of sniping on Zmaja od Bosne.

<sup>582</sup> Bakir Nakaš, 25 Jan 2007, T. 1062 – 1063.

<sup>583</sup> P472, Expert report Robert Donia, p. 34, referring, *inter alia*, to Security Council resolution 757 (30 May 1992).

<sup>584</sup> P472, Expert report Robert Donia, p. 34, omission in the original.

<sup>585</sup> D2, UNPROFOR weekly BH political assessment, 3 November 1993, p. 3.

problem originated in Serbia.<sup>586</sup> At this time, night-time temperatures were falling below -20 degrees centigrade.<sup>587</sup> People died as a result of the lack of heating.<sup>588</sup>

166. David Harland testified that during 1994 the Bosnian Serbs usually let in enough food that the people in Sarajevo did not starve to death.<sup>589</sup> However, in addition to the evidence that the Bosnian Serbs placed impediments in the way of delivery of humanitarian aid, at the beginning of 1994, UNPROFOR reported that the Bosnian Muslim authorities in Sarajevo appeared to be diverting “even more food than usual away from intended beneficiaries”.<sup>590</sup> It reported that the civilian population in Sarajevo may have been receiving less than one-third of the aid brought into the city.<sup>591</sup> As for the remainder of the food aid, it was reported that some was sold on the black market and some went to the military; however, most was unaccounted for.<sup>592</sup>

167. The Trial Chamber heard evidence that fire fighters within the confrontation lines had to work under shell and sniper fire.<sup>593</sup> In early 1993, almost 20 per cent of the Bosnian Muslim fire fighters were being killed or wounded while fighting fires.<sup>594</sup> In September 1993, GOFRS instituted a protection programme for Bosnian Muslim fire fighters, following which no Bosnian Muslim fire fighter was killed.<sup>595</sup> GOFRS volunteers were also targeted and, as a consequence, they carried arms and shot at snipers.<sup>596</sup> John Jordan stated that when fighting fires on the SRK side, GOFRS volunteers “seldom” came under fire from snipers or from shelling.<sup>597</sup>

168. A video clip shown during the trial depicted fire fighters, including John Jordan, fighting a fire that was raging in a multi-storey building in December 1993, while at the same time being shot at by snipers.<sup>598</sup> The same video clip also depicted John Jordan assisting in an attempted rescue of two children from a collapsed building in a residential district.<sup>599</sup> In this instance, the rescuers came under “lengthy inconsistent artillery” fire.<sup>600</sup> John Jordan testified that the rescue would not have

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<sup>586</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

<sup>587</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

<sup>588</sup> David Harland, P1, MT. 26944 – 26945.

<sup>589</sup> David Harland, 15 Jan 2007, T. 344, 375.

<sup>590</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3; David Harland, 15 Jan 2007, T. 382 – 383.

<sup>591</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3; David Harland, 15 Jan 2007, T. 382 – 383.

<sup>592</sup> D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

<sup>593</sup> John Jordan, 21 Feb 2007, T. 2647 – 2648; P270, Videoclip of fire fighting.

<sup>594</sup> John Jordan, 22 Feb 2007, T. 2700 – 2701.

<sup>595</sup> John Jordan, 22 Feb 2007, T. 2700 – 2701.

<sup>596</sup> John Jordan, 21 Feb 2007, T. 2658, 22 Feb 2007, T. 2693, P267, p. 6.

<sup>597</sup> John Jordan, P267, p. 5.

<sup>598</sup> John Jordan, 21 Feb 2007, T. 2647 – 2648; P269, Video of interview with John Jordan.

<sup>599</sup> John Jordan, 21 Feb 2007, T. 2647 – 2648; P269, Video of interview with John Jordan.

<sup>600</sup> John Jordan, 21 Feb 2007, T. 2647; P269, Video of interview with John Jordan. Only one of the children survived.

been possible if UNPROFOR had not brokered a temporary cease-fire with the SRK, enabling the UNPROFOR troops to assist in the rescue with heavy equipment.<sup>601</sup>

### 3. Defence Evidence of ABiH Activities from 1992 to 1994

169. Defence witnesses gave evidence concerning ABiH attacks against units of the SRK during the pre-Indictment period.<sup>602</sup> There is also evidence regarding shelling of the SRK and Bosnian Serb civilians and civilian areas by the ABiH.<sup>603</sup> For example, Zoran Samardžić, a soldier within the SRK, explained that in 1993, “there was lots of fighting and many shells fell on the urban area of Hadžići.”<sup>604</sup> On 13 April 1993, his friend was injured by shrapnel in the street.<sup>605</sup> After visiting that friend, Zoran Samardžić returned home to find that his 13-year-old son was dead, as was his son’s 11-year-old friend, Srdjan Zuza.<sup>606</sup>

170. The Defence put to Robert Donia that “several thousand” Bosnian Serbs were killed in Sarajevo in 1992.<sup>607</sup> He disagreed, saying that one demographer had estimated that 151 Bosnian Serbs were killed in encounters with Croat or Bosnian Muslim “irregulars” within Sarajevo in 1992 although, in his view, the number of Bosnian Serbs killed by artillery fire and sniping and tank fire was much greater than that.<sup>608</sup> However, he maintained that the figure of 2,511 individuals included in a RS Government report was “unquestionably high.”<sup>609</sup>

171. According to Martin Bell, civilians in SRK-held territory were also targeted.<sup>610</sup> Evidence indicates that the ABiH had and used snipers in the pre-Indictment period.<sup>611</sup> Witnesses testified about incidents in which they, family members, friends or civilians generally were shot by the ABiH.<sup>612</sup> In two UNPROFOR reports, dated 15 October 1993 and 16 October 1993, Radovan

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<sup>601</sup> John Jordan, 21 Feb 2007, T. 2647 – 2648.

<sup>602</sup> Milorad Katić, 31 May 2007, T. 5975 – 5976; Vaso Elez, 7 June 2007, T. 6345 – 6346; Zoran Samardžić, 14 June 2007, T. 6651 – 6652; Predrag Čarkić, 19 June 2007, T. 6869 – 6870, 6871 – 6872; Radomir Visnjić, 25 June 2007, T. 7228, 7239 – 7245, 7260, 7261; Rade Ivanović, 4 July 2007, T. 7625 – 7626, 7631, 7633; T-15, 13 July 2007, T. 8291 – 8292; T-9, 16 July 2007, T. 8344 – 8345.

<sup>603</sup> Stevan Veljović, 29 May 2007, T. 5747, 5749; Vaso Elez, 7 June 2007, T. 6332 – 6333; T-53, 7 June 2007, T. 6387 – 6388; Goran Kovačević, 12 June 2007, T. 6544 – 6545; T-39, 21 June 2007, T. 6994 – 6995; T-48, 22 June 2007, T. 7133 – 7134; T-37, 10 July 2007, T. 7983; T-20, D496, p. 2 (under seal); Dragan Orlić, D497, p. 3; D185, SRK combat report, dated 13 September 1992 (“SRK combat report, 13 September 1992”).

<sup>604</sup> Zoran Samardžić, 13 June 2007, T. 6626 – 6627.

<sup>605</sup> Zoran Samardžić, 13 June 2007, T. 6626 – 6627.

<sup>606</sup> Zoran Samardžić, 13 June 2007, T. 6626 – 6627, 6628; D229, Death certificate of Stasa Samardžić, dated 18 May 1993.

<sup>607</sup> Robert Donia, 16 Mar 2007, T. 3962 – 3963.

<sup>608</sup> Robert Donia, 16 Mar 2007, T. 3963.

<sup>609</sup> Robert Donia, 16 Mar 2007, T. 3963.

<sup>610</sup> Martin Bell, 26 Apr 2007, T. 5239, 5253 – 5254.

<sup>611</sup> Milorad Katić, 31 May 2007, T. 5983 – 5984; T-2, 20 June 2007, T. 6924 – 2926; Kosta Kosović, 10 July 2007, T. 7995; D185, SRK combat report, 13 September 1992; D251, Order, 5 March 1993.

<sup>612</sup> See e.g. Dragan Simić, 5 June 2007, T. 6164; Vaso Elez, 7 June 2007, T. 6332; T-2, 20 June 2007, T. 6920, 6924, 6936 – 6939, 6949; T-61, 9 July 2007, T. 7837 – 7838; Momčilo Gojković, 13 July 2007, T. 8253 – 8254.

Karadžić reportedly said that Bosnian Muslim shelling and sniping was a big problem.<sup>613</sup> T-5 recalled, “[e]very day I would watch civilians getting killed on the streets, and we were helpless to assist them because we were also exposed to danger. I personally saw when a boy was hit. His mother went up to him to help. The mother was also hit. And they remained there on the street until it got dark. No one was able to help them.”<sup>614</sup>

172. Milorad Katić also testified about the death and injury of people in Bosnian Serb-held parts of Sarajevo during the pre-Indictment period.<sup>615</sup> Witnesses also spoke of feeling frightened, threatened and unsafe.<sup>616</sup> Others spoke of civilians living close to the confrontation lines.<sup>617</sup> Radomir Višnjić, testifying for the Defence, recalled that anti-sniping barriers were put up in Bosnian Serb areas in the pre-Indictment period.<sup>618</sup> Defence witness T-5, a civilian from Grbavica, testified that after May 1992, “[w]e spent the whole day in the basement, and at night we would supply ourselves with food and water and we were able to go out during the night. During the day, we didn’t dare to because there was shooting, constant shooting.”<sup>619</sup> Luka Jović, a member of an SRK Armoured Battalion, spoke of the lack of water and electricity in the Bosnian Serb-held areas of Dobrinja.<sup>620</sup>

173. Defence witness Milan Pejić, a doctor, testified that in 1992 there were no hospitals in Blažuj.<sup>621</sup> Following an attack in late April 1992 at a hotel in Ilidža, he treated people in a motel, giving them first aid.<sup>622</sup> Milorad Katić said that, in 1992, wounded persons were taken to Pale, a journey that took a minimum of three or four hours by road.<sup>623</sup> Later, Zica Hospital was established in Blažuj, approximately six kilometres away from Nedarići.<sup>624</sup> According to the Prosecution witness Milomir Šoja, this was the only hospital in the area and civilians and military personnel alike were treated there.<sup>625</sup> However, major surgery could not be carried out at Zica Hospital.<sup>626</sup>

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<sup>613</sup> David Harland, P1, MT. 26950.

<sup>614</sup> T-5, 25 June 2007, T. 7209 – 7210.

<sup>615</sup> Milorad Katić, 31 May 2007, T. 5970 – 5971, 5373 – 5374, 1 June 2007, T. 5993; D198, Article from Srpska Vojska, dated 25 January 1994.

<sup>616</sup> T-7, 19 June 2007, T. 6848 – 6850; Radomir Višnjić, 25 June 2007, T. 7260.

<sup>617</sup> Vaso Elez, 6 June 2007, T. 6308 – 6310; Luka Jović, 14 June 2007, T. 6697 – 6698.

<sup>618</sup> Radomir Višnjić, 25 June 2007, T. 7245; T-44, D498, p. 3 (under seal).

<sup>619</sup> T-5, 25 June 2007, T. 7208. *See also* Luka Jović, 14 June 2007, T. 6716.

<sup>620</sup> Luka Jović, 14 June 2007, T. 6697 – 6698.

<sup>621</sup> Milan Pejić, 21 June 2007, T. 7027.

<sup>622</sup> Milan Pejić, 21 June 2007, T. 7027 – 7028. *See also* Milomir Šoja, 25 Apr 2007, T. 5165.

<sup>623</sup> Milorad Katić, 1 June 2007, T. 6023. *See also* Radomir Višnjić, 25 June 2007, T. 7238 – 7239.

<sup>624</sup> Milan Pejić, 21 June 2007, T. 7033; Milorad Katić, 1 June 2007, T. 6023. *See also* Milomir Šoja, 25 Apr 2007, T. 5165.

<sup>625</sup> Milomir Šoja, 25 Apr 2007, T. 5165. *See also* Milorad Katić, 1 June 2007, T. 6022 – 6023.

<sup>626</sup> T-48, 22 June 2007, T. 7136.



Milorad Katić testified that the lack of facilities at all the hospitals, including the hospitals of Kasindol and Pale, meant that the seriously wounded had to be transferred to Belgrade.<sup>627</sup>

#### **D. Challenge to the Reliability of the Investigation by BiH Police and BiH Police Reports**

174. The Defence, in its Final Brief, argued that the reports of the BiH police should be excluded from the evidence pursuant to Rule 95 of the Rules of Procedure and Evidence (“Rules”).<sup>628</sup> In particular, it argued that the MUP forces formed part of the ABiH.<sup>629</sup> Moreover, the BiH police did not respect the criminal procedure in force at the time by leaving crime scenes unguarded, not registering the statements of possible eyewitnesses or not including the names of eyewitnesses in their investigative reports; crime scenes were cleaned up before investigations were carried out; the investigators were not properly trained and military experts were never part of investigation teams; the methods used to establish a causal link between the killed or injured person and the incident, as well as the civilian status of the victim, were unacceptable because victims were not photographed nor was biological material gathered at the scene, “medical reports were never of interest to the Bosnian police investigators”, and the means of determining the status of victims was unverifiable.<sup>630</sup>

175. Several BiH police officers testified that the police only investigated cases of shelling and sniping if there were casualties or heavy damage.<sup>631</sup> Upon being informed that an incident occurred, an investigative team was set up, which was led by an investigative judge.<sup>632</sup> The unarmed team, which did not wear uniforms, generally also included a criminal inspector, a forensic technician or a crime scene officer and, if the incident concerned a shelling, a member of a bomb squad.<sup>633</sup> The bomb squad member was part of the KDZ, the members of which were trained in detecting, deactivating and disarming explosive devices.<sup>634</sup> Each member of the investigative team was responsible for different aspects of the investigations.<sup>635</sup> In response to questions by the Defence,

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<sup>627</sup> Milorad Katić, 1 June 2007, T. 6023 – 6024.

<sup>628</sup> Defence Final Brief, dated 1 October 2007 (“Defence Final Brief”), paras 158 – 168.

<sup>629</sup> Defence Final Brief, paras 64, 120, 122, 158.

<sup>630</sup> Defence Final Brief, paras 158 – 167.

<sup>631</sup> Bogdan Vidović, 14 Feb 2007, T. 2110; Sanjin Hasanefendić, 16 Feb 2007, T. 2295 – 2296; Sead Bešić, 21 Feb 2007, T. 2607 – 2608; Zlatko Mededović, P649, p. 11.

<sup>632</sup> W-138, 31 Jan 2007, T. 1318 – 1319; Bogdan Vidović, 14 Feb 2007, T. 2116 – 2117; Sanjin Hasanefendić, 16 Feb 2007, T. 2293; W-137, 20 Feb 2007, T. 2521; W-28, 22 Feb 2007, T. 2708 – 2709; Nedžib Đozo, 14 Mar 2007, T. 3706, 3708 – 3709; W-116, 17 Apr 2007, T. 4614 – 4616.

<sup>633</sup> W-138, 30 Jan 2007, T. 1207, 1 Feb 2007, T. 1432, 1436 – 1437; Sanjin Hasanefendić, 16 Feb 2007, T. 2293 – 2295, 2355; W-137, 19 Feb 2007, T. 2478 – 2479; W-28, 22 Feb 2007, T. 2708 – 2709, 2726 – 2727; W-116, 18 Apr 2007, T. 4648 – 4649, P549, p. 2, P551, p. 2; Zlatko Mededović, P649, p. 11.

<sup>634</sup> W-137, 19 Feb 2007, T. 2410; Ekrem Suljević, 2 Mar 2007, T. 3094 – 3095, 3111; W-116, 18 Apr 2007, T. 4632.

<sup>635</sup> W-138, 30 Jan 2007, T. 1206 – 1207, 1211 – 1214; Sead Bešić, 20 Feb 2007, T. 2576, 2581; W-116, 17 Apr 2007, T. 4616, 18 Apr 2007, T. 4632 – 4633, 4650 – 4651, P548, p. 2, P549, p. 2; Mirza Sabljica, 19 Apr 2007, T. 4694 – 4695, 4709 – 4710, 4737, 4756 – 4757, 4778. *See also*, Kemal Bučo, 2 Feb 2007, T. 1498 – 1504, 1514, P158, p. 2; Bogdan Vidović, 13 Feb 2007, T. 2060; Sanjin Hasanefendić, 16 Feb 2007, T. 2291 – 2295, 2324, 2327; W-137, 19 Feb 2007, T. 2410 – 2412; W-28, 22 Feb 2007, T. 2709 – 2710, 2718 – 2719, 2732 – 2733, 2747; Ekrem Suljević,

Prosecution witnesses testified that it was not always possible for an investigative judge to be present during the investigation; many investigative reports indicate the extent to which the investigative judge was involved.<sup>636</sup> These witnesses noted that under law in BiH, it was possible that another member of the investigation team would take charge of the investigation in the absence of the judge.<sup>637</sup> The RS police did not assist in the investigations inside the city of Sarajevo, although it would have been allowed.<sup>638</sup> Defence witness Simo Tuševljak, chief of security of the RS police, testified in cross-examination that he could only recall two instances in which the RS police offered to assist the BiH police in its investigation.<sup>639</sup>

176. The Defence argued that military experts ought to have participated in the investigation teams.<sup>640</sup> BiH police officers testified that the members of investigative teams were trained in investigation techniques, including the determination of direction of fire, through courses and field experience, and were sometimes taught techniques by UN personnel. If officers were inexperienced, they conducted their tasks under the supervision of a more experienced police officer.<sup>641</sup>

177. Several BiH police officers testified that until the investigative team arrived, the scene was secured by police officers from the local police stations.<sup>642</sup> The Defence argued that no reports of police officers from local police stations were tendered into evidence, even though they “were supposed to evacuate the dead and wounded before the arrival of the Security Centre police.”<sup>643</sup>

178. Witnesses for the Prosecution testified that UNMOs attended the scenes of shelling or sniping incidents on a regular basis.<sup>644</sup> UNPROFOR was also involved in some investigations.<sup>645</sup>

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2 Mar 2007, T. 3094 – 3095, 3101 – 3102, 5 Mar 2007, T. 3184 – 3185; W-91, 14 Mar 2007, T. 3740; Vekaz Turković, 26 Apr 2007, T. 5224. *See e.g.* P582, Criminal investigation file, dated 12 November 1994, p. 1.

<sup>636</sup> W-137, 20 Feb 2007, T. 2521 – 2522; W-28, 22 Feb 2007, T. 2708 – 2709; Nedžib Đozo, 14 Mar 2007, T. 3708 – 3709.

<sup>637</sup> Nedžib Đozo, 14 Mar 2007, T. 3708 – 3709; W-91, 15 Mar 2007, T. 3792. *See also*, W-28, 22 Feb 2007, T. 2708 – 2709.

<sup>638</sup> Scad Bešić, 21 Feb 2007, T. 2605 – 2606.

<sup>639</sup> Simo Tuševljak, 11 July 2007, T. 8043 – 8044, 12 July 2007, T. 8104 – 8105.

<sup>640</sup> Defence Final Brief, para. 161.

<sup>641</sup> W-138, 30 Jan 2007, T. 1204 – 1205 (private session); Bogdan Vidović, 13 Feb 2007, T. 2059, 14 Feb 2007, T. 2109; Sanjin Hasanefendić, 16 Feb 2007, T. 2287; W-137, 19 Feb 2007, T. 2409, 2412 – 2414; Scad Bešić, 20 Feb 2007, T. 2568, 2575, 21 Feb 2007, T. 2607 – 2609; Ekrem Suljević, 2 Mar 2007, T. 3094 – 3095, 3105 – 3106; W-116, 18 Apr 2007, T. 4648 – 4649; Mirza Sabljica, 19 Apr 2007, T. 4694 – 4695, 4698 – 4699; Vekaz Turković, 26 Apr 2007, T. 5217 – 5219. *See also* Kemal Bučo, 2 Feb 2007, T. 1500 – 1501; W-28, 22 Feb 2007, T. 2707 (private session); Nedžib Đozo, 14 Mar 2007, T. 3681. Zlatko Mededović stated he gained sufficient knowledge on ballistic traces of military shells from studying literature before the war started, Zlatko Mededović, P649, pp 2, 11.

<sup>642</sup> W-28, 22 Feb 2007, T. 2730 – 2731 (private session); W-91, 15 Mar 2007, T. 3769; Vekaz Turković, 25 Apr 2007, T. 5191; W-116, P551, p. 2 (under seal).

<sup>643</sup> Defence Final Brief, para. 159.

<sup>644</sup> Thorbjorn Overgard, 18 Jan 2007, T. 637; Asam Butt, 14 Feb 2007, T. 2160, 2162; Harry Konings, 12 Mar 2007, T. 3555 – 3556; W-57, 17 Apr 2007, T. 4593; W-116, 18 Apr 2007, T. 4649.

<sup>645</sup> W-156, P625, p. 21 (under seal); W-46, P387, p. 15 (under seal).

However, UN personnel and the BiH police largely conducted separate investigations.<sup>646</sup> Upon completion of the police investigation, a report would be drawn up containing the results of the investigation and results from the crime laboratory.<sup>647</sup> If UN personnel were present at the scene, and if they provided relevant information or made comments, this was reflected in the investigative report.<sup>648</sup> The report was sent to the Prosecutor's office in Sarajevo by the police or the investigative judge.<sup>649</sup>

179. The Defence argued that the evidence shows that UNMOs were sometimes not permitted to attend sites of shelling or sniping, or hospitals and morgues, and that this was one of the factors which, according to the Defence, casts substantial doubt on the credibility of the BiH police reports.<sup>650</sup> However, Maj. Overgard testified that, in general, there were no restrictions on the movement of UNMOs.<sup>651</sup>

180. The Trial Chamber heard evidence from several witnesses of the method by which the direction of fire was established by the BiH police and the UN. When investigating shelling incidents during the Indictment period, the BiH police and UN personnel used the same basic method for determining the origin or direction of fire.<sup>652</sup> QMS Higgs, the Prosecution expert on mortars, was of the opinion that the BiH police were very competent in crater analysis and used the correct methodology to determine the direction of fire.<sup>653</sup> Defence expert Maj. Gen. Garović challenged the investigations by the BiH police, saying that the methods used would not allow for a determination of the origin of fire.<sup>654</sup> However, the Trial Chamber notes that the BiH police reports

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<sup>646</sup> Thorbjorn Overgard, 19 Jan 2007, T. 662; Harry Konings, 12 Mar 2007, T. 3556; Thomas Hansen, 2 Apr 2007, T. 4388 – 4389; Nedžib Đozo, P364, p. 2; Ronald Eimers, P585, p. 5.

<sup>647</sup> W-138, 1 Feb 2007, T. 1350; Bogdan Vidović, 13 Feb 2007, T. 2060; Sead Bešić, 21 Feb 2007, T. 2597; W-28, 22 Feb 2007, T. 2709, 2748; Mirza Sabljica, 19 Apr 2007, T. 4709; Vekaz Turković, 25 Apr 2007, T. 5191. *See also* Asam Butt, 14 Feb 2007, T. 2160; Harry Konings, 12 Mar 2007, T. 3555 – 3556; Hussain Ijaz, 27 Apr 2007, T. 5411 – 5412; Nedžib Đozo, P363, p. 2, P364, p. 2.

<sup>648</sup> Bogdan Vidović, 14 Feb 2007, T. 2144 – 2145; W-28, 22 Feb 2007, T. 2749 – 2750; Ekrem Suljević, 2 Mar 2007, T. 3102. *See also* Thorbjorn Overgard, 19 Jan 2007, T. 662; Harry Konings, 12 Mar 2007, T. 3556; Ronald Eimers, P585, pp 2, 5; P266, Criminal investigation file, dated 29 August 1995.

<sup>649</sup> Sead Bešić, 21 Feb 2007, T. 2597; W-28, 22 Feb 2007, T. 2719, 2724 – 2725, 2765 (private session); Ekrem Suljević, 2 Mar 2007, T. 3102; Vekaz Turković, 25 Apr 2007, T. 5191 – 5193; W-116, P549, p. 2.

<sup>650</sup> Defence Final Brief, paras 153 – 157.

<sup>651</sup> Thorbjorn Overgard, 19 Jan 2007, T. 688 – 691. *See also* David Harland, 16 Jan 2007, T. 442; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 712; Thomas Knustad, 13 Feb 2007, T. 2011; Asam Butt, 15 Feb 2007, T. 2233; W-137, 20 Feb 2007, T. 2497 – 2498; Per Anton Brennskag, 8 Mar 2007, T. 3501; W-46, 15 Mar 2007, T. 3817 – 3818 (closed session), 16 Mar 2007, T. 3897, 3904 – 3905 (closed session); Ronald Eimers, 20 Apr 2007, T. 4798 – 4799, 4802, P585, p. 7; W-156, 27 Apr 2007, T. 5359 – 5361 (closed session), P625, pp 17, 23, 31 (under seal); Hussain Ijaz, 27 Apr 2007, T. 5411 – 5412; D7, UNPROFOR daily sitrep, dated 2 December 1994 (“UNPROFOR daily sitrep, 2 December 1994”), p. 3; D73, UNMO HQ daily sitrep, dated 19 June 1995 (“UNMO daily sitrep, 19 June 1995”), p. 12; P9, UNPROFOR daily sitrep, dated 25 November 1994, p. 5; P19, UNPROFOR sitrep, dated 2 July 1995, p. 2.

<sup>652</sup> Mirza Sabljica, 19 Apr 2007, T. 4696. *See also* Thorbjorn Overgard, 18 Jan 2007, T. 635. Before their deployment to Sarajevo, UNMOs were specifically trained in crater analysis and technical aspects of weaponry, Thorbjorn Overgard, 19 Jan 2007, T. 656 – 657; Thomas Knustad, 13 Feb 2007, T. 1989; Asam Butt, 14 Feb 2007, T. 2151 – 2152; Harry Konings, 12 Mar 2007, T. 3550, 3573 – 3574.

<sup>653</sup> Richard Higgs, 23 Apr 2007, T. 5015.

<sup>654</sup> Desimir Garović, 23 Aug 2007, T. 9130; D366, Expert report Desimir Garović, p. 13.

and the investigation reports by UNMO did not indicate an exact position as the origin of fire of shells. Rather, the reports consistently provided a direction of fire with a margin of error. Sometimes the recorded margin of error was as high as ten degrees. In cases where an exact location was mentioned, this was based on statements of witnesses who saw the launch of the projectile.

181. The BiH police and UNMOs also investigated shelling incidents involving modified air bombs.<sup>655</sup> W-137 and W-116 gave evidence that it was “slightly” or “much more” difficult to determine direction of fire for modified air bombs because of the sort of crater they produced.<sup>656</sup> However, if the modified air bomb struck a vertical object, such as a high-rise building, it was easy to determine the direction of fire on the basis of the marks left by the explosion; in case the bomb had first ricocheted, it was possible to determine the direction of fire based on the ricochet marks.<sup>657</sup> Berko Zečević clarified that if an air bomb, whether modified or not, hits a target at an angle of around 25 degrees or less, it could ricochet rather than explode because the fuse would not be the first part of the bomb to hit an obstacle.<sup>658</sup> Sanjin Hasanefendić and Berko Zečević said that the direction of fire of these bombs was determined through an analysis of the centre of the explosion and the traces left by the explosion; these traces were used to estimate the angle of descent.<sup>659</sup> Maj. Gen. Garović testified that on the basis of a crater caused by an air bomb, and using a magnetic compass, nothing could be determined in respect of origin of fire because there is only inaccurate data about the effects of a modified air bomb.<sup>660</sup>

182. As was the case in shelling incidents, due to continuing fire, police officers were often unable to investigate a sniping scene immediately after the incident occurred.<sup>661</sup> Sometimes the investigative team only drove past the location of an incident without stopping to gather forensic evidence at that location.<sup>662</sup>

183. The Trial Chamber notes that the Defence, specifically with regard to sniping incidents, argued that the methods to establish the origin of fire were not appropriate in the circumstances. In particular, and by way of example, it argued that certain factors do not support BiH police findings

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<sup>655</sup> Thorbjorn Overgard, 18 Jan 2007, T. 634; W-138, 30 Jan 2007, T. 1208 – 1209; W-28, 22 Feb 2007, T. 2708; Per Anton Brennskag, 8 Mar 2007, T. 3467.

<sup>656</sup> W-137, 19 Feb 2007, T. 2422; W-116, 18 Apr 2007, T. 4670.

<sup>657</sup> W-138, 30 Jan 2007, T. 1209, 31 Jan 2007, T. 1318 – 1320; W-137, 19 Feb 2007, T. 2422.

<sup>658</sup> Berko Zečević, 20 Apr 2007, T. 4842; W-137, 19 Feb 2007, T. 2424; P586, Expert report Berko Zečević, p. 179.

<sup>659</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2327 – 2329; Berko Zečević, 20 Apr 2007, T. 4850 – 4851. *See also* W-138, 1 Feb 2007, T. 1349 – 1350; W-137, 19 Feb 2007, T. 2471.

<sup>660</sup> Desimir Garović, 23 Aug 2007, T. 9151.

<sup>661</sup> Kemal Bučo, 2 Feb 2007, T. 1519 – 1520; W-28, 22 Feb 2007, T. 2718; Mirza Sabljica, 19 Apr 2007, T. 4749; Vekaz Turković, 26 Apr 2007, T. 5226; P582, Criminal investigation file, p. 1. *See also*, Section II.E.6.(b)(i) Shelling of Livanjska Street on 8 November 1994.

<sup>662</sup> Kemal Bučo, 2 Feb 2007, T. 1518 – 1520.

on origin of fire in cases of sniping.<sup>663</sup> These factors include: the location of the confrontation lines, which would often cross certain buildings and were very near to each other; that snipers often changed positions; the existence of rumours about certain sniper positions, which would have resulted in the police officers not truly investigating the origin of fire; the possibility of so-called “stray bullets” and ricochets; and that the police officers did not take into account pre-existing damage to buildings when making their findings. Finally, the Defence also drew attention to the fact that witnesses testified that the ABiH shot at individuals in order to create panic.

184. Col. Stamenov, the Defence expert on sniping, was specifically asked about the investigations into sniping conducted by the BiH police and whether he agreed with the findings of the police. In his report, he stated that the process used by the BiH police was “unscientific, based on arbitrary and hypothetical assumptions, making use of arbitrary data and as such cannot lead to a truthful conclusion founded on scientific facts.”<sup>664</sup> During his testimony, he said that in an urban environment it is “extremely difficult” to establish the origin of fire, because such an environment causes “multiple deflection of the sound” and that this effect can cause a situation where it sounds like the shot comes from one location, when, in actual fact, it was fired from another.<sup>665</sup>

185. Witnesses testified, when asked by the Defence, that there were instances in which the evidence at the scene was tampered with, or even planted.<sup>666</sup> Media reports by the BiH of targeted civilians inside Sarajevo by the SRK were often regarded by SRK brigade commanders as “false” allegations and “propaganda”.<sup>667</sup> Lt. Col. Konings, a Dutch UNMO, confirmed that there were rumours that bodies were “dragged around the city” and were planted in locations other than where those people had died, in order to make the number of killed persons appear higher.<sup>668</sup> He testified that on his arrival in Sarajevo he was briefed by UNPROFOR to “be alert to the possibility of bodies being planted at scenes”, but that he never saw any evidence to support this rumour.<sup>669</sup> He also testified that he never heard from his superiors that bodies were planted to serve military and political interests of BiH.<sup>670</sup> Another witness recalled one incident in which UN “investigators” were not allowed to attend a shelling scene for a number of hours and that upon arrival at the scene

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<sup>663</sup> Defence Final Brief, para 168.

<sup>664</sup> D360, Expert report Ivan Stamenov, p. 14.

<sup>665</sup> Ivan Stamenov, 22 Aug 2007, T. 9031, 9033.

<sup>666</sup> W-138, 1 Feb 2007, T. 1362, 1374, 1379 – 1380; W-137, 20 Feb 2007, T. 2553; Berko Zečević, 23 Apr 2007, T. 4956, 4972.

<sup>667</sup> Vlajko Božić, 17 July 2007, T. 8448 – 8449.

<sup>668</sup> Harry Konings, 12 Mar 2007, T. 3558 – 3559.

<sup>669</sup> Harry Konings, 12 Mar 2007, T. 3559, 13 Mar 2007, T. 3644.

<sup>670</sup> Harry Konings, 13 Mar 2007, T. 3643 – 3645. The Trial Chamber notes that the Defence put this proposition to him, quoting Gen. Nicolai’s testimony regarding the Markale Market II shelling, in which he stated that the possibility that people could be used as an instrument for the highest interest of the state was “an option that we did not exclude”, Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1039.

they found debris which “could not have been the result of firing coming from the Serbs.”<sup>671</sup> This witness said that manipulation was something that had to be “reckoned with.”<sup>672</sup>

186. Several BiH police officers disagreed with the Defence assertions that evidence was tampered with. They explained that often there were no bodies at the scenes of incidents because local people took the victims to hospital or to the morgue.<sup>673</sup> According to W-137, “[t]hose collecting the bodies were never entirely certain whether the body was dead or still alive.”<sup>674</sup> As for the cleaning up of blood marks at the scene, it was said that this was a “perfectly normal, natural human reaction.”<sup>675</sup> W-116 testified that it would be “naive” and an “exaggeration” to think that people in Sarajevo would be shelling themselves with “over two million shells over four years”.<sup>676</sup> From early 1994 until the end of the war, W-137 conducted “a couple of hundred” mortar crater analyses.<sup>677</sup> He believed that it was impossible for anyone to try and tamper with a crater, not only because there would be too many witnesses to such an activity, but also because in order to falsify traces in hard surfaces, such as asphalt, so as to make them appear to have been caused by shrapnel, one would have to hammer hard at the surface.<sup>678</sup> People walking over the crater could not change the traces left in the surface.<sup>679</sup>

187. The Trial Chamber observes that the evidence from Defence witnesses as to the working methods of the RS police shows that the methods of investigating the incident site by the RS police were almost identical to the methods of the BiH police. The similarities include the following: the RS police teams also had an investigative judge; it was the responsibility of the police to secure the scene; photographs and blood samples would be taken of the bodies of victims at the scene, but the police also came to the morgue to photograph the victims; an on-site investigation was often not conducted immediately, due to continuing fire; and the investigation reports were sent to the relevant prosecutor’s office.<sup>680</sup> Furthermore, it was not always possible to conduct a full autopsy, for instance, in cases of numerous victims or unavailability of medical experts only an external examination of the body would take place.<sup>681</sup>

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<sup>671</sup> W-46, 16 Mar 2007, T. 3897 (closed session).

<sup>672</sup> W-46, 16 Mar 2007, T. 3895 (closed session), P387, p. 15 (under seal).

<sup>673</sup> Vekaz Turković, 26 Apr 2007, T. 5225 – 5226; W-28, 22 Feb 2007, T. 2731 – 2734. *See also* Mirza Sabljica, 19 Apr 2007, T. 4757 – 4758.

<sup>674</sup> W-137, 20 Feb 2007, T. 2501.

<sup>675</sup> W-137, 20 Feb 2007, T. 2502.

<sup>676</sup> W-116, 18 Apr 2007, T. 4662 – 4663.

<sup>677</sup> W-137, 19 Feb 2007, T. 2414.

<sup>678</sup> W-137, 19 Feb 2007, T. 2418, 2430.

<sup>679</sup> W-137, 19 Feb 2007, T. 2430.

<sup>680</sup> Simo Tuševljak, 11 July 2007, T. 8043, 8066, 8069, 8089 – 8090, 8100 – 8102; Ivica Milosavljevic, 24 Aug 2007, T. 9237 – 9240, 27 Aug 2007, T. 9252.

<sup>681</sup> Ivica Milosavljević, 24 Aug 2007, T. 9238 – 9239, 9243 – 9244, 9248 – 9249, 27 Aug 2007, T. 9251 – 9253.

188. The Defence submitted in its Final Brief that the MUP forces formed part of the ABiH.<sup>682</sup> An intelligence report by the SRK stated that there were between 11,000 and 12,000 members of the BiH MUP in the city of Sarajevo.<sup>683</sup> Goran Kovačević testified that BiH MUP units and special police units remained directly involved throughout the conflict, by taking part in “riots and sabotage action”.<sup>684</sup> However, Maj. Gen. Karavelić testified that the ABiH and the civilian police were two separate entities.<sup>685</sup> The BiH MUP forces were not under the control of the army, but remained under the control of the BiH Government and the BiH MUP.<sup>686</sup> He denied that special BiH MUP units were subordinated to his command or that reserve police officers fought as ABiH combatants.<sup>687</sup> However, he explained that sometimes police units were assigned for certain combat actions and that an agreement was reached between Gen. Delić and BiH MUP that these police forces could be used by brigade commanders in a specific area.<sup>688</sup> If assistance was requested for a special operation, a BiH MUP unit was temporarily placed under the command of the 1<sup>st</sup> Corps.<sup>689</sup> Orders of Gen. Prevljak confirm that special MUP units, among them the *Bosna* and *Lasta* detachments, were engaged in operations with the ABiH.<sup>690</sup>

189. As to the Defence reliance in its Final Brief on Rule 95 it is passing strange that an argument to the effect that Prosecution evidence contravenes that Rule was not presented during the trial. That Rule vests the Trial Chamber with a discretion to exclude evidence obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings. While it is not precluded for a Party to invoke Rule 95 for the first time in its Final Brief, it would seem that a Party who is serious about its reliance on the Rule would have raised this argument during the trial; the reason being that a Trial Chamber, in determining the applicability of Rule 95, would in many cases consider it necessary to hold a trial within a trial - clearly, a procedure that would not ordinarily take place at the stage of the presentation of a final brief. In the circumstances of this case, it is sufficient for the Trial Chamber to say that the Defence adduced no evidence to substantiate its submission as to the application of Rule 95. Although the Trial Chamber acknowledges that there were shortcomings in some of the procedures adopted by the BiH police investigation teams, it is satisfied that the reports produced by the teams are generally reliable and provide a sufficient basis for the Trial Chamber's

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<sup>682</sup> Defence Final Brief, paras 64, 120, 122, 158.

<sup>683</sup> P691, Intelligence information by SRK, dated 2 April 1995.

<sup>684</sup> Goran Kovačević, 12 June 2007, T. 6542 – 6543, 6601.

<sup>685</sup> Vahid Karavelić, 27 Mar 2007, T. 4082 – 4083.

<sup>686</sup> Vahid Karavelić, P492, pp 14 - 15.

<sup>687</sup> Vahid Karavelić, 28 Mar 2007, T. 4154 – 4155, P494, GT. 11788.

<sup>688</sup> Vahid Karavelić, 28 Mar 2007, T. 4159.

<sup>689</sup> Vahid Karavelić, P492, pp 14 - 15. That happened no more than five times in 1994 and 1995, Vahid Karavelić, 27 Mar 2007, T. 4083 – 4084.

<sup>690</sup> D62, Order by Fikret Prevljak, dated 23 August 1995, p. 1. *See also* D61, Order by Fikret Prevljak, dated 6 July 1995; D143, Order by Fikret Prevljak on use of Sarajevo CSB Police Units, dated 8 May 1995.

findings. The Trial Chamber is in a position to rely on the reports for its findings to the degree required by the law.

190. The Trial Chamber was presented with evidence that special BiH police units occasionally took part in combat activities. However, the Trial Chamber finds that these units did not form part of the ABiH throughout the Indictment period. The evidence shows that the units stayed under separate command of the Bosnian government and the BiH MUP. The evidence does not support a finding that the regular police was an integral part of the ABiH troops, nor does it support a finding that the regular police assisted in combat operations during ABiH offensives.

191. The Trial Chamber, when deciding on sniping incidents, will make its own determination on the direction of fire and, where necessary and possible, on the origin of fire. In doing so, it will be mindful of the arguments presented by the Defence, which are set out in paragraph 183 above.

### **E. Evidence pertaining to the “Campaign” in the Indictment Period**

192. As set out in the Indictment, the Prosecution has charged the Accused with conducting “a campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population which had the primary purpose of spreading terror among the civilian population. Civilians were killed or seriously injured as a result.”<sup>691</sup> The Defence submitted that “[t]here can be no doubt that this conflict caused many deaths and injuries on both sides, that the situation for civilians was grim on both sides and varied depending on military activities” but the situation in Sarajevo, as presented in “the reports”, was one-sided and “[i]nquiries often turned out superficial to facilitate political decisions.”<sup>692</sup>

193. In its Final Brief, the Defence submitted that the SRK desired peace and that it only undertook military actions in defence of its territory and the civilian population in its territory.<sup>693</sup> However, David Harland and others testified that there was an organised campaign implemented in Sarajevo, which was orchestrated at high political and military levels of the VRS, and that the objectives of the campaign were multiple.<sup>694</sup>

#### **1. Patterns of Sniping and Shelling of Sarajevo**

194. The Trial Chamber heard extensive evidence regarding sniping and shelling of Sarajevo during the Indictment period, both as part of military activity and as directed against civilians.

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<sup>691</sup> Indictment, para. 22. *See also e.g.* Prosecution Closing Brief, para. 4.

<sup>692</sup> Defence Final Brief, para. 125.

<sup>693</sup> Defence Final Brief, paras 75 – 77.



195. The evidence indicates that during the Indictment period, the people living in the area of Sarajevo within the confrontation lines were continuously shelled and sniped, although some witnesses noted that the level of intensity varied, particularly with regard to shelling.<sup>695</sup> Ewa Tabeau, the Prosecution statistician and demographic expert, testified that her analysis of the number of persons wounded as a result of sniping during the Indictment period indicated that the level of sniping was almost constant, independent of the fluctuations and the intensity of the armed conflict.<sup>696</sup> Martin Bell recalled that the quieter periods tended to be around mid-winter and that summer was always the worst.<sup>697</sup> Many witnesses described the summer months of 1995 as the most intensive period of sniping and shelling of the city, paralleling the most intensive fighting between the two warring factions at the frontlines.<sup>698</sup> Witnesses also described feeling a sense of surprise and disquiet when there was no shelling on a particular day because shelling occurred so regularly.<sup>699</sup>

196. John Jordan recalled that in nice weather, “people came out, made it a target-rich environment and the snipers got busy.”<sup>700</sup> An increase in sniping on both sides reportedly took place from 25 June 1994.<sup>701</sup> UNPROFOR reported that in the week ending 2 July 1995, sniper activity had spread to the Old Town and areas to the west that were previously considered to be reasonably safe.<sup>702</sup>

197. Berko Zečević, Prosecution expert on air bombs, testified that artillery and mortar explosions were a daily occurrence in Sarajevo.<sup>703</sup> Maj. Overgard testified that in November and December 1994, he investigated incidents of shelling on a nearly daily basis, while Maj. Eimers, a Dutch UNMO, testified that in November 1994 it was relatively quiet from the point of view of shelling.<sup>704</sup> Maj. Gen. Nicolai testified that the first few months of 1995 were “fairly quiet” and that

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<sup>694</sup> On 10 December 1994, David Harland wrote that Gen. Brinkman no longer found it useful to protest against incidents, as they were dealing with an organised campaign: David Harland, P1, MT. 26955.

<sup>695</sup> Martin Bell, 26 Apr 2007, T. 5240, 5243 – 5244; Milan Mandilović, 17 Jan 2007, T. 570, 18 Jan 2007, T. 621; Bogdan Vidović, 13 Feb 2007, T. 2061; Sanjin Hasanefendić, 16 Feb 2007, T. 2296; Ziba Šubo, P280, p. 2; W-57, P538, p. 2 (under seal); Nefa Šljivo, P532, p. 2; Ismet Alić, P640, p. 8; Sead Bešić, 20 Feb 2007, T. 2576; Mirza Sabljica, 19 Apr 2007, T. 4695, 4735 – 4736.

<sup>696</sup> Ewa Tabeau, 1 May 2007, T. 5504 – 5505; P637, Expert report Ewa Tabeau, pp 56 - 57. *See also* Sanjin Hasanefendić, 16 Feb 2007, T. 2296; W-12, 2 Mar 2007, T. 3074 – 3075; Rupert Smith, 7 Mar 2007, T. 3317 – 3318.

<sup>697</sup> Martin Bell, 26 Apr 2007, T. 5240.

<sup>698</sup> Bogdan Vidović, 13 Feb 2007, T. 2060 – 2061; Sanjin Hasanefendić, 16 Feb 2007, T. 2296, 2372; W-12, 2 Mar 2007, T. 3075 – 3076; Mirza Sabljica, 19 Apr 2007, T. 4736; Martin Bell, 26 Apr 2007, T. 5243 – 5244, 5246; David Harland, 15 Jan 2007, T. 327 – 330; P15, UNPROFOR sitrep, dated 3 June 1995, pp 2, 3. *See also* Rupert Smith, 7 Mar 2007, T. 3316 – 3318; John Jordan, P267, p. 10.

<sup>699</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703; Hussain Ijaz, 27 Apr 2007, T. 5416; Ziba Šubo, P280, p. 2.

<sup>700</sup> John Jordan, 21 Feb 2007, T. 2632. *See also* Sanela Dedović, 29 Jan 2007, T. 1176 – 1177.

<sup>701</sup> David Fraser, 8 Feb 2007, T. 1871; P202, UNPROFOR report on anti-sniping measures, 25 June 1994, pp 1 - 2; P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, 15 September 1994, pp 4 - 5.

<sup>702</sup> P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>703</sup> Berko Zečević, 20 Apr 2007, T. 4818 – 4819.

<sup>704</sup> Thorbjorn Overgard, 18 Jan 2007, T. 636; Ronald Eimers, 20 Apr 2007, T. 4799; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1007 – 1008.

there was “anything from no firing incidents to a few hundred firing incidents” per day, in comparison to May and June 1995, when there were a few thousand firing incidents in a day.<sup>705</sup> The level of shelling at the end of June 1995 was so high that the four teams of UNMOs deployed around Sarajevo had to prioritise the incidents they investigated, based on whether or not there were casualties, because they could not investigate them all.<sup>706</sup> Lt. Com. Knustad recalled that in July and August 1995, there were more than 100 impacts around the city per day.<sup>707</sup> Gen. Smith stated that during the later part of August 1995, tension around Sarajevo increased and a pattern of random shelling by “the Serbs” of a few rounds a day was established by the end of that month.<sup>708</sup>

## 2. Sniping and Shelling by the SRK

198. Evidence was led that civilians and civilian areas in Sarajevo were sniped and shelled by the SRK.<sup>709</sup> According to Brig. Gen. Fraser, the Bosnian Serbs controlled “all the movement and situation inside the city, including the psychological aspects of the city” and they used all means available to them to retain that control through sniping and shelling.<sup>710</sup> Kemal Bućo testified “[w]e were cannon fodder. We were just clay pigeons for them to fire at. And they fired at will.”<sup>711</sup> Martin Bell, who has reported from 100 countries and 15 war zones, including the Vietnam War, the Gulf War and Croatia, testified that “of all of the conflicts I have reported, I would say there was the least distinction between soldiers and civilians when it came to targeting.”<sup>712</sup> In response to questions by the Trial Chamber, he testified that he had never previously seen the targeting of civilians on the scale that existed during the conflict in Sarajevo and termed it “the second war”.<sup>713</sup>

199. The Trial Chamber notes the Defence submission that the “combat zones, as well as the confrontation lines and everything in the vicinity of the confrontation line, were legitimate military targets.”<sup>714</sup> A number of witnesses, who were SRK soldiers during the Indictment period, testified

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<sup>705</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 940.

<sup>706</sup> Thomas Knustad, 13 Feb 2007, T. 1992 – 1993; Asam Butt, 15 Feb 2007, T. 2192 – 2193.

<sup>707</sup> Thomas Knustad, 13 Feb 2007, T. 1992 – 1993. *See also* Bogdan Vidović, 13 Feb 2007, T. 2066, recalled conducting six to seven on-site investigations into shelling per day in July and August 1995.

<sup>708</sup> Rupert Smith, P334, p. 22.

<sup>709</sup> David Harland, 16 Jan 2007, T. 451 – 452; Thorbjorn Overgard, 18 Jan 2007, T. 635 – 636; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 965 – 966; W-118, 6 Feb 2007, T. 1637; David Fraser, 7 Feb 2007, T. 1770 – 1771; Rupert Smith, 7 Mar 2007, T. 3310 – 3311; Vahid Karavelić, 27 Mar 2007, T. 4086; Martin Bell, 27 Apr 2007, T. 5288; Milan Pejic, 21 June 2007, T. 7044 – 7045; Louis Fortin, P27, p. 7; Kemal Bućo, P158, p. 2; Ronald Eimers, P585, pp 5 - 7; P20, UNPROFOR sitrep, 8 Jul 1995, p. 2; P232, Photograph marked by Sanjin Hasanefendić. *See also infra*, Sections II.E.3 Sniping during the Indictment Period, II.E.4. Sniping Incidents Representative of the “Campaign” and II.E.6. Shelling Incidents Representative of the “Campaign”.

<sup>710</sup> David Fraser, 8 Feb 2007, T. 1825.

<sup>711</sup> Kemal Bućo, 2 Feb 2007, T. 1509 – 1510.

<sup>712</sup> Martin Bell, 26 Apr 2007, T. 5236, 5238 – 5239.

<sup>713</sup> Martin Bell, 27 Apr 2007, T. 5286 – 5287, 5288 – 5289.

<sup>714</sup> Defence Final Brief, para. 38.

that they did not fire on civilians and were ordered not to do so.<sup>715</sup> In addition, there is some evidence indicating that when there were casualties caused by sniping or shelling on ABiH-controlled territory, it was assumed that the firing had come from SRK-held territory.<sup>716</sup>

200. Throughout the war, the BiH police continued to investigate crimes, such as burglary or homicide that were not necessarily related to the war.<sup>717</sup> However, the police officers who came to testify before the Trial Chamber gave evidence that in 1994 and 1995 their work predominantly concerned investigation of incidents of sniping or shelling.<sup>718</sup> The experience was comparable to that of the police in other parts of Sarajevo, who received calls for assistance from all over Sarajevo, at any time of the day or the night and all year round.<sup>719</sup> A spreadsheet prepared by the Prosecution and presented to the Trial Chamber through a police officer, showed that between 30 August 1994 and 9 November 1995, there were 214 sniping and shelling incidents investigated by the BiH police.<sup>720</sup>

201. Several witnesses, police officers and UN personnel, testified about their investigations of sniping and shelling during the Indictment period. W-116 stated that from 1993 until the end of the conflict, 99 per cent of his work concerned crimes against civilians and that a large percentage of the cases involving civilian deaths by sniping and shelling were committed by “the military”.<sup>721</sup> Sanjin Hasanefendić, a forensic officer with the BiH police, attended approximately 200 scenes of shelling and 50 scenes of sniping from August 1994 to November 1995, while several others could not be attended due to ongoing sniper fire.<sup>722</sup> Lt. Col. Konings was involved in the investigations of at least 100 sniping and shelling incidents, 40 or 50 of which involved civilian casualties.<sup>723</sup> Maj. Overgard estimated, in relation to the investigations he carried out in Hrasnica, that 30 to 40 civilians were killed as a result of shelling and sniping.<sup>724</sup>

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<sup>715</sup> Stevan Veljović, 30 May 2007, T. 5851; Siniša Krsman, 6 Jun 2007, T. 6296 – 6297; Luka Jović, 14 Jun 2007, T. 6706 – 6708, 18 Jun 2007, T. 6727 – 6728; T-39, 21 Jun 2007, T. 7014; T-48, 22 June 2007, T. 7177, 7179 – 7181; Radomir Visnjić, 26 Jun 2007, T. 7294; T-52, 28 Jun 2007, T. 7472 – 7476; Milan Mandić, 4 Jul 2007, T. 7611; Vljajko Bozić, 17 Jul 2007, T. 8483 – 8484, 8477 – 8479; Borislav Kovačević, 10 Jul 2007, T. 7912 – 7913, 7918 – 7919, 7949 – 7950, 7954; T-15, 13 Jul 2007, T. 8332 – 8334; Nedeljko Učur, 26 Jul 2007, T. 8912, 8923 – 8926, 8931; Stjepan Djukic, 3 Jul 2007, T. 7537 – 7538.

<sup>716</sup> David Harland, 16 Jan 2007, T. 406; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 729 – 730.

<sup>717</sup> W-138, 1 Feb 2007, T. 1401 – 1402; Sanjin Hasanefendić, 16 Feb 2007, T. 2291 – 2292.

<sup>718</sup> Bogdan Vidović, 13 Feb 2007, T. 2066; W-116, 17 Apr 2007, T. 4616; Vekaz Turković, 25 Apr 2007, T. 5180.

<sup>719</sup> Vekaz Turković, 25 Apr 2007, T. 5180, 5212 – 5213.

<sup>720</sup> P602, Spreadsheet showing law enforcement reports from Sarajevo. The Trial Chamber notes that the spreadsheet lists 215 incidents. One incident is listed twice (no. 28).

<sup>721</sup> W-116, P549, p. 2 (under seal).

<sup>722</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2292, 2295 – 2296. *See also* Mirza Sabljica, 19 Apr 2007, T. 4696; W-138, 30 Jan 2007, T. 1206.

<sup>723</sup> Harry Konings, 12 Mar 2007, T. 3554 – 3555.

<sup>724</sup> Thorbjorn Overgard, 18 Jan 2007, T. 652.

202. Bogdan Vidović, a forensic officer with the BiH police, testified that it was not determined in any of the investigations of sniping and shelling that the origin of fire was the ABiH.<sup>725</sup> Sanjin Hasanefendić and W-28 said that they never investigated a case in which it turned out that the victim was killed as a result of being involved in military activity or where the incident took place in the course of a combat operation.<sup>726</sup>

203. In addition, John Jordan testified that most of the fire against the GOFRS volunteers came from the SRK and usually from high ground or a building.<sup>727</sup> In determining the side responsible for firing at them, John Jordan and the GOFRS volunteers took into account their knowledge of who controlled particular buildings and what threat those occupied buildings posed to their operations on a daily basis.<sup>728</sup> He also stated that he was told that throughout the war, local fire fighters were informed by former colleagues “on the Serb side” that there would be shooting along certain routes, enabling them to avoid those areas when getting to a fire.<sup>729</sup>

### 3. Sniping during the Indictment Period

204. Both armies had snipers.<sup>730</sup> According to Brig. Gen. Fraser, the Bosnian Serb snipers were very skilled.<sup>731</sup> For example, after arriving at their positions, Bosnian Serb snipers fired at a telephone pole to indicate that they were there, fired a couple of shots to check windage and distance and “to set themselves up for the day’s activities”, and, at the end of the day, they sometimes shot at one of the UN vehicles “to announce” that they were leaving.<sup>732</sup>

205. There is evidence that not all the sniping of civilians was intentional. For example, while some civilians were intentionally targeted, others were killed by stray bullets during an exchange of fire between the opposing forces, particularly due to the proximity of the confrontation lines to civilian areas.<sup>733</sup> Brig. Gen. Fraser testified that ricochets were very possible.<sup>734</sup> However,

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<sup>725</sup> Bogdan Vidović, 13 Feb 2007, T. 2065 – 2066; *See also* Sanjin Hasanefendić, 16 Feb 2007, T. 2296 – 2297; John Jordan, 21 Feb 2007, T. 2636 – 2637, 2640.

<sup>726</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2296; W-28, 22 Feb 2007, T. 2723.

<sup>727</sup> John Jordan, 21 Feb 2007, T. 2636, P267, p. 6.

<sup>728</sup> John Jordan, 21 Feb 2007, T. 2640 – 2641.

<sup>729</sup> John Jordan, P267, p. 5.

<sup>730</sup> David Harland, 16 Jan 2007, T. 407, 459; David Fraser, 7 Feb 2007, T. 1762; Ismet Hadžić, 6 Mar 2007, T. 3228 – 3232, 3284; Martin Bell, 27 Apr 2007, T. 5288; Stevan Veljović, 30 May 2007, T. 5835; T-2, 20 Jun 2007, T. 6920, 6922, 6936; John Jordan, P267, p. 8; Vahid Karavelić, P493, p. 8, P494, GT. 11950 – 11953; P6, UNPROFOR cable on violation of Anti-sniping Agreement, 12 September 1994; P680, Order to prepare for training in 1995, dated 5 January 1995; P684, Order on assigning and dispatching sniper instructors, dated 19 January 1995; P688, Order by the SRK Commander to train SRK units, dated 29 January 1995, p. 1; P763, Request for equipment and snipers for Rajlovac Brigade, 25 June 1992; P206, Anti-Sniping Agreement, 14 August 1994. *Cf.* Siniša Krsman 6 June 2007, T. 6288 – 6291, 6293; Vlajko Božić, 17 July 2007, T. 8404 – 8405, 8446 – 8447; Milan Mandić, 4 July 2007, T. 7594, 7595; Dženana Sokolović, 22 Jan 2007, T. 808 – 809. *See also supra*, paras 69, 77.

<sup>731</sup> David Fraser, 7 Feb 2007, T. 1789. *See also* W-156, P625, p. 34 (under seal).

<sup>732</sup> David Fraser, 7 Feb 2007, T. 1789.

<sup>733</sup> Mirza Sabljica, 19 Apr 2007, T. 4756, 4758; W-138, 1 Feb 2007, T. 1413 – 1414.

Maj. Gen. Nicolai testified that while it was difficult to determine whether the targeting of civilians was deliberate in all cases, “considering the quality of the Bosnian Serb forces, when that happened, it was deliberate.”<sup>735</sup>

(a) Sniping by the SRK

206. The Trial Chamber heard evidence that civilians inside the confrontation lines were killed or injured as a result of sniping from SRK-held territory.<sup>736</sup>

207. Lt. Van der Weijden testified that a shooter would be able to distinguish between a combatant and a non-combatant.<sup>737</sup> He cited a number of factors that would enable a sniper to make such a distinction: in the case of a child, the comparative height between the adult and the child; the difference in the type of movement of an individual, for example, a combatant would not carry a bundle of wood out in the open but would, instead, move quickly between positions and make use of the cover around him; colour of clothing, hairstyles, accessories; the absence of weapons.<sup>738</sup> In sum, he testified that, “[i]t’s just the little things that add up to making conclusions.”<sup>739</sup> He further testified that some of the sniping incidents he reported on involved longer distances, for example, between 600 to 800 metres in cloudy conditions, over which it is very difficult to distinguish between a civilian or non-combatant and a combatant.<sup>740</sup> However, under the rules of engagement, one is only allowed to fire a shot after positive identification of the target and until that has been done, the sniper should withhold his fire.<sup>741</sup>

208. Snipers targeted places where civilians gathered, including, for example, markets, trams and where people queued for food and water.<sup>742</sup> Sometimes snipers would shoot at the water containers people were carrying.<sup>743</sup> Witnesses recalled going to collect water late at night or very early in the morning to avoid sniping.<sup>744</sup>

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<sup>734</sup> David Fraser, 8 Feb 2007, T. 1866, 1875 – 1876.

<sup>735</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 962.

<sup>736</sup> Bakir Nakaš, 25 Jan 2007, T. 1071; Thorbjorn Overgard, 18 Jan 2007, T. 648 – 649. Ismet Hadžić, 6 Mar 2007, T. 3222; Milan Mandić, 4 Jul 2007, T. 7609; Sanela Dedović, P110, p. 2; W-95, P520, p. 2 (under seal); Nefa Šljivo, P531, p. 2. *See also infra*, Section II.E.3. Sniping during the Indictment Period, II.E.4. Sniping Incidents Representative of the “Campaign”.

<sup>737</sup> Patrick van der Weijden, 29 Mar 2007, T. 4278 – 4280.

<sup>738</sup> Patrick van der Weijden, 29 Mar 2007, T. 4278 – 4280.

<sup>739</sup> Patrick van der Weijden, 29 Mar 2007, T. 4280.

<sup>740</sup> Patrick van der Weijden, 29 Mar 2007, T. 4286 – 4287.

<sup>741</sup> Patrick van der Weijden, 29 Mar 2007, T. 4286 – 4287.

<sup>742</sup> Azra Šišić, 27 Feb 2007, T. 2830 – 2832; David Harland, P1, MT. 26956; Rialda Musaefendić, P295, p. 4; Alija Holjan, P526, pp 2 - 3; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>743</sup> Rialda Musaefendić, P295, p. 4.

<sup>744</sup> Azra Šišić, 27 Feb 2007, T. 2831; Rialda Musaefendić, P295, p. 4.

209. Rialda Musaefendić recalled that two drivers were killed trying to deliver bread.<sup>745</sup> On one occasion, she saw that the bread had bullets in it as a result of the truck being fired on by Bosnian Serbs.<sup>746</sup> Shots were fired at work parties and people carrying out repairs on tram tracks or power lines.<sup>747</sup> In order not to get hit by sniper fire, people drove at high speed, and this sometimes resulted in car accidents.<sup>748</sup> W-138 testified: “People were being killed by snipers while they were running across streets. I myself had to run away from snipers when I tried to cross the street because people in civilian clothes crossing the streets were particularly targeted by snipers.”<sup>749</sup>

210. The level of sniping meant that it was not possible for emergency vehicles to respond to emergency calls; in general, people were taken to the hospital by others who were at the scene of the sniping or shelling.<sup>750</sup> John Jordan testified that the GOFRS volunteers would respond to the casualties, particularly if the victim was wounded and in an exposed position, because GOFRS had an armoured ambulance.<sup>751</sup>

211. Although Bogdan Vidović testified that it was hard to single out a particular neighbourhood in Sarajevo that was more susceptible to sniping than another, other witnesses identified specific areas that were known to be used by snipers and to be particularly dangerous for civilians.<sup>752</sup> Dangerous places were marked with warning signs, which read, “Sniper fire: Watch out, don’t go there.”<sup>753</sup> Generally, these areas were short distances from the confrontation lines.<sup>754</sup> According to Ismet Hadžić, year after year, snipers would shoot from one location for a day or two, following which it would be quiet for 15 to 20 days before the spot was “reactivated” for a couple more days.<sup>755</sup> He explained that all these “hot spots” were on Bosnian Serb-held territory.<sup>756</sup>

212. On the question of SRK snipers, Maj. Veljović said “if we had any snipers, we probably did have, they could only be deployed on our positions to target enemy soldiers and we were not within the range of the city. Our snipers were not within the range of the city. [...]”<sup>757</sup>

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<sup>745</sup> Rialda Musaefendić, P295, p. 4.

<sup>746</sup> Rialda Musaefendić, P295, p. 5.

<sup>747</sup> Avdo Vatrić, P647, pp 7, 12.

<sup>748</sup> John Jordan, P267, pp 5 - 6.

<sup>749</sup> W-138, 1 Feb 2007, T. 1414.

<sup>750</sup> W-62, 23 Jan 2007, T. 888; John Jordan, P267, p. 4; P613, Videoclip of sniping on Zmaja od Bosne; P622, Videoclip of events in Sarajevo; P623, Videoclip of events in Sarajevo. *See also infra*, Section II.E.4. Sniping Incidents Representative of the “Campaign”.

<sup>751</sup> John Jordan, 21 Feb 2007, T. 2662.

<sup>752</sup> Bogdan Vidović, 13 Feb 2007, T. 2063. *See also*, W-62, 24 Jan 2007, T. 925 – 926; W-138, 1 Feb 2007, T. 1405 – 1406; Nefa Šljivo, P531, p. 2; Fikreta Pačarić, P643, p. 9; Avdo Vatrić, P647, p. 7.

<sup>753</sup> W-138, 1 Feb 2007, T. 1405 – 1406; W-118, P175, p. 3 (under seal).

<sup>754</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 965 – 966; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706.

<sup>755</sup> Ismet Hadžić, 6 Mar 2007, T. 3222.

<sup>756</sup> Ismet Hadžić, 6 Mar 2007, T. 3220 – 3222.

<sup>757</sup> Stevan Veljović, 30 May 2007, T. 5835.

213. In light of the evidence outlined in this section, the Trial Chamber does not accept Maj. Veljović's testimony that the SRK did not use snipers to target the city.

(i) Public Transport

214. Trams and people on trams were targeted.<sup>758</sup> On days that they worked, trams were the primary means of transportation.<sup>759</sup> Furthermore, trams were hugely symbolic for people in Sarajevo.<sup>760</sup> According to Brig. Gen. Fraser:

“trams were a favourite target of snipers inside of Sarajevo because of the psychological impact it had on the people of Sarajevo. The people looked to the tram, and if it was running, things were reasonably good; if it was stopped, it meant that the situation was grave and that sent shudders throughout the city. So shooting at a tram had a significant psychological impact on the city.”<sup>761</sup>

215. According to Avdo Vatrić, the sniping of trams was a “common occurrence”; the tram company, GRAS, tried to protect the tram drivers by putting steel plate on the area in which they sat.<sup>762</sup> Slavica Livnjak stated that, as a tram driver, she was exposed to dangerous situations all the time.<sup>763</sup>

216. In addition to being a target of sniper fire, trams were also targeted by shelling, forcing trams to the depot, which was also shelled “on many occasions”, destroying several trams.<sup>764</sup> It had to be determined on a daily basis whether it was safe to operate trams that day.<sup>765</sup> According to witnesses, the Bosnian Muslim authorities decided whether the trams would run.<sup>766</sup>

217. Trams were vulnerable on the street Zmaja od Bosne, the so-called ‘Sniper Alley’, especially in the area between the Museum and the Holiday Inn where the tram tracks bend, making an S-curve.<sup>767</sup> Slavica Livnjak remembered bending her head every time she drove past Holiday Inn.<sup>768</sup> Trams were also particularly vulnerable in the areas of the Marshal Tito Barracks, Pofalići

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<sup>758</sup> Milan Mandilović, 18 Jan 2007, T. 600; Mirza Sabljica, 19 Apr 2007, T. 4733 – 4734; Martin Bell, 26 Apr 2007, T. 5249; Slavica Livnjak, P95, p. 2; W-118, P175, p. 2 (under seal); Alija Holjan, P526, p. 2; Avdo Vatrić, P647, pp 8, 13; P10, UNPROFOR weekly sitrep, dated 10 December 1994, p. 7; P614, Videoclip of sniping of tram.

<sup>759</sup> Slavica Livnjak, 23 Jan 2007, T. 875 – 876; Avdo Vatrić, P647, p. 8; David Fraser, 8 Feb 2007, T. 1879 – 1880.

<sup>760</sup> Martin Bell, 26 Apr 2007, T. 5249.

<sup>761</sup> David Fraser, 7 Feb 2007, T. 1793.

<sup>762</sup> Avdo Vatrić, P647, p. 8. *See also* Mirza Sabljica, 19 Apr 2007, T. 4733 – 4734.

<sup>763</sup> Slavica Livnjak, P95, p. 2.

<sup>764</sup> W-54, 6 Feb 2007, T. 1692 – 1693. *See also* Avdo Vatrić, P647, pp 7 - 8, 12.

<sup>765</sup> W-118, 6 Feb 2007, T. 1635, 1638 – 1639, P175, p. 2 (under seal); Slavica Livnjak, P95, p. 2. *See also* P11, Report on implementation of COHA, 29 March 1995, p. 1.

<sup>766</sup> David Fraser, 8 Feb 2007, T. 1880; W-118, 6 Feb 2007, T. 1624 – 1625.

<sup>767</sup> Slavica Livnjak, 23 Jan 2007, T. 870, P94, p. 2, P95, p. 2; W-91, 15 Mar 2007, T. 3800 – 3801; Martin Bell, 26 Apr 2007, T. 5249; Džemaludin Luinović, P298, p. 2; Avdo Vatrić, P647, p. 12; P583, Photograph marked by Mirza Sabljica; *See also infra*, Section II.E.4(b)(i) Sniping of Targets on Zmaja od Bosne.

<sup>768</sup> Slavica Livnjak, P95, p. 3.

and close to the Bristol Hotel.<sup>769</sup> Witnesses said that the trams were fired upon by the SRK from Grbavica.<sup>770</sup> Brig. Gen. Fraser expressed the view that rather than aiming generally at a moving tram, snipers would probably try to pick out a target inside that tram, since a sniper with the skill of a Bosnian Serb sniper looking onto Zmaja od Bosne would be unlikely to hit a tram by a mistake.<sup>771</sup>

218. A number of witnesses expressed their view that trams are not military targets. Avdo Vatrić stated that, to the best of his knowledge, the ABiH never allowed the movement of troops or equipment using a GRAS tram or bus.<sup>772</sup>

219. Lt. Van der Weijden noted in his expert report that a tram is a means of public transport for civilians.<sup>773</sup> Lt. Van der Weijden testified that a tram is not well-suited for military use or transportation of military personnel because it is a relatively slow-moving vehicle, it is not able to deviate from the tracks, it is often brightly coloured, has lots of windows and is not armoured.<sup>774</sup> There was no reason to identify a tram as a threat, or its passengers as combatants.<sup>775</sup> He also said that it would be “very possible” for a sniper in Grbavica to know that he was shooting at a tram on Zmaja od Bosne, as distinct from a military vehicle.<sup>776</sup> This was confirmed by Col. Stamenov, who testified that from a distance of 312 metres, it is not possible to mistake a tram for any kind of legitimate military target, “if the tram is clearly visible”.<sup>777</sup> Lt. Van der Weijden also stated that as previous incidents with civilian victims where trams had been fired upon were widely reported in the media, it must have been known to snipers that only civilians used the trams.<sup>778</sup>

220. In addition to sniping, the operation of trams was impeded by the irregular power supply. According to Avdo Vatrić, turning off the power supply is the simplest and fastest way to disable a tram network.<sup>779</sup> The Bosnian Serbs controlled Reljevo transformer station and, as such, in 1994 and 1995, they could stop the operation of the trams if they chose to, which, according to Avdo

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<sup>769</sup> Slavica Livnjak, 23 Jan 2007, T. 870 – 871, P95, p. 2; Kemal Bućo, P158, p. 2; D22, Map marked by Slavica Livnjak showing dangerous areas for trams along Sniper alley (“Map marked by Slavica Livnjak”).

<sup>770</sup> Bogdan Vidović, 13 Feb 2007, T. 2065; Slavica Livnjak, P95, p. 3; Sabina Šabanić, P153, p. 2; Kemal Bućo, P158, p. 2. *See also*, Section II.E.4(b)(i) Sniping of Targets on Zmaja od Bosne.

<sup>771</sup> David Fraser, 7 Feb 2007, T. 1793, 1795.

<sup>772</sup> Avdo Vatrić, P647, p. 8.

<sup>773</sup> P514, Expert report Patrick van der Weijden, p. 38.

<sup>774</sup> Patrick van der Weijden, 29 Mar 2007, T. 4284 – 4285; P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

<sup>775</sup> P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

<sup>776</sup> Patrick van der Weijden, 29 Mar 2007, T. 4285.

<sup>777</sup> Ivan Stamenov, 22 Aug 2007, T. 9078.

<sup>778</sup> P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

<sup>779</sup> Avdo Vatrić, P647, p. 6.



Vatrić, they “often” did.<sup>780</sup> Avdo Vatrić said that “it seemed as though the Serbs would allow [the trams] to start operating just so that they could shoot at the passengers on the trams.”<sup>781</sup>

221. Buses were also subject to sniping as well as shelling.<sup>782</sup> In 1995, a bus line was established in Dobrinja to “do away with the fear of the siege.”<sup>783</sup> Buses operated to take people who were under work obligation, that is, obligatory civilian engagement for the war effort, to their place of work.<sup>784</sup> Those that remained road-worthy ran throughout cease-fires.<sup>785</sup> Buses did not drive along the same routes as those taken by the trams.<sup>786</sup>

222. With respect to all incidents of sniping of trams, the Defence argued that the evidence shows that the trams were running just behind the confrontation lines and through an area where there was almost constant fighting going on.<sup>787</sup> The Defence also submitted that the “Bosnian authorities preferred to have the trams used” despite the existence of a street further away from the confrontation line, along which buses could have operated safely.<sup>788</sup>

223. The Trial Chamber finds that the evidence does not support these submissions. On the contrary, the evidence shows that trams did not run during periods when there was combat activity and that trams were told to return to the depot if combat activity began. The Trial Chamber also notes that the bus line that was established to carry people on an alternative route to ‘Sniper Alley’ also came under fire.

224. Further, on the basis of the evidence, the Trial Chamber is satisfied that the trams targeted in the city of Sarajevo had civilian status. In this regard, the Trial Chamber notes that all evidence shows that a tram is not suitable for military use. Furthermore, it was a well-known fact among people living in Sarajevo that civilians used the trams. This was also made clear from media reports during the relevant time period. The fact that one or two soldiers were travelling on a tram which was targeted by sniper fire does not change its civilian status.

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<sup>780</sup> Avdo Vatrić, P647, pp 6, 7, 12.

<sup>781</sup> Avdo Vatrić, P647, p. 8.

<sup>782</sup> Slavica Livnjak, 23 Jan 2007, T. 875 – 876; W-35, 23 Jan 2007, T. 840 – 841; W-138, 31 Jan 2007, T. 1325 – 1326; Ismet Hadžić, 6 Mar 2007, T. 3237.

<sup>783</sup> Ismet Hadžić, 6 Mar 2007, T. 3237.

<sup>784</sup> Milomir Šoja, 24 Apr 2007, T. 5113; Slavica Livnjak, 23 Jan 2007, T. 876.

<sup>785</sup> W-35, 23 Jan 2007, T. 840 – 841.

<sup>786</sup> Slavica Livnjak, 23 Jan 2007, T. 875.

<sup>787</sup> Defence Final Brief, para. 179.

<sup>788</sup> Defence Final Brief, paras 88, 101.

(ii) Marindvor and Zmaja od Bosne

225. Milan Mandilović testified that there was an excellent view of Marindvor from the Jewish Cemetery and that the distance the snipers had to shoot from the Jewish Cemetery and Grbavica to Marindvor was short.<sup>789</sup> Marindvor was a dangerous place because it was in the open, causing people to run across the street and it was a matter of luck whether they were hit or not.<sup>790</sup>

226. The most infamous place for sniping was the street Zmaja od Bosne, which ran along the city's east-west axis; it was under constant sniper fire.<sup>791</sup> According to an UNPROFOR report, in early July 1995, “[d]espite the reduction in military activity around the city, the harassment [by sniping and shelling] of the civilian population continues almost unabated. [...] Almost no civilians now use the city's main east-west thoroughfare (‘Sniper Alley’) – so much so that snipers who used to work that area now seem to have relocated [...]”<sup>792</sup>

227. The area of Zmaja od Bosne around the Museum and the Holiday Inn was particularly vulnerable.<sup>793</sup> In the experience of Martin Bell, most of the sniping incidents happened in the area in front of the Holiday Inn and about 400 to 500 metres to the East in what became known as “Snipers’ Corner”.<sup>794</sup> Martin Bell expressed the view that ‘Sniper Alley’ and areas around the Museum and the Holiday Inn were especially vulnerable because people mostly lived on the west side of the city but went to jobs in the centre.<sup>795</sup>

228. There were a number of buildings in the vicinity of Zmaja od Bosne, principally on the south bank of the Miljacka River in SRK-held territory, where snipers could get into good positions.<sup>796</sup> Witnesses testified that the source of the sniper fire along ‘Sniper Alley’ was Grbavica in SRK-held territory; the Metalka Building and the “sky-scrapers”, high-rise buildings in Grbavica, were well-known SRK sniper positions.<sup>797</sup> The “sky-scrapers” were located on Lenjinova Street,

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<sup>789</sup> Milan Mandilović, 17 Jan 2007, T. 565 – 566. *See also*, Avdo Vatrić, P647, p. 12.

<sup>790</sup> W-118, P175, p. 3 (under seal).

<sup>791</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; David Fraser, 8 Feb 2007, T. 1879; Bogdan Vidović, 13 Feb 2007, T. 2063; Sabina Šabanić, 2 Feb 2007, T. 1474 – 1475; Asam Butt, 14 Feb 2007, T. 2161 – 2162; Sanjin Hasanefendić, 16 Feb 2007, T. 2298, 2304; Martin Bell, 26 Apr 2007, T. 5241; Alma Mulaosmanović, P179, p. 2; Džemaludin Luinović, P298, p. 2; Fikreta Pačariz, P643, p. 9; P9, UNPROFOR daily sitrep, 25 November 1994, p. 5; P195, Map marked by David Fraser; P201, Photograph marked by David Fraser; P609, Video sniping in Sarajevo.

<sup>792</sup> P20, UNPROFOR sitrep, 8 July 1995, p. 2.

<sup>793</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; Asam Butt, 14 Feb 2007, T. 2161 – 2162; Martin Bell, 26 Apr 2007, T. 5241; Slavica Livnjak, P95, p. 2; P9, UNPROFOR daily sitrep, 25 November 1994, p. 5; P760, UNPROFOR sitrep, 10 December 1994, p. 3. *See also supra*, II.E.3(a)(i) Public Transport.

<sup>794</sup> Martin Bell, 27 Apr 2007, T. 5285.

<sup>795</sup> Martin Bell, 26 Apr 2007, T. 5241; P609, Videoclip sniping in Sarajevo; Sabina Šabanić, 2 Feb 2007, T. 1474 – 1475.

<sup>796</sup> David Fraser, 7 Feb 2007, T. 1761 – 1762, 1777 – 1778.

<sup>797</sup> *See, e.g.*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; W-118, 6 Feb 2007, T. 1622 – 1623, 1636, P174, p. 2 (under seal); Alija Holjan, 4 Apr 2007, T. 4473, P525, p. 2, P526, p. 3; Bogdan Vidović, 13 Feb 2007, T. 2063, 14 Feb 2007, T. 2112; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760 – 4761; Vahid Karavelić, 27 Mar 2007,

directly across the Marshal Tito Barracks.<sup>798</sup> The Metalka Building was located at the end of Franje Račkog Street, across the Miljacka River, about 300 metres from the Holiday Inn and the Museum.<sup>799</sup> Rooms in the higher floors of this building offered a direct and clear view of the area between the National Museum and the Faculty of Philosophy.<sup>800</sup> Milorad Katić suggested that, if there were snipers in the Metalka Building, it would have been possible to fire at trams on ‘Sniper Alley’ from there.<sup>801</sup> The SRK was also positioned in the Invest Bank Building and their snipers could fire from the top of this building onto Zmaja od Bosne.<sup>802</sup>

229. Milorad Katić distinguished between shooting and sniping and rejected the proposition that there were snipers positioned in Grbavica.<sup>803</sup> He testified that while he saw men with rifles going in and out of the Metalka Building, the rifles did not have telescopic sights.<sup>804</sup> However, he also agreed that there were men with rifles positioned on the upper floors of the Metalka Building and the Invest Bank Building, and that the two streets that ran parallel to each other from these buildings, could form a “funnel” through which one could hit targets on Zmaja od Bosne.<sup>805</sup> He further agreed that “a human being could be effectively engaged from those buildings on the VRS side of the river to Marindvor with or without a telescopic sight.”<sup>806</sup>

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T. 4088, 4090; Huso Palo, 5 Feb 2007, T. 1535, 1547, P162, p. 2; W-35, 22 Jan 2007, T. 824; P92, p. 3 (under seal); Dženana Sokolović, 22 Jan 2007, T. 787, 807 – 808; Milorad Katić, 5 June 2007, T. 6157; David Harland, P1, MT. 26962; Kemal Bućo, P158, p. 2; Fikreta Pačarić, P643, p. 9; Avdo Vatrić, P647, p. 12; D20, Photograph marked by W-35; P161, Official note, p. 2; P176, Map marked by W-118; P181, Photograph marked by Alma Mulaosmanović; P201, Photograph marked by David Fraser; D215, Map marked by Vaso Elez; P515, Photograph marked by Patrick van der Weijden; P754, Photograph marked by Milorad Katić; P941, Videoclip of sniping incident (under seal). *See also e.g. Sniping of an UNPROFOR soldier from the Metalka Building, 15 April 1995*, Asam Butt, 14 Feb 2007, T. 2161 – 2165, 15 Feb 2007, T. 2167 – 2171, 2190 – 2192, 2246 – 2253; W-46, 15 Mar 2007, T. 3834 – 3836 (closed session); P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; D68, Photograph marked by Asam Butt. Cf. Alen Gičević, 5 Feb 2007, T. 1569.

<sup>798</sup> P104, Street map of Sarajevo; P157, Photograph marked by Sabina Šabanić; P181, Photograph marked by Alma Mulaosmanović; D215, Map marked by Vaso Elez.

<sup>799</sup> *See, e.g.*, W-35, 22 January 2007, T. 831, P92, p. 3 (under seal); John Jordan, 21 Feb 2007, T. 2652; P515, Photograph marked by Patrick van der Weijden; P97, Photograph marked by Slavica Livnjak; P166, Photograph marked by Alen Gičević; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P583, Photograph marked by Mirza Sabljica; P754, Photograph marked by Milorad Katić; C14, Photographs taken during site visit, pp 14 - 18, 24 - 29; C3, Photographs taken during site visit, pp 12 - 20.

<sup>800</sup> Slavica Livnjak, 23 Jan 2007, T. 862; Patrick van der Weijden, 29 Mar 2007, T. 4279, 4283; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; P97, Photograph marked by Slavica Livnjak; P166, Photograph marked by Alen Gičević; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P514, Expert report Patrick van der Weijden, p. 32; P515, Photograph marked by Patrick van der Weijden; P583, Photograph marked by Mirza Sabljica; P754, Photograph marked by Milorad Katić; C3, Photographs taken during site visit, pp 1, 4 - 5, 7 - 11, 13 - 20; C14, Photographs taken during site visit, pp 24 - 29.

<sup>801</sup> Milorad Katić, 4 June 2007, T. 6093; P754, Photograph marked by Milorad Katić.

<sup>802</sup> Milorad Katić, 4 June 2007, T. 6092 – 6093, 5 June 2007, T. 6157 – 6158; Vaso Elez, 7 June 2007, T. 6375 – 6376, 6378; Radomir Visnjić, 26 June 2007, T. 7286 – 7287; P754, Photograph marked by Milorad Katić; P764, Photograph marked by Vaso Elez; D217, Interim combat report by Fikret Prevljak, 1 July 1995; D220, Photograph marked by Vaso Elez.

<sup>803</sup> Milorad Katić, 4 June 2007, T. 6106.

<sup>804</sup> Milorad Katić, 4 June 2007, T. 6100 – 6101; 6106 – 6107.

<sup>805</sup> Milorad Katić, 4 June 2007, T. 6106 – 6107. *See also* Patrick van der Weijden, 29 Mar 2007, T. 4282; P515, Photograph marked by Patrick van der Weijden; Vaso Elez, 7 June 2007, T. 6376.

<sup>806</sup> Milorad Katić, 4 June 2007, T. 6107.

230. A number of witnesses recounted their visits to Bosnian Serb sniper nests in Grbavica.<sup>807</sup> For example, Brig. Gen. Fraser recounted how, escorted by Bosnian Serbs, he visited a SRK sniper nest in a three- or four-storey red brick building in Grbavica in the spring or summer of 1995.<sup>808</sup> He saw “spider holes” punched in the wall of the building, from where one could look towards the Bosnian Muslim side of the Miljacka River, which he concluded were good positions for snipers.<sup>809</sup> On being confronted with the testimony of witnesses who had visited SRK sniper nests in Grbavica, Milorad Katić testified that at the time of his visit, there were “just rank-and-file soldiers of the Republika Srpska army. They were not specials. They were not snipers.”<sup>810</sup>

(iii) Other Sniping Locations

231. Other areas that were particularly exposed to sniping were concentrated around intersections and bridges across the Miljacka River.<sup>811</sup> For instance, the Butmir Bridge and civilians using the bridge were targeted.<sup>812</sup> Sokolovići, Skenderija, the railway station and the area near Koševo Stadium were also under “constant” sniper fire, as was Dobrinja.<sup>813</sup>

232. There were SRK sniper positions in the hills around Sarajevo.<sup>814</sup> Witnesses testified that people were killed by fire from Špicasta Stijena,<sup>815</sup> Mount Trebević,<sup>816</sup> Vraca,<sup>817</sup> the Jewish Cemetery, and the curve of the Lukavica-Pale road above Skenderija, precisely above Debelo Brdo.<sup>818</sup> Rijalda Musafendić testified that there were Bosnian Serb snipers in the hills above

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<sup>807</sup> Louis Fortin, 16 Jan 2007, T. 490, P27, p. 8; W-46, 16 Mar 2007, T. 3913 (closed session); David Harland, P1, MT. 26963.

<sup>808</sup> David Fraser, 7 Feb 2007, T. 1776; P201, Photograph marked by David Fraser.

<sup>809</sup> David Fraser, 7 Feb 2007, T. 1777 – 1778.

<sup>810</sup> Milorad Katić, 4 June 2007, T. 6105

<sup>811</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2297, 2304; Ismet Hadžić, 6 Mar 2007, T. 3220 – 3222; Harry Konings, 13 Mar 2007, T. 3554 – 3555; Alen Gičević, P164, p. 2; Alma Mulaosmanović, P179, p. 2; Azem Agović, P211, p. 1; Džemaludin Luinović, P298, p. 2; P232, Photograph marked by Sanjin Hasandefendić.

<sup>812</sup> Thorbjorn Overgard, 18 Jan 2007, T. 651 – 652; P203, UNPROFOR report on incidents of 6 and 7 September 1994, dated 14 September 1994 (“UNPROFOR report, 14 September 1994”); Ronald Eimers, P585, p. 9.

<sup>813</sup> Ismet Alić, P640, p. 8; Avdo Vatrić, P647, p. 12; W-82, P228, p. 2; Harry Konings, 13 Mar 2007, T. 3604; Sanela Dedović, P110, p. 2; Nedžib Đozo, 14 Mar 2007, T. 3695 – 3696; Azra Šišić, 27 Feb 2007, T. 2861; Enes Jašarević, 1 Mar 2007, 3020 – 3021; P304, Map marked by Enes Jašarević.

<sup>814</sup> Patrick van der Weijden, 29 Mar 2007, T. 4295; Stevan Veljović, 30 May 2007, T. 5851–5852; Derviša Selmanović, P170, p. 3; W-95, P520, p. 2 (under seal). *See also* Rijalda Musafendić, 28 Feb 2007, T. 2932 – 2933.

<sup>815</sup> Tarik Zunić, 7 Feb 2007, T. 1728, P185, p. 2; David Fraser, 7 Feb 2007, T. 1773 – 1774; Harry Konings, 13 Mar 2007, T. 3604; Nedžib Đozo, 14 Mar 2007, T. 3694 – 3696, P363, p. 2; Vahid Karavelić, 27 Mar 2007, T. 4088; Derviša Selmanović, P170, p. 3; Siniša Krsman, 6 June 2007, T. 6294 – 6295.

<sup>816</sup> W-12, 1 Mar 2007, T. 3042, 2 Mar 2007, T. 3065, 3068 – 3069, P307, p. 2 (under seal); Stevan Veljović, 24 May 2007, T. 5724 – 5727; Predrag Trapara, 27 June 2007, T. 7373 – 7374; Derviša Selmanović, P170, p.3; Azem Agović, P211, p. 1; Nedžib Đozo, P363, p. 2; P104, Street map of Sarajevo; P910, Video of sniping position in Mount Trebević.

<sup>817</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1673 – 1674.

<sup>818</sup> Vahid Karavelić, 27 Mar 2007, T. 4088 – 4089; Mirza Sabljica, 19 Apr 2007, T. 4744; Milan Mandić, 4 July 2007, T. 7595. The Trial Chamber recalls that evidence indicating that both the Jewish cemetery and Debelo Brdo were held by both the VRS and the ABiH. *See supra* Section II.B.3. Areas of Responsibility and Confrontation Lines -SRK and 1<sup>st</sup> Corps of the ABiH.

Hrasno and in the Grbavica Stadium.<sup>819</sup> Many witnesses testified that Špicasta Stijena and the Jewish Cemetery were very active sniping positions used by the SRK.<sup>820</sup> Nedžib Đozo testified that approximately 100 civilians were wounded and killed in Sedrenik by sniper fire from Špicasta Stijena during the conflict.<sup>821</sup> Martin Bell testified that he visited a number of sniper positions in Bosnian Serb-held territory, most of which were on the “high road to Pale”, including a position at Trebinje to which, in the words of Martin Bell, “Karadžić liked to take us.”<sup>822</sup>

233. Nedarići, which was under the control of the Bosnian Serb forces, was also a source of sniper fire.<sup>823</sup> The Trial Chamber heard evidence that shooting came from the School of the Blind, a centre for blind children and children with impaired vision, a two-storey building located in Nedarići.<sup>824</sup> The School of the Blind was close to apartment buildings in Vojničko Polje, Alipašino Polje, and Oslobođenja, which were ABiH-held areas.<sup>825</sup>

(b) Anti-sniping Measures

234. Anti-sniping barriers, in the form of large screens, improvised walls, blankets, transport containers and old trucks, were set up around the city in order to block the view of the snipers and provide people some cover against sniping.<sup>826</sup> Bogdan Vidović said that the containers only offered limited protection; sometimes a bullet would pass through a container and hit a person behind it and sometimes the snipers would fire over a container onto the people behind it.<sup>827</sup>

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<sup>819</sup> Rijalda Musaefendić, 28 Feb 2007, T. 2932 – 2934, P295, p. 4. *See also* Mirza Sabljica, 19 Apr 2007, T. 4741–4743; Predrag Carkić, 19 June 2007, T. 6884; P104, Street map of Sarajevo; D197, Map marked by Milorad Katić. *Cf.* Sanjin Hasanefendić, 16 Feb 2007, T. 2301, 2389 – 2390; Slavica Livnjak, 23 Jan 2007, T. 872;

<sup>820</sup> *See infra*, Section II.E.4(B)(ii) Sniping of Targets in Sedrenik and paras 132 – 135, 140. *Cf.* Stevan Veljović, 30 May 2007, T. 5865 – 5868, 5875, 5892; P742, Map marked by Stevan Veljović; P743, Photograph marked by Stevan Veljović.

<sup>821</sup> Nedžib Đozo, 14 Mar 2007, T. 3694 – 3696, 3705. He testified that he could not guarantee that there were exactly 100, but this information could be found in the register, kept for the purpose, at the Stari Grad police station.

<sup>822</sup> Martin Bell, 26 Apr 2007, T. 5256 – 5257; P617, Videoclip of interview with Radovan Karadžić.

<sup>823</sup> W-62, 24 Jan 2007, T. 925 – 926; Azra Šišić, 27 Feb 2007, T. 2861; Enes Jašarević, 1 Mar 2007, T. 3004, 3021; Kosta Kosović, 11 July 2007, T. 8010; Avdo Vatrić, P647, p. 12; P304, Map marked by Enes Jašarević. *Cf.* T-52, 28 June 2007, 7471 – 7476. The Trial Chamber notes that the “nursing home” and the Faculty of Theology in Nedarići were also held by the SRK, T-48, 22 June 2007, T. 7147 – 7148, 7158; T-52, 28 June 2007, T. 7443.

<sup>824</sup> W-62, 23 Jan 2007, T. 892 – 893, 899 – 900; T-48, 22 June 2007, T. 7147 – 7148; P784, UNMO daily sitrep, dated 12 July 1994, p. 4 (under seal); P785, UNMO daily sitrep, dated 11 July 1994, p. 5; P941, Videoclip of sniping incident (under seal); D278, Map marked by T-52; D279, Photograph marked by T-52; P783, Map marked by T-48. *Cf.* T-52, 28 June 2007, T. 7468, 7493 – 7494. *See infra*, Section II.E.4(b)(iii)a. Sniping of Adnan Kasapović.

<sup>825</sup> W-62, 23 Jan 2007, T. 892 – 893, 900; T-48, 22 June 2007, T. 7147 – 7148, 7158 – 7159, 7169–7170; T-52, 28 June 2007, T. 7430 – 7432, 7443, 7458; T-60, 25 July 2007, T. 8815 – 8817, 8843 – 8844; P100, Photograph marked by W-62; P783, Map marked by T-48; D278, Map marked by T-52; D279, Photograph marked by T-52; D352, Photograph marked by T-60 (under seal).

<sup>826</sup> Milan Mandilović, 18 Jan 2007, T. 603; Alen Gičević, 5 Feb 2007, T. 1563; Asam Butt, 14 Feb 2007, T. 2161 – 2162, 2165; Sanjin Hasanefendić, 16 Feb 2007, T. 2299, 2300; Azra Šišić, 27 Feb 2007, T. 2832; Nedžib Đozo, 14 Mar 2007, T. 3695 – 3696; Martin Bell, 26 Apr 2007, T. 5242; T-48, 22 June 2007, T. 7167; Milan Mandić, 4 July 2007, T. 7608 – 7609; Sanela Dedović, P110, p. 2; P616, Videoclip of events in Sarajevo.

<sup>827</sup> Bogdan Vidović, 13 Feb 2007, T. 2064.

235. The Trial Chamber admitted into evidence video footage, which depicts a moving UNPROFOR APC with people sheltering behind it.<sup>828</sup> When shown to Martin Bell, he said:

“I think it’s one of the iconic images of the war. The French were trying to bring confidence to the people and a degree of security down there [...]. They instituted this idea of the slowly moving armoured vehicle with the people sheltering. And I think it conveys probably more than any single sniping incident the daily perils of the people in the city.”<sup>829</sup>

236. The UNPROFOR Anti-Sniping Task Force was established in response to the “extreme worry and fear” felt by the population as a result of the sniping.<sup>830</sup> Its personnel were deployed permanently in APCs in certain locations, including along Zmaja od Bosne and the “Salvation Route”.<sup>831</sup> Its positioning was in response to reports received from UNPROFOR battalions that showed that almost all of the sniper fire aimed at UNPROFOR or the population of Sarajevo came from snipers who were in the “Serb sector” on the other side of the Miljacka River.<sup>832</sup> However, evidence shows that the ABiH also fired upon UNPROFOR.<sup>833</sup> The Anti-Sniping Task Force and other UNPROFOR troops recorded the sniping incidents that took place and undertook self-defence actions.<sup>834</sup>

(c) Sniping by the ABiH

237. Throughout the trial, the Defence put questions to witnesses concerning the sniping of civilians, including Bosnian Muslims, in Sarajevo by the ABiH.<sup>835</sup> In its Closing Brief, the Prosecution submitted that, “[a]ny theories or suppositions that the ABiH sniped or fired at their own people are entirely unsupported by the evidence and purely speculative.”<sup>836</sup>

238. David Harland testified that the issue of the ABiH sniping Bosnian Muslims was “a very sensitive subject at the time” and was a “common allegation” of “the Serb side”.<sup>837</sup> Witnesses spoke of a gap between rumours of ABiH sniping of civilians and factual events; despite the rumours, they

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<sup>828</sup> Martin Bell, 26 Apr 2007, T. 5247; P612, Videoclip showing events in Sarajevo.

<sup>829</sup> Martin Bell, 26 Apr 2007, T. 5247; P612, Videoclip showing events in Sarajevo.

<sup>830</sup> W-46, 15 Mar 2007, T. 3815 (closed session). *See also* John Jordan, 21 Feb 2007, T. 2632, 2661 – 2662.

<sup>831</sup> Alen Gičević, 5 Feb 2007, T. 1563; David Fraser, 7 Feb 2007, T. 1784 – 1785; W-46, 15 Mar 2007, T. 3811 (closed session); Asam Butt, 14 Feb 2007, T. 2161 – 2162; Slavica Livnjak, 23 Jan 2007, T. 877; P34, Map marked by Louis Fortin; P168, Photograph marked by Alen Gičević; P613, Videoclip of sniping on Zmaja od Bosne (The Trial Chamber notes that this footage could be from pre-Indictment period).

<sup>832</sup> David Fraser, 7 Feb 2007, T. 1784 – 1785; W-46, 15 Mar 2007, T. 3811 (closed session).

<sup>833</sup> *See, e.g.*, David Harland, 15 Jan 2007, T. 399 – 400, 16 Jan 2007, T. 413 – 414; Louis Fortin, 16 Jan 2007, T. 485, P27, p. 7; Ismet Hadžić, 8 Mar 2007, T. 3446; Predrag Trapara, 27 June 2007, T. 7384; P34, Map marked by Louis Fortin; D7, UNPROFOR daily sitrep, 2 December 1994, p. 7; D113, Letter by Van Baal, dated 15 August 1994; D147, Letter by Gen. Gobilliard, dated 11 November 1994.

<sup>834</sup> David Fraser, 7 Feb 2007, T. 1778; W-46, 15 Mar 2007, T. 3811 (closed session); P202, UNPROFOR report on anti-sniping measures, 25 June 1994, p. 2; P203, UNPROFOR report, 14 September 1994, pp 3 - 5.

<sup>835</sup> Milorad Katić, 1 June 2007, T. 6040.

<sup>836</sup> Prosecution Closing Brief, para. 161.

<sup>837</sup> David Harland, 15 Jan 2007, T. 336 – 337.

did not know of such cases.<sup>838</sup> According to David Harland, in less than one per cent of the total cases there was serious reason to believe that people on Bosnian Muslim territory were killed by fire originating from ABiH-held territory and “certainly more than 90 per cent of the victims on the Bosnian side, when we could identify where the shots had come from, appeared to have been shot from the Serb side of the confrontation line.”<sup>839</sup> Furthermore, David Harland testified that there were “several dozens” of Bosnian Serbs killed within the confrontation lines but that there was no general policy of the ABiH to snipe Bosnian Serbs in Sarajevo.<sup>840</sup> According to David Harland, most Bosnian Serbs who were killed in Sarajevo were killed by Bosnian Serb fire from outside the confrontation lines, either through sniping or shelling.<sup>841</sup>

239. In response to questions by the Defence, Brig. Gen. Fraser testified that “any building” on the Bosnian Muslim side of ‘Sniper Alley’ could have been a sniper position.<sup>842</sup> He identified the UNIS Buildings and the Assembly Building as ABiH sniper positions, agreeing that they gave a good view of ‘Sniper Alley’ and that they were “possibly” good positions from which to shoot on civilians and trams.<sup>843</sup> However, he clarified his statements in the following terms: “By the same token, [...] I only knew of one case where allegedly the Muslims were firing at their own people, and I didn’t hear of anything else along ‘Sniper’s Alley’, of positions that they would be using against that road.”<sup>844</sup>

240. The strip of land north of the Miljacka River, up to the Marshal Tito Barracks and north of the four high-rise buildings, was under ABiH control.<sup>845</sup> There were trenches from Marindvor to the technical faculty and the electrical utility company.<sup>846</sup> The Holiday Inn, the Museum, the Parliament, the School for Technology, the UNIS Buildings, the Energoinvest Building and the Marshal Tito Barracks were all prominent features located in Marindvor, and were held by the

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<sup>838</sup> Asam Butt, 15 Feb 2007, T. 2187 – 2189; Thomas Knustad, 13 Feb 2007, T. 2043; Martin Bell, 26 Apr 2007, T. 5266 – 5267, 27 Apr 2007, T. 5286 – 5287. *See also*, John Jordan, 21 Feb 2007, T. 2646 – 2647.

<sup>839</sup> David Harland, 15 Jan 2007, T. 337, 16 Jan 2007, T. 451 – 452; David Fraser, 8 Feb 2007, T. 1877 – 1878; D179, UN report on investigation into sniping incident of 4 September 1994, dated 6 September 1994; D51, UNPROFOR *Compte rendu d’incident on 4 September 1994*, dated 5 September 1994.

<sup>840</sup> David Harland, 15 Jan 2007, T. 331 – 332, 395, P2, MT. 28661 – 28662, 28684. *See also*, Ismet Hadžić, 6 Mar 2007, T. 3250.

<sup>841</sup> David Harland, P2, MT. 28661.

<sup>842</sup> David Fraser, 8 Feb 2007, T. 1869 – 1870, 1778.

<sup>843</sup> David Fraser, 8 Feb 2007, T. 1870, 1778; D50, Photograph marked by David Fraser. He agreed that he could not exclude the possibility that other buildings were ABiH sniping positions. In this respect, John Jordan testified that “it would be correct to assume” that the ABiH had sniper positions in the UNIS Towers but he noted that it was a “lousy” sniper position because it was an isolated building with a lot of glass, John Jordan, 21 Feb 2007, T. 2667 – 2669. *See* D79, Photograph marked by John Jordan.

<sup>844</sup> David Fraser, 8 Feb 2007, T. 1870; W-46, 15 Mar 2007, T. 3815 (closed session).

<sup>845</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1664 – 1665, 1679 – 1680.

<sup>846</sup> Radomir Visnjić, 25 June 2007, T. 7254 – 7255.

ABiH.<sup>847</sup> Vaso Elez testified about other buildings that the ABiH held, such as the School of Economics, the Wood Processing School, the Faculty of Mechanical Engineering, the Unioninvest Building, the National Museum and the railway station, but no apartment buildings.<sup>848</sup> The Faculty of Natural Sciences and Mathematics and the Faculty of Philosophy were also held by the ABiH.<sup>849</sup>

241. Milorad Katić noted that the former Marshal Tito Barracks, where members of the ABiH were billeted, were located to the West of the Holiday Inn and that troops could be deployed there as needed.<sup>850</sup> Brig. Gen. Fraser testified that it was possible but unlikely that a civilian would be caught in cross-fire coming from one of the high-rise buildings in Grbavica and buildings on Bosnian Muslim territory.<sup>851</sup> He said that snipers are skilled marksmen who take time to line up a target and that it is unlikely that they would miss their target.<sup>852</sup>

242. The Defence argued that the ABiH could also have fired onto Zmaja od Bosne from positions in the so-called “Red Building”, behind the Invest Bank Building, close to the Metalka Building.<sup>853</sup> Milorad Katić testified that it was possible for ABiH snipers located in the “Red Building” to fire upon trams travelling along Zmaja od Bosne.<sup>854</sup> However, on being shown a series of images of the area, Milorad Katić agreed that from the area on Zmaja od Bosne, where trams were most regularly sniped, it was not possible to see the Red Building.<sup>855</sup> Witnesses testified that the confrontation line ran behind the Red Building.<sup>856</sup>

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<sup>847</sup> Afeza Karačić, 30 Jan 2007, T. 1193 – 1194; Asam Butt, 15 Feb 2007, T. 2251, 2252; Martin Bell, 26 Apr 2007, T. 5275 – 5276; David Fraser, 8 Feb 2007, T. 1869; W-54, 12 Feb, T. 1962, 1970 – 1971; Milorad Katić, 4 June 2007, T. 6092; T-61, 9 July 2007, T. 7838; D49, Map marked by David Fraser; D50, Photograph marked by David Fraser; D68, Photograph marked by Asam Butt; D79, Photograph marked by John Jordan.

<sup>848</sup> Vaso Elez, 6 June 2007, T. 6310; D218, Photograph marked by Vaso Elez.

<sup>849</sup> T-41, T. 8498 – 8503; Milorad Katić, 4 June 2007, T. 6092; D324, Photograph of Faculty of Mathematics and Natural Sciences.

<sup>850</sup> Milorad Katić, 4 June 2007, T. 6092, 6094 – 6095, testified that the Marshal Tito Barracks were about 500 metres behind the Holiday Inn and ABiH troops were physically located near the confrontation line, controlling the area in which the Museum and Faculty of Philosophy were located.

<sup>851</sup> David Fraser, 8 Feb 2007, T. 1865 – 1866. *See also*, D65, Letter by Vahid Karavelić, dated 27 August 1994.

<sup>852</sup> David Fraser, 8 Feb 2007, T. 1865 – 1866.

<sup>853</sup> Asam Butt, 15 Feb 2007, T. 2178, 2249 – 2250; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; Milorad Katić, 4 June 2007, T. 6092; P223, Photograph marked by Asam Butt; D169, Photograph marked by Mirza Sabljica; P583, Photograph marked by Mirza Sabljica; D220, Photograph marked by Vaso Elez. The Trial Chamber notes that this building was occupied by troops of both the SRK and the ABiH: Asam Butt, 15 Feb 2007, T. 2174; Mirza Sabljica, 19 Apr 2007, T. 4760 – 4761; Vaso Elez, 7 June 2007, T. 6374; P223, Photograph marked by Asam Butt.

<sup>854</sup> Milorad Katić, 4 June 2007, T. 6108. *See also*, P754, Photograph marked by Milorad Katić.

<sup>855</sup> Milorad Katić, 1 June 2007, T. 6115.

<sup>856</sup> Asam Butt, 15 Feb 2007, T. 2178; P223, Photograph marked by Asam Butt. *See also*, Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; D169, Photograph marked by Mirza Sabljica; P583, Photograph marked by Mirza Sabljica; Milorad Katić testified that the King Tvrtko Battalion of the ABiH was there, Milorad Katić, 4 June 2007, T. 6092.



243. Other witnesses dismissed the proposition that the ABiH sniped Bosnian Muslim civilians.<sup>857</sup> In response to a question about whether he had heard that the ABiH fired at Bosnian Muslims, Gen. Smith testified that “nobody ever produced any evidence of this happening.”<sup>858</sup>

#### 4. Sniping Incidents Representative of the “Campaign”

244. Prosecution expert on sniping, Lt. Van der Weijden, examined the incidents enumerated in the First Schedule to the Indictment in his expert report and drew conclusions about the direction and origin of fire as well as about the weapons used. The Defence ballistic expert, Col. Stamenov, also examined the incidents and emphasised in his report that the type of weapon used and the origin of fire cannot be established without material traces recorded at the site, establishing the nature of the damage to the tram, the entry and exit wounds of the victims, and the type and origin of the wounds. He pointed out that not all of that information was available for all of the incidents.<sup>859</sup>

245. The Trial Chamber will now consider specific incidents of sniping. In determining whether the crimes were committed, it will take into consideration the following factors: (i) whether the person who was killed or seriously wounded was a civilian; (ii) the type of weapon that inflicted the injury; and (iii) whether, as the Prosecution alleges, the shots were fired from Bosnian Serb-held territory. In this regard, the Trial Chamber will pay particular attention to the direction and origin of fire.

##### (a) Unscheduled Sniping Incidents

246. In addition to the scheduled incidents, the Prosecution also presented evidence of unscheduled sniping incidents, that is, evidence of sniping that was not contained in the schedules to the Indictment.<sup>860</sup> This evidence included incidents in which civilians were sniped at from Grbavica and other locations in Sarajevo.<sup>861</sup> Some witnesses specified SRK-held territory as the origin of fire.<sup>862</sup> By way of example, the Trial Chamber discusses one of the unscheduled incidents.

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<sup>857</sup> Harry Konings, 13 Mar 2007, T. 3648; Rijalda Musaefendić, 28 Feb 2007, T. 2928; Bogdan Vidović, 14 Feb 2007, T. 2122 – 2128, 2134; Kemal Bučo, 2 Feb 2007, T. 1497.

<sup>858</sup> Rupert Smith, 7 Mar 2007, T. 3343.

<sup>859</sup> D360, Expert report Ivan Stamenov, pp 16, 19, 20.

<sup>860</sup> See *supra*, para. 6.

<sup>861</sup> Kemal Bučo, P158, p. 2; Alen Gičević, P163, p. 3; John Jordan, P267, pp 5, 6, 9 See e.g. *Sniping of a tram at Marindvor, autumn 1994*: W-54, 12 Feb 2007, T. 1942, 1944 – 1945, 1953; *Sniping of a police officer at the “National Restaurant”, autumn 1994*: Bogdan Vidović, 13 Feb 2007, T. 2067 – 2068, 14 Feb 2007, T. 2079, 2114 – 2115, 2148, D63, Statement by Bogdan Vidović, dated 17 May 2006, p. 2; *Sniping of a girl in apartment building at Marindvor 8 November 1994*: Mirza Sabljica, 19 Apr 2007, T. 4730 – 4735, 4749 – 4758, 4760 – 4763; W-116, 18 Apr 2007, T. 4664 – 4668, P549, p. 2; P582, Criminal investigation file, p. 2; P583, Photograph marked by Mirza Sabljica; D166, Map marked by W-116; *Sniping of a tram on Zmaja od Bosne, 23 November 1994*: Kemal Bučo, P158, p. 2; P461, Medical certificate for Emira Tanović; P462, Death certificate for Kemal Tanović; *Sniping of a tram at the*

247. At around 2345 hours on 14 May 1995, Jasmina Tabaković, a lawyer, was in her bedroom in an apartment in Dobrinja, which faced Bosnian Serb positions in Dobrinja I.<sup>863</sup> She was shot in her chest and died.<sup>864</sup> The bullet passed through the plastic sheet that had replaced the window, passed through her body and eventually lodged in the wall behind a wardrobe.<sup>865</sup>

248. On 15 May 1995, the BiH police investigated the sniping of Jasmina Tabaković.<sup>866</sup> The BiH police did not have reports of combat activity for the evening of 14 May 1994, but the father of Jasmina Tabaković testified that during the evening, shots had been fired from the Bosnian Serb positions in Dobrinja I.<sup>867</sup> When asked by the Defence, W-28 agreed that Dobrinja was divided between ABiH and SRK forces.<sup>868</sup>

249. The trajectory of the bullet was determined, using a piece of string to connect the traces in the room.<sup>869</sup> It was established that the shot had come from SRK positions in Dobrinja I.<sup>870</sup> W-138 remembered that, at first glance, the bullet appeared to be a 7.62 mm calibre rifle bullet.<sup>871</sup>

### Finding

250. On the basis of the evidence of witnesses W-28, W-138 and documentary evidence, the Trial Chamber is satisfied that Jasmina Tabaković, a civilian, was killed by a shot while she was in her bedroom in Dobrinja. The shots came from SRK-held territory in Dobrinja I. There is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK. The Trial Chamber concludes that the shots were fired by a member of the SRK.

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*Elektroprivada Building, 14 February 1995*: Bogdan Vidović, 14 Feb 2007, T. 2092 – 2093; P219, Criminal investigation file, dated 15 February 1995; *Sniping of boy on bicycle at the Alipašić Mosque, 25 June 1995*: David Harland, 15 Jan 2007, T. 349 – 350; P19, UNPROFOR sitrep, 2 July 1995.

<sup>862</sup> Derviša Selmanović, P170, p. 3; Ronald Eimers, P584, p. 4; Alija Holjan, P526, p. 3; Slavica Livnjak, P94, pp 2 – 3. See, e.g., *Sniping of a bus on the logistic route, 18 March 1995*: Ronald Eimers, P584, p. 4, P585, p. 9.

<sup>863</sup> W-28, 22 Feb 2007, T. 2722; P796, Criminal investigation file, dated 15 May 1995, p. 2. The Trial Chamber notes that this document has also been admitted as D83. However, the Trial Chamber did not receive an English translation of D83.

<sup>864</sup> P796, Criminal investigation file, p. 2.

<sup>865</sup> W-28, 22 Feb 2007, T. 2722; W-138, 31 Jan 2007, T. 1336 – 1337; P769, Criminal investigation file, p. 2. W-28 also mentioned damage to the curtains in the room, W-28, 22 Feb 2007, T. 2722.

<sup>866</sup> W-28, 22 Feb 2007, T. 2722, 2762 (private session); W-138, 31 Jan 2007, T. 1336 – 1337; P796, Criminal investigation file.

<sup>867</sup> W-28, 22 Feb 2007, T. 2722; P796, Criminal investigation file, p. 3.

<sup>868</sup> W-28, 22 Feb 2007, T. 2762 (private session). See also, *supra*, paras 119 – 120.

<sup>869</sup> W-138, 31 Jan 2007, T. 1338, 1342; W-138, 1 Feb 2007, 1347; P796, Criminal investigation file, p. 2.

<sup>870</sup> W-138, 31 Jan 2007, T. 1337 – 1338; P796, Criminal investigation file, p. 2.

<sup>871</sup> W-138, 31 Jan 2007, T. 1339.

(b) Scheduled Sniping Incidents

(i) Sniping of Targets on Zmaja od Bosne

251. Five of the scheduled incidents which took place in the area of Zmaja od Bosne, also known as ‘Sniper Alley’, involved trams. In that regard, the Trial Chamber recalls its previous finding regarding the civilian nature of the trams.<sup>872</sup>

252. The Defence put forward a general argument with regard to all tram incidents that it was “not possible to conclude beyond any reasonable doubt the source of the shots that hit the tramways, particularly since the tramway travelled just behind the combat positions of BH Army units, through a combat zone that was almost always active.”<sup>873</sup> The Trial Chamber recalls that the stretch of land between the confrontation line and Zmaja od Bosne was controlled by the ABiH, and that Grbavica on the southern side of the confrontation line and high-rise buildings, such as the Metalka Building, were held by the SRK.<sup>874</sup> The Trial Chamber will examine the evidence presented with regard to each incident and decide whether it is possible to determine that the trams were fired at from SRK-held positions.

a. Sniping of Alma Čutuna on 8 October 1994

253. The Trial Chamber was presented with evidence of three incidents of sniping on Zmaja od Bosne on 8 October 1994, all of which are connected and happened within a very short time span.<sup>875</sup> One of these incidents is in the First Schedule to the Indictment.

254. On 8 October 1994, Alma Čutuna was shot while she was travelling on a tram on Zmaja od Bosne.<sup>876</sup> She got on the tram at the stop “Socijalno”, together with her husband, to go downtown.<sup>877</sup> She was wearing a red and black blouse and jeans.<sup>878</sup> No ABiH soldiers were on the tram and there were no military activities or establishments in the area.<sup>879</sup> A cease-fire was in place that day.<sup>880</sup>

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<sup>872</sup> See *supra*, paras 224.

<sup>873</sup> Defence Final Brief, para. 179.

<sup>874</sup> See *supra*, paras 112, 114 – 116.

