



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

Case No. IT-98-29-T
Date: 5 December 2003
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IN TRIAL CHAMBER I

Before: Judge Alphons Orié
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar: Mr. Hans Holthuis

Judgement Of: 5 December 2003

PROSECUTOR

v.

STANISLAV GALIĆ

JUDGEMENT AND OPINION

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CONTENTS

| | |
|--|-----------|
| I. INTRODUCTION | 5 |
| II. APPLICABLE LAW | 7 |
| 1. Prerequisites of Article 3 of the Statute | 7 |
| 2. Attack on Civilians as a Violation of the Laws or Customs of War..... | 8 |
| (a) Introduction | 8 |
| (b) First and Second Tadić Conditions | 8 |
| (c) Third Tadić Condition | 12 |
| (d) Fourth Tadić Condition | 13 |
| (e) Material and Mental Elements | 14 |
| (i) Arguments of the Parties..... | 14 |
| (ii) Discussion..... | 16 |
| (f) Conclusion | 26 |
| 3. Terror Against the Civilian Population as a Violation of the Laws or Customs of War | 26 |
| (a) Introduction | 26 |
| (b) Consideration of the Arguments of the Parties | 27 |
| (i) Prosecution | 27 |
| (ii) Defence | 30 |
| (c) Discussion | 33 |
| (i) Preliminary remarks..... | 34 |
| (ii) First and Second Tadić Conditions..... | 35 |
| (iii) Third Tadić Condition | 39 |
| (iv) Fourth Tadić Condition..... | 40 |
| (v) Conclusion | 49 |
| B. OFFENCES CHARGED UNDER ARTICLE 5 OF THE STATUTE | 50 |
| 1. Prerequisites of Article 5 of the Statute | 50 |
| 2. Crimes Alleged under Article 5 of the Statute..... | 53 |
| (a) Murder..... | 53 |
| (b) Inhumane acts | 53 |
| C. CUMULATIVE CHARGING AND CONVICTIONS | 54 |
| 1. Cumulative Charging | 54 |
| 2. Cumulative Convictions | 55 |
| (a) Article 3: The Test Applied to Count 1 and Counts 4 and 7 | 55 |
| (b) Articles 3 and 5: Cumulation for War Crimes and Crimes against Humanity..... | 56 |
| (c) Article 5: The Counts of Murder and Inhumane acts..... | 56 |
| D. THEORIES OF RESPONSIBILITY UNDER ARTICLE 7 OF THE STATUTE | 56 |
| 1. Individual Responsibility under Article 7 (1) of the Statute..... | 57 |
| 2. Article 7 (3) of the Statute | 60 |
| III. FACTUAL AND LEGAL FINDINGS | 61 |
| A. GENERAL REMARKS ON TERMINOLOGY AND EVIDENCE | 61 |
| 1. Introduction..... | 61 |
| 2. Definitions of “Campaign” and “Sniping” | 62 |
| (a) Campaign | 62 |
| (b) Sniping | 62 |
| 3. Evaluation of Evidence | 64 |
| B. EVENTS LEADING TO THE MILITARY ENCIRCLEMENT OF SARAJEVO IN 1992 | 65 |
| 1. Break-up of the SFRY | 65 |
| 2. Sarajevo: Armed Conflict and Military Encirclement..... | 67 |
| (a) April 1992: Armed Conflict Erupts in Sarajevo..... | 68 |
| (b) May 1992: Further Attacks in Sarajevo and Establishment of a Bosnian-Serb Army..... | 68 |

| | |
|---|-----|
| (c) June/September 1992: Intensification of Attacks in Sarajevo and Further Deployment of UN forces | 71 |
| C. WAS THERE A CAMPAIGN OF SNIPING AND SHELLING BY SRK FORCES AGAINST CIVILIANS? ... | 72 |
| 1. General Evidence of Sniping and Shelling at Civilians in ABiH-held Areas of Sarajevo during the Indictment Period..... | 74 |
| 2. Sniping and Shelling of Civilians in Urban ABiH-held Areas of Sarajevo..... | 80 |
| (a) General Grbavica Area..... | 80 |
| (i) Scheduled Sniping Incident 5 | 90 |
| (ii) Scheduled sniping incident number 24..... | 93 |
| (b) Hrasno Area | 96 |
| (i) Scheduled Sniping Incident 10 | 99 |
| (ii) Scheduled Sniping Incident 15 | 101 |
| (iii) Scheduled Sniping Incident 20 | 104 |
| (iv) Scheduled Sniping Incident 27 | 107 |
| (c) Alipašino Polje Area | 109 |
| (i) Nedarići and the School for the Blind | 109 |
| (ii) Scheduled Sniping Incident 13 | 112 |
| (iii) Scheduled Sniping Incident 21 | 115 |
| (iv) Scheduled Sniping Incident 23 | 117 |
| (v) Scheduled Sniping Incident 25 | 121 |
| (vi) Scheduled Sniping Incident 26 | 123 |
| (vii) Shelling incident in Alipašino Area..... | 126 |
| (viii) Scheduled Shelling Incident 3 | 128 |
| (d) Dobrinja Areas | 136 |
| (i) Orthodox Church and School of Theology..... | 137 |
| (ii) Scheduled Sniping Incident 6 | 139 |
| (iii) Scheduled Sniping Incident 18..... | 141 |
| (iv) Scheduled Sniping Incident 22 | 144 |
| (v) Shelling Attacks on Civilians in Dobrinja Area | 148 |
| (vi) Scheduled Shelling Incident 1 | 150 |
| (vii) Scheduled Shelling Incident 2 | 160 |
| (viii) Scheduled Shelling Incident 4 | 165 |
| (e) Sarajevo Airport | 174 |
| (f) Brijеško Brdo Area..... | 176 |
| (i) Scheduled Sniping Incident 16 | 177 |
| (ii) Scheduled Sniping Incident 17 | 182 |
| (g) Stari Grad Area | 183 |
| (i) Old City Centre..... | 183 |
| (ii) Scheduled Shelling 5 | 185 |
| a. Description of the Incident | 185 |
| b. Investigations of the Causes of the Incident..... | 186 |
| i. Local Investigative Team..... | 187 |
| <i>Sablјica Ballistic Report</i> | 187 |
| <i>Zečević Ballistic Report</i> | 188 |
| ii. UN Investigative Teams..... | 190 |
| iii. Expert Report of the Defence | 193 |
| c. Non-technical evidence concerning the source of fire | 195 |
| d. Presence of Military Targets in the Area of Markale Market | 196 |
| e. Arguments of the Parties | 197 |
| f. Conclusion on the Cause of the Explosion and Casualties | 198 |
| g. Conclusion on the Source of Fire | 199 |
| i. Direction of Fire..... | 199 |
| ii. Range of Fire Related to the Angle of Descent | 200 |
| iii. Non-technical Evidence in relation to the Source of Fire..... | 205 |
| h. Conclusion on Deliberateness of the Attack | 206 |
| (h) Koševo Area..... | 206 |

| | |
|---|------------|
| 3. Sniping and Shelling of Civilians in Rural ABiH-held Areas of Sarajevo..... | 213 |
| (a) Sedrenik Area..... | 213 |
| (i) Špicasta Stijena..... | 213 |
| (ii) Scheduled Sniping Incident 3..... | 215 |
| (iii) Scheduled sniping incident number 8..... | 217 |
| (iv) Other Evidence of Targeting of Civilians from Špicasta Stijena..... | 219 |
| (b) Širokača Area..... | 221 |
| (i) Mount Trebević and Baba Stijena..... | 221 |
| (ii) Scheduled sniping incident number 2..... | 224 |
| (iii) Scheduled sniping incident number 11..... | 226 |
| (c) Vogošća Area..... | 228 |
| (i) Orahov Brijeg..... | 228 |
| (ii) Scheduled Sniping Incident 4..... | 229 |
| (iii) Scheduled Sniping Incident 9..... | 232 |
| (iv) Scheduled Sniping Incident 14..... | 234 |
| (v) Other Evidence of Targeting of Civilians from the area of Kobilja Glava..... | 235 |
| 4. Pattern of Fire into ABiH-held Areas of Sarajevo..... | 237 |
| 5. Were Sniping and Shelling Attacks on Civilians in ABiH-held Areas of Sarajevo Committed with the Aim to Spread Terror?..... | 239 |
| 6. Number of Civilians Killed or Injured in ABiH-controlled Parts of Sarajevo during the Indictment Period..... | 244 |
| 7. Conclusion on Whether there was a Campaign of Sniping and Shelling in Sarajevo by SRK Forces..... | 246 |
| D. LEGAL FINDINGS..... | 251 |
| 1. Offences under Article 3 of the Statute..... | 251 |
| 2. Offences under Article 5 of the Statute..... | 251 |
| IV. CRIMINAL RESPONSIBILITY OF GENERAL GALIĆ..... | 252 |
| A. INTRODUCTION..... | 252 |
| 1. General Galić’s Personal Background..... | 252 |
| 2. The Command Position Held by the Accused Throughout the Relevant Period..... | 253 |
| 3. The Role of General Galić..... | 254 |
| B. WAS GENERAL GALIĆ IN EFFECTIVE COMMAND OF THE SRK FORCES THROUGHOUT THE RELEVANT PERIOD?..... | 255 |
| 1. The Chain of Command..... | 255 |
| (a) The Structure of the SRK..... | 255 |
| (b) The Reporting and Monitoring Systems of the SRK..... | 258 |
| (c) Was the SRK Personnel under Strict Control?..... | 261 |
| (i) Procedure for Instructions and Orders..... | 261 |
| (ii) Control over Sniping Activity..... | 263 |
| (iii) Control over Shelling Activity..... | 266 |
| (iv) Control over SRK Weaponry..... | 272 |
| (d) Was General Galić in a Position to Punish his Subordinates?..... | 273 |
| 2. Conclusions about the Effectiveness of the Command and Control of the Chain of Command..... | 274 |
| C. DID GENERAL GALIĆ KNOW OF THE CRIMES PROVED AT TRIAL?..... | 275 |
| 1. Introduction..... | 275 |
| 2. Protests Delivered in Person to General Galić..... | 276 |
| 3. General Galić’s Responses to Protests..... | 279 |
| 4. Protests Delivered to General Galić’s Subordinates..... | 282 |
| 5. Media Reports..... | 286 |
| 6. Artillery Assets..... | 287 |
| 7. Conclusions about General Galić’s Knowledge of Criminal Activity of the SRK..... | 288 |
| D. DID GENERAL GALIĆ TAKE REASONABLE MEASURES UPON HIS KNOWLEDGE OF CRIME?..... | 290 |
| 1. Prevention of Crimes and Punishment of Perpetrators thereof..... | 290 |

| | |
|---|------------|
| 2. Conclusions..... | 292 |
| E. DID GENERAL GALIĆ AND HIS SUBORDINATES ACT IN FURTHERANCE OF A PLAN?..... | 294 |
| F. CONCLUSION: DOES GENERAL GALIĆ INCUR CRIMINAL RESPONSIBILITY UNDER ARTICLE 7(1) OF THE STATUTE? | 296 |
| 1. Introduction..... | 296 |
| 2. Did General Galić Order the Commission of Crimes Proved at Trial? | 297 |
| V. SENTENCING | 303 |
| A. SUBMISSIONS OF THE PARTIES | 303 |
| B. APPLICABLE PROVISIONS AND SENTENCING PRINCIPLES | 304 |
| C. DETERMINATION OF GENERAL GALIĆ’S SENTENCE | 306 |
| VI. DISPOSITION | 309 |
| VII. SEPARATE AND PARTLY DISSENTING OPINION OF JUDGE NIETO-NAVIA ... | 311 |
| VIII. ANNEXES | 312 |
| A. INDICTMENT AGAINST GENERAL GALIĆ | I |
| B. PROCEDURAL HISTORY OF THE CASE | IV |
| 1. The Indictment and the Accused..... | iv |
| 2. Stages of the Proceedings | vi |
| (a) Pre-Trial Stage..... | vi |
| (b) Preparation of Prosecution case | vi |
| (c) Change in Composition of Trial Chamber | vi |
| (d) Stipulated Facts | vii |
| (e) Preparation of Defence Case | vii |
| 3. Trial Stage..... | vii |
| (a) Issues Related to Witnesses..... | viii |
| (i) Protective measures | viii |
| (ii) Rule 70..... | ix |
| (iii) Video-Link..... | ix |
| (iv) Summons | ix |
| (v) Safe Conducts | ix |
| (vi) Concerning the Possibility of the Accused as Witness | x |
| (vii) Expert Witnesses | x |
| (viii) Rule 92 <i>bis</i> Statements | xi |
| (b) Issues Related to Disclosure and Documentary Evidence | xii |
| (i) Order for Production of Documents | xii |
| (ii) Reciprocal Disclosure | xii |
| (iii) Notification during Trial..... | xiii |
| (iv) Documentary Evidence Admitted from Bar Table | xiii |
| (c) Issue of Visit to Sarajevo | xiii |
| (d) Amicus Curiae..... | xiv |
| 4. Motion to Disqualify Presiding Judge | xv |
| 5. Late disclosure of Material | xv |
| C. GLOSSARIES..... | XVI |
| 1. Glossary - Legal Citations | xvi |
| 2. Glossary - Main Abbreviations | xix |
| D. MAPS | XXI |

I. INTRODUCTION

1. Trial Chamber I of the International Tribunal (the “Trial Chamber”) is seized of a case which concerns events surrounding the military encirclement of the city of Sarajevo in 1992 by Bosnian Serb forces.

2. The Prosecution alleges that “The siege of Sarajevo, as it came to be popularly known, was an episode of such notoriety in the conflict in the former Yugoslavia that one must go back to World War II to find a parallel in European history. Not since then had a professional army conducted a campaign of unrelenting violence against the inhabitants of a European city so as to reduce them to a state of medieval deprivation in which they were in constant fear of death. In the period covered in this Indictment, there was nowhere safe for a Sarajevan, not at home, at school, in a hospital, from deliberate attack”.¹

3. In the course of the three and a half years of the armed conflict in and around Sarajevo, three officers commanded the unit of the Bosnian-Serb Army (“VRS”) operating in the area of Sarajevo, the Sarajevo Romanija Corps (“SRK”). The second of those three officers, Major-General Stanislav Galić, is the accused in this case (“the Accused”). He was the commander for the longest period, almost two years, from around 10 September 1992 to 10 August 1994. The Prosecution alleges that over this period he conducted a protracted campaign of sniping and shelling against civilians in Sarajevo. Two schedules to the Indictment “set forth a small representative number of individual incidents for specificity of pleading”.² At the end of the Prosecution case and pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence of the International Tribunal, the Trial Chamber decided upon the Defence Motion for Acquittal that the Prosecution had failed to prove some of these scheduled sniping incidents.³

4. The Prosecution alleges that General Galić incurs individual criminal responsibility under Articles 7(1) and 7(3) of the Statute for his acts and omissions in relation to the crime of terror

¹ Prosecution Opening Statement, T. 562-3.

² The First Schedule refers to sniping incidents allegedly committed against civilians by forces under the command and control of the Accused. The Second Schedule lists a number of shelling incidents allegedly committed against civilian targets by forces under the command and control of the Accused, Indictment, para. 15.

³ See Decision on Acquittal (details of that decision are mentioned in Annex B of this Judgement).

(count 1), attacks on civilians (counts 4 and 7), murder (counts 2 and 5) and inhumane acts (counts 3 and 6) committed against civilians in the city of Sarajevo.⁴

5. The Trial Chamber's task is to decide whether the Prosecution's allegations that SRK personnel committed the criminal acts alleged in the Indictment have been proved beyond reasonable doubt. It must then decide what, if any, criminal responsibility General Galić incurs for any such criminal acts committed by SRK personnel.

6. This Judgement is rendered by a majority of the Trial Chamber's judges.⁵ Judge Nieto-Navia, partly dissenting, appends his opinion to this Judgement. Portions of this Judgement where he dissents are mentioned as that of the Majority of the Trial Chamber (or the "Majority").

7. This Judgement is divided into eight Parts. Part I consists of this Introduction. Part II provides a legal framework for the making of legal findings on the facts to be set out in the following part. In this part, the Trial Chamber considers the legal elements of violations of the laws or customs of war and of crimes against humanity, then determines under what circumstances an accused can be convicted for more than one crime based upon the same set of facts, and lastly examines the principles affecting the attribution of criminal responsibility. The factual findings of the Trial Chamber are contained in Part III, beginning with general observations concerning terminology and evidence; they continue with a narrative overview of the events leading to the virtually complete encirclement of the ABiH-held parts of Sarajevo; the facts of the present case follow, in order to establish whether a campaign of sniping and shelling against civilians was conducted in Sarajevo by SRK-forces during the Indictment Period and whether it aimed at spreading terror as alleged by the Prosecution; finally, the Trial Chamber sets out its legal findings, namely whether the facts found, if any, constitute crimes. In Part IV of this Judgement, the Trial Chamber states its legal findings as to the criminal responsibility of the Accused. Part V addresses matters relating to sentencing and Part VI sets forth the disposition. Part VII set forth the separate and dissenting opinion of Judge Nieto-Navia. Finally Part VIII contains four Annexes: the Indictment against General Galić, the procedural history of the case, a glossary of terms and cases, and a set of two maps which are not authoritative and do not necessarily reflect any finding of the Trial Chamber but are attached exclusively in order to assist readers to better orient themselves.

⁴ See the Indictment in Annex A. General Galić is charged with four crimes against humanity (murder and inhumane acts) under Article 5 of the Statute and with three violations of the laws or customs of war (inflicting terror on civilians and attacks on civilians) under Article 3 of the Statute.

⁵ Rule 98 *ter* (C): the judgement shall be rendered by a majority of judges.

II. APPLICABLE LAW

8. In this second part the Trial Chamber examines elements of the crimes charged in the Indictment under Articles 3 and 5 of the Statute.

1. Prerequisites of Article 3 of the Statute

9. For a crime to be adjudicated under Article 3 of the Statute (violation of the laws and customs of the war) the Trial Chamber must determine that a state of armed conflict existed at the time the crime was committed and that the crime was “closely related” to the armed conflict.⁶ According to the Appeals Chamber, an “armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.⁷

10. In the *Tadić* Jurisdiction Decision, the Appeals Chamber held that “Article 3 is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 or 5”⁸ and that it “functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the jurisdiction of the International Tribunal.”⁹ Article 3 thus refers to a broad category of offences, providing a merely illustrative list in the article itself.¹⁰

11. According to the same Appeals Chamber Decision, for criminal conduct to fall within the scope of Article 3 of the Statute, the following four conditions (“the *Tadić* conditions”) must be satisfied:

(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, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and

(iv) the violation must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.¹¹

⁶ *Tadić* Jurisdiction Decision, para. 94.

⁷ *Id.*, para. 70.

⁸ *Id.*, para. 89.

⁹ *Id.*, para. 91.

¹⁰ *Tadić* Jurisdiction Decision, para. 89; *Kunarac* Trial Judgement, para. 401; *Furundzija* Trial Judgement, paras 131-133.

¹¹ *Tadić* Jurisdiction Decision, para. 94.

The *Tadić* conditions limit the jurisdiction of the Tribunal to violations of the laws or customs of war that are at once recognized as criminally punishable and are “serious” enough to be dealt with by the Tribunal.

12. The Indictment charges the Accused with violations of the laws or customs of war under Article 3 of the Statute, namely with one count of “unlawfully inflicting terror upon civilians” (Count 1) and with two counts of “attacks on civilians” (Counts 4 and 7) pursuant to Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949. These offences are not expressly listed in Article 3 of the Statute. Starting with the crime of attack on civilians, the Trial Chamber will determine whether the offence can be brought under Article 3 of the Statute by verifying that the four *Tadić* conditions are met. The Trial Chamber will also inquire into the material and mental elements of the offence. It will then repeat this exercise for the crime of terror.

2. Attack on Civilians as a Violation of the Laws or Customs of War

(a) Introduction

13. Count 4 of the Indictment reads:

Violations of the Laws or Customs of War (attacks on civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal.

14. The paragraph introducing Count 4 alleges that the Accused, General Galić, as commander of the SRK, “conducted a coordinated and protracted campaign of sniper attacks upon the civilian population of Sarajevo, killing and wounding a large number of civilians of all ages and both sexes, such attacks by their nature involving the deliberate targeting of civilians with direct fire weapons.”

15. Count 7 of the Indictment is in terms identical to Count 4, except that the paragraph preceding Count 7 alleges that the Accused “conducted a coordinated and protracted campaign of artillery and mortar shelling onto civilian areas of Sarajevo and upon its civilian population. The campaign of shelling resulted in thousands of civilians being killed or injured.”

(b) First and Second *Tadić* Conditions

16. Counts 4 and 7 of the Indictment are clearly based on rules of international humanitarian law, namely Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II. Both provide, in relevant part, that: “The civilian population as such, as well as individual civilians, shall not be made the object of attack.” The first *Tadić* condition, that the violation must constitute an infringement of a rule of international humanitarian law, is thus fulfilled.

17. As for the second *Tadić* condition, that the rule must be customary in nature or, if it belongs to treaty law, that the required conditions must be met, the Prosecution claims that the parties to the conflict were bound by Article 51 of Additional Protocol I and Article 13 of Additional Protocol II as a matter of both treaty law and customary law.¹² In relation to the latter, “the prohibition on attacks against civilians [...] in Article 51 and 13 of Additional Protocols I and II reflect[s] customary international law applicable to all armed conflicts, international or non-international in character, at the time the offences material to the present Indictment are alleged to have been committed.”¹³ The Prosecution further submits that, should the conflict be found to be international, Additional Protocol I would apply as a matter of treaty law; or, should the conflict be found to be internal, Additional Protocol II would apply as a matter of treaty law and moreover the relevant provisions of Additional Protocol I would also apply because the parties to the conflict were bound by an agreement concluded under the auspices of the ICRC on 22 May 1992 (“the 22 May Agreement”) incorporating those provisions.¹⁴ According to the Prosecution, it was for this reason that it did not seek to prove at trial the international or non-international character of the conflict.¹⁵ During closing arguments, in response to questions put by the Trial Chamber regarding the applicability of the agreement of 22 May 1992, the Prosecution said that the parties to the conflict specifically agreed to abide by those provisions irrespective of whether Additional Protocol I would otherwise be applicable by its terms to the conflict in Bosnia.¹⁶

18. The Defence at first did not dispute that “both parties to the armed conflict were bound to uphold the provisions of the Geneva Conventions and the Additional Protocols I and II”,¹⁷ although it did not specify whether this was on the basis of treaty or custom. The Defence took a different position in its Final Brief. There it claims that “the former JNA was not a participant in this armed conflict and that the conflict escalated after the withdrawal of the JNA from Bosnia and Herzegovina on 19 May 1992.”¹⁸ It qualifies the conflict as a “civil war with some elements of religious war”.¹⁹ Additionally, the Defence submits that “[n]o matter the content of the Agreement dated 22 May 1992, which indicates on [a] readiness to apply principles of protection foreseen by [...] Additional Protocols I and II, the Defence considers that Additional Protocol I could not be

¹² Prosecution Pre-Trial Brief, para. 137; Prosecution Final Trial Brief, paras 11 to 15.

¹³ Prosecution Pre-Trial Brief, para. 137; Prosecution Final Trial Brief, para. 15.

¹⁴ Prosecution Pre-Trial Brief, para. 136; Prosecution Final Trial Brief, paras 11 and 12; Prosecution Closing Arguments, T. 21950 (private session).

¹⁵ Prosecution Pre-Trial Brief, para. 132.

¹⁶ Prosecution Closing Arguments, T. 21970.

¹⁷ Defence Pre-Trial Brief, para. 8.11. Both parties also stipulated that “[a]ll parties to the armed conflict were required to abide by the laws and customs governing the conduct of war” (Schedule of Facts Stipulated to by the Parties, 26 October 2001, stipulated fact No. 23).

¹⁸ Defence Final Trial Brief, para. 1093.

¹⁹ Id., para. 1096.

applied in relations between the belligerent parties”,²⁰ since Additional Protocol I is limited in its applicability to international conflicts.²¹ It further states that “it is quite clear that regulations of Additional Protocol II have to be applied, not International Custom Law.”²² During closing arguments the Defence did not take a clear position regarding the applicability of the 22 May Agreement, although it expressed “some doubt” as to its status.²³

19. The jurisprudence of the Tribunal has already established that the principle of protection of civilians has evolved into a principle of customary international law applicable to all armed conflicts.²⁴ Accordingly, the prohibition of attack on civilians embodied in the above-mentioned provisions reflects customary international law.²⁵

20. Moreover, as explained below, the same principle had also been brought into force by the parties by convention.

21. Both warring parties were armed forces in the territory of a State which was originally part of the Socialist Federal Republic of Yugoslavia. The SFRY had ratified the Additional Protocols.²⁶ The first Article of each Protocol states its scope of application. Additional Protocol I regulates international armed conflicts whereas Additional Protocol II regulates non-international armed conflicts.²⁷ Parties to an armed conflict can also, by agreement, bring into force provisions of Additional Protocol I, regardless of the nature of the conflict.²⁸

22. The Trial Chamber does not deem it necessary to decide on the qualification of the conflict in and around Sarajevo. It notes that the warring parties entered into several agreements under the auspices of the ICRC. The first of these was the 22 May Agreement, by which the parties undertook to protect the civilian population from the effects of hostilities and to respect the principle prohibiting attacks against the civilian population.²⁹ With regard to the conduct of hostilities, they agreed to bring into force, *inter alia*, Articles 35 to 42 and 48 to 58 of Additional Protocol I.³⁰

²⁰ Id., para. 971.

²¹ Id., paras 971-2.

²² Id., para. 977.

²³ Defence Closing Arguments, T. 21966-73.

²⁴ *Tadić* Jurisdiction Decision, para. 127; *Kupreškić* Trial Judgement, para. 521.

²⁵ *Strugar* Interlocutory Appeal, para. 10; *Martić* Rule 61 Decision, para. 10. See also *Kordić* Jurisdiction Decision, para. 31.

²⁶ Both instruments were ratified by the Socialist Federal Republic of Yugoslavia (SRFY) on 11 June 1979. The Republic of Bosnia-Herzegovina deposited its Declaration of Succession on 31 December 1992, declaring it became party to the Geneva Conventions and the Additional Protocols as of the date of its independence, 6 March 1992.

²⁷ See Article 1 of Additional Protocol I and Article 1 of Additional Protocol II to the Geneva Conventions of 1949.

²⁸ Parties to an armed conflict may agree to bring into force provisions applicable to international armed conflicts. This is reflected in Common Article 3 to the Geneva Conventions and Article 96 of Additional Protocol I.

²⁹ P58 (22 May Agreement), para. 2.3. The parties agreed to apply Articles 13 to 34 of the Fourth Geneva Convention of 1949. In addition, paragraph 2.3 of the 22 May Agreement specifically provides that: “The civilian population and

23. The Trial Chamber, being obliged *ex officio* to satisfy itself of the validity of this agreement as a source of applicable law, takes account of the fact that, in its letter dated 12 June 1995 addressed to the then Prosecutor of the Tribunal, Richard Goldstone, the ICRC confirmed that the formal conditions required for the entry into force of this agreement had been fulfilled.³¹

24. Moreover, the parties to the 22 May Agreement reiterated their commitment to be bound by the agreement and to implement its provisions. The 22 May Agreement was concluded by representatives of the Republic of Bosnia-Herzegovina, the Serbian Democratic Party, and the Croatian Democratic Community. The same three parties, by the same representatives,³² subsequently signed three agreements and one declaration, the subject-matter of which was the implementation of the 22 May Agreement. On 23 May 1992, the parties convened “to discuss the implementation of the Agreement of 22 May 1992” and signed another agreement whereby they decided to each appoint a liaison officer to form a commission which would work under the auspices of the ICRC towards the resolution of humanitarian issues.³³ The parties convened again on 4 to 6 June 1992 and concluded an agreement dated 6 June (“the 6 June Agreement”) whereby they adopted a plan of action designed to ensure the safety of the ICRC while carrying out its activities. To this end the agreement specifies that the parties must “ensure regular meetings of the Liaison Officers’ Commission, organized under ICRC’s auspices”,³⁴ “enforce respect for the red cross emblem, in accordance with Article 3 of Agreement No. 1 signed in Geneva on 22 May 1992”,³⁵ and “undertake to ensure that the principles and rules of international humanitarian law and, in particular, Agreement No. 1 of 22 May 1992 are known to all combatants and to the civilian population”.³⁶ On 27 August 1992, at a conference in London, each party³⁷ also signed an identically phrased unilateral declaration called the “Programme of Action on Humanitarian Issues Agreed Between the Co-Chairmen to the Conference and the Parties to the Conflict” (the “Programme of Action on Humanitarian Issues”). By this declaration each party recognized that:

individual civilians shall enjoy general protection against the dangers arising from military operations. They shall not be made the object of attack”.

³⁰ P58 (22 May Agreement), para. 2.5. Each party also agreed to undertake “when it is informed, in particular by the ICRC, of any allegation of violations of international humanitarian law, to open an enquiry promptly and pursue it conscientiously, and to take the necessary steps to put an end to the alleged violations or prevent their recurrence and to punish those responsible in accordance with the law in force” (para. 5).

³¹ Letter dated 12 June 1995, para. A (DDM/JUR 95/931 MSS/RBR). Copy available at ICTY Library.

³² The representatives were Mr. K. Trnka, representative of the President of the Republic of Bosnia-Herzegovina, Mr. D. Kalinik, representative of the President of the Serbian Democratic Party, Mr. S. Sito Corić, representative of the President of the Croatian Democratic Community.

³³ This agreement deals with matters such as the exchange and release of prisoners, measures to be taken to de-block populations or objects, identification of humanitarian corridors, and security guarantees to be afforded to the ICRC. Copy available at ICTY Library.

³⁴ 6 June Agreement, Section II, para. 6. Copy available at ICTY Library.

³⁵ *Id.*, para. 7.

³⁶ *Id.*, para. 10.

³⁷ The three parties to conflict were represented in London by Radovan Karadžić, President of the Serbian Democratic Party, Alija Izetbegović, President of the Republic of Bosnia-Herzegovina and Mate Boban, President of the HDZ.

(i) all parties to the conflict are bound to comply with their obligations under International Humanitarian Law and in particular the Geneva Conventions of 1949 and the Additional Protocols thereto, and that persons who commit or order the commission of grave breaches are individually responsible [...]

(viii) that all such action should be in accordance with the agreement with the parties reached in Geneva on 22 May under auspices of the ICRC.³⁸

Finally, on 1 October 1992, the parties concluded an “Agreement on the Release and Transfer of Prisoners”, “on the basis of the Agreement of 22 May 1992.” The preamble to this agreement further refers to Chapter IV of the 6 June Agreement and the humanitarian plan of action accepted by the parties’ leaders in London on 27 August 1992.³⁹

25. The Trial Chamber finds that by virtue of the 22 May 1992 Agreement the parties to the conflict clearly agreed to abide by the relevant provisions of Additional Protocol I protecting civilians from hostilities. Therefore, Article 51, along with Articles 35 to 42 and 48 to 58 of Additional Protocol I, undoubtedly applied as conventional law between the parties to the conflict, including the VRS and the ABiH. The Trial Chamber thus finds that the second *Tadić* condition is met.

(c) Third Tadić Condition

26. The third requirement of the *Tadić* Jurisdiction Decision is that the breach of the rule must be “serious”, that is to say, it must constitute a breach of a Rule protecting important values and the breach must involve grave consequences for the victim.⁴⁰

27. The act of making the civilian population or individual civilians the object of attack (such as attacks committed through a campaign of sniping and shelling as alleged in the Indictment), resulting in death or injury to civilians, transgresses a core principle of international humanitarian law and constitutes without doubt a serious violation of the rule contained in the relevant part of Article 51(2) of Additional Protocol I. It would even qualify as a grave breach of Additional Protocol I.⁴¹ It has grave consequences for its victims. The Trial Chamber is therefore satisfied that the third *Tadić* condition is fulfilled.

³⁸ Programme of Action on Humanitarian Issues, Article 3. Copy available at ICTY library.

³⁹ Agreement on the Release and Transfer of Prisoners, Preamble. Copy available at ICTY library. The October Agreement further stated that: “All prisoners not accused of, or sentenced for, grave breaches of International Humanitarian Law as defined in Art. 50 of the First, Art. 51 of the Second, Art. 130 of the Third and Art. 147 of the Fourth Geneva Convention, as well as in Art. 85 of Additional Protocol I, will be unilaterally and unconditionally released.” Id., Art. 3 (emphasis added).

⁴⁰ *Tadić* Jurisdiction Decision, para. 94.

⁴¹ See Art. 85(3) of Additional Protocol I.

(d) Fourth Tadić Condition

28. In accordance with the fourth *Tadić* condition, a violation of the rule under examination must incur, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.⁴²

29. The Appeals Chamber has found that “customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife.”⁴³ It has further expressly recognized that customary international law establishes that a violation of the principle prohibiting attacks on civilians entails individual criminal responsibility.⁴⁴

30. It should be noted that the intention of the States parties to Additional Protocol I to criminalize violations of Article 51(2) of Additional Protocol I is evidenced by the fact, mentioned above, that an attack on civilians is considered a grave breach of the Protocol, as defined by Article 85(3)(a) therein.⁴⁵ The Trial Chamber has also noted that the “Programme of Action on Humanitarian Issues” recognized that those who committed or ordered the commission of grave breaches were to be held individually responsible.⁴⁶

31. Moreover, national criminal codes have incorporated as a war crime the violation of the principle of civilian immunity from attack.⁴⁷ This war crime was punishable under Article 142 of the 1990 Penal Code of the Socialist Federal Republic of Yugoslavia.⁴⁸ In the Republic of Bosnia-Herzegovina it was made punishable by a decree-law of 11 April 1992.⁴⁹ National military manuals also consistently sanction violations of the principle.⁵⁰ For instance, paragraph 33 (2) of the 1988

⁴² *Tadić* Jurisdiction Decision, para. 94.

⁴³ *Id.*, para. 134.

⁴⁴ *Strugar* Interlocutory Appeal, para. 10.

⁴⁵ See Art. 85(3) (a) of Additional Protocol I. See also ICRC Commentary, paras 1932, 1941.

⁴⁶ See the Programme of Action on Humanitarian Issues, Article 3(i); October Agreement, Article 3.

⁴⁷ See, e.g., Law of 16 June 1993 relative to the repression of serious violations of international humanitarian law, Belgium, Chapter 1§3, No.11; Swedish Penal Code, Chap. 22, §6, No. 3 and 4 (1990); Hungarian Criminal Code, Chapter XI, Section 160 (1978); Philippine Criminal Code, Article 334 (1964); Criminal Code of Mozambique, Article 83 (1987); Italian Criminal Military Code of War, Article 185 (1941); Spanish Penal Code, Article 611 (1) (1995); Croatian Penal Code, Article 120 (1) (1991).

⁴⁸ Original code (*Službeni list SFRJ*, br. 38/90) available at ICTY Library.

⁴⁹ BiH Decree-law of 11 April 1992 (*Službeni list RbiH*, br. 2/92) available at ICTY Library.

⁵⁰ See, e.g., United States Field Manual No. 27-10: The Law of Land Warfare, para. 25 (1976); United Kingdom Manual of Military Law, chap. 4, para. 88 (1958); German Military Manual (*Humanitäres Völkerrecht in bewaffneten Konflikten-Handbuch*), paras 404 and 451 (1992) (English translation available at ICTY library); Canadian Law of Armed Conflict at the Operational and Tactical Level, Section 4, paras 15 and 22 (1992); Dutch “Soldiers Handbook” (*Handboek voor de Soldaat*), VS 2-1350, Chapter VII, Art. 34 (1974); Australian Law of Armed Conflict Commander’s Guide (ADFP 37 Supplement 1), para. 1302 (1994); New Zealand Interim Law of Armed Conflict Manual, para. 517 (1992); Canadian Law of Armed Conflict at the Operational and Tactical Level, Section 4, paras 15, 22 (1992); Soviet Minister of Defence Order No. 75 of 16 February 1990 on the Publication of the Geneva Conventions of 12 August

Yugoslavia Regulations on the Application of International Laws of War in the Armed Forces of the SFRY condemns as war crimes “attack on civilians” and “deliberately bombing of the civilian population”.⁵¹

32. It therefore follows that serious violations of the principle prohibiting attacks on civilians incur individual criminal responsibility under the laws of war, and that this was already the case at the time relevant to the Indictment. The fourth *Tadić* condition is met.

(e) Material and Mental Elements

33. The Trial Chamber will now consider the material and mental elements of the offence of attack on civilians.

(i) Arguments of the Parties

34. The Prosecution submits that the crime of attack on civilians comprises the following elements: (1) an attack resulted in civilian deaths, serious injury to civilians, or a combination thereof; (2) the civilian status of the population or of individual persons killed or seriously injured was known or should have been known to the perpetrator; and (3) the attack was wilfully directed at the civilian population or individual civilians.⁵² It relies on the second paragraph of Article 51 of Additional Protocol I as the legal foundation of this offence.⁵³

35. The Prosecution invokes Articles 50 and 52 of Additional Protocol I to define the notions of civilians, civilian objects, and military objectives in the context of this crime.⁵⁴ It maintains that an attack is unlawful if the victims are civilians not taking active part in hostilities, and that the presumption enshrined in Article 50(1) of Additional Protocol I is the basis for determining a victim’s civilian status.⁵⁵ Among the factors relevant to establishing the perpetrator’s knowledge of the status of the victims are: “(1) the physical appearance of the victims, including their gender, age, physical condition, dress and the character of the objects in their possession or close to them; and (2) the actions of the victims at the time they are killed or injured.”⁵⁶

1949 relative to the Protection of Victims of War and their Additional Protocols (1990), art. 8, para. (f). (French translation available at the ICRC’s web site: <<http://www.icrc.org>>.)

⁵¹ P5 (1988 Yugoslavia Regulations on the Application of International Laws of War in the Armed Forces of the SRFY), para. 33.

⁵² Prosecution Pre-Trial Brief, para. 160; Prosecution Final Trial Brief, para. 9. The Prosecution submits that, in addition, two common elements of Article 3 of the Statute must be met, namely that: (1) there was a nexus between the attack and an armed conflict; and (2) the accused bears individual criminal responsibility for the attack under either Article 7(1) or 7(3) of the Statute. Prosecution Final Trial Brief, para. 9.

⁵³ Prosecution Pre-Trial Brief, paras 133, 139; Prosecution Final Trial Brief, para. 9.

⁵⁴ Prosecution Pre-Trial Brief, paras 155-6; Prosecution Final Trial Brief, paras 16-17.

⁵⁵ Prosecution Response to Defence Motion to Acquit, para. 9.

⁵⁶ Prosecution Pre-Trial Brief, para. 165.

36. The Prosecution maintains that the principles of distinction and proportionality, as set forth in the four 1949 Geneva Conventions and the Additional Protocols thereto, “lie at the heart of unlawful attack charges”.⁵⁷ It states that the prohibition of attack on civilians is founded upon the principle of distinction, which requires commanders to distinguish between the civilian population and combatants and between civilian objects and military objectives at all times, and accordingly to direct hostilities only against military objectives.⁵⁸ The Prosecution suggests that in accordance with this principle, the following types of attack are unlawful: (1) attacks deliberately directed against the civilian population as such, whether directed at particular civilian objects or at civilian areas generally; (2) attacks aimed at military and civilian objectives without distinction; and (3) attacks directed at legitimate military objectives, which cause civilian losses clearly disproportionate to the military advantage anticipated.⁵⁹

37. In its analysis of the principle of proportionality,⁶⁰ the Prosecution states that in order to establish the proportionality of a military attack, “the anticipated advantage to be gained from the particular military activity” must be weighed against “the probable civilian losses”.⁶¹ When seeking to establish whether the proportionality principle is violated, the Prosecution urges the Trial Chamber to analyze the “concrete and direct military advantage” at the level of each sniping and shelling incident,⁶² and to consider whether the precautionary provisions contained in Article 57 of Additional Protocol I were complied with.⁶³ It submits that the term “legitimate military objective” should be understood to “denote a military objective which may be lawfully targeted at the moment the commander makes the decision to launch the attack”, in accordance with the precautions laid out in Article 57(2)(b) of Additional Protocol I.⁶⁴ As for the obligation of defending commanders to minimize casualties of civilians under their control contained in Article 58 of Additional Protocol I, the Prosecution takes the view that “this obligation is conditioned by what is deemed feasible” It further submits that failure of the defending party to comply with the obligation expressed in this provision does not relieve an attacking party of its duty to respect both the principle of distinction and the principle of proportionality when launching an attack.⁶⁵

38. The Defence does not challenge the Prosecution’s submissions regarding the elements of the crime of attack on civilians or offer an alternative definition of the offence. It maintains that a civilian is a person who has “no connection with the activities of the armed forces” and claims that

⁵⁷ Prosecution Final Trial Brief, para. 10.

⁵⁸ *Id.*, para. 16.

⁵⁹ Prosecution Pre-Trial Brief, para. 157; Prosecution Final Trial Brief, para. 17.

⁶⁰ Prosecution Final Trial Brief, paras 21-33.

⁶¹ *Id.*, para. 23.

⁶² *Id.*, para. 24.

⁶³ *Id.*, paras 25-29.

⁶⁴ *Id.*, para. 22.

this cannot be proven by merely describing the age, clothing and activity at the time of the incident, or physical attributes of an individual.⁶⁶ According to the Defence, in order to determine the civilian status of a victim, “its assignments in the specified period of time” must be established.⁶⁷

39. The Defence submits further that the essence of the principle of proportionality “is to avoid infliction of excessive suffering to all those on the opposite belligerent side, whether civilians or soldiers”.⁶⁸ It states that “the above mentioned principle is based upon two elements: the principle of soldier’s efficiency, and the principle of humanitarianism”.⁶⁹

40. The Defence mentions the obligation of the parties to an armed conflict to undertake the precautionary measures against the effects of attacks in order to protect civilians in their own territory.⁷⁰ It does not however raise the issue of whether failure to remove one’s own civilians from dangerous circumstances would justify a violation by enemy forces of Article 51(2) of Additional Protocol I; it merely claims that it is difficult to avoid civilian casualties when the obligation is not complied with.⁷¹

(ii) Discussion

41. Although the Indictment refers in general terms to Article 51 of Additional Protocol I, the Trial Chamber understands the first sentence of the second paragraph of that article to be the legal basis of the charges of attack on civilians in Counts 4 and 7. This sentence will hereinafter be referred to as “the first part” of the second paragraph of Article 51 of Additional Protocol I, or simply as the “first part of Article 51(2)”.

42. The constitutive elements of the offence of attack on civilians have not yet been the subject of a definitive statement by the Appeals Chamber. In only two cases before the Tribunal have persons been charged and tried of attack on civilians under Article 3 of the Statute pursuant to Article 51(2) of Additional Protocol I. In each case a brief exposition was given of the offence, together with the offence of attacks on civilian property. In the *Blaskić* case the Trial Chamber observed in relation to the *actus reus* that “the attack must have caused deaths and/or serious bodily

⁶⁵ Id., paras 669-76.

⁶⁶ Defence Motion to Acquit, paras 8(b). The Defence point to the difficulties of distinguishing between civilians and combatants in the context of urban warfare. Defence Final Trial Brief, paras 464-82, 707-10.

⁶⁷ Defence Final Trial Brief, paras 464-82.

⁶⁸ Id., para. 810.

⁶⁹ Id., para. 812.

⁷⁰ In its Pre-Trial Brief, the Defence asserts that civilian casualties caused during the conflict in Sarajevo were due to the failure of the ABiH to respect its obligations under Article 58 of Additional Protocol I. Defence Pre-Trial Brief, paras 8.14-8.15. In its Final Trial Brief, the Defence submits that the failure of the ABiH to remove the civilian population from the proximity of military objectives was a violation of its obligations under Article 28 of the Fourth Geneva Convention. Defence Final Trial Brief, para. 537.

⁷¹ Defence Final Trial Brief, paras 13-14, 986.

injury within the civilian population or damage to civilian property. [...] Targeting civilians or civilian property is an offence when not justified by military necessity.”⁷² On the *mens rea* it found that “such an attack must have been conducted intentionally in the knowledge, or when it was impossible not to know, that civilians or civilian property were being targeted not through military necessity”.⁷³ The Trial Chamber in the *Kordić and Cerkez* case held that “prohibited attacks are those launched deliberately against civilians or civilian objects in the course of an armed conflict and are not justified by military necessity. They must have caused deaths and/or serious bodily injuries within the civilian population or extensive damage to civilian objects”.⁷⁴

43. The Trial Chamber follows the above-mentioned jurisprudence to the extent that it states that an attack which causes death or serious bodily injury within the civilian population constitutes an offence. As noted above, such an attack when committed wilfully is punishable as a grave breach of Additional Protocol I.⁷⁵ The question remains whether attacks resulting in non-serious civilian casualties, or in no casualties at all, may also entail the individual criminal responsibility of the perpetrator under the type of charge considered here, and thus fall within the jurisdiction of the Tribunal, even though they do not amount to grave breaches of Additional Protocol I. The present Indictment refers only to killing and wounding of civilians; therefore the Trial Chamber does not deem it necessary to express its opinion on that question.

44. The Trial Chamber does not however subscribe to the view that the prohibited conduct set out in the first part of Article 51(2) of Additional Protocol I is adequately described as “targeting civilians when not justified by military necessity”.⁷⁶ This provision states in clear language that civilians and the civilian population as such should not be the object of attack. It does not mention

⁷² *Blaškić* Trial Judgement, para. 180.

⁷³ *Id.*, para. 180.

⁷⁴ *Kordić* Trial Judgement, para. 328.

⁷⁵ See Article 85(3)(a) of Additional Protocol I.

⁷⁶ In its broad sense, military necessity means “doing what is necessary to achieve a war aim”. (Dictionary of International Law of Armed Conflict, ed. ICRC, 1992). The principle of military necessity acknowledges the potential for unavoidable civilian death and injury ancillary to the conduct of legitimate military operations. However, this principle requires that destroying a particular military objective will provide some type of advantage in weakening the enemy military forces. Under no circumstance are civilians to be considered legitimate military targets. Consequently, attacking civilians or the civilian population as such cannot be justified by invoking military necessity. See also Art. 57(5) of Additional Protocol I.

The following finding by the Nuremberg Tribunal in the *United States v. List* case provides some guidance in this respect: “Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money [...] It permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of the war; it allows the capturing of armed enemies and others of peculiar danger, but does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill. The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an end in itself is a violation of international law. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces.” (11 Trials of War Criminals before the Nuremberg Military Tribunals 1253-4 (1950)).

any exceptions. In particular, it does not contemplate derogating from this rule by invoking military necessity.⁷⁷

45. The Trial Chamber recalls that the provision in question explicitly confirms the customary rule that civilians must enjoy general protection against the danger arising from hostilities.⁷⁸ The prohibition against attacking civilians stems from a fundamental principle of international humanitarian law, the principle of distinction, which obliges warring parties to distinguish *at all*

⁷⁷ It should be noted further that, in Article 51(6), Additional Protocol I explicitly prohibits “attacks against the civilian population or civilians by way of reprisals”. This prohibition is based on the principle of protection of civilians. At ratification of Additional Protocol I, a number of states made statements of interpretation which appeared to keep open the possibility of reprisals, subject to certain requirements. For example, Italy’s statement of interpretation included the following: “Italy will react to serious and systematic violations by an enemy of the obligations imposed by Additional Protocol I and in particular its Articles 51 and 52 with all means admissible under international law in order to prevent any further violations.” (Statements of Understanding made by Italy (27 February 1986). See also, *e.g.*, Statement of Understanding made by the United Kingdom (28 January 1998)). The Trial Chamber will not pronounce itself on the legal consequences of these declarations. However, it notes that the language of Article 51(6) of Additional Protocol I implies that the prohibition against reprisals cannot be waived on the grounds of military necessity.

⁷⁸ The Trial Chamber notes that, already in 1868, the Preamble to the St Petersburg Declaration stated that the “technical limits at which the necessities of war ought to yield to the requirements of humanity” and that the weakening of the military forces of the enemy should be “the only legitimate object which states should endeavour to accomplish during war.” The Brussels Declaration of 1874 stated in its articles 15-18 that civilian dwellings are immune from attacks. This Declaration laid the groundwork for the Fourth Hague Convention of 1907, which established in its Article 25 that “the attack or bombardment, by any means whatever, of undefended towns, villages, dwellings or building, is forbidden.” In 1937, during the Spanish Civil War, Prime Minister Chamberlain, in the British House of Commons, made explicit reference to the rule forbidding attacks on the civilian population as such. In June 1938, following the German and Italian air forces operations during this conflict and similar attacks carried out by Japan in China, he stated in the House of Commons that one of the three rules or principles of international law equally applicable to air, land, or sea warfare in any armed conflict was the rule whereby “it is against international law to bomb civilians as such and to make deliberate attacks upon civilian populations.” (House of Commons Debates, Vol. 337, 21 June 1938, cols. 937-8). This same rule was later reaffirmed by the Assembly of the League of Nations in 1938, which adopted a resolution on 30 September 1938 regarding both the Spanish Civil War and the Chinese-Japanese War, stating in general terms that “intentional bombing of civilian population is illegal.” The applicability of this rule in all armed conflicts was further corroborated by General Assembly Resolutions 2444 (1968) and 2675 (1970), both adopted unanimously. In its Resolution 2444, the General Assembly affirmed that “the following principles for observance by all governmental and other authorities responsible for action in armed conflicts: (b) that it is prohibited to launch attacks against the civilian populations as such”. (G.A. Res. 2444, U.N. GAOR, 23rd Session, Supp. No. 18 U.N. Doc A/7218(1968)). In its Resolution 2675, it stated that “the following basic principles for the protection of civilian populations in armed conflicts, without prejudice to their future elaboration within the framework of progressive development of the international law or armed conflict (4) [C]ivilian populations as such should not be the object of military operations.” (G.A. Res. 2675, U.N. GAOR, 25th Session, Supp. No. 28 U.N. Doc A/8028 (1970)). Evidence of the existence of *opinio iuris* regarding the prohibition against attacking civilians and its applicability in all armed conflicts can also be found in the Resolution adopted by the Institute of International Law in its Edinburgh session in 1969, entitled “The Distinction between Military Objectives and Non-Military Objectives in General and Particularly the Problems Associated with Weapons of Mass Destruction”. It noted that “[e]xisting international law prohibits all armed attacks on the civilian populations as such [...]” (D. Schindler and J. Toman, *The Laws of Armed Conflicts*, Martinus Nijhoff Publisher, 1988, pp 265-6).

The customary status of this prohibition is further borne out of the *travaux préparatoires* of the Additional Protocols. For example, the United Kingdom delegate in the Diplomatic Conference observed that paragraphs 1 to 3 of Article 51 entitled “protection of the civilian population” contain “a valuable reaffirmation of existing customary rules of international law” designed to protect civilians. (See 6 Official Records, p. 164). For the Ukrainian delegate, paragraph 2 is “in line with the generally recognized rules of international law” (*Ibid*, p. 201). The Canadian delegate indicated that many of the provisions of Article 51 are “codification of customary international law” (*Ibid*, p. 179). The ICRC Commentary describes Article 51 as a “key article in the Protocol” and as an “indispensable provision”. It also points out that Article 51 was originally presented as one of the provisions to which reservations were prohibited (O.R. X, p. 251, CDDH/405/Rev.1). The idea of having a core of provisions to which no reservation would be allowed was eventually rejected, but some delegations nevertheless expressed the view that reservations to this article would be

times between the civilian population and combatants and between civilian objects and military objectives and accordingly to direct their operations only against military objectives.⁷⁹ In its Advisory Opinion on the Legality of Nuclear Weapons, the International Court of Justice described the principle of distinction, along with the principle of protection of the civilian population, as “the cardinal principles contained in the texts constituting the fabric of humanitarian law” and stated that “States must never make civilians the object of attack [...]”⁸⁰

46. Part IV of Additional Protocol I, entitled “Civilian Population” (articles 48 to 58), develops and augments earlier legal protections afforded to civilians through specific rules aimed at guiding belligerents to respect and protect the civilian population and individual civilians during the conduct of hostilities.⁸¹ The general prohibition mentioned above forms integral part of and is complemented and reinforced by this set of rules. In order to properly define the conduct outlawed in the first part of Article 51(2) of Additional Protocol I, this rule must be interpreted in light of the ordinary meaning of the terms of Additional Protocol I, as well as of its spirit and purpose.⁸²

47. As already stated, the first part of Article 51(2) of Additional Protocol I proscribes making the civilian population as such, or individual civilians, the object of attack. According to Article 50 of Additional Protocol I, “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 Geneva Convention⁸³ and in

incompatible with object and purpose of the treaty. (O.R. VI, p. 167, CDDH/SR.41, paras 135-7; p. 187, id. Annex (GDR), pp 192-3 (Mexico)). See also ICRC Commentary, para. 1930.

⁷⁹ See Article 48 of Additional Protocol I. This article enunciates the principle of distinction as a basic rule.

⁸⁰ ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Report 1996, para. 78. The International Court of Justice further asserted that “these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law”. Id., para.79.

⁸¹ Article 51(1) of Additional Protocol I states clearly that “the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations”. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.” Among the instruments that provide rules for the protection of civilians are, *inter alia*, the Hague Regulations, annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Fourth Geneva Convention of 1949.

⁸² The Trial Chamber recalls that the principle of *nullum crimen sine lege* “does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime[,] nor does it prevent a court from relying on previous decisions which reflect an interpretation as to the meaning to be ascribed to particular ingredients of a crime.” *Aleksovski Appeal Judgement*, para. 127.

⁸³ Art 4 of the Third Geneva Convention states, *inter alia*: “A. Prisoners of war, in the sense of the present Convention, are persons belonging to 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;

Article 43 of Additional Protocol I.”⁸⁴ For the purpose of the protection of victims of armed conflict, the term “civilian” is defined negatively as anyone who is not a member of the armed forces or of an organized military group belonging to a party to the conflict. It is a matter of evidence in each particular case to determine whether an individual has the status of civilian.

48. The protection from attack afforded to individual civilians by Article 51 of Additional Protocol I is suspended when and for such time as they directly participate in hostilities.⁸⁵ To take a “direct” part in the hostilities means 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.⁸⁶ As the *Kupreskić* Trial Chamber explained:

the protection of civilian and civilian objects provided by modern international law may cease entirely or be reduced or suspended [...] if a group of civilians takes up arms [...] and engages in fighting against the enemy belligerent, they may be legitimately attacked by the enemy belligerent whether or not they meet the requirements laid down in Article 4(A)(2) of the Third Geneva Convention of 1949.⁸⁷

Combatants and other individuals directly engaged in hostilities are considered to be legitimate military targets.⁸⁸

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.”

⁸⁴ Art 43 of Additional Protocol I states: “1. 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.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.”

⁸⁵ See Article 51 (3) of Additional Protocol I.

⁸⁶ ICRC Commentary, para. 1944.

⁸⁷ *Kupreskić* Trial Judgement, paras 522-3. The Inter-American Commission of Human Rights also provided guidance as to the scope of civilian immunity, in the *Tablada* case, by stating that: “(...)When civilians, such as those who attacked the Tablada base, assume the role of combatants by directly taking part in fighting, whether singly or as a member of a group, they thereby become legitimate military targets. As such, they are subject to direct individualised attack to the same extent as combatants. Thus, by virtue of their hostile acts, the Tablada attackers lost the benefits of the above mentioned precautions in attack and against the effects of indiscriminate or disproportionate attacks pertaining to peaceable civilians. In contrast, these humanitarian law rules continued to apply in full force with respect to those peaceable civilians present or living in the vicinity of the La Tablada base at the time of the hostilities.” *Juan Carlos Abella v. Argentina*, Case 11.137, Report N° 55/97, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7, p. 271, para. 178 (1997).

⁸⁸ Combatant status implies not only being considered a legitimate military objective, but also being able to kill or wound other combatants or individuals participating in hostilities, and being entitled to special treatment when hors-de-combat, *i.e.* when surrendered, captured or wounded (See Article 41(2) of Additional Protocol I).

49. The civilian population comprises all persons who are civilians, as defined above.⁸⁹ The use of the expression “civilian population *as such*” in Article 51(2) of Additional Protocol I indicates that “the population must never be used as a target or as a tactical objective”.⁹⁰

50. The presence of individual combatants within the population does not change its civilian character.⁹¹ In order to promote the protection of civilians, combatants are under the obligation to distinguish themselves at all times from the civilian population; the generally accepted practice is that they do so by wearing uniforms, or at least a distinctive sign, and by carrying their weapons openly. In certain situations it may be difficult to ascertain the status of particular persons in the population. The clothing, activity, age, or sex of a person are among the factors which may be considered in deciding whether he or she is a civilian. A person shall be considered to be a civilian for as long as there is a doubt as to his or her real status.⁹² The Commentary to Additional Protocol I explains that the presumption of civilian status concerns “persons 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”.⁹³ The Trial Chamber understands that a person shall not be made the object of attack when it is not reasonable to believe, in the circumstances of the person contemplating the attack, including the information available to the latter, that the potential target is a combatant.

51. As mentioned above, in accordance with the principles of distinction and protection of the civilian population, only military objectives may be lawfully attacked.⁹⁴ A widely accepted definition of military objectives is given by Article 52 of Additional Protocol I as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.⁹⁵ In case of doubt as to whether an object which is normally dedicated to civilian purposes is being used to make an effective contribution to military action, it shall be presumed not to be so used.⁹⁶ The Trial Chamber understands that such an object shall not be attacked when it is not reasonable to believe, in the circumstances of the person contemplating

⁸⁹ See Article 50(1) of Additional Protocol I.

⁹⁰ See ICRC Commentary, para. 1938. The terms of this provision of Additional Protocol I reflect the language of General Assembly Resolutions 2444 (1968) and 2675 (1970). The Appeals Chamber has considered these resolutions to be declaratory of customary international law in this field. See *Tadić* Decision on Jurisdiction, para. 112.

⁹¹ See Article 50(3) of Additional Protocol I. The Commentary to this paragraph notes that: “[i]n wartime condition 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.” ICRC Commentary, para. 1922.

⁹² See Article 50(1) of Additional Protocol I.

⁹³ ICRC Commentary, para. 1920.

⁹⁴ Article 52(2) of Additional Protocol I. See *Kordić* Trial Judgement, para. 327.

⁹⁵ Article 52(2) of Additional Protocol I.

⁹⁶ Article 52(3) of Additional Protocol I.

the attack, including the information available to the latter, that the object is being used to make an effective contribution to military action.

52. “Attack” is defined in Article 49 of Additional Protocol I as “acts of violence against the adversary, whether in offence or in defence.” The Commentary makes the point that “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 in defence.⁹⁷ The jurisprudence of the Tribunal has defined “attack” as a course of conduct involving the commission of acts of violence.⁹⁸ In order to be punishable under Article 3 of the Statute, these acts have to be carried out during the course of an armed conflict.

53. In light of the discussion above, the Trial Chamber holds that the prohibited conduct set out in the first part of Article 51(2) 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.

54. The Trial Chamber will now consider the mental element of the offence of attack on civilians, when it results in death or serious injury to body or health. Article 85 of Additional Protocol I explains the intent required for the application of the first part of Article 51(2). It expressly qualifies as a grave breach the act of *wilfully* “making the civilian population or individual civilians the object of attack”.⁹⁹ The Commentary to Article 85 of Additional Protocol I explains the term as follows:

wilfully: the accused must have acted consciously and with 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.*, when a man acts without having his mind on the act or its consequences.¹⁰⁰

The Trial Chamber accepts this explanation, according to which the notion of “wilfully” incorporates the concept of recklessness, whilst excluding mere negligence. The perpetrator who recklessly attacks civilians acts “wilfully”.

55. For the *mens rea* recognized by Additional Protocol I to be proven, the Prosecution must show that the perpetrator was aware or should have been aware of the civilian status of the persons attacked. In case of doubt as to the status of a person, that person shall be considered to be a

⁹⁷ ICRC Commentary, para. 4783.

⁹⁸ *Krnjelac* Trial Judgment, para. 54; *Kunarac* Trial Judgment, para. 415.

⁹⁹ See Article 85(3)(a) of Additional Protocol I.

¹⁰⁰ ICRC Commentary, para. 3474.

civilian. However, in such cases, the 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.

56. In sum, the Trial Chamber finds that the crime of attack on civilians is constituted of the elements common to offences falling under Article 3 of the Statute, as well as of the following specific elements:

1. Acts 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.

57. As regards the first element, the Trial Chamber agrees with previous Trial Chambers that indiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians.¹⁰¹ It notes that indiscriminate attacks are expressly prohibited by Additional Protocol I.¹⁰² This prohibition reflects a well-established rule of customary law applicable in all armed conflicts.¹⁰³

¹⁰¹ Other Trial Chambers have found that attacks which employ certain means of combat which cannot discriminate between civilians and civilian objects and military objectives are tantamount to direct targeting of civilians. For example, the *Blaškić* Trial Chamber inferred from the arms used in an attack carried out against the town of Stari Vitez that the perpetrators of the attack had wanted to target Muslim civilians, since these arms were difficult to guide accurately, their trajectory was "irregular" and non-linear, thus being likely to hit non-military targets. *Blaškić* Trial Judgement, paras 501, 512. In the *Martić* Rule 61 proceedings, the Trial Chamber regarded the use of an Orkan rocket with a cluster bomb warhead as evidence of the intent of the accused to deliberately attack the civilian population. The Chamber concluded that "in respect of its accuracy and striking force, the use of the Orkan rocket in this case was not designed to hit military target but to terrorise the civilians of Zagreb. These attacks are therefore contrary to the rules of customary and conventional international law". The Trial Chamber based this finding on the fact that the rocket was inaccurate, it landed in an area with no military objectives nearby, it was used as an antipersonnel weapon launched against the city of Zagreb and the accused indicated he intended to attack the city, *Martić* Rule 61 Decision, paras 23-31. It is relevant to note that the International Court of Justice has stated, with regard to the obligation of States not to make civilians the object of attack, that "they must consequently never use weapons that are incapable of distinguishing between civilian and military targets", ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Report 1996, para. 78.

¹⁰² Article 51(4) of Additional Protocol I prohibits indiscriminate attacks and provides the first conventional definition of indiscriminate attacks. Paragraph (5) of the same provision provides examples of attacks considered to be indiscriminate. The *Kupreškić* Trial Chamber held, with regard to the prohibition of launching indiscriminate attacks, that "it is nevertheless beyond dispute that at a minimum, large numbers of casualties would have been interspersed among the combatants. The point which needs to be emphasised is the sacrosanct character of the duty to protect civilians [...] Even if it can be proved that the Muslim population of Ahmici was not entirely civilian but comprised some armed elements, still no justification would exist for widespread and indiscriminate attacks against civilians". *Kupreškić* Trial Judgement, para. 513. See also *Blaskić* Trial Judgement, paras 509-10.

¹⁰³ As recognized by the Appeals Chamber, among the customary rules that have developed to govern both international conflicts and non-international strife is the protection of the civilian population against indiscriminate attacks. *Tadić* Jurisdiction Decision, para. 127. The Trial Chamber observes that, already in 1922, the Air Warfare Rules enunciated the prohibition on indiscriminate attacks, by providing that "where military objectives were situated so that they could not be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from the bombardments." (Article 24 (3), Air Warfare Rules). These rules impose further limits to bombardments by providing in Article 24(4) that "in the immediate neighbourhood of the operations of land forces, the bombardments of cities, towns and villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardments, having regard to the danger thus posed to

58. One type of indiscriminate attack violates the principle of proportionality.¹⁰⁴ The practical application of the principle of distinction requires that those who plan or launch an attack take all feasible precautions to verify that the objectives attacked are neither civilians nor civilian objects, so as to spare civilians as much as possible.¹⁰⁵ Once the military character of a target has been

the civilian population”. Although these rules were never adopted in legally binding form, they are considered to be an authoritative interpretation of the law. (See, e.g., L. Oppenheim, *International Law* vol II, 7th ed, 1960). The IX Hague Convention concerning Bombing of Naval Forces in Time of War of 1907 also recognized in its Article 12 that collateral civilian casualties might result and urged that precautions be taken to avoid or minimize them. In March 1938, during the Spanish Civil War, the British Prime Minister explained the protest of his country to General Franco over the bombing of Barcelona to members of the House of Commons by stating that “The one definite rule of international law, however, is that direct and deliberate bombing of non-combatants is in all circumstances illegal, and His Majesty’s Government’s protest was based on information which led them to the conclusion that the bombardments of Barcelona, carried on apparently random and without special aim at military objectives, was in fact of this nature.”(House of Commons Debates, vol. 333, 23 March 1938, col. 1177). In June of that year, in reference to the same conflict, the Prime Minister affirmed before the House of Commons the existence of a rule or principle of international law prescribing that “reasonable care must be taken in attacking...military objectives so that by carelessness a civilian population in the neighbourhood is not bombed.” (House of Common Debates, vol. 337, 21 June 1938, cols 937-8). In 1938, the Assembly and the Council of the League of Nations both condemned attacks carried out without sufficient precautions to safeguard the civilian population. The Assembly of the League of Nations expressed the concern that the civilian population be bombarded through negligence by stating, *inter alia*, that “any attack on legitimate military objectives must be carried out in such a way that civilian population in the neighbourhood are not bombed through negligence”. In this same sense, the Council of the League of Nations also adopted a resolution condemning *inter alia* as “contrary to the conscience of mankind and to the principles of international law air attacks by the insurgents directed “by negligence’ against civilian population.” In its already cited Resolution 2444 (1968), the UN General Assembly affirmed that among the principles applicable to all armed conflicts was that “a distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.” (G.A. Res. 2444, U.N. GAOR, 23rd Session, Supp. No. 18 U.N. Doc A/7218(1968)). Resolution 2675(1970) also stated that “in the conduct of military operations, every effort should be made to spare the civilian populations from the ravages of war, and all necessary precautions should be taken to avoid injury loss or damage to the civilian populations.” (G.A. Res. 2675, U.N. GAOR, 25th Session, Supp. No. 28 U.N. Doc A/8028 (1970).

¹⁰⁴ The principle of proportionality, inherent to both the principles of humanity and military necessity upon which the law of conduct of hostilities is based, may be inferred, *inter alia*, from Articles 15 and 22 of the Lieber Code and from Article 24 of the 1924 Hague Air Warfare Rules. This principle was codified in Article 51(5)(b) and Article 57(2)(a)(iii) and (b) of Additional Protocol I. It should be noted that these provisions do not make explicit reference to the term “proportionality” but speak of “excessive” incidental civilian losses.

Article 51(5) of Additional Protocol I provides that “[a]mong others, the following types of attacks are to be considered as indiscriminate: [...] (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

Article 57(2) of Additional Protocol I states that: “(2). With respect to attacks, the following precautions shall be taken:

(a) [...] (iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

¹⁰⁵ See Article 57(2) of Additional Protocol I. The precautions required by Article 57(2)(a) must be “feasible” and, in this context, “feasible” means that which is practicable or practically possible. The French version of this paragraph reads: “faire tout ce qui est *pratiquement possible*[...]” (emphasis added). Italy stated in a declaration submitted upon ratification of Additional Protocol I that “feasible” must be understood to mean that which is “practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations”. (See Statements of Understanding made by Italy (27 February 1986)). Several states have submitted similar declarations pertaining to Additional Protocol I, with no objections raised by other state parties. (See Statements of Understanding of Belgium (20 May 1986), The Netherlands (26 June 1987), Spain (21 April 1989), Canada (20 November 1990), Germany (14 February 1991), Australia (21 June 1991), and Egypt (9 October 1992).

In another context, the European Commission and Court of Human Rights examined a case of “armed clash” in which a woman, standing in the doorway of her home, had been killed in the course of a supposed ambush operation carried out

ascertained, commanders must consider whether striking this target is “expected to cause incidental loss of life, injury to civilians, damage to civilian objectives or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”¹⁰⁶ If such casualties are expected to result, the attack should not be pursued.¹⁰⁷ The basic obligation to spare civilians and civilian objects as much as possible must guide the attacking party when considering the proportionality of an attack.¹⁰⁸ In determining whether an attack was proportionate it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual perpetrator,¹⁰⁹ making reasonable use of the information available to him or her, could have expected excessive civilian casualties to result from the attack.¹¹⁰

against members of an alleged armed group. Regarding the obligation to avoid incidental civilian losses, the Commission considered that the planning and control of the operation needed to be assessed “... not only in the context of the apparent targets of an operation but, particularly where the use of force is envisaged in the vicinity of the civilian population, with regard to the avoidance of incidental loss of life and injury to others” (*Ergi v. Turkey* No. 23818/94, Decision on admissibility of 2 March 1995, 80 D&R 157, Commission Report of 20 May 1997). The Court explicitly noted that the responsibility of the State “may also be engaged where [the security forces] fail to take all feasible precautions in the choice of means and methods of security operation mounted against an opposing group with the view to avoiding, or at least, minimising incidental loss of civilian life” (*Ergi v. Turkey*, Judgement of 28 July 1998, para. 79).

¹⁰⁶ See Article 51(5)(b) of Additional Protocol I. The *travaux préparatoires* of Additional Protocol I indicate that the expression “concrete and direct” was intended to show that the advantage must be “substantial and relatively close”, and that “advantages which are hardly perceptible and those which would only appear in the long term should be disregarded”. ICRC Commentary, para. 2209. The Commentary explains that “a military advantage can only consist in ground gained or in annihilating or in weakening the enemy armed forces”. ICRC Commentary, para. 2218. Australia and New Zealand stated at the time of ratification, in almost identical wording, that “the term ‘concrete and direct military advantage anticipated’, used in Articles 51 and 57 of Additional Protocol I, means *bona fide* expectation that the attack will make a relevant and proportional contribution to the objective of the military attack involved”. (See Statements of Understanding made by New Zealand (8 February 1988) and Australia (21 June 1991)).

¹⁰⁷ See Article 57(2)(b) of Additional Protocol I.

¹⁰⁸ The ICRC Commentary acknowledges that “the disproportion between losses and damages caused and the military advantages anticipated raises a delicate problem; in some situations there will be no room for doubt, while in other situations there may be reason for hesitation. In such situations, the interests of the civilian population should prevail”. ICRC Commentary, para. 1979.

¹⁰⁹ The Trial Chamber notes that the rule of proportionality does not refer to the actual damage caused nor to the military advantage achieved by an attack, but instead uses the words “expected” and “anticipated”. When ratifying Additional Protocol I, Germany stated that “the decision taken by the person responsible has to be judged on the basis of all information available to him at the relevant time, and not on the basis of hindsight”. (See Statements of Understanding made by Germany (14 February 1991)). Similar declarations were also made by Switzerland (17 February 1982), Italy (27 February 1986), Belgium (20 May 1986), The Netherlands (26 June 1987), New Zealand (8 February 1988), Spain (21 April 1989), Canada (20 November 1990), and Australia (21 June 1991). No other party to Additional Protocol I has raised objections to these declarations.

¹¹⁰ Military manuals provide guidance as to the practical application of this test. The Canadian Law of Armed Conflict at the Operational and Tactical Level, Section 5, para. 27 (1992) indicates, for example, that “consideration must be paid to the honest judgement of responsible commanders, based on the information reasonably available to them at the relevant time, taking fully into account the urgent and difficult circumstances under which such judgements are usually made” and indicates that the proportionality test must be examined on the basis of “what a reasonable person would do” in such circumstances. The Australian Defence Force, Law of Armed Conflict – Commander’s Guide (1994), at p. 9-10, and the New Zealand Interim Law of Armed Conflict Manual, at para. 515(4), contain a similar provision. See also, e.g., Yugoslav Regulation on the Application of international Laws of War in the Armed Forces of the SRFY, para. 72 (1988).

59. To establish the *mens rea* of a disproportionate attack the Prosecution must prove, instead of the above-mentioned *mens rea* requirement, that the attack was launched wilfully and in knowledge of circumstances giving rise to the expectation of excessive civilian casualties.¹¹¹

60. The Trial Chamber considers that certain apparently disproportionate attacks may give rise to the inference that civilians were actually the object of attack. This is to be determined on a case-by-case basis in light of the available evidence.

61. As suggested by the Defence, 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.¹¹² 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.

(f) Conclusion

62. The Trial Chamber finds that an attack on civilian can be brought under Article 3 by virtue of customary international law and, in the instant case, also by virtue of conventional law and is constituted of acts of violence wilfully 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.

3. Terror Against the Civilian Population as a Violation of the Laws or Customs of War

(a) Introduction

63. This section of the Judgement expresses the view of the Majority of the Trial Chamber. Judge Nieto-Navia attaches a dissenting opinion.

64. The first count of the Indictment reads:

Count 1: Violations of the Laws or Customs of War (unlawfully inflicting terror upon civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal.

65. The paragraph introducing Count 1 alleges that the Accused, General Galić, as commander of the SRK, “conducted a protracted campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population thereby inflicting terror and mental suffering upon its

¹¹¹ See Article 85(3)(b) of Additional Protocol I.

¹¹² See Article 58 of Additional Protocol I.

civilian population.” This introductory paragraph is headed “Infliction of terror”. The remaining six counts are divided into two groups which are headed, respectively, “Sniping” and “Shelling”. These are evidently descriptive categorizations of the counts, to which the Majority attaches no particular legal significance. Moreover, it will transpire in the course of the Majority’s discussion that “Infliction of terror” is not an appropriate designation of the offence considered here because actual infliction of terror is not a required element of the offence. The Majority will henceforth refer to the offence charged in Count 1 as “the crime of terror against the civilian population”, or simply “the crime of terror”, a purported violation of the laws or customs of war.¹¹³

66. The charge, as such, of terror against the civilian population is one that until now has not been considered in a Tribunal judgement, although evidence of terrorization of civilians has been factored into convictions on other charges.¹¹⁴ This is also the first time an international tribunal has pronounced on the matter.¹¹⁵ After considering the arguments of the Parties, the Majority will examine in detail the legal foundations and other essential characteristics of the charge.

(b) Consideration of the Arguments of the Parties

(i) Prosecution

67. In its Pre-trial Brief the Prosecution explained its position that the character of the armed conflict in Sarajevo as international or non-international was “irrelevant” to the charges against the Accused.¹¹⁶ This was said to be because the 22 May Agreement¹¹⁷ made Article 51 of Additional

¹¹³ The Prosecution refers to it as “the offence of terror”: see, for example, Prosecution Pre-trial Brief, para. 25.

¹¹⁴ In the *Čelebići* case, acts of intimidation creating an “atmosphere of terror” in prison camps were punished as grave breaches of the Geneva Conventions (torture or inhuman treatment) and as violations of Article 3 common to the Geneva Conventions (torture or cruel treatment): *Čelebići* Trial Judgement, paras 976, 1056, 1086-91, and 1119. In the *Blaškić* case “the atmosphere of terror reigning in the detention facilities” was part of the factual basis leading to the Accused in that case being convicted for the crimes of inhuman treatment (a grave breach) and cruel treatment (a violation of the laws or customs of law): *Blaškić* Trial Judgement, paras 695, 700, and 732-3. Blaškić’s additional conviction for “unlawful attack” on civilians was based in part upon the finding that his soldiers “terrorised the civilians by intensive shelling, murders and sheer violence” (id., para. 630; also paras 505, 511). And in the *Krstić* case, General Krstić was accused of persecutions, a crime against humanity, on the basis of his alleged participation in “the terrorising of Bosnian Muslim civilians”: *Krstić* Trial Judgement, para. 533. The Trial Chamber found that a “terror campaign” was in existence: “Numerous witnesses gave evidence that, during Operation Krivaja 95, the VRS shelled the Srebrenica enclave intensively with the apparent intent to terrify the populace” (id., para. 122). Moreover: “On 12 and 13 July 1995, upon the arrival of Serb forces in Potocari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, insults, looting and burning of nearby houses, beatings, rapes, and murders” (id., para. 150). The Trial Chamber in *Krstić* characterized “the crimes of terror”, and the forcible transfer of the women, children, and elderly at Potocari as constituting persecution and inhumane acts (id., para. 607; see also paras 1, 41, 44, 46, 147, 153, 292, 364, 517, 527, 537, 653, 668, 671, 677). See also *Martić* Rule 61 Decision, paras 23-31 (use of rocket was not designed to strike a military target but to terrorize the civilian population of Zagreb contrary to the rules of international law); and *Nikolić* Sentencing Judgement, para. 38.

¹¹⁵ The Special Court for Sierra Leone has issued several indictments containing counts of “acts of terrorism” (“terrorizing the civilian population”) brought pursuant to Article 3 common to the Geneva Conventions and to Additional Protocol II; see <<http://www.sc-sl.org>>.

¹¹⁶ Prosecution Pre-trial Brief, para. 132.

¹¹⁷ P58.

Protocol I applicable to the conflict irrespective of its character.¹¹⁸ Thus the Prosecution did not concentrate in this case on proving the character of the conflict.

68. The Trial Chamber has found that Article 51 was indeed part of the law regulating the conduct of the parties and that it was brought into operation at least by the 22 May Agreement. Since the Geneva Conventions and Additional Protocol I can be extended by agreement to any given conflict, and since the 22 May Agreement was not conditioned upon the Sarajevo conflict having, or assuming, a certain character (international or non-international), the Prosecution's position, as set out above, is correct.

69. The Prosecution further maintained that the prohibition against terrorizing the civilian population amounts to a rule of *customary* international law applicable to all armed conflicts. In support of this the Prosecution cited certain rules on aerial warfare prepared in the 1920s but not finalized, two UN resolutions from 1994 condemning atrocities in the former Yugoslavia, and the Spanish penal code from 1995.¹¹⁹ As will be made clear in later discussion, the Majority does not take a position in respect of this question.

70. The Prosecution submitted that the following elements constitute the crime of terror:

1. Unlawful acts or threats of violence.
2. Which caused terror to spread among the civilian population.
3. The acts or threats of violence were carried out with the primary purpose of spreading terror among the civilian population.

In addition, according to the Prosecution's proposal, there must be a nexus between the acts or threats of violence and the armed conflict, and the Accused must bear responsibility for the acts or threats under Article 7 of the Statute.¹²⁰

71. The Prosecution submitted that the first element in the list above, which is part of the *actus reus* of the offence, is "broad", because it encompasses both acts and threats of violence.¹²¹ The Prosecution sees the acts of violence in the present case as consisting of systematic shelling and sniping of civilians. The Prosecution's case is thus limited to these acts. As for "threats", the alleged shelling and sniping of civilians created, according to the Prosecution, a constant threat that more

¹¹⁸ Prosecution Pre-trial Brief, para. 136.

¹¹⁹ *Id.*, para. 141. The Prosecution Final Trial Brief (para. 8, fn. 5) simply referred back to the submissions in the Pre-trial Brief.

¹²⁰ Prosecution Pre-trial Brief, para. 142. These elements were repeated without change in the Prosecution Final Trial Brief (para. 8).

¹²¹ Prosecution Pre-trial Brief, para. 144.

such acts would be perpetrated at any moment.¹²² The “threats” in the present case are said to be of a kind implicit in the acts of violence. The Trial Chamber is thus not called upon to determine liability for threats that are not implicit, in the Prosecution’s sense.

72. The “special intent requirement” (element 3) is, according to the Prosecution, the distinguishing feature of the crime of terror.¹²³ The Prosecution has interpreted “primary purpose” as requiring that “the infliction of terror upon the civilian population was the predominant purpose served by the acts or threats of violence. It need not be established that the broader campaign in the Sarajevo theatre had this as its sole or only objective.”¹²⁴ Where the special intent, or *mens rea*, cannot be proven directly, it may be “inferred from the nature, manner, timing, frequency and duration of the shelling and sniping of civilians.”¹²⁵

73. “As an element of the offence of terror [... i]t must [...] be established that terror *was in fact caused*”.¹²⁶ In addition to proof of actual infliction of terror, the Prosecution requires a causal connection between the first and second elements (“2. Which caused...”). That is, there must have been not only unlawful acts and actual terror experienced by the population, but also a causal link between the acts and the terror. “[T]he offence of unlawfully inflicting terror [...] is distinguished also by its *effect*, which in the present case was the profound psychological impact on the population”.¹²⁷ The Prosecution does not cite any authority for these submissions.

74. “Population”, according to the Prosecution, does not just mean any number of Sarajevo civilians: “the unlawful shelling and sniping campaigns [had] the result that *much of the civilian population* lived in a state of terror”.¹²⁸ The implication that “population” is to be understood to mean the *majority* of the population, or at least a large segment of it, is found also in the following: “The requirement that terror be spread among the civilian population is satisfied even if certain civilians, or sectors of the population, were not so affected.”¹²⁹

75. In its preliminary submissions the Prosecution did not provide a legal definition of “terror” (i.e. of the emotional effect which figures in the purported second element of the offence), except to refer in a footnote to a dictionary definition of the word as “extreme fear”.¹³⁰ In the course of trial,

¹²² Id., para. 144.

¹²³ Id., paras 143, 148.

¹²⁴ Id., para. 149.

¹²⁵ Id., para. 150.

¹²⁶ Id., para. 25 (emphasis added).

¹²⁷ Id., paras 142-3 (emphasis added).

¹²⁸ Id., para. 145 (emphasis added).

¹²⁹ Id., para. 147.

¹³⁰ Id., footnote 109.

when the Prosecution's expert on terror (a psychologist) was heard, terror was again rendered as extreme fear. The Prosecution later explicitly adopted its expert's definition.¹³¹

76. The Prosecution's legal theory concerning the crime of terror was not elaborated or modified in later submissions.¹³² Except for the Additional Protocols, the Prosecution did not cite an authority for the three elements which, in its view, define the offence. The Majority makes the preliminary observation that the language of the prohibition common to the Additional Protocols, that "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited",¹³³ does not on its face support the Prosecution's second element, that the acts or threats of violence must have caused terror to spread among the civilian population.

(ii) Defence

77. The Defence in its preliminary submissions termed the Prosecution's stand on the applicable law "unacceptable", but did not dismiss outright the availability of the charge. It acknowledged that Article 51 of Additional Protocol I, which prohibits (in the Defence's words) "illegal terror inflicted on civilians", was binding upon the parties to the conflict.¹³⁴

78. The Defence stated that the intent to inflict terror must be demonstrable: "If the Prosecution is charging General Galić with having conducted a long-lasting shelling and sniping campaign designed to terrorize [the] civilian population [...] it must be established that there existed the intent to inflict terror on [the] civilian population by shelling and sniping."¹³⁵ Lastly, the Defence did not take issue with the *actus reus* element "of the criminal act of inflicting terror, as the Prosecution has qualified it", namely acts of violence causing civilian casualties.¹³⁶

79. Thus, from the beginning of the case, the Defence joined the Prosecution in understanding that the scope of the *actus reus* of terror would be limited to the acts underlying Counts 4 and 7 of the Indictment (killing or severe injury of civilians through unlawful attacks), and that "threats" would not be a significant factor. The Defence's only comment on threats was on a theoretical plane, when it stated that for threats of violence to come within the offence of terror they had to be

¹³¹ Response to Acquittal Motion, para. 16.

¹³² As mentioned above, para. 8 of the Prosecution Final Trial Brief simply reverts to the submissions in the Pre-trial Brief.

¹³³ Art. 51(2) of Additional Protocol I and Art. 13(2) of Additional Protocol II.

¹³⁴ Defence Pre-trial Brief, paras 8.11, 8.23, 8.24.

¹³⁵ Id., para. 8.20.

¹³⁶ Id., para. 8.20.

specifically directed against the civilian population. “[The threat] must be serious. It must be real. And it must be capable to cause terror or spread terror among [the] civilian population.”¹³⁷

80. The Defence’s concern about Count 1 appears to have been limited to the question of multiplication of offences referenced to one and the same set of acts.¹³⁸ (This is taken up by the Trial Chamber in its discussion of the law of cumulative convictions.) The implication is that the Defence did not contest the existence of a crime of terror.

81. The Defence’s final written submissions on Count 1 repeat the submissions in its Pre-trial Brief.¹³⁹ However, in another part of its Final Brief, the Defence notes the Prosecution’s position that “the civilian population was the subject of illegal attacks and terror [etc.]”,¹⁴⁰ and then states:

In order to accept the above mentioned, unfounded Prosecution’s conclusions, the Defence’s viewpoint is that the Prosecution must prove the following:

- a) The exact military actions that were conducted against the illegal targets and by which means (i.e. shelling or sniping), including the exact time and place,
- b) That, as part of these illegal actions, there was intention of targeting the civilians with the aim to terrorize,
- c) That the intention to kill the civilians existed,
- d) That the intention to inflict injuries, other than killings existed.¹⁴¹

The difference between this list (which may or may not have been intended by the Defence as an alternative definition of the offence) and the Prosecution’s definition of the elements of the crime of terror is that the Defence does not seem to require proof that the civilian population did, in fact, experience terror (the second element in the Prosecution’s list), but does require proof of the perpetrator’s intent to kill or injure civilians.

82. In yet another part of the Final Brief, however, the Defence does demand proof of actual infliction of terror, as well as a causal link between actual terror and unlawful violent acts:

The prosecutor should have proven several things:

1. that there was terror
2. that this terror was not simply the result of war in an urban theatre, led in a legitimate way

¹³⁷ Defence Closing Arguments, T. 21807.

¹³⁸ Defence Pre-trial Brief, paras 8.21-8.24.

¹³⁹ See Defence Final Trial Brief, paras 1097-104.

¹⁴⁰ Id., para. 445.

¹⁴¹ Id., para. 446.

3. that this terror was the result of illegitimate acts
4. performed by troops commanded by the Accused
5. following his orders
6. (alternatively) that the Accused was aware of the facts and (if he had not given the orders himself) that he had not punished them
7. finally that the result was hoped for as such within the scope of a global plan.¹⁴²

If this was meant as a definition of the crime of terror, the Defence did not cite any authority for it.

83. On the experiential aspect of terror, the Defence said: “It is underestimating the meaning of ‘terror’ to say that if an individual (or individuals) feels ‘extreme fear’ he feels terror.”¹⁴³ Later, in its oral submissions at the trial’s end, the Defence asserted: “Inflicting of terror as an element of a criminal offence [...] cannot be causing of any kind of terror or causing terror of any intensity [...] It 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.”¹⁴⁴

84. As noted in the preceding section, by the end of the trial the Defence seemed to have changed its position on the applicability of Additional Protocol I. In its Final Brief it wrote that the conflict had “the character of civil war [...] it is quite clear that regulations of Additional Protocol II ha[ve] to be applied”.¹⁴⁵ It submitted that Additional Protocol I is limited in its applicability to international conflicts by operation of Article 2 common to the Geneva Conventions.¹⁴⁶ Moreover, in oral submissions on the last day of trial, the Defence expressed “some doubt” as to the status of the 22 May Agreement.¹⁴⁷

85. The Trial Chamber has already found that the 22 May Agreement was in effect during the relevant period, which confirms that the parts of Additional Protocol I referred to therein were operative during that period.¹⁴⁸ Thus the Defence’s final position on the applicability of Additional Protocol I is of no consequence to the discussion of the crime of terror.¹⁴⁹ The Majority notes that,

¹⁴² Id., para. 888.

¹⁴³ Id., para. 584.

¹⁴⁴ Defence Closing Arguments, T. 21810.

¹⁴⁵ Defence Final Trial Brief, para. 977.

¹⁴⁶ Id., paras 971-2.

¹⁴⁷ T. 21966-73.

¹⁴⁸ See *supra*, paras 23-4.

¹⁴⁹ It should be noted, however, that the Defence’s submissions on the constraining effect of Article 2 common (“Common Article 2”) to the Geneva Conventions on the applicability of Additional Protocol I are not accurate. While it is true that the scope of that Protocol’s application is given in Article 1 of the protocol as corresponding to the situations referred to in Common Article 2 – namely “to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties”, as well as “to all cases of partial or total occupation of the territory of a High Contracting Party” – clearly this does not have the effect of limiting the application of the Conventions and the Protocol to the cases mentioned above. Thus a unilateral declaration pursuant to Article 96 of

in any case, the Defence unequivocally accepted the applicability of Additional Protocol II, which contains the same prohibition against terror as the first Protocol.

(c) Discussion

86. While the Parties have not raised the question of jurisdiction *ratione materiae*, the Majority will consider it *ex officio*, for it is fundamental to the exercise of competence.

87. The Majority must decide whether the Tribunal has jurisdiction over the crime of terror against the civilian population, but only to the extent relevant to the charge in this case. That is to say, the Majority is not required to decide whether an offence of terror in a *general* sense falls within the jurisdiction of the Tribunal, but only whether a *specific* offence of killing and wounding civilians in time of armed conflict with the intention to inflict terror on the civilian population, as alleged in the Indictment, is an offence over which it has jurisdiction.¹⁵⁰ While the Tribunal may have jurisdiction over other conceivable varieties of the crime of terror, it will be for Trial Chambers faced with charges correspondingly different from Count 1 of the present Indictment to decide that question.

Additional Protocol I by the representative authority of a people “fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination” may be enough to bring into force the Conventions and the Protocol, even though the authority is not a state power. More pertinently, Article 3 common to the Geneva Conventions enables parties to a non-international armed conflict to bring into force all or part of the Conventions and, by extension, all or part of Additional Protocol I supplementing the Conventions.

¹⁵⁰ The Majority is aware that several international instruments exist outlawing “terrorism” in various forms. The Majority necessarily limits itself to the legal regime that has been developed with reference to conventional armed conflict between States, or between governmental authorities and organized armed groups, or between such groups within a State. In other words, the Majority proceeds on the understanding that the present case will have a basis, if at all, in the legal regime of the Geneva Conventions and the Additional Protocols and not in international efforts directed against “political” varieties of terrorism. The Majority would also note that “terrorism” has never been singly defined under international law. The first international attempt at codification of “terrorism” was the 1937 League of Nations Convention for the Prevention and Punishment of Terrorism, 19 LNOJ 23 (1938), which however did not receive sufficient ratifications and was not pursued. Since that time the international community has followed a thematic approach to the characterization of international terrorism, with subject-specific conventions such as the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, 2 ILM 1042 (1963); the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105; the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 974 UNTS 177; the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, 13 ILM 41 (1974); the 1979 International Convention Against the Taking of Hostages, 18 ILM 1460 (1979); 1997 International Convention for the Suppression of Terrorist Bombings, 37 ILM 249 (1998); 1999 International Convention for the Suppression of the Financing of Terrorism, 39 ILM 270 (2000); and Convention on the Suppression of Acts of Nuclear Terrorism (in process of negotiation), UN Doc. A/C6/53/L4, Annex I (1998). This incomplete list of relevant global instruments also does not include regional anti-terrorism agreements. Related resolutions of the UN General Assembly include the 1994 Declaration on Measures to Eliminate International Terrorism, UN Doc. A/RES/49/60, and the 1995 Measures to Eliminate Terrorism, UN Doc. A/RES/50/53 (“that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”). The prohibition of terror against the civilian population in times of war, which (as discussed below) is given expression in Geneva Convention IV and the Additional Protocols, is another example of the thematic, subject-specific, approach to “terrorism”.

88. The Majority wishes to emphasize that nothing said below should be taken to limit the jurisdiction of the Tribunal in other cases.¹⁵¹

89. As noted in the preceding section, in the *Tadić* decision on jurisdiction the Appeals Chamber said that four conditions (“the *Tadić* conditions”) must be met for an offence to be subject to prosecution under Article 3 of the Statute (violations of the laws or customs of law): (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, it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim; and (iv) the violation must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.¹⁵²

90. The discussion below begins with preliminary remarks on the Majority’s approach to treaty interpretation and the paramount importance of the *nullum crimen sine lege* principle. The Majority will then consider each of the *Tadić* conditions. The elements of the crime of terror are developed as part of the discussion of the fourth *Tadić* condition.

(i) Preliminary remarks

91. The Majority will instruct itself on two related matters of principle. In its interpretation of provisions of the Additional Protocols and of other treaties referred to below, the Majority will apply Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, namely that “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁵³ No word in a treaty will be presumed to be superfluous or to lack meaning or purpose.

92. The Majority also acknowledges the importance of the principle found in Article 15 of the 1966 International Covenant on Civil and Political Rights, which states, in relevant part: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. [...] Nothing in this article shall prejudice the trial and punishment of any person for

¹⁵¹ As will be seen, one of the Majority’s conclusions is that proof of actual infliction of terror is not a legal element of the crime under any interpretation of Article 51(2) of Additional Protocol I. This finding does not, of course, amount to a narrowing of the Tribunal’s jurisdiction; on the contrary, the Majority’s rejection of this supposed element proposed by the Prosecution leads to a broader definition of the offence.

¹⁵² *Tadić* Jurisdiction Decision, para. 94.

¹⁵³ Reprinted in 8 ILM 679 (1969).

any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.”¹⁵⁴

93. The principle (known as *nullum crimen sine lege*) is meant to prevent the prosecution and punishment of a person for acts which were reasonably, and with knowledge of the laws in force, believed by that person not to be criminal at the time of their commission. In practice this means “that penal statutes must be strictly construed” and that the “paramount duty of the judicial interpreter [is] to read into the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object.”¹⁵⁵ Moreover:

The effect of strict construction of the provisions of a criminal statute is that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of construction fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself.¹⁵⁶

(ii) First and Second Tadić Conditions

94. The Indictment is not explicit as to which part of Article 51 of Additional Protocol I, or which part of Article 13 of Additional Protocol II, Count 1 is referenced to. Article 51 is an extensive provision in Part IV of the Protocol concerned with the protection of the civilian population. Yet it is clear from the submissions in this case that the intended reference of Count 1 is to sub-paragraph 2 of Article 51, which states:

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 second sentence of this excerpt will henceforth be referred to as the “second part” of the second paragraph of Article 51, or simply as the “second part of 51(2)”.

95. The quoted passage is identical to sub-paragraph 2 of Article 13 of Additional Protocol II. Since the Trial Chamber has found that certain parts of Additional Protocol I, including Article 51 thereof, applied to the armed conflict in Sarajevo during the relevant time, the Majority takes Additional Protocol I to be the basis of Count 1. It is not necessary to decide whether Additional Protocol II was also applicable to the conflict. Moreover, the Majority is not called upon to decide whether Additional Protocol I came at any time into effect in the State of Bosnia-Herzegovina

¹⁵⁴ 999 UNTS 171.

¹⁵⁵ *Čelebići* Trial Judgement, para. 408.

¹⁵⁶ *Id.*, para. 413. On the principle of legality see also *Aleksovski* Appeal Judgement, paras 126-7 (“the principle of *nullum crimen sine lege* ... does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime”); and *Vasiljević* Trial Judgement, para. 193 (“the Trial Chamber must further satisfy itself that the criminal conduct in question was

through fulfilment of the Protocol's inherent conditions of application (Article 1 of the Protocol). The implementing instrument, on the evidence in this case, was the 22 May Agreement (as discussed in the preceding section).

96. Thus the first two *Tadić* conditions are met: Count 1 bases itself on an actual rule of international humanitarian law, namely the rule represented by the second part of the second paragraph of Article 51 of Additional Protocol I. As for the rule's applicability in the period covered by the Indictment, the rule had been brought into effect at least by the 22 May Agreement, which not only incorporated the second part of 51(2) by reference,¹⁵⁷ but repeated the very prohibition "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited" in the agreement proper.¹⁵⁸

97. The Majority emphasizes that it is not required to pronounce on whether the rule in question is also customary in nature. As stated above, it belongs to "treaty law". This is enough to fulfil the second *Tadić* condition as articulated by the Appeals Chamber. Nevertheless, the Majority will proceed with additional caution here to avoid any possible misunderstanding of its position on this important question.

98. The Appeals Chamber has said "that the International Tribunal is authorised to apply, in addition to customary international law, any treaty which: (i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogating from peremptory norms of international law, as are most customary rules of international humanitarian law."¹⁵⁹ In relation to the first point, the Majority understands that it stems from the unqualified imperative of respect for the *nullum crimen sine lege* principle. The fact that the 22 May Agreement was binding on the parties to the conflict, and that certain provisions of Additional Protocol I had thereby undoubtedly been brought into effect, means that in this general sense there is no affront to the principle of *nullum crimen sine lege* by the Majority's determination. In relation to the Appeals Chamber's second point, this raises the question of whether the second part of 51(2) in any way conflicts with, or derogates from, peremptory norms of international law. In the Majority's view, it does not. What the second paragraph of Article 51, read as a whole, intends to say is that the

sufficiently defined and was sufficiently accessible at the relevant time for it to warrant a criminal conviction and sentencing under the criminal heading chosen by the Prosecution").

¹⁵⁷ See P58 (22 May Agreement), para. 2.5.

¹⁵⁸ *Id.*, para. 2.3.

¹⁵⁹ *Tadić* Decision on Jurisdiction, para. 143. This was also the view of Security Council members. Speaking at a meeting of the Council on 25 May 1993, at which the Tribunal's Statute was adopted, France's representative commented that "the expression 'laws or customs of war' used in Article 3 of the Statute covers specifically, in the opinion of France, all the obligations that flow from the humanitarian law agreements in force on the territory of the former Yugoslavia at the time when the offences were committed" (UN Doc. S/PV.3217, p. 11). The representatives of the United States and the United Kingdom expressed the same view (*id.*, pp 15 and 19, respectively).

prohibition against terror is a specific prohibition within the general prohibition of attack on civilians.¹⁶⁰ The general prohibition is a peremptory norm of customary international law.¹⁶¹ It could be said that the specific prohibition also shares this peremptory character, for it protects the same value. However, to reiterate, the Majority is not required to decide this question. What is clear is that, by exemplifying and therefore according with the general norm, the rule against terror neither conflicts with nor derogates from peremptory norms of international law.

99. The following considerations are also relevant. The Additional Protocols were debated and finalized at the 1974-1977 Diplomatic Conference under the auspices of the ICRC. A summary record of the proceedings has been preserved.¹⁶² The ICRC's delegate to the committee to which Article 51(2) of Additional Protocol I was assigned in draft form¹⁶³ said that the rule "merely reaffirmed existing international law", without making a distinction between the provision's first and second parts.¹⁶⁴ This was the consistent attitude at the Conference. States' concerns were for the most part limited to whether the object of the prohibition against terror should be the actor's intent or the capacity of the methods employed to spread violence.¹⁶⁵ Several States simply put on record their approval of the draft provision without proposing changes.

100. To illustrate the insignificant level of controversy, the Majority mentions the committee's summary of its first-session discussions of what was to become Article 51(2): "Some delegations had proposed an interpretation of 'methods intended to spread terror' going beyond the attacks referred to in the first sentence of the paragraph. Specific reference was made in this connexion to propaganda. The language of 'intended to'¹⁶⁶ also gave rise to some controversy. Some delegations suggested that the substantive element of intent would be too difficult to determine and that methods that in fact spread terror should be prohibited. Other delegations emphasized the problem of imposing responsibility for acts that might cause terror without terror having been intended."¹⁶⁷

¹⁶⁰ See ICRC Commentary, para. 4785: "Attacks aimed at terrorizing *are just one type of attack*, but they are particularly reprehensible. Attempts have been made for a long time to prohibit such attacks, for they are frequent and inflict particularly cruel suffering upon the civilian population." (Emphasis added.) While the second part of 51(2) uses the expression "acts or threats of violence", and not "attacks", the concept of "attack" is defined in Article 49 of Additional Protocol I as "acts of violence".

¹⁶¹ See the discussion in the preceding section on the crime of attack on civilians. See as well ICRC Commentary, para. 1923. The Trial Chamber also notes that in a 1995 decision on the applicability of Additional Protocol II to the conflict in Colombia, the Constitutional Court of Colombia accepted the customary-law status of Article 13 of the Protocol, including the prohibition against terror: Ruling No. C-225/95, excerpted in translation in M. Sassòli and A. A. Bouvier (eds.), *How Does Law Protect in War?* (Geneva: ICRC, 1999), p. 1366 (para. 30) (henceforth "Sassòli & Bouvier").

¹⁶² *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, 17 vols. (Geneva: ICRC, 1974-77) (henceforth "Records").

¹⁶³ The draft provision was then numbered 46.

¹⁶⁴ *Records*, vol. XIV, p. 36.

¹⁶⁵ *Id.*, vol. XIV, pp 48-75.

¹⁶⁶ The original formulation of the second part was: "In particular, methods intended to spread terror among the civilian population are prohibited."

¹⁶⁷ *Records*, vol. XV, p. 241.

101. In the report on its second session, the committee stated: “The prohibition of ‘acts or threats of violence which have the primary object of spreading terror’ is directed to intentional conduct specifically directed toward the spreading of terror and excludes terror which was not intended by a belligerent and terror that is merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful.”¹⁶⁸ What little disagreement there was about the draft provision was thus put to rest.¹⁶⁹

102. Article 51 of Additional Protocol I was adopted by the plenary of the Diplomatic Conference on 26 May 1977 with 77 in favour, one against, and 16 abstentions.¹⁷⁰ France, the only state voting against, explained that it objected, for various reasons, to the provisions of paragraphs 4, 5, 7, and 8 of Article 51 (but not of paragraph 2).¹⁷¹ The concerns of the abstaining States were also confined to paragraphs 4, 5, 7, and 8.¹⁷²

103. Explicit reference to the terror clause is found twice in the States’ explanations of their votes on Article 51. In both cases the endorsement of the prohibition is strong and unqualified. The Byelorussian Soviet Socialist Republic noted the “criminal” character of conduct which the prohibition aimed to counteract:

Also very important from the standpoint of increasing the protection afforded to the civilian population is the provision in Article [51] concerning the prohibition of the use of force or threat of the use of force for the purpose of intimidating the civilian population. Intimidating peaceful citizens and spreading terror among the civilian population is well known to be one of the infamous methods widely resorted to by aggressors seeking to attain their criminal ends at whatever price.¹⁷³

104. The plenary adopted Additional Protocol I in whole by consensus on 8 June 1977.¹⁷⁴ Following this, many States provided further explanations of their positions, but there was no further reference to the terror clause of Article 51(2).¹⁷⁵ There were no treaty reservations of any relevance to this provision. A perusal of the *travaux préparatoires* of the Diplomatic Conference thus satisfies the Majority that all participating States condemned the strategy of terrorizing civilians as, in Byelorussia’s words, an “infamous method” of warfare.¹⁷⁶

¹⁶⁸ Id., vol. XV, p. 274.

¹⁶⁹ Id., vol. XV, pp 328-31.

¹⁷⁰ Id., vol. VI, p. 163.

¹⁷¹ Id., vol. VI, pp 161-2; see also vol. VII, p. 193.

¹⁷² Id., vol. VI, pp 164-8, 187-8 (FRG).

¹⁷³ Id., vol. VI, p. 177. See also the comments of the Ukrainian Soviet Socialist Republic, id., vol. VI, p. 201.

¹⁷⁴ Id., vol. VII, pp 194 and 205, respectively.

¹⁷⁵ Id., vol. VII, pp 191-251.

¹⁷⁶ By 1992, when there were around 191 countries in the world, 118 States had ratified Additional Protocol I and five had signed the treaty without ratifying it. The State of Bosnia-Herzegovina succeeded to the Protocol on 31 December 1992. This information is available at the ICRC’s web site: <<http://www.icrc.org>>.

105. These observations further support the view that the second part of 51(2) neither conflicts with nor derogates from peremptory norms of international law. It was meant, on the contrary, to be an exemplification of the general principle.

(iii) Third Tadić Condition

106. The Majority now considers the third *Tadić* condition, namely that 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.¹⁷⁷

107. In the Majority’s opinion, this third condition, correctly interpreted, is not that the *rule* must be inherently “serious”, which would mean that every violation of it would also be serious, but that the alleged *violation* of the rule – that is, of a recognized humanitarian rule – must be serious for the violation to come within the jurisdiction of the Tribunal.

108. In the present case, acts of violence of a very serious nature are alleged in the Indictment. In particular, Count 1 alleges a protracted campaign of shelling and sniping of civilians. A campaign of this nature cannot but cause death and injury to civilians over time, and allegedly this was the result of the Accused’s actions in this case. There is no doubt that making the civilian population or individual civilians the object of attack, with resulting death and injury to civilians, is a very serious violation of a basic rule of international humanitarian law. It would even qualify as a grave breach of Additional Protocol I.¹⁷⁸

109. Since doing that much is a serious violation, doing the same with the primary purpose of spreading terror among the civilian population can be no less serious, nor can it make the consequences for the victims any less grave. It is clear moreover from the *travaux préparatoires* of the Diplomatic Conference that the participating States without exception regarded the deliberate taking of measures to terrorize the civilian population as reprehensible as any attack upon the civilian population. Therefore the alleged violation is serious and the third condition is met.

110. The Majority has not neglected the question of whether threats of violence, as opposed to acts of violence, could also involve grave consequences for the victim. However, because the question is not at issue in this case, the Majority is not required to address it.¹⁷⁹

¹⁷⁷ *Tadić* Jurisdiction Decision, para. 94.

¹⁷⁸ See Art. 85(3) of Additional Protocol I.

¹⁷⁹ Certain threats of violence would undoubtedly involve grave consequences. For example, a credible and well publicized threat to bombard a civilian settlement indiscriminately, or to attack with massively destructive weapons, will most probably spread extreme fear among civilians and result in other serious consequences, such as displacement of sections of the civilian population.

111. It is perhaps worth reiterating Article 1 of the Tribunal’s Statute (“Competence of the International Tribunal”), that “The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 [...]” – the key notion for the purposes of this discussion is the seriousness of an offence.

112. The Majority has demonstrated the seriousness of the violations alleged in this case.

(iv) Fourth Tadić Condition

113. The Majority now comes to examine the fourth *Tadić* condition, namely whether a serious violation of the prohibition against terrorizing the civilian population entails, under customary or conventional law, the individual criminal responsibility of the person breaching the rule. The issue here, in particular, is whether the intent to spread terror had already been criminalized by 1992. The Majority reiterates that it takes no position on whether a customary basis exists for a crime of terror as a violation of the laws or customs of war. Its discussion below amounts to a survey of statutory and conventional law relevant to the fulfilment of the fourth *Tadić* condition.

114. To the Majority’s knowledge, the first conviction for terror against a civilian population was delivered in July 1947 by a court-martial sitting in Makassar in the Netherlands East-Indies (N.E.I.). The offences alleged in *Motomura et al.*¹⁸⁰ were charged in the indictment as “systematic terrorism against persons suspected by the Japanese of punishable acts [...] this systematic terrorism taking the form of repeated, regular and lengthy torture and/or ill-treatment, the seizing of men and women on the grounds of wild rumours, repeatedly striking them [...] the aforesaid acts having led or at least contributed to the death, severe physical and mental suffering of many.”¹⁸¹ The court-martial’s jurisdiction was conferred by statute,¹⁸² Article 1 of which read, in relevant part:

Under war crimes are understood acts which constitute a violation of the laws and usages of war committed in time of war by subjects of an enemy power or by foreigners in the service of the enemy, such as: [...]

2. Systematic terror.¹⁸³ [...]

4. Torture of civilians. [...]

34. Indiscriminate mass arrests.

35. Ill-treatment of interned civilians or prisoners. [...]

¹⁸⁰ *Trial of Shigeki Motomura and 15 Others*, 13 Law R. Trials War Crim. 138 (“*Motomura case*”).

¹⁸¹ *Id.*, pp. 138-9.

¹⁸² Decree No. 44 (1946), in *Staatsblad van Nederlandsch-Indië*, 1946.

¹⁸³ “*Systematische terreur*” in original, which translates as systematic *terror* and not *terrorism*.

115. The *Motomura* court-martial convicted 13 of the 15 accused of “systematic terrorism practiced against civilians” for acts including unlawful mass arrests.¹⁸⁴ The court found that those arrests had the effect of terrorizing the population, “for nobody, even the most innocent, was any longer certain of his liberty, and a person once arrested, even if absolutely innocent, could no longer be sure of health and life.”¹⁸⁵ The associated torture and ill-treatment of interned civilians was also found to be a form of systematic terror.¹⁸⁶ Seven of those convicted were sentenced to death and the rest to prison sentences ranging from 1 to 20 years.¹⁸⁷

116. The list of war crimes in the aforementioned N.E.I. statute reproduced with minor changes a list of war crimes proposed in March 1919 by the so-called Commission on Responsibilities, a body created by the Preliminary Peace Conference of Paris to inquire into breaches of the laws and customs of war committed by Germany and its allies during the 1914-1918 war.¹⁸⁸ The Commission reported that it had found evidence of multiple violations of the rights of civilians and combatants, as well as a carefully planned and executed “system of terrorism”. It claimed that: “Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance.”¹⁸⁹ The Commission’s list of war crimes had “Murders and massacres; systematic terrorism” of civilians as one item (the first in the list).¹⁹⁰ The few trials held in 1921-1922 in Leipzig pursuant to the Treaty of Versailles are generally considered to have been a failure.¹⁹¹ In any event, they did not advance the concept of systematic terrorism created by the Commission.¹⁹²

117. The British and the Australians had also tried to make something of the “systematic terrorism” which came to life in 1919 and found its way into the post-Second World War N.E.I. statute. On 20 July 1945 the British delegation to a conference of nations known as the London Conference, which had assembled to negotiate the formation of the International Military Tribunal, proposed that terror against civilians in the context of armed conflict be criminalized. The delegation’s suggested definition of “Crimes”, under Article 6 of the draft IMT Charter, read, in part:

¹⁸⁴ *Motomura* case, p. 140.

¹⁸⁵ *Id.*, p. 143.

¹⁸⁶ *Id.*, p. 144.

¹⁸⁷ *Id.*, p. 140.

¹⁸⁸ On the Commission on Responsibilities, see UN War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: HMSO, 1948), Ch. III.

¹⁸⁹ Cited in *id.*, pp. 33-4.

¹⁹⁰ See, *id.*, pp. 34-5 (reproduction of the Commission’s list of war crimes).

¹⁹¹ *Id.*, p. 51.

¹⁹² *Id.*, pp. 48-51 (summaries of cases heard).

The Tribunal shall have the power to try, convict and sentence any person who has, in any capacity whatever directed or participated in the planning, furtherance, or conduct of any or all of the following acts, designs, or attempts namely: [...]

2. Systematic atrocities against or systematic terrorism or ill-treatment or murder of civilians

3. Launching or waging war in a manner contrary to the laws, usages and customs of warfare

and who is hereby declared therefore to be personally answerable for the violations of international law, of the laws of humanity, and of the dictates of public conscience.¹⁹³

A few days later, a revised definition which had gained the approval of the French was put forth by the British. It no longer made reference to “terrorism” as such, but used open-ended language (“Atrocities ... include but are not limited to ...”).¹⁹⁴ The Charter in its final form used this open-ended formulation to define war crimes.

118. Australia’s War Crimes Act of 1945 made reference to the work of the Commission on Responsibilities and included “systematic terrorism” in its category of war crimes.¹⁹⁵

119. The next relevant appearance of a prohibition against terror was in Article 33 of the 1949 Geneva Convention IV, which article states in part: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.” This protection extends only to persons “in the hands of a Party to the conflict” (Article 4 of the Convention).¹⁹⁶ Thus, purely by operation of Article 33, civilians in territory not occupied by the adversary are not protected against “measures of intimidation or of terrorism” which the adversary might decide to direct against them.

120. The most important subsequent development on the international stage was the unopposed emergence of Article 51(2) of Additional Protocol I (and of the identical provision in the second Protocol) in the Diplomatic Conference of 1974-1977, as described above. Additional Protocol I elaborated and extended the protections of the Geneva Conventions, including those of the fourth Convention on the protection of civilians in times of war. The Majority recalls that the scope of application of Additional Protocol I is given in its first Article, which states that the Protocol “shall apply in the situations referred to in Article 2 common to [the Geneva] Conventions.” Article 2 of the Conventions states, *inter alia*, that the Convention “shall also apply to all cases of partial or total

¹⁹³ Reproduced in *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945* (Washington D.C.: US Government Printing Office, 1949), p. 312.

¹⁹⁴ *Id.*, p. 390.

¹⁹⁵ See 5 Law R. Trials War Crim. 94-97.

occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” Consequently Additional Protocol I applies to the aforementioned situations to the extent feasible, as well as to situations such as that which the present Indictment is concerned with, in which civilians not in the hands of an attacking force allegedly become victims of attacks by that force. In other words, whereas the cited part of Article 33 of Geneva Convention IV brought protection from intimidation or terrorism to only a subset of civilians in the context of armed conflict (those in the hands of a Party to the conflict), Article 51(2) of the Protocol elaborated and extended the protection from terror to civilians whether or not in the hands of the Party to the conflict conducting the attack, to the extent consistent with a purposeful and logical interpretation of Additional Protocol I.

121. The Majority now turns to consider a legislative development in the region relevant to this Indictment. Article 125 (“War Crime Against the Civilian Population”) in Chapter XI (“Criminal Offences Against Humanity and International Law”) of the 1960 Criminal Code of the Federal Republic of Yugoslavia read: “Whoever, in violation of the rules of international law in times of war, armed conflict or occupation issues orders for or performs [...] *the application of intimidating measures and terror* [...] shall be punished with severe imprisonment of at least five years or with the penalty of death.”¹⁹⁷ The source of this may have been Article 33 of Geneva Convention IV, whose benefit, as noted above, is enjoyed by “protected persons”, namely those in the hands of a Party to the conflict. Yet Article 125 is formulated quite generally and does not seem to be limited to protected persons, in the sense of the Geneva Conventions. The 1964 Criminal Code was unchanged in this respect.¹⁹⁸ The 1976 Criminal Code followed a different enumeration. The Chapter changed from XI to XVI, and the Article number from 125 to 142. The titles did not change. Article 142 came to read: “Whosoever, in violation of the rules of the international law during a war, an armed conflict or an occupation, orders [...] imposition of measures [against the civilian population] aimed at inducing fear and terror [...] or whosoever commits any of the said acts, shall be punished by imprisonment of not less than five years or by death.”¹⁹⁹

122. Following Yugoslavia’s ratification of Additional Protocol I on 11 March 1977, the new treaty was incorporated into Yugoslavia’s “[Armed Forces] Regulations on the Application of

¹⁹⁶ Armed forces manuals soon incorporated the prohibition. See, for example, United States Field Manual No. 27-10: The Law of Land Warfare (Washington D.C.: Department of the Army), para. 272 (1956); United Kingdom Manual of Military Law, Part III: The Law of War on Land (London: The War Office, HMSO), para. 42 (1958).

¹⁹⁷ *Criminal Code 1960* (Belgrade: Union of Jurists’ Associations, 1960), pp. 48-9, emphasis added.

¹⁹⁸ See *Criminal Code 1964*, translated by M. Damaška (Beograd: Institute of Comparative Law), Art. 125. The words “use of measures of intimidation and terror” appear instead, a difference in translation.

¹⁹⁹ Unattributed translation available at ICTY Library. The translation was checked against the original Code (*Službeni list SFRJ*, br. 44/76), also available at the ICTY Library.

International Laws of War”. The Trial Chamber was provided with the 1988 edition.²⁰⁰ An order from the Federal President prefaces the regulations and tasks commanders of units with the responsibility “for the application of the international laws of war. The officer in charge shall institute proceedings against persons who violate the international laws of war for the pronouncement of the penalties prescribed by the law.”²⁰¹ The applicable laws include Additional Protocol I.²⁰² “Serious” violations of the laws of war are considered criminal offences.²⁰³ These include war crimes against a civilian population, namely “attack on civilians [...] inhuman treatment [of civilians] inflicting great suffering or injury to bodily integrity or health [...] *application of measures of intimidation and terror*”²⁰⁴ and “deliberate bombardment of the civilian population”.²⁰⁵ In a later part, on means and methods of combat, the regulations state: “Attacking civilians for the purpose of terrorising them is especially prohibited.”²⁰⁶ The regulations point out that ignorance of the provisions of the laws of war “does not exonerate the transgressors from responsibility”,²⁰⁷ that the perpetrators of war crimes “may also answer before an international court, if such a court has been established”,²⁰⁸ and that the Criminal Code has been updated to criminalize and punish all aforementioned war crimes against the civilian population.²⁰⁹ These updates to the Criminal Code are evident in the version of the Code promulgated by the Federal Republic of Yugoslavia in 1990, whose Article 142 repeats the text of 1976 (excerpted in the paragraph above) yet is augmented by prohibitions derived from the Additional Protocols of 1977.²¹⁰

123. The “Serbian Republic” of Bosnia-Herzegovina did not disavow the regulatory regime which the Accused and other former JNA officers had laboured under while serving the Federation’s armed forces. An “Order on the Application of the Rules of the International Law of War in the Army of the Serbian Republic of Bosnia and Herzegovina”, signed by Radovan Karadžić on 13 May 1992 and published in the “Official Gazette of the Serbian People” on 13 June 1992, declared that “the Army [...] shall apply and respect the rules of the international law of war [...] includ[ing]: the international treaties signed, ratified or joined by the former Socialist Federal

²⁰⁰ P5.1 (translation). Other post-1977 military manuals from around the world cite terror as an impermissible means of warfare or refer to Article 51(2) of Additional Protocol I. See, for example, German Military Manual (*Humanitäres Völkerrecht in bewaffneten Konflikten-Handbuch*), Section 451 (1992) (English translation available at ICTY library); New Zealand Interim Law of Armed Conflict Manual, Article 517 (1992); Soviet Minister of Defence Order No. 75 of 16 February 1990 on the Publication of the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of War and their Additional Protocols, Article 5, para. (o) (1990) (French translation available at the ICRC’s web site: <<http://www.icrc.org>>.).

²⁰¹ P5.1, p. 6.

²⁰² Id., p. 11.

²⁰³ Id., p. 14.

²⁰⁴ Id., p. 18, emphasis added.

²⁰⁵ Id., p. 19.

²⁰⁶ Id., p. 29.

²⁰⁷ Id., p. 14.

²⁰⁸ Id., p. 15.

²⁰⁹ Id., p. 20.

Republic of Yugoslavia; the customary international law of war; [and] the generally accepted principles of the international law of war. [...] It is the duty of the competent superior officer to initiate proceedings for legal sanctions against individuals who violate the rules of the international law of war.”²¹¹ These “proceedings for legal sanctions” were set down in greater detail in the “Guidelines for Determining Criteria for Criminal Prosecution” issued in 1992 by the Military Prosecutor’s Office at the Main Staff of the Armed Forces of Republika Srpska.²¹² Here the Military Prosecutor referred to the Criminal Code of the Federal Republic of Yugoslavia, which had been adopted by the “Serbian Republic” to the extent of preserving the title of the original Chapter – “Criminal Offences Against Humanity and International Law” – in which the updates referred to above in the Federation’s Armed Forces Regulations had been implemented.²¹³ The Military Prosecutor noted the “unique nature” of that Chapter’s criminal offences, which is to be seen “in their seriousness, which is expressed in severe punishments, including the death penalty”.²¹⁴ “These criminal offences take the form of direct execution of criminal and inhumane acts against the civilian population [...] inhumane conduct, causing great suffering or injury to body or health [and] *frightening and terrorising people*.”²¹⁵ The 1992 Guidelines instituted a procedure which relied on the army’s officer corps to report violations of the laws of war to the Military Prosecutor’s office.²¹⁶ The Guidelines warned officers that should they “take no measures to prevent the [...] acts themselves, and expose perpetrators to criminal prosecution, this in itself makes them answerable for these criminal offences.”²¹⁷

124. The 22 May 1992 Agreement states in its section on “Implementation” that each party “undertakes, when it is informed, in particular by the ICRC, of any allegation of violations of international humanitarian law, to open an enquiry promptly and pursue it conscientiously, and to take the necessary steps to put an end to the alleged violations or prevent their recurrence *and to punish those responsible* in accordance with the law in force.”²¹⁸ Clearly the parties intended that serious violations of international humanitarian law would be prosecuted as criminal offences committed by individuals.²¹⁹

²¹⁰ The Criminal Code of 1990 was published in *Službeni list SFRJ*, br. 38/90 and is available at ICTY Library.

²¹¹ P82.1 (translation).

²¹² P276.1 (translation).

²¹³ *Id.*, p. 3.

²¹⁴ *Id.*, p. 7.

²¹⁵ *Id.*, p. 7 (emphasis added).

²¹⁶ *Id.*, p. 8.

²¹⁷ *Id.*, p. 8.

²¹⁸ Para. 5 of the 22 May agreement, emphasis added.

²¹⁹ The 22 May Agreement did not make explicit reference to Article 85 of Additional Protocol I (“repression of breaches”), although it incorporated the grave breaches regime by committing the parties to the terms of Geneva Conventions I and II (para. 2.1 of the 22 May Agreement). Subsequent agreements among the parties to the conflict, cited in the preceding section, also indicate an intention to prosecute those responsible for serious violations of

125. The developments reviewed so far demonstrate that, by the time the second part of 51(2) was added verbatim to the 22 May Agreement it already had a significant history of usage by direct or indirect reference in the region of the former Yugoslavia.