<sup>875</sup> See *infra*, paras 261 *et seq.*

<sup>876</sup> W-35, 22 Jan 2007, T. 822, 828.

<sup>877</sup> W-35, 22 Jan 2007, T. 826, 829, P91, p. 2 (under seal), P92, p. 3 (under seal).

<sup>878</sup> W-35, P92, p. 3 (under seal).

<sup>879</sup> W-35, 22 Jan 2007, T. 827 – 828; W-35, 23 Jan 2007, 847 – 848; P92, p. 3 (under seal); W-28, 22 February 2007, T. 2752.

<sup>880</sup> W-35, 22 Jan 2007, T. 824 – 825, P91, p. 2 (under seal), P92, p. 3 (under seal).

255. Shots were fired at and hit the crowded tram around 1200 and 1210 hours, when it was running east, in the direction of the Presidency Building and Baščaršija,<sup>881</sup> between the National Museum and the Faculty of Philosophy, in front of the Holiday Inn.<sup>882</sup> At this point, the tram tracks made an S-curve.<sup>883</sup>

256. When the shooting started, people panicked and tried to seek shelter behind the seats.<sup>884</sup> There were bursts of fire first aimed at the upper section of the tram and then at the lower section of the tram.<sup>885</sup> Alma Ćutuna was standing next to the middle door of the tram, and was facing Grbavica.<sup>886</sup> She was wounded on the left side of her head by a piece of shard.<sup>887</sup> She was also shot in her right upper leg; the shot severed an artery in her leg.<sup>888</sup> An exit wound was on her right hip.<sup>889</sup> The tram continued to the Presidency Building, but after that Alma Ćutuna lost consciousness.<sup>890</sup> When Alma Ćutuna was taken to the State Hospital, she was “clinically dead”.<sup>891</sup> However, following surgery carried out immediately after her arrival, she recovered and was discharged from the hospital 35 days later.<sup>892</sup> The circulation in her leg is still poor and she needs help with day-to-day activities.<sup>893</sup>

257. Prosecution expert Lt. Van der Weijden concluded in his report that the likely location of the shooter was the Metalka Building, a high-rise building he visited in Grbavica.<sup>894</sup> The alleged shooting position was 310 to 320 metres from the place where the incident took place.<sup>895</sup> W-35 also

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<sup>881</sup> W-35, 22 Jan 2007, T. 830 – 831, 835, P93, Photograph marked by W-35; D20, Photograph marked by W-35; D21, Photograph marked by W-35; P941, Videoclip of sniping incident (under seal); P794, Criminal investigation file, pp 1 – 2.

<sup>882</sup> W-35, 22 Jan 2007, T. 824, 835 – 837, P91, p. 2 (under seal), P92, p. 3 (under seal); P93, Photograph marked by W-35; D20, Photograph marked by W-35; P941, Videoclip of sniping incident (under seal); W-28, 22 February 2007, T. 2721; P278, Photograph marked by W-28.

<sup>883</sup> W-35, 22 Jan 2007, T. 825 – 826, 829; P93, Photograph marked by W-35, D20, Photograph marked by W-35; D21, Photograph marked by W-35. *See also*, Ivan Stamenov, 22 Aug 2007, T. 9078; Slavica Livnjak, 23 Jan 2007, T. 858, 866, P94, p. 2.

<sup>884</sup> W-35, 22 Jan 2007, T. 827 – 828, 831, P91, p. 2 (under seal).

<sup>885</sup> W-35, P92, p. 3 (under seal).

<sup>886</sup> W-35, 22 Jan 2007, T. 826, 23 Jan 2007, T. 850 – 851, P91, p. 2 (under seal), P92, p. 3 (under seal); D21, Photograph marked by W-35.

<sup>887</sup> W-35, 22 Jan 2007, T. 824, P92, p. 3 (under seal).

<sup>888</sup> W-35, 22 Jan 2007, T. 824 – 825, P91, p. 3 (under seal); P92, p. 3 (under seal); P451, Medical report, p. 3 (under seal); P452, Medical record, p. 1 (under seal); P941, Videoclip of sniping incident (under seal). *See also*, P794, Criminal investigation file, p. 4.

<sup>889</sup> W-35, P91, p. 2 (under seal).

<sup>890</sup> W-35, 22 Jan 2007, T. 831, P91, p. 2 (under seal).

<sup>891</sup> W-35, 22 Jan 2007, T. 824, P92, p. 3 (under seal). *See also*, P794, Criminal investigation file, p. 3.

<sup>892</sup> P451, Medical report, p. 3 (under seal); P452 Medical record, p. 1 (under seal).

<sup>893</sup> W-35, P91, p. 3 (under seal), P92, p. 3 (under seal).

<sup>894</sup> Lt. Van der Weijden also examined the possibility that the shots had come from the Jewish Cemetery, but excluded this possibility, P514, Expert report Patrick van der Weijden, p. 20; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

<sup>895</sup> P514, Expert report Patrick van der Weijden, pp 18, 20; P104, Street map of Sarajevo; Ivan Stamenov, 22 Aug 2007, T. 9059.

testified that the shots came from the Metalka Building.<sup>896</sup> In this respect, the Trial Chamber recalls that the Metalka Building was held by the SRK and was known as a sniper location.<sup>897</sup>

258. Lt. Van der Weijden further testified that the location where the tram was hit was directly visible from the Metalka Building.<sup>898</sup> Expert for the Defence, Col. Stamenov, also testified that one could see parts of Zmaja od Bosne and the Holiday Inn from the Metalka Building.<sup>899</sup> However, he added that the Metalka Building would not have been visible from a tram located just after the S-curve and travelling east.<sup>900</sup> Moreover, based on a NATO weather report for Sarajevo, he testified that the weather on 8 October 1994 was “rainy and foggy”. That NATO report stated that there was rain and fog in the early morning in the area of the Sarajevo airport.<sup>901</sup> W-35 testified that it was a nice and sunny day.<sup>902</sup>

259. Since the tram was not a stationary target, Lt. Van der Weijden recorded the time during which the tram would have been exposed to a shooter at the Metalka Building, and the time was at least eight seconds.<sup>903</sup> At the S-curve, trams had to slow down.<sup>904</sup> Slavica Livnjak, a tram driver, explained that, when negotiating the S-curve, the tram started to bend and the two tram cars were facing two different directions.<sup>905</sup> Col. Stamenov also testified that, in the S-curve, there would be an angle between the front and the rear part of the tram, depending on the width of the tracks.<sup>906</sup> He confirmed that a tram has to slow down in order to enter an S-curve, and that after the curve it takes some distance to accelerate so that the area over which the tram is moving slowly is greater than just the S-curve itself.<sup>907</sup>

260. In terms of the type of weapon used, Lt. Van der Weijden concluded that automatic fire, most likely with a M84 or M53 machinegun, was probably used since there were a number of victims and several shots were fired at a rapid rate.<sup>908</sup> He explained that machineguns are more

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<sup>896</sup> W-35, 22 Jan 2007, T. 824, 832, P92, p. 3 (under seal).

<sup>897</sup> See *supra*, para. 228.

<sup>898</sup> P514, Expert report Patrick van der Weijden, p. 20. See also, W-35, 22 Jan 2007, T. 824 – 825, 829, 836, 850 – 851, P92, p. 3 (under seal); P93, Photograph marked by W-35; P97, Photograph marked by Slavica Livnjak.

<sup>899</sup> Ivan Stamenov, 22 Aug 2007, T. 9055, *commenting on* C3, Photographs taken during site visit, p. 1.

<sup>900</sup> Ivan Stamenov, 22 Aug 2007, T. 9054, *commenting on* C14, Photographs taken during site visit, p. 22.

<sup>901</sup> Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 2.

<sup>902</sup> W-35, 22 Jan 2007, T. 827, P92, p. 3 (under seal).

<sup>903</sup> P514, Expert report Patrick van der Weijden, p. 20. See also, C14, Photographs taken during site visit, pp 2 – 7.

<sup>904</sup> W-35, 22 Jan 2007, T. 825 – 826, 829; Slavica Livnjak, P95, p. 2; P93, Photograph marked by W-35, D20, Photograph marked by W-35; D21, Photograph marked by W-35.

<sup>905</sup> Slavica Livnjak, 23 Jan 2007, T. 858, 865, 866 – 867, P94, p. 2.

<sup>906</sup> Ivan Stamenov, 22 Aug 2007, T. 9053; D365, Drawing made by Ivan Stamenov.

<sup>907</sup> Ivan Stamenov, 22 Aug 2007, T. 9078.

<sup>908</sup> Patrick van der Weijden, 29 Mar 2007, T. 4280, 4324; P514, Expert report Patrick van der Weijden, p. 18, Appendix A.

effective against a moving target like a tram, which is only visible temporarily.<sup>909</sup> The BiH police commented that the damage to the tram was “probably caused by a ‘death sower’.”<sup>910</sup>

261. The Trial Chamber notes that further to the shooting of the tram carrying Alma Čutuna, there is evidence of two other sniping incidents that took place in the same area and within minutes of each other.<sup>911</sup> The BiH police investigation file stated that on 8 October 1994, fire was opened on two trams near the Museum, including the tram carrying Alma Čutuna, from the “aggressor’s positions” in Grbavica.<sup>912</sup> The driver of one of the trams told the BiH police that he thought the shots had come from the Metalka Building.<sup>913</sup> During the on-site investigation, the investigation team found two stationary trams that were damaged and with traces of fire, and blood stains and broken glass on the inside of the tram.<sup>914</sup>

262. Moreover, evidence also shows that shortly after the second tram was targeted, four children between 12 and 14 years of age, running in the same area, near the Faculty of Philosophy and the Executive Council, were shot and wounded.<sup>915</sup> W-54 recalled that the children were shot from the Metalka Building.<sup>916</sup> While the trams and the children were being shot at, an UNPROFOR team was taking cover behind one of its vehicles stationed on the sidewalk.<sup>917</sup> It was reported that the sniping of the two trams and the children had resulted in 11 casualties, including Alma Čutuna.<sup>918</sup>

263. Evidence suggested that Gen. Rose passed by the incident site at the moment that the children were shot.<sup>919</sup> UNPROFOR reported that on 8 October 1994, a tram was fired at with three bursts of fire in the area of the Holiday Inn, resulting in the death of one civilian and the wounding of 11.<sup>920</sup> It reported that “the fire was answered as coming from the [Bosnian Serb Army] in the area of the Jewish Cemet[c]ry. Investigation [is] ongoing”.<sup>921</sup> A later UNPROFOR report recounted that Gen. Mladić was informed by Gen. Rose about the incident and about the casualties.<sup>922</sup> Gen. Mladić denied that Bosnian Serb soldiers were involved and claimed that the shootings came from the “Holiday Inn (i.e. the Bosnian [Muslim] side)” and that it was all “a scenario” engineered by the

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<sup>909</sup> P514, Expert report Patrick van der Weijden, p. 18, Appendix A.

<sup>910</sup> P794, Criminal investigation file, p. 2. In that regard, the Trial Chamber recalls the evidence of Tarik Žunić, who used these words to describe a M84 machine gun, Tarik Žunić, 7 Feb 2007, T. 1740.

<sup>911</sup> W-35, 22 Jan 2007, T. 827, P92, p. 3 (under seal); P794, Criminal investigation file, pp 1 – 2.

<sup>912</sup> P794, Criminal investigation file, pp 1 – 2.

<sup>913</sup> P794, Criminal investigation file, p. 2.

<sup>914</sup> P794, Criminal investigation file, p. 2.

<sup>915</sup> W-54, 12 Feb 2007, T. 1944 – 1946; P794, Criminal investigation file, p. 2.

<sup>916</sup> W-54, 12 Feb 2007, T. 1945.

<sup>917</sup> W-54, 12 Feb 2007, T. 1944; P794, Criminal investigation file, p. 2.

<sup>918</sup> P794, Criminal investigation file, pp 3 – 4; P448, P449, P450, Medical records (all under seal).

<sup>919</sup> W-46, 15 Mar 2007, T. 3824 – 3825 (closed session); P388, UNPROFOR report, dated 13 October 1994.

<sup>920</sup> P853, UNPROFOR daily sitrep, dated 8 October 1994, p. 3.

<sup>921</sup> *Ibid.*

other side.<sup>923</sup> During the meeting, an UNPROFOR technical expert assured Gen. Mladić that the shooting had not come from the “Holiday Inn side”.<sup>924</sup>

264. The Defence confronted W-28, who was part of the BiH police investigation team, with a letter by Gen. Rose addressed to President Alija Izetbegović protesting against sniping incidents that took place on 8 October 1994 “in the City of Sarajevo from both sides of the line of confrontation”.<sup>925</sup> W-28 was not able to comment on the letter, but testified that he was not aware of military activities on that day.<sup>926</sup> The Trial Chamber notes that this same letter was sent to Radovan Karadžić.<sup>927</sup> However, these letters do not refer to any specific incident or any specific location in or around Sarajevo.

### Findings

265. As to the Defence submission of poor visibility on that day, the Trial Chamber notes that the NATO report reflects that on 8 October 1994 at around 1200 or 1210 hours, when the shooting took place, it was neither raining nor foggy and that the visibility was 6,000 metres.<sup>928</sup> Therefore, the Trial Chamber is satisfied that the visibility was sufficient to allow a sniper at the Metalka Building to identify and target a tram negotiating the S-curve.<sup>929</sup>

266. On the basis of the evidence of eyewitnesses, experts for the Prosecution and Defence, the BiH police report and photographic evidence, the Trial Chamber is satisfied that the tram was shot at the S-curve on Zmaja od Bosne with machinegun fire and that Alma Čutuna, a civilian, was hit and seriously injured in her right upper leg. There is no evidence that the shots originated from ABiH-held territory. The Trial Chamber is satisfied that the shots came from the direction of the Metalka Building, which was held by the SRK. In light of the fact that nothing in the evidence suggests that the shots came from anyone other than a member of the SRK, the Trial Chamber finds that the shots were fired by a member of the SRK.

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<sup>922</sup> P389, UNPROFOR report, dated 10 October 1994, p. 2: seven people were injured and one died; W-46, 15 Mar 2007, T. 3825 – 3826 (closed session).

<sup>923</sup> P389, UNPROFOR report, 10 October 1994, p. 2.

<sup>924</sup> *Ibid.*

<sup>925</sup> W-28, 22 February 2007, T. 2752; D80, Protest letters from General Rose to Ganić/ Izetbegović/ Karadžić, dated 9 October 1994 (“Protest letter, 9 October 1994”), p. 3.

<sup>926</sup> W-28, 22 February 2007, T. 2752.

<sup>927</sup> D80, Protest letter, 9 October 1994, p. 4.

<sup>928</sup> D362, NATO weather report for Sarajevo, p. 2.

<sup>929</sup> C14, Photographs taken during site visit, pp 24 – 26.

b. Sniping of Hajrudin Hamidić on 21 November 1994

267. The twenty-first of November 1994 was a cold day.<sup>930</sup> The trams were operating that morning. However, the centre of Sarajevo came under shell-fire and due to the intensity of the shelling, the trams could not reach Baščaršija and were ordered to return to the depot at Alipašin Most.<sup>931</sup> A tram driver, Hajrudin Hamidić, picked up a group of passengers while driving the empty tram back to the depot.<sup>932</sup> The passengers were mainly women and children, as well as some elderly and young people.<sup>933</sup> No military personnel got onto the tram with that group of passengers.<sup>934</sup>

268. When the tram reached the intersection between the National Museum and the Holiday Inn at about 1100 hours, a projectile fell one or one and a half metres in front of the tram.<sup>935</sup> There was a huge impact and detonation, which W-54 attributed to a shell rather than to a rifle grenade.<sup>936</sup> The explosion was very loud.<sup>937</sup> W-54 saw that the windscreen was shattered, the front section of the tram was damaged, all the windows were broken and there was shrapnel inside the tram.<sup>938</sup> Blood was trickling down the face of Hajrudin Hamidić.<sup>939</sup> His glasses had been shattered and he was bleeding profusely.<sup>940</sup>

269. The tram tracks were not smashed or bent by the explosion, so W-54 inferred that the projectile had landed either between or to the left of the rails.<sup>941</sup> After the explosion, the tram kept moving.<sup>942</sup> The tram driver told his passengers: "Lie down. We're all going to be killed."<sup>943</sup> The passengers were panicking; the women and children were screaming and crying, pleading with the driver to continue, and making comments such as: "We're going to be killed."<sup>944</sup>

270. Immediately following the explosion, when the tram had travelled approximately another 50 metres and had gone past the Marshal Tito Barracks, snipers started shooting repeatedly at the left-

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<sup>930</sup> W-54, 6 Feb 2007, T. 1695.

<sup>931</sup> W-54, 6 Feb 2007, T. 1639, 1693 – 1694; Avdo Vatrić, P647, p. 5.

<sup>932</sup> W-54, 12 Feb 2007, T. 1949.

<sup>933</sup> W-54, 6 Feb 2007, T. 1695.

<sup>934</sup> W-54, 6 Feb 2007, T. 1695.

<sup>935</sup> W-54, 6 Feb 2007, 1695 – 1696, 12 Feb 2007, 1968; D56, Police file, dated November/December 1994 ("Police file"), p. 2 (under seal).

<sup>936</sup> W-54, 6 Feb 2007, T. 1695 – 1696, 12 Feb 2007, T. 1950 – 1951, 1959.

<sup>937</sup> W-54, 12 Feb 2007, T. 1959.

<sup>938</sup> W-54, 6 Feb 2007, T. 1696 – 1697, 12 Feb 2007, T. 1950 – 1951, 1961.

<sup>939</sup> W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1951.

<sup>940</sup> W-54, 12 Feb 2007, T. 1950 – 1951. In that regard, the Prosecution submitted that Hajrudin Hamidić was not wounded as a result of sniper fire as alleged in the Indictment and that the evidence pertaining to this incident could go to support a finding on Counts 3 and 4 of the Indictment, Trial Hearing, 6 Feb 2007, T. 1681 – 1682.

<sup>941</sup> W-54, 12 Feb 2007, T. 1960.

<sup>942</sup> W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1955, 1970.

<sup>943</sup> W-54, 6 Feb 2007, T. 1696.

<sup>944</sup> W-54, 6 Feb 2007, T. 1696.



hand side of the tram.<sup>945</sup> The sniping continued until the tram reached Pofalići and stopped at the stop “Socijalno” or “Elektroprivreda”.<sup>946</sup> A wounded woman disembarked from the tram and an ambulance was called to assist.<sup>947</sup> Apart from this woman, W-54 was not aware of any other person being injured by the sniping during the tram journey.<sup>948</sup>

271. W-54 testified that, after the Elektroprivreda stop, the tram continued to Dolac Malta, where it was safe to stop and where the other passengers disembarked.<sup>949</sup> At that location, in that area of Hrasno, there were no Bosnian Serb soldiers and snipers on the left bank of the Miljacka River, as Hrasno was under the control of ABiH.<sup>950</sup> The tram driver then drove the tram to the depot.<sup>951</sup>

272. According to W-54, the snipers were stationed approximately 400 to 500 metres from the tram.<sup>952</sup> W-54 testified that all shots, including the shot causing the large explosion, came from the high-rise buildings at Grbavica, that is, Lenjinova Street, numbers 6, 8 and 10.<sup>953</sup> W-54 knew that these high-rise buildings were controlled by the SRK because at least one building displayed the Serb flag.<sup>954</sup> The BiH police, on the basis of an analysis of the remains of the projectile, concluded that the direction of fire was 184 degrees, which corresponded to the direction of a high-rise building in Grbavica.<sup>955</sup> The Trial Chamber recalls that other evidence also shows that the high-rise buildings in Grbavica were held by the SRK.<sup>956</sup>

273. The BiH police further concluded that the explosion was caused by a M80 hand-held rocket projectile.<sup>957</sup> This type of projectile was used by the JNA, and had a range of 1,300 metres.<sup>958</sup> Lt. Van der Weijden came to a different conclusion regarding the nature of the initial explosion. According to him, the explosion was most likely caused by a M84 or M53 machinegun.<sup>959</sup> In his view, a bullet hit an electrical circuit, since a short circuit could cause a loud bang similar to a small explosion.<sup>960</sup>

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<sup>945</sup> W-54, 12 Feb 2007, T. 1968.

<sup>946</sup> W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1941, 1955 – 1956.

<sup>947</sup> W-54, 6 Feb 2007, T. 1698, 12 Feb 2007, T. 1951, 1957.

<sup>948</sup> W-54, 6 Feb 2007, T. 1951, 1954, 1698; D56, Police file, p. 5 (under seal).

<sup>949</sup> W-54, 6 Feb 2007, T. 1696 – 1697.

<sup>950</sup> W-54, 6 Feb 2007, T. 1696 – 1697.

<sup>951</sup> W-54, 12 Feb 2007, T. 1949; D56, Police file, p. 5 (under seal).

<sup>952</sup> W-54, 6 Feb 2007, T. 1696 – 1697, 1698, 12 Feb 2007, T. 1955 -1956, 1959 – 1960, 1968 – 1969; D55, Statement of W-54, dated 20 May 2006, p. 2 (under seal).

<sup>953</sup> W-54, 6 Feb 2007, T. 1696 – 1698, 12 Feb 2007, T. 1955, 1958, 1959; D56, Police file, p. 5 (under seal). The Trial Chamber takes also note of D215, Map marked by Vaso Elez; D218, Photograph marked by Vaso Elez.

<sup>954</sup> W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1955.

<sup>955</sup> D56, Police file, p. 4 (under seal).

<sup>956</sup> *See supra*, para. 228.

<sup>957</sup> D56, Police file, p. 4 (under seal).

<sup>958</sup> D56, Police file, p. 4 (under seal).

<sup>959</sup> P514, Expert report Patrick van der Weijden, p. 36.

<sup>960</sup> P514, Expert report Patrick van der Weijden, p. 36.

274. Lt. Van der Weijden's assessment of the location of the incident site and likely shooter location differed from the testimony of W-54. Lt. Van der Weijden visited the incident site as well as the likely location of the shooter on 29 November 2006.<sup>961</sup> Although the trees were leafless and visibility was just over 450 metres at the incident site due to fog, there was still sufficient vision to determine the direction and approximate location of the shooter.<sup>962</sup> According to Lt. Van der Weijden, the information provided by the victim led him to determine that the Grbavica area was the source of fire. However, this was contradictory to the location identified in the reports provided by the Prosecution, which indicated a location that was not visible from the Grbavica area, but was in clear view of the area west of the Jewish Cemetery that was also known for sniping activity.<sup>963</sup> According to Lt. Van der Weijden, the Grbavica area was not the origin of fire in this incident.<sup>964</sup>

### Findings

275. The Trial Chamber notes that the evidence of W-54 and Lt. Van der Weijden differed in the following areas: the exact location of the initial explosion; the exact location of the tram when it was hit by subsequent sniper fire; the type of weapon that caused the explosion; and the direction of fire. Lt. Van der Weijden's report did not take into account the high-rise buildings as possible sniper locations and did not take into account that the remains of a M80 rocket projectile had been located at the site of the explosion.<sup>965</sup> Nor does his report show that he knew of the subsequent sniping of the tram. The Trial Chamber further notes that neither of the Parties put any questions to Lt. Van der Weijden in relation to this specific incident. The Trial Chamber finds that Lt. Van der Weijden based his opinion on incomplete information. He was not asked to provide a new assessment, in which he could have taken into account the fact that traces of a rocket projectile were found.

276. On the basis of the testimony of W-54 and the BiH police report, the Trial Chamber finds that the tram was hit by a M80 hand-held rocket and that Hajrudin Hamidić, a civilian and the driver of the tram, was seriously injured as a result of this explosion. The Trial Chamber is also satisfied that the tram was fired at with sniper fire immediately after being targeted by the rocket projectile. There is no evidence to suggest that these shots originated from ABiH-held territory. The sniper fire and the rocket projectile originated from the high-rise buildings at Grbavica which were

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<sup>961</sup> P514, Expert report Patrick van der Weijden, p. 37.

<sup>962</sup> P514, Expert report Patrick van der Weijden, p. 37.

<sup>963</sup> P514, Expert report Patrick van der Weijden, p. 37. The Trial Chamber notes that Lt. Van der Weijden did not indicate which warring party was in these areas.

<sup>964</sup> P514, Expert report Patrick van der Weijden, p. 37.

<sup>965</sup> P514, Expert report Patrick van der Weijden, pp 36 – 38. It is possible that Lt. Van der Weijden was not provided with all relevant information prior to investigating this scheduled incident.

held by the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

c. Sniping of Hafiza Karačić and Sabina Šabanić on 23 November 1994

277. On 23 November 1994, Afeza Karačić and her sister went to the market in Baščaršija.<sup>966</sup> According to Afeza Karačić, there was a cease-fire in place that day, which had been announced on the radio two or three days earlier.<sup>967</sup> There was no fighting between the warring parties.<sup>968</sup> In the afternoon, Afeza Karačić and her sister decided to take a tram back to Otoka, where they lived.<sup>969</sup> On the same day just before 1600 hours, Sabina Šabanić left work to take a tram home.<sup>970</sup> Sabina Šabanić and Afeza Karačić travelled on the same crowded tram.<sup>971</sup>

278. It was a clear day and there was still natural light at that time of the afternoon.<sup>972</sup> There were no leaves on the trees.<sup>973</sup> No soldiers were on the tram, and there were no soldiers or any ABiH vehicles in the area.<sup>974</sup>

279. From Baščaršija, the tram ran towards the West, on Zmaja od Bosne, in the direction of the Technical School and the Marshal Tito Barracks.<sup>975</sup> Tram drivers were instructed not to stop in the area because trams were very exposed to shooting.<sup>976</sup> When the tram reached the area of Marindvor, it was shot by a sniper.<sup>977</sup>

280. Huso Palo, the tram driver, heard a shot from his left side, to the South.<sup>978</sup> Witnesses reported that there was only one shot which came through an open window of the tram.<sup>979</sup> Most of the passengers threw themselves on the floor, imploring the tram driver to take shelter.<sup>980</sup>

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<sup>966</sup> Afeza Karačić, P115, p. 2.

<sup>967</sup> Afeza Karačić, P115, p. 2.

<sup>968</sup> Sabina Šabanić, 2 Feb 2007, T. 1457-1458.

<sup>969</sup> Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, P115, p. 2; P104, Street map of Sarajevo.

<sup>970</sup> Sabina Šabanić, 2 Feb 2007, T. 1445, 1447, P153, p. 2.

<sup>971</sup> Afeza Karačić, 29 Jan 2007, T. 1185; Sabina Šabanić, 2 Feb 2007, T. 1457, P153, p. 2; Kemal Bućo, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1.

<sup>972</sup> Afeza Karačić, 29 Jan 2007, T. 1185, P115, p. 2; Sabina Šabanić, 2 Feb 2007, T. 1457, P154, p. 2.

<sup>973</sup> Afeza Karačić, 29 Jan 2007, T. 1185.

<sup>974</sup> Afeza Karačić, 29 Jan 2007, T. 1185, P115, p. 2; Huso Palo, P162, p. 2; Sabina Šabanić, P154, p. 2.

<sup>975</sup> Afeza Karačić, P115, p. 2; Huso Palo, P162, p. 2; P941 Videoclip with Afeza Karačić (under seal); P104, Street map of Sarajevo.

<sup>976</sup> Afeza Karačić, 29 Jan 2007, T. 1185 – 1186, P115, p. 2; Huso Palo, 5 Feb 2007, T. 1541, 1544, P162, p. 2.

<sup>977</sup> Huso Palo, 5 Feb 2007, T. 1535 – 1536; Sabina Šabanić, 2 Feb 2007, T. 1449; Afeza Karačić, P114, p. 2, P115, p. 2; Kemal Bućo, 2 Feb 2007, T. 1495 – 1496, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P155, Photograph marked by Sabina Šabanić; P157, Photograph marked by Sabina Šabanić; P160, Photograph marked by Kemal Bućo; D36, Photograph marked by Sabina Šabanić; D20, Photograph marked by W-35; P104, Street map of Sarajevo.

<sup>978</sup> Huso Palo, 5 Feb 2007, T. 1536, 1539, 1547, P162, pp 2 – 3.

281. Afeza 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.<sup>981</sup> She was wearing a brown jacket and trousers.<sup>982</sup> Afeza Karačić did not hear any shots, she just felt a powerful impact against her shoulder and heard other passengers screaming.<sup>983</sup> The bullet, which came from her right, entered her upper right shoulder and exited slightly lower on the right arm, severing a nerve.<sup>984</sup>

282. Sabina Šabanić was standing at the back of the front section of the tram, facing Grbavica.<sup>985</sup> She did not hear the shot either and did not realise that she was wounded until she got off the tram and started to lose consciousness.<sup>986</sup> She was hit in the front right shoulder and the bullet exited two inches lower at the back of the same shoulder.<sup>987</sup>

283. The tram continued further down the street and stopped in a sheltered area at the Marshal Tito Barracks. The injured people got off the tram.<sup>988</sup> The two wounded, Afeza Karačić and Sabina Šabanić, were taken to the Koševo Hospital Trauma Clinic.<sup>989</sup> Afeza Karačić had several operations as a result of which her arm was shortened by six centimetres.<sup>990</sup> Due to her injuries, she has 80 per cent disability; she cannot drive a car or write properly and has difficulty eating with her right hand.<sup>991</sup> Sabina Šabanić stayed in hospital for four days.<sup>992</sup> She could not use her arm properly and had difficulty eating and getting dressed, leaving her unable to work until March 1995.<sup>993</sup>

284. Kemal Bućo, a state security inspector for the BiH police, reported that Afeza Karačić and Sabina Šabanić had been hit by one single bullet which fragmented.<sup>994</sup> W-91 was also involved in the investigation of the sniping of two trams which occurred on 23 November 1994.<sup>995</sup> W-91 stated that it was common for the Bosnian Serb Army to fire fragmentation bullets at trams that would

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<sup>979</sup> Huso Palo, 5 Feb 2007, T. 1537 – 1538; Kemal Bućo, 2 Feb 2007, T. 1518, P158, p. 2, P159, Information report, p. 1; P161, Official note, p. 2; P212, Official report, p. 1.

<sup>980</sup> Afeza Karačić, 30 Jan 2007, T. 1197, P114, p. 2; Huso Palo, 5 Feb 2007, T. 1536, 1539; Sabina Šabanić, 2 Feb 2007, T. 1448, P153, p. 2.

<sup>981</sup> Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, P114, p. 2; P941, Videoclip with Afeza Karačić (under seal).

<sup>982</sup> Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, 1185, P114, p. 2.

<sup>983</sup> Afeza Karačić, 30 Jan 2007, T. 1196, 1201, P114, p. 2.

<sup>984</sup> Afeza Karačić, 29 Jan 2007, T. 1184, 30 Jan 2007, 1194, P114, p. 2; P941, Videoclip with Afeza Karačić (under seal); P161, Official note, p. 2.

<sup>985</sup> Sabina Šabanić, P153, p. 2.

<sup>986</sup> Sabina Šabanić, 2 Feb 2007, T. 1450, 1476, P153, p. 2.

<sup>987</sup> Sabina Šabanić, 2 Feb 2007, T. 1458, P153, p. 2.

<sup>988</sup> Afeza Karačić, 30 Jan 2007, T. 1189, P114, p. 2; Huso Palo, 5 Feb 2007, T. 1536, P162, p. 3; Sabina Šabanić, 2 Feb 2007, T. 1450, P153, p. 2; P161, Official note, p. 2; D36, Photograph marked by Sabina Šabanić.

<sup>989</sup> Sabina Šabanić, 2 Feb 2007, T. 1484, P153, p. 2; Afeza Karačić P114, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P459, Medical certificate (under seal); P460, Medical certificate (under seal).

<sup>990</sup> Afeza Karačić, P114, p. 2, P115, p. 2.

<sup>991</sup> Afeza Karačić, 30 Jan 2007, T. 1190, P114, p. 2, P115, p. 2.

<sup>992</sup> Sabina Šabanić, P153, p. 2.

<sup>993</sup> Sabina Šabanić, P153, p. 2.

<sup>994</sup> Kemal Bućo, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1.

<sup>995</sup> W-91, P371, p. 2 (under seal).

fragment on impact, even through glass.<sup>996</sup> In W-91's view, the use of fragmentation bullets had two advantages: first, they could hit more than one person.<sup>997</sup> Second, they avoided leaving behind a single exit hole and this prevented the Bosnian Muslims from using certain methods to determine the origin of fire, such as putting a tube through the holes.<sup>998</sup>

285. However, Col. Stamenov testified that, to his knowledge, there were no fragmentation bullets in the SRK's arsenal, neither for rifles nor for machineguns.<sup>999</sup> Lt. Van der Weijden also concluded that several shots were fired, most likely from a M84 or M53 machinegun.<sup>1000</sup>

286. There was conflicting evidence regarding the location where the tram was hit and the origin of fire. Afeza Karačić testified that the tram was hit at the Holiday Inn, just before the National Museum.<sup>1001</sup> Lt. Van der Weijden also appears to have conducted his analysis of this incident based on the assumption that the tram was hit in front of the Holiday Inn.<sup>1002</sup> However, in a statement Afeza Karačić gave in 1995, she indicated that the tram was hit at the Marshal Tito Barracks.<sup>1003</sup> All other evidence indicated that the tram was shot between the School of Engineering and the Marshal Tito Barracks.<sup>1004</sup>

287. As to the origin of fire, all witnesses gave evidence that the shot came from the direction of Grbavica, but differed as to the exact location. During her testimony in court, Afeza Karačić indicated that the shots came from the Metalka Building.<sup>1005</sup> According to Lt. Van der Weijden, the likely location of the shooter was the Metalka Building.<sup>1006</sup> The Trial Chamber recalls that the Metalka Building was a known Bosnian Serb sniper position.<sup>1007</sup> However, Sabina Šabanić, Kemal

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<sup>996</sup> W-91, P371, p. 2 (under seal).

<sup>997</sup> W-91, P371, p. 2 (under seal).

<sup>998</sup> W-91, P371, p. 2 (under seal).

<sup>999</sup> Ivan Stamenov, 22 Aug 2007, T. 9051, 9085.

<sup>1000</sup> Patrick van der Weijden, 29 Mar 2007, T. 4324; P514, Expert report Patrick van der Weijden, pp 25, 27, Appendix A. The Trial Chamber notes that it has not been provided with information as to which statements Lt. Van der Weijden reviewed.

<sup>1001</sup> Afeza Karačić, 30 Jan 2007, T. 1191; P104, Street map of Sarajevo; P116, Photograph marked by Afeza Karačić; P941, Videoclip with Afeza Karačić (under seal); P119, 360° photograph.

<sup>1002</sup> P514, Expert report Patrick van der Weijden, pp 25 – 26.

<sup>1003</sup> Afeza Karačić, P114, p. 2; In her written statement from 2006, she changed this to "The location where the tram was shot was near the Tito Barracks as written, but it should be correctly described as Marindvor area." P115, p. 2.

<sup>1004</sup> Huso Palo, 5 Feb 2007, T. 1535 – 1536; Sabina Šabanić, 2 Feb 2007, T. 1449; Afeza Karačić, P114, p. 2, P115, p. 2; Kemal Bućo, 2 Feb 2007, T. 1495 – 1496, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P155, Photograph marked by Sabina Šabanić; P157, Photograph marked by Sabina Šabanić; P160, Photograph marked by Kemal Bućo; D36, Photograph marked by Sabina Šabanić; D20, Photograph marked by W-35; P104, Street map of Sarajevo.

<sup>1005</sup> Afeza Karačić, 30 Jan 2007, T. 1192 – 1193. During her testimony, Afeza Karačić indicated where the Metalka Building was located, but did not explicitly say that the shots came from there; P941, Videoclip with Afeza Karačić (under seal); P119, 360° photograph.

<sup>1006</sup> P514, Expert report Patrick van der Weijden, pp 25 – 26; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

<sup>1007</sup> See *supra*, para 228.

Bučo and Huso Palo gave evidence that the shot was fired from one of the high-rise buildings on Lenjinova Street, which offered a direct line of sight onto the area between the two museums, where the tram was shot.<sup>1008</sup> The Trial Chamber recalls that these buildings were also known Bosnian Serb sniper positions.<sup>1009</sup>

### Findings

288. On the basis of the evidence of eyewitnesses, including Hafiza Karačić and Sabina Šabanić, and the BiH police report, the Trial Chamber finds that the tram was shot at the intersection in front of the Holiday Inn, or shortly thereafter in front of the Marshal Tito Barracks between the two museums. The origin of fire was either the high-rise buildings on Lenjinova Street or the Metalka Building. The Trial Chamber recalls that both locations were held by the SRK.

289. There is no evidence to suggest that the shots came from ABiH-held territory. In light of the evidence from all witnesses that the shots came from SRK-held territory, it is not necessary for the Trial Chamber to resolve the conflicting evidence as to the precise location of the tram and the origin of fire. Moreover, the evidence shows that weapons were used with a calibre and range sufficient to hit the tram and to cause the serious injuries sustained by Sabina Šabanić and Afeza Karačić. The question whether the two civilians were injured by a fragmentation bullet or by multiple shots has no bearing on the findings of the Trial Chamber. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

#### d. Sniping of Senad Kešmer, Alma Čehajić and Alija Holjan on 27 February 1995

290. W-118 was driving a tram that was fired upon on 27 February 1995 on Zmaja od Bosne.<sup>1010</sup> The crowded tram was travelling westwards, from the centre of town toward Ilidža.<sup>1011</sup> According

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<sup>1008</sup> Kemal Bučo, 2 Feb 2007, T. 1495, P158, p. 2. According to Kemal Bučo, the origin of fire was determined by a CSB ballistic team and also by UNPROFOR; Huso Palo, 5 Feb 2007, T. 1535, 1539, 1547, P162, pp 2 – 3; Sabina Šabanić, 2 Feb 2007, T. 1453 – 1455, P154, p. 2; P157, Photograph marked by Sabina Šabanić; P161, Official note, p. 2; P104, Street map of Sarajevo; D215, Map marked by Vaso Elez.

<sup>1009</sup> See *supra*, para. 228.

<sup>1010</sup> W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1628, P174, p. 2 (under seal).

<sup>1011</sup> W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1624, 1629 – 1630, P175, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1657; Alija Holjan, 4 Apr 2007, T. 4473, P524, p. 1, P525, p. 2, P526, p. 2; D39, Photograph marked by W-118.

to W-118, there was a cease-fire in place and it was a peaceful day.<sup>1012</sup> The weather conditions allowed for good visibility, with neither fog nor rain.<sup>1013</sup>

291. Alma Mulaosmanović, maiden name Čehajić, aged 18, was on the tram on her way back home from school.<sup>1014</sup> She was wearing a light purple jacket, blue jeans, tennis shoes, and a green blouse.<sup>1015</sup> On the tram, she stood facing the Marshal Tito Barracks.<sup>1016</sup> Alija Holjan, a foreman of a street cleaning crew, was sitting on the right-side of the tram, next to an exit.<sup>1017</sup> W-118 recounted how the shooting started around noon, when the tram was about 20 metres west of the tram stop at the Marshal Tito Barracks.<sup>1018</sup> Alija Holjan and Alma Mulaosmanović also testified that the tram was near the Marshal Tito Barracks when it came under fire.<sup>1019</sup> W-118 heard a loud noise, and, at first, thought that the wires were breaking.<sup>1020</sup> Alija Holjan and Alma Mulaosmanović both heard shots hitting the left side of the tram.<sup>1021</sup> They described how the passengers tried to take cover from the bullets.<sup>1022</sup> Alma Mulaosmanović testified:

“Just as all other passengers, I was just waiting to be hit. In that crouching position I just prayed to God, because shots were heard hitting the tram, that I wouldn’t be hit in the spine or any such part that would leave me paralysed.”<sup>1023</sup>

292. Alma Mulaosmanović sustained what she called a “light injury” in her left arm from a bullet.<sup>1024</sup> It entered on the front at her elbow, passed through the muscle, “slid down” the bone and exited on her lower arm.<sup>1025</sup> Alija Holjan felt a blow to the right shoulder blade area.<sup>1026</sup> He started to bleed.<sup>1027</sup> A bullet had struck him in the back, passing from left to right.<sup>1028</sup> He saw that about

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<sup>1012</sup> W-118, 6 Feb 2007, T. 1624, 1637, 1648, P174, p. 2 (under seal). *See also*, D475, D476, D477, D478, D478, Regular combat reports, 25 – 27 February 1995.

<sup>1013</sup> W-118, P175, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1657; Alija Holjan, P526, p. 2.

<sup>1014</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1649.

<sup>1015</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1657, P179, pp 2 – 3.

<sup>1016</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1658, 1661 – 1662, P178, p. 2, P179, p. 3.

<sup>1017</sup> Alija Holjan, 4 Apr 2007, T. 4470, 4472, 4479, P524, p. 1, P525, p. 2.

<sup>1018</sup> W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1630, 1633, 1640, P174, p. 2 (under seal); P176, Map marked by W-118; P177, Photograph marked by W-118; D39, Photograph marked by W-118; D40, Map marked by W-118. *See also*, Alija Holjan, P524, p. 1, P525, p. 2; Alma Mulaosmanović, P178, p. 2.

<sup>1019</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1652 – 1653, 1661, 1663 – 1664; P180, Map marked by Alma Mulaosmanović; P181, Photograph marked by Alma Mulaosmanović; D42, Photograph marked by Alma Mulaosmanović. *See also*, Alma Mulaosmanović, P179, p. 2; Alija Holjan, 4 Apr 2007, T. 4476 – 4477, P524, p. 1, P525, p. 2,

<sup>1020</sup> W-118, 6 Feb 2007, T. 1625.

<sup>1021</sup> Alija Holjan, 4 Apr 2007, T. 4479, P524, p. 1, P525, p. 2. Alma Mulaosmanović, 6 Feb 2007, T. 1658, P178, p. 2, P179, pp 2 – 3.

<sup>1022</sup> Alija Holjan, 4 Apr 2007, T. 4479, P524, p. 1; Alma Mulaosmanović, 6 Feb 2007, T. 1658, P178, p. 2, P179, pp 2 – 3.

<sup>1023</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1658.

<sup>1024</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1653, 1656, 1658, P178 p. 2, P179, p. 3.

<sup>1025</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1656.

<sup>1026</sup> Alija Holjan, P524, p. 1, P525, p. 2, P526, p. 3.

<sup>1027</sup> Alija Holjan, P525, p. 2, P526, p. 3.

<sup>1028</sup> Alija Holjan, P525, p. 2.

four other people were injured during the shooting of the tram.<sup>1029</sup> He saw a woman who was seriously wounded in the leg and he later heard that she died in the hospital.<sup>1030</sup> W-118 did not hear any gunfire and only realised that the tram had been shot at when she heard people screaming.<sup>1031</sup> She turned around and saw passengers lying down on the floor and someone bleeding.<sup>1032</sup> Then W-118 thought that the whole length of the tram had been targeted; it felt like a “burst of fire”.<sup>1033</sup>

293. Alma Mulaosmanović recalled that the shooting continued until they reached shelter in front of a police station.<sup>1034</sup> W-118 continued to drive for about 50 metres and stopped the tram at the Faculty of Natural Sciences and Mathematics to seek shelter.<sup>1035</sup> At that point, passengers tried to leave the tram.<sup>1036</sup>

294. Alma Mulaosmanović and Alija Holjan were taken to the first-aid station of the State Hospital, and an elderly man and woman were also brought there.<sup>1037</sup> Alija Holjan was sent home from the hospital, but he continued to receive outpatient treatment and was on sick leave for one month.<sup>1038</sup> Since the injury, he cannot use his right hand for extended periods of time and experiences pain when the weather changes.<sup>1039</sup> He has been declared 20 per cent disabled.<sup>1040</sup> W-118 said that the incident had a psychological as well as a physical impact on her life.<sup>1041</sup> Since the incident, W-118 no longer works as a tram driver.<sup>1042</sup>

295. UNPROFOR and BiH police who were deployed at the junction of the Faculty of Natural Sciences and Mathematics inspected the tram immediately after the incident.<sup>1043</sup> 30 bullet holes and

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<sup>1029</sup> Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2, P526, p. 3.

<sup>1030</sup> Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2.

<sup>1031</sup> W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

<sup>1032</sup> W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

<sup>1033</sup> W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

<sup>1034</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1653, 1662, P178, p. 2, P179 p. 3.

<sup>1035</sup> W-118, 6 Feb 2007, T. 1620, P174, p. 2 (under seal), P175, p. 2 (under seal); D39, Photograph marked by W-118.

<sup>1036</sup> W-118, 6 Feb 2007, T. 1623. In her written statements, W-118 refers to the faculty of natural sciences as the Faculty of Mathematics. *See also*, Alija Holjan, P524, p. 1, P525, p. 2; Alma Mulaosmanović, 6 Feb 2007, T. 1653; P180, Map marked by Alma Mulaosmanović; Sabina Sabanić, 2 Feb 2007, T. 1473; D36, Photograph marked by Sabina Sabanić. The Trial Chamber will refer to that building as the Faculty of Natural Sciences and Mathematics.

<sup>1037</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1658, 1679, P178, p. 2, P179, p. 3; P453, Medical record (under seal); Alija Holjan, P524, p. 1, P525, p. 2, P526, p. 3.

<sup>1038</sup> Alija Holjan, P524, p. 1, P525, p. 2; P470, Medical record (under seal), pp 1- 2 Alija Holjan, P524, p. 1.

<sup>1039</sup> Alija Holjan, P524, p. 1, P525, p. 2.

<sup>1040</sup> Alija Holjan, P526, p. 3.

<sup>1041</sup> W-118, 6 Feb 2007, T. 1626 – 1627.

<sup>1042</sup> W-118, 6 Feb 2007, T. 1626.

<sup>1043</sup> W-118, P174, p. 2 (under seal), P175, p. 2 (under seal). In this regard the Trial Chamber notes that neither of the parties submitted a criminal investigation file of this incident, however, it also notes that Alija Holjan gave a statement to the BiH Police.



marks were found on the left side of the tram just below and on the windows.<sup>1044</sup> The tram could not be driven normally anymore because one of the control wires had been hit.<sup>1045</sup>

296. W-118, Alija Holjan and Alma Mulaosmanović all gave evidence that the shots had come from the high-rise buildings in Grbavica, to the South of the tram. The Trial Chamber recalls that the high-rises were held by the SRK.<sup>1046</sup> Alma Mulaosmanović explained that the high-rise buildings and the Vraca Hills were visible and that she was “within their field of vision.”<sup>1047</sup> She further noted that “[h]ad [the shots] come from a closer area, it would have been louder.”<sup>1048</sup> According to W-118 and Alma Mulaosmanović, the area where the tram came under fire was known to be dangerous since it was “an open space and in good view.”<sup>1049</sup> According to Alija Holjan, there was a passage between the buildings toward the Technical School and that was the only place where one could see the tram from Grbavica.<sup>1050</sup>

297. W-118 testified that she saw one ABiH soldier on the tram, standing next to her.<sup>1051</sup> However, Alma Mulaosmanović does not remember seeing any ABiH soldiers on the tram.<sup>1052</sup> W-118 and Alija Holjan also testified that there were no soldiers or vehicles near the tram on that day and there was nothing else of a military nature in the area.<sup>1053</sup> The Marshal Tito Barracks was the closest military facility to the location where the tram was hit.<sup>1054</sup>

298. The Defence suggested that there was occasional shooting and fighting, between the two warring factions, something W-118 could not confirm.<sup>1055</sup> In fact, W-118, Alma Mulaosmanović and Alija Holjan all testified that there was no combat activity near or around the tram on the day of the incident.<sup>1056</sup> Alma Mulaosmanović also testified that there were trees, probably both evergreens and deciduous, between the tram tracks and the Miljacka River that obstructed the view to the river

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<sup>1044</sup> W-118, P174, p. 2 (under seal), 6 Feb 2007, T. 1626.

<sup>1045</sup> W-118, P175, p. 2 (under seal).

<sup>1046</sup> See *supra*, para. 228. See also, D41, Report from General Rose’s Headquarters to UNPROFOR Headquarters in Zagreb describing incidents of 27 February 1995, dated 28 February 1995 (“UNPROFOR HQ sitrep, 28 February 1995”), p. 23.

<sup>1047</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1657 – 1658, 1672, 1674.

<sup>1048</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1654.

<sup>1049</sup> W-118, 6 Feb 2007, T. 1624; Alma Mulaosmanović, 6 Feb 2007, T. 1657.

<sup>1050</sup> Alija Holjan, P525, p. 2.

<sup>1051</sup> W-118, 6 Feb 2007, T. 1623, P175, p. 2 (under seal).

<sup>1052</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1656.

<sup>1053</sup> W-118, 6 Feb 2007, T. 1623 – 1624, P175, p. 2 (under seal); Alija Holjan, 4 Apr 2007, T. 4471, 4474 – 4475, P526, p. 3.

<sup>1054</sup> Alma Mulaosmanović, P179, p. 3; W-118, P175, p. 2 (under seal).

<sup>1055</sup> W-118, 6 Feb 2007, T. 1637.

<sup>1056</sup> W-118, 6 Feb 2007, T. 1624, 1637, 1648, P174, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1656; Alija Holjan, 4 Apr 2007, T. 4471.

and “the area between the warring factions.”<sup>1057</sup> Alija Holjan testified that the confrontation line may have been about 1,000 metres away on the hills from the place where the tram was shot.<sup>1058</sup>

299. The Defence raised the possibility that the shots which hit the tram may have been the result of fighting at the Vrbanja Bridge. When asked by the Defence whether the first shots she heard were the shots that hit the tram, Alma Mulaosmanović explained that she thought that she heard shots being fired before the tram was hit, but that she was not certain.<sup>1059</sup> In response to the Defence question whether she thought the earlier shots had come from the territory controlled by the ABiH, she testified that:

“It was even the same sort of sound when the bullets were fired. There was no change at all to the sound, not in terms of the distance. This was several moments before the tram was hit; therefore, it is very difficult to determine. The tram was moving and the time lag between the two was very short. There was not much fighting going on or anything.”<sup>1060</sup>

During cross-examination, Alija Holjan explained that he did not hear any shooting before the incident and he was sure that the shots only came from the left side.<sup>1061</sup>

300. An UNPROFOR report of the same day, tendered by the Defence, stated that eight shots were fired at a tram near the Holiday Inn, resulting in one confirmed civilian casualty and three other possible casualties. The report pointed out that the origin of the shots was assessed from the “Vrbanja Bridge/Red building area” where a “fire fight” between the SRK and the ABiH had occurred at the same time.<sup>1062</sup> A few pages later, the report stated that UNMO had investigated the alleged sniper fire and confirmed that the tram was hit by nine shots at the Holiday Inn and that the fire came from the South.<sup>1063</sup>

301. W-118 and Alma Mulaosmanović were confronted with this information during cross-examination. W-118 explained that this report probably did not refer to the incident on her tram, as it stated that there was a “fire fight” between the two factions.<sup>1064</sup> Alma Mulaosmanović could also not confirm that there had been a “fire fight” between the warring factions at the time of the incident.<sup>1065</sup> Further, the report referred to the area “near” the Holiday Inn, which, according to W-118, could have been a reference to the area of Marindvor and Holiday Inn and not to the area further down, near the Marshal Tito Barracks where the tram was hit.<sup>1066</sup> The area of the “Vrbanja

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<sup>1057</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1664 – 1665; D42, Photograph marked by Alma Mulaosmanović.

<sup>1058</sup> Alija Holjan, 4 Apr 2007, T. 4473, P526, p. 3.

<sup>1059</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1662.

<sup>1060</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1666 – 1667; D42, Photograph marked by Alma Mulaosmanović.

<sup>1061</sup> Alija Holjan, 4 Apr 2007, T. 4479 – 4480.

<sup>1062</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, pp 2, 9.

<sup>1063</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, p. 23.

<sup>1064</sup> W-118, 6 Feb 2007, T. 1642 – 1645.

<sup>1065</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1671 – 1672.

<sup>1066</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, p. 2; W-118, 6 Feb 2007, T. 1642 – 1644.

Bridge/Red building”, as indicated as origin of fire in the UNPROFOR report, was, according to W-118, not the same as the Grbavica area she had indicated as the origin of fire.<sup>1067</sup> This was confirmed by Alma Mulaosmanović, who marked the two different neighbourhoods on a photograph.<sup>1068</sup>

302. Brig. Gen. David Fraser was also questioned by the Defence about the UNPROFOR report. He explained that the report comprised information from different levels of command.<sup>1069</sup> He testified that discrepancies in the report, such as the number of shots, are not unusual in this kind of report.<sup>1070</sup> According to Brig. Gen. Fraser, the report, read as a whole, shows that there were two concurrent occurrences: a fire fight at the Vrbanja Bridge, and sniping against a tram.<sup>1071</sup> He could not confirm, based on the information in the report, that it was the shooting from the Vrbanja Bridge that hit the tram.<sup>1072</sup> Instead he testified, “I am reading the report [as if] the tram was actually specifically targeted, from what the words are saying here, “sniper fire against a tram.” That is a very deliberate, definite action.”<sup>1073</sup>

303. Lt. Van der Weijden was not questioned about this incident by either of the parties. In his report, he concluded that automatic fire, most likely from a M84 or M53 machinegun, was used since there were a number of victims and several shots were fired at a rapid rate.<sup>1074</sup> It is observed that the UNPROFOR report also makes mention of a machinegun cease-fire violation in relation to the incident on the tram.<sup>1075</sup>

304. Lt. Van der Weijden further stated in his report that the likely location of the sniper was the Metalka Building.<sup>1076</sup> However, the Trial Chamber notes that Lt. Van der Weijden placed the tram at the intersection between the Museum and the Holiday Inn, some distance to the east of the place where the eyewitnesses indicated the tram was hit. W-118, Alma Mulaosmanović and Alija Holjan,

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<sup>1067</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, p. 2; W-118, 6 Feb 2007, T. 1647 – 1648.

<sup>1068</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1676 – 1677; P181, Photograph marked by Alma Mulaosmanović; P182, Photograph marked by Alma Mulaosmanović.

<sup>1069</sup> David Fraser, 8 Feb 2007, T. 1881 – 1882.

<sup>1070</sup> David Fraser, 8 Feb 2007, T. 1885.

<sup>1071</sup> David Fraser, 8 Feb 2007, T. 1887 – 1888.

<sup>1072</sup> David Fraser, 8 Feb 2007, T. 1887.

<sup>1073</sup> David Fraser, 8 Feb 2007, T. 1887.

<sup>1074</sup> P514, Expert report Patrick van der Weijden, p. 28, Appendix A.

<sup>1075</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, p. 9; David Fraser, 8 Feb 2007, T. 1884.

<sup>1076</sup> P514, Expert report Patrick van der Weijden, p. 29; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

all gave evidence that the shot was fired from one of the high-rise buildings located on Lenjinova Street in Grbavica.<sup>1077</sup>

305. Col. Stamenov stated in his report that it was impossible to identify the location from which the projectile was fired with any certainty, since neither the exact location of the tram when the fire started, nor the direction of fire, nor the type of weapon used was established.<sup>1078</sup>

### Findings

306. The Trial Chamber is in a position to rule out the possibility that the projectile came from the Vrbanja Bridge, where the evidence clearly shows that there was a fire-fight between the two parties, because the maps and photographs discussed in court indicate that there was no line of sight between the Vrbanja Bridge and the tram. There were no high-rise buildings at that bridge and the path of a bullet from that position, shot towards the Marshal Tito Barracks, would have been obstructed by several buildings.<sup>1079</sup> This finding is in no way affected by the conflicting evidence as to where the tram was hit, be it at the Holiday Inn or at the Marshal Tito Barracks.

307. In view of the fact that there was no clear line of sight between the Metalka Building and the tram at the Marshal Tito Barracks, the Trial Chamber finds that the projectile was fired from the high-rise buildings in Grbavica, in SRK-held territory. There is no evidence that the shots originated from ABiH territory. The Trial Chamber finds that there was a clear view from the high-rise buildings on Lenjinova Street in Grbavica onto the intersection at the Marshal Tito Barracks. The Trial Chamber's finding is supported by the consistent testimony of eyewitnesses as to the origin of fire and the location of the tram.

308. The Trial Chamber also finds that Alija Holjan and Alma Mulaosmanović, both civilians, were seriously injured in this incident.

309. The only evidence pertaining to Senad Kešmer, who was one of the victims mentioned in the Indictment, was an extract from a medical record from a hospital in Sarajevo, dated 27 February 1995, which stated that Senad Kešmer received treatment at an out-patient clinic and was discharged for home treatment.<sup>1080</sup> The Trial Chamber is able to make a finding that Senad Kešmer suffered an injury, but is not in a position to attribute this injury to the SRK because the only

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<sup>1077</sup> W-118, 6 Feb 2007, T. 1620, 1622 – 1623, 1636, P174, p. 2 (under seal); P176, Map marked by W-118; P177, Photograph marked by W-118; Alma Mulaosmanović, 6 Feb 2007, T. 1653 – 1655, 1657, 1678, P178, p. 2, P179, p. 2; P180, Map marked by Alma Mulaosmanović; P181, Photograph marked by Alma Mulaosmanović; Alija Holjan, 4 Apr 2007, T. 4473, P525, p. 2, P526, p. 3; P104, Street map of Sarajevo; D215, Map marked by Vaso Elez.

<sup>1078</sup> D360, Expert report Ivan Stamenov, p. 16.

<sup>1079</sup> See P181, Photograph marked by Alma Mulaosmanović; P182, Photograph marked by Alma Mulaosmanović.

evidence is a medical record that is silent with regard to the circumstances under which Senad Kešmer sustained his injury.

310. In addition, the Trial Chamber received medical documentation with regard to two other persons who sustained gunshot wounds on the same day.<sup>1081</sup> However, it is not clear whether the two persons were victims of the incident on the tram on 27 February 1995. The UNPROFOR report, in different sections, variously referred to three to four injured persons, but only confirmed one casualty, a woman who was injured in her leg and underwent surgery.<sup>1082</sup> This information is corroborated by W-118's and Alija Holjan's testimony.<sup>1083</sup> In addition to Alija Holjan and Alma Mulaosmanović being injured on the tram, the evidence shows that one unknown woman was shot in the leg. The Trial Chamber is, therefore, satisfied that at least three persons were seriously injured on the tram on 27 February 1995 by shots originating from SRK-held territory. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

e. Sniping of Azem Agović and Alen Gičević on 3 March 1995

311. The third of March 1995 was the Muslim Bajram holiday.<sup>1084</sup> There was no military activity that morning.<sup>1085</sup> A cease-fire was in place.<sup>1086</sup> At around noon, a tram driven by Slavica Livnjak was travelling along Zmaja od Bosne from west to east, that is, from Čengić Vila toward Baščaršija.<sup>1087</sup>

312. Alen Gičević, his girlfriend and Azem Agović were among the many passengers on the tram.<sup>1088</sup> Alen Gičević was wearing black trousers and was standing just behind the middle part of the tram, next to the third door on the right-hand side, facing the SRK-held positions of Vraca and the Jewish Cemetery.<sup>1089</sup> Grbavica and the southern part of town were to his right.<sup>1090</sup> He had been a

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<sup>1080</sup> P468, Medical record (under seal).

<sup>1081</sup> P465, Medical record (under seal); P469, Medical record (under seal).

<sup>1082</sup> D41, UNPROFOR HQ sitrep, 28 February 1995, pp 2, 9, 23.

<sup>1083</sup> W-118, 6 Feb 2007, T. 1626, P174, p. 2; Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2.

<sup>1084</sup> Alen Gičević, P164, p. 3, Azem Agović, P210, p. 2, P211, p. 2.

<sup>1085</sup> Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1566, P163, p. 2; Azem Agović, 13 Feb 2007, T. 2052, P210, p. 2, P211, p. 2.

<sup>1086</sup> Slavica Livnjak, 23 Jan 2007, T. 859 – 860, 862, P95, p. 2; Alen Gičević, P164, p. 2; Azem Agović, P211, p. 2.

<sup>1087</sup> Slavica Livnjak, 23 Jan 2007, T. 857, P94, p. 2, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1556, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 2.; W-118, P174, p. 2 (under seal); Zlatko Mededović, P649, p. 6; P96, Photograph marked by Slavica Livnjak; D23, Criminal investigation file, pp 2, 4, 5, 7.

<sup>1088</sup> Alen Gičević, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 2.

<sup>1089</sup> Alen Gičević, 5 Feb 2007, T. 1556, P163, p. 2, P164, pp 2 – 3.

<sup>1090</sup> Alen Gičević, 5 Feb 2007, T. 1556.

member of the ABiH, but had been demobilised from the army nine months before this incident.<sup>1091</sup> Azem Agović was seated facing the rear of the tram, with Grbavica to his left.<sup>1092</sup> He was wearing a three-piece grey suit.<sup>1093</sup>

313. When the tram passed the area between the Parliament and the Faculty of Philosophy, Azem Agović heard firing.<sup>1094</sup> Alen Gičević, Azem Agović and Slavica Livnjak testified that the tram was hit in the area of the Holiday Inn, close to the National Museum, just before the S-curve in the tram tracks.<sup>1095</sup> There were no military institutions, vehicles or equipment present in the vicinity; the closest military facility was the Marshal Tito Barracks.<sup>1096</sup>

314. The passengers screamed and threw themselves on the floor in panic. Alen Gičević explained that “we all fell, on the one hand because the tram swerved and on the other hand because bullets started flying.”<sup>1097</sup> He immediately felt severe pain just above his right knee and he was bleeding.<sup>1098</sup> Azem Agović explained that he suddenly felt severe pain just above his left hip; a bullet had entered just above his left hip and passed through his body and exited on the right side.<sup>1099</sup> Azem Agović saw that a young man and a child had been wounded as well.<sup>1100</sup> Alen Gičević testified that another man, sitting between him and the door was injured and was bleeding.<sup>1101</sup> Slavica Livnjak saw that an old man and a young man, located in the second tram car, were wounded.<sup>1102</sup> The investigation conducted after the incident confirmed that Alen Gičević, Azem Agović and a third person had been injured during the incident.<sup>1103</sup>

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<sup>1091</sup> Alen Gičević, 5 Feb 2007, T. 1571 – 1572, P164, p. 3.

<sup>1092</sup> Slavica Livnjak, P94, p. 2, P95, p. 3, stating that the tram was carrying about 100 “civilians”; Azem Agović, 13 Feb 2007, T. 2052, P210, p. 2, P211, p. 2.

<sup>1093</sup> Azem Agović, 13 Feb 2007, T. 2052, P211, p. 2.

<sup>1094</sup> Azem Agović, P211, p. 2.

<sup>1095</sup> Slavica Livnjak, 23 Jan 2007, T. 858, 862, 864, P94, p. 2, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1557, 1561 – 1562, P163, pp 2, 6; Azem Agović, P210, p. 2; P165, Map marked by Alen Gičević; P166, Photograph marked by Alen Gičević; P167, Photograph marked by Alen Gičević; P96, Photograph marked by Slavica Livnjak; P97, Photograph marked by Slavica Livnjak; D23, Criminal investigation file, pp 2, 4 – 5, 7-8. For S-curve, *see also, supra*, paras 217, 255, 257.

<sup>1096</sup> Alen Gičević, P163, p. 2, P164, p. 3; Azem Agović, P211, p. 3. According to Alen Gičević the Marshal Tito Barracks was about 900 metres away; Slavica Livnjak, 23 Jan 2007, T. 863, 877 – 878, P94, p. 2, P95, p. 3, Slavica Livnjak, 23 Jan 2007, T. 877.

<sup>1097</sup> Alen Gičević, 5 Feb 2007, T. 1573, P163, p. 2, P164, p. 3; Slavica Livnjak, P95, p. 3.

<sup>1098</sup> Alen Gičević, 5 Feb 2007, T. 1557, P163, p. 2, P164, p. 3; D23, Criminal investigation file, pp 4, 8; Zlatko Mededović, P649, p. 7.

<sup>1099</sup> Azem Agović, 13 Feb 2007, T. 2053, P210, p. 2, P211, p. 2; D23, Criminal investigation file, pp 4, 8; P454, Medical record (under seal); Zlatko Mededović, P649, p. 7.

<sup>1100</sup> Azem Agović, P210, p. 2, P211, p. 2.

<sup>1101</sup> Alen Gičević, 5 Feb 2007, T. 1579 – 1580, P163, p. 2.

<sup>1102</sup> Slavica Livnjak, 23 Jan 2007, T. 869, P95, p. 3.

<sup>1103</sup> D23, Criminal investigation file, pp 2, 4 – 5, 8.

315. The tram continued until it reached some containers near an old “tobacco building”, near the Executive Council Building, which offered shelter from sniper fire.<sup>1104</sup> According to the BiH police report, the tram was hit between the accordion and the first door of the second car, at the level of the seat.<sup>1105</sup> Alen Gičević left the tram and did not talk to the tram driver or to the police after the incident.<sup>1106</sup> He walked to the State Hospital with the help of his girlfriend.<sup>1107</sup> A part of the bullet was lodged in his knee and was extracted seven days later.<sup>1108</sup> Alen Gičević still suffers from this injury; his blood circulation is poor, he feels pain in his tibia and gets tired quickly.<sup>1109</sup> Azem Agović was brought by a car to Koševo Hospital where he stayed for a month, 16 days of which were in intensive care.<sup>1110</sup> He required treatment for another three years and initially could not walk far, drive a car or carry heavy things.<sup>1111</sup>

316. There was evidence that on the same day, just after the incident occurred, W-118 was driving a tram from Remiza towards the centre of the town.<sup>1112</sup> She stopped the tram behind containers where three trams other trams were already taking shelter.<sup>1113</sup> W-118 further stated that, after a while, Bosnian Serbs started shooting from the direction of Grbavica and that UNPROFOR soldiers fired back in that direction.<sup>1114</sup> One UNPROFOR soldier was injured and taken to hospital.<sup>1115</sup> W-118 explained that the cross-fire lasted for 15 minutes.<sup>1116</sup>

317. Azem Agović stated that the bullet that hit him came from a building in Zagrebačka Street, located at the edge of Grbavica.<sup>1117</sup> According to Alen Gičević, there were two or three shots, but he was not sure whether they were fired from one or several different locations.<sup>1118</sup> He stated that he was sure that the shot came from the direction of the Jewish Cemetery, based on the sounds of the shots.<sup>1119</sup> During his testimony in court, he explained that he assumed the shots came from one of the high-rise buildings in Grbavica or from the Metalka Building.<sup>1120</sup> Slavica Livnjak also testified

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<sup>1104</sup> Alen Gičević, 5 Feb 2007, T. 1580, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 3; Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3.

<sup>1105</sup> Slavica Livnjak, 23 Jan 2007, T. 868 – 869; D23, Criminal investigation file, pp 2, 5, 7-8.

<sup>1106</sup> Alen Gičević, 5 Feb 2007, T. 1574; W-118, P174, p. 2 (under seal).

<sup>1107</sup> Alen Gičević, 5 Feb 2007, T. 1578, P163, p. 2, P164, p. 3; Slavica Livnjak, P95, p. 3; W-118, P174, p. 2 (under seal); D23, Criminal investigation file, pp 2, 5.

<sup>1108</sup> Alen Gičević, 5 Feb 2007, T. 1580, 1582, P163, p. 2; P454, Medical record (under seal).

<sup>1109</sup> Alen Gičević, P163, p. 2.

<sup>1110</sup> Azem Agović, P210, p. 2, P211, p. 3; P466, Medical record (under seal); Slavica Livnjak, P95, p. 3; D23, Criminal investigation file, pp 2, 5.

<sup>1111</sup> Azem Agović, P210, p. 2, P211, p. 3.

<sup>1112</sup> W-118, P174, p. 2 (under seal).

<sup>1113</sup> W-118, P174, p. 2 (under seal).

<sup>1114</sup> W-118, P174, p. 2 (under seal); Zlatko Mededović, P649, p. 7.

<sup>1115</sup> W-118, P174, p. 2 (under seal); D23, Criminal investigation file, pp 2, 5, 8.

<sup>1116</sup> W-118, P174, p. 2 (under seal).

<sup>1117</sup> Azem Agović, P210, p. 2, P211, p. 2; D220, Photograph marked by Vaso Elez; P104, Street map of Sarajevo.

<sup>1118</sup> Alen Gičević, 5 Feb 2007, T. 1559 – 1560, 1573, P163, p. 2, P164, p. 3.

<sup>1119</sup> Alen Gičević, P163, p. 2.

<sup>1120</sup> P165, Map marked by Alen Gičević; P166, Photograph marked by Alen Gičević; Alen Gičević, 5 Feb 2007, T. 1559, 1561.

that the shots came from the direction of the Metalka Building in Grbavica.<sup>1121</sup> The BiH police investigation team were not able to determine the origin of fire.<sup>1122</sup>

318. Lt. Van der Weijden, in his report, also concluded that the fire originated from the Metalka Building.<sup>1123</sup> He pointed out that the tram took at least eight seconds to pass the S-curve.<sup>1124</sup> In this respect, the Trial Chamber recalls the evidence of Lt. Van der Weijden and Col. Stamenov as to the visibility of trams at the S-curve.<sup>1125</sup> It also recalls its earlier finding that at the start of the S-curve, where the tracks cross the road, the Metalka Building is visible.<sup>1126</sup>

319. According to Azem Agović and Alen Gičević, the third of March was a sunny day.<sup>1127</sup> However, according to Col. Stamenov, it was raining in the morning of 3 March 1995 and the visibility was poor, and that according to a NATO weather report, it was a bit overcast at noon.<sup>1128</sup>

320. An on-site investigation conducted on the same day, established that “a single bullet” fired from “aggressor positions” at Grbavica had hit the tram.<sup>1129</sup> When Alen Gičević was confronted with this information during cross-examination, he maintained that he knew two to three shots were fired at the tram, because he “heard it” and “felt it”.<sup>1130</sup> In response to questions from the Defence, W-91, a police officer who investigated the incident, testified that the BiH police was not able to determine the exact location of the sniper because the tram continued moving after it was shot, in order to take cover in the safe area.<sup>1131</sup> In general, he testified, trams were shot at from the South, from the Grbavica area.<sup>1132</sup> Col. Stamenov’s report does not address the origin of fire in this incident.

321. In terms of the type of weapon used, Lt. Van der Weijden concluded that automatic fire, most likely from a M84 or M53 machinegun, was probably used as there were a number of victims and several shots were fired at a rapid rate.<sup>1133</sup> The criminal investigation file also stated that “automatic” fire had been opened on the tram.<sup>1134</sup> In his written statement, W-91 stated that it was

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<sup>1121</sup> Slavica Livnjak, 23 Jan 2007, T. 860, 862, P94, p. 2, P95, p. 3; P97, Photograph marked by Slavica Livnjak.

<sup>1122</sup> Zlatko Mededović, P649, p. 3.

<sup>1123</sup> P514, Expert report Patrick van der Weijden, p. 32. Lt. Van der Weijden considered the Jewish Cemetery as a possible location, but dismissed that possibility, *ibid*.

<sup>1124</sup> P514, Expert report Patrick van der Weijden, p. 33. *See also*, C14, Photographs taken during site visit, pp 2 – 7.

<sup>1125</sup> *See supra*, paras 258 – 259.

<sup>1126</sup> *See supra*, paras 265; C14, Photographs taken during site visit, pp 24 – 26.

<sup>1127</sup> Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3; Azem Agović, 13 Feb 2007, T. 2052, P211, p. 2.

<sup>1128</sup> Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 3.

<sup>1129</sup> D23, Criminal investigation file, pp 2, 4 – 5, 7; W-91, 15 Mar 2007, T. 3793, 3795; Zlatko Mededović, P649, pp 6 – 7.

<sup>1130</sup> Alen Gičević, 5 Feb 2007, T. 1578, P163, p. 2.

<sup>1131</sup> W-91, 15 Mar 2007, T. 3801.

<sup>1132</sup> W-91, 15 Mar 2007, T. 3800. *See also*, D23, Criminal investigation file, p. 2.

<sup>1133</sup> P514, Expert report Patrick van der Weijden, p. 31, Appendix A.

<sup>1134</sup> D23, Criminal investigation file, pp 4, 7.



common for the Bosnian Serb Army to fire fragmentation bullets at the trams.<sup>1135</sup> However, from the information in the criminal investigation file he could not conclude that the bullet which hit the tram was a fragmentation bullet.<sup>1136</sup> Col. Stamenov stated in his report that there were no material traces on the basis of which one could establish with any certainty whether two or three persons were wounded by a single projectile.<sup>1137</sup> He also testified that with the sniper weapons likely to have been used in this incident, there is no such bullet that would have a fragmentation effect.<sup>1138</sup> In his opinion, the incident could not be classified as a sniper attack.<sup>1139</sup>

## Findings

322. On the basis of the evidence of witnesses, including eyewitnesses and documentary evidence, the Trial Chamber finds that the tram was shot in front of the Holiday Inn, just before the S-curve, and that Azem Agović and Alen Gičević, both civilians, were seriously injured by the shots. In its Final Brief, the Defence drew attention to the fact that the police was unable to establish the direction of fire.<sup>1140</sup> However, the Trial Chamber finds that, although the exact location of the shooter could not be established by the BiH police, all eyewitnesses and the Prosecution expert Lt. Van der Weijden confirm that the shots came from Grbavica, which, the Trial Chamber recalls, was SRK-held territory.<sup>1141</sup> The Defence further submitted that there is a discrepancy between the number of bullets and the number of victims.<sup>1142</sup> The Trial Chamber is satisfied that more than one bullet hit the tram and injured Azem Agović and Alen Gičević.

323. As for the Defence arguments relating to the poor visibility on that day, the Trial Chamber notes that the NATO weather report reflects that at around noon, when the incident took place, there was no rain or fog and the visibility was between 7,000 to 8,000 metres.<sup>1143</sup> Therefore, the Trial Chamber is satisfied that the visibility was sufficient for a shooter to identify the victims as civilians.

324. In relation to the general argument by the Defence that ABiH troops were positioned between the tram tracks and the SRK-held area of Grbavica - a claim that was also confirmed by W-91 - the Trial Chamber finds that there is no evidence that the shots actually came from the ABiH-held territory; rather, the evidence is that shots came from SRK-held territory. In light of the

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<sup>1135</sup> W-91, P371, p. 2 (under seal).

<sup>1136</sup> W-91, 15 Mar 2007, T. 3795 – 3796, P371, p. 2 (under seal).

<sup>1137</sup> D360, Expert report Ivan Stamenov, p. 16.

<sup>1138</sup> Ivan Stamenov, 22 Aug 2007, T. 9051.

<sup>1139</sup> D360, Expert report Ivan Stamenov, p. 16.

<sup>1140</sup> Defence Final Brief, para. 180.

<sup>1141</sup> *See supra*, para. 228.

<sup>1142</sup> Defence Final Brief, para. 180.

fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

f. Sniping of Dženana Sokolović and Nermin Divović on 18 November 1994

325. In the evening of 17 November 1994, Dženana Sokolović, her seven-year-old son Nermin Divović, and her eight-year-old daughter Enida Divović went to Hrasno to collect firewood.<sup>1144</sup> The day after, around noon, they returned to their home in Bistrik.<sup>1145</sup> According to Dženana Sokolović, there was a cease-fire in place on 18 November 1994 and the trams were running.<sup>1146</sup> It was a nice day.<sup>1147</sup>

326. There were no soldiers around and no combat going on in the area at the time of the incident.<sup>1148</sup> However, John Jordan testified that snipers were active in the area that day and there had been a few instances of people being shot and wounded.<sup>1149</sup> UNPROFOR soldiers guarded the area on Zmaja od Bosne around the cross-road near the Holiday Inn, and GOFRS volunteers were also present in the area.<sup>1150</sup>

327. While walking down the Zmaja od Bosne, in the area of Holiday Inn and the Faculty of Philosophy, Enida Divović, who was walking in front of her mother and brother, started to cross the Franje Račkog Street, which runs perpendicular to the Zmaja od Bosne.<sup>1151</sup> Dženana Sokolović and her son, Nermin Divović, followed, walking side by side, talking to each other.<sup>1152</sup> Nermin Divović was to the left of her, holding onto her jacket.<sup>1153</sup> As they crossed the Franje Račkog Street, at the zebra-crossing, Dženana Sokolović and Nermin Divović were shot.<sup>1154</sup> They had walked past the

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<sup>1143</sup> D362, NATO weather report for Sarajevo, p. 2.

<sup>1144</sup> Dženana Sokolović, 22 Jan 2007, T. 764 – 765.

<sup>1145</sup> Dženana Sokolović, 22 Jan 2007, T. 763, 765.

<sup>1146</sup> Dženana Sokolović, 22 Jan 2007, T. 765 – 766.

<sup>1147</sup> John Jordan, 21 Feb 2007, T. 2650. *See also*, Dženana Sokolović, 22 Jan 2007, T. 772 – 773.

<sup>1148</sup> Dženana Sokolović, 22 Jan 2007, T. 810; D19, Criminal investigation file, Dženana Sokolović (“Criminal investigation file”), p. 2.

<sup>1149</sup> John Jordan, 21 Feb 2007, T. 2650, P267, p. 3. *See also*, P868, UNPROFOR daily sitrep, dated 18 November 1994, p. 8.

<sup>1150</sup> Dženana Sokolović, 22 Jan 2007, T. 786; John Jordan, 21 Feb 2007, T. 2650, P267, p. 3; D19, Criminal investigation file, p. 2.

<sup>1151</sup> Dženana Sokolović, 22 Jan 2007, T. 766, 769; D19, Criminal investigation file, p. 1, P104, Street map of Sarajevo.

<sup>1152</sup> Dženana Sokolović, 22 Jan 2007, T. 785; P88, Photograph marked by Dženana Sokolović.

<sup>1153</sup> Dženana Sokolović, 22 Jan 2007, T. 773, 784; P941, Videoclip with Dženana Sokolović (under seal).

<sup>1154</sup> Dženana Sokolović, 22 Jan 2007, T. 773, 784; John Jordan, 21 Feb 2007, T. 2651, 2666, 2671 – 2672, 2677; D19, Criminal investigation file, pp 1, 3; P271, Videoclip of sniping incident; P272, Photo from the “Providence Journal – Bulletin”; D79, Photograph marked by John Jordan; P868, UNPROFOR daily sitrep, 18 November 1994, p. 8.

Museum by that time.<sup>1155</sup> Dženana Sokolović saw her son fall down, but she did not realise that he had been shot until later.<sup>1156</sup> She also did not realise until later that she herself had been shot.<sup>1157</sup>

328. After the incident, two APCs of the UNPROFOR French Battalion arrived and parked in the Franje Račkog Street.<sup>1158</sup> An GOFRS armoured ambulance also arrived and parked as a protection between the source of gun-fire and Nermin Divović, who was lying on the zebra-crossing.<sup>1159</sup> Nermin Divović died on the way to the hospital and was taken to the mortuary.<sup>1160</sup> Dženana Sokolović and her daughter were taken to Koševo Hospital by a UN vehicle.<sup>1161</sup> Dženana Sokolović underwent surgery and stayed in hospital for seven or eight days.<sup>1162</sup> She was unable to attend her son's funeral.<sup>1163</sup> Since the incident, she has not been able to hold a full-time job.<sup>1164</sup>

329. Lt. Van der Weijden determined the direction of the shot and the location of the shooter.<sup>1165</sup> His report and other evidence showed that the shots came from the Metalka Building, which was located at the end of the Franje Račkog Street and across the river.<sup>1166</sup> According to Lt. Van der Weijden, the shooter was at a distance of 312 metres from the victims.<sup>1167</sup> Rooms in the Metalka Building offered a direct and clear view of the area between the Museum and the Faculty of Philosophy.<sup>1168</sup> Lt. Van der Weijden concluded that the possible rifles used were Zastava M76, SVD Dragunov/M91 or Zastava M59/66, or semi-automatic rifles or machine guns, such as M53, M84 or M87.<sup>1169</sup> From the Metalka Building, it would have been possible to identify Dženana

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<sup>1155</sup> Dženana Sokolović, 22 Jan 2007, T. 785; John Jordan, 21 Feb 2007, T. 2651; P271, Videoclip of sniping incident; P272, Photo from the "Providence Journal – Bulletin".

<sup>1156</sup> Dženana Sokolović, 22 Jan 2007, T. 766 – 767, 779, 796 – 797.

<sup>1157</sup> Dženana Sokolović, 22 Jan 2007, T. 799, 800.

<sup>1158</sup> D19, Criminal investigation file, p. 4; Sead Bešić, 21 Feb 2007, T. 2601 – 2602.

<sup>1159</sup> P271, Videoclip of sniping incident; P272, Photo from the "Providence Journal – Bulletin"; John Jordan, 21 Feb 2007, T. 2650 – 2651, 2652.

<sup>1160</sup> Dženana Sokolović, 22 Jan 2007, T. 780; John Jordan, 21 Feb 2007, T. 2650; D19, Criminal investigation file, p. 2, 4; P271, Videoclip of sniping incident.

<sup>1161</sup> Dženana Sokolović, 22 Jan 2007, T. 793; John Jordan, 21 Feb 2007, T. 2650; P271, Videoclip of sniping incident.

<sup>1162</sup> Dženana Sokolović, 22 Jan 2007, T. 780 – 781; Bakir Nakaš, 25 Jan 2007, 1086 – 1087, 1088; P456, Medical record, pp 2 – 4 (under seal).

<sup>1163</sup> Dženana Sokolović, 22 Jan 2007, T. 780.

<sup>1164</sup> Dženana Sokolović, 22 Jan 2007, T. 780.

<sup>1165</sup> P514, Expert report Patrick van der Weijden, p. 23.

<sup>1166</sup> P514, Expert report Patrick van der Weijden, p. 23; P515, Photograph marked by Patrick van der Weijden. *See also*, D19, Criminal investigation file, p. 1; P868, UNPROFOR daily sitrep, 18 November 1994; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20; P88, Photograph marked by Dženana Sokolović; P941, Videoclip with Dženana Sokolović (under seal); D79, Photograph marked by John Jordan.

<sup>1167</sup> Patrick van der Weijden, 29 Mar 2007, T. 4278, 4283; P514, Expert report Patrick van der Weijden, pp 23, 24; P515, Photograph marked by Patrick van der Weijden; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

<sup>1168</sup> Patrick van der Weijden, 29 Mar 2007, T. 4279; P514, Expert report Patrick van der Weijden, pp 23 – 24; P515, Photograph marked by Patrick van der Weijden; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20.

<sup>1169</sup> P514, Expert report Patrick van der Weijden, p. 22, Appendix A.

Sokolović and her child as an adult and a child, even with the naked eye as the relative size of the child compared to the mother was very obvious at that range.<sup>1170</sup> According to Lt. Van der Weijden, there was no reason to mistake the victims for combatants.<sup>1171</sup>

330. Dženana Sokolović gave conflicting evidence about the exact location of the incident. During examination-in-chief, she indicated that she and her son were shot as they crossed the Franje Račkog Street.<sup>1172</sup> During cross-examination, she confirmed that they had been shot on the zebra-crossing.<sup>1173</sup> Then she explained that she had been confused with regard to the location of the shots and again said that they were at the sidewalk before the zebra-crossing.<sup>1174</sup> She testified that the precise location of the incident was the one shown in the investigation video, that is, on the sidewalk closer to the Museum.<sup>1175</sup>

331. There was also conflicting evidence about the direction of the shot. She sometimes said that she was hit from the left side.<sup>1176</sup> However, she consistently indicated with her hands that the bullet entered her abdomen on the right side and exited on the left side.<sup>1177</sup> She explained that she was a “little confused” about what is left and what is right.<sup>1178</sup>

332. The Defence, during cross-examination and in the presentation of its evidence, drew attention to the entry and exit wounds of both victims. It submitted that the shots could have originated from ABiH-held territory. According to the medical records of Dženana Sokolović, the entry wound was on the *left* side and the exit wound on the *right* side.<sup>1179</sup> Šefik Bešlić, the doctor who performed the operation on Dženana Sokolović, explained that the information in the medical record that the entry wound was on the “paramedian left” and the exit wound to the “paramedian right” was a mistake made by the doctor who wrote the notes.<sup>1180</sup> Šefik Bešlić also explained that the hospital had large numbers of patients, and it was mainly the young doctors who noted down the information.<sup>1181</sup> The doctors may have looked at two or three patients at a time and then written down information; it was then that this particular doctor might have “switched” the sides in this

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<sup>1170</sup> Patrick van der Weijden, 29 Mar 2007, T. 4277 – 4278; P514, Expert report Patrick van der Weijden, p. 24.

<sup>1171</sup> P514, Expert report Patrick van der Weijden, p. 24.

<sup>1172</sup> Dženana Sokolović, 22 Jan 2007, T. 773 – 774.

<sup>1173</sup> Dženana Sokolović, 22 Jan 2007, T. 784.

<sup>1174</sup> Dženana Sokolović, 22 Jan 2007, T. 804 – 805. *See also*, P89, 360° Photograph; P941, Videoclip with Dženana Sokolović (under seal); D18, Photograph marked by Dženana Sokolović.

<sup>1175</sup> Dženana Sokolović, 22 Jan 2007, T. 804 – 805.

<sup>1176</sup> Dženana Sokolović, 22 Jan 2007, T. 772. 797.

<sup>1177</sup> Dženana Sokolović, 22 Jan 2007, T. 797, 812; P941, Videoclip with Dženana Sokolović (under seal).

<sup>1178</sup> Dženana Sokolović, 22 Jan 2007, T. 795.

<sup>1179</sup> P456, Medical record, p. 3 (emphasis added) (under seal). Dr. Bakir Nakaš, who was the Director of the Sarajevo State Hospital during the Indictment period, explained during his testimony that “paramedian” means from the central axis of the body to the left or to the right, Bakir Nakaš, 25 Jan 2007, 1087.

<sup>1180</sup> Šefik Bešlić, 3 Apr 2007, T. 4419 – 4420, 4425.

<sup>1181</sup> Šefik Bešlić, 3 Apr 2007, T. 4426.

report.<sup>1182</sup> He explained that the correct information was always obtained by looking at the patient.<sup>1183</sup>

333. The testimony of both Dženana Sokolović and Šefik Bešlić was that the bullet entered from the right side of Dženana Sokolović's body and exited on the left side.<sup>1184</sup> Šefik Bešlić testified that, based on his experience with gun-shot victims, a review of the medical documentation of her injuries and his own recent physical examination of her, the entry wound was on the right side and the exit wound was on the left side of her body.<sup>1185</sup> He explained that an entry wound is smaller than an exit wound and that Dženana Sokolović's wound on her left side was larger than the wound on the right side, thus indicating that the projectile exited her body on the left side and that the projectile travelled from her right to her left side.<sup>1186</sup> The scars of Dženana Sokolović were typical of scars resulting from injuries sustained by a bullet.<sup>1187</sup> The Defence asked whether it was possible that the scars on her body had been altered. He replied that there would be a possibility that she had surgery on the scars, but he dismissed the possibility that a surgeon would create a scar resembling an exit wound.<sup>1188</sup>

334. The Defence asked Šefik Bešlić whether there was a difference in height between the entry and exit wounds on the body of Dženana Sokolović. He replied that the wounds were practically parallel to each other.<sup>1189</sup> In this respect, the Defence expert Col. Stamenov testified that up to 500 metres, the ballistic trajectory of a bullet is almost straight.<sup>1190</sup> He testified that if a person is shot from an elevation, the trajectory would not be parallel to the ground.<sup>1191</sup>

335. Witnesses testified that the same bullet that had passed through Dženana Sokolović went through the head of her son and killed him.<sup>1192</sup> Other evidence, introduced by the Defence, suggests that Nermin Divović was shot first, after which the bullet that killed him passed through his mother's abdomen.<sup>1193</sup>

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<sup>1182</sup> Šefik Bešlić, 3 Apr 2007, T. 4426, 4427.

<sup>1183</sup> Šefik Bešlić, 3 Apr 2007, T. 4429, 4436.

<sup>1184</sup> Dženana Sokolović, 22 Jan 2007, T. 797, 807, 812; Šefik Bešlić, 3 Apr 2007, T. 4419 – 4420, 4422 – 44323, P521, p. 2, D19, Criminal investigation file, p. 4; P941, Videoclip with Dženana Sokolović (under seal).

<sup>1185</sup> Šefik Bešlić, 3 Apr 2007, T. 4422 – 4423, 4440 – 4441, P521, p. 2.

<sup>1186</sup> Šefik Bešlić, 3 Apr 2007, T. 4422, 4429, 4450, P521, p. 2; Bakir Nakaš, 25 Jan 2007, 1088.

<sup>1187</sup> Šefik Bešlić, 3 Apr 2007, T. 4438.

<sup>1188</sup> Šefik Bešlić, 3 Apr 2007, T. 4436 – 4438.

<sup>1189</sup> Šefik Bešlić, 3 Apr 2007, T. 4443; P941, Videoclip with Dženana Sokolović (under seal).

<sup>1190</sup> Ivan Stamenov, 22 Aug 2007, T. 9037 – 9041.

<sup>1191</sup> Ivan Stamenov, 22 Aug 2007, T. 9042 – 9043.

<sup>1192</sup> Dženana Sokolović, 22 Jan 2007, T. 772, 779; John Jordan, 22 Feb 2007, T. 2702 – 2703, P267, p. 3.

<sup>1193</sup> D19, Criminal investigation file, p. 1.

336. Nermin Divović was killed by a bullet that entered from the right-hand side of his cheek and exited on the left-hand side of his neck.<sup>1194</sup> He was not very tall; his head reached Dženana Sokolović's waist.<sup>1195</sup> The Defence tendered a criminal investigation file indicating that the entry wound was at the back of Nermin Divović's head, above the right ear and that the exit wound was on the face, below the left eye.<sup>1196</sup> However, this evidence is neither supported by the Record of Autopsy on Nermin Divović nor by the video evidence showing the boy shortly after he was shot.<sup>1197</sup>

337. The Defence expert on forensic medicine, Ivica Milosavljević, was asked to review the medical record of Dženana Sokolović and the death certificate of Nermin Divović, both contained in a police investigation file tendered by the Defence.<sup>1198</sup> Ivica Milosavljević testified that the Autopsy report on Nermin Divović showed that he sustained a gun-shot wound to the head and that the angle of the shot was from below upwards, and from left to right.<sup>1199</sup> In relation to the injuries of Dženana Sokolović, he testified that the medical record showed that Dženana Sokolović sustained an entry wound on the left-hand side of her body and an exit wound on the right side of her body.<sup>1200</sup> He commented that the surgeon "probably assumed that [the wounds] are located symmetrically", indicating to him that the projectile had moved parallel to the ground.<sup>1201</sup> He challenged the notion that scars could be used as an indication of the entry or exit wound.<sup>1202</sup> In his opinion, the horizontal trajectory of the projectile that hit Dženana Sokolović and the bullet trajectory shown by the Autopsy Record on Nermin Divović, "clearly indicated that these two persons were injured by two different projectiles."<sup>1203</sup> He further testified that a bullet, when passing through a human body, does not retain sufficient kinetic energy to subsequently "pierce the skin on the human body, much less any bones."<sup>1204</sup>

338. In cross-examination, the Prosecution confronted Ivica Milosavljević with the opinion he expressed in his report, namely, that the documentation provided to him was insufficient to draw any conclusions, and asked how he could base his conclusions about the two victims on those documents. Ivica Milosavljević reiterated that the documentation was insufficient to draw forensic

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<sup>1194</sup> P457 Record of autopsy, p.1 (under seal); Bakir Nakaš, 25 Jan 2007, T. 1085.

<sup>1195</sup> Dženana Sokolović, 22 Jan 2007, T. 786.

<sup>1196</sup> D19, Criminal investigation file, p. 4.

<sup>1197</sup> P457, Record of autopsy, p.1 (under seal); P271, Videoclip of sniping incident.

<sup>1198</sup> Ivica Milosavljević, 27 Aug 2007, T. 9280 – 9282, 9283 – 9284; D19, Criminal investigation file.

<sup>1199</sup> Ivica Milosavljević, 27 Aug 2007, T. 9280 – 9281.

<sup>1200</sup> Ivica Milosavljević, 27 Aug 2007, T. 9281 – 9282.

<sup>1201</sup> Ivica Milosavljević, 27 Aug 2007, T. 9282.

<sup>1202</sup> Ivica Milosavljević, 27 Aug 2007, T. 9283 – 9284.

<sup>1203</sup> Ivica Milosavljević, 27 Aug 2007, T. 9284.

<sup>1204</sup> Ivica Milosavljević, 27 Aug 2007, T. 9283 – 9284.

conclusions and said that the opinion he expressed in court was a “professional supposition.”<sup>1205</sup> He clarified that he could only indicate exactly where the entry and exit wounds were located and what the direction of the projectile had been.<sup>1206</sup> He could not provide more accurate details.<sup>1207</sup> In response to further questions by the Prosecution, he conceded that he only reviewed the medical documentation provided in the police investigation file, and that he had not been provided with a statement by Šefik Bešlić; he had not tried to contact him or the forensic pathologist who conducted the autopsy of Nermin Divović.<sup>1208</sup> The Trial Chamber notes that he did not examine the victims.

## Findings

339. There are discrepancies in Dženana Sokolović’s evidence and in the documentary evidence with regard to the exact location where she and her son were shot.<sup>1209</sup> The Trial Chamber finds that in spite of those discrepancies, it is clear from the expert report of Lt. Van der Weijden and from photographic and video evidence in the case that a sniper located in the Metalka Building could have targeted the victims on both possible locations on Zmaja od Bosne.<sup>1210</sup>

340. Having considered all the evidence concerning the direction of fire, the medical record of Dženana Sokolović, including the circumstances under which the notes on that record were written, the Trial Chamber is satisfied that Dženana Sokolović was shot in the right side of her body and that the bullet went through her abdomen and exited on the left side, continuing through Nermin Divović’s head. The video taken immediately after the incident also shows that the locations of the entry and exit wounds on Nermin Divović were accurately described in Nermin Divović’s autopsy report, and not in the criminal investigation file. Therefore, the opinion of Ivica Milosavljević that the bullet that killed Nermin Divović travelled from left to right was based on incorrect information.

341. There is no evidence indicating that the shots came from ABiH-held territory. The Trial Chamber finds the evidence of Lt. Van der Weijden convincing and concludes that the only reasonable inference to be drawn is that the shot that killed Nermin Divović and wounded Dženana Sokolović, both civilians, originated from the Metalka Building, a known SRK sniper position. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired

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<sup>1205</sup> Ivica Milosavljević, 27 Aug 2007, T. 9287 – 9288.

<sup>1206</sup> Ivica Milosavljević, 27 Aug 2007, T. 9288.

<sup>1207</sup> Ivica Milosavljević, 27 Aug 2007, T. 9288.

<sup>1208</sup> Ivica Milosavljević, 27 Aug 2007, T. 9288 – 9290.

<sup>1209</sup> The evidence suggesting they were shot on the zebra-crossing is: Dženana Sokolović, 22 Jan 2007, T. 773, 784; John Jordan, 21 Feb 2007, T. 2651, 2666, 2671 – 2672, 2677; D19, Criminal investigation file, pp 1, 3; P271, Videoclip of sniping incident; P272, Photo from the “Providence Journal – Bulletin”; D79, Photograph marked by John Jordan. The evidence suggesting they were shot before the zebra-crossing is: Dženana Sokolović, 22 Jan 2007, T. 775, 804 – 805; P89, 360° photograph; P941, Videoclip with Dženana Sokolović; D18, Photograph marked by Dženana Sokolović.

by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

(ii) Sniping of Targets in Sedrenik

342. Three sniping incidents took place in the area of Sedrenik. The Defence submitted in its Final Brief that the sector of Sedrenik was a “military zone throughout the conflict and particularly during the time material to the Indictment.”<sup>1211</sup> Witnesses described Sedrenik as a “purely” residential neighbourhood during the Indictment period.<sup>1212</sup> The Trial Chamber recalls that Špicasta Stijena was held by the SRK and that ABiH forces were positioned in trenches at Grdonj and at the foot of Špicasta Stijena.<sup>1213</sup> Based on the evidence of Derviša Selmanović, Nedžib Đozo, Tarik Žunić and Lt. Col. Konings, the Trial Chamber finds that Sedrenik was a civilian area, with a civilian population. The Trial Chamber’s analysis of the status of Sedrenik is set out elsewhere in this Judgement and is to be read in conjunction with this paragraph.<sup>1214</sup>

a. Sniping of Sanela Dedović on 22 November 1994

343. On 22 November 1994, Sanela Dedović, 13 years old, was walking to the school on Saburina Street.<sup>1215</sup> She did not see any soldiers, military equipment, or possible military targets, nor was there any combat going on at the time.<sup>1216</sup> Sanela Dedović testified that it was not raining and that the visibility was good.<sup>1217</sup>

344. There were two routes by which Sanela Dedović could get to town from her house. The first was via the Rogina, Sedrenik and Redzepa Gorusanovica intersection.<sup>1218</sup> The second was between houses and through gardens.<sup>1219</sup> She decided to take the first route, knowing that approximately 100 metres of the intersection were dangerous.<sup>1220</sup> She stated that she would use the intersection on days

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<sup>1210</sup> P514, Expert report Patrick van der Weijden, p. 23; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20.

<sup>1211</sup> Defence Final Brief, para. 184.

<sup>1212</sup> Nedžib Đozo, P363, p. 2; Derviša Selmanović, P169, p. 2; P514, Expert report Patrick van der Weijden, p. 49.

<sup>1213</sup> See *supra*, para. 140.

<sup>1214</sup> See *infra*, para. 901.

<sup>1215</sup> Sanela Dedović, 29 Jan 2007, T. 1152, 1154, P109, p. 2, P110, p. 2; P117, Official note, 22 November 1994, p. 1; P118, Statement of Sanela Dedović, dated 13 November 1995, p. 1.

<sup>1216</sup> Sanela Dedović, 29 Jan 2007, T. 1156, 1176, P109, p. 2.

<sup>1217</sup> Sanela Dedović, 29 Jan 2007, T. 1155 – 1156.

<sup>1218</sup> Sanela Dedović, 29 Jan 2007, T. 1154 – 1155, P109, p. 2, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

<sup>1219</sup> Sanela Dedović, 29 Jan 2007, T. 1155, P109, p. 2.

<sup>1220</sup> Sanela Dedović, 29 Jan 2007, T. 1154 – 1155, P109, p. 2, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1. She testified that she chose that route because the backyard and gardens would have been muddy, which would have made her new shoes dirty, Sanela Dedović, 29 Jan 2007, T. 1155.



when she did not hear shooting.<sup>1221</sup> As she did not hear any shooting on 22 November 1994, she decided to run across the intersection.<sup>1222</sup>

345. When Sanela Dedović was running across the intersection at around 1110 hours, in order to reach Rogica Street, she was facing away from Špicasta Stijena.<sup>1223</sup> From Rogica Street, she would not have had Špicasta Stijena within her view because the street sloped downward.<sup>1224</sup> While still on the intersection, she first felt pain and then heard the sound of the shot.<sup>1225</sup> The bullet came from behind her.<sup>1226</sup> The bullet first ricocheted against the asphalt ground, splintered and then a bit of shrapnel hit her left ankle.<sup>1227</sup> Sanela Dedović saw blood and hopped on one foot to a shelter behind a house; people from the house immediately came to help her.<sup>1228</sup>

346. One of those persons informed UNMOs who were stationed in the area.<sup>1229</sup> After the UNMOs arrived at the shelter, another shot was fired, preventing anyone else from approaching the intersection.<sup>1230</sup> The UNMOs transported Sanela Dedović immediately to the Koševo Hospital where she was admitted at the Trauma Clinic.<sup>1231</sup>

347. At the hospital, a lead “fragment” was surgically removed from her ankle.<sup>1232</sup> She was in hospital for about 22 days.<sup>1233</sup> According to Sanela Dedović, she was hit by a piece of a fragmentation bullet.<sup>1234</sup> Lt. Van der Weijden stated that if the victim had sustained a direct hit, she would have suffered more serious injuries than she did.<sup>1235</sup>

348. In 1995, Sanela Dedović stated that she still felt pain in her ankle during the night, after walking to school during the day.<sup>1236</sup> She also sometimes had seizures and cramps, which she never experienced prior to being injured.<sup>1237</sup>

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<sup>1221</sup> Sanela Dedović, P110, p. 2, P109, p. 2.

<sup>1222</sup> Sanela Dedović, 29 Jan 2007, T. 1155.

<sup>1223</sup> Sanela Dedović, 29 Jan 2007, T. 1154, 1163, 1168, 1174; P118, Statement of Sanela Dedović, 13 November 1995, p. 1; P117, Official note, p. 1.

<sup>1224</sup> Sanela Dedović, 29 Jan 2007, T. 1163 – 1164.

<sup>1225</sup> Sanela Dedović, 29 Jan 2007, T. 1174, P109, p. 2.

<sup>1226</sup> Sanela Dedović, 29 Jan 2007, T. 1164.

<sup>1227</sup> Sanela Dedović, 29 Jan 2007, T. 1170, 1174, P109, p. 2; P118, Statement Sanela Dedović, 13 November 1995, p. 1; D360, Expert report Ivan Stamenov, p. 19.

<sup>1228</sup> Sanela Dedović, 29 Jan 2007, T. 1174; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

<sup>1229</sup> P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

<sup>1230</sup> Sanela Dedović, 29 Jan 2007, T. 1174 – 1175; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

<sup>1231</sup> P118, Statement Sanela Dedović, 13 November 1995, p. 1. *See also*, P117, Official note, p. 1.

<sup>1232</sup> Sanela Dedović, 29 Jan 2007, T. 1170, P109, p. 2; P117, Official note, p. 1; P458, Medical report Sanela Dedović, p. 1 (under seal).

<sup>1233</sup> P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

<sup>1234</sup> Sanela Dedović, 29 Jan 2007, T. 1170.

<sup>1235</sup> P514, Expert report Patrick van der Weijden, p. 40.

<sup>1236</sup> Sanela Dedović, P109, p. 2.

<sup>1237</sup> Sanela Dedović, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

349. Sanela Dedović testified that the bullet that hit her came from Špicasta Stijena.<sup>1238</sup> According to her, the confrontation line ran along the entire length of Špicasta Stijena, with SRK soldiers on the top of Špicasta Stijena and ABiH soldiers at its foot.<sup>1239</sup> She testified that it was well-known that there was a SRK sniper's nest on the ridgeline.<sup>1240</sup> In her written statement, Sanela Dedović said that people knew Sedrenik was a dangerous place to live, as it was exposed to sniping from Špicasta Stijena, but that there was no other place to go.<sup>1241</sup> A sign warned the residents: "Caution: Sniper".<sup>1242</sup> In the opinion of Sanela Dedović, Špicasta Stijena was the only Bosnian Serb-held position from which it was possible to shoot at people crossing the intersection.<sup>1243</sup> The Trial Chamber recalls that the confrontation line ran at the foot of Špicasta Stijena and that SRK soldiers controlled the ridge.<sup>1244</sup>

350. In cross-examination, Sanela Dedović testified that she did not know whether there was further shooting or not on the day she was injured, as she was in hospital at that stage.<sup>1245</sup> However, she stated that after 22 November 1994, the intersection was guarded by UNMOs with an APC which was aimed in the direction of Špicasta Stijena.<sup>1246</sup>

351. Lt. Van der Weijden visited the incident site on 29 November 2006, which, in weather and seasonal conditions, more or less matched the time of year of the incident.<sup>1247</sup> The trees were leafless.<sup>1248</sup> The ridgeline was approximately 850 to 1,100 metres from the incident site, but in clear view.<sup>1249</sup> In his view, it was only possible to have fired from the ridgeline or just below it, where the SRK positions were.<sup>1250</sup> Certain houses and the hillsides, which are now devoid of trees, would have blocked the view from ABiH positions to the incident site at that time.<sup>1251</sup>

352. According to Lt. Van der Weijden, the sniper weapon used was most likely a M76 or M91 sniper rifle.<sup>1252</sup> However, these weapons would have been at the limit of their capabilities at the

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<sup>1238</sup> Sanela Dedović, 29 Jan 2007, T. 1163; P112, Map marked by Sanela Dedović.

<sup>1239</sup> Sanela Dedović, 29 Jan 2007, T. 1171, 1172.

<sup>1240</sup> Sanela Dedović, 29 Jan 2007, T. 1164; P113, 360° photograph.

<sup>1241</sup> Sanela Dedović, P110, p. 2.

<sup>1242</sup> Sanela Dedović, 29 Jan 2007, T. 1164.

<sup>1243</sup> Sanela Dedović, P109, p. 2.

<sup>1244</sup> *See supra*, para. 140.

<sup>1245</sup> Sanela Dedović, 29 Jan 2007, T. 1176.

<sup>1246</sup> Sanela Dedović, P109, p. 2.

<sup>1247</sup> P514, Expert report Patrick van der Weijden, p. 41.

<sup>1248</sup> P514, Expert report Patrick van der Weijden, p. 41.

<sup>1249</sup> P514, Expert report Patrick van der Weijden, p. 41; Ivan Stamenov, 22 Aug 2007, T. 9059 – 9060 (900 to 1,200 metres). Sanela Dedović, 29 Jan 2007, T. 1172 – 1173 estimated the distance between herself and the Bosnian Serb forces as being three kilometres, but then stated it to be 200 – 300 metres, Sanela Dedović, 29 Jan 2007, T. 1173 – 1174.

<sup>1250</sup> P514, Expert report Patrick van der Weijden, p. 41.

<sup>1251</sup> P514, Expert report Patrick van der Weijden, p. 41.

<sup>1252</sup> P514, Expert report Patrick van der Weijden, p. 40.

distance from which Sanela Dedović was shot.<sup>1253</sup> Lt. Van der Weijden stated that the weapon was not a machinegun as the victim described hearing one shot only.<sup>1254</sup> As a final possibility, Lt. Van der Weijden stated that the weapon used may have been a hunting rifle, particularly because these rifles were “omnipresent” before and during the war.<sup>1255</sup>

353. According to Lt. Van der Weijden, the clothes worn by Sanela Dedović would have enabled the shooter to identify her as a civilian.<sup>1256</sup> The range would have made it difficult to see the colours of the clothing with the naked eye, but the colours would have been visible with optics mounted on the rifle.<sup>1257</sup> As the victim was 13 years old at the time and not of adult height, he concluded that there was no reason to identify the victim as a combatant.<sup>1258</sup>

### Findings

354. On the basis of the evidence of Sanela Dedović and of Lt. Van der Weijden, the Trial Chamber finds that Sanela Dedović, a civilian, was shot and seriously wounded in the ankle by a fragment of a bullet fired from a sniper weapon. There is no evidence indicating that the shot came from ABiH-held territory. The shot originated from the ridge Špicasta Stijena, which was controlled by the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

#### b. Sniping of Derviša Selmanović on 10 December 1994

355. In the morning of 10 December 1994, there was constant sniper fire into Sedrenik from Špicasta Stijena.<sup>1259</sup> It was a dry, partly overcast day.<sup>1260</sup> According to Derviša Selmanović, there were no military institutions or vehicles present in the vicinity of Sedrenik and there were no soldiers in the area at the time.<sup>1261</sup> No fighting was going on between the warring parties.<sup>1262</sup>

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<sup>1253</sup> P514, Expert report Patrick van der Weijden, p. 40.

<sup>1254</sup> P514, Expert report Patrick van der Weijden, p. 40.

<sup>1255</sup> P514, Expert report Patrick van der Weijden, p. 40.

<sup>1256</sup> P514, Expert report Patrick van der Weijden, p. 43.

<sup>1257</sup> P514, Expert report Patrick van der Weijden, p. 43.

<sup>1258</sup> P514, Expert report Patrick van der Weijden, p. 43.

<sup>1259</sup> P368, Official note, dated 12 March 1995, p. 1.

<sup>1260</sup> Derviša Selmanović, 5 Feb 2007, T. 1586, 1607, P170, p. 3.

<sup>1261</sup> Derviša Selmanović, 5 Feb 2007, T. 1586, P170, p. 3.

<sup>1262</sup> Derviša Selmanović, 5 Feb 2007, T. 1586; Nedžib Đozo, 14 Mar 2007, T. 3703, P363, p. 2.

356. At around 1100 hours, Derviša Selmanović went out into a friend's garden to get firewood, which had been stacked between the house and a garage.<sup>1263</sup> She suddenly felt a sharp pain in her knee and a burning sensation in her leg.<sup>1264</sup> A bullet had struck her knee on the inside of her leg and had exited on the outside of the leg.<sup>1265</sup> Derviša Selmanović sought shelter behind the house. Immediately afterwards, "another 20 to 30 bullets" were fired at the house.<sup>1266</sup>

357. Derviša Selmanović's neighbour helped her to call an ambulance.<sup>1267</sup> Due to the constant sniper fire from Špicasta Stijena, the ambulance could not come to where she was; instead she was taken by an UNPROFOR patrol to the place where the ambulance was.<sup>1268</sup> She was then taken to the Koševo Hospital, where it was established that she had received a light wound and she was sent home on the same day.<sup>1269</sup> In 2006, Derviša Selmanović stated that she still felt pain in her knee when she stood or walked for a long time or when the weather changed.<sup>1270</sup>

358. The same day, Nedžib Đozo, a BiH police officer, was notified that "there was shooting in the area of Sedrenik from Špicasta Stijena and that a female had been wounded by sniper shot."<sup>1271</sup> According to Nedžib Đozo, the investigation team that was set up was unable to visit the exact location in Sedrenik where the victim was wounded because "single shots aiming at specific places where people were milling or moving around" were constantly fired from Špicasta Stijena.<sup>1272</sup> He rejected the Defence suggestion that there was ongoing fighting and firing between the two sides or that there were stray bullets coming from both sides without specifically targeting anyone.<sup>1273</sup>

359. According to Derviša Selmanović and Nedžib Đozo, the shooting came from the direction of Špicasta Stijena.<sup>1274</sup> This was confirmed by Lt. Van der Weijden.<sup>1275</sup> When she was shot, Derviša Selmanović was approximately 900 to 1,050 metres from the Bosnian Serb positions on Špicasta

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<sup>1263</sup> Derviša Selmanović, 5 Feb 2007, T. 1589 – 1590, P170, p. 3; Nedžib Đozo, 14 Mar 2007, T. 3699; P367, Investigation report, dated 14 December 1994, p. 1; P368, Official note, p. 1; P171, 360° photograph; P365, Map marked by Nedžib Đozo; P366, Photograph marked by Nedžib Đozo.

<sup>1264</sup> Derviša Selmanović, P170, p. 3; P368, Official note, p. 1.

<sup>1265</sup> Derviša Selmanović, 5 Feb 2007, T. 1590, P169, p. 2; P171, 360° photograph; Nedžib Đozo, 14 Mar 2007, T. 3691; P463, Medical record (under seal).

<sup>1266</sup> P368, Official note, p. 1.

<sup>1267</sup> Derviša Selmanović, P170, p. 3; P368, Official note, p. 1.

<sup>1268</sup> Derviša Selmanović, 5 Feb 2007, T. 1604, P170, p. 3; P368, Official note, p. 1.

<sup>1269</sup> Derviša Selmanović, P170, p. 3; P367, Investigation report, p. 1; Nedžib Đozo, 14 Mar 2007, T. 3686, 3692; P368, Official note, p. 1; P463, Medical record (under seal).

<sup>1270</sup> Derviša Selmanović, P169, p. 2; P368, Official note, p. 2.

<sup>1271</sup> Nedžib Đozo, 14 Mar 2007, T. 3685.

<sup>1272</sup> Nedžib Đozo, 14 Mar 2007, T. 3704. *See also*, P363, p. 2; P367, Investigation report, p. 1.

<sup>1273</sup> Nedžib Đozo, 14 Mar 2007, T. 3703.

<sup>1274</sup> Derviša Selmanović, 5 Feb 2007, T. 1592 – 1593, 1606, P169, p. 2; Nedžib Đozo, 14 Mar 2007, T. 3685 – 3686; P172, Videoclip of sniping incident; P365, Map marked by Nedžib Đozo.

<sup>1275</sup> P514, Expert report Patrick van der Weijden, pp 45 – 46.

Stijena.<sup>1276</sup> Col. Stamenov agreed that a sniper with the proper weapon would have no difficulty hitting a target at ranges of between 900 and 1,200 metres.<sup>1277</sup> However, he cited a witness statement indicating that at the time of the incident it was foggy and the visibility was poor.<sup>1278</sup>

360. Derviša Selmanović and Nedžib Đozo testified that the shot that hit Derviša Selmanović could not have come from the ABiH positions which were blocked from sight.<sup>1279</sup> Lt. Van der Weijden noted in his report that the line of sight was blocked by a wooden shack and a tree trunk, and that, during the conflict, trees on the hillsides obstructed the view of the Bosnian Muslim forces even more.<sup>1280</sup> According to Lt. Van der Weijden and Nedžib Đozo, the only possible shooting position from which the location of the incident could be seen was Špicasta Stijena.<sup>1281</sup>

361. On the basis of the evidence of Derviša Selmanović that around 20 shots were fired, Lt. Van der Weijden concluded that either a M53 or a M84 machinegun was used.<sup>1282</sup> In his view, the distance from which Derviša Selmanović was shot made it difficult, but not impossible, to identify her as a civilian.<sup>1283</sup> However, the fact that Derviša Selmanović was collecting firewood at the time she was shot “should have been enough to identify her as a civilian”.<sup>1284</sup> In addition, she was 49 years-old at the time, and, according to Lt. Van der Weijden, her movements would have been slower than those of a younger person.<sup>1285</sup> He believes there was no reason to identify Derviša Selmanović as a combatant.<sup>1286</sup> Finally, he explained that if civilians were in the vicinity, a sniper had to take every precaution to prevent firing at civilians and if the sniper could not identify a person, he should have refrained from firing.<sup>1287</sup>

362. There was evidence about Derviša Selmanović’s status as a civilian. Since 1994, Derviša Selmanović was employed as a cook assistant in the ABiH.<sup>1288</sup> She explained that her place of work

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<sup>1276</sup> P514, Expert report Patrick van der Weijden, p. 45; Ivan Stamenov, 22 Aug 2007, T. 9060 (900 to 1,200 metres); Cf. Derviša Selmanović, P170, p. 3 (200 metres).