126. There is at least one conviction for terrorism of the civilian population in the course of the Yugoslav conflict by a municipal court in the territory of the former Yugoslavia. In May 1997, the Split County Court in Croatia convicted Rajko Radulović and other members of the army of “Republika Srpska” pursuant to provisions including Article 33 of Geneva Convention IV, Article 51 of Additional Protocol I, and Article 13 of Additional Protocol II, for, *inter alia*, “a plan of terrorising and mistreating the civilians”, “carr[ying out] the orders of their commanders with the goal to terrorise”, which included opening random fire against civilian areas and threatening to demolish, and indeed proceeding to demolish, a dam with the intention of drowning the approximately 30,000 people living downstream.²²⁰

127. Finally, the fact that there existed, by 1992, individual criminal responsibility for serious violations of the rule against terror under at least conventional law, is evident from the content and context of Additional Protocol I. If a violation charged against the Accused in the present case is of the same nature as that which States at the Diplomatic Conference collectively considered a grave breach, individual criminal responsibility for the charge would thereby have been established. Terror in the present Indictment is not charged as a grave breach of Additional Protocol I. But with regard to whether there was, in 1992, individual criminal responsibility for a person committing a serious violation of the rule prohibiting terror, this can be answered in the affirmative where the serious violation took the form of serious injury or death caused to civilians. In such cases the acts of violence qualified, in themselves, as grave breaches of Additional Protocol I. Therefore the violation seen in all its elements (attack plus intent to terrorize) could not have been qualified as less criminal than a grave breach.

128. The same conclusion is reached by another line of reasoning. Article 85 of Additional Protocol I is addressed to States, yet it delineates crimes, and legal elements of crimes, for which there is individual criminal responsibility. The Majority finds in Article 85’s universal acceptance in the Diplomatic Conference clear proof that certain violations of Article 51(2) of Additional Protocol I had been criminalized. In particular, as already explained in the preceding section, there was individual criminal responsibility for “making the civilian population or individual civilians the

international humanitarian law. See, e.g., Article 3(1) of the Programme for Action on Humanitarian Issues and Article 3 of the October Agreement.

²²⁰ *Prosecutor v. R. Radulović et al.*, Split County Court, Republic of Croatia, Case No. K-15/95, Verdict of 26 May 1997; excerpted in translation in Sassòli & Bouvier, pp 1263-8. The events considered in this case occurred between September 1991 and January 1993.

object of attack”, “when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health”.²²¹ Alongside this component should be considered the unanimous and unqualified condemnation by the Diplomatic Conference of attacks against civilians intended to spread terror. That is, this specific intentional state – having the intent to spread terror – was also condemned. The serious violations alleged in the present case include both of the above components (wilfully attacking civilians resulting in death or serious injury plus the intent to terrorize them).

129. Because the alleged violations would have been subject to penal sanction in 1992, both internationally and in the region of the former Yugoslavia including Bosnia-Herzegovina, the fourth *Tadić* condition is satisfied.

130. Since all four conditions have now been satisfied, the Majority finds that serious violations of the second part of Article 51(2), and specifically the violations alleged in this case causing death or injury, entailed individual criminal responsibility in 1992. The Majority expresses no view as to whether the Tribunal also has jurisdiction over other forms of violation of the rule, such as the form consisting only of threats of violence, or the form comprising acts of violence not causing death or injury. This is not a question it has been called upon to decide.

131. It now falls to the Majority to specify, in the light of what has been considered above, including the preliminary remarks on statutory interpretation, the material and mental elements of the offence of terror over which the Majority has found the Tribunal has jurisdiction. The Majority recalls the submissions of the Parties on the elements, which were summarized in the introduction to this section, and in particular the submission that actual infliction of terror is one of the elements of the offence. The Majority reiterates that the Parties’ submissions on the elements were tentative and were based on little authority.

132. The Majority finds that Count 1 of the Indictment charges the Accused with serious violations of the rule in Article 51(2) of Additional Protocol I that “Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.” The present case does not involve “threats” (except in the narrow sense of implicit threats proposed by the Prosecution), and therefore the Majority is not required to pronounce on a crime of terror consisting only of threats. The present case also does not involve allegations of harm other than the causing of death or serious injury to civilians (in contrast, for example, with the *Motomura* case, where the harm was in the form of unlawful mass arrests and ill-treatment of civilians). In articulating the elements of the specific offence relevant to the disposition of this case, the Majority

²²¹ See Art. 85(3) (in part) of Additional Protocol I. See also ICRC Commentary, para. 1932 and para. 1941.

relies necessarily on the wording of Article 51(2) of Additional Protocol I. The Trial Chamber's discussion of the crime of attack on civilians in the previous section is also relevant. That there is no uncertainty as to the meaning of the elements is demonstrated below with reference to the *travaux préparatoires* of the Diplomatic Conference. The Majority finds that the offence as here defined was criminalized in a precise and accessible manner by 1992, and that this was known or should have been known to the Accused. Therefore there is no affront to the principle of *nullum crimen sine lege*.

133. In conclusion, the crime of terror against the civilian population in the form charged in the Indictment is constituted of the elements common to offences falling under Article 3 of the Statute, as well as of the following specific elements:

1. Acts 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.²²²

134. The Majority rejects the Parties' submissions that actual infliction of terror is an element of the crime of terror.²²³ The plain wording of Article 51(2), as well as the *travaux préparatoires* of the Diplomatic Conference exclude this from the definition of the offence.²²⁴ Since actual infliction of terror is not a constitutive legal element of the crime of terror, there is also no requirement to prove a causal connection between the unlawful acts of violence and the production of terror, as suggested by the Parties.²²⁵

²²² As stated in an earlier footnote, the Majority has not considered it necessary to enter into discussion of "political" terrorist violence and of attempts to regulate it through international conventions. Nevertheless, for comparative purposes, it may be of interest that the 1999 International Convention for the Suppression of the Financing of Terrorism, 39 ILM 270 (2000), defines terrorism as including: "Art. 2: ... (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

²²³ This is not to say that the *factual* allegations in the indictment concerning actual infliction of terror do not remain relevant to the case. These will be discussed later in the Judgement.

²²⁴ Certain States attempted to have intent substituted with actual infliction of terror: see the joint proposal by *Algeria et al.*, *Records*, vol. III, p. 205, as well as the proposals by Mongolia (*id.*, vol. XIV, p. 53), Iraq (*id.*, vol. XIV, p. 54), Indonesia (*id.*, vol. XIV, p. 55), and USSR (*id.*, vol. XIV, p. 73). Other States tried for "acts capable of spreading terror" (see, *e.g.*, Ghana *et al.*, *id.*, vol. III, p. 203). All these proposals failed and the intent requirement was kept.

²²⁵ Prosecution Pre-trial Brief, paras 25, 142-3; Defence Final Trial Brief, para. 888.

135. With respect to the “acts of violence”, these do not include legitimate attacks against combatants but only unlawful attacks against civilians.²²⁶

136. “Primary purpose” signifies the *mens rea* of the crime of terror.²²⁷ It is to be understood as excluding *dolus eventualis* or recklessness from the intentional state specific to terror. Thus the Prosecution is required to prove not only that the Accused accepted the likelihood that terror would result from the illegal acts – or, in other words, that he was aware of the possibility that terror would result – but that that was the result which he specifically intended. The crime of terror is a specific-intent crime.²²⁸

137. The meaning of “civilian population” was given in the section discussing the crime of attack on civilians. The Majority accepts the Prosecution’s rendering of “terror” as “extreme fear”. The *travaux préparatoires* of the Diplomatic Conference do not suggest a different meaning.

(v) Conclusion

138. The Majority is of the view that an offence constituted of acts of violence wilfully directed against the civilian population or individual civilians causing death or serious injury to body or health within the civilian population with the primary purpose of spreading terror among the civilian population – namely the crime of terror as a violation of the laws or customs of war – formed part of the law to which the Accused and his subordinates were subject to during the Indictment period. The Accused knew or should have known that this was so. Terror as a crime within international humanitarian law was made effective in this case by treaty law. The Tribunal has jurisdiction *ratione materiae* by way of Article 3 of the Statute. Whether the crime of terror also has a foundation in customary law is not a question which the Majority is required to answer.

²²⁶ This is clear from the *travaux préparatoires* of the Diplomatic Conference. For example, Romania, *Records*, vol. III, pp. 200-1 (reprisals and other unlawful attacks); GDR, *id.*, vol. IV, p. 79 (reprisals or terror attacks); Indonesia, *id.*, vol. XIV, p. 55 (attack on the civilian population and the spreading of terror should be given “almost the same emphasis”); Ukrainian SSR: “Article [51] widens the scope of protection for the civilian population and individual civilians, who under no circumstances shall be the object of attack. In particular, paragraph 2 explicitly prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population; this is in line with the generally recognized rules of international law, which lay down that Parties to the conflict shall not make the civilian population an object of attack” (*id.*, vol. VI, p. 201).

²²⁷ ICRC Commentary, para. 1940: “the Conference wished to indicate that the prohibition covers acts *intended* to spread terror”.

²²⁸ At the Diplomatic Conference, Egypt said that the words “intended to” in the original version should be replaced by some other expression “in view of the difficulty of establishing intent” (*Records*, vol. XIV, pp. 56-7). France responded that “In traditional wars attacks could not fail to spread terror among the civilian population. What should be prohibited in paragraph 1 is the intention to do so” (*id.*, vol. XIV, p. 65). The comments by Iran should also be noted: “Although objections had been raised to the phrase methods intended to spread terror’ in paragraph 1, methods of war undoubtedly did spread terror among the civilian population, and those used exclusively or mainly for that purpose should be prohibited” (*id.*, vol. XIV, p. 64). Reporting on its second session, Committee III stated: “The prohibition of acts or threats of violence which have the primary object of spreading terror’ is directed to *intentional conduct specifically directed toward the spreading of terror and excludes terror which was not intended by a belligerent and terror that is*

B. Offences Charged under Article 5 of the Statute

1. Prerequisites of Article 5 of the Statute

139. For a crime to be adjudicated under Article 5 of the Statute (crimes against humanity), there are two prerequisites: that there was an armed conflict, and that the alleged criminal acts occurred during that armed conflict.²²⁹ The latter “require[s] nothing more than the existence of an armed conflict at the relevant time and place.”²³⁰ No nexus between the underlying crime and the armed conflict is necessary.²³¹

140. With regard to the general elements of a crime against humanity under Article 5 of the Statute, the Trial Chamber follows the law as stated by the Appeals Chamber.²³² The required elements related to *actus reus* are that:

- (i) there must be an “attack;”
- (ii) the underlying crime must be part of the attack;
- (iii) the attack must be directed against any civilian population;
- (iv) the attack must be widespread or systematic;

The *mens rea* requirement is that the perpetrator knows of the wider context in which the underlying crime occurs and knows that his or her conduct is part of the attack.

141. An “attack” may be defined as a course of conduct involving the commission of acts of violence.²³³ In the context of a crime against humanity, “attack” is not limited to armed combat.²³⁴ It may also encompass situations of mistreatment of persons taking no active part in hostilities, such as of a person in detention.²³⁵ In comparing the content of customary international law concerning crimes against humanity to the Tribunal’s Statute, the Appeals Chamber noted that “the ‘attack on the civilian population’ and the ‘armed conflict’ must be separate notions, although of course under Article 5 of the Statute the attack on ‘any civilian population’ may be part of an ‘armed

merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful” (id., vol. XV, p. 274, emphasis added).

²²⁹ *Kunarac* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 249; *Tadić* Jurisdiction Decision, para. 141.

²³⁰ *Tadić* Appeal Judgement, para. 249.

²³¹ *Tadić* Appeal Judgement, para. 249 and 251.

²³² *Kunarac* Appeal Judgement, para. 85.

²³³ *Krnjelac* Trial Judgement, para. 54; *Kunarac* Trial Judgement, para. 415.

²³⁴ *Kunarac* Trial Judgement, para. 416.

²³⁵ *Id.*, para. 416 endorsed by *Kunarac* Appeal Judgement, para. 89.

conflict”²³⁶ In accordance with customary international law, the attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.²³⁷

142. The phrase “directed against” is an expression which “specifies that in the context of a crime against humanity the civilian population is the primary object of the attack.”²³⁸ In order to determine whether the attack may be said to have been so directed, the following, *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 its course, 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 requirement of the laws of war.²³⁹

143. The attack must be directed against a “civilian population.”²⁴⁰ A population may qualify as “civilian” even if non-civilians are among it, as long as the population is predominantly civilian.²⁴¹ The definition of a “civilian” is expansive and includes individuals who at one time performed acts of resistance, as well as persons *hors de combat* when the crime was perpetrated.²⁴² There is no requirement that the entire population of the area in which the attack is taking place must be subjected to that attack.²⁴³ It is sufficient to show that a certain number of individuals were targeted in the course of the attack, or that individuals were targeted in such a way as to compel the conclusion that the attack was in fact directed against a civilian “population,” rather than against a small and randomly selected number of individuals.²⁴⁴

144. The Prosecution submits that, in the context of an armed conflict, the determination that an attack is unlawful in light of treaty and customary international law with respect to the principles of distinction and proportionality is critical in determining whether the general requirements of Article 5 have been met.²⁴⁵ Otherwise, according to the Prosecution, unintended civilian casualties resulting from a lawful attack on legitimate military objectives would amount to a crime against humanity under Article 5 and lawful combat would, in effect, become impossible.²⁴⁶ It therefore submits that an accused may be found guilty of a crime against humanity if he launches an unlawful attack against persons taking no active part in the hostilities when the general requirements of Article 5

²³⁶ *Kunarac* Appeal Judgement, para. 86 quoting *Tadić* Appeal Judgement, para. 251.

²³⁷ *Kunarac* Appeal Judgement, para. 86; *Tadić* Appeal Judgement, para. 251.

²³⁸ *Kunarac* Trial Judgement, para. 421, endorsed by *Kunarac* Appeal Judgement, para. 91.

²³⁹ *Kunarac* Appeal Judgement, para. 91.

²⁴⁰ *Krnjelac* Trial Judgement, para. 56; *Kunarac* Trial Judgement, paras 421-426.

²⁴¹ *Krnjelac* Trial Judgment, para. 56; *Kunarac* Trial Judgement, para. 425; *Tadić* Trial Judgement, para. 638.

²⁴² *Krnjelac* Trial Judgement, para. 56; *Kupreškić* Trial Judgement, paras 547-549; *Blaškić* Trial Judgement, para. 214; *Jelisić* Trial Judgement, para. 54.

²⁴³ *Kunarac* Appeal Judgement, para. 90.

²⁴⁴ *Id.*

²⁴⁵ Prosecution Final Trial Brief, para. 38.

²⁴⁶ *Id.*, para. 38.

have been established.²⁴⁷ The Trial Chamber accepts that when considering the general requirements of Article 5, the body of laws of war plays an important part in the assessment of the legality of the acts committed in the course of an armed conflict and whether the population may be said to have been targeted as such.²⁴⁸

145. Evidence of attack by opposing forces on the civilian population to which the accused belongs may not be introduced unless it tends to prove or disprove an allegation made in an indictment, such as the Prosecution's contention that there was a widespread or systematic attack against a civilian population.²⁴⁹ A submission that the opposing side is responsible for starting the hostilities is not relevant to disproving the allegation that there was an attack on the civilian population in question.²⁵⁰

146. The attack must be widespread or systematic. "Widespread" denotes a large-scale attack with a large number of victims,²⁵¹ while "systematic" refers to the organized nature of the attack.²⁵² The assessment of what constitutes a widespread or systematic attack is relative to the civilian population under attack.²⁵³ The Trial Chamber must first identify the population which is the object of the attack and, in light of the means, methods, patterns, resources, participation of officials or authorities, and result of the attack upon that population, ascertain whether the attack was widespread or systematic.²⁵⁴

147. The jurisprudence of the Tribunal has established that there is no requirement under customary international law that the attack be connected to a policy or plan.²⁵⁵ Evidence of a plan or policy may, however, be used in showing that the attack was widespread or systematic.²⁵⁶

148. In addition to the intent to commit the underlying crime, the accused must know that there is an attack directed against the civilian population and that the acts performed by him or her are part of that attack.²⁵⁷ Knowledge of the details of the attack is not necessary,²⁵⁸ and it is not required that

²⁴⁷ *Id.*, para. 38.

²⁴⁸ *Krnjelac* Trial Judgment at para. 54.

²⁴⁹ *Id.*, para. 88.

²⁵⁰ *Id.*

²⁵¹ *Id.*, para. 94.

²⁵² *Id.*, citing *inter alia* the discussion in *Tadić* Trial Judgement, para. 648.

²⁵³ *Kunarac* Appeal Judgement, para. 95; *Kunarac* Trial Judgement, para. 430.

²⁵⁴ *Id.*

²⁵⁵ *Id.* (and discussion thereof).

²⁵⁶ *Id.*, para. 98.

²⁵⁷ *Id.*, para. 102.

²⁵⁸ *Id.*, para. 102.

the accused shares the purpose or goal behind the attack.²⁵⁹ It is sufficient that through his or her acts or function the accused knowingly participated in the attack.²⁶⁰

2. Crimes Alleged under Article 5 of the Statute

(a) Murder

149. Counts 2 and 5 of the Indictment charge the Accused with murder as a crime against humanity pursuant to Article 5(a) of the Statute. The counts are referenced to the Accused's alleged conduct of a coordinated and protracted campaign of sniping, artillery, and mortar attacks upon civilian areas and the civilian population of Sarajevo, resulting in the death of civilians.

150. The basic requirements for murder as a crime against humanity are that:²⁶¹

- (a) the victim died;
- (b) the victim's death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility; and
- (c) the act was done, or the omission was made, by the accused, or by a person or persons for whose acts or omissions the accused bears criminal responsibility, with an intention:
 - (i) to kill, or
 - (ii) to inflict serious injury, in reckless disregard of human life.²⁶²

(b) Inhumane acts

151. Counts 3 and 6 charge the Accused with inhumane acts as a crime against humanity pursuant to Article 5(i) of the Statute. The counts are referenced to the Accused's alleged conduct of a coordinated and protracted campaign of sniping, artillery, and mortar attacks upon civilian areas and the civilian population of Sarajevo, resulting in the suffering and injury of civilians.

152. The crime of inhumane acts is a residual clause for serious acts which are not otherwise enumerated in Article 5 but which require proof of the same chapeau elements.²⁶³ The elements of the crime of inhumane acts are that:²⁶⁴

²⁵⁹ Id., para. 103.

²⁶⁰ *Krnjelac* Trial Judgment, para. 59; *Kunarac* Trial Judgment, para. 434; *Blaškić* Trial Judgment, para. 251.

²⁶¹ *Vasiljević* Trial Judgement, para. 205; *Krnjelac* Trial Judgement, para. 324; *Kordić* Trial Judgement, para. 236; *Kupreškić* Trial Judgement, paras 560-1; *Rutaganda* Trial Judgement, para. 80-1; *Akayesu* Trial Judgement, para. 589.

²⁶² *Čelebići* Trial Judgement, para. 439. The element of inflicting "serious injury" is expressed as infliction of "grievous bodily harm or serious injury" in, e.g., *Vasiljević* Trial Judgement, para. 205; *Krnjelac* Trial Judgement, para. 324

²⁶³ *Vasiljević* Trial Judgement, para. 234; *Krnjelac* Trial Judgement, para. 130; *Kvočka* Trial Judgement, para. 206; *Kordić and Čerkez* Trial Judgement, para. 269.

- (a) there was an act or omission of similar seriousness to the other acts enumerated in Article 5;
- (b) the act or omission caused serious mental or physical suffering or injury²⁶⁵ or constituted a serious attack on human dignity; and
- (c) the act or omission was performed intentionally by the accused, or by a person or persons for whose acts and omissions the accused bears criminal responsibility.

153. In order to assess the seriousness of an act or omission, consideration must be given to all the factual circumstances of the case. These circumstances may include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim including age, sex, and health, and the physical, mental, and moral effects of the act or omission upon the victim.²⁶⁶

154. The intention to inflict inhumane acts is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or where he knew that his or her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity.²⁶⁷

155. Because some of the charges in this Indictment have the same underlying facts in common, the Trial Chamber will consider the law on cumulation of charges and convictions.

C. Cumulative Charging and Convictions

1. Cumulative Charging

156. The Defence deems it “unacceptable” that the Accused be cumulatively charged with three different crimes (murder, inhumane acts, and attacks on civilians) on the basis of the same set of factual allegations.²⁶⁸ The Appeals Chamber of the Tribunal has pronounced on the issue of cumulative charging and stated that “cumulative charging constitutes the usual practice of both this Tribunal and the ICTR” and “is to be allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an

²⁶⁴ *Vasiljević* Trial Judgement, para. 234; *Krnjelac* Trial Judgement, par 130; *Kayishema* Trial Judgement, paras 151, 154.

²⁶⁵ *Kvočka* Trial Judgment, para. 208; *Blaškić* Trial Judgment, para. 239.

²⁶⁶ *Vasiljević* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 131; *Čelebići* Trial Judgment, para. 536; *Jelisić* Trial Judgment para. 57; *Kunarac* Trial Judgment, para. 501.

²⁶⁷ *Vasiljević* Trial Judgement, para. 236; *Krnjelac* Trial Judgement, para. 132; *Kayishema* Trial Judgement, para. 153.

²⁶⁸ The Defence contends that cumulative charging under Counts 1 (Infliction of terror), 4 (attacks on civilians through sniping) and 7 (attacks on civilians through shelling) constitutes an error of law since, under all three Counts, the protected object is constituted by the civilian population and “illegal action against civilians can not be qualified as

accused will be proven”.²⁶⁹ The Defence’s arguments with regard to cumulative charging are dismissed.

2. Cumulative Convictions

157. In the present case the criminal conduct alleged against the Accused is the same for Count 1 and Counts 4 and 7 under Article 3 of the Statute (violations of the laws and customs of war: terror upon the civilian population and attack on civilians). The same alleged conduct serves as a basis also for the counts under Article 5 of the Statute (crimes against humanity: murders and inhumane acts). The Trial Chamber must decide in each case on which charges it is permissible to enter a conviction if the legal elements of the crimes were proved.

158. According to the Appeals Chamber it is permissible to enter cumulative convictions under different statutory provisions to punish the same criminal acts if “each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not contained in the other.”²⁷⁰ If it is not the case that each statutory provision involved has a materially distinct element, a conviction should be entered only under the more specific provision, namely the one with the additional element.²⁷¹

(a) Article 3: The Test Applied to Count 1 and Counts 4 and 7

159. Count 1 is referenced to attacks on civilians by sniping and shelling, and Counts 4 and 7 are referenced, respectively, to the same attacks of sniping and shelling.

160. The Majority of the Trial Chamber has found that the crime of terror in Count 1 is defined as “1. Acts 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.”

161. The Trial Chamber has found that the crime of attack on civilians in Counts 4 and 7 is defined as “1. Acts 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

three different criminal offences only on the grounds of the armament from which [sic] the action is taken”, Defence Pre-Trial Brief, paras 8.18, 8.19, 8.24; Defence Final Trial Brief, paras 1099, 1101, 1102, 1104.

²⁶⁹ *Čelebići* Appeal Judgement, para. 400; see also *Kupreškić* Appeal Judgement, para. 385.

²⁷⁰ *Čelebići* Appeal Judgment, para. 412.

²⁷¹ *Čelebići* Appeal Judgment, para. 413.

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.”

162. Applying the aforementioned test, convictions for the crimes of terror and attack on civilians under Article 3 of the Statute based on the same conduct are not permissible. The legal elements are the same except that the crime of terror contains the distinct material element of “primary purpose of spreading terror.” This makes it more specific than the crime of attack on civilians. Therefore, if all relevant elements were proved, a conviction should be entered for Count 1 only.

(b) Articles 3 and 5: Cumulation for War Crimes and Crimes against Humanity

163. The Appeals Chamber has stated that it is permissible to cumulate convictions for the same acts under Articles 3 and 5 of the Statute.²⁷² Therefore, a conviction for the crime of terror upon the civilian population (Article 3 of the Statute) and convictions for murder and inhumane acts (Article 5 of the Statute) may stand together.

(c) Article 5: The Counts of Murder and Inhumane acts

164. The counts of murder and inhumane acts as crimes against humanity are not based upon the same criminal conduct. They seek to punish, respectively, murder of civilians through sniping and shelling attacks (Article 5(a) of the Statute), and other harm suffered by civilians through sniping and shelling attacks, in particular serious injury (Article 5(i) of the Statute). Therefore the issue of cumulative convictions does not arise.

D. Theories of Responsibility under Article 7 of the Statute

165. The Indictment alleges that General Galić, as commander of the Sarajevo Romanija Corps, and pursuant to Article 7(1) of the Statute, bears individual criminal responsibility for planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of the campaign of shelling and sniping against the civilian population of Sarajevo.²⁷³ The Accused is also alleged to bear individual criminal responsibility pursuant to Article 7(3) of the Statute for the conduct of his subordinates.²⁷⁴

²⁷² *Jelisić Appeals Judgment*, para. 82. Article 3 of the Statute requires a close link between the acts of the accused and the armed conflict; that element is not required for crimes under Article 5. Article 5 requires proof that the act of the Accused formed part of a widespread or systematic attack against a civilian population; that element is not required for crimes falling under Article 3 of the Statute. It follows that each crime under these Articles has a distinct material element to be proven at trial not required by the other. The test is met and it is permissible to cumulatively convict under both statutory provisions.

²⁷³ Indictment, para. 10.

²⁷⁴ *Id.*, para. 11.

166. Article 7 of the Statute provides for imposition of individual and superior responsibility on persons on the following basis:

1. 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.

2. [...]

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

1. Individual Responsibility under Article 7 (1) of the Statute

167. The Indictment, in describing the Accused's responsibility, makes reference to each head of responsibility in Article 7(1).²⁷⁵ In the Prosecution's Final Trial Brief reference is made to "ordering" as the basis of responsibility. It is within the Trial Chamber's discretion to convict, if at all, the Accused under the appropriate head of responsibility within the limits set by the Indictment and insofar as the evidence permits.²⁷⁶

168. The Trial Chamber considers, briefly, the case-law of the International Tribunals which elaborates the elements of the various heads of individual criminal responsibility in Article 7(1) of the Statute.²⁷⁷ Considering them in the order in which they appear in the Statute, "planning" has been defined to mean that one or more persons designed the commission of a crime, at both the preparatory and execution phases,²⁷⁸ and the crime was actually committed within the framework of that design²⁷⁹ by others.²⁸⁰ "Instigating" means prompting another to commit an offence, which is actually committed.²⁸¹ It is sufficient to demonstrate that the instigation was "a clear contributing factor to the conduct of other person(s)".²⁸² It is not necessary to demonstrate that the crime would not have occurred without the accused's involvement.²⁸³ "Ordering" means a person in a position of authority using that authority to instruct another to commit an offence. The order does not need to

²⁷⁵ Id., para. 10.

²⁷⁶ *Furundžija* Trial Judgement, para. 189, *Kupreškić* Trial Judgement, para. 746; *Kunarac* Trial Judgement, para. 388, *Krstić* Trial Judgement, para. 602.

²⁷⁷ Cf. Article 6(1) of the Statute of the ICTR. See also the Prosecution Pre-trial Brief (paras 69 *et seq.*) and the Defence's submissions on Article 7 in its Pre-trial Brief (paras 6.1-6.35).

²⁷⁸ *Akayesu* Trial Judgement, para. 480. See also *Blaškić* Trial Judgement, para. 279; *Kordić* Trial Judgement, para. 386 quoting the *Akayesu* Trial Judgement.

²⁷⁹ *Akayesu* Trial Judgement, para. 473.

²⁸⁰ If the person planning a crime also commits it, he or her is only punished for the commission of the crime and not for its planning, *Kordić* Judgement, para. 386 (quoting the *Blaškić* Trial Judgement, para. 278).

²⁸¹ *Akayesu* Trial Judgement, para. 482; *Blaškić* Trial Judgement, para. 280; *Kordić* Trial Judgement, para. 387.

²⁸² *Kvočka* Trial Judgement, para. 252, citing *Kordić* Trial Judgement, para. 387.

²⁸³ *Kvočka* Trial Judgement, para. 252, citing *Kordić* Trial Judgement, para. 387.

be given in any particular form.²⁸⁴ “Committing” means that an “accused participated, physically or otherwise directly, in the material elements of a crime under the Tribunal’s Statute”.²⁸⁵ Thus, it “covers first and foremost the physical perpetration of a crime by the offender himself.”²⁸⁶ “Aiding and abetting” means rendering a substantial contribution to the commission of a crime.²⁸⁷ These forms of participation in a crime may be performed through positive acts or through culpable omission.²⁸⁸ It has been held in relation to “instigating” that omissions amount to instigation in circumstances where a commander has created an environment permissive of criminal behaviour by subordinates.²⁸⁹ The Defence contests the applicability of that case-law and considers that “in all the cases [under Article 7(1)] a person must undertake an action that would contribute to the commission of a crime”.²⁹⁰

169. In the Majority’s opinion, a superior may be found responsible under Article 7(1) where the superior’s conduct had a positive effect in bringing about the commission of crimes by his or her subordinates, provided the *mens rea* requirements for Article 7(1) responsibility are met. Under Article 7(3) (see further below) the subordinate perpetrator is not required to be supported in his conduct, or to be aware that the superior officer knew of the criminal conduct in question or that the superior did not intend to investigate or punish the conduct. More generally, there is no requirement of any form of active contribution or positive encouragement, explicit or implicit, as between superior and subordinate, and no requirement of awareness by the subordinate of the superior’s disposition, for superior liability to arise under Article 7(3). Where, however, the conduct of the superior supports the commission of crimes by subordinates through any form of active contribution or passive encouragement (stretching from forms of ordering through instigation to aiding and abetting, by action or inaction amounting to facilitation), the superior’s liability may be brought under Article 7(1) if the necessary *mens rea* is a part of the superior’s conduct. In such cases the subordinate will most likely be aware of the superior’s support or encouragement, although that is not strictly necessary. In the Majority’s view, the key point in all of this is that a superior with a guilty mind may not avoid Article 7(1) responsibility by relying on his or her silence or omissions or apparent omissions or understated participation or any mixture of overt and non-overt actions, where the effect of such conduct is to commission crimes by subordinates.

²⁸⁴ *Krstić* Trial Judgement, para. 601, citing *Akayesu* Trial Judgement, para. 483; *Blaškić* Trial Judgement, para. 281; *Kordić* Trial Judgement, para. 388.

²⁸⁵ *Kvočka* Trial Judgement, paras 250-1.

²⁸⁶ *Tadić* Appeal Judgement, para. 188.

²⁸⁷ *Aleksovski* Appeal Judgement, paras 162-4.

²⁸⁸ *Tadić* Appeal Judgement, para. 188.

²⁸⁹ *Blaškić* Trial Judgement, para. 337.

²⁹⁰ Defence Pre-trial Brief, paras 6.3-6.4.

170. The Trial Chamber notes that the regulations concerning the application of the laws of war to the armed forces of the SFRY, which would have been known to the Accused, provided under the heading “Responsibility for the acts of subordinates” that, *inter alia*, “a military commander is responsible as a participant or an instigator if, by not taking measures against subordinates who violate the law of war, he allows his subordinates units to continue to commit the acts.”²⁹¹ In situations where a person in authority under duty to suppress unlawful behaviour of subordinates of which he has notice does nothing to suppress that behaviour, the conclusion is allowed that that person, by positive acts or culpable omissions, directly participated in the commission of the crimes through one or more of the modes of participation described in Article 7(1).

171. Proof of all forms of criminal responsibility can be given by direct or circumstantial evidence.²⁹² For instance, “ordering” – a form of responsibility emphasized by the Prosecution in its Final Trial Brief – may be inferred from a variety of factors, such as the number of illegal acts, the number, identity and type of troops involved, the effective command and control exerted over these troops, the logistics involved, the widespread occurrence of the illegal acts, the tactical tempo of operations, the *modus operandi* of similar acts, the officers and staff involved, the location of the superior at the time and the knowledge of that officer of criminal acts committed under his command.²⁹³

172. In order for individual criminal responsibility to ensue, conduct must be coupled with intent. The requisite *mens rea* for all forms of participation under Article 7(1) is that the accused “acted in the awareness of the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.”²⁹⁴ The *mens rea* of the accused need not be explicit but may be inferred from the circumstances.²⁹⁵

²⁹¹ *Čelebići* Trial Judgement, para. 341, quoted in *Blaškić* Trial Judgement, para. 238.

²⁹² *Rule 61 Decision* of 13 September 1996, Case No. IT-95-12, *Prosecutor v. Ivica Rajić*, paras 59-61; *Kordić* Trial Judgement, para. 388; *Martinović* Trial Judgement, para. 61; see also *Abbaye Ardenne* case (Trial of SS Brigadeführer Kurt Meyer), Case n. 22, Canadian Military Court in Aurich (Germany), in *Law Reports of Trials of War Criminals*, volume IV, pp 97-112, stating that “[t]here is no evidence that anyone heard any particular words uttered by the accused which would constitute an order, but it is not essential that such evidence be adduced. The giving of the *order may be proven circumstantially*; that is to say, you may consider the facts you find to be proved bearing upon the question whether the alleged order was given, and *if you find that the only reasonable inference is that an order [...] was given by the accused* at the time and place alleged, and that the [order was complied with], *you may properly find the accused guilty*.” Inferences of this kind were also drawn by the International Military Tribunal for the Far-East sitting at Tokyo, Japan (IMTFE); see section “Massacres were ordered” in Röling and Rüter (eds.), *The Tokyo Judgement*, Amsterdam, 1977, vol. I, page 400, where massacres of prisoners of war were inferred to have occurred in various detention camps based on only one order in relation to one camp coupled with testimonies with regard to other camps

²⁹³ See *Čelebići* Trial Judgement, para. 384-6; *Blaškić* Trial Judgement, para. 307. Some of these factors were cited in the UN Commission of Experts, *Final Report*, S/1994/627, 27 May 1994.

²⁹⁴ *Kvočka* Trial Judgement, para. 251, citing *Tadić* Trial Judgement, para. 688 and *Čelebići* Trial Judgement, para. 327.

²⁹⁵ *Čelebići* Trial Judgement, para. 328.

2. Article 7 (3) of the Statute

173. The case-law of the International Tribunal establishes that the following three conditions must be met before a person can be held responsible for the criminal acts of another under Article 7(3) of the Statute: (1) a superior-subordinate relationship existed between the former and the latter; (2) the superior knew or had reason to know that the crime was about to be committed or had been committed; and (3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator.²⁹⁶ The Appeals Chamber has said that control must be effective for there to be a relevant relationship of superior to subordinate.²⁹⁷ Control is established if the commander had “the power or authority in either a *de jure* or a *de facto* form to prevent a subordinate’s crime or to punish the perpetrators of the crime after the crime is committed.”²⁹⁸ The Appeals Chamber emphasised that “in general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a Court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced.”²⁹⁹

174. In the absence of direct evidence of the superior’s actual knowledge of the offences committed by his or her subordinates, this knowledge may be established through circumstantial evidence. The Trial Chamber may consider, *inter alia*, the indicia given by the United Nations Commission of Experts in its Final Report on the armed conflict in former Yugoslavia.³⁰⁰ The Trial Chamber also takes into consideration the fact that the evidence required to prove such knowledge for a commander operating within a highly disciplined and formalized chain of command with established reporting and monitoring systems is not as high as for those persons exercising more informal types of authority.

175. In relation to the superior’s “having reason to know” that subordinates were about to commit or had committed offences, “a showing that a superior had some general information in his possession which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he had ‘reason to know’.”³⁰¹ The information available to the superior may be in written or oral form. It need not be explicit or specific.³⁰² For instance, past behaviour of subordinates or a history of abuses might suggest the need to inquire further. It is not required that

²⁹⁶ *Čelebići* Trial Judgement, para. 346; *Aleksovski* Trial Judgement, para. 69; *Blaškić* Trial Judgement, para. 294; *Kordić* Trial Judgement, para. 401; *Kunarac* Trial Judgement, para. 395, *Krstić* Trial Judgement, para. 604; *Kvočka* Trial Judgement para. 314.

²⁹⁷ *Čelebići* Appeal Judgement, paras 255-6.

²⁹⁸ *Id.*, paras 192, 256.

²⁹⁹ *Id.*, para. 197.

³⁰⁰ *Čelebići* Trial Judgement, para. 386, quoting the Commission of Experts Report, p. 17.

³⁰¹ *Čelebići* Appeal Judgement, para. 238.

³⁰² *Id.*, para. 238.

the superior had actually acquainted himself or herself with the information in his or her possession.³⁰³

176. The evaluation of the action taken by individuals in positions of superior authority who have a legal duty to take all necessary and reasonable measures to prevent the commission of offences by their subordinates or, if such crimes have been committed, to punish the perpetrators, must be done on a case-by-case basis. Furthermore, it must be kept in mind that the superior is not obliged to perform the impossible; “a superior should only be held responsible for failing to take such measures that are within his material possibility”.³⁰⁴

177. Finally, in cases where concurrent application of Articles 7(1) and 7(3) is possible because the requirements of the latter form of responsibility are satisfied alongside those of the former, the Trial Chamber has the discretion to choose the head of responsibility most appropriate to describe the criminal responsibility of the accused.³⁰⁵

III. FACTUAL AND LEGAL FINDINGS

178. In this third part, the Trial Chamber will explore what are the particular facts of the case and whether these particular facts support beyond reasonable doubt findings that the crimes alleged in the Indictment, charged under Articles 3 and 5 of the Statute and as examined in Part II, were committed.

A. General Remarks on Terminology and Evidence

1. Introduction

179. The Trial Chamber heard 171 witnesses, resulting in 22,016 pages of transcript. In addition, a total of 1,268 exhibits and 15 experts’ reports were admitted.

180. In August 2003, the Prosecution disclosed material after the closing of the case pursuant, *inter alia*, to its obligations under Rule 68 of the Rules. The Defence reacted and regarded part of this material exculpatory. The Trial Chamber, upon review of the material disclosed, finds that, apart from one piece of evidence, the evidence lately disclosed by the Prosecution is redundant or does not concern the Indictment Period. The only piece of evidence not discussed at trial consists of a video interview about an incident where the Bosnian Croat Army (HVO) allegedly shelled ABiH-

³⁰³ *Id.*, para. 239.

³⁰⁴ *Čelebići* Trial Judgement, para. 395.

³⁰⁵ *Krnjelac* Trial Judgement, para. 173; see also *Krstić* Trial Judgement, para. 652.

held territory in Sarajevo.³⁰⁶ The Trial Chamber does not find that information related to this incident, even if true, tends to suggest the innocence or mitigate the guilt of the Accused or may affect the credibility of Prosecution evidence; in fairness to the Accused, this material is however admitted into evidence for the purpose of a better understanding of the overall context of the conflict in Sarajevo during the Indictment period. On 18 November 2003, the Trial Chamber was informed that the Prosecution had disclosed additional material to the Defence, and received it pursuant to Rule 67(D) of the Rules. The Trial Chamber asked for a position of the Defence on this additional material. The Defence has however not filed any comment with the Trial Chamber in the following thirteen days. In the silence of the Defence on the character of the material, the Trial Chamber does not consider this material, and refrains from any decision on the matter.

2. Definitions of “Campaign” and “Sniping”

(a) Campaign

181. The Indictment alleges the existence of a “campaign” without providing a definition of the term. The Prosecution’s understanding of the campaign can be derived relatively easily from the Indictment, which states that a “military strategy” of shelling and sniping was used to kill and wound the civilian inhabitants of Sarajevo; that this was “coordinated” and “protracted”; that the acts in question were “widespread or systematic”; and that they were performed between September 1992 and August 1994.³⁰⁷ In light of this, the Trial Chamber understands the word “campaign” in the context of the Indictment to cover military actions in the area of Sarajevo during the Indictment period involving widespread or systematic shelling and sniping of civilians resulting in their death or injury.

(b) Sniping

182. The Prosecution defines the term “sniping” as “fire from a small calibre weapon, such as [a] rifle or machine-gun, from a concealed, or partially concealed, position”.³⁰⁸ The Defence contests

³⁰⁶ The video interview is contained in a CD-rom marked with the ERN number V000-0120.

³⁰⁷ In its Final Trial Brief, the Prosecution elaborated the notion of a “campaign”, to the extent of alleging that it was “covert” (para. 62), that it had an “intensity” which was “modulated” (para. 67) and was “sensitive to international pressure” (para. 68), that it featured “widespread indiscriminate shelling” (para. 163), and that it was “widespread and systematic” (para. 571). In its closing arguments, the Prosecution associated the notion of “campaign” with a “pattern of behaviour”, “resources ... marshalled to achieve a particular objective”, “degree of planning”, “allocation of assets”, and so forth (T. 21991-2). The Trial Chamber does not find any of these submissions as substantially adding essential elements to the notion of “campaign” referred to in the Indictment.

³⁰⁸ Prosecution Pre-Trial Brief, footnote 3.

this definition as being too broad and defines “sniping” as fire from “a special rifle with [an] optical sight” and claims that the SRK did not have such rifles.³⁰⁹

183. The Indictment does not give a definition of “sniping”. However, the counts related to sniping activity refer to “deliberate targeting of civilians with direct fire weapons,”³¹⁰ and Schedule 1 of the Indictment alleges incidents perpetrated with weapons such as machine-guns.³¹¹ The Accused was therefore on notice that the “sniping” alleged against him was not limited to incidents committed with special sniping rifles equipped with an optical sight. Furthermore, the common definition of sniping is given in terms of the direct targeting of an individual or object, a special rifle not being a necessary part of the definition.³¹² While it is true that both Witness DP36,³¹³ an SRK soldier, and Mustafa Kovać,³¹⁴ head of the Civil Defence in Sarajevo, limited the meaning to *infantry weapons possessing an optical sight*, Francis Briquemont, Commander of UN forces in Bosnia-Herzegovina in 1993-1994, defined a sniper as *an elite firer who shoots from a long distance at individual targets*,³¹⁵ and John Hamill, an artillery officer who was a Military Observer with the United Nations (UNMO),³¹⁶ said that a sniper, in a military sense, is somebody who will *target specific individuals at long range and kill them*.³¹⁷ Hamill approved the definition of “sniping” in a report entitled “Weaponry in the Former Yugoslavia” written by Tetsuo Ani, a Canadian army officer:

[“sniping”:] a term used indiscriminately in the conflict of the former Yugoslavia, applied usually to the targeting of civilians, with a variety of single-shot and multiple-shot (machine guns) weapons. The expression derives from the fact that the source of fire is usually so well concealed that it is difficult to pinpoint. Sniping, in the military sense is conducted for specific purposes, sometimes using specialised weapons that are expressly designed for sniping.³¹⁸

184. The Trial Chamber finds that in the context of the present case, sniping must be understood as direct targeting of individuals at a distance using any type of small calibre weapon.

³⁰⁹ Defence Final Trial Brief, para. 11; Acquittal Motion, para. 11.

³¹⁰ Indictment, counts 2 to 4.

³¹¹ See for instance Scheduled Sniping Incident 15.

³¹² The *Oxford English Dictionary* (2nd edition, 1991) defines “to snipe” as “to shoot or fire at (men, etc.) one at a time, usually from cover and at long range.” The *Collins Shorter Dictionary and Thesaurus* (1995) gives this variety: “to shoot at enemy from cover.” *Webster’s New Universal Unabridged Dictionary* (1996) has it as “to shoot at individuals as opportunity offers from a concealed or distant position.”

³¹³ Witness DP36, T. 18103.

³¹⁴ Kovać, T. 836-7.

³¹⁵ Briquemont, T. 10165-6.

³¹⁶ Hamill, T. 6060.

³¹⁷ Hamill, T. 6156.

³¹⁸ P3675, p. 8; Hamill, T. 6208-10. Milenko Indić, liaison officer of the SRK, referred to “sniping” even more broadly, indicating that *all infantry weapons were referred to as snipers* during the war: T. 18570.

3. Evaluation of Evidence

185. The Trial Chamber, mindful that the burden of proof lies with the Prosecution, has evaluated the evidence adduced at trial in accordance with the Statute, the Rules, and accepted international standards and general principles of law.

186. The Indictment states that “All Counts in this indictment allege the totality of the campaigns of sniping and shelling against the civilian population but the scale was so great that the Schedules to the individual groups of counts in this indictment set forth only a small representative number of individual incidents for specificity of pleading.”³¹⁹ The Indictment, insisting on the word “campaign,” set out to make a wide-ranging case against General Galić.

187. The Appeals Chamber assented to this view, namely that the scheduling of certain incidents was necessary to satisfy the standard of specificity applying to indictments:

an indictment pleaded in the very general terms in the body of this indictment, without at least some of the details given in the two schedules, would not have given adequate notice to Galić of the nature of the case he had to meet. [...] Essential material facts omitted from the body of the indictment are the areas where the sniping and shelling caused injuries to the civilian inhabitants of Sarajevo, the approximate dates upon which the relevant events occurred, and also, in relation to the shelling, the areas from which the shelling originated. The only place where those material facts can be found is in the two schedules.³²⁰

188. Thus the Schedules serve a procedural requirement – that of proper notice. They should not be understood as reducing the Prosecution’s case to the scheduled incidents, and the trial was not conducted on that understanding. Much evidence was led tending to support the Prosecution’s general case, which on the face of it (“shelling and sniping killed and wounded thousands of civilians”)³²¹ goes beyond what could reasonably be based on scheduled incidents. Therefore, the Trial Chamber has paid due attention to the scheduled incidents, for they are alleged to exemplify the overall situation in Sarajevo. In respect of these incidents, the Trial Chamber gave particular attention to questions of distance between the victim and the most probable source of fire; distance between the location where the victim was hit and the confrontation line; combat activity going on at the time and the location of the incident, as well as relevant nearby presence of military activities or facilities; appearance of the victim as to age, gender, clothing; the activity the victim could appear to be engaged in; visibility of the victim due to weather, unobstructed line of sight or daylight. The Trial Chamber was hence in a position to assess in each case, in accordance with the law set out in Part II of this Judgement and in fairness to the Accused, whether a scheduled incident

³¹⁹ Indictment, para. 15.

³²⁰ *Prosecutor v. Stanislav Galić*, Decision [Appeals Chamber] on Application by Defence for Leave to Appeal, 30 November 2001, para. 16.

is beyond reasonable doubt representative of the alleged campaign of sniping and shelling or whether it is reasonable to believe that the victim was hit by ABiH forces, by a stray bullet, or taken for a combatant.

189. At the same time, the Trial Chamber has given no less attention to evidence of non-scheduled sniping and shelling incidents as well as to evidence of other aspects of the situation in Sarajevo. The scheduled incidents have thus been considered by the Trial Chamber within a more general evidentiary context, reflecting how the great number of witnesses in the case understood them and explained them. Witness evidence together with documentary evidence has been chosen, combined, and arranged by the Trial Chamber in accordance with its relevance, the credibility of its source, and its probative value, with due regard to the fact that the present Indictment alleges unlawful conduct and responsibility for such conduct going beyond what is referred to in the scheduled incidents.

190. The Trial Chamber was confronted with the difficulty that maps used or marked by witnesses had no scale indicated on them. Some of these maps did, however, indicate minutes of latitude. It is common knowledge that one degree of latitude equals approximately 111 kilometres, irrespective of location, and that a minute is 1/60th of one degree. On this basis, the Trial Chamber has been able to determine or verify distances between points marked by witnesses on maps with an acceptable degree of accuracy. The Trial Chamber agrees with the Defence that the scale of the map admitted into evidence as exhibit C2 is 1:50,000.³²²

191. The Trial Chamber turns now to a review of events preceding the Indictment Period for a better understanding of the context in which the case is situated, in particular the history of the break-up of the Socialist Federal Republic of Yugoslavia (“SFRY”), which has been described in previous Judgements of this Tribunal and need not be repeated in lengthy detail here.³²³

B. Events Leading to the Military Encirclement of Sarajevo in 1992

1. Break-up of the SFRY

192. From 1945 to 1990 the SFRY was composed of six republics: Croatia, Bosnia and Herzegovina (“BiH”),³²⁴ Macedonia, Montenegro, Serbia (comprising the autonomous regions of

³²¹ Indictment, para. 4(a), see Annex A.

³²² Defence Counsel, T. 20073; see also Prosecutor, T. 20334, 20353.

³²³ See, for example, *Tadić* Trial Judgement, paras 53-126; *Kordić* Trial Judgement, paras 453-466; *Čelebići* Trial Judgement, paras 91-119; *Martinović* Trial Judgement, paras 13-25.

³²⁴ The term BiH will be used throughout the Judgement to denote, according to the context, either the federate entity before the dissolution of the SFRY or the sovereign state emerged during 1992.

Kosovo and Vojvodina), and Slovenia. BiH was unique in that no ethnicity had a majority and therefore no distinct “Bosnian nation” was recognized within the constitutional order.³²⁵

193. After 18 November 1990³²⁶ the Assembly of BiH was dominated by the three leading nationalist parties: the Croatian HDZ, the Serbian SDS, and the Muslim SDA. In Sarajevo, the three parties divided among themselves key positions at both municipal and republican levels.³²⁷ Alija Izetbegović, a Muslim, became President of the BiH Republic.³²⁸

194. Slovenia and Croatia declared their independence from the SFRY in June 1991; during the following months, they strove to establish themselves as sovereign states.³²⁹ This had an impact in BiH. In September 1991, the Main Board of the SDS recommended the formation of Serbian Autonomous Regions. The first of these was the region of Romanija-Birač in the Sarajevo area, which included, since its inception on 17 September 1991, the municipality of Pale and, from 24 December 1991, the municipality of Ilijaš.³³⁰ On 15 October 1991, after the Assembly had adjourned for the day by its President Krajisnik, the SDS delegates departed; however, HDZ and SDA delegates reconvened and passed a “Declaration of Sovereignty.” The Declaration blamed the federal government for the disintegration of the SFRY and proclaimed the sovereignty of BiH.³³¹

195. On 24 October 1991, BiH Serbs formed the Assembly of the Serbian People of BiH³³² and, in a plebiscite held on 9 and 10 November, overwhelmingly voted to remain part of the SFRY.³³³ By the end of 1991, Yugoslav People’s Army (“JNA”) troops and tanks, withdrawn from Slovenia and Croatia, headed towards strategic locations in BiH.³³⁴ On 9 January 1992, the Serbian Republic of BiH (Republika Srpska) was proclaimed with the aim of confederating part of BiH with the SFRY, or otherwise of declaring secession from BiH in order to join the SFRY.³³⁵ During the first months of 1992, Serbian institutions in competition with the ones controlled by the Presidency of

³²⁵ According to both the 1981 and the 1991 censuses, the BiH ethnic composition was approximately 44% Muslims, 31% Serbs, and 17% Croats. Guskova Report, p. 3. The demographic data on Sarajevo are in dispute among the Parties in this trial. The Defence relies on the 1981 census (Defence Final Trial Brief, paras 4-6), while the Prosecution alleges that the 1991 census is a reliable source of data.

³²⁶ Guskova Report, p. 6; Donia Report, p.1.

³²⁷ Donia Report, p. 1.

³²⁸ Guskova Report, p. 8; Radinović Report, para. 26.

³²⁹ Radinović, although denying that the conflict in the former Yugoslavia was of international character (Radinović Report, para. 2) stated that the war started “in the frontier areas between the former Yugoslav Republics” (Radinović Report, para. 5).

³³⁰ Donia Report, pp 2-3.

³³¹ Guskova Report, pp 10-11; Donia Report, p. 3.

³³² Donia Report, p. 3.

³³³ Donia Report, p. 3, reports that voters were required to identify themselves as to their ethnicity and that the few non-Serb voters received ballots of a different colour.

³³⁴ In Sarajevo, they headed towards the Lukavica barracks and were seen passing through the streets in Dobrinja, Hadžić, T. 12201.

³³⁵ Guskova Report, pp. 8; 12-13; Radinović Report, para. 70.

the BiH Republic (“the Presidency”) were established throughout BiH, including in most of Sarajevo’s ten municipalities.³³⁶

196. On 26 November 1991, the SFRY government requested the Security Council to send a peace-keeping mission to the SFRY.³³⁷ On 21 February 1992, the Security Council decided to establish the UN Protection Force (UNPROFOR) to “create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis”.³³⁸ Shortly thereafter, the Parliament of BiH organized a referendum on independence from the SFRY, held on 29 February and 1 March 1992 and boycotted by Bosnian Serbs. With full support from BiH Croats and Muslims, the Presidency declared BiH an independent state on 3 March 1992.³³⁹ In early March 1992, conflict broke out along ethnic lines in various locations in BiH.³⁴⁰ In April 1992, pursuant to a decision by the BiH Presidency, loyal Territorial Defence units, together with paramilitary groups, Bosnian-Croat forces (HVO), and Muslim JNA officers, were gradually incorporated into the Army of BiH (“ABiH”).³⁴¹

2. Sarajevo: Armed Conflict and Military Encirclement

197. Sarajevo, the capital of BiH, is built in a hilly region along an east-west axis which follows the Miljacka River.³⁴² By 1992, Sarajevo had grown into the most important political, cultural, industrial, and commercial centre of BiH.³⁴³ It was relevant to all BiH ethnic groups both as a symbol and for its strategic location.³⁴⁴

198. Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaš, Hadžići, and Trnovo.³⁴⁵ According to the 1991 census, the municipality of Pale was the only one in which BiH Serbs constituted an absolute

³³⁶ Donia Report, pp. 4-6.

³³⁷ See SC Resolution 721 of 27 November 1991.

³³⁸ SC Resolution 743 of 21 February 1992, reaffirmed by S.C. Resolution 749 of 7 April 1992.

³³⁹ Kupusović, T. 614-6; Guskova Report, p. 13; Donia Report, p. 8; Terzić Report, p. 49, suggesting that the constitutionally mandated majority of two thirds for the vote had not been reached.

³⁴⁰ Guskova Report, p. 18.

³⁴¹ Radinović Report paras 53-54; 61-62; Karavelić, T. 11894-11904; Kupusović, T. 644; Sabljica, T. 5310.

³⁴² Stipulated Facts 3, 4.

³⁴³ Kupusović, T. 610; Radinović Report, para. 99.

³⁴⁴ Stipulated Facts 2, 5, 6; Guskova Report, p. 40; Kupusović, T. 610-612; Briquemont, T. 10144-5.

³⁴⁵ Donia Report, p. 1; Radinović Report, paras 78-82. With respect to the population in Sarajevo, according to the 1991 census, the population was 592,980— about 49.2% Muslims, 29.8% Serbs, 6.6% Croats, 10.7% self-described Yugoslavs, and 3.7% of other nationalities. Donia Report (Appendix B); Kupusović, T. 610. According to the Radinović Report (para. 83) and Smail Cekić’s estimates, the population in 1992 was about 527,000, of which 220,000-259,000 Muslims (Cekić, T. 12871-2).

majority (around 69%). The Serbs were a simple majority in Ilidža and Ilijaš. In Novo Sarajevo they were in approximately equal numbers to the Muslims.³⁴⁶

(a) April 1992: Armed Conflict Erupts in Sarajevo

199. In early March 1992, barricades and checkpoints were erected in Sarajevo by both SDS and SDA members.³⁴⁷ Forces loyal to the BiH Presidency seized strategic buildings and military equipment, while the SDS gradually took control of much of the city's western and northern suburbs.³⁴⁸ Much evidence at trial highlighted the psychological impact of a killing of a Serb during a wedding party on 1 March 1992.³⁴⁹ Armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992.³⁵⁰ Extensive gunfire erupted in Sarajevo, with each side accusing the other of having started the hostilities.³⁵¹ Also on 6 April, according to the Donia Report, the JNA attacked the Ministry of Training Academy in Vrace, the central tramway depot, and the Old Town district with mortar, artillery, and tank fire, and JNA units seized control of Sarajevo's airport.³⁵² "The JNA expanded its control of approaches to the city by establishing road blocks along key roads. By the end of April, the contour of Sarajevo's siege was largely established."³⁵³ On 22 April 1992, a peace rally in front of the Assembly of the Republic was broken up by shots coming from the Holiday Inn.³⁵⁴

(b) May 1992: Further Attacks in Sarajevo and Establishment of a Bosnian-Serb Army

200. On 2 May 1992, a major JNA attack on the centre of Sarajevo occurred while President Izetbegović was in Lisbon for negotiations. That day, Tarik Kupusović, a member of the town council, witnessed tanks approaching from Lukavica, a neighbourhood in the southern part of Sarajevo, and opening fire on the Presidency building. Fire was returned from those buildings. Forces loyal to the BiH Presidency prevented the JNA from storming the Presidency, but only

³⁴⁶ Donia Report, Appendix B; witness AD, T. 10651 (closed session). The Defence stresses that in at least 8 of the ten municipalities of Sarajevo, more than 50% of the land was possessed by Serbs, and claims that Bosnian Serbs were deeply rooted in the area (Defence Final Trial Brief, paras 4, 6; Radinović Report, para. 84; Terzić Report, pp 18-21). The contribution of Serbs to Sarajevo history and culture are extensively dealt with in the Terzić Report, especially pp. 18-32. The Trial Chamber does not deem it necessary to take a position on the possible relevance of these data and on their conflicting interpretations. On Ilidza, see Radinović Report, para. 84.

³⁴⁷ Kupusović, T. 616; Sokolar, T. 3586-8; Donia Report, p. 8; Radinović Report, para. 111; Fact agreed in Court by the Parties, T. 15240.

³⁴⁸ Guskova Report, p. 19; Radinović Report, paras 113-114.

³⁴⁹ Donia Report, p. 8; Guskova Report, p 14; Radinović Report, para. 111; Sokolar, T. 3566; 3586; Witness AD, T. 10654-5 (closed session).

³⁵⁰ Stipulated Fact 15; Sokolar, T. 3605; Guskova Report, p. 22. Shooting took place at, among other places, the Assembly of the Serbian People of BiH. Facts agreed in Court by the Parties, T. 7658-9; Sokolar, T. 3569; Kupusović, T. 616; witness DP36, T. 18016.

³⁵¹ Donia Report, p. 9; Kupusović, T. 616; DP36, T. 18016-18025; DP3, T. 13508.

³⁵² Donia Report, p. 9.

³⁵³ Donia Report, pp 9-10.

³⁵⁴ Donia Report, p. 9; Kupusović, T. 622-623.

barely.³⁵⁵ “After that the town was exposed to very heavy shelling. A couple of days later the Bascarsija, the centre of old Sarajevo, was set alight, the national and university libraries, the railway station, the post office and many key buildings in town were heavily shelled and destroyed. [...] This started already on the 2nd or 3rd of May and went on for several weeks, with interruptions, went [on] every day or every other day we experienced shocks. Zetra was destroyed, the Olympic Sports Hall, [...] the railway station had gone, [...] many apartments buildings had burned or several floors of those buildings and several apartments. [...] The buildings that I mentioned are scattered all over town, so one could not identify a particular part of town being targeted, except for the buildings themselves, that were symbols of the town and were essential for its functioning, like the post office, the railway stations, the Zetra sports hall, and similar such facilities.”³⁵⁶

201. After the JNA partially withdrew,³⁵⁷ the parliament of Republika Srpska on 12 May 1992 ordered the formation of the Bosnian-Serb Army (“VRS”),³⁵⁸ designating General Ratko Mladić Chief of its General Staff.³⁵⁹ On 22 May 1992 BiH was admitted as a member state of the United Nations.³⁶⁰ The Security Council called for the withdrawal of foreign forces, including the JNA, from BiH territory.³⁶¹ That same day, General Mladić ordered the formation of the Sarajevo Romanija Corps (“SRK”),³⁶² one of the five constituent Corps of the VRS. It was to be located in the greater Sarajevo area, the former zone of responsibility of the 4th JNA Corps.³⁶³ JNA elements joined local Territorial Defence forces³⁶⁴ and participated in organizing and staffing the SRK.³⁶⁵

³⁵⁵ Kupusović, T. 635-7; 716-8. Eldar Hafizović thought the incident had taken place on 1 May 1993, although was not sure of the date and only remembered with certainty it occurred on a holiday, T. 7757; see also fact agreed in Court by the Parties, T. 13531-5.

³⁵⁶ Kupusović, T. 636-7. A similar chronology and response of shock by Sarajevo civilians was provided by other witnesses, for instance Witness J said the war in Sarajevo first broke out on 4 April 1992 and for the first ten days or so, no one could believe it. Then there was a “feeling that something was wrong” and the shooting started. Around 2 May 1992, the war really started with shooting and shelling regularly occurring which continued up to and beyond September 1992 (T. 8043).

³⁵⁷ Kupusović, T. 643; Donia Report, p. 10; Radinović Report, para. 14; witness DP36 confirmed that the eye-witnessed JNA withdrawal, T. 18035-18036. During the withdrawal, forces loyal to the Presidency attacked retreating columns of JNA soldiers on various occasions with the aim to seize military material; Radinović Report, paras 27-28; 56.

³⁵⁸ Donia Report, p. 11; Radinović Report, paras 12-15; 126.

³⁵⁹ Stipulated Fact 18; Radinović Report, para. 12.

³⁶⁰ UN GA Res. 46/237, 22 May 1992, UN doc. A/Res/46/237 (1992).

³⁶¹ UN SC Res. 752, 15 May 1992 and UN SC Res. 757, 30 May 1992; Guskova, T. 19427; Guskova Report, p. 19.

³⁶² Stipulated Fact 19; Radinović Report, paras 14; 126.

³⁶³ Radinović, T. 21068; Radinović Report, paras 92-95.

³⁶⁴ TO units, the bulk of local defence strategy in SFRY times, had started splitting along ethnic lines since late 1991, Karavelić, T. 11904.

³⁶⁵ Donia Report, pp. 7-8; Robert Donia, T. 7620; Witness D, T. 1890; DP9, T. 14441; Golić, T. 14847-51; 14860; Witness DP5, T. 15239-42 (stating that, in Nedarići, the TO had become a military organization in March 1992; after May 1992, BiH forces used weapons and material left behind by the JNA) and T. 15247-9 (stating that TO members were recognised retroactively as having enlisted into the military from 4 April 1992); Witness DP53, T. 16114; Dževlan, T. 3515 (affirming that the JNA *evolved* into the VRS); Kupusović, T. 643. The Radinović Report (para. 19) states that professional soldiers of the VRS originated from BiH, “while the major part of the command cadre originated from the reserve cadre contingent.” The assistance from Yugoslavia (Serbia and Montenegro) to the VRS and the

The SRK comprised overall about 18,000 soldiers³⁶⁶ divided into ten to thirteen brigades,³⁶⁷ ranging from a few dozen troops to several thousands,³⁶⁸ themselves divided into battalions and companies.³⁶⁹ The main SRK forces were positioned around what was colloquially called the inner ring of Sarajevo, in particular in the area of Ilidža, Nedarići and Grbavica.³⁷⁰ Until the end of 1992, seven SRK brigades were positioned in that part of confrontation lines constituting the “inner ring”, whose length was some 55 kilometres.³⁷¹ Auxiliary forces of the Corps were positioned on the so-called exterior ring of the Sarajevo front, which length was some 180 kilometres.³⁷²

Republika Srpska is described in the Radinović Report, para. 49. Contacts of Bosnian Serbs with the Minister of Defence of the Republic of Serbia as early as in Autumn 1991 are discussed by the Guskova Report, p. 16.

³⁶⁶ Stipulated Fact 20. Each brigade headquarters included a staff whose structure replicated that of the Corps headquarters in order to facilitate communication. Philipps, T. 11692-3.

³⁶⁷ Philipps, T. 11685. In the first phase of its existence, the SRK consisted of thirteen brigades, three independent regiments for support, and five battalions for servicing and supplies. Three brigades from the earliest composition of the 4th Corps of the JNA became part of the SRK: the 49th Motorized Brigade (reformed and renamed 1st Sarajevo Motorized Brigade); the 120th Light Infantry Brigade (renamed 2nd Sarajevo Light infantry Brigade); the 216th Mountain Brigade (renamed 1st Romanija Infantry Brigade), which was located east of Sarajevo in Pale; Radinović Report, para. 92. The other Brigades were: the Novo Sarajevo Brigade, the 2nd Romanija Motorized Brigade, and the Koševo, Vogošća, Ilijaš, Ilidža, Blažuj, Hadžići, Rogatica and Trnovo Light Brigades. The regiments were grouped as: artillery, anti-tank, anti-armour. The battalions were: military police, medical battalion, engineering, transportation and logistics (Phillips, T. 11529). During the summer and autumn of 1992, the SRK composition was being finalised. Brigades were reconstituted, so that the Trnovo and Novo Sarajevo Brigades were brought under the 1st Romanija Infantry Brigade; also, the Igman Brigade was formed from the Blažuj and Hadžići ones (DP18, T. 16433-16434). At the end of November 1992, the Romanija Motorized Brigade and the Rogatica Brigade were transferred to the VRS Drina Corps (Philipps, T. 11528), so that the number of SRK brigades was brought down to nine (Philipps, Chart 2). Towards the end of 1993 and beginning of 1994, the Rajlovac, the Vogošća and the Koševo brigades were integrated into a new 3rd Sarajevo Brigade and the total number of brigades was reduced to seven (Philipps, T. 11570-1, Chart 3; Radinović Report, para. 13 of Summary and Conclusions). An estimate of the positions of the single brigades of the SRK in the Sarajevo region is provided by the Radinović Report, para. 129.

³⁶⁸ Philipps, T. 11546; for instance, as of 11 April 1993, the 2nd Sarajevo Light infantry Brigade was composed of only 56 men (T. 11558), while the Ilidža brigade consisted of about 3,000 troops (T. 11559).

³⁶⁹ A brigade generally consisted of several battalions varying in size from 56 to over 700 troops. Philipps, T. 11554. A battalion was divided into companies. Philipps, T. 11555; Witness DP4, T. 14201; Briquemont, T. 10115. A company was divided into four platoons with 24 to 32 members, Witness DP9, T. 14505-14507..

³⁷⁰ Radinović Report, para. 106; Karavelić, T. 12005; Lazić, T. 13755-6 (Ilidža, Nedarići); Kolp, T. 8256, Kupusović, T. 657 and Niaz, T. 9081 (with respect to Grbavica).

³⁷¹ Radinović Report, para. 129. Radinović stated that the description was made on the basis of the operative documents of the warring sides which were accessible to them, on the basis of secondary sources as well as on the basis of recounts of brigade commanders and other superior officers of the SRK. The information provided by Radinović is however not properly sourced, and the Trial Chamber only refers to it as general information with no specific value in respect to the charges brought in the Indictment. Radinović stated that until the end of 1992, the SRK positions were as follows: (1) the 1st Sarajevo Mechanized Brigade on the front from Gornji Kotorac to the left and Knjeginac to the right. The front line from Grbavica to Knjeginac was held by forces of 1st Romanija Infantry Brigade, from the beginning of the war til mid 1993. (2) the 1st Romanija Infantry Brigade from Knjeginac up to Pasino Brdo (front of 65 km) (3) Koševo Light Infantry Brigade defended the part of the front from Pasino Brdo up to Hotonj (front of 9.5km). (4) Vogošća Brigade was holding the front from Hotonj up to Perivoje (front of 29 km). (5) Rajlovac Brigade was holding the front from Perivoje up to Azici (front of 12 kilometers). In the first part of 1994, these three brigades were joined into one. (6) Illida Brigade was positioned from Azici up to Plandiste (front of 18 km) and (7) 2nd Sarajevo Light Infantry Brigade was also holding the part of the front from Gornji Kotorac up to Krupac, and then also on the exterior ring from Krupac up to Jagodnica (front of 14 km). Caution is further required when examining the positions above because Radinović provided other details in para. 15 of summary and conclusions of his Report, stating that, in the second half of 1992, the SRK was in the following operative disposition : the 1st Romanija Infantry Brigade on the front Trebević-Hresa; the Koševo Brigade from Pasino Brdo to Mrković, with the front facing Koševo; the Vogošća Brigade from Radava to Dobrosevica, with Vogošća in the depth; the Ilijas Brigade along the line Visoko-Ilijaš-Semizovać; the Rajlovac Brigade on the part of the front from Vrelo Bosne to Dogdol, on the most difficult position in Nedzarici, on Stup, and in part towards Igman; the Igman brigade on the line Tarcin-Pazarić towards Hadzici; the Vojkovic, *i.e.* the 2nd Sarajevo Light Infantry Brigade, on the front from Kotorac to Krupac, facing Hrasnica and Butmir; the 1st Sarajevo Mechanized

(c) June/September 1992: Intensification of Attacks in Sarajevo and Further Deployment of UN forces

202. The Trial Chamber was provided with evidence that, between May and September 1992, shelling of military and civilian targets within the city of Sarajevo by both sides continued,³⁷³ and fighting was intense and brutal.³⁷⁴

203. On 8 June 1992, with Resolution 758, the Security Council enlarged the mandate and strength of UNPROFOR and authorized the deployment of UN Military Observers (“UNMOs”). By Security Council Resolution 761 of 29 June 1992, UNPROFOR was tasked with protecting Sarajevo airport, a strategic location south-west to the city, and with helping it function so that humanitarian aid could reach the population.³⁷⁵ In the summer of 1992, pursuant to an agreement with the UN, the SRK handed over Sarajevo airport to UNPROFOR.³⁷⁶ From that moment on, the airport was only to be used by UN personnel for UN purposes.³⁷⁷ UNPROFOR’s mandate was again broadened by Security Council Resolution 776 of 14 September 1992, to include the protection of convoys of humanitarian aid.³⁷⁸ At least three military battalions, French,³⁷⁹ Egyptian, and Ukrainian, were positioned in the city.³⁸⁰ Each consisted of around 500 to 600 soldiers.³⁸¹ The headquarters of the UN troops in charge of “Sector Sarajevo” were in the Post Office (PTT) building in downtown Sarajevo³⁸² and the warring factions had liaison offices there to maintain

Brigade on the front from Lukavica to Grbacica with the positions towards Butmir, Dobrinja, Mojnilo and Hrasno; the 4th Mixed Artillery Regiment in the region of Crepoljsko; the 4th Mixed Anti-Armor Artillery Regiment in Mokro on the positions in Hresa and Han Darventa.

³⁷² Radinović Report, para. 131; the SRK controlled on the west and north-west of the city Vogošća, Raijlovac and Hadžići; on the south-east, Mount Trebević, Tucker, T. 9926; Kolp, T. 8287; 9418; Sokolar, T. 3568; Kupusović, T. 657-658; Van Lynden, T. 2103; DP36, T. 18047-8.

³⁷³ See, *inter alia*, Witness AD, T. 10570 (howitzers targeted Sarajevo at least from August 1993) (closed session); Kupusović, T. 772; Hajir, T. 1677-1681; Sabljica, T. 5314; Golić, T. 14940; The SRK shelled, *inter alia*, the Tito Barracks after retreating from them and leaving behind part of former JNA heavy weaponry, Van Lynden, T. 2134-7, 2211.

³⁷⁴ Witness DP14, T. 15839; Witness J, T. 8043; Witness D (referring to SRK takeover of Grbavica), T. 1884-9; Van Lynden, T. 2210 (referring to ABiH takeover of Mojnilo); Hajir, T. 1677-1681; Maljanović, T. 2977; Radinović Report, paras 116-120.

³⁷⁵ Witness W, T. 9538.

³⁷⁶ Kupusović, T. 625; Radinović Report, para. 143; see Security Council Resolution 758 of 8 June 1992.

³⁷⁷ Tucker, T. 9931.

³⁷⁸ Kolp, T. 8223-7; Briquemont, T. 10040; by Resolutions 819 (16 April 1993), 824 (6 May 1993), 836 (4 June 1993) to protect areas “free from any armed attack or any other hostile act” (the so-called “safe areas” of Sarajevo, Srebrenica, Zepa, Tužla and Goražde) as well as to monitor cease-fires and to use force in self-defence.

³⁷⁹ Indić testified that there were two French battalions, Indić, T. 18576.

³⁸⁰ In the time-frame relevant to the Indictment, UN missions in BiH were commanded by General Philippe Morillon (France) until 12 July 1993, by General Briquemont (Belgium) until 24 January 1994 and later by General Rose (Great Britain), Kolp, T. 8222.

³⁸¹ Abdel-Razek, T. 11581.

³⁸² Mole, T. 9514; Kolp, T. 8221; Moroz, T. 18116.

contact with UNPROFOR and file protests on alleged violations of rules and agreements by the other party.³⁸³

204. On 1 September 1992, the ABiH troops positioned in and around Sarajevo formally came to be known as the 1st ABiH Corps.³⁸⁴ In 1993, some 75,000 troops of the 1st Corps were placed within the confrontation lines around Sarajevo. Approximately half of them were positioned in the city itself,³⁸⁵ while the other half was positioned along the confrontation lines outside the city.³⁸⁶ The two opposing forces in the Sarajevo sector were observed by military monitoring teams (UNMOs) in stations code-named LIMA (outside the city to cover SRK positions) and PAPA (in the city to cover the territory controlled by the ABiH).³⁸⁷ There were around 60 observers as of February 1993, spread out over a total of 14 observation posts (11 LIMAs and 3 PAPAs).³⁸⁸ However, it was generally thought that, due to insufficient numbers, UNMOs could not effectively cover each assigned area.³⁸⁹

205. Confrontation lines encircling the portions of the city under ABiH forces were in place by 10 September 1992, when General Galić took up his duties as SRK commander. The necessity for VRS forces – and for the SRK in particular – to “blockade” the city is recognized by the Radinović Report, as well as the strategic objective of the ABiH of “de-blocking” the city.³⁹⁰ Members of the UNPROFOR present in Sarajevo clearly described the success of the SRK in creating “siege” conditions.³⁹¹ The map attached to this Judgement in annex D shows the extent of the inner ring formed by the ABiH and the SRK confrontation lines facing each other in the city of Sarajevo. The confrontation lines remained relatively static throughout the Indictment Period.³⁹²

C. Was there a Campaign of Sniping and Shelling by SRK forces against Civilians?

206. The Prosecution alleges that “for forty-four months, the Sarajevo Romanija Corps implemented a military strategy which used shelling and sniping to kill, maim, wound and terrorise

³⁸³ Kolp, T. 8310; Harding, T. 4445-6.

³⁸⁴ Karavelić, T. 11905.

³⁸⁵ The troops were divided into thirteen or fourteen brigades, Cutler, T. 8995; Mole, T. 11080; Kolp, T. 8299; Karavelić, T. 11917; D144 (Decision on the units composing the 1st Corps signed by President Izetbegović). In addition to brigades, special forces and an artillery unit were part of the 1st Corps, Briquemont, T. 10116.

³⁸⁶ Karavelić, T. 11787; Bukva, T. 18325. The Radinović Report (para. 133) estimates that the inner ring of Sarajevo numbered between 33,000 to 50,000 soldiers.

³⁸⁷ Carswell, T. 8383; O’Keeffe, T. 9179-81. In December 1992, there were 7 or 8 LIMAs (Cutler, T. 8009-10); in June 1993, 11 LIMAs (Garmeister, T. 8976); from September 1993, 6 or 7 (Garmeister, T. 8976). PAPAs were between 3 and 6 (Cutler, T. 8899-8900; Gardmeister, T. 8970).

³⁸⁸ In January-February 1994, the monitors increased due to the need to monitor the withdrawal of heavy weaponry; Niaz, T. 9067.

³⁸⁹ Cutler, T. 8901; Carswell, T. 8330; 8358; Indić, T. 18793-4.

³⁹⁰ Radinović Report, paras 105; 134.

³⁹¹ Kolp, T. 8256; Rose, T. 10187-8; 10259.

³⁹² Mandilović, T. 1011-2; Radinović Report, paras 105, 135.

the civilian inhabitants of Sarajevo. The shelling and sniping killed and wounded thousands of civilians of both sexes and all ages, including children and the elderly”.³⁹³ The Defence submits that the “City was neither shelled, nor targeted from snipers. When the SRK units acted, they always acted in self-defence, and only and exclusively on legitimate military targets in the city and on enemy’s firing position”.³⁹⁴ It argues that a war was being waged in an urban setting, which “always includes collateral damages, especially when one side is not respecting its own obligations, like it was the case with the Muslim side, namely the obligation to remove civilians from the zone of military activities”, and “despite all precautions, it is not possible to control the opening of fire and the firing in urban conditions to avoid civilian casualties”.³⁹⁵ The Defence argues that the BiH Presidency intentionally attacked civilians on its side, pretending it came from the other belligerent party, to provoke the sympathy of the international community in favour of the BiH Presidency.³⁹⁶

207. In this section, the Trial Chamber reviews the evidence of deliberate sniping and shelling of civilians, both under the heading of scheduled incidents and at a more general temporal and geographical level. In fairness to the Accused, but also because of the amount of evidence relating to the scheduled incidents and the manner in which it was introduced and dealt with, the Trial Chamber recalls that it paid due attention to those incidents. It tried to the extent that was possible and reasonable to assess each scheduled incident on its own terms, but also with a limited reference to other evidence concerning the situation of civilians in Sarajevo. By this method, the Trial Chamber will make findings on whether the Prosecution has proved that the SRK deliberately carried out any of the alleged scheduled sniping and shellig attacks attacks against civilians or against persons whose status should have been presumed to have been civilian.

208. The Majority wishes to clarify at this point its reasoning in moving from the level of specific scheduled incidents to the level of a general campaign. It would be implausible to claim that 24 sniping attacks and 5 shelling attacks amounted to a “campaign”, in the sense above. The Majority makes no such claim. Spread out over a period of two years, the total of proved attacks, if any, could not in itself represent a convincing “widespread” or “systematic” manifestation of sniping and shelling of civilians. Therefore, the evidence which demonstrates whether the alleged scheduled incidents, if proved attacks, were not isolated incidents but representative of a campaign of sniping and shelling as alleged by the Prosecution is examined with no less due attention.

209. The Trial Chamber will examine first general evidence of sniping and shelling at civilians in ABiH-held areas of Sarajevo, then turn to evidence of sniping and shelling at civilians in specific

³⁹³ See Indictment, para. 4 (a).

³⁹⁴ Defence Final Trial Brief, para. 11 (footnote omitted).

³⁹⁵ *Id.*, para. 13.

geographical areas of Sarajevo to consider whether, as alleged by the Prosecution, the sniping and shelling at civilians was conducted throughout the city of Sarajevo, that is in urban and rural neighbourhoods of Sarajevo.

1. General Evidence of Sniping and Shelling at Civilians in ABiH-held Areas of Sarajevo during the Indictment Period

210. The city of Sarajevo came under extensive gunfire and was heavily shelled during the Indictment Period. This is documented by UN reports, and other UN sources, which offer general assessments of the death or injury of Sarajevo civilians in the course of such attacks.³⁹⁷ John Hamill, a military observer who served with UNPROFOR from May 1993 to July 1994,³⁹⁸ explained that “Very, very few [shelling] incidents actually stand out” in his mind because there were “a whole series of attacks that went on killing civilians in the city of Sarajevo” during his stay there.³⁹⁹ Francis Thomas, a Canadian officer who oversaw UNMOs in Sarajevo from October 1993 to July 1994,⁴⁰⁰ testified that upon his arrival the bulk of the shelling was directed at the city of Sarajevo and he could detail cases in which UN representatives observed “artillery fire on the ground, hitting civilians”.⁴⁰¹ A 1993 UNPROFOR report indicated that shelling had resulted in a “High level of civilian casualties relative to recent months”.⁴⁰²

211. The Defence submits however that the evidence suggests that the ABiH carried out attacks against their own civilians to attract sympathy of the international community. The Prosecution accepts that the Trial Record discloses that elements sympathetic or belonging to the ABiH may have attacked the Muslim population of Sarajevo although it argues that this evidence was inconclusive.⁴⁰³ The Trial Chamber notes in this respect that Piers Tucker, a British officer who

³⁹⁶ Id., paras 837-849.

³⁹⁷ See, for example, P358 (UNPROFOR report for November 1992); P618 (UN report for December 1992); D1826 (UNPROFOR weekly situation report for the period between 12 to 18 February 1993); D66 (Annex VI to 1994 UN report); P918 (UNPROFOR report of March 1993 – admitted under seal); P932 (UNPROFOR report of March 1993– admitted under seal); P3689 (UNPROFOR report of October 1992 – admitted under seal). There is no dispute either that there was intense fire from within the city into SRK-controlled territory.

³⁹⁸ Hamill, T. 6059-60.

³⁹⁹ Hamill, T. 6165.

⁴⁰⁰ Thomas, T. 9255-7.

⁴⁰¹ Thomas, T. 9265, 9394. Thomas added that in the specific cases that he referred to, UN representatives “knew that there were nobody else [other than civilians at the] location [of the shelling incidents.]”, Thomas, T. 9394.

⁴⁰² P1963 (UNPROFOR situation report on 13-14 December 1993– admitted under seal). See also P2578 (UNMO summary for 4 March 1994 to 29 April 1994): “05 [March] ... civilian wounded vicinity Holiday Inn ... 08 [March] ... 1 X BiH civilian wounded by [small-arms] fire in Dobrinja area ... 09 [March] ... 3 X BiH civilians wounded by [small-arms] fire ... 11 [March] ... 1 X BiH civilian wounded by [small-arms] fire ... 13 [March] 2 X BiH civilians wounded ... 16 [March] 3 X BiH civilians wounded by [small-arms] fire, Dobrinja area ... 17 [March] ... 3 X BiH civilians wounded ... 23 [March] 1 x BiH civilian wounded [by small-arms] fire ... 15 [April] ... 4 x BiH civilians wounded after [shooting] ... 23 [April] 1 x BiH civilian wounded [by small-arms] fire ... 26 [April] ... 1 x BiH civilian wounded by [small-arms] fire.” For the purpose of determining non-combatant status in P2578, “women and children were automatically considered civilians,” Thomas, T. 9474.

⁴⁰³ T. 21992-3.

served with UNPROFOR, testified that with respect to the firing upon a funeral taking place in a cemetery north of Koševo hospital, “people from [the United Nations] headquarters Sector Sarajevo, and I can name them if you need, told me that they had carried out investigations [...] and that they believed that that fire had come from Bosniak forces”.⁴⁰⁴ Similarly, a Canadian officer with the UNPROFOR testified that it was “‘common knowledge’ that [investigations carried out by the United Nations] strongly pointed to the fact that the Muslim forces did, on occasion, shell their own civilians” though, “for political reasons,” that information was not made public.⁴⁰⁵ Richard Mole, Senior UNMO from September to December 1992, testified that he was “sure – though [he could not] give evidence of fact – that incidents occurred where, to perpetuate [the view that the population of Sarajevo was beleaguered] ... the Presidency forces may well have fired upon their own city to maintain that beleaguered viewpoint”. He added that United Nations investigations of certain incidents occurring in the Sarajevo during the conflict had concluded that “there was an element of doubt as to [whether the SRK or the ABiH] had done the damage”.⁴⁰⁶ According to Michael Rose, the British general who commanded UNPROFOR forces in Bosnia-Herzegovina from January 1994 to January 1995, what “was certain is that the Bosnian government forces would, from time to time, fire at the Serbs, at particular moments of political importance, in order to draw back fire on to Sarajevo so that the Bosnian government could demonstrate the continuing plight of the people in Sarajevo”.⁴⁰⁷

212. On other occasions, UN sources also attributed civilian injuries and deaths to SRK actions, including deliberate targeting. According to General Francis Briquemont, who commanded UN forces in Bosnia-Herzegovina from 12 July 1993 to 24 January 1994,⁴⁰⁸ “There is no doubt that during the shelling” of Sarajevo by the SRK, “civilians were hit.”⁴⁰⁹ An ABiH source also attributed responsibility for civilian injuries and deaths in the city to the SRK. By letter dated 9 December 1993, ABiH General Rasim Delić complained to UNPROFOR that “the city of Sarajevo has been exposed to heavy shelling”, leading to “a great number of casualties among civilian population [...] I take this opportunity to inform you that I have warned [the SRK] to stop the actions against the city of Sarajevo, otherwise I will have to issue an order to the units of the [ABiH] to respond to the same level.”⁴¹⁰

213. The Defence repeatedly proposed to witnesses who served the UN in Sarajevo that the physical damage was greater on the front line than in the city, implying that the casualties inflicted

⁴⁰⁴ Tucker, T. 9895-6; 9940.

⁴⁰⁵ Henneberry, T. 8734.

⁴⁰⁶ Mole, T. 9500-9501, 10997-99.

⁴⁰⁷ Rose, T. 10184-6, 10210-1.

⁴⁰⁸ Briquemont, T. 10037-9.

⁴⁰⁹ Briquemont, T. 10103.

in the city were unintentional. The Trial Record shows however that there was more shelling going *into* the city and that civilians, and the civilian population as such, in ABiH-held areas of Sarajevo were targeted from SRK controlled territory.

214. Hamill recounted an admission by an SRK officer to whom he spoke in relation to the Markale incident in February 1994: Colonel Cvetković “was the commanding officer of the Bosnian Serb army artillery regiment based in Mrkovići. We interviewed him in connection with this incident because he was designated by Republika Srpska authorities to deal with us. [...] he also said that in the previous year, they had fired 30 to 40,000 rounds into the city and why were we so concerned about one round when they had fired so many”.⁴¹¹ An undated UNPROFOR military assessment of the situation in the city stated, without indicating its basis for doing so, that “Not all [SRK] shelling is provoked. The [SRK soldiers] often deliberately shell civilian targets in order to create civilian casualties.”⁴¹²

215. John Ashton, who arrived in Sarajevo in July 1992 as a photographer,⁴¹³ remembered that during his stay in Sarajevo, “The majority of things – the targets I saw were civilian targets. I saw a lot of people go out to water lines. These were targeted specifically. And I saw people try to cut down trees. I saw snipers actually shoot at people.”⁴¹⁴ Morten Hvaal, a Norwegian journalist covering the conflict from September 1992 to August 1994,⁴¹⁵ witnessed civilians being shot at “more or less every day, if not every day”⁴¹⁶ and estimated that he saw, or arrived within 30 minutes of, “50 to a hundred”⁴¹⁷ instances where civilians were actually hit by small-arms fire. Mirsad Kučanin, a criminal inspector with the Centre of the Security Service in Sarajevo,⁴¹⁸ performed more than a hundred investigations of shooting and shelling incidents in the city of Sarajevo, and “in all of them, casualties were civilians.”⁴¹⁹ Kučanin knew of at least 30 instances during the conflict when UNPROFOR was informed of shooting directed at civilians and took action such as placing armoured personnel carriers to block lines of sight.⁴²⁰ Mustafa Kovać, who

⁴¹⁰ P1928 (Letter from Rasim Delić dated 6 December 1993).

⁴¹¹ Hamill, T. 6109.

⁴¹² P2442 (Collection of UNPROFOR documents), p. 37.

⁴¹³ Ashton, T. 1204. Ashton was still present in Sarajevo in early 1994. Ashton, T. 1226-7.

⁴¹⁴ Ashton, T. 1227. For example, Ashton helped in January 1993 a person who had been shot at night while cutting wood somewhere along “the main boulevard way downtown [and] all the way out at to the PTT [building],” at a location where no military presence could be seen, Ashton, T. 1228-30.

⁴¹⁵ Hvaal, T. 2249-50.

⁴¹⁶ Hvaal, T. 2276.

⁴¹⁷ Hvaal, T. 2277.

⁴¹⁸ Kučanin, T. 4499.

⁴¹⁹ Kučanin, T. 4556.

⁴²⁰ Kučanin, T. 4621-2. Witness Y, an UNPROFOR officer, confirmed that both the local authorities of Sarajevo and UNPROFOR erected barriers to protect the population of the city from shooting and shelling during the conflict, “notably along the access facing the Serb quarters, Serb neighbourhoods,” Witness Y, T. 10850-2. See also Kovać, T. 872-3.

worked with the Civil Defence organization in Sarajevo,⁴²¹ explained that frequent shelling had caused civilian casualties in the city in 1992.⁴²²

216. Akif Mukanović, soldier with the ABiH, said that he felt more secure at the frontline than elsewhere in Sarajevo because “fire was opened less often” at the confrontation lines.⁴²³ This is concordant with the explanation given by Milan Mandilović, surgeon at the State Hospital, as to why civilian patients received at the State Hospital out-numbered combatants at least four to one.⁴²⁴ He said:

Sarajevo is a relatively large city with quite a large population, and you couldn't keep that entire population in a basement. The population had to move around. People went to work. They had to go and fetch foodstuffs or humanitarian aid. [...] And it is precisely because of that that there were far more injured and wounded civilians coming into hospital. The soldiers were on the outskirts of town, and probably in trenches too, so that they did have some protection, and there were fewer of them, fewer soldiers than there were civilians.⁴²⁵

217. The Trial Record also contains evidence that civilians were deliberately targeted while engaged in civilian activities or while in civilian locations.

218. Ashton testified about fire-fighters targeted when tending fires started by shelling. He observed “an attack which lasted for an hour right next to the PTT building which hit a factory. The firemen came out to fight the fire and then of course there was a lull in the shelling and as soon as the firemen arrived they started firing again, the shells started coming in again.”⁴²⁶ In another occasion, during the shelling of a bakery compound, “the fire department responded despite the fact the shells continued to come down.” According to that witness, in that instance, UNPROFOR determined that the shelling had come from Grbavica, SRK-held territory.⁴²⁷

219. Ambulances were also targeted. They were sometimes driven at night, without flashing their lights, and not on main roads to avoid being fired upon.⁴²⁸ Witness AD, an SRK soldier, testified that the Commander of the Ilijaš Brigade gave orders to his mortar battery to target ambulances, a marketplace, funeral processions, and cemeteries further north from the city, in Mrakovo.⁴²⁹

⁴²¹ Kovać, T. 839.

⁴²² Kovać, T. 841-3.

⁴²³ Mukanović, T. 3086.

⁴²⁴ Mandilović, T.1022.

⁴²⁵ Mandilović, T.1036-8.

⁴²⁶ Ashton, T.1216.

⁴²⁷ Ashton, T.1390-1. Ashton took photographs of the incident in October 1992; its location is marked “P3” on map P3645 and the photograph is part of P3641, being ERN 0039 1285.

⁴²⁸ Mulaomerović, T.1632.

⁴²⁹ Witness AD, T. 10741-2 (closed session); 10756 (closed session). The witness also stated that he saw “artillery fire from, almost from the cemetery itself” from his lines. Witness AD, T. 10687 (closed session).

220. Hvaal testified that during the Indictment Period he attended funerals several times a week and saw that the Bosnian Serb army would shell them. On 20 to 30 occasions he claimed to have experienced a funeral procession being shelled. Hvaal pointed out that, over time, covering a cemetery became eventually very dangerous. Because of this, by the end of 1993 it “has become the rule” that funerals would be held only at night.⁴³⁰ Harding, a UNMO in Sarajevo from July 1992 until January 1993, said that funerals at the Lion Cemetery “took place all the time. Sometimes three or four at a time”. “Funerals were a fairly common thing to be attacked, and so it wasn’t unusual.” The attacks came from the north and north-east, “from the Bosnian Serb forces.” He gave evidence to the effect that the front line was so close at that point and that the Lion cemetery could be observed from it.⁴³¹ Such attacks “happened a lot, it became normal and because it was considered normal, we didn’t make a report on it.”⁴³² The digging of graves and holding of funeral services were conducted at night,⁴³³ and in some cases burials were not in cemeteries at all.⁴³⁴

221. According to UN military personnel, trams were also deliberately targeted by Bosnian Serb forces. Fraser, an UNPROFOR representative in Sarajevo from April 1994 onwards, testified: “I can indicate to you there was one shooting in the city on the tram, where some people were shot and killed and they were identified as civilians.”⁴³⁵ Adrianus Van Baal, UNPROFOR Chief of Staff in Bosnia-Herzegovina in 1994, testified that on 16 March 1994 General Milovanović, the Chief of the Main Staff of the VRS, threatened that if the trams in Sarajevo continued to run, he would ensure that they and their passengers would be targeted. Van Baal said that following the threat, the trams which continued to run were indeed targeted.⁴³⁶

222. Civilians in ABiH-held areas of Sarajevo deferred even basic survival tasks to times of reduced visibility, such as foggy weather⁴³⁷ or night time, because they were targeted otherwise. Civilians would often collect wood at night, in particular, older people, “because they couldn’t

⁴³⁰ Hvaal, T. 2286, 2290.

⁴³¹ Harding, T.4324-6. He drew a line with the letter "S" on map to indicate the front line and a cross and "L" to indicate the Lion Cemetery.

⁴³² Harding, T. 4393. The witness stated that Major Nikolai Roumiansev, a Russian officer with UNPROFOR, did not make any suggestion that there was outgoing fire from the Lion Cemetery which may have attracted incoming fire (T. 4395). However, ABiH armoured vehicles were seen from PAPA 3 near the Cemetery itself (T. 4471).

⁴³³ Šehbajraktarević, a funeral director, stated that they had to dig the graves at night because Sarajevo was safer in the darkness. Funeral rites were shortened to a minimum. The witness testified of the shelling of Fatima Karcic’s funeral procession around 4 pm in June 1993, which killed eight people on the spot. “A shell fell and hit a plum tree, and killed eight people on the spot. My men went to pick up the bodies.” After that, the Municipal Assembly gave orders to conduct funerals at night, Šehbajraktarević, T.1777-8.

⁴³⁴ Kupusović, T.666.

⁴³⁵ Fraser, T. 11229-30.

⁴³⁶ Van Baal, T.9862-3.

⁴³⁷ Kupusović, T. 662: “people were happy when there was a thick fog in town and around it, when there was no sniping.” Thomas discussed sniper activity, which was a UNMO Daily SitRep of 4-5 December 1993), T. 9300-1. The document refers to reduced sniper activity as a result of poor visibility.

move as fast and they knew it was risky to travel during the day.”⁴³⁸ Schools were closed, and temporary neighbourhood schools were established in cellars, to minimize the distance that children had to travel to their classes, and therefore their exposure to sniping and shelling.⁴³⁹ Many civilians lived for a long period of time in the cellars of their buildings in order to avoid the shells.⁴⁴⁰ They learned to move around as little as possible,⁴⁴¹ rarely leaving their apartments:⁴⁴² some old people were “literally dying of malnutrition because they were too terrified to come out.”⁴⁴³

223. Because obtaining food and water was fraught with danger, since both involved queuing for prolonged periods with the risk of being targeted, Kovać testified that the Civil Defence varied the sites for the distribution of food provided by humanitarian agencies.⁴⁴⁴ When the water supply failed, international aid agencies supplied water pumps which were installed at suitable locations around the city.⁴⁴⁵ Residents had to wait, sometimes for a day, before their turn to fill their containers. UN troops had to frequently modify the locations where citizens gathered to receive humanitarian aid in order to avoid being targeted by shells.⁴⁴⁶

224. Civilians venturing from their homes for these chores would often accompany each other, so that if they were wounded there would be assistance. One witness said she would always go out with someone, in case she was wounded, since she was living alone with three children. Sometimes children accompanied the women, to help carry the water.⁴⁴⁷ Civilians also developed alternative routes to traverse the city, which offered a greater degree of cover from sniper fire from SRK-held areas. Even so, these routes could afford no protection from shelling with indirect fire weapons, such as mortars.⁴⁴⁸

⁴³⁸ Ashton, T. 1129.

⁴³⁹ Mukanović, T. 3086.

⁴⁴⁰ Omerović, T. 3848-9; Kupusović, T. 680-1; Ekrem Pita, 3997.

⁴⁴¹ Tarić, T. 3124-6;

⁴⁴² Ashton, T. 1414. Menzilović, who lived on the hills in the area of Briješko brdo, stated that civilians were targeted by SRK snipers, who “wouldn’t let us leave our houses,” Menzilović, T. 6998.

⁴⁴³ Ashton, T. 1371, referring to early winter 1993 and again towards the end of 1993.

⁴⁴⁴ Kovać, T.848.

⁴⁴⁵ Kovać, T.846.

⁴⁴⁶ Kovać, T. 843; 871; see also Hafizović, T. 7760-3 (shelling targeted Oslobodilaca Sarajevo Street where “it was well known” that humanitarian aid was distributed); Hadžić, T. 12294-5 (stating that anti-atomic shelters were used to deliver humanitarian aid).

⁴⁴⁷ Menzilović, T.6982.

⁴⁴⁸ For example, Thomas discussed P2088, which was an excerpt from a UNMO Daily SitRep generated in January 1994 (T. 9309-9311, closed session). It recorded that the SRK was shelling areas that were known to be places that civilians used to seek cover from snipers. He testified that “the Bosnians would use covered routes to avoid sniper alley and artillery would be brought to bear on those covered routes, and that was an indicator that they were being specifically targeted.” He observed that this practice explained why there was a high number of casualties in relation to the low number of outgoing rounds reported.

225. To Kovać, “More or less every neighbourhood [of Sarajevo] was shelled during the conflict.”⁴⁴⁹ The Prosecution adduced detailed evidence in relation to specific areas of the city of Sarajevo held by ABiH forces to support its allegation that civilians therein were targeted throughout the Indictment Period from SRK-controlled areas.

2. Sniping and Shelling of Civilians in Urban ABiH-held Areas of Sarajevo

(a) General Grbavica Area

226. The Prosecution alleges that the high-rise buildings in the area of Grbavica “were notorious among Sarajevans and internationals as a source of sniping fire directed to civilians”.⁴⁵⁰ It claims that “the suitability of this site for sniping civilians in the city was unparalleled, not only for the close proximity from which SRK forces could snipe into the heart of the city from a height, but more particularly because at that point the width of the city was quite narrow, exposing all traffic, including pedestrian, trams, buses and other vehicular traffic, that traversed the city on an east-west axis, to fire from these high-rise apartment buildings.”⁴⁵¹

227. Grbavica was a neighbourhood in the Municipality of Novo Sarajevo located in the southern-central part of the city of Sarajevo. It was under SRK control throughout the Indictment period.⁴⁵² Both parties are in agreement on this point. Maps marked by Prosecution and Defence witnesses indicate that the confrontation line in Grbavica ran along the Miljacka River, with Grbavica lying to the south.⁴⁵³ The area of Vrace, to the southwest of Grbavica, was also under the control of the SRK during the Indictment period.⁴⁵⁴

228. The evidence shows that civilians in Novo Sarajevo were targeted from the SRK-controlled area of Grbavića. From October 1993 to March 1994, when Afzaal Niaz, an UNPROFOR representative, was on duty in Sarajevo, there was, according to this witness, frequent sniping from the south-eastern side of the confrontation line in Grbavica.⁴⁵⁵ Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994, testified that it was common knowledge that sniper fire originated in the Grbavica area, “in the buildings on the other side of the river”.⁴⁵⁶ Aernout Van Lynden, a Dutch journalist who visited Sarajevo several times during the

⁴⁴⁹ Kovać, T. 843.

⁴⁵⁰ Prosecution’s Final Trial Brief, para. 285.

⁴⁵¹ Id., para. 285.

⁴⁵² Karavelić, T. 12005; Niaz, T. 9081; Lazić, T. 13755-6; Kolp, T. 8254, 8256; Kupusović, T. 657; Hamill, T. 6174; Jusić, T.3242; Milada Halili, T. 2732; Vidović, T. 4241; Golić, T. 14849; Radinović, T. 20901.

⁴⁵³ Hamill, T.6174; P3704 (pre-marked map of confrontation lines); DP10, T.14328; D1776 (map marked by DP10).

⁴⁵⁴ Vidović, T.4240-4241; Mandilović, T.1014; Velić, T.2774; 2776-2777; P3644.DF (map marked by Fraser).

⁴⁵⁵ Niaz, T. 9081.

⁴⁵⁶ Kolp, T. 8243.

Indictment period,⁴⁵⁷ recounted that the sniper positions held by the SRK, in particular within Grbavica, were dangerous, as they allowed soldiers to “literally shoot down streets” in this central part of Sarajevo.⁴⁵⁸ John Ashton testified that “there was gunfire coming across the river from Grbavica directly into the city, between the buildings, near the university and near the Holiday Inn and near the museum”. He was later informed by SRK soldiers in Grbavica that “that’s where they had their front line set up and that’s where they were firing at people when they crossed the streets.”⁴⁵⁹

229. Some areas of town were deliberately avoided by the population due to the danger of gunfire originating in Grbavica. The main thoroughfare of Sarajevo, part of which was called Marshal Tito Boulevard, and Marin Dvor, a central district, were exposed to frequent gunfire from that area. Jeremy Hermer, a UNMO at LIMA positions from August 1993 to January 1994,⁴⁶⁰ testified that the main avenue in Sarajevo, which runs parallel to the Miljacka River from Stari Grad into the western part of town, became known as “Sniper Alley.”⁴⁶¹ Van Lynden indicated that much of this road, as well as Marin Dvor Square, and the intersection near the Presidency building, were open to sniper fire from the high-rise buildings in Grbavica.⁴⁶² He recalled seeing signs in some areas warning about sniping activity, as well as barriers across streets for protection of civilians from gunfire from those positions.⁴⁶³ Morten Hvaal, a Norwegian journalist covering the conflict from September 1992 to August 1994, said that throughout 1992 and 1993, before there were any effective anti-sniper measures in Sarajevo, he was frequently fired upon from buildings in SRK-controlled Grbavica when driving along “Sniper Alley.”⁴⁶⁴ From Grbavica the SRK “basically controlled a large chunk of the road that you had to travel to get to the western part of the city. So it was a case of picking up as much speed as you could in your car and going past there as fast as you possibly could”.⁴⁶⁵ He said that it was possible to see, particularly in the beginning of the war, “dust, smoke, even muzzle flashes partially because there was no one to engage them. They were basically at liberty to operate in a fairly relaxed manner [...] it was pretty easy to figure out where it was coming from.”⁴⁶⁶ Major Roy Thomas, a senior UNPROFOR Military Observer in Sector Sarajevo from October 1993 to July 1994, testified that civilians would use covered routes to avoid “Sniper Alley” although artillery would be brought to bear on those covered routes; to him, this was

⁴⁵⁷ Van Lynden, T. 2085, 2092-3.

⁴⁵⁸ Van Lynden, T. 2216-7.

⁴⁵⁹ Ashton, T. 1221.

⁴⁶⁰ Hermer, T. 8439.

⁴⁶¹ Hermer, T. 8467.

⁴⁶² Van Lynden, T. 2117, 2119.

⁴⁶³ Van Lynden, T. 2117, 2119.

⁴⁶⁴ Van Lynden, T. 2262, 2264.

⁴⁶⁵ Van Lynden, T. 2261.

⁴⁶⁶ Van Lynden, T. 2262.

an indication that civilians were the targets.⁴⁶⁷ Fouad Šehbajraktarević, a local resident, testified that “as you passed along Titova Street, you had the protection of buildings on either side. As soon as you reached Marin Dvor, it’s all over. There are snipers that can hit from any side from Grbavica.”⁴⁶⁸

230. Several witnesses testified that the gunfire from Grbavica was aimed specifically at civilians. In December 1993, Hermer witnessed several rounds being fired directly at a crowd of civilians along Sniper Alley, near the government buildings. He recounted that:

As the rounds hit the ground in front of us, the crowd which consisted of [...] between 20 and 50 people [s]imultaneously lowered their bodies and ducked their heads and moved into cover. Everyone did this simultaneously. It was if it was a well-rehearsed drill. [...] The only possible targets in that area were the civilians, the road and my vehicle. [...] Within a few seconds, there was more firing and what had happened effectively was that the crowd of people who had been moving from east to west across the road were now stuck either side of that road. I remember clearly that there was one mother [...] who was separated on one side of the road from her child who was on our side of the road. What had happened at that stage was that because the gun that was firing had a clear line of sight all the way down this road, this effectively split the city, at that point, into east and west. And any transit across that road was potentially lethal. [...] Each time somebody emerged from cover and tried to cross the road, another burst of automatic heavy machine-gun fire would come [...] crashing down in front of us. When nobody was moving, the gun wasn't firing.⁴⁶⁹

David Fraser, an UNPROFOR representative who was in Sarajevo from April 1994 onwards, stated that “in the area of Sniper Alley, there were no military positions [...] just civilians walking along the street.” They were the main targets of the shooting.⁴⁷⁰ Ashton described the situation he witnessed in the central part of the city:

I had seen [...] people trying to cross the bridges, cross the river in central Sarajevo, especially in Novo Sarajevo. I would watch them stop and hide behind a tree or behind a wall and then jump up and run, and then the shot would be fired. I watched at a major intersection near the Energoinvest building, which was another one of the most dangerous intersections in all of Sarajevo, because the sniping was consistent at that intersection. It was a wide, broad area that looked up towards the corner of Hrasno district and Grbavica where they intersected, but there was clearly a sniping position that fired down into that every day.⁴⁷¹

He said that containers were set up at intersections, such as near the Presidency and Energoinvest buildings and in the proximity of the Holiday Inn, to shield against fire coming from Grbavica.⁴⁷² He pointed out that such barriers did not afford complete protection to civilians. When he visited

⁴⁶⁷ Thomas, T.9310-9311 (close session), 9322-9323.

⁴⁶⁸ Šehbajraktarević, T. 1776

⁴⁶⁹ Hermer, T. 8468-9.

⁴⁷⁰ Fraser, T. 11198.

⁴⁷¹ Ashton, T. 1254.

⁴⁷² Ashton, T. 1340-1341.

SRK positions in Grbavica, he discovered that it was possible for SRK soldiers to see people crossing the gaps between the containers, and to target them as they crossed. Moreover, larger-calibre rounds would go right through the barriers.⁴⁷³ On one occasion in the winter of 1993 to 1994, Hvaal was driving down Marshal Tito Boulevard when he came across an elderly woman lying in the street.⁴⁷⁴ She had been injured at an intersection with a history of heavy sniping from SRK positions.⁴⁷⁵ Before he could pull her to safety, she was struck in the head by a second bullet which killed her.⁴⁷⁶ On 5 December 1992, Van Lynden saw a civilian apartment block on Marshal Tito Boulevard being struck by incendiary bullet rounds from SRK territory.⁴⁷⁷ The incident was filmed by his crew.⁴⁷⁸ Van Lynden saw civilians escaping the resulting fire⁴⁷⁹ and was told by the people there that there had been no out-going fire to precipitate the attack.⁴⁸⁰

231. Ashton described several instances of shelling on civilians. He testified about a mortar attack in December 1992 which killed a woman and wounded others in Novo Sarajevo.⁴⁸¹ On February 1993, Ashton witnessed an SRK tank fire three shells into the area of the Holiday Inn near the museum, where there had been no hostile military activity. He said that civilians were in the street and French and Ukrainian UNPROFOR troops were stationed by some metal barriers.⁴⁸² Francis Briquemont, commander of UN forces in Bosnia-Herzegovina from July 1993 to January 1994, said that when he arrived in Sarajevo and drove down “Sniper Alley” he saw that “almost all the buildings or civilian apartments were burned or destroyed or had been shelled.”⁴⁸³ He added that “The scope of the destruction on all of the buildings where people lived, all along Sniper Alley, [...] meant that those buildings were the systematic target of firing” prior to July 1993.⁴⁸⁴ UNPROFOR documents reported extensive shooting and shelling in the central area of Sarajevo during the Indictment period.⁴⁸⁵

⁴⁷³ Ashton, T. 1340.

⁴⁷⁴ Hvaal, T. 2778-80.

⁴⁷⁵ Hvaal, T. 2279, 2282-3.

⁴⁷⁶ Hvaal, T. 2284-5. See P3625 (photograph taken by Hvaal of the victim outside the morgue of the Koševo hospital).

⁴⁷⁷ Van Lynden, T. 2120-2125; P3644.VL (map of Sarajevo marked by witness showing location of building).

⁴⁷⁸ See P3647 (Video footage of report on the burning of the building made by Van Baal); P3467 A (transcript of video footage).

⁴⁷⁹ Van Lynden, T. 2125-6.

⁴⁸⁰ Van Lynden, T. 2125-6.

⁴⁸¹ Ashton, T. 1392. The set of photographs taken by Ashton are examples of people victims of sniping or shelling incidents from late September 1992 to the end of October 1992, T. 1403-4. See P3641 (set of photographs taken by Ashton).

⁴⁸² Ashton, T. 1246-7.

⁴⁸³ Briquemont, T. 10142-3.

⁴⁸⁴ Briquemont, T. 10169. The witness had the impression that, during his tenure, from October to December, essentially military objectives were shelled, more than civilian targets, T.10143-4.

⁴⁸⁵ See, e.g., P816 (UNPROFOR daily sit-rep for Sector Sarajevo for 16 February 1993): “During the reporting period the level of combat activity remained at rather high level. Arty/mortar shelling and SA/HMG fire were report throughout the day in the various areas of the city. However the most shelled areas were [...] Novo Sarajevo”; P752 (UNPROFOR report for the month of January 1993): “20 Jan. 93.The situation showed significant improvement over

232. Mensur Jusić, a local resident, recalled a sniping attack which occurred in the spring of 1994 on Vojvode Putnika Street.⁴⁸⁶ It was evening and the witness was returning home from work. As he got off the tram, he heard a loud burst of gunfire and the sound of bullets hitting the asphalt. As he ran for cover, he saw a young girl crawling to safety. She had been hit by a sniper bullet. The witness picked her up and took her to a shielded passageway between the buildings. He did not see soldiers or any armed persons at that location nor anyone returning fire.⁴⁸⁷ Jusić testified that the gunfire had originated in Grbavica, across the Bratstvo-Jedinstvo Bridge.⁴⁸⁸ A second incident he witnessed occurred in the area of the Sarajevo railway station.⁴⁸⁹ Jusić saw a man on Brodska Street fall to the ground upon being struck by a bullet. Some people, who were not in uniform and did not carry weapons, pulled the man away. The gunfire continued.⁴⁹⁰ Jusić said that the victim was not carrying weapons and was dressed in civilian clothes, as were the other people in the vicinity.⁴⁹¹ Based on previous experience with shootings at this location, he knew that the shot had been fired from the top of a certain group of tall (twenty-storey) buildings in Grbavica.⁴⁹²

233. Mirsad Kučanin, a criminal investigator from Sarajevo, indicated on a map the location of four fifteen-storey buildings on Lenjinova Street, in the vicinity of the left bank of the Miljacka River, from where there was constant sniper fire.⁴⁹³ He also located the Grbavica shopping centre, a group of three twenty-storey buildings which he knew from personal experience were frequently used as firing positions to target civilians in the centre of the town and along Titova Street.⁴⁹⁴ He recalled having worked on three incidents involving sniping attacks carried out from the Grbavica shopping centre against trams.⁴⁹⁵ Akif Mukanović, a resident of Hranso, confirmed that sniping attacks were carried out from that location.⁴⁹⁶

yesterday with both the PAPA and LIMA sides reporting a relatively calm day. The snipers were active along the main road within the city, Tito Barracks and the press building. The total number of impacts recorded (arty, or and MLRS) was 197"; P2002 (UNMO daily sit-rep for Sector Sarajevo for 14 December 1993) and P2007 (daily sit-rep for Sector Sarajevo for 25 December 1993) report that among the areas shelled was "the city centre as always"; P2064 (UNMO daily sit-rep for Sector Sarajevo for 4 January 1994): "General Assessment: Unstable. General military activity, in particular shelling and mortar fire have remained at a high level. [...] Residential areas shelled and mortared during the past 24 hrs have been Novo Sarajevo [...] Sniper activity and small arms/HMG activity high ... inside the city"; P2840 (UNPROFOR daily sit-rep for 3 August 1994): "Location: Sniper Alley Area. Description: One sniper located in a Serbian building [...] shot against the tramway. Three Bosnian civilians lightly wounded and driven to the hospital."

⁴⁸⁶ Jusić, T. 3243-6.

⁴⁸⁷ Jusić, T. 3243-6.

⁴⁸⁸ Jusić, T. 3242.

⁴⁸⁹ Jusić, T. 3247-8.

⁴⁹⁰ Jusić, T. 3249. See No. 1 on P3112 (map of area marked by witness).

⁴⁹¹ Jusić, T. 3250-1.

⁴⁹² Jusić, T. 3251-2.

⁴⁹³ Kučanin, T. 4610, 4612; P3658 (map marked by witness).

⁴⁹⁴ Kučanin, T. 4610, 4613, 4617, 4621.

⁴⁹⁵ Kučanin, T. 4610.

⁴⁹⁶ Mukanović, T. 3106; P3235 (map pre-marked by witness indicating location of skyscrapers).

234. Witness AJ testified that on 7 November 1992, in the afternoon, she was walking home from a neighbour's house.⁴⁹⁷ She was dressed in civilian clothes.⁴⁹⁸ As she passed between two buildings⁴⁹⁹ near Darovalaca Krvi Street she heard a shot from the direction of Grbavica.⁵⁰⁰ A bullet struck her in the hip.⁵⁰¹ She was taken to a first-aid station and later hospitalized.⁵⁰² Witness AJ testified that there were no soldiers⁵⁰³ or weapons⁵⁰⁴ in the vicinity of the incident.⁵⁰⁵ According to the witness the gunfire originated in Grbavica.⁵⁰⁶ She had been clearly visible from the Grbavica shopping centre buildings as well as from other high-rise buildings in that neighbourhood.⁵⁰⁷ It was common knowledge, according to Witness AJ, that SRK snipers operated from there.⁵⁰⁸ Many people from her street had been killed or wounded by shots fired from those positions.⁵⁰⁹

235. The Trial Chamber heard evidence about different SRK sniping positions located in high-rise buildings located on the southern side of the Miljacka River.

236. From June 1992 until the beginning of May 1993, Witness D, an SRK soldier,⁵¹⁰ was stationed at the entrance of four 15-storey buildings near Lenjinova Street in the vicinity of the Miljacka River.⁵¹¹ Using a map he indicated in court the positions where he and his platoon was deployed.⁵¹² He recalled that during his shifts soldiers from other units assigned to sniper duty would join his platoon at the tall buildings.⁵¹³ The snipers would occupy the upper floors.⁵¹⁴ "There

⁴⁹⁷ Witness AJ, T. 7118-9, 7121.

⁴⁹⁸ Witness AJ, T. 7119.

⁴⁹⁹ See P3263 (photograph of the area).

⁵⁰⁰ Witness AJ, T. 7123.

⁵⁰¹ Witness AJ, T. 7121, 7123, 7128.

⁵⁰² Witness AJ, T. 7122. She remained for 23 days in intensive care at the hospital. See P3282 (medical documentation from Sarajevo University Hospital) (under seal).

⁵⁰³ Witness AJ, T. 7150.

⁵⁰⁴ Witness AJ, T. 7144, 7150-1.

⁵⁰⁵ Witness AJ, T. 7144.

⁵⁰⁶ Witness AJ testified that she heard the sound of a shot from behind, slightly to the right, in the direction of Grbavica. She believed that the confrontation line was about 50 to 100 metres away from where the incident occurred, and stated that "in fact, there is only one road and the river of Miljacka between that part of the city and Grbavica [...] They were on the other side of the river", T. 7123-4. In that part of Grbavica, there were two yellow buildings, the shopping centre and four white skyscrapers, T. 7124.

⁵⁰⁷ Witness AJ, T. 7124-5, 7131 (closed session). A two-storey white building is seen on a photograph shown in court blocking the view of the street from these high-rise buildings. The witness explained that the upper floor and left side of this building hadn't been built at the time of the event. T. 7129-30 (closed session); P3263 (photographs of site of incident). She also pointed out the location of the shopping centre and a white skyscraper in Grbavica on a map shown to her in court, which was not tendered into evidence, Witness AJ, T. 7131. Although she showed some confusion when identifying both her building and the site of the event on this map, she clearly indicated the place where she was injured on a video and on a set of photographs which were shown to her in court, Witness AJ, T. 7132-8; P3280Y (video of site of incident); T. 7138-9; P3279Y (360 degree photograph of the location of incident); T. 7141-4 (closed session).

⁵⁰⁸ Witness AJ, T. 7125.

⁵⁰⁹ Witness AJ, T. 7125.

⁵¹⁰ Witness D, T. 11893-5.

⁵¹¹ Witness D, T. 1895-6.

⁵¹² Witness D, T. 1919; P3637 (pre-marked map by Witness D).

⁵¹³ Witness D, T. 1919-20.

⁵¹⁴ Witness D, T. 1920.

were there every day.”⁵¹⁵ He often heard the sound of gunfire coming from those floors.⁵¹⁶ He had the opportunity to speak to the snipers.⁵¹⁷ “They would usually say that they had hit someone.”⁵¹⁸ Their equipment consisted of “very long-barrelled rifles” with telescopic sights, “some kind of binoculars with a rubber eyepiece on it.”⁵¹⁹ “They had a separate telescope which was not mounted on the rifle. It was much broader, much wider, than the one on a rifle, and they were able to see the target better using this device.”⁵²⁰ They also had infrared sights.⁵²¹

237. Witness D said that ABiH snipers fired at his platoon’s positions in Grbavica⁵²² but “there was no fighting except this sniper fire”.⁵²³ According to the witness, his platoon received orders from the platoon commander, and from the company commander, to fire at anything that moved and that could jeopardize their positions.⁵²⁴ They were never instructed not to fire at civilians.⁵²⁵ On the other hand, however, several Defence witnesses who had been stationed in the area of Grbavica and the Jewish Cemetery during the conflict indicated that they were not given orders to target civilians.⁵²⁶

238. Van Lynden recounted that in late September 1992 the Bosnian Serb Presidency permitted him to visit apartment blocks in Grbavica⁵²⁷ close to the Miljacka River,⁵²⁸ where he observed front-line sniping positions.⁵²⁹ He was taken to rooms in several buildings where there were different kinds of gun emplacements, including dark rooms “where there were sniper rifles” alongside sandbags behind window slits. He described the rifles as being long-barrelled and as having telescopic sights. Van Lynden knew from previous experience that the weapons he saw in those rooms were sniper rifles.⁵³⁰ On the floor he saw used cartridge cases. The soldiers were dressed in the uniform of the Yugoslav army.⁵³¹ “They had walkie-talkies, small radios, and there

⁵¹⁵ Witness D, T. 1933.

⁵¹⁶ Witness D, T. 1920.

⁵¹⁷ Id.

⁵¹⁸ Id.

⁵¹⁹ Witness D, T. 1928-9. He identified one of their weapons as an M76 using P3648 (manual of weapons). T. 1936.

⁵²⁰ Witness D, T. 1934.

⁵²¹ Id.

⁵²² Witness D, T. 2033-4.

⁵²³ Witness D, T. 2037-8.

⁵²⁴ Witness D, T. 1912-14.

⁵²⁵ Id.

⁵²⁶ DP16 and DP11, soldiers in the 3rd battalion of the SRK stationed in the area of the Jewish Cemetery, said they did not receive orders to target civilians. According to DP16, they were to “respect” civilians, DP16, T. 16523; DP11, T. 15020-21. Izo Golić, an SRK soldier with the 1st Romanija Brigade, said that the members of his unit were told in strict terms not to target anything of their own free will, and that they were not supposed to fire at civilians, to hold on and respect the Geneva Conventions, Golić, T. 14870. Witness DP10, a soldier in the 2nd Armoured Battalion stationed in the area of Grbavica, said his unit was never given orders to open fire on civilians, DP10, T. 14321

⁵²⁷ Van Lynden, T. 2104, 2107-8.

⁵²⁸ Van Lynden, T. 2111.

⁵²⁹ Van Lynden, T. 2107-8.

⁵³⁰ Van Lynden, T. 2107-8.

⁵³¹ Van Lynden, T. 2110.

were clearly other positions higher up or in other buildings, higher up the slope overlooking Sarajevo, who were in contact with these men on the front line positions, spotters.” He added: “It was clear that this was co-ordinated. It’s not just a man looking through one slit and deciding to do something if he sees something. There were others. It was a co-ordinated effort”.⁵³²

239. Hvaal said that in late 1993 or early 1994 he visited four high-rise buildings in Grbavica.⁵³³ There he saw “a fairly basic sniper position, not a very sophisticated one, heavily sandbagged.”⁵³⁴ Once inside, the only view out was through the window slit used by the sniper.⁵³⁵ He saw various types of weapon in those buildings, including an M-84, a general purpose machine gun locally known as a “death sower”.⁵³⁶

240. At various times after June 1993, Ashton was taken by members of the SRK to front-line positions in apartment buildings in Grbavica.⁵³⁷ There he saw heavily sandbagged rooms from where snipers operated.⁵³⁸ Through the window slits he could see the area of Marin Dvor across the river, including the Holiday Inn and Tito barracks: “It was very easy to see where people could get shot crossing the intersections”.⁵³⁹ He indicated that there were “thousands and thousands of shell casings in the rooms. There was a lot of outgoing fire from that position.”⁵⁴⁰

241. The Prosecution also alleges that the Jewish Cemetery was one of the prominent sources of sniper fire against civilians.⁵⁴¹ The Jewish Cemetery of Sarajevo was located on the western slopes of Mount Trebević. The evidence in the Trial Record indicates that both belligerent parties held positions in this area. Maps marked by Defence witnesses show that the confrontation lines were separated by the width of the cemetery. The SRK was positioned on the south-western side of the cemetery, while the ABiH was stationed along the north-eastern wall.⁵⁴² These confrontation lines remained unchanged throughout the conflict.⁵⁴³ The area of the Jewish Cemetery was described by

⁵³² Van Lynden, T. 2112.

⁵³³ Hvaal, T. 2258-61.

⁵³⁴ Hvaal, T. 2262.

⁵³⁵ Hvaal, T. 2264.

⁵³⁶ Hvaal, T. 2262, 2265.

⁵³⁷ Ashton, T. 1221. He pointed out the location of these blocks of flats on a map, Ashton, T. 1356-7; P3645 (map of Sarajevo marked by Ashton). See also T. 1574, 1578; position D7 on P3644.

⁵³⁸ Ashton, T. 1221, 1367.

⁵³⁹ Ashton, T. 1367.

⁵⁴⁰ Id.

⁵⁴¹ Prosecution Final Trial Brief, para. 160.