<sup>1277</sup> Ivan Stamenov, 22 Aug 2007, T. 9060.

<sup>1278</sup> Ivan Stamenov, 22 Aug 2007, T. 9030.

<sup>1279</sup> Nedžib Đozo, 14 Mar 2007, T. 3690, 3699, P363, p. 2; P366, Photograph marked by Nedžib Đozo; D123, Photograph marked by Nedžib Đozo; P514, Expert report Patrick van der Weijden, p. 45. Nedžib Đozo testified that ABiH forces would not shoot at Sedrenik, as the ABiH units there were made up of residents of Sedrenik. Shooting at Sedrenik would mean shooting at their relatives and their neighbours. In addition, the ABiH troops would have had to turn their backs to the “Serbian forces.” Nedžib Đozo, 14 Mar 2007, T. 3690. During cross-examination, Derviša Selmanović explained that the bullet must have come from Špicasta Stijena because it was closer to Sedrenik, Derviša Selmanović, 5 Feb 2007, T. 1603, 1607; P171, 360° photograph.

<sup>1280</sup> P514, Expert report Patrick van der Weijden, p. 45.

<sup>1281</sup> P514, Expert report Patrick van der Weijden, pp 44 – 46; Nedžib Đozo, P363, p. 2.

<sup>1282</sup> P514, Expert report Patrick van der Weijden, p. 44; Ivan Stamenov, 22 Aug 2007, T. 9060.

<sup>1283</sup> P514, Expert report Patrick van der Weijden, p. 47.

<sup>1284</sup> P514, Expert report Patrick van der Weijden, p. 47.

<sup>1285</sup> P514, Expert report Patrick van der Weijden, p. 47.

<sup>1286</sup> P514, Expert report Patrick van der Weijden, p. 47.

<sup>1287</sup> P514, Expert report Patrick van der Weijden, p. 47.

<sup>1288</sup> Derviša Selmanović, P170, p. 2.

was located near the Koševo Hospital and that she walked to and from her work every day.<sup>1289</sup> She was given “some form of a uniform” as a cook assistant, but she had been advised by army officials not to wear this uniform while coming to or returning home after work.<sup>1290</sup> She explained in cross-examination that she did not wear the uniform.<sup>1291</sup> Hence, she was always dressed in civilian clothes on her way to and from work.<sup>1292</sup> She explained, in response to further Defence questions, that on the way to and from her place of work, she did not often see people with weapons who did not wear a uniform.<sup>1293</sup> Derviša Selmanović testified that, at the time of the incident, she was wearing civilian clothing.<sup>1294</sup> Nedžib Đozo testified that she was not “a member of the BH army”.<sup>1295</sup>

363. The Trial Chamber received conflicting evidence with regard to Derviša Selmanović’s injury. According to the police report, she was wounded in her left leg.<sup>1296</sup> Nedžib Đozo testified that it was only when Derviša Selmanović was interviewed in March 1995 that it was established that she was in fact wounded in her right leg.<sup>1297</sup> The Trial Chamber saw a video recorded by the Prosecution, in which Derviša Selmanović said that the shooting came from her right side and that she was hit on the outside of her right leg.<sup>1298</sup> However, during her testimony, she said that this was wrong and that the shooting actually came from her left side and that the bullet entered on the inner side of her right leg.<sup>1299</sup> Derviša Selmanović explained that she had been confused during the recording of the video when using the right hand to show where the shooting came from.<sup>1300</sup>

## Findings

364. On the basis of the evidence of Derviša Selmanović and Nedžib Đozo, the experts and documentary evidence, the Trial Chamber finds that Derviša Selmanović was shot with a machinegun and seriously wounded in her leg when she was in the backyard of a house in Sedrenik, and that the shots came from the SRK-controlled ridge Špicasta Stijena. The Trial Chamber accepts that Derviša Selmanović was confused during the recording of the video, but it is satisfied that her evidence that she was wounded in her right leg is correct. As regards the origin of fire, the Trial Chamber takes into consideration the evidence as to the location of the SRK and ABiH troops and

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<sup>1289</sup> Derviša Selmanović, P170, p. 2.

<sup>1290</sup> Derviša Selmanović, P170, p. 2.

<sup>1291</sup> Derviša Selmanović, 5 Feb 2007, T. 1603 – 1604.

<sup>1292</sup> Derviša Selmanović, P170, p. 2.

<sup>1293</sup> Derviša Selmanović, 5 Feb 2007, T. 1603 – 1604.

<sup>1294</sup> Derviša Selmanović, P170, p. 3.

<sup>1295</sup> Nedžib Đozo, 14 Mar 2007, T. 3703.

<sup>1296</sup> P367, Investigation report, p. 1. *See also*, Nedžib Đozo, 14 Mar 2007, T. 3691 – 3692.

<sup>1297</sup> Nedžib Đozo, 14 Mar 2007, T. 3691, 3694, P363, p. 2; P368, Official note, p. 1.

<sup>1298</sup> P172, Videoclip of sniping incident.

<sup>1299</sup> Derviša Selmanović, 5 Feb 2007, T. 1590, 1592 – 1593.

<sup>1300</sup> Derviša Selmanović, 5 Feb 2007, T. 1592 – 1593, 1606. She explained that she was hit when she started to walk with her right foot, Derviša Selmanović, 5 Feb 2007, T. 1593.

the evidence that the line of sight of ABiH troops toward Derviša Selmanović was blocked. The latter evidence convinces the Trial Chamber that the shots did not come from ABiH-held territory but from SRK-held Špicasta Stijena. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

365. On the question of Derviša Selmanović's status as a civilian, the Defence, during its closing arguments, argued that she was a member of the ABiH and that she had been told at work not to wear a uniform because she would be safer if she was wearing civilian clothes.<sup>1301</sup> The Trial Chamber accepts her evidence that she was not wearing a uniform and that she was always dressed in civilian clothing. This distinction in dress is clear and it would have been obvious to an SRK shooter who had optical sights. Moreover, at the time of the shooting, Derviša Selmanović was gathering fire wood in a private garden and did not carry any weapon.

366. The status of a "civilian" is defined negatively in Article 50 of Additional Protocol I. The Trial Chamber's analysis of the definition of a civilian is carried out elsewhere in this Judgement and is to be read in conjunction with this paragraph.<sup>1302</sup> The Trial Chamber finds that Derviša Selmanović, as an unarmed cook, would fall under Article 4A(4) of the Third Geneva Convention, and thus is to be considered a civilian, according to Article 50 of Additional Protocol I.<sup>1303</sup>

c. Sniping of Tarik Žunić on 6 March 1995

367. On 6 March 1995, Tarik Žunić, aged 14 years, was walking home from his school in the Pofalići area to Sedrenik.<sup>1304</sup> He was wearing jeans and a green jacket and was carrying a blue rucksack.<sup>1305</sup> It was a cloudy day, but there was no fog.<sup>1306</sup> On the route to and from school, there was no weaponry, and there were no trenches, military installations or barracks in the part of the

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<sup>1301</sup> Defence Closing Arguments, 10 October 2007, T. 9531 – 9532.

<sup>1302</sup> See *infra*, paras 945 – 947.

<sup>1303</sup> Article 4 A (4) of Geneva Convention III states:

"Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model."

<sup>1304</sup> Tarik Žunić, 7 Feb 2007, T. 1707 – 1708, 1730, P185, p. 2; P186, Map marked by Tarik Žunić.

<sup>1305</sup> Tarik Žunić, 7 Feb 2007, T. 1724 – 1725, P184, p. 2.

<sup>1306</sup> Tarik Žunić, P184, p. 2.

town where he lived.<sup>1307</sup> If there was shooting or shelling in the morning, Tarik Žunić usually did not go to school. However, on the morning of 6 March 1995, there had been no shooting.<sup>1308</sup>

368. At around 1300 hours, Tarik Žunić was walking on Sedrenik Street about 100 metres from his home.<sup>1309</sup> He stated that, in the middle of Sedrenik Street, there was a sheet of canvas, fixed to wooden sticks, to hide the people from the sight of the snipers at Špicasta Stijena.<sup>1310</sup> After passing the canvas, Tarik Žunić heard two shots.<sup>1311</sup> At that moment, he was close to a little shop; a fence and a family house were on his right-hand side.<sup>1312</sup> He was carrying the rucksack on his right shoulder, holding it with his right hand.<sup>1313</sup> Upon hearing the shots, Tarik Žunić took shelter and did not realise immediately that he had been hit.<sup>1314</sup>

369. Tarik Žunić testified that he was hit in his right hand by a single bullet.<sup>1315</sup> The bullet entered the palm of his hand and exited at the wrist.<sup>1316</sup> He testified that, “I was lucky to have walked not so fast; otherwise, I would have been dead.”<sup>1317</sup> The Defence pointed out that the medical record stated “entry wound in distal part of right underarm from the radial side, and exit point in the thenar area”, but Tarik Žunić maintained that he was shot in his hand.<sup>1318</sup> This was confirmed in the police report on the incident that was tendered by the Defence.<sup>1319</sup> Tarik Žunić recalled that the bullet went through his jacket from left to right, before hitting his hand.<sup>1320</sup>

370. Lying under cover for 30 minutes, during which time the sniping continued, he waited for help to arrive.<sup>1321</sup> He testified that, “I could hear the bullets and the shots being fired.”<sup>1322</sup> He heard both single shots and bursts of fire and he immediately recognised that the shots were fired from the M84 machinegun as the sound is distinct from the sound of ordinary guns.<sup>1323</sup> In cross-examination,

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<sup>1307</sup> Tarik Žunić, 7 Feb 2007, T. 1746 – 1747, P185, p. 2; P186, Map marked by Tarik Žunić.

<sup>1308</sup> Tarik Žunić, P184, p. 2. The Defence tendered daily combat reports dated 5 and 7 March 1995. These reports show that it was a quiet period in the area of responsibility of the 101<sup>st</sup> Motorized Brigade of the ABiH, D482, Daily combat report, dated 5 March 1995; D483, Daily combat report, dated 7 March 1995.

<sup>1309</sup> Tarik Žunić, 7 Feb 2007, T. 1708, 1718, 1719, 1748 – 1749, P184, p. 2; P187, Photograph marked by Tarik Žunić; P188, Photograph marked by Tarik Žunić; P191, Photograph marked by Tarik Žunić; P193, Photograph marked by Tarik Žunić.

<sup>1310</sup> Tarik Žunić, P184, p. 2.

<sup>1311</sup> Tarik Žunić, P184, p. 2.

<sup>1312</sup> Tarik Žunić, 7 Feb 2007, T. 1719, 1751; P190, 360° photograph; P191, Photograph marked by Tarik Žunić; P192, Photograph marked by Tarik Žunić; P193, Photograph marked by Tarik Žunić; D43, Official note, dated 10 and 11 March 1995 (“Official note”), p. 1.

<sup>1313</sup> Tarik Žunić, 7 Feb 2007, T. 1725.

<sup>1314</sup> Tarik Žunić, P184, p. 2.

<sup>1315</sup> Tarik Žunić, 7 Feb 2007, T. 1725, 1734, 1741, P184, p. 2. *See also*, D43, Official note, p. 1.

<sup>1316</sup> Tarik Žunić, 7 Feb 2007, T. 1725, 1741.

<sup>1317</sup> Tarik Žunić, 7 Feb 2007, T. 1725.

<sup>1318</sup> Tarik Žunić, 7 Feb 2007, T. 1737 – 1738; P189, Medical record, dated 10 November 1995.

<sup>1319</sup> D43, Official note, pp 2 – 3.

<sup>1320</sup> Tarik Žunić, 7 Feb 2007, T. 1725, 1741, P184, p. 2; P189, Medical record.

<sup>1321</sup> Tarik Žunić, 7 Feb 2007, T. 1727, P185, p. 2.

<sup>1322</sup> Tarik Žunić, 7 Feb 2007, T. 1727.

<sup>1323</sup> Tarik Žunić, 7 Feb 2007, T. 1740, P184, p. 2.



he testified that he had never seen a M84 machinegun, but that he learned to distinguish the sound because he had heard many shots, and as he put it, “I lived there. I survived. [...] I listened to people older than me all the time.”<sup>1324</sup>

371. Tarik Žunić said a civilian vehicle stopped, but the ongoing shooting prevented the driver from helping him; he believed the vehicle may have been shot.<sup>1325</sup> He also said that some people tried to help him and that one man was hit.<sup>1326</sup> Soon after, a UN APC stopped and transported him to the Koševo Hospital.<sup>1327</sup> Only after the APC had picked him up, did the shooting stop.<sup>1328</sup> After his wound had been dressed at the hospital, he was sent home.<sup>1329</sup> In 1995, he stated that he sometimes suffered pain when the weather changed.<sup>1330</sup>

372. The official note of the BiH police on the incident stated that due to firing from “the aggressor’s positions” at the place where Tarik Žunić was wounded, an on-site investigation could not be conducted.<sup>1331</sup> It also reported that Tarik Žunić was wounded by a bullet fired from “aggressor’s positions at Špicasta Stijena.”<sup>1332</sup>

373. Similarly, Tarik Žunić testified that the shots came from the direction of Špicasta Stijena.<sup>1333</sup> He also testified that the confrontation line and the Bosnian Serb positions at Špicasta Stijena were visible from the place where he was shot, but that the Bosnian Muslim positions were not, as they were at the foot of the hill.<sup>1334</sup> He explained that the SRK was on the top of Špicasta Stijena and on a higher ground than the ABiH positions and that the ABiH positions were closer than the Bosnian Serb positions.<sup>1335</sup> In that regard, the Trial Chamber recalls the location of the confrontation line at the foot of Špicasta Stijena.<sup>1336</sup> Tarik Žunić explained that he was sure the shots were fired from Špicasta Stijena because of the entry and exit points of his wound and because snipers fired from Špicasta Stijena all the time.<sup>1337</sup> Tarik Žunić stated that many civilians had been hit by snipers in this area, especially in Sedrenik Street.<sup>1338</sup> During cross-examination, he confirmed that it was

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<sup>1324</sup> Tarik Žunić, 7 Feb 2007, T. 1740, P185, p. 2.

<sup>1325</sup> Tarik Žunić, P184, p. 2, P185, p. 2.

<sup>1326</sup> Tarik Žunić, 7 Feb 2007, T. 1745, P185, p. 2.

<sup>1327</sup> Tarik Žunić, P184, p. 2.

<sup>1328</sup> Tarik Žunić, 7 Feb 2007, T. 1746.

<sup>1329</sup> Tarik Žunić, P184, p. 2; D43, Official note, p. 3.

<sup>1330</sup> Tarik Žunić, P184, p. 2.

<sup>1331</sup> D43, Official note, p. 1.

<sup>1332</sup> *Ibid.*

<sup>1333</sup> Tarik Žunić, 7 Feb 2007, T. 1722, 1725, 1753, P184, p. 2; P188, Photograph marked by Tarik Žunić; P190, 360° photograph; P200, Photograph marked by Tarik Žunić.

<sup>1334</sup> Tarik Žunić, 7 Feb 2007, T. 1708, 1722 – 1723.

<sup>1335</sup> Tarik Žunić, 7 Feb 2007, T. 1723, 1726 – 1727, 1742.

<sup>1336</sup> *See supra*, para 140.

<sup>1337</sup> Tarik Žunić, 7 Feb 2007, T. 1738 – 1739, 1753 – 1754, P184, p. 2; P192, Photograph marked by Tarik Žunić.

<sup>1338</sup> Tarik Žunić, P184, p. 2.

possible to fire at targets in the street from Trebević, “an area held by the Serbs”, but not with small-calibre weapons.<sup>1339</sup>

374. Lt. Van der Weijden, who visited the incident site, stated that there was a clear view of the incident site from the ridgeline.<sup>1340</sup> He stated in his report that the road where the victim was walking had a wall measuring one metre high at the side facing Špicasta Stijena.<sup>1341</sup> He also stated that the street was partly shielded from view of Špicasta Stijena by screens.<sup>1342</sup> The fence at which Tarik Žunić was shot had several bullet holes; this strengthened Lt. Van der Weijden’s opinion that shooting came from the direction of Špicasta Stijena.<sup>1343</sup>

375. Tarik Žunić estimated that the distance to the confrontation lines was 700 to 900 metres.<sup>1344</sup> He explained that he knew where the confrontation lines were because he later walked up to the line previously held by the SRK.<sup>1345</sup> Lt. Van der Weijden confirmed in his report that the distance from the ridgeline to the incident site was approximately 650 to 900 metres.<sup>1346</sup> Col. Stamenov agreed that a sniper with the proper equipment would have no difficulty hitting a target at ranges of between 900 and 1,200 metres.<sup>1347</sup>

376. Lt. Van der Weijden stated in his report that it was likely that the M84 machinegun had been used during this incident since it was a “burst at a longer range”.<sup>1348</sup> Other possible weapons were M87 or M53 machineguns. However, he added that if the M87 had been used, the victim most likely would have had no hand left because of the power of the ammunition.<sup>1349</sup> He confirmed that it is possible for people to tell the difference between the rate of fire of a M53 and a M84, especially after living in war-like conditions for a long time.<sup>1350</sup>

377. Evidence was led as to whether Tarik Žunić could have been identified as a combatant. Tarik Žunić testified that there were no houses or other obstacles between him and the frontline, nor were there ABiH positions in the vicinity of his home.<sup>1351</sup> Tarik Žunić sometimes heard ABiH troops moving past his house and to the confrontation lines. However, he testified that that

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<sup>1339</sup> Tarik Žunić, 7 Feb 2007, T. 1739, P184, p. 2.

<sup>1340</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1341</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1342</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1343</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1344</sup> Tarik Žunić, 7 Feb 2007, T. 1709, 1713, P184, p. 2.

<sup>1345</sup> Tarik Žunić, 7 Feb 2007, T. 1714, 1723 – 1724, 1744.

<sup>1346</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1347</sup> Ivan Stamenov, 22 Aug 2007, T. 9060.

<sup>1348</sup> P514, Expert report Patrick van der Weijden, p. 48.

<sup>1349</sup> P514, Expert report Patrick van der Weijden, p. 48.

<sup>1350</sup> P514, Expert report Patrick van der Weijden, p. 48.

<sup>1351</sup> Tarik Žunić, 7 Feb 2007, T. 1712; P187, Photograph marked by Tarik Žunić

happened during night time so that civilians were not put at risk.<sup>1352</sup> During cross-examination, Tarik Žunić explained that he was too young to be involved in the army.<sup>1353</sup> Lt. Van der Weijden stated in his report that a boy of 14 years of age can, if he reached adult height, sometimes be mistaken for an adult.<sup>1354</sup> He concluded that since the street was partly shielded, and there was some growth preventing the victim from being viewed from Špicasta Stijena, and, since the boy was moving, the shooter could not have seen the victim completely.<sup>1355</sup> This would have made it “impossible” to determine if the victim was a combatant or not.<sup>1356</sup> However, according to Lt. Van der Weijden, the village and the area were inhabited by civilians at that time. As the Bosnian Serbs had a good view of the village from their positions at Špicasta Stijena, they would have had ample opportunity to observe the village and its inhabitants, and thereby identify the majority of the inhabitants as non-combatants.<sup>1357</sup> Lt. Van der Weijden concluded that there was no reason to identify the boy as a combatant.<sup>1358</sup>

## Findings

378. There is no evidence indicating that the shot that wounded Tarik Žunić came from ABiH-held territory. The Trial Chamber is satisfied that Tarik 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. On the basis of the evidence of Lt. Van der Weijden and evidence as to the clothes worn by Tarik Žunić on that day, the Trial Chamber is satisfied that there was no reason for the sniper to mistake him for a combatant.

### (iii) Sniping of Targets Elsewhere in Sarajevo

379. Three scheduled sniping incidents took place in Vojničko Polje, Gazin Han and Dobrinja. The Defence submitted in its Final Brief that Vojničko Polje was a “military zone full of military targets” and that Dobrinja was a “military zone with constant military activity”.<sup>1359</sup> T-60 testified that there was firing from artillery weapons and light machine guns from behind the high-rise buildings in Alipašino Polje, which was ABiH-held territory, and that there was shooting from Vojničko Polje with light weapons; the SRK would respond to these attacks with artillery and gun

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<sup>1352</sup> Tarik Žunić, 7 Feb 2007, T. 1712, 1747.

<sup>1353</sup> Tarik Žunić, 7 Feb 2007, T. 1741, 1746, 1750.

<sup>1354</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1355</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1356</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1357</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1358</sup> P514, Expert report Patrick van der Weijden, p. 49.

<sup>1359</sup> Defence Final Brief, paras 181 and 186.

fire.<sup>1360</sup> The Trial Chamber recalls its previous findings regarding the confrontation lines in Vojničko Polje and in Dobrinja.<sup>1361</sup> It finds that Vojničko Polje and Dobrinja were civilian areas.<sup>1362</sup> The Trial Chamber's analysis of the status of Sedrenik is set out elsewhere in the Judgement and is to be read in conjunction with this paragraph.<sup>1363</sup>

a. Sniping of Adnan Kasapović on 24 October 1994

380. W-62 testified that in the early morning of 24 October 1994, Adnan Kasapović and two of his friends, all fourteen years of age, went to the so-called Vemeks department store in Vojničko Polje.<sup>1364</sup> It was Adnan Kasapović's fourteenth birthday.<sup>1365</sup> Adnan Kasapović was dressed in a black or grey tracksuit, the other two were wearing a blue tracksuit and jeans and a black T-shirt, respectively.<sup>1366</sup> There was no military activity in the area that day, nor were ABiH soldiers in the area.<sup>1367</sup>

381. Just outside and to one side of the Vemeks department store there was a passageway running through the building.<sup>1368</sup> The passageway was to the right of Adnan Kasapović and his friends as they walked towards the department store.<sup>1369</sup> The passageway was about 10 metres long, and became about half a metre narrower in the middle, although a car could pass through the passageway.<sup>1370</sup> The ceiling of the passageway was about three to three and a half metres high.<sup>1371</sup> This location was known to be very dangerous because of sniping through the passageway.<sup>1372</sup>

382. About 50 metres from the passageway, there was an ABiH dormitory, also described as "some kind of an ABiH army command post" or "the staff".<sup>1373</sup> The dormitory was a privately-owned flat where ABiH soldiers were billeted during the war.<sup>1374</sup> Soldiers could be seen there at times, both in uniform and plain clothes.<sup>1375</sup> The passageway was not used by the soldiers.<sup>1376</sup>

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<sup>1360</sup> T-60, 25 July 2007, T. 8818 – 8821.

<sup>1361</sup> See *supra*, paras 119 - 120 and *infra*, para. 902.

<sup>1362</sup> See *supra*, paras 119 - 120 and *infra*, para. 903.

<sup>1363</sup> See *infra*, para. 901.

<sup>1364</sup> W-62, 23 Jan 2007, T. 880, 882 – 885. See also, Ermin Krečo, P646, pp 5, 8.

<sup>1365</sup> W-62, 23 Jan 2007, T. 888 – 889.

<sup>1366</sup> W-62, 23 Jan 2007, T. 889; P514, Expert report Patrick van der Weijden, p. 13.

<sup>1367</sup> W-62, 23 Jan 2007, T. 889, 890, 24 Jan 2007, T. 924.

<sup>1368</sup> W-62, 23 Jan 2007, T. 885; P99, 360° photograph; P100, Photograph marked by W-62; Ermin Krečo, P646, pp 5, 8.

<sup>1369</sup> W-62, 23 Jan 2007, T. 902, 909; P100, Photograph marked by W-62; Ivan Stamenov, 22 Aug 2007, T. 9045 – 1946.

<sup>1370</sup> W-62, 23 Jan 2007, T. 907, 908; Patrick van der Weijden, 29 Mar 2007, T. 4299; T-52, 28 June 2007, T. 7433; C10, Photograph taken during site visit, p. 1.

<sup>1371</sup> W-62, 23 Jan 2007, T. 906.

<sup>1372</sup> W-62, 23 Jan 2007, T. 890, 24 Jan 2007, T. 924.

<sup>1373</sup> W-62, 24 Jan 2007, T. 924; Ermin Krečo, P646, pp 5, 8.

<sup>1374</sup> W-62, 23 Jan 2007, T. 889, 917, 24 Jan 2007, T. 922 – 923; Ermin Krečo, P646, p. 8.

<sup>1375</sup> W-62, 24 Jan 2007, T. 922 – 923.

383. W-62 and Ermin Krečo gave evidence that there was a low wall running adjacent to and out from the department store.<sup>1377</sup> It joined the side of the passageway closest to the department store.<sup>1378</sup> Ermin Krečo stepped onto the wall, and Adnan Kasapović was just about to do the same, when W-62 and Ermin Krečo heard a shot.<sup>1379</sup> W-62 grabbed hold of Adnan Kasapović and only then realised that Adnan Kasapović had been shot.<sup>1380</sup> W-62 started to pull Adnan Kasapović towards the department store.<sup>1381</sup> They called out to people in the dormitory.<sup>1382</sup> While W-62 was pulling Adnan Kasapović toward the department store he heard another shot.<sup>1383</sup> Some soldiers came with a bandage and a stretcher to help them.<sup>1384</sup>

384. The bullet had entered from the front right shoulder of Adnan Kasapović's body, passed to the left of his lungs and exited near his back left shoulder.<sup>1385</sup> The soldiers placed the bandage on Adnan Kasapović and put him in a civilian vehicle, but Adnan Kasapović died on the way to the Dobrinja Hospital.<sup>1386</sup>

385. On the other side of the department store building and visible through the passageway was the School of the Blind.<sup>1387</sup> The School consisted of two larger buildings with two smaller ones between them.<sup>1388</sup> It had three floors and was 20 to 25 metres high.<sup>1389</sup> Witnesses gave different estimates of the distance to the School of the Blind from the passageway, ranging from 150 metres to 300 metres.<sup>1390</sup> According to W-62, the shot that killed Adnan Kasapović came from the School of the Blind, through the passageway.<sup>1391</sup> He testified that he knew that shooting had come from the School of the Blind because there were holes between the third floor and the roof.<sup>1392</sup> Defence witness T-52 testified that the whole facade of the School of the Blind was damaged by bullet holes,

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<sup>1376</sup> W-62, 23 Jan 2007, T. 889, 24 Jan 2007, T. 924.

<sup>1377</sup> W-62, 23 Jan 2007, T. 885; Ermin Krečo, P646, p. 5. *See also*, P941, Videoclip of sniping incident (under seal); C10, Photograph taken during site visit, p. 1.

<sup>1378</sup> P941, Videoclip of sniping incident (under seal); C10, Photograph taken during site visit, p. 1.

<sup>1379</sup> W-62, 23 Jan 2007, T. 885; Ermin Krečo, P646, pp 5, 8; P941, Videoclip of sniping incident (under seal).

<sup>1380</sup> W-62, 23 Jan 2007, T. 886.

<sup>1381</sup> W-62, 23 Jan 2007, T. 886; Ermin Krečo, P646, pp 5, 8.

<sup>1382</sup> Ermin Krečo, P646, p. 8.

<sup>1383</sup> W-62, 23 Jan 2007, T. 886.

<sup>1384</sup> W-62, 23 Jan 2007, T. 886, 918, 920; Ermin Krečo, P646, p. 5.

<sup>1385</sup> W-62, 23 Jan 2007, T. 886 – 887; T. 909; Ermin Krečo, P646, pp 5, 8; P514 Expert report Patrick van der Weijden, p. 11.

<sup>1386</sup> W-62, 23 Jan 2007, T. 887 – 888; Ermin Krečo, P646, pp 5, 8 – 9.

<sup>1387</sup> W-62, 23 Jan 2007, T. 892, 899 – 900; T-48, 22 June 2007, T. 7147 – 7148; P941, Videoclip of sniping incident (under seal); D278, Map marked by T-52; D279, Photograph marked by T-52; P783, Map marked by T-48.

<sup>1388</sup> W-62, 23 Jan 2007, T. 892 – 894; T-48, 22 June 2007, T. 7147 – 7148; T-41, 18 July 2007, T. 8562; P99, 360° photograph; P100, Photograph marked by W-62.

<sup>1389</sup> W-62, 23 Jan 2007, T. 900; T-52, 28 June 2007, T. 7429; Patrick van der Weijden, 29 Mar 2007, T. 4301, 4306.

<sup>1390</sup> W-62, 24 Jan 2007, T. 924 (150 metres); P514 Expert report Patrick van der Weijden, p. 13 (250 – 300 metres); Patrick van der Weijden, 29 Mar 2007, T. 4297, 4301; Ivan Stamenov, 22 Aug 2007, T. 9059 (250-300 metres); T-52, 28 June 2007, T. 7434 – 7435 (200-300 metres).

<sup>1391</sup> W-62, 23 Jan 2007, T. 894, 902; P99, 360° photograph; P100, Photograph marked by W-62; P941, Videoclip of sniping incident (under seal).

<sup>1392</sup> W-62, 23 Jan 2007, T. 899 – 900, 912 – 913, 914 – 915; P909, Photograph of the School of the Blind.

but he could not recall any bigger holes.<sup>1393</sup> The Trial Chamber recalls that the School of the Blind was held by the SRK and was known as a sniper location.<sup>1394</sup>

386. There was conflicting evidence about whether the line of sight could have been obstructed. According to W-62, on that day nothing obstructed the view from the School of the Blind to the place where Adnan Kasapović was shot.<sup>1395</sup> Garages under the control of the ABiH were located between the School of the Blind and the passageway, but those were not high enough to obstruct the view.<sup>1396</sup> When shown a photograph taken during the Trial Chamber's on-site visit, Defence witnesses T-48 and T-52 confirmed that there was a line of sight from the School of the Blind into the passageway.<sup>1397</sup> However, T-48 denied that there was a direct line of sight from the School of the Blind to the passageway at the time of the incident because both warring parties had set up screens and barricades to make it possible for the people to move safely.<sup>1398</sup> T-52 confirmed that, in general, screens were present from the beginning of the conflict in 1992 until the end of the war, thus obstructing the view between the School of the Blind and the passageway.<sup>1399</sup> T-52 could not remember if there were any screens at that location on 24 October 1994.<sup>1400</sup>

387. After Adnan Kasapović died, the residents put a blanket at the passageway as protection against shooting.<sup>1401</sup> However, after only a few days the blanket was "torn in ribbons" as a result of shooting.<sup>1402</sup>

388. T-52 further testified that the SRK positions in the School of the Blind during the conflict were on the ground floor where the soldiers slept and held position.<sup>1403</sup> During attacks, the soldiers opened fire from trenches in that position.<sup>1404</sup> T-52 testified that the soldiers would only go up to the first floor to observe the enemy positions, but almost never to the second floor because they could be seen from the outside.<sup>1405</sup> T-52 denied that the SRK would use the second floor for shooting.<sup>1406</sup> He testified that soldiers who were on duty in the School of the Blind had infantry

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<sup>1393</sup> T-52, 28 June 2007, T. 7430, 7488 – 7489. *See also*, T-41, 19 July 2007, T. 8600 – 8601, P909, Photograph of the School of the Blind.

<sup>1394</sup> *See supra*, para. 233.

<sup>1395</sup> W-62, 23 Jan 2007, T. 893, 24 Jan 2007, T. 925.

<sup>1396</sup> W-62, 23 Jan 2007, T. 899; T-48, 22 June 2007, T. 7164, T-52, 28 June 2007, T. 7432; P100, Photograph marked by W-62; D24, Photograph marked by W-62; D279, Photograph marked by T-52.

<sup>1397</sup> T-48, 22 June 2007, T. 7184; T-52, 28 June 2007, T. 7433 – 7434, 7462; C10, Photographs taken during site visit, pp 1 – 2.

<sup>1398</sup> T-48, 22 June 2007, T. 7165 – 7167; P100, Photograph marked by W-62.

<sup>1399</sup> T-52, 28 June 2007, T. 7432, 7434 – 7435, 7441 – 7442, 7460, 7464; D279, Photograph marked by T-52.

<sup>1400</sup> T-52, 28 June 2007, T. 7462 – 7463.

<sup>1401</sup> W-62, 23 Jan 2007, T. 890, 892.

<sup>1402</sup> W-62, 23 Jan 2007, T. 890. *See also*, T-52, 28 June 2007, T. 7487, 7490.

<sup>1403</sup> T-52, 28 June 2007, T. 7429.

<sup>1404</sup> T-52, 28 June 2007, T. 7429, 7447 – 7448.

<sup>1405</sup> T-52, 28 June 2007, T. 7448 – 7449, 7450 – 7451, 7453 – 7456, 7489.

<sup>1406</sup> T-52, 28 June 2007, T. 7455.

weapons and hand-grenades and that there was an order from the brigade command not to shoot at civilians.<sup>1407</sup> T-60 testified that people did not want to go to the area between the School of the Blind and the high buildings in Vojničko Polje, because of fear of “provocative actions” from the ABiH.<sup>1408</sup>

389. In his report and during his testimony, Lt. Van der Weijden expressed the opinion that the only possible points of origin of fire were within the complex of the School of the Blind.<sup>1409</sup> The passageway acted as a funnel that pointed back to the general location of the shooter and the darkness of the passageway highlighted the location of the victim.<sup>1410</sup> If one looked through the passageway from the place where Adnan Kasapović was shot, the location of the shooter would be visible.<sup>1411</sup> When Col. Stamenov was shown a photograph taken during the site visit, he confirmed this.<sup>1412</sup> However, he testified that the victim could have been shot from any building situated in that direction or from a different direction.<sup>1413</sup> Moreover, Col. Stamenov testified that the visibility was poor on 24 October 1994, based on a NATO weather report for Sarajevo that the weather was a bit foggy in the morning.<sup>1414</sup> According to W-62, however, the weather was nice on 24 October 1994.<sup>1415</sup> The Defence, in its Final Brief, submitted that a shooter, “on this misty morning” could have reasonably taken the boys for combatants.<sup>1416</sup>

390. Lt. Van der Weijden testified that Adnan Kasapović was killed by a shot from a M76 or M91 rifle.<sup>1417</sup> According to Lt. Van der Weijden, it would have been possible, from the range at which Adnan Kasapović was shot, to determine if he was carrying weapons or if he was a combatant.<sup>1418</sup> Finally, Lt. Van der Weijden concluded that the shot was not fired either from the South, North or East, because, in his view, had it been fired from those directions, the boys would have been able to escape through the passageway.<sup>1419</sup> In this respect, the Trial Chamber notes that the boys were walking towards the South and would have remained visible to any sniper shooting at them from the South, North or East when taking shelter at the department store.<sup>1420</sup> However,

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<sup>1407</sup> T-52, 28 June 2007, T. 7465, 7470.

<sup>1408</sup> T-60, 25 July 2007, T. 8819 – 8820; D352, Photograph marked by T-60 (under seal).

<sup>1409</sup> Patrick van der Weijden, 29 Mar 2007, T. 4296, 4302, 4304 – 4306; P514, Expert report Patrick van der Weijden, pp 11 – 12.

<sup>1410</sup> Patrick van der Weijden, 29 Mar 2007, T. 4305; P514, Expert report Patrick van der Weijden, pp 12 – 13.

<sup>1411</sup> Patrick van der Weijden, 29 Mar 2007, T. 4305 – 4306.

<sup>1412</sup> Ivan Stamenov, 22 Aug 2007, T. 9044; C10, Photographs taken during site visit, p. 1.

<sup>1413</sup> Ivan Stamenov, 22 Aug 2007, T. 9049 – 9050; C10, Photographs taken during site visit, p. 1.

<sup>1414</sup> Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 3.

<sup>1415</sup> W-62, 23 Jan 2007, T. 889 – 890.

<sup>1416</sup> Defence Final Brief, para. 181.

<sup>1417</sup> P514, Expert report Patrick van der Weijden, p. 11 (7,62x54R ammunition).

<sup>1418</sup> P514, Expert report Patrick van der Weijden, p. 13.

<sup>1419</sup> Patrick van der Weijden, 29 Mar 2007, T. 4304 – 4305.

<sup>1420</sup> Patrick van der Weijden, 29 Mar 2007, T. 4304 – 4305.

neither W-62 nor Ermin Krečo gave evidence of being shot at while taking shelter at the department store after having passed the passageway.

391. The Defence questioned Lt. Van der Weijden about how a shooter could see a target from the School of the Blind, considering the difference in elevation between the School and the passageway. Lt. Van der Weijden explained that the bullet's trajectory is such that over longer distances between the point of origin and the target, the bullet travels above the line of sight of the shooter and only meets up with the target at a certain distance.<sup>1421</sup> Col. Stamenov confirmed this.<sup>1422</sup> The further away the target, the bigger the curve, but the line is almost straight for the first 500 metres.<sup>1423</sup> Col. Stamenov testified that a M76 rifle was a "very successful" sniper rifle for distances up to 500 metres.<sup>1424</sup> Over a distance of approximately 300 metres, a bullet, when at its highest point above the line of vision, travels at approximately 20 centimetres above that line.<sup>1425</sup> Lt. Van der Weijden concluded that from 300 to 320 metres distance at a height of 20 metres, there is no difficulty in seeing the target and being able to shoot at it without the bullet striking the roof of the passageway.<sup>1426</sup>

392. Further, the Defence expert witness Col. Stamenov emphasised that no information about the entry and exit wound of the victim, or the angle at which the projectile or a fragment entered the victim's chest was available, although this information was crucial when determining the origin of fire.<sup>1427</sup> However, during cross-examination, he confirmed that the trajectory of a bullet in a body can change and that it may be difficult in those cases to establish the direction of fire based on that information.<sup>1428</sup>

## Findings

393. On the basis of the evidence of eyewitnesses W-62 and Ermin Krečo, the Trial Chamber is satisfied that on 24 October 1994, Adnan Kasapović, a 14-year-old boy and a civilian, was shot and killed when walking by a passageway in Vojničko Polje.<sup>1429</sup> There is no evidence suggesting that the shot originated from ABiH-held territory. The evidence from eyewitnesses and the Prosecution

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<sup>1421</sup> Patrick van der Weijden, 29 Mar 2007, T. 4297; P516, Sketch by Patrick van der Weijden.

<sup>1422</sup> Ivan Stamenov, 22 Aug 2007, T. 9039; D363, Drawing made by Ivan Stamenov.

<sup>1423</sup> Ivan Stamenov, 22 Aug 2007, T. 9039, 9040; D363, Drawing made by Ivan Stamenov.

<sup>1424</sup> Ivan Stamenov, 22 Aug 2007, T. 9040 – 9041.

<sup>1425</sup> Patrick van der Weijden, 29 Mar 2007, T. 4297, 4299; Ivan Stamenov, 22 Aug 2007, T. 9040; D363, Drawing made by Ivan Stamenov.

<sup>1426</sup> Patrick van der Weijden, 29 Mar 2007, T. 4297 – 4299, 4300, 4301, 4305 – 4306; P516, Sketch by Patrick van der Weijden.

<sup>1427</sup> Ivan Stamenov, 22 Aug 2007, T. 9035 – 9038, 9048, 9049, 9050; D360, Expert report Ivan Stamenov, p. 19.

<sup>1428</sup> Ivan Stamenov, 22 Aug 2007, T. 9070 – 9071, 9084.

<sup>1429</sup> The Trial Chamber notes that the Indictment specifies the location as "alley adjoining Đorde Andrijevića Kuna Street".



expert Lt. Van der Weijden shows that the shots came from the School of the Blind, a known sniper location of the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

394. With regard to the issue of presence of screens that would have obstructed the view of the shooter from the School of the Blind, the Trial Chamber takes into account the testimony of three witnesses. First, T-48 said that there was no direct line of sight at the time the incident because of the presence of screens. Second, T-48's evidence was confirmed by T-52. However, T-52 could not say whether there were any screens on the particular day of the incident. He testified to the presence of screens generally as a protective measure until the end of the war. Third, W-62 said that on that day, nothing obstructed the view from the School of the Blind to the place of shooting and that the blankets were hung up in the passageway only after the incident as a protective measure. It is important to note that neither T-48 nor T-52 was present at the location when the incident took place. The Trial Chamber accepts the evidence of W-62, who was an eyewitness to the incident, and, therefore, finds that nothing obstructed the view from the School of the Blind.

395. Based on the evidence of W-62 and Lt. Van der Weijden, the Trial Chamber is also satisfied that there was a direct line of sight from the School of the Blind to the passageway. Significantly, when Defence expert witness Col. Stamenov was shown the photograph of the passageway, he confirmed that there was a direct line of sight from the School of the Blind to the passageway. The Trial Chamber also notes that T-52, who was positioned in the School of the Blind, did not deny that the SRK soldiers at times went to upper floors of the School of the Blind. It is not convinced by his testimony that they never shot from that position. The Trial Chamber finds that the sniper in the School of the Blind, particularly with the benefit of telescopic sights and from the upper floors of the School of the Blind, had a clear view of Adnan Kasapović.

396. Col. Stamenov raised two other points: first, he was shown a NATO weather report for that particular day which stated that it was foggy and overcast, and he concluded that the visibility was poor on that day. On the other hand, W-62 testified that it was a nice day. The Trial Chamber is convinced that there was sufficient visibility in the early morning of that day for a shooter with telescopic sight to see Adnan Kasapović. This finding is buttressed by the NATO weather report tendered into evidence by the Defence which shows that in the early morning hours, the visibility was between 900 to 2,000 metres compared to the distance between the School of the Blind and Adnan Kasapović, which was established to be approximately 300 to 320 metres and, therefore, well within the optical range of the shooter.

397. Second, Col. Stamenov argued that the lack of any medical report as to the entry and exit wound was crucial for the determination of origin of the fire. However, the Trial Chamber notes that in cross-examination, he confirmed that the trajectory of a bullet in a body can change and that it may be difficult in those cases to establish the direction of fire with the help of that information. The Trial Chamber, therefore, attaches no weight to that argument.

b. Sniping of Fata Guta on 8 November 1994

398. In the morning of 8 November 1994, Fata Guta and W-50 left the house of W-50 in Gazin Han, Stari Grad municipality, in the eastern part of Sarajevo, to fetch some water from the Mošćanica spring.<sup>1430</sup> W-50 and Fata Guta were dressed in “civilian clothing”.<sup>1431</sup> W-50 carried jerry cans with a rope over her shoulders.<sup>1432</sup>

399. They walked down a pathway from the house towards the main road.<sup>1433</sup> About three to five metres before they had reached the main road, Fata Guta was hit by a bullet in her left hand.<sup>1434</sup> W-50 heard Fata Guta crying that she had been hit as she fell to the ground.<sup>1435</sup> There were two shots at the time Fata Guta was wounded.<sup>1436</sup> W-50 testified that there were no military targets or any military activity in the neighbourhood where Fata Guta was shot.<sup>1437</sup> W-50 testified that the pathway she and Fata Guta were walking on was in a civilian area but known to be dangerous because of sniping.<sup>1438</sup>

400. Fata Guta was bleeding profusely and W-50 helped her to move behind a holiday cottage where she administered first aid.<sup>1439</sup> Since the sniping continued, they stayed behind the cottage for about 20 minutes.<sup>1440</sup> After that W-50 took Fata Guta to the nearest doctor in Gazin Han to get medical care.<sup>1441</sup> On their way to and from the doctor, W-50 could hear the sound of gunshots from the direction of Zečija Glava, which is located in the East.<sup>1442</sup> W-50 and Fata Guta had to take a

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<sup>1430</sup> W-50, 28 Feb 2007, T. 2867 – 2868 (redacted), 2888 (redacted), 2900 (redacted); D90, Map of Sarajevo marked by W-50 (under seal).

<sup>1431</sup> P514, Expert report Patrick van der Weijden, p. 53.

<sup>1432</sup> W-50, 28 Feb 2007, T. 2868, P514, Expert report Patrick van der Weijden, p. 53.

<sup>1433</sup> W-50, 28 Feb 2007, T. 2871 – 2872; P290, p. 2 (under seal); P292, Photograph marked by W-50.

<sup>1434</sup> W-50, 28 Feb 2007, T. 2868, 2870, 2871 – 2872, 2891 – 2893, P290, p. 2 (under seal); P291, Videoclip of W-50 (under seal); P293, Photograph marked by W-50; P294, Criminal investigation file, dated 8 November 1994, p. 4; P455, Medical record Fata Guta (under seal); P514, Expert report Patrick van der Weijden, p. 51; D89, Photograph marked by W-50.

<sup>1435</sup> W-50, P290, p. 2 (under seal); P514, Expert report Patrick van der Weijden, p. 51.

<sup>1436</sup> W-50, 28 Feb 2007, T. 2869.

<sup>1437</sup> W-50, 28 Feb 2007, T. 2869, P290, p. 2 (under seal).

<sup>1438</sup> W-50, P290, p. 2 (under seal).

<sup>1439</sup> W-50, 28 Feb 2007, T. 2868, 2872 – 2873, P290, p. 2 (under seal); P293, Photograph marked by W-50.

<sup>1440</sup> W-50, 28 Feb 2007, T. 2873, P290, p. 2 (under seal).

<sup>1441</sup> W-50, 28 Feb 2007, T. 2873, P290, p. 2 (under seal); P514, Expert report Patrick van der Weijden, p. 51.

<sup>1442</sup> W-50, 28 Feb 2007, T. 2875, 2888; D90, Map of Sarajevo marked by W-50 (under seal).

different route on their return from the doctor.<sup>1443</sup> They passed by what W-50 called an ABiH “headquarters”, but there were no soldiers.<sup>1444</sup> The ABiH “headquarters” was located close to the Bosnian Serb positions, by the roadside, not far from the place where Fata Guta was wounded.<sup>1445</sup> According to W-50, the headquarters was staffed by civilians, some of whom were protecting the neighbourhood from the Bosnian Serbs, but there were no weapons at that location.<sup>1446</sup>

401. Later that same day Fata Guta received further treatment for her injuries at the Koševo Hospital.<sup>1447</sup> Fata Guta went to an outpatient’s clinic daily for ten days to dress the wound.<sup>1448</sup>

402. According to W-50, Fata Guta was hit by a shot that came from the direction of Zečija Glava, which was a Bosnian Serb-held position.<sup>1449</sup> W-50 was sure the shots came from the direction of Zečija Glava because she clearly heard the whistling sound of the bullet from that location.<sup>1450</sup> She was also certain that the shots were directed at Fata Guta and herself.<sup>1451</sup> It seemed that the sniper was intent on killing them because more shots tracked their movements behind cover and there was no one else around.<sup>1452</sup>

403. Lt. Van der Weijden concluded that the weapon used was either a M76 or M91 semi-automatic sniper rifle.<sup>1453</sup> This rifle would have enabled the shooter to rapidly fire consecutive shots, which would not have been possible with a bolt-action rifle.<sup>1454</sup> Lt. Van der Weijden explained that Zečija Glava is located at least 1,200 metres away from the incident site and that such a distance is beyond the shooting range of M76 or M91 sniper rifles.<sup>1455</sup> Shots against moving targets using such kind of weapons are extremely difficult at a range of 1,200 metres.<sup>1456</sup> W-50 and Fata Guta were moving when they were shot at, indicating that the shooter was able to follow them visually.<sup>1457</sup> Considering the available optics for M76 or M91 sniper rifles, the shooter would not have been able to follow the targets from the location of Zečija Glava.<sup>1458</sup> Even if the shooter had

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<sup>1443</sup> W-50, 28 Feb 2007, T. 2887, 2901.

<sup>1444</sup> W-50, 28 Feb 2007, T. 2886 – 2887. The Trial Chamber notes that Enes Jašarević testified that the word “headquarters” is used not exclusively used for “military headquarters”, but can also denote a regular work place, Enes Jašarević, 1 Mar 2007, T. 3023.

<sup>1445</sup> W-50, 28 Feb 2007, T. 2887 – 2888.

<sup>1446</sup> W-50, 28 Feb 2007, T. 2888.

<sup>1447</sup> P294, Criminal investigation file, pp 3, 4; P455, Medical record Fata Guta (under seal).

<sup>1448</sup> W-50, 28 Feb 2007, T. 2901, P290, p. 2 (under seal); P455, Medical record Fata Guta (under seal).

<sup>1449</sup> W-50, 28 Feb 2007, T. 2866 – 2867, 2868, 2873, 2882 – 2883, 2884 – 2885, P290, p. 2 (under seal); P293, Photograph marked by W-50; P294, Criminal investigation file, pp 1, 3-4.

<sup>1450</sup> W-50, 28 Feb 2007, T. 2875.

<sup>1451</sup> W-50, 28 Feb 2007, T. 2869.

<sup>1452</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1453</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1454</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1455</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1456</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1457</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1458</sup> P514, Expert report Patrick van der Weijden, p. 51.

access to better optics, the flight time of the bullet would have prevented the shooter from reacting to the movements of the targets.<sup>1459</sup> According to Lt. Van der Weijden, the shooter who fired at W-50 and Fata Guta must have been in a different position, but in the same line as that of Zečija Glava.<sup>1460</sup>

404. South-east of the incident site was a Bosnian Muslim position, which, however, did not offer a good view of the site.<sup>1461</sup> According to Lt. Van der Weijden, the shots were, therefore, not fired from that location.<sup>1462</sup> Between Zečija Glava and the location of the incident, there was an abandoned area, a so-called “no man’s land”.<sup>1463</sup> According to Lt. Van der Weijden, this area could have been easily infiltrated from Zečija Glava.<sup>1464</sup> He believed that snipers had indeed infiltrated the no man’s land and taken up positions in one of the abandoned houses, which were located 300 to 475 metres away from the incident site.<sup>1465</sup> He explained that, when a sniper fired from a room in a house, the room would muffle the sound and it would be very difficult to pinpoint the location due to the echoes of the shots between the walls of the surrounding houses.<sup>1466</sup>

405. Lt. Van der Weijden stated that since the incident took place in the morning, a shooter facing towards the West, had the sun in his back and W-50 and Fata Guta had the sun in their faces.<sup>1467</sup> This, together with the optics on the rifle, gave the shooter an optimal opportunity to identify the targets.<sup>1468</sup>

## Findings

406. The Trial Chamber finds that Fata Guta was shot and seriously wounded in her hand while she was on her way to fetch water from the Moščanica spring in Gazin Han. Although W-50 testified that the shots came from Zečija Glava, the evidence adduced by expert witness Lt. Van der Weijden indicates that Zečija Glava could not have been the shooter's position because of the insufficient range of the weapons, and that the shots must have come from the abandoned area closer to the incident site. The Trial Chamber notes that the evidence does not clearly indicate who had access to and could have infiltrated the abandoned area. The Trial Chamber, therefore, finds

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<sup>1459</sup> P514, Expert report Patrick van der Weijden, p. 51.

<sup>1460</sup> P514, Expert report Patrick van der Weijden, p. 51. *See also*, D360, Expert report Ivan Stamenov, p. 19.

<sup>1461</sup> P514, Expert report Patrick van der Weijden, pp 52-53.

<sup>1462</sup> P514, Expert report Patrick van der Weijden, pp 52-53.

<sup>1463</sup> P514, Expert report Patrick van der Weijden, pp 52-53.

<sup>1464</sup> P514, Expert report Patrick van der Weijden, pp 52-53.

<sup>1465</sup> P514, Expert report Patrick van der Weijden, p. 53.

<sup>1466</sup> P514, Expert report Patrick van der Weijden, p. 53.

<sup>1467</sup> P514, Expert report Patrick van der Weijden, p. 53.

<sup>1468</sup> P514, Expert report Patrick van der Weijden, pp 53 – 54.

that the evidence presented is insufficient to conclude that it was an SRK sniper who shot at Fata Guta from a position in the abandoned area.

c. Sniping of Šemsa Čovrk on 3 May 1995

407. The third of May 1995 was a sunny and warm day.<sup>1469</sup> In the area of Dobrinja, there was usually a lot of military activity.<sup>1470</sup> However, it was peaceful on that day and a cease-fire was in place.<sup>1471</sup>

408. The ground floors of the apartment buildings in Dobrinja C5, which is located close to Sarajevo Airport, were often shot at, owing to the proximity of the area to the confrontation line.<sup>1472</sup> For this reason, residents normally used the cellar to enter the buildings.<sup>1473</sup> Every building had its own entrance to a cellar, located at the backside.<sup>1474</sup> Šemsa Čovrk, a woman aged 27 years old, was walking towards the main entrance of building number 4, on Josipa Kraša Street, holding the hand of her five-year-old son.<sup>1475</sup>

409. Šemsa Čovrk was close to the entrance when a guard, who was a civilian, called her loudly.<sup>1476</sup> She stopped and turned towards the direction of the houses at the confrontation line.<sup>1477</sup> At this moment, Šemsa Čovrk was hit by a bullet on the right side of her abdomen and fell to the ground.<sup>1478</sup> She was moved by a neighbour and another man to a house about five or six metres across the street from the building.<sup>1479</sup> Shortly afterwards, she was transferred to the Dobrinja Hospital where she underwent surgery and stayed for seven days.<sup>1480</sup>

410. Lt. Van der Weijden concluded that the shooting position was 200 to 300 metres from the place where Šemsa Čovrk was hit, in the direction of the airport on SRK-held territory.<sup>1481</sup> W-32 said that the shots came from an area that was between some houses, and originated from the

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<sup>1469</sup> W-32, 4 Apr 2007, T. 4485.

<sup>1470</sup> W-32, 4 Apr 2007, T. 4502 – 4503.

<sup>1471</sup> W-32, 4 Apr 2007, T. 4485, 4502.

<sup>1472</sup> W-32, 4 Apr 2007, T. 4484, P528, p. 1 (under seal); P104, Street map of Sarajevo.

<sup>1473</sup> W-32, 4 Apr 2007, T. 4484 – 4486, 4500.

<sup>1474</sup> W-32, 4 Apr 2007, T. 4485 – 4486.

<sup>1475</sup> W-32, 4 Apr 2007, T. 4486, P528, p. 1 (under seal), P529, p. 2 (under seal).

<sup>1476</sup> W-32, 4 Apr 2007, T. 4494, 4498, 4500, P528, p. 1 (under seal). The Defence tried to ascertain in cross-examination the exact position of Šemsa Čovrk when she was hit. According to the testimony of W-32, Šemsa Čovrk passed a garage at her left in order to reach the hallway of the house, W-32, 4 Apr 2007, T. 4494 – 4495.

<sup>1477</sup> W-32, 4 Apr 2007, T. 4486 – 4487, 4494, 4499, 4501, P529, p. 2 (under seal); P530, Videoclip of sniping incidents (under seal).

<sup>1478</sup> W-32, 4 Apr 2007, T. 4487, 4494, P528, p. 1 (under seal), P529, p. 2 (under seal); P530, Videoclip of sniping incidents (under seal).

<sup>1479</sup> W-32, P528, p. 1 (under seal), P529, p. 2 (under seal).

<sup>1480</sup> P471, Medical report, p. 2 (under seal); W-32, P528, p. 1 (under seal).

<sup>1481</sup> P514, Expert report Patrick Patrick van der Weijden, p. 14. W-32 estimated the distance as approximately 100 metres, W-32, 4 Apr 2007, T. 4493; P530, Videoclip of sniping incidents (under seal).

houses near the airport.<sup>1482</sup> These houses were also in the direction of the confrontation line.<sup>1483</sup> In response to a question by the Defence, W-32 said that the shot came “probably from the front line.”<sup>1484</sup> In her view, the shots did not come from the airport because one could not see the airport directly from the place where Šemsa Čovrk was hit.<sup>1485</sup> Rather, the shots came from the airport settlements.<sup>1486</sup> W-32 did not know who was firing in this area or where the shots into Dobrinja C5 generally came from.<sup>1487</sup> According to W-32, the territory where the buildings of the airport settlement were located was controlled by “the aggressor”.<sup>1488</sup>

411. Lt. Van der Weijden did not regard the airport as a possible origin of fire, because between the buildings of Dobrinja C5 and the airport there are open fields with shrubs, blocking the view from a low or ground position.<sup>1489</sup> Furthermore, the airport was under the control of UNPROFOR which was patrolling the area with very strict rules of engagement towards combatants.<sup>1490</sup> Instead, he found that the houses to the West of the place where Šemsa Čovrk was hit were suitable positions for sniping, giving a shooter the height and the means to shoot from a concealed position.<sup>1491</sup> Lt. Van der Weijden concluded that the shooter was at a long range because of the difference in time between the sound of the shot and the impact.<sup>1492</sup> He also explained that, from a distance of 200 to 300 metres, a person with a five-year-old child could easily have been identified as civilian, even with the naked eye.<sup>1493</sup>

412. In cross-examination, the Defence suggested that there were several streets and rows of buildings between the confrontation line and the place where Šemsa Čovrk was shot.<sup>1494</sup> W-32 responded that there was only one other building between Josipa Kraša Street, number 4, and the confrontation line.<sup>1495</sup> On a map tendered by the Defence, the confrontation line as of September 1995 is depicted as running through the middle of the airport settlement.<sup>1496</sup> Thus the houses marked in Lt. Van der Weijden’s report as possible sniping positions would not have been located in territory controlled by the SRK.<sup>1497</sup> However, another map, tendered by the Prosecution,

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<sup>1482</sup> W-32, 4 Apr 2007, T. 4493; P530, Videoclip of sniping incidents (under seal).

<sup>1483</sup> W-32, 4 Apr 2007, T. 4495, 4501 – 4502, 4503.

<sup>1484</sup> W-32, 4 Apr 2007, T. 4503.

<sup>1485</sup> W-32, 4 Apr 2007, T. 4501 – 4502.

<sup>1486</sup> W-32, P528, p. 1 (under seal).

<sup>1487</sup> W-32, 4 Apr 2007, T. 4503.

<sup>1488</sup> W-32, 4 Apr 2007, T. 4492, P528, p. 1 (under seal). *See also*, Azra Šišić, 27 Feb 2007, T. 2851 – 2852; P288, Map marked by Azra Šišić.

<sup>1489</sup> P514, Expert report Patrick van der Weijden, p. 15.

<sup>1490</sup> P514, Expert report Patrick van der Weijden, p. 15.

<sup>1491</sup> P514, Expert report Patrick van der Weijden, p. 15.

<sup>1492</sup> P514, Expert report Patrick van der Weijden, p. 14.

<sup>1493</sup> P514, Expert report Patrick van der Weijden, p. 16.

<sup>1494</sup> W-32, 4 Apr 2007, T. 4501.

<sup>1495</sup> W-32, 4 Apr 2007, T. 4501.

<sup>1496</sup> D164, Map of Dobrinja marked by W-32; P328, Map marked by Ismet Hadžić; Ismet Hadžić, 5 Mar 2007, T. 3201.

<sup>1497</sup> D164, Map of Dobrinja marked by W-32; P514, Expert report Patrick van der Weijden, p. 16.

indicates that the confrontation line was just behind the first buildings on the eastern side of the airport settlement, so that some of the possible sniper positions were indeed in SRK-controlled territory.<sup>1498</sup> Further, the confrontation line, as drawn by Ismet Hadžić, ran through a building.<sup>1499</sup> There is no indication that this part of the confrontation line differed between 1994 and 1995. Ismet Hadžić, the Commander of 1<sup>st</sup> Dobrinja Brigade/155<sup>th</sup> Mountain Brigade, explained that from the beginning until the end of the war the separation line remained unchanged.<sup>1500</sup> The confrontation line ran along the road through the settlement of Dobrinja 5, the river, and the village towards the airport settlement.<sup>1501</sup> Ismet Hadžić further testified that the separation line between ABiH and VRS forces was only a road “five wide”.<sup>1502</sup> According to him, there were Bosnian Muslim forces in one part of the settlement and across the road in other buildings, there were Bosnian Serb forces.<sup>1503</sup>

413. Based on the information that the victim was hit with a single shot and that the closest buildings from where the shot could have been fired was at least 200 metres, Lt. Van der Weijden believed that it was unlikely that a machine gun was used to shoot Šemsa Čovrk.<sup>1504</sup> He concluded that the shot was most likely fired with a M76 or M91 sniper rifle.<sup>1505</sup>

### Findings

414. The Trial Chamber finds that Šemsa Čovrk, a civilian, was shot and seriously wounded while she was walking on Josipa Kraša Street in Dobrinja C5. However, it is not in a position to conclude that the victim was shot from a sniping position located in SRK-controlled territory. The evidence as to the exact location of the confrontation line in the airport settlement is very conflicting and inconclusive. A map tendered by the Defence shows that the confrontation line ran through the middle of the airport settlement, with the result that the house marked in Lt. Van der Weijden’s report as possible sniping position would not be located in SRK-controlled territory. On another map, tendered by the Prosecution, the confrontation line is shown as running behind the first building of the eastern side of the airport settlement, thereby possibly placing the sniping position in areas controlled by the SRK. The Trial Chamber also notes that one of the buildings from which Šemsa Čovrk could have been shot was shared by the two armies. In light of all the

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<sup>1498</sup> P330, Map marked by Ismet Hadžić. *See also*, D360, Expert report Ivan Stamenov, p. 31.

<sup>1499</sup> P330, Map marked by Ismet Hadžić.

<sup>1500</sup> Ismet Hadžić, 5 Mar 2007, T. 3198.

<sup>1501</sup> Ismet Hadžić, 6 Mar 2007, T. 3204 – 3205; Enes Jašarević, 1 Mar 2007, T. 3020 – 3021.

<sup>1502</sup> Ismet Hadžić, 6 Mar 2007, T. 3213.

<sup>1503</sup> Ismet Hadžić, 6 Mar 2007, T. 3213. *See also*, W-28, 22 Feb 2007, T. 2762; W-46, 15 Mar 2007, T. 3835 (closed session), P387, p. 28 (under seal).

<sup>1504</sup> P514, Expert report Patrick van der Weijden, p. 14.

<sup>1505</sup> P514, Expert report Patrick van der Weijden, p. 14.

evidence, the Trial Chamber is not satisfied that the victim was shot from a position on the territory controlled by SRK.

#### 5. Shelling during the Indictment Period

415. David Harland estimated that during the course of the war about half a million shells were fired at Sarajevo: “Sometimes we were able to determine very exactly where they came from and sometimes [we] weren’t. In nearly a hundred per cent of the cases, that is, with the exception of two or three, when we could confirm, we confirmed that they came from the Serb side.”<sup>1506</sup> He also stated that during the period of 1993 to 1995, roughly 1,000 shells per day landed on Sarajevo, with a lull in 1994 due to the cease-fire of that year.<sup>1507</sup>

416. The Trial Chamber recalls its finding that the SRK had modified air bombs and launched them from the ground.<sup>1508</sup> There is also evidence that air bombs, phosphorous bombs and other improvised weapons were used by the SRK.<sup>1509</sup> Nedžib Đožo explained that the “Serb forces” located on the slopes of Mount Trebević filled natural gas containers with explosives, put rubber tires around the containers and rolled them down the slope from Osmice.<sup>1510</sup> An UNPROFOR report noted that in the evening of 27 August 1995, “the BSA rolled a barrel full of fuel and explosive material from the Sharpstone Hill to explode at the bottom, they did so two times, although it did not cause casualties, [i]t caused a lot of fear among the people there.”<sup>1511</sup>

##### (a) Shelling by the SRK

417. Evidence was led that the civilian population in the city of Sarajevo was regularly the target of shelling by the SRK,<sup>1512</sup> including heavy shelling with modified air bombs in the city of Sarajevo, and other parts of the front.<sup>1513</sup> The Trial Chamber heard that the location of Sarajevo in a valley and the positions of the SRK on the hills around Sarajevo meant that the SRK could shell

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<sup>1506</sup> David Harland, P2, MT. 28668 – 28669.

<sup>1507</sup> David Harland, P1, MT. 26937. *See also*, W-137, 20 Feb 2007, T. 2559; W-12, 2 Mar 2007, T. 3073.

<sup>1508</sup> *See supra*, para 107.

<sup>1509</sup> *See also*, Milomir Šoja, 25 Apr 2007, T. 5121 – 5126; Martin Bell, 26 Apr 2007, T. 5240 – 5241, 5263 – 5264; Stevan Veljović, 29 May 2007, T. 5801; Ljuban Mrković, 13 July 2007, T. 8223 – 8224.

<sup>1510</sup> Nedžib Đožo, 14 Mar 2007, T. 3711 – 3713. *See also, supra*, Section II.B.2.(b)(ii) Modified Air Bombs.

<sup>1511</sup> P21, UNPROFOR sitrep, dated 28 August 1995, p. 5.

<sup>1512</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 962 – 963; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703; Thorbjorn Overgard, 18 Jan 2007, T. 639, 651 – 652; W-12, 2 Mar 2007, T. 3074 – 3075; Ismet Hadžić, 6 Mar 2007, T. 3211; Rijalda Musaefendić, 28 Feb 2007, T. 2936; Huso Palo, P 162, p. 2; Tarik Zunić, P185, p.3; W-57, P538, p. 2 (under seal); Ronald Eimers, P584, pp 2, 4, P585, pp 4, 5, 6, 7; P10, UNPROFOR weekly sitrep, 10 December 1994, pp 5 - 6; P19, UNPROFOR sitrep, 2 July 1995, p. 2; P343, Protest letter from Rupert Smith to Gen. Mladić, dated 26 June 1995. *See also* P777, 1<sup>st</sup> Iliđza Infantry Brigade command daily report, dated 21 June 1995, p. 2; T-2, 20 June 2007, T. 6959).

<sup>1513</sup> *See, e.g.*, P586, Expert report of Berko Zečević, p. 75; Berko Zečević, 20 Apr 2007, T. 4918 – 4919; W-137, 19 Feb 2007, T. 2471; Ekrem Suljević, P310, p. 2.



Sarajevo without restriction.<sup>1514</sup> As described by Martin Bell, the “burden of the bombardment fell on the civilians trapped in the city.”<sup>1515</sup>

418. Maj. Eimers noted that the Bosnian Serb Liaison Officers usually acknowledged that the firing had come from their side but “if we thought it was a civilian target they would often call it a military target.”<sup>1516</sup> Similarly, Brig. Mohatarem testified that when UNPROFOR confronted the “Serb commanders” with information about sniping or shelling, they would accept that they had been firing at their military counterparts, but they would not accept that they had been shooting at civilians.<sup>1517</sup> In Brig. Mohatarem’s view, “[t]hey didn’t care about it, actually.”<sup>1518</sup> Lt. Col. Konings explained that, in his view, there were very few military targets inside the city of Sarajevo, and that in most incidents of shelling he investigated, there were no military targets involved.<sup>1519</sup>

419. Maj. Veljović, who testified for the Defence, rejected the proposition that the SRK intentionally targeted the civilian population and areas inside the confrontation lines by shelling, maintaining that “[t]here was never any order issued to fire any heavy weaponry on Baščaršija, Čengić Vila, or any part of the town, except on the separation line and military positions. Mortars were used to target military positions, but there was a strict ban referring to all other parts.”<sup>1520</sup> He further explained that “there was no mistake-free firing”; a projectile might miss a target by 50 to 100 metres and fall “into a built-up inhabited area of town” if, for example, the sufficient charge was not used, the gunpowder was damp or a soldier who was “upset, psychologically” forgot to measure the right angle.<sup>1521</sup>

420. A number of witnesses expressed the view that the shelling was carried out in an indiscriminate manner.<sup>1522</sup> David Harland explained that in 1993 and 1994, but probably more in the latter half of 1994, the shelling was not concentrated against military targets. Instead, shells were dropped apparently randomly across densely-populated civilian areas in a way that would cause a small number of casualties in a large number of places.<sup>1523</sup> Lt. Col. Konings testified that

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<sup>1514</sup> W-116, 18 Apr 2007, T. 4687. *See also*, P617, Videoclip of interview with Radovan Karadžić.

<sup>1515</sup> Martin Bell, 27 Apr 2007, T. 5279. *See also*, John Jordan, P267, p. 6.

<sup>1516</sup> Ronald Eimers, P585, p. 4, 20 Apr 2007, T. 4786. *See supra*, Section II.B.1(a) VRS and SRK.

<sup>1517</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710.

<sup>1518</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710.

<sup>1519</sup> Harry Konings, 12 Mar 2007, T. 3560.

<sup>1520</sup> Stevan Veljović, 29 May 2007, T. 5754, 5806. *See also*, Simo Tuševljak, 11 July 2007, T. 8085, 12 July 2007, T. 8109, 8112; Ljuban Mrković, 12 July 2007, T. 8158.

<sup>1521</sup> Stevan Veljović, 30 May 2007, T. 5854 – 5855, 5856.

<sup>1522</sup> Ismet Hadžić, 6 Mar 2007, T. 3211, 3236; W-12, 2 Mar 2007, T. 3074 – 3075; Thomas Knustad, 13 Feb 2007, T. 1993; W-137, 20 Feb 2007, T. 2553; Tarik Žunić, P185, p. 3; W-156, P625, p. 11 (under seal); John Jordan, P267, p. 6. *See also*, P619, Videoclip of shelling in Sarajevo.

<sup>1523</sup> David Harland, 15 Jan 2007, T. 330 – 331; David Harland, P1, MT. 26951. *See also*, John Jordan, P267, p. 7.

one of the consequences of using mortars as “harassing fire”, as it was used in Sarajevo, is the infliction of a lot of harm, especially against civilians.<sup>1524</sup>

421. Milan Mandilović recalled that on 16, 17, and 18 June 1995, the start of an ABiH offensive, Sarajevo was intensively shelled: “Terrible detonations were heard in town; a large number of shells landed in the town.”<sup>1525</sup> The “attempt to lift the blockade” and the Markale Market II incident that took place on 28 August 1995 were “firmly etched” in Milan Mandilović’s mind “because they marked the onset of terrible, complete destruction.”<sup>1526</sup>

422. UNPROFOR reports recorded numerous incidents of shelling of Bosnian Muslim-held areas of Sarajevo, many of which resulted in casualties.<sup>1527</sup> In approximately half of the shelling investigations Bogdan Vidović attended, from August 1994 until November 1995, there were civilian casualties.<sup>1528</sup>

423. Witnesses described civilian areas that were regularly targeted by shelling. Such areas included parks, cemeteries, market places and places where people collected water.<sup>1529</sup> Azra Šišić recalled that it was “a risky business” to leave one’s apartment building to collect food from 100 to 200 metres away because of the shelling.<sup>1530</sup>

424. Sanjin Hasanefendić testified that the entire Novo Sarajevo municipality was exposed to artillery fire, but added that the residential areas of Heroes’ Square, Pofalići and Velešići were the most exposed.<sup>1531</sup> Nefa Šljivo stated that there was shelling in Hrasnica and W-82 stated that there was a lot of shelling in Sokolovići.<sup>1532</sup> Evidence also indicates that civilian buildings were regularly shelled and that shells regularly landed very near to peoples’ houses.<sup>1533</sup> A number of witnesses testified about the shelling of their homes and surrounding areas from Špicasta Stijena and other Bosnian Serb-held areas.<sup>1534</sup> W-12 said that there was nothing which could be done about the

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<sup>1524</sup> Harry Konings, 12 Mar 2007, T. 3560.

<sup>1525</sup> Milan Mandilović, 18 Jan 2007, T. 617 – 618. *See also supra*, paras 784 - 785.

<sup>1526</sup> Milan Mandilović, 17 Jan 2007, T. 570 – 571.

<sup>1527</sup> *See infra*, Section IIE.7.b Physical Impact. For an example, *see* P12, UNPROFOR daily sitrep, dated 14 April 1995, p. 2; Nedžib Dozo, 14 Mar 2007, T. 3705 – 3706.

<sup>1528</sup> Bogdan Vidović, 13 Feb 2007, T. 2066 – 2067.

<sup>1529</sup> David Harland, 15 Jan 2007, T. 345; Thomas Knustad, 13 Feb 2007, T. 1993; P16, UNPROFOR sitrep, 24 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>1530</sup> Azra Šišić, 27 Feb 2007, T. 2830. *See also*, Rialda Musaeferović, P295, p. 4.

<sup>1531</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2303, 2391; P232, Photograph marked by Sanjin Hasanefendić. *See also*, Predrag Carkić, 19 June 2007, T. 6870 – 6871; D70, Photograph marked by Sanjin Hasanefendić; P850, UNMO sitrep, 9 July 1995, pp 2, 11.

<sup>1532</sup> Nefa Šljivo, P531, p. 2, P532, p. 2; W-82, P228, p. 2 (under seal).

<sup>1533</sup> Harry Konings, 13 Mar 2007, T. 3603; W-57, P538, p. 2 (under seal); Nefa Šljivo, P531, p. 2, P532, p. 2; UNPROFOR protest letter, 2 December 1994, p. 3.

<sup>1534</sup> Bogdan Vidović, 13 Feb 2007, T. 2062; Harry Konings, 13 Mar 2007, T. 3603; Kemal Bućo, 2 Feb 2007, T. 1510; Sanela Dedović, P110, p.2; W-12, P307, p. 2 (under seal); Tarik Žunić, P185, pp 2 – 3.

shelling except putting sandbags against the windows of the house and covering the windows with blankets.<sup>1535</sup>

425. As was the case before the Indictment period, the hospitals within the confrontation lines were shelled and sniped.<sup>1536</sup> The Trial Chamber heard evidence that during the Indictment period, the State Hospital was hit about a dozen times and shells landed in its compound.<sup>1537</sup> The southern part of the hospital, facing the frontline, was affected much more than other parts.<sup>1538</sup> Witnesses stated that the fire came from the Jewish Cemetery, Grbavica, Mount Trebević and Vraca.<sup>1539</sup> Milan Mandilović stated that all the floors in the hospital were affected by the destructive impact of artillery weapons and that there was not a single window of the hospital that was not broken.<sup>1540</sup>

426. According to witnesses, there were no military facilities in the immediate vicinity of the State Hospital in 1994 and 1995.<sup>1541</sup> Milan Mandilović, a doctor at the State Hospital, testified that, during the Indictment period, he never saw the ABiH firing mortars from the grounds of the hospital nor did he see ABiH tanks or heavy weaponry in or around the hospital complex.<sup>1542</sup> He noted that the hospital's location between two streets would have required weapons with a manoeuvrability that such weapons did not have.<sup>1543</sup> Maj. Gen. Karavelić noted that his command post was 200 to 300 metres from the hospital, and testified that he immediately dispatched police to investigate reports of firing from the State Hospital and the Koševo Hospital and that they "never found anything" to indicate the presence of mobile mortars near the hospitals.<sup>1544</sup> However, T-60 stated that on a weekly basis from mid-1994 until November 1995, he saw a cannon perhaps 20 metres away from the gate of the hospital and within the perimeter of the hospital, being fired mostly on the neighbourhood of Vraca.<sup>1545</sup> According to T-60, the Bosnian Serbs responded to this only when heavy artillery was fired upon their positions.<sup>1546</sup>

427. The Koševo Hospital and the area around it were also shelled.<sup>1547</sup> Maj. Gen. Nicolai testified that the Koševo Hospital was shelled by the SRK on 16 May 1995.<sup>1548</sup> He stated that the

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<sup>1535</sup> W-12, P307, p. 2 (under seal).

<sup>1536</sup> See *supra*, Section II.C.a. Sniping and Shelling of Areas within the Confrontation Lines.

<sup>1537</sup> Bakir Nakaš, 25 Jan 2007, T. 1071.

<sup>1538</sup> Milan Mandilović, 17 Jan 2007, T. 563 – 564, 18 Jan 2007, 604; P47, Photograph of State Hospital.

<sup>1539</sup> Milan Mandilović, 17 Jan 2007, T. 564; Bakir Nakaš, 25 Jan 2007, T. 1070 – 1071, 29 Jan 2007, T. 1143. See also *supra*, Section II.B.3 Areas of Responsibility and Confrontation Lines - SRK and 1<sup>st</sup> Corps of the ABiH.

<sup>1540</sup> Milan Mandilović, 17 Jan 2007, T. 563 – 564, 584; P47, Photograph of State Hospital.

<sup>1541</sup> Bakir Nakaš, 25 Jan 2007, T. 1068 – 1069, 29 Jan 2007, T. 1121 – 1122; Milan Mandilović, 17 Jan 2007, T. 562.

<sup>1542</sup> Milan Mandilović, 17 Jan 2007, T. 562.

<sup>1543</sup> Milan Mandilović, 17 Jan 2007, T. 562.

<sup>1544</sup> Vahid Karavelić, P494, GT. 12030.

<sup>1545</sup> T-60, 25 July 2007, T. 8796, 8799 – 8801, 8846 – 8850, 8853 – 8857; P916, Map marked by T-60 (under seal).

<sup>1546</sup> T-60, 25 July 2007, T. 8796, 8799 – 8800.

<sup>1547</sup> Thomas Knustad, 13 Feb 2007, T. 1993; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995; T-61, 9 July 2007, T. 7870 – 7873; Fadila Serdarević, P641, p. 6.

<sup>1548</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992.

headquarters of a unit of the ABiH was situated near the Zetra Stadium, which was about one kilometre away from the Koševo Hospital.<sup>1549</sup> Maj. Gen. Karavelić stated that it could not be confirmed that the 1<sup>st</sup> Corps had fired from its grounds.<sup>1550</sup> However, there is evidence of ABiH firing from the area around the hospital. An UNMO report dated 17 June 1995 recorded that while the Koševo Hospital was hit, “outgoing rounds” had been observed in the area.<sup>1551</sup> T-61, a Bosnian Serb doctor who worked at the Koševo Hospital until January 1994, testified that throughout the whole war, soldiers were present in the area around the hospital.<sup>1552</sup> However, Maj. Gen. Nicolai testified that the SRK’s aim would have had to be “awfully inaccurate” to miss the ABiH headquarters by one kilometre and instead hit the hospital.<sup>1553</sup>

428. The evidence of witness T-60 pertaining to the presence of a cannon in the vicinity of the State Hospital is not supported by other evidence. Bakir Nakaš, the Director of the State Hospital, did not confirm that the ABiH was present inside the compound of the State Hospital, or in its immediate vicinity.<sup>1554</sup> This was confirmed by Milan Mandilović, but he was not asked in cross-examination about the presence of ABiH in and around the hospital. The evidence pertaining to Koševo Hospital does not show that the ABiH was located in the compound of the hospital itself. There is no evidence that the civilian status of the hospitals changed during the Indictment period. In light of all the evidence relating to this matter, including that of the skill of the mortar crews, the Trial Chamber is satisfied that both hospitals were intentionally targeted by the SRK. As a matter of international humanitarian law, hospitals are not legitimate military targets.

429. The “Blue Routes”, which were established in early 1994, were land routes over which basic necessities, such as food and medical supplies, could be brought into Sarajevo and which allowed civilians to move between different areas.<sup>1555</sup> One of the Blue Routes, referred to by some witnesses as the “convoy road”, ran over Mount Igman into Hrasnica. Witnesses testified that the ABiH controlled the convoy road and that it was used by the ABiH, civilians and humanitarian aid workers.<sup>1556</sup> However, Lt. Col. Louis Fortin only saw UNHCR and Bosnian Muslim humanitarian aid convoys on the convoy road and he never saw any ABiH military convoys or any ABiH arms being transported there.<sup>1557</sup> According to other witnesses, it was not possible to be sure whether at a

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<sup>1549</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995. *See also*, P391, UNPROFOR report, 17 November 1994, p. 2.

<sup>1550</sup> Vahid Karavelić, P494, GT. 11884.

<sup>1551</sup> P891, UNMO daily sitrep, dated 17 June 1995, pp 13-14.

<sup>1552</sup> T-61, 9 July 2007, T. 7832 – 7833, 7855-7856, 7860.

<sup>1553</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995.

<sup>1554</sup> Bakir Nakaš, 25 Jan 2007, T. 1068 – 1069, 29 Jan 2007, T. 1121 – 1122.

<sup>1555</sup> David Harland, 16 Jan 2007, T. 461, P2, MT. 28638; Ismet Hadžić, 6 Mar 2007, T. 3237; Milan Mandilović, 17 Jan 2007, T. 569.

<sup>1556</sup> David Fraser, 8 Feb 2007, T. 1842; Thorbjorn Overgard, 19 Jan 2007, T. 687; Hussain Ijaz, 27 Apr 2007, T. 5405; Ronald Eimers, P585, p. 7. *See also supra*, para. 125, regarding Mount Igman.

<sup>1557</sup> Louis Fortin, 17 Jan 2007, T. 547. *See also*, Ronald Eimers, 20 Apr 2007, T. 4812–4813.

particular time the road was being used by civilians or the ABiH. Maj. Eimers stated that the same vehicle was sometimes used for both military and civilian purposes, and the road was most frequently used when it was dark.<sup>1558</sup>

430. There is evidence that no distinction was made as to who was on the convoy road; the UN, civilians, military personnel, humanitarian aid convoys and NGO personnel were all fired at by the SRK.<sup>1559</sup> Col. Hussain Ijaz, a Pakistani UNMO, testified that if there was a vehicle moving on the convoy road, “rest assured that it will be fired upon” from Ilidža.<sup>1560</sup> In the view of David Harland, the SRK would shoot at convoys to try and stop them at times of greater political tension.<sup>1561</sup> Gen. Smith stated that he expected the Bosnian Serbs to try and close the convoy road as part of their strategy to “maintain the siege as tightly as they could”, as this was one of the only routes by which supplies could be brought into Sarajevo.<sup>1562</sup> During cross-examination, Brig. Gen. Fraser conceded that the road could be considered a “legitimate military target”, but only so long as “you don’t kill civilians”.<sup>1563</sup>

431. In its Final Brief, the Defence submitted that the convoy road was a “legitimate military objective”, stating that the road “was also used by UNPROFOR convoys, but its true masters were the BiH Government and the ABiH.”<sup>1564</sup> The Prosecution argued that the convoy road was used by civilians, the UN and ABiH, and that it was “impossible for the SRK to be sure that the target was military. The SRK fire onto the Igman Road was indiscriminate” and another example of “the Accused’s failure to follow the principle of distinction.”<sup>1565</sup>

432. During the period of May, June and July 1995, the SRK also targeted UNPROFOR with shelling.<sup>1566</sup> According to David Harland, the reason behind the shelling was an attempt to limit the UN’s observation activities.<sup>1567</sup> On 29 June 1995, the PTT Building was shelled with three mortar

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<sup>1558</sup> Ronald Eimers, 20 Apr 2007, T. 4811 – 4812.

<sup>1559</sup> David Harland, 15 Jan 2007, T. 344; Thorbjorn Overgard, 18 Jan 2007, T. 651 – 652; Ronald Eimers, 20 Apr 2007, T. 4811 – 4812, P584, p. 3, P585, p. 7; Ismet Hadžić, 6 Mar 2007, T. 3237; Hussain Ijaz, 27 Apr 2007, T. 5406 – 5409; P203, UNPROFOR report, 14 September 1994, pp 4, 7; P20, UNPROFOR sitrep, 8 July 1995, p. 3.

<sup>1560</sup> Hussain Ijaz, 27 Apr 2007, T. 5406 – 5409; P634, Map of Sarajevo marked by Hussain Ijaz. *See also*, Thorbjorn Overgard, 18 Jan 2007, T. 650 – 651; Ronald Eimers, 20 Apr 2007, T. 4808, 4812 – 4813, P585, P. 6.

<sup>1561</sup> David Harland, 15 Jan 2007, T. 345.

<sup>1562</sup> Rupert Smith, 7 Mar 2007, T. 3310, P334, pp 9 – 10. *See also*, David Harland, 16 Jan 2007, T. 461, 464 – 465; P24, UNPROFOR report, 12 March 1995, pp 1 – 2; P25, UNPROFOR cable, 14 March 1995, p. 2; P11, Report on implementation of COHA, 29 March 1995, p. 4; P16, UNPROFOR sitrep, 24 June 1995, p. 4.

<sup>1563</sup> David Fraser, 8 Feb 2007, T. 1842.

<sup>1564</sup> Defence Final Brief, paras 59 – 60.

<sup>1565</sup> Prosecution Closing Brief, para. 375.

<sup>1566</sup> David Harland, 15 Jan 2007, T. 345 – 346; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 716 – 717; P17, UNPROFOR report, dated 30 June 1995; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 2; P843, UNMO daily sitrep, dated 23 July 1995, pp 2 - 3; P893, UNPROFOR daily sitrep, dated 22 June 1995, p. 3; P898, UNMO daily sitrep, dated 3 July 1995, p. 2; D140, Order by the SRK Commander banning fire at UN forces, 25 July 1995; P745, UNPROFOR Military Police report, dated 27 August 1995. *Cf.* Stevan Veljović, 30 May 2007, T. 5875 – 5876.

<sup>1567</sup> David Harland, 15 Jan 2007, T. 346. *See also*, P17, UNPROFOR report, 30 June 1995.

rounds.<sup>1568</sup> Two of the mortar shells hit the PTT Building and one fell next to it.<sup>1569</sup> Lt. Col. Fortin believed that the PTT Building was directly targeted by the SRK:

“Col. Meille phoned Indić who did not deny it was their doing, however he said it was not intended to hit us, but rather the Bosnian mortar positions situated near the PTT. This situation had occurred in the past, but the Serbs had been more accurate in their targeting. We took it to be a warning about the use of our own mortars against them.”<sup>1570</sup>

(b) Shelling by the ABiH

433. The Defence questioned witnesses on the possibility of the ABiH firing at their own people within the confrontation lines. Evidence was presented that the ABiH fired at areas within the city of Sarajevo.<sup>1571</sup> Brig. Gen. Fraser recalled that on 18 and 19 September 1995, there were two mortar attacks onto the city within approximately 40 minutes of each other.<sup>1572</sup> Both shelling incidents had the same point of impact, resulting in twice the number of casualties.<sup>1573</sup> The crater analysis, part of the investigation into the incidents that was carried out jointly with the BiH police and UNPROFOR, indicated that the shells had come from two different directions; the first rounds came from SRK-held territory, the second rounds came from Bosnian Muslim-held territory.<sup>1574</sup> Brig. Gen. Fraser characterised this incident as one “that was precipitated by the Serbs but finished off by the Bosnians, the Muslims.”<sup>1575</sup>

434. According to T-60, the ABiH fired from Alipašino Polje over Vojničko Polje, which was 100 metres from Alipašino Polje, and that many buildings in Vojničko Polje “were damaged more from the side where BH army had its positions than from the side where the Serb army had its positions.”<sup>1576</sup> The Trial Chamber recalls that Alipašino Polje and Vojničko Polje were located in ABiH-held territory.<sup>1577</sup>

435. However, Lt. Com. Knustad testified that, in the investigations in which they were involved, it was not determined that the ABiH shelled the Bosnian Muslim population.<sup>1578</sup> He further noted

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<sup>1568</sup> Louis Fortin, P27, p. 15; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>1569</sup> Louis Fortin, P27, p. 15.

<sup>1570</sup> Louis Fortin, P27, p. 15. *See also*, P19, UNPROFOR sitrep, 2 July 1995, p. 3. An UNPROFOR report addressing the shelling stated “The Serbs seem to have no qualms about using counter-battery fire against Bosnian weapons close to UN facilities. They may also be using the proximity of Bosnian weapons as a convenient excuse for targeting UNPROFOR – as appears to have been the case with last night’s shelling of the PTT building”, D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2.

<sup>1571</sup> John Jordan, 21 Feb 2007, T. 2639, P267, p. 6; T-7, 19 Jun 2007, T. 6843 – 6844; Siniša Krsman, 6 Jun 2007, T. 6254 – 6255.

<sup>1572</sup> David Fraser, 7 Feb 2007, T. 1779.

<sup>1573</sup> David Fraser, 7 Feb 2007, T. 1779.

<sup>1574</sup> David Fraser, 7 Feb 2007, T. 1779 – 1780.

<sup>1575</sup> David Fraser, 7 Feb 2007, T. 1778.

<sup>1576</sup> T-60, 25 July 2007, T. 8795 – 8796.

<sup>1577</sup> *See supra*, para. 121, and *infra*, para. 902. *See also*, T-52, 28 June 2007, T. 7432, 7458; D279, Photograph marked by T-52; T-60, 25 July 2007, T. 8815 – 8817, 8843 – 8844; D352, Photograph marked by T-60 (under seal).

<sup>1578</sup> Thomas Knustad, 13 Feb 2007, T. 2006 – 2007, 2030, 2042 – 2043.

that, “we were very well aware of the fact that the government army did not have very much heavy weapons at all.”<sup>1579</sup>

436. In addition, according to John Jordan, rumours that the ABiH fired at the Bosnian Muslim population circulated among the various groups of people in and around Sarajevo, “particularly among the folks on the BSA side.”<sup>1580</sup> Neither John Jordan nor Gen. Smith believed these rumours.<sup>1581</sup> John Jordan testified that he “didn’t think that the [ABiH] had the ability to pull that off without everyone knowing it.”<sup>1582</sup>

437. Witnesses also testified that they had heard that the ABiH staged incidents for propaganda purposes or to gain sympathy, but they did not see such incidents themselves. Brig. Gen. Fraser recalled that he was told by French UNPROFOR soldiers that they had seen ABiH soldiers filming a staged attack on children, in which no one was actually hurt, for broadcast on television.<sup>1583</sup> According to David Harland, the UN in Sarajevo felt that the Bosnian Muslims wanted the media to see the Bosnian Serbs attacking, so the Bosnian Muslims sometimes had to create the conditions for that to happen.<sup>1584</sup> Martin Bell testified that the ABiH and the Bosnian Muslim Government were facing a very critical situation, especially with regard to their relative lack of heavy weapons, that is, that they would only be able to break the siege by making “sacrificial attacks”, which they attempted.<sup>1585</sup> However, he also expressed his view that while the “Government forces” had an interest in trying to break the siege and attracting the sympathy and intervention of the outside world, he had “no evidence whatever that they would fire on their own people to do that” and did not give credence to such stories.<sup>1586</sup>

438. In cross-examination, Gen. Smith stated that he heard that the ABiH and the Bosnian Muslim Government used the civilian population in order to “attain certain military and political goals” but that he never saw any evidence to support the assertions that “always came from the other side.”<sup>1587</sup> In addition, Ismet Hadžić rejected the Defence proposition that the ABiH was “causing incidents in Sarajevo” as a “smoke-screen” to divert attention away from the use of the

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<sup>1579</sup> Thomas Knustad, 13 Feb 2007, T. 2006 – 2007, 2034. Cf. Stevan Veljović, 31 May 2007, T. 5857, 5916 – 5917.

<sup>1580</sup> John Jordan, 21 Feb 2007, T. 2640.

<sup>1581</sup> John Jordan, 21 Feb 2007, T. 2640; Rupert Smith, 7 Mar 2007, T. 3338, 3340.

<sup>1582</sup> John Jordan, 21 Feb 2007, T. 2640.

<sup>1583</sup> David Fraser, 7 Feb 2007, T. 1781.

<sup>1584</sup> David Harland, P2, MT. 28699. *See also*, W-46, 15 Mar 2007, T. 3817 – 3818, 3895, 16 Mar 2007, T. 3908 – 3909 (closed session), P387, p. 15 (under seal); T-48, 22 June 2007, T. 7180 – 7181; Vljako Božić, 17 July 2007, T. 8484.

<sup>1585</sup> Martin Bell, 27 Apr 2007, T. 5286 – 5287.

<sup>1586</sup> Martin Bell, 26 Apr 2007, T. 5266 – 5267.

<sup>1587</sup> Rupert Smith, 7 Mar 2007, T. 3342, 3343.

tunnel.<sup>1588</sup> He stated: “[w]e went through the tunnel trying to breakthrough the siege and to try and drive [“the aggressor”] away, so that we could live in Sarajevo.”<sup>1589</sup>

## 6. Shelling Incidents Representative of the “Campaign”

439. In addition to the scheduled shelling incidents, the Prosecution presented evidence of specific unscheduled shelling incidents, that is, incidents which are not enumerated in the Second Schedule to the Indictment. This evidence includes incidents in which shelling from SRK-held positions and from other locations caused civilian casualties.<sup>1590</sup> The Trial Chamber will not address all of them. However, it has taken them into account in its deliberations. By way of example, the Trial Chamber presents one of the incidents below.

### (a) Unscheduled Shelling Incidents

440. On 28 June 1995, at about 1030 hours, a modified air bomb hit an apartment building on Geteova Street, number 5.<sup>1591</sup> Three people died in the explosion and seven people were injured.<sup>1592</sup> The explosion destroyed apartments on five floors, some apartments being completely destroyed,

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<sup>1588</sup> Ismet Hadžić, 6 Mar 2007, T. 3288 – 3289.

<sup>1589</sup> Ismet Hadžić, 6 Mar 2007, T. 3289.

<sup>1590</sup> See e.g. *Shelling in Hrasnica, Sokolovići and Butmir from Ilidža, 17 November 1994*: Ronald Eimers, P584, p. 3; *Shelling in the Centar Municipality from Mrkovići, 22 May 1995*: P798, Official report, pp 1 – 2 (under seal); *Shelling in the Centar Municipality from Grbavica, 11 June 1995*: P220, Criminal investigation file; Bogdan Vidović, 14 Feb 2007, T. 2094, 2100 – 2101; *Shelling in Alipašino Polje from Ilidža, 22 June 1995*: W-138, 30 Jan 2007, T. 1212, 1217, 1224, 1230, 1233, 1235 – 1238, 1240 – 1241, 31 Jan 2007, T. 1264 – 1265, 1 Feb 2007, T. 1350 – 1351, 1379 – 1381, 1384 – 1393; W-137, 20 Feb 2007, T. 2534 – 2537; Per Anton Brennskag, 8 Mar 2007, T. 3495 – 3496, 3499 – 3500; P121, Set of reports regarding shelling Geteova Street, number 12 (under seal); P122, Sketch of shelling site; P125, Set of photographs regarding shelling Geteova Street, number 12; P130, Forensic report by KDZ, dated 18 July 1995; *Shelling in Dobrinja from Lukavica, 25 June 1995*: P800, Official report, dated 26 June 1995 (under seal); P801, Report by KDZ, dated 26 September 1995; *Shelling on Koševo Street from Žlatište, 26 June 1995*: P325, Official report, dated 26 June 1995; *Shelling on the TV Building from Rajlovac, 29 June 1995*: W-116, P550, pp 2 – 3 (under seal); *Shelling in Novo Sarajevo from Mrkovići and Biosko, 30 June 1995*: P233, Criminal investigation file, dated 30 June 1995, p. 2; P234, Set of photographs regarding shelling Paromlinska Street, p. 2; P235, Forensic report by KDZ, dated 16 July 1995; Sanjin Hasanefendić, 16 Feb 2007, T. 2307 – 2311; *Shelling in Novo Sarajevo from Vraca, 18 July 1995*: Sanjin Hasanefendić, 16 Feb 2007, T. 2311 – 2314, 2361 – 2367, 2369 – 6370; P236, Official note, dated 19 July 1995; P238, Forensic report by KDZ, dated 22 September 1995; P237, Forensic report, dated 18 July 1995; P849, UNMO daily sitrep, dated 19 July 1995, p. 19; *Shelling of apartment block in the old town from Špicasta Stijena, 28/29 August 1995*: Harry Konings, 13 Mar 2007, T. 3603. For evidence pertaining to shelling from other, unspecified locations, See e.g. *Shelling of the State Hospital, late summer 1994*: Milan Mandilović, 17 Jan 2007, T. 564, 566 – 567, 18 Jan 2007, T. 595; *Shelling of an apartment building in Hrasno, 5 July 1995*: Sanjin Hasanefendić, 16 Feb 2007, T. 2376 – 2377; *Shelling of a bus in Dobrinja, 18 August 1995*: W-138, 31 Jan 2007, T. 1325 – 1333, 1335, 1 Feb 2007, T. 1349 – 1351, 1418 – 1421; P148, Forensic investigation file, dated 18 August 1995 (under seal).

<sup>1591</sup> W-138, 30 Jan 2007, T. 1241, 31 Jan 2007, T. 1286 – 1287, 1 Feb 2007, T. 1350 – 1351; W-28, P276, p. 2; P138, Forensic report, dated 28 June 1995 (“Forensic report”), p. 1.

<sup>1592</sup> W-28, P276, p. 2; P140, Official note, dated 27 July 1995, p. 1; P141, Official note, dated 28 June 1995, p. 2; The Trial Chamber notes that P138 reports that two people were killed and six people suffered injuries, P138, Forensic report, p. 1. W-138 testified that later information indicated that there were additional casualties, W-138, 31 Jan 2007, T. 1293 – 1294.



while others were partially destroyed.<sup>1593</sup> The three persons who were killed and the seven who were injured all lived in the apartment building.<sup>1594</sup>

441. Remnants of the projectile were retrieved from one of the apartments.<sup>1595</sup> Those traces were sent for analysis.<sup>1596</sup> The traces were determined to be rocket motors and a plate, which “most probably came from the propellant assembly of a modified FAB-250 aircraft bomb, calibre 325 mm.”<sup>1597</sup> Based on the trace evidence and the “state of the site”, the azimuth was determined to have been 261 degrees, with a margin of error of 25 degrees, indicating that the projectile was fired from the direction of Ilidža, SRK-held territory.<sup>1598</sup>

442. Berko Zečević, the expert for the Prosecution on modified air bombs, analysed the evidence regarding this shelling incident. In his report, he states that the azimuth was 285 degrees, with a distance from the launch site of 6,000 metres, “that is, the wider area of Butila.”<sup>1599</sup> Ilidža is located to the south-west of Alipašino Polje, whereas Butila is located to the north-west of Alipašino Polje.<sup>1600</sup> The Trial Chamber notes that the finding of the BiH police on the azimuth includes a large margin of error and that 281 degrees falls within that margin of error. The Trial Chamber further notes that the effective range of a FAB-250 air bomb is between 5,780 and 7,680 metres.<sup>1601</sup>

## Finding

443. The Trial Chamber recalls its earlier finding that the ABiH was not in possession of modified air bombs.<sup>1602</sup> The Trial Chamber is satisfied that the modified air bomb originated from SRK-held territory, either Ilidža or Butila, and that it was launched by a member of the SRK. The Trial Chamber is also satisfied that three people died and seven people were injured in the explosion, all of them civilians living in the residential apartment building at Geteova Street, number 5.

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<sup>1593</sup> P139, Set of photographs regarding shelling Geteova Street, number 5, pp 3 – 4; P141, Official note, p. 2; W-138 testified that three floors were destroyed, W-138, 31 Jan 2007, T. 1289 – 1292. *See also*, P586, Expert report of Berko Zečević, p. 151. The Trial Chamber notes that the photographs show that the apartments on three floors were completely destroyed and that apartments below those show significant damage. In addition, the Trial Chamber notes that W-138 confirmed that he took the photographs, W-138, 31 Jan 2007, T. 1289, 1294.

<sup>1594</sup> P141, Official note, p. 2

<sup>1595</sup> W-28, P276, p. 2; P141, Official note, pp 1 – 2.

<sup>1596</sup> P142, Official note, dated 25 July 1995, p. 1.

<sup>1597</sup> *Ibid*, p. 3.

<sup>1598</sup> P141, Official note, p. 2; P138, Forensic report, p. 1; W-138, D32, p. 2 (under seal).

<sup>1599</sup> P586, Expert report Berko Zečević, p. 151.

<sup>1600</sup> D59, Military map of Sarajevo area.

<sup>1601</sup> P586, Expert report Berko Zečević, p. 88.

<sup>1602</sup> *See supra*, para. 107.

(b) Scheduled Shelling Incidents

(i) Shelling of Livanjska Street on 8 November 1994

444. During the war, Ismet Alić lived in Koševsko Brdo and Fikret Mujezinović lived on Livanjska Street, Centar Municipality, despite the danger posed by random sniping and shelling.<sup>1603</sup> They stated that this was a purely residential area, with houses, a school and a police station at the end of Livanjska Street, and there were no military establishments in the vicinity.<sup>1604</sup> However, there was a Red Cross kitchen and an ABiH military kitchen on another nearby street.<sup>1605</sup> Fikret Mujezinović testified that the military kitchen was used to prepare meals for the ABiH soldiers deployed on the confrontation lines around Sarajevo. It remained closed through the day, shutting down at 0500 hours, and opening again only at 1700 hours in order to enable delivery of food to the soldiers between 2000 hours and 2400 hours, or until 0500 hours, when the street would ordinarily be deserted. Everybody working at the kitchen wore civilian clothes and nobody in uniform was allowed near the kitchen, not even soldiers returning from the front.<sup>1606</sup> Men delivered the food to soldiers at positions approximately two to two and a half kilometres away.<sup>1607</sup> The confrontation line was an estimated one kilometre away from this area.<sup>1608</sup> There was a cease-fire in force on 8 November 1994 and there had been no shelling for some time.<sup>1609</sup>

445. On 8 November 1995, three shells impacted on Livanjska Street, between 1515 hours and 1800 hours.<sup>1610</sup> Ismet Alić, who was a boy at the time, was readying to play football with friends in a playground on Livanjska Street, approximately 300 metres from the school playground. There were 10 to 15 people in the area, including children returning from school.<sup>1611</sup> Fikret Mujezinović, a cook at the Red Cross kitchen, was at the Veteran Union office, from where he distributed parcels to the families of the dead and wounded.<sup>1612</sup> At about 1500 hours, Lejla Hodžić, a girl around 12 to 14 years of age, came to his office and asked for a parcel. Given that parcels were only distributed

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<sup>1603</sup> Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2792.

<sup>1604</sup> Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2794.

<sup>1605</sup> Fikret Mujezinović, 27 Feb 2007, T. 2793; D87, Map marked by Fikret Mujezinović, 27 Feb 2007. This street is now called Antuna Hangija, previously known as Mitra Trifunovica.

<sup>1606</sup> Fikret Mujezinović, 27 Feb 2007, T. 2793 – 2794.

<sup>1607</sup> Fikret Mujezinović, 27 Feb 2007, T. 2806.

<sup>1608</sup> Ismet Alić, P640, p. 9; Fikret Mujezinović, 27 Feb 2007, T. 2806.

<sup>1609</sup> Ismet Alić, P640, p. 5. A number of other witnesses described a “lull” in fighting in the latter months of 1994, *see infra*, para. 782.

<sup>1610</sup> The Trial Chamber notes that Livanjska Street is now called Braće Begić, Fikret Mujezinović, 27 Feb 2007, T. 2825.

<sup>1611</sup> Ismet Alić, P640, p. 5.

<sup>1612</sup> Fikret Mujezinović, 27 Feb 2007, T. 2793.

after 1800 hours, Fikret Mujezinović asked her to come back later. Lejla Hodžić walked back to the house at number 26, which was about 25 to 30 metres from the office.<sup>1613</sup>

446. Suddenly, there was the sound of something fast-moving followed by a loud explosion (“the first shell”).<sup>1614</sup> The explosion threw Ismet Alić over the fence at which he was standing and, fearing more shelling, he took shelter in an apartment.<sup>1615</sup> Fikret Mujezinović, who was in the Veteran Union office, fell to the floor, later opening the door to find “shrapnel falling all over the ground”.<sup>1616</sup> He ran over to where the shell had exploded, which was not far away.<sup>1617</sup>

447. According to Ismet Alić, shrapnel from the blast wounded his cheek, and two of his friends, Adis Tinjak and Ceha Cehajić, were wounded in the stomach and rushed to the hospital.<sup>1618</sup> Ismet Alić was taken to hospital half an hour later. The piece of shrapnel is still lodged in his cheek.<sup>1619</sup> Dino Blekić, a young boy, sustained life-threatening injuries to his abdomen and died at the hospital.<sup>1620</sup> A woman named Nena Deljanin was seriously injured inside the building at number 26 and was declared dead on arrival at the hospital.<sup>1621</sup> Fikret Mujezinović testified that he lifted Lejla Hodžić to put her in a car when he realised that she had received an injury to her head and had died. He also said that he put the remains of her brains in his jacket pocket and zipped it up.<sup>1622</sup> W-91 testified that in the course of BiH police investigation, pieces of brain were found in a pool of blood, although the team did not find any victim at the scene, and that it later transpired that Lejla Hodžić had suffered a serious head wound and was missing a piece of her brain.<sup>1623</sup> The criminal investigation file showed that six persons were seriously injured, and Lejla Hodžić and Nena Deljanin were killed as a result of the first shell.<sup>1624</sup>

448. The Defence presented a death certificate for the victim Lejla Hodžić, arguing that it indicated that her brains remained intact and within her head.<sup>1625</sup> It submitted that if her brain was intact, it could not have been on the street as depicted in the video of the incident that was admitted

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<sup>1613</sup> Fikret Mujezinović, 27 Feb 2007, T. 2795.

<sup>1614</sup> Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2795.

<sup>1615</sup> Ismet Alić, P640, p. 8.

<sup>1616</sup> Fikret Mujezinović, 27 Feb 2007, T. 2795.

<sup>1617</sup> Fikret Mujezinović, 27 Feb 2007, T. 2795.

<sup>1618</sup> Ismet Alić, P640, p. 5; Fikret Mujezinović, 27 Feb 2007, T. 2797.

<sup>1619</sup> Ismet Alić, P640, p. 8.

<sup>1620</sup> Fikret Mujezinović, 27 Feb 2007, T. 2796; W-91, 14 Mar 1994, T. 3738; P284, Official report, dated 8 November 1994 (“Official report”), p. 2 (under seal). The Trial Chamber notes that the victim Dino Blekić was first referred to as female and then as male, but in P284, Official report, p. 2 (under seal), the victim is referred to as male.

<sup>1621</sup> Fikret Mujezinović, 27 Feb 2007, T. 2799, 2804, 2815; P284, Official report, p. 2 (under seal).

<sup>1622</sup> Fikret Mujezinović, 27 Feb 2007, T. 2798; P283, Photograph marked by Fikret Mujezinović.

<sup>1623</sup> W-91, 15 Mar 2007, T. 3776, 3777 (private session); P377, Video of first shell in Livanjska Street, dated 8 November 1994.

<sup>1624</sup> P284, Official report, pp 1, 2 (under seal). Cf. At the hospital, Ismet Alić saw the bloody clothes of two wounded persons and later learnt of three children who had died in the same incident, Ismet Alić, P640, p. 9.

<sup>1625</sup> See W-91, 15 Mar 2007, T. 3778 – 3779 (private session), 3782 – 3783 (private session); D127, Death certificate of victim Lejla Hodžić, 8 Nov 1994.

into evidence.<sup>1626</sup> It further argued that the incident site was “reconstructed” by the BiH police under order of the investigative judge. Both of these arguments were made in support of the Defence submission that the first shelling incident had been staged.<sup>1627</sup>

449. The impact of the first shell on Livanjska Street was investigated both by the French Battalion of UNPROFOR and the BiH police. Local police arrived within 20 to 45 minutes of the explosion; Fikret Mujezinović recalled that they secured the scene and requested children be kept inside the school building since “people were expecting another shell [to be] fired”.<sup>1628</sup> The BiH police investigative team found the tail-fin embedded in the crater, in the asphalt, as occurs most commonly in softer grounds.<sup>1629</sup> The lodging of the tail-fin in the crater, along with other accompanying circumstances, indicated to QMS Richard Higgs that “the mortar was probably fired on a higher charge”.<sup>1630</sup> The criminal investigation took about “one and a half hours, maybe two” by which time it was dusk.<sup>1631</sup> As will be discussed later in this section, around that time, two more shells struck Livanjska Street.

450. After the UNPROFOR investigators arrived, a member of that battalion was prevented by the BiH police from removing the tail-fin of the first shell from the ground.<sup>1632</sup> The UNPROFOR investigators left soon after, stating they would return in about 20 minutes.<sup>1633</sup> However, the UNPROFOR investigators only returned to the site of the impact of the first shell on Livanjska Street the following day, having made a media statement that their investigation team had been denied access to the site.<sup>1634</sup>

451. The investigation of the BiH police determined that the first shell had come from the “aggressor’s position” “from the north, five degrees west”, exploding in front of the house at number 26 at 1525 hours.<sup>1635</sup> The subsequent and more detailed investigation report by the KDZ determined that the shell was fired from the north-west, “in the direction of Poljine” and the angle of descent was determined as 62 degrees.<sup>1636</sup> The KDZ also found that the 82 mm mortar shell was

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<sup>1626</sup> W-91, 14 Mar 2007, T. 3734, 15 Mar 2007, T. 3782 – 3783.

<sup>1627</sup> W-91, 15 Mar 2007, 3782 – 3783; P377, Video of first shell in Livanjska Street.

<sup>1628</sup> Fikret Mujezinović, 27 Feb 2007, T. 2799 – 2800, 2809. *See also*, P284, Official report (under seal).

<sup>1629</sup> W-91, 14 Mar 2007, T. 3750; Mirza Sabljica, 19 Apr 2007, T. 4711, 4717; P578, UNPROFOR report, dated 9 November 1994, p. 2; D85, Official report on shelling incident of 8 November 1994 (“Official report”), p. 6. *See also*, Richard Higgs, 24 Apr 2007, T. 5034.

<sup>1630</sup> Richard Higgs, 24 Apr 2007, T. 5034.

<sup>1631</sup> Fikret Mujezinović, 27 Feb 2007, T. 2800, 2810.

<sup>1632</sup> Fikret Mujezinović, 27 Feb 2007, T. 2799 – 2800.

<sup>1633</sup> Fikret Mujezinović, 27 Feb 2007, T. 2809; W-91, 14 Mar 2007, T. 3747.

<sup>1634</sup> Fikret Mujezinović, 27 Feb 2007, T. 2815 – 2816; W-91, 15 Mar 2007, T. 3754.

<sup>1635</sup> P284, Official report, pp 1, 2 (under seal).

<sup>1636</sup> D85, Official report, p. 6.

of model M74, a type formerly used by the JNA.<sup>1637</sup> The UNPROFOR report corresponded with the BiH police findings and identified the most “suspected area” as between Brijeg and Izlaze “on the Serbian side”, slightly north-west of Livanjska Street.<sup>1638</sup>

452. QMS Higgs testified that, on the basis of the angle of descent and the position of the tail-fin found embedded at the site, it was possible that the shell originated in Poljine, about 500 to 600 metres north of the confrontation line.<sup>1639</sup> The Trial Chamber notes that the distance from Livanjska Street to the confrontation line was approximately 700 metres to 1,000 metres, taking the origin of fire well beyond the confrontation line and to Poljine, the area north-west of Sarajevo that was under the control of the 1<sup>st</sup> Battalion of the SRK 3<sup>rd</sup> Sarajevo Brigade.<sup>1640</sup>

453. The Defence suggested the BiH police investigation into the first shelling continued on 9 November 1994.<sup>1641</sup> Fikret Mujezinović professed no knowledge of this, and testified that the investigators made their findings on 8 November 1994, at the end of the on-site investigation.<sup>1642</sup> W-91 testified that although the BiH police did return to Livanjska Street the following day, it was to investigate the second and third shelling incidents that took place later on the same day, as well as to “reconstruct” the site of the first shelling for the purposes of the UNPROFOR investigation, as they were required to do by the investigative judge.<sup>1643</sup>

454. While evidence of investigations into the first shelling incident was presented by the Prosecution, the Defence tendered evidence of two shells following at 1725 hours and 1730 hours, respectively.<sup>1644</sup> The BiH police report tendered by the Defence makes reference to the UNPROFOR investigation of the first shelling incident in front of house number 26, while the local police was investigating the two later incidents around house number 36.<sup>1645</sup> The BiH police report also stated in conclusion that “all three mines were undoubtedly fired from the enemy positions.”<sup>1646</sup> Viewed collectively, the UNPROFOR reports on the shelling of Livanjska Street address three incidents in all, as do the reports of the BiH police.

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<sup>1637</sup> W-91, 14 Mar 2007, T. 3738; Mirza Sabljica, 19 Apr 2007, T. 4710; D85, Official report, p. 6; P578, UNPROFOR report, p. 1.

<sup>1638</sup> W-91, 14 Mar 2007, T. 3755; Mirza Sabljica, 19 Apr 2007, T. 4722; D85, Official report, p. 4; P578, UNPROFOR report, pp 2 – 3.

<sup>1639</sup> Richard Higgs, 24 Apr 2007, T. 5035.

<sup>1640</sup> Ismet Alić, P640, p. 9; Fikret Mujezinović, 27 Feb 2007, T. 2806 – 2807; P595, Map marked by Richard Higgs. For evidence pertaining to SRK control over area of Poljine, *see infra* Section II.B.3(d). *See also*, Anđelko Dragaš, 22 Jun 2007, T. 7076 – 7077; T-48, 22 Jun 2007, T. 7135 – 7136; Vljako Božić, 17 Jul 2007, T. 8404, 8409.

<sup>1641</sup> Fikret Mujezinović, 27 Feb 2007, T. 2810; W-91, 15 Mar 2007, T. 3788 – 3789.

<sup>1642</sup> Fikret Mujezinović, 27 Feb 2007, T. 2810, 2812.

<sup>1643</sup> W-91, 14 Mar 2007, T. 3734, 3754 – 3755, 15 Mar 2007, T. 3788 – 3789.