⁵⁴² DP16, T. 16522-16523; D1809 (map marked by witness DP16); DP11, T. 14991, 15010-12; D1779 (map marked by witness); D1781(electronic map marked by DP11); Vorobev, T. 17382-3, 17390; D185 (map marked by witness); Golić, T. 14889.

⁵⁴³ DP11, T. 14992; DP16, T. 16531.

Defence witnesses as a particularly sensitive part of the frontline, where there was frequent exchange of fire between the warring parties.⁵⁴⁴

242. The cemetery had a chapel located within its wall on the lower, northern end.⁵⁴⁵ The Trial Chamber heard conflicting evidence given by Defence witnesses regarding the party in control of the chapel. Both DP16, a soldier in the 3rd battalion of the SRK stationed in the area of the Jewish Cemetery,⁵⁴⁶ and DP11, another member of the same battalion,⁵⁴⁷ said that the chapel was under ABiH control.⁵⁴⁸ Izo Golić, an SRK soldier with the 1st Romanjia Brigade, said that no one held the chapel, “[i]t was closer to our positions”.⁵⁴⁹ Victor Vorobev, a Russian UNPROFOR representative stationed in this area on the SRK side, testified that the cemetery was not controlled by either party.⁵⁵⁰ The Trial Chamber did not hear specific evidence to the effect that civilians were targeted from the chapel of the Jewish Cemetery.⁵⁵¹

243. The Trial Chamber heard testimonies to the effect that snipers operated in the area of the Jewish cemetery of Sarajevo. General Michael Rose, the UNPROFOR commander for Bosnia-Herzegovina from January 1994 to January 1995, said that during his tenure in Sarajevo the Jewish cemetery always remained a dangerous source of fire.⁵⁵² Kučanin indicated that fire was opened from the Jewish cemetery against civilians on the centre of Sarajevo.⁵⁵³ Van Lynden visited an SRK position near the Jewish cemetery, where there had been civilian houses prior to the war. Their positions were protected by tree trunks.⁵⁵⁴ They employed a system of mirrors which allowed them to remain under cover.⁵⁵⁵

244. Lastly, as concerns non-scheduled incidents of sniping and shelling, international observers and senior hospital staff testified that the State Hospital, located in Marin Dvor,⁵⁵⁶ was regularly

⁵⁴⁴ DP16, T. 16624; DP11, T. 14992; Vorobev, T.17390.

⁵⁴⁵ DP16, T. 16522, 16549, 16634; D1810 (map marked by witness DP16); DP11, T.15010-15012; D1781 (map marked by witness). One witness referred to it as a synagogue, Vorobev, T. 17455, 17466-7.

⁵⁴⁶ DP16, T. 16520, 16524.

⁵⁴⁷ DP11, T. 14985.

⁵⁴⁸ DP16, T. 16522, 16634; DP11, T. 15079, 15092-5.

⁵⁴⁹ Golić, T. 14890.

⁵⁵⁰ Vorobev, T. 17380, 17466.

⁵⁵¹ The Trial Chamber notes that the evidence does indicate that gunfire originated from the chapel, although it does not show that it was aimed at civilians. Victor Vorobev testified that, during his tenure in Sarajevo in 1994, his subordinates stationed on the SRK side of the Jewish Cemetery reported seeing armed men at the synagogue and intermittent fire opened from there (Victor Vorobev, T. 17456.) He did not indicate to which side these armed men belonged. DP16 said that fire was frequently opened by the ABiH from the chapel towards the positions of his company (DP16, T. 16522-3, 16534).

⁵⁵² Rose, T. 10208.

⁵⁵³ Kučanin, T. 4608-9; P3658 (map marked by witness).

⁵⁵⁴ Van Lynden, T. 2113.

⁵⁵⁵ Id.

⁵⁵⁶ Kupusović, T. 664-5; Nakaš, T. 1123; Ashton, T. 1282; Eterović, T. 8844; P3645 (Map of Sarajevo marked by Ashton). This institution was also referred to at times as the “French” hospital, the “Army” hospital or the “Citizens” hospital, Kupusović, T. 664-5; Harding, T. 4346-7.

fired upon during the Indictment period from SRK-controlled territory resulting in injuries to patients and staff and significantly damaging the hospital infrastructure. Ashton, who lived at the State Hospital from the end of 1992 until the beginning of 1993, testified to this fact.⁵⁵⁷ According to the witness, every day during that period began with the shelling of the hospital from Mount Trebević. Anti-aircraft weapons were also used in these attacks.⁵⁵⁸ Ashton recalled one particularly intense shelling incident on 23 September 1992 which seriously damaged three parts of the hospital.⁵⁵⁹ On that occasion, from the fourth floor of the main hospital building, he saw in the direction of Pale the firing of heavy-weapons from SRK-controlled territory.⁵⁶⁰ He also observed shells being fired on the hospital from SRK-controlled positions above the Jewish cemetery in Grbavica.⁵⁶¹ In October 1992 he saw a tank fire three times at the hospital from SRK-controlled territory on the road leading to Pale.⁵⁶² Attacks from Grbavica against the hospital were launched also in October 1992, December 1992, and January 1993.⁵⁶³ Another witness, Van Lynden, recalled being at the hospital towards the end of 1992 when a large explosion, which he attributed to tank fire, rocked the facility and damaged an elevator shaft.⁵⁶⁴ Sometime in March 1993, Ashton witnessed a member of the medical staff being injured by shrapnel in the arm and leg while bringing patients in through the front of the hospital.⁵⁶⁵

245. Milan Mandilović, surgeon at the State Hospital, testified that throughout the Indictment period, infantry fire caused great damage to the hospital.⁵⁶⁶ “The entire south facade, the east one as well, and partially the west, it was all bullet riddled from small arms.”⁵⁶⁷ According to the witness the fire “came from the slopes of the Trebević mountain, the Jewish Cemetery, and the Vrace part of Grbavica settlement. [...] Those are the zones that would correspond to the south easterly, southern, and south western side.”⁵⁶⁸ Patients and hospital staff were wounded whilst in the hospital by sniper fire from those areas.⁵⁶⁹ He said that all twelve floors were damaged to some extent as

⁵⁵⁷ Ashton, T. 1231.

⁵⁵⁸ Id.

⁵⁵⁹ Id.

⁵⁶⁰ Ashton, T. 1231 and 1235-6. Later, in 1994, Ashton visited the area of Pale where the fire had come from and was shown by SRK soldiers heavy weapons which were positioned in the vicinity, Ashton, T. 1236-7.

⁵⁶¹ Ashton, T. 1232-3, 1243-4.

⁵⁶² Ashton, T. 1244-5. In October 1992, he photographed the extensive damage done both to the façade and rooms inside the hospital facing Grbavica, Ashton, T. 1393-4; P3641 (Selected photographs taken by Ashton).

⁵⁶³ Ashton, T. 1244. He was at the hospital during another shelling incident sometime in 1993; he climbed to one of the upper floors of the main building, peered towards Grbavica with his camera lens and saw a tank firing onto the hospital. T. 1394. Ashton had on hand a camera with high-definition lens he normally used for his profession, which enabled him to see at a distance, Ashton, T. 1245.

⁵⁶⁴ Van Lynden, T. 2140. Van Lynden also remembered going to the State hospital in May 1992 and observing that the medical facility “had been very badly shot up at that stage [of the conflict]”, Van Lynden, T. 2089-90.

⁵⁶⁵ Ashton, T. 1266.

⁵⁶⁶ Mandilović, T. 1090.

⁵⁶⁷ Mandilović, T.1033-4

⁵⁶⁸ Mandilović, T. 1034.

⁵⁶⁹ Mandilović, T. 1034, 1036.

result of shelling.⁵⁷⁰ The south side of the building, directly visible from SRK positions, was most severely shelled.⁵⁷¹ Patients had to be moved to the north wing and to lower floors to be protected from the attacks.⁵⁷² Bakir Nakaš, the administrator of the State Hospital since May 1992,⁵⁷³ testified that the southern facade of the hospital, which faced the SRK-held territories of Vrace and Trebević,⁵⁷⁴ was most exposed to fire, “almost 85 to 90 percent of hits were on that side”.⁵⁷⁵ Nakaš recalled that, in October 1992, a large bullet from an anti-aircraft gun injured his secretary in her office.⁵⁷⁶ In August 1993 a bullet struck his office.⁵⁷⁷ According to the witness, these attacks originated in the areas of Vrace and Mount Trebević.⁵⁷⁸ Carl Harding, a UNMO in Sarajevo from July 1992 until January 1993, inspected the State Hospital on 31 December 1992⁵⁷⁹ and found that all three hospital buildings had been damaged from shelling. A 155 mm shell had damaged the ground floor of the casualty reception building, while other fire had destroyed parts of the upper floors of the main building.⁵⁸⁰ The third building of the hospital, the annex, also bore the scars of artillery attacks.⁵⁸¹ By January 1993, shelling had reduced the bed capacity of the hospital to 200 from its pre-conflict level of 480 beds.⁵⁸²

246. The Prosecution tendered detailed evidence concerning two alleged examples of deliberate sniping of civilians from these areas which are identified in Schedule 1 of the Indictment under numbers 5 and 24.

(i) Scheduled Sniping Incident 5⁵⁸³

247. Milada Halili and her husband Sabri Halili testified that on the morning of 27 June 1993, at around noon, they were walking with Almasa Konjhodžić, Milada’s mother, to the PTT building.⁵⁸⁴

⁵⁷⁰ Mandilović, T. 1013.

⁵⁷¹ Mandilović, T. 1013-4.

⁵⁷² Mandilović, T. 1020, 1036. The entire southern wing of the hospital was not operational throughout the war. All activities had to be transferred to the northern wing. During the intensive shelling, everything had to be transferred to the lower floors. The higher floors, that is, from the 5th to the 12th floor, were not operational. When the intensity of the shelling subsided, the activities of the hospital would move again to higher floors, T. 1090-1091.

⁵⁷³ Nakaš, T. 1122-3.

⁵⁷⁴ Nakaš, T.1123, 1129.

⁵⁷⁵ Nakaš, T. 1126. After the first shelling of the hospital on 13 May 1992, the medical staff placed a large white flag with the Red Cross emblem in the southern section of the hospital facing Trebević and the hill of Vrace, Nakaš, T. 1123, 1182; Harding, T. 4348-50. The staff later took down this flag in September 1992 because exposure to gunfire had reduced it to tatters, Nakaš, T. 1123-4.

⁵⁷⁶ Nakaš, T. 1126-7.

⁵⁷⁷ Nakaš, T. 1127. Judging by the location of the first impact, the witness concluded that the hits originated from the slope of Trebević, which is an extension of Vrace hill, Nakaš, T. 1127. He also testified that fragments from tank, artillery and mortar explosives were recovered at the hospital after shelling incidents, Nakaš, T. 1190.

⁵⁷⁸ Nakaš, T.1189-90.

⁵⁷⁹ P3661 (Battle damage assessment of State hospital dated January 1993 by Carl Harding).

⁵⁸⁰ Id.

⁵⁸¹ Id.

⁵⁸² Id.

They were commemorating the death by sniper fire of a relative.⁵⁸⁵ As was common at the time, they had taken a long circuitous road to avoid areas targeted by snipers.⁵⁸⁶ As they approached the traffic lights at the intersection of Kranjčevića Street, in the vicinity of the Marshal Tito Barracks, they heard the sound of gunfire.⁵⁸⁷ Milada Halili, who was a bit ahead, ran across the intersection behind a barrier of containers which had been set up to protect against shooting from Grbavica.⁵⁸⁸ Frightened by the shot, Almasa Konjhodžić lost her balance and fell.⁵⁸⁹ Sabri Halili helped her to her feet and they continued.⁵⁹⁰ They had walked ten metres when Almasa Konjhodžić was struck by a bullet.⁵⁹¹ Sabri Halili turned to see a pool of blood beneath his mother-in-law.⁵⁹² The victim was taken to hospital where she died from the wound.⁵⁹³

248. The Trial Chamber accepts the description of the incident as recounted by the witnesses and is satisfied that the victim was a civilian. The victim were wearing civilian clothes.⁵⁹⁴ Although Sabri Halili was a member of the ABiH, he was off-duty that day and was not dressed in uniform or carrying weapons.⁵⁹⁵

249. The Defence submits that the victim was hit by a stray bullet which ricocheted during an exchange of fire and that she was not deliberately targeted.⁵⁹⁶ In the Defence's view, it is also possible that the bullet was fired from ABiH positions and then ricocheted, striking the victim.⁵⁹⁷

250. The following expresses the view of a majority of judges ("the Majority"). Judge Nieto-Navia dissents and expresses his view in the appended dissenting and separate opinion.

251. The account of the incident shows that the victim and her family were near the traffic lights of the intersection, and had not yet reached the protection of the containers, when the first shot was fired. The second shot, which killed the victim, was fired as they crossed the intersection behind the

⁵⁸³ The Indictment alleges that on 27 June 1993, Almasa Konjhodžić, a woman aged 56 years, was shot dead near the junction of Đure Đakovića and Kranjčevića Street, presently Alipasina and Kranjčevića, while walking with her family, Schedule 1 to the Indictment.

⁵⁸⁴ Milada Halili, T. 2731, 2734; Sabri Halili, T. 2660-3.

⁵⁸⁵ Sabri Halili, T. 2660.

⁵⁸⁶ Milada Halili, T. 2732, 2734, 2754; Sabri Halili, T. 2661-4.

⁵⁸⁷ Sabri Halili, T. 2665; Milada Halili, T. 2736, 2757.

⁵⁸⁸ Sabri Halili, T. 2666, 2669-71; Milada Halili, T. 2736-7; P3262 (diagram of intersection). There was also a trailer between the containers about a metre and a half above the ground, Sabri Halili, T. 2669-70; Milada Halili, T. 2736-7.

⁵⁸⁹ Milada Halili, T. 2736, 2758; Sabri Halili, T. 2664.

⁵⁹⁰ Sabri Halili, T. 2664, 2671.

⁵⁹¹ Sabri Halili, T. 2664.

⁵⁹² Sabri Halili, T. 2664, 2671.

⁵⁹³ Sabri Halili, T. 2678-9; Milada Halili, T. 2736-2738; P1340 (the death certificate of Ms. Konjhodžić).

⁵⁹⁴ Both witnesses recalled that the victim was wearing a red dress with a black tiger print at the time of the incident. She was then 55 years old, Milada Halili, T. 2739; Sabri Halili, T. 2680.

⁵⁹⁵ Sabri Halili, T. 2658, 2679-80, 2686, 2706; Milada Halili testified that her husband was a soldier but he didn't have a military uniform. He was not carrying any weapons that day because he was off duty, T. 2740. She said that she worked in "the kitchens of the ABiH" during the conflict. T. 2749-50, 2764.

⁵⁹⁶ Defence Final Trial Brief, paras 104-106, 113-115.

barrier of containers. The testimony of the witnesses shows that there were no soldiers or other military targets in the vicinity of the incident.⁵⁹⁸ Milada Halili testified that there were people waiting for a bus opposite Marshal Tito Barracks.⁵⁹⁹ Sabri Halili said that there was no ongoing combat that day because a cease-fire had been concluded.⁶⁰⁰ An UNPROFOR document from 13 June 1993 confirms that a cease-fire was in place, but reports the situation as being “relatively tense due to SA [small-arms] fire and RT [artillery] shelling in the vicinity of Tito Barracks”.⁶⁰¹ The Majority finds that the UNPROFOR report does not contradict the testimonies of the witnesses, for it does not provide sufficient information on the situation at the Kranjčevića Street intersection at the time of the incident. It also does not indicate in any way that this shooting incident was among the small-arms fire described; the witness did not speak about an exchange of fire but about the sound of a first and then second shot that hit the victim. Since the exact trajectory of the bullet which struck the victim is unclear from the evidence,⁶⁰² the Majority cannot exclude that the victim was hit by a bullet that ricocheted. Nevertheless, the Majority understands the evidence to show beyond reasonable doubt that no military activity which could have accounted for the shooting was underway at the time of the incident in the vicinity of Marshal Tito Barracks and that the victim and her family were being targeted deliberately.

252. The Defence argues that the victim could not be seen from SRK positions in Grbavica.⁶⁰³ Milada Halili testified that, although she did not see from where the bullet that hit her mother was fired, she heard the sound of gunfire coming from the direction of Grbavica.⁶⁰⁴ Sabri Halili said that the bullet which struck his mother-in-law came from the left of the direction in which they were walking, that is, from behind the containers.⁶⁰⁵ Both witnesses claimed that a tall white building in Grbavica, on the SRK side of the confrontation line, about 10 to 15 meters from the Miljacka River, was the source of fire.⁶⁰⁶ Jonathan Hinchliffe, a witness who testified about distances in relation to

⁵⁹⁷ Defence Final Trial Brief, para. 119.

⁵⁹⁸ Milada Halili, T. 2740; Sabri Halili, T. 2680. In a statement given to the Office of the Prosecution on 11 November 1995, Milada Halili referred to the driver of the car who drove them to the hospital as a soldier, despite the fact that he did not wear any military uniform. She explained in court that she had thought so because she believed that any able bodied man was a soldier at the time, Milada Halili, T. 2760-1.

⁵⁹⁹ Milada Halili, T. 2758

⁶⁰⁰ Sabri Halili, T. 2685, 2694, 2702.

⁶⁰¹ D32 (UNPROFOR document of 28 June 1993); Sabri Halili, T. 2691.

⁶⁰² Sabri Halili believed that the bullet that struck his mother-in-law had probably ricocheted from the asphalt, then hitting Ms. Konjhodžić. Sabri Halili, T. 2716. Milada Halili believed her mother had been directly targeted and had not been hit by a bullet that ricocheted, because the intersection where her mother was shot was visible from the skyscrapers in Grbavica, Milada Halili, T. 2757.

⁶⁰³ It claims that there was no visibility because the barricades had been erected in the area and that, in particular, the site of the incident was not visible from the high-rise building identified by the witnesses as the source of fire, Defence Final Trial Brief, paras 107-13.

⁶⁰⁴ Milada Halili, T. 2757.

⁶⁰⁵ Sabri Halili, T. 2671, 2716. He said that the bullets were probably shot from between the first and the tenth floor of this skyscraper, Sabri Halili, T. 2699-2700.

⁶⁰⁶ Milada Halili, T. 2757; Sabri Halili, T. 2676-2677, 2683; P3260 (map of area marked by Milada Halili); P3271 (two photographs of site of incident); P3279A (360 degree photograph of the location of scheduled sniping incident 5).

scheduled sniping incidents, determined the distance between the building indicated by the witnesses and the intersection to have been 665 metres.⁶⁰⁷ While the evidence is insufficient to conclude beyond reasonable doubt that the two shots were fired from the building indicated by the two witnesses, the visual evidence shows that there was an unobstructed line of sight from Grbavica to the intersection where the victim was shot.⁶⁰⁸ The fact that containers had been placed at the intersection to give protection from gunfire coming from Grbavica proves that that intersection was a dangerous one and had been targeted before. Based on these considerations, and on the testimony of the two witnesses as a whole, the only reasonable conclusion to be drawn from the evidence is, in the Majority's opinion, that the bullet which killed Almasa Konjhodžić was fired from Grbavića. The evidence demonstrates Grbavica was under SRK control at the time of the incident.

253. The Majority therefore finds that Almasa Konjhodžić, a civilian, was deliberately targeted and killed by a shot fired from SRK-controlled territory in Grbavica.

(ii) Scheduled sniping incident number 24⁶⁰⁹

254. Mensur Jusić testified that on 19 June 1994, at approximately 5 p.m., he was on a tram heading down Vojvode Putnika Street in the direction of Ilidža.⁶¹⁰ Witness M was on the same tram with her son aged four years. She was six months pregnant.⁶¹¹ It was a sunny day.⁶¹² As the tram approached the intersection of Vojvode Putnika and Trscanska Streets, slightly past Marin Dvor,⁶¹³ Witness M heard a shot and saw that her son who was in a window seat had been injured.⁶¹⁴ A man who had been standing by the tram's door and a young woman had also been injured.⁶¹⁵ Jusić also recalled hearing a shot. He saw a woman with a little boy covered in blood. He then realized that he too had been hit in the shin of his right leg, and noticed that another woman, standing to his right, was bleeding from her arm.⁶¹⁶ The two witnesses testified that the tram continued, missing two

⁶⁰⁷ Hinchliffe, T. 12969.

⁶⁰⁸ P3271 (two photographs of site of incident); P3279A (360 degree photograph of the location of scheduled sniping incident 5); P3280 C (video).

⁶⁰⁹ The Indictment alleges that on 19 June 1994, Witness M, a woman aged 31 years, and her son, aged 4 years, were lightly wounded in their legs by a shot that penetrated a crowded tram in which they were travelling. The tram was travelling west Zmaja od Bosne Street towards Alipašino Polje. Mensur Jusić, a man aged 36 years, sustained a slight leg wound and Belma Sukić-Likić, a woman aged 23 years, was wounded in her left armpit in the same attack. The tram was near the Holiday Inn Hotel at the time of the incident, Schedule 1 to the Indictment.

⁶¹⁰ Jusić, T. 3225-6, 3301.

⁶¹¹ Witness M, T. 3340-2, 3355.

⁶¹² Jusić, T. 3237; Witness M, T. 3340, 3342.

⁶¹³ Jusić, T. 3237, 3270, 3298, 3301, 3303; D38 (map of area of incident); P3279J (set of photographs of intersection); P3112 (map marked by witness), Jusić, T. 3260-1; Witness M, T. 3343-4; Vidović, T. 4294. The tram was in front of a church at the time of the event, Jusić T. 3270, 3276; Witness M, T. 3344, P3279.I (360 degree photograph of the location of scheduled sniping incident 24); P2696.

⁶¹⁴ Witness M, T. 3340, 3343-4, 3355.

⁶¹⁵ Witness M, T. 3342-3.

⁶¹⁶ Jusić, T. 3227-8, 3295. Jusić believed that a single bullet injured the child, the young woman and himself. He explained on P3110 (pre-marked diagram) the positions in the tram of those injured during the event and the place of impact on the tram, T. 3229-30; P3280 (video of location of event).

stops, until it reached a safe place at Pofalici.⁶¹⁷ No further shots were fired.⁶¹⁸ The injured received medical assistance at a nearby emergency clinic.⁶¹⁹

255. The Trial Chamber accepts that the incident occurred as recounted by the witnesses. In particular, it is convinced that the tram was struck by a bullet, which injured three passengers, as it travelled down Vojvode Putnika Street towards Iliđža. It is further satisfied that the passengers in the tram were civilians. Moreover, the tram was visibly a civilian vehicle, which functioned during cease-fires, along a set route, and it could not have been confused for a military objective.

256. The Defence submitted that neither the tram nor its passengers were deliberately targeted.⁶²⁰ It argued that there was daily combat activity in the area, so the tram could have been hit by a stray bullet or by a bullet that ricocheted.⁶²¹ The testimony of the witnesses indicated that public transport was operational that day because a cease-fire was in force.⁶²² Witness M testified that the morning had been calm and that there had been no incidents.⁶²³ The tram was not crowded at the time of the shooting and was not transporting any soldiers or any kind of military equipment.⁶²⁴ No military vehicles were present in the close vicinity of the location of the incident.⁶²⁵ The evidence does not suggest that any military activity was underway in the area. The Trial Chamber finds that the only reasonable inference to be drawn from the evidence is that the tram and its passengers were deliberately targeted.

257. The Defence further submitted that the evidence is insufficient as to whether the bullet originated in SRK territory.⁶²⁶ It argued that both warring parties had positions in the area of the

⁶¹⁷ Witness M, T.3347-9, 3370; Jusić, T. 3227-8, 3303-4,3325. Jusić marked on D38 (map of area) the two stops missed by the tram before it came to a halt at the Pofalici stop. He indicated that the tram driver stopped there because this stop was screened off from SRK positions in Grbavica by a school and a church, Jusić, T. 3228.

⁶¹⁸ Jusić, T. 3227.

⁶¹⁹ Witness M, T. 3341, 3352-3, 3366, 3370-2; P3106 (medical certificate from First Aid Centre); Jusić, T. 3341.

⁶²⁰ Defence Final Trial Brief, para. 387. It claims that “[i]f the shooter had such an intention, he would shoot at the window where he could, possibly, see the ones who were sitting or standing, i.e. the shooter would not target the lower part of a tram which, objectively, is hard to cause any sort of consequence, except to damage the tram just a bit”. Defence Final Trial Brief, para. 383.

⁶²¹ Defence Final Trial Brief, paras 386, 387, 389.

⁶²² Witness M, T. 3340; Jusić, T. 3223; Vigodić, T. 4242; P3656 (set of 8 photographs taken by the police). People can be seen walking around on the street at the Pofalici stop on a photograph shown in court (See P3656).

⁶²³ Witness M, T. 3340.

⁶²⁴ Witness M, T. 3341-2, 3355; Jusić, T. 3227, 3241. In a statement given to OTP in 1995, Witness M had stated that there were ABiH and UNPROFOR soldiers at the Pofalici stop. During cross-examination, she testified that she did not recall the presence of any ABiH soldiers at this stop and said that, if any, there were two or three soldiers there, T. 3365-6, 3368. She said that the Pofalici stop was two stops further from where the tram was shot, T. 3370.

⁶²⁵ Jusić, T. 3240.

⁶²⁶ Defence Final Trial Brief, paras 376-77, 389. The Defence also contests the credibility of Jusić’s testimony based on the fact that witness testified that he smelled gunpowder when the bullet hit the tram, which, in the Defence’s view, was not possible in this case, Defence Final Trial Brief, paras 381-382. The Trial Chamber does not consider that this issue affects the credibility of Jusić’s testimony.

Jewish cemetery, so that the bullet was possibly fired from ABiH positions in this area.⁶²⁷ Bogdan Vidović, a police officer who carried out a forensic investigation of the incident, testified that the bullet struck the left-hand side of the tram in the direction it was travelling.⁶²⁸ He said that the police could not establish the exact source of fire, since the tram had not stopped at the site of the shooting.⁶²⁹ The forensic investigation established only the general direction of fire and concluded that the shot originated in the areas of Grbavica or Vrace, which were SRK-controlled territory.⁶³⁰ Based on the bullet impact point on the left side of the tram, Jusić said that the shot was fired from SRK positions in the hills, in the direction of the Jewish cemetery or the slopes of Mount Trebević, areas under SRK control.⁶³¹ Witness M also believed that the shot was fired from SRK positions in the hills in the direction of Mount Trebević, where the Jewish cemetery was located.⁶³² The Trial Chamber notes that the Prosecution does not allege a specific source of fire for this incident, but claims that the different areas indicated by the witnesses were all under SRK control.⁶³³ It establishes, on the basis of the evidence and of maps available to the Trial Chamber, that the distance between the site where the incident occurred and the boundaries of the Jewish Cemetery was approximately 500 metres.⁶³⁴ Witnesses DP11 and DP16 indicated that the site of the shooting was not visible from SRK positions at the Jewish cemetery.⁶³⁵ The Defence, on the other hand, indicated that the site of the incident was visible from both sides of the confrontation line.⁶³⁶ A panoramic view from the intersection where the tram was shot and photographs of this intersection

⁶²⁷ Defence Final Trial Brief, paras 379-380, 384. The Defence argues that the evidence in the Trial Record shows that the northern and eastern side of the Jewish Cemetery, including the Chapel, were under ABiH control, while the SRK held the western and southern sides of the Cemetery, so that the warring parties were separated by the Cemetery itself, Defence Final Trial Brief, para. 384.

⁶²⁸ Vidović, T. 4220-2, 4228, P2696 (Report of police investigation dated 19 June 1994). He pointed out on photographs taken during the forensic investigation the bullet impact points on the tram, T. 4222-7; P3656 (set of 8 photographs of tram). He explained that the bullet went through the wall of the tram car a metre from the ground, damaged the metal bracket of the heater which was under a seat, travelled across the aisle and hit the support of the seat that faced the rear of the tram on the opposite side, P3655, P3656; T. 4226-9, 4240. Bullet fragments were found in the tram, T. 4236. A report prepared by another officer indicates that the bullet fragmented after hitting the inner tin of the tram (P3655).

⁶²⁹ Vidović said that the tram was inspected by the police three stops further down from the location where it was hit. T. 4250-2. An official ballistic expert did not participate in the investigation, since it had been moved from the site of the incident. T. 4250-52. The usual technique to determine the source of fire based on the entry-exit point of impact was not used, T. 4301-2.

⁶³⁰ Vidović, T. 4240-1, 4250-2; see P3655 and P2696.

⁶³¹ Jusić, T. 3239-40. The witness confirmed that the tram was hit on the left-hand side in the direction it was travelling, some 10 centimetres beneath the window in the rear part of the first carriage. T. 3228, 3232, 3239. The witness marked on a map (P3112) the location of the Jewish Cemetery, T. 3261.

⁶³² Witness M, T. 3346, 3357-8; P3279.I (360 degree photograph).

⁶³³ Prosecution Final Trial Brief, para. 396.

⁶³⁴ Hinchliffe measured the distance from a building just north of the Jewish cemetery to the site of the incident to be 460 metres, Hinchliffe, T. 12994. Witness DP16 estimated the distance between the northern boundary of the Jewish Cemetery and the place where the incident occurred to be approximately 460 metres, T. 16623-4.

⁶³⁵ Witness DP11 testified that it was not possible to see the site of the incident from SRK positions at the cemetery, because high-rise buildings blocked the view, Witness DP11, T. 15012-5. Witness DP16 said that the view towards the Marijn Dvor intersection was obstructed by the Assembly building and the cemetery wall, which was two to three metres high, Witness DP16, T. 165451-2, 16545; D1810.

show that there was an unobstructed view of the intersection from the areas of the Jewish cemetery and Mount Trebević.⁶³⁷ Considering the location of the tram when it was hit and that it was impacted on the left-hand side in the direction it was travelling, the fact that there was an unobstructed line of sight between the site of the event and the area of the Jewish Cemetery under the SRK control, the approximate distance between these two areas, lead the Trial Chamber to find that the only reasonable conclusion is that the shot which struck the tram was fired from this area held by the SRK.

258. The Trial Chamber finds that a civilian vehicle was deliberately targeted from SRK-controlled territory in the area of the Jewish Cemetery, resulting in the wounding of three civilian passengers.

(b) Hrasno Area

259. The Prosecution alleges that the neighbourhood of Hrasno was exposed to fire from the upper reaches of Hrasno Brdo (Hrasno Hill) in the area of Ozrenska Street.⁶³⁸ The neighbourhood of Hrasno was a residential area located in the south-western part of Sarajevo, adjacent to Grbavica.

260. Testimonies heard by the Trial Chamber indicate that civilians in the neighbourhood of Hrasno were exposed to shooting from several SRK positions. Witnesses described the area of Hrasno Brdo in the vicinity of Ozrenska Street as a regular source of gunfire. Nafa Tarić, a victim of a sniping incident, testified that snipers targeted civilians from SRK positions there.⁶³⁹ Akif Mukanović, a resident of Hrasno, said that gunfire against civilians frequently originated from those positions after dark.⁶⁴⁰ Witness J testified that “during the entire war, there were well-known sniper spots” at Ozrenska Street.⁶⁴¹

261. Evidence shows that the neighbourhood of Hrasno was under ABiH control, including the lower parts of Hrasno Brdo or Hrasno Hill. The witnesses indicated that the SRK also had positions on Hrasno Brdo, in the area of Ozrenska Street, which ran along the top of the hill. Witness DP10, who had been a soldier in the SRK’s stationed in the area of Grbavica,⁶⁴² said that the SRK had

⁶³⁶ It argues that the evidence in the Trial Record shows that the northern and eastern side of the Jewish Cemetery, including the Chapel, were under ABiH control, while the SRK held the western and southern sides of the Cemetery, so that the warring parties were separated by the Cemetery itself, Defence Final Trial Brief, para. 384.

⁶³⁷ See P3279I (360 degree photograph of the location of scheduled sniping incident 24); P3279.J (set of photographs of intersection); P2641 (photographs taken by Ashton).

⁶³⁸ Prosecution Final Trial Brief, para. 364.

⁶³⁹ Tarić, T. 3140-1, 3147; 3195-8.

⁶⁴⁰ Mukanović, T. 3084, 3115.

⁶⁴¹ Witness J, T. 8054.

⁶⁴² DP10, T. 14318.

positions on Hrasno Brdo which went up to the junction of Ozrenska and Moravska Street.⁶⁴³ Witness D also testified that the SRK was stationed in the higher parts of Hrasno Brdo, but said that the confrontation lines ran further west of this junction along Ozrenska Street. Between June 1992 and February 1993⁶⁴⁴ Witness D was stationed at various times at front-line positions at the intersection of Ozrenska Street and Milinkladska Street on Hrasno Brdo.⁶⁴⁵ Although he could not see the ABiH front-line positions from his location, they were about 50 metres down the hill.⁶⁴⁶ The witness drew a dotted line on a map to indicate the front line along Ozrenska Street.⁶⁴⁷ Two residents of Hrasno and two criminal investigators confirmed that higher parts of the hill, including the area of Ozrenska Street, were under SRK control, while lower parts were ABiH territory.⁶⁴⁸ The Trial Chamber is satisfied from the evidence that the SRK controlled upper parts of Hrasno Brdo, including the area of Ozrenska Street and the ABiH held the lower parts of the hill.

262. Witness D, an SRK soldier, testified that from the positions of his unit on Ozrenska Street he was able to observe members of an SRK sniping unit operating from a two-storey house situated some 15 metres further up from where he was.⁶⁴⁹ The snipers would frequently change their positions and move from one house to another.⁶⁵⁰ Their equipment was similar to that which he saw in the tall buildings in Grbavica.⁶⁵¹ They had long-barrelled rifles with telescopic sights, binoculars, and “something like a telescope” with high magnification.⁶⁵² They also had infrared sights⁶⁵³ and a special kind of machine-gun with fitted optical sights.⁶⁵⁴ Witness D could see their weaponry protruding from the house. Very often he would hear the sound of firearms coming from there.⁶⁵⁵ On occasion he discussed with the snipers the nature of their targets. “They targeted civilians and soldiers alike.⁶⁵⁶ [...] The shooting was usually at the intersections and the transversals, as they were called, which were built horizontally around town and could be seen very well from those positions.” These ‘transversals’ were described as “broad roads down the width of the city, not longitudinally, and they form intersections with the vertical roads.”⁶⁵⁷ Using binoculars he was able

⁶⁴³ DP10, T. 14364-5; D1767 (electronic map of sniping incident 10 marked by witness); D1766 (map of area marked by witness DP10).

⁶⁴⁴ Witness D, T. 1896, 1932.

⁶⁴⁵ Witness D, T. 1921-2, 1925-30, 2021-4.

⁶⁴⁶ Witness D, T. 1927, 2028.

⁶⁴⁷ Witness D, T. 2020. See Map 1 of Ex. 3637D (set of maps of area).

⁶⁴⁸ Mukanović, T. 3082-4, 3115; P3235 (map marked by Mukanović); Tarić, T. 3140-3141, 3147; Kučanin, T. 4622, 4630; P3658 (map marked by Kucanin); Witness J, T. 8054; P3234 (map marked by Witness J).

⁶⁴⁹ Witness D, T. 1927-1928; P3251 (photograph of the area) depicts the view from trenches on Ozrenska Street. The witness' positions were below the rubble on the photograph, T. 1927.

⁶⁵⁰ Witness D, T. 1932.

⁶⁵¹ Witness D, T. 1928-9.

⁶⁵² Witness D, T. 1928-9; P3638 (manual of weapons); T.1936.

⁶⁵³ Witness D, T. 1934.

⁶⁵⁴ Witness D, T. 1928-9.

⁶⁵⁵ Id.

⁶⁵⁶ Witness D, T. 1929.

⁶⁵⁷ Witness D, T. 1930.

to see the containers that had been installed at these crossings for protection, as well as the people walking on the far side of the containers.⁶⁵⁸ “Sometimes people weren’t as safety-conscious and would cross at points where there were no containers.”⁶⁵⁹ The snipers confirmed to the witness that they were targeting persons at intersections where the barriers had been set up.⁶⁶⁰

263. Van Lynden visited an SRK position in the higher area of Hrasno Hill.⁶⁶¹ The gun emplacement he saw there had been dug in the garden outside a house.⁶⁶² The soldiers had a machine gun, and “While one man manned the machine-gun, the other looked down with binoculars.”⁶⁶³ While the witness was there, one soldier opened fire. “When we asked what he had shot at, his answer was the ‘Mujahedin’ by which he meant his opponents, the Bosnian Muslims.”⁶⁶⁴

264. Civilians in Hrasno were targeted also from the area of Grbavica. In April 1993, Ashton was on board a bus in the Hrasno neighbourhood when the bus was fired upon.⁶⁶⁵ From the orientation of the bus and of the bullet marks, Ashton concluded that the gunfire originated from the area above the sports stadium in Grbavica.⁶⁶⁶ Witness I said that sniping from the shopping centre in Grbavica upon civilians in the area of Hrasno was common.⁶⁶⁷ Habib Trto also testified that gunfire was frequently directed from Grbavica against the intersection at the Dolac Malta bridge.⁶⁶⁸ Milada Halili, a resident of Hrasno, confirmed that civilians were targeted at this intersection.⁶⁶⁹ This situation prompted Almasa Konjhodžić, Milada Halili’s mother, to move from the witness’s house to the PTT building, where she was employed, in order to avoid crossing the Dolac Malta bridge every day.⁶⁷⁰ Several other persons had also moved there for this reason.⁶⁷¹ Milada Halili testified that her apartment faced the Grbavica shopping centre and had been shot at from there.⁶⁷²

⁶⁵⁸ Id.

⁶⁵⁹ Witness D, T. 1931.

⁶⁶⁰ Id. A red circle on a photograph shown in court indicates one of these intersections. T. 1931; P3251 (photograph depicting view from Ozrenska Street). The witness said that snipers operated on both sides of the confrontation lines in the area of Ozrenska Street, T. 2042. During the time he was a member of his platoon, the confrontation line in this area remained almost unchanged, T. 2078

⁶⁶¹ Van Lynden, T. 2114.

⁶⁶² Id.

⁶⁶³ Id.

⁶⁶⁴ Id.

⁶⁶⁵ Ashton, T. 1383. Ashton took photographs inside the bus when it was shot at. See P3641 (photographs taken by Ashton).

⁶⁶⁶ Ashton, T. 1384, 1386. The witness marked direction of fire on a map (P 3645).

⁶⁶⁷ Witness I, T. 2853.

⁶⁶⁸ Habib Trto, T. 7098-9.

⁶⁶⁹ Milada Halili, T. 2730.

⁶⁷⁰ Milada Halili, T. 2730, 2749.

⁶⁷¹ Sabri Halili, T. 2717-8.

⁶⁷² Milada Halili, T. 2732. In October 1992, her flat burned down as result of SRK fire from that area. Milada Halili, T. 2733.

265. Alija Mulaomerović, the director of the Institute for Emergency Medical Services, which was located at 14 Darovalaca Krvi Street, currently called Kolodvorska Street,⁶⁷³ recounted that the Institute was shot at on numerous occasions from SRK territory. The staff believed that the shooting originated in Ozrenska Street on Hrasno Brdo,⁶⁷⁴ as well as from the former police school in Vrace.⁶⁷⁵ Mulaomerović testified that the Institute was repeatedly shelled during the conflict and suffered serious damage.⁶⁷⁶ He could not, however, specify the source of fire: “it came from all directions”.⁶⁷⁷ The Institute’s staff was under constant threat from the gunfire and shelling the Institute was subject to.⁶⁷⁸

266. The Prosecution tendered detailed evidence concerning four alleged examples of deliberate sniping of civilians in the general area of Hrasno which are identified in Schedule 1 of the Indictment under numbers 10, 15, 20 and 27.

(i) Scheduled Sniping Incident 10⁶⁷⁹

267. Nafa Tarić testified that on 3 September 1993, at approximately 5 p.m., she and her eight-year-old daughter, Elma Tarić, went out to get school books.⁶⁸⁰ Nafa Tarić recalled it was a sunny and peaceful day.⁶⁸¹ They walked from their apartment in Hrasno through the neighbourhood and down Ivana Krndelja Street.⁶⁸² They crossed the street holding hands⁶⁸³ behind a line of containers which had been installed to provide protection against SRK snipers operating, according to the

⁶⁷³ The facility also operated four satellite stations in the municipalities of Vogošća, Ilidža, Novi Grad, Dobrinja and the airport of Sarajevo, Mulaomerović, T. 1616-7, 1642-3.

⁶⁷⁴ Mulaomerović, T. 1625.

⁶⁷⁵ Id.

⁶⁷⁶ Mulaomerović, T. 1627-9.

⁶⁷⁷ Mulaomerović, T. 1627.

⁶⁷⁸ Mulaomerović remembered various instances when the staff of the IEMS was injured by shelling or sniping. For example, he said that, on 17 September 1992, part of a shell hit a driver as he walked towards the building. He sustained a serious injury to a leg and remained invalid, T. 1624. Two days later, another staff member was rendered invalid by a hit at the entrance of the building, T. 1624. On 18 October 1992, a medical technician was wounded by shrapnel of a shell in front of the emergency medical service building, T. 1633. On 31 February 1993, a colleague was hit by a sniper in his spine. He was left completely paralyzed and died 6 months later, T. 1635.

⁶⁷⁹ The Indictment alleges that on 3 September 1993, Nafa Tarić, a woman aged 35 years, and her daughter Elma Tarić, aged 8 years, were shot by a single bullet while walking together in Ivana Krndelja Street (now called Azize Sacirbegovic Street), in the centre of Sarajevo. The bullet wounded the mother in her left thigh and wounded the daughter on her right hand and in her abdomen, Schedule 1 to the Indictment.

⁶⁸⁰ Nafa Tarić, T. 3127-8. Nafa Tarić was wearing jeans, a denim waistcoat and white T-shirt, while Elma Tarić was dressed in a red tracksuit, T. 3132-3.

⁶⁸¹ Nafa Tarić, T. 3127. The Defence submits that the Report of the Commission of Experts, dated 3 September 1993, indicates that a “thick fog over Sarajevo quieted all shooting” (D36, Final Report of the Commission of Experts, Volume 2, Annex VI, Part I). It thus challenges the credibility of the witness’ testimony, Defence Final Trial Brief, paras 167-170. The Trial Chamber finds that this report does not exclude that there was visibility at 5pm at that location, and it therefore does not affect the credibility of this witness.

⁶⁸² She indicated on a map the route they took that day, P3105 (map of area); T. 3129-30, 3200-1. See also P3280.I (videotape), T. 3136-8; P3279.H (360 degree photograph of the location of scheduled sniping incident 10), 3148-51. Ivana Krndelja Street is currently called Azize Sacirbegović Street.

⁶⁸³ Elma Tarić was walking to the right of her mother, D35 (Statement given to OTP), p.2.

witness, from the area of Ozrenska Street on Hrasno Hill.⁶⁸⁴ As the two emerged from the cover of the containers, they were shot.⁶⁸⁵ A single bullet hit Nafa Tarić's left thigh, then grazed her daughter's hand and penetrated her stomach.⁶⁸⁶ They fell to the ground.⁶⁸⁷ Nafa Tarić said that another bullet "whizzed past our bodies as we lay there".⁶⁸⁸ People who witnessed the incident⁶⁸⁹ did not dare approach them.⁶⁹⁰ They managed to crawl away from the exposed position⁶⁹¹ and were taken to hospital.⁶⁹² The Trial Chamber is satisfied that the incident occurred as recounted by the witness.

268. The Trial Chamber has no doubt that Nafa Tarić and Elma Tarić, who was 8 years old at the time, were civilians.

269. The Defence submits that the victims were not deliberately targeted.⁶⁹³ Nafa Tarić testified that there was no on-going military activity at the time of the incident.⁶⁹⁴ She said that there were neither soldiers, uniformed personnel nor any military equipment present in the immediate vicinity.⁶⁹⁵ According to the witness, the closest ABiH military command post was located approximately 500 to 800 metres from the Hrasno neighbourhood.⁶⁹⁶ The fact that the two victims were shot at as they emerged from behind the containers, and that a second shot was fired at them as they lay wounded, reveals that they were deliberately targeted and not wounded by accident.

270. The Defence argues that the medical documentation tendered into the Trial Record does not explain "the angle of injury channel [sic] of the witness and her daughter", making it impossible to establish the exact direction and source of fire.⁶⁹⁷ It further claims that Nafa Tarić and her daughter

⁶⁸⁴ Nafa Tarić, T. 3131; D35 (Statement given to OTP), p. 2. See P3268 (set of photographs of site of event); T. 3139-40.

⁶⁸⁵ Nafa Tarić, T. 3131; D35 (Statement given to OTP), p.2.

⁶⁸⁶ Nafa Tarić, T. 3131-2; P3369A (discharge sheet from the State Hospital of Elma Tarić and Nafa Tarić); D107 (Official report of the 4th Hrasno Police Station - under seal).

⁶⁸⁷ Nafa Tarić, T. 3131; D35 (Statement given to OTP), p.2.

⁶⁸⁸ Nafa Tarić, T. 3132; D35 (Statement given to OTP).

⁶⁸⁹ Nafa Tarić, T. 3133.

⁶⁹⁰ Id.

⁶⁹¹ Nafa Tarić, T. 3133, 3135.

⁶⁹² The witness and her daughter remained at the State Hospital for almost two weeks, T. 3135; P3369A (discharge sheet from the State Hospital of Elma Tarić and Nafa Tarić).

⁶⁹³ Defence Final Trial Brief, para. 174. The Defence alleges that it was not possible for the perpetrator to have had such a quick reaction and fire at the victims as soon as they left the protection of the containers, Defence Final Trial Brief, para. 174.

⁶⁹⁴ Nafa Tarić, T. 3131.

⁶⁹⁵ Nafa Tarić, T. 3133.

⁶⁹⁶ Nafa Tarić, T. 3183. She believed the confrontation lines were about one kilometre away, T. 3165.

⁶⁹⁷ According to the Defence, this data is also necessary to establish the direction of the projectile, the number of bullets fired, and whether the victims were injured by a bullet or parts of a bullet that ricocheted, Defence Final Trial Brief, para. 171-172. Dušan Dunjić and Milan Kunjadić, the medical and ballistic forensic experts for the Defence, concluded that they were unable to determine the type of projectile or weapon responsible for the victims' injuries, the direction of fire or whether the victims were directly targeted, because information such as the nature of the wound sustained by the

could not have been shot from SRK positions on Ozrenska Street, since the location of the incident was not visible from these positions.⁶⁹⁸ The Trial Chamber considers that the absence of more detailed medical documentation or technical information on the point of entry of the bullet into the bodies of the victims is not crucial for determining the source of fire. Witness J, a police officer from the Novo Sarajevo Public Security Station who conducted an on-site investigation of the event,⁶⁹⁹ concluded that the shot had been fired from the SRK positions on Ozrenska Street.⁷⁰⁰ He based his conclusion not only on the common knowledge that snipers operated in that area,⁷⁰¹ but also on the fact that the police was unable to immediately access the site of the incident because of on-going shooting from those positions.⁷⁰² Nafa Tarić recalled speaking to five people at the hospital where she was taken who had been injured by sniper fire originating in the area of Ozrenska Street within an hour of the incident in which she and her daughter were wounded.⁷⁰³ DP10 and DP16 testified that the site of the incident was not fully visible from SRK positions in Ozrenska Street.⁷⁰⁴ However, visual evidence presented to the Trial Chamber demonstrates that there was an unobstructed line of sight from SRK positions on Hrasno Brdo to the location of the incident.⁷⁰⁵ Taking this into account, the only reasonable inference is that Nafa and Elma Tarić were injured by a shot fired from this area.

271. The Trial Chamber is satisfied beyond reasonable doubt that Nafa and Elma Tarić, civilians, were deliberately targeted from an SRK-controlled position.

(ii) Scheduled Sniping Incident 15⁷⁰⁶

victims or the position of their bodies was not available, D1921 (Report by medical forensic expert for the Defence Dušan Dunjić), pp 15-16; D1924 (Report by ballistic forensic expert for the Defence Milan Kunjadjić), pp.7-8; Milan Kunjadjić, T. 19341.

⁶⁹⁸ Defence Final Trial Brief, paras 176-178. The Defence alleges that “from the intersection of Ozrenska and Mravska Streets, [the] SRK positions are “falling” below the south slopes of the hill, and that from the locations where were [the] SRK positions it is impossible to shoot in the direction of the place [of the event]”, Defence Final Trial Brief, para. 177.

⁶⁹⁹ Witness J, T. 8057; D107 (Official report of the 4th Hrasno Police Station) (under seal). He found no bullet fragments at the scene. T. 8057.

⁷⁰⁰ D107 (Official report of the 4th Hrasno Police Station) (under seal). Hinchliffe took a laser range finder reading of the distance from the area of Tagolavska road, where he saw trenches and which he suspects was the area of the source of fire, to the spot where the victims were wounded to be 700 metres, Hinchliffe, T. 12979-81.

⁷⁰¹ Witness J, T. 8084.

⁷⁰² Witness J, T. 8084.

⁷⁰³ Nafa Tarić, T. 3195-8.

⁷⁰⁴ Witness DP10 said that the street where the incident occurred was only partially visible from the SRK positions, since a white building obstructed the line of sight. However, later in his testimony, he admitted that a line of sight did exist, although he said that the part of the intersection that was visible was in fact sheltered by screens, Witness DP10, T. 14373, 14397, 14411-5. Witness DP16 testified that the site of the incident was not visible from SRK lines, Witness DP16, T. 16576.

⁷⁰⁵ See photograph No. 1 of P3268 (set of photographs of site of incident); P3280I (videotape); P3279H (360 degree photograph of the location of scheduled sniping incident 10).

⁷⁰⁶ The Indictment alleges that on 2 November 1993, two men were wounded by a burst of gunfire while they were working clearing rubbish along Braće Ribara Street, presently Porodice Ribar Street, in the Hrasno area of Sarajevo. Ramiz Velić, aged 50 years, was wounded in his left forearm, and Milan Ristić, aged 56 years, was wounded in his right

272. Ramiz Velić, an employee of the Public Utilities Company in Sarajevo,⁷⁰⁷ testified that on 2 November 1993, at approximately 9.30 a.m., he was collecting rubbish with a front-end loader on Brace Ribara Street, in a settlement known as Trg Heroje (Heroes' Square) in Hrasno.⁷⁰⁸ On this day he was being escorted by Egyptian forces in two UNPROFOR armored personnel carriers marked "UN".⁷⁰⁹ He was wearing black corduroy trousers and a leather driver's jacket.⁷¹⁰ The loader and the trucks onto which the rubbish was being loaded were yellow.⁷¹¹

273. Velić was being assisted by local residents using hands and shovels to load the rubbish.⁷¹² Blankets hung on a wire across the street as protection against sniper fire.⁷¹³ As Velić reversed the loader he moved away from the blankets and the protection of one of the buildings into an open area where the UNPROFOR vehicles were, and was shot.⁷¹⁴ Velić did not hear the shot over the noise made by the loader. When he sensed the bullet strike his left hand,⁷¹⁵ he jumped out of the cabin and took cover behind a tyre.⁷¹⁶ The shooting continued and he heard several bullets strike the left side of the vehicle.⁷¹⁷ His colleagues later told him that they counted 64 bullet marks on the loader.⁷¹⁸ After the shooting ceased, Velić was transported to hospital.⁷¹⁹ The Trial Chamber is satisfied that the incident occurred as recounted by Velić.

274. The Defence submits that either the loader was legitimately targeted because it was possibly being used for a military purpose,⁷²⁰ or that the victim was wounded by accident during an exchange of fire.⁷²¹ Trial Chamber accepts Velić's testimony that the loader was only used to load

arm and both legs, Schedule 1 to the Indictment. The Prosecution led no evidence regarding the wounding of Milan Ristić, hence the Trial Chamber only considers the incident in relation to Ramiz Velić.

⁷⁰⁷ Velić, T. 2769-70.

⁷⁰⁸ Velić, T. 2771-2, 2776, 2780, 2782, P3280D (video of site of incident). Every day, the witness, then aged 50, would load up rubbish with his loader onto trucks, Velić, T. 2769-1.

⁷⁰⁹ Velić, T. 2782. He said that he would work under UNPROFOR escort when there was intense gunfire or when he had to clear up rubbish in dangerous areas, Velić, T. 2770-1.

⁷¹⁰ Velić, T. 2782.

⁷¹¹ Velić, T. 2782, 2826.

⁷¹² Velić, T. 2772.

⁷¹³ Velić, T. 2817-9, 2834-5. The witness placed a line on P3244 (photograph of site of incident) to show where the wire crossed the street, Velić, T. 2819

⁷¹⁴ Velić, T. 2772-4, 2837. See P3280D (video of site of incident).

⁷¹⁵ Velić, T. 2774, 2807, 2837; P1806 (discharge report of the Sarajevo University Medical Centre).

⁷¹⁶ Velić, T. 2773-4, 2837-8.

⁷¹⁷ Velić, T. 2773.

⁷¹⁸ Velić, T. 2806; P3279DD; T. 2838.

⁷¹⁹ Velić, T. 2812. The discharge report from the Sarajevo University Medical Centre shows that he was admitted on 2 November 1993 "as result of fresh injuries on the left hand inflicted by a sniper bullet" and was discharged on 28 December 1993, after undergoing surgery on two occasions, P1806 (discharge report of the Sarajevo University Medical Centre).

⁷²⁰ Defence Final Trial Brief, para. 241.

⁷²¹ Defence Final Trial Brief, paras 239, 242. It claims that "when visible damages from the photographs are considered, it is apparent that glasses are not damaged, which excludes the Prosecution's claim that Ramiz Velić was deliberately targeted", Defence Final Trial Brief, para. 244.

rubbish and that he was the only one who drove it during 1993.⁷²² The loader was shot at when Velić moved into open space.⁷²³ Even if the attacker had not been able to see the clothing and the activity performed by Velić, the presence of the two UNPROFOR vehicles would have made the attacker aware that Velić was performing civilian duties. The Trial Chamber is not convinced by the Defence's argument that Velić was accidentally hit. After he stepped out of the cabin, the loader was struck by dozens of bullets.⁷²⁴ Velić saw no other vehicles at the site of the incident apart from the loader, the yellow trucks and the UNPROFOR vehicles.⁷²⁵ There was no military presence or military equipment in the vicinity, according to the witness.⁷²⁶ The Trial Chamber concludes that Velić was deliberately targeted.

275. The Defence further submitted that the Prosecution failed to establish the source of fire.⁷²⁷ Velić testified that, at the time he was hit, his left hand "was turned towards Vrace".⁷²⁸ The source of gunfire, according to the witness, was the MUP academy in Vrace,⁷²⁹ under SRK control.⁷³⁰ Hinchliffe estimated the distance to the academy as 490 metres.⁷³¹ Defence witnesses DP10 and DP16 gave inconsistent testimony concerning the line of sight from the academy.⁷³² Visual evidence presented to the Trial Chamber demonstrates that the location of the incident was clearly visible from the SRK positions in Vrace.⁷³³ Considering the testimony of Velić, the position of the UNPROFOR APCs, and the existence of an unobstructed line of sight between the site of the

⁷²² Velić, T. 2826-7. The witness testified that, as part of his work obligations during the conflict, he was assigned the task of digging trenches. Up until the date of the event, he had worked digging trenches only on three occasions, once at Žuč and twice at Vogosca. He indicated, however, that he did not use his loader to dig trenches, but used only a pick and a shovel. T. 2810-11, 2820, 2829-30, 2833. He indicated that he had also been targeted on previous occasions whilst driving the loader and collecting rubbish in other areas, T. 2782.

⁷²³ The witness indicated on a video shown in court the location where the APCs were parked, see P3280D (video of site of incident).

⁷²⁴ Velić said that the gunfire had totally damaged the tyres, the front part of the loader and the reservoir, all which had to be replaced, Velić, T. 2807-8, 2813.

⁷²⁵ Velić, T. 2826.

⁷²⁶ Velić, T. 2812. The witness did not know of the existence of any military facility in the area, Velić, T. 2828.

⁷²⁷ Defence Final Trial Brief, paras 242-243.

⁷²⁸ Velić, T. 2773-4. The left-hand door of the cabin also faced Vrace, Velić, T. 2777.

⁷²⁹ Velić, T. 2773-4.

⁷³⁰ Velić, T. 2781. The witness clearly identified the location of this academy and of other SRK positions on photographs shown to him in court. See P3244, P3245, P3250 (set of photographs of site of incident), T. 2783-7, 2790; P3280D (video of site of incident), T. 2777; P3279D (360 degree photograph of the location of scheduled sniping incident 15); T. 2780-1. P3245 (photograph) shows the MUP academy. The witness placed red marks and letter "B" on P3245 (photocopy of P3244) and also marked P3250 (telephotograph of site) to indicate location of MUP academy and SRK positions in Vrace, Velić, T. 2784-6.

⁷³¹ Hinchliffe, T. 12985-6.

⁷³² DP10 said it was not possible to fire from the MUP Academy to the site of the event, because the view was blocked by the walls of the Grbavica stadium and by screens put up near the location of the shooting, Witness DP10, T. 14361-2; D1768 (map marked by witness). Witness DP16 testified that there was no line of sight between the spot of the incident and SRK positions, because a pink building obstructed the view, although he did believe there was a partial line of sight from the MUP Academy, Witness DP16, T. 16579-82; P3244. He added that there was daily exchange of fire in the area, T. 16580.

⁷³³ P3280D (video of site of incident); P3244 (photograph of site of incident). The witness testified that the trees seen in the photographs and video were not there at the time. See P3279D (360 degree photograph of the location of scheduled sniping incident 15), T. 2781-2; P3244 (photograph of site of incident), T. 2783-4.

incident and the area of Vrace, as well as the approximate distance between these two areas, the only reasonable inference is that the bullets fired at the loader, one of which hit the victim, originated, if not from the MUP academy, then at least from the area of Vrace.

276. The Trial Chamber is satisfied beyond reasonable doubt that Ramiz Velić, a civilian, was deliberately targeted from SRK-controlled territory in Vrace.

(iii) Scheduled Sniping Incident 20⁷³⁴

277. In January 1994, Akif Mukanović lived with his wife and two teenage children on the first floor of an apartment block on 27 Obala Jula in Hrasno.⁷³⁵ The apartment faced the direction of the confrontation lines, which were approximately 800 metres away.⁷³⁶ Bullets had hit the apartment on numerous occasions.⁷³⁷ To minimize the risk of being seen at night from SRK territory on Hrasno Brdo, the Mukanović family would, in addition to blinds, use blankets to cover the windows at night.⁷³⁸

278. Mukanović testified that on 11 January 1994, he arrived home from work around 7p.m.⁷³⁹ It was already dark outside.⁷⁴⁰ His wife, Hatema,⁷⁴¹ his two children, and a neighbour were at the dining room table.⁷⁴² His wife was sitting with her back to the window.⁷⁴³ Mukanović noticed that the blinds had not been covered with blankets.⁷⁴⁴ Because there was no electricity, a candle was lit on the table.⁷⁴⁵ The witness recalled that “There wasn’t any shooting, there wasn’t any fighting, or anything like that. There was just this bang, and we all jumped up. [...] And my wife at that point just got up and said, ‘I’m finished’. She took a step forward [...] went all pale and sunk to the floor”.⁷⁴⁶ According to Mukanović, two bullets struck his apartment.⁷⁴⁷ One passed through the

⁷³⁴ The Indictment alleges that on 11 January 1994, Hatema Mukanović, a woman aged 38 years, was shot dead while sitting in her apartment with her family and neighbours drinking coffee by candle-light on the first floor of Obala 27. Jula 89/I, presently Aleja Lipa 64, in the Hrasno area of Sarajevo, Schedule 1 to the Indictment.

⁷³⁵ Mukanović, T. 3056-7.

⁷³⁶ Mukanović, T. 3057.

⁷³⁷ Mukanović, T. 3057.

⁷³⁸ Mukanović, T. 3057-9. The dining-room of the Mukanović’s apartment had a hinge-type window. Looking outward from the dining-room, the left side had a glass pane, while on the right side there was only thin plastic sheeting. The cotton blinds of the window had holes caused by bullets and shrapnel, Mukanović, T. 3059-60.

⁷³⁹ Mukanović, T. 3060, 3105.

⁷⁴⁰ Mukanović, T. 3061.

⁷⁴¹ Mukanović, T. 3087.

⁷⁴² Mukanović, T. 3061, 3105.

⁷⁴³ Mukanović, T. 3061.

⁷⁴⁴ Id.

⁷⁴⁵ Mukanović, T. 3061, 3070.

⁷⁴⁶ Mukanović, T. 3063.

⁷⁴⁷ Mukanović, T. 3064-5, 3119-20. The witness pointed out on a video and photographs shown to him in court the entry points of the two bullets and where his wife was seated at the time of the incident, P3280 (video of location of incident), T. 3065-7. As shown on the video, the second entry point was measured to be 97 centimetres from the floor and 5.5 centimetres from the door frame, T. 3066. See P3237 (photograph 1A of dining room); P3238 (photograph 1B, pre-marked black-and-white photocopy of P3237), T. 3068-70, 3073.

wooden frame of the left side of the window, looking outward,⁷⁴⁸ and wounded his wife in the right shoulder blade, cutting through her aorta and lodging in her body.⁷⁴⁹ A second bullet went through the left windowpane, across the dining-room and through the wall into the outside hallway of the building.⁷⁵⁰ Hatema Mukanović was taken to the hospital but she did not survive the injury.⁷⁵¹

279. The Trial Chamber is satisfied that the incident occurred as recounted by the witness and that the victim and her family were civilians.

280. The Defence submitted that the direction of fire cannot be ascertained because the angles at which the bullets struck were not established by the Prosecution.⁷⁵² The Trial Chamber does not consider that information necessary to determine the direction or source of fire. Mukanović testified that the shots came from the SRK positions on Hrasno Brdo.⁷⁵³ He indicated on a map and on photographs shown in court the location of those positions, which could be seen from his apartment, as well as the confrontation lines.⁷⁵⁴ He said that, when there was shooting at night, “One could see because they would be using tracing bullets. So you could see where the fire came from.”⁷⁵⁵ Witness J, a police officer at the Novo Sarajevo Public Security Station, conducted an on-site investigation of the incident.⁷⁵⁶ He explained that the bullet that hit the victim had left entry-exit marks, from which the police was able to determine the direction of fire.⁷⁵⁷ The forensic investigation concluded that the shots had come from SRK positions on Hrasno Brdo.⁷⁵⁸ Hinchliffe estimated the distance to be 760 metres.⁷⁵⁹ Visual evidence presented to the Trial Chamber shows that there was an unobstructed line of sight between Hrasno Brdo and Mukanović’s apartment.⁷⁶⁰

⁷⁴⁸ Mukanović, T. 3065, 3119.

⁷⁴⁹ Mukanović, T. 3064, 3119-20.

⁷⁵⁰ Mukanović, T. 3065, 3119-20.

⁷⁵¹ Mukanović, T. 3063-64.

⁷⁵² Defence Final Trial Brief, para. 303. Dušan Dunjić, the medical forensic expert for the Defence concluded that he was unable to determine the type of projectile responsible for the victim’s death, due to the absence of detailed information on the nature of the wound, D1921 (Report by medical forensic expert for the Defence Dušan Dunjić), pp 29-31.

⁷⁵³ Mukanović, T. 3073.

⁷⁵⁴ P3235 (map marked by witness), T. 3083-3085; P3237 (photograph 1A); P3238 (photograph 1B, pre-marked black-and-white photocopy of P3237). The location of SRK positions is marked with the letter “F”. T. 3073. See P3239 (photograph 2A, view from dining room window); P3240 (photograph 2B, pre-marked black-and-white photocopy of P3239), P3241 (photograph 3A, telephoto of view from dining room window); P3242 (photograph 3B, pre-marked black-and-white photocopy of P3241), P3279 (360 degree photograph of the location of scheduled sniping incidents 20), T. 3081-2.

⁷⁵⁵ Mukanović, T. 3115.

⁷⁵⁶ Witness J, T. 8058, 8061. Witness J marked on map the building where victim lived when she was shot. T.8060. See No.4 on P3234 (map of location of incidents in Hrasno).

⁷⁵⁷ Witness J, T. 8061.

⁷⁵⁸ Witness J, T. 8089. Witness J marked on a map the area of the source of fire and drew a red line to indicate where the confrontation line ran, Witness J, T. 8061. See No.7 on P3234 (map of location of incidents in Hrasno). He recognised however that it was technically possible that the shots had been fired from another point on the hill, T. 8068.

⁷⁵⁹ Hinchliffe, T. 2991.

⁷⁶⁰ P3237 (photograph 1A); P3238 (photograph 1B, pre-marked black-and-white photocopy of P3237); P3239 (photograph 2A, view from dining room window); P3240 (photograph 2B, pre-marked black-and-white photocopy of

The Trial Chamber concludes from the above that the victim was killed by a shot fired from territory on Hrasno Brdo under SRK control.

281. The Defence further submits that the victim could not have been deliberately targeted, since she was not visible from SRK positions on Hrasno Brdo.⁷⁶¹ In the Defence's view, the victim was probably hit by accident by a stray bullet fired during ongoing combat.⁷⁶²

282. The following findings are that of the Majority of the Trial Chamber. A separate opinion by Judge Nieto-Navia dissenting from the Majority's findings is attached to this Judgement.

283. Mukanović's account establishes that two bullets were fired into his apartment. One bullet hit the glass pane and the other went through the window frame and struck the witness's wife. Mukanović testified that there had been no military personnel or equipment in the building and no military activity in the vicinity.⁷⁶³ He added that the day had been "pretty quiet, one of the calmer days". There had been no shooting or shelling prior to the incident that evening.⁷⁶⁴ The Majority finds that the shots fired into Mukanović's apartment were not stray bullets but were deliberately aimed at the window of the witness's apartment. There was a pattern of sniping of civilians in the area of Hrasno. Mukanović and his family were aware of this danger and would hang blankets on windows to reduce the visibility of their apartment at night. However, on the evening of the incident only torn cotton curtains were drawn across the windows. The room they were sitting in was lit by a candle. There is evidence that the SRK snipers operating from Hrasno Brdo used infrared sights to view their targets after dark.⁷⁶⁵ However, the Prosecution has not established that such a device was used in this case. Nevertheless, taking into account the fact that there were no soldiers inside or in the proximity of the building and no combat activity was underway at the time, the attacker should

P3239), P3241 (photograph 3A, telephoto of view from dining room window); P3242 (photograph 3B, pre-marked black-and-white photocopy of P3241); P3279 (360 degree photograph of the location of scheduled sniping incident 20).

⁷⁶¹ Defence Final Trial Brief, paras 298-302, 306. The Defence notes that the incident occurred after dark, that only a candle was lit in the room, and that the dining-room window was covered with plastic foil. According to the Defence, under these circumstances, the victim could not have possibly been seen from SRK positions located at a distance of 800 metres, as claimed by the Prosecution, Defence Final Trial Brief, para. 300. Milan Kunjadić, the ballistic forensic expert for the Defence, believed that the source of fire was Hrasno Brdo, T. 19360. He testified, however, that from the distance of the alleged source of fire, 800 metres, the perpetrator would not have been able to see the target if the window was covered. According to the witness, the evidence suggests that the two bullets had been fired simultaneously, T. 19361. Although he could not precisely indicate the type of weapon used, he believed it had most probably been an automatic rifle, T. 19365-7. He concluded that the victim could not have been the "immediate target" of the shooting "because of the fact that the window was covered by a blind and a curtain (which made visual communication impossible)", T. 19353; See D1924 (Report by ballistic forensic expert for the Defence Milan Kunjadić), p.12.

⁷⁶² Defence Final Trial Brief, para. 302.

⁷⁶³ Mukanović, T. 3086-3087. The witness indicated that his apartment was located at 300 to 400 metres from Hero's Square (Trg Heroja). He did not know whether the ABiH had its headquarters in the Loris building, on Hero's Square, but said that maybe the first building on the front line was an ABiH headquarter, Mukanović, T. 3103

⁷⁶⁴ Mukanović, T. 3086-7.

⁷⁶⁵ Witness D, T. 1934.

have known that, by deliberately targeting a window (with a light) of an apartment in a residential block of flats, only civilian casualties would result.

284. The Majority of the Trial Chamber finds that, after dark on 11 January 1994, two shots were fired deliberately at a candle-lit window of a civilian apartment block in Hrasno from SRK-controlled territory on Hrasno Brdo, killing Hatema Mukanović, a civilian, and that the attack was carried out from SRK-controlled territory with the intention to kill or to seriously injure any civilian present in the candle-lit room.

(iv) Scheduled Sniping Incident 27⁷⁶⁶

285. Witness AG, a boy of 13, and Witness AH, his sister, testified that on the afternoon of 22 July 1994 they ventured out with their mother to visit a relative.⁷⁶⁷ It was a clear day.⁷⁶⁸ They stopped to look at a shoe-shop window on Miljenka Cvikovica Street.⁷⁶⁹ Witness AG got off his bicycle and stood nearby.⁷⁷⁰ He was at that moment shot in the lower part of this stomach.⁷⁷¹ The bullet tore through the boy's body and shattered the shop window.⁷⁷² The family was given assistance by people who emerged from a nearby restaurant.⁷⁷³ Witness AG was taken to an emergency unit⁷⁷⁴ and then hospitalized for several days.⁷⁷⁵

286. The Trial Chamber is satisfied that the incident occurred as recounted by the witnesses and that Witness AG was a civilian.

287. The Defence submitted that Witness AG was not deliberately targeted from SRK positions but was wounded by a stray bullet from combat activity.⁷⁷⁶ The evidence shows, on the contrary,

⁷⁶⁶ The Indictment alleges that on 22 July 1994 a 13 year-old boy aged, Witness AG, was shot and wounded in the abdomen while window-shopping with his mother and sister in Miljenka Cvitkovica Street, presently Ferde Hauptmana, in the Čengić Vila area of Sarajevo, Schedule 1 to the Indictment.

⁷⁶⁷ Witness AG, T. 6286; Witness AH, T. 6244-5.

⁷⁶⁸ Witness AH, T. 6265; Witness AG, T. 6287.

⁷⁶⁹ Witness AH, T. 6245-6, 6266; Witness AG T. 6286, 6318, 6334.

⁷⁷⁰ Witness AG, T. 6286, 6318-9; Witness AH, T. 6245, 6268-9, 6277.

⁷⁷¹ Witness AG, T. 6287, 6296, 6316; Witness AH, T. T. 6245, 6247, 6254. Witness AG was wearing shorts and a short-sleeved shirt on the day of the shooting, Witness AG T. 6291; Witness AH, T. 6248.

⁷⁷² Witness AG, T. 6315-6316. Witness AG did not know if he heard the shot, but he did recall hearing the sound of glass breaking. Witness AG, T. 6287, 6316. Witness AH also only heard the sound of shattered glass and then saw that her brother was wounded. She saw the hole left by the bullet on the left-hand side of the shop window, Witness AH, T. 6245-7, 6267-74.

⁷⁷³ Witness AH, T. 6270. Witness AH said that the men who had assisted them were dressed in civilian clothes, Witness AH, T. 6270.

⁷⁷⁴ Witness AH, T. 6247, 6278-80; Witness AG, T. 6288, 6291, 6298, 6345.

⁷⁷⁵ Witness AG, T. 6291; See P2794 (discharge report of the State Hospital). See P2792 (set of photographs taken by the police). The account of the event was confirmed in a written statement given to the police by Witness AG's mother. See D80 (statement given by mother to Police Security Station of Novi Grad dated 1 March 1995), Witness AH, T. 6277.

⁷⁷⁶ Defence Final Trial Brief, paras 437-8. According to the Defence, the fact that only two shots were fired and that no attempt was made by the perpetrator to hit other people present in the area indicates that the victim was not intentionally

that there was no military activity in the area at the time of the incident. Witness AH testified that there was a cease-fire in place that day, and that she and her children had gone out precisely because there was no fighting.⁷⁷⁷ Witnesses AG and AH said that no soldiers or military vehicles were in the vicinity of the incident.⁷⁷⁸ No shooting was heard prior to the moment of the incident.⁷⁷⁹ Several children were playing nearby⁷⁸⁰ and the neighbourhood restaurant was open.⁷⁸¹ The Trial Chamber therefore finds that the victim was not hit by a stray bullet but was deliberately targeted.

288. The Defence further submitted that there was no clear line of sight from SRK positions to the location of the incident.⁷⁸² Witnesses AG and AH did not claim to know where the shot originated from.⁷⁸³ The police investigation showed that, in fact, two shots had been fired in quick succession, the second bullet striking the restaurant nearby.⁷⁸⁴ From an examination of the bullet marks in the restaurant,⁷⁸⁵ the police concluded that the shots were fired from the Pržulje house on

targeted, Defence Final Trial Brief, para. 435. Dušan Dunjić, the medical forensic expert for the Defence indicated that, due to the absence of information such as a detailed description of the nature of the wound sustained by the victim and his body position at the time of the incident, it was not possible to determine the type of projectile responsible for his injury or whether he was directly targeted or hit by a bullet that ricocheted, D1921 (Report by medical forensic expert for the Defence Dušan Dunjić), pp 44-46.

⁷⁷⁷ Witness AH, T. 6267.

⁷⁷⁸ Witness AG, T. 6298, 6324; Witness AH T. 6248-9. Witness AG did not notice any military equipment nearby or any military vehicles parked in the parking lot in front of the shop, Witness AG, T. 6291, 6319. Witness AH testified that she did not see soldiers inside the restaurant when she went back for the bicycle, Witness AH, T. 6270.

⁷⁷⁹ Witness AG, T. 6288. He said that, because he was in a state of shock after being wounded, he did not recall whether there was any shooting after he was injured, T. 6288.

⁷⁸⁰ Witness AG recalled there were some 5 or 6 children playing very close to him at the time, and thought they probably ran away afterwards, Witness AG T. 6288, 6322. See also D80, Witness AH, T. 6277.

⁷⁸¹ The Official Note of the Centre of Security Department, drafted by Kučanin, indicated that there were 10 people inside the restaurant at the time of the shooting, but that no one there was injured, P2790 (Official Note of the Centre of Security Department dated 22 July 1994 signed by Kučanin).

⁷⁸² Defence Final Trial Brief, paras 433-435. It argues that the distance between the place where the victim was injured and the alleged source of fire was not been properly established (para. 433). Milan Kunjadić, the ballistic forensic expert for the Defence, concluded that, based on the information available to him, he was unable to determine the type of weapon used and the distance from which the bullet was shot, D1924 (Report by ballistic forensic expert for the Defence Milan Kunjadić), p.18.

⁷⁸³ Witness AG, T. 6328; Witness AH, T. 6279.

⁷⁸⁴ Kučanin, T. 4510, 4514-5; P2792 (set of photographs taken by the police); P2790 (Official Note of the Centre of Security Department dated 22 July 1994 signed by Kučanin). Witness AH saw the bullet impacts in the restaurant when she later returned to pick up her brother's bicycle, Witness AH, T. 6247-8, 6270. See P3280W (video of location of incident); P3279W (360 degree photograph of the location of scheduled sniping incident 27); P3279WW (photographs of site marked by witness AG); P3269 (set of photographs pre-marked by witness AH).

⁷⁸⁵ Kučanin saw bullet impacts inside the restaurant and on its window and was present when other members of the police took photographs of the crime scene and recorded the bullet trajectories. He said that the bullet that hit the restaurant left three impact points. It passed through the awning outside the restaurant and, after piercing its window, hit an inside wall and bounced back from it, falling on the floor, Kučanin, T. 4509-12, 4515-16, 4647-48, 4654-57, 4762-67; P2792 (set of photographs taken by the police); P2790 (Official Note of the Centre of Security Department dated 22 July 1994 signed by Kučanin). The witness indicated on a set of photographs shown to him in court the bullet impact points, T. 4515, 4647-8, 4654-7, 4762-67; P2792 (set of photographs taken by the police) He explained that the police had used a periscope-like device, developed by a ballistic expert, to visually connect the first two impact points and determine the source of fire, T. 4512, 4658-9. A 7.62 millimetre calibre rifle bullet was recovered from the scene, T. 4516; P2792 (set of photographs taken by the police); P2790 (Official Note of the Centre of Security Department dated 22 July 1994 signed by Kučanin).

Zagorska Street, on SRK-controlled territory on Hrasno Brdo.⁷⁸⁶ Given that the two bullets were fired in quick succession, the Trial Chamber concludes that they were fired, if not from the same weapon, then from the same location. Witness DP16 claimed that the site of the incident was not visible from SRK positions,⁷⁸⁷ however the visual evidence presented to the Trial Chamber demonstrates that a clear line of sight existed.⁷⁸⁸

289. The Trial Chamber therefore finds that Witness AG, a civilian, was injured by a shot deliberately fired at him from SRK-controlled territory on Hrasno Brdo.

(c) Alipašino Polje Area

290. Alipašino Polje is a residential neighbourhood in the west of Sarajevo. It is bounded by Mojmiilo hill and the neighbourhood of Dobrinja to the south, and by the neighbourhood of Nedarići to the west and south-west.⁷⁸⁹ The whole of Alipašino Polje was on the ABiH side of the confrontation line, which separated it from Nedarići.⁷⁹⁰ The line at this point extended from west to east and curved into ABiH-controlled territory. The result was that Nedarići was bordered on three sides by territory controlled by the ABiH; a west-running corridor connected this neighbourhood with the more expansive SRK-controlled territory to the west.⁷⁹¹ The Prosecution adduced evidence to prove that attacks on civilians in Alipašino Polje were launched from the SRK-controlled territory of Nedarići, in particular from a collection of buildings known as the “School for the Blind.” That evidence was adduced in general and also in relation to specific scheduled sniping and shelling incidents, which are detailed below.

(i) Nedarići and the School for the Blind

291. The Nedarići neighbourhood, where the SRK held a salient in the ABiH lines, consisted mostly of low buildings of one to two storeys.⁷⁹² The portion of Nedarići east of Ante Babića Street and south of Đure Jakšića Street (now renamed Adija Mulebegovića), where there are higher buildings, was controlled by the ABiH together with Alipašino Polje. In certain areas, a street

⁷⁸⁶ Kučanin, T. 4512-13; P2790 (Official Note of the Centre of Security Department dated 22 July 1994 signed by Kučanin). Kučanin pointed out the location of the house on a photograph shown to him in court, Kučanin, T. 4516-7. Hinchliffe did not take a laser range finder reading of the distance from the site where the victim was hit to the alleged source of fire, but, based on his observation of the ridge line, he estimated this distance to be 1200 metres, Hinchliffe, T. 12995

⁷⁸⁷ He testified that, because the site of the shooting was at more than 1000 metres from SRK lines and due to “the configuration of the ground and the separation line in that area”, this site was not visible from SRK positions, Witness DP16, T. 16577.

⁷⁸⁸ P2792 (set of photographs taken by the police); P3279W (360-degree photograph); P3280W (video of location of incident); P3269 (set of photographs pre-marked by witness AH).

⁷⁸⁹ P36644.RH; D1814 (maps).

⁷⁹⁰ P3644.RH (map).

⁷⁹¹ D1814 (map).

⁷⁹² Hajir, T. 1698.

divided the two warring sides,⁷⁹³ but close to the Institute for the Blind, ABiH and SRK forces were only a few meters apart.⁷⁹⁴

292. Fighting in the area was intense from the first months of the conflict, and soldiers from both sides constantly fired *from* and *against* the area. Mustafa Kovać, the head of the Civil Defence in Sarajevo during the war, and Commander Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994, confirmed that a barricade was placed to protect civilians against sniping from the SRK-held part of Nedarići in Ante Babića Street.⁷⁹⁵ Kolp also stated that SRK snipers were known to fire from Nedarići against the tram line behind the Oslobođenje building.⁷⁹⁶ Mirsad Kućanin, a member of Sarajevo Police force, stated that the perpendicular streets going towards Alipašino Polje (including Prvomajska Street), under ABiH control and inhabited mainly by BiH Muslims, were regularly targeted from Nedarići.⁷⁹⁷ Kovać testified that bullets of different calibres, grenades or anti-aircraft guns, machine-guns, mortar grenades and shells and bullets from sniper weapons were fired *from* the Nedarići area.⁷⁹⁸ Fuad Điho, a resident in the area, explained that the entire facades of the houses on Ante Babića Street were “pock-marked with shell pieces and grenades of all calibres and [the SRK] fired at apartment blocks where people lived.”⁷⁹⁹ According to Ismet Hadžić,⁸⁰⁰ commander of the Dobrinja Brigade of the ABiH, the shelling of Dobrinja took place from the Nedarići barracks, the area below the Institute of Theology, near Kasindolska Cesta.⁸⁰¹

⁷⁹³ Witness DP6, T. 13869.

⁷⁹⁴ Witness DP8, T. 14726.

⁷⁹⁵ Kolp, T. 8243-4; P3644.MK (map marked by Kovać); Kovać, T. 877, 881.

⁷⁹⁶ Kolp, T. 8243-4.

⁷⁹⁷ Kućanin, T. 4633, P3658 (map marked by witness). Also, at the beginning of the conflict, Dobrinja had been exposed to intense shelling from Nedarići, Kovać, T. 877.

⁷⁹⁸ Kovać, T. 874, 878. Witness DP6 (T. 13984) and DP17 (T. 16832-3) confirmed that the SRK had mortars in Nedarići; Witness DP5 stated that the SRK had a rocket launcher at the Institute for the Blind, T. 15349.

⁷⁹⁹ Điho, T. 3936-3937.

⁸⁰⁰ Hadžić, T. 12253.

⁸⁰¹ Defence witnesses submitted that the ABiH also fiercely fought in and around Nedarići. Richard Gray, UNMO in Sarajevo between April and September 1992, stated that in Nedarići the SRK was “under siege” and isolated; the confrontation line was at the student hostel and on Ante Babića Street. HVO forces in Stup shelled the buildings where he intended to place military observers and, in general, the area was all targeted by shell fire and mortar bombs from the ABiH. On 18 May 1992, a eight or nine-story building on Ante Babića was shelled by SRK forces in response to ABiH sniping (Gray, T. 19856; 19884, marking on D1845, western part of the map of Sarajevo; 19754; 19857; 19895; 19899-19902; 19906-7). According to witness DP5, a soldier in the SRK who left the area in middle 1993, attacks were typically launched by ABiH forces with multi-barrel rocket launchers, hand-held rocket launchers, mortars and mountain guns. ABiH snipers would fire from Vojničko Polje and Alipašino Polje. DP5 also remembered that houses in Nedarići had been set on fire and that an attack had occurred involving tanks around 10 June 1992. He further stated that during the conflict three rows of barricades were erected at the intersection of Ante Babića Street and Aleja Branca Bujića (Witness DP5, T. 15250-2, 15256-9, 15271-4, 15404-8). The fact that large fighting operations took place around that date is confirmed by witness DP51, who stated that the Koševo hospital treated a large number of wounded from Nedarići in the early morning of 7 or 8 June 1992 (Witness DP51, T. 13628). Destruction of buildings in Nedarići continued on a massive scale at least until December 1992 (Witness DP6, T. 13935). The Prosecution acknowledged that in June 1994 there were soldiers on both sides of the confrontation lines in Nedarići and that daily clashes occurred; also, ABiH troops enjoyed a good view of the other side of the confrontation line due to their position in high-rise buildings around Nedarići (T. 13898-9).

293. Some specific incidents of alleged sniping from SRK positions were described by civilians during the course of the trial. Witness R, a woman hit while going to draw water from a well, recalled that on a winter day in 1992, she was facing Nedarići and, taking into account also the fact that the SRK “always shot at us from that part of Nedzarici”, she claimed that the bullet came from that area.⁸⁰² Medina Omerović, a girl living in the area, recounted that a sniping incident occurred in Spring 1994 on the northern part of Lukavička Cesta, towards the confrontation line in Aleja Branka Bujica Street,⁸⁰³ causing the death of a 10-year old boy, Dejan Stefanović.⁸⁰⁴ She testified that she could hear gunfire coming from “Nedarići” on her way to and from school, or on the road to her sister’s apartment.⁸⁰⁵ The witness believed that the fire came from the houses held by the SRK located on the right-hand side behind her building.⁸⁰⁶

294. During trial, a considerable amount of evidence was tendered with regard to that group of buildings in Nedarići known as the “Institute for the Blind”, allegedly a major source of fire in SRK-held territory against civilians of the surrounding areas. Witnesses marked the confrontation line on a map in court as going south along Lukavička Cesta street from the intersection where the Institute for the Blind is located.⁸⁰⁷

295. Defence witnesses denied that shooting used to come from the Institute for the Blind. In particular, witnesses DP4, a member of the SRK company stationed in Nedarići, stated that he never saw rifles with telescopic sights there.⁸⁰⁸ Witness DP6 and witness DP8, both also SRK soldiers in Nedarići, stated that the view from the Institute for the Blind to Ante Babića street was obstructed.⁸⁰⁹ Witness DP6 also remarked that, although the SRK occupied the first floor of the Institute for the Blind, no fire could come from the upper two floors of that building, since it was dangerous to go there.⁸¹⁰ The Trial Chamber was however confronted with UNMO daily situation reports pointing to the fact that the Institute for the Blind was indeed a source of sniping against civilians. A Report of 11 July 1994 describes the wounding of a 17-year old “Bosnian male” at the intersection of Ante Babića street with Aleja Branka Bujica, with UNMOs suspecting that “sniping

⁸⁰² Witness R, T. 8187-8.

⁸⁰³ P3098 (map of the area marked by the witness); Omerović, T. 3865, T. 3849-50.

⁸⁰⁴ Omerović, T. 3849-50; 3886; 3888.

⁸⁰⁵ Omerović, T. 3893-4.

⁸⁰⁶ Omerović, T.3863-4.

⁸⁰⁷ Fajko Kadrić, T. 3789-90; P3108 (map of the area); Faruk Kadrić, T. 3742-3, showing the confrontation lines on D47, map of the area; however, the witness testified that he couldn’t actually see the confrontation lines. All the buildings in front of the “blind Institute and the institute for children were destroyed”, as those “below the institute for blind children, the Branka Bujica Street” (area marked on the map as Oslobodjenje-Studenski Dom, Zavod za Slijepe, Dom Penzionera). See also Kučanin, T. 4542, P3644.MK1 (map marked by witness). Faruk Kadrić traced another confrontation line along Aleja Branka Bujica (now Aleja Bosne Srebre), from Ante Babića street up the “Home for the Blind Children”, D47 (map of the area marked by witness); Faruk Kadrić, T. 3742-3. Witness DP4 marked Aleja Branka Bujica as SRK territory under constant fire from the ABiH; Witness DP4, T. 14137.

⁸⁰⁸ Witness DP4, T. 14228.

⁸⁰⁹ Witness DP6, T. 13918; Witness DP8, T. 14729; 14742-7.

came from BP859578” (the Institute for the Blind); the report also highlighted that it was “the third casualty (all civilians) in the same spot in the last few days.”⁸¹¹ With reference to the previous day, an “UNMO BH Command” report dated 13 July 1994 stated that the commander of 1st Battalion of the SRK Ilidža Brigade admitted that sniping did originate from Bravo PAPA 859578 (“House for the Blind People”), and “promised that there would be no more sniping from that place.”⁸¹²

296. Moreover, many residents of the neighbourhood, or the surrounding areas, asserted that the Institute for the Blind was indeed a source of sniping against civilians. Fajko Kadrić, a member of the ABiH and of the Sarajevo Civilian Defence, stated that there was always danger from the Institute for the Blind and that his truck was hit a number of times on the same side at the intersection between Ante Babića street and Đure Jakšića street (later renamed Adija Mulebegovića).⁸¹³ Both Fajko Kadrić and his son Faruk, almost 16 years old at the time, believed that shooting on 4 October 1993 came from the Institute for the Blind.⁸¹⁴ Marko Kapetanović, a 60-year old resident of the area, and Fuad Điho, a reserve policeman living in Alipašino Polje, testified that shooting on 13 March 1994 on Ante Babića Street came from the Institute for the Blind.⁸¹⁵ Điho stated that “it was common knowledge that [the Institute for the Blind and the Faculty of Theology were] one of the snipers’ strongholds.”⁸¹⁶ Omerović explained that, during the years of war, and based on what she heard, she gained a sense that sniping fire came from the Institute for the Blind and the surrounding area.⁸¹⁷

297. All these witnesses provided detailed evidence in relation to instances during which they were shot or instances where they witnessed shooting at civilians from SRK-controlled territory. The Prosecution specifically alleges these incidents under number 13, 21, 23, and 25 in Schedule 1 of the Indictment as representative of attacks on civilians from the SRK-held areas of Nedarići.

(ii) Scheduled Sniping Incident 13⁸¹⁸

298. Fajko Kadrić was a butcher in Vojničko Polje.⁸¹⁹ He owned a refrigerated truck,⁸²⁰ with the mark “Mesnica” (*The Butcher’s*) written in large letters on the right-hand side,⁸²¹ which he

⁸¹⁰ Witness DP6, T. 13919; 14067-8.

⁸¹¹ P2754 (UNMO report), discussed at T. 16852 (private session).

⁸¹² P2759 (UNMO report), page 4, para. 24; Witness DP17, T. 16856-61.

⁸¹³ Fajko Kadrić, T. 3782.

⁸¹⁴ Fajko Kadrić, T. 3779-3784; 3763 (with regard to his son being shot at later that morning); Faruk Kadrić, T. 3716 (with regard to a shooting incident early in the morning that day).

⁸¹⁵ Marko Kapetanović, T. 5776, 5820; Điho, T. 3906.

⁸¹⁶ Điho, T. 3957.

⁸¹⁷ Omerović, T. 3852.

⁸¹⁸ The Indictment alleges that on 4 October 1993, “Faruk Kadrić, a boy aged 16 years, was shot and wounded in his neck while riding as a passenger in his father’s truck along Ante Babića street, in the west end of Sarajevo”, Schedule 1 to the Indictment.

⁸¹⁹ Fajko Kadrić, T. 3753, 3757.

regularly used during the armed conflict mainly to transport water or flour for the Civilian Defence.⁸²² On the morning of Monday 4 October 1993, Fajko Kadrić was carrying flour from a bakery to the Civil Defence in Vojničko Polje, now Saraj Polje, with his truck.⁸²³ Although Fajko Kadrić also served in a small company of the 5th Motorized Brigade of the ABiH,⁸²⁴ he explained that, on the day of the incident, he was on duty, that is “civilian work.”⁸²⁵ Faruk Kadrić insisted that his father did not use the truck for the army.⁸²⁶ Faruk Kadrić was sitting in the second passenger seat to the right of Fajko Kadrić, who was driving⁸²⁷ when at about 11:15 am,⁸²⁸ they turned left into Ante Babića street and headed south; the truck was travelling at a speed of about 20 to 30 km/h at the most, as it had a full load and was going uphill.⁸²⁹

299. Both witnesses asserted that nobody was around except for an UNPROFOR APC, stationed to their right and about 100 meters down Ante Babića street, at the intersection with Đure Jakšića street (later renamed Adija Mulebegovića street).⁸³⁰ At the point where Aleja Branca Bujića forks off and the 10-storey high building of the student hostel (*Studentski Dom*) is located,⁸³¹ an explosion was heard.⁸³² Faruk Kadrić was hit in the neck.⁸³³ Both father and son heard the sound of the shot coming from their right as they passed the intersection⁸³⁴ and asserted that the bullet most probably came from the Institute for the Blind.⁸³⁵

⁸²⁰ Fajko Kadrić, T. 3755-6.

⁸²¹ Fajko Kadrić, T. 3761; P3107, drawing of the truck made by the witness, Faruk Kadrić, T. 3706.

⁸²² Fajko Kadrić, T. 3784, 3786-7.

⁸²³ Fajko Kadrić, T. 3757-8; T. 3786; D47 (map of the area marked by witness). With regard to the day of the incident, the Trial Chamber also regards as corroborating circumstance the declaration of the Sarajevo University Clinical Centre, P1781, stating that he was admitted on 4 October 1993.

⁸²⁴ Fajko Kadrić, T. 3793-6; P1781.1 (Sarajevo University Clinical Centre Patient History, where the ABiH 5th Motorized Brigade is cited as “insurance holder’s work organization”); Faruk Kadrić, who at the beginning denied his father was a soldier (T. 3719), later conceded the issue, T. 3744.

⁸²⁵ Fajko Kadrić, T. 3803.

⁸²⁶ Faruk Kadrić, T. 3750; 3729.

⁸²⁷ Fajko Kadrić, T. 3760; Faruk Kadrić, T. 3707.

⁸²⁸ Fajko Kadrić, T. 3761; Faruk Kadrić, T. 3712.

⁸²⁹ Fajko Kadrić, T. 3763.

⁸³⁰ Faruk Kadrić, T. 3707, Fajko Kadrić, T. 3765-66. According to the calculations of the Trial Chamber, the intersections of Ante Babića with, respectively, Aleja Bosne Srebrenice and Đure Jakšića street is closer to 200 meters.

⁸³¹ Faruk Kadrić, T. 3706, 3715; Fajko Kadrić, T. 3758, 3779-81; P3108 (pre-marked map); P3644.FK.1 (map marked in court); P3277 (photograph of the intersection).

⁸³² Fajko Kadrić, T. 3759; P3107 (drawing of the truck made by Fajko Kadrić). The witness showed on the drawing the “entry point” on the side of the car “which [was] about 20 or maybe 10 millimeters”; Fajko Kadrić, T. 3765. He later specified that “the truck was hit on the right-hand side of the door, the frame of the door at the height of the neck” (T. 3761).

⁸³³ Fajko Kadrić, T. 3760; Faruk Kadrić, T. 3707-10, 3714, P1781; P1701.

⁸³⁴ Faruk Kadrić, T. 3707-8; Fajko Kadrić, T. 3759.

⁸³⁵ Fajko Kadrić testified that the Institute for the Blind was a well-known sniper’s stronghold. He notably indicated the presence of holes made in the walls, from which the SRK would shoot. According to him, those holes were visible from the position of the truck when they were shot at, Fajko Kadrić, T. 3783. However, none of the witnesses was able to see where exactly the bullet came from, which is understandable in view of the circumstances. Fajko Kadrić also stated that there was always a risk at this intersection and that his truck had been hit on various occasions, always on the right-hand side, Fajko Kadrić, T. 3782. Faruk Kadrić recounted that a woman was shot at on that same morning at that intersection,

300. Fajko Kadrić continued to drive and stopped where the UNPROFOR APC was stationed.⁸³⁶ UNPROFOR soldiers helped them and transported Faruk to their dispensary.⁸³⁷ According to the doctors, the wound in the neck had been caused by a fragmentation bullet;⁸³⁸ several metal fragments are still visible on the X-rays of his neck and could not be removed as an operation would risk leaving him paralysed.⁸³⁹

301. All the buildings in front of the Institute for the Blind were destroyed and had been levelled.⁸⁴⁰ Further, the student hostel was completely hollow and could be seen through.⁸⁴¹ A small barricade had been placed at the intersection across Aleja Branca Bujića.⁸⁴² After reviewing the evidence,⁸⁴³ Milan Kunjadić, the Defence expert on ballistics, conceded that he did not know the height of the barricade or the state of the buildings during the war and recognised that he could not exclude the possibility that the truck could be seen above the barricades and through the damaged buildings.⁸⁴⁴ He also acknowledged that a sniper might have been able to follow the truck above the barricade and through the hollow buildings, and be ready to shoot precisely when the cabin window emerged under the stipulated circumstances.⁸⁴⁵

302. Although the Trial Chamber is convinced that Fajko Kadrić was hit by a bullet, it finds it difficult to reconstruct the event with due certainty, in particular in respect of the position and the speed of the truck in relation to either barricades, both close to and further from the intersection,

so he had been urged not to go to school, Faruk Kadrić, T. 3716. Hinchliffe measured the distance from the Institute for the Blind to the location of the truck as being 440 metres, Hinchliffe, T. 12983.

⁸³⁶ Fajko Kadrić, T. 3760; Faruk Kadrić, T. 3707.

⁸³⁷ Fajko Kadrić, T. 3766; Faruk Kadrić, T. 3707-3708. At the dispensary, the wound was dressed; Faruk Kadrić was later brought to an institution designated as KAR and then to the Sarajevo University Clinical Centre (Koševo hospital), where he received extended medical treatment. Four or five months later, he went to the United Arab Emirates and stayed there for one and a half years to receive further treatment, Faruk Kadrić, T. 3708-10.

⁸³⁸ Faruk Kadrić, T. 3710; P1781 (letter of discharge from hospital indicating that he was wounded on 4 October 1993 by a fragmentation bullet and that he presented metal foreign bodies in the back of the neck).

⁸³⁹ P1701 (three x-rays of the neck). The contention of the Defence that the evidence does not permit to determine by what the injury was caused (Defence Final Trial Brief, para. 205) is without merit. The Defence itself later seems to admit that the "bullet came somewhere from the right side of the truck" (Defence Final Trial Brief, para. 215). A comparison of the fragments still present in Faruk Kadrić's neck with the visible C4 vertebra in the x-ray leads the Chamber to believe that the length of the larger one of these fragments is at least 2 cm, Faruk Kadrić, T. 3713.

⁸⁴⁰ Faruk Kadrić, T. 3742-3. Two photographs, taken from the Institute for the Blind towards Ante Babića street, only show the presence of a small house under reconstruction, which stands in front of the Institute. At the time of the incident, this house had been destroyed and could not obstruct the view, Faruk Kadrić, T. 3784. The trees appearing on another photograph, taken from Ante Babića street towards the Institute for the Blind, could not obstruct the view either, given their lower size at the time, P3277, photograph of the intersection; Fajko Kadrić, T. 3836. With specific regard to visibility, both witnesses testified that the weather was "fair", Fajko Kadrić, T. 3761; Faruk Kadrić, T. 3712.

⁸⁴¹ Fajko Kadrić, T. 3777; Điho, T. 3916-7; Kapetanović, T. 5791-2. The fact that the Institute could be seen from the position where Faruk was hit was stated by the father (Fajko Kadrić, T. 3779-3784) and by the son (Faruk Kadrić, T. 3746).

⁸⁴² Faruk Kadrić indicated that a small barricade, a small container, had been placed there on that day, T. 3715. Fajko Kadrić mentioned the presence of barricades which were about 2 meters high, T. 3776; see P3277, photograph of the intersection.

⁸⁴³ Kunjadić, T. 19274-5, 19349, 19330. A vehicle traveling at 20-30 km/h, the speed suggested by Fajko Kadrić for his truck on that occasion (T. 3761) moves at 5.5 to 8.3 meters per second.

⁸⁴⁴ Kunjadić, T. 19349-51.

⁸⁴⁵ Kunjadić, T. 19353.

and to the nearby buildings, to conclude beyond reasonable doubt that the shot was fired deliberately from SRK-held territory to hit Fajko Kadrić on the passenger seat of the truck.⁸⁴⁶ This incident can therefore not be accepted as exemplary of deliberate sniping by the SRK at civilians.

(iii) Scheduled Sniping Incident 21⁸⁴⁷

303. On 13 March 1994,⁸⁴⁸ Ivan Franjić, 63,⁸⁴⁹ and Augustin Vučić, 57,⁸⁵⁰ were wounded by one or more bullets on Ante Babića street. They were both civilians⁸⁵¹ and Catholic Croats living in the same neighbourhood.⁸⁵² The evidence presented in respect of this shooting, as seen below, is inconsistent to the extent that it created insurmountable difficulties for the Trial Chamber to reconstruct the event in which Ivan Franjić and Augustin Vučić were hit by one or more bullets.

304. Marko Kapetanović, a man allegedly walking with them on that day, testified that he was not able to identify his own exact location or that of the victims at the time of the incident. In particular, the position he indicated on site while videotaped⁸⁵³ differed from the one he pointed to

⁸⁴⁶ Due to these uncertainties, the Trial Chamber does not need to consider the claim by the Defence that, since the driver of the truck was an ABiH member (even if not on duty), it would be unreasonable to expect a soldier to distinguish the civilian status of a victim seated in a military objective from such a distance, Defence Final Trial Brief, para. 215. However, the Defence also stated that it “completely agree[d]” with the witness Briquemont when he said that civilian vehicles become a legitimate military target when one is “sure that they are being used for military purposes,” T. 10134. In any event, the Defence essentially claims that a person who is in a truck allegedly used for army needs, as Faruk Kadrić, cannot be considered a civilian, Defence Final Trial Brief, para. 216.

⁸⁴⁷ The Indictment alleges that on 13 March 1994 Ivan Franjić and Augustin Vučić “were shot and wounded while walking with a third man on Ante Babića street, in Vojničko Polje, in the west end of Sarajevo. Ivan Franjić, aged 63 years, was wounded in his stomach, and Augustin Vučić, aged 57 years, was wounded in his kidneys and died from his injuries two and a half months later”, Schedule 1 to the Indictment.

⁸⁴⁸ Kapetanović could not remember the exact date of the incident and placed it around April 1993, Kapetanović, T. 5765. Điho, at first, placed the incident in March 1994 (Điho, T. 3904) then in April 1994 (Điho, T. 3908). He was later confronted with his statement to the Sarajevo Criminal Department of 25 February 1995, in which he had indicated the date of 3 March 1994 (Điho, T. 3909-10; P2476). The Documentation from the University Medical Centre of Sarajevo and the letter of discharge issued to Franjić show that the victim was admitted to the hospital on 13 March 1994; P2477, discharge letter. The translation into English (P2477.1) bears the wrong date of 13 March 1993). With regard to the exact time of the incident, Kapetanović recounted that his friends were shot around 10 am (Kapetanović, T. 5766, 5827, 5841), while Điho declared that the incident occurred at about 2 or 3 pm (Điho, T. 3908). A report of the Fourth Police Station (Municipality of Novi Grad, Sarajevo) of 13 March 1994 indicates about 5 pm (P2476.1, English translation of the police report).

⁸⁴⁹ Kapetanović testified that Franjić was injured towards the middle of the stomach, above his navel. Kapetanović, T. 5767-5768, 5782. Both witnesses indicated that his intestines were partially protruding from the open wound. Kapetanović, T. 5768, 5837; Điho, T. 3908. The letter of discharge issued by the hospital to Franjić on 5 April 1994 is from the abdominal surgery clinic of the University Medical Centre of Sarajevo; the diagnosis was “gunshot wound to the abdomen caused by a sniper bullet.” P2477.1, discharge letter. The date of release has been mistranslated in the English version and should read as “5 April 1994”, instead of “5 April 1993”.

⁸⁵⁰ Kapetanović testified that Vučić was more seriously wounded in the kidney on the left-hand side (Kapetanović, T. 5838; T. 5767-8, 5823). Although both witnesses declared that he subsequently died as a result of his wound (Kapetanović, T. 5769; Điho, T. 3921), the Defence submitted that the evidence presented is insufficient to conclude that Vučić’s death resulted from the particular injury to the kidneys. The Trial Chamber agrees that the nexus between the injury and Vučić’s death was not proven beyond reasonable doubt.

⁸⁵¹ The Defence suggests that the three men might have been Croat members of the HVO (Defence Final Trial Brief, para. 313). The Trial Chamber does not find any element in evidence to support this allegation.

⁸⁵² Kapetanović, T. 5769 (Franjić and himself were retired, while Vučić was about to retire), T. 5774, 5769; Điho, T. 3918. Franjić lived in the same apartment block as Kapetanović, Kapetanović, T. 5765.

⁸⁵³ Kapetanović, T. 5777, P3280.U (video of the incident scene).

on a photograph presented to him during trial⁸⁵⁴ and from the one he had marked on a map out of court.⁸⁵⁵ In another portion of his testimony, he explained that his two friends were shot about 10 meters from the pedestrian crossing on the east side of Ante Babića street in front of the student hostel.⁸⁵⁶ Although these three locations are all within 200 meters one from the other and are all along Ante Babića street, the Trial Chamber is bound to take the discrepancies into consideration.

305. Fuad Điho, a policeman present on the scene who later extended help to the wounded men,⁸⁵⁷ testified that he found these men at two different locations: Vučić at approximately the same location as the one pointed to by Kapetanović on the photograph,⁸⁵⁸ while Franjić was 70 or 80 meters south, along Ante Babića street.⁸⁵⁹

306. Kapetanović stated that a single bullet hit the two victims⁸⁶⁰ and grazed his own belt.⁸⁶¹ He testified that he did not hear any specific noise made by the bullet and could not assert with certainty whether one or two bullets were fired;⁸⁶² nonetheless, he assumed that the injury to the two men was caused by one single bullet,⁸⁶³ which had entered the stomach of Vučić above the navel.⁸⁶⁴ Điho, on the other hand, testified that he clearly heard two separate shots.⁸⁶⁵

307. Both witnesses assumed that the shooting came from the Institute for the Blind,⁸⁶⁶ but it is unclear on which basis they made this assertion.⁸⁶⁷ Điho stated that the bullet came from Nedarići, which he was facing when he heard the shots.⁸⁶⁸ Kapetanović stated that, since they were moving towards Dobrinja, he believed that the bullet came from their right;⁸⁶⁹ later in his testimony, he however seemed to indicate the low building (not established to be under SRK control) in front of

⁸⁵⁴ Kapetanović, T. 5802-4, marking the left of the photograph in the vicinity of the intersection of the four-lane road which appears across the bottom of the photograph and a road that extends parallel to the side of the photograph, to the left of a red vehicle on the intersection, P3279Ob (photograph of the incident scene).

⁸⁵⁵ P3202 (map marked by witness with a cross apparently where Trg Medunarodnog prijateljstva turns south towards Ante Babića street).

⁸⁵⁶ Kapetanović, T. 5862, marking the lower right-hand side of P3279 (photograph of the incident scene).

⁸⁵⁷ Điho, a reserve policeman, and a colleague went to the neighbourhood, in the parking lot between numbers 1 and 3 of Ante Babića street after receiving a complaint that some children were tampering with a car. While they were there, they heard some shooting and, at first, believed they had been targeted, Điho, T. 3904-6.

⁸⁵⁸ P3279Oa; P3115, map of the area marked by the witness; Điho, T. 3911-3912. Also, Điho, T. 3962, marking the lower right-hand side of P3279Ob, photograph of the incident scene.

⁸⁵⁹ Điho, T. 3907-8.

⁸⁶⁰ Kapetanović, T. 5766.

⁸⁶¹ Kapetanović, T. 5823.

⁸⁶² Kapetanović, T. 5767, 5781.

⁸⁶³ Kapetanović, T. 5768.

⁸⁶⁴ Kapetanović, T. 5781.

⁸⁶⁵ Điho, T. 3906.

⁸⁶⁶ Kapetanović, T. 5776; 5820; Điho, T. 3906. The evidence about the position of the victims and the type of wounds sustained does not sufficiently inform the Trial Chamber about the source of fire.

⁸⁶⁷ Kapetanović, T. 5781. In respect to the source of fire, the Defence alluded that the shot could have come from the Retirement Home or from the Oslobodenje building, which were 50 to 100 metres far from the Institute for the Blind (Kapetanović, T. 5821) and were held by the ABiH, Điho, T. 3934-6; P3115 (map marked by witness).

⁸⁶⁸ Điho, T. 3918.

⁸⁶⁹ Kapetanović, T. 5768.

the student hostel as the source of fire.⁸⁷⁰ Điho explained that the Institute for the Blind and the Institute of Theology dominated Nedarići and that it was common knowledge that those two buildings were snipers' strongholds.⁸⁷¹ Both witnesses also indicated that the destruction of some buildings left an open view from the Institute for the Blind to the position of the victims.⁸⁷² Điho also declared that barricades were set up on Ante Babića street, across Aleja Branka Bujića,⁸⁷³ by contrast, Kapetanović stated that he never saw barricades at that location.⁸⁷⁴

308. With regard to the aftermath of the incident, Kapetanović testified that a man and a woman came to help the two injured men.⁸⁷⁵ Both Kapetanović and Điho indicated that they stopped a car to have Franjić taken to the hospital.⁸⁷⁶ Shortly thereafter, they stopped another car, which transported Vučić to Koševo hospital.⁸⁷⁷ Franjić, now deceased, had instead made a statement to the Prosecution that a policeman had given him the first medical aid; he had not noticed Vučić or Kapetanović close by.⁸⁷⁸

309. In view of the inconsistencies of the evidence, in particular in relation to the exact location of the three men, the assumed source of fire, the time of the incident and the course of events after the men were hit, this incident cannot be accepted as exemplary of deliberate sniping by the SRK at civilians.

310. The conclusions in the following incident express the views of the Majority of the Trial Chamber. Judge Nieto-Navia expresses his view in the attached separate and dissenting opinion.

(iv) Scheduled Sniping Incident 23⁸⁷⁹

311. Fatima Salčin, a middle-aged woman who was living in Alipašino Polje in 1994, testified that around 13 June 1994 a cease-fire was in place and she and a relative of hers, Đemal Maljanović,

⁸⁷⁰ Kapetanović, T. 5786.

⁸⁷¹ Điho, T. 3957. In particular, openings of 30 to 40 centimetres had been made for that purpose in the walls of the Institute for the Blind, as he could see for himself when he visited the building after the Dayton agreement of 1995, Điho, T. 3956-7; 3959.

⁸⁷² Kapetanović, T. 5774; P3265, photograph of the area, marked by witness with regard to destruction due to shelling; in particular, the two private houses in front of the student hostel were destroyed; Điho testified that he could see the Institute for the Blind from the place where Franjić was shot, T. 3952. The student hostel was hollow and several large holes provided a view through it, Fajko Kadrić, T. 3777; Điho, T. 3916-7; Kapetanović, T. 5791-2.

⁸⁷³ Điho, T. 3914.

⁸⁷⁴ Kapetanović, T. 5833.

⁸⁷⁵ Kapetanović, T. 5768, 5836-7.

⁸⁷⁶ Kapetanović, T. 5838; Điho, T. 3907.

⁸⁷⁷ Kapetanović, T. 5838; Điho, T. 3908.

⁸⁷⁸ Statement presented to Kapetanović by the Defence, T. 5843.

⁸⁷⁹ The indictment alleges that on 13 June 1994 "Fatima Salčin, a woman aged 44 years, was shot and wounded in her right hand while walking with her father-in-law on Ive Andrića Street, in the Mojmiilo area of Sarajevo", Schedule 1 to the Indictment.

were returning from Dobrinja on foot to Alipašino Polje.⁸⁸⁰ As Salčin described the incident, suddenly her hand “just went up in the air”.⁸⁸¹ A bullet had struck the palm of her right hand and had come out the other side.⁸⁸² The sound of shooting then rang out.⁸⁸³ The witness thought it was a machine-gun burst.⁸⁸⁴ It was the first shooting she had heard all day.⁸⁸⁵ Salčin was dressed in a blue skirt and a leather jacket.⁸⁸⁶ She could not recall the exact time of the incident, but thought it was sometime in the evening, between 6 and 7.30 p.m.⁸⁸⁷ Although a light rain was falling, there was still some natural light.⁸⁸⁸ Maljanović pulled Salčin down to the ground, where they remained until the shooting was over. With Maljanović’s help she was taken to a hospital in Dobrinja.⁸⁸⁹ A discharge report from Dobrinja General Hospital shows that Fatima Salčin was admitted on 13 June 1994, with an “entry-and-exit wound to her right hand”, and discharged fifteen days later.⁸⁹⁰ Đzemal Maljanović gave a similar account of the incident. In June 1994 the witness was 52 years old.⁸⁹¹ He had joined the ABiH at the start of the war and was discharged in January 1993.⁸⁹² He testified that on 13 June 1994 he and Salčin were walking home dressed in civilian clothes and unarmed.⁸⁹³ It was late afternoon, it was overcast, and it was drizzling.⁸⁹⁴ But visibility, according to the witness, was good.⁸⁹⁵ They had turned off Lukavička street and were walking up the slope of Ive Andrića street when Salčin was shot.⁸⁹⁶ Maljanović said that there had been some screening along Lukavička street providing protection against snipers, but once they had started ascending Ive Andrića street they had become exposed.⁸⁹⁷ Once they had ascended above the level of the protective screens, Maljanović “turned around [and] saw that it was dangerous. At that very moment there was a shot.”⁸⁹⁸ They fell to the ground and “then there was a second shot, which couldn’t hit us.”⁸⁹⁹ They rolled down the hill to safety. At the hospital the witness heard that two other people had been shot in the same area earlier in the day.⁹⁰⁰

⁸⁸⁰ Salčin, T. 2924-6, 2941.

⁸⁸¹ Salčin, T. 2925-7, 2942-3.

⁸⁸² Salčin, T. 2930.

⁸⁸³ Salčin, T. 2926.

⁸⁸⁴ Salčin, T. 2946.

⁸⁸⁵ Salčin, T. 2943.

⁸⁸⁶ Salčin, T. 2932.

⁸⁸⁷ Salčin T. 2927, 2943, 2971.

⁸⁸⁸ Salčin, T. 2927, 2971.

⁸⁸⁹ Salčin, T. 2927, 2931, 2938.

⁸⁹⁰ P3369 (Dobrinja General Hospital Discharge Paper), P3369.1 (translation); T. 2931-2.

⁸⁹¹ Maljanović, T. 2976.

⁸⁹² Maljanović, T. 2977, 2989, 2999, 3004.

⁸⁹³ Maljanović, T. 2987.

⁸⁹⁴ Maljanović, T. 2979, 3006.

⁸⁹⁵ Maljanović, T. 2979.

⁸⁹⁶ Maljanović, T. 2980.

⁸⁹⁷ Maljanović, T. 2980-2.

⁸⁹⁸ Maljanović, T. 2986.

⁸⁹⁹ Id.

⁹⁰⁰ Maljanović, T. 2988.

312. As to the existence of military targets in the vicinity of the incident, Fatima Salčin said that other people had been out in the streets in the area and as far as she could tell none of them were soldiers or in uniform.⁹⁰¹ Nor did she notice any type of military equipment.⁹⁰² Salčin was shown recent photographs of herself and Maljanović standing approximately at the spot of the incident.⁹⁰³ In the distance behind them can be seen a cluster of buildings which Salčin identified as Nedariči. According to the witness the bullet which struck her hand came from this “general direction”, for it was from this direction that she had heard the sound of gunfire.⁹⁰⁴ Đzermal Maljanović testified that at the time Salčin was shot there had been no soldiers or persons in military uniforms or military equipment in the immediate vicinity of the incident.⁹⁰⁵ He added that at the time of the incident there had been “machine-gun nests [...] on the former barracks and [...] on the Catholic monastery.”⁹⁰⁶ The barracks was the former JNA barracks located in Nedariči which during the conflict had come under the control of the Bosnian Serbs.⁹⁰⁷ Maljanović marked on a map the position on Ive Andrića street where he and Salčin were when Salčin was shot, as well as the location of the nearest confrontation line, the barracks, and the so-called monastery.⁹⁰⁸ The barracks, as marked by the witness, lay approximately 1,000 metres north of the monastery. The place where Salčin was shot was about 1,400 metres southeast of the barracks and 1,100 metres east of the monastery.⁹⁰⁹ Maljanović remarked that “they targeted us from the back”.⁹¹⁰ Asked how he knew that the source of fire was the barracks or the monastery he answered that these were well known sniping nests and that more than 500 people had been killed along a stretch of road half a kilometre long, hence the protective screens erected on Lukavička street.⁹¹¹

313. Defence Witness DP5 was a member of the Territorial Defence in Nedariči and later an SRK officer located at the former JNA barracks in Nedariči.⁹¹² He testified that there was a cannon just east of where Salčin was shot which was used to fire at Nedariči.⁹¹³ The gun emplacement, said the witness, was alongside a road cut into the hill and was concealed with camouflage netting, however its location could be seen with binoculars from atop the former JNA barracks in Nedariči. The ABiH crew operating it was stationed nearby.⁹¹⁴ There was, according to DP5, exchange of fire

⁹⁰¹ Salčin, T. 2932.

⁹⁰² Salčin, T. 2933.

⁹⁰³ P3259, Salčin, T. 2935.

⁹⁰⁴ Salčin, T. 2934, 2936-7.

⁹⁰⁵ Maljanović, T. 2987-8.

⁹⁰⁶ Maljanović, T. 2980.

⁹⁰⁷ Maljanović, T. 2982, 2984.

⁹⁰⁸ P3100; T. 2984-6, 2990-2.

⁹⁰⁹ Based on calculations using P3100 and C2.

⁹¹⁰ Maljanović, T. 2980.

⁹¹¹ Maljanović, T. 3007-8.

⁹¹² Witness DP5, T. 15238-9, 15249-50.

⁹¹³ Witness DP5, T. 15297.

⁹¹⁴ Witness DP5, T. 15409-11; D1785.

between the two sides in this general area every two or three days. The witness did not specify any time period.⁹¹⁵ He did not say whether the cannon was in place and operational in June 1994. Witness DP5 also testified that there was a water reservoir at a spot about 150 metres south of the location of the sniping incident which had been a JNA position before it was captured by the ABiH in the early months of the war.⁹¹⁶

314. In its final oral arguments the Prosecution did not claim that the shot came from the barracks or from the monastery but “from the vicinity of the cone that we see on the map [i.e. P3728 (incident 23], to the west of the front-line positions” (the cone’s apex is the spot of the incident and its base is a north-south line about 200 metres long drawn against the eastern edge of the monastery).⁹¹⁷ The Prosecution referred to the Defence’s submission in its acquittal motion that Salčin was the victim of a stray round, dismissing it as unsupported by the evidence. In the Prosecution’s view, the fact that the shooting continued is evidence that the two witnesses were specifically targeted. Without giving reasons, the Defence excluded the barracks as the source of fire and argued that when consideration is given to the fact that it was raining, that it was between 6 and 7.30 in the evening, and that the distance between the monastery and the site of the incident was considerable, Salčin and Maljanović could not have been seen and so could not have been deliberately targeted.⁹¹⁸ The possibility cannot be excluded, according to the Defence, that Salčin was shot accidentally.

315. The issue for the Majority is whether Salčin and Maljanović were deliberately targeted by the SRK and, if so, whether they were targeted as civilians. The evidence suggests that the bullet which struck Salčin in the hand came from behind her. At the time Salčin and Maljanović were at least 300 metres east of the nearest confrontation line (which ran approximately north-south) and they were facing east.⁹¹⁹ The evidence does not assist the Majority to determine the *exact* source of the gunfire. As for the direction, the only certainty is that the bullet struck Salčin’s palm and lifted her arm up in front of her. This suggests a westerly direction.

316. The Majority is convinced that the shot was fired from within SRK-controlled territory, by SRK personnel, to the west of the confrontation line, for there is evidence⁹²⁰ that many people were killed or wounded in this area by fire from across the confrontation line and that protective screens had been erected in response to the attacks. There is evidence that two other persons had been shot

⁹¹⁵ Witness DP5, T. 15297.

⁹¹⁶ Witness DP5, T. 15297-8; D1785.

⁹¹⁷ Prosecution Closing Argument, T. 21707.

⁹¹⁸ Defence Final Trial Brief, para. 361.

⁹¹⁹ See P3100 and P3644.RH.

⁹²⁰ Maljanović, T. 3007-8.

from across the confrontation line earlier on 13 June 1994.⁹²¹ There is no reason to believe that Salčin was shot by ABiH forces or by anyone else located in the narrow and exposed strip of land between the confrontation line and the position of the witnesses. Having inferred that the bullet (and any follow-up shots) came from SRK territory, the Majority must now consider whether Salčin and Maljanović were deliberately targeted by the SRK. The two witnesses had been walking for some time before the incident occurred. They did not report that any military activity was underway in the area. Salčin believed a ceasefire was in effect and observed that other civilians were out and about at the time. Maljanović was apprehensive about taking the shortcut to Alipašino Polje up along Ive Andrića street, not out of concern of being caught in any cross-fire but out of fear that if he and his companion rose above the level of the protective screens on Lukavička street they would be exposed to SRK sniper fire, which was common in that area and had claimed many victims. If the cannon referred to by Witness DP5 was indeed operational at the relevant time, Salčin and Maljanović could not have been reasonably confused with the crew operating it. The Majority accepts that the two witnesses had travelled the road between Alipašino Polje and Dobrinja before and were aware of the dangers. Their assessment of the prevailing conditions at the time of the incident must be given due weight. They did not walk into a fire fight. The evidence suggests that the shooting ceased after Salčin and Maljanović rolled down the slope to safety. The Majority thus finds that the two witnesses were deliberately targeted from SRK-controlled territory.

317. Salčin and Maljanović were civilians, were dressed as civilians, and presented no conceivable military threat. The Trial Chamber, by majority of its members, finds that they were deliberately targeted from the SRK-controlled area, if not attacked as civilians, then in reckless disregard of their civilian status.

(v) Scheduled Sniping Incident 25⁹²²

318. On 26 June 1994, a sunny early evening, between 19:00 and 19:30 hours, Sanela Muratović, 16, and Medina Omerović, 17, were walking side by side from the house of Omerović's sister to Omerović's apartment in Đure Jaksića Street 17 (on the eastern side of Lukavička Cesta), in the neighbourhood of Vojničko Polje (Novi Grad).⁹²³ Muratović, a civilian, was wearing a T-shirt, trousers and sneakers, while Omerović was wearing shorts.⁹²⁴ As the two young women were about to cross the street towards Omerović's apartment block, some soldiers in uniform warned them of

⁹²¹ Maljanović, T. 2988.

⁹²² The Indictment alleges that on 26 June 1994, "Sanela Muratović, a girl aged 16 years, was shot and wounded in her right shoulder while walking with a girlfriend on Đure Jaksica St., presently Adija Mulabegovića, in the west end of Sarajevo", Schedule 1 to the Indictment.