<sup>1644</sup> P578, UNPROFOR report; P284, Official report (under seal); D84, UNPROFOR report; D85, Official report.

<sup>1645</sup> Mirza Sabljica, 19 Apr 2007, T. 4705; D85, Official report, p. 3.

<sup>1646</sup> D85, Official report, p. 7.

455. As noted above, Livanjska Street was shelled two more times on 8 November 1994, at 1725 hours and at 1730 hours. The second shell impacted at 1725 hours and exploded on the asphalt surface across the road from house number 36, about 30 to 40 metres behind where people were assembled, near the entrance of the school building and on the right-hand side pavement, if viewed from east to west.<sup>1647</sup> “Several minutes later” a third shell landed in the yard of house number 36, seven to ten metres away from the impact site of the second shell.<sup>1648</sup> A woman, Razija Šteta, was found injured in the street and Muharem Aladjuz sustained a minor shrapnel wound while arranging for Razija Šteta to be driven to the hospital.<sup>1649</sup> Razija Šteta died as a result of the wounds she sustained.<sup>1650</sup>

456. The investigations by the KDZ and UNPROFOR into the second and third shells were conducted simultaneously, but independently of one another, on 9 November 1994.<sup>1651</sup> While coinciding in several aspects, the investigative teams reached differing conclusions regarding the possible direction of fire. In its Final Brief, the Defence highlighted this inconsistency.<sup>1652</sup> The KDZ report ascertained the angle of descent of the second and third shells, an 82 mm M68 mortar shell, also formally used by the JNA, was 67 degrees.<sup>1653</sup> The report concluded that the shells had been fired “20 degrees from the east, probably from the wider area of Špicasta Stijena occupied by the aggressors,” although later in the report, it states that the direction of fire was north-east.<sup>1654</sup> On being asked about this description of the probable direction of fire in the KDZ report, QMS Higgs testified that it was a terminological error in the presentation of direction, and not an error in the ballistics calculations; he said that “the pattern of this crater is a good one.”<sup>1655</sup> Mirza Sabljica attributed the error to the fact that Dragan Mioković, the inspector who compiled the report, was a homicide investigator.<sup>1656</sup> Later in the KDZ report, it is stated that the shells came from the north-east.<sup>1657</sup> Both Mirza Sabljica and QMS Higgs interpreted “20 degrees from the east” as “from the north to the east”, that is, north-east.<sup>1658</sup> They both concurred in the finding.<sup>1659</sup>

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<sup>1647</sup> Fikret Mujezinović, 27 Feb 2007, T. 2801, 2810; D84, UNPROFOR report, p. 1; D85, Official report, p. 2; Ismet Alić, P640, p. 8.

<sup>1648</sup> Fikret Mujezinović, 27 Feb 2007, T. 2801; W-91, 14 Mar 2007, T. 3748; D84, UNPROFOR report, p. 1; D85, Official report p. 3.

<sup>1649</sup> Fikret Mujezinović, 27 Feb 2007, T. 2801; D85, Official report pp 3, 9 – 12.

<sup>1650</sup> D85, Official report pp 3, 11, 14.

<sup>1651</sup> W-91, 15 Mar 2007, T. 3790.

<sup>1652</sup> Defence Final Brief, para. 190.

<sup>1653</sup> D85, Official report p. 6.

<sup>1654</sup> D85, Official report, p. 3.

<sup>1655</sup> Richard Higgs, 24 Apr 2007, T. 5038.

<sup>1656</sup> Mirza Sabljica, 19 Apr 2007, T. 4726.

<sup>1657</sup> D85, Official report, p. 6.

<sup>1658</sup> Mirza Sabljica, 19 Apr 2007, T. 4726, 4764 – 4766; Richard Higgs, 24 Apr 2007, T. 5038 – 5039.

<sup>1659</sup> Mirza Sabljica, 19 Apr 2007, T. 4766 – 4767; Richard Higgs, 24 Apr 2007, T. 5039.

457. The UNPROFOR investigation found that it was “obvious” that the same mortar had fired the two shells, and concluded that the angle of descent of the two shells was between 70 to 75 degrees.<sup>1660</sup> It found that to fire the 82 mm shells from SRK-held territory, the angle had to be below 60 degrees.<sup>1661</sup> As a result, UNPROFOR found that “it is possible to conclude that the most suspected areas are under the control of BiH.”<sup>1662</sup>

458. The inconsistency between the directions of fire was attributed to the fact that the UNPROFOR team employed Finnish mortar tables for an 82 mm calibre shell, and these were different from the tables for JNA-produced mortars that were used by the BiH police investigative team.<sup>1663</sup> Mirza Sabljica testified that the two teams relied on “different charges and different ranges” and he noticed that the “maximum charge zero plus six in the Finnish tables had the range twice the shorter one than applicable to those manufactured in the former Yugoslavia.”<sup>1664</sup> In response to questions put to him by the Defence, Mirza Sabljica reiterated that north-east was definitely the direction of fire and declined to comment on the origin of fire, be it Špicasta Stijena, Grdonj, Orlovac or other locations to the north-east, as it was not an issue he had considered.<sup>1665</sup> Mirza Sabljica also disagreed with the suggestion of the Defence that the shell could have come from the north-west, as the shrapnel traces on the surface were too clear to allow for such errors.<sup>1666</sup>

459. QMS Higgs testified that the spray pattern indicated the angle of descent was closer to 60 to 65 degrees as determined by the BiH investigation.<sup>1667</sup> The estimate of 60 to 65 degrees “gives the mortar a lot longer range”, making it possible for the shells to have been “fired from a distance in excess of four kilometres away” and “well beyond the confrontation line”.<sup>1668</sup> QMS Higgs also took account of the fact that nobody heard the second and third shells being fired, even though the shells passed along very built-up residential areas. He also considered the lack of witnesses to the “tremendous muzzle flash” that the mortar gives off upon being fired, which would have been visible at 1725 hours in winter from miles away.<sup>1669</sup> He testified that the shells could have been fired from the other side of the confrontation line, over and behind the steep escarpment, and that this would have muffled the sound.<sup>1670</sup> QMS Higgs testified that based on his experience the “most logical position” from which the second and third shells were fired was in territory held by the

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<sup>1660</sup> D84, UNPROFOR report, p. 2.

<sup>1661</sup> D84, UNPROFOR report, p. 3.

<sup>1662</sup> D84, UNPROFOR report, p. 3.

<sup>1663</sup> W-91, 14 Mar 2007, T. 3757. Regarding the reason for the different mortar tables, *see* Per Anton Brennskag, P345, p. 2.

<sup>1664</sup> Mirza Sabljica, 19 Apr 2007, T. 4729.

<sup>1665</sup> Mirza Sabljica, 19 Apr 2007, T. 4775 – 4776.

<sup>1666</sup> Mirza Sabljica, 19 Apr 2007, T. 4775 – 4776.

<sup>1667</sup> Richard Higgs, 24 Apr 2007, T. 5042; P590, Supplement to information report Richard Higgs, p. 3.

<sup>1668</sup> Richard Higgs, 24 Apr 2007, T. 5047.

<sup>1669</sup> Richard Higgs, 24 Apr 2007, T. 5043.

<sup>1670</sup> Richard Higgs, 24 Apr 2007, T. 5042 – 5043.

SRK, although in response to a question by the Defence, he could not categorically rule out the possibility that the shell came from ABiH-held territory.<sup>1671</sup>

460. The Trial Chamber notes that the direction of fire of the second and third shell was determined to be the north-east by both BiH police and UNPROFOR. This was confirmed by QMS Higgs, Mirza Sabljica and W-91, all of whom testified that the origin of fire was SRK-held territory.<sup>1672</sup> The Defence, relying on one of the UNPROFOR reports on the incident, suggested that the second and third shells were fired from ABiH-held territory.<sup>1673</sup>

461. On the issue of the possible purpose of such mortar attacks, QMS Higgs said that “a single round fired into the centre of a populated area” does not present the prospect of obtaining any military objective.<sup>1674</sup> The only possible purpose would have been “to cause civilian casualties and to put basically terror into the minds of the people in that area”.<sup>1675</sup> In his opinion, the delay of several minutes between the second and third shell at Livanjska Street was not intended to achieve any military objective.<sup>1676</sup> Given that 82 mm mortars are capable of firing 20 rounds a minute, the delay was aimed at allowing time for people from the area to gather around and treat casualties, thereby “catch[ing] more people in the area than [were] there in the first place” – “a tactic used by terrorist organisations with bombs”.<sup>1677</sup>

## Findings

462. On the afternoon of 8 November 1994, three shells exploded on Livanjska Street. On the basis of the evidence of a number of witnesses, as well as the documentary evidence, the Trial Chamber is satisfied that the first shell exploded on Livanjska Street in the afternoon of 8 November 1994. The Trial Chamber rejects the Defence argument that the first shelling was staged since there is no evidence to support such an assertion, and it is contrary to eyewitness evidence from Fikret Mujezinović and Ismet Alić, and the evidence of W-91.

463. The Trial Chamber accepts the consistent evidence regarding the direction and origin of fire of the first shell, that is, that it came from a north-westerly direction, and more precisely, Poljine, which was under the control of the SRK. The Trial Chamber is satisfied that this shell was fired by members of the SRK.

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<sup>1671</sup> Richard Higgs, 24 Apr 2007, T. 5044, 5100 – 5103.

<sup>1672</sup> W-91, 14 Mar 2007, T. 3734, 3748; D84, UNPROFOR report, p. 4; Mirza Sabljica, 19 Apr 2007, T. 4765.

<sup>1673</sup> D84, UNPROFOR report, p. 3.

<sup>1674</sup> Richard Higgs, 24 Apr 2007, T. 5030.

<sup>1675</sup> Richard Higgs, 24 Apr 2007, T. 5036.

<sup>1676</sup> Richard Higgs, 24 Apr 2007, T. 5045.

<sup>1677</sup> Richard Higgs, 24 Apr 2007, T. 5045.



464. Although the evidence regarding the direction of fire of the second and third shells that hit Livanjska Street is conflicting, the Trial Chamber is satisfied that, on the basis of the Mirza Sablijca's evidence, this inconsistency resulted from the UNPROFOR investigators' erroneous reliance upon Finnish mortar tables. The BiH police and QMS Higgs concluded that the direction of fire was north-east, and from SRK-held territory. Furthermore, according to QMS Higgs, the range of the 82 mm mortar and the angle of descent, together with his other observations, indicated that the origin of fire was beyond the confrontation line, and thus SRK-held territory. In the circumstances, the Trial Chamber finds that the second and third shells were fired from SRK-held territory in the north-east and that the shells were fired by members of the SRK.

465. The evidence establishes that three civilians, Lejla Hodžić, Dino Blekić and Nena Deljanin, were killed and six civilians were seriously injured as a result of the explosion of the first shell. Evidence also shows that two civilians were injured by the explosions of the second and third shells; Muharem Aladjuz was lightly injured and Razija Šteta later died of her injuries. The Trial Chamber finds that at least four civilians were killed and six civilians were seriously injured as a result of the three shells that impacted on Livanjska Street on 8 November 1994.

(ii) Shelling of Baščaršija Flea Market on 22 December 1994

466. On the foggy morning of 22 December 1994, at around 0910 hours, two shells exploded on the Baščaršija flea market.<sup>1678</sup> Baščaršija was a part of town that W-12 knew well, since he lived in Bistrik, a neighbouring suburb also in the old part of the city.<sup>1679</sup> Baščaršija is a neighbourhood in the old town of Sarajevo, in a north-easterly direction from Vrbanja Bridge. It was the most important historical cultural part of the town of Sarajevo.<sup>1680</sup> The area was under the control of the ABiH, which also held Bistrik.<sup>1681</sup> According to Maj. Stevan Veljović, a SRK operations officer, the houses and buildings in Baščaršija were protected and remained intact throughout the war.<sup>1682</sup> Baščaršija, including the flea market, was a civilian area.<sup>1683</sup> While W-28 stated that there was no military activity on 22 December 1994, W-12 recalled that, with the exception of this incident, there was only sporadic shooting that day.<sup>1684</sup> There were ABiH trenches at Brajkovac, at the foot of

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<sup>1678</sup> W-12, 1 Mar T. 3041, 2 Mar 2007, T. 3061, 3067 – 3068; D124, Criminal investigation file, dated 22 December 1994, p. 7; D101, Statement of Hanga Tsori Hammerton, p. 2; W-28, P275, p. 2; Nedžib Dozo, 14 Mar 2007, T. 3715.

<sup>1679</sup> W-12, 1 Mar 2007, T. 3039, 2 Mar 2007, T. 3071.

<sup>1680</sup> Stevan Veljović, 29 May 2007, T. 5751 – 5752.

<sup>1681</sup> W-54, 12 Feb 2007, T. 1967–1968; W-12, 1 Mar 2007, T. 3042; Milorad Katić, 31 May 2007, T. 5980; Predrag Trapara, 27 June 2007, T. 7373 – 7374; P308, Map marked by W-12; D197, Map marked by Milorad Katić. "Stari Grad" was ABiH-held territory: David Harland, P2, MT. 28631.

<sup>1682</sup> Stevan Veljović, 29 May 2007, T. 5751 – 5752. *See also*, D186, Order by the SRK commander about full combat readiness, dated 12 August 1994, p. 2.

<sup>1683</sup> W-28, P275, p. 2.

<sup>1684</sup> W-28, P275, p. 2; W-12, 2 Mar 2007, T. 3064.

Mount Trebević, and about 50 metres diagonally south of the location where W-12 was walking at the time of the incident.<sup>1685</sup>

467. W-12 was walking southwards, with Baščaršija to the West and Mount Trebević to the East.<sup>1686</sup> He heard a loud sound like a round being fired from a powerful, heavy weapon, such as a cannon or gun.<sup>1687</sup> “Several seconds” later, he heard a detonation, which led W-12 to conclude that the shell had landed in Baščaršija although, due to the fog, W-12 did not see where the shell impacted.<sup>1688</sup> W-12 heard the sound of one shell being fired, but had no clear recollection of a second round being fired.<sup>1689</sup> However, from the sound, W-12 concluded that the shell was fired from Vidikovac, a part of Mount Trebević, which was Bosnian Serb-held territory.<sup>1690</sup> W-12 did not see the shell being fired or in flight.<sup>1691</sup> The Defence submitted, in its Final Brief, that, while eyewitnesses heard the sound of an explosion, they heard neither the sound of the projectile being fired nor its flight.<sup>1692</sup>

468. According to W-12, the fact that two shells exploded in the Baščaršija flea market was confirmed on the radio and by his neighbours later in the day.<sup>1693</sup> The explosions resulted in civilian casualties; two civilians were killed and seven or eight were injured, three of them seriously.<sup>1694</sup>

469. Independent investigations were carried out by the KDZ, the UNPROFOR French Battalion, and two UNMOs, Maj. Hanga Tsori Hammerton, a Kenyan UNMO, and Maj. Ilonyosi, an UNMO from Nigeria.<sup>1695</sup> Based on the crater analysis and fragments found on the scene, the BiH police concluded that two 76 mm shells were fired from a gun or cannon.<sup>1696</sup> No stabilising fin was found embedded in the crater to suggest that the projectile was a mortar shell.<sup>1697</sup> On the basis of the shrapnel fragments shown to him, Maj. Hammerton concluded that two 82 mm mortar shells had been fired, although he could not establish the range.<sup>1698</sup> The UNMO’s conclusion regarding the calibre of shells was put to Ekrem Suljević by the Defence. Ekrem Suljević ruled out the possibility

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<sup>1685</sup> W-12, 2 Mar 2007, T. 3065.

<sup>1686</sup> W-12, 2 Mar 2007, T. 3047.

<sup>1687</sup> W-12, 1 Mar 2007, T. 3037.

<sup>1688</sup> W-12, 1 Mar 2007, T. 3038, 3043, 2 Mar 2007, T. 3048, 3070.

<sup>1689</sup> W-12, 2 Mar 2007, T. 3076 – 3078, P307, p. 2; P308, Map marked by W-12.

<sup>1690</sup> W-12, 1 Mar 2007, T. 3039 – 3041, 2 Mar 2007, T. 3062, P306, p. 2; P308, Map marked by W-12. *See also*, W-28, P275, p. 2. *See also supra*, para. 118.

<sup>1691</sup> W-12, 1 Mar 2007, T. 3038 – 3039, 3043.

<sup>1692</sup> Defence Final Brief, para. 191.

<sup>1693</sup> W-12, 2 Mar 2007, T. 3077.

<sup>1694</sup> D124, Criminal investigation file, pp 2, 3, 4; P833, UNMO daily sitrep, dated 23 December 1994, p. 6; P317, Witness statements; P315, Investigation report, dated 22 December 1994, p. 1; W-12, 2 Mar 2007, T. 3077; D101, Statement of Hanga Tsori Hammerton, p. 3.

<sup>1695</sup> Ekrem Suljević, 2 Mar 2007, T. 3114; D101, Statement of Hanga Tsori Hammerton, p. 2.

<sup>1696</sup> Ekrem Suljević, P310, p. 3; P315, Investigation report, p. 1.

<sup>1697</sup> Ekrem Suljević, 2 Mar 2007, T. 3116 – 3117. *See also*, D101, Statement of Hanga Tsori Hammerton, p. 2.

<sup>1698</sup> D101, Statement of Hanga Tsori Hammerton, p. 2.

that the projectile was a 82 mm shell due to the evidence gathered on-site, including the crater and the fragments collected.<sup>1699</sup> He also testified that the munition was familiar to the investigative team, based on characteristic markings on the fragments; the munition was one that the JNA had possessed.<sup>1700</sup> Ekrem Suljević further testified that no member of the investigative team differed on the assessment regarding the calibre.<sup>1701</sup>

470. The KDZ calculated the azimuth as 159 degrees, a south-easterly direction, that is, from Mount Trebević “where the enemy positions are located.”<sup>1702</sup> During cross-examination, Ekrem Suljević clarified that the investigative team did not calculate the distance from which the shell was fired or the angle of descent.<sup>1703</sup> The UNMO report concurred with the KDZ on the direction of fire, determining that the direction of fire was 160 degrees, which was south, south-east of the impact site.<sup>1704</sup>

471. The Defence submitted, in its Final Brief, that the alleged victims of the incident were not found at the scene of the shelling, even though the BiH police arrived within 15 minutes of the shelling.<sup>1705</sup> In this regard, during cross-examination, Nedžib Đozo, who investigated the incident, confirmed that the dead and wounded were not found at the scene and testified that it was normal for investigators not to see bodies at the scene, since “you cannot leave wounded or killed lying about.”<sup>1706</sup> Ekrem Suljević disagreed with the Defence suggestion that the nature of wounds could be helpful indicators of the type of weapon employed.<sup>1707</sup>

472. The Defence argued that the explosions at the Baščaršija flea market were the result of a bomb that had been previously planted there. However, it did not present any evidence in support of this assertion. Nor did it suggest this possibility to the KDZ member, Ekrem Suljević. Nedžib Đozo testified that none of the fragments found on-site indicated that they were part of a “manufactured device”.<sup>1708</sup>

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<sup>1699</sup> Ekrem Suljević, 2 Mar 2007, T. 3116, 5 Mar 2007, T. 3130 – 3132.

<sup>1700</sup> Ekrem Suljević, 5 Mar 2007, T. 3132 – 3133, P310, p. 3.

<sup>1701</sup> Ekrem Suljević, 5 Mar 2007, T. 3184.

<sup>1702</sup> P315, Investigation report, p. 1; Ekrem Suljević, 5 Mar 2007, T. 3128 – 3129, P310, p. 3; D102, Map marked by Ekrem Suljević; W-28, P275, p. 2.

<sup>1703</sup> Ekrem Suljević, 2 Mar 2007, T. 3116.

<sup>1704</sup> Ekrem Suljević, 2 Mar 2007, T. 3114; D101, Statement of Hanga Tsori Hammerton, p. 2.

<sup>1705</sup> Defence Final Brief, para. 191.

<sup>1706</sup> Nedžib Đozo, 14 Mar 2007, T. 3716.

<sup>1707</sup> Ekrem Suljević, 2 Mar 2007, T. 3120.

<sup>1708</sup> Nedžib Đozo, 14 Mar 2007, T. 3728.

## Findings

473. On 22 December 1994, two shells exploded at the Baščaršija flea market. While recognising the discrepancy in the evidence regarding the calibre of the shell that exploded at the flea market, the Trial Chamber is satisfied, on the basis of the investigations carried out by both the BiH police and the UNMOs, that the direction of fire was south-east, that is, from Mount Trebević. Furthermore, the Trial Chamber notes that the BiH police identified “the enemy positions” as the origin of fire, as did W-12, who heard the shell being fired and determined it was fired from Vidikovac, a part of Mount Trebević, which was Bosnian Serb-held territory. On the basis of this evidence, the Trial Chamber finds that the shell was fired from SRK-held territory and that it was fired by members of the SRK.

474. With regard to the Defence submission that the alleged victims were not found by the BiH police on the scene, the Trial Chamber recalls that evidence was presented in respect of this incident, as well as others, that after a shelling the wounded and bodies of the dead were removed from the scene as quickly as possible. On the basis of evidence from witnesses and the BiH police report, the Trial Chamber is satisfied that at least seven civilians were injured, three of whom were seriously injured, and two civilians were killed as a result of the shelling of the Baščaršija flea market.

### (iii) Shelling of a Residential Area in Hrasnica on 7 April 1995

475. In April 1995, Ziba Šubo, a homemaker, was living with her husband Zemir, her twin sons Elmir and Elvir, her daughter Emira Brajlović, and grandson Elvis Brajilović in a two-storey house at Alekse Šantića Street, number 1, Hrasnica, Ilidža Municipality.<sup>1709</sup> Ziba Šubo’s cousin, Ziba Čustović, lived with her daughter, Aldijana, who was twelve or thirteen years old in 1995, in a smaller house two metres away but in the same yard.<sup>1710</sup>

476. On 7 April 1995, it was sunny and there was good visibility.<sup>1711</sup> In the morning of that day W-57, a police investigator, was having coffee with his colleagues when, at about 0850 hours, they heard a sound like a landing plane.<sup>1712</sup> The sound stopped and was followed by a different sound, something like a whoosh.<sup>1713</sup> W-57 “could feel” that the projectile flew slowly in comparison to artillery projectiles.<sup>1714</sup> One or two seconds later, W-57 and his colleagues heard a very strong

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<sup>1709</sup> Ziba Šubo, P279, p. 1, P280, p. 2; P544, Photograph of homes marked by W-57.

<sup>1710</sup> Ziba Šubo, P280, p. 2.

<sup>1711</sup> W-57, P539, p. 2 (under seal).

<sup>1712</sup> W-57, P538, p. 4 (under seal), P539, p. 2 (under seal).

<sup>1713</sup> W-57, P539, p. 2 (under seal).

<sup>1714</sup> W-57, P538, p. 4 (under seal).

explosion from the centre of Hrasnica.<sup>1715</sup> They felt the detonation, pressure and compression from the explosion, and this prompted them to lie on the floor, in anticipation of a second explosion.<sup>1716</sup> The investigators heard a sound, “like everything was breaking in the neighbourhood.”<sup>1717</sup> Maj. Thorbjorn Overgard also recalled hearing a noise like an aeroplane before the explosion.<sup>1718</sup>

477. At that time, Ziba Šubo’s daughter and husband had gone off to work.<sup>1719</sup> Ziba Šubo was alone in the house with her sons and grandson, who were asleep in rooms on the first floor.<sup>1720</sup> Ziba Šubo had invited Ziba Čustović over for coffee.<sup>1721</sup> However, she never made it to Ziba Šubo’s house.<sup>1722</sup>

478. At about 0850 hours, a shell fell and destroyed Ziba Šubo’s house.<sup>1723</sup> When the shell exploded, the windows suddenly went dark.<sup>1724</sup> Objects started falling on Ziba Šubo.<sup>1725</sup> She did not hear any sound but she immediately realised that a shell had exploded because the house was “caving in and falling apart.”<sup>1726</sup> Ziba Šubo felt pain from objects hitting her and she was effectively buried in rubble.<sup>1727</sup> The roof and first floor of the house were destroyed and the top of the house collapsed to the ground floor.<sup>1728</sup> She then heard her children calling for her and crying.<sup>1729</sup> She shouted to them to run away and get to safety.<sup>1730</sup> Ziba Šubo crawled through the rubble and once she reached the top, she saw her children running across the street in their underwear. She noticed that her grandson was wounded.<sup>1731</sup>

479. According to W-57, there was no military activity that morning; it was very quiet.<sup>1732</sup> However, there is evidence that at about this time there was an increase in military activity.<sup>1733</sup> Maj. Overgard did not think that the house on which the bomb landed could have been a military target; “there were no signs of military flags [...]. It was not different from all the other houses in

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<sup>1715</sup> W-57, P538, p. 4, P539, p. 2 (under seal).

<sup>1716</sup> W-57, P539, p. 2 (under seal).

<sup>1717</sup> W-57, P538, p. 4 (under seal), P539, p. 2 (under seal).

<sup>1718</sup> Thorbjorn Overgard, 19 Jan 2007, T. 676.

<sup>1719</sup> Ziba Šubo, P279, p. 1, P280, p. 2.

<sup>1720</sup> Ziba Šubo, P280, p. 2.

<sup>1721</sup> Ziba Šubo, P279, p. 1, P280, p. 2.

<sup>1722</sup> Ziba Šubo, P280, p. 2.

<sup>1723</sup> Ziba Šubo, P279, p. 1.

<sup>1724</sup> Ziba Šubo, P279, p. 1, P280, p. 2.

<sup>1725</sup> Ziba Šubo, P280, p. 2.

<sup>1726</sup> Ziba Šubo, P280, pp 2, 3.

<sup>1727</sup> Ziba Šubo, P280, p. 3.

<sup>1728</sup> W-57, P539, p. 3 (under seal); Ziba Šubo, P279, p. 1, P280, p. 3.

<sup>1729</sup> Ziba Šubo, P280, p. 3.

<sup>1730</sup> Ziba Šubo, P279, p. 1, P280, p. 3.

<sup>1731</sup> Ziba Šubo, P279, p. 1, P280, p. 3.

<sup>1732</sup> W-57, 17 Apr 2007, T. 4588.

<sup>1733</sup> Martin Bell, 27 Apr 2007, T. 5311; W-57, 17 Apr 2007, T. 4565; P825, UNMO sitrep, dated 7 April 1995, p. 2. *See also infra*, Section II.E.9(d) ABiH Offensives.

Hrasnica.”<sup>1734</sup> In its Final Brief, the Defence submits that there were military activities between the Famos Factory and the Igman Road.<sup>1735</sup> The Trial Chamber notes that, on the basis of the map marked by W-57, the Famos Factory was approximately one to one and half kilometres from the incident site.<sup>1736</sup> W-57 also estimated that the Igman Road was about 300 to 400 metres above the settlement where the incident happened.<sup>1737</sup> He thought the point of impact of the air bomb was very far from the ABiH Brigade and the Company headquarters located in Hrasnica, but closer to the UNMOs’ accommodation, which he estimated to be about 800 to 900 metres from the Battalion Headquarters and one kilometre from the Company Headquarters.<sup>1738</sup> Maj. Overgard testified that the Igman Road, on which there was civilian and military traffic, was more than a kilometre from the site of the incident.<sup>1739</sup>

480. In that regard, the Defence made a more general submission that Hrasnica was a military area.<sup>1740</sup> The Trial Chamber’s analysis of the civilian status of Hrasnica is carried out elsewhere in this Judgement, and is to be read in conjunction with this paragraph.<sup>1741</sup> The Trial Chamber finds that Hrasnica was a civilian area.

481. Ziba Čustović was killed by the shell explosion.<sup>1742</sup> Ziba Šubo fainted when she saw Ziba Čustović; half of her head was missing and she was covered in blood.<sup>1743</sup> She does not recall what happened after; she only remembers that she later found herself sitting at the bottom of the rubble, where she regained consciousness. However, she lost consciousness again after telling a neighbour, Zijo Mujanović, to look for Ziba Čustović.<sup>1744</sup> When Ziba Šubo woke up, she was in a hospital.<sup>1745</sup> There were a number of injured people who were taken to hospital as well as people with minor injuries, such as cuts and bruises.<sup>1746</sup>

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<sup>1734</sup> Thorbjorn Overgard, 19 Jan 2007, T. 676.

<sup>1735</sup> Defence Final Brief, para. 202.

<sup>1736</sup> P540, Map marked by W-57.

<sup>1737</sup> W-57, 17 Apr 2007, T. 4566.

<sup>1738</sup> Thorbjorn Overgard, 18 Jan 2007, T. 648; D17, Map marked by Thorbjorn Overgard.

<sup>1739</sup> Thorbjorn Overgard, 19 Jan 2007, T. 687, 693 – 694. *See also, supra*, paras 429 – 431.

<sup>1740</sup> Defence Final Brief, para. 202.

<sup>1741</sup> *See infra*, paras 899 – 900.

<sup>1742</sup> Ziba Šubo, P280, p. 3; W-57, 17 Apr 2007, T. 4578, P539, p. 3 (under seal); P420, Death certificate of Ziba Čustović, dated 7 April 1995 (under seal); P542, Official report on shelling of Hrasnica on 7 April 1995, dated 7 April 1995, p. 2; P825, UNMO sitrep, also reports the death of Ziba Čustović.

<sup>1743</sup> Ziba Šubo, P280, p. 3, P279, p. 1; P281, P282, Photographs of Ziba Šubo’s house.

<sup>1744</sup> Ziba Šubo, P279, p. 1, P280, p.3.

<sup>1745</sup> Ziba Šubo, P279, p. 1, P280, p. 3.

<sup>1746</sup> W-57, P539, p. 3 (under seal). According to W-57, one civilian was killed and three civilians were wounded, W-57, P538, p. 4 (under seal).

482. Ziba Šubo still has back and arm pain from the injuries she suffered; her hearing is impaired and, since the day of the shelling, she suffers from high blood pressure.<sup>1747</sup> One of her sons also has problems hearing.<sup>1748</sup>

483. On leaving the police station, W-57 saw a lot of smoke and dust about 150 metres from the office in the south-easterly direction.<sup>1749</sup> W-57 went to the site immediately and saw that the brick house on which the bomb impacted was totally destroyed.<sup>1750</sup> Another small house next door was also destroyed and about twenty other nearby houses suffered damage. Some were severely damaged.<sup>1751</sup> The BiH police report lists ten houses that suffered “extensive damage”.<sup>1752</sup> Similarly, the KDZ report states that eleven damaged houses were photographed and sketched.<sup>1753</sup> All windows of the buildings in a semi-circle from the impact location were broken.<sup>1754</sup> However, many houses had already suffered damage from previous explosions in the past four years, making it difficult to distinguish between damage caused by this explosion and pre-existing damage.<sup>1755</sup> W-57 secured the site.<sup>1756</sup>

484. An investigation team, of which W-57 and W-116 were members, returned to the scene at about 1500 hours to conduct the investigation.<sup>1757</sup> The investigation was concluded by 1600 hours that day.<sup>1758</sup> Trace evidence, including fragments of an air bomb and rockets were discovered at the site and sent for analysis.<sup>1759</sup> According to W-116, the day after the incident, two more engines and the container with rocket fuel were found.<sup>1760</sup>

485. An investigation was also carried out by UNMOs on 8 April 1995.<sup>1761</sup> Maj. Overgard recounted that, after the explosion occurred, the UNMOs stationed in Hrasnica first tried unsuccessfully to contact the BiH police. They then went to the site of the explosion, where Maj. Overgard testified he saw the damage caused by the explosion and the feet of a person wearing a

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<sup>1747</sup> Ziba Šubo, P280, p. 3.

<sup>1748</sup> Ziba Šubo, P280, p. 3.

<sup>1749</sup> W-57, P539, p. 2 (under seal), P538, p. 4 (under seal).

<sup>1750</sup> W-57, P538, p. 4 (under seal), P539, p. 3 (under seal); P84, Set of photographs.

<sup>1751</sup> Thorbjorn Overgard, 18 Jan 2007, T. 646; W-116, 18 Apr 2007, T. 4622; W-57, P539, p. 3 (under seal).

<sup>1752</sup> P542, Official report, p. 2.

<sup>1753</sup> P553, Forensic report, dated 7 April 1995, p. 1 (under seal).

<sup>1754</sup> W-57, P538, p. 4 (under seal).

<sup>1755</sup> W-116, 18 Apr 2007, T. 4653 – 4654; W-57, 17 Apr 2007, T. 4565.

<sup>1756</sup> W-57, P539, p. 3 (under seal).

<sup>1757</sup> W-57, 17 Apr 2007, T. 4551, P539, p. 3 (under seal); P542, Official report, p. 1; For evidence pertaining to the membership of the investigative team and its activities, *see* W-116, 17 Apr 2007, T. 4616 – 4617, 18 Apr 2007, T. 4622 – 4623, 4656, P548, pp 2 – 3; W-57, 17 Apr 2007, T. 4582 – 4583, P539, p. 3 (under seal); P552, Sketches from criminal report (under seal); P553, Forensic report (under seal); P554, Set of photographs.

<sup>1758</sup> W-57, 17 Apr 2007, T. 4583; P542, Official report, p. 2.

<sup>1759</sup> W-116, P548, p. 3; W-57, P538, p. 4 (under seal); P542, Official report, p. 2; P553, Forensic report (under seal).

<sup>1760</sup> W-116, P548, p. 3.

<sup>1761</sup> Thorbjorn Overgard, 19 Jan 2007, T. 662; P224, UNMO report, dated 10 April 1995, p. 1. *Cf.* P542, Official report, p. 1.

camouflage uniform under the bricks.<sup>1762</sup> The Commander of ABiH's 4<sup>th</sup> Motorised Brigade was at the site and sent the UNMOs home, where they were kept under the guard of three ABiH soldiers, posted outside their house, until approximately 1900 hours.<sup>1763</sup> At around 1900 hours, Maj. Overgard and another UNMO, Calum Gunn, went to the site but it was too dark to investigate.<sup>1764</sup> The next morning, the ABiH guards were back.<sup>1765</sup>

486. Maj. Overgard thought the ABiH did not trust them to do a proper investigation into such an important incident and that it did not want the UNMOs to disturb the investigation of the BiH police.<sup>1766</sup> However, according to W-57, the UNMOs performed the investigation together with the ABiH on 7 April 1995 and the ABiH tried to be as co-operative as possible.<sup>1767</sup> He also stated that the UNMOs were merely advised to stay indoors until things got quieter and confirmed that there were armed men around the UNMO residence. He claimed that they were not there to prevent the UNMOs from leaving but rather to ensure their safety. He stated that "things were getting very tense" and that he was afraid that something might happen to them.<sup>1768</sup> According to W-57, the UNMOs could move freely after the BiH investigation was completed.<sup>1769</sup>

487. At approximately 1300 hours on 8 November 1994, the UNMOs were able to investigate the scene.<sup>1770</sup> The person, wearing camouflage, whose feet Maj. Overgard had seen coming out from under the bricks was not there anymore, but Maj. Overgard thought the person could have been a soldier on leave or just a civilian wearing these clothes.<sup>1771</sup> It was only later that Maj. Overgard saw, at the morgue, the body of the woman killed in the explosion.<sup>1772</sup>

488. The BiH police and UNMO investigations concluded that the SRK had used a modified air bomb to target Hrasnica.<sup>1773</sup> The UNMO team relied on traces found on the scene, witnesses' statements and the noise the UNMOs heard before the bomb landed.<sup>1774</sup> Maj. Overgard dismissed the possibility that the damage could have been caused by ammunition placed inside the house

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<sup>1762</sup> Thorbjorn Overgard, 18 Jan 2007, T. 641, 19 Jan 2007, T. 665 – 667.

<sup>1763</sup> Thorbjorn Overgard, 18 Jan 2007, T. 641, 19 Jan 2007, T. 669, 671.

<sup>1764</sup> Thorbjorn Overgard, 19 Jan 2007, T. 672.

<sup>1765</sup> Thorbjorn Overgard, 19 Jan 2007, T. 672.

<sup>1766</sup> Thorbjorn Overgard, 18 Jan 2007, T. 642, 19 Jan 2007, T. 673.

<sup>1767</sup> W-57, 17 Apr 2007, T. 4584; P542, Official report, p. 2. *See also*, W-116, 17 Apr 2007, T. 4617, 18 Apr 2007, T. 4658 – 4659, 4660.

<sup>1768</sup> W-57, 17 Apr 2007, T. 4590 – 4592.

<sup>1769</sup> W-57, 17 Apr 2007, T. 4593.

<sup>1770</sup> Thorbjorn Overgard, 18 Jan 2007, T. 641 – 642, 19 Jan 2007, T. 673 – 674.

<sup>1771</sup> Thorbjorn Overgard, 19 Jan 2007, T. 674 – 675.

<sup>1772</sup> Thorbjorn Overgard, 19 Jan 2007, T. 666.

<sup>1773</sup> W-57, 17 Apr 2007, T. 4558, P538, p. 4 (under seal); P541, Protest letter from the ABiH to UNPROFOR, 7 April 1995; P224, UNMO report; Thorbjorn Overgard, 18 Jan 2007, T. 639 – 642; P83, Map marked by Thorbjorn Overgard; D15, Map showing location of Sierra Sierra 2. *See also* Berko Zečević, 23 Apr 2007, T. 4974 – 4976.

<sup>1774</sup> Thorbjorn Overgard, 19 Jan 2007, T. 676, 693.



because the bricks were drawn into the house.<sup>1775</sup> Martin Bell reported the incident for the BBC and recalled that it was, to his knowledge, the first use of a “propelled aircraft bomb” in Sarajevo.<sup>1776</sup>

489. W-57 interviewed a number of people from the settlement of Sokolović Kolonija, which lies between Ilidža and Hrasnica, who had seen the bomb in flight, leaving a trail of smoke that indicated it had come from the north-west.<sup>1777</sup> An eyewitness told W-57 that he saw the bomb in flight.<sup>1778</sup> Another witness had seen the bomb being fired.<sup>1779</sup> ABiH reconnaissance observers posted at Mount Igman had seen what appeared to be a rocket launcher truck near the water supply building in Ilidža by.<sup>1780</sup> However, they did not see the projectile being launched.<sup>1781</sup> Eyewitnesses told W-116 that the bomb was launched from the yard of a factory in Ilidža, from a truck that had come out of the factory.<sup>1782</sup> The Trial Chamber notes the Defence submission that the witnesses were all members of the ABiH. The Defence further suggested that the incident had been staged.<sup>1783</sup>

490. The investigations by both the BiH police and UNMOs concluded that the modified air bomb was launched from an area near a factory in Ilidža, a Bosnian Serb controlled area, at a distance of approximately four kilometres from the point of impact.<sup>1784</sup> The place eyewitnesses identified as the origin of fire was a position held by the VRS.<sup>1785</sup> Berko Zečević, an expert on modified air bombs, concluded that the area between Rimski Most and Plandište, west of Ilidža, was a possible launch area, which was consistent with the conclusions of the ABiH and UNMO investigators.<sup>1786</sup>

491. Furthermore, an order from the SRK, dated 6 April 1995 and signed by the Accused, stated “[t]he Ilidža Brigade will immediately prepare a launcher with an aerial bomb and transport the bomb for launching. [...] The most profitable target must be selected in Hrasnica or Sokolović Kolonija, where the greatest casualties and material damage would be inflicted.”<sup>1787</sup> According to a

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<sup>1775</sup> Thorbjorn Overgard, 19 Jan 2007, T. 675.

<sup>1776</sup> Martin Bell, 26 Apr 2007, T. 5261 – 5162, 27 Apr 2007, T. 5304, D178, p. 14; P621, BBC report on 7 April 1995 incident in Hrasnica.

<sup>1777</sup> W-57, 17 Apr 2007, T. 4547, P538, p. 4 (under seal), P539, pp 2, 4 (under seal); P540, map marked by W-57.

<sup>1778</sup> W-57, P538, p. 4 (under seal).

<sup>1779</sup> W-57, P538, p. 4 (under seal); P586, Expert report Berko Zečević, p. 116.

<sup>1780</sup> W-57, 17 Apr 2007, T. 4552.

<sup>1781</sup> W-57, P539, p. 4 (under seal).

<sup>1782</sup> W-116, P548, p. 3.

<sup>1783</sup> See, e.g., Defence Final Brief, para. 202.

<sup>1784</sup> Thorbjorn Overgard, 18 Jan 2007, T. 640; W-57, 17 Apr 2007, T. 4558, P539, pp 3, 4 (under seal); W-116, P548, p. 3.

<sup>1785</sup> W-57, 17 Apr 2007, T. 4552, P538, p. 5 (under seal); W-116, P548, p. 3.

<sup>1786</sup> P586, Expert report Berko Zečević, p. 118.

<sup>1787</sup> P226, Order by SRK commander to prepare air bomb launcher, dated 6 April 1995 (“Order by SRK commander, 6 April 1995”).

SRK combat report from the SRK, dated 7 April 1995, a 250 kilogram aerial bomb was launched at the centre of Hrasnica on 7 April 1995.<sup>1788</sup> W-116 stated that the attack was aimed at civilians.<sup>1789</sup>

### Findings

492. On the basis of witness testimony, including from W-57 and Maj. Overgard, and the BiH police and UNMO investigation reports, and Berko Zečević's evidence, the Trial Chamber is satisfied that the projectile that exploded in Hrasnica on 7 April 1995 was a modified air bomb. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

493. The Trial Chamber is also satisfied, on the basis of the evidence of Ziba Šubo, W-57, Ziba Čustović's death certificate, and the BiH police and UNMO reports, that one civilian was killed and three civilians were injured, one of them seriously, as a result of the explosion of the modified air bomb.

494. In addition to the death and injuries suffered, there is witness, photographic and documentary evidence of extensive damage caused to houses around the area where the modified air bomb exploded, including the complete destruction of Ziba Šubo's house and the house next door. The Trial Chamber finds that the explosion of the modified air bomb caused substantial damage to houses in the vicinity of the explosion; the explosion completely destroyed two houses and damaged at least ten other houses nearby.

495. The evidence from the BiH and UNMO investigations, eyewitnesses, and Berko Zečević is consistent as to the direction from which the modified air bomb was fired. While some of the eyewitnesses were members of the ABiH, others were not. The Trial Chamber rejects the Defence submission that it should find the evidence of the ABiH observer eyewitnesses not credible because they were members of the ABiH. The Trial Chamber does not view this as having any bearing on the determination of the direction of fire made by the BiH police, UNMOs and Berko Zečević. Moreover, on 6 April 1995, the Accused ordered the Ilidža Brigade to target an area of Hrasnica or Sokolović Kolonija where "the greatest casualties and material damage would be inflicted." This was followed by an SRK combat report dated 7 April 1995, that reported there was a launching of an aerial bomb at Hrasnica that day. The Trial Chamber finds that the modified air bomb that exploded in Hrasnica on 7 April 1995 was fired from the area north-west of the impact site, in the area of

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<sup>1788</sup> P225, SRK combat report, dated 7 April 1995. *See also* Asam Butt, 15 Feb 2007, T. 2210 – 2211, who also testified that a "strong connection" existed between the two orders.

<sup>1789</sup> W-116, P548, p. 3. *See also* P541, Protest letter from the ABiH to UNPROFOR, 7 April 1995.

Ilidža, an area that was controlled by the SRK and that the modified air bomb was launched by members of the SRK.

(iv) Shelling of Safeta Zajke Street on 24 May 1995

496. In May 1995, Anda Gotovac lived in Safeta Zajke Street, number 43, near the railway technical school, across the tracks behind the Television Building, in the Novi Grad Municipality.<sup>1790</sup> At about 1000 hours on 24 May 1995, she was sitting outside, at a table in front of her garage.<sup>1791</sup> Enes Jašarević was working in an electric transformer station in the vicinity.<sup>1792</sup>

497. It was a quiet day with no ABiH troops present and there had been no shooting between 0930 and 1000 hours.<sup>1793</sup> The Trial Chamber notes the Defence submission that in May 1995 there was fighting “in the normal combat zones, namely Butmir/Ilidža, Grbavica/Debelo Brdo” and, at the end of May, the most intense fighting was in Sedrenik and Zetra.<sup>1794</sup> When shown a report by the Defence, pertaining to ABiH operations conducted 24 May 1995, Enes Jašarević testified that he did not notice any military activity “coming from Sarajevo” on that day.<sup>1795</sup> The Defence submits, in its Final Brief, that the presence of tyres in a photograph could indicate that there was a military facility nearby.<sup>1796</sup> However, when W-116 was questioned by the Defence during cross-examination about their presence, he testified that a car repair workshop was there and that Safeta Zajke Street was a residential area with only civilian houses.<sup>1797</sup> Anda Gotovac testified that she never saw any ABiH positions or equipment in her street or neighbourhood.<sup>1798</sup> However, she confirmed, when asked by the Defence, that soldiers would pass through her street in order to go to the ABiH-held Žuč Hill. She explained that because she lived downhill, they were “not exactly” passing through her neighbourhood.<sup>1799</sup> Berko Zečević noted in his report that apart from civilian settlements, the area showed an abundance of civilian objects in the vicinity, such as the Bosnia Radio and Television Building (“TV Building”), the Žica factory, the transformer station in Majdanska Street, which was hit later that day, the Novi Grad Municipal Assembly, all of which were very close to the point of impact.<sup>1800</sup>

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<sup>1790</sup> Anda Gotovac, P522, p. 2; P556, Map marked by W-116.

<sup>1791</sup> Anda Gotovac, P523, p. 2.

<sup>1792</sup> Enes Jašarević, 1 Mar 2007, T. 2987; D96, Witness Statement by Enes Jašarević, dated 10 March 1997 (“Statement by Enes Jašarević”), p. 2.

<sup>1793</sup> Anda Gotovac, 3 Apr 2007, T. 4463; Enes Jašarević, 1 Mar 2007, T. 2991 – 2992.

<sup>1794</sup> Defence Final Brief, para. 117. *See supra*, Section II.E.9.(d) ABiH Offensives.

<sup>1795</sup> Enes Jašarević, 1 Mar 2007, T. 3011 – 3013; D95, Report by Vahid Karavelić, dated 24 May 1995, p. 2.

<sup>1796</sup> P562, Photographs, p. 7 (under seal).

<sup>1797</sup> W-116, 18 Apr 2007, T. 4682 – 4683.

<sup>1798</sup> Anda Gotovac, 3 Apr 2007, T. 4455, 4457 – 4458, 4459, 4462, P522, p. 2. *See also* W-116, 18 Apr 2007, T. 4682 – 4684.

<sup>1799</sup> Anda Gotovac, 3 Apr 2007, T. 4458.

<sup>1800</sup> P586, Expert report Berko Zečević, p. 125.

498. That day, around 0945 hours, a projectile fell on the asphalt surface in the centre of Safeta Zajke Street, opposite Anda Gotovac's house.<sup>1801</sup> Anda Gotovac testified that she heard something that sounded like a plane. Before she could raise her head, there was an explosion.<sup>1802</sup> She grabbed the table but it was pulled out of her hands by the force of the blast, which then blew her away.<sup>1803</sup> Anda Gotovac heard a lot of screaming.<sup>1804</sup> The roof of her house was destroyed.<sup>1805</sup>

499. A piece of shrapnel was lodged deep into Anda Gotovac's left shoulder, and this injury required surgery.<sup>1806</sup> She was later discharged from hospital but needed after-care for two months.<sup>1807</sup> She still has breathing problems and cannot lean back on her left side.<sup>1808</sup> Also, she is "permanently affected by the constant fear that [she] felt during that three and a half years."<sup>1809</sup> She takes medication "to calm [her] nerves" and cannot sleep more than three or four hours a night.<sup>1810</sup>

500. Anda Gotovac's neighbour was wounded and another person lost his legs.<sup>1811</sup> They were taken to the hospital.<sup>1812</sup> Investigators found that Aiša Hrustan and Ivo Miletić were killed in the explosion and five civilians, including Anda Gotovac, were seriously wounded and six houses were damaged.<sup>1813</sup>

501. Anda Gotovac did not know which direction the projectile came from. She was told by different people that it came from Hreša and Trebević.<sup>1814</sup> Enes Jašarević was indoors when he heard a bomb fly over. He had the impression that it went towards or behind the TV Building.<sup>1815</sup> Everyone in his building got scared; some people ran for shelter. Enes Jašarević heard a dull

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<sup>1801</sup> W-116, P550, p. 3 (under seal); P557, Sketch of the point of impact made by W-116 (under seal); P586, Expert report Berko Zečević, p. 121.

<sup>1802</sup> Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

<sup>1803</sup> Anda Gotovac, P523, p. 2.

<sup>1804</sup> Anda Gotovac, P523, p. 2.

<sup>1805</sup> Anda Gotovac, 3 Apr 2007, T. 4454, P523, p. 2.

<sup>1806</sup> Anda Gotovac, 3 Apr 2007, T. 4454, P523, p. 2.

<sup>1807</sup> Anda Gotovac, P523, p. 2.

<sup>1808</sup> Anda Gotovac, P523, p. 2.

<sup>1809</sup> Anda Gotovac, P522, p. 2.

<sup>1810</sup> Anda Gotovac, P522, p. 2.

<sup>1811</sup> Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

<sup>1812</sup> Anda Gotovac, P523, p. 2.

<sup>1813</sup> W-116, P550, p. 3 (under seal); W-116, 18 Apr 2007, T. 4626; P562, Photographs (under seal); P586, Expert report Berko Zečević, p. 121; P560, P566, Official report, dated 24 May 1995, p. 2 (under seal). The Trial Chamber notes P560 and P566 refer to the same report; P559, KDZ forensic report, dated 24 May 1995, p. 1 (under seal); P421, P422, P424, P426, P427 (under seal), Medical records respectively for Fanjo Tolić, Aiša Hrustan, Džemal Kukuljac, Igor Vučićević and Anda Gotovac.

<sup>1814</sup> Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

<sup>1815</sup> Enes Jašarević, 1 Mar 2007, T. 2994 – 2995; D96, Statement by Enes Jašarević, p. 2; D97, Statement by Enes Jašarević, dated 19 May 2007, p. 2.

impact, but he could not see where the bomb landed.<sup>1816</sup> However, when asked by the Defence, Enes Jašarević testified that he did not see where the bomb came from.<sup>1817</sup>

502. The BiH police was informed of the incident at about 1400 hours that day and an investigative team was established and sent to the site.<sup>1818</sup> The explosion caused a crater 250 centimetres long by 130 centimetres wide and 30 centimetres deep.<sup>1819</sup> During cross-examination, W-116, a forensic technician for the BiH police, explained that the bodies of the victims who were killed in this incident were transported to a mortuary situated on the other side of the town, and this explained why someone else from his department took the photos of the bodies of the victims.<sup>1820</sup>

503. Based on the evidence gathered at the scene and sent to them by the BiH police, W-137 and other KDZ experts concluded that the projectile was a FAB-250 air bomb, propelled by five 122 mm GRAD rockets.<sup>1821</sup> Berko Zečević, in his report, wrote that rocket motors were found in the crater, along with several metal parts, stabilisers and parts of the fuse.<sup>1822</sup> He concluded that it was “undeniable” that the modified air bomb had three 122 mm GRAD rocket motors, despite the conflicting opinions in the reports on the incident regarding both the number and calibre of rocket motors that were found.<sup>1823</sup> Berko Zečević noted that in light of the multiple explosions, the features of the crater, the effect on the house and surrounding buildings, witnesses’ statements that they felt burning and strong pressure, the smoking house described by a witness and that doors and windows were knocked out, he could only conclude that the projectile was a “classic case of fuel-air aircraft bomb.”<sup>1824</sup>

504. The Defence submitted, in its Final Brief, that there was conflicting evidence regarding the direction from which the modified air bomb was fired.<sup>1825</sup> The Defence identified a translation error in the BiH police report; in the original version of the report it is said that the “length of the crater was turned towards the south”, while the translation states that the crater stretches south-east.<sup>1826</sup> The Trial Chamber notes that, notwithstanding the error in translation, the report states that the

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<sup>1816</sup> Enes Jašarević, 1 Mar 2007, T. 2994 – 2995.

<sup>1817</sup> Enes Jašarević, 1 Mar 2007, T. 2987, 2994, 3030 – 3031.

<sup>1818</sup> P560, P566, Official report, pp 1 – 3 (under seal). *See also supra*, Section II.D Challenge to the Reliability of the Investigations by BiH Police and BiH Police Reports.

<sup>1819</sup> W-116, P550, p. 3 (under seal); P144, Photographs, pp 6 – 7; P559, KDZ forensic report, p. 1 (under seal).

<sup>1820</sup> W-116, 17 Apr 2007, T. 4615, 18 Apr 2007, T. 4634; P562, Photographs (under seal).

<sup>1821</sup> W-137, 19 Feb 2007, T. 2472 – 2473; P260, P561, KDZ report, dated 5 June 1994 (under seal); P559, KDZ forensic report, p. 2 (under seal).

<sup>1822</sup> P586, Expert report Berko Zečević, p. 121.

<sup>1823</sup> P586, Expert report Berko Zečević, p. 122.

<sup>1824</sup> P586, Expert report Berko Zečević, pp 122 – 125.

<sup>1825</sup> Defence Final Brief, para. 203.

<sup>1826</sup> Defence Final Brief, para. 203. *See also* W-116, 18 Apr 2007, T. 4685; P560, P566, Official report, p. 1 (under seal). In P560 the translation error has been corrected.

projectile came from the “aggressor positions in the Lukavica area.”<sup>1827</sup> W-116 established that the projectile had come from the south-east, which could be determined from the angle of the funnel-shaped crater.<sup>1828</sup> He also observed fragments of the projectile embedded in the asphalt that indicated this direction. Usually, W-116’s team had ballistic experts to help them determine the direction of fire but in this specific instance, it was W-116 who did it.<sup>1829</sup> He was not entirely certain that the direction of fire he determined was precise because he was not a ballistic expert.<sup>1830</sup> The KDZ report identifies the direction of fire as south-east, which is the Lukavica area, and the BiH police report mentions Lukavica as the probable origin of the projectile.<sup>1831</sup>

505. Based on the findings of the investigators, Berko Zečević determined that the azimuth was 155 degrees, with a margin of error of plus or minus five degrees.<sup>1832</sup> Berko Zečević found an angle of descent of 20 degrees and he estimated the launching point to be at a distance of 5,800 metres or more from the point of impact.<sup>1833</sup> His findings are consistent with those of the BiH police.<sup>1834</sup>

506. W-116 testified, during cross-examination, that the investigators did not look into any activity or fire coming from Žuč Hill that could have been the cause of damage because the damage was too extensive to be from mortar or tank shells, which would have given them a reason to investigate that possibility.<sup>1835</sup>

## Findings

507. The Trial Chamber accepts the conclusions of the KDZ, including those of W-137, and of Berko Zečević, and finds that a FAB-250 air bomb with fuel-air explosive, propelled by at least three rockets, hit Safeta Zajke Street on the morning of 24 May 1995. The Trial Chamber is, therefore, satisfied that the modified air bomb was fired from the SRK-controlled area of Lukavica. The Trial Chamber further recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. On the basis of evidence of Anda Gotovac, the BiH police reports, and medical records, the Trial Chamber is satisfied that two civilians were killed and five civilians were seriously injured as a result of the explosion of the modified air bomb.

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<sup>1827</sup> P560, P566, Official report, p. 2 (under seal).

<sup>1828</sup> W-116, 18 Apr 2007, T. 4629, P550 (under seal), p. 4; P558, Map marked by W-116; P564, Map marked by W-116; P559, KDZ forensic report, p. 1 (under seal).

<sup>1829</sup> W-116, 18 Apr 2007, T. 4629, 4669 – 4670.

<sup>1830</sup> W-116, 18 Apr 2007, T. 4630.

<sup>1831</sup> P560, P566, Official report, p. 1 (under seal). *Cf.* W-116 took a photograph of the crime scene in which one can see the fragments of the projectile embedded in the ground and showing a south-westerly direction: W-116, 18 Apr 2007, T. 4686 – 4687; P562, Photographs (under seal).

<sup>1832</sup> P586, Expert report Berko Zečević, p. 123.

<sup>1833</sup> Berko Zečević, 20 Apr 2007, T. 4856; P586, Expert report Berko Zečević, p. 124.

<sup>1834</sup> P586, Expert report Berko Zečević, p. 125.

<sup>1835</sup> W-116, 18 Apr 2007, T. 4683 – 4684.

508. The Trial Chamber received conflicting evidence about the direction from which the modified air bomb came. W-116, a police officer but not a ballistic expert, testified that he determined the direction was south-east. The BiH police report identified the direction of fire as south, but Lukavica as the probable origin of fire. Berko Zečević concluded that the launching point was 5,800 metres from the impact point, in a south-easterly direction, in the Lukavica area. Although there is some inconsistency as to the direction of fire, the evidence of the investigative reports, including the KDZ report, and Berko Zečević, points to the Lukavica area as the origin of fire. Furthermore, given both the possible range of the FAB-250 and the likely range of the bomb in this incident, whether the modified air bomb was fired from south or south-east, the origin of fire would have been within SRK-held territory in any case.<sup>1836</sup> The Trial Chamber is, therefore, satisfied that the modified air bomb was fired from the SRK-controlled area of Lukavica and that it was launched by members of the SRK.

(v) Shelling of Majdanska Street on 24 May 1995

509. On 24 May 1995, Enes Jašarević was working as an electrician at the transformer station near the TV Building, proximate to Novi Grad municipality.<sup>1837</sup> That day he was supposed to go to Vogošća but, as a result of heavy shelling in the Sarajevo area and particularly the Novi Grad municipality, he did not go.<sup>1838</sup>

510. At around 1000 hours an air bomb flew over Enes Jašarević and fell somewhere behind the TV Building.<sup>1839</sup> After that “nothing happened and we continued our duty and we were sitting around our work place.”<sup>1840</sup> Sometime after 1300 hours, there was no work left to do and Enes Jašarević decided to leave. He left the building with Sulejman Prasko, the foreman, who began to weed the small vegetable patch adjacent to the entrance of the transformer station.<sup>1841</sup> Enes Jašarević waited for a colleague, Salko Slatko, with whom he intended to cover part of the journey home.<sup>1842</sup>

511. At approximately 1400 hours, Salko Slatko arrived and the two men exited through the gates of the transformer station. Enes Jašarević testified that he heard a sound which he believed to be an aeroplane, coming from the direction of Mojmiro Hill.<sup>1843</sup> He looked around but no aeroplane was

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<sup>1836</sup> See D59, Military map of Sarajevo area.

<sup>1837</sup> Enes Jašarević, 1 Mar 2007, T. 2987; W-116, 18 Apr 2007, T. 4635; P560, P566, Official report (under seal); P300, Map marked by Enes Jašarević.

<sup>1838</sup> D96, Statement by Enes Jašarević, p. 2; W-116, 18 Apr 2007, T. 4635.

<sup>1839</sup> D96, Statement by Enes Jašarević, p. 2; Enes Jašarević, 1 Mar 2007, T. 3030 – 3031.

<sup>1840</sup> Enes Jašarević, 1 Mar 2007, T. 2995.

<sup>1841</sup> Enes Jašarević, 1 Mar 2007, T. 2995 – 2996.

<sup>1842</sup> Enes Jašarević, 1 Mar 2007, T. 2995.

<sup>1843</sup> Enes Jašarević, 1 Mar 2007, T. 2995 – 2996, 3026, 3028.

visible, even though “the sound was coming closer and closer and becoming stronger and stronger.”<sup>1844</sup>

512. Enes Jašarević explained that he saw a dark object hit a pylon inside the compound of the transformer station and “there was a strong flash”; he fell on his stomach.<sup>1845</sup> The pylon that had been hit by the bomb started to collapse and he thought it was going to collapse on him. However, an overhead power line prevented this.<sup>1846</sup>

513. Enes Jašarević testified that, after the pylon collapsed, he turned over and there was something on his right and left leg and “a kind of contraction in his right arm.”<sup>1847</sup> He tried to remove his leather jacket but he was unable to do so as a piece of shrapnel had attached the sleeve to his elbow.<sup>1848</sup> The entrance gate to the transformer station had been jammed shut and Salko Slato, who was only slightly injured, tried to jump over the fence in order to see what had happened to Suljeman Prasko, who was still inside.<sup>1849</sup> Enes Jašarević approached the fence and saw the foreman lying there, his mouth still moving.<sup>1850</sup> However, someone told him that Suljeman Prasko was already dead.<sup>1851</sup>

514. The Defence presented an ABiH combat report indicating that on that day there was intense fire by the ABiH resulting in “significant consumption of all types of ammunition.”<sup>1852</sup> Enes Jašarević disagreed with the Defence proposition that the transformer station was a military headquarters and that it was a legitimate target; he did not agree either that his profession, as an electrician, implied an obligation to provide for the needs of the ABiH.<sup>1853</sup> He testified that he was not in the ABiH and that “it was just a transformer station with people working there, not wearing uniforms or anything. We just had our kit, our tools, on us and that was that.”<sup>1854</sup> The report of the BiH police pertaining to the incident noted that the modified air bomb exploded in a populated area where there were no combat positions of the ABiH nor were there any combat activities being conducted against the SRK in that area.<sup>1855</sup>

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<sup>1844</sup> Enes Jašarević, 1 Mar 2007, T. 2996.

<sup>1845</sup> Enes Jašarević, 1 Mar 2007, T. 2996; P303, Photograph marked by Enes Jašarević.

<sup>1846</sup> Enes Jašarević, 1 Mar 2007, T. 2996.

<sup>1847</sup> Enes Jašarević, 1 Mar 2007, T. 2997.

<sup>1848</sup> Enes Jašarević, 1 Mar 2007, T. 2997.

<sup>1849</sup> Enes Jašarević, 1 Mar 2007, T. 2997.

<sup>1850</sup> Enes Jašarević, 1 Mar 2007, T. 2997 – 2998.

<sup>1851</sup> Enes Jašarević, 1 Mar 2007, T. 2998; P429, Death certificate of victim Suljeman Prasko, dated 25 May 1995.

<sup>1852</sup> D95, Report by Vahid Karavelić, 24 May 1995, p. 2.

<sup>1853</sup> Enes Jašarević, 1 Mar 2007, T. 3018 – 3019.

<sup>1854</sup> Enes Jašarević, 1 Mar 2007, T. 3022 – 3023.

<sup>1855</sup> P566, Official report, p. 3 (under seal).



515. Enes Jašarević testified that somebody came from the direction of the TV Building and then a car came along and asked whether there were any casualties.<sup>1856</sup> He was put in the car and was taken to the State Hospital. The criminal investigation file showed that, in total, six civilians, including Enes Jašarević and Salko Slatko were wounded, five of them seriously, and that Sulejman Prasko and Nezir Huseinović were killed.<sup>1857</sup>

516. The incident was investigated by the BiH police, with members of UNPROFOR being present.<sup>1858</sup> Members of the Novi Grad Police Station had secured the site. W-116 stated the shell exploded, damaging a high-tension electric tower, a 110-kilowatt transformer and several buildings within a radius of about 200 metres.<sup>1859</sup> The BiH police found a large crater measuring five metres long by one and a half metres wide and one and a half metres deep.<sup>1860</sup> A number of parts of a VBR rocket were found in and around the crater as well as shrapnel and parts of an aerial bomb.<sup>1861</sup> Forensic analysis concluded that the pieces of the projectile collected by the BiH police from the incident site, “probably belonged to a device made of an FAB-250 M72 contact fuse aircraft bomb and five 122 mm GRAD type rockets which were used as a power unit.”<sup>1862</sup> Evidence was presented to the Trial Chamber that the effective range of a FAB-250 is 5,820 metres to 7,680 metres.<sup>1863</sup>

517. The KDZ on-site forensic investigation concluded that the modified air bomb was fired from the Pavlovac area in the south-east.<sup>1864</sup> However, the investigation of the BiH police determined that the crater made by the modified air bomb faced “south”, indicating that the modified air bomb and the VBR rockets had been fired from the same place as the earlier bomb that day at Safeta Zajke Street, namely, Lukavica, where the “aggressor’s firing line is situated”.<sup>1865</sup>

518. In his report, Berko Zečević commented that “the incoming angle was determined from the sketch of the place of the incident.” However, “the incident shows the general picture of the situation at the place of impact, but it does not allow for precise assessment of the incoming angle of the bomb.”<sup>1866</sup> In court, Berko Zečević testified that it was not possible to establish the incoming

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<sup>1856</sup> Enes Jašarević, 1 Mar 2007, T. 2997 – 2998.

<sup>1857</sup> P566, Official report, p. 3 (under seal); P424, Medical report of Džemal Kukuljac (under seal).

<sup>1858</sup> P566, Official report, p. 2 (under seal); P302, Colour photographs.

<sup>1859</sup> W-116, P550, 11 Mar 1997, p. 4.

<sup>1860</sup> P566, Official report, p. 2 (under seal).

<sup>1861</sup> P566, Official report, p. 2 (under seal); W-116, P550, p. 4.

<sup>1862</sup> P313, KDZ investigation file, dated 24 May 1995, p. 3 (under seal); W-116 testified that “it was probably a modified air bomb, because not a single projectile of smaller calibre could have produced such huge devastation”, W-116, 18 Apr 2007, T. 4638. *See also* P586, Expert report Berko Zečević, pp 126 – 128.

<sup>1863</sup> *See infra*, para. 95.

<sup>1864</sup> P313, KDZ investigation file, p. 1 (under seal); P563, Criminal investigation file, p. 2 (under seal); W-116, 18 Apr 2007, T. 4637, 4689, P550, p. 4; P564, Map marked by W-116.

<sup>1865</sup> P566, Official report, pp 1 – 3 (under seal); Enes Jašarević, 1 Mar 2007, T. 3026 – 3028.

<sup>1866</sup> P586, Expert report Berko Zečević, p. 123.

angle of the projectile. Nevertheless, taking the shelling of Safeta Zajke Street and Majdanska Street as incidents that occurred on the same day, within approximately four hours of one another and bearing in mind the fact that Mojmiilo Hill was behind the incident sites, he found it “only logical” that the launching sites in both cases were similar; consequently the incoming angle was, in his view, at a minimum of 20 degrees in order to have been able to hit the transformer station. From this analysis, he concluded that “the location for the launcher has to be at a minimum range of 4,800 metres” and that the launch site would be “within the broader area of Lukavica”.<sup>1867</sup>

## Findings

519. Evidence shows that a bomb exploded on Majdanska Street in the afternoon of 24 May 1995. Enes Jašarević testified to hearing the sound of an aeroplane before a projectile impacted inside the transformer station and exploded. The BiH investigation file records that the BiH police found parts of a rocket, shrapnel and parts of an aerial bomb. Similarly, as evidence shows, the KDZ investigation concluded that the projectile was probably a FAB-250 modified air bomb. The Trial Chamber is satisfied that the projectile that exploded on Majdanska Street was a FAB-250 modified air bomb.

520. The Trial Chamber heard evidence from Enes Jašarević that he was seriously injured and that Suljeman Prasko was killed by the explosion. The BiH police report indicated that, along with Enes Jašarević, five others were injured, including his colleague Salko Slato, and that Nezir Husinović was also killed. Two civilians were killed, and six civilians were injured, five of them seriously, as a result of the explosion on Majdanska Street.

521. While the KDZ investigation concluded that the direction of fire was south-east and that the origin of fire was the Pavlovac region, the BiH police and Berko Zečević concluded that the direction of fire was south, and that the origin of fire was the same as for the shelling incident on Safeta Zajke Street that took place the same day, that is, Lukavica. Berko Zečević estimated that the modified air bomb was launched from a minimum distance of 4,800 metres from the incident site. The Trial Chamber recalls that the areas of Lukavica and Palovac were both controlled by the SRK and, given both the possible range of the FAB-250 and the likely range of the bomb in this incident, the origin of fire would have been within SRK-held territory in any case.<sup>1868</sup> The Trial Chamber further recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that the modified air bomb that exploded

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<sup>1867</sup> Berko Zečević, 20 Apr 2007, T. 4858.

<sup>1868</sup> *See supra*, para. 95.

in Majdanska Street originated from SRK-held territory and that it was launched by members of the SRK.

(vi) Shelling of Safeta Hadžića Street on 26 May 1995

522. The weather was good on 26 May 1995, in Safeta Hadžića Street, Novi Grad Municipality.<sup>1869</sup> Safeta Hadžića Street was a residential area with apartment buildings and offices, close to the Majdanska Street.<sup>1870</sup> W-13 was sitting on the road in front of his apartment building.<sup>1871</sup> There were some 40 to 50 other persons also sitting in front of their apartment buildings.<sup>1872</sup> Džemaludin Luinović was standing at the municipal building, about 250 metres from his home.<sup>1873</sup>

523. It was a quiet day with no military operation going on in the area.<sup>1874</sup> Some offices were intermittently used by uniformed soldiers.<sup>1875</sup> According to Džemaludin Luinović, there was no military unit in this area, but there were people who had been mobilised, some for the army, some for the police.<sup>1876</sup> He, himself, was a reserve policeman, wore a camouflage uniform and carried a semi-automatic rifle, a pistol and a truncheon.<sup>1877</sup> However, Džemaludin Luinović denied ever having used the weapons or having taken part in military activities.<sup>1878</sup> In its Final Brief, the Defence submitted that this incident took place “on the same day as NATO dropped aerial bombs on Sarajevo.”<sup>1879</sup>

524. At about 1100 hours, Džemaludin Luinović saw “something big”, like a “low-flying aeroplane”, coming slowly from the direction of Ilidža.<sup>1880</sup> W-13 described a sound that was different to the usual sound of shells; the sound of “a helicopter flying some 15 metres above the

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<sup>1869</sup> W-13, 5 Apr 2007, T. 4535.

<sup>1870</sup> W-138, 31 Jan 2007, T. 1323. Džemaludin Luinović testified that there were no mortars or any heavy weapons in the area and that the nearest ABiH soldiers were around three kilometres away and the nearest frontline was in Nedarići, at around 4.5 kilometres distance. Having consulted a map, the Trial Chamber doubts the latter distance and rather considers it closer. Džemaludin Luinović also testified that the closest military establishment was the Ramiz Salčin barracks, which was approximately one kilometre away: Džemaludin Luinović, 28 Feb 2007, T. 2951, 2952 – 2953, 2957 – 2958, 1 Mar 2007, T. 2963, P298, p. 3. The Trial Chamber notes that W-138 also referred to Majdanska Street, but that at the time of the incident the entire area was called Safeta Hadžića Street, W-138, 31 Jan 2007, T. 1307, 1322.

<sup>1871</sup> W-13, 5 Apr 2007, T. 4535.

<sup>1872</sup> W-13, 5 Apr 2007, T. 4535, P535, p. 3 (under seal).

<sup>1873</sup> Džemaludin Luinović, 28 Feb 2007, T. 2946, 1 Mar 2007, T. 2962, P297, p. 2, P298, p. 2.

<sup>1874</sup> W-138, 1 Feb 2007, T. 1359 – 1360; W-13, 5 Apr 2007, T. 4535.

<sup>1875</sup> W-138, 31 Jan 2007, T. 1323; P146, Map marked by W-138.

<sup>1876</sup> Džemaludin Luinović, 28 Feb 2007, T. 2950 – 2951.

<sup>1877</sup> Džemaludin Luinović, 28 Feb 2007, T. 2944, 2946, 2955 – 2956, P297, p. 2.

<sup>1878</sup> Džemaludin Luinović, 28 Feb 2007, T. 2956, 1 Mar 2007, T. 2962; Džemaludin Luinović further denied the Defence suggestion that his private workshop was used to camouflage mortars during the war, Džemaludin Luinović, 1 Mar 2007, T. 2975. However, the workshop was used by the ABiH during the war, Džemaludin Luinović, P297, p. 2.

<sup>1879</sup> Defence Final Brief, fn. 446.

<sup>1880</sup> Džemaludin Luinović, 28 Feb 2007, T. 2944, 2946 – 2947, 2950, 1 Mar 2007, T. 2965, 2970 – 2971, P297, p. 2, P298, p. 2; P299, Photograph marked by Džemaludin Luinović. *See also* W-13, P535, p. 3 (under seal); P799, Official

buildings very low.”<sup>1881</sup> According to W-138, seconds later, the area was hit by ten shells and a modified air bomb.<sup>1882</sup> The modified air bomb hit the roof of Safeta Hadžića Street, number 52, destroying four apartments on the fifth floor and two on the fourth floor, while seriously damaging two apartments on the third floor.<sup>1883</sup>

525. Not all of the multiple shells fired at Safeta Hadžića Street on 26 May 1995 exploded.<sup>1884</sup> One shell hit the tarmac without exploding, ricocheted and then hit the house at Majdanska Street 8-b, causing a hole of two metres by two metres.<sup>1885</sup> Another unexploded shell landed in front of the north-west wall in the yard of Safeta Hadžića Street, number 70, causing a 200 centimetre by 80 centimetre by 35 centimetre crater.<sup>1886</sup> Another shell hit the south-west wall of Safeta Hadžića Street, number 102.<sup>1887</sup> Compared to the considerable damage caused by the modified projectile, the damage here was much less.<sup>1888</sup> Another crater caused by an artillery explosion, was found in the yard between building numbers 110 and 102.<sup>1889</sup> The next shell hit and destroyed a car, parked behind building number 110.<sup>1890</sup> Further, one crater was found in the yard of the Džemaludin Mušović elementary school, another crater on the asphalt playground of the school and a third crater was found between the school and Safeta Hadžića Street, number 102.<sup>1891</sup> Other buildings hit by shells were buildings number 110, where the projectile tore through the flat concrete roof and damaged one apartment on the fifth floor, and number 143, where the projectile caused material damage when it hit the roof.<sup>1892</sup> Furthermore, the window panes of buildings numbered 100, 102,

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report and note, p. 2 (under seal); P586, Expert report Berko Zečević, p. 129. Cf. P143, Report of on-site investigation, dated 26 May 1995, p. 1 (under seal).

<sup>1881</sup> W-13, 5 Apr 2007, T. 4537, P535, p. 3 (under seal); D33, Statement of W-138, dated 24 April 2006, p. 2 (under seal).

<sup>1882</sup> W-138, 31 Jan 2007, T. 1307, 1 Feb 2007, T. 1359; P146, Map marked by W-138. See also P143, Investigation report, p. 1 (under seal); P299, Photograph marked by Džemaludin Luinović; P799, Official report and note, pp 1, 11 (under seal); Džemaludin Luinović, 28 Feb 2007, T. 2944, 2947, 2948 – 2949, 2972, 1 Mar 2007, T. 2965, P297, p. 2, P298, p. 3.

<sup>1883</sup> W-138, 31 Jan 2007, T. 1310 – 1311, 1314 – 1315; P144, Photographs of shelling, pp 14 – 15; Džemaludin Luinović, 1 Mar 2007, T. 2969; Berko Zečević, 23 Apr 2007, T. 4952; P586, Expert report Berko Zečević, p. 129; P143, Investigation report, p. 1 (under seal); P145, Analyses of projectile traces, dated 19 June 1995, p. 1, confirmed by Ekrem Suljević in P311, dated 10 March 1997, p. 2; P799, Official report and note, pp 2, 11 (under seal); W-13, P535, p. 3 (under seal).

<sup>1884</sup> P143, Investigation report, p. 1 (under seal). Cf. Džemaludin Luinović testified that all shells exploded, Džemaludin Luinović, 1 Mar 2007, T. 2983.

<sup>1885</sup> Džemaludin Luinović, 28 Feb 2007, T. 2949, 1 Mar 2007, T. 2973, 2983, P297, p. 2, P298, p. 3; W-138, 31 Jan 2007, T. 1307 – 1308, 1314, 1 Feb 2007, T. 1360; P143, Investigation report, p. 1 (under seal). See also, P144, Photographs, p. 12; P799, Official report and note, pp 2, 12 (under seal). The Trial Chamber notes that according to the official report of the KDZ the projectile exploded when it hit the house, P799, Official report and note, p. 2 (under seal).

<sup>1886</sup> W-138, 31 Jan 2007, T. 1314, P144, p. 9; P799, Official report and note, pp 2, 11 (under seal).

<sup>1887</sup> W-138, 31 Jan 2007, T. 1310, P144, p. 5; P799, Official report and note, p. 1 (under seal).

<sup>1888</sup> W-138, 31 Jan 2007, T. 1311; P799, Official report and note, p. 1 (under seal).

<sup>1889</sup> P799, Official report and note, pp 1, 11 (under seal).

<sup>1890</sup> W-138, 31 Jan 2007, T. 1312, P144, pp 3 – 4. The Trial Chamber notes that the car was, according to the official report and the official note of the KDZ, parked behind building number 102, Safeta Hadžića Street: P799, Official report and note, pp 1, 11 (under seal).

<sup>1891</sup> W-138, 31 Jan 2007, T. 1312 – 1313, P144, pp 6 – 8; P799, Official report and note, pp 1 – 2, 11 (under seal).

<sup>1892</sup> P799, Official report and note, pp 2, 12 (under seal).

108 and 110 broke.<sup>1893</sup> In cross-examination, Džemaludin Luinović confirmed a report that there were no civilian casualties resulting from the attack with smaller shells that followed the big one.<sup>1894</sup>

526. After the powerful explosion, the persons on the road took cover in nearby buildings.<sup>1895</sup> Džemaludin Luinović described the moments after the impact as “there was so much dust in the air and bits of concrete flying all over the place; mortar off the walls; doors and windows smashed; bits flying through the air. There was rubble strewn all across the road”, and it was difficult to see.<sup>1896</sup> W-13 and his daughter were injured; W-13 was taken to Koševo Hospital in a private car.<sup>1897</sup>

527. Džemaludin Luinović ran back to his house, which was opposite the building hit by the modified air bomb, and watched the site from his front yard with his father.<sup>1898</sup> He saw injured persons but, in cross-examination said he did not see a body being carried out of the building.<sup>1899</sup> Among the injured persons, several had been injured in the neighbouring building, number 46, and some in the entrance hall of number 48.<sup>1900</sup>

528. There is some contradictory evidence as to the number of people injured in this incident. The Prosecution alleged that two persons were seriously injured and 15 were slightly injured.<sup>1901</sup> Medical records confirm four injured persons, one of them seriously.<sup>1902</sup> An official note by the KDZ, dated 26 May 1995, mentions two persons as seriously wounded.<sup>1903</sup> This note also lists fourteen slightly injured persons.<sup>1904</sup> A report by the KDZ, dated 1 June 1995, lists two seriously wounded, the same as in the official note, and 15 slightly injured persons.<sup>1905</sup> There is one person in the official note listed as injured who does not appear in the KDZ report and there are two persons

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<sup>1893</sup> P799, Official report and note, p. 1 (under seal).

<sup>1894</sup> Džemaludin Luinović, 1 Mar 2007, T. 2970. *See also* P799, Official report and note, p. 7 (under seal).

<sup>1895</sup> W-13, 5 Apr 2007, T. 4534; Džemaludin Luinović, 1 Mar 2007, T. 2965, 2971, P298, p. 2.

<sup>1896</sup> Džemaludin Luinović, 28 Feb 2007, T. 2948, 1 Mar 2007, T. 2965. *See also* W-13, P535, p. 3 (under seal).

<sup>1897</sup> W-13, 5 Apr 2007, T. 4533, 4538, P535, p. 3 (under seal).

<sup>1898</sup> Džemaludin Luinović, 28 Feb 2007, T. 2948.

<sup>1899</sup> Džemaludin Luinović, 1 Mar 2007, 2969 – 2970. Two men were injured when they fell in a hole because they did not notice that the metal cover had been blown off: W-13, P535, p. 3 (under seal). *See also*, W-138, 31 Jan 2007, T. 1308; W-13, 5 Apr 2007, T. 4536 – 4537; P799, Official report and note, p. 1 (under seal).

<sup>1900</sup> P799, Official report and note, pp 3, 11 (under seal).

<sup>1901</sup> Indictment, Second Schedule.

<sup>1902</sup> P430, P431, P433, Medical records (under seal).

<sup>1903</sup> P799, Official report and note, p. 11 (under seal). One of the two seriously injured victims stayed 18 days in Sarajevo State Hospital, P431, Medical record (under seal). *See also*, P586, Expert report Berko Zečević, p. 129.

<sup>1904</sup> P799, Official report and note, p. 11 (under seal).

<sup>1905</sup> P799, Official report and note, p. 3 (under seal). *See also*, P586, Expert report Berko Zečević, p. 129; P433, Medical record (under seal). According to the medical record, two victims sustained severe injuries and were released for treatment at home. Another victim stayed 14 days in hospital.

in the report who are not listed in the official note.<sup>1906</sup> However, one of the latter two is also mentioned in Berko Zečević's expert report as "bleeding from the lungs."<sup>1907</sup>

529. According to a KDZ report, the smaller projectiles were 90 mm armour-piercing explosive artillery projectiles.<sup>1908</sup> The investigation conducted by the KDZ into the incident concluded that the projectile was "probably a [...] contact fuse high explosive shell in 88 mm calibre" and that "this type of projectile is rather old and was a part of the former JNA weaponry."<sup>1909</sup> In an analysis of projectile traces by the KDZ, the large bomb was described as "the remains of a modified aircraft bomb made of several GRAD-type 122 mm rocket projectiles."<sup>1910</sup>

530. With regard to the direction from which the modified air bomb had come, a number of witnesses referred to the West and, in particular, the Ilidža-Rajlovac area.<sup>1911</sup> One KDZ report refers to positions in the west as the direction of fire of the shells and to Lukavica in the south as the launching point for the modified air bomb.<sup>1912</sup> Prosecution expert Berko Zečević stated that the shells had come from the direction of Lukavica, but that the modified air bomb had come from the Ilidža-Rajlovac direction.<sup>1913</sup> He emphasised the "good synchronisation of [SRK] units in Ilidža and Lukavica."<sup>1914</sup> In calculating the angle of descent, Berko Zečević came to the conclusion that the modified air bomb was launched from a minimum distance of around 5,800 metres, which corresponds to the wider area of Butila, located between Rajlovac and Ilidža.<sup>1915</sup>

## Findings

531. The Trial Chamber accepts the testimony of witnesses that they had heard a sound like an aeroplane, that there was a very large explosion and extensive damage. The Trial Chamber also had investigative reports and the report of Berko Zečević. The Trial Chamber is satisfied that after the explosion of the modified air bomb, a number of shells landed on Safeta Hadžića Street; some of

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<sup>1906</sup> P799, Official report and note, pp 3, 11 (under seal).

<sup>1907</sup> P586, Expert report Berko Zečević, p. 129.

<sup>1908</sup> P799, Official report and note, p. 2 (under seal). W-138 noticed on this shell some "Nazi symbols" like the swastika, a symbol with wings and a serial number engraved by a machine, W-138, 31 Jan 2007, T. 1308, 1 Feb 2007, T. 1359, 1360, 1362 – 1363; P143, Investigation report, p. 1 (under seal). Confronted by the Defence, W-138 denied that he brought the unexploded projectile with the "Nazi symbols" to the site to use it for propaganda purposes against the Serbs, W-138, 1 Feb 2007, T. 1362.

<sup>1909</sup> P799, Official report and note, p. 8 (under seal).

<sup>1910</sup> P145, Analyses of projectile traces, 19 June 1995, p. 3. *See also*, P586, Expert report Berko Zečević, pp 129 – 130; P799, Official report and note, p. 2 (under seal).

<sup>1911</sup> Džemaludin Luinović, 28 Feb 2007, T. 2944, 2949 – 2950, 1 Mar 2007, T. 2971, P297, p. 2, P298, p. 2; P299, Photograph marked by Džemaludin Luinović; P143, Investigation report, p. 1 (under seal); D32, Statement of W-138, p. 2 (under seal); P145, Analyses of projectile traces, p. 1. *See also*, P586, Expert report Berko Zečević, p. 129.

<sup>1912</sup> P799, Official report and note, p. 3 (under seal).

<sup>1913</sup> P586, Expert report Berko Zečević, pp 129 – 130.

<sup>1914</sup> P586, Expert report Berko Zečević, p. 129. *See also*, Thorbjorn Overgard, 18 Jan 2007, T. 640.

<sup>1915</sup> P586, Expert report Berko Zečević, pp 131 – 132.

them exploded. The Trial Chamber finds that it was a modified air bomb that hit Safeta Hadžića Street on 26 May 1995. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

532. The Trial Chamber is satisfied that, on the basis of the investigative reports and the conclusions of Berko Zečević, at least 14 persons were slightly injured and two persons were seriously injured as a result of this shelling. These persons were all civilians.

533. Most of the evidence pertaining to the direction from which the modified air bomb came indicates that the direction was the Ilidža-Rajlovac area, that is, north-west of Safeta Hadžića Street. The Trial Chamber notes that a single KDZ report states the direction was south. Even if the direction of fire was south, that would still be within an area under the control of the SRK. The Trial Chamber is satisfied that the modified air bomb was fired from the area of Ilidža-Rajlovac, which was SRK-held territory and that it was launched by members of the SRK.

(vii) Shelling of the UMC and Oncology Department, Dositejeva, on 16 June 1995

534. No witness evidence was led in respect of this shelling incident. However, the incident is the subject of police reports, which were authenticated by Ekrem Suljević, a member of the KDZ.<sup>1916</sup> Berko Zečević also discussed this incident in his report.

535. On the morning of 16 June 1995, an explosion occurred at the University Medical Centre (“UMC”), Department of Radiology and Oncology, at Dositejeva Street, number 4a.<sup>1917</sup> As a result of the explosion, three people were slightly injured; the buildings of five companies and some apartments situated in the vicinity of the UMC were destroyed.<sup>1918</sup>

536. An investigation into the explosion was conducted by the BiH police, the next day, on 17 June 1995, during which multiple fragments of rockets were found in the UMC building.<sup>1919</sup> The investigation concluded that a modified air bomb had hit the roof of the UMC; it had exploded on the window frame of a toilet on the first floor of the building.<sup>1920</sup> Berko Zečević agreed with the

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<sup>1916</sup> Ekrem Suljević, 2 Mar 2007, T. 3099 – 3101.

<sup>1917</sup> P321, Forensic report, dated 17 June 1995; P324, Report by KDZ, dated 19 June 1995, stating that the explosion occurred at around 1105 hours; P217, Official report, dated 17 June 1995.

<sup>1918</sup> P321, Forensic report, p. 1; P217, Official report, p. 1; P323, Photographs; P586, Expert report Berko Zečević, p. 134. The Trial Chamber notes that in P324, Report by KDZ, it is reported that four people were injured. However, that report, unlike the other two reports, P321 and P217, does not list the names of the people who were injured.

<sup>1919</sup> P321, Forensic report, p. 2; P323, Photographs; P324, Report by KDZ, pp 1, 4 – 5; P217, Official report, p. 1.

<sup>1920</sup> P321, Forensic report, p. 1; P324, Report by KDZ, p. 5.

BiH investigators that the explosive device was a modified air bomb.<sup>1921</sup> He also agreed that the bomb exploded “inside the first floor”.<sup>1922</sup>

537. The investigation also concluded that the azimuth was north-west, at 348 degrees, plus or minus ten degrees.<sup>1923</sup> The KDZ later determined, as a result of its investigation, that the modified air bomb had been fired from “enemy positions” in the surrounding area of Pionirska Dolina.<sup>1924</sup> Berko Zečević disagreed with their determination on the azimuth, saying that it was “unacceptable, because the investigators did not define the method they used to determine the incoming angle with such precision.”<sup>1925</sup> He noted that if the azimuth of the BiH police were to be accepted, this would place the possible launch site “deep in the canyon within the Pretis Factory in Vogošća.”<sup>1926</sup> Based on his analysis of the shelling incident on Čobanija Street, which showed that another modified air bomb came from the direction of the Pretis Factory and struck that street, as well as based on an analysis of the surrounding terrain, he determined that the direction of fire was 315 degrees, plus or minus ten degrees, placing the launch site at a distance of 5,820 metres from the impact site and inside the compound of the Pretis Factory.<sup>1927</sup>

## Findings

538. On 16 June 1995, a projectile exploded at the UMC. On the basis of the BiH police reports and Berko Zečević’s report, the Trial Chamber is satisfied that the projectile was a modified air bomb. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. On the basis of the police reports and photographs, the Trial Chamber finds that three or four civilians were injured as a result of the explosion, and that some surrounding buildings were destroyed.

539. The evidence regarding the direction and origin of fire is inconsistent. While the BiH police put the direction of fire at almost north, Berko Zečević, after dismissing this determination, concluded that the direction of fire was closer to north-west. Although the direction from where the bomb came was not established with any certainty, in light of Berko Zečević’s evidence that it was fired almost six kilometres from the impact site, the Trial Chamber is satisfied that the modified air

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<sup>1921</sup> P586, Expert report Berko Zečević, p. 134.

<sup>1922</sup> P586, Expert report Berko Zečević, p. 134.

<sup>1923</sup> P321, Forensic report, p. 1; P322, Investigation file, dated 17 June 1995 (“Investigation file”), p. 1; P324, Report by KDZ, pp 1, 4.

<sup>1924</sup> P324, Report by KDZ, p. 5.

<sup>1925</sup> P586, Expert report Berko Zečević, p. 134.

<sup>1926</sup> P586, Expert report Berko Zečević, p. 135.

<sup>1927</sup> P586, Expert report Berko Zečević, p. 135.



bomb was fired from outside the confrontation lines and within SRK-held territory and that it was launched by members of the SRK.

540. The Trial Chamber notes the submission in the Defence Final Brief that there was an ABiH offensive at the time of the incident and that all along the confrontation lines it was “very intense”. It understands this submission to mean that the intensity of the offensive somehow absolves the SRK of criminal liability for the use of modified air bombs on this day. The Trial Chamber rejects this submission and stresses that there was nothing in the circumstances in which the modified air bomb was launched that would absolve the Accused of liability, should the Trial Chamber determine that the SRK forces responsible for the launch were under his control and command.

(viii) Shelling of Trg Medunarodnog Prijateljstva on 16 June 1995

541. On 16 June 1995, there was fine weather and good visibility.<sup>1928</sup> That day, W-107, a homemaker, was in the local commune centre in Alipašino Polje, along with four men.<sup>1929</sup>

542. Trg Medunarodnog Prijateljstva, number 10, was located in a residential area, in Alipašino Polje, and across the street from the PTT Building, where UNPROFOR Sector Sarajevo Headquarters was based.<sup>1930</sup> The headquarters of the civil defence was located in Trg Medunarodnog Prijateljstva, number 10.<sup>1931</sup> According to W-107, the civil defence was a civilian institution.<sup>1932</sup> Humanitarian aid was delivered to the headquarters and civil defence personnel distributed medicines, firewood and food to the civilian population.<sup>1933</sup> Humanitarian organisations, including the Red Cross, came there. No soldiers assisted the civil defence, nor were they present in its facilities.<sup>1934</sup> There was no military installation or facility in the vicinity.<sup>1935</sup> In response to questions by the Defence, W-107 testified she had worked for the Territorial Defence (“TO”).<sup>1936</sup> However, W-107 testified that she was not employed by the TO nor did she have a salary or medical insurance.<sup>1937</sup> She understood the TO to be the same as civil protection.<sup>1938</sup> W-107 further

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<sup>1928</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1929</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1930</sup> W-116, P550, p. 3 (under seal); W-107, 12 Mar 2007, T. 3508, 3545. *See also supra*, para. 32.

<sup>1931</sup> W-107, 12 Mar 2007, T. 3509.

<sup>1932</sup> W-107, 12 Mar 2007, T. 3509, 3513 – 3514, 3545, 3546.

<sup>1933</sup> W-107, 12 Mar 2007, T. 3509, 3515, 3523 – 3524.

<sup>1934</sup> W-107, 12 Mar 2007, T. 3514 – 3515.

<sup>1935</sup> W-107, 12 Mar 2007, T. 3515.

<sup>1936</sup> W-107, 12 Mar 2007, T. 3522; D115, Statement by W-107, dated 12 March 1997 (“Statement by W-107”), p. 2 (under seal).

<sup>1937</sup> W-107, 12 Mar 2007, T. 3522 – 3523.

<sup>1938</sup> W-107, 12 Mar 2007, T. 3522.

testified that it was the TO which was attached to the municipal centre, where she sometimes went to deliver letters.<sup>1939</sup>

543. During the day of 16 June 1995, there was sporadic shooting and sniping in Alipašino Polje.<sup>1940</sup> The Defence submitted that the incident took place on the day the ABiH launched “an offensive on all fronts against the SRK.”<sup>1941</sup>

544. Between 1520 and 1530 hours, W-107 heard a sound “like an aeroplane flying through the room.”<sup>1942</sup> The sound was “loud and strong.”<sup>1943</sup> Moments later, an explosion occurred approximately 10 to 15 metres from the local community centre.<sup>1944</sup> According to W-107, the bomb fell in the meadow on the edge of an asphalt path next to one of the entrances to the local commune centre.<sup>1945</sup> The entrance was at the backside of the lower of two high-rise buildings.<sup>1946</sup>

545. As a result of the explosion, everyone in the room was thrown into the air and to different corners of the room.<sup>1947</sup> There was debris everywhere.<sup>1948</sup> W-107 fell onto a large table and then against the wall, a distance of approximately ten metres.<sup>1949</sup> She had scratches on the right side of her body and was “all swollen.”<sup>1950</sup> Afterwards, she felt “some pain” in her liver and lungs and a buzzing noise in her ears for about one month.<sup>1951</sup> She could not hear properly for about one year and suffered from headaches after the incident.<sup>1952</sup> In total, seven people were slightly injured.<sup>1953</sup>

546. Immediately after the blast, the injured people were taken by civil defence workers to a shelter, which was located approximately ten metres around the corner from the local commune centre.<sup>1954</sup> W-107 stayed in the shelter for three to five days.<sup>1955</sup> W-107 testified that all she recalled

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<sup>1939</sup> W-107, 12 Mar 2007, T. 3522, 3524. The Trial Chamber notes that the municipal centre of the TO was not identical to the local commune centre.

<sup>1940</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1941</sup> Defence Final Brief, para. 206.

<sup>1942</sup> W-107, 12 Mar 2007, T. 3513, 3516; D116, Statement by W-107, p. 2 (under seal).

<sup>1943</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1944</sup> W-116, 18 Apr 2007, T. 4645, P550, p. 3 (under seal); W-107, 12 Mar 2007, T. 3513, 3514; Berko Zečević, 23 Apr 2007, T. 4960 – 4961.

<sup>1945</sup> W-107, 12 Mar 2007, T. 3519, 3535; P354, Photograph marked by W-107.

<sup>1946</sup> W-107, 12 Mar 2007, T. 3538, 3543; P354, Photograph marked by W-107.

<sup>1947</sup> W-107, 12 Mar 2007, T. 3513, 3516.

<sup>1948</sup> W-107, 12 Mar 2007, T. 3517.

<sup>1949</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1950</sup> W-107, 12 Mar 2007, T. 3516.

<sup>1951</sup> D115, Statement by W-107, p. 2 (under seal).

<sup>1952</sup> D116, Statement by W-107, p. 2 (under seal).

<sup>1953</sup> W-116, 18 Apr 2007, T. 4645; P567, Official note, dated 16 June 1995, p. 1 (under seal); P568, On-site investigation report, dated 26 June 1995, p. 1 (under seal).

<sup>1954</sup> W-107, 12 Mar 2007, T. 3517.

<sup>1955</sup> W-107, 12 Mar 2007, T. 3516.

was the screaming and moaning of many people around her in the shelter, among them children and small babies.<sup>1956</sup>

547. The blast destroyed the room of the local commune centre completely and only the exterior walls remained.<sup>1957</sup> “Substantial material damage” was inflicted on the surrounding buildings.<sup>1958</sup> Windows and balconies were damaged.<sup>1959</sup> According to a witness, if a projectile of such a devastating and destructive power had hit the building directly, it would have demolished it completely.<sup>1960</sup>

548. Due to the heavy shelling, BiH police were only able to investigate the incident ten days later, on 26 June 1995.<sup>1961</sup> According to the investigative team’s report, the scene of the incident had been altered.<sup>1962</sup> In its Final Brief, the Defence submitted that this delay in carrying out the investigation “is why everything in the Bosnian police report stems from the policeman’s imagination.”<sup>1963</sup>

549. The official note states that the explosion caused a crater 1100 centimetres long, 780 centimetres wide and approximately 250 centimetres deep.<sup>1964</sup> W-116 testified that the “huge funnel-shaped crater” pointed in the direction of Lukavica, which is situated south-east from Alipašino Polje.<sup>1965</sup> The official note on the incident stated that the modified air bomb was “fired probably from the aggressor’s positions in or near Lukavica.”<sup>1966</sup> In response to questions by the Defence, W-107 said that the area of Mojmiro Hill is located between Alipašino Polje and Lukavica.<sup>1967</sup> That area was occupied primarily by the ABiH.<sup>1968</sup>

550. However, the KDZ report on the on-site investigation stated that the projectile, “probably a modified air bomb with four inbuilt rocket engines”, “came from the direction of the aggressor’s positions in the west.”<sup>1969</sup> In an earlier statement, W-116 identified the direction from which the bomb had come as the west, although, as noted above, W-116 testified that the direction was south-

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<sup>1956</sup> W-107, 12 Mar 2007, T. 3516 – 3517.

<sup>1957</sup> W-107, 12 Mar 2007, T. 3517; D116, Statement by W-107, p. 2 (under seal).

<sup>1958</sup> W-116, 18 Apr 2007, T. 4645; W-116, P550, p. 3 (under seal).

<sup>1959</sup> D116, Statement by W-107, p. 3 (under seal).

<sup>1960</sup> W-116, 18 Apr 2007, T. 4647.

<sup>1961</sup> W-116, 18 Apr 2007, T. 4674 – 4675; P567, Official note, p. 1 (under seal), also tendered as P353.

<sup>1962</sup> P567, Official note, p. 1 (under seal).

<sup>1963</sup> Defence Final Brief, para. 206.

<sup>1964</sup> P567, Official note, p. 1 (under seal); P568, On-site investigation report, p. 1 (under seal); W-116, P550, p. 3 (under seal); The Trial Chamber notes that the date on the first page of the report says 16 June 1995. However the content of the report indicates that it was written on or after 26 June 1995.

<sup>1965</sup> W-116, 18 Apr 2007, T. 4678; D167, Map marked by W-116.

<sup>1966</sup> W-116, 18 Apr 2007, T. 4678; P567, Official note, p. 1 (under seal).

<sup>1967</sup> W-107, 12 Mar 2007, T. 3540.

<sup>1968</sup> See *supra*, paras 121 - 122.

<sup>1969</sup> P568, On-site investigation report, p. 1 (under seal).

east. In his statement, W-116 noted that ballistics experts had also concluded that the projectile came from the west.<sup>1970</sup> Berko Zečević agreed with this conclusion, on the basis of his analysis of the incident.<sup>1971</sup> He determined that the approximate range from where the projectile came was 5,000 metres, the broader area of Butila.<sup>1972</sup>

## Findings

551. The Trial Chamber notes W-107's testimony that she heard the sound of an aeroplane before the explosion and the evidence of the extensive damage caused to the area around the impact site. Furthermore, the BiH police and Berko Zečević determined that the projectile was a modified air bomb. W-116's testimony and the BiH police on-site investigation report show that the explosion of the projectile injured seven civilians, including W-107. W-107 suffered serious injuries. On the basis of the evidence, the Trial Chamber finds that the projectile that exploded was a modified air bomb and that the explosion injured seven people. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

552. With regard to the direction of fire, the Trial Chamber notes that both areas identified by the BiH police and Berko Zečević, to the south-east and to the west of the incident site, were, in any event, occupied by the SRK. The Defence elicited evidence in cross-examination that the area of Mojmiro Hill, which was occupied primarily by the ABiH, lies between the point of impact and the south-easterly direction, which one witness testified was the origin of fire. No evidence was led by the Defence that the modified air bomb came from a position under the control of the ABiH. On the basis of the evidence in its totality, in particular, Berko Zečević's evidence that the projectile was launched from an approximate range of 5,000 metres, and that, in any event, the areas identified by the BiH police and Berko Zečević were both occupied by the SRK, the Trial Chamber is satisfied that this modified air bomb was fired from a position under the control of the SRK and that it was launched by members of the SRK.

553. The Trial Chamber recalls that it already rejected the Defence submission relating to the intensity of the conflict on 16 June 1995.

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<sup>1970</sup> W-116, P550, p. 3 (under seal); P569, dated 26 June 1995 ("On-site sketch"), p. 2 (under seal).

<sup>1971</sup> Berko Zečević, 20 Apr 2007, T. 4858 – 4859. In establishing the minimum angle at which the modified air bomb was fired, Berko Zečević considered the conditions of the surroundings and of the immediate neighbourhood, in particular the height of the buildings next to the impact site, *ibid.*

<sup>1972</sup> Berko Zečević, 20 Apr 2007, T. 4859; P586, Expert report Berko Zečević, pp 137, 149 – 150. Additionally, Berko Zečević emphasised that modified air bomb launchers were mounted on trucks. Therefore, the launching site also

(ix) Shelling of Čobanija Street on 16 June 1995

554. At around 1710 hours on 16 June 1995, in the Centar Municipality, a projectile struck a boiler room on Čobanija Street, number 7, causing damage to the building in which the boiler was located and wounding a number of persons.<sup>1973</sup>

555. According to Bogdan Vidović, a member of the KDZ, Čobanija Street was residential and the nearest military target was in Bistrik where UNPROFOR was stationed.<sup>1974</sup> He did not hear of the presence of any soldiers at Čobanija Street at the time the projectile struck.<sup>1975</sup>

556. Bogdan Vidović testified that three people were injured in the explosion.<sup>1976</sup> Similarly, the BiH police investigation file named three people who were injured.<sup>1977</sup> The KDZ report on the incident stated that five people were injured, although the names of these people are not provided.<sup>1978</sup> Furthermore, the Trial Chamber received the medical records of only two persons, who lived at Čobanija Street, number 9a; one person was wounded in the right eye, while the other sustained an injury to her left ear, a broken arm and suffered from a headache and vomiting.<sup>1979</sup> The Trial Chamber notes that according to the photograph file it is not clear where the victims were when they were wounded.<sup>1980</sup> However, these two people were mentioned in the BiH police investigation file.

557. Bogdan Vidović recalled that witnesses reported that they had heard a sound “like a lorry flying through the air.”<sup>1981</sup> During the investigation, the scene was photographed and pieces of the projectile were collected for analysis. The BiH police investigators and the KDZ investigators determined that a FAB-250 air bomb had been used.<sup>1982</sup> Berko Zečević confirmed in his report that the projectile had been a modified air bomb, filled with a fuel-air mixture.<sup>1983</sup>

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depends on the availability and accessibility of roads in the area. He took these factors into consideration in determining the possible position of firing, Berko Zečević, 20 Apr 2007, T. 4859.

<sup>1973</sup> P213, Investigation file, dated 17 June 1995, p. 1; P215, KDZ investigation file, dated 17 June 1995, p. 1; P216, Photographs; P217, Official report, 17 June 1995, p. 2.

<sup>1974</sup> P214, Map marked by Bogdan Vidović; Bogdan Vidović, 14 Feb 2007, T. 2087.

<sup>1975</sup> Bogdan Vidović, 14 Feb 2007, T. 2087.

<sup>1976</sup> Bogdan Vidović, 14 Feb 2007, T. 2085. In cross-examination, he confirmed this number of wounded, Bogdan Vidović, 14 Feb 2007, T. 2108.

<sup>1977</sup> P217, Official report, 17 June 1995, p. 1.

<sup>1978</sup> P215, KDZ investigation file. *See also*, P586, Expert report Berko Zečević, p. 139.

<sup>1979</sup> P218, Medical records, pp 2 – 3, 7 – 8.

<sup>1980</sup> P216, Photographs, p. 1.

<sup>1981</sup> Bogdan Vidović, 14 Feb 2007, T. 2084.

<sup>1982</sup> Bogdan Vidović, 14 Feb 2007, T. 2083; P213, Investigation file, p. 1; P215, KDZ investigation file, p. 2.

<sup>1983</sup> P586, Expert report Berko Zečević, p. 141.

558. The BiH police investigators concluded, based on the point of impact in the boiler room, that the modified air bomb came from a north-easterly direction.<sup>1984</sup> However, in a police report summarising all the investigations conducted on 16 June 1995 and the KDZ report, the direction indicated was north-west.<sup>1985</sup> According to Bogdan Vidović, this aggregate police report was drafted for police purposes and should reflect the content of the investigative reports for that day.<sup>1986</sup> He testified that if the modified air bomb had come from the north-west, it would have struck a different building.<sup>1987</sup> However, he acknowledged that the member of the bomb squad made a determination on the direction of fire.<sup>1988</sup>

559. Based on his finding that the boiler room was the point of impact and the height of the building opposite that point, Berko Zečević determined a minimum angle of descent of approximately 25 degrees.<sup>1989</sup> This enabled him to look at the surrounding areas, at a distance that would allow for the calculated angle of descent. He found that the only broader area from which the modified air bomb could have been fired was the area around the compound of the Pretis Factory, to the north-west of Čobanija Street.<sup>1990</sup> In his report, he noted that this finding is further supported by the findings on the shelling of the UMC Oncology Department in Dositejeva Street, number 4, which was shelled on the same day.<sup>1991</sup>

## Findings

560. On the basis of the evidence presented, the Trial Chamber finds that the projectile that exploded on Čobanija Street in the evening of 16 June 1995 was a modified air bomb. The Trial Chamber is also satisfied, on the basis of witness testimony, the BiH police and KDZ reports, and the medical records presented to it, that at least three civilians were injured, two of whom seriously, as a result of the explosion of the modified air bomb.

561. There is conflicting evidence regarding the direction of fire. The BiH police report and the testimony of Bogdan Vidović point to north-east as the direction from which the modified air bomb came. However, the KDZ and Berko Zečević concluded that it came from the north-west. The Trial

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<sup>1984</sup> Bogdan Vidović, 14 Feb 2007, T. 2080, 2083, 2099; P213, Investigation file, p. 1; P221, Map marked by Bogdan Vidović. The Trial Chamber notes that the English translation of P213 lists north-west as the direction of fire. Bogdan Vidović, the interpreters in the courtroom and the Defence confirmed that this was a mistake in translation, Bogdan Vidović, 14 Feb 2007, T. 2080 – 2081, 2082.

<sup>1985</sup> P217, Official report, p. 2; P215, KDZ investigation file, p. 2.

<sup>1986</sup> Bogdan Vidović, 14 Feb 2007, T. 2097 – 2099, 2102.

<sup>1987</sup> Bogdan Vidović, 14 Feb 2007, T. 2098.

<sup>1988</sup> Bogdan Vidović, 14 Feb 2007, T. 2098. The Trial Chamber notes that the bomb squad member was a member of the KDZ, *see supra*, para. 175 and 180.

<sup>1989</sup> Berko Zečević, 20 Apr 2007, T. 4860 – 4861; P586, Expert report Berko Zečević, p. 141.

<sup>1990</sup> Berko Zečević, 20 Apr 2007, T. 4861; P586, Expert report Berko Zečević, pp 141 – 142.

Chamber recalls the range of a FAB-250 as 5,820 metres to 7,680 metres. With regard to this incident, and with reference to the 16 June 1995 shelling incident at the UMC Oncology Department in Dositejeva Street, number 4, Berko Zečević concluded that a modified air bomb fired from the Pretis Factory at a range of 5,800 metres could have hit Čobanija Street. The Trial Chamber is satisfied that at that range, and taking account of the possible range of a FAB-250, the origin of fire would have been outside the confrontation lines and within SRK-held territory, whether the modified air bomb was fired from an area north-east or north-west of Čobanija Street. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that the modified air bomb was launched by members of the SRK.

562. The Trial Chamber recalls that it already rejected the Defence submission about the intensity of the conflict on 16 June 1995.

(x) Shelling of a Water Distribution Point in Dobrinja on 18 June 1995

563. Some time during the armed conflict in Sarajevo, the Simon Bolivar School in Dobrinja burned down and was destroyed.<sup>1992</sup> During the Indictment period, this previously destroyed building was used as a shelter for people gathering water from a concealed pump in an inner courtyard of the school.<sup>1993</sup> The location of the pump prevented anyone outside the school seeing the people waiting in line.<sup>1994</sup> A member of the civilian protection, an elderly man named Muharem, operated the pump when it was decided it was safe to do so.<sup>1995</sup>

564. W-137, a police officer, testified that there were “no military facilities around or any military strongholds built near the school.”<sup>1996</sup> According to Luka Jović, the Simon Bolivar School in Dobrinja was “well-sheltered from all sides”.<sup>1997</sup> In cross-examination, W-137 agreed with the Defence that the Simon Bolivar School was approximately 400 to 500 metres from the confrontation lines between the ABiH and the VRS in Dobrinja.<sup>1998</sup> He testified that the school was not a particularly interesting target, because it was much lower than the surrounding buildings.<sup>1999</sup>

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<sup>1991</sup> P586, Expert report Berko Zečević, pp 142 – 143. *See also supra*, Section II.E.6(b)(vii), Shelling of the UMC and Oncology Department, Dositejeva, on 16 June 1995.

<sup>1992</sup> W-137, 19 Feb 2007, T. 2460, 20 Feb 2007, T. 2501; Azra Šišić, 27 Feb 2007, T. 2836, 2837.

<sup>1993</sup> W-137, 19 Feb 2007, T. 2459, 2464, 2482; Azra Šišić, 27 Feb 2007, T. 2837; P258, Photographs, p. 1.

<sup>1994</sup> W-137, 19 Feb 2007, T. 2482; Azra Šišić, 27 Feb 2007, T. 2855.

<sup>1995</sup> Azra Šišić, 27 Feb 2007, T. 2836, 2849 – 2850.

<sup>1996</sup> W-137, 19 Feb 2007, T. 2460. *See also* P259, Criminal investigation file, dated 19 June 1995, p. 3 (under seal).

<sup>1997</sup> Luka Jović, 14 June 2007, T. 6703, D235, Map marked by Luka Jović. He testified that there were bunkers in that school and a family house near that school where the ABiH entered, and there were some containers used by construction workers from Slovenia, and used to construct a bunker full of bags of soil, *ibid.* *See also* P333, Photograph marked by Ismet Hadžić.

<sup>1998</sup> W-137, 19 Feb 2007, T. 2483.

<sup>1999</sup> W-137, 19 Feb 2007, T. 2490.

Ismet Hadžić, Commander of the ABiH 155<sup>th</sup> Mountain Brigade, testified that there was no ABiH weapon or firing position on a roof of the building near the school.<sup>2000</sup> However, he indicated the location where the command of the Brigade was based on a photograph, which shows that this building is approximately 200 metres away from the school.<sup>2001</sup> Ismet Hadžić further testified that on 18 June 1995, the focus of the military activity was at Treskavica and Igman, rather than at Dobrinja.<sup>2002</sup> Azra Šišić, resident of Dobrinja at the time of the shelling, testified that the morning itself had been quite peaceful.<sup>2003</sup>

565. In its Final Brief, the Defence submitted that the school was “on the first frontline in the middle of an ABiH offensive” and that on that day the police were present on the location of the explosion, which “was not common.”<sup>2004</sup>

566. In order to get to the pump inside the school, one had to cross the playground of the school and this area was covered by snipers.<sup>2005</sup> Policemen warned people not to go to the water distribution point in groups, but, rather, go there one by one.<sup>2006</sup> On 17 June 1995, there had been shelling in Dobrinja.<sup>2007</sup> Until 18 June 1995, no one had been killed or injured at the pump.<sup>2008</sup>

567. On 18 June 1995, the residents of the neighbourhood were again warned not to go to the school as a group.<sup>2009</sup> When Azra Šišić went there, approximately 50 persons were waiting to get water.<sup>2010</sup> This group consisted of mostly women and children, but also included some men; some lived in the same building as Azra Šišić.<sup>2011</sup> About six persons were standing around the pump; others were waiting behind a wall.<sup>2012</sup> Azra Šišić was waiting in line, talking to two people she knew, when a shell exploded near the pump.<sup>2013</sup> She testified that immediately after the explosion, “everything went black before my eyes.”<sup>2014</sup> One of the persons Azra Šišić had been speaking to was dead; Azra Šišić and the other person next to her were wounded.<sup>2015</sup> Azra Šišić was taken to the Dobrinja Hospital, which was near the school.<sup>2016</sup> According to W-137, the shell exploded ten

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<sup>2000</sup> Ismet Hadžić, 6 Mar 2007, T. 3268. The Trial Chamber notes that it was not provided with Ismet Hadžić’s rank.

<sup>2001</sup> P333, Photograph marked by Ismet Hadžić.

<sup>2002</sup> Ismet Hadžić, 6 Mar 2007, T. 3227.

<sup>2003</sup> Azra Šišić, 27 Feb 2007, T. 2840.

<sup>2004</sup> Defence Final Brief, para. 192.

<sup>2005</sup> Azra Šišić, 27 Feb 2007, T. 2861.

<sup>2006</sup> Azra Šišić, 27 Feb 2007, T. 2835 – 2836.

<sup>2007</sup> Azra Šišić, 27 Feb 2007, T. 2834.

<sup>2008</sup> Azra Šišić, 27 Feb 2007, T. 2840.

<sup>2009</sup> Azra Šišić, 27 Feb 2007, T. 2835 – 2836, 2854.

<sup>2010</sup> Azra Šišić, 27 Feb 2007, T. 2835.

<sup>2011</sup> Azra Šišić, 27 Feb 2007, T. 2835.