⁹²³ Omerović, T. 3843-5, 3877-8. Medina Omerović, the girlfriend walking with Sanela Muratović at the time of the incident, is the only witness who testified about this incident.

⁹²⁴ Omerović, T. 3847.

incoming sniper fire; they therefore started running.⁹²⁵ Muratović was shot on the right-hand shoulder, from the front side.⁹²⁶ Both the witness and Muratović went on and took shelter in a trench located to their right;⁹²⁷ some of the soldiers who had warned them came to their rescue.⁹²⁸

319. The spot where Muratović was wounded (her right shoulder) and the fact that the witness, walking to the left of the victim, was not wounded, tend to indicate that the bullet came from their front right.⁹²⁹ The witness marked a confrontation line on the map of the area, placing it behind her apartment block, through the Institute for the Blind, an SRK position on Aleja Branka Bujica.⁹³⁰ The Trial Chamber, taking into account the maps and photographs discussed at trial as well as the testimony of Omerović, which apart from minor inaccuracies, was clear, direct, consistent and reliable, finds that a bullet coming from the front on the right-hand side of the two girls could have been shot with precision from the Institute for the Blind. Some defence witnesses confirmed the presence of the SRK in the Institute for the Blind but testified that the building could not have been a source of sniping fire.⁹³¹ The Trial Chamber is not convinced by the testimony of these witnesses. UNMO reports⁹³² and other witnesses had found that the Institute of the School for Blind was a “sniping nest” from where civilians were shot at.⁹³³ The Trial Chamber finds that the shot which hit the victim originated from the area of the Institute for the Blind.

⁹²⁵ Omerović, T. 3844. On 8 November 1995, Omerović had however marked the place where Muratović was wounded on the downhill portion of Lukavička Cesta, on the southwest side of the confrontation line. Omerović, T. 3864. The witness admitted not being very good at locating places on maps; Omerović, T. 3866. All the other evidence produced at trial, and especially the 360 degree photograph of the area taken from the place where Muratović was shot (P32800), decisively point to the fact that the two girls were crossing the area between the two buildings in Đure Jakšića street, from the building where the sister of the witness lived towards the witness’s building. A wing of the witness’s building comes forward towards the street (P32800). Given this, the Trial Chamber deems the marks made on the map on 8 November 1995 not significant to determine the actual position of the two girls on the day of the incident.

⁹²⁶ Omerović, T. 3845-7.

⁹²⁷ The trench completely crossed the road, Omerović, T. 3851.

⁹²⁸ Three of the soldiers who had warned them of sniping fire ran up to them and transported Muratović to Dobrinja hospital, Omerović, T. 3844, 3880-1.

⁹²⁹ P3098 (map of the area marked by the witness).

⁹³⁰ P3098 (map of the area), Omerović, T. 3866-67.

⁹³¹ The Defence has relied on these witnesses to contend that no fire could come from the upper floors of the Institute for the Blind, Defence Final Trial Brief, para. 396. In particular, witness DP4, a member of the SRK company stationed in Nedarići, stated that he never saw rifles with telescopic sights at that position (Witness DP4, T. 14225). Witness DP6 remarked that the SRK occupied only the first floor of the Institute for the Blind, and not the higher floors since it was dangerous to go there, Witness DP6, T. 14067-8.

⁹³² P2757, UNMO report, page 4, para. 24; P2754, UNMO report, discussed at T. 16852 (private session). Witness DP17, T. 16856-16858 (private session), referring to P2754, although contending that “the sniper did not exist” stated that, at the Institute for the Blind, “there were no sniper weapons, but there were weapons that could fire at a longer distance.”

⁹³³ Fajko Kadrić, T. 3782; Điho, T. 3957. Omerović recounted that another sniping incident had occurred in spring 1994 on the same street, causing the death of Dejan Stefanović, Omerović, T. 3849. The boy had been shot on the other side of the street and closer to Aleja Branka Bujica, compared to where Muratović was shot (P3098, map of the area marked by the witness; Omerović, T. 3865, 3849-50). Although the witness gave contradicting evidence with respect to the possible source of fire in that instance, the Trial Chamber does not deem these contradictions as affecting her testimony with regard to the incident involving Muratović. Omerović explained that, during the years of war, based on what she heard, she gained a sense that sniping fire came from the Institute for the Blind and the surrounding area, Omerović, T. 3852.

320. The Defence submits that the victim was hit “by chance” during combat;⁹³⁴ this contention seems based on an acknowledgement by the Prosecution that, in the area, there were daily clashes between the armies, ABiH soldiers were positioned in high-rise buildings and that soldiers had warned the two girls that they should not be going out because “there was firing”.⁹³⁵ The Trial Chamber notes that the warning was that “sniper fire had started and to hurry up.”⁹³⁶ The fact that one single shot was fired and directly hit Muratović, finally, corroborates the finding that the incident was not caused by a “lost shot” during ongoing combat. In order to exclude the possibility of a bullet hitting Muratović by mistake, or of a ricochet, the Trial Chamber takes into specific account the submission by Omerović that soldiers were not garrisoned in the immediate vicinity of the spot where the incident occurred, and that the witness was not aware of any military facility nearby;⁹³⁷ moreover, no fighting was ongoing in the area at the time of the incident. The distance between the area of the Institute for the Blind and the position of the victim at the time of the incident was about 200 meters.⁹³⁸ At that distance, the age, the activity and the way the girls were dressed could not be ignored by the perpetrator. Their civilian status was thus obvious for anyone located at such a short distance.

321. The Trial Chamber finds that Sanela Mutarović, a civilian, was deliberately targeted from SRK-controlled territory.

(vi) Scheduled Sniping Incident 26⁹³⁹

322. In 1994, Rašid Džonko, a man aged 67 years, lived on the 7th floor of an eight-storey apartment block at Senada Mandića Street, no. 5⁹⁴⁰ located in the area of Vojničko Polje, a sub-part of Alipasino Polje. Džonko shared the apartment with one of his daughters, Mediha Golo, and her husband.⁹⁴¹ On a July evening, at about 22:30 hours, Džonko, his three daughters, his son-in-law and two grandchildren gathered in the kitchen of the apartment to watch a football game on TV.⁹⁴² Džonko and his family would usually avoid staying in the kitchen because it faced the direction of

⁹³⁴ Defence Final Trial Brief, para. 405.

⁹³⁵ T. 13898-9.

⁹³⁶ Omerović, T. 3844. She later confirmed that the soldiers “told us to hurry up because a few moments before sniper fire had been opened”, Omerović, T. 3881.

⁹³⁷ The witness indicated that she had seen soldiers in her building and her sister’s apartment block earlier in 1994, but also said that she had never noticed soldiers on the street where the incident occurred. To her knowledge, the soldiers who assisted them were not quartered in that building, Omerović, T. 3882, 3891.

⁹³⁸ Hinchliffe, T. 12994.

⁹³⁹ The Indictment alleges that on 17 July 1994, “Rašid Džonko, a man aged 67 years, was shot and wounded in his back while sitting watching television in his apartment at Milanka Vitomira Street, presently Senada Mandića-Dende Street 5, in Vojničko Polje, in the west end of Sarajevo”, Schedule 1 to the Indictment.

⁹⁴⁰ Džonko, T. 5645; 5712; P3279.

⁹⁴¹ Džonko, T. 5645; 5711-2.

⁹⁴² Džonko, T. 5646, P3279T (photograph taken from the video).

the front line,⁹⁴³ and the balcony running along the kitchen had been damaged by shelling.⁹⁴⁴ Džonko emphasised that the lights were off,⁹⁴⁵ the blinds of the kitchen window, which was covered with two blankets to block the view, were pulled down,⁹⁴⁶ and the bottom half of the glass door leading into the balcony was ‘covered’ with wood planks.⁹⁴⁷ According to Džonko, “you couldn’t see anything”.⁹⁴⁸

323. At approximately 22:45 hours, Džonko was seated in front of the television set placed at one end of the kitchen, opposite the balcony door,⁹⁴⁹ when a bullet came through the kitchen door frame, ricocheted against the brick wall close to Džonko, hit him in the middle of the back to the left side of his spine, exited through his stomach, then continued through a cupboard door and into a chandelier.⁹⁵⁰ Džonko was taken to Dobrinja hospital for first aid and then to Koševo hospital, where he stayed for 13 days.⁹⁵¹ While in hospital, Džonko was told by his son-in-law that members of a UN military organisation came to his apartment to take photographs of the impact points of the bullet which had hit him, and had removed the bullet.⁹⁵²

324. The Prosecution submits that while the victim “was not visible to persons outside the balcony because of the nature of coverings over the windows the evidence that the television was on (at night) and facing the windows (in the direction of the SRK-held territory) and the fact that there was only one shot is persuasive evidence that it was intended and fired at the apartment deliberately, with the intent of shooting whoever was inside”.⁹⁵³

325. The Defence argues that Džonko is not a credible witness,⁹⁵⁴ and that the circumstances in which the incident occurred exclude the possibility of deliberate targeting.⁹⁵⁵ The Defence argues that the possibility of a direct shot is excluded because there was no line of sight between the front line and the victim’s apartment block and because the approximate distance between one of the suspected sources of fire (the Faculty of Theology) and the victim’s apartment is 1,000 metres. According to the Defence, for a bullet to “break through the wooden planks”, go “through the

⁹⁴³ Džonko, T. 5651.

⁹⁴⁴ Džonko, T. 5655.

⁹⁴⁵ Džonko, T.5652.

⁹⁴⁶ Id.

⁹⁴⁷ Id.

⁹⁴⁸ Id.

⁹⁴⁹ Džonko, T.5646, 5652; P3279TT; T.5653-4; P3279T (photograph of the victim seated at the spot where he was shot).

⁹⁵⁰ Džonko, T. 5646-8, 5740.

⁹⁵¹ Džonko, T. 5648.

⁹⁵² Džonko, T. 5649-50.

⁹⁵³ Prosecution Final Trial Brief, para. 363.

⁹⁵⁴ Defence Final Trial Brief, para.422.

⁹⁵⁵ Id.: the Defence claims that the victim was “injured in the evening, at 10.45 p.m., when there was no lights in the apartment, but only TV set was on, that there were curtains on the windows and the door, then it seems quite clear that the witness could not be observed at all”.

witness's body, hit the wall, the door and the cabinet, the projectile must have been fired from a small distance".⁹⁵⁶

326. Although the testimony of Džonko was disorderly, the main features of his testimony are consistent and reliable. Džonko testified that people in the neighbourhood who heard about the incident assumed that the bullet which had hit him had been fired from the area of the School of Theology, widely known to be an SRK sniping nest.⁹⁵⁷ Džonko had no doubt that that assumption was right "because it couldn't have come from anywhere else. That was the only possible place".⁹⁵⁸ He explained this was because of the bullet trajectory.⁹⁵⁹ The bullet came through the balcony door, which faced the direction of the Faculty of Theology as well as the front line.⁹⁶⁰ The distance between the Faculty of Theology, located in Nedarići,⁹⁶¹ and the spot where the victim was shot is approximately 1000 metres and the distance between the SRK front line and the victim's apartment block is approximately 250 metres.⁹⁶² Džonko testified that his apartment block was on the side of the ABiH,⁹⁶³ and that although his apartment block was located behind two other apartment blocks, there was an open space of about 10 metres between these two buildings, thus there was a line of sight between his apartment and the front line.⁹⁶⁴ Džonko pointed out on photographs tendered into evidence the location of the confrontation line and the Faculty of Theology, "where the Serbs fired from,"⁹⁶⁵ and explained that from that location, the Serbs "could target everything".⁹⁶⁶ In these photographs, a line of sight can be seen between Džonko's apartment and the front line.⁹⁶⁷ Džonko further testified that during the time he lived in his apartment close to the front line, "there was shooting and shelling almost every day".⁹⁶⁸ Džonko pointed out on photographs of his apartment block impact points of fire coming from the direction of the front line.⁹⁶⁹ He explained that the front entrance of his apartment block which faced the front line could not be used in daytime during the conflict because residents could be shot.⁹⁷⁰ Defence witness DP8, an SRK soldier stationed in Nedarići in 1993, was shown a picture (P3279T) showing a line of sight between Nedarići and

⁹⁵⁶ Defence Final Trial Brief, para. 422.

⁹⁵⁷ Džonko, T. 5740-1, 5745, 5663.

⁹⁵⁸ Džonko, T.5741, 5745.

⁹⁵⁹ Džonko, T.5741: "it couldn't have come from anywhere else except there [the School of Theology] at that height because it must have been fired from the roof because that is how it travelled. Otherwise, it wouldn't have hit that way, reached the target that way".

⁹⁶⁰ Džonko, T. 5649, 5663, P3279.

⁹⁶¹ Džonko, T. 5689: the witness mentioned the existence of a "VRS" bunker located where a smaller house appears on the photograph, in front of the Faculty of Theology; see also T. 5663.

⁹⁶² P3728, P3644.RH.

⁹⁶³ Džonko, T. 5651, 5661.

⁹⁶⁴ Džonko, T. 5649; P3279T, photograph 35; T. 5664-5, 5658.

⁹⁶⁵ P3279T, photograph 3A; Džonko T. 5662-3.

⁹⁶⁶ Džonko, T. 5663.

⁹⁶⁷ P3279T, photograph 3A; Džonko T. 5662-3.

⁹⁶⁸ Džonko, T. 5657.

⁹⁶⁹ Džonko, T. 5655-7; P3279T (photograph 9A).

Džonko's apartment block, and he admitted that there was a line of sight from the Faculty of Theology to the site of the incident.⁹⁷¹

327. Džonko testified that there was "very little shooting" before he was shot and that he did not hear any shooting after he was shot.⁹⁷² He emphasised that there were no soldiers positioned in the building where he lived at the time of the incident.⁹⁷³ He acknowledged that he sometimes saw unarmed Bosnian soldiers in groups of two or three going to have breakfast or lunch "when there was a lull in the fighting",⁹⁷⁴ because there was a kitchen for them in another apartment block about 100-150 metres away from his.⁹⁷⁵ Some of these ABiH soldiers wore uniforms,⁹⁷⁶ and they would move through connecting trenches,⁹⁷⁷ which could be seen from Mediha Golo's bedroom.⁹⁷⁸ The Trial Chamber takes due consideration of the fact that the witness was hit by a single ricocheting bullet fired through a door whose upper part was made of glass, while watching television on the 7th floor of an apartment building. Yet, the Trial Chamber cannot exclude the reasonable possibility that the bullet, which hit Džonko, was fired during an exchange of fire since he testified that he heard "very little shooting" before he was shot. The Trial Chamber is thus unable to find that beyond reasonable doubt the victim was shot in a deliberate manner and cannot accept this incident as exemplary of a campaign of fire at civilians.

(vii) Shelling incident in Alipašino Area

328. The Trial Chamber heard evidence in relation to the shelling of the Alipašino Polje area. A report of the UNPROFOR stated that two shells landed in the area of Alipašino Polje one morning of 1993, killing 7 persons and wounding 54 others.⁹⁷⁹ Based on the results of a crater analysis, UNPROFOR determined that the projectiles were 120 mm mortar shells which had arrived from the southwest.⁹⁸⁰ UNPROFOR also indicated that possible sources of fire were located in the areas of "Nedarici ... [or] Butmir ... [or] Igman," but concluded that "It is impossible to say with exactitude whether the shells are from the Bosnian or Serbian side."⁹⁸¹ Mykhaylo Tsynchenko, an Ukrainian

⁹⁷⁰ Džonko, T. 5657-8: residents used the entrance door only at night to fetch water and they pierced an entrance through the wall on the other side of the building.

⁹⁷¹ DP8, T. 14802, DP8 emphasized that the line of sight from the apartment did not correspond to the line of sight from the Faculty of Theology, T. 14799-14802.

⁹⁷² Džonko, T. 5648.

⁹⁷³ Džonko, T. 5648-9.

⁹⁷⁴ Džonko, T. 5720, 5727-9.

⁹⁷⁵ Id.

⁹⁷⁶ Džonko, T.5739.

⁹⁷⁷ Džonko, T. 5729.

⁹⁷⁸ Written Statement of Mediha Golo (only portions read out in court of that statement were admitted into evidence); Džonko, T. 5733-8.

⁹⁷⁹ P1839 (UNPROFOR report – admitted under seal). P1839 did not specifically indicate whether the persons killed or injured by the shelling were civilians.

⁹⁸⁰ P1839 (UNPROFOR report – admitted under seal).

⁹⁸¹ Id.

officer who served with the UN in Sarajevo from November 1993 to July 1994,⁹⁸² remembered that on 11 January 1994 a “mortar mine detonated on a playground [in Alipašino Polje]... and that there were children playing there, and there were casualties among the children.”⁹⁸³ Referring to the same incident, a UNMO report confirmed that a location in “west Sarajevo was hit by 7 x 120 mm mortars”⁹⁸⁴ that day and that UNMOs had established that one person had been killed and four had been wounded.⁹⁸⁵ The authors of the report concluded that “it appears that the rounds came from the S.W. ... [and that] it seems very likely that the rounds came from [SRK] weapons. However the evidence is not conclusive.”⁹⁸⁶ They added that “When questioned [the SRK] liaison officer strongly denied [SRK] responsibility.”⁹⁸⁷

329. Other accounts supported UN reports that shelling in Alipašino Polje harmed civilians. John Ashton witnessed one shelling incident in December 1992,⁹⁸⁸ “at least an hour before dark,”⁹⁸⁹ which occurred “right outside the PTT [building where UN representatives were stationed] in which three people were killed, two others were wounded carrying wood that they had just cut.”⁹⁹⁰ He did not remember that there had been any soldiers among the victims.⁹⁹¹ In the fall of 1993, local authorities of Sarajevo reported an incident where a shell landed on a classroom in a residential area of Alipašino Polje; the shell killed a teacher and three children aged between 6 and 9 as well as injuring 21 other adults and children.⁹⁹² According to the report drafted about the incident, “The tail section of the shell was not found [on-site] because members of the [ABiH] had taken it away, but according to eye-witness statements and the assessment of the crime technician, it was a 120 mm shell fired from the direction of Nedarići.”⁹⁹³ Mirsad Kučanin remembered investigating an incident which also took place in the fall of 1993 in Alipašino Polje involving a single 120 mm mortar shell.⁹⁹⁴ The shell had landed in a residential area, killing three civilians and wounding 18 others,⁹⁹⁵ but that nearby there was “some kind of ... a logistical base ... where records of soldiers are kept. There was some kind of outpost there belonging to a unit.”⁹⁹⁶ Refik Agnanović, who lived in

⁹⁸² Tsychenko, T. 17210.

⁹⁸³ Tsychenko, T. 17256.

⁹⁸⁴ D1823 (UNMO situation report for period of 10 January 1994 to 11 January 1994 - although it is dated 11 January 1994, D1823 mistakenly indicates at one point that it covers a period from 10 December 1994 to 11 December 1994).

⁹⁸⁵ D1823 (UNMO situation report for period of 10 January 1994 to 11 January 1994).

⁹⁸⁶ Id. Tsychenko recalled that an investigation was carried out after the incident but he didn't know what conclusions had been reached, Tsychenko, T. 17285-6.

⁹⁸⁷ D1823 (UNMO situation report for period of 10 January 1994 to 11 January 1994).

⁹⁸⁸ Ashton, T. 1228.

⁹⁸⁹ Ashton, T. 1229.

⁹⁹⁰ Ashton, T. 1227.

⁹⁹¹ Ashton, T. 1228. Ashton did not specify where the shelling had come from.

⁹⁹² Kučanin, T. 4517, 4519 and 4539-40. P1840.1 (English translation of Sarajevo CSB report – admitted under seal).

⁹⁹³ P1840.1 (English translation of Sarajevo CSB report – admitted under seal).

⁹⁹⁴ Kučanin, T. 4521.

⁹⁹⁵ Kučanin, T. 4521-3.

⁹⁹⁶ Kučanin, T. 4522.

Alipašino Polje for part of the conflict,⁹⁹⁷ remembered that on an unspecified date before 22 January 1994, the explosion of a shell killed a neighbour and his relative as they were unloading firewood.⁹⁹⁸ In view of the kind of impact of the shell left in the ground,⁹⁹⁹ he believed that the projectile had arrived from the west.¹⁰⁰⁰ He added that the shells landed frequently in his neighbourhood.¹⁰⁰¹

330. The Prosecution alleges the following specific shelling incident in Schedule 2 of the Indictment as representative of deliberate targeting of civilians in Alipašino Polje and adduced detailed evidence to prove that shells launched from SRK-controlled territory targeted civilians in that area.

(viii) Scheduled Shelling Incident 3¹⁰⁰²

331. The two streets which are the focus of this incident were joined in a shape that is almost circular, as shown in Exhibit D1814, where the streets appear under their new names: Geteova (formerly Cetinjska) Street forms the northern half of the circle and Bosanska (formerly Klara Cetkin) Street the southern half. Within this circular shape, which was crossed by two other streets, were tall apartment blocks built along the edges of the four large plots of land formed by the intersecting streets; the centre of each plot was open parkland.¹⁰⁰³ The distance between the site of the third scheduled shelling incident and the confrontation line to the west was about one kilometre.¹⁰⁰⁴ A line drawn from the site of the incident running due west would cut through the northern tip of Nedarići, emerge into the ABiH-controlled territory of Stup, and after approximately 1,800 metres re-enter SRK territory south of Azići.¹⁰⁰⁵

332. In January 1994 Goran Todorović was 12 years old and lived at No. 6 Klara Cetkin Street in Alipašino Polje.¹⁰⁰⁶ On the 22nd of the month he was among a group of about ten children playing in a parking lot in front of his apartment block when he heard an explosion.¹⁰⁰⁷ He testified that

⁹⁹⁷ Agnanović, T. 7717.

⁹⁹⁸ Agnanović, T. 7727-8.

⁹⁹⁹ Agnanović, T. 7728.

¹⁰⁰⁰ Agnanović, T. 7727-8.

¹⁰⁰¹ Agnanović, T. 7726-8. The Trial Chamber also heard evidence indicating that the nearby area of Novi Grad regularly experienced small arms and heavy weapon fire. See Mustafa Kovać, T. 874 and Fata Spahić, T. 7948.

¹⁰⁰² The indictment alleges that on 22 January 1994 three mortar shells hit an area of Alipašino Polje, “the first in a park behind, and the second and third in front of residential apartment buildings at 3, Geteova Street (previously Cetinjska Street) and at 4, Bosanska Street (previously Klara Cetkin Street), where children were playing. The second and third shells killed six children under the age of 15 years and wounded one adult and four such children. The origin of fire was from VRS-held territory approximately to the west,” Schedule 2 to the Indictment.

¹⁰⁰³ See, for example, DP17, T. 16729; and P3644.RH (map).

¹⁰⁰⁴ P3644.RH (map).

¹⁰⁰⁵ P3644.RH, D1814 (maps).

¹⁰⁰⁶ Todorović, T. 8006-7.

¹⁰⁰⁷ Todorović, T. 8008-9, 8020.

because the sound resonated between the buildings he could not tell where the sound of the explosion had come from; and that he later learned that two shells had exploded at that point, not one.¹⁰⁰⁸ He ran towards the buildings for cover and just as he started climbing the staircase to his apartment another shell exploded, 10 to 15 metres away, wounding him.¹⁰⁰⁹ Muhamed Kapetanović was nearly ten years old in January 1994, when he was living at No. 2 Cetinjska Street.¹⁰¹⁰ On 22 January he was playing with four friends in a parking lot.¹⁰¹¹ Another group of children was playing in Klara Cetkin Street.¹⁰¹² Suddenly there was a loud explosion from one or two shells (the witness was not sure), whereupon the children ran for cover.¹⁰¹³ Just before Kapetanović reached his building's entrance, another shell exploded 10 metres behind the trailing child, killing him and wounding three of the others, including the witness, who suffered serious injuries to his leg.¹⁰¹⁴ Witness AI, who was 43 years old in 1994, testified that the morning of 22 January had been exceptionally peaceful, with no shooting.¹⁰¹⁵ A little after 11 a.m. he was walking along Klara Cetkin Street in Alipašino Polje where he lived, when he heard two explosions at a distance of 100 metres approximately.¹⁰¹⁶ Children playing a few metres ahead of him in a parking lot outside apartment blocks No. 2 and 4 ran to the buildings.¹⁰¹⁷ Before the witness himself could take cover, a third shell fell three to five metres to his left, the explosion throwing him into the air and seriously wounding him in the face.¹⁰¹⁸ Another witness, Refik Aganović, was in his apartment on the 14th floor of No. 4 Klara Cetkin Street.¹⁰¹⁹ Around 1 p.m. he heard the "usual" hissing sound of a shell and then a loud explosion nearby.¹⁰²⁰ About a minute or two later a second shell exploded.¹⁰²¹ The witness opened a west-facing window to see what had happened when a third explosion in front of the entrance to his block threw him back.¹⁰²² He rushed downstairs to the entrance where he saw a 13-year-old boy stagger over and die.¹⁰²³ Another, younger, boy whom Aganović said he tried to assist also died in those moments.¹⁰²⁴ Other children, whom the witness did not recognize because they were covered in blood and were missing parts of their bodies, had also been killed.¹⁰²⁵

¹⁰⁰⁸ Todorović, T. 8009, 8020.

¹⁰⁰⁹ Todorović, T. 8011-12, 8026.

¹⁰¹⁰ Kapetanović, T. 7954.

¹⁰¹¹ Kapetanović, T. 7955-7.

¹⁰¹² Kapetanović, T. 7974-5.

¹⁰¹³ Kapetanović, T. 7956.

¹⁰¹⁴ Kapetanović, T. 7956-7, 7961-2, 7984.

¹⁰¹⁵ Witness AI, T. 7665, 7669-70.

¹⁰¹⁶ Witness AI, T. 7665, 7670, 7682, 7688.

¹⁰¹⁷ Witness AI, T. 7665, 7670-1.

¹⁰¹⁸ Witness AI, T. 7665, 7667.

¹⁰¹⁹ Aganović, T. 7717-8.

¹⁰²⁰ Aganović, T. 7718-20.

¹⁰²¹ Aganović, T. 7720.

¹⁰²² Aganović, T. 7722.

¹⁰²³ Aganović, T. 7722-3.

¹⁰²⁴ Aganović, T. 7723-4.

¹⁰²⁵ Aganović, T. 7723-4.

333. Witness Q was a police officer whose task was to conduct the opening stages of criminal investigations through inspection and collection of evidence at crime scenes.¹⁰²⁶ The witness testified that he attended the site of the Alipašino Polje incident shortly after the explosions and found that two shells had hit the ground within 50 metres of each other. He saw blood and traces of tissue in the vicinity.¹⁰²⁷ He informed the Trial Chamber that he himself lived in Alipašino Polje at the time, and that this was the first time the district had been shelled in about 26 days.¹⁰²⁸ The report prepared by Witness Q, which is very brief, lists the names of six children killed by the shells.¹⁰²⁹ Zdenko Eterović was a judge and investigative magistrate who, in the period 1992-1996 had carried out, according to his testimony, between 300 and 400 investigations, including 100 to 150 investigations of shelling or sniping attacks.¹⁰³⁰ On 22 January 1994 he attended the site of the Alipašino Polje incident and prepared a report.¹⁰³¹ He was able to establish by interviewing witnesses and by observation of bodily remains at the site, as well as by visiting the two hospitals to which the casualties had been taken, that six children had been killed by the explosions and another three children and one adult (Witness AI) had been seriously injured.¹⁰³²

334. As to the source of fire, Goran Todorović testified that he did not recall hearing the firing of the shells.¹⁰³³ Muhamed Kapetanović, who like Todorović was outside playing, said he did not know which direction the shells had come from and did not mention hearing the firing of shells.¹⁰³⁴ On the other hand, Witness AI testified that while he did not hear the first two shells being fired, in the “eerie silence” that followed their explosion, in something less than two minutes, he heard the hiss of the firing of the third shell, which exploded less than ten seconds later.¹⁰³⁵ The firing sound came from “behind my back, from the part where Nedarići is”.¹⁰³⁶ Witness AI, a civilian,¹⁰³⁷ claimed familiarity with the sound of shelling originating in Nedarići because, as he put it, he lived in the immediate vicinity and was able to observe the shelling on a daily basis.¹⁰³⁸ Refik Aganović said his neighbourhood was frequently shelled, and altogether 10 people (nine of them children) from his apartment block had been killed in such attacks.¹⁰³⁹ The witness suggested that the shells

¹⁰²⁶ Witness Q, T. 7362-4.

¹⁰²⁷ Witness Q, T. 7365-6.

¹⁰²⁸ Witness Q, T. 7364, 7370, 7400-1.

¹⁰²⁹ Witness Q, T. 7400; P2171B (Witness Q's report), P2171B.1 (translation of above).

¹⁰³⁰ Eterović, T. 8839, 8854-5, 8857-8.

¹⁰³¹ Eterović, T. 8840; P2171C (Eterović's report), P2171C.1 (translation of above).

¹⁰³² Eterović, T. 8841, 8845-6, as well as the aforementioned exhibit.

¹⁰³³ Todorović, T. 8030-1.

¹⁰³⁴ Kapetanović, T. 7960-1.

¹⁰³⁵ Witness AI, T. 7668-70, 7687-8.

¹⁰³⁶ Witness AI, T. 7669.

¹⁰³⁷ Witness AI, T. 7684, 7691.

¹⁰³⁸ Witness AI, T. 7669, 7686-7.

¹⁰³⁹ Aganović, T. 7727-8.

would generally come from the “west”.¹⁰⁴⁰ Witness Q also said that, being a resident of Alipašino Polje, he was most fearful of the Nedarići settlement, which was directly visible from where he lived and which was under the control of the army of Republika Srpska.¹⁰⁴¹ From his apartment he would occasionally hear shells being fired from Nedarići towards Alipašino Polje.¹⁰⁴²

335. Mirza Sabljica and another ballistics specialist prepared a report on the incident.¹⁰⁴³ The investigation team found traces from the explosion of three mortar shells, two 82 mm and one 120 mm, as well as the tail-fin from a 120 mm shell which had apparently hit the top of a building.¹⁰⁴⁴ Sabljica confirmed the conclusions of his report, namely that one shell had impacted with the curb in front of No. 4 Klara Cetkin Street leaving a barely visible primary crater with star-shaped elliptical traces most clearly visible to the west of the crater – “slightly north in relation to true west”, according to the report – and measuring 120 cm; that another shell had impacted with the paved road in front of No. 3 Cetinjska Street leaving a 6 cm deep elliptical primary crater (15 cm by 20 cm) from which concentric lines emerged to form a larger ellipse with axes measuring 110 cm and 180 cm, the longer axis running west-east, with the distance of the crater from the western edge of this ellipse being the longest; and that a third shell (the 120 mm shell) had landed on soft ground in a park between Klara Cetkin Street and Rade Končar Square, leaving a 40 cm deep crater, whose elliptical shape measured 80 cm and 110 cm, the longer axis oriented west-east with traces longer and more visible towards the west.¹⁰⁴⁵ A total of six people had been killed by the first two shells, according to the report. Sabljica testified that on the basis of the “general pattern of destruction marks”, which, as noted, were more pronounced and longer in the westward direction, the investigation team concluded that two shells had landed from the west and one from just north of west – the rationale of the report being that the force of the explosion of a shell landing at an angle is downward-directed and therefore more destructive above the patch of ground lying in the direction of the shell’s approach.¹⁰⁴⁶ Sabljica believed that all three shells originated in Nedarići, in the vicinity of the Institute for the Blind.¹⁰⁴⁷ The report prepared by Witness Q also indicates that the shells “struck from the west (Nedarići)”. The witness testified that he had been able to determine the direction from the traces he found at the site.¹⁰⁴⁸

¹⁰⁴⁰ Aganović, T. 7727.

¹⁰⁴¹ Witness Q, T. 7402, 7406-7.

¹⁰⁴² Witness Q, T. 7404, 7407.

¹⁰⁴³ Sabljica, T. 5248-9; P2171 (Sabljica’s report), P2171.1 (translation of above); see also P2171.A, P2171.A.1 (revised translation of above).

¹⁰⁴⁴ Sabljica, T. 5270-2, 5360.

¹⁰⁴⁵ Sabljica, T. 5270-1, 5363; P2171A.1.

¹⁰⁴⁶ Sabljica, T. 5270-2, 5378; P2171A.1.

¹⁰⁴⁷ Sabljica, T. 5271, 5275, 5282-4. The location of the Institute for the Blind is marked on P3727 (map).

¹⁰⁴⁸ Witness Q, T. 7403.

336. The Trial Chamber now summarizes the evidence on the existence of military activity and possible military targets in the vicinity of the incident. As indicated above, Alipašino Polje was quiet on the morning of the incident. Witness AI denied that there was a reserve police station in the area and said he had not seen any soldiers in the neighbourhood that day.¹⁰⁴⁹ Likewise, Refik Aganović, who had been walking in the neighbourhood shortly before the shells fell, testified that he had not noticed any kind of military activity.¹⁰⁵⁰ One or two soldiers would be living in each apartment block, according to the witness, but there were no groups of soldiers or barracks in the area.¹⁰⁵¹ Goran Todorović testified that he had not seen any soldiers or military activity in the vicinity of the playground.¹⁰⁵² He agreed, however, that the headquarters of a detachment known as Kulin Ban were located about 500 metres from the point of the second explosion.¹⁰⁵³ Muhamed Kapetanović also testified that while there were no soldiers or military activity in the vicinity of the incident, the staff of a detachment of local troops known as Kulin Ban was stationed in the basement of a residential building approximately 150 metres behind his apartment block, on the street then known as Rade Končar Square.¹⁰⁵⁴ Uniformed men would go from the detachment's headquarters to the front line, and an armoured vehicle was often parked in front;¹⁰⁵⁵ Kapetanović last saw it four or five days prior to the incident.¹⁰⁵⁶ Another witness, Mirsad Kučanin, a crime inspector, testified that the Kulin Ban unit was on Rade Končar Square, about 200 metres from the site of the incident.¹⁰⁵⁷ He described it as an administration office, and as the unit's personnel department, and added that "mostly women" worked there and that no-one to his knowledge was in uniform.¹⁰⁵⁸ But the witness also conceded that he did not have first-hand knowledge of Kulin Ban.¹⁰⁵⁹ Zdenko Eterović testified that his brother was a member of Kulin Ban, which he described as a Croatian unit based in Marin Dvor. He denied that Kulin Ban, or any military unit, was located in Alipašino Polje at the time of the incident.¹⁰⁶⁰ Witness Q was shown a letter dated 24 June 1993, predating the incident by seven months, apparently from the Command of the ABiH's 102 Motorized Brigade, ordering priority distribution of electricity to several of the brigade's

¹⁰⁴⁹ Witness AI, T. 7683.

¹⁰⁵⁰ Aganović, T. 7725-6.

¹⁰⁵¹ Aganović, T. 7748.

¹⁰⁵² Todorović, T. 8015, 8027.

¹⁰⁵³ Todorović, T. 8028-30.

¹⁰⁵⁴ Kapetanović, T. 7958-9, 7978. He later said that the Kulin Ban's location was 15 metres' distance from the back exit of his building (T. 7962-3; the same figure appears in the French transcript), and later again that the distance was 100 to 150 metres (T. 7973). The Trial Chamber finds that the shorter distance, as it appears on the record, cannot be correct. All the evidence (including map exhibits) support Kapetanović's other claim (repeated twice) that the distance was at least 100 metres.

¹⁰⁵⁵ Kapetanović, T. 7959, 7978.

¹⁰⁵⁶ Kapetanović, T. 7959.

¹⁰⁵⁷ Kučanin, T. 4664.

¹⁰⁵⁸ Kučanin, T. 4663, 4665.

¹⁰⁵⁹ Kučanin, T. 4687.

¹⁰⁶⁰ Eterović, T. 8869, 8875. Witnesses Vahid Karavelić and Milorad Bukva both confirmed that "Kulin Ban" denoted Croatian units or a Croatian brigade (T. 12023 and 18424, respectively).

“localities”, including the “Basis of Stela (Zavnbih Square 17)”.¹⁰⁶¹ The witness acknowledged that the cited address of “Stela”, which he recalled as being a cafe, was between 50 and 100 metres from where the shells fell.¹⁰⁶² The witness also recalled that at the neighbouring Rade Končar Square there was “some sort of” police station, but he could not remember anything more about it.¹⁰⁶³ Witness AI testified that he did not know of any establishment called “Stela”, nor of a headquarters of the 102 Motorized Brigade, in Alipašino Polje.¹⁰⁶⁴ Aganović, Kapetanović, Todorović, and several other witnesses also testified that they had no knowledge of a “Stela” in the area, or at all.¹⁰⁶⁵ Witness Vahid Karavelić said he had some recollection of a cafe named “Stela” but was not sure where it had been located; he said he did not think it had been a command post.¹⁰⁶⁶

337. The Defence did not dispute the allegation that three mortar shells, two 82 mm and one 120 mm, exploded in two streets and in a neighbouring park, as described above.¹⁰⁶⁷ However, it argued that the place of origin of the shells has not been established;¹⁰⁶⁸ that even if the shells in question originated in SRK-controlled territory, evidence adduced from Muhamed Kapetanović established that a military unit had its headquarters a few dozen metres away from the site of the incident, so that the resulting civilian casualties must be understood as collateral;¹⁰⁶⁹ that the possibility of a mistake cannot be completely excluded;¹⁰⁷⁰ that the possibility of a staged attack by the ABiH (for propaganda purposes, presumably) against territory under its control cannot be completely excluded;¹⁰⁷¹ and that a Prosecution “insider” witness, Witness AD, testified that he had never received an order to fire at children or playgrounds – from which the Defence claims it may be inferred that no other soldiers on the SRK side had received such orders.¹⁰⁷² The Defence adopted the arguments presented in the Viličić Shelling Report in relation to the incident.

338. The Prosecution submits that *four* mortar rounds (not three, as in the Indictment) were fired into Alipašino Polje in the early afternoon of 22 January 1994, three of which hit the ground, killing six children and wounding several more children as well as one adult civilian.¹⁰⁷³ Possible military posts referred to in the evidence, even assuming they were operational at the time of the attack, were 200 metres or more away from the vicinity of the explosions, and this fact excludes the

¹⁰⁶¹ Witness Q, T. 7441; D97 (letter).

¹⁰⁶² Witness Q, T. 7441-2.

¹⁰⁶³ Witness Q, T. 7451-2.

¹⁰⁶⁴ Witness AI, T. 7682-3.

¹⁰⁶⁵ Aganović, T. 7732; Kapetanović, T. 7984; Todorović, T. 8028; Hafizović, T. 7845; Ljusa, T. 7886; Cutler, T. 9016; Thomas, T. 9377; Witness W, T. 9627; Mole, T. 11100; Fraser, T. 11211; Bergeron, T. 11294; and Van Baal, T. 11346.

¹⁰⁶⁶ Karavelić, T. 12023.

¹⁰⁶⁷ Viličić Shelling Report, p. 41.

¹⁰⁶⁸ Defence Final Trial Brief, para. 656; Acquittal Motion, paras 121, 125.

¹⁰⁶⁹ Defence Final Trial Brief, paras 658-60; Acquittal Motion, paras 121, 125.

¹⁰⁷⁰ Defence Final Trial Brief, para. 659.

¹⁰⁷¹ Acquittal Motion, para. 121.

¹⁰⁷² Defence Final Trial Brief, paras 660-1.

possibility of a sequence of firing errors.¹⁰⁷⁴ The Prosecution cites evidence that SRK mortar units could expect their first shot to be accurate within 50 metres.¹⁰⁷⁵

339. Having considered all the evidence, the Trial Chamber finds beyond reasonable doubt that three mortar shells (two 82 mm and one 120 mm calibre), were fired into the residential neighbourhood of Alipašino Polje around noon on 22 January 1994, killing six children and injuring other civilians, including children. The evidence is insufficient to establish that a fourth shell was launched as part of this attack. The Trial Chamber accepts the unanimous testimony of the eyewitnesses that the attack was carried out on an otherwise quiet day during a lull in hostilities (a lull of many days, according to Witness Q). No activity of a military nature was underway in the neighbourhood, nor were any soldiers to be seen, and groups of children, including Todorović and Kapetanović, had gone out onto the streets to play. Witnesses AI and Aganović had taken advantage of the local peace to go walking in their district.

340. The Trial Chamber accepts the Defence's argument that it has not been established beyond reasonable doubt that the shells were fired from the vicinity of the Institute for the Blind in Nedarići. Of the three witnesses who were outdoors at the time of the incident, only Witness AI claimed to have heard the sound of a mortar being fired, that is, the firing of the third shell, though not the firing of the first two. The Trial Chamber is not persuaded that Witness AI, who was at ground level on a street flanked by tall buildings at some distance from Nedarići, was in a position to accurately identify the sound he heard as the sound of a mortar being fired in Nedarići. The Trial Chamber has taken account of the testimony of Witnesses Q, AI, Kapetanović, and Aganović that this was not the first time Alipašino Polje had been attacked from Nedarići. Witness DP17 used Exhibit D1814 to mark the position of an SRK mortar unit he had seen in Nedarići sometime in 1993.¹⁰⁷⁶ According to the witness, the unit was equipped with one 82 mm mortar and one 120 mm mortar.¹⁰⁷⁷ Ismet Hadžić also testified to the presence of 82 mm and 120 mm mortar launchers in Nedarići during the relevant period.¹⁰⁷⁸ This evidence is insufficient for establishing that Nedarići was the source of the shells on 22 January 1994.

341. Nevertheless, the precise location or locations from which the three shells were fired is not critical to the Prosecution's case, and none is alleged in the Indictment.¹⁰⁷⁹ The Trial Chamber finds that Mirza Sabljica employed the correct methodology to determine the direction from which the

¹⁰⁷³ Prosecution Final Trial Brief, paras 515, 527-8.

¹⁰⁷⁴ Id., paras 523-6.

¹⁰⁷⁵ Id., para. 482; more generally, on accuracy, see id., paras 473-483.

¹⁰⁷⁶ DP17, T. 16832-3, 16890.

¹⁰⁷⁷ DP17, T. 16832.

¹⁰⁷⁸ Hadžić, T. 12254.

¹⁰⁷⁹ T. 21981.

shells had landed, and considering that the impact traces were considerably more pronounced to the west of the craters, it can safely be concluded that the shells came in from either the west or north of west. Employing Sabljica's measurements, the Viličić Shelling Report asserts that an "elliptical crater (with axis 0.15 and 0.20 m) and about 0.06 m deep in the asphalt surface [of Cetinjska Street] coincides to action of an 82 mm mortar shell having a drop speed V_c slightly over 68 m/s (see Table 8 [of the Viličić Shelling Report]) indicating that it was fired with the first increment charge and at elevation of about 85°, corresponding to the range of 250 m".¹⁰⁸⁰ The Trial Chamber disagrees with this statement. Table 8 of the report concerns concrete, not asphalt surfaces. Secondly, Table 8, which has to be read in conjunction with Table 1 of the report, states that a 4 cm deep crater can be caused by an 82 mm shell fired without a charge and falling at an angle of 85.2 degrees. But it *also* allows for the same crater depth to be caused by a shell landing at an angle closer to 46.5 degrees where it has been fired with one or more charges. In the former case the maximum range of the shell is 84 metres, according to Table 1, but in the latter case the range is up to 1,325 metres on the first charge (the approximate distance of Cetinjska Street from Nedarići), up to 2,218 metres on two charges, etc. The same is true, according to the report, of a 6 cm deep crater: that is, it can be caused by a steeply fired and relatively slow shell, or by a relatively fast shell fired at a gentler angle. The Viličić Shelling Report asserts that "the clues on the ground do not provide enough evidence to determine the direction of fire", and thereby concludes that the drop angle must have been close to 85 degrees.¹⁰⁸¹ But this is contrary to the undisputed fact that the impact traces were strongly elliptical and significantly displaced to the west.

342. The Trial Chamber notes that no evidence has been received on the level of charge used to fire the 82 mm shells in this case. The pronounced asymmetry of the traces does, however, suggest that the angle of the shells was not steep. Therefore, the Trial Chamber disregards the conclusions of the Viličić Shelling Report in relation to this incident. The Defence's assertion that the attack could have been staged by the ABiH is not supported by any evidence and is therefore dismissed. The Trial Chamber reiterates that a mere hypothesis is not a basis for reasonable doubt. Some fact or allegation must be relied on to turn a mere possibility into a reasonable one. Moreover, concerning the alleged possibility that the ABiH mistakenly hit Alipašino Polje while aiming at Nedarići, for which there is not the slightest factual basis, the fact that the two locations are about a kilometre apart, would necessarily exclude such allegation.

343. The Trial Chamber finds that the three shells were fired from SRK positions somewhere to the west of Alipašino Polje. If the 82 mm shells were indeed fired with the first increment charge as

¹⁰⁸⁰ Viličić Shelling Report, p. 41.

¹⁰⁸¹ Viličić Shelling Report, p. 41.

asserted in the Viličić Shelling Report (something which has not been established), they most probably originated in Nedarići, which was under SRK control.¹⁰⁸² But if higher charges were used, giving an 82 mm shell a range of several kilometres, they could have been launched from SRK positions further afield, i.e. west or southwest of Stup.¹⁰⁸³

344. The final question is whether the shells were aimed by the SRK at a military target in Alipašino Polje. There is no evidence that the so-called “Basis of Stela” was a military facility in January 1994. A letter dated June 1993 refers to Stela as a “locality” of the 102 Motorized Brigade, without further explanation. Only two witnesses had heard of Stela, and both thought it was a cafe. If indeed the “cafe” was only 50 to 100 metres from the incident site (as reported by Witness Q), no military activity was reported in its vicinity. Three witnesses mentioned the base of Kulin Ban, locating it at a distance of 500 metres (Todorović), 150 metres (Kapetanović), and 200 metres (Kučanin) from the site of the explosions. Kulin Ban’s entrance was on Rade Koncar Square, a street on the eastern side of the housing block. The western side of the block was formed by Cetinjska and Klara Cetkin Streets, which ran into each other. In between the two rows of buildings fronting the streets lay open parkland, and it was there that the 120 mm shell struck. The Trial Chamber recalls that all four eye-witnesses to the attack testified that the *third* (or final) shell fell on the streets to the west – that is, Cetinjska or Klara Cetkin. So did one of the earlier shells. It follows that the 120 mm shell struck the park either first or second in sequence. It was the closest to where Kulin Ban is said to have been housed. Therefore it cannot be said that the three shells fell progressively closer to Kulin Ban. Considering the sequence of the explosions, together with the fact that the shelling ceased after just three volleys were fired, all of which landed wide of Kulin Ban (two at a distance of at least 150 metres), the Trial Chamber concludes that Kulin Ban was not the intended target of this attack.

345. The Trial Chamber thus finds that the third scheduled shelling incident constituted an attack that was, *at the very least*, indiscriminate as to its target (which nevertheless was primarily if not entirely a residential neighbourhood), and was carried out recklessly, resulting in civilian casualties.

(d) Dobrinja Areas

346. The residential settlement of Dobrinja, which is situated alongside the airport to the southwest of the city, was constructed as the athletes’ village for the winter Olympics in Sarajevo in 1984. In the early stages of the conflict prior to the Indictment Period, it was isolated from the rest

¹⁰⁸² Witness DP17 testified that the area of Nedarići not under SRK control was negligible (T. 16876).

of the city.¹⁰⁸⁴ The confrontation lines on the eastern side of Dobrinja ran approximately along a street separating the SRK-controlled areas of Dobrinja I and IV from ABiH-controlled areas of Dobrinja II and III B.¹⁰⁸⁵

(i) Orthodox Church and School of Theology

347. The Trial Chamber heard evidence from witnesses living in ABiH-controlled areas of Dobrinja about shooting incidents from SRK-controlled areas of Dobrinja I and IV and Nedarići, and in particular from the areas of the Orthodox Church and the School of Theology.

348. Eldar Hafizović remembered that sometime around November 1992, he helped an adolescent girl who had been shot during the day as she ran across Oslobodilica Sarajeva street.¹⁰⁸⁶ With the help of an ABiH soldier, he pulled the girl to safety¹⁰⁸⁷ and noticed that the victim, who was wearing jeans and a T-shirt, had been wounded in the face.¹⁰⁸⁸ After the girl was injured, tracer bullets continued to be fired, enabling Hafizović to determine that the shooting originated from the direction of SRK-controlled territory in Dobrinja I.¹⁰⁸⁹ According to Omer Hadziabdić, a resident of Dobrinja IIIB,¹⁰⁹⁰ civilians in his neighbourhood were shot from 1992 through until 1994.¹⁰⁹¹ Nedim Gavranović, a resident of Dobrinja III,¹⁰⁹² testified without elaborating on how he had determined the source of fire that women and children were shot in his neighbourhood from Dobrinja IV.¹⁰⁹³ According to Ismet Hadžić, the commander of the ABiH Dobrinja brigade,¹⁰⁹⁴ the SRK had positioned soldiers in elevated areas around Dobrinja “in order to shoot at the population.”¹⁰⁹⁵

349. Residents of ABiH-controlled areas of Dobrinja singled out an Orthodox Church in Dobrinja IV, which had been under construction when hostilities broke out and retained external scaffolding throughout the Indictment period,¹⁰⁹⁶ as one of the sources of sniping fire against

¹⁰⁸³ See P3727 which indicates a range of possible firing positions bounded by dotted lines converging from the west on Alipašino Polje.

¹⁰⁸⁴ Van Lynden, T.2183-4: “Dobrinja [...] initially had a separate siege to the rest of Sarajevo. A link up was made at the end of June 1992”, when Mojmiro Hill fell to the ABiH (T. 2210).

¹⁰⁸⁵ Dževlan, T. 3516; Karavelić, T. 11816, P3728 (electronic map marked by Vahid Karavelić); P3732 (map marked by Ismet Hadžić); DP9, T. 14459, T. 14464, T. 14496; D1770 (map marked by witness); D1771 (electronic map marked by DP9).

¹⁰⁸⁶ Hafizović, T. 7778-80 and 7787.

¹⁰⁸⁷ Hafizović, T. 7782-3.

¹⁰⁸⁸ Hafizović, T. 7787.

¹⁰⁸⁹ Hafizović, T. 7780-2.

¹⁰⁹⁰ Hadzabdić, T. 6736.

¹⁰⁹¹ Hadzabdić, T. 6737.

¹⁰⁹² Gavranović, T. 6711.

¹⁰⁹³ Gavranović, T. 6718.

¹⁰⁹⁴ Hadžić, T. 12205.

¹⁰⁹⁵ Hadžić, T. 12246.

¹⁰⁹⁶ Sokolar, T. 3622.

civilians in Dobrinja. That church could be seen from the three bridges that linked Dobrinja II to Dobrinja III.¹⁰⁹⁷ Three bridges were mostly used: the bridge close to the eastern part of the confrontation line going from Emile Zola street to the square,¹⁰⁹⁸ the bridge used for traffic connecting Dobrinja II and Dobrinja III, then a pedestrian bridge also connecting Dobrinja II and Dobrinja III.¹⁰⁹⁹ Sadija Šahinović, a resident of Dobrinja II, testified that during the conflict “shooting went on incessantly” from Dobrinja IV;¹¹⁰⁰ people who crossed the bridge¹¹⁰¹ were sometimes “wounded there from the church”.¹¹⁰² “Snipers weren’t selective in their choice. They targeted children and women, everyone”.¹¹⁰³

350. Residents also testified that there was no electricity or water in their apartment throughout the conflict.¹¹⁰⁴ Šahinović and other inhabitants of Dobrinja II fetched drinking water from a well in Dobrinja C5 and washing water from the Dobrinja river, where there was a bridge connecting Dobrinja II to Dobrinja III.¹¹⁰⁵ They could not stay long at the river, because “there was a sniper there who had a good view of the whole river. And he would shoot sometimes all day long, and many, many people got wounded and got killed at the river.”¹¹⁰⁶ Vahida Zametica, another resident of Dobrinja II, said that “many, many people got wounded and got killed at the river.”¹¹⁰⁷ Her mother, her brother and she would go to the river for water. They were shot at when getting water on “many occasions.”¹¹⁰⁸ The front line was “close enough to be able to snipe at us every day and to kill us.”¹¹⁰⁹ Sandbags, up to a height of two meters,¹¹¹⁰ were placed along the length of the bridge

¹⁰⁹⁷ Refik Sokolar, a policeman in Dobrinja, indicated that a larger bridge was used by vehicles and two smaller ones utilised by pedestrians, Sokolar, T. 3622, see also P3097 (map marked by Refik Sokolar); the Orthodox Church was in an open area, Sokolar, T. 3581. Sokolar also described the bridges crossing the Dobrinja River within the ABiH-held territory in Dobrinja as follows: from east to west, “there was a large bridge on the confrontation line, and there was also where the buses turned, and then there was a bridge where there was a confrontation line where nobody moved. Then there was another bridge, and this was from the Emile Zola Street on to the square. Then number 3, there was a bridge for the traffic, the buses, when the buses could go, when it was possible. And then there was another pedestrian bridge between Dobrinja II and Dobrinja III. And then the third bridge which wasn't operational, and this was also for vehicles, this was in two directions towards Nedzarici”. See also P3728 (incidents 6&18, maps with location of the bridges), T. 3623.

¹⁰⁹⁸ Husein Grebić testified that at some 200 metres from that bridge, at the cross roads of Bulevar Branica Dobrinje and Emile Zola street, was the command post of the ABiH 3rd battalion of the 5th Brigade, Grebić, T. 7295 (marked as No. 3 on D95: map marked by Husein Grebić).

¹⁰⁹⁹ Sokolar, T. 3622, 3623.

¹¹⁰⁰ Šahinović, T. 3434; she added that “when snipers were silent, shelling started”, T.3436.

¹¹⁰¹ The pedestrian bridge linking Dobrinja II to Dobrinja III.

¹¹⁰² Šahinović, T. 3423.

¹¹⁰³ Šahinović, T. 3427.

¹¹⁰⁴ Zametica, T. 3480, Dževlan, T. 3545.

¹¹⁰⁵ Zametica, T. 3481-2; Šahinović, T. 3415, 3426, 3440. Šahinović explained that she would, sometimes, fetch water 3 to 6 times a day (T. 3415), while Zametica explained that her family would go every day or every other day (T. 3505). Zametica explained that there were six bridges on Dobrinja river and that the bridge concerned was the fourth bridge from the Orthodox Church (T. 3494-5).

¹¹⁰⁶ Šahinović, T. 3415-6.

¹¹⁰⁷ Šahinović, T. 3416.

¹¹⁰⁸ Zametica, T. 3482-3.

¹¹⁰⁹ Zametica, T. 3505.

¹¹¹⁰ Šahinović, T. 3423.

on both sides, to protect civilians crossing the bridge.¹¹¹¹ A well was being dug so that people would not risk being wounded or killed while fetching water from the river.¹¹¹²

351. Šahinović and Zametica both testified about the killing of the mother of Zametica, an incident specifically alleged in Schedule 1 of the Indictment, number 6, as evidence representative of a campaign of sniping fire against civilians.

(ii) Scheduled Sniping Incident 6¹¹¹³

352. Sadiha Šahinović testified that on 11 July 1993, at about 2 or 3pm,¹¹¹⁴ she went with her friend Munira Zametica to fetch water at the Dobrinja river.¹¹¹⁵ Sniping had gone on throughout the day.¹¹¹⁶ Šahinović explained that she and Zametica found shelter with a group of 6, 7 persons in an area under the bridge where the river ran.¹¹¹⁷ They did not dare to approach the riverbank until Zametica overcame her hesitation¹¹¹⁸ and approached the riverbank. She was filling her bucket with water when she was shot.¹¹¹⁹ It was too dangerous for Šahinović and for Vahida Zametica, the 16-year old daughter of the victim who came to assist once alerted of the incident, to leave the protection of the bridge.¹¹²⁰ The victim was lying face down in the river, blood coming out of her mouth. Vahida heard the shooting continue and saw the bullets hitting the water near her mother.¹¹²¹ ABiH soldiers passing by the bridge saw what had happened, positioned themselves on the bridge behind sandbags and shot into the direction of the Orthodox Church.¹¹²² The victim was pulled out of the water and taken to hospital; she died later that afternoon.¹¹²³

¹¹¹¹ Šahinović, T. 3423; Zametica, T. 3503.

¹¹¹² Šahinović, T. 3435.

¹¹¹³ The Indictment alleges that on 11 July 1993, “Munira Zametica, a woman aged 48 years, was shot dead while collecting water from the Dobrinja River in area of Dobrinja II and III”, Schedule 1 to the Indictment.

¹¹¹⁴ Šahinović, T. 3416, 3418, 3436; Šahinović first stated that the incident occurred at 2-3pm (T. 3416), then as the night was about to fall (T. 3417), then corrected herself and said again between 2 and 3 pm (T. 3418). Šahinović testified that the time given by the Official Note which states that the incident took place in the early part of the evening is incorrect. Vahida Zametica corroborated Šahinović to the extent that she testified that the incident occurred between 14:00 and 14:30 hours (T. 3440). Similarly, the death certificate of the victim which certifies that the death occurred at 16:00 hours on 11 July 1993 supports the witnesses’ testimony (P1382C).

¹¹¹⁵ Zametica, T. 3482; Šahinović, T. 3440, 3416-7.

¹¹¹⁶ Šahinović, T. 3436.

¹¹¹⁷ Šahinović, T. 3422, 3419; the street going to that bridge was called Octobarske Revolucije and the witness thinks that the street is now called Dobrinjske Bolnice (T. 3427-8).

¹¹¹⁸ Šahinović, 3417.

¹¹¹⁹ Šahinović, T. 3417-8.

¹¹²⁰ Šahinović, T. 3418. Zametica, T. 3483-5, 3501.

¹¹²¹ Zametica, T. 3484-5.

¹¹²² Šahinović, T. 3418, 3432-3, 3438, 3453; Šahinović assumed that they were either going to, or coming back from, their guard duty; she did not know for certain because she had left the scene of the incident, was halfway when she returned and saw them there. They positioned themselves on the bridge behind sandbags and shot in the direction of the Orthodox Church to be able to pull the victim out of the water. The witness did not remember whether there was an exchange of fire between the ABiH soldiers who returned fire from the bridge and the Serb forces in the church. Usually, there was no fire from Dobrinja II in the direction of Dobrinja IV, Šahinović, T. 3418, 3434-38, 3452-3.

¹¹²³ Šahinović, T. 3418, 3453. The death certificate of the victim states that the death occurred at 16:00 hours, P1382. An official report of the incident by the public security services (the “Official Note”) confirmed the death of Munira

353. The Defence claims that the victim could not have been hit from “VRS” positions because the Dobrinja River or the victim could not be seen from there; the Defence argues that ABiH soldiers had fortified positions on the bridge, that combat was ongoing at the time the incident occurred and that the victim was hit by a stray bullet.¹¹²⁴

354. Šahinović testified that the bullets directed at the victim originated from the Orthodox Church in Dobrinja.¹¹²⁵ She, like the victim’s daughter, indicated that shooting at the river always originated from the Orthodox Church.¹¹²⁶ This is both consistent with the side of the bridge at which those who had come to fetch water had taken shelter as with the observations in respect of continuing fire which prevented those present from removing the victim from the riverbank. SRK firing positions on the tower of the Orthodox Church and nearby high-rise buildings were confirmed by several witnesses.¹¹²⁷ Photographs of the area tendered into evidence demonstrate conclusively that there was a line of sight between the tower of the Orthodox Church and the spot where the victim was shot. The explanation given by witness DP9 as to why it was unlikely that SRK soldiers would fire from the Orthodox Church is not convincing.¹¹²⁸ The claim by the Defence that from the place where the victim was shot no line of sight existed to VRS positions is contradicted by evidence in the Trial Record, in particular photographs of the site. The victim was at the north-western side of the bridge when she was hit. The possible sources of fire from where one could hit a person below the bridge are very limited, due to the tunnel-shaped watercourse of some length under the bridge. This has the effect of narrowing the area from where there is a line of sight to the spot below the bridge. The tower of the Orthodox Church is within that narrow area.

Zametica; it assessed that “the murder took place on 11 July 1993 between 1900 and 1930 hrs.” and that the victim was shot by two rounds of fire. D42 (official report of public security station of Sarajevo), Šahinović, T. 3439. The contradiction observed between this timing and that indicated by Šahinović was put to the witness who testified that the time given by the “Official Note” was not correct, Šahinović, T. 3440.

¹¹²⁴ Defence Final Trial Brief, paras 125-7; Motion for Acquittal, para. 47.

¹¹²⁵ Šahinović, T. 3434-6, Šahinović identified the Orthodox Church on a photograph, locating it in Dobrinja IV, Šahinović, T. 3424, P3279, P3279K (360 degree photograph of the location of scheduled sniping incident 6); Zametica, T. 3486, 3489; P3279.VZ (enlarged photograph taken from the site of the incident); P3279KK (enlarged photograph taken from the site of the incident).