<sup>2012</sup> Azra Šišić, 27 Feb 2007, T. 2838.

<sup>2013</sup> Azra Šišić, 27 Feb 2007, T. 2836, 2856.

<sup>2014</sup> Azra Šišić, 27 Feb 2007, T. 2856.

<sup>2015</sup> Azra Šišić, 27 Feb 2007, T. 2856.

<sup>2016</sup> Azra Šišić, 27 Feb 2007, T. 2842.



centimetres above the heads of several people.<sup>2017</sup> He recalled that the upper part of the bodies was injured because “the shrapnel rain virtually fell on the people there.”<sup>2018</sup>

568. A BiH police report shows that the shell exploded at about 1140 hours.<sup>2019</sup> An investigative team arrived at the scene approximately one hour later; in the meantime, the scene was secured by two members of the local police station.<sup>2020</sup> The investigative team found a crater on the left wall, at a height of around 3.2 metres to four metres, and shrapnel marks on the wall.<sup>2021</sup> A tail-fin of a 120 mm mortar shell was found in the gym on the other side of the wall.<sup>2022</sup> Based on the traces on the wall and their calculations, the BiH police determined that the shell originated from the north-west “where the aggressor barracks in Nedžarići are located.”<sup>2023</sup>

569. In response to questions by the Defence, W-137 explained that the tail fin had not, as suggested by the Defence, bounced back on impact, but had continued as a result of the shell exploding on the edge of the wall, ending up in the gym.<sup>2024</sup> The BiH police were thus unable to use the tail fin in determining the direction of fire; this determination was, therefore, made on the basis of the marks left on the wall.<sup>2025</sup> W-137 confirmed that the media reported an incorrect direction of fire, saying that the media “often portray distorted pictures.”<sup>2026</sup>

570. An UNMO team arrived at the scene after the investigation of the BiH police had concluded.<sup>2027</sup> In cross-examination, W-137 was confronted with a statement of Capt. Thomas Hansen, a Danish UNMO who had investigated this incident.<sup>2028</sup> The statement showed that Capt. Hansen determined, on the basis of marks on the wall, that the shell had come from a westerly to north-westerly direction.<sup>2029</sup> Capt. Hansen continued, “[w]hen you see the confrontation line, West to North-West, from the point of impact, it is almost impossible to determine whether the shell was fired by a BiH mortar or a BSA mortar. With the possible ranges for a 120 mm shell, it could have been fired from either side.”<sup>2030</sup> W-137 commented that the statement of Capt. Hansen was

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<sup>2017</sup> W-137, 19 Feb 2007, T. 2459.

<sup>2018</sup> W-137, 19 Feb 2007, T. 2459, 2465.

<sup>2019</sup> P259, Criminal investigation file, p. 2 (under seal).

<sup>2020</sup> P259, Criminal investigation file, p. 1 (under seal); W-137, 20 Feb 2007, T. 2502.

<sup>2021</sup> W-137, 19 Feb 2007, T. 2464 – 2465; P259, Criminal investigation file, p. 2 (under seal); P257, Photographs marked by W-137; P589, Expert report by Richard Higgs, dated 21 December 2006 (“Second expert report Richard Higgs”), p. 17.

<sup>2022</sup> W-137, 19 Feb 2007, T. 2461, 2464; P259, Criminal investigation file, p. 2 (under seal). *See also* D72, Statement of Thomas Hansen, dated 8, 9 September 1992 (“Statement of Thomas Hansen”), p. 2.

<sup>2023</sup> W-137, 19 Feb 2007, T. 2461; P259, Criminal investigation file, p. 2 (under seal).

<sup>2024</sup> W-137, 19 Feb 2007, T. 2487, 2488.

<sup>2025</sup> W-137, 19 Feb 2007, T. 2487.

<sup>2026</sup> W-137, 20 Feb 2007, T. 2505 – 2506, 2509 – 2510.

<sup>2027</sup> W-137, 20 Feb 2007, T. 2502; D72, Statement of Thomas Hansen, p. 2; D74, UNMO daily sitrep, dated 18 June 1995 (“UNMO daily sitrep, 18 June 1995”), pp 6 – 7.

<sup>2028</sup> W-137, 19 Feb 2007, T. 2491 – 2493.

<sup>2029</sup> D72, Statement of Thomas Hansen, p. 2.

<sup>2030</sup> D72, Statement of Thomas Hansen, p. 3.

inaccurate and incompetent, because the specified direction was far too unspecific.<sup>2031</sup> When shown an UNMO report referring to the incident, W-137 repeated his opinion that what was claimed in the report was too unspecific to warrant attention.<sup>2032</sup> The Trial Chamber notes that the basis for the UNMO report would have been Capt. Hansen's investigation.

571. QMS Richard Higgs, the Prosecution expert on mortars, evaluated the evidence on this incident and commented that the BiH police had used a sound methodology during their investigation and agreed with the finding of the police on the direction of fire.<sup>2033</sup> In his report, he emphasised that the bearing as determined by the BiH police could only be seen as an approximation of the direction of fire, but he testified that the identified location "was the most likely firing position."<sup>2034</sup> In cross-examination, he reiterated that in view of the location of the school in relation to other buildings around it, the shell could have come from only one direction.<sup>2035</sup> QMS Higgs testified that a calculation of the angle of descent was not possible, because there was no clear crater pattern as a result of the shell hitting the wall.<sup>2036</sup>

572. As a result of the shelling, seven people were killed and 11 or 12 were wounded, at least four of them seriously.<sup>2037</sup> The bodies of the deceased were photographed in the morgue.<sup>2038</sup> Capt. Hansen stated that on 18 June 1995, he saw seven bodies in the morgue, all with "fragment impacts" to the head.<sup>2039</sup> W-137 testified that he believed that all victims were civilians.<sup>2040</sup>

573. The Defence challenged the allegation that seven people died in this explosion, arguing that the bodies of people had been removed from the scene and that the Bosnian Muslim media reported this as a shelling by the Bosnian Serbs, which was used by the BiH Government to request a lift of the weapons embargo.<sup>2041</sup> It also argued that the UNMO report showed that trace evidence had already been removed from the scene by the time the UNMO team arrived.<sup>2042</sup>

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<sup>2031</sup> W-137, 19 Feb 2007, T. 2491.

<sup>2032</sup> W-137, 19 Feb 2007, T. 2496; D73, UNMO daily sitrep, 19 June 1995, p. 12.

<sup>2033</sup> Richard Higgs, 24 Apr 2007, T. 5048; P589, Second expert report Richard Higgs, pp 16 – 17.

<sup>2034</sup> Richard Higgs, 24 Apr 2007, T. 5048; P589, Second expert report Richard Higgs, pp 18 – 19.

<sup>2035</sup> Richard Higgs, 24 Apr 2007, T. 5062, 5063 – 5064. *See also* Richard Higgs, 24 Apr 2007, T. 5047 – 5048.

<sup>2036</sup> Richard Higgs, 24 Apr 2007, T. 5064.

<sup>2037</sup> Azra Šišić, 27 Feb 2007, T. 2838 – 2840, 2841; P654, Death certificate for Bahrija Sijerčić; P655, Death certificate for Kenan Čizmić; P656, Death certificate for Izet Kadić; P657, Death certificate for Rešad Imamović; P658, Death certificate for Sulejman Mehmedović; P659, Death certificate for Safet Loncar; P660, Death certificate for Nura Loncar; P259, Criminal investigation file, pp 1, 2 – 3 (under seal); P258, Photographs, pp 5 – 10. W-137 authenticated the photographs, W-137, 19 Feb 2007, T. 2468; P651, P652, P653, Medical records. *See also* P16, UNPROFOR sitrep, dated 24 June 1995, p. 3; D74, UNMO daily sitrep, 18 June 1995, p. 6; D73, UNMO daily sitrep, 19 June 1995, p. 12.

<sup>2038</sup> W-137, 20 Feb 2007, T. 2503; P258, Photographs, pp 5 – 10.

<sup>2039</sup> D72, Statement of Thomas Hansen, p. 2.

<sup>2040</sup> W-137, 19 Feb 2007, T. 2460.

<sup>2041</sup> W-137, 20 Feb 2007, T. 2500 – 2502, 2503 – 2506, 2509 – 2512.

<sup>2042</sup> W-137, 19 Feb 2007, T. 2495 – 2496; D73, UNMO daily sitrep, 19 June 1995, p. 12.

574. Ekrem Suljević, a member of the KDZ, testified that he took part in the investigation and confirmed the authenticity of the police report which was tendered into evidence by the Prosecution.<sup>2043</sup> As to the removal of trace evidence, W-137 testified that blood marks and other material were usually removed once an investigation was over.<sup>2044</sup> He testified that the removal of blood marks was done because “there was a huge shock” and that not removing those traces would have been “a huge offence to the honour of the victims themselves.”<sup>2045</sup> He did not know who removed the traces of blood.<sup>2046</sup> However, while on the scene, W-137 found “a lot of blood and body parts.”<sup>2047</sup> The Trial Chamber notes that the photographs that were tendered into evidence show the presence of blood and body parts at the scene.<sup>2048</sup> In addition, Capt. Hansen stated that when he arrived at the scene, blood and human parts were still there.<sup>2049</sup> W-137 also disagreed that evidence had been removed from the scene, saying that the traces of the impact on the wall remained intact, thus allowing for a determination of the direction of fire to be made.<sup>2050</sup> In response to the Defence suggestion that the shelling was used to request a lifting of the arms embargo, W-137 testified that the government official, Haris Silajdžić, often called for such a lifting so that the Bosnian Muslims would be able to defend themselves.<sup>2051</sup>

575. Defence expert on mortars, Maj. Gen. Garović, concluded on the basis of the absence of shrapnel marks in the photographs of the scene, that there was no evidence of a mortar explosion at the school.<sup>2052</sup> The Defence questioned QMS Higgs about the absence of shrapnel marks in the photographs he used to determine the direction of fire.<sup>2053</sup> QMS Higgs confirmed that the photographs did not show shrapnel marks on the ground.<sup>2054</sup> He explained that this was possible because of the place of impact of the shell; since it hit the edge of a wall at an angle, “the blast would have gone beyond the surface of the wall” and “if there was going to be any shrapnel marks, they would probably have been on the ground around where the people were. But that’s a number of metres away from the point of burst, so their markings would have been obviously not as prominent as they are when a mortar round strikes the ground.”<sup>2055</sup>

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<sup>2043</sup> Ekrem Suljević, 5 Mar 2007, T. 3150, 3169, 3176 – 3177.

<sup>2044</sup> W-137, 20 Feb 2007, T. 2500 – 2501.

<sup>2045</sup> W-137, 20 Feb 2007, T. 2503.

<sup>2046</sup> W-137, 20 Feb 2007, T. 2502.

<sup>2047</sup> W-137, 20 Feb 2007, T. 2500.

<sup>2048</sup> P258, Photographs, pp 4 – 5.

<sup>2049</sup> D72, Statement by Thomas Hansen, p. 2.

<sup>2050</sup> W-137, 20 Feb 2007, T. 2504.

<sup>2051</sup> W-137, 20 Feb 2007, T. 2509 – 2510.

<sup>2052</sup> Desimir Garović, 23 Aug 2007, T. 9151.

<sup>2053</sup> Richard Higgs, 24 Apr 2007, T. 5096 – 5098.

<sup>2054</sup> Richard Higgs, 24 Apr 2007, T. 5096.

<sup>2055</sup> Richard Higgs, 24 Apr 2007, T. 5097 – 5098.

576. Azra Šišić testified that she thought this had been a deliberate attack against civilians.<sup>2056</sup> In cross-examination, QMS Higgs testified that one would have to see the school in order to accurately fire onto the target.<sup>2057</sup> He did not visit all possible firing positions in order to determine whether the school was visible from all of them.<sup>2058</sup> Luka Jović, testifying for the Defence, said that the school was not visible from Dobrinja I or Dobrinja IV.<sup>2059</sup> However, QMS Higgs testified that, irrespective of where the shell was fired from, “firing a single round onto a location where civilians are present is obviously being down [*sic*] to kill civilians, to either form terror in the minds of those people, or to achieve some other wish of a commander, which I really could only guess at what that could be.”<sup>2060</sup> In response to further questions from the Defence, QMS Higgs testified that he had no evidence to support a finding that the shell came from ABiH-held territory.<sup>2061</sup> He also noted that he was aware that the confrontation lines were close to the school, but that he had no information indicating that there was heavy fighting going on at the time of the incident. Furthermore, if heavy fighting was going on, the sound of one mortar being fired would not have been easily distinguishable from it.<sup>2062</sup>

## Findings

577. The Defence response to the Prosecution case on this incident is an allegation that the shelling was staged; in fact, the Defence, through Maj. Gen. Garović, argued that far from the explosion being the result of a mortar shell fired from some distance, the explosion was in fact static. The main, if not the only, point made by Maj. Gen. Garović in support of the Defence case is that in the photos there was an absence of shrapnel marks on the wall indicating that a mortar shell had not exploded. The Defence put its allegation that the shelling was staged to a number of witnesses, who all unequivocally rejected the possibility. The Trial Chamber finds credible the explanation for the absence of shrapnel offered by QMS Higgs. He explained that the absence was due to the fact that the shell hit the edge of a wall at an angle and that “the blast would have gone beyond the surface of the wall”. The Trial Chamber also finds credible the evidence of Azra Šišić, QMS Higgs and Capt. Hansen that the shell that exploded was a mortar shell. The Trial Chamber is satisfied, on the basis of the evidence, that on 18 June 1995, a mortar shell exploded on a wall near a water pump located in the Simon Bolivar School in Dobrinja.

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<sup>2056</sup> Azra Šišić, 27 Feb 2007, T. 2840.

<sup>2057</sup> Richard Higgs, 24 Apr 2007, T. 5067.

<sup>2058</sup> Richard Higgs, 24 Apr 2007, T. 5067. He did not know whether the civilians would have been visible to the person firing the shell, Richard Higgs, 24 Apr 2007, T. 5096.

<sup>2059</sup> Luka Jović, 14 June 2007, T. 6703, 18 June 2007, T. 6735.

<sup>2060</sup> Richard Higgs, 24 Apr 2007, T. 5072.

<sup>2061</sup> Richard Higgs, 24 Apr 2007, T. 5072.

<sup>2062</sup> Richard Higgs, 24 Apr 2007, T. 5095 – 5096, 5103.

578. The Trial Chamber finds, on the basis of the evidence, including witness testimony, death certificates and medical records and the BiH criminal investigation file, that seven civilians were killed and 11 or 12 civilians were injured, four seriously, by the explosion of the mortar shell.

579. On the basis of the evidence in its totality, the Trial Chamber is unable to conclude that this mortar shell was fired from the territory under the control of the SRK. The BiH police determined that the direction of fire to be north-west of the incident site, locating the origin of fire in the Nedarići barracks of the SRK, and this was confirmed by QMS Higgs. On the other hand, Capt. Hansen concluded that the shell came from a west to north-west direction. Capt. Hansen's point was that it was not possible to determine that the shell was fired by the ABiH or the SRK because the possible range of a 120 mm shell could place the origin in either ABiH or SRK-held territory. In the circumstances, therefore, the Trial Chamber is not satisfied that the mortar was launched from SRK-held territory.

(xi) Shelling of TV Building on 28 June 1995

580. The World Wide Television Company had its offices in the TV Building on Šeste Proleterske Brigade Street, number 4.<sup>2063</sup> The TV Building has ten floors.<sup>2064</sup> The second floor has its own roof and it is separated from another part of the building by a large atrium.<sup>2065</sup> In the morning of 28 June 1995, Rialda Musaefendić, who was an assistant to the producer of the World Wide Television Company at the time, was in the office on the second floor of the TV Building.<sup>2066</sup> Fadila Serdarević and Mehmed Kamber were also in the TV Building with about seven other people.<sup>2067</sup> The UNMOs Lt. Col. Louis Fortin and Capt. Thomas Hansen were in the PTT Building.<sup>2068</sup> John Jordan was in Čengić Vila.<sup>2069</sup>

581. Lt. Col. Fortin stated that on 28 June 1995 there was heavy fire around the city.<sup>2070</sup> The Trial Chamber received evidence that the ABiH was engaged in an attack against the Bosnian Serbs in Stup and Nedarići that day, which started at 0830 hours.<sup>2071</sup> John Jordan stated that, up until the

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<sup>2063</sup> Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić to the ABiH police, dated 19 July 1995 (“Statement of Rialda Musaefendić”), p. 1; P135, Forensic report on the TV Building shelling, dated 17 July 1995 (“Forensic report”), p. 1; W-138, 1 Feb 27, T. 1440. The Trial Chamber notes that Šeste Proleterske Brigade Street is now known as Bulevar Meše Selimovića.

<sup>2064</sup> Rialda Musaefendić, P295, p. 2.

<sup>2065</sup> Rialda Musaefendić, P295, p. 2.

<sup>2066</sup> Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1.

<sup>2067</sup> Fadila Serdarević, P641, pp 5, 9; Mehmed Kamber, P645, p. 5.

<sup>2068</sup> Thomas Hansen, 2 Apr 2007, T. 4334; Louis Fortin, P27, p. 14.

<sup>2069</sup> John Jordan, P267, p. 8.

<sup>2070</sup> Louis Fortin, P27, p. 14.

<sup>2071</sup> D183, UNPROFOR HQ sitrep, 1 July 1995; P45, UNPROFOR interoffice memo, dated 28 June 1995; Louis Fortin, P27, p. 14. *See also infra*, para. 787.

explosion at the TV Building, it had been relatively quiet that day, “with a mortar here and there”.<sup>2072</sup>

582. Evidence was led regarding the status of the TV Building and the area around it. John Jordan did not hear any outgoing fire from the area.<sup>2073</sup> Several witnesses testified that there was no military target or activity, nor any ABiH mortars, tanks or military hardware, inside or around the TV Building.<sup>2074</sup> Fadila Serdarević, who was in the TV Building, stated that she was not a soldier, that she never wore a uniform and that she did not see any soldiers around the TV Building.<sup>2075</sup>

583. However, Lt. Col. Fortin testified that there were ABiH mortars in the vicinity, in a field 500 metres north of and behind the TV Building.<sup>2076</sup> He thought that the ABiH mortars could not be seen.<sup>2077</sup> During cross-examination, he agreed that the ABiH placed heavy weapons close to UNPROFOR positions.<sup>2078</sup> He also agreed with the Defence that there were densely-populated areas around mortar positions and that, by placing mortars there, one would “run into the problem of collateral damage”.<sup>2079</sup> However, Lt. Col. Fortin also believed that the ABiH moved its weapons a lot in the course of their June offensive, and that the Bosnian Serb retaliations were usually accurate.<sup>2080</sup>

584. At around 0900 hours on 28 June 1995, witnesses stated that they heard the sound of a very strong impact.<sup>2081</sup> Rialda Musaefendić stated that this was followed by a sound similar to “a thousand tiny feet walking on pebbles.”<sup>2082</sup> After they heard the sound of the impact, Rialda Musaefendić and Fadila Serdarević took cover but since there was no immediate explosion they got to their feet again.<sup>2083</sup> Then there was “a huge detonation and flash”.<sup>2084</sup> During cross examination, Rialda Musaefendić testified that, although it seemed to be a long time, she did not know how much time elapsed between the first impact sound and the detonation.<sup>2085</sup>

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<sup>2072</sup> John Jordan, P267, p. 8.

<sup>2073</sup> John Jordan, P267, p. 8.

<sup>2074</sup> W-138, 31 Jan 2007, T. 1282; Rialda Musaefendić, 28 Feb 2007, T. 2911; W-28, P275, p. 2 (under seal); John Jordan, P267, p. 8. *See also* W-156, 27 Apr 2007, T. 5376, 5377 (closed session).

<sup>2075</sup> Fadila Serdarević, P641, p. 9.

<sup>2076</sup> Louis Fortin, 17 Jan 2007, T. 541, P27, p. 14.

<sup>2077</sup> Louis Fortin, 17 Jan 2007, T. 551 – 552, 554 – 555.

<sup>2078</sup> Louis Fortin, 17 Jan 2007, T. 535; P19, UNPROFOR sitrep, 2 July 1995, pp 3, 4.

<sup>2079</sup> Louis Fortin, 17 Jan 2007, T. 541.

<sup>2080</sup> Louis Fortin, 17 Jan 2007, T. 537, 552.

<sup>2081</sup> Rialda Musaefendić, 28 Feb 2007, T. 2910 – 2911, 2915 – 2916, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1; Mehmed Kamber, P645, p. 5; Fadila Serdarević, P641, p. 5; W-138, 30 Jan 2007, T. 1242.

<sup>2082</sup> Rialda Musaefendić, 28 Feb 2007, T. 2916, P295, p. 2.

<sup>2083</sup> Rialda Musaefendić, P295, p. 2; Fadila Serdarević, P641, p. 5.

<sup>2084</sup> Rialda Musaefendić, 28 Feb 2007, T. 2916, P295, p. 2; Fadila Serdarević, P641, p. 5.

<sup>2085</sup> Rialda Musaefendić, 28 Feb 2007, T. 2918, 2923.

585. Fadila Serdarević felt a strong hit on her face and she fell on her back.<sup>2086</sup> She felt an intense heat on her face and was temporarily blinded.<sup>2087</sup> Rialda Musaefendić stated that when she looked at the windows, they, and everything that had been on the window sills, were flying towards her.<sup>2088</sup> She recalled lying at the end of the office near the door, covered by debris and items of furniture.<sup>2089</sup> She had hit her head and lost consciousness.<sup>2090</sup> Another employee helped Rialda Musaefendić walk down the stairs.<sup>2091</sup> She saw a lot of damage and “quite an amount of blood everywhere” and heard the sound of people screaming.<sup>2092</sup> When Fadila Serdarević was able to see again with one eye, she saw people around her covered in blood, who were screaming and shouting and “looked like they had no faces”.<sup>2093</sup> Fadila Serdarević started to walk to leave the building.<sup>2094</sup> However, she panicked and could not walk anymore.<sup>2095</sup> Fadila Serdarević lay down on the floor until a colleague carried her out.<sup>2096</sup>

586. W-138, a crime technician with the BiH police, testified that there were two other explosions that morning, at roughly the same time.<sup>2097</sup> The TV Building was heavily damaged, all windows were broken and the ceiling collapsed.<sup>2098</sup> Rialda Musaefendić stated that the office was “completely destroyed; “there were broken pieces of furniture lying everywhere”.<sup>2099</sup> She saw a body lying on the floor, to her right, as she was exiting the building.<sup>2100</sup> She provided the Prosecution with a DVD showing footage of the incident, shot by Mladen Pehar, a cameraman for a German TV station, who was on the second floor of the TV Building, in the same corridor as Rialda Musaefendić, when the bomb hit.<sup>2101</sup> The footage recorded the sound of the explosion and captured the first moments after the explosion and the immediate effects, and showed extensive damage to the interior and exterior of the TV Building, as well as injured persons.<sup>2102</sup>

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<sup>2086</sup> Fadila Serdarević, P641, p. 5.

<sup>2087</sup> Fadila Serdarević, P641, p. 5.

<sup>2088</sup> Rialda Musaefendić, P295, p. 2.

<sup>2089</sup> Rialda Musaefendić, P295, p. 2.

<sup>2090</sup> Rialda Musaefendić, P295, p. 2.

<sup>2091</sup> Rialda Musaefendić, 28 Feb 2007, T. 2906.

<sup>2092</sup> Rialda Musaefendić, P295, p. 3.

<sup>2093</sup> Fadila Serdarević, P641, p. 5.

<sup>2094</sup> Fadila Serdarević, P641, p. 5.

<sup>2095</sup> Fadila Serdarević, P641, p. 5.

<sup>2096</sup> Fadila Serdarević, P641, p. 5.

<sup>2097</sup> W-138, 30 Jan 2007, T. 1243.

<sup>2098</sup> Mehmed Kamber, P645, p. 5; W-138, 30 Jan 2007, T. 1244; P133, Photograph file.

<sup>2099</sup> Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1.

<sup>2100</sup> Rialda Musaefendić, 28 Feb 2007, T. 2911 – 2912.

<sup>2101</sup> Rialda Musaefendić, 28 Feb 2007, T. 2914; D91, Video footage of the TV Building shelling.

<sup>2102</sup> Rialda Musaefendić, 28 Feb 2007, T. 2915; D91, Video footage of the TV Building shelling.

587. As a result of the explosion, about 30 persons were wounded.<sup>2103</sup> Rialda Musaefendić and Fadila Serdarević were taken to Koševo hospital, along with all the other injured persons.<sup>2104</sup> Fadila Serdarević had cuts all over her face and neck and stayed in hospital for seven days.<sup>2105</sup> Rialda Musaefendić had a cut above her eye and her eyes were damaged by the dust and debris.<sup>2106</sup> A piece of shrapnel was embedded in her right cheek.<sup>2107</sup> Other material was also embedded in her head and body and she stated: “it was as if my whole body had been peppered by this material”.<sup>2108</sup> Rialda Musaefendić regularly returned to the hospital for treatment.<sup>2109</sup> During cross-examination, the Defence asked her why only one medical record attested to her injuries. Rialda Musaefendić replied that nobody worried about paperwork during the war and she had thus not collected medical certificates about her condition.<sup>2110</sup>

588. Rialda Musaefendić now has difficulty with her eyes; from time to time they get very sore, they are very sensitive and she always has to wear glasses.<sup>2111</sup> She still has material embedded in her body but she can “function relatively normally”.<sup>2112</sup> Mehmed Kamber received cuts and suffered a 40 per cent loss of hearing “during” the blast.<sup>2113</sup>

589. One person, a security officer named Ibrahim Šalaka, was killed.<sup>2114</sup> W-138 testified that the investigative team found the body of Ibrahim Šalaka inside the TV Building. However, he testified that the evidence showed that Ibrahim Šalaka had died on the staircase and had then been brought inside from there.<sup>2115</sup> W-138 testified that Ibrahim Šalaka had a multitude of wounds on the backside of his body. The autopsy later showed that the wounds were caused by concrete fragments, which had hit him in his back.<sup>2116</sup>

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<sup>2103</sup> Louis Fortin, P27, p. 14; Rialda Musaefendić, P295, p. 3; P586, Expert report Berko Zečević, p. 144; P134, Police investigation file, p. 1; P135, Forensic report, p. 1; P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P60, P61, P62, P63, P65, P66, P67, P68, P69, P70, P126 (under seal), Medical records, respectively for Rialda Mustafendić, Mehmed Kamber, Fadila Serdarević, Ahmet Kulender, Zijad Jusufbegović, *ibid.*, Nadira Kulender, *ibid.*, Marija Bajramović, Mirko Lisov, Rajko Joksimović, Umihana Prguda, Alija Imamović, Džemal Terović, Sanela Bajramović, Asja Resavac, Feridoun Hemani, Hamed Elzayegh, Alica Čurtović, Jasmina Abaz.

<sup>2104</sup> Rialda Musaefendić, 28 Feb 2007, T. 2908 – 2909, P295, p. 3.

<sup>2105</sup> Fadila Serdarević, P641, p. 6.

<sup>2106</sup> Rialda Musaefendić, 28 Feb 2007, T. 2909, P295, pp 2 – 3; P49, Medical records, dated 17 July 1995.

<sup>2107</sup> Rialda Musaefendić, 28 Feb 2007, T. 2906 – 2907, P295, p. 3.

<sup>2108</sup> Rialda Musaefendić, 28 Feb 2007, T. 2925, P295, p. 3. Over the following few weeks this material began to come out of her body, *ibid.*

<sup>2109</sup> Rialda Musaefendić, P295, p. 3.

<sup>2110</sup> Rialda Musaefendić, 28 Feb 2007, T. 2926; P49, Medical records, 17 July 1995.

<sup>2111</sup> Rialda Musaefendić, P295, p. 3.

<sup>2112</sup> Rialda Musaefendić, P295, p. 3.

<sup>2113</sup> Mehmed Kamber, P645, p. 5.

<sup>2114</sup> W-138, 31 Jan 2007, T. 1274, 1275; Rialda Musaefendić, P295, p. 3; D33, Statement of W-138, p. 2 (under seal); P586, Expert report Berko Zečević, p. 144; P134, BiH police investigation file on the TV Building shelling, dated 28 June 1995 (“Police investigation file”), pp 1, 3; P135, Forensic report, p. 1; P126, Autopsy report of Ibrahim Šalaka, dated 29 June 1995.

<sup>2115</sup> W-138, 31 Jan 2007, T. 1274 – 1275; P132, Blueprint sketch marked by W-138.

<sup>2116</sup> W-138, 31 Jan 2007, T. 1276; P133, Photograph file, pp 8, 10.



590. The Defence questioned W-138 extensively on his investigation into the death of Ibrahim Šakala. During cross examination, the Defence put to W-138 that he had planted the body inside the building and that he had smeared the blood on the staircase, all of which the witness denied.<sup>2117</sup> The Defence also confronted W-138 with a prior statement, in which Ibrahim Šakala is said to have been at the northern side of the atrium and to have run across it, to the staircase, immediately after the projectile ricocheted.<sup>2118</sup> W-138 stated that he had given this statement eleven years after the incident and that he had added details, which he had heard from witnesses later; he denied the allegation of the Defence that he was lying.<sup>2119</sup> W-138 also denied the Defence allegations that he had staged the incident and the death of Ibrahim Šakala and that he had thereby committed a war crime and was obstructing justice and misleading the court.<sup>2120</sup>

591. The Defence also questioned Rialda Musafendić on the possibility of the body of Ibrahim Šakala being planted. In response, she testified that there were about 12 persons in her office before the bomb hit the building and that it would have been impossible to bring a body into the room without being noticed and stopped because of the presence of numerous local and foreign journalists and the security monitoring of the building.<sup>2121</sup>

592. After the explosion, word reached the Novi Grad BiH police station that an explosion had occurred and a team headed by an investigative judge, and including KDZ experts, was set up.<sup>2122</sup> In addition, Berko Zečević, together with a ballistics and an explosives expert, carried out an independent investigation upon the request of the investigative judge.<sup>2123</sup> Berko Zečević and his colleagues arrived on site about one hour to one hour and a half after the explosion.<sup>2124</sup> Berko Zečević went to the TV Building first and then was called to a nearby site where another projectile had just landed; he stayed there for about 15 to 20 minutes and returned to the TV Building, where he stayed until 1700 hours.<sup>2125</sup> Berko Zečević did not see any UNMOs at the TV Building but he thought they could have come when he was at the other explosion site.<sup>2126</sup>

593. Capt. Hansen, who was summoned by the Trial Chamber as a court witness, testified that he and another UNMO went to the TV Building. Efforts by the Trial Chamber to contact the other

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<sup>2117</sup> W-138, 1 Feb 2007, T. 1373 – 1374, 1378.

<sup>2118</sup> W-138, 1 Feb 2007, T. 1375 – 1376; D33, Statement of W-138, p. 2 (under seal).

<sup>2119</sup> W-138, 1 Feb 2007, T. 1376 – 1377.

<sup>2120</sup> W-138, 1 Feb 2007, T. 1377.

<sup>2121</sup> Rialda Musafendić, 28 Feb 2007, T. 2912 – 2913.

<sup>2122</sup> W-138, 30 Jan 2007, T. 1206 – 1207, 1242, 31 Jan 2007, T. 1269; W-28, P275, p. 2 (under seal); P134, Police investigation file, p. 1.

<sup>2123</sup> Berko Zečević, 20 Apr 2007, T. 4861 – 4862. They were assisted by police officers who took pictures for reporting purposes, *ibid.*

<sup>2124</sup> Berko Zečević, 20 Apr 2007, T. 4862.

<sup>2125</sup> Berko Zečević, 20 Apr 2007, T. 4869.

<sup>2126</sup> Berko Zečević, 20 Apr 2007, T. 4869.

UNMO in order to have him testify were unsuccessful. Capt. Hansen denied having been present during the police investigation, although his presence is reflected in the police report.<sup>2127</sup> Capt. Hansen and the other UNMO did not participate in the investigations because the BiH police and military did not allow them to do so. Shelling was still ongoing and they were taken to a room “for their safety”, from which they were free to leave if they wished.<sup>2128</sup> They waited there for about two hours before leaving.

594. The projectile landed in an inner courtyard of the TV Building and, initially, the investigators did not understand how the projectile had come to land at that location so they climbed on the roof to investigate.<sup>2129</sup> They found a ricochet mark on the roof, which led them to the second point of impact against the eastern wall of the courtyard.<sup>2130</sup> According to W-138, Ekrem Suljević and Berko Zečević, the projectile ricocheted from the roof of the TV Building, continuing its trajectory flying over Studio C. It hit a wall opposite Studio C, between the first and the second floor, from which it ricocheted again to finally land and explode right next to the eastern wall of Studio C.<sup>2131</sup> W-138 stated that the second point of impact, where the projectile ricocheted for the second time, was identified because it caused burn marks on the wall, which were not present on other areas that were simply damaged by objects and debris flying.<sup>2132</sup> W-138 added that the TV Building had not been targeted before.<sup>2133</sup> However, Martin Bell testified that the TV Building had been targeted throughout the war.<sup>2134</sup>

595. Berko Zečević and the investigative team found that the projectile left a large mark on the roof of one metre by 1.5 metres by 0.2 metre deep, a larger opening on the exterior wall and interior wall of Studio C and a crater in the ground, up to 1.5 metres deep, 1.5 metres wide and three metres long.<sup>2135</sup> When he saw the damage on the TV Building, W-138 thought it could not have been caused by weapons with which he was experienced, such as mortar or artillery shells.<sup>2136</sup> In his report, Berko Zečević wrote that there was extensive damage where the projectile exploded, which showed no traces of a fragmentation effect, and looked like damage caused by a blast wave

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<sup>2127</sup> Thomas Hansen, 2 Apr 2007, T. 4342; P134, Police investigation file, p. 1.

<sup>2128</sup> Thomas Hansen, 2 Apr 2007, T. 4339 – 4344.

<sup>2129</sup> W-138, 31 Jan 2007, T. 1269 – 1270.

<sup>2130</sup> W-138, 31 Jan 2007, T. 1269 – 1270.

<sup>2131</sup> W-138, 30 Jan 2007, T. 1242, 1245 – 1246, 1252 – 1253, 1256 – 1257, 31 Jan 2007, T. 1269; Ekrem Suljević, P310, p. 2; P586, Expert report Berko Zečević, pp 144, 147, 148; Rialda Musafendić, 28 Feb 2007, T. 2905, 2928; P136, Photograph marked by W-138.

<sup>2132</sup> W-138, 31 Jan 2007, T. 1268 – 1269.

<sup>2133</sup> W-138, 31 Jan 2007, T. 1271.

<sup>2134</sup> Martin Bell, 27 Apr 2007, T. 5302.

<sup>2135</sup> P586, Expert report Berko Zečević, p. 144; P134, Police investigation file, p. 2; P135, Forensic report, p. 2; W-138, 30 Jan 2007, T. 1255 – 1256, 1267; P133, Photograph file, pp 4, 6.

<sup>2136</sup> W-138, 30 Jan 2007, T. 1245.

explosion.<sup>2137</sup> In his view, his conclusion that a type of air bomb with fuel-air explosive and two explosive charges detonated within a few seconds of each other was corroborated by witness statements that spoke of two explosions.<sup>2138</sup> The conclusions of the BiH police investigation also pointed to the use of this kind of explosive device.<sup>2139</sup>

596. A total of 41 fragments were analysed by the KDZ, which determined that 38 of the fragments came from the air bomb; one fragment was found to have been part of “the carrier of the aerial bomb” and the last two fragments were found to have been part of a fuse, but one of those fragments “probably [did] not belong to the device which exploded.”<sup>2140</sup> Both Berko Zečević and the investigative team concluded that the projectile was most probably a high-impact 250 kilogram modified air bomb with fuel-air explosive, although its motors were not found.<sup>2141</sup>

597. A few days before handing his report to the investigative judge, Berko Zečević was invited to a meeting with someone from the Defence Ministry and two officers from the Security Service of the ABiH Main Staff.<sup>2142</sup> They asked Berko Zečević to change his conclusion so as to state that the projectile was a TNT bomb because, according to Berko Zečević, these men were under the impression that a TNT bomb could cause more damage than a fuel-air bomb.<sup>2143</sup> He refused to change his report. He testified that the fact that he was asked to change his report did not cast any doubt on the quality of the police reports on this incident.<sup>2144</sup>

598. Ekrem Suljević stated that, on the basis of information and experience he accumulated since the shelling, he could say that an air bomb, most probably a 250 kilogram bomb, was definitely used.<sup>2145</sup> On being asked by the Defence, Ekrem Suljević maintained his conclusion that the projectile was a modified air bomb despite not finding any rocket motors on the scene.<sup>2146</sup> He added later that he thought the projectile probably lost the engines in flight, and to him, this was an indication of the unreliable nature of the weapon.<sup>2147</sup> Also during cross-examination, the Defence presented Ekrem Suljević with a sketch of the projectile made by the UNMO who observed the

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<sup>2137</sup> P586, Expert report Berko Zečević, pp 145, 148.

<sup>2138</sup> P586, Expert report Berko Zečević, pp 148, 149.

<sup>2139</sup> P134, Police investigation file, p. 3; P135, Forensic report, p. 3.

<sup>2140</sup> P135, Forensic report, pp 2 – 4. *See also* Rialda Musafendić, P295, p. 2.

<sup>2141</sup> W-138, 30 Jan 2007, T. 1242, 1 Feb 2007, T. 1354; Ekrem Suljević, P310, p. 2; W-28, P275, p. 2 (under seal); P586, Expert report Berko Zečević, pp 145, 147; P135, Forensic report, pp 3, 4; W-46, 16 Mar 2007, T. 3846 (closed session).

<sup>2142</sup> Berko Zečević, 20 Apr 2007, T. 4870 – 4871.

<sup>2143</sup> Berko Zečević, 20 Apr 2007, T. 4870 – 4871.

<sup>2144</sup> Berko Zečević, 20 Apr 2007, T. 4871 – 4872.

<sup>2145</sup> Ekrem Suljević, P310, p. 2.

<sup>2146</sup> Ekrem Suljević, 2 Mar 2007, T. 3123 – 3124.

<sup>2147</sup> Ekrem Suljević, 5 Mar 2007, T. 3175 – 3176.

incident from the PTT Building.<sup>2148</sup> The sketch depicts an air bomb, 20 centimetres in diameter and 60 centimetres in length, which Ekrem Suljević thought it was impossible given the extent of the damage he observed at the scene. He estimated that the diameter of the projectile had to be at least 40 centimetres.<sup>2149</sup> He also observed that the report mentioned a short, wide projectile, and this constitutes a discrepancy with the measurements given on the sketch.<sup>2150</sup>

599. The Defence asked W-138 whether he was an expert in modified air bombs to which he replied that he had received training in ballistics that was sufficient to enable him to determine the type of projectile.<sup>2151</sup> The Defence also put to W-138 that the investigators did not find any traces of rockets and that there was a possibility that the projectile dropped its motors during the flight.<sup>2152</sup> W-138 replied that the investigation carried on for several days pursuant to a decision by the investigating judge but that he was only there on the day of the incident.<sup>2153</sup> On that day, he did not find the rockets, as is stated in the report, but he testified that it is possible that the rockets were found later by the investigators who continued to work on this incident.<sup>2154</sup> The Defence asked W-138 whether he or someone from his team had fired this rocket, in order to stage the incident and to mock justice, thereby misusing their power. W-138 answered that neither he, nor anyone from his team, had done that.<sup>2155</sup>

600. Further evidence to support the finding of Berko Zečević on the type of warhead that exploded on the TV Building was provided by Bakir Nakaš, the Director of the State Hospital, where many of the victims were treated that day. The latter testified that some of the injuries treated were from shrapnel and debris from the building but most were from blast-shock.<sup>2156</sup> John Jordan and Martin Bell also recalled that the TV Building was hit by a modified air bomb.<sup>2157</sup> Rialda Musaefendić stated that she later learnt that the explosion was caused by a 250 kilogram air bomb that had an engine mounted on it.<sup>2158</sup>

601. On the basis of the evidence at the scene, including the ricochet marks on the roof and the explosion site, the investigative team determined the direction of fire.<sup>2159</sup> The BiH police investigation file noted the azimuth as 288 degrees, that is, north-west of the incident site, in the

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<sup>2148</sup> Ekrem Suljević, 5 Mar 2007, T. 3170; D103, UNMO report on shelling of TV building with sketch, dated 29 June 1995 (“UNMO report with sketch”).

<sup>2149</sup> Ekrem Suljević, 5 Mar 2007, T. 3170 – 3172; D103, UNMO report with sketch.

<sup>2150</sup> Ekrem Suljević, 5 Mar 2007, T. 3175.

<sup>2151</sup> W-138, 1 Feb 2007, T. 1354 – 1355.

<sup>2152</sup> W-138, 1 Feb 2007, T. 1367.

<sup>2153</sup> W-138, 1 Feb 2007, T. 1367.

<sup>2154</sup> W-138, 1 Feb 2007, T. 1367.

<sup>2155</sup> W-138, 1 Feb 2007, T. 1367 – 1368, 1371 – 1372, 1372 – 1373.

<sup>2156</sup> Bakir Nakaš, 29 Jan 2007, T. 1107.

<sup>2157</sup> Martin Bell, 26 Apr 2007, T. 5263; John Jordan, P267, p. 8.

<sup>2158</sup> Rialda Musaefendić, P295, p. 3.

area of Rajlovac, “where the aggressor was located.”<sup>2160</sup> According to W-28, the on-site ballistics expert, the bomb came from 288 degrees west.<sup>2161</sup> The KDZ forensic report noted the azimuth was 280 degrees, plus or minus ten degrees.<sup>2162</sup>

602. Berko Zečević also concluded that the modified air bomb had come from a direction of 280 degrees, plus or minus ten degrees, at an angle of descent of 25 degrees and from a minimum distance of 5,800 metres. He placed the launch point in the wider area between Doglodi and, the more distant, Butila, which, the Trial Chamber notes, is north-west of the TV Building.<sup>2163</sup> He stated that the most important factor in establishing these figures was the impact traces on the roof.<sup>2164</sup> According to Berko Zečević, these traces would have been very different had the bomb been launched from a distance of one kilometre.<sup>2165</sup>

603. W-28 stated that he was sure the bomb came from enemy positions because there was another report from the Stup police station, a subdivision of the BiH Ilidža police station, which recorded that the rockets fired on and around 28 June 1995 were fired from “enemy positions.”<sup>2166</sup> W-28 did not see the report, but he knew it had been sent to the BiH Department of Genocide.<sup>2167</sup>

604. Ekrem Suljević stated that the direction of fire was confirmed by eyewitnesses.<sup>2168</sup> Rialda Musaefendić testified that she was told that others had seen the bomb before it hit the TV Building and that it appeared to come from the direction of Ilidža, which she stated, lay to the west of the TV Building and was held by the SRK throughout the war.<sup>2169</sup>

605. Ekrem Suljević thought that the TV Building had been deliberately targeted, despite the known inaccuracy of the aircraft bombs, because a day later another aircraft bomb was fired and it landed about 100 metres away from the same building, an event confirmed by Mehmed Kamber.<sup>2170</sup>

606. Lt. Col. Per Anton Brennskag, at the time an UNMO in the Pofalići UNMO team, saw the incident from OP-4, in Vitkovac.<sup>2171</sup> He testified to seeing the bomb being launched from the area

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<sup>2159</sup> W-138, 30 Jan 2007, T. 1245, 31 Jan 2007, T. 1282 – 1283, 1321; Ekrem Suljević, P310, p. 2.

<sup>2160</sup> P134, Police investigation file, p. 3.

<sup>2161</sup> W-28, P275, p. 2 (under seal).

<sup>2162</sup> P135, Forensic report, p. 3.

<sup>2163</sup> Berko Zečević, 20 Apr 2007, T. 4872, 23 Apr 2007, T. 4969; P586, Expert report Berko Zečević, pp 145, 147, 149, 150.

<sup>2164</sup> Berko Zečević, 20 Apr 2007, T. 4872.

<sup>2165</sup> Berko Zečević, 20 Apr 2007, T. 4873 – 4876.

<sup>2166</sup> W-28, P275, p. 2 (under seal). The Trial Chamber notes that it did not receive this Ilidža police station report.

<sup>2167</sup> W-28, P275, p. 2 (under seal).

<sup>2168</sup> Ekrem Suljević, P310, p. 2.

<sup>2169</sup> Rialda Musaefendić, 28 Feb 2007, T. 2928 – 2929, P295, p. 3.

<sup>2170</sup> Ekrem Suljević, P310, p. 3; Mehmed Kamber, P645, p. 5.

<sup>2171</sup> Per Anton Brennskag, 8 Mar 2007, T. 3452, 3458 – 3459; P348, Map marked by Per Anton Brennskag.

of Ilidža, a SRK-held area, a straight smoke trail and, finally, an impact on the TV Building.<sup>2172</sup> He specified that the smoke trail did not go all the way to the TV Building.<sup>2173</sup> During his testimony, Lt. Col Brennskag was shown a report on the incident written by Capt. Hansen, which stated that the UNMOs at OP-4 were taking cover at the time of the incident and therefore could not provide information about it.<sup>2174</sup> Lt. Col. Brennskag denied having taken cover during the incident and testified that he never saw Capt. Hansen at OP-4.<sup>2175</sup> He testified that he reported his sighting orally, although he did not remember to whom.<sup>2176</sup>

607. The Defence submission was that the origin of fire was ABiH-held territory.<sup>2177</sup> The Defence presented several witnesses with a report and a statement of UNMO Capt. Hansen, according to which another UNMO said that he saw the projectile being fired from ABiH-held territory. The other UNMO reported that the launch site was about 1,800 metres from the nearest confrontation line, and that the projectile flew over the parking lot of the PTT Building.<sup>2178</sup> During his testimony before the Trial Chamber, Capt. Hansen confirmed he had not seen the incident himself; rather, the other UNMO came to the PTT Building and reported to him what he had seen, and indicated to Capt. Hansen the exact position from the place where the bomb was launched, and he included this location in his report.<sup>2179</sup> Lt. Col. Brennskag testified that if the modified air bomb had been launched from the location indicated by Capt. Hansen, it would have been launched nearly horizontally; Lt. Col. Brennskag witnessed the flight of four or five air bombs during the war and he never saw one being launched horizontally.<sup>2180</sup> He added that the projectile he witnessed coming from Ilidža could not have passed over the point identified by Capt. Hansen as being the origin of fire.<sup>2181</sup>

608. Capt. Hansen estimated that about 300 to 500 people were working in the PTT Building at the time, but the blinds were drawn on most of the building's windows.<sup>2182</sup> He did not consider it unusual that no one else saw the projectile because people were sheltering from the ongoing

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<sup>2172</sup> Per Anton Brennskag, 8 Mar 2007, T. 3452, 3455, 3464, 3465, 3475; D114, P347, P348, Maps marked by Per Anton Brennskag.

<sup>2173</sup> Per Anton Brennskag, 8 Mar 2007, T. 3456, 3476.

<sup>2174</sup> Per Anton Brennskag, 8 Mar 2007, T. 3458 – 3459; P894, UNMO report by Capt. Hansen on shelling of TV Building, dated 29 June 1995 (“UNMO Capt. Hansen’s report”). The Trial Chamber notes that this report was also given an MFI number, D31 and placed under seal. The Trial Chamber will refer to the exhibit number P894.

<sup>2175</sup> Per Anton Brennskag, 8 Mar 2007, T. 3458 – 3459.

<sup>2176</sup> Per Anton Brennskag, 8 Mar 2007, T. 3481 – 3482.

<sup>2177</sup> See, e.g., Defence Final Brief, para. 207.

<sup>2178</sup> P894, UNMO Capt. Hansen’s report; D72, Statement of Thomas Hansen, p. 3. See, e.g., Thomas Knustad, 13 Feb 2007, T. 2031 – 2033.

<sup>2179</sup> Thomas Hansen, 2 Apr 2007, T. 4334 – 4335; P894, UNMO Capt. Hansen’s report.

<sup>2180</sup> Per Anton Brennskag, 8 Mar 2007, T. 3466.

<sup>2181</sup> Per Anton Brennskag, 8 Mar 2007, T. 3464 – 3465.

<sup>2182</sup> Thomas Hansen, 2 Apr 2007, T. 4339.

shelling.<sup>2183</sup> Capt. Hansen agreed that it was possible that the UNMO he spoke to made a mistake.<sup>2184</sup> However, he also testified that, at the time he wrote his report, he was aware of the implications it may have. He believed his conclusions to be correct and the UNMO's report to be credible.<sup>2185</sup> The same day, he went to the ABiH Liaison Officer in the PTT Building and had a conversation with him, which, according to Capt. Hansen, was misinterpreted and led to a conflict between him and the ABiH.<sup>2186</sup>

609. Capt. Hansen did not encounter anyone else who saw the launching from ABiH-held territory or saw a launcher truck.<sup>2187</sup> Lt. Col. Butt did not remember that this report or the events described in it were ever discussed in any of his team-leader meetings, although they were supposed to be.<sup>2188</sup> W-137 disagreed with the description of the events recounted in Capt. Hansen's statement and testified that the language of the report and its content carried little weight because it was based on hearsay and did not "resemble any proper military report of expertise."<sup>2189</sup> Gen. Smith did not remember the TV Building incident specifically but stated that, had the ABiH fired at the TV Building, it would have been brought to his attention and he would have been surprised to hear it.<sup>2190</sup>

610. Wg. Cdr. Andrew Knowles was summoned by the Trial Chamber as a court witness because the Trial Chamber, after reviewing documents, concluded that he could provide information relevant to the case. He testified that he worked in the PTT Building as Deputy Operations Officer, with Capt. Hansen, the Chief Operations Officer and ABiH liaison officers.<sup>2191</sup> He recalled that on the morning of 28 June 1995, he was in the PTT car park with Capt. Hansen.<sup>2192</sup> The Trial Chamber notes that Capt. Hansen testified that he was in the PTT Building at the time the incident occurred.<sup>2193</sup>

611. Wg. Cdr. Knowles testified that he and Capt. Hansen heard the sound of a launch and then "caught sight of a low, flat, almost direct-fire type trajectory, slow moving that flew straight across to a front horizontally and hit the TV Building and a couple of buildings up."<sup>2194</sup> After that, Wg.

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<sup>2183</sup> Thomas Hansen, 2 Apr 2007, T. 4361.

<sup>2184</sup> Thomas Hansen, 2 Apr 2007, T. 4348 – 4349.

<sup>2185</sup> Thomas Hansen, 2 Apr 2007, T. 4375 – 4376.

<sup>2186</sup> See P519, UNMO report, dated 5 July 1995.

<sup>2187</sup> Thomas Hansen, 2 Apr 2007, T. 4376.

<sup>2188</sup> Asam Butt, 15 Feb 2007, T. 2218 – 2219.

<sup>2189</sup> W-137, 20 Feb 2007, T. 2515 – 2516.

<sup>2190</sup> Rupert Smith, 7 Mar 2007, T. 3402 – 3404. See also, Rialda Musacfenđić, 28 Feb 2007, T. 2938 – 2939; Martin Bell, 27 Apr 2007, T. 5303, 5304 – 5305, 5306; W-156, 27 Apr 2007, T. 5344 – 5345 (closed session).

<sup>2191</sup> Andrew Knowles, 25 Sept 2007, T. 9325.

<sup>2192</sup> Andrew Knowles, 25 Sept 2007, T. 9326 – 9327, 9334, 9335, 9376, 9392; P517, Map of the area of the TV Building in Sarajevo; P518, Colour photo from upper parking lot of PTT Building.

<sup>2193</sup> Thomas Hansen, 2 Apr 2007, T. 4334.

<sup>2194</sup> Andrew Knowles, 25 Sept 2007, T. 9334 – 9335.

Cdr. Knowles testified, there was a detonation within seconds.<sup>2195</sup> However, he conceded the projectile could have, in fact, crossed over and landed behind the TV Building.<sup>2196</sup> He also accepted the possibility, suggested to him by the Prosecutor, that at the time he caught sight of the projectile, it was already in flight and therefore could have come from further away than he thought it had.<sup>2197</sup> Wg. Cdr. Knowles confirmed that he saw a launch signature consisting of a point of smoke on the ground, which would have corresponded to the launch point unless, by a coincidence, there was something else happening at that spot.<sup>2198</sup> According to Wg. Cdr. Knowles, a patrol was sent out to investigate the suspected launch site. However, no evidence of a launch was found at that location.<sup>2199</sup> He also accepted that, given that shelling was abundant in Sarajevo at that time, the smoke signature could have been “something else happening.”<sup>2200</sup>

612. When asked to assess what kind of projectile he saw, Wg. Cdr. Knowles testified that the projectile he saw was too big to be any kind of mortar or artillery shell.<sup>2201</sup> He stated:

“This projectile whatever it was some [*sic*], I would suggest [an] improvised type device, obviously being used in a method that it was not designed from. And wherever it was launched from, the initial launch would have provided it with its energy and then it seemed in a direct mode to be travelling horizontally under its own momentum until it impacted where it impacted. I do not recall a rocket motor being attached to this or if it had, it would have burnt out initially in the early phase of its flight and the rest was ballistic.”<sup>2202</sup>

613. When he saw the projectile in flight, it did not have a smoke trail. Wg. Cdr. Knowles testified that the projectile came from the north-west; he and Capt. Hansen tracked it all the way into the TV Building.<sup>2203</sup> Wg. Cdr. Knowles testified that, in order to have come from the Ilidža area, the projectile would have had to fly over the PTT Building and therefore, unless it was in its terminal ballistic phase, dropping down, it could not have hit the TV Building without hitting something else in its path.<sup>2204</sup>

614. When confronted with the conclusions of the investigations and evidence pointing to the SRK launching the projectile on that day, Wg. Cdr. Knowles stated it was possible that what he had witnessed was a “secondary event”, a coincidental and simultaneous round coming from a different direction that may not have been the one which struck the TV Building.<sup>2205</sup> However, he did not remember seeing any report of any other impact on the TV Building on that day or on the following

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<sup>2195</sup> Andrew Knowles, 25 Sept 2007, T. 9376.

<sup>2196</sup> Andrew Knowles, 25 Sept 2007, T. 9376.

<sup>2197</sup> Andrew Knowles, 25 Sept 2007, T. 9389 – 9390.

<sup>2198</sup> Andrew Knowles, 25 Sept 2007, T. 9341 – 9342.

<sup>2199</sup> Andrew Knowles, 25 Sept 2007, T. 9339.

<sup>2200</sup> Andrew Knowles, 25 Sept 2007, T. 9342.

<sup>2201</sup> Andrew Knowles, 25 Sept 2007, T. 9400.

<sup>2202</sup> Andrew Knowles, 25 Sept 2007, T. 9400 – 9401.

<sup>2203</sup> Andrew Knowles, 25 Sept 2007, T. 9346 – 9347.

<sup>2204</sup> Andrew Knowles, 25 Sept 2007, T. 9347 – 9348.



day.<sup>2206</sup> He accepted that he could have been mistaken about the fact that he was with Capt. Hansen in the car park, but stood firm on his statements about the flight path which he witnessed.<sup>2207</sup>

615. The Trial Chamber also received evidence pertaining to this incident originating from the SRK. An SRK report on the situation at the front, signed by the Accused and dated 30 June 1995, stated:

“Our artillery forces are responding with precision to the Muslim artillery attacks. In one such response on 28 June they hit the BHRT[V], radio and television centre, the centre of media lies against the just struggle of the Serb people.”<sup>2208</sup>

Maj. Veljović was asked to comment on this document. He testified that it referred to artillery and not to modified air bombs.<sup>2209</sup> Wg. Cdr. Knowles also accepted the proposition of the Defence that it was possible that the warring factions would have boasted about things that they never did in order to boost the morale of troops.<sup>2210</sup>

616. The Trial Chamber also received evidence in the form of minutes of a meeting between liaison officers of UNPROFOR and SRK Ilidža Brigade. The document stated that the SRK officer:

“acknowledged that *Krema* rockets had been fired on the city of Sarajevo (about a dozen). This was psychological warfare, aimed at upsetting the Bosnian soldiers engaged on the Treskavica front who would be worried about the safety of their families in Sarajevo. He said that the Bosnian authorities tried to conceal the efficiency of these shots by keeping the press in the Television Building. In fact, two *Krema* rockets were launched on the Television Building. One of them hit it and consequently, according to Captain Novak, the journalists were able to report on the incident and the Bosnian soldiers were informed about the existence of these weapons called Terror.”<sup>2211</sup>

617. The Trial Chamber was presented with a protest letter sent by Col. Meille to the Accused, concerning, *inter alia*, the TV Building incident, which stated that the origin of fire was SRK-held territory and in which the Accused was urged to stop “these violations of humanitarian law”.<sup>2212</sup> This letter was forwarded by Maj. Gen. Nicolai, who, in a cover letter, stated, “I write to you to protest 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.”<sup>2213</sup> The Defence argued, in its Final Brief, that this shelling incident

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<sup>2205</sup> Andrew Knowles, 25 Sept 2007, T. 9363, 9397.

<sup>2206</sup> Andrew Knowles, 25 Sept 2007, T. 9397 – 9398.

<sup>2207</sup> Andrew Knowles, 25 Sept 2007, T. 9392, 9393, 9398.

<sup>2208</sup> P42, P152, Report by the SRK commander, dated 30 June 1995.

<sup>2209</sup> Stevan Veljović, 31 May 2007, T. 5920.

<sup>2210</sup> Andrew Knowles, 25 Sept 2007, T. 9395.

<sup>2211</sup> P629, UNPROFOR meeting minutes, dated 9 July 1995. *See also*, W-156, 27 Apr 2007, T. 5329 – 5330 (closed session).

<sup>2212</sup> P633, Protest letter to the SRK Commander, dated 30 June 1995 (under seal). The Trial Chamber notes that this letter is also P18. *See also* W-156, 27 Apr 2007, T. 5344 (closed session).

<sup>2213</sup> P103, Protest letter, dated 1 July 1995. *See also*, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 951.

was “instructive” with regard to the means at the Accused’s disposal to carry out investigations following the letters of protest sent to him by UNPROFOR.<sup>2214</sup>

### Findings

618. On the basis of the evidence, the Trial Chamber is satisfied that on 28 August 1995, a modified air bomb hit the TV Building and exploded. There was no real challenge by the Defence that it was a modified air bomb that hit the TV Building. In any event, the Trial Chamber is supported in its finding by testimony of several witnesses, and the reports of Berko Zečević and the BiH police.

619. The evidence shows that approximately 30 civilians were wounded, some seriously. The Defence challenged a number of Prosecution witnesses regarding the death of Ibrahim Šalaka, suggesting to them that his death was staged. All the witnesses rejected that suggestion. While Ibrahim Šalaka may have been moved inside the TV Building from the staircase on which he was killed, the Trial Chamber is satisfied on the basis of the evidence, including the BiH police reports and the autopsy report, that Ibrahim Šalaka, a civilian, was killed in the explosion.

620. The Defence challenged the Prosecution evidence on the origin of fire, focusing mainly on the report of Capt. Hansen. The latter testified that the modified air bomb was fired from ABiH-held territory. The Trial Chamber notes that the evidence recorded in the report is hearsay. Lt. Col. Brennskag, an eyewitness to the incident, was shown Capt. Hansen’s report and dismissed the possibility that the modified air bomb was fired from ABiH-held territory because he saw it being fired from Ilidža. W-137 also dismissed Capt. Hansen’s report, saying that its language and content carried little weight because it was based on hearsay and did not “resemble any proper military report of expertise.”

621. The Trial Chamber must also assess the evidence of Wg. Cdr. Knowles, who testified that he saw a projectile flying from ABiH-held territory. However, in the view of the Trial Chamber, he displayed considerable uncertainty as to whether this was the projectile that hit the TV Building. The Trial Chamber is bound to say that it found Wg. Cdr. Knowles’ evidence vague and full of caveats. In assessing the weight to be attached to Capt. Hansen’s evidence, as against the rest of the evidence, the Trial Chamber cannot ignore its hearsay character and that it stands alone as the evidence which positively seeks to identify ABiH territory as the origin of fire. On the other hand, the Trial Chamber has before it evidence of the SRK origin of the bomb that is first-hand from several witnesses, including Lt. Col. Brennskag and the reports of the BiH police, including the

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<sup>2214</sup> Defence Final Brief, para. 207.

KDZ, and Berko Zečević. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

622. The most cogent evidence supporting the Prosecution case that the modified air bomb came from SRK-held territory is the report from the Accused, referred to in paragraph 615 above, which includes what is tantamount to an acknowledgement on his part that the SRK launched a bomb at the TV Building on 28 June 1995. The Trial Chamber attaches no weight to Wg. Cdr. Knowles' acceptance of the Defence proposition that warring factions would have boasted about things they never did in order to boost the morale of their troops.

623. In sum, the Trial Chamber is satisfied that the modified air bomb that hit the TV Building on 28 June 1995 was fired from the area around Ilidža, which, the evidence shows, was SRK-held territory and that it was launched by members of the SRK.

(xii) Shelling of Bunički Potok Street on 1 July 1995

624. Zejna Šljivo lived on Bunički Potok Street, number 233, in Hrasnica, at the foot of Mount Igman. In the evening of 1 July 1995, she was at home, in the kitchen, with her two daughters, Nefa and Jasmina, Jasmina's husband, Nedžad, and their four year old daughter Emira.<sup>2215</sup> At the same time, W-95 was in the garden of another house on Bunički Potok Street with about nine other persons.<sup>2216</sup> Fikreta Pačariz was in the basement or the ground floor of her home on Bunički Potok Street, with her husband, Hamo Pačariz, and their children.<sup>2217</sup>

625. Col. Hussain Ijaz, an UNMO from Pakistan, was posted in Hrasnica at the time.<sup>2218</sup> He stated that he was sitting in the kitchen, on the second floor of the house where his team was stationed, while the rest of his team was sitting in the office, in an adjacent room.<sup>2219</sup>

626. At around 2100 hours, the inhabitants of Bunički Potok Street in Hrasnica heard a noise, which, according to W-95, Col. Ijaz and Fikreta Pačariz, was similar to that of an aeroplane.<sup>2220</sup> W-95, Col. Ijaz, Zejna Šljivo and Fikreta Pačariz then all heard a big explosion.<sup>2221</sup>

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<sup>2215</sup> Zejna Šljivo, P642, p. 5.

<sup>2216</sup> W-95, P520, p. 2 (under seal).

<sup>2217</sup> Fikreta Pačariz, P643, p. 9.

<sup>2218</sup> Hussain Ijaz, 27 Apr 2007, T. 5400. The Trial Chamber notes that this witness was a Major in the Pakistani Army at the time of the incident. For the purposes of this Judgement, the Trial Chamber will refer to this witness by his current rank.

<sup>2219</sup> Hussain Ijaz, 27 Apr 2007, T. 5413.

<sup>2220</sup> Hussain Ijaz, 1 May 2007, T. 5430; Nefa Šljivo, 5 Apr 2007, T. 4512, P531, p. 2, P532, p. 2; W-95, P520, p. 2 (under seal); Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 9.

<sup>2221</sup> Hussain Ijaz, 27 Apr 2007, T. 5414; W-95, P520, p. 2 (under seal); Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 6.

627. A projectile hit Zejna Šljivo's garage, which was connected to her house, exploded, and the house collapsed around her.<sup>2222</sup> Her family was screaming and there was dust everywhere.<sup>2223</sup> The family managed to get outside but Zejna Šljivo fell down and injured her forehead.<sup>2224</sup> Nefa Šljivo received cuts on her back. While most of her family members received cuts to the face, her brother-in-law's wrist was broken.<sup>2225</sup> Zejna Šljivo's other daughter, Jasmina, ran to get help and, when she came back, she said that "UNPROFOR soldiers" had been wounded in the blast.<sup>2226</sup> Zejna Šljivo and her family went to the outpatients' clinic, and then to the Ćamil Marić War Hospital in Hrasnica, to receive treatment for their injuries.<sup>2227</sup> At the hospital, Nefa Šljivo saw a number of her neighbours who had also been injured: one man with a severe head injury, one woman with "many scars" on her face and another with an injury to her shoulder.<sup>2228</sup> According to Zejna Šljivo, during the time she was at the hospital, the shelling continued.<sup>2229</sup>

628. The window of the kitchen where Col. Ijaz was sitting came away from the wall and fell on him; he received injuries to his right shoulder and left leg.<sup>2230</sup> A Bangladeshi UNMO was also injured.<sup>2231</sup> Col. Ijaz was later evacuated to the hospital in Hrasnica and then to a French hospital in Sarajevo.<sup>2232</sup>

629. W-95 saw roofing tiles and bricks being blasted away by the force of the explosion and she was thrown against the wall of the garage.<sup>2233</sup> She received injuries to her left shoulder as a result of being hit by shrapnel, which doctors at the Ćamil Marić War Hospital in Hrasnica were unable to remove.<sup>2234</sup> She recalled that a man named Kadić and a woman named Naza Pamuk were also injured and that many of the wounded were brought to that same hospital.<sup>2235</sup>

630. Fikreta Pačariz's home was heavily damaged and was no longer habitable.<sup>2236</sup> Five or six surrounding houses were also damaged.<sup>2237</sup> Fikreta Pačariz suffered cuts to her face, head and

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<sup>2222</sup> Nefa Šljivo, 5 Apr 2007, T. 4508, T. 4511, P531, p. 2, P532, p. 2; Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 6. See also P603, Official report, dated 4 July 1995, pp 1, 3, which states that the bomb landed on Bunički Potok Street, 233. The Trial Chamber notes, however, that in P604, Forensic report by KDZ, dated 13 July 1995 ("Forensic report"), p. 1, and P586, Expert report Berko Zečević, p. 159, the impact site is said to be Bunički Potok Street, number 231.

<sup>2223</sup> Nefa Šljivo, P532, p. 2.

<sup>2224</sup> Zejna Šljivo, P642, p. 5.

<sup>2225</sup> Nefa Šljivo, 5 Apr 2007, T. 4508, P532, p. 2; Zejna Šljivo, P642, p. 5.

<sup>2226</sup> Zejna Šljivo, P642, p. 5.

<sup>2227</sup> Zejna Šljivo, P642, p. 5; Nefa Šljivo, 5 Apr 2007, T. 4508, P532, p. 2.

<sup>2228</sup> Nefa Šljivo, P532, p. 2.

<sup>2229</sup> Zejna Šljivo, P642, p. 5.

<sup>2230</sup> Hussain Ijaz, 27 Apr 2007, T. 5414 – 5415.

<sup>2231</sup> Hussain Ijaz, 27 Apr 2007, T. 5415.

<sup>2232</sup> Hussain Ijaz, 27 Apr 2007, T. 5416, 5418.

<sup>2233</sup> W-95, P520, pp 2 – 3 (under seal).

<sup>2234</sup> W-95, 2 Apr 2007, T. 4410 – 4411, P520, p. 3 (under seal).

<sup>2235</sup> W-95, 2 Apr 2007, T. 4410, P520, p. 3 (under seal). According to W-95, there was not enough room for everyone to be treated indoors.

<sup>2236</sup> Fikreta Pačariz, P643, pp 6, 10.

neck.<sup>2238</sup> Her husband, Hamo Pačariž, and children were not hurt, although her husband and mother-in-law were in shock.<sup>2239</sup> Her father-in-law, Duran Pačariž, was seriously injured.<sup>2240</sup> Fikreta Pačariž and her father-in-law were taken to the Hrasnica Hospital, where they received treatment.<sup>2241</sup> Duran Pačariž died from a heart attack on 18 July 1995.<sup>2242</sup> According to Fikreta Pačariž, the injuries and the shock of the bombing accounted for his death.<sup>2243</sup> Fikreta Pačariž continues to live with “psychological traumas”.<sup>2244</sup> She also stated that many neighbours were injured in the explosion.<sup>2245</sup> According to reports by the BiH police, two persons were seriously wounded and eleven others were slightly wounded in the explosion.<sup>2246</sup>

631. The BiH police was informed at approximately 2215 hours that an explosion had occurred at Bunički Potok Street, number 233, and that, at the same time, damage had been found on Alekse Šantića Street, number 50.<sup>2247</sup> The latter house was located around 150 metres away from the site of the explosion on Bunički Potok Street.<sup>2248</sup> On 2 July 1995, the investigative team went to Bunički Potok Street to investigate the explosion; a crater measuring 3.5 by 2.8 metres in diameter and 1.10 metres deep was found in front of the house.<sup>2249</sup> Afterwards, the investigative team went to the house on Alekse Šantića Street, where it found fragments in a large crater, measuring 6.10 by 2.40 metres, in the garden.<sup>2250</sup> One of the fragments found carried Cyrillic letters and numbers.<sup>2251</sup>

632. The BiH police investigators determined that one projectile, with a concussion warhead, that is, a modified air bomb, impacted on Alekse Šantića Street, number 50, and ricocheted to hit Bunički Potok Street, number 233.<sup>2252</sup> The conclusion was that “the concussion warhead projectile

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<sup>2237</sup> Fikreta Pačariž, P643, pp 6, 9.

<sup>2238</sup> Fikreta Pačariž, P643, pp 6, 9.

<sup>2239</sup> Fikreta Pačariž, P643, pp 6, 9.

<sup>2240</sup> Fikreta Pačariž, P643, pp 6, 9.

<sup>2241</sup> Fikreta Pačariž, P643, pp 6, 10.

<sup>2242</sup> Fikreta Pačariž, P643, p. 6.

<sup>2243</sup> Fikreta Pačariž, P643, pp 6, 10.

<sup>2244</sup> Fikreta Pačariž, P643, p 6, 10.

<sup>2245</sup> Fikreta Pačariž, P643, pp 6, 9.

<sup>2246</sup> P603, Official report, pp 1 – 3; P604, Forensic report, p. 1. Enes Kadić and Nedžad Bostandžić were seriously wounded, Kemal Mortuza, Husein Ijaz, Fikreta Pačariž, Duran Pačariž, Naza Pamuk, Hata Mulaosmanović, Emira Kadić, Zeina Šljivo, Nefa Šljivo, Emir Bostandžić and Jasmina Bostandžić were lightly injured. The BiH police also received reports from the hospital in Hrasnica regarding injuries sustained by certain individuals, *see* Vekaz Turković, 26 Apr 2007, T. 5208, 5227 – 5228; P603, Official report, p. 1.

<sup>2247</sup> P603, Official report, p. 1.

<sup>2248</sup> P603, Official report, p. 1.

<sup>2249</sup> P603, Official report, pp 1 – 3.

<sup>2250</sup> P603, Official report, p. 4.

<sup>2251</sup> P603, Official report, p. 4.

<sup>2252</sup> P603, Official report, p. 4; P604, Forensic report, p. 1. The Trial Chamber notes that this type of projectile belongs to the category of air bombs, *see supra*, Section II.B.2(b)(ii) Modified Air Bombs.

was most probably [...]. unfastened from the rest of the projectile there, that is, it got loose and landed and exploded about 150 metres away from the said house in Bunički Potok.”<sup>2253</sup>

633. Berko Zečević also concluded that the projectile that exploded on Bunički Potok Street was a modified air bomb.<sup>2254</sup> In his report, Berko Zečević stated that, “[t]he damage and the direction of the blast wave effect point to the fact that the aircraft bomb had probably been charged with some kind of fuel-air explosive.”<sup>2255</sup> However, Berko Zečević arrived at a different conclusion from the BiH police investigators; he concluded that two modified air bombs hit two locations that were close to one another in a relatively short space of time.<sup>2256</sup> In court, Berko Zečević testified that he was able to calculate the direction and the angle of descent and concluded that “the[r]e were two separate cases and that the report saying that the rocket, after hitting the ground, deviated by 90 degrees and hit [the roof of a house] on Bunički Potok Street [was] absolutely not authentic” because it was impossible to manipulate the flight of an unguided projectile, and because the deviation of 90 degrees was too high to be considered a ricochet.<sup>2257</sup> Furthermore, according to Berko Zečević, a warhead had a larger mass than rocket motors do and thus “[i]t isn’t logical that rocket motors are grounded and the warhead which has a larger mass should be found ahead of it.”<sup>2258</sup> The Trial Chamber notes that during cross-examination, Vekaz Turković testified that while he had taken part in the investigation and worked on the report of the forensic on-site investigation, he had not signed it himself, and could not, therefore, attest to the accuracy of all the information it contained.<sup>2259</sup> At the time of his appearance before the Trial Chamber, Vekaz Turković was aware of the conclusions reached by Berko Zečević and believed it possible that they were correct.<sup>2260</sup>

634. Fikreta Pačariž also stated that there were two bombs, the first of which did not explode, and the second of which exploded 15 minutes later on the garage near her house.<sup>2261</sup> Fikreta Pačariž explained that whilst other shells splintered into shrapnel when they exploded, this bomb did not.<sup>2262</sup> She was later told that the bomb contained 250 kilograms of explosives.<sup>2263</sup>

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<sup>2253</sup> P603, Official report, p. 4. *See also*, Vekaz Turković, P600, p. 3.

<sup>2254</sup> P586, Expert report Berko Zečević, p. 158. *See also*, Hussain Ijaz, 27 Apr 2007, T. 5416; Nefa Šljivo, 5 Apr 2007, T. 4515; W-95, P520, p. 3 (under seal).

<sup>2255</sup> P586, Expert report Berko Zečević, p. 159.

<sup>2256</sup> Berko Zečević, 20 Apr 2007, T. 4877 – 4878. *See also*, P586, Expert report Berko Zečević, p. 159.

<sup>2257</sup> Berko Zečević, 20 Apr 2007, T. 4878.

<sup>2258</sup> Berko Zečević, 20 Apr 2007, T. 4878.

<sup>2259</sup> Vekaz Turković, 26 Apr 2007, T. 5227 – 5228, *referring to* P604, Forensic report.

<sup>2260</sup> Vekaz Turković, 26 Apr 2007, T. 5207 – 5208.

<sup>2261</sup> Fikreta Pačariž, P643, p. 6.

<sup>2262</sup> Fikreta Pačariž, P643, p. 6.

<sup>2263</sup> Fikreta Pačariž, P643, p. 6.

635. In its Final Brief, the Defence submitted that the BiH police did not find any shrapnel at the impact sites.<sup>2264</sup> The BiH police report, cited by the Defence in support of its submission, stated that the BiH police found “several shell fragments of different shapes and dimensions” in and around the crater in Bunički Potok Street and two rocket motors and “several fragments of the rocket motor body were found in the garden” on Alekse Šantića Street.<sup>2265</sup> The forensic report, also cited by the Defence, noted that “pieces of projectile” were found, but there is no information in the report concerning “other traces” or “items found at the scene”.<sup>2266</sup> When confronted with the fact that the BiH police report did not mention pieces of shrapnel being found on the locations that sustained heavy damage, Vekaz Turković explained that the standard procedure at the time was to try and collect a sufficient amount of trace evidence that could serve to establish the type of weapon; it was impossible to collect all pieces of shrapnel due to the vast amount of shrapnel found at shelling sites and gathering all this trace evidence was considered unnecessary.<sup>2267</sup> The Trial Chamber further recalls the evidence of Berko Zečević that a bomb with fuel-air explosive leaves remnants of the bomb’s body after the explosion but little to no shrapnel around the point of detonation.<sup>2268</sup>

636. The BiH police investigators concluded that the modified air bomb was fired “from the aggressor’s positions in the north, the surrounding area of Ilidža.”<sup>2269</sup> Vekaz Turković stated that this conclusion was reached by examining the first place of impact of the bomb and how it had ricocheted thereafter and hit the second house; the bomb “had to have been launched from the direction of Ilidža and nowhere else.”<sup>2270</sup> The forensic report stated that the projectile was launched from the north.<sup>2271</sup>

637. Berko Zečević determined the direction of fire as north-west of the impact site but he could not precisely establish the angle of descent.<sup>2272</sup> However, when testifying before the Trial Chamber, he stated that the direction of fire was, in principle, similar to that determined by the BiH police, which was that it came from the direction of Ilidža. The angle of descent and distance it travelled were around 25 degrees and 5,000 metres respectively.<sup>2273</sup> In order to arrive at these conclusions, he relied on the topography of Sarajevo, photographs of the scene and the information about the damage.<sup>2274</sup> Berko Zečević wrote in his report that “[t]he incoming direction of this projectile could

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<sup>2264</sup> Defence Final Brief, para. 208.

<sup>2265</sup> P603, Official report, pp 3 – 4.

<sup>2266</sup> P604, Forensic report, pp 1 – 2.

<sup>2267</sup> Vekaz Turković, 26 Apr 2007, T. 5232 – 5233, P600, p. 3.

<sup>2268</sup> *See supra* para. 94.

<sup>2269</sup> P603, Official report, pp 3 – 4; Vekaz Turković, P600, p. 3.

<sup>2270</sup> Vekaz Turković, P601, p. 3.

<sup>2271</sup> P604, Forensic report, p. 1.

<sup>2272</sup> P586, Expert report Berko Zečević, p. 159.

<sup>2273</sup> Berko Zečević, 20 Apr 2007, T. 4879 – 4880.

<sup>2274</sup> Berko Zečević, 20 Apr 2007, T. 4880.

not be determined on the basis of the effects on the ground, but it was possible to determine the location of the place where the modified bomb hit the ground, in view of the incidents in Alekse Šantića Street, which are very close to the place of this incident. On the basis of those facts, it can be concluded that the probable incoming angle is similar and that the launch site should also be in the area of Plandište.”<sup>2275</sup> The Trial Chamber notes that the area of Plandište is slightly north-west of Ilidža.<sup>2276</sup>

638. The Defence submitted that this incident took place after “menaces” from the mayor of Sarajevo.<sup>2277</sup> The UNPROFOR report cited by the Defence referred to a breakdown in the relationship between UNPROFOR and that, on 30 June 1995, the mayor of Sarajevo hinted at retaliation against UNPROFOR “if it did nothing to help the city.”<sup>2278</sup> However, no evidence was presented during trial indicating that the ABiH may have fired the modified air bombs that impacted in Hrasnica on 1 July 1995, or, moreover, that it targeted UNPROFOR with the modified air bombs on that date. The UNPROFOR report further stated that in the week preceding 1 July 1995 the SRK “counter-attacked” the eastern slopes of Mount Igman to the south of Sarajevo and pushed the ABiH back from “vital roads.”<sup>2279</sup> According to the report, the SRK told the UN that it would “launch punitive counter-attacks against the urban area” and that the SRK “responded to the Bosnian offensive by resuming a fairly indiscriminate bombardment of the downtown area.”<sup>2280</sup>

## Findings

639. The Trial Chamber is satisfied, on the basis of the evidence as a whole and, particularly the evidence of Berko Zečević, that two modified air bombs fell on the evening of 1 July 1995, one on Bunički Potok Street and the other on Alekse Šantića Street. It is established on the basis of the testimony of Zejna Šljivo, W-95 and Fikreta Pačariz, and the BiH police report, that the explosion on Bunički Potok Street caused injuries to 13 civilians, two of whom were seriously injured.

640. The BiH police report identified Ilidža as the origin of fire. Berko Zečević concluded that the modified air bomb on Bunički Potok Street had been fired from the north-west, and testified that the direction was, in principle, the same as that determined by the BiH police. The KDZ report stated that the direction of fire was north. The Trial Chamber notes that the area of Ilidža is north, north-west of the impact site and recalls that evidence was presented indicating that the area around

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<sup>2275</sup> P586, Expert report Berko Zečević, p. 160.

<sup>2276</sup> See, e.g., D59, Military map of Sarajevo area.

<sup>2277</sup> Defence Final Brief, para. 208.

<sup>2278</sup> P19, UNPROFOR sitrep, pp 4 – 5.

<sup>2279</sup> P19, UNPROFOR sitrep, p. 2.

<sup>2280</sup> P19, UNPROFOR sitrep, p. 2.



Ilidža was SRK-held territory.<sup>2281</sup> The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber is satisfied that the modified air bombs were fired from the Ilidža area, which was controlled by the SRK and that it was launched by members of the SRK.

(xiii) Shelling of Bjelašnička Street in Sokolovići on 23 July 1995

641. In the afternoon of 23 July 1995, two bombs landed in Sokolović Kolonija, otherwise called Sokolovići, but did not explode.<sup>2282</sup> According to Edisa Kršo, the shelling then stopped and people came out onto the street.<sup>2283</sup> W-82 went to see the unexploded bombs and then returned home where she did some housework until 1800 hours, when she invited “some ladies” for coffee.<sup>2284</sup>

642. W-82 stated that she was sitting outside a house on Bjelašnička Street, at 1830 hours, with four friends, when she saw a blinding flash.<sup>2285</sup> Simultaneously, she felt something hit her right shoulder and felt blood on her shoulder and chest, near her neck.<sup>2286</sup> She said that there had been no warning.<sup>2287</sup> Edisa Kršo stated that at about 1915 hours, she came out of her house, located at Bjelašnička Street, number 24 and stood in front of it, talking with her mother, a neighbour and her little daughter.<sup>2288</sup> She heard a strange noise, similar to an aircraft engine and saw a dark object flying in the air with a trail of black smoke in a spiral shape.<sup>2289</sup> She also stated she saw “something like a burning ball” in the air, which hit the tallest building in the neighbourhood, a three-story apartment building, and exploded with a loud noise.<sup>2290</sup> Edisa Kršo’s mother lay down on the ground immediately, while the neighbour ran to an air-raid shelter with her daughter. Edisa Kršo became frightened and ran into the house, up the stairs, where a piece of broken brick hit her on the head; she fell unconscious.<sup>2291</sup> Edisa Kršo regained consciousness and realised she was bleeding; she got up and was hit on the head again, this time by a piece of gutter. She lost consciousness

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<sup>2281</sup> See *supra*, para. 123.

<sup>2282</sup> W-82, 16 Feb 2007, T. 2273, 2280 – 2281, P228 (under seal), p. 2; Edisa Kršo, P644, p. 5.

<sup>2283</sup> Edisa Kršo, P644, p. 5.

<sup>2284</sup> W-82, 16 Feb 2007, T. 2281.

<sup>2285</sup> W-82, 16 Feb 2007, T. 2265, P229 (under seal). The Trial Chamber notes that the time estimate given by this witness was 45 minutes earlier than the time which was consistently confirmed by the other evidence pertaining to this incident: *see for example* P608, Forensic report by KDZ, dated 24 July 1995, p. 1; Edisa Kršo, P644, p. 5; P586, Expert report Berko Zečević, p. 162.

<sup>2286</sup> W-82, 16 Feb 2007, T. 2263 – 2264, P229, p. 2 (under seal).

<sup>2287</sup> W-82, P229, p. 3 (under seal).

<sup>2288</sup> Edisa Kršo, P644, p. 5.

<sup>2289</sup> Edisa Kršo, P644, p. 5.

<sup>2290</sup> Edisa Kršo, P644, p. 5. The Trial Chamber notes that it is stated in P586, Expert report Berko Zečević, p. 162, that the building hit by the projectile, Bjelašnička Street 54, was two storeys high.

<sup>2291</sup> Edisa Kršo, P644, p. 5.

again and was taken to the Čamil Marić Hospital in Hransica by car and admitted to the intensive care unit.<sup>2292</sup>

643. After the explosion, W-82 heard people crying and shouting.<sup>2293</sup> She had trouble standing, but managed to stand on the second attempt and tried to run.<sup>2294</sup> W-82 heard her son saying that others were also injured.<sup>2295</sup> As she was trying to run, her neighbours grabbed her and took her to Sokolović Kolonija, where she received first aid, and then brought her to the Čamil Marić Hospital where she stayed for three days.<sup>2296</sup> In her first statement, dated 8 March 1997, W-82 stated that she had been lightly injured and, in her second statement, on 22 May 2006, she said that she received severe lacerations to her right shoulder and top of her chest.<sup>2297</sup> Her skin had “peeled off and was hanging down.”<sup>2298</sup> There were two pieces of shrapnel embedded deep in her body, which still remain.<sup>2299</sup> W-82 still feels pain in her right shoulder and from the pieces of shrapnel inside.<sup>2300</sup> Two of the women with whom W-82 was sitting were killed.<sup>2301</sup> The two other women received superficial lacerations and bruising.<sup>2302</sup>

644. Edisa Kršo recalled that the hospital was very crowded.<sup>2303</sup> As her injury was not very serious, Edisa Kršo was permitted to go home and continue her treatment there.<sup>2304</sup> As a result of her injury, however, Edisa Kršo could not continue her studies or travel to Sarajevo, she had nightmares for a month and suffered from a stomach problem and headaches up until 1997.<sup>2305</sup> In total, eleven people were injured and two were killed in this incident.<sup>2306</sup>

645. The house in which W-82 was staying in Bjelašnička Street was “almost completely destroyed”;<sup>2307</sup> the top and ground floors were “badly damaged”, the framework of the doors and

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<sup>2292</sup> Edisa Kršo, P644, pp 5, 6.

<sup>2293</sup> W-82, P228, p. 2 (under seal).

<sup>2294</sup> W-82, 16 Feb 2007, T. 2273, 2282, P229, p. 2 (under seal).

<sup>2295</sup> W-82, P229, p. 2 (under seal).

<sup>2296</sup> W-82, 16 Feb 2007, T. 2273, 2282, P229, p. 2 (under seal).

<sup>2297</sup> W-82, P228, p. 2 (under seal), P229, p. 2 (under seal).

<sup>2298</sup> W-82, P229, p. 2 (under seal).

<sup>2299</sup> W-82, P229, p. 2 (under seal).

<sup>2300</sup> W-82, P228, p. 2 (under seal). W-82's medical certificate was admitted as item 42 of P106 (under seal).

<sup>2301</sup> W-82, P229, p. 2 (under seal); Vekaz Turković, 26 Apr 2007, T. 5212, P600, p. 3; P608, Forensic report, p. 1.

<sup>2302</sup> W-82, P229, p. 2 (under seal).

<sup>2303</sup> Edisa Kršo, P644, p. 6.

<sup>2304</sup> Edisa Kršo, P644, p. 6.

<sup>2305</sup> Edisa Kršo, P644, p. 6.

<sup>2306</sup> W-82, P229, p. 3 (under seal); P606, Criminal investigation file, dated 23 July 1995, p. 3; P586, Expert report Berko Zečević, p. 162; P436, P437, P438, P439, P440, P441, P442, P443, P444, P445, P446, P447, Medical records from the Čamil Marić hospital for Hajrija Tabaković, Admir Baručija, Arnes Čerkez, Adis Kršo, Alija Mraković, Mejra Lindov, Elvedin Rahić, Hašija Mraković, Admir Baručija, Izet Bijelonja, Hasan Čerkez, Adnan Bijelonja (all under seal). The Trial Chamber notes that in her 8 March 1997 statement, W-82 recalled that 17 people were wounded, six of them children: W-82, P228 (under seal), p. 2.

<sup>2307</sup> W-82, P229, p. 3 (under seal); Vekaz Turković, P600, p. 3; P608, Forensic report, p. 1.

windows were damaged and the roof tiles were blown away.<sup>2308</sup> She stated that the bomb had landed on a house 15 metres away from where she was.<sup>2309</sup> That house was completely destroyed.<sup>2310</sup> Five or six nearby houses were heavily damaged as were a lot of vehicles.<sup>2311</sup> Edisa Kršo saw a large hole in the house opposite hers, “as if a draft had blown through it”.<sup>2312</sup> She stated that “about 200 houses in the settlement”, including her house, had been damaged due to the blast that day.<sup>2313</sup>

646. The BiH police carried out the investigation on the same day.<sup>2314</sup> Vekaz Turković, a crime-scene technician with the BiH police, found parts of rocket motors on the first floor and in the kitchen of Bjelašnička Street, number 44.<sup>2315</sup> In his forensic report, he noted significant damage to houses and vehicles in the neighbourhood, as well as injuries to people.<sup>2316</sup> He conclude that a rocket missile with a concussion warhead, that is, a modified air bomb, had landed on Bjelašnička Street, number 54.<sup>2317</sup> He stated he was “satisfied that the deaths, injuries and damage was caused by a device similar to the other air bombs that [he] had examined.”<sup>2318</sup> During cross-examination, Vekaz Turković testified that the bodies of the two women who died had been removed when he carried out his investigation, and this is why they do not appear in the photographs he took of the scene.<sup>2319</sup>

647. In its Final Brief, the Defence submitted that the BiH police did not find any shrapnel on the incident site.<sup>2320</sup> During cross-examination, Vekaz Turković conceded that there was no mention in the BiH police report of shrapnel that could have been taken for analysis in order to determine what kind of projectile exploded.<sup>2321</sup>

648. In his expert report, Berko Zečević noted the absence of traces on the interior walls of Bjelašnička Street, number 54 and surrounding buildings, and concluded that the projectile could not have been a FAB-250 bomb filled with conventional TNT explosives, which has “a minimum

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<sup>2308</sup> W-82, P229, p. 3 (under seal).

<sup>2309</sup> W-82, P229, p. 3 (under seal).

<sup>2310</sup> W-82, P229, p. 3 (under seal), P228, p. 3 (under seal); P608, Forensic report, p. 1.

<sup>2311</sup> W-82, P228, p. 3 (under seal); P608, Forensic report, p. 1.

<sup>2312</sup> Edisa Kršo, P644, p. 5.

<sup>2313</sup> Edisa Kršo, P644, p. 6.

<sup>2314</sup> Vekaz Turković, P600, p. 3.

<sup>2315</sup> Vekaz Turković, 26 April 2007, T. 5233 – 5234, P600, p. 3; P608, Forensic report, pp 1, 3.

<sup>2316</sup> P608, Forensic report, pp 1, 2.

<sup>2317</sup> P608, Forensic report, pp 1, 2; The Trial Chamber notes that this type of projectile belongs to the category of air bombs, *see supra*, Section II.B.2(b)(ii) Modified Air Bombs.

<sup>2318</sup> Vekaz Turković, P600, p.3.

<sup>2319</sup> Vekaz Turković, 26 Apr 2007, T. 5225; P607, Photographs.

<sup>2320</sup> Defence Final Brief, para. 209.

<sup>2321</sup> Vekaz Turković, 26 April 2007, T. 5234, P600, p.3.

of 11,000 fragments”.<sup>2322</sup> Consistent with the BiH police finding, Berko Zečević determined that the projectile was a modified air bomb with fuel-air explosive.<sup>2323</sup>

649. W-82 did not know the direction from which the bomb came.<sup>2324</sup> Berko Zečević noted that the Bosnian Muslim investigators determined that the incoming direction of the projectile was north-west.<sup>2325</sup> Based on the photographs taken at the scene, Berko Zečević estimated the angle of descent of the projectile to be 25 degrees. He estimated the direction that the projectile came from to be about 320 degrees, that is, from a north-westerly direction, which avoided a trajectory over the heavily-populated parts of Ilidža.<sup>2326</sup> Berko Zečević concluded that the probable launch site of this air bomb was in the wider area of the settlement of Osijek, over five kilometres away from the place where the bomb landed.<sup>2327</sup>

## Findings

650. On 23 July 1995, a modified air bomb exploded on Bjelašnička Street. In its Final Brief, the Defence made the argument that the BiH police report did not mention the presence of shrapnel. It is not clear to what end this argument was made, but if it is to suggest that the absence of shrapnel was not consistent with the use of a modified air bomb, it is sufficient for the Trial Chamber to recall the testimony of Verkaz Turković that (i) it was impossible to collect all the pieces of shrapnel and it was standard procedure to collect an amount of evidence sufficient to establish the type of weapon, and (ii) the BiH police collected parts of rocket motors. Evidence in this case is that the presence of rocket motors indicates the explosion was caused by modified air bombs.

651. On the basis of the evidence, including witness testimony, medical records, and the investigative and expert reports, the Trial Chamber is satisfied that two civilians were killed and 11 civilians were injured, some seriously, as a result of the explosion of the modified air bomb.

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<sup>2322</sup> P586, Expert report Berko Zečević, p. 164.

<sup>2323</sup> P586, Expert report Berko Zečević, pp 162, 164. *See also supra*, para. 93.

<sup>2324</sup> W-82, P229, p. 3 (under seal). The Trial Chamber notes that the statement of Edisa Kršo was admitted in redacted form pursuant to Rule 92 *bis* of the Rules. The Trial Chamber, in deciding on the admission of this statement, applied the law, as set in *Prosecutor v. Stanislav Galić*, where the Appeals Chamber held that “a written statement containing conclusions by a witness “as to the direction from which the particular shell had been fired, could [...] be of substantial importance to the Prosecution case if it is the vital link in demonstrating that the shell [...] was fired from a gun emplacement manned by immediately proximate subordinates of the accused.” The Trial Chamber, therefore, ordered the redaction of the section of the statement of Edisa Kršo detailing the direction of fire, *see* Decision on Prosecution Motion for Admission of Written Statements pursuant to Rule 92 *bis* and *ter* of the Rules of Procedure and Evidence, with Confidential Annex A, dated 27 February 2007.

<sup>2325</sup> P586, Expert report Berko Zečević, p. 162. *See also* P606, Criminal investigation file, p. 4.

<sup>2326</sup> P586, Expert report Berko Zečević, p. 164. *See also supra*, para. 123.

<sup>2327</sup> P586, Expert report Berko Zečević, p. 164.

652. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that it has been established that the modified air bomb was fired from a north-westerly direction, from SRK-controlled territory and that it was launched by members of the SRK.

(xiv) Shelling of the BITAS Building on 22 August 1995

653. On 22 August 1995, the BITAS Building on Zmaja od Bosne, number 64 was shelled.<sup>2328</sup> Sanjin Hasanefendić did not recall any ABiH military activity in the area on 22 August 1995, nor did he see any active ABiH forces in the area.<sup>2329</sup> The BITAS Building was located approximately 100 metres from the Novo Sarajevo Police Station.<sup>2330</sup> Other buildings in the immediate vicinity of the BITAS Building and the police station included residential buildings, a post office, a Catholic church, office buildings, the Socijalno Building and the Elektroprivreda Building.<sup>2331</sup>

654. Sanjin Hasanefendić testified that he was at the Novo Sarajevo Police Station when the BITAS Building was shelled.<sup>2332</sup> There was a loud droning sound he had never heard before followed by a powerful explosion.<sup>2333</sup>

655. At the moment of the explosion, Irhad Lukavac was in a Golf car parked outside the building that was next to the Gol Restaurant at Zmaja od Bosne, number 66, just west of the BITAS Building.<sup>2334</sup> The Golf car was heavily damaged by the explosion.<sup>2335</sup> Irhad Lukavac sustained injuries to his chest, got out of his car and fell on the ground next to the restaurant, where citizens gathered to help him.<sup>2336</sup> He was put in an unidentified car and taken to hospital.<sup>2337</sup> However, he succumbed to his injuries on the way there and died.<sup>2338</sup> Another car was also heavily damaged.<sup>2339</sup>

656. The Defence argued that the lack of photographs showing blood marks on the location where Irhad Lukavac had collapsed, indicated that he was not killed at the location identified by Sanjin Hasanefendić.<sup>2340</sup> However, Sanjin Hasanefendić testified that he photographed the blood

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<sup>2328</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2315 – 2316; P244, Official note shelling BITAS Building, dated 25 August 1995, p. 1; P230, Map marked by Sanjin Hasanefendić; P231, Map marked by Sanjin Hasanefendić; P232, P239, Photograph marked by Sanjin Hasanefendić.

<sup>2329</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2336, 2355.

<sup>2330</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2316; P239, Photograph marked by Sanjin Hasanefendić.

<sup>2331</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2316 – 2317; P239, Photograph marked by Sanjin Hasanefendić.

<sup>2332</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2317.

<sup>2333</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2317.

<sup>2334</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

<sup>2335</sup> P244, Official note, p. 3.

<sup>2336</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2; P435, Medical record (under seal).

<sup>2337</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

<sup>2338</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

<sup>2339</sup> P244, Official note, p. 3.

<sup>2340</sup> Defence Final Brief, para. 210; Sanjin Hasanefendić, 16 Feb 2007, T. 2356, 2357, 2358.

marks inside the vehicle as evidence of the place where the victim was injured.<sup>2341</sup> Sanjin Hasaneferendić also testified that the victim was taken away quickly in a car.<sup>2342</sup> Finally, he said that the type of damage to the car clearly indicated that it had been caught in the explosion.<sup>2343</sup>

657. Another person was slightly injured; Sanjin Hasaneferendić confirmed the police report that Alija Muharemović was walking down Zmaja od Bosne when the explosion occurred and he sustained light injuries to his right lower leg.<sup>2344</sup> He was taken to Omer Maslić Medical Centre, where he received medical treatment and was sent home.<sup>2345</sup> The police investigation file did not contain medical records for this victim. In response to questions of the Defence about this, Sanjin Hasaneferendić stated that as a forensic technician, he was not responsible for collecting medical documentation.<sup>2346</sup>

658. Sanjin Hasaneferendić left the police station shortly after the explosion, but returned there due to the severity of the shelling in the Novo Sarajevo municipality.<sup>2347</sup> As a result of the shelling, Sanjin Hasaneferendić and his colleagues could not carry out an on-site investigation at the BITAS Building until the next day.<sup>2348</sup> The scene of the incident was secured by two police officers of the Novo Sarajevo Police Station during the night of 22 August 1995.<sup>2349</sup>

659. The Trial Chamber heard evidence that the explosion created considerable damage to the BITAS Building, in particular on the west side of the building.<sup>2350</sup> Over twelve rooms on four floors on the side the projectile impacted were completely destroyed, and doors, windows and walls in all offices on both sides of the building were damaged.<sup>2351</sup> The staircase running between the second, third and fourth floors collapsed, and the elevator was destroyed.<sup>2352</sup> Photographic evidence shows that a large part of the outer wall on the west side of the building was blasted away.<sup>2353</sup> The police report on the incident notes that the exact number of rooms damaged by the explosion could not be determined because the police found it impossible to enter the building.<sup>2354</sup>

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<sup>2341</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2359.

<sup>2342</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2360.

<sup>2343</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2359 – 2360.

<sup>2344</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

<sup>2345</sup> P244, Official note, p. 2.

<sup>2346</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2352, 2353.

<sup>2347</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2317 – 2318.

<sup>2348</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2318.

<sup>2349</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2318, 2360; P244, Official note, p. 1.

<sup>2350</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2321, 2328; P244, Official note, p. 2; P241, Photograph of BITAS Building.

<sup>2351</sup> Sanjin Hasaneferendić, 16 Feb 2007, T. 2328; P240, Photograph marked by Sanjin Hasaneferendić; P244, Official note, p. 2.

<sup>2352</sup> P244, Official note, p. 3; P586, Expert report Berko Zečević, pp 167 – 169.

<sup>2353</sup> P240, Photograph marked by Sanjin Hasaneferendić. *See also*, P586, Expert report Berko Zečević, pp 167 – 169.

<sup>2354</sup> P244, Official note, p. 3.

660. The police report shows that the BITAS Building was not the only building that was damaged; surrounding buildings to the North, South and West of the BITAS Building were all damaged to some degree.<sup>2355</sup> The apartment of Šaćira Jugović, on the fourth floor of Zmaja od Bosne, number 66, was seriously damaged when a fragment came through the window causing a fire in the apartment.<sup>2356</sup> Many of the rooms burned down completely before the fire could be extinguished.<sup>2357</sup>

661. A number of metal fragments, measuring between 30 and 120 centimetres, were determined by the BiH Police to be parts of an explosive device which probably had been modified.<sup>2358</sup> To the knowledge of Sanjin Hasanefendić, the ABiH did not possess the size or calibre of the device which exploded on 22 August 1995.<sup>2359</sup> The Defence put to Sanjin Hasanefendić that it was possible that the BITAS Building had been hit by many different projectiles around the same time. In response, Sanjin Hasanefendić said that this assertion was not supported by evidence, and that evidence of one modified air bomb had been found at the scene.<sup>2360</sup> He also rejected the Defence suggestion that the modified air bomb could have torn through the building, causing the damage, rather than explode inside the building.<sup>2361</sup>

662. According to the investigative team report, the first point of impact for the projectile was the glass of the staircase in the south-west side of the BITAS Building, between the second and third floors.<sup>2362</sup> The subsequent explosion occurred within the building, on the staircase itself.<sup>2363</sup> Berko Zečević, stated that the severe damage to the horizontal concrete beam above the second floor marks the exact place where the projectile “probably entered” the building.<sup>2364</sup> Based on the evidence of damage to the exterior walls of the two highest floors on the north-east side of the building, he concluded that the projectile “probably” ricocheted off the staircase, towards the third floor before exploding.<sup>2365</sup> According to Berko Zečević, the effects of the projectile inside the staircase bore the hallmarks of a “volumetric weapon”.<sup>2366</sup> The effects of the projectile inside the

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<sup>2355</sup> P244, Official note, p. 3.

<sup>2356</sup> *Ibid.*

<sup>2357</sup> *Ibid.*

<sup>2358</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2322, 2354; P242, Photograph; P243, Forensic report on shelling of BITAS Building, dated 23 August 1995, p. 2.

<sup>2359</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2336.

<sup>2360</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2354.

<sup>2361</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2354.

<sup>2362</sup> P244, Official note, p. 2; P243, Forensic report, p. 2; Sanjin Hasanefendić, 16 Feb 2007, T. 2318 – 2319, 2324; P240, Photograph marked by Sanjin Hasanefendić.

<sup>2363</sup> P244, Official note, p. 2; P243, Forensic report, p. 2; Sanjin Hasanefendić, 16 Feb 2007, T. 2318 – 2319, 2354; P240, Photograph marked by Sanjin Hasanefendić.

<sup>2364</sup> P586, Expert report Berko Zečević, p. 167.

<sup>2365</sup> P586, Expert report Berko Zečević, p. 168.

<sup>2366</sup> P586, Expert report Berko Zečević, p. 169.

staircase were more pronounced on structures of low resistance, while there were no “pronounced fragmentation effects”.<sup>2367</sup>

663. Sanjin Hasanefendić stated in a document dated 10 March 1997 that the direction of fire was “south”.<sup>2368</sup> When confronted with this prior statement in cross-examination, Sanjin Hasanefendić stated that bomb squad technicians and other investigators “may always take a broader area to describe the direction of fire.”<sup>2369</sup>

664. The BiH police determined the direction of fire with reference to the centre of the explosion in relation to the location of air bomb fragments.<sup>2370</sup> The forensic investigation team, including the bomb squad technician, determined that the direction of fire of the projectile that struck the BITAS Building was the “aggressor’s positions at Rajlovac,” to the “south-west” of the BITAS Building.<sup>2371</sup> Based on the police reports and the findings in other shelling incidents near the BITAS Building, Berko Zečević also concluded that the projectile came from the wider area of Rajlovac.<sup>2372</sup> In reaching this conclusion, he estimated the direction of fire as 275 degrees.<sup>2373</sup> The incoming trajectory did not run above populated areas controlled by the SRK.<sup>2374</sup> The Trial Chamber notes in this respect that the wider area of Rajlovac is to the west to north-west of the BITAS Building.

665. The Trial Chamber recalls that in his report, Berko Zečević indicated the effective range of a FAB-250 was 5,820 metres to 7,680 metres.<sup>2375</sup> Berko Zečević placed the probable launch site at approximately 6,700 metres from the point of impact.<sup>2376</sup> He estimated that the angle of descent was approximately 25 to 30 degrees.<sup>2377</sup> The Trial Chamber notes that a table provided in the report of Berko Zečević shows that a modified air bomb, fired at an angle of 30 degrees, would be close to the ground or would hit the ground at approximately 6,500 metres from the firing point and a modified air bomb, fired at an angle of 35 degrees would be close to the ground or would hit the ground at approximately 7, 200 metres and at relatively low angles.<sup>2378</sup>

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<sup>2367</sup> P586, Expert report Berko Zečević, p. 169.

<sup>2368</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2349, 2350.

<sup>2369</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2350.

<sup>2370</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2324, 2327, 2328, 2330; P243, Forensic report, pp 1 – 2.

<sup>2371</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2324, 2356; P243, Forensic report, p. 1; P244, Official note, p. 2; P241, P245, P247, P248, Photographs; P246, Photograph marked by Sanjin Hasanefendić.

<sup>2372</sup> P586, Expert report Berko Zečević, pp 167 – 170. Berko Zečević took into account the findings related to the shelling of Trg Medunarodnog, Prijateljstva Square, Geteova Street and Safeta Hadžića Street.

<sup>2373</sup> P586, Expert report Berko Zečević, p. 169.

<sup>2374</sup> P586, Expert report Berko Zečević, p. 169.

<sup>2375</sup> See *supra*, para. 95 and P586, Expert report of Berko Zečević, pp 87 – 88.

<sup>2376</sup> P586, Expert report Berko Zečević, p. 170.

<sup>2377</sup> P586, Expert report Berko Zečević, p. 170.

<sup>2378</sup> P586, Expert report Berko Zečević, p. 88.



666. The south-west direction of fire was corroborated by two eyewitnesses who saw the projectile flying above Čengiće Vila, west of the BITAS Building.<sup>2379</sup> Sanjin Hasanefendić did not know whether official statements were taken from these eyewitnesses, but knew that they spoke to the crime police inspector.<sup>2380</sup> However, the Trial Chamber notes that it is unclear who these witnesses were. While witnesses Abdulah Čančar and Zada Borovina were identified in the forensic report as being in the BITAS Building at the time of the explosion, Sanjin Hasanefendić testified that the eyewitnesses said that “they were at the time in Čengiće Vila neighbourhood.”<sup>2381</sup>

667. The Defence did not present evidence specifically challenging this shelling incident during its case, either in cross-examination or in the presentation of its case. However, the Defence expert, Maj. Gen. Garović, generally challenged the existence of modified air bombs and the existence of fuel-air explosives.<sup>2382</sup>

### Findings

668. On 22 August 1995 a modified air bomb exploded on the BITAS Building. As a result of the explosion, it has been established that one person, a civilian, was killed and another person was slightly injured. In this regard, the Trial Chamber recalls witness testimony and a BiH police report. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

669. While the evidence from the witnesses as to the direction from which the modified air bomb came was conflicting, all the areas identified as the possible origin of fire were under the control of the SRK. The Trial Chamber is satisfied on the basis of the evidence as a whole, particularly the consistent conclusions of the BiH police and the KDZ, as set out in their reports, and Berko Zečević, that the modified air bomb was fired from the area of Rajlovac, an area under the control of the SRK and that it was launched by members of the SRK.

#### (xv) Shelling of the Markale Market on 28 August 1995

670. The weather on 28 August 1995 was clear, with a light breeze and few clouds.<sup>2383</sup> There were two markets on Mula Mustafe Bašeskije Street, which according to W-137, “constituted the

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<sup>2379</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2326, 2329 – 2330, 2334, 2347 – 2348.

<sup>2380</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2334, 2347 – 2348.

<sup>2381</sup> Sanjin Hasanefendić, 16 Feb 2007, T. 2347; P244, Official note, p. 3, reads that Abdullah Čančar was at his doorman post in the BITAS building at the moment of the explosion. Zada Borovina, employee of DP BITAS, was on the fifth floor at the moment of the explosion and was brought down by firemen.

<sup>2382</sup> See *supra*, paras 99 – 101.

greatest concentration of shops selling food in Sarajevo at the time.”<sup>2384</sup> One of the markets was the indoor market at Markale, which was about 200 metres from the other, outdoor, market. Sead Bešić explained that vendors sold cigarettes and various goods at the exit of Markale Market.<sup>2385</sup> Lt. Col. Konings, a Dutch UNMO, testified that he passed by the Markale Market early on 28 August 1995 and recalled seeing a lot of civilians gathered there, engaging in trading activities on the sidewalk and everywhere on the street and that he “did not trust the situation”.<sup>2386</sup> At 1110 hours that day, a shell exploded on the street, just in front of the indoor market.<sup>2387</sup>

671. The Defence challenged the evidence regarding this incident on multiple grounds. It argued that the incident was a staged event. In this regard it argued that an explosive device had been planted at the Markale Market. Moreover, it challenged the total number of victims, suggesting that bodies could have been planted in the area so as to make it appear as though many people had died there. It also challenged the direction of fire and the angle of descent that were calculated by the BiH police, UNPROFOR and UNMO. In doing so, it focused, *inter alia*, on the fact that the radar systems around Sarajevo did not register the firing of the shell that struck the street in front the Markale Market.

a. Number of dead and wounded

672. When he arrived at the scene, W-137 saw that all the victims of the shelling were being rushed to hospital in the trunks of many cars, without distinction as to whether the victims were wounded or dead. The persons collecting the bodies could not be certain that the victims were alive and thus, he said, picked everyone up in order to get them to the hospital as fast as possible.<sup>2388</sup> When asked by the Defence why it was permitted that the dead bodies be removed from the scene, W-137 explained that he saw this happening right after the incident, but that the police or UN members had not yet arrived at the scene and that it was just civilians who were evacuating the casualties as fast as possible.<sup>2389</sup>

673. Djula Leka, a homemaker and mother of five children, was a long term resident of Sarajevo.<sup>2390</sup> When the shell exploded, she was just outside the Markale Market and in front of the

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<sup>2383</sup> D58, ICTY information report, dated 2 October 2003 (“ICTY information report”), p. 1; D121, ICTY information report, dated 3 September 2003 (“ICTY information report”), p. 3; P255, Criminal investigation file, dated 29 August 1995, p. 1.

<sup>2384</sup> W-137, 20 Feb 2007, T. 2544; D75, Photograph marked by W-137.

<sup>2385</sup> Sead Bešić, 20 Feb 2007, T. 2577.

<sup>2386</sup> Harry Konings, 12 Mar 2007, T. 3587 – 3590, 13 Mar 2007, T. 3677 – 3678; D121, ICTY information report, p. 1.

<sup>2387</sup> Sead Bešić, 20 Feb 2007, T. 2570; Djula Leka, P650, p. 2; P21, UNPROFOR sitrep, 28 August 1995, p. 5.

<sup>2388</sup> W-137, 20 Feb 2007, T. 2501, 2556; P255, Criminal investigation file, p. 2.

<sup>2389</sup> W-137, 20 Feb 2007, T. 2557.

<sup>2390</sup> Djula Leka, P650, p. 2.

indoor market, about five to seven metres from the place of impact.<sup>2391</sup> She was injured in the explosion.<sup>2392</sup> Djula Leka's brother-in-law was killed in the explosion and was lying about ten metres away from her.<sup>2393</sup> She asked a policeman she knew to help her. He stopped a car to transport her to the hospital but the car was "full of dead bodies" so she refused to get in it.<sup>2394</sup> The policeman then stopped a taxi, which transported her to the hospital.<sup>2395</sup> Djula Leka stayed in the hospital for four to five days.<sup>2396</sup> She still feels some pain in her shoulder and chest as a result of the injuries she received from the explosion.<sup>2397</sup>

674. The shell landed four or five metres behind Mesuda Klarić and Ismet Klarić.<sup>2398</sup> Immediately after the explosion Mesuda Klarić felt like she was not fully conscious or able to see properly what was going on.<sup>2399</sup> When she came to, she found herself sitting on the ground with her husband next to her.<sup>2400</sup> He told her, "I lost my arm".<sup>2401</sup> She was bleeding heavily from her leg.<sup>2402</sup> She saw a lot of people lying on the street toward the cathedral.<sup>2403</sup> Medusa Klarić was put in a car and her husband was put in the trunk of another car.<sup>2404</sup> As her husband was being placed in the car, she saw that his foot was missing and that he was also wounded in the groin.<sup>2405</sup> In the car that took Medusa Klarić to the hospital, there were also a young girl and a young man; she saw that the foot of the young girl had been severed.<sup>2406</sup> At the hospital, Medusa Klarić and Ismet Klarić were both taken immediately to surgery. Ismet Klarić did not survive.<sup>2407</sup> Medusa Klarić still has pieces of shrapnel in her body, one in her back, one near the kidney area and one below her right knee.<sup>2408</sup>

675. Milan Mandilović, at the time a surgeon at the State Hospital, and Bakir Nakaš, who is now the Director of the same hospital, were at the hospital on the day of the incident and recalled receiving a large number of seriously wounded civilians. Bakir Nakaš saw about 80 victims from the Markale Market at the hospital that day.<sup>2409</sup> The medical staff had to resort to conducting triage

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<sup>2391</sup> Djula Leka, P650, p. 2.

<sup>2392</sup> Djula Leka, P650, p. 2.

<sup>2393</sup> Djula Leka, P650, p. 2.

<sup>2394</sup> Djula Leka, P650, p. 2.

<sup>2395</sup> Djula Leka, P650, p. 2.

<sup>2396</sup> Djula Leka, P650, p. 2.

<sup>2397</sup> Djula Leka, P650, p. 2.

<sup>2398</sup> Mesuda Klarić, P648, p. 2.

<sup>2399</sup> Mesuda Klarić, P648, p. 2.

<sup>2400</sup> Mesuda Klarić, P648, p. 2.

<sup>2401</sup> Mesuda Klarić, P648, p. 2.

<sup>2402</sup> Mesuda Klarić, P648, p. 2.

<sup>2403</sup> Mesuda Klarić, P648, p. 2.

<sup>2404</sup> Mesuda Klarić, P648, pp 2 – 3.

<sup>2405</sup> Mesuda Klarić, P648, p. 3.

<sup>2406</sup> Mesuda Klarić, P648, p. 3. The Trial Chamber notes that Sead Bešić was shown photos of the site of the explosion and identified body parts of victims, Sead Bešić, 21 Feb 2007, T. 2615 – 2616; P264, Photographs of impact site, dated 28 August 1995, pp 2, 3, 4, 5 and 6.

<sup>2407</sup> Mesuda Klarić, P648, p. 3.

<sup>2408</sup> Mesuda Klarić, P648, p. 3.

<sup>2409</sup> Bakir Nakaš, 29 Jan 2007, T. 1115.

of the victims.<sup>2410</sup> Milan Mandilović and Bakir Nakaš testified that a great majority of the victims they saw were civilians and, given the place where the incident occurred, even the few persons wearing military clothes were probably there buying groceries.<sup>2411</sup>

676. W-28, a Bosnian Muslim police investigator, went to the morgue and hospitals with “UN observers” and a judge to verify how many people were killed or wounded.<sup>2412</sup> He recorded that 35 persons were killed and 78 were wounded, although some of the wounded later died.<sup>2413</sup> Sead Bešić testified that about 30 more persons died as a consequence of this incident and that his team found body parts of victims, lower extremities such as feet and legs on the scene of the incident.<sup>2414</sup> The findings of W-28’s investigation were that 40 people were killed.<sup>2415</sup> The Trial Chamber received death certificates for twelve victims, including one anonymous person.<sup>2416</sup> In addition, it received a list containing the names of 35 deceased and 85 wounded.<sup>2417</sup> Finally, the Defence tendered a report of an ABiH Brigade, which stated that one of its members was killed in this incident. The report shows that this soldier was off-duty at the time.<sup>2418</sup>

677. Lt. Col. Konings recalled that, when he arrived at the scene with his team, the bodies of the victims had been evacuated but there were still body parts and blood everywhere.<sup>2419</sup> The Defence asked him whether he thought a single 120 mm mortar shell could do this type of damage. He said that he believed it could, given the particularities of the case, such as the amount of people gathered at the impact site, the building surrounding the site, which prevented the pressure from the blast from getting away and the presence of a lot of glass from the windows of the buildings.<sup>2420</sup> According to Nedžib Đozo, Markale Market was the only place where the aggressor could kill a great number of people with only one shell.<sup>2421</sup>

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<sup>2410</sup> Milan Mandilović, 17 Jan 2007, T. 573; Bakir Nakaš, 29 Jan 2007, T. 1106; Sead Bešić, 20 Feb 2007, T. 2569.

<sup>2411</sup> Milan Mandilović, 17 Jan 2007, T. 573; Bakir Nakaš, 29 Jan 2007, T. 1106.

<sup>2412</sup> W-28, P275, p. 3; Rupert Smith, P334, p. 22.

<sup>2413</sup> W-28, P275, p. 3; D10, UNPROFOR HQ daily sitrep, dated 29 August 1995 (“UNPROFOR daily sitrep, 29 August 1995”), p. 3; Lt. Col. Konings went to the morgue between 1200 and 1300 hours and recorded 38 dead, Harry Konings, 12 Mar 2007, T. 3581 – 3582; P252, Criminal investigation file by KDZ, dated 29 August 1995, p. 1; P255, Criminal investigation file, pp 3 – 5.

<sup>2414</sup> Sead Bešić, 20 Feb 2007, T. 2573 – 2574, 21 Feb 2007, T. 2592 – 2593; Harry Konings, 12 Mar 2007, T. 3581; P262, Criminal investigation sketch.

<sup>2415</sup> W-28, P275, p. 3.

<sup>2416</sup> P71, P72, P73, P74, P75, P76, P77, P78, P79, P80, P81, P82, Medical records respectively for an anonymous person, Andrija Svoboda, Ruža Galić, Samir Marevac, Rasim Koso, Ajkuna Cokalić, Osman Levent, Dževad Hodžić, Zijad Bejtić, Merdžana Obralić, Amira Guberović, Samir Tupuzović, dated 28 and 29 August 1995.

<sup>2417</sup> P266, Criminal investigation file, dated 29 August 1995, containing a list of names of 35 killed victims and mention of 85 wounded.

<sup>2418</sup> D461, Interim report on death of unit member, 112<sup>th</sup> Viteška Brigade, dated 28 August 1995, p. 1.

<sup>2419</sup> D119, Statement of Harry Konings, dated 26 April 1996 (“Statement of Harry Konings”), p. 3; D120, ICTY information report, dated 6 October 2003 (“ICTY information report”), p. 3.

<sup>2420</sup> Harry Konings, 13 Mar 2007, T. 3639 – 3640.

<sup>2421</sup> Nedžib Đozo, P363, p. 3.

678. One investigation was carried out by the BiH police and a team of UNMOs, including Lt. Col. Konings.<sup>2422</sup> Sead Bešić was part of the BiH police team.<sup>2423</sup> Lt. Col. Konings also participated in a meeting to discuss the investigation with the BiH police the next day.<sup>2424</sup> UNPROFOR also led an investigation with a team of French UNPROFOR members.<sup>2425</sup>

b. Investigation of the Incident; Type of Shell

679. The first BiH police officers arrived within minutes after the explosion at the Markale Market. W-137, a KDZ technician, testified that he was in the area with a colleague when he heard a lot of cars sounding their horns. He saw “human arms and legs sticking out of the cars.” He arrived about seven minutes after seeing the cars as he and his colleague went back to the police station to gather their equipment.<sup>2426</sup> He described the scene he found there as “the last, deepest circle of Dante’s hell”.<sup>2427</sup>

680. The BiH investigators, the UNMOs and UNPROFOR all concluded that the shell that exploded outside Markale Market was a 120 mm mortar shell.<sup>2428</sup> Lt. Col. Konings identified the crater as “very clear”, showing that the projectile was a mortar shell.<sup>2429</sup> The UNPROFOR investigations concluded that the 120 mm mortar shell was of Bosnian Serb manufacture.<sup>2430</sup> Its tail-fin was found between 20 and 50 metres from the place of impact, damaged and bent. There were Cyrillic signs on it.<sup>2431</sup> Lt. Col. Konings testified that it was expected that a tail-fin of such mortar shells would be found at a distance from the point of impact.<sup>2432</sup> Sead Bešić explained that the tail-fin could have been moved by anyone at the scene trying to help evacuate the dead and wounded.<sup>2433</sup>

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<sup>2422</sup> Harry Konings, 12 Mar 2007, T. 3565 – 3567; D117, UNMO Patrol Report, dated 29 August 1995; D119, Statement of Harry Konings, p. 2; D121, ICTY information report, p. 2; Sead Bešić, 20 Feb 2007, T. 2568; P255, Criminal investigation file, p. 1.

<sup>2423</sup> Sead Bešić, 20 Feb 2007, T. 2568. W-137 testified that, given the gravity of the incident, the BiH investigation lasted longer than usual, that is, for one or two hours, while the UNPROFOR French artillery experts only stayed on-site for about 5 to 10 minutes, W-137, 19 Feb 2007, T. 2429 – 2430.

<sup>2424</sup> Harry Konings, 12 Mar 2007, T. 3593; P266, Criminal investigation file, dated 29 August 1995, p. 1.

<sup>2425</sup> Rupert Smith, 7 Mar 2007, T. 3336; Harry Konings, 12 Mar 2007, T. 3565 – 3567; P355, Video footage.

<sup>2426</sup> W-137, 20 Feb 2007, T. 2549 – 2550.

<sup>2427</sup> W-137, 19 Feb 2007, T. 2417 – 2418.

<sup>2428</sup> P252, KDZ investigation file, p. 4; P255, Criminal investigation file, p. 1; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 732.

<sup>2429</sup> Harry Konings, 12 Mar 2007, T. 3570; P265, Photo composition of street with impact crater.

<sup>2430</sup> P631, UNPROFOR Sector Sarajevo final report, dated 6 September 1995 (“UNPROFOR final report”), p. 1; P357, UNPROFOR investigation report, dated 8 September 1995 (“UNPROFOR investigation report”), P. 3; Berko Zečević confirmed that the ABiH did not have these weapons, D171, Interview of Berko Zečević, dated 21, 27 June 2001, p. 2.

<sup>2431</sup> Harry Konings, 12 Mar 2007, T. 3571; D119, Statement of Harry Konings, p. 3; Sead Bešić, 20 Feb 2007, T. 2582; P255, Criminal investigation file, p. 2; D120, ICTY information report, p. 3.

<sup>2432</sup> Harry Konings, 13 Mar 2007, T. 3673.

<sup>2433</sup> Sead Bešić, 20 Feb 2007, T. 2584.

c. Direction of Fire

681. The explosion created a crater in the road, close to the pavement; there was a lot of blood around it.<sup>2434</sup> Sead Bešić testified that the shrapnel damage to both the lower part of the wall of the Markale Market on the south side of the street and the building on the north side of the street at a greater height; that damage along with the fact that people sustained injuries to their lower limbs on the south side of the street, indicated that the projectile came from the south.<sup>2435</sup> He also testified that the fact that much less shrapnel damage appeared on the wall of the Markale Market than on the north side could be explained by the circumstance that most victims were standing south of the point of impact and that most of the shrapnel hit them instead of the Markale Market wall.<sup>2436</sup>

682. The ballistic expert of the BiH police, the UNMO team and the French UNPROFOR team that conducted the initial investigation of the crater all found that the shell came from a direction of 170 degrees, that is, the direction of Trebević, which was SRK-held territory.<sup>2437</sup> QMS Richard Higgs, the Prosecution expert on mortars, upon reviewing the traces left by the mortar shell that impacted in front of Markale Market, also concluded that the direction of fire for this round was 170 degrees.<sup>2438</sup>

683. Immediately before the shelling of the Markale Market, four other shells fell in the same neighbourhood.<sup>2439</sup> The investigation of these other shelling incidents was done by BiH police. As far as W-28 could recall, all five shells came from the same direction.<sup>2440</sup> UNPROFOR included all five shells in its investigation. As noted above, it initially found that the direction of fire of the fifth shell, which landed in front of the Markale Market, was 170 degrees. However, because the direction of fire for the four other shells was determined to be between 220 and 240 degrees, the crater was again investigated. UNPROFOR then reached the conclusion that there “was an anomaly” with the shell that landed in front of Markale Market and that the round was fired “most likely from 220 - 240 degrees”.<sup>2441</sup>

684. The possibility of a ricochet was discussed with several witnesses. Maj. Gen. Nicolai recalled that the fifth shell struck the roof of a building in the vicinity of the Markale Market,

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<sup>2434</sup> W-137, 19 Feb 2007, T. 2418.

<sup>2435</sup> Sead Bešić, 20 Feb 2007, T. 2578 – 2580; P261, Photograph marked by Sead Bešić; W-137, 20 Feb 2007, T. 2555 – 2556.

<sup>2436</sup> Sead Bešić, 21 Feb 2007, T. 2612 – 2615, D78, Photograph marked by Sead Bešić.

<sup>2437</sup> Thomas Knustad, 13 Feb 2007, T. 1999 – 2000; Harry Konings, 12 Mar 2007, T. 3572 – 3573; 3575 – 3576; D119, Statement of Harry Konings, p. 3; W-28, P275, p. 3; P252, KDZ investigation file, p. 4; P255, Criminal investigation file, p. 2; P357, UNPROFOR investigation report, pp 3, 21; P209, Map marked by Thomas Knustad.

<sup>2438</sup> Richard Higgs, 23 Apr 2007, T. 5018.

<sup>2439</sup> P21, UNPROFOR sitrep, 28 August 1995, p. 5.

<sup>2440</sup> W-28, P275, p. 3; Nedžib Dozo, P363, pp 2 -3; P255, Criminal investigation file, p. 2.

<sup>2441</sup> P357, UNPROFOR investigation report, pp 3, 21.

ricocheted off the roof and exploded in the air, causing a lot of casualties.<sup>2442</sup> However, as to the possibility of the fifth shell ricocheting off the roof, W-137 testified that the shell fell directly on the street. He clarified that if the shell had hit a roof or another obstacle it would have immediately exploded, thus leaving traces of the explosion at that location, rather than on the street.<sup>2443</sup> He also ruled out the possibility that the shell hit the roof, because people went up to the roof to look down onto the scene.<sup>2444</sup> Lt. Col. Konings also excluded the possibility that the projectile could have ricocheted before impacting.<sup>2445</sup> While a ricochet was theoretically possible, the projectile would have, most likely, landed without exploding.<sup>2446</sup>

685. Lt. Col. Konings did not reach a conclusion as to the origin of fire on the day he investigated the incident.<sup>2447</sup> The firing point of the four other shells and the last one seemed to be different, since it was 220 to 240 degrees, as opposed to 170 degrees, or “2.850 mils”, for the shell which landed at the Markale Market.<sup>2448</sup> The final conclusion of the UNPROFOR, however, was that all five shells had been fired from the same weapon and from the Lukavica area.<sup>2449</sup> Lt. Col. Konings thought it was “completely possible” that the fifth mortar shell and the other four came from two different locations, and he testified that he still believed this to be the case.<sup>2450</sup>

686. The BiH police investigators, the French UNPROFOR team and the UNMO team calculated that the minimum angle of descent was 67 to 70 degrees.<sup>2451</sup> QMS Higgs also concluded, on the basis of the characteristics of the crater, that the angle of descent must have been between 67 and 70 degrees.<sup>2452</sup> He testified that on the basis of the photographs of the scene and the conclusions of the investigating teams, with the exception of the final UNPROFOR conclusion, the crater of the Markale Market impact was too shallow to be able to determine the angle of descent based on the fuse furrow.<sup>2453</sup> The evidence of QMS Higgs showed that fuse furrows generally appear when a mortar shell impacts on soft ground. The fuse of the shell causes a hole in the ground, typically up to 50 centimetres deep. QMS Higgs clarified that the fuse furrow should not be used for a determination of the direction of fire, but could be accurately used for a determination of the angle

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<sup>2442</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1024 – 1025, 1028.

<sup>2443</sup> W-137, 19 Feb 2007, T. 2420 – 2421, 20 Feb 2007, T. 2554.

<sup>2444</sup> W-137, 20 Feb 2007, T. 2554.

<sup>2445</sup> D120, ICTY information report, p. 3.

<sup>2446</sup> Harry Konings, 13 Mar 2007, T. 3597 – 3599; P357, UNPROFOR investigation report, p. 3.

<sup>2447</sup> Harry Konings, 12 Mar 2007, T. 3591 – 3593.

<sup>2448</sup> Harry Konings, 13 Mar 2007, T. 3596.

<sup>2449</sup> P357, UNPROFOR investigation report, p. 3.

<sup>2450</sup> Harry Konings, 13 Mar 2007, T. 3599 – 3601, 3634 – 3635; P357, UNPROFOR investigation report.

<sup>2451</sup> W-137, 19 Feb 2007, T. 2453; Harry Konings, 12 Mar 2007, T. 3575 – 3576; P631, UNPROFOR final report, p. 8; P253, Sketch of the scene and minimum angle of descent, dated 29 August 1995; D119, Statement of Harry Konings, p. 3.

<sup>2452</sup> Richard Higgs, 23 Apr 2007, T. 5019 – 5020.

<sup>2453</sup> Richard Higgs, 23 Apr 2007, T. 5015 – 5017; P357, UNPROFOR investigation report, pp 6, 9.

of descent.<sup>2454</sup> However, the fuse furrow was the basis for the renewed calculation of the direction of fire by UNPROFOR.<sup>2455</sup>

687. The Defence tendered an article on the incident by Bosnian Serb scientist, Mirosljub Vukašinić, who wrote that, after an analysis of television footage, it was obvious that the measurements for the calculation of angle of descent of the shell “had been altered” in order to obtain an angle of descent at which the shell would not hit the roof of the building.<sup>2456</sup> In the article, he concluded that the shell explosion was most probably carried out in static conditions, at an angle between 50 and 60 degrees. He wrote that if a shell had been fired from a VRS position at an angle of descent of between 50 and 60 degrees, it would have exploded on the building’s roof.<sup>2457</sup> Berko Zečević, Prosecution expert on modified air bombs, commented that, although excellent in theory, the conclusions of this Mirosljub Vukašinić were erroneous because they were based on inaccurate data. He also concluded that the angle of descent was a minimum of 70 degrees and agreed with Mirosljub Vukašinić’s position that if a shell had arrived at an angle of 50 to 60 degrees, the projectile would have struck the roof of the building.<sup>2458</sup>

#### d. Origin of Fire

688. W-137’s conclusion was that the shell came from the slopes of Mount Trebević, which were controlled by the SRK.<sup>2459</sup> UNPROFOR initially also arrived at this conclusion from their investigation.<sup>2460</sup> However, the UNPROFOR investigations concluded that the shell had come from “2850 mils”, an area located a few kilometres east of Lukavica.<sup>2461</sup> Gen. Smith stated that, after the investigation, he decided that “the rounds came from the Serb side.”<sup>2462</sup> None of the reports, either from the BiH police or from UNPROFOR, concluded that the shell had been launched from ABiH-held territory.<sup>2463</sup> The Defence put to David Harland that the first investigative report was that there was doubt about the origin of fire because it was impossible to determine the level of charge used to fire the projectiles. However, he testified that Gen. Smith had asked for a review of the report and

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<sup>2454</sup> Richard Higgs, 23 Apr 2007, T. 5010 – 5011.

<sup>2455</sup> P357, UNPROFOR investigation report, p. 3.

<sup>2456</sup> D175, Article on ballistic analysis of the Markale Market II incident by Mirosljub Vukašinić (“Article by Mirosljub Vukašinić”), p. 3.

<sup>2457</sup> D175, Article by Mirosljub Vukašinić, p. 16.

<sup>2458</sup> Berko Zečević, 23 Apr 2007, T. 4936 – 4937.

<sup>2459</sup> W-137, 19 Feb 2007, T. 2433 – 2434.

<sup>2460</sup> P21, UNPROFOR sitrep, 28 August 1995, p. 5.

<sup>2461</sup> P631, UNPROFOR final report, pp 1, 9.

<sup>2462</sup> Rupert Smith, P334, p. 22.

<sup>2463</sup> Rupert Smith, 7 Mar 2007, T. 3336.



David Harland was there when the technical team found, “beyond reasonable doubt”, that the shell had been fired from Bosnian Serb positions.<sup>2464</sup>

689. Lt. Col. Konings considered the possibility that the round had been fired from ABiH-held territory with one charge attached to the shell but rejected this as not being “normal military behaviour”.<sup>2465</sup> In his report, he noted that the BiH police team “worked very hard” to convince the UNMOs that the round came from Bosnian Serb-held territory before he had decided on the most probable firing position.<sup>2466</sup> Lt. Col. Konings later based his conclusion that the shell had come from Bosnian Serb-held territory on the fact that no UNMO had recorded any shell coming from within the frontline, that no radar had recorded the launching which indicated that the trajectory was below the beam of the radar and that it was a long range shot. With regard to the latter, the acoustic system did not pick up any firing and, therefore, the launching point must have been far away.<sup>2467</sup> Further, Lt. Col. Konings explained that had this projectile been fired with the lowest charge of zero, the origin of fire would have been near OP-1.<sup>2468</sup> The Trial Chamber notes that OP-1 was located at Čolina Kapa overlooking the central downtown area of Sarajevo.<sup>2469</sup>

690. The UNMOs Lt. Com. Thomas Knustad and Maj. Paul Conway were posted at OP-1 and they heard an impact and explosion after which they observed smoke coming from the area of Markale, about 2,000 metres from where they were. Lt. Com. Knustad was confident that the round, which resulted in the explosion that he heard and observed from his post, was not fired from within his area of responsibility.<sup>2470</sup> Lt. Com. Knustad estimated that the maximum distance at which a 120 mm mortar shell can be heard is at least four to five kilometres.<sup>2471</sup> He therefore excluded the possibility that the shell was fired from within ABiH-held territory because he would have heard it.<sup>2472</sup> In this respect, Defence expert Maj. Gen. Garović conceded that mountains or hills would muffle or deflect the sound, if the mountains or hills were along the shell’s trajectory.<sup>2473</sup>

691. QMS Higgs testified that, depending on the type of charge used, there were four ranges that the mortar shell could have been fired from: 900, 1,600, 2,400 or 3,000 metres. The first possibility placed the launch close to an urban area, where many people would have heard the launching, the

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<sup>2464</sup> David Harland, 16 Jan 2007, T. 433, 436.

<sup>2465</sup> D119, Statement of Harry Konings, p. 4.

<sup>2466</sup> Harry Konings, 13 Mar 2007, T. 3616 – 3617; P85, Handwritten UNMO report, dated 28 August 1995, p 2.

<sup>2467</sup> Harry Konings, 13 Mar 2007, T. 3602 – 3603, 3622, D119, Statement of Harry Konings, p. 4; D121, ICTY information report, p. 2; Rupert Smith, 7 Mar 2007, T. 3336 – 3337; Richard Higgs, 24 Apr 2007, T. 5092; W-156, 27 Apr 2007, T. 5393 (closed session); P255, Criminal investigation file, p. 2.

<sup>2468</sup> Harry Konings, 12 Mar 2007, T. 3585 – 3586.

<sup>2469</sup> D120, ICTY information report, p. 2.

<sup>2470</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1025 – 1026; Thomas Knustad, 13 Feb 2007, T. 1993 – 1995, 1996 – 1997; D58, ICTY information report, p. 1.

<sup>2471</sup> Thomas Knustad, 13 Feb 2007, T. 2003 – 2004.

<sup>2472</sup> Thomas Knustad, 13 Feb 2007, T. 2004 – 2006; 2023, 2039, 2048 – 2049.

second one placed it between frontlines, which, in the view of the witness, was tactically unsound, and the third one, at 2,400 metres, placed it on higher ground in SRK-held territory, which was, according to QMS Higgs, the most probable location.<sup>2474</sup> He also testified that, although the downtown area was visible from that distance, the exact location of the Markale Market was hidden by the buildings surrounding it but he believed it was still possible to target that area because at the time both warring parties most likely had pre-recorded targets.<sup>2475</sup> W-137 testified that mortars were very accurate weapons, which allowed targeting precise enough to hit a particular street and that the Bosnian Serbs were very good at targeting with them.<sup>2476</sup>

692. The inner-city neighbourhood where the five shells fell on 28 August 1995 was a civilian area without any military activity.<sup>2477</sup> Lt. Com. Knustad stated that he could not imagine what could actually have been the target of these rounds.<sup>2478</sup> QMS Higgs testified that there was no military advantage to firing a single round into a built-up area and that the goal was probably to terrorise the civilian population.<sup>2479</sup> Lt. Col. Konings testified that, after spending five months in Sarajevo and observing the use of mortars shells, this incident fitted perfectly the pattern of mortar rounds fired anywhere on the city, not aimed at military targets and in the form of a “harassing fire against the civilians.”<sup>2480</sup>

693. The Defence emphasised that the radars around Sarajevo did not register the shell that struck the street outside the Markale Market. In his article that was tendered by the Defence, Mirosljub Vukašinić noted that the shell was neither heard by the UNMOs, nor detected by the radars monitoring artillery fire.<sup>2481</sup> W-137 testified that the French UNPROFOR contingent had provided a radar system to Sarajevo at the beginning of the war, which broke down shortly thereafter.<sup>2482</sup> According to him, without the radar, no one could locate precisely the origin of fire but it was established that the ABiH had not been firing any mortars on that day.<sup>2483</sup> The Defence put to him that the Dutch and the British also had radar systems and that these did not register a single shell that fell in the area that day; W-137 would not comment on that.<sup>2484</sup> Lt. Col. Konings testified that he knew of a British Cymbeline radar system as well as one operated by the French but that they

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<sup>2473</sup> Desimir Garović, 24 Aug 2007, T. 9188 – 9189.

<sup>2474</sup> Richard Higgs, 24 Apr 2007, T. 5024 – 5028, 5055 – 5056; 5105.

<sup>2475</sup> Richard Higgs, 24 Apr 2007, T. 5028 – 5030.

<sup>2476</sup> W-137, 20 Feb 2007, T. 2547 – 2548, 2550 – 2551.

<sup>2477</sup> W-28, P275, p. 3; D119, Statement of Harry Konings, p. 4; P255, Criminal investigation file, p. 2.

<sup>2478</sup> Thomas Knustad, 13 Feb 2007, T. 1998.

<sup>2479</sup> Richard Higgs, 24 Apr 2007, T. 5030.

<sup>2480</sup> Harry Konings, 13 Mar 2007, T. 3623 – 3624, 3636 – 3637.

<sup>2481</sup> D175, Article by Mirosljub Vukašinić, p. 1.

<sup>2482</sup> W-137, 19 Feb 2007, T. 2432.

<sup>2483</sup> W-137, 19 Feb 2007, T. 2433.

<sup>2484</sup> W-137, 20 Feb 2007, T. 2552 – 2553.

were in the UNPROFOR chain of command with which they had no contact.<sup>2485</sup> Maj. Gen. Nicolai commented that normally the radar would have registered the shell, but he immediately noted that the coverage of the radar “might not have been 100 per cent.”<sup>2486</sup> The UNPROFOR report on this incident, however, clarified why the launch of the mortar was not recorded: it read that the radar was set to detect the trajectory of a mortar fired at a distance of 950 metres or less. Any round fired from a distance between 1,500 and 3,000 metres would have had a trajectory that would have passed under the radar beam.<sup>2487</sup> The report noted that the distance to the confrontation line from the impact point was 1,050 metres.<sup>2488</sup>

e. Military Activities on 28 August 1995

694. According to Bakir Nakaš, 28 August 1995 was a peaceful day.<sup>2489</sup> However, an UNPROFOR report shows that on 28 August 1995 there was ongoing military activity in several places in and around Sarajevo, and a total of 1,746 firing incidents were recorded, as well as a high number of explosions. At approximately 1230 hours, a church in Ilidža was hit, killing members of a wedding party. More shelling between the ABiH and VRS ensued, that lasted the entire day, with the VRS reportedly doing most of the shelling. By 2000 hours, another five “rockets” had been fired “toward downtown again.”<sup>2490</sup>

f. Defence Submission of Tampering

695. Between the shelling of the Markale Market and the start of the NATO bombing in the night of 29 August 1995, Gen. Smith had three conversations with Gen. Mladić, during which Gen. Mladić denied responsibility for the shelling and requested an inquiry.<sup>2491</sup> In these three conversations, Gen. Mladić denied that the VRS had shelled the market and said that it was a Bosnian Muslim attack designed to discredit the VRS.<sup>2492</sup> In the first conversation, Gen. Mladić urged Gen. Smith to set up a joint investigation team, comprising UNPROFOR, BiH and Bosnian Serb representatives.<sup>2493</sup> Gen. Smith agreed to consider doing so but told Gen. Mladić that all the information he had indicated that it was a Bosnian Serb attack.<sup>2494</sup> In the second conversation, Gen.

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<sup>2485</sup> Harry Konings, 13 Mar 2007, T. 3666.

<sup>2486</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1024 – 1026, 1027.

<sup>2487</sup> P357, UNPROFOR investigation report, p. 3.

<sup>2488</sup> P357, UNPROFOR investigation report, p. 3.

<sup>2489</sup> Bakir Nakaš, 29 Jan 2007, T. 1106.

<sup>2490</sup> P21, UNPROFOR sitrep, 28 August 1995, pp 1, 5.

<sup>2491</sup> Rupert Smith, P334, p. 22; P733, SRK order dated 28 August 1995, requesting troops to report firing at Sarajevo between 1000 and 1200 hours with weapons of 80 mm calibre and more, p. 1.

<sup>2492</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1015 – 1016; Rupert Smith, P334, p. 22.

<sup>2493</sup> Rupert Smith, P334, p. 22.

<sup>2494</sup> Rupert Smith, P334, p. 22.

Mladić reported to Gen. Smith that his investigations had concluded that no VRS forces were involved in the attack.<sup>2495</sup> Gen. Smith told Gen. Mladić that the UNMO investigation had established that the round responsible for killing the victims was a 120 mm mortar round, probably fired from the south.<sup>2496</sup> Gen. Mladić again requested that a joint commission be established to investigate the attack which he believed would “vindicate” his forces.<sup>2497</sup> In the third conversation, Gen. Smith informed Gen. Mladić that it was beyond reasonable doubt that the shells had come from the SRK territory and that the firing point was between 3.5 and 4 kilometres south-west of the impact point.<sup>2498</sup> Gen. Mladić again denied that the shell had originated from SRK firing positions. Gen. Smith did not believe him.<sup>2499</sup> Gen. Mladić again stated that there were a number of indications to suggest that the shelling had been orchestrated by the BiH.<sup>2500</sup> There is no evidence that a joint investigation was ever undertaken.

696. W-137 was asked by the Defence if it was possible that the crater outside the Markale Market could have been tampered with. He rejected this possibility because he thought it was impossible for anyone to have tampered with the crater given the number of people present at the scene and trying to help the victims.<sup>2501</sup> Furthermore, he testified that the crime scene was secured by police officers who did not allow anyone near the crime-scene until the BiH police investigation team arrived.<sup>2502</sup> Sead Bešić was asked why no vehicle was hit when the shell exploded and he answered that one motorcyclist was hit and that it was not a very busy street at the time. He was also asked whether a vehicle could flatten the tail-fin of the shell in the manner the tail-fin found at the scene was flattened. Sead Bešić testified that while it was possible, it was absolutely not true that the shell was planted and exploded there.<sup>2503</sup> The Defence also questioned the presence of bicycles against the wall of the building of the south side of the street which did not seem to have been damaged at all. W-137 explained that they were probably not there when the shell landed but had been put against this wall later, in order to make way for the vehicles which were evacuating the victims.<sup>2504</sup> The Trial Chamber notes that video footage taken immediately after the incident shows that one bicycle was already standing against the wall of the Markale Market and that a

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<sup>2495</sup> Rupert Smith, P334, p. 22.

<sup>2496</sup> Rupert Smith, P334, p. 22.

<sup>2497</sup> Rupert Smith, P334, p. 22.

<sup>2498</sup> Rupert Smith, P334, p. 23.

<sup>2499</sup> Rupert Smith, 7 Mar 2007, T. 3337 – 3338, P334, p. 23; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1021.

<sup>2500</sup> Rupert Smith, P334, p. 23.

<sup>2501</sup> W-137, 19 Feb 2007, T. 2418 – 2419.

<sup>2502</sup> Sead Bešić, 20 Feb 2007, T. 2569.

<sup>2503</sup> Sead Bešić, 21 Feb 2007, T. 2619 – 2621.

<sup>2504</sup> W-137, 20 Feb 2007, T. 2554 – 2555; P250 Photograph of impact site marked by W-137.

person later moved another bicycle from the street and placed it against the wall of the Markale Market.<sup>2505</sup>

697. Defence expert Maj. Gen. Garović testified that it was impossible for a 120 mm mortar shell to kill approximately 43 persons. He disagreed with the Prosecution that people located beyond 50 to 70 metres from a 120 mm explosion site would sustain injuries.<sup>2506</sup> It would normally kill about ten persons and the others would not even be wounded.<sup>2507</sup> Ivica Milosavljević, Defence expert on forensic medicine, testified that he could not be certain that the victims were killed at the spot where it is alleged that they lost their lives.<sup>2508</sup> Based on photographs of the victims, Ivica Milosavljević identified wounds caused by gunshots at a range of less than one metre, rather than shrapnel wounds.<sup>2509</sup> However, he also testified that some of the photographs showed wounds inflicted by shrapnel.<sup>2510</sup>

698. Ivica Milosavljević also reviewed video footage shot at the scene right after the incident and concluded that a victim seen on the footage was probably not killed at the scene because a victim appeared in a location where previously only a cardboard box was visible.<sup>2511</sup> He further testified that the basis of his assumption that the victims' bodies had been placed at the scene was that, on the video footage, victims seemed to be moved and, in some instances, there was a lack of blood marks.<sup>2512</sup> Ivica Milosavljević accepted that, when asked by the Prosecution, that he did not see any autopsy report, but he explained that no such reports were included in the material provided to him by the Defence for review. He was concerned about this because "a forensic medical examination in the absence of this type of documentation is simply impossible."<sup>2513</sup> He agreed with the Prosecution that shrapnel comes in different sizes and shapes and it is not the only thing that can kill a person at an explosion scene.<sup>2514</sup>

699. The Defence suggested to W-137 that the victims were not killed at the location of the incident. W-137 said this was "absolutely untrue" and said that "pieces of brain, of skulls, of fingers were found", that shrapnel "severed off people's feet completely" and that there were so much body parts on the crime scene that, "had this been planted, it would have been noticed by hundreds of

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<sup>2505</sup> P622, Videoclip of events in Sarajevo; P623, Videoclip of events in Sarajevo.

<sup>2506</sup> Desimir Garović, 24 Aug 2007, T. 9186.

<sup>2507</sup> Desimir Garović, 24 Aug 2007, T. 9227, D368, Sketch of mortar kill radius made by Desimir Garović.

<sup>2508</sup> Ivica Milosavljević, 27 Aug 2007, T. 9256; P623, Videoclip of events in Sarajevo.

<sup>2509</sup> Ivica Milosavljević, 27 Aug 2007, T. 9258, 9259 – 9261, 9266, 9269, 9271; D370, Photograph marked by Ivica Milosavljević; D371 Photograph marked by Ivica Milosavljević.

<sup>2510</sup> Ivica Milosavljević, 27 Aug 2007, T. 9262 – 9263.

<sup>2511</sup> Ivica Milosavljević, 27 Aug 2007, T. 9275 – 9279, 9316 – 9317.

<sup>2512</sup> Ivica Milosavljević, 27 Aug 2007, T. 9306 – 9309.

<sup>2513</sup> Ivica Milosavljević, 27 Aug 2007, T. 9290 – 9291, 9297 – 9298, 9300; 9313 – 9314.

<sup>2514</sup> Ivica Milosavljević, 27 Aug 2007, T. 9302 – 9304.

witnesses. So both theoretically and practically it was impossible.”<sup>2515</sup> Lt. Col. Konings also testified that, in his view, it was not possible to stage this shelling incident by bringing and unloading dead bodies from elsewhere, given the many people he saw gathered at Markale that morning and the fact that no other similar incident had been previously reported in which so many persons were killed.<sup>2516</sup> However, he did confirm that there were rumours at the time that bodies were occasionally planted but he did not comment on the veracity of these rumours.<sup>2517</sup>

700. Maj. Gen. Garović testified that, on the basis of photographs, the crater appeared to be two centimetres deep; in his view, that could indicate that the shell came in at a low velocity, or that it was set off in static conditions.<sup>2518</sup> He agreed with the determination of the direction of fire of about 175 degrees and thought it impossible to make a mistake regarding this direction.<sup>2519</sup> He also assessed two sketches of the incident made by the investigators, which he deemed to be inaccurate. Maj. Gen. Garović used the “photogrametric method” in order to assess the measurements made at the scene by the investigators.<sup>2520</sup> He established measurements of the scene on the basis of the panoramic photographs and applied them to the two sketches and concluded that, according to his calculations, it was impossible for the shell to land on the street without hitting the roof of the Markale Market.<sup>2521</sup> However, Maj. Gen. Garović agreed that it was possible that the shell did not hit the building.<sup>2522</sup> He further accepted the Prosecution’s proposition that he was never present at the site of the explosion and, therefore, did not take his measurements at the scene, unlike the investigators whose results he disagreed with.<sup>2523</sup> He also said that he was “acquainted with photogrametrics”, but was not an expert in the field.<sup>2524</sup>

701. The Prosecution suggested that Maj. Gen. Garović used firing tables for a different kind of projectile from the one that exploded at the Markale Market.<sup>2525</sup> Maj. Gen. Garović testified that, although the difference between the two different projectiles warranted different firing tables and the ranges may vary, it did not make a difference with regard to ballistics.<sup>2526</sup> He also accepted the Prosecutor’s proposition that he had not reviewed any evidence suggesting that this was a static explosion, or encountered any person who suggested that he or she planted an explosive device at

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<sup>2515</sup> W-137, 20 Feb 2007, T. 2557.

<sup>2516</sup> Harry Konings, 12 Mar 2007, T. 3588 – 3590; D121, ICTY information report, p. 2.

<sup>2517</sup> Harry Konings, 13 Mar 2007, T. 3643.

<sup>2518</sup> Desimir Garović, 23 Aug 2007, T. 9135.

<sup>2519</sup> Desimir Garović, 23 Aug 2007, T. 9136.

<sup>2520</sup> Desimir Garović, 23 Aug 2007, T. 9144; D175, Article by Mirosljub Vukašinić, p. 1; D367, Photograph of Markale Market marked by Desimir Garović.

<sup>2521</sup> Desimir Garović, 23 Aug 2007, T. 9136 – 9138, 24 Aug, T. 9209 – 9212; P253, Sketch of the scene and minimum angle of descent, 29 August 1995; P254, Sketch marked by W-137.

<sup>2522</sup> Desimir Garović, 23 Aug 2007, T. 9141.

<sup>2523</sup> Desimir Garović, 24 Aug 2007, T. 9203 – 9204.

<sup>2524</sup> Desimir Garović, 24 Aug 2007, T. 9204.

<sup>2525</sup> Desimir Garović, 24 Aug 2007, T. 9180 – 9183.

the scene; this possibility was a guess on his part.<sup>2527</sup> However, Maj. Gen. Garović testified that, based on the visible traces and the documentation, he believed preparations for a static explosion were carried out.<sup>2528</sup> In these circumstances, he testified that there would be no important distinction between the projectile flying in at low velocity or exploding in static conditions.<sup>2529</sup>

702. The Defence put to W-137 that the five shells that fell in the area of Markale Market on 28 August 1995 “were in fact explosions that were planted and activated by telecommand, [...] and there were no victims at all when these explosions occurred.” W-137 vehemently denied this submission.<sup>2530</sup> QMS Higgs also testified that it was very unlikely the mortar shell had been planted and fired in a static position at the location because there were no traces of elements which would have been necessary to accomplish this: a frame would have been needed to hold the shell in position and there was no trace of secondary debris; the shell would have needed to be fired, either by a secondary charge or by removing the fuse and placing a charge in it, which would have affected the pattern of the crater.<sup>2531</sup> He disagreed with the Defence proposition that the logical conclusion to draw from the evidence that no one had heard the shell and no radar system had recorded it, was that the shell had been planted at the location.<sup>2532</sup>

g. Evidence of Col. Andrey Demurenko

703. Defence witness Col. Andrey Demurenko, Chief of Staff of UNPROFOR Sector Sarajevo in 1995, testified that he was at the UNPROFOR headquarters in the PTT Building when the explosion occurred and that he went to the site of the incident to observe the crater and give instructions to the UNPROFOR members working at the site, following which he went back to the headquarters.<sup>2533</sup> Upon his return to the headquarters, he learned that the spokesperson for UNPROFOR in BiH had declared in a press conference that the SRK was responsible for the incident at the Markale Market.<sup>2534</sup>

704. Col. Demurenko presented to the Trial Chamber an order from Gen. Bachelet, in which it is said that the shelling of Sarajevo would be used for appropriate NATO air strikes. In Col. Demurenko’s opinion, this meant that the shelling could be used as a pretext for NATO air

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<sup>2526</sup> Desimir Garović, 24 Aug 2007, T. 9180 – 9183.

<sup>2527</sup> Desimir Garović, 24 Aug 2007, T. 9212 – 9214, 9215 – 9217.

<sup>2528</sup> Desimir Garović, 24 Aug 2007, T. 9212 – 9215.

<sup>2529</sup> Desimir Garović, 24 Aug 2007, T. 9214 – 9215.

<sup>2530</sup> W-137, 20 Feb 2007, T. 2553 – 2554.

<sup>2531</sup> Richard Higgs, 24 Apr 2007, T. 5031 – 5032, 5109 – 5110.

<sup>2532</sup> Richard Higgs, 24 Apr 2007, T. 5094.

<sup>2533</sup> Andrey Demurenko, 5 July 2007, T. 7679, 6 July 2007, T. 7739.

<sup>2534</sup> Andrey Demurenko, 5 July 2007, T.7679 – 7680.

strikes.<sup>2535</sup> In this regard, he testified that the press conference given by the UN spokesman shortly after the incident, in which it was alleged the SRK was responsible, was “another signal” to the same effect, “saying that NATO air strikes had been pre-planned and the only thing they were waiting for was a reason, was a justification.”<sup>2536</sup> It prompted him to undertake his own investigation, in order not to “let the Serbs be blamed for everything, without trying to be impartial.”<sup>2537</sup> The group of people he worked with in his investigation were all Russian nationals.<sup>2538</sup> They worked for three days, from 29 to 31 August 1995, and reached conclusions on 1 September 1995.<sup>2539</sup>

705. The investigation concluded that the SRK could not have fired the shell.<sup>2540</sup> Col. Demurenko testified that he tried to communicate the result of his investigation to Gen. Bachelet but that he was discouraged by his Aide de Camp, a Canadian officer, who told him that there was no chance his conclusions would be made public.<sup>2541</sup> No one witnessed the conversation between Col. Demurenko and the Aide de Camp.<sup>2542</sup> Col. Demurenko testified that he did not look for a possibility to approach Gen. Bachelet.<sup>2543</sup> However, he decided to publicise the results of his investigation and, on 2 September 1995, gave an interview with Associated Press.<sup>2544</sup> Col. Demurenko testified that, he received death threats the following day from Capt. Salajdžić, an ABiH liaison officer.<sup>2545</sup> However, he testified that he did not report this to anyone.<sup>2546</sup>

706. Lt. Col. Konings stated that he had heard about a senior UN official claiming publicly that the shell came from within the confrontation lines and he remembered being annoyed because that person had not participated in the investigation and could therefore, in his view, not comment on it.<sup>2547</sup> When confronted with the results of Col. Demurenko’s investigation that there was “one chance in one million that this shell came from Bosnian Serb held territory”, David Harland testified that Col. Demurenko’s assessment was deemed factually incorrect by a team of experts of the UN.<sup>2548</sup>

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<sup>2535</sup> Andrey Demurenko, 21 Aug 2007, T. 8981.

<sup>2536</sup> Andrey Demurenko, 21 Aug 2007, T. 8984.

<sup>2537</sup> Andrey Demurenko, 5 July 2007, T. 7681, 21 Aug 2007, T. 8984. He first obtained authorisation to proceed with the investigation with his superior, Gen. Bachelet: Andrey Demurenko, 5 July 2007, T. 7697.

<sup>2538</sup> Andrey Demurenko, 6 July 2007, T. 7758 – 7759.

<sup>2539</sup> Andrey Demurenko, 5 July 2007, T. 7692.

<sup>2540</sup> Andrey Demurenko, 5 July 2007, T. 7693.

<sup>2541</sup> Andrey Demurenko, 5 July 2007, T. 7697, 6 July 2007, T. 7768.

<sup>2542</sup> Andrey Demurenko, 6 July 2007, T. 7769.

<sup>2543</sup> Andrey Demurenko, 6 July 2007, T. 7773 – 7774.

<sup>2544</sup> Andrey Demurenko, 5 July 2007, T. 7697 – 7698, 6 July 2007, T. 7750; D356, UNPROFOR memo, dated 29 Aug 1995, p. 1.

<sup>2545</sup> Andrey Demurenko, 5 July 2007, T. 7714 – 7715.

<sup>2546</sup> Andrey Demurenko, 5 July 2007, T. 7716 – 7717.

<sup>2547</sup> D121, ICTY information report, p. 3.

<sup>2548</sup> David Harland, 16 Jan 2007, T. 434.



707. David Harland testified that Gen. Smith, upon his advice, gave a press statement that his investigation showed that it was not clear who had fired the shell. He knew at the time that the shots came from SRK-held territory but, because he was planning to call for NATO air strikes, he chose to make that statement so as not to alert the Bosnian Serbs and allow for some time to evacuate UN personnel from Bosnian Serb-held territory.<sup>2549</sup> Brig. Mohatarem testified that the air strikes were requested but they were called off within 24 hours, on 30 August 1995, because of Col. Demurenko's public declaration about the origin of the shots. A verification of all agencies' initial investigations was called for and it reached the same conclusions as initially, except for a discrepancy with regard to the angle of the shot that made many casualties.<sup>2550</sup>

708. Col. Demurenko did not dispute the technical findings of the BiH police or other investigators as to the direction of fire or the angle of descent. He did, however, disagree with the conclusion of the "UN experts" regarding the origin of fire. After visiting the locations of the possible firing positions, he questioned whether they were suitable for mortar launching.<sup>2551</sup>

709. Col. Demurenko's team, using firing tables, first established all the possible firing locations.<sup>2552</sup> In response to the Prosecution, who put to him that the tables that were used were for M52 mortar shells while the evidence pointed to the use of a M74 shell, he testified that the firing tables were identical for these two types of shells.<sup>2553</sup> Col. Demurenko's team then went to the possible firing locations, which were in the direction of fire established by all the investigations and on Bosnian Serb-held territory, and took photographs at these locations. His team concluded that it was not possible to fire from any of them.<sup>2554</sup> Col. Demurenko was unable to find all of the photographs he had taken at the time.<sup>2555</sup> He testified that there were stones in three of these firing positions, making it impossible to secure a plate at these locations, while the fourth location was in a wooded area through which the shell could not have passed.<sup>2556</sup> Col. Demurenko also pointed to locations on a map showing very steep slopes, on which it was impossible to place a mortar.<sup>2557</sup>

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<sup>2549</sup> David Harland, 16 Jan 2007, T. 434 – 435.

<sup>2550</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 718 – 719, 730 – 732, 734 – 735.

<sup>2551</sup> Andrey Demurenko, 5 July 2007, T.7699 – 7703, 21 Aug 2007, T. 8943, 8947 – 8948.

<sup>2552</sup> Andrey Demurenko, 6 July 2007, T. 7759.

<sup>2553</sup> Andrey Demurenko, 21 Aug 2007, T. 8944 – 8945; P252, KDZ investigation file, p. 2; P925, Still from the video interview of Andrey Demurenko.

<sup>2554</sup> Andrey Demurenko, 5 July 2007, T. 7699 – 7703; D357, D358, Colour photographs of Andrey Demurenko pointing to wooded area; D359, Colour photograph of Andrey Demurenko pointing to open field; P927, Colour photograph with Andrey Demurenko pointing towards vantage point; P922, Sketch from Andrey Demurenko with handwritten notes showing mortar trajectories.

<sup>2555</sup> Andrey Demurenko, 21 Aug 2007, T. 8959.

<sup>2556</sup> Andrey Demurenko, 5 July 2007, T. 7704 – 7705, 21 Aug 2007, T. 8991.

<sup>2557</sup> P807 Military map of Sarajevo area marked by Andrey Demurenko; Andrey Demurenko, 6 July 2007, T. 7789 – 7790.

710. The Prosecution questioned Col. Demurenko extensively about the locations he visited with his team and repeatedly asked at where, in relation to the Markale Market, the locations were found. Col. Demurenko explained during cross-examination that he could no longer recall exactly which line was established as the direction of fire; he refused to say whether it was 170 or 176 degrees. However, he said that “based on the material [...], [they] made theoretical calculations as to the line that had to be verified and that was related to the initial investigation by the Bosnian authorities and UNPROFOR.”<sup>2558</sup> A diagram that was drawn by Col. Demurenko shows that he visited locations that were along one line, with a bearing of 2850 mils. The diagram also contains lines to show a margin of error, but does not show that Col. Demurenko visited any points between the line at 2850 mils and the margins of error.

711. The Prosecution showed Col. Demurenko a series of photographs taken recently at the possible firing positions at a bearing of 176 degrees from the Markale Market but he could not confirm that these were the places he had visited twelve years earlier.<sup>2559</sup> One of the photographs showed a meadow.<sup>2560</sup> Col. Demurenko testified that although he visited a meadow during his investigation, he did not find any traces of a mortar launcher, such as marks in the ground or traces of gunpowder.<sup>2561</sup> Col. Demurenko explained during examination-in-chief and re-examination that he could calculate possible firing locations with a margin of error of ten to 15 metres, and this enabled him to visit the locations and look in their immediate vicinity for signs of mortars.<sup>2562</sup> The Prosecution showed Col. Demurenko one of the photographs he himself had taken at one of the locations he and his team visited. Col. Demurenko agreed that, from this location, there was a view of the city of Sarajevo and it was possible to fire a mortar or even a tank directly at the city.<sup>2563</sup>

712. Finally, with regard to his investigation, Col. Demurenko testified in cross-examination that he had kept the results of his investigation in his personal archives but there was no final report because the conclusion of the team’s work “boiled down to one sentence. The statement made by the Spokesperson is false. This could not have been a shell from the Serb side.”<sup>2564</sup>

713. Col. Demurenko also explained his view of what had taken place at the Markale Market. He testified that the chances that “the first shell” of a round of shells aimed at a narrow street would hit that street are “one in a million”.<sup>2565</sup> According to him, there were indications that this was not a

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<sup>2558</sup> Andrey Demurenko, 21 Aug 2007, T. 8999.

<sup>2559</sup> P923, P926, Photographs taken in the area of Mount Trebević; Andrey Demurenko, 21 Aug 2007, T. 8956 – 8957, 8962.

<sup>2560</sup> P923, Photograph taken in the area of Mount Trebević.

<sup>2561</sup> Andrey Demurenko, 21 Aug 2007, T. 8956 – 8957, 8964 – 8965.

<sup>2562</sup> Andrey Demurenko, 5 July 2007, T. 7706, 21 Aug 2007, T. 8992.

<sup>2563</sup> Andrey Demurenko, 21 Aug 2007, T. 8969.

<sup>2564</sup> Andrey Demurenko, 6 July 2007, T. 7760, 7765 – 7766.

<sup>2565</sup> Andrey Demurenko, 5 July 2007, T. 7708.

shelling incident but, rather, an explosion caused by “terrorists”; one shell had caused many casualties while four others on that same day had not, and that was the second occurrence of such an incident causing many casualties in the vicinity of the Markale Market between 1994 and 1995. He also deemed it improbable that a mortar shell and its fragments would kill over 100 people. Furthermore, he noted that there were no traces of the shell recorded by the radar systems in Sarajevo.<sup>2566</sup> Consequently, while a mortar shell dropped from a rooftop would not explode, he explained that an explosion could be simulated by using a different explosive device to fire the shell and that the crater would look similar to that of an actual mortar shell launched from far away.<sup>2567</sup>

### Findings

714. There are many areas of controversy surrounding this incident. However, the Trial Chamber begins with one area which is non-controversial. On 28 August 1995, at 1110 hours, there was an explosion on Mula Mustafe Bašeskije Street, just outside the Markale Market.

715. The following areas are hotly contested by the Parties: (i) the calibre of the mortar; (ii) whether the mortar was fired from another location, as argued by the Prosecution, or planted at the scene, as argued by the Defence; (iii) if fired from another location, whether the mortar was fired from SRK-held territory.

716. The Prosecution led evidence from W-28, W-137, Sead Bešić, Lt. Col. Konings, Maj. Gen. Nicolai and QMS Higgs, and presented documentary evidence, that a 120 mm mortar shell that struck the street in the vicinity of Markale Market, killing 35 persons and wounding 78, was fired from SRK-held territory.

717. Defence witness, Maj. Gen. Garović put the general Defence case of tampering by testifying that it was impossible for a 120 mm mortar to kill 43 persons. He also testified that, on the basis of the photographs, which showed the crater to be about two centimetres deep, the shell came in at a low velocity or it was set off in static conditions. In cross-examination, he agreed he was never present at the scene and did not take measurements at the scene, unlike the investigators, with whose results he disagreed. The Trial Chamber observes that Maj. Gen. Garović’s conclusions were based on his use of the photogrametric method to assess the measurements made at the scene by the investigators. In cross-examination, he said he was “acquainted” with the method but was not an expert in the field.

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<sup>2566</sup> Andrey Demurenko, 5 July 2007, T. 7718.

<sup>2567</sup> Andrey Demurenko, 5 July 2007, T. 7719.

718. The Trial Chamber does not find Maj. Gen. Garović's evidence to be reliable. He did not convince the Trial Chamber of his grasp of the photogrametric method and its reliability for the purpose of establishing the angle of descent of a projectile in this particular incident. The Trial Chamber does not discount Maj. Gen. Garović's testimony that, based on the visible traces and documentation, he believed preparations for a static explosion were carried out. However, in the Trial Chamber's view, this does not take the matter any further because he did not visit the site and he derived his conclusion from photographs on the basis of a method that the Trial Chamber has found unreliable. The Trial Chamber finds persuasive QMS Higgs' testimony that it was unlikely that the shell had been planted, because a frame would have been needed to hold the shell in position, but there were no traces of secondary debris. Moreover, in his view, the shell would have had to be activated by a secondary charge or by removing the fuse and placing a charge in it, and that would have affected the pattern of the crater. Furthermore, the Trial Chamber finds the possibility that the mortar ricocheted is not supported by the evidence.

719. The Trial Chamber also takes note of the article on the incident by Miroljub Vukašinić, published as part of the Military Technical Institute of the Army of Yugoslavia 97 Symposium in Belgrade. His conclusions, that it was obvious that the measurements for the calculation of the angle of descent of the shell were altered and that the shell exploded in static conditions, were based on an analysis of television footage. These conclusions were dismissed by Berko Zečević, who said that they were erroneous because they were based on inaccurate data. The Trial Chamber is not convinced by Miroljub Vukašinić's conclusions and notes that the calculations of the angle of descent of the BiH police, the UNMOs and UNPROFOR were based on measurements taken at the scene. The Trial Chamber sees no reason to question those measurements. Furthermore, the Trial Chamber is persuaded by the evidence of the BiH police, the UNMOs and the first UNPROFOR investigation, which concluded that the direction of fire was 170 degrees, that is, Mount Trebević, which was SRK-held territory.

720. Ivica Milosavljević, the Defence expert on forensic medicine, made essentially two points. He was not certain that the victims were killed at the spot where it is alleged by the Prosecution that they lost their lives and, in his view, the victims' wounds were not caused by shrapnel, but by gunshots. However, the Trial Chamber observes that he agreed that: (i) some of the photographs showed wounds inflicted by shrapnel; (ii) shrapnel wounds come in all shapes and sizes and that shrapnel was not the only thing that could kill a person at an explosion scene; (iii) he did not see any autopsy reports. With regard to the latter, the Trial Chamber notes, therefore, that the data relied upon by Ivica Milosavljević was incomplete and his views are based entirely on his interpretation of the photographs.

721. The Defence and Ivica Milosavljević made a lot of the video footage, which at one point in time showed no body at a particular location and at the same location some time thereafter showed the presence of a victim's body. The evidence indicates that bodies were being moved in the interests of the health and security of the victims and to clear the street. The evidence also indicates that the scene immediately after the explosion was characterised by a general confusion and panic. In such a situation, the Trial Chamber does not find the movement of bodies remarkable. In the circumstances, it attaches no weight to this evidence pertaining to the video footage. The Trial Chamber also notes the evidence of Lt. Col. Konings and W-137, both of whom rejected the Defence proposition that the victims were not killed at the scene of the explosion. Lt. Col. Konings testified that it was not possible to stage this shelling incident by bringing dead bodies from elsewhere, given the many people he saw gathered at the Markale Market that morning and the fact that no other similar incident, killing that many people was reported in Sarajevo before this one. W-137 testified that there were so many body parts at the scene that if they had been brought in from elsewhere, this would have been noticed by hundreds of people. The Trial Chamber finds that at least 35 persons died and at least 78 persons were wounded, many of them seriously. The great majority of wounded were civilians. Only one of the deceased was a soldier of the ABiH. The Trial Chamber is satisfied that the other 34 deceased were civilians.

722. Col. Demurenko testified that a mortar had exploded in front of Markale Market but that it was not fired from SRK positions. He went to the possible firing locations in SRK-held territory that he identified and concluded for each of the locations that either it was not possible to fire a mortar from the location or there were no visible traces which would have indicated a mortar was fired from the location. Col. Demurenko could not testify as to exactly which bearing he used when he visited the possible firing locations identified by his team. The Prosecution showed Col. Demurenko a satellite photograph indicating the difference in the bearing identified by UNPROFOR and the bearing he had identified while testifying in examination-in-chief. However, he also said he used the bearing that was calculated by UNPROFOR. Col. Demurenko testified he could calculate the possible firing locations with a margin of deviation of ten to 15 metres and that enabled him to search the location within those points. The Trial Chamber recalls the evidence that any bearing calculated by UNPROFOR or the BiH police had a margin of error of approximately ten degrees, confirmed by QMS Higgs. It is clear that this margin of error covered a wider area than was covered by the locations visited by Col. Demurenko on the basis of a margin of deviation of no more than ten to 15 metres. The Trial Chamber, therefore, has a difficulty accepting Col. Demurenko's conclusions dismissing any possibility that the shell was fired from SRK-held territory. This determination is consistent with the Prosecution's line of cross-examination that Col. Demurenko confined himself to too narrow an area in seeking to identify the possible launching

sites. It is significant that Col. Demurenko never answered the Prosecution's questions on this point with any clarity, in fact the Trial Chamber characterises his responses as vague and evasive.

723. Col. Demurenko also testified that the Markale explosion was not a result of shelling but rather was one caused by terrorists. He further made the point that no traces of the shell were recorded by the Cymbeline radar system. This point was also made by the Defence in cross-examination. The short answer to this is given by an UNPROFOR report which explained that the launch of the mortar was not recorded because the radar was set to detect the trajectory of a mortar shell fired at a distance of 950 metres or less and, consequently, the trajectory of any round fired from a distance of between 1,500 and 3,000 metres would have passed under the radar beam. The Trial Chamber accepts this explanation.

724. In the circumstances, the Trial Chamber is satisfied that the mortar shell that struck the street in the vicinity of the Markale Market was fired from the territory under the control of the SRK and that it was fired by members of the SRK.

#### 7. Effects of Shelling and Sniping on Civilians

725. In its Final Brief, the Defence submitted that the period covered by the Indictment "differed in many ways from the preceding period of the conflict."<sup>2568</sup> However, witnesses said that during the Indictment period the day-to-day life of civilians in Sarajevo did not differ in many ways from what it had been like in 1992 and 1993.<sup>2569</sup> Milan Mandilović testified that while 1994 and 1995 were "somewhat easier" in comparison to the previous years, "the population was exhausted, both psychologically and physically."<sup>2570</sup> Col. Demurenko, Chief of Staff of UNPROFOR Sector Sarajevo from January 1995 to December 1995, testified that "if one looks at the human suffering, then it was a case of a full siege, just like in Leningrad during Second World War."<sup>2571</sup> He expressed his surprise at the "ambivalent attitude, blunted attitude toward life" and the prevalent atmosphere of "lethargy" in Sarajevo.<sup>2572</sup> He agreed with the Prosecution that one possible explanation for the lethargy was that as a result of having been under siege for three years, "people had lost their will to lead a normal life."<sup>2573</sup> Martin Bell explained that:

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<sup>2568</sup> Defence Final Brief, para. 129.

<sup>2569</sup> Bakir Nakaš, 25 Jan 2007, T. 1062; Milan Mandilović, 18 Jan 2007, T. 617. *See supra*, Section II.C.2 Effect on the Civilian Population within the Confrontation Lines.

<sup>2570</sup> Milan Mandilović, 17 Jan 2007, T. 569 – 570, 18 Jan 2007, T. 605 – 606.

<sup>2571</sup> Andrey Demurenko, 21 Aug 2007, T. 9007. *See also*, Milorad Katić, 1 June 2007, T. 6039.

<sup>2572</sup> Andrey Demurenko, 5 July 2007, T. 7667, 7731 – 7732.

<sup>2573</sup> Andrey Demurenko, 5 July 2007, T. 7732.

“[the civilians inside the confrontation lines] looked haggard, they looked hunted. Their only business of the day was to get through the day, to survive. Survival was what it was about. They were truly desperate times.”<sup>2574</sup>

(a) Daily Life

726. Civilians in the ABiH-held territory suffered from many privations, such as shortages of food, water, power, gas and electricity, for much of the war.<sup>2575</sup> According to Bakir Nakaš, the day-to-day life of those residing in Sarajevo during the Indictment period was not very different from the lives of people in 1992 and 1993:

“The city was still under siege, no electricity, no regular water supply, no regular energy supply; under shelling and sniping continually. Life was not normal in any way for the residents of Sarajevo, nor was our work, the work of health workers in the city’s health institutions. Likewise, we lacked all energy supplies, electricity, and our supplies were reduced, limited, in terms of medical supplies, food and such like.”<sup>2576</sup>

727. Evidence indicates that the availability of food, water and power fluctuated.<sup>2577</sup> According to witnesses, the SRK largely controlled the utilities in Sarajevo.<sup>2578</sup> According to David Harland, the “Bosnian Serbs” said that Radovan Karadžić, in particular, wanted to cut off the Sarajevo water supply “and other things”, but that there was “influence” from Serbia not to do so.<sup>2579</sup> UNPROFOR reported that at the end of June 1995 efforts to restore gas, water and electricity were blocked by the “Serb military”, despite agreements to restore the utilities between Bosnian Muslim and Bosnian Serb civil leaders. Zdravko Tolimir stated that there would be no restoration of utilities until the fighting around Sarajevo was over.<sup>2580</sup>

728. As of May or June 1992, Sarajevo did not, in general, have electricity.<sup>2581</sup> Martin Bell stated that there were periods during winter lulls in fighting when gas and electricity were intermittently restored.<sup>2582</sup> People used wood for fuel, including the doors of a school in Novo Sarajevo.<sup>2583</sup>

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<sup>2574</sup> Martin Bell, 26 Apr 2007, T. 5264.

<sup>2575</sup> Martin Bell, 26 Apr 2007, T. 5258, 5259; David Harland, 16 Jan 2007, T. 454.; P618, Videoclip showing aspects of humanitarian situation in Sarajevo; Azra Šišić, 27 Feb 2007, T. 2830 – 2831; Alma Mulaosmanović, P179, p. 3; Anda Gotovac, P522, p. 2; Rialda Musaefendić, P295, p. 4; W-156, P625, p. 11 (under seal). Cf. Goran Kovacevic, 13 June 2007, T. 6602.

<sup>2576</sup> Bakir Nakaš, 25 Jan 2007, T. 1062.

<sup>2577</sup> Martin Bell, 26 Apr 2007, T. 5258; Milan Mandilovic, 18 Jan 2007, T. 621 – 622; P12, UNPROFOR daily sitrep, 14 April 1995, p. 3; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 4.

<sup>2578</sup> David Harland, 15 Jan 2007, T. 352 – 353; Azra Šišić, 27 Feb 2007, T. 2848 – 2849; David Harland, P1, MT. 26955; W-156, P625, pp 39 – 40 (under seal); John Jordan, P267, p. 7. See also P15, UNPROFOR sitrep, 3 June 1995, pp 3 – 4; P10, UNPROFOR weekly sitrep, 10 December 1994, pp 5, 6; P16, UNPROFOR sitrep, 24 June 1995, pp 4 – 5; P19, UNPROFOR sitrep, 2 July 1995, p. 6; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 4; P23, Minutes of meeting on implementation of ceasefire agreement, dated 6 October 1995, pp 1, 3. See also *supra*, Section II.E.8 “Campaign” Strategy.

<sup>2579</sup> David Harland, P1, MT. 26972.

<sup>2580</sup> P16, UNPROFOR sitrep, 24 June 1995, pp 4 – 5.

<sup>2581</sup> Milan Mandilović, 17 Jan 2007, T. 569 – 570; Azra Šišić, 27 Feb 2007, T. 2830 – 2831.

<sup>2582</sup> Martin Bell, 26 Apr 2007, T. 5258, 27 Apr 2007, 5283 – 5284.

Dzenana Sokolovic, 22 Jan 2007, T. 764; Martin Bell, 26 Apr 2007, T. 5258; Dzermaludin Luinovic, 28 Feb 2007, T. 2953; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

Witnesses testified that, in 1994 and 1995, there were transformer stations functioning in Sarajevo; but there was no regularity in the distribution of electricity during that time because, for example, overhead power lines were brought down as a result of the fighting or the power pylons were destroyed “for a more permanent interruption of supply.”<sup>2584</sup> Milorad Katić recalled that, in such a situation, repairmen from both sides went together with UNPROFOR, “so that no one would get hurt during the intervention.”<sup>2585</sup> Further, he agreed with the Prosecution, that this would involve arranging a temporary cease-fire. With “representatives of UNPROFOR and the electric company on both sides and also with representatives of the gas or water works companies, it was agreed to have this repair work done by jointly formed work details, and this practice was pursued in 1994 and 1995, all the way up to the time of the Dayton Accords.”<sup>2586</sup> Goran Kovačević stated that with the exception of when power lines were brought down by the fighting, the electricity supply “never ceased.”<sup>2587</sup> He also noted that “they” could cut-off supply from “Sarajevo gas station”, which “normally didn’t happen because those were all under UNPROFOR control.”<sup>2588</sup> No other evidence was presented that the gas stations were under UNPROFOR control.

729. Inhabitants of Sarajevo were “constantly hungry and short of food.”<sup>2589</sup> The Sarajevo bakery did not always operate during the war due to shortages of flour and electricity, and also because it was a “favourite target for being shelled.”<sup>2590</sup> The evidence indicates that food shortages meant that civilians living inside the confrontation lines were substantially dependent on humanitarian food aid.<sup>2591</sup> Rialda Musafendić stated that after the Bosnian Serbs closed “the line” in the direction of Stup, it was no longer possible to buy food and they became largely reliant on humanitarian aid.<sup>2592</sup>

730. According to witnesses, the Blue Routes were opened intermittently during the Indictment period.<sup>2593</sup> At such times, and when airplanes carrying humanitarian aid were able to land at Sarajevo Airport, the food situation improved.<sup>2594</sup> However, the Blue Routes were subject to SRK

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<sup>2584</sup> Enes Jašarević, 1 Mar 2007, T. 2988 – 2990; Avdo Vatrić, P647, p. 6. *See also*, Milan Mandilović, 17 Jan 2007, T. 569 – 570; Milorad Katić, 1 June 2007, T. 6031.

<sup>2585</sup> Milorad Katić, 1 June 2007, T. 6031.

<sup>2586</sup> Milorad Katić, 4 June 2007, T. 6129 – 6130. *See also*, Goran Kovačević, 12 June 2007, T. 6556.

<sup>2587</sup> Goran Kovačević, 12 June 2007, T. 6556.

<sup>2588</sup> Goran Kovačević, 12 June 2007, T. 6556.

<sup>2589</sup> Rialda Musafendić, P295, p. 4; Džemaludin Luinović, 28 Feb 2007, T. 2956 – 2957; W-57, P539, p. 4 (under seal).

<sup>2590</sup> Rialda Musafendić, P295, p. 5; D116, Statement by W-107, p. 3 (under seal). *See, e.g.*, P15, UNPROFOR sitrep, 3 June 1995, p. 3 which stated that the “Sarajevo Bakery, which depends on UNHCR for approximately 48 tons of flour per day and is the sole producer of bread in the city, used up its flour stocks yesterday.”

<sup>2591</sup> W-62, 23 Jan 2007, T. 881 – 882; Azra Šišić, 27 Feb 2007, T. 2830 – 2831; Martin Bell, 26 Apr 2007, T. 5258; P618, Videoclip showing aspects of humanitarian situation in Sarajevo; P15, UNPROFOR sitrep, 3 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 6.

<sup>2592</sup> Rialda Musafendić, P295, p. 4.

<sup>2593</sup> Milan Mandilović, 17 Jan 2007, T. 569, 18 Jan 2007, 617; David Harland, 16 Jan 2007, T. 461, P2, MT. 28638.

<sup>2594</sup> Martin Bell, 26 Apr 2007, T. 5258, 27 Apr 2007, 5283 – 5284; Milan Mandilović, 18 Jan 2007, T. 617.



fire and closure.<sup>2595</sup> Martin Bell stated that from April 1995 “the plight of the civilians inside Sarajevo was as desperate as it had been at any time.”<sup>2596</sup> At the end of May and early June 1995, the food situation in Sarajevo was rapidly deteriorating due to the closure of the land routes and the ongoing suspension of the humanitarian airlift as a result of the closure of Sarajevo Airport on 8 April 1995.<sup>2597</sup> An UNPROFOR report dated 19 May 1995 stated that UNHCR was only able to bring in 50 per cent of the city’s food needs by land.<sup>2598</sup> Food convoys that reached Sarajevo on 22 June 1995 after a period of four weeks without any transport provided for only 20 per cent of the total need for food.<sup>2599</sup>

731. Rialda Musaefendić stated that there was a pervading fear that the water would run out and the inhabitants of Sarajevo would not be able to get new supplies.<sup>2600</sup> Water came in water tankers.<sup>2601</sup> There were also water pumps and wells in the city, and Martin Bell stated that people also took water from the river.<sup>2602</sup> Rialda Musaefendić collected water on a daily basis from the Hrasno reservoir.<sup>2603</sup> An UNPROFOR report noted that in May and early June 1995, all sources of water, producing about 15 per cent of the pre-cut off level, were located in the eastern part of Sarajevo.<sup>2604</sup> As such, water assistance was to be focused on the western part of the city.<sup>2605</sup> The report noted that Grbavica was relatively better off for water because its water supply came from a gravity-fed source and that Ilidža “may be facing problems”; but it was difficult to verify due to lack of communication.<sup>2606</sup>

732. Evidence indicates that the provision of medical services was severely affected as a result of the ongoing conflict. There was not enough electricity to run the machines or elevators and the State Hospital even rationed the use of generators.<sup>2607</sup> Food preparation, laundry and sterilisation were all done using firewood, or gas, if available.<sup>2608</sup> Small tanks were built to preserve water, which was occasionally provided by tankers, for a few days.<sup>2609</sup> However, “[o]nly the most vital part[s] of the hospital were provided with electricity and the minimal quantities of water.”<sup>2610</sup> There was no

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<sup>2595</sup> See *supra*, Section II.E.5(a) Shelling by the SRK.

<sup>2596</sup> Martin Bell, 26 Apr 2007, T. 5258.

<sup>2597</sup> P15, UNPROFOR sitrep, 3 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 6.

<sup>2598</sup> D12, UNPROFOR weekly sitrep, 19 May 1995, p. 3.

<sup>2599</sup> David Harland, 15 Jan 2007, T. 344. See also Rialda Musaefendić, P295, p. 4; P16, UNPROFOR sitrep, 24 June 1995, p. 4.

<sup>2600</sup> Rialda Musaefendić, P295, p. 4.

<sup>2601</sup> W-62, 23 Jan 2007, T. 882; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

<sup>2602</sup> Martin Bell, 26 Apr 2007, T. 5258; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

<sup>2603</sup> Rialda Musaefendić, P295, p. 4.

<sup>2604</sup> P15, UNPROFOR sitrep, 3 June 1995, p. 4.

<sup>2605</sup> *Ibid.*

<sup>2606</sup> *Ibid.*

<sup>2607</sup> Bakir Nakaš, 25 Jan 2007, T. 1074; Milan Mandilović, 17 Jan 2007, T. 569 – 570.

<sup>2608</sup> Bakir Nakaš, 25 Jan 2007, T. 1074.

<sup>2609</sup> Bakir Nakaš, 25 Jan 2007, T. 1074 – 1075.

<sup>2610</sup> Bakir Nakaš, 25 Jan 2007, T. 1075.

regular heating in the hospital, with the exception of one heater that was installed by using gas as an open source of energy.<sup>2611</sup> Bakir Nakaš stated that it “was so risky that I really don’t understand how part of this hospital didn’t blow up, because the gas was often cut off. There were leakages and things like that.”<sup>2612</sup>

733. There were not enough medical supplies. Medicines and medical supplies were distributed between the State Hospital and the Medical Clinical Centre based on an estimate of the number of surgeries and patients to be treated.<sup>2613</sup> The outpatient and emergency wards were supplied 100 per cent by the World Health Organisation.<sup>2614</sup> In addition, the UN made provisions to evacuate “humanitarian cases”, that is, people who were sick or wounded.<sup>2615</sup> Bosnian Serbs would often raise concerns with UNPROFOR about the time it took persons on SRK-held territory to get to a hospital or about the inadequate facilities at the hospitals.<sup>2616</sup> T-61 testified that on the Bosnian Serb side, the situation regarding medical equipment was “much worse” since it had no stocks.<sup>2617</sup> However, according to David Harland, the conditions in the hospitals on the Bosnian Muslim side were “vastly worse” than those on the Bosnian Serb side.<sup>2618</sup>

(b) Physical Impact

734. The Trial Chamber heard testimony from several witnesses and received evidence in form of documents that throughout 1994 and 1995, civilians inside the confrontation lines suffered death and injury as a result of the SRK shelling and sniping.<sup>2619</sup>

735. The Trial Chamber heard evidence that at the State Hospital “not a week passed without there having been persons brought in, either due to sniping or shelling [...] we would constantly admit persons.”<sup>2620</sup> The number of civilian casualties fluctuated during this period due to increased

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<sup>2611</sup> Bakir Nakaš, 25 Jan 2007, T. 1075.

<sup>2612</sup> Bakir Nakaš, 25 Jan 2007, T. 1075.

<sup>2613</sup> Bakir Nakaš, 25 Jan 2007, T. 1075.

<sup>2614</sup> Bakir Nakaš, 25 Jan 2007, T. 1075.

<sup>2615</sup> David Harland, P2, MT. 28638.

<sup>2616</sup> David Harland, 16 Jan 2007, T. 456.

<sup>2617</sup> T-61, 9 July 2007, T. 7883.

<sup>2618</sup> David Harland, 16 Jan 2007, T. 456 – 457.

<sup>2619</sup> Bakir Nakaš, 29 Jan 2007, T. 1099 – 1100; W-137, 20 Feb 2007, T. 2498 – 2499; Milan Mandilović, 18 Jan 2007, T. 596; Andrey Demurenko, 5 July 2007, T. 7676; W-95, P520, p. 3 (under seal); Rupert Smith, P334, p. 12; P6, UNPROFOR cable, 12 September 1994; P10, UNPROFOR weekly sitrep, 10 December 1994, p. 5; P16, UNPROFOR sitrep, 24 June 1995, pp 1, 3; P12, UNPROFOR daily sitrep, 14 April 1995, p. 2; P19, UNPROFOR sitrep, 2 July 1995, p. 2; P20, UNPROFOR sitrep, 8 July 1995, p. 2; P391, UNPROFOR report, 17 November 1994, p. 2; P760, UNPROFOR sitrep, 10 December 1994, p. 2; P793, UNPROFOR report on violations of Anti-sniping Agreement, pp 1 – 2; D10, UNPROFOR daily sitrep, 28 Aug 1995, pp 2 – 3. *See also supra*, Section II.E.1-6.

<sup>2620</sup> Milan Mandilović, 17 Jan 2007, T. 571.

movement of civilians across Sarajevo or increased shelling.<sup>2621</sup> John Jordan testified that the majority of victims from shelling and sniping were women and children.<sup>2622</sup>

736. Between August 1994 and October 1995, about ten per cent of the total number of civilian patients Bakir Nakaš treated were sniping casualties and about 90 per cent were shelling casualties.<sup>2623</sup> Milan Mandilović testified that approximately 80 per cent of the casualties brought to the State Hospital were civilians, and 20 per cent were military personnel.<sup>2624</sup>

737. A spreadsheet prepared by the Prosecution and presented to the Trial Chamber through a police officer, showed 329 persons were wounded and 95 persons were killed in 214 shelling and sniping incidents investigated by the Bosnian Muslim police between 30 August 1994 and 9 November 1995.<sup>2625</sup> Brig. Mohatarem testified that in the month of May 1995 more than 70 civilians were killed and about 250 were injured.<sup>2626</sup> Based upon records maintained after 1992, and information from others, W-57 estimated that from late 1992 until the end of the war, between 1,800 and 2,000 residents were killed in Hrasnica as a result of sniping and shelling, while 5,000 to 10,000 inhabitants were wounded either once or more.<sup>2627</sup>

738. The Trial Chamber does not consider the spreadsheet an exhaustive account of the number of persons killed during the conflict. The evidence clearly showed that more than 95 persons were killed in sniping and shelling incidents.

739. In addition, the Trial Chamber notes that Ewa Tabeau presented evidence of the number of dead and wounded as a result of shelling and sniping during the Indictment period. During trial and in its Final Brief, the Defence challenged the evidence of Ewa Tabeau on a number of grounds, including that the six municipalities to which her findings related were divided between the warring parties during the conflict and, as a result, her report could not assist the Trial Chamber with “knowing the number of dead and injured in the part of Sarajevo exposed to the military activity of

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<sup>2621</sup> Milan Mandilović, 17 Jan 2007, T. 571; Bakir Nakaš, 29 Jan 2007, T. 1105.

<sup>2622</sup> John Jordan, P267, pp 5, 9.

<sup>2623</sup> Bakir Nakaš, 25 Jan 2007, T. 1082, 1085 – 1086, 29 Jan 2007, T. 1104 – 1105. He further testified that he treated 115 people injured by sniping of which 74 were civilians, including eight children. *See also*, P107, Spreadsheet showing victims of sniping (under seal).

<sup>2624</sup> Milan Mandilović, 17 Jan 2007, T. 571 – 572. He stated that the following was taken into account to determine whether someone was a civilian or military: “One of the significant elements involved in the admission of patients was their personal background and their personal data, names, age, place of birth, and so on, and it was on the basis of this that we would admit them. Also what was taken into account was the way the patients were brought into the hospital, whether it was by way of a vehicle belonging to an organisation or institution or whether they were brought in by people, passers-by, their friends or members of their family. In addition to that, military personnel would have military IDs on them, they would be in uniform; and on the basis of that, we could easily establish whether a person was a civilian or military personnel”, Milan Mandilović, 17 Jan 2007, T. 572 – 573.

<sup>2625</sup> P602, Spreadsheet showing law enforcement reports from Sarajevo. The Trial Chamber notes that the spreadsheet lists 215 incidents. One incident is listed twice (no. 28).

<sup>2626</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 713.

<sup>2627</sup> W-57, 17 Apr 2007, T. 4548 – 4549, P538, p. 2 (under seal).

units under the control of the Accused.”<sup>2628</sup> Ewa Tabeau acknowledged that she “didn’t pay attention to what army controlled what areas” as this was beyond her “interest” in this report.<sup>2629</sup> The Prosecution argued that Ewa Tabeau “was not attributing deaths to anyone” but simply presenting evidence of war-related deaths, on which the Parties could make submissions.<sup>2630</sup>

(c) Psychological Impact

740. Evidence shows that the conflict impacted psychologically on people of all ethnicities in Sarajevo. Witnesses described the immense psychological impact that the conflict had on the civilians, adults and children alike, who lived within the confrontation lines.<sup>2631</sup> Bakir Nakaš testified that very often the number of patients who would come to the hospital with “mental disturbances” was greater than those who came in with various physical wounds and injuries.<sup>2632</sup> People were affected by the knowledge that one might be killed or wounded any day and by living in a city under siege for such a long time without basic necessities.<sup>2633</sup>

741. The Trial Chamber also heard that John Jordan responded to a number of incidents over the years in Sarajevo where one member, often the youngest member, of a family was shot.<sup>2634</sup> It was his view that “[w]hen you’re targeting civilians like this, particularly families who may or may not be Muslim, shooting the child has the effect of literally disembowelling the whole family.”<sup>2635</sup>

742. Witnesses testified that they felt constantly afraid in Sarajevo as a result of the sniping and shelling.<sup>2636</sup> People risked their lives every time they ventured out.<sup>2637</sup> It was dangerous to collect food and water.<sup>2638</sup> W-107 stated that her daughters often returned from collecting water or

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<sup>2628</sup> Defence Final Brief, paras 139 – 140.

<sup>2629</sup> Ewa Tabeau, 2 May 2007, T. 5552.

<sup>2630</sup> Ewa Tabeau, 2 May 2007, T. 5549.

<sup>2631</sup> Bakir Nakaš, 29 Jan 2007, T. 1108, 1147; Milan Mandilović, 17 Jan 2007, T. 569; Fadila Serdarević, P641, pp 5, 6, 9, P643, p. 10; P539, W-57, p. 4 (under seal); Nefa Šljivo, P531, p. 2. Cf. T-61, 9 July 2007, T. 7879 – 7880.

<sup>2632</sup> Bakir Nakaš, 29 Jan 2007, T. 1101 – 1102.

<sup>2633</sup> Bakir Nakaš, 29 Jan 2007, T. 1108; Milan Mandilović, 17 Jan 2007, T. 569 – 570; Ismet Hadžić, 6 Mar 2007, T. 3234.

<sup>2634</sup> John Jordan, 22 Feb 2007, T. 2697 – 2698.

<sup>2635</sup> John Jordan, 22 Feb 2007, T. 2697 – 2698.

<sup>2636</sup> Afeza Karačić, 29 Jan 2007, T. 1186; Alma Mulaosmanović, 6 Feb 2007, T. 1658 – 1659, 1672, 1674; Azra Šišić, 27 Feb 2007, T. 2832 – 2833; Sanjin Hasanefendić, 16 Feb 2007, T. 2302; P232, Photograph marked by Sanjin Hasanefendić. See also, Enes Jašarević, 1 Mar 2007, T. 3003; Slavica Livnjak, 23 Jan 2007, T. 872; T-61, 9 July 2007, T. 7880, 7881; W-62, 24 Jan 2007, T. 925 – 926; Sanela Dedović, P110, pp 2, 3; Ismet Alić, P640, p. 3; W-32, P529, p. 2; Anda Gotovac, P522, p. 2; Derviša Selmanović, 5 Feb 2007, T. 1596, P170, p.3; Fikreta Pačarić, P643, p. 9; Sabina Šabanić, P154, p. 2; W-57, P539, p. 4 (under seal); D116, Statement by W-107, p. 4 (under seal).

<sup>2637</sup> W-118, 6 Feb 2007, T. 1637 – 1638; Enes Jašarević, 1 Mar 2007, T. 3003 – 3004; Azem Agović, P211, p. 2; Alma Mulaosmanović, P179, p. 3; Derviša Selmanović, P170, p. 3; Slavica Livnjak, P95, p. 2. See T-61, 9 July 2007, T. 7880 – 7881; P304, Map marked by Enes Jašarević; P539, W-57, p. 4 (under seal).

<sup>2638</sup> See, e.g., *supra*, Section II.E.4.(b)(i)f and II.E.4.(b)(ii)b. See also, W-62, 23 Jan 2007, T. 881 – 882; Alija Holjan, P526, p. 3; D116, Statement by W-107, p. 4 (under seal).

firewood and “I would find that they had soiled their clothes because of the fear that they had.”<sup>2639</sup>  
As described by W-57, they lived under “the constant threat of death.”<sup>2640</sup>

743. Witnesses also testified that it made no difference whether one was inside one’s apartment or on the street or in a tram; people in Sarajevo knew that they could be shot at any moment and that shells could land anywhere.<sup>2641</sup> People felt safer during lulls in the shelling and sniping but even then one was not safe and there was no way of knowing when the shelling and sniping would resume.<sup>2642</sup> Alma Mulaosmanović stated:

“Wherever you were, moving out or sitting in your home, we could hear the shots passing by throughout the war, including the shells. You could never know where they were going to land. They just whizzed by, and as soon as it passed it was a kind of relief. [...]

But it wasn’t safe inside the flat either. You had to go out eventually to fetch things. [...] It was dangerous all over the place. One of my friends died on her balcony which had a concrete wall just in front. [...] Nowhere was safe.”<sup>2643</sup>

744. According to witnesses, there were very few places where one could be entirely safe from shelling, except underground, under fortified cover or in the cave down by the Miljacka River.<sup>2644</sup> As was the case during the first two years of the war, people would vary the routes that they took according to the areas of the city that were known to be particularly dangerous in order to ensure they were concealed from the view of snipers as much as possible, including by finding alternative ways to enter their homes.<sup>2645</sup> Video evidence was presented showing civilians running between one point and another, particularly when they had to cross open spaces.<sup>2646</sup> Similarly, it was dangerous to travel from Dobrinja into the city and vice versa and, consequently, there was little communication between the two areas.<sup>2647</sup> Witnesses spoke of it being a matter of “luck” that day-to-day, and throughout the war, they were not injured or killed.<sup>2648</sup> W-35 testified that “most of our lives during the four years were spent in cellars.”<sup>2649</sup>

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<sup>2639</sup> D116, Statement by W-107, p. 5 (under seal).

<sup>2640</sup> W-57, P539, p. 4 (under seal).

<sup>2641</sup> W-46, 15 Mar 2007, T. 3815 (closed session); Alma Mulaosmanović, 6 Feb 2007, T. 1674; Enes Jašarević, 1 Mar 2007, T. 3003; Azra Šišić, 27 Feb 2007, T. 2832 – 2833; Sabina Šabanić, P154, p. 2; Nefa Šljivo, P531, p. 2; Tarik Zunić, P185, p. 3; Derviša Selmanović, P170, p. 3.

<sup>2642</sup> Sanela Dedović, P110, p. 2; W-95, P520, p. 2 (under seal); Ismet Alić, P640, p. 8.

<sup>2643</sup> Alma Mulaosmanović, 6 Feb 2007, T. 1659, 1666, 1674. *See also*, Afeza Karačić, 29 Jan 2007, T. 1186.

<sup>2644</sup> Martin Bell, 26 Apr 2007, T. 5242; John Jordan, P267, p. 6; D116, Statement by W-107, p. 4 (under seal).

<sup>2645</sup> Asam Butt, 15 Feb 2007, T. 2178 – 2179; Ismet Hadžić, 6 Mar 2007, T. 3212; Alma Mulaosmanović, P178, p. 2; Sanela Dedović, P110, p. 3; Nedžib Đozo, P363, p. 2. *See also, supra*, Section II.E.3(b) Anti-sniping Measures

<sup>2646</sup> P612, Videoclip of events in Sarajevo.

<sup>2647</sup> Martin Bell, 26 Apr 2007, T. 5242; Enes Jašarević, 1 Mar 2007, T. 3003.

<sup>2648</sup> W-118, P175, p. 3 (under seal); Džemaludin Luinović, P298, p. 2.

<sup>2649</sup> W-35, 23 January 2007, T. 849.

745. Azem Agović said he got used to living with the dangers.<sup>2650</sup> For other witnesses, it was a struggle just to survive.<sup>2651</sup> Referring to a modified air bomb exploding in Sokolovići, W-82 stated that “they could have coped” with the sniping and shelling of the neighbourhood “until the air bomb landed on 23 July 1995.”<sup>2652</sup> As recounted by Ismet Hadžić:

“At the beginning of the war, it was a disaster, psychologically speaking. It affected not only the people who were killed and their families but the entire neighbourhood around the area where someone had been killed. In 1994 and 1995, it became the normal thing, although to say it was normal is horrific. Only the families who had their family members killed were affected. But as for the others, they just saw one person less. That was the mental state of the population. Death was the most common thing in 1994 and 1995, although the psychological burden was somewhat less than in the initial two years.”<sup>2653</sup>

746. For Ismet Alić, the time during the war was “like a vacuum, where life was just empty.”<sup>2654</sup> It took a long time for life to return to normalcy.<sup>2655</sup> Some witnesses continue to suffer the psychological effects of the war by, for example, needing medication to remain calm, being unable to work, experiencing anxiety, difficulty sleeping, waking during the night because of thunder and believing it is an attack by the Bosnian Serbs, and being frightened by loud noise.<sup>2656</sup> Elderly people were not able to get on with life and many still suffer psychologically from the effects of the war.<sup>2657</sup>

(d) Ability to Leave Sarajevo

747. The Trial Chamber heard evidence that, while some civilians managed to get out of Sarajevo early in the war, others were mostly trapped inside the confrontation lines encircling Sarajevo.<sup>2658</sup> Bosnian Serbs, primarily those in the neighbourhoods under the control of the ABiH, expressed to David Harland their desire to leave Sarajevo because the city was “under siege” and they were at great risk of being killed, but were unable to do so mainly because Bosnian Muslim authorities would not allow it.<sup>2659</sup>

748. Martin Bell testified that the civilians behind the Bosnian Serb lines were able to get out to safer territory, if they wished.<sup>2660</sup> Milorad Katić testified that people were able to leave the Bosnian

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<sup>2650</sup> Azem Agović, P211, p. 3.

<sup>2651</sup> W-57, P539, p. 4 (under seal); Nefa Šljivo, P531, p. 2; D116, Statement by W-107, p. 5 (under seal).

<sup>2652</sup> W-82, P228, p. 2. *See supra*, Section II.E.6(b)(xiii) Shelling of Bjelašnička Street in Sokolovići on 23 July 1995.

<sup>2653</sup> Ismet Hadžić, 6 Mar 2007, T. 3234.

<sup>2654</sup> Ismet Alić, P640, p. 9.

<sup>2655</sup> Ismet Alić, P640, p. 9.

<sup>2656</sup> Ismet Alić, P640, p. 9; Alma Mulaosmanović, 6 Feb 2007, T. 1658 – 1659, 1660, P179, p. 3; Anda Gotovac, P522, p. 2; Derviša Selmanović, P170, p. 3; Fikreta Pačariz, P643, p. 10; Sabina Šabanić, P154, p. 2; W-95, P520, p. 3 (under seal); D116, Statement by W-107, p. 5 (under seal).

<sup>2657</sup> Ismet Alić, P640, p. 9. *See also*, D116, Statement by W-107, p. 5 (under seal).

<sup>2658</sup> Martin Bell, 26 Apr 2007, T. 5264, 27 Apr 2007, T. 5279; W-54, 6 Feb 2007, T. 1692.

<sup>2659</sup> David Harland, 15 Jan 2007, T. 358-359, 16 Jan 2007, T. 449.

<sup>2660</sup> Martin Bell, 27 Apr 2007, T. 5279.

Serb-held areas for Bosnian Muslim-held areas, and vice versa, by walking over the Brotherhood and Unity Bridge.<sup>2661</sup>

749. The Trial Chamber also heard that so long as they had permission, people could leave and return to Sarajevo through the tunnel.<sup>2662</sup> Witnesses rejected the Defence submissions that only Bosnian Muslim citizens were able to leave and any Bosnian Serbs who used the tunnel would be killed on the other side.<sup>2663</sup> Several witnesses testified that they had passed through the tunnel on multiple occasions.<sup>2664</sup> However, Martin Bell testified that civilians were not able to evacuate the city on any significant scale.<sup>2665</sup>

750. Evidence was presented in respect of the use of the tunnel for both humanitarian and military purposes. Witnesses confirmed that the tunnel was used for purposes which included passage of soldiers and wounded, and food supplies and various types of ammunition and weapons.<sup>2666</sup> According to Defence witness T-52, the SRK did not fire at the tunnel because civilians were always together with the soldiers and the ABiH made use of that to safely take up positions on the surrounding hills.<sup>2667</sup> According to Milan Mandić, the SRK command knew of the ABiH tactic of mixing with civilians and expressly forbade opening any fire.<sup>2668</sup> However, Maj. Gen. Karavelić testified that there was shelling, regardless of who or what was going through the tunnel.<sup>2669</sup> Col. Dragičević concluded that the tunnel eliminated the concept of any kind of siege, since ABiH units would go through the tunnel and take up positions in Ilijaš, Ilidža and the Nisići plateau.<sup>2670</sup> However, Maj. Gen. Karavelić disagreed that the tunnel changed the status of the siege.<sup>2671</sup> Ismet Hadžić, commander of the ABiH 155<sup>th</sup> Brigade, explained that the ABiH went through the tunnel to break through the siege in order to liberate Sarajevo.<sup>2672</sup>

751. The Trial Chamber finds that in the period covered by this Indictment, Sarajevo was effectively besieged by the SRK. If, by virtue of the limited possibilities offered by the tunnel, this

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<sup>2661</sup> Milorad Katić, 1 June 2007, T. 6039. *See also supra*, Section II.C.2 Effect on the Civilian Population within the Confrontation Lines.

<sup>2662</sup> David Harland, 15 Jan 2007, T. 379; W-138, 1 Feb 2007, T. 1425 – 1427.

<sup>2663</sup> David Harland, 15 Jan 2007, T. 380; W-138, 1 Feb 2007, T. 1425 – 1429.

<sup>2664</sup> Bakir Nakaš, 29 Jan 2007, T. 1144 – 1145; W-137, 19 Feb 2007, T. 2480; John Jordan, 21 Feb 2007, T. 2646; Nefa Šljivo, 5 Apr 2007, T. 4513 – 4514, 4516, 4517; W-57 P539, p. 4 (under seal).

<sup>2665</sup> Martin Bell, 27 Apr 2007, T. 5280.

<sup>2666</sup> Vahid Karavelić, 27 Mar 2007, T. 4143 – 4144, P492, p. 13. *See also*, Rupert Smith, 7 Mar 2007, T. 3358; David Harland, 15 Jan 2007, T. 377 – 378; David Fraser, 8 Feb 2007, T. 1840; Luka Dragičević, 26 Mar 2007, T. 4011; Martin Bell, 27 Apr 2007, T. 5279 – 5280; Zoran Trapara, 26 June 2007, T. 7307 – 7308; Ljuban Mrković, 12 July 2007, T. 8149 – 8151, 8190 – 8191; D152, Order by Fikret Prevljak, dated 13 April 1995.

<sup>2667</sup> T-52, 28 June 2007, T. 7437, 7461.

<sup>2668</sup> Milan Mandić, 3 July 2007, T. 7561.

<sup>2669</sup> Vahid Karavelić, 28 Mar 2007, T. 4225; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 714; Rupert Smith, 7 Mar 2007, T. 3351 – 3352, P334, p. 12; Thorbjorn Overgard, 19 Jan 2007, T. 687; Nefa Šljivo, 5 Apr 2007, T. 4517.

<sup>2670</sup> Luka Dragičević, 26 Mar 2007, T. 4042 – 4043.

<sup>2671</sup> Vahid Karavelić, 28 Mar 2007, T. 4223.

<sup>2672</sup> Ismet Hadžić, 6 Mar 2007, T. 3288 – 3289.

was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace. The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate.

#### 8. “Campaign” Strategy

752. In the Prosecutions submissions, the Accused conducted a campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population “which had the primary purpose of spreading terror among the civilian population.”<sup>2673</sup> The Prosecution further submitted that the SRK intended to terrorise the civilians of Sarajevo with its campaign, “and they did so”.<sup>2674</sup>

753. David Harland testified that the campaign was part of a strategy to force the Bosnian Muslims, through the application of “pressure”, to capitulate on terms favourable to the Bosnian Serbs.<sup>2675</sup> As such, 1992 and 1993 were largely devoted to the Bosnian Serbs gaining territory and then removing the non-Bosnian Serb populations from BiH.<sup>2676</sup> In 1994, according to David Harland, the Bosnian Serbs thought that they were achieving their objectives.<sup>2677</sup> Radovan Karadžić and Momčilo Krajišnik had explained that their tactic was to hold onto the land that they had gained and to make the Bosnian Muslim Government understand that it did not have any military options available and that the suffering of the Bosnian Muslim people would only increase if the Government did not agree to a political settlement.<sup>2678</sup> The political settlement “would lead to Bosnian Serb independence within defined borders, no reversal of ethnic cleansing and a substantial acceptance of the territory” the Bosnian Serbs held.<sup>2679</sup> At this time, the Bosnian Serbs also agreed to a number of measures to stabilise the situation in Sarajevo, such as cease-fires and measures to reduce the sniping of civilians, the opening of the Blue Routes, the turning on of some electricity

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<sup>2673</sup> Indictment, para. 22. *See also*, Prosecution Final Brief, para. 4: “the SRK, under the Accused’s command, conducted a politically motivated campaign of terror against the civilian population of Sarajevo. The campaign involved sniping, shelling and air bombing a city under siege. It ran from the beginning to end of the Amended Indictment period, in all areas of Sarajevo, at all times of day, and in all months of the year. Its targets were civilians. Not only did the Accused inherit this campaign, he intensified it.”

<sup>2674</sup> Prosecution Closing Arguments, 9 Oct 2007, T. 9473.

<sup>2675</sup> David Harland, 15 Jan 2007, T. 324 – 330, P1, MT. 26933, 26935, 26954, 26996, P2, MT. 28654. *See also*, Rupert Smith, 7 Mar 2007, T. 3310.

<sup>2676</sup> David Harland, 15 Jan 2007, T. 327 – 330, P1, MT. 26936 – 26937, 26953.

<sup>2677</sup> David Harland, 15 Jan 2007, T. 328.

<sup>2678</sup> David Harland, 15 Jan 2007, T. 328.

<sup>2679</sup> David Harland, 15 Jan 2007, T. 328.



and water and the re-starting of the trams.<sup>2680</sup> Consequently, 1994 was a relatively quiet and stable year in terms of military activity.<sup>2681</sup> David Harland explained:

“They thought that time was on their side. They said, you know, we hold all the land, we dominate all the high ground, we can apply pressure - as they called it - the shelling and the sniping and the cutting off of the water and gas and electricity and food to the Muslim population.”<sup>2682</sup>

754. Towards the end of 1994 and in 1995, there was a “sharp deterioration” in the situation, which continued up until the end of the conflict.<sup>2683</sup> David Harland recalled Momčilo Krajišnik explaining that “the Serbs” felt that they had perhaps miscalculated and that the Bosnian Muslims were not going to capitulate.<sup>2684</sup> As a result, they had decided to “apply pressure more directly.”<sup>2685</sup> The Bosnian Serbs returned to a pattern of more intense use of both military and non-military means against Sarajevo so as to force the Bosnian Muslim Government to enter into a peace agreement.<sup>2686</sup>

755. Witnesses who worked with UNPROFOR at the time believed that the purpose of the campaign of shelling and sniping was to exert pressure on the Bosnian Muslims by terrorising the civilian population.<sup>2687</sup> Gen. Smith testified that, with the exception of countering a specific attack, it was his understanding that shelling and sniping of civilian areas in Sarajevo was “essentially to terrorise, to wear down the resolve of the defender, to hold the presence of the Serb pressure evidently in the minds of people on a daily basis.”<sup>2688</sup> David Harland found it “particularly alarming” that Radovan Karadžić and his associates directly said “we will use this Serbian-supported war machine to make life impossible for the civilians”, to “terrorise” the civilians in order to reach a particular political goal.<sup>2689</sup> Similarly, Lt. Col. Fortin said that it was his assessment that in Sarajevo sniping was used by the SRK “as a terrorist tactic” more than anything else “since the Bosnian Serbs had nothing to gain militarily and a lot to lose politically.”<sup>2690</sup>

756. The deprivation of the civilian population in Sarajevo of food, water and power was also “a common theme” of the Bosnian Serb strategy to force the Bosnian Muslim Government to accept a

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<sup>2680</sup> David Harland, 15 Jan 2007, T. 329, 331, 384 – 385.

<sup>2681</sup> David Harland, 15 Jan 2007, T. 327 – 330, T. 384 – 385, P1, MT. 26937.

<sup>2682</sup> David Harland, 15 Jan 2007, T. 328.

<sup>2683</sup> David Harland, 15 Jan 2007, T. 327 – 330, P1, MT. 26937.

<sup>2684</sup> David Harland, 15 Jan 2007, T. 329, 331.

<sup>2685</sup> David Harland, 15 Jan 2007, T. 324 – 325, 327 – 331.

<sup>2686</sup> David Harland, 15 Jan 2007, T. 327 – 331.

<sup>2687</sup> Harry Konings, 12 Mar 2007, T. 3560; W-46, 15 Mar 2007, T. 3815 (closed session), P387, pp 14 – 15 (under seal); W-156, 27 Apr 2007, T. 5329 (closed session), P625, pp 18, 21 (under seal); Ronald Eimers, P585, p. 5.

<sup>2688</sup> Rupert Smith, 7 Mar 2007, T. 3311. *See also*, W-46, 15 Mar 2007, T. 3815 (closed session); David Harland, 15 Jan 2007, T. 325 – 327, P1, MT. 26936.

<sup>2689</sup> David Harland, P1, MT. 27004.

<sup>2690</sup> Louis Fortin, P27, p. 7.

peace agreement.<sup>2691</sup> David Harland testified that “whenever the Bosnians would try any sort of military activity, the Serbs would retaliate against the city as a whole and the civilian population by cutting off the electricity or limiting the amount of water or, in particular, stopping convoys of food or increasing their bombardment of civilian areas.”<sup>2692</sup>

757. The Trial Chamber heard evidence that in some instances the shelling and sniping of civilian areas by the SRK was in response to ABiH attacks, but that this “retaliatory” shelling and sniping was not directed at the ABiH forces; rather, it “consisted of arbitrary firing at the city.”<sup>2693</sup> David Harland commented that “the retaliation was principally against civilians.”<sup>2694</sup> Maj. Eimers also testified that retaliation was twice as hard from the SRK side and that “there was a couple of times that we got word that there were Serb civilians killed on one day, and then we could predict the next day we would get mortars incoming in the area where I lived, yes. And that actually happened.”<sup>2695</sup>

758. UNPROFOR requested the SRK not to respond to an ABiH attack launched on 18 September 1994 by shooting into the city.<sup>2696</sup> A witness described an ABiH attack on a Bosnian Serb checkpoint on 6 October 1994, following which the Bosnian Serbs retaliated by firing into the city and on civilians.<sup>2697</sup> Gen. Smith recalled that at the end of May 1995, the VRS shelled all safe areas in BiH, including Sarajevo, in response to the NATO bombing of the Pale ammunition depot on 25 May 1995, which itself was a consequence of “flared up” fighting between the warring factions on 24 May 1995.<sup>2698</sup> Similarly, UNPROFOR reported that at the end of June and early July 1995, the “[Bosnian] Serbs have responded to the Bosnian [Muslim] offensive by resuming a fairly indiscriminate bombardment of the downtown area, and by increasing sniper activity.”<sup>2699</sup> Brig. Gen. Fraser, in recalling an incident where the Bosnian Muslims had fired at the SRK headquarters in Lukavica, said that “the barrage of fire” that came back from the Bosnian Serbs was not aimed at the source of the Bosnian Muslim fire but “[i]t was just fired at the city. In fact, it was firing all around Debelo Brdo and the area just around Miljacka River, on the Muslim side.”<sup>2700</sup> The SRK

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<sup>2691</sup> David Harland, 15 Jan 2007, T. 324 – 325; David Harland, P1, MT. 26953, 27004. Cf. Ljuban Mrković, 12 July 2007, T. 8185 – 8186.

<sup>2692</sup> David Harland, 16 Jan 2007, T. 454.

<sup>2693</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1049, 1051 – 1052, 1055 – 1056; Asam Butt, 15 Feb 2007, T. 2229 – 2231; Rupert Smith, 7 Mar 2007, T. 3349, 3392 – 3393, P334, p. 13; P20, UNPROFOR sitrep, 2 July 1995, p. 2; P103, Protest letter, 1 July 1995, pp 1 – 2.

<sup>2694</sup> David Harland, 16 Jan 2007, T. 455.

<sup>2695</sup> Ronald Eimers, 20 Apr 2007, T. 4792 – 4793.

<sup>2696</sup> David Harland, 15 Jan 2007, T. 387 – 388; D3, UNPROFOR Memo on 18 September 1994 ABiH attack, pp 2 – 3.

<sup>2697</sup> W-46, 15 Mar 2007, T. 3821 – 3822, 3823 (closed session).

<sup>2698</sup> Rupert Smith, 7 Mar 2007, T. 3322, P334, pp 13 – 14.

<sup>2699</sup> P19, UNPROFOR sitrep, 2 July 1995, p. 2.

<sup>2700</sup> David Fraser, 7 Feb 2007, T. 1796.

could have defended their positions just as effectively by using less fire and causing fewer civilian victims.<sup>2701</sup>

759. Civilians and civilian areas were sniped and shelled when the SRK had not achieved particular military objectives. Following a failed attack by the SRK to take Debelo Brdo on 16 to 17 May 1995, “[t]hey rained Sarajevo town with artillery, with mortars; snipers were active all along the confrontation line. [...] In those two days, I think, they were very heavy on civilians.”<sup>2702</sup> Bakir Nakaš recalled that shelling or sniping was more intense, and the number of casualties higher, after failed negotiations or if some territories were lost elsewhere in BiH.<sup>2703</sup>

760. A further objective of the campaign was to maintain a psychological upper hand over UNPROFOR in order to prevent the UN from taking action.<sup>2704</sup> David Harland testified that Momčilo Krajišnik threatened the international community and the Bosnian Muslims in a similar manner.<sup>2705</sup> In his view, the Bosnian Serbs saw UNPROFOR as working contrary to their war effort by facilitating humanitarian support and started to actively obstruct the effort of UNPROFOR to bring humanitarian relief in Sarajevo.<sup>2706</sup> He recalled that, in response to the threat of retaliatory measures by the Security Council, Radovan Karadžić threatened that the Bosnian Serbs would attack the UN and that they would impose restrictions on utilities, like gas and water, to make life more miserable for the Bosnian Muslims in Sarajevo unless the Security Council stopped threatening the “essential lifeline” with Serbia.<sup>2707</sup> Moreover, according to David Harland, the nature of the campaign – causing small numbers of casualties in a large number of places – kept the level of “terror” high but also forestalled any dramatic events around which an international response would coalesce.<sup>2708</sup>

#### 9. The Defence Challenge to the Prosecution Allegation of a “Campaign”

761. Throughout the trial, the Defence adduced evidence of shelling, sniping and other activities by the ABiH. The Trial Chamber will analyse this evidence in the section containing the Considerations on the Counts and determine its relevance to the Indictment, and where a finding of relevance is made, the weight to be attached to that evidence. The evidence is set out here as part of the case presented by the Defence.

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<sup>2701</sup> W-156, P625, p. 24 (under seal).

<sup>2702</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 713.

<sup>2703</sup> Bakir Nakaš, 25 Jan 2007, T. 1076 – 1077. *See also*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703, 740.

<sup>2704</sup> W-156, 27 Apr 2007, T. 5331 (closed session), P625, pp 18, 21 (under seal); David Harland, P1, MT. 26936. W-46, P387, p. 14 (under seal).

<sup>2705</sup> David Harland, P1, MT. 27005.

<sup>2706</sup> David Harland, P1, MT. 26955 – 26956.

<sup>2707</sup> David Harland, P1, MT. 26979; P14, Notes of meeting between Smith and Karadžić, dated 21 May 1995, p. 3.

<sup>2708</sup> David Harland, 15 Jan 2007, T. 330 – 331.

762. The Prosecution argued that the conduct of the ABiH and the suffering of the Bosnian Serb population, although regrettable, are not relevant to this case as the evidence pertaining to these matters does not affect the criminal liability of the Accused.

(a) Shelling of SRK-held Territories

763. Evidence was presented regarding shelling by the ABiH.<sup>2709</sup> Prosecution and Defence witnesses testified that the ABiH fired, for example, mortars, from inside the confrontation lines, including from Mount Igman,<sup>2710</sup> Hrasnica and Mojmiilo Hill,<sup>2711</sup> Hum Hill,<sup>2712</sup> Debelo Brdo,<sup>2713</sup> Čolina Kapa<sup>2714</sup> and Alipašino Polje.<sup>2715</sup>

764. Slobodan Bjelica, a journalist with the Bosnian Serbian newspaper in Grbavica (*Sarajevske Srske Novine*) during the Indictment period, testified that many buildings in Grbavica were damaged by the ABiH with heavy weaponry in 1994 and 1995.<sup>2716</sup> He testified that “mostly” the destruction of these buildings happened during exchanges of fire, but on “quite a few occasions” it happened during cease-fires.<sup>2717</sup>

765. Brig. Ghulam Muhammed Mohatarem, Chief UNMO for BiH from February 1995 to January 1996, recalled two instances of ABiH shelling.<sup>2718</sup> Lt. Col. Konings, UNMO in Sarajevo, testified that although he never saw it personally, he heard from other UNMOs that the ABiH fired mortars from inside the confrontation line but never had any proof of it.<sup>2719</sup>

766. Witnesses testified that certain roads in and around Sarajevo were shelled by the ABiH. The Lukavica-Pale road, which was used by civilians for many purposes, including the transportation of

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<sup>2709</sup> Luka Jović, 14 June 2007, T. 6711; Milorad Katić, 1 June 2007, T. 6018; D236, Analysis of consumption of ammunition, dated 20 July 1995; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 2.

<sup>2710</sup> Branislav Dukić, 18 June 2007, T. 6788; Zoran Trapara, 26 June 2007, T. 7311; T-39, 21 June 2007, T. 6994 – 6995; T-41, 18 July 2007, T. 8525 – 8526; T-48, 25 Jun 2007, T. 7202; Sinisa Krsman, 6 June 2007, T. 6254 – 6255; Drazen Maunaga, 12 Jun 2007, T. 6486 – 6487; D333, Photograph marked by T-41; D334, Photograph of Nedzarici.

<sup>2711</sup> T-39, 21 June 2007, T. 6994 – 6995; T-48, 22 June 2007, T. 7149; Drazen Maunaga, 12 June 2007, T. 6486 – 6487. *See also*, T-41, 18 July 2007, T. 8521; Milan Pejić, 21 June 2007, T. 7053; D330, Photograph marked by T-41; D332, Photograph marked by T-41.

<sup>2712</sup> T-41, 18 July 2007, T. 8524; D332, Photograph marked by T-41.

<sup>2713</sup> Momčilo Gojković, 13 July 2007, T. 8255. *See also*, Stevan Veljović, 30 May 2007, T. 5860–5861; Dragan Simić, 5 June 2007, T. 6186, 6218–6219; D208, Photograph marked by Dragan Simić.

<sup>2714</sup> Slobodan Bjelica, 24 July 2007, T. 8758 – 8759. Momčilo Gojković, 13 July 2007, T. 8255, 8264; T-41, 18 July 2007, T. 8553–8554.

<sup>2715</sup> T-60, 25 July 2007, T. 8793 – 8795 (private session), 8821; T-48, 22 June 2007, T. 7170 – 7171; D262, Photograph marked by T-48; D352, Photograph marked by T-60 (under seal). *See also*, Sections II.E.3(c), II.E.5(b) and II.E.9(c) and (d).

<sup>2716</sup> Slobodan Bjelica, 24 July 2007, T. 8766 – 8768; D347, Photograph; D348, Photograph.

<sup>2717</sup> Slobodan Bjelica, 24 July 2007, T. 8768 – 8769.

<sup>2718</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 701, 737 – 738; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 990 – 991, 25 Jan 2007, T. 1014.

<sup>2719</sup> Harry Konings, 12 Mar 2007, T. 3559 – 3560, 13 Mar 2007, T. 3624 – 3625

people to hospitals, and by the military, was under “constant” targeting by the ABiH.<sup>2720</sup> During cross-examination, T-41 said that he was certain that the ABiH opened fire on the road because of the location of their positions and agreed that it was “common knowledge” that the ABiH attacked the road.<sup>2721</sup> Milomir Šoja, employee at *Energoinvest Automatika* from December 1994, heard that on the road between Ilidža and Pale, from Ilidža to Rajlovac and towards Vogošća, persons and vehicles were often fired upon, although he did not say who was responsible for this firing.<sup>2722</sup> The Trial Chamber notes that the Defence stressed, on a number of occasions, the military importance of the Lukavica-Pale road to the SRK. For example, in its Final Brief, the Defence submits, “[h]ad the ABiH forces taken control of this route it could have caused the total defeat of the SRK.”<sup>2723</sup>

767. Evidence was presented regarding the deaths of civilians as a result of the shelling.<sup>2724</sup> Vlastimir Glavaš, a police officer in Ilidža during the Indictment period, testified that on 28 August 1995, he got married at Vrelo Bosne, in the Ilidža municipality.<sup>2725</sup> As the wedding ceremony drew to a close and guests started leaving the church, “shells started falling from the direction of Igman, all around the church and my wedding guests.”<sup>2726</sup> A total of 12 shells fell; 47 people were wounded and a cousin of the bride was killed.<sup>2727</sup> During cross-examination, Vlastimir Glavaš testified that the shells had come from Mount Igman, which he knew was held by the ABiH.<sup>2728</sup> He agreed with the Prosecution suggestion that it was “logical” to assume that “if shells land in your area, it [*sic*] comes from the people surrounding you.”<sup>2729</sup> An UNPROFOR sitrep recorded that the Bosnian Serb Army had reported three mortar rounds had fallen on a church in Ilidža.<sup>2730</sup> In the

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<sup>2720</sup> Milorad Katić, 1 June 2007, T. 6018, 6019, 6047 – 6048; Zoran Trapara, 26 June 2007, T. 7310, 7322 – 7323; Momcilo Gojković, 13 July 2007, T. 8253 – 8254; T-9, 16 July 2007, T. 8350 – 8351; Predrag Trapara, 27 June 2007, T. 7377–7378, 7383; T-41, 18 July 2007, T. 8517 – 8520, 8545 – 8548; Slobodan Bjelica, 24 July 2007, T. 8761; T-15, 13 July 2007, T. 8301. *See also*, Vlajko Božić, 17 July 2007, T. 8432 – 8433, 8435 – 8436; Milomir Šoja, 25 Apr 2007, T. 5168; D200, Map of Sarajevo marked by Milorad Katić; D310, Map marked by Momcilo Gojković; D328, Photograph marked by T-41; D329, Photograph marked by T-41; P908, Photograph marked by T-41.

<sup>2721</sup> T-41, 18 July 2007, T. 8547 – 8548. *See also*, Ljuban Mrković, 12 July 2007, T. 8141–8142.

<sup>2722</sup> Milomir Šoja, 25 Apr 2007, T. 5168. *See also*, Vlajko Božić, 17 July 2007, T. 8419 – 8420; D318, Photograph marked by Vlajko Božić.

<sup>2723</sup> Defence Final Brief, para. 57.

<sup>2724</sup> T-48, 22 June 2007, T. 7133 – 7134; Siniša Krsman, 6 June 2007, T. 6258, 6260; Vlajko Božić, 17 Jul 2007, T. 8433 – 8435; Zoran Samardžić, 13 June 2007, T. 6636 – 6637; Andrey Demurenko, 5 July 2007, T. 7677; T-61, 9 Jul 2007, T. 7851 – 7852, 7863 – 7864; T-9, 16 July 2007, T. 8345, 8358 – 8359. *See also, supra* Section II.E.9(d) ABiH Offensives; T-2, 20 June 2007, T. 6934 – 6935; Milorad Košorac, 26 July 2007, T. 8882; T-53, 11 June 2007, T. 6412; Predrag Trapara, 27 June 2007, T. 7388; Stjepan Djukić, 3 July 2007, T. 7527 – 7528; Stevan Veljović, 29 May 2007, T. 5787 – 5788; D300, Official report of the RS Crime Police Department, dated 2 May 1995.

<sup>2725</sup> Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740.

<sup>2726</sup> Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740.

<sup>2727</sup> Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740, 8745; D343, Official report of RS Police, dated 7 September 1995. *See also*, T-39, 21 June 2007, T. 7000; Milan Pejić, 21 June 2007, T. 7044.

<sup>2728</sup> Vlastimir Glavaš, 24 July 2007, T. 8747 – 8748.

<sup>2729</sup> Vlastimir Glavaš, 24 July 2007, T. 8747 – 8748.

<sup>2730</sup> P21, UNPROFOR sitrep, 28 August 1995, p. 1.

report, it was stated that the ABiH was responsible for the shelling, although this information was unconfirmed.<sup>2731</sup>

(b) Sniping into SRK-held Territories

768. There is evidence that the ABiH undertook sniping.<sup>2732</sup> In a report to the UN Secretary-General, David Harland testified that sniping was a way for the Bosnian Muslims to strike back when “the Serbs” held most of the heavy weapons, controlled the high ground and most of the gas, water and electricity.<sup>2733</sup>

769. There was evidence of the death or injury of Bosnian Serb civilians as a result of ABiH sniping.<sup>2734</sup> Milan Pejić recalled that during cease-fires, both civilians and military personnel were injured by sniping, although there was not the large numbers of wounded that resulted from shelling.<sup>2735</sup> He testified: “It was very hard because there were children who were wounded in front of the school, while riding bicycles, in the streets. There was civilians who were wounded, women, children.”<sup>2736</sup>

770. As in Bosnian Muslim-held areas, tarpaulins and sheets were put up on lines across the roads, and other barriers were constructed, in Bosnian Serb-held areas to block the view of the snipers.<sup>2737</sup> Passages were constructed so that civilians and soldiers could move from place to place

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<sup>2731</sup> P21, UNPROFOR sitrep, 28 August 1995, pp 4, 5.

<sup>2732</sup> David Harland, 15 Jan 2007, T. 332, P2, MT. 28696, 28697. *See also*, W-46, 15 Mar 2007, T. 3816 (closed session), P387, pp 14 – 15 (under seal); Vahid Karavelić, P492, p. 11, P493, p. 8, P494, GT. 11949 – 11953, 11957; Ismet Hadžić, 6 Mar 2007, T. 3257 – 3258, 6 Mar 2007, T. 3228 – 3231, 3284; David Harland, 16 Jan 2007, T. 459; W-156, P625, p. 34 (under seal); John Jordan, P267, p. 8; D99, Order by Nedžad Ajnadžić, 14 Feb 1994, p. 1; D107, Order by Fikret Prevljak, 26 June 1995, p. 1; D251, Order, 5 March 1993. *See also supra*, para. 77.

<sup>2733</sup> David Harland, P2, MT. 28696.

<sup>2734</sup> Vaso Elez, 7 June 2007, T. 6345 – 6346, 6379; T-41, 18 Jul 2007, T. 8494, 8495, 8497 – 8501, 8511, 8559 – 8560; T-2, 20 June 2007, T. 6947; Martin Bell, 26 Apr 2007, T. 5253; D104, Report by FRY Committee for Compiling Data on Crimes against Humanity and International Law, dated January 1998, p. 11; D220, Photograph marked by Vaso Elez, 7 June 2007; D324, Photograph of Faculty of Mathematics and Natural Sciences; P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, 15 September 1994, p. 4; P391, UNPROFOR report, 17 November 1994, p. 2. *See also*, Vlajko Božić, 17 July 2007, T. 8419 – 8420; Milorad Košorac, 26 July 2007, T. 8882; Simo Tuševljak, 11 July 2007, T. 8068 – 8069, 12 July 2007, T. 8105, 8117 – 8119; D300, Official report of RS Crime Police Department, 2 May 1995. *Cf.* Luka Jović, 18 June 2007, T. 6729 – 6730.

<sup>2735</sup> Milan Pejić, 21 June 2007, T. 7038 – 7039.

<sup>2736</sup> Milan Pejić, 21 June 2007, T. 7038 – 7039.

<sup>2737</sup> Martin Bell, 27 Apr 2007, T. 5288 – 5289; T-48, 22 June 2007, T. 7170 – 7171; T-41, 18 July 2007, T. 8511 – 8512, 8537 – 8538; D325, Photograph; D327, Photograph of Nedzarici; D355, Photograph; D338, Video. Note that in cross-examination, the Prosecution stated that on the video, the drive appeared relaxed, contrary to the witness’s testimony that there was constant danger: *see* T-41, 18 July 2007, T. 8540 – 8544; Slobodan Bjelica, 24 July 2007, T. 8761, 8771 – 8872; Vlastimir Glavaš, 24 July 2007, T. 8746; T-48, 22 June 2007, T. 7167; Milan Mandić, 4 July 2007, T. 7608 – 7609; T-7, 19 June 2007, T. 6851; Milorad Katić, 1 June 2007, T. 5992, 6033, 6034.

concealed.<sup>2738</sup> Slobodan Bjelica testified that there were “at least” 50 sign posts in Grbavica warning people of the presence of snipers.<sup>2739</sup>

771. Witnesses testified that there were military targets, as well as civilians, in Grbavica.<sup>2740</sup> According to David Harland, the sniper fire from the “Bosnian Government” “tended to be concentrated from a relatively small number of buildings overlooking Grbavica.”<sup>2741</sup> Several witnesses testified that Grbavica was exposed to fire from numerous locations under the control of the ABiH, for example, Mojmiilo Hill, Debelo Brdo, the Loris Building, Hum Hill and Pofalići.<sup>2742</sup>

772. Luka Jović testified that the ABiH was “constantly exerting pressure” on people living in Dobrinja IV by firing shots from Dobrinja II and III.<sup>2743</sup> T-60 testified that “prolonged bouts of rifle fire” came from Alipašino Polje and that Vojničko Polje, an ABiH-held area between Nedarići and Alipašino Polje, was known as the “lair of snipers.”<sup>2744</sup>

(i) Specific Sniping Incidents against Bosnian Serbs

773. On 11 March 1995 at approximately 1630 hours, the daughter of Nedeljko Učur and another young girl, were killed by ABiH sniper fire while in front of the building, Rave Janković Street, number 59, in Grbavica.<sup>2745</sup> Nedeljko Učur, soldier of the SRK 1<sup>st</sup> Sarajevo Brigade at the time, said that three men in uniform, including himself, were also there and that the men in uniform were not shot at.<sup>2746</sup> The Prosecution submitted that the perpetrators of this sniping had been punished by the Bosnian Muslim authorities.<sup>2747</sup> Nedeljko Učur and Simo Tuševljak could not confirm that the

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<sup>2738</sup> Radomir Visnjić, 25 June 2007, T. 7246 – 7247; T-41, 18 July 2007, T. 8497 – 8498; T-7, 19 June 2007, T. 6851; D323, Photograph of apartment building in Dobrinja; D327, Photograph of Nedzarici; D350, Photograph of Grbavica; T-7, 19 June 2007, T. 6851.

<sup>2739</sup> Slobodan Bjelica, 24 July 2007, T. 8770 – 8771; Nedeljko Učur, 26 July 2007, T. 8917 – 8918; D349, Photograph; D355, Photograph.

<sup>2740</sup> Zoran Trapara, 26 June 2007, T. 7321; Vaso Elez, 7 June 2007, T. 6340 – 6341; David Fraser, 7 Feb 2007, T. 1792 – 1793. *See also*, Slobodan Bjelica, 24 July 2007, T. 8764 – 8765.

<sup>2741</sup> David Harland, 15 Jan 2007, T. 331 – 332.

<sup>2742</sup> T-5, 25 June 2007, T. 7222; Radomir Visnjić, 25 June 2007, T. 7254–7255; Sinisa Krsman, 6 June 2007, T. 6254; Vaso Elez, 6 June 2007, T. 6307, 6310, 6312 – 6313, 7 June 2007, T. 6324 – 6325, 6333 – 6334; Stevan Veljović, 24 May 2007, T. 5719–5721, 29 May 2007, T. 5744–5745; Milorad Katić, 31 May 2007, T. 5981, 1 June 2007, T. 6036, 5 June 2007, T. 6157–6158; T-41, 18 July 2007, T. 8515–8516, 8521; Mirza Sabljica, 19 Apr 2007, T. 4742–4746; Stevan Veljović, 29 May 2007, T. 5744; Slobodan Bjelica, 24 July 2007, T. 8777–8779; D218, Photograph marked by Vaso Elez; D331, Photograph marked by T-41.

<sup>2743</sup> Luka Jović, 14 Jun 2007, T. 6697 – 6698, 6714. *See also*, D238, Report on consumption of ammunition, dated 20 June 1995.

<sup>2744</sup> T-60, 25 July 2007, T. 8821, 8857.

<sup>2745</sup> Nedeljko Učur, 26 July 2007, T. 8909 – 8910; Predrag Carkic, 19 June 2007, T. 6887 – 6888; Simo Tuševljak, 11 July 2007, T. 8071, 8077 (private session); David Harland, 16 Jan 2007, T. 461, 464; Rupert Smith, P334, pp 9 – 10; P24, UNPROFOR report, 12 March 1995, pp 1 – 2; D301, UNPROFOR report on sniping in Grbavica, dated 13 March 1995 (under seal). *See also*, Slobodan Bjelica, 24 July 2007, T. 8763; Milorad Katić, 1 June 2007, T. 6037.

<sup>2746</sup> Nedeljko Učur, 26 July 2007, T. 8911, 8918.

<sup>2747</sup> *See* P24, UNPROFOR report, 12 March 1995, pp 1 – 2; P25, UNPROFOR cable, 14 March 1995, p. 2.

perpetrators had been punished when confronted with this information during cross-examination.<sup>2748</sup>

774. Vaso Elez, a soldier in the SRK 1<sup>st</sup> Sarajevo Brigade, testified that he had heard about Bosnian Serbs who tried to cross the Miljacka River “and these attempts ended in the Miljacka.”<sup>2749</sup> He also heard about attempts to cross sides, over a street near the Grbavica stadium.<sup>2750</sup> An ABiH combat report noted that on 15 October 1994, “[a]t 2015 hours, our guard, who is at Palma, noticed an escapee who tried to escape to the aggressor’s side. He opened fire and on that occasion he wounded him.”<sup>2751</sup> According to another ABiH combat report dated 7 April 1995, a woman was similarly shot while attempting to cross into Novo Sarajevo around 1930 hours.<sup>2752</sup> Milorad Katić acknowledged that the ABiH report on the incident only stated the facts of the incidents and did not mention that the incident took place in the dark along the confrontation line.<sup>2753</sup> During cross-examination, Vaso Elez agreed with the Prosecution that this incident concerned an individual who was trying to cross the lines between two opposing forces in the dark.<sup>2754</sup> Vaso Elez went on to state that there were “several cases” like the one described in the ABiH combat report; “I don’t know the actual names involved but quite a few things like that happened.”<sup>2755</sup>

(c) Defence Allegations of Provocation by the ABiH

775. The Defence submitted that “[u]nits of the BH Army sometimes opened fire in order to draw fire from SRK units so as to portray the latter to the international community as the side that violated the cease-fire.”<sup>2756</sup> Some witnesses testified that the SRK only fired in response to ABiH firing.<sup>2757</sup> In cross-examination, Martin Bell maintained his earlier statement that:

“If there was a general pattern to the fighting in the Sarajevo during the whole of the siege, it was that the Muslims would attack outwards with small arms and infantry, and the Serbs would respond with artillery because that was their strength. The world therefore got an impression that Sarajevo was under constant and unprovoked bombardment. However, the war was being waged by both sides. I would even say that the Muslims had a political interest in provoking the Serbs to use their heavy artillery.”<sup>2758</sup>

776. According to Maj. Gen. Nicolai, UNPROFOR Chief of Staff from 28 February 1995 to 2 September 1995, the ABiH “regularly” fired from various locations around the city that were “very

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<sup>2748</sup> Nedeljko Učur, 26 July 2007, T. 8929 – 8930; Simo Tuševljak, 12 July 2007, T. 8120 – 8122.

<sup>2749</sup> Vaso Elez, 7 June 2007, T. 6327.

<sup>2750</sup> Vaso Elez, 7 June 2007, T. 6327.

<sup>2751</sup> D216, Daily combat report by Enis Srna, dated 15 October 1994; Vaso Elez, 7 June 2007, T. 6329, 6331 – 6332.

<sup>2752</sup> Milorad Katić, 1 June 2007, T. 6040 – 6041; D205, ABiH daily combat report by Sifat Podžić, dated 7 April 1995.

<sup>2753</sup> Milorad Katić, 4 June 2007, T. 6133, 6134 – 6135; D205, ABiH daily combat report by Sifat Podžić, 7 April 1995.

<sup>2754</sup> Vaso Elez, 7 June 2007, T. 6358, 6359 – 6360.

<sup>2755</sup> Vaso Elez, 7 June 2007, T. 6332 – 6333.

<sup>2756</sup> See Defence Final Brief, para. 84.

<sup>2757</sup> See e.g. Borislav Kovačević, 10 July 2007, T. 7938 – 7939; T-60, 25 July 2007, T. 8800.

<sup>2758</sup> Martin Bell, 26 Apr 2007, T. 5272, D178, p. 14.



often” “very close” to UN positions, namely the PTT Building, the Zetra ice stadium and the Marshal Tito Barracks, and that it used “mobile mortars”.<sup>2759</sup> He testified that he was informed about such incidents by UNMOs and UNPROFOR personnel, from whom he had heard of “definitely more” than ten other incidents of ABiH provocation.<sup>2760</sup> In this regard, Maj. Gen. Karavelić, Commander of the 1<sup>st</sup> Corps of the ABiH, denied knowledge of the existence of “mobile mortars” within the ABiH and said that the term was fabricated by the SRK and promoted through UNPROFOR, in order to conceal actions by the SRK.<sup>2761</sup>

777. There is evidence that there were varying opinions within UNPROFOR as to the reason the ABiH shot from positions near to UNPROFOR’s location. While some assumed or believed that the shooting was intended to draw SRK fire onto UNPROFOR, others noted UNPROFOR was used as a shield for ABiH actions or that the proximity of the weapons near UNPROFOR positions was due to an increase in weaponry in the city at that time.<sup>2762</sup> An UNPROFOR report, dated 2 July 1995, stated: “Either way, there has been an increase in the number of Serb shells hitting UNPROFOR targets. The Sector does not consider this to be wayward counter-battery fire from the Serbs, but direct targeting.”<sup>2763</sup>

778. Maj. Gen. Nicolai confirmed as “an example of the Bosnian attitude” an instance when Hasan Muratović, a Minister in the Bosnian Muslim Government, complained about sniping at a water distribution point in Hrasno and asked for UN protection.<sup>2764</sup> Maj. Gen. Nicolai told Hasan Muratović that placing the water distribution point on Heroes’ Square, near the confrontation line and in full sight of the SRK, was a way of provoking the sniping and he suggested that the water distribution point be moved to a safer location.<sup>2765</sup>

779. Some witnesses recalled specific instances of provocation.<sup>2766</sup> Other witnesses rejected the notion that the ABiH engaged in provocation. For example, Ismet Hadžić dismissed the suggestion, as put to him by the Defence, that the ABiH provoked the SRK in Sarajevo in order to “attract the

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<sup>2759</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 964, 996 – 997, 25 Jan 2007, T. 1048 – 1049; P898, UNMO daily sitrep, 3 July 1995. *See also*, Rupert Smith, 7 Mar 2007, T. 3355 – 3556; W-156, 27 Apr 2007, T. 5372 – 5374 (closed session); Luka Dragičević, 26 Mar 2007, T. 4035; David Harland, 16 Jan 2007, T. 430.

<sup>2760</sup> Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1048. *See also*, Stevan Veljović, 29 May 2007, T. 5807.

<sup>2761</sup> Vahid Karavelic, 27 Mar 2007, T. 4144 – 4145, P493, p. 5, P494, GT. 11884, 12030.

<sup>2762</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 997 – 998; Rupert Smith, 7 Mar 2007, T. 3355 – 3556; W-156, 27 Apr 2007, T. 5356 – 5357 (closed session); D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

<sup>2763</sup> P19, UNPROFOR sitrep, 2 July 1995, p. 4.

<sup>2764</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1004.

<sup>2765</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1004.

<sup>2766</sup> Martin Bell, 27 Apr 2007, T. 5287; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 984 – 988; Momcilo Gojković, 13 July 2007, T. 8254; Miroslav Pejić, 16 July 2007, T. 8368 – 8369; Radomir Visnjić, 25 June 2007, T. 7265; T-60, 25 July 2007, T. 8819 – 8820; D217, Interim combat report by Fikret Prevljak, 1 July 1995, pp 1 – 2; D237, Diagram marked by Luka Jović.

attention of the Serbian forces” and then focus ABiH operations outside Sarajevo.<sup>2767</sup> W-137 rejected as “an insane idea” the Defence proposition that the ABiH fired from civilian areas, such as water collection points, to provoke the SRK.<sup>2768</sup>

(d) ABiH Offensives

780. The Trial Chamber received a considerable amount of evidence, mainly presented by the Defence, pertaining to offensives carried out by ABiH in and around Sarajevo during the Indictment period, and particularly during the summer months of 1995.

781. There is evidence that ABiH offensive action increased in August and September 1994.<sup>2769</sup> On 18 September 1994, the ABiH launched an attack on SRK positions in eastern Sarajevo,<sup>2770</sup> including around Špicasta Stijena, leading to SRK retaliatory action to retake territories.<sup>2771</sup> According to Maj. Eimers, the ABiH also attacked western Sarajevo, attempting to break the siege of Sarajevo from the “Igman Olympic Road area to get into the direction of Goradže” by firing 200 mortar shells an hour.<sup>2772</sup> In addition, Zoran Trapara recalled that from August 1994, the ABiH were regrouping outside Sarajevo, using the tunnel and via Mount Igman.<sup>2773</sup> According to him, this regrouping continued through May 1995 “and onwards”; the ABiH “were preparing for a frontal attack on all Serb positions.”<sup>2774</sup> The Trial Chamber notes that the 14<sup>th</sup> Division of the 1<sup>st</sup> Corps of the ABiH had its command post in Tarčin and its area of responsibility was the Igman area.<sup>2775</sup>

782. Following this period of military action, there was, according to a number of witnesses, a “lull” in the fighting from the latter months of 1994 and until the summer months of 1995.<sup>2776</sup> Other evidence shows combat activity in and around Sarajevo during that time.<sup>2777</sup>

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<sup>2767</sup> Ismet Hadžić, 6 Mar 2007, T. 3289.

<sup>2768</sup> W-137, 20 Feb 2007, T. 2514.

<sup>2769</sup> D158, Order by Rasim Delić, dated 2 November 1994; Vahid Karavelić, 28 Mar 2007, T. 4240, P493, p. 3.

<sup>2770</sup> David Harland, 15 Jan 2007, T. 387 – 389, P2, MT. 28687; D3, UNPROFOR Memo on 18 Sep 1994 ABiH attack; D4, Memo of Pale and Sarajevo Meetings, 20 September 1994.

<sup>2771</sup> Anđelko Dragaš, 22 June 2007, T. 7065 – 7066; Vljako Božić, 17 July 2007, T. 8429, 8467 – 8468; T-15, 13 July 2007, T. 8311; D156, Daily combat report by Vahid Karavelić, dated 19 September 1994; Vahid Karavelić, 28 Mar 2007, T. 4237.

<sup>2772</sup> Ronald Eimers, 20 Apr 2007, T. 4807, P585, p. 5. *See also*, T-39, 21 June 2007, T. 6997; D187, Report on 1<sup>st</sup> Corps combat achievements, 1 November 1994.

<sup>2773</sup> Zoran Trapara, 26 June 2007, T. 7311. *See also*, T-2, 20 June 2007, T. 6934 – 6935; Borislav Kovačević, 9 July 2007, T. 7892; D275, Order by Fikret Prevljak, dated 6 August 1995; Ismet Hadžić, 6 Mar 2007, T. 3287, 3289.

<sup>2774</sup> Zoran Trapara, 26 June 2007, T. 7311 – 7312. *See also*, Stevan Veljović, 29 May 2007, T. 5759.

<sup>2775</sup> Ismet Hadžić, 6 Mar 2007, T. 3273.

<sup>2776</sup> T-2, 20 June 2007, T. 6934 – 6935; T-5, 25 June 2007, T. 7214 – 7215; T-9, 16 July 2007, T. 8355 – 8356; T-39, 21 June 2007, T. 6998; T-52, 28 June 2007, T. 7436 – 7437; Zoran Trapara, 26 June 2007, T. 7304, 7311; Borislav Kovačević, 9 July 2007, T. 7891; Stjepan Djukić, 3 July 2007, T. 7513, 7514; Vljako Božić, 17 July 2007, T. 8431 – 8432; Ljuban Mrković, 12 July 2007, T. 8144, 8164; Simo Tuševljak, 11 July 2007, T. 8045 – 8046; Vlastimir Glavaš, 24 July 2007, T. 8739; Dragan Simić, 5 June 2007, T. 6175; Milorad Katić, 1 June 2007, T. 6037; Martin Bell, 27 Apr 2007, T. 5280 – 5281; Andrey Demurenko, 5 July 2007, T. 7671, 12 July 2007, T. 8183 – 8184; P836, UNPROFOR

783. According to Gen. Smith, UNPROFOR had observed from March 1995 “the general opening up” of an ABiH offensive that began in June 1995.<sup>2778</sup> Radovan Karadžić informed Gen. Smith, at a meeting on 5 April 1995, that the VRS had decided to launch a counter-attack, although it was likely to bring the Bosnian Serbs into confrontation with the UN and NATO.<sup>2779</sup> In addition, Radovan Karadžić told Gen. Smith that if the Bosnians launched an offensive to open up a land corridor to Sarajevo, as his intelligence told him would happen, “we will take Sarajevo.”<sup>2780</sup>

784. The ABiH mounted a series of attacks against SRK positions in May 1995.<sup>2781</sup> On 8 June 1995, Maj. Gen. Karavelić ordered the 1<sup>st</sup> Corps to carry out a co-ordinated “simultaneous” attack.<sup>2782</sup> According to Maj. Veljović, this operation, which began at 0310 hours on 15 June 1995, was code-named “Operation T-95” and 61.5 per cent of the “total potential army of Bosnia and Herzegovina” was involved, that is, between 130,000 to 135,000 men, against “a corps” of 18,000 men.<sup>2783</sup> The evidence of the total number of ABiH soldiers as presented by Maj. Veljović is not supported by other evidence, although his evidence regarding the number of soldiers in the SRK is supported by other evidence, as discussed elsewhere in this Judgement.<sup>2784</sup> The Trial Chamber notes that, according to Stevan Veljović, the attack affected, for example, the areas of Viseko and Kaluk towards Vogošća, Žuč, Semizovac, the Nišići river valley from the direction of Debelo Brdo, Žlatiste, Hreša and the Lukavica Barracks.<sup>2785</sup>

785. There is detailed evidence before the Trial Chamber regarding this major ABiH offensive, in which the “Bosnians attacked Serb positions all along the confrontation line, attacking out of the

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sitreps, 28 December 1994; P873, UNMO daily sitrep, dated 26 January 1995; P874, UNMO daily sitrep, dated 14 February 1995.

<sup>2777</sup> Milan Mandić, 3 July 2007, T. 7561; Vljako Božić, 17 July 2007, T. 8413 – 8414; T-2, 20 June 2007, T. 6933, 6934; Borislav Kovačević, 9 July 2007, T. 7891; Simo Tuševljak, 12 July 2007, T. 8111 – 8112; Siniša Krsman, 6 June 2007, T. 6251; Zoran Trapara, 26 June 2007, T. 7307, 7311 – 7312; P866, UNPROFOR daily sitrep, dated 18 November 1994, p. 6; P867, UNPROFOR daily sitrep, 14 December 1994, p. 4; P877, UNMO daily sitrep, 28 February 1995, p. 8. *See also*, Louis Fortin, P27, p. 10; Ronald Eimers, P584, p. 4. *See also*, P765, Report on expenditure of ammunition, 11 January 1995 (under seal), which records the use of ammunition by the SRK during November and December 1994, including 136,080 7.62 mm bullets for automatic rifles and tracers, 900 sniper bullets and three aerial bombs.

<sup>2778</sup> Rupert Smith, 7 Mar 2007, T. 3379, 3392, P334, p. 7. *See also*, W-156, 27 Apr 2007, T. 5351 (closed session); Ljuban Mrković, 12 July 2007, T. 8144.

<sup>2779</sup> Rupert Smith, P334, p. 10.

<sup>2780</sup> Rupert Smith, P334, p. 11. *See also*, Ronald Eimers, P585, p. 9.

<sup>2781</sup> Harry Konings, 13 Mar 2007, T. 3651 – 3652; Momčilo Gojković, 13 Jul 2007, T. 8259 – 8260D308, Combat report, dated 24 May 1995; Louis Fortin, P27, p. 10. *See also*, Stevan Veljović, 29 May 2007, T. 5773, 5775 – 5776; D188, Interim combat report by Vahid Karavelić, dated 5 May 1995; D189, Combat report by Vahid Karavelić, dated 5 May 1995.

<sup>2782</sup> D190, Order of Vahid Karavelić for attack, dated 8 June 1995, p. 4. *See also*, Stevan Veljović, 29 May 2007, T. 5785.

<sup>2783</sup> Stevan Veljović, 29 May 2007, T. 5784. *See also*, Martin Bell, 27 Apr 2007, T. 5287; Zoran Trapara, 26 June 2007, T. 7315; D191, Daily combat report, dated 16 June 1995; D192, Combat report, dated 16 June 1995.

<sup>2784</sup> *See supra*, Section II.B.1(b) ABiH and 1<sup>st</sup> Corps, and para. 69.

<sup>2785</sup> Stevan Veljović, 29 May 2007, T. 5787.

city, and into it, from the South, West and North”.<sup>2786</sup> The offensive was intended to “break the siege of Sarajevo”.<sup>2787</sup> Maj. Veljović testified that, from 15 June 1995 until 21 June 1995, there were “intensive” attacks on the northern and southern fronts.<sup>2788</sup>

786. T-53 stated that as a result of the ABiH attacks, the civilians on the territory held by the SRK were “concerned about their lives” and the lives of their families.<sup>2789</sup> He testified:

“[e]veryone rose to defend the Serb positions, from those aged 18 to senior citizens who were still strong enough to carry a weapon. Rest assured that this was the only reason that the area was actually defended. The BH army operations were incredible, mind-boggling, the fiercest since the beginning of the war. Only those determined to defend their homes could remain.”<sup>2790</sup>

787. Evidence shows that the attacks were “fierce” in the last week of June 1995 and the first week of July 1995, with attacks along several parts of the confrontation lines, including Grbavica,<sup>2791</sup> Dobrinja I and IV, Hrasno, the Lukavica-Trebević-Pale road and Špicasta Stijena.<sup>2792</sup> Furthermore, UNPROFOR reported that on 28 June 1995, “the BiH launched an infantry attack against Serb-populated settlement of Nedarići, supported by mortar and artillery fire. The attack was repelled.”<sup>2793</sup> Another witness testified that Nedarići was inhabited by civilians, as were other areas, but there were also Bosnian Serb trenches and military facilities.<sup>2794</sup> Still further witness and documentary evidence concerns ongoing combat actions throughout July<sup>2795</sup> and August 1995.<sup>2796</sup>

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<sup>2786</sup> W-156, 27 Apr 2007, T. 5350 – 5351, 5362 – 5363 (closed session); P16, UNPROFOR sitrep, 24 June 1995, pp 1-2; D159, Report by Fikret Prevljak on active combat actions, dated 4 July 1995; T-53, 11 Jun 2007, T. 6409; D139, SRK report on 15 June 1995 ABiH offensive, dated 16 June 1995, p. 1; D118, Report by Fikret Prevljak, dated 4 July 1995. Evidence was also presented regarding attacks that took place on 20 and 21 June 1995: T-2, 20 Jun 2007, T. 6977; D217, Interim combat report by Fikret Prevljak, 1 July 1995, p. 1; D313, Combat report, dated 20 June 1995; P777, 1<sup>st</sup> Iliđža Infantry Brigade command daily report, 21 June 1995, p. 1. *See also*, Zoran Samardžić, 13 Jun 2007, T. 6636; Rupert Smith, P334, p. 15; P891, UNMO daily sitrep, 17 June 1995; P892, UNMO daily sitrep, dated 18 June 1995.

<sup>2787</sup> Differing views as to the purpose of this offensive were presented before the Trial Chamber. D282, Report by Vahid Karavelić, dated 15 June 1995, p. 1, stated the objective of the offensive was “to break the siege of Sarajevo”; W-156, 27 Apr 2007, T. 5372 – 5374 (closed session). D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2, reported that the “Bosnian objectives seem to be to tie down Serb forces around the city, while they chip away at the Serb defenses in areas of their choosing”; D107, Report by Fikret Prevljak, 26 June 1995. *Cf.* T-53, 11 Jun 2007, T. 6410.

<sup>2788</sup> Stevan Veljović, 29 May 2007, T. 5787, 5793 – 5794. *See also*, T-9, 16 July 2007, T. 8355 – 8358; Asam Butt, 15 Feb 2007, T. 2237; Vaso Elez, 7 June 2007, T. 6333 – 6334; Luka Dragičević, 26 Mar 2007, T. 4025.

<sup>2789</sup> T-53, 11 June 2007, T. 6411. *See also*, Simo Tuševljak, 11 July 2007, T. 8045 – 8046.

<sup>2790</sup> T-53, 11 June 2007, T. 6411. *See also*, T-2, 20 June 2007, T. 6934 – 6935.

<sup>2791</sup> Vaso Elez, 7 June 2007, T. 6340 – 6341, 6342; D220, Photograph marked by Vaso Elez.

<sup>2792</sup> Siniša Krsman, 6 Jun 2007, T. 6257 – 6258; D273, Combat report by Fikret Prevljak, dated 25 June 1995; Radomir Visnjić, 25 Jun 2007, T. 7262 – 7263; D107, Report by Fikret Prevljak, 26 June 1995; Siniša Krsman, 6 Jun 2007, T. 6257 – 6258. *See also*, Zoran Trapara, 26 Jun 2007, T. 7315 – 7317, 7320 – 7321; Predrag Trapara, 27 Jun 2007, T. 7385 – 7387; P19, UNPROFOR sitrep, 2 Jul 1995, p. 2; Vaso Elez, 7 Jun 2007, T. 6335, 6341, 6342; D217, Interim combat report by Fikret Prevljak, 1 July 1995, p. 1; D220, Photograph marked by Vaso Elez; D313, Combat report, 26 June 1995; P847, UNMO daily sitrep, dated 22 June 1995; Radomir Visnjić, 25 Jun 2007, T. 7262 – 7263.

<sup>2793</sup> D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2. *See also*, Louis Fortin, 16 Jan 2007, T. 476; W-156, 27 Apr 2007, T. 5354 – 5355 (closed session), P19, UNPROFOR sitrep, 2 July 1995; P767, Request for ammunition, 22 June 1995.

<sup>2794</sup> W-156, 27 Apr 2007, T. 5377 (closed session). *See also*, T-48, 22 June 2007, T. 7147–7148, 7158; T-52, 28 June 2007, T. 7426, 7436, 7443.

<sup>2795</sup> Goran Kovačević, 13 June 2007, T. 6563; T-48, 22 June 2007, T. 7145; T-52, 28 June 2007, T. 7438; T-52, 28 June 2007, T. 7439. *See also*, Vahid Karavelić, 29 Mar 2007, T. 4251; D61, Order by Fikret Prevljak, 6 July 1995; D219,

788. A number of Defence witnesses also gave evidence regarding combat activity in areas of BiH that may be considered to be outside the geographical scope of the Indictment, including, Semizovac-Srednje, the Vareš municipality and the Nišići Plateau<sup>2797</sup> and the Treskavica and Trnovo area.<sup>2798</sup> Borislav Kovačević explained that during the ABiH attack on SRK positions at the Nišići Plateau on the morning of 15 June 1995, there was a lot of shelling and that while shells landed on the frontlines, shells also “overshot, landing in the rear on civilians.”<sup>2799</sup> Milan Pejić, a doctor during the war, testified that in 1995 there were “intense attacks”, particularly in the Blažuj area by the ABiH.<sup>2800</sup> He said that this was a “well-known offensive in which we had a large number of wounded” and that it was “just shelling, indiscriminate shelling.”<sup>2801</sup>

(e) Effect of Conflict on Bosnian Serbs

789. The Trial Chamber heard evidence that the Bosnian Serb civilians who lived in and around Sarajevo suffered hardships during the conflict.<sup>2802</sup> Martin Bell testified that while there were fewer civilians in SRK-held areas, because those who were not men of military age could get out, there was anger and anxiety about the sniper activity and, in that regard, “there was no monopoly of suffering and that certainly [...] applied to the Serbs.”<sup>2803</sup> T-60 testified that the conflict was very hard for “all citizens” but that the Bosnian Serb population living in the ABiH-held territory “had

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Order by Enver Hadzihasanović for Rasim Delić, dated 11 July 1995; Vaso Elez, 7 June 2007, T. 6344, 6368 – 6370; D272, Report by Fikret Prevljak, dated 21 July 1995. *See also*, P764, Photograph marked by Vaso Elez; Radimir Visnjić, 25 June 2007, T. 7260 – 7261; P898, UNMO daily sitrep, 3 July 1995; P901, UNMO daily sitrep, dated 6 July 1995; P850, UNMO daily sitrep, 9 July 1995; P849, UNMO daily sitrep, 20 July 1995; P903, UNMO daily sitrep, dated 21 July 1995; P843, UNMO daily sitrep, 23 July 1995; P848, UNMO daily sitrep, dated 26 July 1995; P19, UNPROFOR sitrep, 2 July 1995, p. 1; W-156, 27 Apr 2007, T. 5354 – 5355 (closed session); *Cf.* Luka Dragičević, 26 Mar 2007, T. 4051; Stevan Veljović, 29 May 2007, T. 5784 – 5785; Ronald Eimers, P585, p. 9.

<sup>2796</sup> T-53, 11 Jun 2007, T. 6412 – 6413; D62, Order by Fikret Prevljak, 23 Aug 1995; P840, UNMO daily sitrep, dated 15 August 1995, p. 2; P841, UNMO daily sitrep, 19 August 1995; P842, UNMO daily sitrep, 21 August 1995; P845, UNMO daily sitrep, dated 29 August 1995; P851, UNMO daily sitrep, dated 30 August 1995; P768, Order issuing SRK units with air bombs, 24 August 1995.

<sup>2797</sup> Stevan Veljović, 29 May 2007, T. 5799; Vlastimir Glavaš, 24 July 2007, T. 8732; Dragan Simić, 5 June 2007, T. 6173, 6175; Vlajko Božić, 17 July 2007, T. 8430 – 8436; Stjepan Djukić, 3 July 2007, T. 7526 – 7528; Borislav Kovačević, 9 July 2007, T. 7890 – 7893; T-9, 16 July 2007, T. 8350 – 8351, 8354 – 8356; Drazen Maunaga, 12 June 2007, T. 6507; Miroslav Pejić, 16 July 2007, T. 8373 – 8374; D282, Report by Vahid Karavelić, 15 June 1995; D290, Report from Kakanj Command Post, dated 7 November 1994; D474, Regular combat report by Izet Berkovac, dated 18 June 1995; P766, Request for ammunition, 16 June 1995.

<sup>2798</sup> Stevan Veljović, 29 May 2007, T. 5771 – 5773; Rade Ivanović, 4 July 2007, T. 7642 – 7643; T-53, 11 June 2007, T. 6400; T-61, 9 July 2007, T. 7852 – 7853; Drazen Maunaga, 12 June 2007, T. 6497 – 6498, 6507; Radimir Visnjić, 25 June 2007, T. 7260; D188, Interim combat report by Vahid Karavelić, 5 May 1995.

<sup>2799</sup> Borislav Kovačević, 9 July 2007, T. 7893 – 7894.

<sup>2800</sup> Milan Pejić, 21 June 2007, T. 7039.

<sup>2801</sup> Milan Pejić, 21 June 2007, T. 7039.

<sup>2802</sup> Vaso Elez, 7 June 2007, T. 6346 – 6347; *Cf.* Stevan Veljović, 31 May 2007, T. 5929.

<sup>2803</sup> Martin Bell, 26 Apr 2007, T. 5253.

particular difficulties taking this in.”<sup>2804</sup> The Trial Chamber also heard evidence that the effects of the siege were especially acute for the civilians living inside the confrontation lines.<sup>2805</sup>

790. In Bosnian Serb territory, the population faced difficulties getting food, water and electricity.<sup>2806</sup> Vaso Elez testified that the sanctions imposed on RS by Serbia and Montenegro exacerbated the food shortage and Bosnian Serb civilians and soldiers outside the confrontation lines relied upon humanitarian aid.<sup>2807</sup> Zoran Trapara testified that the Bosnian Serb population was in a “worse” situation than the population within the confrontation lines: “They were being financed by the whole world. They brought food to Sarajevo by plane. 90 per cent of the food that came to Sarajevo was sent to the town. Nothing reached the Serb parts.”<sup>2808</sup> However, T-61 testified that, as far as he was aware, food supplies were “somewhat better” on the Bosnian Serb side, than on the Bosnian Muslim side, although he testified that humanitarian aid was distributed “very unevenly, to the detriment of the Serb side.”<sup>2809</sup>

791. People were very fearful.<sup>2810</sup> Zoran Trapara recalled, “[m]y house, where I lived, where I slept, was 2 or 300 metres away from the front line, and it was exposed to sniper fire and barrage fire on a daily basis and shelling as well from the Muslim side.”<sup>2811</sup> Luka Jović testified that he and his family rarely went outside and, when they did, they left through a window in a neighbouring apartment.<sup>2812</sup> It was too dangerous to leave Dobrinja IV during the day because one might be shot, so they left to get food only at night.<sup>2813</sup>

792. With regard to the period of the ABiH offensive, Col. Dragičević testified that it was not possible to conduct investigations into the deaths of civilians on SRK-held territory, “[w]e were not even able to bury them peacefully.”<sup>2814</sup> Simo Tuševljak confirmed that the Bosnian Serb police sent 217 official reports of its investigations into “war crimes” committed against Bosnian Serb civilians

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<sup>2804</sup> T-60, 25 Jul 2007, T. 8799. *See also*, Slobodan Bjelica, 24 Jul 2007, T. 8772 – 8773; Ljuban Mrković, 12 Jul 2007, T. 8184 – 8185.

<sup>2805</sup> Martin Bell, 26 Apr 2007, T. 5264; David Harland, 15 Jan 2007, T. 372. *Cf.* Rupert Smith, 7 Mar 2007, T. 3380.

<sup>2806</sup> Ljuban Mrković, 12 July 2007, T. 8184 – 8185; T-61, 9 July 2007, T. 7883. *See also*, Zoran Samardžić, 13 June 2007, T. 6635; Milorad Katić, 1 June 2007, T. 6031 – 6032; Luka Jović, 14 June 2007, T. 6700; D354, Photograph.

<sup>2807</sup> Vaso Elez, 7 June 2007, T. 6323, 6346. Trial Chamber notes that according to David Harland, on 4 August 1994, the FRY imposed sanctions on the VRS, which remained in force when the Accused became SRK Commander: David Harland, 15 Jan 2007, T. 391 – 392. *See also*, Zoran Samardžić, 13 June 2007, T. 6629 – 6630; Goran Kovačević, 12 June 2007, T. 6556; Zoran Trapara, 26 June 2007, T. 7351 – 7352.

<sup>2808</sup> Zoran Trapara, 26 June 2007, T. 7351 – 7352.

<sup>2809</sup> T-61, 9 July 2007, T. 7883.

<sup>2810</sup> Ljuban Mrković, 12 July 2007, T. 8184 – 8185; T-61, 9 July 2007, T. 7883; T-48, 22 June 2007, T. 7133 – 7134; Simo Tuševljak, 11 July 2007, T. 8045; Milorad Katić, 1 June 2007, T. 6014 – 6015; Drazen Maunaga, 12 June 2007, T. 6506 – 6507; Miroslav Pejić, 16 July 2007, T. 8390.

<sup>2811</sup> Zoran Trapara, 26 June 2007, T. 7350.

<sup>2812</sup> Luka Jović, 14 June 2007, T. 6700.

<sup>2813</sup> Luka Jović, 14 June 2007, T. 6705 – 6706. *See* D235, Map marked by Luka Jović.

<sup>2814</sup> Luka Dragičević, 26 Mar 2007, T. 4040 – 4041.

to the Office of the Prosecutor of the Tribunal.<sup>2815</sup> According to Ivica Milosavljević, between 1991 and 1995, autopsies were performed on 4,000 people killed in “war-affected areas” and he carried out 1,000 external examinations in order to establish the cause of death of persons killed in the “war-affected areas.”<sup>2816</sup> Furthermore, there are Bosnian Serbs whose fate remains unknown.<sup>2817</sup>

793. Defence witnesses expressed their views that the death of Bosnian Serbs was never publicised. Slobodan Bjelica testified that “we” received reports every day about civilian casualties in Bosnian Serb territory, but that despite trying to disseminate information about the suffering of the Bosnian Serbs to the international press, nothing was published.<sup>2818</sup> T-5, who lived in Grbavica during the conflict, testified that “we listened to Muslim media non-stop”, which referred to the killing of “scores” of “Serbian soldiers” but never mentioned the deaths of civilians, while describing the situation on the Bosnian Muslim side in opposite terms: “We felt this was adding insult to injury.”<sup>2819</sup>

#### General Findings on Sniping and Shelling

794. There is abundant evidence from specific incidents as well as from other witness and documentary evidence about general sniping locations and targets, that sniper fire against civilians within the confrontation lines primarily came from SRK-held territory.<sup>2820</sup> As a result of the sniping, civilians were seriously injured or killed. The Trial Chamber finds that the only reasonable inference to be drawn from this evidence is that the shots, originating from SRK-held territory, were fired by members of the SRK.

795. In relation to the Defence allegation that the ABiH shelled Bosnian Muslims living within the confrontation lines, the Trial Chamber notes that it heard no such evidence. Instead, the Trial Chamber heard evidence from a number of witnesses, including UN officials, that the ABiH did not shell their own population. The Trial Chamber further notes that allegations about the ABiH staging incidents for propaganda purposes or to gain sympathy, was not supported by evidence showing that such cases actually occurred. The Trial Chamber finds that the most that can be made of the evidence presented is that there were rumours, primarily from the SRK-side, that the ABiH shelled civilians living within the confrontation lines and staged incidents in order to gain sympathy from the outside world.

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<sup>2815</sup> Simo Tuševljak, 11 July 2007, T. 8063, 8081 – 8083.

<sup>2816</sup> Ivica Milosavljević, 24 Aug 2007, T. 9237

<sup>2817</sup> David Harland, P1, MT. 27012 – 27013.

<sup>2818</sup> Slobodan Bjelica, 24 July 2007, T. 8761 – 8764.

<sup>2819</sup> T-5, 25 June 2007, T. 7215.

<sup>2820</sup> See *supra*, Section II.B.3 Areas of Responsibility and Confrontation Lines - SRK and 1<sup>st</sup> Corps of the ABiH; Section II.E.1 - II.E.4, II.E.8.

796. The Trial Chamber heard voluminous evidence that shelling against civilians within the confrontation lines primarily came from SRK-held territory and that, as a result of the shelling, civilians were seriously injured or killed. This evidence includes witness testimony from military officials, UN personnel, local residents and victims. The Trial Chamber finds that the only reasonable inference to be drawn from this evidence is that the shells, originating from SRK-held territory, were launched by SRK troops.

797. The Defence argued that an armed conflict between the ABiH and the VRS existed prior to the Indictment period and that this conflict was fought at a very high level of intensity. In particular, the Defence argued that the terror that existed, and with which the Accused is charged, was a result of this armed conflict. The Trial Chamber rejects the argument that the terror with which the Accused is charged resulted from the intensity of the armed conflict. No evidence was brought to support that submission.

798. In relation to the submission that the ABiH launched offensives resulting in the death of Bosnian Serbs, the Trial Chamber finds that although evidence has been presented of such offences and deaths, no submission was made linking those ABiH activities with the criminal liability of the Accused. To put it more bluntly, in the circumstances of this case, the Trial Chamber does not see how this could exonerate the Accused.

799. The Trial Chamber takes this opportunity to express its sympathy for all victims of the conflict, both Bosnian Muslims and Bosnian Serbs.

## **F. Evidence Relating to Role Accused**

### **(a) Leadership of the Accused**

800. David Harland testified that the Accused was a forceful and commanding personality with a “rather more commanding presence” than his predecessor Gen. Galić.<sup>2821</sup> He appeared “competent as a commander”, but at the same time seemed to be “somewhat troubled by what he was doing.”<sup>2822</sup> Col. Dragičević and Maj. Veljović testified that the Accused was a “man of high moral values”, an “altruist”, “a professional of the highest ranking”, “an extraordinary personality” and that his personality was “commendable”.<sup>2823</sup>

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<sup>2821</sup> David Harland, 15 Jan 2007, T. 353.

<sup>2822</sup> David Fraser, 7 Feb 2007, T. 1782.

<sup>2823</sup> Luka Dragičević, 26 Mar 2007, T. 3989 – 3990; Stevan Veljović, 31 May 2007, T. 5925.



801. The SRK headquarters in Lukavica functioned well.<sup>2824</sup> According to Col. Dragičević, the Accused made decisions on the basis of proposals by his officers, such as his assistant commanders or the Chief of Staff.<sup>2825</sup> The Accused held regular meetings with his subordinate staff, once or twice a month, and held briefings after visiting the confrontation lines.<sup>2826</sup>

802. Maj. Eimers, Maj. Veljović and Col. Dragičević testified that the Accused held a “tight chain of command” and that the command structure under the Accused was “rather rigid”.<sup>2827</sup> There is evidence that the Accused, while being Deputy Commander and Chief of Staff of the SRK, tried to improve the level of command and control within the SRK.<sup>2828</sup> After he had become SRK Commander, the Accused also issued orders aimed at improving command and control within the corps.<sup>2829</sup> For example, on 16 September 1994, the Accused ordered that regular combat reports accounting for the situation at 1500 hours each day be delivered on a daily basis to the SRK command by 1600 hours.<sup>2830</sup>

803. There is also evidence that the Accused, in his capacity as SRK Commander, controlled the use of ammunition.<sup>2831</sup> For example, on 23 April 1995, he ordered all unit commands to submit information on the daily use of all types of ammunition. He also ordered that the quantities of ammunition issued and consumed be monitored and registered.<sup>2832</sup> On several occasions, he warned subordinate officers not to allow unnecessary use of ammunition.<sup>2833</sup>

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<sup>2824</sup> Rupert Smith, 7 Mar 2007, T. 3360; John Jordan, P267, p. 9. *See also supra*, Section II.B.1(a) VRS and SRK.

<sup>2825</sup> Luka Dragičević, 27 Mar 2007, T. 4067. *See also*, Luka Dragičević, 27 Mar 2007, T. 4062 – 4063; Stevan Veljović, 31 May 2007, T. 5911. *See e.g.* P679, Order about meeting with brigade and individual unit commanders, dated 2 January 1995.

<sup>2826</sup> Luka Dragičević, 27 Mar 2007, T. 4062 – 4063; Stevan Veljović, 30 May 2007, T. 5832, 5840. *See also*, P735, Order on meeting between the corps commander and unit commanders, dated 14 September 1995.

<sup>2827</sup> Ronald Eimers, 20 Apr 2007, T. 4789 – 4790; Stevan Veljović, 29 May 2007, T. 5764; W-156, P625, p. 9, 32 (under seal). *See also*, Luka Dragičević, 26 Mar 2007, T. 3999 – 4000.

<sup>2828</sup> David Fraser, 8 Feb 2007, T. 1824; P208, Order by SRK Deputy Commander, dated 29 July 1994.

<sup>2829</sup> P671, Clarification order by the SRK Commander, dated 16 September 1994; P676, Warning by the SRK Commander, dated 22 November 1994; P678, Order by the SRK Commander, dated 26 November 1994; P686, Order by the SRK Commander on daily reporting, dated 22 January 1995; P730, Order by the SRK Commander, dated 30 July 1995.

<sup>2830</sup> P671, Clarification order by the SRK Commander, 16 September 1994 *See also*, P686, Order by the SRK Commander on daily reporting, 22 January 1995.

<sup>2831</sup> P702, Order by SRK Commander re ammunition, dated 23 April 1995; P710, Order by the SRK Commander re unnecessary use of ammunition, dated 22 May 1995; P723, Warning by the SRK Commander re ammunition, dated 19 July 1995; P728, Order by the SRK Commander re ammunition, dated 26 July 1995.

<sup>2832</sup> P702, Order by SRK Commander re ammunition, 23 April 1995.

<sup>2833</sup> P710, Order by the SRK Commander, 22 May 1995; P723, Warning by the SRK Commander re ammunition, 19 July 1995; P728, Order by the SRK Commander re ammunition, 26 July 1995.

804. The Accused regularly toured the confrontation lines and visited the different SRK units at their positions.<sup>2834</sup> Col. Dragičević testified that he spent 90 per cent of his time in the field with subordinate units.<sup>2835</sup> The Accused also visited the Bosnian Serb civilian population.<sup>2836</sup>

805. Maj. Veljović testified that the Accused was highly respected by the officers and soldiers because “he was always there where the fighting was at its worst. He was not always just sitting in his office or where the civilians were.”<sup>2837</sup> Other Defence witnesses confirmed that the Accused was highly esteemed by the soldiers because he visited them at the confrontation lines and because he took good care of their needs.<sup>2838</sup>

806. Maj. Veljović said that the Accused was “the only corps commander who visited virtually every trench. This was supposed to be done by an operations officer, but, no, he was the one always in the field.”<sup>2839</sup> The Accused himself highlighted this aspect in a letter to Gen. Mladić dated 19 May 1996, in which he presents a review of his work as SRK Commander. In the letter, the Accused claimed that:

“I never stayed away from my troops for a single day, nor did I ever work in any commands. Nevertheless, I was always a commander, both up to company level and above, only in part serving as Chief of Staff. Had it not been for my success and the huge effort that I put in, I would never have lasted in these respective roles for this long.”<sup>2840</sup>

He continued:

“During my further involvement with the SRK, my commitment never wavered. There was no task that I found difficult, and key features were liberated that were of strategic significance to the defence of the SRK’s zone of responsibility in the June offensive back in 1995. The two-month large-scale enemy offensive was stopped and crushed without any panic in 1995.

My control of the situation was fully consolidated.”<sup>2841</sup>

807. When the Accused became commander, the military situation stabilised and the SRK strengthened their positions.<sup>2842</sup> Maj. Veljović testified that the Accused’s position was that the

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<sup>2834</sup> Stevan Veljović, 29 May 2007, T. 5770, 20 May 2007, T. 5837; Zoran Trapara, 26 June 2007, T. 7348 – 7349; Anđelko Dragaš, 22 June 2007, T. 7067; Vaso Elez, 7 June 2007, T. 6326, 6360 – 6361; Stjepan Djukić, 3 July 2007, T. 7513 – 7514; Milorad Košorac, 26 July 2007, T. 8871 – 8872, 8873; Milorad Katić, 1 June 2007, T. 6058 – 6059; Sinisa Krsman, 6 June 2007, T. 6266 – 6267; Goran Kovačević, 13 June 2007, T. 6582 – 6583; Luka Dragičević, 26 Mar 2007, T. 3999 – 4000; Dragan Simić, 5 June 2007, T. 6172 – 6173, 6177.

<sup>2835</sup> Luka Dragičević, 26 Mar 2007, T. 3989. *See also*, Sinisa Krsman, 6 June 2007, T. 6267.

<sup>2836</sup> T-39, 21 June 2007, T. 6998; Anđelko Dragaš, 22 June 2007, T. 7067; Milorad Katić, 1 June 2007, T. 6032 – 6033.

<sup>2837</sup> Stevan Veljović, 30 May 2007, T. 5837.

<sup>2838</sup> Anđelko Dragaš, 22 June 2007, T. 7067, 7122; Sinisa Krsman, 6 June 2007, T. 6266 – 6267; Radomir Visnjić, 25 June 2007, T. 7259 – 7260; Dragan Simić, 5 June 2007, T. 6215; Milorad Katić, 1 June 2007, T. 6032 – 6033, 6058, 6005 – 6006; Milorad Košorac, 26 July 2007, T. 8874 – 8875.

<sup>2839</sup> Stevan Veljović, 31 May 2007, T. 5926 – 5927; Stevan Veljović, 30 May 2007, T. 5840; Anđelko Dragaš, 22 June 2007, T. 7122.

<sup>2840</sup> P738, Letter by SRK Commander to Gen. Ratko Mladić, dated 19 May 1996, p. 2.

<sup>2841</sup> *Ibid.*, p. 3.

<sup>2842</sup> Borislav Kovačević, 9 July 2007, T. 7891; Stjepan Djukić, 3 July 2007, T. 7534 – 7535.

corps should take defensive positions because the SRK expected attacks by the ABiH “any minute” and because the corps had “suffered enormous losses in the preceding period of the war”.<sup>2843</sup>

(b) Involvement in and Awareness of Shelling and Sniping

808. The Trial Chamber was presented with evidence relating to the involvement of the Accused in crimes committed by SRK forces in Sarajevo, in particular, in the sniping and shelling of civilians. The Prosecution argues in its Closing Brief that evidence in this case shows the Accused had effective control over the SRK as a whole.<sup>2844</sup>

(i) Effective Control

809. Prosecution and Defence witnesses testified that the Accused exercised “effective command” over the SRK and over operations around the city of Sarajevo and that the chain of command functioned well.<sup>2845</sup> In the view of Maj. Eimers, the Bosnian Serbs had excellent command and control by phone and by radio.<sup>2846</sup> Orders were often communicated to the lower levels orally, again by phone or radio.<sup>2847</sup> The operation centres of the brigades received daily reports and prepared reports which were sent to the corps command.<sup>2848</sup> The corps operations centre could also enquire from brigade operations officers whether certain orders were carried out.<sup>2849</sup>

810. There is evidence about the relationship between the Main Staff of the VRS and the SRK command. Col. Dragičević testified that the responsibilities and duties of the corps commander were clearly set.<sup>2850</sup> Maj. Veljović testified that the Accused could order assault actions in relation to smaller features, but he had to seek approval from a superior command for wider scale action.<sup>2851</sup> Col. Dragičević testified that the Accused always abided by the decisions of the Main Staff of the VRS.<sup>2852</sup> Brig. Gen. Fraser affirmed the superior-subordinate relationship between Gen. Mladić and the Accused.<sup>2853</sup> Another witness stated that, in his opinion, all the incidents in Sarajevo were “orchestrated, guided, and designed” by Gen. Mladić and that liaison officer Col. Indić was

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<sup>2843</sup> Stevan Veljović, 29 May 2007, T. 5770 – 5771.

<sup>2844</sup> Prosecution Closing Brief, pp 128 – 135, 138 – 140.

<sup>2845</sup> David Fraser, 7 Feb 2007, T. 1784, 8 Feb 2007, T. 1810 – 1811; Ronald Eimers, 20 Apr 2007, T. 4790; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1046; Predrag Trapara, 27 June 2007, T. 7389; Milorad Katić, 1 June 2007, T. 6059 – 6060; P1, MT. 26951, 25691; W-156, P625, p. 9 (under seal).

<sup>2846</sup> Ronald Eimers, 20 Apr 2007, T. 4788 – 4790, P585, p. 8.

<sup>2847</sup> Milorad Katić, 1 June 2007, T. 6059 – 6060; T-2, 20 June 2007, T. 6931; T-48, 22 June 2007, T. 7153; Stevan Veljović, 30 May 2007, T. 5837.

<sup>2848</sup> Stevan Veljović, 30 May 2007, T. 5824 – 5825.

<sup>2849</sup> Stevan Veljović, 30 May 2007, T. 5832.

<sup>2850</sup> Luka Dragičević, 27 Mar 2007, T. 4065.

<sup>2851</sup> Stevan Veljović, 31 May 2007, T. 5953 – 5955.

<sup>2852</sup> Luka Dragičević, 26 Mar 2007, T. 3991.

<sup>2853</sup> David Fraser, 8 Feb 2007, T. 1818 – 1819.

“Mladić’s eyes” and had more power than the Accused.<sup>2854</sup> He described the Accused as “a man of straw”.<sup>2855</sup> In court, during examination-in-chief, the witness clarified that what he meant to express was that, in the overall military structure and organisation, Gen. Mladić decided on the strategic conception and design of the operations while the Accused was the one who carried them out and had operational and tactical command and control.<sup>2856</sup> Gen. Mladić had a “particular eye on Sarajevo” and the Accused, therefore, only had limited freedom of action on a strategic level but the Accused “kept total mastery of the means needed to implement locally a certain number of actions”.<sup>2857</sup>

811. Ismet Hadžić, commander of an ABiH brigade, had the impression that the Accused exercised more freedom than his predecessor Gen. Galić.<sup>2858</sup> Near the end of the war, Ismet Hadžić had the feeling that the Accused could make decisions without approval from the Main Staff of the VRS.<sup>2859</sup> In his view, the SRK under the command of the Accused used a more “systematic approach”, and the SRK activities were “more subtle”, “more precise” and “more dangerous” than during the time of Gen. Galić.<sup>2860</sup>

a. Effective Control over Sniping

812. Gen. Smith testified that day-to-day activities of snipers would normally be controlled at “around battalion level”.<sup>2861</sup> However, he noted that sniping could also be controlled at a higher level.<sup>2862</sup> Brig. Gen. Fraser gave evidence that the deployment of snipers is generally decided at a “higher level within the army” because snipers are “a highly specialised skill set” and it was important to apply them to very precise targets.<sup>2863</sup>

813. Witnesses gave evidence about who commanded and controlled sniping activity by the SRK in Sarajevo. Maj. Veljović testified that the Accused would issue general orders as to how to engage

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<sup>2854</sup> W-46, P387, p. 11 (under seal).

<sup>2855</sup> W-46, P387, p. 11 (under seal).

<sup>2856</sup> W-46, 15 Mar 2007, T. 3806 – 3808, 16 Mar 2007, T. 3851 – 3852 (closed session).

<sup>2857</sup> W-46, 15 Mar 2007, T. 3808 (closed session).

<sup>2858</sup> Ismet Hadžić, 6 Mar 2007, T. 3236.

<sup>2859</sup> Ismet Hadžić, 6 Mar 2007, T. 3236.

<sup>2860</sup> Ismet Hadžić mentioned the targeting of infrastructures, such as local heating facilities and intersections in order to “achieve maximum effect”, Ismet Hadžić, 6 Mar 2007, T. 3236; he referred to the shelling of the Simon Bolivar School and the TV building and incidents where a sniper killed two or three people with one shot, Ismet Hadžić, 6 Mar 2007, T. 3260. For these incidents, *see supra*, Section II.E.6(b)(x) Shelling of a Water Distribution Point in Dobrinja on 18 June 1995; Section II.E.6(b)(xi) Shelling of TV Building; Section II.E.4(b)(i)f Sniping of Dženana Sokolović and Nermin Divović on 18 November 1994. He also referred to a change in the shelling methods leading to levelling the target.

<sup>2861</sup> Rupert Smith, 7 Mar 2007, T. 3318 – 3320; *See also*, P514, Expert report Patrick van der Weijden, p. 3.

<sup>2862</sup> Rupert Smith, 7 Mar 2007, T. 3320 – 3321.

<sup>2863</sup> David Fraser, 7 Feb 2007, T. 1784 – 1785. *See also*, P514, Expert report Patrick van der Weijden, p. 3; P387, p. 15 (under seal).

a target and the lower level commander would then organise the firing position.<sup>2864</sup> The organisation of firing systems at the positions was done by the squad, regiment, battalion or platoon commanders.<sup>2865</sup>

814. Several other witnesses testified that the snipers of the SRK did not operate in a random manner, but that their operation was co-ordinated by the SRK command.<sup>2866</sup> Documentary evidence further shows that the Accused issued several orders relating to snipers, sniper training and sniper ammunition.<sup>2867</sup>

815. The Accused was involved in anti-sniping agreements with UNPROFOR. For example, on 14 August, in the first days of his command, he signed the Anti-sniping Agreement.<sup>2868</sup> Witnesses testified that, after the signing of the Anti-sniping Agreement, the number of sniper casualties immediately and sharply declined, although this did not last more than two or three months.<sup>2869</sup>

816. The Accused's control over sniping activity in Sarajevo is also confirmed by one of his assistant commanders. Col. Lugonja wrote in a memorandum pertaining to the implementation of an anti-sniping agreement, dated 15 August 1994, that "sniping is to be stopped only by orders and the inner organisation and accordingly by taking adequate measures." He further noted, regarding his proposals for the implementation of the agreement, that "the final decision will be taken by commander General Milošević."<sup>2870</sup>

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<sup>2864</sup> Stevan Veljović, 31 May 2007, T. 5955 – 5956.

<sup>2865</sup> Stevan Veljović, 31 May 2007, T. 5955 – 5956.

<sup>2866</sup> David Fraser, 7 Feb 2007, T. 1784 - 1785, "As a battalion commander, I would control the snipers; as a brigade commander, I would control how we would employ snipers because of the paucity of numbers; but more importantly is the effect that you're looking for in the application of this skill set." *See also*, P514, Expert Report Van der Weijden, p. 3; David Harland, 16 Jan 2007, T. 459; W-46, 15 Mar 2007, T. 3812 – 3813 (closed session), 16 Mar 2007, T. 3853 (closed session); P387, p. 11 (under seal); W-156, P625, pp 17, 18, 24 (under seal).

<sup>2867</sup> Vljako Božić, 17 July 2007, T. 8405 – 8406, 8442 – 8443, 8445 – 8447; T-53, 11 June 2007, T. 6459 – 6461, 6464 – 6466; P683, Order by the SRK Commander on detachment and transfer of sniper instructors, dated 19 January 1995. *See also*, Ivan Stamenov, 22 Aug 2007, T. 9034 – 9035; Stevan Veljović, 29 May 2007, T. 5769; P664, Request for inspection of weapons, dated 6 July 1994; P680, Order to prepare for training in 1995, 5 January 1995; P681, Report to Sarajevo command on training, dated 13 January 1995; P682, Report to SRK command on implementation of training in 1994 and recommendation for sniper course, dated 15 January 1995; P684, Order on assigning and dispatching sniper instructors, 19 January 1995; P685, Report to SRK Command on training of officers for sniping squads, 21 January 1995; P688, Order by the SRK Commander to train SRK units in 1995, 29 January 1995, p. 6; P690, Analysis prepared by Maj. Stevan Veljović on training, dated 6 February 1995; P729, Request by the SRK Commander for replenishment of ammunition, dated 27 July 199; P766, Request for ammunition, 16 June 1995.

<sup>2868</sup> *See supra*, Section II.A.4(c) Anti-sniping Agreement - 14 August 1994.

<sup>2869</sup> David Harland, 15 Jan 2007, T. 337, 16 Jan 2007, 459; W-46, 15 Mar 2007, T. 3812 – 3813 (closed session), 16 Mar 2007, T. 3850, 3851 (closed session). *See also*, W-46, P387, p. 14 (under seal); David Fraser, 7 Feb 2007, T. 1784, 8 Feb 2007, T. 1820 – 1821; P666, Memorandum to SRK command, 15 August 1994, p. 2

<sup>2870</sup> P666, Memorandum to SRK command, 15 August 1994, p. 2.

b. Effective Control over Shelling

817. Witnesses also gave evidence about who commanded and controlled the shelling by the SRK. Gen. Smith stated that normal military procedure prescribes that artillery fire is controlled “at the highest practical point” because it might influence events across the whole area. In his view, within the SRK, the artillery fire was “probably” controlled at the corps level.<sup>2871</sup> QMS Higgs testified that heavy and medium mortars are controlled at command level in order to prevent “lower rank local commander[s] from just firing at something and wasting such a valuable asset.”<sup>2872</sup>

818. Other witnesses also testified that the Accused controlled the shelling activities of the SRK.<sup>2873</sup> Maj. Eimers, stated that at times requests for temporary cease-fires were sent to the Lukavica Barracks from checkpoints and within seconds the SRK command stopped “their guns”.<sup>2874</sup> Maj. Veljović testified that the Main Staff would issue orders relating to cease-fires and that the orders were then carried out by the subordinate commanders.<sup>2875</sup> Defence witnesses confirmed that there were orders issued not to shoot during cease-fire. Zoran Trapara testified that there was an express order to his unit not to shoot during a cease-fire with any kind of weapon.<sup>2876</sup> Milan Mandić testified that after the Accused became commander, in August 1994, until mid-October 1994, the soldiers were under orders not to fire infantry or artillery.<sup>2877</sup>

819. Evidence further shows that the Accused issued orders pertaining to positions of artillery pieces and to artillery ammunition.<sup>2878</sup> During the case, evidence was led that the SRK sometimes used heavy weapons from WCPs.<sup>2879</sup> One witness believed that the orders to use heavy weapons, which were excluded under the TEZ agreement, were given by the SRK Commander.<sup>2880</sup>

820. There is also evidence suggesting that the Accused planned to withhold heavy weaponry that fell under the TEZ. At the time when he was still Deputy SRK Commander, the Accused submitted a proposal to Gen. Galić to set aside artillery pieces and camouflage them. This involved:

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<sup>2871</sup> Rupert Smith, 7 Mar 2007, T. 3318 – 3320.

<sup>2872</sup> Richard Higgs, 23 Apr 2007, T. 5005 – 5006.

<sup>2873</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 704; W-46, 15 Mar 2007, T. 3816 – 3817, 3830 – 3831 (closed session), 16 Mar 2007, T. 3853 (closed session); Borislav Kovačević, 9 July 2007, T. 7906.

<sup>2874</sup> Ronald Eimers, P585, p. 8.

<sup>2875</sup> Stevan Veljović, 29 May 2007, T. 5764.

<sup>2876</sup> Zoran Trapara, 26 June 2007, T. 7349.

<sup>2877</sup> Milan Mandić, 3 July 2007, T. 7560. *See also*, D214, Order on cease-fire, 25 December 1994.

<sup>2878</sup> P667, Order by the SRK Commander to camouflage weapons, dated 21 August 1994. *See also* T-53, 11 June 2007, T. 6460 – 6461, 6464 – 6465; Predrag Trapara, 27 June 2007, T. 7414; P687, Request for ammunition, dated 23 January 1995; P697, Order by the SRK Commander on inspection, dated 9 April 1995; P710, Order by the SRK Commander, 22 May 1995; P729, Request by the SRK Commander for replenishment of ammunition, dated 27 July 1995.

<sup>2879</sup> *See supra*, Section IIA.4(b) Total Exclusion Zone (TEZ) - 9 February 1994.

<sup>2880</sup> W-46, 15 Mar 2007, T. 3829 – 3830 (closed session).

“a diversionary tactic to set aside the equipment that is out of order and for which we do not have sufficient quantities of ammunition [...] Remaining artillery pieces were previously moved from firing positions and camouflaged and the artillery pieces from the HK were placed in their positions. The UN monitors have been informed about the current VP. [...] we believe that by fulfilling the requirements in the above-mentioned manner, we would not reduce b/g combat readiness of the SRK and at the same time we would not create an image of being uncooperative with the UN.”<sup>2881</sup>

821. The Accused was involved in negotiations with UNPROFOR about the withdrawal of heavy weapons.<sup>2882</sup> As discussed in paragraph 52 of this Judgement, the plan to camouflage heavy weaponry was put into effect when the Accused was commander of the SRK.

c. Effective Control over the Use of Modified Air Bombs

822. Evidence shows that the SRK used modified air bombs, and air bomb launchers and that the Accused was directly involved in the deployment of these weapons.<sup>2883</sup> For example, on 15 July 1995, the Accused requested the Main Staff of the VRS to approve the issuance of 100 FAB-100s and 100 FAB-250s.<sup>2884</sup> The Trial Chamber also received evidence that the Accused ordered the use of air bomb launchers from as early as August 1994. On 10 August 1994, on one of the first days as Commander of the SRK, the Accused ordered that air bomb launchers be “ready for firing at Moševićko Brdo structure and 2 launchers for firing at Gradina, Konjsko Brdo and Velika Bukva.”<sup>2885</sup>

823. Maj. Veljović believed that the Accused would have had to seek approval regarding air bombs from the Main Staff, “because this ammunition and some refurbishing probably was under the jurisdiction of the Ministry of Defence.”<sup>2886</sup> Further, in June 1994 the VRS Main Staff issued an order to the SRK. Maj. Gen. Milovanović stressed that it was the Main Staff of the VRS that was to decide on the use of air bombs: if the Main Staff of the VRS approved, “possibly a Corps”, and “not a brigade according to its own plan.”<sup>2887</sup> This order was issued before the Accused became commander of the SRK.<sup>2888</sup>

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<sup>2881</sup> P802, Proposal by SRK Commander, 10 February 1994.

<sup>2882</sup> P8, UNPROFOR memo, 23 November 1994; P625, pp 6, 7 (under seal), W-156, 27 Apr 2007, T. 5332 – 5334 (closed session); P630, Report of meeting between Sector Sarajevo and SRK, 18 September 1995. *See also supra*, Section II.A.4(b) Total Exclusion Zone (TEZ) - 9 February 1994.

<sup>2883</sup> *See supra*, Section II.B.2(b)(ii)a Modified Air Bombs. *See also*, P891, UNMO daily sitrep, 17 June 1995, p. 13; P892, UNMO daily sitrep, 18 June 1995, pp 1 – 2.

<sup>2884</sup> P722, Request by the SRK Commander, 17 July 1995. *See also*, P767, Request for ammunition, dated 22 June 1995; T-53, 11 June 2007, T. 6456 – 6457; P714, Requisition of 50 air bombs, 4 June 1995; P768, Order issuing SRK units with air bombs, dated 24 August 1995.

<sup>2885</sup> P665, Order by the SRK Commander for further operation, dated 10 August 1994, p. 3. *See also*, P696, Order by SRK Commander, dated 4 April 1995, p. 1.

<sup>2886</sup> Stevan Veljović, 31 May 2007, T. 5955.

<sup>2887</sup> P739, Order by the VRS to SRK command about requisition of aerial bombs, dated 12 June 1994.

<sup>2888</sup> The VRS order was dated 12 June 1994.

824. In an order to the Accused, dated 26 April 1995, Gen. Mladić stated that “we are in possession of information that you are planning to use two air bombs against enemy targets and settlements in the area of Sarajevo, in the evening or during the night of 26.04.1995” and he reminded the Accused that it was his duty to inform him about the planned use of air bombs.<sup>2889</sup> According to one witness, the document confirms that the SRK commander had freedom of action regarding the modus operandi “within a larger aggression strategy” and that the SRK commander was the person who had tactical coordination of the action on the field.<sup>2890</sup>

825. In a report to the VRS Main Staff dated 15 June 1995, the Accused wrote that air bomb launchers “are grouped in the brigades in the north western part of the front and are used throughout the SRK zone of responsibility as required and as decided by the SRK commander.”<sup>2891</sup>

826. There is further evidence that the air bomb launchers were used to fire several rounds of air bombs. On 21 April 1995, the Accused ordered the preparation of launchers for air bombs and to ensure that “four to six aerial bombs can be launched simultaneously against the designated target, the condition being that they must hit the target, which means that provisions have to be made for more bombs so that, in the event of a miss, the next projectile lands on the target.”<sup>2892</sup>

(ii) Evidence Relating to the Defence of ‘Alibi’

827. The Defence argued that for the period of 6 August to 10 September 1995, the Accused is entitled to the defence of alibi since he was absent from the area where the crimes with which he is charged in the Indictment were committed and since Čedo Sladoje took up all the command responsibilities in the SRK over that period.<sup>2893</sup> The Defence submitted that the Accused was *de facto* unable to carry out his command duties at the time and, therefore, cannot be held responsible for what took place in his absence, or, in particular, for not conducting an investigation into the Markale Market II incident.<sup>2894</sup>

828. In its Closing Brief, the Prosecution dismisses “the claim by the Defence” that the Accused was not responsible for the Markale Market II incident. It also submitted that there is no evidence that the Accused disciplined or prosecuted anyone for the Markale Market II incident.<sup>2895</sup>

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<sup>2889</sup> P394, Order from Gen. Ratko Mladić to the SRK Commander, dated 26 April 1995.

<sup>2890</sup> W-46, 15 Mar 2007, T. 3816 – 3817, 3837 – 3838 (closed session).

<sup>2891</sup> P663, Report from SRK command, 15 June 1995.

<sup>2892</sup> P701, Order by the SRK Commander on preparations for action “Talas-I”, dated 21 April 1995, p. 2.

<sup>2893</sup> Defence Pre-Trial Brief, 27 February 2006, para. 10.

<sup>2894</sup> Defence closing arguments, 10 October 2007, T. 9565.

<sup>2895</sup> Prosecution closing arguments, 9 October 2007, T. 9434, 9436.



829. Evidence was presented indicating that at the beginning of August 1995, the Accused left Sarajevo for Belgrade, where he received treatment for an injury to his right eye that he had sustained on 17 May 1995.<sup>2896</sup> The Accused was wounded when a tank round, which was fired from Mount Žuč, about two or three kilometres away, hit an observation post, situated above Zlatište and the Lukavica-Trbevisa-Pale road, where he was.<sup>2897</sup> He received medical attention immediately at the medical station next to the observation post.<sup>2898</sup>

830. From mid-June 1995, and until he left for Belgrade, the Accused was in the field during the offensives against the Nišići Plateau and Trnovo.<sup>2899</sup> Authorisation for the Accused to travel to Belgrade was given by the Main Staff of the SRK.<sup>2900</sup> Dragan Simić drove the Accused to Belgrade via Lukavica, Han Pijesak and Zvornik.<sup>2901</sup> When they reached Belgrade, Dragan Simić took the Accused to the Slavija Hotel.<sup>2902</sup> Dragan Simić then left Belgrade for his village, where he remained until early September.<sup>2903</sup> According to his medical file, the Accused was admitted to the VMA Eye Clinic in Belgrade on 8 or 9 August 1995 and discharged on 21 August 1995.<sup>2904</sup> Two reports from the Belgrade Military Medical Academy dated 4 September 1995 and 25 September 1995, indicate that the Accused had regular check-ups every two to three weeks and ongoing treatment.<sup>2905</sup> In early September 1995, Dragan Simić picked up the Accused from the barracks in Han Pijesak and drove him back to the forward command post via the Lukavica Barracks.<sup>2906</sup>

831. Witnesses testified that the Accused was absent from combat positions around Sarajevo for approximately one month while he was receiving treatment for his eye injury.<sup>2907</sup> During the time he was in Belgrade, Col. Sladoje, the SRK Chief of Staff, assumed the command responsibilities of the SRK.<sup>2908</sup>

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<sup>2896</sup> D340, Medical file for Dragomir Milošević, dated 28 August 1996, pp 1, 2; Luka Dragičević, 26 Mar 2007, T. 3999; Dragan Simić, 5 June 2007, T. 6192, 6196, 6224 – 6225; T. 41, 18 July 2007, T. 8521, 8534, 8535 – 8536; Stevan Veljović, 30 May 2007, T. 5842, 5847 – 5848.

<sup>2897</sup> Dragan Simić, 5 June 2007, T. 6190, 6192, 6196; Stevan Veljović, 30 May 2007, T. 5841, 5852; D209, Sketch made by Dragan Simić, dated 5 June 2007; D210, Photograph marked by Dragan Simić; P741, Map marked by Stevan Veljović, 30 May 2007.

<sup>2898</sup> Dragan Simić, 5 June 2007, T. 6196.

<sup>2899</sup> Dragan Simić, 5 June 2007, T. 6205 – 6206.

<sup>2900</sup> Dragan Simić, 5 June 2007, T. 6225.

<sup>2901</sup> Dragan Simić, 5 June 2007, T. 6206, 6225.

<sup>2902</sup> Dragan Simić, 5 June 2007, T. 6225.

<sup>2903</sup> Dragan Simić, 5 June 2007, T. 6206, 6225.

<sup>2904</sup> D340, Medical file for Dragomir Milošević, 28 August 1996, p. 3. *See also*, P344, UN Documents relating to meetings with Mladić, dated 14 August 1995, p. 6.

<sup>2905</sup> D340, Medical file for Dragomir Milošević, p. 5. *See also*, pp 6 -7.

<sup>2906</sup> Dragan Simić, 5 June 2007, T. 6206, 6226.

<sup>2907</sup> Dragan Simić, 5 June 2007, T. 6206; Stevan Veljović, 31 May 2007, T. 5943; T.41, 18 July 2007 T. 8534 – 8536.

<sup>2908</sup> Luka Dragičević, 26 Mar 2007, T. 4050; Stevan Veljović, 30 May 2007, T. 5843; *See, e.g.*, P732, Order by the SRK command, 27 August 1995; P733, Order signed by Čedo Sladoje, “in lieu of the Commander,” 28 August 1995; P734, SRK order, “Commander represented by”, 7 September 1995.

832. According to Col. Dragičević, the Accused returned to Sarajevo on 10 September 1995, and resumed command of the SRK.<sup>2909</sup> Similarly, Dragan Simić testified that when he returned the Accused to the forward command post, the Lukavica Barracks had been damaged during the NATO air strikes and evacuated.<sup>2910</sup> Col. Dragičević assumed that the Accused was informed of the events leading to the NATO airstrikes because, “[i]t is a matter of course as far as the military is concerned that the commander has to be aware of what was going on in the previous period.”<sup>2911</sup> Maj. Veljović testified that “it was his duty to fully brief him.”<sup>2912</sup> The Trial Chamber rejects the defence of alibi and sets out the reasons in paragraphs 972 to 977 of this Judgement.

(iii) Orders of the Accused

833. The Trial Chamber received evidence pertaining to the Accused personally ordered the shelling of Hrasnica on 7 April 1995 with a modified air bomb.<sup>2913</sup>

834. On 19 April 1995, the Accused in response to information indicating that “the enemy is preparing for actions”, ordered all units to have “launching pads and aerial bombs ready for firing on the town.”<sup>2914</sup>

835. On 16 May 1995, the Accused ordered the Ilidža Brigade to “immediately prepare an aerial bomb launcher with at least five aerial bombs” to be ready to fire at his command, with the launchers being “roughly aimed at the airport”.<sup>2915</sup> The Accused further ordered the SRK 3<sup>rd</sup> Sarajevo Brigade to “immediately transfer their aerial bomb launcher to the Trebević sector (near what used to be *Jugobanka*) with five aerial bombs” and to “inform the SRK Command of their readiness for movement and arrival at destination.”<sup>2916</sup>

836. With regard to the shelling of the TV Building on 28 June 1995, the Trial Chamber notes that the Accused highlighted this incident in a report on the situation at the front. He wrote:

“The Serbian soldiers are displaying unprecedented heroism, not letting the enemy get closer to their homes and families. The VRS Main Staff commander, Gen. Ratko Mladić, commended the heroism of units in the north-western part of the front, and numerous congratulations also arrived from unit commands and civilian government institutions. Our artillery forces are responding with

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<sup>2909</sup> Luka Dragičević, 26 Mar 2007, T. 3999, 4049.

<sup>2910</sup> Dragan Simić, 5 June 2007, T. 6206.

<sup>2911</sup> Luka Dragičević, 26 Mar 2007, T. 4050.

<sup>2912</sup> Stevan Veljović, 30 May 2007, T. 5843 – 5844.

<sup>2913</sup> See *supra*, Section II.E.6(b)(iii) Shelling of a Residential Area in Hrasnica on 7 April 1995; P225, SRK combat report, 7 April 1995, p. 2. See also, Stevan Veljović, 31 May 2007, T. 5913 – 5915.

<sup>2914</sup> D141, Order by the SRK Commander on full combat readiness, dated 19 April 1995, p. 1.

<sup>2915</sup> P395, Order by the SRK Commander to prepare air bomb launcher, dated 16 May 1995.

<sup>2916</sup> *Ibid.*

precision to the Muslim artillery attacks. In one such response on 28 June they hit the BH Radio and Television Centre, the centre of media lies against the just struggle of the Serbian people.”<sup>2917</sup>

(iv) Orders by the Accused to Prevent the Shooting of Civilians

837. Several Defence witnesses testified that the Accused issued orders not to shoot at civilians, and to abide by the Geneva Conventions. According to T-48, the soldiers were “under constant orders not to open fire unnecessarily, not to target civilians.”<sup>2918</sup> Dragan Simić, the Accused’s driver, testified that the Accused constantly reiterated that the soldiers should only return fire if attacked directly in their trenches, and to fire only at the military targets which fired at them. He further testified that the Accused insisted that “they must under no circumstances fire at civilians.”<sup>2919</sup> Lastly, Dragan Simić testified that the Accused constantly told the soldiers to take care and not to fire without any need.<sup>2920</sup> Siniša Krsman also testified that the Accused told the soldiers to be careful, not to shoot when unnecessary, to spare the ammunition and to guard their lives and the territory in which they lived.<sup>2921</sup>

838. According to Milorad Košorac, the Accused requested, during a visit of his unit, that the notice board in the command centre, where medical certificates, travel orders, and also a copy of an excerpt from the Geneva Conventions on the rules of waging the war were posted, be put in a more visible place. After the Accused had left, the soldiers, according to Milorad Košorac, made the following comments: “Is this guy normal or what? These other guys are violating the cease-fire. One of our guys was just shot, and this commander is asking the battalion to comply with all this.”<sup>2922</sup> During cross-examination, he was asked whether he could give the names of other persons present at the scene who could confirm this and he gave the name of Ranko Blagovčanin but said he was not able to locate this person at the time of the hearing.<sup>2923</sup>

839. According to Maj. Veljović, wherever he went, the Accused told the soldiers and officers that “fire should only be opened at enemy soldiers and no one else”.<sup>2924</sup> He testified that the Accused also specifically demanded that the soldiers did not target populated areas.<sup>2925</sup>

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<sup>2917</sup> P42, P152 Report by the SRK Commander, 30 June 1995.

<sup>2918</sup> T-48, 22 June 2007, T. 7177. *See also, ibid.*, T. 7180 – 7181; Stevan Veljović, 30 May 2007, T. 5854; Luka Jović, 18 June 2007, T. 6728; Vlajko Božić, 17 July 2007, T. 8477 – 8479. Witnesses testified that the Accused issued strict directives, in accordance with the Geneva Conventions, and warned his troops for disciplinary measures; he did not entrust individual officers to carry the message to the troops so he went from one position to the next to ensure that his orders were passed on, Radomir Visnjić, 25 June 2007, T. 7259 – 7260. *See also, ibid.*, 26 June 2007, T. 7294.

<sup>2919</sup> Dragan Simić, 5 June 2007, T. 6176.

<sup>2920</sup> *Ibid.*, T. 6174, 6214 – 6215. *See also*, Milorad Košorac, 26 July 2007, T. 8874 – 8876.

<sup>2921</sup> Siniša Krsman, 6 June 2007, T. 6266 – 6267.

<sup>2922</sup> Milorad Košorac, 26 July 2007, T. 8871 – 8872.

<sup>2923</sup> *Ibid.*, T. 8897.

<sup>2924</sup> Stevan Veljović, 29 May 2007, T. 5748, 5770 – 5771, 30 May 2007, T. 5827, 5839 – 5840, 31 May 2007, T. 5926 – 5927.

<sup>2925</sup> *Ibid.*, 31 May 2007, T. 5925.

Furthermore, he testified that, at every position he visited, the Accused constantly reminded his troops to strictly observe the Geneva Conventions and even warned them of their accountability.<sup>2926</sup>

840. There is one written order in evidence in which the Accused prohibited sniping. Close to the end of the war, on 1 October 1995, the Accused issued an order to all units of the SRK “pursuant to the order of the VRS Main Staff [...], the demonstrated need to stop any firing on the town of Sarajevo, and in order to continue preventing sniper fire on the town”, in which he prohibited, until further notice, “any sniper fire on the town of Sarajevo and all commanders and commanders of units shall inform every single soldier of this order.”<sup>2927</sup> The order further read: “In the event that the Muslims fire from the town of Sarajevo on our units, immediately inform the Corps Command, who shall form a commission through the UNPROFOR Command of Sector Sarajevo to go to the firing position to establish the weapon used and the consequences of the fire.”<sup>2928</sup>

(v) Involvement in Attacks on UNPROFOR

841. Witnesses gave evidence about the Accused’s involvement in attacks on members of UNPROFOR.<sup>2929</sup> One witness stated that the incidents directed at UNPROFOR soldiers were planned and carried out by “Bosnian Serbs at the highest level”.<sup>2930</sup> He did not believe that “a local leader” would have made such a decision.<sup>2931</sup> Col. Dragičević was asked for some clarifications by the Trial Chamber and testified that orders relating to UNPROFOR were issued by the Main Staff of the VRS and were handed down by the Accused and his subordinates.<sup>2932</sup> However, he stressed during cross-examination, that neither the Accused nor anyone else from the VRS ever issued any order to act against UNPROFOR soldiers.<sup>2933</sup>

842. Documentary evidence shows that the Accused, at times, prohibited attacks on UNPROFOR,<sup>2934</sup> but other documentary evidence suggests that attacks on UNPROFOR were also carried out following orders of the Accused.<sup>2935</sup> For instance, an order to all Brigade commands,

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<sup>2926</sup> *Ibid.*, 29 May 2007, T. 5770 – 5771, 31 May 2007, T. 5926 – 5927.

<sup>2927</sup> P737, Order by the SRK Commander on sniper fire, dated 1 October 1995.

<sup>2928</sup> *Ibid.*

<sup>2929</sup> *See*, for evidence pertaining to attacks on UNPROFOR, *e.g.*, paras 236, 432.

<sup>2930</sup> W-46, P387, p. 10 (under seal).

<sup>2931</sup> *Ibid.*

<sup>2932</sup> Luka Dragičević, 26 Mar 2007, T. 4057.

<sup>2933</sup> *Ibid.*, T. 4034 – 4035.

<sup>2934</sup> P661, Order by the SRK deputy commander, 16 July 1993; P662, Order by the SRK deputy commander, 17 January 1994; P677, Order by the SRK Commander, dated 24 November 1994; D140, Order by Luka Dragičević, banning fire at the UN forces and equipment, acting for the SRK Commander, dated 25 July 1995 (“Order by Luka Dragičević, acting for the SRK Commander, 25 July 1995”).

<sup>2935</sup> P751, Order by SRK Commander, dated 26 November 1994; P396, Order by the SRK Commander, dated 27 May 1995; D140, Order by Luka Dragičević, acting for the SRK Commander, 25 July 1995. *See also*, P341, Order of SRK Commander, dated 27 May 1995; Rupert Smith, 7 Mar 2007, T. 3325 – 3526; W-46, 16 Mar 2007, T. 3843 – 3844 (closed session), P387, p. 16 (under seal); Luka Dragičević, 26 Mar 2007, T. 4022, 4055 – 4056.

signed by the Accused on 17 January 1994, asks SRK troops to “prevent any incidents with the forces of UNPROFOR and other international organisations”,<sup>2936</sup> while an order to the Commander of the Ilijaš Brigade, signed by the Accused on 26 November 1994, reads “You are to fire at the centre of deployed UNPROFOR forces.”<sup>2937</sup>

(vi) Intent and Awareness of Crimes

843. Evidence shows that the Accused was well-informed about the situation of the troops under his command.<sup>2938</sup> Lower level units regularly sent reports to the higher commands, as he himself had ordered.<sup>2939</sup> The reports also included information about civilian casualties.<sup>2940</sup>

844. Maj. Veljović agreed with an assessment of Col. Lugonja that the SRK had good information about ABiH positions, command posts, and movement.<sup>2941</sup>

a. Awareness of Crimes

845. In its Closing Brief, the Prosecution submits that there is uncontradicted testimony which shows that the Accused knew of his troops behaviour.<sup>2942</sup> Evidence shows that the Accused knew about allegations that SRK forces had targeted civilians. As described above, the Accused regularly visited SRK units at the confrontations lines in order to get an impression of the situation in the field.<sup>2943</sup> These visits included SRK-held areas from which civilians were targeted.<sup>2944</sup> Dragan Simić testified that, in the period from end December 1994 to May 1995, the Accused mostly went to Grbavica and Nedarići.<sup>2945</sup> As evidence presented in this case shows, there were a lot of sniping incidents in Grbavica and Nedarići.<sup>2946</sup> It is reasonable to infer that the Accused, who was the commander of the SRK and who regularly visited SRK units in these areas, was aware of the crimes that were committed.

846. Evidence shows that the Accused received numerous protest letters from UNPROFOR about crimes committed by SRK troops. UNPROFOR Gen. Gobilliard, Col. Meille and Maj. Gen. Nicolai

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<sup>2936</sup> P662, Order by the SRK deputy commander, 17 January 1994.

<sup>2937</sup> P751, Order by SRK Commander, 26 November 1994.

<sup>2938</sup> Anđelko Dragaš, 22 June 2007, T. 7123.

<sup>2939</sup> Zoran Trapara, 26 June 2007, T. 7332 – 7333.

<sup>2940</sup> Stevan Veljović, 30 May 2007, T. 5856.

<sup>2941</sup> *Ibid.*, T. 5837 – 5838, 5850 – 5851.

<sup>2942</sup> Prosecution Closing Brief, pp 140 – 144.

<sup>2943</sup> *See supra*, paras. 804 – 806.

<sup>2944</sup> *See supra*, Sections II.E.3.(a)(ii), II.E.4.b(i) and II.E.4(b)(iii)(a).

<sup>2945</sup> Dragan Simić, 5 June 2007, T. 6175 – 6176. *See also*, T-48, 22 June 2007, T. 7157.

<sup>2946</sup> *See supra*, Sections II.E.3.(a)(ii), II.E.4.b(i) and II.E.4(b)(iii)(a).

sent many protest letters to the Accused.<sup>2947</sup> Lt. Col. Fortin testified that protest letters to the Bosnian Serb side were addressed to the SRK Commander.<sup>2948</sup> According to Brig. Mohatarem, UNMOs also lodged protests.<sup>2949</sup> However, they would normally not file protests with the SRK, but “with Pale.”<sup>2950</sup>

847. UNPROFOR Sector Sarajevo would often protest against Bosnian Serbs shooting at the Igman road.<sup>2951</sup> In case of a shooting incident on ‘Sniper Alley’, protests were issued by the UNPROFOR battalion and by Gen. Gobilliard; verbal protests were conveyed by the liaison officers, whereas written protests were sent to the Accused.<sup>2952</sup> One witness testified that the UNPROFOR Sector Commander never received any answer to his protest letters.<sup>2953</sup> However, according to the witness, it was “certain that the information was always received” by the Accused.<sup>2954</sup> However, Maj. Gen. Nicolai testified that he normally received responses to protest letters from the SRK, either in written form or by telephone. Usually, the response consisted of a denial of involvement in the actions in relation to which the protest letter had been sent.<sup>2955</sup> At other times, it was said that the actions were a response to provocation “by the other side”, either by fire or by preparing an offensive.<sup>2956</sup> In general, David Harland and Maj. Eimers said, the protest letters did not lead to any change in the behaviour of the Bosnian Serbs.<sup>2957</sup>

848. One witness stated that the Accused was almost always willing to meet with Gen. Gobilliard.<sup>2958</sup> However, the Bosnian Serb commanders were rather dismissive about sniping or other violations. According to Brig. Mohatarem, they would not accept that they had been shooting at civilians. He added: “They didn't care about it, actually.”<sup>2959</sup>

849. A protest letter dated 2 December 1994 was sent to the Accused regarding the shooting of AT3 missiles from a place near the Jewish Cemetery on the Presidency Building, on a cinema and on the Ministry of Interior in Sarajevo. After the plane in which Yasushi Akashi arrived in Sarajevo

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<sup>2947</sup> Louis Fortin, P27, p. 7; P28, Protest letter, dated 2 June 1995; P29, Protest letter, dated 3 June 1995; P31, Protest letter, dated 3 June 1995; P32, Protest letter, 3 June 1995. *See also*, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 937, 947 – 949.

<sup>2948</sup> Louis Fortin, 16 Jan 2007, T. 479, P27, p. 7.

<sup>2949</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 708 – 709.

<sup>2950</sup> *Ibid.*

<sup>2951</sup> W-46, P387, p. 11 (under seal).

<sup>2952</sup> *Ibid.*, p. 13 (under seal).

<sup>2953</sup> W-46, 16 Mar 2007, T. 3850 (closed session). *See also*, Louis Fortin, 16 Jan 2007, T. 484; W-156, 27 Apr 2007, T. 5347 (closed session).

<sup>2954</sup> W-46, P387, p. 13 (under seal).

<sup>2955</sup> Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

<sup>2956</sup> David Harland, 15 Jan 2007, T. 347 – 349; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

<sup>2957</sup> David Harland, 15 Jan 2007, T. 347 – 349; Ronald Eimers, P585, pp 6, 10.

<sup>2958</sup> W-46, P387, p. 13 (under seal).

<sup>2959</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710; P392, Protest letter, 2 December 1994; W-46, P387, p. 25 (under seal).

in February 1995 was hit, a protest was conveyed to the Accused, to the SRK headquarters and to the VRS headquarters in Pale.<sup>2960</sup>

850. Around the twentieth of May 1995, when the SRK started using weapons from the WCPs, several protest letters were written.<sup>2961</sup> Brig. Mohatarem testified that in May 1995 alone, eight or nine protest letters were sent.<sup>2962</sup> Lt. Col. Fortin issued an ultimatum that if the Bosnian Serbs did not return the weapons to the WCPs, then “we would bomb. They did not and we bombed.”<sup>2963</sup>

851. On 8 June 1995, Gen. Gobilliard protested against the launching of “violent attacks with artillery and tanks all along the southern side of the confrontation line, particularly in the area of Debelo Brdo, Staro Brdo, Zlatišće road, Jewish Cemetery and Bosut Barracks. One tank even fired from inside Grbavica and incendiary rounds were also observed.”<sup>2964</sup> He requested the Accused, “once more, [...] to issue orders to prevent the situation from deteriorating to the point where a diplomatic solution is no longer possible” and he reminded the Accused that he was “responsible for the acts of the troops who implement your orders.”<sup>2965</sup>

852. There are also protest letters in evidence which relate to the scheduled incidents in this case. In a letter dated 30 June 1995, Col. Meille lodged a protest with the Accused regarding several shelling attacks on civilian targets in the city of Sarajevo on 28 and 29 June 1995, in particular, the shelling of the TV Building on 28 June 1995, the shelling of a residential area in Alipašino Polje, the firing at residential buildings in the city centre and the shelling of the PTT Building on 29 June 1995.<sup>2966</sup> A copy of that letter was sent by Maj. Gen. Nicolai to Gen. Delić and to Gen. Mladić on 1 July 1995.<sup>2967</sup>

#### b. Intent of the Accused

853. Brig. Gen. Fraser testified that it appeared to him that there was “a commander’s intent in play around the city of Sarajevo with respect to sniping incidents”.<sup>2968</sup> He testified that there was sniping in different areas of Sarajevo, along ‘Sniper Alley’, around the airport, and around the area

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<sup>2960</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 728.

<sup>2961</sup> Louis Fortin, P27, p. 7.

<sup>2962</sup> Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 722 – 723. *See, e.g.*, W-46, P387, p. 29 (under seal).

<sup>2963</sup> Louis Fortin, P27, p. 7. *See also*, para. 62.

<sup>2964</sup> P33, Protest letter, dated 8 June 1995.

<sup>2965</sup> *Ibid.*

<sup>2966</sup> P18, Protest letter, dated 30 June 1995.

<sup>2967</sup> P87, Protest letter, dated 1 July 1995; P103, Protest letter, 1 July 1995. *See also*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 722 – 723; Louis Fortin, P27, p. 15.

<sup>2968</sup> David Fraser, 7 Feb 2007, T. 1772 – 1773.

of Špicasta Stijena, these areas were all under the control of different SRK brigades, and sniping on these areas indicated a “higher commander’s intent.”<sup>2969</sup>

854. On 6 April 1995, the Accused issued an order to the Ilidža Brigade to “immediately prepare a launcher with an aerial bomb and transport the bomb for launching.” Further, the order stated that “[t]he most profitable target must be selected in Hrasnica or Sokolović [K]olon[ija] where the greatest casualties and material damage would be inflicted.”<sup>2970</sup>

855. There is also evidence that on 5 November 1994, the Accused attended a meeting in Vogošća at which allegedly the decision was taken to shell civilian targets. In an order dated 7 November 1994, Gen. Mladić stated:

“I have an information that on 5 November 1994 a meeting took place between local Serb leaders of Serbian Sarajevo in Vogošća, at which the Sarajevo-Romanija Corps Commander was also present, and at which a decision was made to block the UNPROFOR, to confiscate heavy technical equipment under the UNPROFOR’s control, and to shell civilian targets in Sarajevo with heavy weaponry.”<sup>2971</sup>

856. Milorad Katić confirmed that the leadership of “Serb Sarajevo” met from time to time in Vogošća.<sup>2972</sup> With regard to Gen. Mladić’s order of 7 November 1994, Milorad Katić testified that Gen. Mladić was probably misinformed about the meeting on 5 November 1994.<sup>2973</sup> In that order, Gen. Mladić further stated that he “forbid[s] all use of weapons of bigger calibre on civilian targets in Sarajevo without my approval.”<sup>2974</sup> Milorad Katić agreed that this sentence could be interpreted to mean that fire from all other smaller calibre weapons was allowed, as was put to him by the Prosecution, but testified that he did not believe that this was a fair reading.<sup>2975</sup>

857. On 12 or 16 August 1994, during his first days as SRK commander, the Accused issued an order to bring the SRK units to full combat readiness. He ordered the 4<sup>th</sup> Mixed Artillery Regiment to “draw up a fire plan in the region of Bašćaršija and Vrbanja. Fire is to be open in compliance with the order of the SRK commander.”<sup>2976</sup> Maj. Veljović explained that the SRK could not respond to ABiH mortar attacks, which originated from Čolina Kapa, and other features because this might have destroyed the cultural and historical area of Bašćaršija and brought about the “condemnation by the international community and the United Nations”.<sup>2977</sup> Moreover, he testified that the order

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<sup>2969</sup> David Fraser, 7 Feb 2007, T. 1772 – 1773.

<sup>2970</sup> P226, Order by SRK Commander, 6 April 1995.

<sup>2971</sup> P496, Order by Gen. Mladić on combat activities, dated 7 November 1994 (“Order by Gen. Mladić, 7 November 1994”).

<sup>2972</sup> Milorad Katić, 1 June 2007, T. 6061. *See also*, P675, Order by SRK Commander, dated 16 November 1994.

<sup>2973</sup> Milorad Katić, 1 June 2007, T. 6004 – 6005; P496, Order by Gen. Mladić, 7 November 1994.

<sup>2974</sup> P496, Order by Gen. Mladić, 7 November 1994.

<sup>2975</sup> Milorad Katić, 4 June 2007, T. 6066 – 6067; P496, Order by Gen. Mladić, 7 November 1994.

<sup>2976</sup> D186, Order by the SRK Commander about full combat readiness, 12, 16 August 1994, p. 2.

<sup>2977</sup> Stevan Veljović, 29 May 2007, T. 5752.



was that the buildings, roads, the civilian population and movements of people “shall not be targeted at any cost, except on specific orders”.<sup>2978</sup> The Accused strictly required, according to Maj. Veljović, that it be made clear to subordinate units that targets in Baščaršija could be engaged only and solely on his orders.<sup>2979</sup> According to Maj. Veljović, the Accused never issued such an order.<sup>2980</sup>

(c) Investigations and Disciplinary Measures

858. The Prosecution submits that the Accused “had the SRK’s properly functioning military investigation and justice system available to him, and could have used that system to prevent and/or punish the criminal acts of his troops.”<sup>2981</sup>

859. Evidence was led relating to whether the Accused initiated investigations or criminal or disciplinary proceedings against SRK soldiers who had committed crimes.

860. The VRS regulations, setting out the application of international humanitarian law since June 1992, were based on JNA regulations and provided, in relevant parts:

“Commanders and commanding officers and each member of the army or other armed formation taking part in combat activities shall be responsible for the application of the rules of international laws of war.

The competent superior officer shall initiate proceedings for sanctions as provided by the law against individuals who violate the international laws of war.”<sup>2982</sup>

861. On 19 June 1995, the Accused informed all SRK officers and unit members that the law on military courts and the law on the military prosecutor’s office during a state of war applied.<sup>2983</sup> Col. Dragičević confirmed that these regulations were in place during the Indictment period.<sup>2984</sup> He explained that if a commander in the SRK became aware of a violation of the international laws of war, he had a duty to report that up the chain of command. If a violation was reported to the corps commander, the commander was obliged to initiate proceedings and send an appropriate document to the military prosecutor.<sup>2985</sup> Information on such violations was also included in regular reports.<sup>2986</sup> There were two or three military prosecutors within the VRS.<sup>2987</sup>

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<sup>2978</sup> Stevan Veljović, 29 May 2007, T. 5752.

<sup>2979</sup> *Ibid.*, T. 5753 – 5754.

<sup>2980</sup> *Ibid.*, T. 5752 – 5754.

<sup>2981</sup> Prosecution Closing Brief, p. 148.

<sup>2982</sup> P475, Order on the application of the rules of international law of war in the VRS, dated 13 June 1992. *See also*, Luka Dragičević, 26 Mar 2007, T. 3972 – 3973; P474, SFRY Army Regulations, dated 1988, pp 14 - 15.

<sup>2983</sup> P718, Order by SRK Commander, dated 19 June 1995.

<sup>2984</sup> Luka Dragičević, 26 Mar 2007, T. 3973.

<sup>2985</sup> *Ibid.*, T. 3973 – 3976, 3996 – 3997, 27 Mar 2007, T. 4064. *See also*, Simo Tuševljak, 11 July 2007, T. 8097.

<sup>2986</sup> Luka Dragičević, 26 Mar 2007, T. 3973 – 3974.

<sup>2987</sup> Simo Tuševljak, 11 July 2007, T. 8097 – 8098.

862. Evidence shows that the office of the military prosecutor received reports from the SRK and its subordinate units.<sup>2988</sup> Col. Dragičević, the SRK Assistant Commander for Morale, Religious and Legal Affairs, testified that he never learned or heard of any instances where the Accused reported a violation of international humanitarian law to the military prosecutor. He testified that he would have been informed about such a report.<sup>2989</sup>

863. The legal department of the SRK, in turn, received monthly reports from the military prosecutor's office for Sarajevo of criminal proceedings against members of the SRK and the outcome of any such proceeding.<sup>2990</sup> During regular briefing sessions, the legal department informed members of the SRK corps command of the content of the reports.<sup>2991</sup> However, the reports did not contain any information about criminal proceedings against SRK members on war crime charges.

864. The civilian Crime Prevention Department of Sarajevo would hand over a case file to the military prosecutor's office, if it was established that the alleged perpetrator of a particular crime was a member of the VRS.<sup>2992</sup> Simo Tuševljak could not say how many times this happened or whether this happened often.<sup>2993</sup> He testified that the communication between this department and the military prosecutor was very rare.<sup>2994</sup> However, he did not recall one single instance between 1993 and 1995 in which he undertook an investigation of war crimes against a member of the SRK that he had to refer to the military prosecutor.<sup>2995</sup>

865. The military police of the SRK also conducted investigations.<sup>2996</sup> The intelligence and security organ as well as the corps commander would be informed about the outcome of these

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<sup>2988</sup> P480, Report by Col. Dragičević, 22 March 1995; P481, Report by Col. Dragičević to SRK command on crimes in March 1995, dated 19 April 1995 ("Report by Col. Dragičević, 19 April 1995"); P482, Information on Crime Levels in March 1995, dated 19 April 1995; P478, Report by Col. Dragičević to SRK command on crimes in May 1995, dated 8 June 1995 ("Report by Col. Dragičević, 8 June 1995"); P485, Information on Crime Statistics for June 1995, dated 26 July 1995.

<sup>2989</sup> Luka Dragičević, 26 Mar 2007, T. 3983 – 3984, 4036 – 4037.

<sup>2990</sup> Luka Dragičević, 26 Mar 2007, T. 3974 – 3975; P479, Report of the military prosecutor on crime trends in December 1994, dated 17 January 1995; P483, Report of the military prosecutor on crime trends in April 1995, dated 1 May 1995; P476, Report of the military prosecutor about crimes committed in May 1995, dated 2 June 1995; P477, Report of the military prosecutor on crime trends in May 1995, dated 6 June 1995; P484, Report of the military prosecutor on crime trends in June 1995, dated 11 July 1995; P486, Report of the military prosecutor on crime trends in July 1995, dated 2 August 1995; P487, Report of the military prosecutor on crime trends in August 1995, dated 5 September 1995; P488, Report of the military prosecutor on crime trends in October 1995, dated 13 November 1995.

<sup>2991</sup> Luka Dragičević, 26 Mar 2007, T. 3976; P480, Report by Col. Dragičević to SRK command on crimes in February 1995, dated 22 March 1995 ("Report by Col. Dragičević, 22 March 1995"). *See also*, P481, Report by Col. Dragičević, 19 April 1995; P482, Information on crime levels in March 1995, 19 April 1995; P478, Report by Col. Dragičević, 8 June 1995; P485, Information on crime statistics for June 1995, 26 July 1995.

<sup>2992</sup> Simo Tuševljak, 11 July 2007, T. 8096 – 8099.

<sup>2993</sup> *Ibid.*, T. 8098 – 8100.

<sup>2994</sup> *Ibid.*, T. 8097 – 8098.

<sup>2995</sup> *Ibid.*, 12 July 2007, T. 8113.

<sup>2996</sup> D185, SRK combat report, 13 September 1992; P670, Report on the work of the 4<sup>th</sup> Military Police Battalion, dated 4 September 1994.

investigations.<sup>2997</sup> However, there is no evidence that the military police investigated war crimes committed by the SRK forces. Witnesses testified that they were not aware of any investigations or proceedings relating to war crimes committed by SRK members. Predrag Trapara testified that he had no information from any source on any military prosecutions, administrative discipline, inquiries, or investigations into allegations that troops of SRK had committed war crimes and atrocities in the Indictment period.<sup>2998</sup>

866. Evidence shows that disciplinary proceedings against SRK soldiers were conducted and disciplinary measures taken. However, these proceedings and measures did not concern violations of international humanitarian law.<sup>2999</sup> On 18 March 1995, the Accused pronounced a disciplinary prison sentence against a SRK soldier for desertion.<sup>3000</sup> On 22 April 1995, the Accused ordered the commander of the Pračanski Battalion to pronounce disciplinary measures or sentences for members of his battalion who violated military discipline and to report to him if members committed major disciplinary offences.<sup>3001</sup> Furthermore, Col. Dragičević testified that the Accused was successful in implementing a prohibition on the use of alcohol in the field and in controlling the use of alcohol.<sup>3002</sup> According to Col. Dragičević, short prison sentences for people found to be intoxicated were pronounced, either by the Accused directly or by an appropriate order to the superior officer of the intoxicated soldier.<sup>3003</sup>

867. On 25 May 1995, the Accused responded to an order by the Main Staff of the VRS to bring “charges of criminal and disciplinary responsibility [...] against SRK soldiers, officers and commands because of the loss of territory and MTS and deaths, wounding and disappearance of combatants in the area of the Nišić plateau and Trnovo axis during 1994.”<sup>3004</sup> The Accused requested more time for investigation and suggested that a commission be formed.<sup>3005</sup> Whether a commission was eventually established, was not clarified during trial.

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<sup>2997</sup> Stevan Veljović, 30 May 2007, T. 5825; P715, Clarification on disciplinary responsibility, dated 4 June 1995.

<sup>2998</sup> Predrag Trapara, 27 June 2007, T. 7404; Vlajko Božić, 17 July 2007, T. 8449.

<sup>2999</sup> P668, Report on investigation of Capt. 1<sup>st</sup> class Milidrag, dated 26 August 1994; P695, Order on disciplinary measures, dated 2 April 1995.

<sup>3000</sup> P693, Pronouncement of disciplinary sentence, dated 18 March 1995; P699, Decision on reduction of disciplinary sentence, dated 16 April 1995.

<sup>3001</sup> P490, Order by SRK Commander, dated 22 April 1995. The Trial Chamber notes that Pračanski Battalion was within the Sarajevo-Romanija Corps, Luka Dragičević, 26 Mar 2007, T. 3987.

<sup>3002</sup> Luka Dragičević, 26 Mar 2007, T. 3990.

<sup>3003</sup> *Ibid.*

<sup>3004</sup> P711, Request by SRK Commander to Main Staff, dated 25 May 1995, p. 1.

<sup>3005</sup> *Ibid.*

### III. FINDINGS ON THE COUNTS AND CRIMINAL LIABILITY OF THE ACCUSED

868. As a general rule, in its findings the Trial Chamber will not repeat the evidence that has already been set out *in extenso*. The Trial Chamber will, instead, refer to the relevant areas of the Judgement that provide the foundation for its decisions.

#### A. Count 1: Terror

869. Under this count, the Prosecution charged the Accused with criminal responsibility under Articles 7(1) and 7(3) for the crime of terror as a violation of the laws or customs of war. It must first be established whether violations of the laws or customs of war were committed. This gives rise to a discussion of the requirements under Article 3 of the Statute as well as a discussion of the legal elements of the crime of terror.

##### 1. General Requirements of Article 3 of the Statute

870. Article 3 of the Statute is a residual clause which covers all serious violations of humanitarian law not covered by Articles 2, 4 or 5 of the Statute.<sup>3006</sup> There are two preliminary jurisdictional requirements for the application of Article 3 of the Statute: there must be an armed conflict, whether international or internal, at the time material to the Indictment, and the alleged crime must be closely related to this armed conflict (“nexus requirement”).<sup>3007</sup> Furthermore, four additional conditions, known as the *Tadić* conditions, must be fulfilled for a crime to fall within the jurisdiction of the Tribunal.<sup>3008</sup> The Trial Chamber finds that the *Tadić* conditions are met in respect of the relevant crimes.

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<sup>3006</sup> *Prosecution v. Tadić*, Case No. IT-94-1-AR72, Appeals Chamber Decision on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 91. *Galić*, Appeal Judgement, para. 118; *Kunarac et al.* Appeal Judgement, para. 68; *Čelebići* Appeal Judgement, para.125; *Prosecution v. Milan Martić*, Trial Judgement, para. 40 (“*Martić* Trial Judgement”).

<sup>3007</sup> *Tadić* Jurisdiction Decision, paras 67 – 70, 137; *Stakić* Appeal Judgement, para. 342; *Kunarac* Appeal Judgement, para 55; *Galić* Appeal Judgement, para. 120; *Čelebići* Appeal Judgement, paras 140, 147 – 150 and 420; Two criteria have been established in the case-law of the Tribunal in order to exclude mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts. The intensity of the conflict and the organisation of the parties should be assessed in light of the evidence relating to the case, *see Kordić and Čerkez* Appeal Judgement, para. 341; *Tadić* Trial Judgement, para. 562; *Aleksovski* Trial Judgement, para. 43; *Čelebići* Trial Judgement, para. 184.

<sup>3008</sup> *Tadić* Jurisdiction Decision, para. 94. *See also, e.g. Kunarac* Appeal Judgement, para. 66; *Martić* Trial Judgement, para. 40; *Prosecution v. Mile Mrkšić*, Trial Judgement, para. 405. For an offence to fall under the scope of Article 3 of the Statute, four conditions must be met:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;
- (iii) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.

871. The test to determine the existence of an armed conflict was set out in the *Tadić* Jurisdiction Decision and has been applied consistently by the Tribunal thereafter:

“An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.”<sup>3009</sup>

Crimes committed anywhere in the territory under the control of a party to the conflict, until a peaceful settlement of the conflict is achieved, fall within the jurisdiction of the Tribunal.<sup>3010</sup> A sufficient link between the alleged acts of the accused and the armed conflict as a whole must be established in order to meet the jurisdictional requirements of Article 3 of the Statute.<sup>3011</sup>

872. In the Indictment, the Prosecution alleged that an armed conflict existed in BiH at all material times relevant to the Indictment.<sup>3012</sup> The Trial Chamber notes that the Defence did not dispute that an armed conflict took place in BiH during the Indictment period.<sup>3013</sup> Indeed, the existence of an armed conflict was central to the Defence case; the Defence argued that the intensity of the conflict showed that the activities of the SRK were a necessary and legitimate response to ABiH activities, rather than being directed at the civilian population.<sup>3014</sup> In addition, the Trial Chamber heard evidence from several witnesses who confirmed the existence of an armed conflict between the SRK and the ABiH during the Indictment period.<sup>3015</sup> There is abundant evidence of a linkage between the acts of the Accused and the armed conflict. One need only refer to the evidence of the orders given by the Accused to various brigades and other units, for example, the report of the Accused regarding the TV Building.

## 2. The Crime of Terror

873. Count 1 of the Indictment is charged pursuant to Article 3 of the Statute and Article 51 of Additional Protocol I and Article 13 of Additional Protocol II. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II are similarly worded as follows:

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<sup>3009</sup> *Tadić* Jurisdiction Decision, para. 70. See also, *Kordić and Čerkez* Appeal Judgement, para. 341; *Tadić* Trial Judgement, paras 561 – 571.

<sup>3010</sup> *Tadić* Jurisdiction Decision, para. 70; *Kunarac* Appeal Judgement, para. 57; *Prosecution v. Milan Martić*, Trial Judgement, para. 41; *Prosecution v. Mile Mrkšić et al.*, Trial Judgement, para. 406 (“*Mrkšić et al.* Trial Judgement”).

<sup>3011</sup> *Tadić* Trial Judgement, paras 572 – 573.

<sup>3012</sup> Indictment, para. 26.

<sup>3013</sup> Defence Opening Statement, 24 May 2007, T. 5686 – 5688; Defence Pre-Trial Brief, para. 17; Defence Closing Brief, para. 211 *et seq.* Adjudicated Facts 16, 25 to 35, which refer to the existence of an armed conflict in Bosnia and Herzegovina in the time between 1992 and 1994.

<sup>3014</sup> Defence Opening Statement, 24 May 2007, T. 5686 – 5688, 5697; Trial Hearing, 27 June 2007, T. 7380, 3 July 2007, T. 7518 – 7519, 4 July 2007, T. 7622 – 7623; Defence Closing Arguments, T. 9498.

<sup>3015</sup> See e.g. Milorad Katić, 1 June 2007, T. 6049 – 6050; Nedeljko Učur, 26 July 2007, T. 8930; Asam Butt, 15 Feb 2007, T. 2240 – 2242, 2244; Martin Bell, 26 Apr 2007, T. 5271, 5273, 27 Apr 2007, T. 5280 – 5282, D178, p. 7; T-39, 21 June 2007, T. 6998 – 6999; D1, UNPROFOR report on meeting with Karadžić and others, dated 7 October 1994; D2, UNPROFOR weekly BH Political Assessment, 3 November 1993, p. 1; D155, Letter by Enver Hadžihasanović, dated 15 September 1994; P42, P152, Report by the SRK Commander, 30 June 1995.

“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

The first sentence incorporates a general prohibition of attacks on civilians, while the second sentence prohibits a specific form of attacks on civilians.<sup>3016</sup>

874. The crime alleged in the Indictment is that of acts or threats of violence, the primary purpose of which is to spread terror among the civilian population (“crime of terror”). This crime was considered for the first time by this Tribunal in the *Galić* case.<sup>3017</sup> The Appeals Chamber held that the crime of terror was both prohibited and criminalised under customary international law. The crime falls under Article 3 of the Statute as a violation of the laws or customs of war and the Tribunal has jurisdiction over the crime.<sup>3018</sup>

875. In addition to the elements common to offences under Article 3 of the Statute, the Trial Chamber and the Appeals Chamber in the *Galić* case found that for the crime of terror the following specific elements need to be met:

1. Acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population;
2. The offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence;
3. The above offence was committed with the primary purpose of spreading terror among the civilian population.<sup>3019</sup>

(a) Actus Reus

876. The Appeals Chamber in the *Galić* case held that the *actus reus* of the crime of terror is constituted by acts or threats of violence directed against the civilian population or individual civilians causing death or serious injury to body or health within the civilian population or to individual civilians.<sup>3020</sup>

877. Like the crime of unlawful attacks against civilians, the crime of terror is not limited to direct attacks against civilians, but may also include indiscriminate or disproportionate attacks or threats thereof.<sup>3021</sup> Similarly, acts and threats of violence do not include legitimate attacks against

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<sup>3016</sup> *Galić* Appeal Judgement, para. 87; *Galić* Trial Judgement, para. 98.

<sup>3017</sup> *Galić* Trial Judgement and Appeal Judgement.

<sup>3018</sup> *Galić* Appeal Judgement, paras 86 – 87, 90, 98; *Galić* Trial Judgement, paras 86 – 138.

<sup>3019</sup> *Galić* Trial Judgement, para. 133; *Galić* Appeal Judgement, paras 100, 101.

<sup>3020</sup> *Galić* Appeal Judgement, paras 100, 101.

<sup>3021</sup> *Galić* Appeal Judgement, para. 102. *See infra*, para. 944.

combatants but only unlawful attacks against civilians.<sup>3022</sup> While the nature of the acts or threats of violence may vary, the important element, as outlined below, is that the acts or threats of violence are committed with the specific intent to spread terror among the civilian population.<sup>3023</sup>

(b) *Mens Rea*

878. As the Trial Chamber in the *Galić* case held, the crime of terror is a “specific intent crime.”<sup>3024</sup> The *mens rea* of the crime of terror consists of a general intent and a specific intent. The general intent is that the offender must have wilfully made the civilian population or an individual civilian the object of acts or threats of violence.<sup>3025</sup> The specific intent is “spreading terror among the civilian population.”<sup>3026</sup>

879. The Trial Chamber in the *Galić* case defined the crime of terror as “wilfully” making the civilian population or individual civilians not taking direct part in hostilities the object of acts of violence with “the primary purpose of spreading terror among the civilian population.”<sup>3027</sup> “Primary” does not mean that the infliction of terror is the only objective of the acts or threats of violence. Other purposes may exist simultaneously with the purpose of spreading terror among the civilian population, provided that the intent to spread terror is principal among the aims of the acts of violence.<sup>3028</sup> Perpetrators committing the crime of terror may have military, political or other goals. Consequently, the war crime of terror does not require proof of ultimate military or political goals.<sup>3029</sup>

880. While the actual infliction of death or serious harm to body or health is a required element of the crime of terror, both the Trial Chamber and the Appeals Chamber in the *Galić* case held that actual infliction of ‘terror’ on the civilian population is not an element of the crime.<sup>3030</sup> The fact that the civilian population suffered and experienced terror during an armed conflict may, however, serve as corroboration of the intent to terrorise.

881. As the Appeals Chamber held, the specific intent of the crime of terror can be inferred from the circumstances of the acts or threats of violence, that is, from their nature, manner, timing and

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<sup>3022</sup> *Galić* Trial Judgement, para. 135; *Galić* Appeals Judgement, para. 102.

<sup>3023</sup> *Galić* Appeal Judgement, para. 102.

<sup>3024</sup> *Galić* Trial Judgement, para. 137.

<sup>3025</sup> The requirement of wilfulness is laid down in Article 85 (3) of Additional Protocol I.

<sup>3026</sup> *Galić* Appeal Judgement, para. 104; *Galić* Trial Judgement, para. 133.

<sup>3027</sup> *Galić* Trial Judgement, para. 133.

<sup>3028</sup> *Galić* Appeal Judgement, para.104.

<sup>3029</sup> The Trial Chamber notes that an element of political pressure is expressed in a number of international conventions dealing with ‘terror’/ ‘terrorism’ outside the scope of international humanitarian law.

<sup>3030</sup> *Galić* Appeal Judgement, para. 104; *Galić* Trial Judgement, paras 65, 134.

duration.<sup>3031</sup> In that regard, this Trial Chamber notes, attacks during cease-fires and truces or long-term and persistent attacks against civilians, as well as indiscriminate attacks, may be taken as indicia of the intent to spread terror. The Trial Chamber considers that the specific intent may also be inferred from the site of the attack. The fact that, during the siege, civilians were targeted and attacked 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, may provide strong indicia of the intent to spread terror.

882. In sum, the crime of terror requires the same legal elements as the crime of unlawful attacks against civilians. However, it is different from the crime of unlawful attacks against civilians in that it requires the additional mental element of the “primary purpose of spreading terror.”<sup>3032</sup> The crime of terror, therefore, constitutes an “aggravated”, more serious form of, unlawful attack on civilians. The law on unlawful attacks against civilians is set out in Section III.A.6 below.

### (c) The Concept of “Terror”

883. ‘Terror’ is the key term in the formulation of the crime of terror. The Trial Chamber in the *Galić* case noted that the Prosecution did not provide a definition of ‘terror’ in its preliminary submissions, but that, in the course of the trial, it adopted a definition given by an expert which equated ‘terror’ with “extreme fear”.<sup>3033</sup> That Trial Chamber also cited the Defence submission that “[terror] has to be of the highest intensity. It has to be long-term. It has to be direct. And it has to be capable of causing long-term-consequences”.<sup>3034</sup> The Trial Chamber in the *Galić* case ultimately accepted the Prosecution’s rendering of terror as “extreme fear”.<sup>3035</sup> Like the Trial Chamber, the Appeals Chamber in the *Galić* case did not define the term ‘terror’. In a footnote, the Appeals Chamber merely noted that “terror could be defined, as the Trial Chamber did, as ‘extreme fear’”.<sup>3036</sup> As such, neither the Trial Chamber nor the Appeals Chamber in the *Galić* case carried out an examination of the term ‘terror’.<sup>3037</sup>

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<sup>3031</sup> *Galić* Appeal Judgement, para. 104.

<sup>3032</sup> See also, *Galić* Trial Judgment, para. 162.

<sup>3033</sup> *Galić* Trial Judgement, para. 75 referring to the Prosecution Response to Acquittal Motion, para. 16.

<sup>3034</sup> *Galić* Trial Judgement, para. 83 referring to Defence Closing Arguments, T. 21810.

<sup>3035</sup> *Galić* Trial Judgement, para. 137.

<sup>3036</sup> *Galić* Appeals Judgement, fn 320.

<sup>3037</sup> The Trial Chamber in the *Galić* case did not consider it necessary to enter into a discussion of what it called “‘žpolitical’ terrorist violence” and its regulation in various international instruments; *Galić* Trial Judgement, fn 222 and fn 150. Unlike the Statute of this Tribunal, the Statutes of the International Criminal Tribunal for Rwanda (“ICTR”) and of the Special Court for Sierra Leone (“SCSL”) enumerate ‘acts of terrorism’ in their respective articles dealing with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. In its first judgement issued on 20 June 2007, the SCSL found that the accused were criminally responsible for, *inter alia*, the crime “acts of terrorism” pursuant to Article 3(d) of the SCSL Statute. In dealing with the elements of the crime “acts of terrorism”, the SCSL, however, simply reproduced the elements set out by the Trial Chamber in the *Galić* case. The



884. 'Terror', in its ordinary meaning, denotes "the state of being terrified or greatly frightened; intense fear, fright or dread" or the "action or quality of causing dread; terrific quality or terribleness."<sup>3038</sup>

885. When asked by the Trial Chamber to define 'terror' during its Closing Arguments, the Prosecution gave the following definition:

"No one knew whether they might be the next victim. It affected every waking moment of their lives. People for 15 months over the period of this indictment knew absolutely no sense of safety anywhere in the city. Terror is [...] the intentional deprivation of a sense of security. It's been [*sic*] the primal fear that people feel when they see someone in front of them gunned down and that moment of panic when they try and run to help the victim, waiting for the next shots to come, and you've had ample evidence about that."<sup>3039</sup>

"And it's not just [...] the fear that comes from being nearby the combat. This is a fear calculated to demoralise, to disrupt, to take away any sense of security from a body of people who have nothing [...] to do with the combat."<sup>3040</sup>

During its closing arguments, the Defence stated the following when addressing the issue of terror:

"The terror that my learned friend spoke about, the primordial fear which the primal fear, this fear was there for everyone, it was felt by everyone, civilians and soldiers alike. If someone had a strategy of terrorising and killing civilians, it would not have been possible for several thousand of their soldiers to be killed. [...] This shows that that area was a theatre of heavy fighting, of serious conflicts, and one cannot characterise this as a civilian area and speak of civilians as the sole targets at the time of the events in this indictment."<sup>3041</sup>

The Defence thereby appeared to challenge the terror charge on the basis that there was heavy fighting in all of Sarajevo which caused terror among everyone.

886. The Trial Chamber finds that the response of the Prosecution captures the essence of what the term terror denotes.

887. The Trial Chamber emphasises that the existence of an armed conflict constitutes a general requirement of Article 3 of the Statute and also of the crime of terror pursuant to Article 51 of Additional Protocol I and Article 13 of Additional Protocol II. In that regard, the Trial Chamber notes a growing tendency in international law to distinguish between terror in times of peace and terror in a situation of armed conflict as understood in international humanitarian law.<sup>3042</sup> However,

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ICTR thus far has not dealt with a case involving "acts of terrorism": *Prosecutor v. Alex Tamba Brima, Brima Bazzy Tamara, Santigie Borbor Kanu*, Case No. SCSL-04-16-T, Judgement, 20 June 2007.

<sup>3038</sup> Oxford English Dictionary, Second Edition 1989, 'terror'; 'terror-bombing' denotes "intensive and indiscriminate bombing designed to frighten a country into surrender". 'Reign of terror' denotes "a state of things in which the general community live in dread of death or outrage".

<sup>3039</sup> Prosecution Closing arguments, 9 Oct 2007, T. 9468.

<sup>3040</sup> Prosecution Closing arguments, 9 Oct 2007, T. 9472.

<sup>3041</sup> Defence Closing arguments, 10 Oct 2007, T. 9525.

<sup>3042</sup> Most international conventions are confined to terror not governed by international humanitarian law. The International Convention against the Taking of Hostages of 1979, Art. 12; International Convention for the Suppression of Terrorist Bombings 1997 (A/Res/52/164 or UNTS 284), Art. 19(2); Nuclear Terrorism Convention of 2005

the Trial Chamber observes that attacks directed against the civilian population are equally prohibited in the international instruments dealing with the crime of terror in peace time.

888. The Trial Chamber also notes that the crime of terror only covers acts or threats of violence which are specifically intended to spread terror among the civilian population. It must be established that the terror goes beyond the fear that is only the accompanying effect of the activities of armed forces in armed conflict. The prohibition of spreading terror among a civilian population must therefore always be distinguished from the effects that acts of legitimate warfare can have on a civilian population.<sup>3043</sup> The Trial Chamber notes that a certain degree of fear and intimidation among the civilian population is present in nearly every armed conflict.<sup>3044</sup> The closer the theatre of war is to the civilian population, the more it will suffer from fear and intimidation. This is particularly the case in an armed conflict conducted in an urban environment, where even legitimate attacks against combatants may result in intense fear and intimidation among the civilian population, but to constitute terror, an intent to instil fear beyond this level is required. Therefore, the circumstances of a particular armed conflict must be taken into account in determining whether the crime of terror has been committed, or whether the perpetrators intended to “spread terror among a civilian population.”

### 3. Evaluation of the Evidence

#### (a) Civilian Status of the Population

889. The status of the population in Sarajevo during the conflict is of critical significance to the Indictment as a whole. The Prosecution’s case is that the population of Sarajevo had a civilian status. However, the Defence challenged this with regard to Sarajevo as a whole and for a number of particular areas within the confrontation lines. A determination as to whether the population was civilian or not is necessary in respect of every count. For that reason, it is convenient to consider and determine that question at this stage.

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(A/Res/59/290). The scope of the Draft Comprehensive Convention on Terrorism was, and still is, a very contentious issue and was considered a “key central focus”. Currently, the Draft Comprehensive Convention against International Terrorism contains an exemption for the activities of armed forces during an armed conflict. Article 20(2) (A/61/37, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Tenth Session (27 February – 3 March 2006), p. 4; A/62/37, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Eleventh Session (5, 6 and 15 February 2007), p. 6. *See also*, for a distinction of terrorism “in times of peace” and in times of armed conflict: *Antonio Cassese*, *The Multifaceted Criminal Notion of Terrorism in International Law*, 4 JICJ 2006, 933 ff. argues that a customary rule on the crime of terrorism in peace time has already evolved.

<sup>3043</sup> *Galić* Trial Judgement, para. 101.

<sup>3044</sup> *See also*, French delegation, Official Records, vol. XIV, p. 65: “in traditional war attacks could not fail to spread terror among the civilian population: what should be prohibited [...] was the intention to do so.”

890. In its Final Brief, the Defence argued that the Prosecution did not show beyond reasonable doubt that acts of violence “were directed against the civilian population as such or against civilian persons and facilities and were indiscriminate, given that combat between the warring parties in the city of Sarajevo took place in military zones that were either completely free of civilians or deprived of their civilian status owing to the high number of military targets present among the civilians and civilian property.”<sup>3045</sup> This argument has two parts. First, the Defence challenges the allegation that the underlying crimes were committed as part of a widespread or systematic attack directed against any civilian population and thus challenges the applicability of Article 5 of the Statute. Second, the Defence challenges the Prosecution allegation that the acts of violence were directed against individual civilians or a civilian population and thus the further allegation that the crimes of terror and unlawful attacks against civilians under Article 3 of the Statute were committed.

891. During its closing arguments, the Defence expanded on this challenge, saying that “it must be established beyond reasonable doubt that it was, indeed, a civilian area and that it was, indeed, a civilian population and that this man sitting today before you in the dock had no other intention than to use his powerful army against that civilian population.”<sup>3046</sup> The argument of the Defence is particularly focused on the summer months of 1995, the period during which the ABiH launched an offensive.<sup>3047</sup>

892. The Defence also argued that the ABiH intentionally mixed military targets with civilian targets, by “setting up ABiH headquarters in civilian-looking buildings,” “mixing uniformed fighters with non-combatants” and by having members of the ABiH move between trenches without uniform.<sup>3048</sup> The Defence concludes that, “as several brigades of the BH Army 1<sup>st</sup> Corps had their combat positions, headquarters, and weapons depots in the city of Sarajevo on territory under BH Army control, one can reasonably conclude that military targets were common on that territory.”<sup>3049</sup>

893. During its closing arguments, the Prosecution responded to the Defence argument. It submitted that “[a]ny Defence argument that the reason civilians were killed and injured was due to the deliberate intermingling by the ABiH of military targets with civilians and civilian objects is an attempt to draw attention away from the charges at hand. If the Defence is saying that the Accused had information that civilians were mixed among military targets, the Accused was under an obligation to gather sufficient information to ensure that [in] any attacks against such a target, the

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<sup>3045</sup> Defence Final Brief, p. 80.

<sup>3046</sup> Defence Closing Arguments, T. 9498.

<sup>3047</sup> For evidence pertaining to this offensive, see Section II.E.9(d) ABiH Offensives.

<sup>3048</sup> Defence Final Brief, paras 100 – 102.

<sup>3049</sup> Defence Final Brief, para. 102.

anticipated military advantage outweighed the anticipated loss to civilian life.”<sup>3050</sup> It further submitted that even if “certain civilian objects become legitimate objects of attack, any such attack must still be conducted with respect for the principles of distinction and proportionality.”<sup>3051</sup>

894. The status of a population may change due to the flow of civilians and combatants.<sup>3052</sup> The evidence showed that the ABiH 1<sup>st</sup> Corps had between 60,000 and 78,000 troops during the conflict, of which approximately 40,000 to 45,000 were stationed in Sarajevo.<sup>3053</sup> The establishment of the 12<sup>th</sup> Division of the ABiH did not change this number significantly.<sup>3054</sup>

895. The evidence of Prosecution expert Ewa Tabeau and Defence witness Maj. Veljović showed that at the start of the conflict there were approximately 500,000 persons in the ten municipalities of Sarajevo.<sup>3055</sup> After the start of the conflict, approximately 40,000 to 60,000, out of 150,000, Bosnian Serbs remained inside the confrontation lines and many of the approximately 100,000 Bosnian Muslims moved to the Bosnian Muslim-dominated areas inside the confrontation lines.<sup>3056</sup> In Hrasnica alone, the population increased from approximately 30,000 to 50,000 persons, due to an influx of Bosnian Muslims from areas such as Trnovo and Eastern Bosnia.<sup>3057</sup> The evidence showed that at the very start of the conflict, people were evacuated from the area of Sarajevo, but there is no evidence that large population movements occurred as the conflict continued.<sup>3058</sup>

896. Taking into account all the population fluctuations at the start of the war, the Trial Chamber finds that the populated urban areas within the confrontation lines were civilian in status. For example, the evidence showed that in the Bosnian Muslim-held territory of Dobrinja alone, the population numbered 27,000 persons, with the presence of approximately 2,200 troops of the Dobrinja Brigade, and that the Old Town, located well within the confrontation lines, was a densely-populated area.<sup>3059</sup> The Trial Chamber further notes that the 40,000 to 45,000 troops of the 1<sup>st</sup> Corps were not all stationed in densely-populated areas. Rather, many soldiers were deployed in trenches or positions along the confrontation lines.<sup>3060</sup> While acknowledging that in the normal run of military activities, some soldiers would visit their homes, in the view of the Trial Chamber, the overall effect of that movement would not have altered the civilian status of those urban areas.

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<sup>3050</sup> Prosecution Closing Arguments, T. 9418.

<sup>3051</sup> Prosecution Closing Arguments, T. 9419.

<sup>3052</sup> See *infra*, Section III.A.6 Counts 4 and 7: Unlawful Attacks against Civilians.

<sup>3053</sup> See *supra* Section II.B.1(b) ABiH Structure.

<sup>3054</sup> See *supra* Section II.B.1(b) ABiH Structure

<sup>3055</sup> P637, Expert report Ewa Tabeau, p. 67; Stevan Veljović, 31 May 2007, T. 5930, 5959, 5975.

<sup>3056</sup> See *supra*, Section II.C. Sarajevo 1992 - 1994.

<sup>3057</sup> W-57, 17 Apr 2007, T. 4548.

<sup>3058</sup> See *supra*, Section II.C. Sarajevo 1992 - 1994.

<sup>3059</sup> See *supra*, paras. 119 - 120, 466.

<sup>3060</sup> See, e.g., Sections II.B.3(c); II.E.9(d) ABiH Offensives.

897. There is evidence that the troops of the 1<sup>st</sup> Corps were supported by troops of other ABiH corps during the summer offensive. However, there is no evidence to suggest a massive influx of ABiH troops into the urban areas within the confrontation lines in Sarajevo which could have altered the civilian status of that area.

898. It is clear that military targets existed inside the confrontation lines. For example, an ABiH military map showed around 30 command posts of ABiH units throughout the entire area inside the confrontation lines.<sup>3061</sup> However, these military targets, too, cannot be said to be of such great numbers that they would deprive the entire urban area within the confrontation lines of its civilian status. In the circumstances, therefore, the Defence submission that the entire area inside the confrontation lines of Sarajevo was a military area is rejected, and the Trial Chamber finds that the area had civilian status.

899. The Defence also submitted that certain areas within the confrontation lines were “military zones”, namely Hrasnica, Sedrenik and Vojničko Polje. The shelling incidents in Hrasnica took place on 7 April 1995, 1 July 1995 and 23 July 1995. The evidence pertaining to the period of the end of March and early April 1995 shows that there was fighting in the general area around Mount Igman and Treskavića.<sup>3062</sup> The evidence also shows that fighting occurred along the confrontation lines, including at the lines at the Famos Factory. However, most of the fighting took place many kilometres away from Hrasnica.<sup>3063</sup> Furthermore, the evidence does not show troop movement through Hrasnica on their way from Sarajevo to the Mount Igman and Treškavica areas, or vice versa, on a scale that would alter the civilian status of Hrasnica in April 1995.

900. With particular regard to the time period in which the scheduled shelling incident of 1 July 1995 took place in Hrasnica, an ABiH combat report, dated 1 July 1995, shows that troops of the 12<sup>th</sup> Division, stationed inside the confrontation lines, attacked the Nedarići barracks, located several kilometres from Hrasnica.<sup>3064</sup> However, there is no indication in the evidence that ABiH troops moved through Hrasnica on a scale that would alter the civilian status of the area. On the basis of the evidence discussed above, the civilian status of Hrasnica remained unchanged in April 1995 and during the summer offensive in 1995.

901. It is significant that the Defence offered absolutely nothing to substantiate its submission that Sedrenik was a military zone. On the contrary, Nedžib Đozo, a BiH police officer who

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<sup>3061</sup> P194, Military map of Sarajevo.

<sup>3062</sup> P696, Order by SRK Commander, 4 April 1995; D509, ABiH combat report, dated 3 April 1995; D59, Military map.

<sup>3063</sup> P696, Order by SRK Commander, 4 April 1995; P883, UNMO daily sitrep, dated 4 April 1995; P226, Order by SRK Commander, 6 April 1995. *See also supra*, Section II.E.9(d) ABiH Offensives.

<sup>3064</sup> D425, ABiH combat report, dated 1 July 1995.

investigated many sniping incidents in Sedrenik, testified that “there was no military activity in that neighbourhood; it was a purely residential area.”<sup>3065</sup> Derviša Selmanović stated that Sedrenik was a “strictly civilian neighbourhood.”<sup>3066</sup> On the basis of her evidence as to the time she lived in Sedrenik, the Trial Chamber is satisfied that Derviša Selmanović was sufficiently familiar with the settlement to speak to its civilian nature. Similarly, Tarik Žunić said, in cross-examination, that ABiH troops did move through the area on their way to the trenches, but did so only at night in order not to endanger the civilians living in Sedrenik. Finally, Lt. Col. Harry Konings, team leader of the UNMO team that was deployed in Sedrenik, testified that, as was common for UNMO teams, their team base in Sedrenik was located “in the middle of the civilian population.”<sup>3067</sup> The Trial Chamber finds that the neighbourhood of Sedrenik was located close to confrontation lines. However, its proximity to the confrontation lines does not alter Sedrenik’s civilian status, nor does the military activity that took place at the confrontation lines. Moreover, the Trial Chamber finds that there was no military asset in Sedrenik that could alter its civilian status. In light of the evidence, the Trial Chamber finds that Sedrenik was, contrary to the Defence submission, a civilian area with a civilian population.

902. In respect of Vojničko Polje, the evidence shows that the confrontation line ran just in front of the School of the Blind. Defence witness T-60, a civilian who lived in an apartment building in Vojničko Polje, testified that, in 1994 and 1995, most of the buildings in his area were inhabited by the ABiH.<sup>3068</sup> He stated that he did not see any civilians and that “one could only observe troops there, either in camouflage military uniforms or in civilian clothes but with weapons.”<sup>3069</sup> When asked about the building with the passageway where Adnan Kasapović was shot on 24 October 1994, T-52 testified that he never went there, but that he could see the ABiH soldiers there.<sup>3070</sup>

903. Prosecution witnesses W-62 and Ermin Krečo testified that during the war there was an ABiH dormitory in the vicinity of the passageway where Adnan Kasapović was shot. They also spoke about going to visit friends who lived in the same neighbourhood; this shows that civilians were present in the area. While, as stated above, T-60 said that “most” of the buildings were inhabited by the ABiH and that he did not see any civilians, he also gave evidence of the presence of civilians in the area; T-60 testified that he lived in one of the apartment buildings in Vojničko Polje and other civilians lived in his building. His testimony that civilians were only living in his building is not supported by the evidence of W-62 and Ermin Krečo, who lived in another

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<sup>3065</sup> Nedžib Dozo, P363, p. 2.

<sup>3066</sup> Derviša Selmanović, P169, p. 2.

<sup>3067</sup> Harry Konings, 12 Mar 2007, T. 3553 – 3554.

<sup>3068</sup> T-60, 25 July 2007, T. 8815- 8816; D352, Photograph marked by T-60 (under seal).

<sup>3069</sup> T-60, 25 July 2007, T. 8817, 8843 - 8844; D352, Photograph marked by T-60 (under seal)

<sup>3070</sup> T-52, 28 June 2007, T7458; D279, Photograph marked by T-52.

apartment building. Furthermore, Defence witness T-52 testified that the ABiH held positions in the high-rise buildings in Vojničko Polje and Alipašino Polje.<sup>3071</sup> However, in cross-examination, he confirmed that the high-rise buildings in Vojničko Polje, in front of the School of the Blind, were probably inhabited by civilians in 1994 – 1995, but said that he did not see them.<sup>3072</sup> Similarly, T-48 thought that civilians lived in the apartment buildings, although he also did not see them. On the basis of the evidence of these witnesses, the Trial Chamber is satisfied that Vojničko Polje was a civilian area and finds that the presence of an ABiH dormitory does not alter the civilian status of this area.

904. In sum, the Trial Chamber rejects the Defence submission that the entire area of Sarajevo was a military zone and that the areas of Hrasnica, Sedrenik and Vojničko Polje were also military zones. Instead, the Trial Chamber reiterates its earlier findings that these areas had civilian status.

(b) Terror

905. As to the evidence pertaining to the crime of terror, the Trial Chamber recalls its earlier finding that the SRK was responsible for the sniping and shelling of the area within the confrontation lines. It also found that as a result, civilians were seriously injured or killed.<sup>3073</sup> The evidence adduced in relation to sniping amply supports the charge of terror. In addition to the evidence pertaining to the scheduled incidents, the Trial Chamber heard other evidence of shelling and sniping of the civilians and the civilian population inside the confrontation lines in Sarajevo. The evidence shows that civilians were continuously exposed to shelling and sniping and that numerous civilians were wounded or killed, although some witnesses noted that the level of intensity varied, particularly with regard to shelling.<sup>3074</sup> The varying intensity notwithstanding, the evidence of Berko Zečević and several UNMOs shows that artillery and mortar explosions were a daily occurrence in Sarajevo.

906. The Defence challenged the terror charge by leading evidence designed to show that the SRK troops acted only in response to provocation or in order to protect their families.<sup>3075</sup> It argued that the SRK desired peace.<sup>3076</sup> The Trial Chamber understands this argument to be a challenge to the intent element for the crime of unlawful attacks against civilians. In this respect, the Trial Chamber recalls that in prohibiting attacks against civilians and civilian objects, Article 49 of

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<sup>3071</sup> T-52, 28 June 2007, T. 7432; D279, Photograph marked by T-52.

<sup>3072</sup> T-52, 28 June 2007, T. 7458.

<sup>3073</sup> See *supra*, paras 794, 796.

<sup>3074</sup> See *supra*, Sections II.E.5 Shelling during Indictment Period; II.E.1 Patterns of Sniping and Shelling of Sarajevo.

<sup>3075</sup> Defence Final Brief, paras 75 – 77. See also *supra*, Sections II.E.9.(c) Defence Allegations of Provocations; II.E.9(d) ABiH Offensives.

<sup>3076</sup> Defence Final Brief, paras 75 – 77.

Additional Protocol I defines “attacks” as meaning “acts of violence against the adversary, *whether in offence or defence*”.<sup>3077</sup> There is an unconditional and absolute prohibition on the targeting of civilians in customary international law:<sup>3078</sup> *Any attack directed at the civilian population is prohibited, regardless of the military motive.*

907. A number of Prosecution witnesses, including Ismet Hadžić, John Jordan, Lt. Com. Thomas Knustad and W-137, testified that the shelling was carried out in an indiscriminate manner.<sup>3079</sup> Lt. Col. Konings stated that one of the consequences of using mortars as “harassment fire”, as it was used in Sarajevo, is the infliction of a lot of harm, especially against civilians.<sup>3080</sup> No area in Sarajevo was safe from the shells; the Trial Chamber heard of shells striking in Hrasnica, Sokolović Kolonija, Marindvor, Alipašino Polje, Dobrinja, Baščaršija, Koševo Polje, Alipašin Most, Hrasno and many other locations throughout Sarajevo. The shelling was aimed at civilian areas, such as parks, cemeteries, market places and water collection points. Azra Šišić recalled that it was “very risky” to leave one’s apartment building to collect food from 100 to 200 metres away because of the shelling.<sup>3081</sup>

908. Sniping was also pervasive throughout the city. Witnesses testified that civilians were killed by fire from Špicasta Stijena, Grbavica, Mount Trebević, Vraca, the Jewish Cemetery, and the curve of the Lukavica-Pale road above Skenderija, and above Debelo Brdo.<sup>3082</sup> John Jordan recalled that in nice weather the snipers were particularly active, “people came out, made it a target-rich environment and the snipers got busy.”<sup>3083</sup> Snipers targeted places where civilians gathered, including, for example, where people queued for and collected water. Sometimes snipers would shoot at the water containers people were carrying. Witnesses recalled going to collect water late at night or very early in the morning, when there was no sniping.<sup>3084</sup> Bogdan Vidović testified that it was hard to single out a particular neighbourhood in Sarajevo that was more susceptible to sniping than another.<sup>3085</sup> However, there were areas around Sarajevo that were known to be used by snipers and to be particularly dangerous for civilians.<sup>3086</sup> Trams and buses, and people on them, were targeted.<sup>3087</sup> In the general area of the Marindvor, people had to run across the street and it was a matter of luck whether they were hit or not.<sup>3088</sup> The Holiday Inn area of the main thoroughfare,

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<sup>3077</sup> Emphasis added.

<sup>3078</sup> *Blaškić* Appeal Judgement, para. 109; *Kordić and Čerkez* Appeal Judgement, para. 54.

<sup>3079</sup> See, e.g., *supra*, paras 420, 758.

<sup>3080</sup> See *supra*, para. 420.

<sup>3081</sup> See *supra*, para. 423, and, generally, Section II.E.5 Shelling during the Indictment Period.

<sup>3082</sup> See *supra* para. 323, and, generally, Section II.E.3 Sniping during the Indictment Period.

<sup>3083</sup> See *supra*, para. 198.

<sup>3084</sup> See *supra* para. 208.

<sup>3085</sup> Bogdan Vidović, 13 Feb 2007, T. 2063. See also, W-62, 24 Jan 2007, T. 925 – 926. Cf. Nefa Šljivo, P531, p. 2.

<sup>3086</sup> See *supra* paras 211, and Sections II.E.3(ii) Marindvor and Zmaja od Bosne.

<sup>3087</sup> See *supra*, Section II.E.3(a)(i) Public Transport.

<sup>3088</sup> W-118, P175, p. 3 (under seal).



Zmaja od Bosne, was dubbed ‘Sniper Alley’ in a direct reference to the numerous incidents involving sniper fire in that area.

909. The evidence shows that the very role of snipers requires that any shot they take is deliberate, intended to kill or seriously injure the target. Some witnesses testified that the SRK snipers were very skilled.<sup>3089</sup> The Trial Chamber heard evidence of a number of trams being shot at and several passengers being killed or seriously injured. The evidence shows that these incidents took place during cease-fires. There are passages in the evidence that clearly demonstrate the sheer fear and horror experienced by those passengers. Nothing illustrates more graphically the intent of the perpetrators and the victimisation of the passengers than the evidence that was repeated time and again of a tram slowing down to pass the S-curve and being deliberately targeted while it was so doing. Slavica Livnjak described how she would bend her head every time she negotiated the S-curve with her tram. The tram and its passengers were virtually sitting ducks or, to use another avian metaphor, in the words of a witness, “clay pigeons.”<sup>3090</sup>

910. Not only was the civilian population starved and deprived of its opportunity to leave the city for fourteen months, it was also subjected during that period to conditions which would inevitably instil extreme fear and create insecurity by virtue of the incessant sniping and shelling of the city. The inability to escape from this trap of horror for any extended period of time unavoidably weakened the besieged population’s will to resist, and worse, it left deep and irremovable mental scars on that population as a whole.

911. The Trial Chamber finds that every incident of sniping resulting in death or serious injury that has been referred to earlier in the Judgement, and in respect of which it found that the sniping originated from Bosnian Serb-held territory and was carried out by members of the SRK, is an example of terror within the meaning of Count 1.

912. Furthermore, in light of the evidence referred to earlier in the Judgement on the basis of which the Trial Chamber found that the SRK was responsible for shelling civilians and civilian areas by modified air bombs, and particularly in light of the evidence of the indiscriminate nature of the modified air bomb, the knowledge of the SRK of that indiscriminate character, the gravity of the injuries and the number of deaths caused by the use of these highly inaccurate bombs, the Trial Chamber finds that terror within the meaning of Count 1 was committed by the SRK forces. In this respect, the Trial Chamber also recalls its earlier finding that only the SRK possessed and used modified air bombs to target the civilian areas in Sarajevo. It is perfectly reasonable for the Trial

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<sup>3089</sup> See *supra*, paras 109, 204, 241.

<sup>3090</sup> See *supra*, para. 198.

Chamber to infer an intent to terrorise from the very use by the SRK of this highly inaccurate and indiscriminate weapon, the modified air bomb.

913. In light of the evidence referred to earlier in the Judgement on the basis of which the Trial Chamber found that the SRK was responsible for shelling civilians and civilian areas, and particularly in light of the evidence as to the accuracy of mortars and the skill of the SRK mortar crews, the firing of numerous shells into the city, the gravity of the injuries and the number of deaths caused by mortar fire, the Trial Chamber finds that the deliberate targeting of civilians in the city, with these accurate weapons, fired in such high numbers, constitutes terror within the meaning of Count 1. Since it is acknowledged that a mortar is an accurate weapon and that the crew thereof were highly trained, the Trial Chamber is entitled to infer from the use of that weapon an intent to terrorise.

#### 4. Counts 2 and 5: Murder

914. Under Counts 2 and 5, the Prosecution charged the Accused with criminal responsibility under Articles 7(1) and 7(3) of the Statute for the crime of murder, a crime against humanity. In order to substantiate these charges, the Prosecution must establish that murder as a crime against humanity was committed by SRK troops. The Trial Chamber must, therefore, consider what constitutes a crime against humanity and what constitutes the crime of murder.

915. In order for the Tribunal to have jurisdiction under Article 5, the crime must have been committed in armed conflict.<sup>3091</sup> The phrase “committed in armed conflict” requires only “the existence of an armed conflict at the relevant time and place.”<sup>3092</sup> The underlying crimes need not be closely related to the armed conflict; it suffices that they be linked geographically and temporally with it.<sup>3093</sup> This requirement is purely jurisdictional and does not constitute a substantive element of a crime against humanity.<sup>3094</sup>

916. In order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against a civilian population. As interpreted by the Appeals Chamber, this phrase encompasses five elements.<sup>3095</sup>

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<sup>3091</sup> *Kunarac* Appeal Judgement, para. 82; *Tadić* Appeal Judgement, para. 249; *Galić* Trial Judgement, para. 139; *Mrksic et al.* Trial Judgement, para. 429.

<sup>3092</sup> *Tadić* Appeal Judgement, para. 249; *Mrksic et al.* Trial Judgement, para. 430.

<sup>3093</sup> *Kunarac* Appeal Judgement, paras 83, 86; *Tadić* Appeal Judgement, paras 249, 251; *Galić* Trial Judgement, para. 139; *Kupreškić* Trial Judgement, para. 546; *Mrksic et al.* Trial Judgement, para. 432.

<sup>3094</sup> *Kunarac* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, para. 249.

<sup>3095</sup> The five elements are (i) there must be an attack; (ii) the acts of the perpetrator must be part of the attack; (iii) the attack must be directed at any civilian population; (iv) the attack must be widespread or systematic; (v) the perpetrator knows that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population

(a) Attack

917. When assessing whether an attack against a particular civilian population occurred, it is not relevant whether the other side also committed atrocities against its opponent's civilian population.<sup>3096</sup> Evidence of this nature is not relevant unless it tends to prove or disprove any of the allegations made in the Indictment, particularly to refute the allegation that there was a widespread or systematic attack against a civilian population.<sup>3097</sup> Such an allegation cannot be disproved by a submission that the other side is responsible for starting the hostilities.<sup>3098</sup> The Trial Chamber finds that there is an abundance of evidence of attacks by SRK troops.

(b) Nexus between the Acts of the Perpetrator and the Attack

918. The required nexus between the acts of the perpetrator and the attack consists of two elements: (i) the commission of an act which, by its nature and consequences, is objectively part of the attack; together with (ii) knowledge on the part of the perpetrator that there is an attack on the civilian population and that his act is part thereof.<sup>3099</sup>

919. While the acts of the perpetrator must be "part of" the attack against the civilian population, they need not be committed *in the midst of* that attack.<sup>3100</sup> As the Appeals Chamber in *Kunarac* stated, a crime:

"which is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack. The crime must not, however, be an isolated act. A crime would be regarded as an 'isolated act' when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack."<sup>3101</sup>

920. The Trial Chamber finds on the basis of the evidence that the required nexus exists.

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and knows that his acts fit into such a pattern. *Kunarac* Appeal Judgement, para. 85, *endorsing Kunarac* Trial Judgement, para. 410; *Martić* Trial Judgement, para. 49; *Mrksic et al.* Trial Judgement, para. 435.

<sup>3096</sup> *Kunarac* Appeal Judgement, para. 87. The Appeals Chamber continues: "The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such," citing *Kupreškić* Trial Judgement.

<sup>3097</sup> *Kunarac* Appeal Judgement; para. 88; *Galić* Trial Judgement, para. 145.

<sup>3098</sup> *Kunarac* Appeal Judgement, para. 88; *Galić* Trial Judgement, para. 145.

<sup>3099</sup> *Kunarac* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, paras 248, 251, 271.

<sup>3100</sup> *Tadić* Appeals Judgement, para. 248; *Naletilić* Trial Judgement, para. 234; *Kordić* Trial Judgement, para. 178; *Mrksic et al.* Trial Judgement, para. 438.

<sup>3101</sup> *Kunarac* Appeal Judgement, para. 100; *Kupreškić* Trial Judgement, para. 550; *Tadić* Trial Judgement, para. 119.

(c) Directed against any Civilian Population

921. As held by the Appeals Chamber in *Kunarac*, the term “directed against any civilian population” signifies that “the civilian population is the primary object of attack.”<sup>3102</sup> In assessing whether the civilian population was the primary object of attack, the following factors, *inter alia*, are to be considered: the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in the course of the attack, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>3103</sup>

922. The term “civilian population”, broadly interpreted, refers to a population that is predominantly civilian.<sup>3104</sup> The civilian population comprises all persons who are civilians.<sup>3105</sup> It is important to recall that the presence of soldiers does not necessarily deprive a civilian population of its civilian character.<sup>3106</sup> As the Appeals Chamber ruled in *Kordić and Čerkez*:

“[t]he civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”<sup>3107</sup>

923. In *Galić*, the Appeals Chamber clarified that when the status of a population has yet to be determined, or the status may be changing due to the flow of civilians and military personnel, the conclusion is somewhat different.<sup>3108</sup> In *Blaškić*, the Appeals Chamber found that the number of soldiers present within a civilian population, along with the purpose of their presence, must both be examined to ascertain whether they deprive the population of its civilian nature.<sup>3109</sup> The Appeals Chamber quoted from the ICRC Commentary on the issue:

“[...] in wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.”<sup>3110</sup>

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<sup>3102</sup> *Kunarac* Appeal Judgement, para. 91. See also, *Kordić and Čerkez* Appeal Judgement, para. 96; *Blaškić* Appeal Judgement, para. 106; *Galić* Trial Judgement, para. 142; *Martić* Trial Judgement, para. 49(2); *Mrksic et al.* Trial Judgement, para. 440.

<sup>3103</sup> *Ibid.*

<sup>3104</sup> *Jelišić* Trial Judgement, para. 54; *Kupreškić* Trial Judgement, paras 547 – 549; *Naletilić* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Blagojević and Jokić* Trial Judgement, para. 544; *Mrksic et al.* Trial Judgement, paras 442, 458.

<sup>3105</sup> Article 50(2), Additional Protocol I.

<sup>3106</sup> *Galić* Appeal Judgement, para. 144, citing *Blaškić* Appeal Judgement, para. 115 (also paras 110, 113); *Galić* Trial Judgement, para. 143.

<sup>3107</sup> *Kordić and Čerkez* Appeal Judgement, para. 50. See also, *Galić* Appeal Judgement, para. 144.

<sup>3108</sup> *Galić* Appeal Judgement, para. 137.

<sup>3109</sup> *Blaškić* Appeal Judgement, para. 110 – 116. See also, *Kordić and Čerkez* Appeal Judgement, para. 97.

<sup>3110</sup> ICRC Commentary, para. 1922.

924. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was, in fact, directed against a civilian “population” and not against a limited and randomly-selected number of individuals.<sup>3111</sup> The Trial Chamber has already found, in relation to Count 1, that the attacks of the SRK troops were directed against the civilian population.<sup>3112</sup>

(d) Widespread or Systematic

925. In the context of a crime against humanity, an attack must be “widespread” *or* “systematic” but need not be both.<sup>3113</sup> The Trial Chamber recalls the case-law of the Tribunal, according to which the phrase “widespread” denotes the large-scale nature of the attack and the number of targeted persons, while the phrase “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>3114</sup>

926. The assessment of whether an attack is widespread or systematic is relative to the civilian population under attack and a Trial Chamber must, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.<sup>3115</sup>

927. As to the widespread nature of the attack, there is evidence of a very large number of attacks by way of mortars, modified air bombs and sniping, spread out over the entire city of Sarajevo over a prolonged period of time. There is evidence of a very large number of persons targeted on trams and in other locations. Although the Prosecution has based the Indictment on a campaign of shelling and sniping carried out by the SRK, the Trial Chamber does not consider it necessary to examine whether there was in fact a campaign. A campaign is a military strategy; it is not an ingredient of any of the charges in the Indictment, be that terror, murder or inhumane acts. In the particular context of a crime against humanity, the Trial Chamber needs to be satisfied that there was a widespread or systematic attack and not that a campaign was carried out. It may be that proof of the existence of a campaign would also be proof of a widespread or systematic attack, but the Trial Chamber considers it important to distinguish between the term “campaign”, which is merely descriptive or illustrative of the Prosecution’s case and the legal ingredients of the charges. In the instant case, the Trial Chamber is satisfied that the evidence substantiates the widespread character

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<sup>3111</sup> ICRC Commentary, para. 1922. *See also, Mrksic et al.* Trial Judgement, para. 458.

<sup>3112</sup> *See infra*, paras. 905 - 907, 910, 913.

<sup>3113</sup> *See e.g. Stakić* Appeal Judgement, para. 246; *Kordić and Čerkez* Appeal Judgement, para. 93.

<sup>3114</sup> *See e.g. Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac* Appeal Judgement, para. 94.

<sup>3115</sup> *Kunarac* Appeal Judgement, para. 95, *endorsing Kunarac* Trial Judgement, para. 430. *See also, Galić* Trial Judgement, para. 146.

of the attack. As to the systematic nature of the attacks, the Trial Chamber refers to the evidence of the organised manner in which trams were sniped during the negotiation of the S-curve on Zmaja od Bosne and the use of shelling and sniping by the SRK as both a means of retaliation and to achieve political objectives.

928. In short, the features of the campaign - the 24 proven scheduled incidents of sniping and shelling, the unscheduled incidents of sniping and shelling, the other evidence pertaining to shelling and sniping, the large number of persons targeted by the shelling and sniping, the structure and pattern evident in the shelling and sniping, the clear correlation between conflict in BiH as a whole and the shelling of Sarajevo by the SRK - provide a classical illustration of a large-scale and organised attack, that is, a widespread and systematic attack.

(e) Mens Rea

929. The *mens rea* element of a crime against humanity is fulfilled when the perpetrator has the requisite intent to commit the underlying offence(s) charged and when he knows both that there is an attack on the civilian population and that his acts form part of that attack.<sup>3116</sup> The perpetrator need not know the details of the attack nor need he share the purpose or goal behind the attack.<sup>3117</sup> Factors such as the perpetrator's proximity to the area of criminal activity can be applied to infer knowledge of the crimes.<sup>3118</sup> Knowledge of certain events, not necessarily every individual attack, is sufficient to warrant the conclusion that the perpetrator had notice of the wider context and nature of the crimes.<sup>3119</sup>

930. Clearly, in the circumstances of this case, it is proper to infer that the SRK troops, who were the instruments of the attacks on the civilian population, had the requisite intent to commit the various offences charged in the Indictment, and that they knew of the attacks on the civilian population and their acts formed part of those attacks. The circumstances were such that it must have been obvious to the SRK troops that they were targeting a civilian population.

931. For the crime of murder to be established, it must be shown that a victim died and that the victim's death was caused by an act or omission.<sup>3120</sup> To satisfy the *mens rea* for murder it is further

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<sup>3116</sup> *Kordić and Čerkez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac* Appeal Judgement, paras 99, 102; *Tadić* Appeal Judgement, para. 248; *Galić* Trial Judgement, para. 140.

<sup>3117</sup> *Kunarac* Appeal Judgement, paras 102, 103; *Blaškić* Appeal Judgement, para. 122; *Galić* Trial Judgement, para. 148.

<sup>3118</sup> *Limaj et al.* Appeal Judgement, para. 218; *Blagojević and Jokić* Appeal Judgement, paras 66, 75-76.

<sup>3119</sup> *Blagojević and Jokić* Appeal Judgement, para 102.

<sup>3120</sup> *Galić* Appeal Judgement, paras 147 – 149; *Kvočka et al.* Appeal Judgement, para. 261.

required that there was an act or omission, with the intention to kill (*animus necandi*) or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.<sup>3121</sup>

932. The Trial Chamber received a great deal of evidence of incidents resulting in death which qualify as murder. This evidence includes (i) sniping by SRK troops of civilians resulting in death,<sup>3122</sup> and (ii) shelling by SRK troops, resulting in death.<sup>3123</sup> An examination of this vast body of evidence satisfies the Trial Chamber that these were acts carried out by the SRK troops, resulting in death of civilians, and done with the intent to kill or cause grievous bodily harm.

#### 5. Counts 3 and 6: Inhumane Acts

933. Under Counts 3 and 6 of the Indictment, the Accused is charged with inhumane acts, a crime against humanity, pursuant to Articles 5(i), 7(1) and 7(3) of the Statute as a consequence of conducting, as the Commander of the SRK, a co-ordinated and protracted campaign of sniping and shelling attacks upon the civilian population in Sarajevo and onto civilian areas of Sarajevo, which killed and wounded a large number of civilians of all ages and both sexes.

934. “Other inhumane acts”, as provided for in Article 5(i) of the Statute, functions as a residual category for serious crimes that are not otherwise enumerated in Article 5, but which require proof of the same chapeau elements.<sup>3124</sup> The particular elements of the crime of inhumane acts are: (i) there was an act or omission of similar seriousness to the other acts enumerated in Article 5; (ii) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (iii) the act or omission was performed intentionally.<sup>3125</sup> The Appeals Chamber in *Galić* noted that the Trial Chamber in that case pointed to “numerous acts” that qualify as “other inhumane acts”, namely, the deliberate sniping and shelling by members of the SRK forces that inflicted serious injuries on civilians.<sup>3126</sup>

935. The *mens rea* for the crime of inhumane acts is satisfied if, at the time of the act or omission, the perpetrator had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or the perpetrator knew that his or

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<sup>3121</sup> *Kvočka et al.* Appeal Judgement, para. 261.

<sup>3122</sup> See *supra*, Section II.E.3. Sniping during the Indictment Period.

<sup>3123</sup> See *supra*, Section II.E.6. Shelling during the Indictment Period

<sup>3124</sup> *Kordić and Čerkez* Appeals Judgement, para. 117; *Martić* Trial Judgement, para. 82; *Kayishema and Ruzindana* Trial Judgement, paras 149 – 150.

<sup>3125</sup> *Vasiljević* Trial Judgement, para. 234, affirmed in *Vasiljević* Appeals Judgement, para. 165; *Galić* Trial Judgement, para. 152. See also, *Kordić and Čerkez* Appeals Judgement, para. 117; *Martić* Trial Judgement, para. 83; *Blagojević and Jokić* Trial Judgement, para. 626; *Krnojelac* Trial Judgement, para. 130; *Kajelijeli* Trial Judgement, paras 932 – 933; *Kayishema and Ruzindana* Trial Judgement, para. 151.

<sup>3126</sup> *Galić* Appeal Judgement, para. 158.

her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity.<sup>3127</sup>

936. The extensive evidence presented of the numerous acts of sniping and shelling of civilians and civilian areas within the confrontation lines by the SRK includes evidence from witnesses, BiH police reports, UNPROFOR and UNMO reports, such as daily situation reports, and SRK orders and reports.<sup>3128</sup> That evidence shows that, although there were areas that were understood to be more dangerous than others, civilians in all areas of Sarajevo were susceptible to being shot or falling victim to an attack by mortars, other artillery weapons and modified air bombs.<sup>3129</sup> The location of the city within hills and mountains enabled the SRK to shell it without restriction.<sup>3130</sup> And, in the words of Martin Bell, the “burden of the bombardment fell on the civilians trapped in the city.”<sup>3131</sup>

937. For a period of almost 15 months, civilians, including women, and boys and girls, of varying ages, were targeted by SRK snipers while at home, while gathering food, water or firewood necessary for survival, while going to work and while driving trams.<sup>3132</sup> Witnesses also described being at home, involved in daily activities such as talking with neighbours or drinking coffee, at the moment a shell or bomb exploded on, or in the vicinity of, their houses.<sup>3133</sup> Market places, tram lines and water collection points were targeted with shells.<sup>3134</sup> As described in the findings on Count 1, the victims sustained serious injuries, which had serious physical and psychological impacts on them.<sup>3135</sup>

938. On the basis of the evidence it has examined, the Trial Chamber is satisfied that the acts of sniping and shelling of civilians by the SRK troops caused serious mental or physical suffering to civilians within the confrontation lines and that they were acts of similar gravity to the other acts enumerated in Article 5 of the Statute. The Trial Chamber finds that, on the basis of the above factors, at the time of the acts of sniping and shelling, the members of the SRK who carried out those acts had the intent to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victims, or they knew that their acts were likely to cause serious physical or mental suffering or a serious attack upon human dignity.

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<sup>3127</sup> *Galić* Trial Judgement, para. 154; *Blagojević and Jokić* Trial Judgement, para. 628. See also, *Kordić and Čerkez* Appeals Judgement, para. 117.

<sup>3128</sup> See *supra* Section II.E. Evidence Pertaining to Alleged “Campaign” in the Indictment Period.

<sup>3129</sup> See, e.g., *supra*, paras. 196 - 498, 211, 217, 227.

<sup>3130</sup> See *supra* paras 417, 138 - 140.

<sup>3131</sup> See *supra*, paras 417, 420, 422; Martin Bell, 27 Apr 2007, T. 5279.

<sup>3132</sup> See *supra*, Section II.E.4 in general, and in particular, paras 208 -211, 214 - 217, 225 - 228, 247 - 250.

<sup>3133</sup> See *supra*, e.g., Sections. II.E.6(b)(iii), (iv), (vi) and (xii)

<sup>3134</sup> See *supra*, Sections II.E.6(b)(ii), (xv) and para 423.

<sup>3135</sup> See *supra* paras 905, 907, 910, 913; Section II.E.7(b), (c).



## 6. Counts 4 and 7: Unlawful Attacks against Civilians

939. Counts 4 and 7 of the Indictment read:

“Unlawful Attacks on Civilians, a Violation of the Laws or Customs of War, punishable under Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949, and Articles 3, 7(1) and 7(3) of the Statute of the Tribunal.”

The counts allege that the Accused conducted a campaign of sniping and shelling against the civilian population and civilian areas of Sarajevo, which involved deliberate and/or indiscriminate targeting of civilians and resulted in over a thousand civilians being killed or injured. Specifically in relation to shelling, it is alleged that the shelling was excessive and disproportionate to the concrete and military advantage anticipated.<sup>3136</sup>

### (a) Attack on Civilians

940. Counts 4 and 7 of the Indictment refer to Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949, which read, in their relevant parts: “The civilian population as such, as well as individual civilians, shall not be the object of attack.”

941. This general prohibition is well-established in customary international law and is based on the principles of distinction, precaution and protection.<sup>3137</sup> The principle of distinction obliges warring parties to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives and ensure that operations will only be directed against military objectives.<sup>3138</sup> Article 57(2)(a)(ii) of Additional Protocol I requires those who plan or decide upon an attack to take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects. The principle of protection ensures that the civilian population and individual civilians enjoy general protection against dangers arising from military

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<sup>3136</sup> Indictment, paras 24 – 25.

<sup>3137</sup> *Galić* Appeal Judgement para. 119, *Kordić and Čerkez* Appeal Judgement, paras 40 – 42; *Blaškić* Appeal Judgement, para. 109; *Prosecutor v. Pavle Strugar et al.*, IT-02-42-AR72, Decision on Interlocutory Appeal, 22 November 2002, para. 9; *Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 & 3, 2 March 1999, para. 31. See also, *Prosecutor v. Enver Hadžihasanović et al.*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005, para. 28.

<sup>3138</sup> See Article 48 of Additional Protocol I, which describes the principle of distinction as a basic rule. Additional Protocol II does not contain a similar provision.

operations.<sup>3139</sup> Together, these three principles form the foundation of international humanitarian law.

(b) *Actus Reus*

942. The *actus reus* of the crime of unlawful attacks on civilians is acts of violence directed against the civilian population or individual civilians causing death or serious injury to body or health within the civilian population.<sup>3140</sup>

943. Article 49 of Additional Protocol I defines “attacks” as “acts of violence against the adversary, whether in offence or defence.” An “attack” is a technical term relating to a specific military operation limited in time and place, and covers attacks carried out both in offence and defence.<sup>3141</sup> The case-law of the Tribunal, in relation to crimes charged under Article 5 of the Statute, has defined “attack” as a course of conduct involving the commission of acts of violence.<sup>3142</sup> In *Galić*, the Trial Chamber held that the prohibited conduct set out in Article 51(2) of Additional Protocol I is to direct an attack, as defined in Article 49 of Additional Protocol I, against the civilian population and against individual civilians not taking part in hostilities.<sup>3143</sup>

944. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II clearly state that civilians and the civilian population should not be the object of attacks. There is an unconditional and absolute prohibition on the targeting of civilians in customary international law.<sup>3144</sup> Therefore, *any* attack directed at the civilian population is prohibited, regardless of the military motive.

945. The meaning of “civilian” is defined in Article 50(1) of Additional Protocol I, which reads:

“A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention<sup>3145</sup> and in Article 43 of this Protocol.<sup>3146</sup>  
In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”

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<sup>3139</sup> See Article 51(1) of Additional Protocol I and Article 13(1) of Additional Protocol II.

<sup>3140</sup> *Galić* Trial Judgement, para. 56.

<sup>3141</sup> ICRC Commentary, para. 4783, as quoted in *Galić* Trial Judgement, para. 52.

<sup>3142</sup> *Kunarac et al.* Trial Judgement, para. 415; *Krnjelac* Trial Judgement, para. 54. See also, *Galić* Trial Judgement, para. 52.

<sup>3143</sup> *Galić* Trial Judgement, paras 53 and 56. See also, *Galić* Appeal Judgement, paras 129-138.

<sup>3144</sup> *Blaškić* Appeal Judgement, para. 109; *Kordić and Čerkez* Appeal Judgement, para. 54.

<sup>3145</sup> Article 4 of Geneva Convention III states: A. Prisoners of war, in the sense of the present Convention, are persons belonging to the one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly;

That is, the term “civilian” is defined negatively, to include any person who is not a member of the armed forces or an organised military group belonging to a party to the conflict.<sup>3147</sup> In some circumstances it may be difficult to ascertain whether a person is a civilian.

946. The generally accepted practice is that combatants distinguish themselves by wearing uniforms, or, at the least, a distinctive sign, and by carrying their weapons openly.<sup>3148</sup> Other factors that may help determine whether a person is a civilian include his or her clothing, activity, age or sex.<sup>3149</sup> In cases of doubt whether a person is a civilian, that person shall be considered to be a civilian.<sup>3150</sup> As stated in the Commentary on Additional Protocol I, the presumption of civilian status applies to:

“[p]ersons who have not committed hostile acts, but whose status seems doubtful because of the circumstances. They should be considered to be civilians until further information is available, and should therefore not be attacked.”<sup>3151</sup>

947. The protection afforded to individual civilians by Article 51 of Additional Protocol I continues until such time as civilians take a direct part in hostilities.<sup>3152</sup> There is a need to distinguish between direct participation in hostilities and participation in the war effort.<sup>3153</sup> To take direct part in hostilities means to engage in acts of war which, by their nature or purpose, are likely to cause actual harm to the personnel or matériel of the enemy armed forces.<sup>3154</sup> A civilian who takes part in armed combat loses his or her immunity and becomes a legitimate target.<sup>3155</sup>

948. To constitute a violation of the prohibition of attacks against civilians, the attack must be directed at individual civilians or the civilian population.<sup>3156</sup> In this regard, the Appeals Chamber has held that whether an attack is so directed can be inferred from many factors, including the

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(d) that of conducting their operations in accordance with the laws and customs of war. (3)  
Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

[...]

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

<sup>3146</sup> Article 43 (1) of Additional Protocol I states:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

<sup>3147</sup> *Galić* Trial Judgement, para. 47.

<sup>3148</sup> See Article 44 (7) Additional Protocol I; *Galić* Trial Judgement, para. 50.

<sup>3149</sup> *Galić* Trial Judgement, para. 50.

<sup>3150</sup> Article 50(1) of Additional Protocol I.

<sup>3151</sup> ICRC Commentary, para. 1920.

<sup>3152</sup> Article 51(3) of Additional Protocol I. See also, Article 13(3) of Additional Protocol II.

<sup>3153</sup> ICRC Commentary, para. 1945.

<sup>3154</sup> ICRC Commentary, para. 1944.

<sup>3155</sup> ICRC Commentary, para. 1944.

<sup>3156</sup> *Galić* Appeal Judgement, paras 132, 133; *Galić* Trial Judgement, paras 57, 60.

means and method used in the course of the attack, the status and number of the victims, the nature of the crimes committed, the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war and the indiscriminate nature of the weapon used.<sup>3157</sup>

949. The parties to a conflict are 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.<sup>3158</sup> 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.<sup>3159</sup>

950. The unlawful attack must have resulted in death or serious injury to body or health within the civilian population.<sup>3160</sup>

(c) *Mens Rea*

951. The Prosecution must establish that the Accused wilfully made the civilian population or individual civilians the object of acts of violence.<sup>3161</sup> Article 85 of Additional Protocol I describes the intent required for the application of the first part of Article 51(2). It qualifies as a grave breach the act of wilfully “making the civilian population or individual civilians the object of attack”.<sup>3162</sup> According to the Commentary on Article 85 of Additional Protocol I, the term “wilfully”:

“*wilfully*: the accused must have acted consciously and with the intent, i.e., with his mind on the act and its consequences, and willing them (“criminal intent” or “malice aforethought”); this encompasses the concepts of “wrongful intent” or “recklessness”, viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., where a man acts without having his mind on the act or its consequences.”<sup>3163</sup>

As confirmed by the *Galić* Appeals Chamber, the notion of “wilfully” incorporates the concept of recklessness, whilst mere negligence is excluded.<sup>3164</sup>

952. In order to establish the *mens rea* for the offence, it must be shown that the perpetrator was aware or should have been aware of the civilian status of the persons attacked. In cases of doubt, the

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<sup>3157</sup> *Galić* Appeal Judgement, para. 132. See also, *Kunarac et al.* Appeal Judgement, para. 91; *Blaškić* Appeal Judgement, para. 106.

<sup>3158</sup> See Article 58 of Additional Protocol I.

<sup>3159</sup> *Galić* Appeal Judgement, para. 133, confirming *Galić* Trial Judgement, para. 60.

<sup>3160</sup> *Blaškić* Trial Judgement, para. 180; *Kordić and Čerkez* Trial Judgement, para. 328, confirmed in *Kordić* Appeal Judgement, paras 57, 67; *Galić* Trial Judgement, para. 43.

<sup>3161</sup> *Galić* Trial Judgement, para. 56, approved in *Galić* Appeal Judgement, para. 140.

<sup>3162</sup> Article 85 (3) of Additional Protocol I.

<sup>3163</sup> ICRC Commentary, para. 3474, *Galić* Appeal Judgement para. 140, confirming *Galić* Trial Judgement, para. 54.

<sup>3164</sup> *Galić* Appeal Judgement para. 140, confirming *Galić* Trial Judgement, para. 54.

Prosecution must show that, in the given circumstances, a reasonable person could not have believed that the individual he or she attacked was a combatant.<sup>3165</sup>

953. The Trial Chamber recalls its finding that the crime of terror shares the same elements with the crime of unlawful attacks against civilians, except for the additional requirement that to constitute terror it must be established that the acts were committed with the primary purpose of spreading terror among the civilian population. It follows, therefore, that the acts which the Trial Chamber found to have constituted terror must *a fortiori* also constitute unlawful attacks against civilians and civilian population, and the Trial Chamber so finds.

### **B. Individual Criminal Liability of the Accused**

954. All the counts charge the Accused with responsibility under Article 7(1) and 7(3) of the Statute. Article 7(1) of the Statute provides:

“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.”

The Accused is charged with planning, ordering, or in the alternative, aiding and abetting the crimes.

955. In order to establish individual criminal responsibility for planning, ordering or aiding and abetting of a crime, proof is required that the crime in question has actually been committed by the principal perpetrator(s) (“the underlying crime”).<sup>3166</sup> If the underlying crime has been established, the Trial Chamber will assess the individual criminal responsibility of the Accused for that crime.

956. Planning is established when it is proven that one or more persons contemplated the commission of one or more crimes provided for in the Statute, which were later perpetrated.<sup>3167</sup> If a person is convicted of having committed a crime, his involvement in the planning of the crime can only be considered as an aggravating factor.<sup>3168</sup>

957. Ordering requires that a person in a position of authority, whether *de jure* or *de facto*, instructs another person to commit a crime.<sup>3169</sup> This authority may be proved expressly or may be reasonably implied from the evidence.<sup>3170</sup>

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<sup>3165</sup> *Galić* Trial Judgement, para. 55.

<sup>3166</sup> *See Brdanin* Trial Judgement, para. 267, with further references.

<sup>3167</sup> *Kordić and Čerkez* Appeal Judgement, para. 26.

<sup>3168</sup> *Kordić and Čerkez* Trial Judgement, para. 386; *Stakić* Trial Judgement, para. 443.

<sup>3169</sup> *Kordić and Čerkez* Appeal Judgement, para. 28; *Gacumbitsi* Appeal Judgement, para. 182; *Brdanin* Trial Judgement, para. 270.

958. The *mens rea* for the modes of liability of planning and ordering requires that the perpetrator must have acted or omitted to act with direct intent or indirect intent in relation to their own planning or ordering.<sup>3171</sup> In the latter instance of indirect intent, a perpetrator who orders or plans an act or omission with an awareness of the substantial likelihood that a crime will be committed in the execution of the order or plan has the requisite *mens rea* for establishing responsibility under Article 7(1) in relation to ordering or planning. Planning or ordering with such awareness has to be regarded as accepting that crime.<sup>3172</sup>

### 1. Findings on Planning and Ordering

959. It was not in dispute that the Accused was the *de jure* commander of the SRK during the Indictment period. The evidence showed that, at least as far as the theatre of Sarajevo was concerned, the Accused was in command over the SRK troops. The evidence further showed that he held a “tight chain of command” within the SRK. According to Maj. Stevan Veljović, testifying for the Defence, the SRK operations centre verified whether orders were carried out. There was a strong reporting chain in place. Evidence in the form of orders and requests showed that the Accused was actively engaged in a number of matters, including the levels of ammunition and the selection of individual members of the SRK for sniper training. In addition, several Defence witnesses confirmed that the Accused was highly respected by his subordinates, who were very disciplined and followed his orders.<sup>3173</sup>

960. There is evidence that the Accused did not devise a strategy for Sarajevo on his own. Clearly, the Main Staff of the VRS and Gen. Mladić were also involved in decisions as to the military strategy of the VRS and the SRK. However, the evidence shows that the Accused was able to implement the greater strategy in a manner he saw fit. The evidence also shows that the Accused decided on the deployment of weapons, for example, on the placement of artillery batteries and movement of modified air bomb launchers.

961. There is an abundance of evidence that the Accused acted in furtherance of orders by the VRS Main Staff, for example, with respect to orders pertaining to UNPROFOR. Within his authority as Commander of the SRK, the Accused issued orders that prohibited attacks against UNPROFOR, but also ordered attacks on UNPROFOR. Whether those orders to attack UNPROFOR were the result of a revised strategy by the Main Staff is immaterial. The Accused relayed those orders to his own troops.

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<sup>3170</sup> *Brdanin* Trial Judgement, para. 270; *Limaj et al.* Trial Judgement, para. 515.

<sup>3171</sup> *Kordić and Čerkez* Appeal Judgement, paras 29 – 32.

962. The evidence indicated quite clearly that the Accused was in charge of sniping activities and the only reasonable inference to be drawn is that he planned and ordered those activities. For example, one of the first actions taken by the Accused, when he became Commander of the SRK, was to sign the Anti-sniping Agreement of 14 August 1994. He had been involved in the negotiations of this agreement prior to being appointed SRK Commander. The evidence demonstrated that this agreement was implemented to some extent. The fact that sniping occurred over an extended period of time in different areas of Sarajevo on territory under the control of different SRK brigades, shows, in the Trial Chamber's view, that the operation of snipers was coordinated at the SRK command level, that is, by the Accused. In addition, the Trial Chamber recalls the evidence that the Accused issued numerous orders relating to training, equipment and the deployment of snipers. Although the Trial Chamber was not presented with any written order of the Accused unequivocally ordering the sniping of civilians, the evidence shows that SRK snipers did not operate in a random manner, and the Trial Chamber is satisfied that the entire sniping campaign was under the control of the Accused. Other examples of planning and ordering by the Accused are an order to stop sniping, and an order for combat readiness and to draw up a firing plan onto the Old Town.

963. Many orders of the Accused, in which he decided on the placement of mortars and in which he specified the areas these mortars were to engage, show that within the SRK, it was the Accused who decided on the use of mortars and the methods of shelling.

964. There are several orders in evidence, in which the Accused requested air bombs, sometimes in large numbers, or in which he ordered that precise quantities of air bombs be issued to various SRK brigades. He also ordered the construction of launchers of modified air bombs.<sup>3174</sup> The Accused stated in a report that air bomb launchers "are used throughout the SRK zone of responsibility as required and as decided by the SRK commander."<sup>3175</sup> There is abundant evidence of the Accused planning and ordering the shelling of civilian areas, including, in particular, the TV Building and the shelling of Hrasnica on 7 April 1995.<sup>3176</sup>

965. There is also evidence of ordering and planning by the Accused that calls for special attention. On the one hand, there is an abundance of evidence of a campaign of sniping and shelling

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<sup>3172</sup> *Kordić and Čerkez* Appeal Judgement, paras 29 – 32. The Trial Chamber notes that the Appeals Chamber has not identified this element for the mode of liability of "committing".

<sup>3173</sup> See *supra*, paras 801 - 804 and Section II.F(a).

<sup>3174</sup> P722, Request by the SRK Commander, 17 July 1995. See also, P767, Request for ammunition, dated 22 June 1995; P768, Order issuing SRK units with air bombs, 24 August 1995; P714, Requisition of 50 air bombs, 4 June 1995: FAB-105 and FAB-250 were to be issued to the Rajlovac Infantry Brigade, to the Ilijaš Infantry Brigade, to the Ilidža Infantry Brigade, the Igman Infantry Brigade and to the 3<sup>rd</sup> Sarajevo Infantry Brigade and to the SRK reserve.

<sup>3175</sup> P663, Report from SRK command, 15 June 1995.

<sup>3176</sup> See *supra*, Section II.E.6(b) (iii) and (xi).

carried out consistently throughout the Indictment period by the SRK forces of which the Accused was the commander. On the other hand, some evidence has been presented that on a number of occasions during his visits to the troops, the Accused instructed his men on the confrontation line to abide by the Geneva Conventions and not to shoot at civilians. On one particular occasion, on 1 October 1995, he issued an order not to shoot at civilians. In addition, there is also evidence that there were instructions to adhere to the COHA.<sup>3177</sup> The issue is the impact of the latter three pieces of evidence on a finding by the Trial Chamber that the Accused ordered and planned the crimes charged; in particular, does that evidence contradict a finding of having ordered and planned? In approaching this question, the Trial Chamber must have regard to the burden that is placed on the Prosecution to establish the charges beyond reasonable doubt.

966. The Trial Chamber considers that it must examine the evidence of the two sets of circumstances as a whole and ask itself whether, at the end of the day, it is satisfied beyond reasonable doubt that the Accused planned and ordered the campaign. In doing so, the Trial Chamber must determine what weight is to be attached to the various items of evidence. It disregards the evidence that, in October 1995, the Accused issued an order prohibiting sniping, because that order was issued virtually at the end of the conflict. It is observed that the last incident charged in the Indictment occurred on 28 August 1995 and the Dayton Accords were signed a month later. The Trial Chamber does not disregard the evidence that the Accused, on certain occasions, instructed his soldiers to abide by the Geneva Conventions and not to shoot civilians or that there were instructions to adhere to the COHA. However, an examination of the evidence in its totality obliges the Trial Chamber to look at the vast body of evidence as to the campaign of shelling and sniping. When the Trial Chamber does that, it sees a design, a consistency and a pattern that is only explicable on the basis of a system characterised by a tight command and control. The evidence shows that the Accused was in command and control of his troops, who carried out this campaign of sniping and shelling. The Trial Chamber need only mention the order to shell Hrasnica with a modified air bomb and his acknowledgement of success of the SRK troops in shelling the TV Building.<sup>3178</sup> The Trial Chamber is convinced that, notwithstanding the evidence of the above-mentioned instructions and orders, the campaign was such that not only must it have had the consent of the Accused, but it must also have been carried out on his instructions and orders.

967. As far as the crime of terror is concerned, the Trial Chamber recalls that the Prosecution must prove that the Accused had a specific intent to spread terror among a civilian population.<sup>3179</sup>

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<sup>3177</sup> See *supra*, paras 837 - 840.

<sup>3178</sup> See *supra*, Sections II.E.6(b)(iii) and (xi)

<sup>3179</sup> See *supra*, Section III.A.2(b) The Crime of Terror.



The Trial Chamber recalls its finding that the members of the SRK acted with the specific intent to spread terror. With regard to the intent of the Accused, the Trial Chamber notes the prolonged period over which the civilian population of Sarajevo was under attack. The evidence led in this case shows that the civilian population of Sarajevo had been subjected to shelling and sniping under the command of Gen. Galić for about 24 months. The widespread nature of these crimes must have put the Accused on notice about the involvement of SRK troops in these crimes and the effects of these crimes on the civilians inside the confrontation lines. When he became SRK Commander, the Accused knew that the continuation of sniping and shelling under his command would further increase the suffering and despair of the civilian population. Nevertheless, he continued the sniping and shelling of civilians and civilian area over a period of another 15 months.

968. In Gen. Rupert Smith's view, the shelling and sniping of civilian areas and civilians in Sarajevo was "essentially to terrorise, to wear down the resolve of the defender, to hold the presence of the Serb pressure evidently in the minds of people on a daily basis." His evidence was supported by other witnesses who were deployed with UNPROFOR in Sarajevo during the Indictment period. One witness described the SRK activities under the command of the Accused as "more subtle", "more precise" and "more dangerous" than during the time of Gen. Galić.<sup>3180</sup>

969. As the evidence showed, trams and buses were a particular focus of the sniping activity during the Indictment period. Trams and buses only ran during cease-fires. The Accused must have known that the resumption of public transport was an encouraging sign for the civilian population in Sarajevo, and he also knew that targeting of trams and buses would have a particularly devastating psychological effect.

970. The use of the modified air bombs is another clear indication of the Accused's intent to spread terror. The highly destructive force and the psychological effects these bombs had on the civilian population were obvious to anyone. The decision by the Accused to use modified air bombs against civilian targets can, therefore, only be interpreted as demonstrating the intent to spread terror.

971. The evidence shows that the shelling was indiscriminate, and aimed at causing the maximum amount of casualties.<sup>3181</sup> In addition, there was sometimes a delay between the first and later shells, which, according to witnesses, was to terrorise the civilian population, because they could never be sure when the shelling would stop.

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<sup>3180</sup> Ismet Hadžić, 6 Mar 2007, T. 3236, 3260.

<sup>3181</sup> See *supra*, paras 905, 907.

(a) Defence of “Alibi”

972. Evidence was presented to the Trial Chamber indicating that at the beginning of August 1995, the Accused left Sarajevo for Belgrade, where he received treatment for an injury to his right eye. He was discharged from hospital on 21 August 1995 and he returned to Sarajevo in early September 1995.<sup>3182</sup> At the time when the shelling of the Markale Market took place, on 28 August 1995, the Accused was, therefore, not present in the area of Sarajevo.

973. The Defence, for the period from 6 August to 10 September 1995, “enters the defence of alibi since in the relevant period he was not on the sites where the crimes he is charged with in the Indictment were committed and since all the command responsibilities in the Sarajevo Romanija Corps were taken over by Mr Čedo Sladoje.”<sup>3183</sup> In its closing arguments, the Defence submitted that, as the Accused “was unable to carry out that duty de facto at the time, he cannot be held responsible [...]”<sup>3184</sup>

974. The Prosecution, in its Final Brief, dismissed “the claim by the Defence” that the Accused was not responsible for the Markale Market II incident, arguing:

“The massacre of 28 August 1995 was the result of the continued operation of a campaign that the Accused commanded for a long time before he left for Belgrade. That this terror campaign continued in the absence of the Accused is not exculpatory of the Accused; to the contrary it is inculpatory, as it shows what a thorough job the Accused had done of integrating the terror campaign into the SRK’s operations.”<sup>3185</sup>

975. The Indictment against the Accused is typical of the indictments laid by the Prosecution in leadership cases in this Tribunal. The essence of those cases is that the accused, who is in a position of leadership, planned and ordered the commission of the crime. Those cases do not proceed on the basis that, to employ the phrase used by the Appeals Chamber in *Galić*, the Accused “personally, physically” committed the crimes.<sup>3186</sup> There is an abundance of evidence in this case showing that the Accused not only planned and ordered the campaign of sniping and shelling, but also that this campaign was characterised by a degree of consistency and pattern which was only achievable under the leadership of a person who was in full control of the SRK troops. The Trial Chamber has already examined evidence that shows that the Accused held a tight chain of command. In such a situation, therefore, the mere absence of the Accused from the site of the execution of the crimes and the fact that his responsibilities had been taken over by the SRK Chief of Staff Čedomir Sladoje

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<sup>3182</sup> See *supra* para. 830.

<sup>3183</sup> Defence Pre-Trial Brief, 27 February 2006, para. 10.

<sup>3184</sup> Defence Closing Arguments, 10 Oct 2007, T. 9546, 9564 – 9565.

<sup>3185</sup> Prosecution Closing Brief, para. 470. See also, Prosecution Closing Arguments, 9 Oct 2007, T. 9434, 9436 – 9437; Defence Closing Arguments, 10 Oct 2007, T. 9559.

<sup>3186</sup> *Prosecutor v Stanislav Galić*, Case No. IT-98-29-AR-73.2, “Appeals Chamber Decision on Interlocutory Appeal concerning Rule 92 bis (C)”, dated 7 June 2002, para. 10(a).

would not relieve him of responsibility, if the Trial Chamber is otherwise satisfied that the crimes that took place in his absence formed part of the campaign of sniping and shelling that he had planned and ordered.

976. The Trial Chamber observes that his period of absence from Sarajevo was not very long. It was not three months or six months; it was, in fact, only five weeks. When that factor is placed alongside the finding that the shelling and sniping that took place in that period fell squarely within the overall pattern of the campaign, the Trial Chamber is in a position to infer that those activities were planned and ordered by the Accused.

977. The Trial Chamber also notes that the short period of the Accused's absence falls in the latter part of his tenure as SRK Commander. By the summer of 1995, the shelling and sniping was already being conducted on the orders of the Accused for approximately one year. The evidence further shows that there was an increase in the level of fighting in March and April 1995 and from June 1995 onwards, as a result of ABiH offensives. The response of the Accused to those offensives was to shell civilian areas within the confrontation lines. During the Accused's absence in August and at the beginning of September 1995, the shelling and sniping of civilian areas continued in the same manner as before. The Trial Chamber finds that the ongoing shelling of civilian areas in August and early September 1995 falls squarely within the overall plan and general orders of the Accused and, accordingly, dismisses the defence of alibi.

(b) Conclusions

978. The Trial Chamber has no doubt that the orders by the Accused to target civilians in Sarajevo formed part of a strategy, a plan, to continue the shelling and sniping of civilians in Sarajevo which commenced under the Accused's predecessor Gen. Galić. The scheduled and unscheduled incidents are not single incidents or sporadic occurrences; rather, they fit in a pattern of shelling and sniping contemplated and implemented by the Accused during his tenure as Commander of the SRK. The Trial Chamber cannot but conclude that the Accused intended to plan and order the shelling and sniping of civilians and civilian areas of Sarajevo. The Trial Chamber is also satisfied that the Accused ordered and planned the shelling and sniping of the civilian population and individual civilians in Sarajevo with the intent to spread terror among that population.

979. On the basis of the analysis of the evidence, the Trial Chamber finds that the Accused ordered and planned terror, as charged under Count 1, ordered and planned murder as charged under Counts 2 and 5, ordered and planned inhumane acts, as charged under Counts 3 and 6, and

unlawful attacks against civilians, as charged under Counts 4 and 7. This finding makes it unnecessary to consider aiding and abetting.

980. The incidents that the Trial Chamber has found not to be proven do not in any way affect its findings on the responsibility of the Accused for the crimes charged in the Indictment.

981. In light of the finding that the Accused ordered and planned terror, the Trial Chamber will not enter a conviction for the crime of unlawful attacks against civilians, as charged under Counts 4 and 7 of the Indictment.

2. Has the Prosecution Charged the Individual Criminal Responsibility of the Accused under Article 7(3) of the Statute as an Alternative to his Liability under Article 7(1) of the Statute?

982. Paragraph 21 of the Indictment provides that pursuant to Article 7(3) of the Statute, “Dragomir Milošević is also criminally responsible for the crimes in this Indictment [...]” This would seem to indicate that the charge under Article 7(3) is not an alternative to liability under Article 7(1), but is in addition to that liability. Counts 1 to 7 all charge the Accused with responsibility for the crimes, punishable under, *inter alia*, Articles 7(1) and 7(3) of the Statute, indicating that the Accused is charged under both Article 7(1) and 7(3).

983. However, paragraph 448 of the Prosecution’s Closing Brief states that the Accused is criminally responsible under Article 7(1) “and, also in the alternative, even though Gen. Milošević was in effective control of the SRK and knew of the crimes being committed, he did not take reasonable and necessary steps either to prevent the crimes or punish those who committed them, which makes him guilty under Article 7(3) of the Statute.” Paragraph 537 of the Prosecution’s Closing Brief also states that, “in the alternative, Gen. Milošević is criminally responsible under 7(3) of the Statute.” The Closing Brief would, therefore, seem to make clear that the Accused is charged under Article 7(1), and alternatively under Article 7(3). The Prosecution’s Closing Arguments also refer to Article 7(3) in the alternative to Article 7(1).<sup>3187</sup>

984. There is a conflict between the Indictment, on the one hand, and the Prosecution’s Closing Brief and Closing Arguments on the other, as to whether the Accused is charged under Article 7(3) alternatively to, or in addition to, Article 7(1). However, in light of the finding of guilt under Article

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<sup>3187</sup> Prosecution Closing Arguments, 9 Oct 2007, T. 9424.

7(1), it is not necessary to consider the Accused's responsibility under Article 7(3) of the Statute.<sup>3188</sup>

#### IV. SENTENCING

985. The Trial Chamber found the Accused guilty of planning and ordering the crimes of terror, under Count 1, murder, under Counts 2 and 4 and inhumane acts, under Count 3 and 5. For a determination of a sentence, the Trial Chamber must examine the applicable law on this matter.

986. The relevant provisions concerning sentencing are set out in Article 24 of the Statute and Rule 101 of the Rules. These provisions set forth factors to be taken into consideration by a Trial Chamber when it is determining a sentence.<sup>3189</sup>

987. The case-law of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are deterrence and retribution.<sup>3190</sup> In addition, a third purpose of sentencing is rehabilitation which, while it may be considered a relevant factor, "is not one which should be given undue weight".<sup>3191</sup>

988. The Trial Chamber observes that in *Galić*, the Appeals Chamber overturned Gen. Galić's sentence of 20 years and increased it to a term of life imprisonment. This Trial Chamber does not construe that decision as restricting the exercise of its discretion in the sentence to be imposed in this case; that decision relates to a different accused in a different set of circumstances, and the paramount consideration in sentencing is that the sentence must fit the individual circumstances of the convicted person.

##### 1. Gravity and Individual Circumstances of the Convicted Person

989. Article 24(2) of the Statute provides that in imposing sentences, Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. The Appeals Chamber has held that the gravity of the offence is a primary consideration in imposing a sentence.<sup>3192</sup> There is no hierarchy of crimes within the jurisdiction of

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<sup>3188</sup> *Blaškić* Appeal Judgement, para. 91; *Krštić* Trial Judgement, paras 605, 652, endorsed by Appeals Chamber in *Krštić* Appeal Judgement, fn. 250; *Kordić and Čerkez* Appeal Judgement, para. 34; *Kvočka et al.* Appeal Judgement, para. 104; *Kajelijeli* Appeal Judgement, paras 81, 82; *Naletilić and Martinović* Appeal Judgement, para. 368.

<sup>3189</sup> *Krštić* Appeal Judgement, paras 241 – 242; *Jelisić* Appeal Judgement, para. 101; *Čelebići* Appeal Judgement, paras 715, 717, 718, 780. See also, *Kambanda* Appeal Judgement, para. 124; *Furundžija* Appeal Judgement, para. 238; *Martić* Trial Judgement, para. 481.

<sup>3190</sup> *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185. See also, *Furundžija*, Trial Judgement, para. 288; *Tadić* Sentencing Trial Judgement, paras 7 – 9; *Zelenović* Sentencing Trial Judgement, para. 31.

<sup>3191</sup> *Čelebići* Appeal Judgement, para. 806. See also, *Deronjić* Sentencing Appeal Judgement, paras 135 – 137; *Stakić* Appeal Judgement, para 402.

<sup>3192</sup> *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442. See also, *Aleksovski* Appeal Judgement, para. 182; *Martić* Trial Judgement, para. 485.

the Tribunal.<sup>3193</sup> Sentences must reflect the inherent gravity or totality of the criminal conduct of the accused, requiring a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.<sup>3194</sup>

990. The Appeals Chamber has also held that the consequences of the crime upon the victims directly injured, namely the extent of the long-term physical, psychological and emotional suffering of the victim, is always relevant to sentencing.<sup>3195</sup> Further factors, such as the effects of the crime on relatives of the immediate victims, may also be considered.<sup>3196</sup>

991. The Accused is convicted of planning and ordering the crimes of terror, murder and inhumane acts. All of these crimes are very serious and were committed during a campaign of sniping and shelling over a period of 14 months. The civilian population in Sarajevo was virtually completely encircled and had only limited possibilities of leaving the city, so as to remove themselves from the hazardous and threatening circumstances. In effect, the civilian population was trapped inside the confrontation lines and the Trial Chamber has, in fact, found that Sarajevo was besieged. The behaviour of the SRK troops was characterised by indiscriminate shelling of civilian areas and sniping of civilians and civilian objects in the besieged city. As a result of the sniping and shelling, many civilians in Sarajevo were killed or seriously injured.

992. The crime of terror is a specific crime, with an intent that is particularly indicative of a disregard for human life and integrity. The acts of the SRK troops were geared to striking persons at the very core of their being, by instilling a sense of insecurity and fear that affected every aspect of their lives. The civilians in Sarajevo were subjected to acts of violence that were aimed at depriving them of any sense of security. The evidence shows that they suffered immensely as a result of the campaign of sniping and shelling.

993. The evidence also shows that the SRK succeeded in spreading the terror it intended to cause. The resulting suffering of the civilian population is an element of the crime of inhumane acts and is relevant for an assessment of the gravity of the crimes. As described by many witnesses, there was no safe place to be found in Sarajevo; one could be killed or injured anywhere and anytime. W-107 stated that her daughters often returned from collecting water or firewood and “I would find that they had soiled their clothes because of the fear that they had.”<sup>3197</sup> Another witness described how

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<sup>3193</sup> *Stakić* Appeal Judgement, para. 375.

<sup>3194</sup> *Galić* Appeal Judgement, para. 409; *Blaškić* Appeal Judgement, para. 683, citing *Furundžija* Appeal Judgement, para. 249. See also, *Čelebići* Appeal Judgement paras 731, 769; *Stakić* Trial Judgement, para. 903.

<sup>3195</sup> *Blaškić* Appeal Judgement, para. 683; *Krnojelac* Trial Judgement, para. 512. See also, *Zelenović* Sentencing Trial Judgement, para. 38; *Češić* Sentencing Trial Judgement, para. 32; *Babić* Sentencing Trial Judgement, para. 47.

<sup>3196</sup> *Blaškić* Appeal Judgement, para. 683; *Krnojelac* Appeal Judgement, para. 260. See also, *Čelebići* Trial Judgement, para. 1226.

<sup>3197</sup> D116, Statement by W-107, p. 5 (under seal).

the civilians in Sarajevo lived under “the constant threat of death.”<sup>3198</sup> The terror and suffering that was caused in this case left the victims with physical and mental scars that even twelve years later have not disappeared; it is very likely that these scars will never disappear.

994. By planning and ordering the crimes of terror, murder and inhumane acts, the Accused made the entire civilian population of Sarajevo the direct target of countless acts of violence, and acted in direct breach of the basic principles of international humanitarian law.

## 2. Aggravating and Mitigating Factors

995. The Statute and the Rules require the Trial Chamber to take into account both aggravating and mitigating circumstances when imposing a sentence.<sup>3199</sup> Factors which a Trial Chamber takes into account as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and vice versa.<sup>3200</sup>

### (a) Aggravating Circumstances

996. Aggravating circumstances must be proved by the Prosecution beyond reasonable doubt.<sup>3201</sup> Such factors include: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia;<sup>3202</sup> (ii) the length of time during which the crime continued;<sup>3203</sup> (iii) active and direct criminal participation, if linked to a high-rank position of command,<sup>3204</sup> and the active participation of a superior in the criminal acts of subordinates;<sup>3205</sup> (iv) premeditation and motive;<sup>3206</sup> (v) the violent, and humiliating nature of the acts and the vulnerability of the victims;<sup>3207</sup> (vi) the status of

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<sup>3198</sup> W-57, P539, p. 4 (under seal).

<sup>3199</sup> See *supra*, Article 24 of the Statute and Rule 101 of the Rules; *Čelebići* Appeal Judgement, para. 717.

<sup>3200</sup> *Deronjić* Sentencing Appeal Judgement, para. 106, citing *Krnojelac* Trial Judgement, para. 517; *Plavšić* Sentencing Trial Judgement, para. 58; *Banović* Sentencing Trial Judgement, para. 53. See also, *Momir Nikolić* Sentencing Appeal Judgement, para. 58.

<sup>3201</sup> *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763.

<sup>3202</sup> *Blagojević and Jokić* Appeal Judgement, para. 324; *Galić* Appeal Judgement, para. 412; *Blaškić* Appeal Judgement, para. 686, citing *Jokić* Sentencing Trial Judgement, paras 61 – 62. The Appeals Chamber in *Stakić* noted that “in considering the superior position in connection with Article 7(1), the Appeals Chamber recalls that it is settled in the jurisprudence of the Tribunal that superior position itself does not constitute an aggravating factor. Rather it is the abuse of such position which may be considered an aggravating factor,” *Stakić* Appeal Judgement, para. 411, citing *Kayishema and Ruzindana* Appeal Judgement, paras 358 – 359.

<sup>3203</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Appeal Judgement, para. 356; *Todorović* Sentencing Trial Judgement, para. 65.

<sup>3204</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Krstić* Trial Judgement, para. 708.

<sup>3205</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Čelebići* Appeal Judgement, paras 736 – 737.

<sup>3206</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Krstić* Trial Judgement, paras 711 – 712. See also, *Krstić* Appeal Judgement, para. 258.

<sup>3207</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Trial Judgement, para. 867; *Kunarac et al.* Appeal Judgement, para. 352. See also, *Zelenović* Sentencing Trial Judgement, para. 39.

the victims, their age and number, and the effect of the crimes on them;<sup>3208</sup> (vii) the character of the accused;<sup>3209</sup> and (viii) the circumstances of the offences generally.<sup>3210</sup>

997. The Prosecution submitted that the physical and psychological suffering of the victims and the Accused's position of authority should be taken into consideration as aggravating circumstances. The Defence did not respond to the Prosecution's submissions.

998. On the basis of the evidence the Trial Chamber takes into consideration the following circumstances as aggravating the culpability of the Accused.

999. First, the Accused was the Commander of the SRK, the corps that conducted a protracted campaign of sniping and shelling of civilians, civilian areas and the civilian population of Sarajevo. The Accused was a career officer and served as the Chief of Staff of the SRK before becoming its commander. As corps commander, he held one of the highest positions within the VRS, and was directly subordinated to the highest organ of the VRS, the Main Staff. The evidence showed that the Accused was highly respected by the officers and soldiers of the SRK. The Accused had a special responsibility to uphold the standards of international humanitarian law. The Trial Chamber considers that the Accused's position as commander of the SRK obligated him to prevent the commission of crimes and to ensure that the troops under his command conducted themselves with respect for international humanitarian law. However, the evidence presented to the Trial Chamber shows that the Accused abused his position and that he, through his orders, planned and ordered gross and systematic violations of international humanitarian law.

1000. Second, the Accused willingly continued the campaign for over a year. By his planning and ordering the continuation of the sniping and shelling of civilians and civilian areas, he played a very active role in the commission of the crimes.

1001. Moreover, the Accused introduced to the Sarajevo theatre, and made regular use of, a highly inaccurate weapon with great explosive power: the modified air bomb. It is plain from the evidence that the indiscriminate nature of these weapons was known within the SRK. The modified air bombs could only be directed at a general area, making it impossible to predict where they would strike. Each time a modified air bomb was launched, the Accused was playing with the lives of the civilians in Sarajevo. The psychological effect of these bombs was tremendous. As one witness testified, referring to the modified air bombing in Sokolovići, the inhabitants of that settlement "could have coped" with the sniping and shelling of the neighbourhood "until the air bomb landed

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<sup>3208</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Trial Judgement, paras 864, 866; *Kunarac et al.* Appeal Judgement, para. 355. *See also*, *Zelenović* Sentencing Trial Judgement, para. 40.

<sup>3209</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Čelebići* Appeal Judgement, para. 788.



on 23 July 1995.”<sup>3211</sup> The repeated use of the blatantly inaccurate modified air bombs is an aggravating factor.

(b) Mitigating Circumstances

1002. Mitigating factors have to be proven “on a balance of probabilities”, that is, “the circumstance in question must have existed ‘more probably than not’.”<sup>3212</sup> Factors to be taken into account may include the following: (i) an expression of remorse;<sup>3213</sup> (ii) voluntary surrender;<sup>3214</sup> (iii) good character with no prior criminal convictions;<sup>3215</sup> (iv) comportment in detention;<sup>3216</sup> (v) personal and family circumstances;<sup>3217</sup> (vi) the character of the accused subsequent to the conflict;<sup>3218</sup> and (vii) age.<sup>3219</sup> With regard to the method for calculating the impact on a sentence of mitigating circumstances, the Appeals Chamber has held that, “any modification of sentence needs to be assessed in light of all the circumstances of the case and cannot be limited to a simple mathematical diminution of sentence otherwise to be imposed.”<sup>3220</sup>

1003. The Prosecution submitted that there were no circumstances “that mitigate the culpability of the Accused.” The Defence did not put forward any submissions as to mitigating circumstances that the Trial Chamber should consider. The Trial Chamber will take into account the following factors in mitigation of the sentence that is to be imposed: the Accused voluntarily surrendered to the authorities of Serbia and Montenegro before being transferred to The Hague; David Fraser’s evidence that the Accused appeared to be “somewhat troubled by what he was doing”; Col. Dragičević’s evidence that the Accused was an “altruist” and Maj. Veljović’s testimony that the Accused was a “man of high moral values”; the negotiation and signing of the Anti-sniping Agreement by the Accused; and the orders issued by the Accused not to shoot civilians and to abide by the Geneva Conventions.

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<sup>3210</sup> *Blaškić* Appeal Judgement, para. 686, referring to *Tadić* Sentencing Trial Judgement, para. 19.

<sup>3211</sup> See *supra*, Section II.E.6(b)(xiii).

<sup>3212</sup> *Babić* Sentencing Appeal Judgement, para. 43. See also, *Galić* Appeal Judgement, para. 414; *Bralo* Appeal Sentencing Trial Judgement, paras 56, 62 – 63.

<sup>3213</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 89; *Erdemović* Second Sentencing Trial Judgement, para. 16(iii).

<sup>3214</sup> *Galić* Appeal Judgement, para. 426. See also, *Blaškić* Appeal Judgement, para. 686, referring to *Jokić* Sentencing Trial Judgement, para. 73.

<sup>3215</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Erdemović* Second Sentencing Trial Judgement, para. 16(i); *Kupreškić et al.* Appeal Judgement, para. 459.

<sup>3216</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 100; *Dragan Nikolić* Sentencing Trial Judgement, para. 268.

<sup>3217</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Kunarac et al.* Appeal Judgement, paras 362, 408; *Tadić* Sentencing Trial Judgement, para. 26.

<sup>3218</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, paras 90 – 91, 103.

<sup>3219</sup> *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 100.

<sup>3220</sup> *Bralo* Appeal Sentencing Trial Judgement, para. 85.

### 3. General Practice Regarding Sentencing in the Former Yugoslavia

1004. Article 24(1) of the Statute provides that “Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”.<sup>3221</sup> The case-law of the Tribunal has consistently held that this does not require Trial Chambers to conform to the practice regarding prison sentences in the courts of the former Yugoslavia; it only requires that Trial Chambers take that practice into account.<sup>3222</sup>

1005. During the Indictment period, the sentencing law as it pertains to international crimes in BiH was regulated by the Criminal Code of the SFRY (“SFRY Criminal Code”).<sup>3223</sup> Article 142 of the SFRY Criminal Code punishes war crimes against civilians, including killings, inhumane treatment, and application of measures of intimidation and terror, with a minimum sentence of five years’ imprisonment or the death penalty, or by a maximum 20 years in prison, extendible to 40 years in certain circumstances.<sup>3224</sup> The Trial Chamber recalls that under Article 24 of the Statute the maximum penalty is life imprisonment.

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<sup>3221</sup> See also, *Dragan Nikolić* Appeal Sentencing Trial Judgement, para. 85.

<sup>3222</sup> See e.g. *Čelebići* Appeal Judgement, paras 813, 816, 820; *Tadić* Sentencing Appeal Judgement, para. 21; *Kunarac et al.* Appeal Judgement, para. 377; *Jelisić* Appeal Judgement, paras 116 – 117; *Stakić* Appeal Judgement, para. 398; *Galić* Appeal Judgement, para. 443.

<sup>3223</sup> The Code was adopted by the Federal Assembly on 28 September 1976, and has been in force since 1 July 1977.

<sup>3224</sup> SFRY Criminal Code, art. 38(2), 142. Article 38 provides that a prison sentence may not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment could not exceed 20 years.

## V. DISPOSITION

1006. The Trial Chamber finds the Accused, Dragomir Milošević, **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

Count 1, terror, a violation of the laws or customs of war;

Count 2, murder, a crime against humanity;

Count 3, inhumane acts, a crime against humanity;

Count 5, murder, a crime against humanity;

Count 6, inhumane acts, a crime against humanity;

1007. The finding of guilt on Count 1 has the consequence that Counts 4 and 7, unlawful attacks against civilians, a violation of the laws or customs of war are **DISMISSED**.

1008. The Trial Chamber sentences Dragomir Milošević to a single sentence of **thirty-three (33)** years of imprisonment.

1009. Dragomir Milošević has been detained since 3 December 2004. Pursuant to Rule 101(C) of the Rules, Dragomir Milošević is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Dragomir Milošević shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he will serve his sentence.

Done on this twelfth day of December 2007,  
in The Hague, the Netherlands,  
in English and French, the English text being authoritative.

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**Judge Patrick Robinson**

**Presiding**

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**Judge Antoine Kesia-**

**Mbe Mindua**

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**Judge Frederik Harhoff**

**[Seal of the Tribunal]**

## VI. ANNEX

### A. Glossary

#### General Abbreviations

|                               |  |
|-------------------------------|--|
| <b>ABiH</b>                   | Armed Forces of the Republic of Bosnia and Herzegovina   |
| <b>APC</b>                    | Armoured Personnel Carrier   |
| <b>Additional Protocol I</b>  | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977      |
| <b>Additional Protocol II</b> | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 |
| <b>Adjudicated Facts</b>      | Adjudicated Facts admitted into evidence by decisions of the Trial Chamber on 10 April 2007 and 18 July 2007.  |
| <b>Agreed Facts</b>           | Facts agreed to by the Parties, admitted by decision of the Trial Chamber on 10 April 2007.  |
| <b>Anti-sniping Agreement</b> | Agreement on Elimination of Sniping Activities in Sarajevo Region of 14 August 1994  |
| <b>Badinter Commission</b>    | European Community's Arbitration Commission, under the chairmanship of Robert Badinter   |
| <b>BiH</b>                    | Bosnia and Herzegovina   |
| <b>Brig.</b>                  | Brigadier  |
| <b>Brig. Gen.</b>             | Brigadier General  |
| <b>C</b>                      | Chamber exhibit  |
| <b>Capt.</b>                  | Captain  |
| <b>COHA</b>                   | Cessation of Hostilities Agreement of 23 December 1994   |
| <b>Col.</b>                   | Colonel  |
| <b>D</b>                      | Defence exhibit admitted into evidence   |
| <b>Defence Final Brief</b>    | Defence Final Brief (Rule 86 (b)), with public annex A, filed on 1 October 2007  |
| <b>DMZ</b>                    | Demilitarised zone   |
| <b>EC</b>                     | European Community   |
| <b>Gen.</b>                   | General  |
| <b>Geneva Convention III</b>  | Geneva Convention Relative to the Treatment of Prisoners of War, 12 August, 1949   |
| <b>GOFRS</b>                  | Global Operation Fire Rescue Services  |
| <b>HDZ</b>                    | Croatian Democratic Party  |
| <b>HVO</b>                    | Croatian Defence Council   |
| <b>ICRC</b>                   | International Committee of the Red Cross   |
| <b>ICRC Commentary</b>        | Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, 1987.                 |
| <b>ICTR</b>                   | International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious  |

|                                  |  |
|----------------------------------|--|
|                                  | Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 |
| <b>ICTY</b>                      | 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  |
| <b>GT.</b>                       | Transcript page from hearings in the case <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T.  |
| <b>Indictment</b>                | Amended Indictment in the case of <i>Prosecutor v. Dragomir Milošević</i> , Case No IT-98-29/1-PT, filed 18 December 2006  |
| <b>Indictment period</b>         | From August 1994 to November 1995  |
| <b>JNA</b>                       | Yugoslav People's Army   |
| <b>KDZ</b>                       | Counter Sabotage Protection Department of Bosnian Muslim Ministry of Interior  |
| <b>Lt.</b>                       | Lieutenant   |
| <b>Lt. Col.</b>                  | Lieutenant Colonel   |
| <b>Lt. Com.</b>                  | Lieutenant Commander   |
| <b>Maj.</b>                      | Major  |
| <b>Maj. Gen.</b>                 | Major General  |
| <b>Markale Market I</b>          | Shelling of Markale Market on 5 February 1994  |
| <b>MT.</b>                       | Transcript page from hearings in the case <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T.   |
| <b>MUP</b>                       | Ministry of Interior   |
| <b>OP</b>                        | UNPROFOR Observation Post  |
| <b>P</b>                         | Prosecution exhibit admitted into evidence   |
| <b>p.</b>                        | Page   |
| <b>pp</b>                        | Pages  |
| <b>para.</b>                     | Paragraph  |
| <b>paras</b>                     | Paragraphs   |
| <b>Prosecution Closing Brief</b> | Closing Brief of the Prosecution, filed on 1 October 2007  |
| <b>QMS</b>                       | Quartermaster Sergeant   |
| <b>Republika Srpska</b>          | Serbian Republic of Bosnia and Herzegovina   |
| <b>RS</b>                        | Republika Srpska   |
| <b>Rules</b>                     | The Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia   |
| <b>SAO</b>                       | Serb Autonomous Region   |
| <b>Scheduled incidents</b>       | Incidents contained in the schedules to the Indictment   |
| <b>SDA</b>                       | Party of Democratic Action   |
| <b>SDS</b>                       | Serbian Democratic Party   |
| <b>SFRY</b>                      | Socialist Federal Republic of Yugoslavia   |
| <b>SRK</b>                       | Sarajevo Romanija Corps  |
| <b>Statute</b>                   | Statute of the International Criminal Tribunal for the Former Yugoslavia   |
| <b>T.</b>                        | Transcript page from hearings at trial in the present case. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless specified otherwise. Minor differences may                                    |

therefore exist between the pagination therein and that of the final transcripts released to the public. The Trial Chamber accepts no responsibility for the corrections to or mistakes in these transcripts. In case of doubt, the video-tape of a hearing is to be revisited.

**TEZ**

Total Exclusion Zone

**TO**

Territorial Defence

**UN**

United Nations

**UNHCR**

UN High Commissioner for Refugees

**UNMO**

United Nations Military Observers

**UNPROFOR**

United Nations Protection Force

**VRS**

Republika Srpska Army

**WCP**

Weapons Collection Point

### List of Cases

#### ICTY

|   |  |
|---|--|
| <b><i>Aleksovski</i> Trial Judgement</b>                | <i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999                    |
| <b><i>Aleksovski</i> Appeal Judgement</b>               | <i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000                   |
| <b><i>Babić</i> Sentencing Trial Judgement</b>          | <i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-S, Sentencing Judgement, 29 June 2004                 |
| <b><i>Banović</i> Sentencing Trial Judgement</b>        | <i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003        |
| <b><i>Blagojević and Jokić</i> Trial Judgement</b>      | <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005  |
| <b><i>Blagojević and Jokić</i> Appeal Judgement</b>     | <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007       |
| <b><i>Blaškić</i> Appeal Judgement</b>                  | <i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004                        |
| <b><i>Bralo</i> Sentencing Appeal Judgement</b>         | <i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007    |
| <b><i>Brđanin</i> Trial Judgement</b>                   | <i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004                   |
| <b><i>Čelebići</i> Trial Judgement</b>                  | <i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-T, Judgement, 16 November 1998              |
| <b><i>Čelebići</i> Appeal Judgement</b>                 | <i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-A, Judgement, 20 February 2001              |
| <b><i>Češić</i> Sentencing Trial Judgement</b>          | <i>Prosecutor v. Ranko Češić</i> , Case No. IT-95-10-S, Sentencing Judgement, 11 March 2004                |
| <b><i>Deronjić</i> Sentencing Appeal Judgement</b>      | <i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 29 July 2005 |
| <b><i>Dragan Nikolić</i> Sentencing Trial Judgement</b> | <i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-S, Sentencing Judgement, 18 December 2003          |
| <b><i>Erdemović</i> Second Sentencing Judgement</b>     | <i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998         |
| <b><i>Furundžija</i> Trial Judgement</b>                | <i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998                  |
| <b><i>Furundžija</i> Appeal Judgement</b>               | <i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A,  |

|  |  |
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| <b><i>Galić</i> Trial Judgement</b>                                    | Judgement, 21 July 2000<br><i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement 5 December 2003   |
| <b><i>Galić</i> Appeal Judgement</b>                                   | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006  |
| <b><i>Hadžihasanović and Kubura</i>, Interlocutory Appeal Decision</b> | <i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005   |
| <b><i>Halilović</i> Appeal Judgement</b>                               | <i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Judgement, 16 October 2007   |
| <b><i>Jelisić</i> Trial Judgement</b>                                  | <i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999  |
| <b><i>Jelisić</i> Appeal Judgement</b>                                 | <i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001   |
| <b><i>Jokić</i> Sentencing Trial Judgement</b>                         | <i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-1-T, Sentencing Judgement, 18 March 2004  |
| <b><i>Kordić and Čerkez</i> Jurisdiction Decision</b>                  | <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999 |
| <b><i>Kordić and Čerkez</i> Trial Judgement</b>                        | <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001  |
| <b><i>Kordić and Čerkez</i> Appeal Judgement</b>                       | <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004  |
| <b><i>Krstić</i> Trial Judgement</b>                                   | <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001   |
| <b><i>Krstić</i> Appeal Judgement</b>                                  | <i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004   |
| <b><i>Krnojelac</i> Trial Judgement</b>                                | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002   |
| <b><i>Krnojelac</i> Appeal Judgement</b>                               | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003   |
| <b><i>Kunarac et al.</i> Trial Judgement</b>                           | <i>Prosecutor v. Dragoljub Kunarac, et al.</i> , IT-96-23 and IT-96-23/1-T, Judgement, 22 February 2001  |
| <b><i>Kunarac et al.</i> Appeal Judgement</b>                          | <i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002  |
| <b><i>Kupreškić et al.</i> Trial Judgement</b>                         | <i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000  |
| <b><i>Kupreškić et al.</i> Appeal Judgement</b>                        | <i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Judgement, 23 October 2001  |
| <b><i>Kvočka et al.</i> Appeal Judgement</b>                           | <i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005   |
| <b><i>Limaj et al.</i> Trial Judgement</b>                             | <i>Prosecutor v. Limaj et al.</i> , Case No. IT-03-66-T, Judgement, 30 November 2005   |
| <b><i>Limaj et al.</i> Appeal Judgement</b>                            | <i>Prosecutor v. Limaj et al.</i> , Case No. IT-03-66-A, Judgement, 27 September 2007  |
| <b><i>Martić</i> Trial Judgement</b>                                   | <i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgement, 12 June 2007   |
| <b><i>Momir Nikolić</i> Sentencing Appeal Judgement</b>                | <i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006   |

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| <b><i>Mrkšić et al.</i> Order for Review of the Indictment</b> | <i>Prosecutor v Mrkšić et al.</i> , Case No. IT-95-13-R61, Order for Review in Open Court of the Indictment by Trial Chamber I (Rule 61 of the Rules of Procedure and Evidence), 6 March 1996 |
| <b><i>Mrkšić et al.</i> Trial Judgement</b>                    | <i>Prosecutor v. Mile Mrkšić et al.</i> , Case No. IT-95-13/1-T, Judgement, 27 September 2007   |
| <b><i>Naletilić and Martinović</i> Trial Judgement</b>         | <i>Prosecutor v. Naletilić and Martinović (a.k.a “Tuta and Stela”)</i> , Case No.IT-98-34-T, Judgement, 31 March 2003   |
| <b><i>Naletilić and Martinović</i> Appeal Judgement</b>        | <i>Prosecutor v. Naletilić and Martinović (a.k.a “Tuta and Stela”)</i> , Case No.IT-98-34-A, Judgement, 3 May 2006  |
| <b><i>Plavšić</i> Sentencing Trial Judgement</b>               | <i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003   |
| <b><i>Stakić</i> Trial Judgement</b>                           | <i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003  |
| <b><i>Stakić</i> Appeal Judgement</b>                          | <i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006   |
| <b><i>Strugar et al.</i> Decision on Interlocutory Appeal</b>  | <i>Prosecutor v. Pavle Strugar et al.</i> , Case No. IT-02-42-R72, Decision on Interlocutory Appeal, 22 November 2002   |
| <b><i>Tadić</i> Jurisdiction Decision</b>                      | <i>Prosecutor v. Dusko Tadić a.k.a “Dule”</i> , Case No. IT-94-1-A Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995  |
| <b><i>Tadić</i> Trial Judgement</b>                            | <i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-T, Judgement, 7 May 1997  |
| <b><i>Tadić</i> Appeal Judgement</b>                           | <i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999  |
| <b><i>Tadić</i> Sentencing Trial Judgement</b>                 | <i>Prosecutor v. Duško Tadić (a.k.a. “Dule”)</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999   |
| <b><i>Tadić</i> Sentencing Appeal Judgement</b>                | <i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-Abis, Sentencing Judgement, 26 January 2000   |
| <b><i>Todorović</i> Sentencing Trial Judgement</b>             | <i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9-1, Sentencing Judgement, 31 July 2001  |
| <b><i>Vasiljević</i> Trial Judgement</b>                       | <i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002  |
| <b><i>Vasiljević</i> Appeal Judgement</b>                      | <i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004  |
| <b><i>Zelenović</i> Sentencing Trial Judgement</b>             | <i>Prosecutor v. Dragan Zelenović</i> , Case No. IT-96-23/2-S, Sentencing Judgement, 4 April 2007   |

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|---|---|
| <b><i>Gacumbitsi</i> Appeal Judgement</b> | <i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, Judgement, 7 July 2006               |
| <b><i>Kajelijeli</i> Trial Judgement</b>  | <i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 |
| <b><i>Kajelijeli</i> Appeal Judgement</b> | <i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-A, Judgement, 23 May 2005                  |
| <b><i>Kambanda</i> Appeal Judgement</b>   | <i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-A, Judgement, 19 October 2000                    |



***Kayishema and Ruzindana Trial Judgement*** *Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1999*

***Kayishema and Ruzindana Appeal Judgement*** *Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement, 1 June 2001*

SCSL

***The AFRC Accused Trial Judgement*** *Prosecutor v. Alex Tamba Brima, Brima Bazzy Tamara, Santigie Borbor Kanu, Case No. SCSL-04-16-T, Judgement, 20 June 2007*