¹¹²⁶ Zametica, T. 3485-9; P3279.KK; Šahinović testified that the bridge had sandbags along the length of the bridge on both sides up to 2 metres, but there was a “very small place that was not covered” so they had to run across ... people got wounded there from the church.” There were containers, but “they were not reliable because the tin was thin”. Photographs in evidence confirmed Šahinović’s statement in that regard, P3279.KK (enlarged photograph) shows that there was a line of sight from the river bank concerned and the Orthodox Church.

¹¹²⁷ Hadžić, T. 12249; Hajir, T. 1679; Thomas, T. 9322-9325; Sokolar, T. 3581; D42 (Official Note). Hinchliffe measured the distance between the bridge and the Church tower to be 1,107 meters, Hinchliffe, T. 12970.

¹¹²⁸ The Defence witness DP9, a member of the SRK Ilidža brigade positioned in the Dobrinja area, acknowledged that Dobrinja IV was under SRK control (DP9, T. 14454, 14464). He claimed that the side of the Orthodox Church facing Dobrinja was heavily damaged by ABiH shelling (DP9, T. 14443, 14453) and subject to fire so that attempting to climb up this façade “would have been equal to suicide” (DP9, T. 14494-5). During cross-examination, he conceded that the tower survived the shelling intact except for its top part, which was seriously damaged (DP9, T. 14563). Photographs of the tower, covered by scaffolding, were shown to the witness, who recognised that they were taken from what was the ABiH side during the war and accurately depicted the state of the Orthodox Church during the Indictment Period, P3753 (set of photographs of the Orthodox Church’s tower), DP9, T. 14580-1. He insisted that the “church” was never used by the SRK for any military activity, DP9, T. 14464.

The evidence remains uncontradicted that the area of the Orthodox Church from where the fire came from was within SRK-controlled territory.¹¹²⁹ The Trial Chamber is satisfied beyond reasonable doubt that the Orthodox Church area, Dobrinja IV, was controlled by SRK forces.

355. The Trial Chamber also rejects the defence's claim that ABiH soldiers at that time held fortified positions on the bridge and that the victim was hit by a stray bullet fired during combat. Reliable testimony establishes that ABiH soldiers passed by after the event and only then opened return fire in the direction of the Orthodox Church. In the present case, the activity the victim was engaged in, the fact that civilians routinely fetched water at this location and her civilian clothing were indicia of the civilian status of the victim. At a distance of 1100 metres (as determined by Hinchcliffe), the perpetrator would have been able to observe the civilian appearance of Zametica, a 48 year old civilian woman, if he was well equipped, or if no optical sight or binoculars had been available, the circumstances were such that disregarding the possibility that the victim was civilian was reckless.¹¹³⁰ Furthermore, the perpetrator repeatedly shot toward the victim preventing rescuers from approaching her. The Trial Chamber concludes that the perpetrator deliberately attacked the victim. The mere fact that at the distance of 1100 metres the chance of hitting a target deteriorates does not change this conclusion. The suggestion by the Defence that the cause of death should be doubted in the absence of specific forensic medical information is also rejected. The course of events sufficiently proves that Zametica's death was a consequence of direct fire opened on her.

356. The Trial Chamber finds that Munira Zametica, a civilian, was deliberately shot from SRK-held territory.

(iii) Scheduled Sniping Incident 18¹¹³¹

357. The Prosecution also called Sanija Dževlan, who lived in Dobrinja IIIA,¹¹³² to testify about an instance where she was shot in Dobrinja.¹¹³³ She testified that on 6 January 1994, she cycled to

¹¹²⁹ As mentioned above, the confrontation line at the eastern part of Dobrinja were along a street separating Dobrinja I and IV from Dobrinja II and III B and the buildings of Dobrinja IV and the Orthodox Church were placed within SRK-held territory, Dževlan, T. 3516; Karavelić, T. 11816, P3728 (electronic map marked by Vahid Karavelić); P3732 (map marked by Ismet Hadžić); DP9, T. 14459, 14464, 14496; D1770 (map marked by witness); D1771 (electronic map marked by DP9).

¹¹³⁰ There is some discrepancy as to the colour of the clothing of the victim. Vahida Zametica testified that her mother wore a brown skirt (T. 3486), while Šahinović testified that the victim was wearing a multicoloured skirt (T. 3426). The Trial Chamber recalls that such details have a bearing if the clothing of the victim could have led the perpetrator – along with other details such as the carrying of a weapon or involvement in a military activity - to believe that the person targeted was not a civilian.

¹¹³¹ The Prosecution submits that, on 6 January 1994, “Sanija Dževlan, a woman aged 32 years, was shot and wounded in her buttocks while riding a bicycle across a bridge in Nikolje Demonja Street, Dobrinja”, Schedule 1 to the Indictment.

¹¹³² Dževlan, T. 3515.

¹¹³³ Dževlan was aged 32 at the time of the incident, Dževlan, T. 3513.

the hospital located in Dobrinja II to pick up medicines for her sick mother.¹¹³⁴ The day was particularly calm,¹¹³⁵ and she was wearing brown trousers, a yellow anorak and was not carrying arms.¹¹³⁶ While cycling back from the hospital located in Dobrinja II, at about 3 or 4 pm,¹¹³⁷ she was shot in the buttocks just after crossing one of the bridges connecting Dobrinja II to Dobrinja III.¹¹³⁸ She felt a blow and realised that she had been shot when she saw 3 or 4 bullets rebounding off the concrete around her.¹¹³⁹ She managed to keep riding her bicycle and reached her home.¹¹⁴⁰ Her neighbours helped her to the hospital where she remained for about 10 days.¹¹⁴¹ She was wounded on the buttocks but the bullet(s) did not hit the bones.¹¹⁴²

358. The Defence does not contest that the victim was a civilian nor that she was wounded by a bullet, while crossing the bridge on Emile Zola street.¹¹⁴³ The Trial Chamber is indeed satisfied beyond reasonable doubt that the clothing of the victim, the activity she was engaged in (riding a

¹¹³⁴ Dževlan, T. 3517-8, 3556.

¹¹³⁵ Dževlan, T. 3517-9. She testified that she did not hear any shelling or sniping before she left her house, otherwise she would have not done so, Dževlan, T. 3519, 3536-7, 3542. The Defence confronted her with UN documents reporting shelling activity that day in Sarajevo, D45 (UN report of the week up to 6 January 1994), D44 (UNPROFOR document about shelling activity on 6 January 1994 in Sarajevo). The witness responded that the shelling of all neighbourhoods mentioned in these documents was too distant for her to hear, Dževlan, T. 3542. The UN document D44 reports shelling on Stup, Žuč, Alipašić Most, Smilevići, Rajlovac, Lukavica, Grbavica and Vogošća. The UN document D45 reports shelling on the areas of the Jewish cemetery, Grbavica, the airport, the Holiday Inn, the Central Bank; the area near the Presidency building on 6 January 1994.

¹¹³⁶ Dževlan, T. 3518. Dževlan testified that at the time of the incident she was the only passer-by in the area and was not carrying weapons. She added that there had been no soldiers or uniformed people or military equipment in the area, Dževlan, T. 3518.

¹¹³⁷ Dževlan, T. 3518, 3523.

¹¹³⁸ Dževlan, T. 3519; P3280.L (the witness indicated the spot where she was shot and where the bullets came from while the video was playing, T. 3521); P3279.L (direction she was cycling to, T. 3522-3), Dževlan testified that she did not know the name of the bridge she had crossed when she came back from the hospital in Dobrinja II. Dževlan, T. 3535. Upon the Defence's question that the bridge could be called the Emile Zola Bridge, she responded that "possibly it is" but emphasised that "I don't know what the bridge is called, not even today", Dževlan, T. 3535. She recognised the bridge she had crossed on 6 January 1994 on photographs shown to her and on the video of the scene of the incident played in court (P3280L), P3264 (photograph where she marks with a circle part of the Church that is visible); P3114 (map where the witness marked as circle number 1 the spot where she was shot and as circle number 2 the suspected source of fire); T. 3527-9; Sokolar marked on the map P3097 the location of the hospital, placing it at an equal distance between the pedestrian bridge connecting Dobrinja II and III and the traffic bridge also connecting Dobrinja II and III, Sokolar, T. 3583.

¹¹³⁹ Dževlan, T. 3519.

¹¹⁴⁰ Dževlan, T.3519.

¹¹⁴¹ Dževlan, T.3520.

¹¹⁴² P3113.1 (English translation of the medical discharge form).

¹¹⁴³ The Defence assumes that the bridge in which vicinity Dževlan was shot was called the Emile Zola Bridge (Sokolar testified that it was a pedestrian bridge) and argues that the time when the sandbags were placed on it is inconsistent with the testimony of Sadija Sahinović (Defence Final Trial Brief, para. 288). The video, the photographs and the maps of the scene of the incident lead the Trial Chamber to the conclusion that Dževlan was not shot in the vicinity of the pedestrian bridge but in the vicinity of the bridge open to traffic, close to the hospital where she came from. The evidence further demonstrates that the pedestrian bridge under which Munira Zametica (see sniping incident 6) was shot is not the bridge close to the spot where Dževlan was shot. From the description made by Sokolar of the bridges crossing the Dobrinja river and a close examination of P3264 (photograph of a bridge open to traffic) and P3728 (map of incidents 6 & 18), it is clear that Dževlan was shot in the vicinity of the second bridge connecting Dobrinja II (the area of the hospital) to Dobrinja III from the eastern part of the ABiH confrontation line. The Trial Chamber is satisfied that the bridge in the vicinity of which Dževlan was shot is the bridge indicated in P3728 (map of incident 6 & 18) located between the Emile Zola Bridge (from the Emile Zola street and the square) and the Bridge where Munira Zametica was shot (to the street called Octobarske Revolucije at the time of the incident).

bicycle), the fact that she was unarmed, were indicia of Dževlan's civilian status and would have put a perpetrator on notice of her civilian status. But the Defence claims that the evidence is insufficient to establish the source of fire¹¹⁴⁴ and interprets the fact that several bullets were fired as proof that there was combat activity at the time.¹¹⁴⁵ It further maintains that it is unlikely that the bullets were fired from as far as the Orthodox Church and hit the victim's buttocks, when, being on a bicycle, she was barely visible behind the 1-1.5 meter-high barricade. The Defence notes in that respect that her testimony regarding the time when the sandbags were placed is inconsistent with the testimony of Sadija Sahinović and Vahida Zametica.¹¹⁴⁶ All this, in the Defence's view, makes it impossible to conclude that she was deliberately targeted.¹¹⁴⁷

359. Dževlan testified however that she was cycling in the direction of Dobrinja III, leaving behind her the bridge which connected Dobrinja III to Dobrinja II, when she heard fire coming from her right, from Dobrinja IV, the area of the Orthodox Church.¹¹⁴⁸ Witness DP9 confirmed that the building Dževlan pointed at on photographs¹¹⁴⁹ was the Orthodox Church.¹¹⁵⁰ Dževlan further testified that the area of the "church" was held by the SRK forces.¹¹⁵¹ The Trial Chamber finds that witness credible and her evidence reliable.¹¹⁵² The Trial Chamber has already found that the area of the Orthodox Church in Dobrinja IV was under SRK control. The Trial Chamber finds that the bullets which hit the victim came from the area around the Orthodox Church, thus either the building of the Orthodox Church or a building in the vicinity of that Church. The evidence conclusively demonstrates that there was a line of sight between the area of the Orthodox Church and the spot where the victim was shot.¹¹⁵³ The witness did not deny that barricades extended the full length of the bridge and then approximately one metre past either side of the bridge, offering thus some protection, but testified that she was shot in the open area where the barricades end. A

¹¹⁴⁴ Defence Final Trial Brief, para. 287.

¹¹⁴⁵ Id. The presence of an ABiH headquarters in the vicinity and the proximity to the confrontation lines could substantiate the thesis that the victim was hit by a stray bullet, Defence Final Trial Brief, para. 289-90.

¹¹⁴⁶ Defence Final Trial Brief, para. 288.

¹¹⁴⁷ Id., para. 287.

¹¹⁴⁸ Dževlan, T. 3523; P3279.L (the witness indicated the position of her body when she was shot). She assumed that the bullet which hit her came from Dobrinja IV; she was uncertain whether the fire came from the Orthodox Church or another building in the area of Dobrinja IV. On a photograph of the area where she was shot, the witness pointed out the "church" she suspected to be the source of fire, P3114 (map where the witness marked as the circle number 1 the spot where she was shot and as the circle number 2 the suspected source of fire), T. 3528-9).

¹¹⁴⁹ Dževlan, T. 3527.

¹¹⁵⁰ DP9, T. 14491, P3264.

¹¹⁵¹ Dževlan, T. 3523, 3527-9.

¹¹⁵² Dževlan's uncertainty only concerned whether the gunfire she heard came from the Orthodox Church or from a building close to it, in Dobrinja IV, T. 3527.

¹¹⁵³ The photograph P3264 evidences that there was a line of sight from the Orthodox Church or buildings of Dobrinja IV to the spot in Dobrinja III where the victim was shot, P3264 (photograph taken from the bridge and the line of sight to the Orthodox Church). Dževlan recalled that the day after she was shot, a man was shot at same spot, in the open area at the end of the bridge, where she was shot in Dobrinja III allegedly by SRK forces; the spot was then considered dangerous, Dževlan, T. 3529. As a result, in addition to barricades made of sandbags, which extended the full length of the bridge and then approximately one metre past either side of the bridge, barricades were installed either side of the bridge by the civilian protection shortly thereafter, Dževlan, T. 3525, 3529; P3264 (photograph taken from the bridge).

close examination of the photograph of the spot where Dževlan was shot, P3264, shows that there was a line of sight between the site of the incident and the area of the Orthodox Church. The Trial Chamber finds that there was no ongoing combat activity at the time and in the vicinity of the incident.¹¹⁵⁴ The only reasonable inference is that the bullet, coming from Dževlan's right-hand side, came from the direction of the Orthodox Church located approximately 800 metres from the site of the incident.¹¹⁵⁵ That Church was identified by credible and reliable witnesses as a source of fire in Dobrinja IV. The Trial Chamber finds that Dževlan was shot from SRK-controlled territory.

360. Dževlan testified that several bullets ricocheted around her, while she was riding her bicycle and after she was hit. The Trial Chamber is satisfied that the sequence of events demonstrates conclusively that Dževlan was deliberately targeted. In sum, the Trial Chamber finds that the victim, a civilian, was deliberately targeted from SRK-controlled territory.

361. The Prosecution also tendered detailed evidence concerning another alleged example of deliberate sniping at civilians from the SRK-controlled area of the School of Theology which is identified in Schedule 1 of the Indictment under number 22. The conclusions found in this incident are that of the Majority of the Trial Chamber. Judge Nieto-Navia dissents and expresses his views in the separate and dissenting opinion appended to this Judgement.

(iv) Scheduled Sniping Incident 22¹¹⁵⁶

362. In 1994, Ramiz Grabovica, an ABiH conscript in logistics, was employed by the public transport company to drive civilians on a regularly scheduled bus route between the Alipašino bridge and Dobrinja during cease-fires.¹¹⁵⁷ On 25 May 1994, a sunny day,¹¹⁵⁸ at approximately 11:40 am,¹¹⁵⁹ Grabovica reached his last stop at the intersection of Nikole Demonje Street and Omladinskih Brigada Street in the centre of Dobrinja,¹¹⁶⁰ stopped the red and white bus, opened the three doors of the bus and turned off the engine to save fuel.¹¹⁶¹ As he waited for passengers to board, Grabovica heard a single shot¹¹⁶² coming from the direction of Nedarići, which was

¹¹⁵⁴ As seen *supra*, the victim testified that shelling taking place in other places of the city could not be heard.

¹¹⁵⁵ The distance was calculated on the basis of maps in evidence, in particular P3644.RH.

¹¹⁵⁶ The Indictment alleges that on 25 May 1994, "Šehadeta Plivać, a woman aged 53 years and Hajra Hafizović, a woman aged 62 years, were both shot and wounded in their legs while passengers in a crowded bus near the junction of Nikolje Demonje and Bulevar Avnoaj, presently Nikolje Demonje and Bulevar Branioca Dobrinje, in Dobrinja", Schedule 1 to the Indictment.

¹¹⁵⁷ Grabovica, T. 3645-6, 3659.

¹¹⁵⁸ Grabovica, T. 3645.

¹¹⁵⁹ Grabovica, T. 3648, 3662; P2637.1 (Translation of Official Note issued by the Novi Grad Public Security Station and Medical Documentation issued by the Dobrinja General Hospital).

¹¹⁶⁰ Grabovica, T. 3648, 3684; Sokolar, T. 3578, 3662. For the precise location of the bus at the time of the incident, see P3280M (Video), Grabovica, T. 3652; Sokolar, T. 3578; P2637.1; D46 (map of the location of the incident marked by Grabovica), Grabovica, T. 3686.

¹¹⁶¹ Grabovica, T. 3649.

¹¹⁶² Grabovica, T. 3658.

controlled by the SRK,¹¹⁶³ precipitating panic on the bus.¹¹⁶⁴ Passengers, nearly all women who were not wearing military uniform or carrying weapons¹¹⁶⁵ believed that a sniper was shooting at them from the Faculty of Theology in Nedarići,¹¹⁶⁶ a notorious SRK firing position at the time of the event.¹¹⁶⁷ He saw that two middle-aged women had been injured. The one sitting on the right side of the bus was holding her knee and the other sitting in the opposite side of the aisle was bleeding profusely.¹¹⁶⁸ Grabovica explained that “at that moment, I was also in panic, but I realised that I had to drive them to the hospital. [...] I switched on the engine, closed the doors, even though all the other passengers were saying, 'open, open, because the sniper is shooting'. [...] I closed the doors, started, and because the hospital was about a hundred metres away, I went over the sidewalk and through a grassy patch, and I made it to the hospital.”¹¹⁶⁹ The victims, Sehadeta Plivac and Hajra Hafizović, were taken off the bus and remained at the hospital where they received medical assistance.¹¹⁷⁰

363. After the incident, Grabovica drove back to the depot at Velikih Drveta on the Alipašino bridge,¹¹⁷¹ where he was interrogated by the local police, who inspected the bus and took photographs of the bullet impact point. The police disclosed their findings to Refik Sokolar, a police investigator at the Novi Grad Public Security Station, who found that the source of fire was the School of Theology in Nedarići.¹¹⁷² Grabovica testified that he did not hear shooting prior or subsequently to the incident.¹¹⁷³ He added that there were no soldiers, military equipment or military activity in the immediate vicinity of the site of the incident or along the route he took on that day,¹¹⁷⁴ but that he saw members of the local civilian police along the way.¹¹⁷⁵

¹¹⁶³ Grabovica, T. 3649, 3654, 3655, 3675, 3683.

¹¹⁶⁴ Grabovica, T. 3649, 3668.

¹¹⁶⁵ Grabovica, T. 3651, 3692.

¹¹⁶⁶ Grabovica, T. 3668.

¹¹⁶⁷ Sokolar, T. 3575; Thomas, T. 9322.

¹¹⁶⁸ Grabovica, T. 3649-50, 3668.

¹¹⁶⁹ Grabovica, T. 3650, 3668.

¹¹⁷⁰ Grabovica, T. 3668-69; P2637.1; the medical documentation of the victims tendered into evidence indicates that both victims sustained piercing bullet wounds in the legs (P2637.1: Plivac was wounded in the lower part of the right leg and Hafizović was wounded in the lower part of both legs).

¹¹⁷¹ Grabovica, T. 3669.

¹¹⁷² Sokolar, T. 3576-3578, 3614, 3618; Sokolar visited the victims at the hospital (T. 3576, 3615-3619) examined the site of the incident (T. 3618) and heard the report of the local police, who had inspected and taken photographs of the damaged bus in the depot (T. 3576, 3618). In his report of the incident, Sokolar stated that the bullet had ricocheted off the right front wheel of the bus and then hit the victims and was fired from SRK “positions around the Faculty of Theology in Nedarići” (P2637.1); Sokolar made that assessment on the basis of the location of the buildings around the area, the position of the bus, and the impact point of the bullet (T. 3617-8; P2637.1 (pp 1-2)). Sokolar was shown photographs of the site of the incident and testified that the area where a small shopping centre is erected used to be a grassy area at the time of the incident (T. 3578); Grabovica, T. 3669-70.

¹¹⁷³ Grabovica, T. 3645.

¹¹⁷⁴ Grabovica, T. 3652, 3693.

¹¹⁷⁵ Grabovica, T. 3652, 3680, 3693; Sokolar testified that the members of the local civilian police mostly wore civilian clothes, and that a very small number of them wore uniforms, Sokolar, T. 3594; Grabovica also said that they would wear just side arms, Grabovica, T. 3680.

364. The Majority of the Trial Chamber is satisfied that the events occurred as recounted by Grabovica and that the passengers of the bus were civilians. Although Grabovica was a military conscript employed to transport civilians in a bus of the public transport company, he did not carry weapons and was not dressed in a military uniform.¹¹⁷⁶ There is no evidence in the Trial Record, which could suggest that the bus transported combatants or was used for a military activity. The bus was visibly a civilian vehicle, which only functioned during cease-fires along a regularly scheduled bus route.

365. The Majority of the Trial Chamber is also satisfied that the passengers of the bus were targeted from the area of Nedarići.¹¹⁷⁷ Grabovica testified that the engine of the bus was switched off and that the area was quiet when he heard a single shot hitting the bus and the sound of gunfire coming from the direction of Nedarići. In that direction, the SRK frontline was approximately 750 metres away.¹¹⁷⁸ Grabovica testified that there was a line of sight from the Faculty of Theology to the site of the incident.¹¹⁷⁹ On photographs of that site, Grabovica pointed out a shopping centre and two houses erected several hundred metres away from the alleged origin of fire,¹¹⁸⁰ which did not exist at the time of the incident and obstruct the line of sight to the Faculty of Theology.¹¹⁸¹ Grabovica testified that he was interrogated by the local police, who inspected the impact point of the bullet on the bus. The local police communicated the results of the inspection to Sokolar, who testified that the victims were hit by a ricocheting bullet fired from the direction of Nedarići.¹¹⁸² The Prosecution alleges two sources of fire in Nedarići. One of these sources is indicated by a red circle close to the confrontation line, north-west to the site of the incident. Witness DP8 testified that there

¹¹⁷⁶ Grabovica, T. 3692.

¹¹⁷⁷ The Defence argues that Refik Sokolar and Ramiz Grabovica are not reliable witnesses as Sokolar prepared the official note of the incident on the basis of unfounded information, and Grabovica based his assessment of the alleged source of fire on hearsay and on the fact that there was a line of sight between the Faculty of Theology and the site of the incident, which is contested by the Defence, Defence Final Trial Brief, paras 334-9.

¹¹⁷⁸ Vahid Karavelić, Commander of the ABiH 1st Corps, testified that the confrontation lines indicated on the map P3728 and separating Dobrinja (under ABiH control) from Nedarići (under SRK control) were correct, P3728 [sniping incident 22], Karavelić, T. 11852. A close examination of the map P3644RH shows that the distance between the SRK confrontation line and the site of the incident is approximately 750 metres.

¹¹⁷⁹ Grabovica, T. 3683; Grabovica marked the location of the Faculty of Theology with number 1 on D46 (Map marked by Grabovica), Grabovica, T. 3686, 3655; P3274B (Photograph); Sokolar also marked the location with number 3 on P3097 (Map marked by Refik Sokolar), Sokolar, T. 3582.

¹¹⁸⁰ See P3274B (Photograph); P3274C (Photograph). The markings on the photographs were made by Grabovica, T. 3655-6.

¹¹⁸¹ Grabovica, T. 3655-6.

¹¹⁸² Fire used to originate from there: Ismet Hadžić testified that a row of trucks filled with cement was placed practically all the way from the health centre in Dobrinja V to Mojnilo to protect Dobrinja from SRK firing positions located in Nedarići, and in particular in the Faculty of Theology, Hadžić, T. 12220, 12249. Francis Thomas, a senior UNMO, explained that no other good firing position existed in the vicinity; the SRK was based in the Faculty of Theology, moving out of the building after firing in order to avoid retaliatory fire, Thomas, T. 9323. Thomas added that the SRK had a machine-gun located there and could eventually target anybody crossing the street in the line of sight of the Faculty of Theology for one to one-and-a-half kilometers, Thomas, T. 9323-9324.

was no line of sight between these two points.¹¹⁸³ A close examination of the map P3728 (incident 22) shows that indeed there is no line of sight because high buildings located along the Bulevar Branioca Dobrinja obstruct the view. In relation to the source of fire alleged by Grabovica, the witness testified that there was a line of sight between the Faculty of Theology and the site of the incident. According to the Defence witness DP8, there was no line of sight from which a perpetrator could have fired from the Faculty of Theology, because houses erected between the frontline and the site of the incident obstructed the view to the site of the incident. Grabovica explained, however, that the small constructions seen on the photographs and which obstruct the view to Nedarići did not exist at the time of the incident. Witness DP8 testified that the Faculty of Theology was the highest building in the area of Nedarići, which mainly consisted of houses. A close examination of photographs of the area of the incident shows that there is indeed a line of sight between the site of the incident and the Faculty of Theology. The Trial Chamber further notes that the distance between these two points is approximately 1,500 metres. Although a distance of 1,500 metres is great for small arms fire to aim at a target, the Majority has no doubt that a bus is an object big enough to be seen and targeted at such a distance (from or around the Faculty of Theology to the site of the incident). There is no evidence however, which could allow it to conclude beyond reasonable doubt that the gunfire which hit the victims originated from the Faculty of Theology. Yet, the Majority cannot discount the fact that there was one line of sight between the site of the incident and Nedarići. Considering the evidence that the fire originated from the direction of Nedarići is reliable, the only reasonable inference is that the bullet, which hit the victims, was fired from the area of Nedarići. The Majority is thus convinced that the bullet which hit the victims originated from Nedarići. The Majority is further convinced by the evidence which demonstrates that the area of Nedarići was controlled by the SRK at the time of the incident.¹¹⁸⁴

366. The Defence argues that the Prosecution failed to prove that the bus was deliberately targeted.¹¹⁸⁵ The Defence emphasises that if the bus had been shot deliberately with the intention of killing or injuring someone, it would not have been hit in the area of the wheel, but on its

¹¹⁸³ Defence witness DP8, an SRK soldier stationed in the Faculty of Theology in Nedarići in 1993, testified that there was no line of sight between the possible source of fire alleged by the Prosecution (and shown by two red circles in the map P3279 [incident 22]) and the site of the incident, because there were houses blocking the view between the confrontation line and the site of the incident in relation to the circle indicating the Faculty of Theology. He added that there were buildings between 6 to 8 storeys high about halfway between the site of incident and the centermost circle. He testified that the Faculty of Theology was one of the tallest buildings in Nedarići. DP8 noted that the distance between the Faculty of Theology and the site of the incident was more than two kilometers, Witness DP8, T. 14725, 14738-41, 14756; D1773 (Map marked by Witness DP8). DP8 also testified that the Faculty of Theology housed a medical corps and advanced mortar positions, Witness DP, T. 14720. DP7, a nurse in that medical corps, testified that the Faculty of Theology housed mortar and armoured units, DP7, T. 15130, 15217.

¹¹⁸⁴ The Defence Witnesses DP8 and DP9, members of the SRK whose units were stationed in Nedarići, confirmed that the area of Nedarići was under the control of the SRK, DP8, T. 14726, 14765-6; DP9, T. 14587.

¹¹⁸⁵ Defence Final Trial Brief, para. 344.

window.¹¹⁸⁶ The Majority is satisfied that the bus Grabovica drove the day of the incident was easily recognisable even at a long distance as a civilian object, used for a regularly scheduled civilian activity. It could have not been mistaken for a military object. Grabovica testified that the morning had been quiet and that he did not hear shooting or military activities in the area, which could have explained the gunfire. The fact that a single bullet was fired towards the bus leads to the compelling inference that the passengers of the bus were deliberately targeted. The Majority finds that the passengers of the bus were deliberately targeted.

367. The Majority of the Trial Chamber finds that the civilian passengers of a civilian vehicle were deliberately targeted from SRK-controlled territory and that such targeting resulted in the wounding of Šehadeta Plivac and Hajra Hafizović.

(v) Shelling Attacks on Civilians in Dobrinja Area

368. In addition to shooting incidents, the Trial Record discloses that shelling occurred in ABiH-controlled areas of Dobrinja. UNPROFOR reported that five shells landed near Dobrinja II one summer evening of 1993, leaving two dead and 18 wounded,¹¹⁸⁷ and determined, after inspecting recovered shell fragments, that 82 mm mortar shells had been involved in the incident.¹¹⁸⁸ UNPROFOR also determined from a crater analysis that the shells had arrived from a northwestern direction¹¹⁸⁹ and concluded that, “taking into account the characteristics found on the ground [at the site of the explosion,] one can say [with] 95% [certainty] that the shooting came from the faculty of [Nedarići], which is found 1,300 m from the spot of the incident.”¹¹⁹⁰ UNPROFOR investigators added that the “very populated street [in Dobrinja where the incident had occurred] had been affected by hundreds of shells before this incident.”¹¹⁹¹

369. A resident of Dobrinja remembered two specific instances of shelling where he was injured. On 24 October 1992, Eldar Hafizović was wounded during day-time in Dobrinja III at 5 Trg Junaka Socijalističkog.¹¹⁹² He was with his grandmother on a balcony located on the fifth floor of a building cooking on a grill when a tank shell exploded about 1.5 metres away from him, injuring one of the fingers on his right hand as well as his right knee.¹¹⁹³ Because the balcony faced the area of Gavrica Brdo, which he believed was controlled by the SRK and where he had seen tanks in the

¹¹⁸⁶ Defence Final Trial Brief, para. 341.

¹¹⁸⁷ P1546 (UNPROFOR report—admitted under seal). The report did not specifically state whether the victims were civilians or soldiers.

¹¹⁸⁸ Id.

¹¹⁸⁹ Id.

¹¹⁹⁰ Id.

¹¹⁹¹ Id.

¹¹⁹² Hafizović, T. 7769-70.

¹¹⁹³ Hafizović, T. 7770-72. Hafizović’s grandmother was not injured by the explosion, Hafizović, T. 7770.

past, Hafizović concluded that Gavrica Brdo “was the only possible direction [the tank shell] could have come from.”¹¹⁹⁴ Hafizović was injured on a second occasion on 13 January 1993 while attending a get-together with other young people in an apartment on the ground floor of a building in Dobrinja I.¹¹⁹⁵ At the time of the incident, the witness and his friends were using a gas light as it was late in the evening and there was no electricity.¹¹⁹⁶ Hafizović remembered hearing a loud explosion and realised that he was injured in the head and bleeding.¹¹⁹⁷ He ran out into the street crying out for help¹¹⁹⁸ and heard SRK soldiers shouting from nearby confrontation lines: “Hey, you Balijas, how many of you did we kill this time?”¹¹⁹⁹ Hafizović recalled that fragments from a 82 mm mortar shell were recovered by neighbours after the incident, but did not know where the shell had been fired from.¹²⁰⁰

370. Other residents of ABiH-controlled parts of Dobrinja explained that the whole area was shelled extensively during the conflict. Omer Hadzabdić testified that “Shelling took place on a daily basis. [SRK soldiers] were shelling targets according to their own choice ... They were just firing at targets independently of whether they were civilians or military targets. I, myself, was a victim of a shell [on an unspecified date].”¹²⁰¹ Witness AE remembered that, in addition to shooting, civilians experienced shelling in Dobrinja “Day in, day out.”¹²⁰² Ismet Hadžić explained that “Every single part of Dobrinja was exposed to severe shelling [...] Thousands of shells were landing at the time. It was raining shells.”¹²⁰³ He added that according to ABiH intelligence, the sources of this shelling were located at “[the] Nedarici Barracks ... The area below the University of Theology in Nedarici, the area near Kasindolska Street [...], Krtelji, Gornji Kotarac, Gavrica Brdo, the Lukavica Barracks, and the playground right above the barracks.”¹²⁰⁴

371. In Schedule 2 of the Indictment, the Prosecution alleges three specific instances under numbers 1, 2 and 4 where civilians in Dobrinja were attacked from SRK-controlled territory and adduced detailed evidence to prove that these attacks against civilians were launched by SRK forces. Incidents 1 and 2 express the views of the Majority of the Trial Chamber. Judge Nieto-Navia expresses his views in relation to these two shelling incidents in the appended separate and dissenting opinion.

¹¹⁹⁴ Hafizović, T. 7772.

¹¹⁹⁵ Hafizović, T. 7773 and 7775.

¹¹⁹⁶ Hafizović, T. 7775-6.

¹¹⁹⁷ Hafizović, T. 7776.

¹¹⁹⁸ Id. No one else in the apartment was wounded by the explosion, Hafizović, T. 7817.

¹¹⁹⁹ Hafizović, T. 7776. Hafizović believed that the nearest confrontation line was about 50 metres away, T. 7815.

¹²⁰⁰ Hafizović, T. 7816.

¹²⁰¹ Hadziabdić, T. 6738.

¹²⁰² Witness AE, T. 6013.

¹²⁰³ Hadžić, T. 12248.

¹²⁰⁴ Hadžić, T. 12253.

(vi) Scheduled Shelling Incident 1¹²⁰⁵

372. On 1 June 1993,¹²⁰⁶ some residents of Dobrinja decided to organize a football tournament in the community of Dobrinja IIIB.¹²⁰⁷ It was a beautiful, sunny day.¹²⁰⁸ Being aware of the danger of organising such an event, the residents looked for a safe place to hold the tournament.¹²⁰⁹ The football pitch was set up in the corner of a parking lot,¹²¹⁰ which was bounded by six-storey apartment blocks on three sides and on the fourth side, which faced the north, by Mojmiilo hill,¹²¹¹ and was not visible from any point on the SRK side of the confrontation line.¹²¹² Around 200 spectators, among whom were women and children, gathered to watch the teams play.¹²¹³ Children aged between 10 to 15 years positioned themselves next to some old cars, damaged by previous shelling, that had been overturned and placed around the football pitch to mark the field.¹²¹⁴ Some residents also came out onto the balconies of the apartment buildings surrounding the pitch to watch the football tournament.¹²¹⁵

373. The first match of the tournament began at around 9 am and the second one started an hour later.¹²¹⁶ Some minutes after 10 am, during the second match, two shells exploded at the parking lot. Ismet Fažlić, a member of the civil defence, was the referee of the second game.¹²¹⁷ He recounted that about 10 to 20 minutes into that game, as they carried out a penalty kick, the first shell landed among the players in the centre of the pitch.¹²¹⁸ He was hit by shrapnel and sustained serious injuries in both legs as well as in other parts of his body.¹²¹⁹ He immediately saw that there

¹²⁰⁵ The Indictment alleges that on 1 June 1993 two 82 mm mortar shells were fired in quick succession upon a civilian crowd of approximately 200 in Dobrinja IIIB, a residential settlement, who were watching a football game. Twelve people were killed and 101 wounded. The origin of fire was from VRS positions east-south-east of Dobrinja, Schedule 2 to the Indictment. In support of this alleged shelling incident, the Prosecution called, in particular, three victims (Ismet Fažlić, Nedim Gavranović, Omer Hadziabdić) a representative of the UNPROFOR (John Hamill), a resident of Dobrinja and former commander of the ABiH 5th Motorised Dobrinja Brigade (Ismet Hadžić), a former doctor at the Dobrinja hospital (Youssef Hajir) and an expert on mortars (Richard Higgs). The Defence did not call witnesses to testify on this incident, although the incident was examined by the Defence's expert on shelling.

¹²⁰⁶ It was the day of the Muslim holiday of Kurban Bajram, Ismet Fažlić, T.6600-1; Omer Hadziabdić, T.6743-44.

¹²⁰⁷ Fažlić, T.6600.

¹²⁰⁸ Fažlić, T.6600; Gavranović, T. 6712; Hadziabdić, T. 6743.

¹²⁰⁹ Fažlić, T. 6602. Ismet Hadžić, commander of the ABiH 5th Motorised Dobrinja Brigade, advised the organisers not to hold the tournament, Fažlić, T. 6602.

¹²¹⁰ Fažlić explained that the parking lot measured 80 by 100 to 112 metres and the football pitch was about 15 to 20 metres long by 40 metres wide, Fažlić, T.6602, 6009, 6632.

¹²¹¹ Fažlić, T.6602, 6626. P3678A (360 degree photo of the location of scheduled shelling incident 1) and P3281B (the video of Ismet Fažlić demarcating the area) visually show the dimensions of the corner of the parking lot where the football match was held.

¹²¹² Fažlić, 6602, 6637; Gavranović, T.6727. Gavranović testified that the football pitch could only be seen from Mojmiilo hill. T.6727-6728. He believed that the crowd couldn't be heard from the Serb part of Dobrinja. T. 6730. DP9 testified that it was impossible to see the parking lot from the SRK side, T. 14475, 14495.

¹²¹³ Gavranović. T. 6716, 6730; Fažlić, T.6604.

¹²¹⁴ Fažlić, T. 6604. He estimated that there were around 100 children on these vehicles, T. 6604.

¹²¹⁵ Fažlić, T. 6604.

¹²¹⁶ Fažlić, T. 6600-01.

¹²¹⁷ Fažlić, T. 6600.

¹²¹⁸ Fažlić, T. 6601, 6608-09.

¹²¹⁹ Fažlić, T. 6610.

were eleven young men on the ground,¹²²⁰ eight of whom had died on the spot.¹²²¹ Fažlić said that “three of my players [were] totally dismembered, their legs and arms; it was only their track suit that held them together” and that many people around the pitch were on the ground.¹²²² Omer Hadziabdić, who was 15 years old at the time,¹²²³ was watching the match from the overturned cars when the first shell struck the football pitch. He heard a very strong explosion which knocked him down. He was wounded by shrapnel in his leg.¹²²⁴ Nedim Gavranović, who was 12 years old at the time, was standing behind one of the goals when he heard the first explosion and felt a very strong blow.¹²²⁵ He sustained an entry and exit wound in his right lower leg caused by shrapnel.¹²²⁶

374. The witnesses recounted that a second shell landed at almost the same spot within seconds of the first shell.¹²²⁷ It fell in front of a young man and tore his leg off.¹²²⁸ After the second explosion, those who could began running away from the parking lot to take cover. As Hadziabdić ran from the site, he was able to see many wounded people on the ground.¹²²⁹

375. The Majority is convinced that the shelling incident of 1 June 1993 in the residential settlement of Dobrinja IIIB occurred as recounted by eye-witnesses. It finds that two mortar shells landed at around 10.20am at the parking lot in the settlement of Dobrinja IIIB, where a crowd of approximately 200 people had gathered to watch the football tournament.

376. After the event, the wounded were taken to the Dobrinja auxiliary hospital.¹²³⁰ Some were later transferred to the Koševo hospital.¹²³¹ While the witnesses agreed that the explosion on 1 June 1993 injured many people, there is disagreement as to the exact number of people killed or injured. Dr. Youssef Hajir, who worked at the Dobrinja hospital at the time, testified that he had never seen so many injured come to the hospital.¹²³² The entire facility was filled with victims of the

¹²²⁰ Fažlić, T. 6608-9.

¹²²¹ Fažlić, T. 6677.

¹²²² Fažlić, T. 6610.

¹²²³ Hadziabdić, T. 6752.

¹²²⁴ Hadziabdić, T. 6747.

¹²²⁵ Gavranović, T. 6713-4.

¹²²⁶ Gavranović, T. 6715; P2506.B (medical report of injuries from Dobrinja hospital).

¹²²⁷ Fažlić said that the rounds were a matter of 3 to 4 seconds and 12 to 14 metres apart. T. 6610-6611. He testified that the second shell landed about 10 metres behind some of the vehicles surrounding the pitch, T.6601, 6610. Gavranović said that the first shell landed in the centre of the pitch and the second shell fell some 5 to 10 seconds later, T. 6714. Hadziabdić testified that the second shell fell approximately 10 seconds later and a few metres away from the first, T. 6747-8.

¹²²⁸ Fažlić, T. 6610.

¹²²⁹ Hadziabdić, T. 6747-8.

¹²³⁰ Gavranović, T. 6715; Hadziabdić, T. 6749.

¹²³¹ Gavranović, T. 6715; Hajir, T. 1689-91; Fažlić, T. 6612. See P3737A, B, C (the protocols of the Koševo hospital emergency centre, surgical ward, and morgue). Dr. Gavrankapetanović, General manager of the Koševo hospital, validated P3737A, B, C (the emergency centre, surgical ward, and morgue), T. 12524, 12530-1, 12604. Dr. Nakaš validated P.2506 (records for seven wounded from 1 June 1993), T. 1149.

¹²³² Hajir, T. 1689-91, 1704.

incident.¹²³³ Although he did not recall the exact number of casualties, Dr. Hajir estimated that there were approximately 130 to 140 injured and 13 to 14 dead.¹²³⁴ He stated that 90 of the injured were treated at the Dobrinja hospital and the rest was transferred to town, due to lack of capacity.¹²³⁵ The Dobrinja hospital records contain a list of 136 names of the casualties, twelve of which are recorded as killed.¹²³⁶ Gavranović, who was among the wounded at the Dobrinja hospital, recounted that he saw many people he knew there.¹²³⁷ He believed that 15 persons died and that approximately 50 to 70 were wounded.¹²³⁸ Hadziabdić was taken to the Dobrinja hospital to be given first aid.¹²³⁹ He also recognised many of those injured and killed and said that “mainly, those were men, most of them were civilians and children”, and friends his age.¹²⁴⁰ Fažlić was among those transferred from the Dobrinja hospital to the Koševo hospital, where he underwent treatment and remained for almost two months.¹²⁴¹ He believed that a total of 16 people were killed and 82 or 83 wounded, including children.¹²⁴² Ismet Hadžić, a resident of Dobrinja and the commander of the ABiH 5th Motorised Dobrinja Brigade, was not present when the incident occurred, but he recalled that the shells that fell that day killed 15 people, including children, and wounded 121 people, 56 of them severely.¹²⁴³ It is noted that Exhibit D25, an ABiH 5th Motorised Dobrinja Brigade command report dated 1 June 1993, signed by Commander Ismet Hadžić, indicated that there were 11 killed and 87 wounded (six combatants killed and fifty-five wounded and five civilians killed and thirty-two wounded).¹²⁴⁴ Dr. Janko Viličić, the Defence’s expert in shelling, disagreed with the Prosecution’s alleged number of casualties (12 killed and 101 wounded), and stated that, given the position of the spectators around the football pitch when the explosions occurred, a total of 43 persons would be expected to have been hit by fragments from the two shells.¹²⁴⁵ The Majority finds that the number of victims estimated by the theoretical model used by Viličić is contradicted by the evidence. It

¹²³³ Id.

¹²³⁴ Hajir, T. 1689-91.

¹²³⁵ Hajir, T. 1704, 1708.

¹²³⁶ See P3747 (list from Dobrinja hospital of patients admitted after being wounded on 1 June 1993). See also P3738R and 3738S (two death certificates); P.2506 (records for seven wounded from 1 June 1993); P1183 (death certificates for five of those killed). Arifagić, deputy director for administrative tasks at the Dobrinja hospital, authenticated P3747, as a result of the shelling of a match in Dobrinja as well as two other death certificates for persons killed at the football match (P3738R and 3738S), T. 12694-5.

¹²³⁷ Gavranović, T. 6715. The witness remained at the hospital for 12 days, Gavranović, T. 6724; P2506.B (medical report of injuries from Dobrinja hospital).

¹²³⁸ Gavranović, T. 6724.

¹²³⁹ Hadziabdić, T. 6749-6750.

¹²⁴⁰ Hadziabdić, T. 6752.

¹²⁴¹ Fažlić, T. 6612; P1197 (letter of discharge from Koševo hospital dated 24 July 1993).

¹²⁴² Fažlić, T. 6609, 6611, 6677.

¹²⁴³ Hadžić, T. 12254.

¹²⁴⁴ D25 (ABiH 5th Motorised Dobrinja Brigade command report for 1 June 1993), para. 2(f).

¹²⁴⁵ To support this claim, he applied a set of conditions to a theoretical model available for predicting the number of victims due to the explosion of a mortar shell, which would maximise the lethal effect of the detonation of an 82 mm mortar shell, Viličić, T. 20223-4. See also D1917 (Viličić Shelling Report) for a detailed description of this theoretical model, pp 30-32. He concluded that the fact that the number of those allegedly killed was relatively small and that of those injured was unrealistically high can be interpreted to be either an exception to the statistics or an erroneous recording of those wounded in the event, D1917 (Viličić Shelling Report), p. 30.

finds that there is sufficient specific and credible evidence¹²⁴⁶ to conclude that it has been shown beyond reasonable doubt that the explosion of 1 June 1993 in Dobrinja killed over 10 persons and injured approximately 100 others.

377. The Defence submits that the shells were not deliberately fired by SRK forces upon civilians. Based on the conclusions of the Viličić Report, the Defence argues that the shells could have been fired from ABiH territory.¹²⁴⁷ One crater analysis investigation was conducted following the occurrence of the shelling incident by Brice Houdet, an UNPROFOR representative.¹²⁴⁸ His report stated that the two mortar shells fired that day at Dobrinja IIIB were of a calibre of at least 81mm. Based on the splinter pattern of the shells, Houdet indicated that the mortars were fired from a direction of between 138 degrees (2420 mils) and 143 degrees (2500 mils).¹²⁴⁹ Having calculated the minimum possible angle of descent of the shells (45,71 degrees) and the minimum range at that angle, he concluded that these could have only been fired from the SRK side, “300 metres south of Lukavica”,¹²⁵⁰ which is located to south of Dobrinja. Witness Y was present at the site of the event when the crater analysis was carried out. He testified that the shells landed at the foot of a building in Dobrinja and that the crater analysis showed that these shells were fired from a short range. He added that “in order to corroborate this statement made by specialists, the fact that these shells landed right next to a screen or a protection screen which was indeed the building over the parking (...) would go to show that the mortar shells could only have been fired from a short range and more specifically so in the direction of Lukavica”.¹²⁵¹ Christian Bergeron, *Chef de Cabinet* to UNPROFOR Commander of Sector Sarajevo from April 1993 to April 1994, was at the Sector Sarajevo Headquarters when Houdet prepared his report. He agreed that, based on Houdet’s analysis, the fire had come from SRK-held territory.¹²⁵² He added that “on the basis of the line of fire, the direction of fire, and by analysing the arc, we got to an area in which the mortar pieces

¹²⁴⁶ Hajir, T. 1689-1691; Gavranović, T. 6724; Fažlić, T. 6609, 6611, 6677; Hadžić, T. 12254; P3747 (list from Dobrinja hospital of patients admitted after being wounded on 1 June 1993); P3737A, B, C (the protocols of the Koševo hospital emergency centre, surgical ward, and morgue); D25 para.2 (f) (ABiH 5th Motorised Dobrinja Brigade command report dated 1 June 1993).

¹²⁴⁷ Defence Final Trial Brief, para. 663.

¹²⁴⁸ P1367 (Houdet Report- Crater analysis report of incident). Christian Bergeron testified that Houdet conducted the crater analysis a maximum of 2 days after the event took place, Bergeron, T. 11285

¹²⁴⁹ P1367 (Houdet Report). It is noted that D25 (ABiH 5th Motorised Dobrinja Brigade command report for 1 June 1993), para (f) indicated that 82mm mortar shells had been launched upon the crowd at the football match.

¹²⁵⁰ P1367 (Houdet Report), conclusion 3. According to the report, since no fuse furrow was produced by the shells due to the macadam surface of the pitch, the angle of descent and range could not be established. The report indicates that the measurement of the distance between the first crater and the roof of the buildings showed a minimum angle of descent of 40.5 degrees, P1367 (Houdet Report), conclusion 1. It also states that the minimum angle of descent for both 81mm and 120mm mortars is 45,71 degrees and that, at that angle, the minimum range is 1,120 metres for 81mm mortars and 1,340 metres for 120mm mortars, P1367 (Houdet Report), conclusion 2. No indication is given as to the charge that was used to fire the mortar shells. Based on this data, the report states that the shells could have only been fired from the SRK side and concludes that “at the minimum range, the mortars were 300 metres south of Lukavica Barracks”, P1367 (Houdet Report), conclusion 3.

¹²⁵¹ Witness Y, T. 10865-6.

¹²⁵² Bergeron, T. 11262-3, 11300-1.

were bound to have been sitting. And in the Dobrinja sector, this possible area where they could have been was entirely on the Serb side, and more specifically so, towards the south of Lukavica”.¹²⁵³ After the occurrence of the shelling incident, the craters were filled with a red plastic-like substance to preserve them.¹²⁵⁴ John Hamill, a former UN Military Observer on the LIMA (SRK) side, met with Ismet Fažlić and others in Dobrinja on 18 September 2001 at the Prosecution’s request to examine the two shell impact sites.¹²⁵⁵ Based on his analysis of the patterns of the mortar impacts on the ground, Hamill concluded that the shells had been fired from a direction of 2200 mils, i.e., east-south-east. He specifically pointed towards the area of Toplik, an area east of Sarajevo in the direction of Lukavica monitored by the UNPROFOR, as the source of fire.¹²⁵⁶ Richard Higgs, a Prosecution’s expert witness on shelling, also inspected the shell imprints in the parking lot.¹²⁵⁷ In his report, Higgs stated that, after examining the mortar crater, he agreed with Houdet’s findings that the shells were fired by a medium-size mortar and that the direction of fire was east-south-east and within SRK-held territory.¹²⁵⁸ Higgs plotted two solid lines and two broken lines (to represent the margin of error) on a map to show the direction of fire and to confirm Houdet’s finding that the location of the mortars was within SRK-held territory.¹²⁵⁹

378. Viličić accepted that, based on the dimensions and shape of the craters, 81 to 82 mm shells could have been responsible for the explosions.¹²⁶⁰ He disagreed however with Houdet’s findings regarding the direction and the source of fire.¹²⁶¹ In his report, Viličić indicated that “the position of the plane of firing (firing direction) was determined by an inadequately reliable method (by compass) referred to markings from the shell action on the ground”.¹²⁶² In order to determine the

¹²⁵³ He told the Trial Chamber that the results of the crater analysis report, which attributed this incident to the Serb side, were later made public during a press conference held in the Sector Sarajevo BH Command, Bergeron, T. 11262-3.

¹²⁵⁴ Hamill, T. 6114; Fažlić, T. 6620; Higgs, T. 12444. Hamill said that the fact the craters were filled does not impact in any significant degree on the accuracy the findings as to the direction of fire, T. 6116-7. Although the craters had been filled with a substance, Higgs stated that it was still possible to ascertain the approximate calibre of the weapon, to determine the approximate angle of descent and the direction from which the round came, T. 12444.

¹²⁵⁵ Hamill, T. 6111, 6114. He testified that the craters were either formed by an 81 or an 82 millimetre mortar or by artillery shells of a field calibre of approximately 100 and 130 millimetres or 122-millimetre Howitzer projectile, T. 6114-5, 6171-2.

¹²⁵⁶ Hamill, T. 6115, 6172-3. Hamill testified that the craters were either formed by an 81 or an 82 millimetre mortar or by artillery shells of a field calibre of approximately 100 and 130 millimetres or 122-millimetre Howitzer projectile, T. 6114-5, 6171-2.

¹²⁵⁷ Higgs, T. 12441; P3734 (Shelling report of Richard Higgs dated 12 February 2002), p.7.

¹²⁵⁸ Higgs, T. 12441; P3734 (Shelling report of Richard Higgs dated 12 February 2002), p.7. He noted that given the quick succession of the rounds, it is probable that the same mortar tube fired both rounds, P3734 (Shelling report of Richard Higgs dated 12 February 2002), pp 7-8.

¹²⁵⁹ Higgs T. 12448-12449; P3644.RH (pre-marked map of Sarajevo).

¹²⁶⁰ Viličić, T. 20223; D1917 (Viličić Shelling Report), p. 29.

¹²⁶¹ Viličić, T. 20226. Viličić also disagreed with Higg’s calculations of the direction of fire. During his testimony in court, Viličić attributed his discrepancy with Higgs regarding the direction of fire to the different maps used and explained that he based his findings on the “official map”, without explaining this point further. Viličić, T. 20226-20227.

¹²⁶² D1917 (Viličić Shelling Report), p. 29. During his cross-examination in court, Viličić indicated that one of the authors of the report, Stamatović, had visited the site of the event. However, the authors did not consider it necessary,

direction of fire, Viličić examined a set of 6 photographs¹²⁶³ of the crater impacts taken on 21 November 1995, which were part of a forensic report prepared by a ballistic expert of the BiH Ministry of Interior that was not tendered into evidence. He affirmed that “it is possible to raise doubt in marked references (photographs 4 to 6), being that the markings in photographs 1 and 2 point to quite the opposite direction of firing”, i.e., towards ABiH-held territory in the northeast.¹²⁶⁴ The Majority finds that Viličić’s conclusion based the interpretation of these photographs does not materially refute the methodology used by Houdet to establish the direction of fire. No evidence in the Trial Record supports the Defence’s claim that the shells were fired from ABiH territory. The Majority is satisfied that the conclusions contained in Houdet’s report are not contradicted by investigations carried out by Higgs and Hamill. It is convinced that the shells that hit the football pitch were of a calibre of at least 81-82mm and originated from the direction east-south-east.

379. Fažlić indicated that the confrontation line was somewhere between 130-210 metres from the site of the event and Omer Hadziabdić gave almost similar numbers (100-200 metres).¹²⁶⁵ Higgs measured the distance on the map to be 320 metres.¹²⁶⁶ Having closely examined and verified the accuracy of the assessment made by Higgs on the base of the maps available to the Trial Chamber,¹²⁶⁷ it finds that the distance from the site of the event to the confrontation lines in the direction of the fire was approximately 300 metres.

for the purposes of the report, to analyse the crater impacts on the ground so many years after the event, Viličić, T. 20321-7.

¹²⁶³ D1848 (set of photographs of site of event and crater impacts).

¹²⁶⁴ D1917 (Viličić Shelling Report), pp 29-30 and 33. Photographs 1 and 2 depict the parking lot where the event took place and photographs 3 to 6 show the crater impacts on the ground. See D1848 (set of photographs of site of event and crater impacts). Photograph 6 depicts the imprints left by one of the shells and a map in the top-right corner, D1848 (ERN 0035-8540). In the bottom-left corner of this photograph, an arrow points toward the north. During his testimony in court, Viličić explained that the usual practice is to place a map according to compass north. He said that if the map shown in the top part of photograph 6 had been placed correctly, it would be pointing towards the north. The imprints of the shell, which point in the direction of this map, would then also point in this northern direction. He placed additional markings on the photograph indicating northern direction, Viličić, T. 20231-3. Based on the shell pattern on the ground, Viličić concluded that the shells had been fired from ABiH-held territory in northeastern direction, D1917 (Viličić Shelling Report), pp 29-30. The Trial Chamber notes that no information was provided by the Defence regarding these photographs, in particular regarding the positioning of the map in photograph 6.

¹²⁶⁵ Fažlić testified that the confrontation line was few hundred metres away from the site of the event. He said that the separation line was 130 metres away from the site, Fažlić, T. 6602. He later indicated that it was 210-215 metres from the site, Fažlić, T. 6686. Hadziabdić said that the confrontation line was 100 to 200 metres from the parking lot, Hadziabdić, T. 6762. He added that the first line of defence was located 300 metres away in the building of Partizanska Olimpijada, the first building of the community of Dobrinja IV, T. 6762. The separation line ran along Indira Gandhi Street and Partizanska Olimpijada Street, which were parallel streets that lead towards the Dobrinja River, Fažlić, T. 6614, 6630

¹²⁶⁶ Higgs, T. 12460; P3644.RH (a pre-marked map of Sarajevo). See also P3727. Higgs testified that he had calculated with a ruler based on map that the confrontation line was approximately only 270 metres away from the impact site, Higgs, T. 12455-6. He later re-measured this distance in court and said that it was approximately 320 metres, Higgs, T. 12460. In his report, Higgs indicated that the confrontation lines were close together at a distance of approximately 200 metres. P3734 (Shelling Report of Richard Higgs dated 12 February 2002) p. 7.

¹²⁶⁷ P3644.RH (map marked by Richard Higgs); P3732 (map marked by Ismet Hadžić); D84 (map marked by Ismet Fažlić);

380. The Majority notes that, according to Houdet's findings based on the minimum angle of descent and the minimum range at that angle, the mortars were located 300 metres south of Lukavica.¹²⁶⁸ Higgs, based on his examination of the shell imprints on the ground, considered that the mortars could have been fired at a greater angle (50 to 55 degrees and 70 degrees) and from a shorter range (500 to 600 metres) than that indicated by Houdet.¹²⁶⁹ Viličić, using a different methodology, gave similar figures. In order to determine the distance of the firing position, Viličić used two elements: the crater dimensions and the drop angle of the mortar shells.¹²⁷⁰ He observed that, according to the forensic report mentioned above, the depth of the crater was 3 cm, the radius was 15 cm and the tail fins of the shells were not recovered.¹²⁷¹ He also indicated that the probability of hitting the intended target was much lower if increment charges are used.¹²⁷² This information led him to the conclusion that the shells were fired from a closer distance with primary charge, landing at low impact speed. The second basis for his determination of the distance of the firing position was the drop angle of the mortar shells. Viličić estimated that the damage caused to asphalt layers indicated that the two shells responsible for the incident had drop angles of between 63 and 70 degrees.¹²⁷³ He maintained that the angle of descent of the shells was between 63 and 70 degrees and that the distance of firing was between 300 metres, which would correspond to the drop angle of 63 degrees, and 400 metres, which corresponds to the drop angle of 71 degrees, from the site of impact.¹²⁷⁴ The Majority notes that Viličić appears to have reversed these figures, as Table 9 of his report shows that a distance of 400 metres would correspond to an angle of 60 degrees. The Majority accepts that there is significant uncertainty concerning the reliability of the conclusions reached by Houdet in this respect, since a steeper angle of descent of a mortar shell could indicate that these were fired from a closer range. However, although the Indictment does not refer to the precise range of fire or the location of the mortars responsible for the attack, the absence of this information does not harm the Prosecution's case. The Majority observes that, given the distance of the confrontation lines to the site of the event, even if the mortars had been fired with primary charge, as suggested by Viličić, their source would have been SRK-controlled territory. Had the shells been launched from a greater distance, as suggested by Higgs and Hamill, they would have

¹²⁶⁸ Higgs, T. 12469.

¹²⁶⁹ Higgs, T. 12467.

¹²⁷⁰ Viličić, T. 20225.

¹²⁷¹ D1917 (Viličić Shelling Report), p. 30-31; Viličić, T. 20222.

¹²⁷² D1917 (Viličić Shelling Report), p. 30; Viličić, T. 20227.

¹²⁷³ Viličić, T.20223-5; D1917 (Viličić Shelling Report), p. 31. Viličić indicated that, according to Table 9 of his report, the maximum firing range for the first increment charge is 485 metres, D1917 (Viličić Shelling Report), p. 30.

¹²⁷⁴ The Viličić Shelling Report concluded that "most probably, the firing position was at the distance of 300 to 400 metres (the range of 300 metres corresponds to the drop angle $\Theta_c = 63^\circ$, the range of 400 has $\Theta_c = 71^\circ$; damages caused to asphalt layer correspond to drop angles between these two values)" situated in north-eastern direction, either in a zone between the territory under UNPROFOR control and Sarajevo airport, or in an area further to the north under ABiH control, D1917 (Viličić Shelling Report), pp 29-31 and 33; Viličić, T. 20225.

been located well-within the SRK side of the confrontation lines. Therefore, the Indictment's allegation that the origin of fire was SRK-held territory has been made out.

381. The Majority takes account of the previous testimonies of witnesses that recounted that the shelling of Dobrinja was a common occurrence.¹²⁷⁵ Witnesses also told the Trial Chamber that the area of the parking lot was shelled on previous occasions. Nedim Gavranović testified that shells landed at the parking lot "throughout the duration of the war, not every day, but occasionally".¹²⁷⁶ Ismet Fažlić said that the parking lot had been hit by shells on numerous occasions.¹²⁷⁷ He remembered that the evening prior to the occurrence of the incident, a shell had impacted only 10 metres north of a playground next to the parking lot.¹²⁷⁸

382. The Defence submits, alternatively, that the intended target of this attack was a legitimate military objective.¹²⁷⁹ In support of this view, the Defence argues that the ABiH had headquarters located in the proximity of the parking lot¹²⁸⁰ and that a system of trenches ran only a dozen of metres away from this site.¹²⁸¹ The evidence indicates that the ABiH 5th Motorised Dobrinja Brigade headquarters were not in the area of the parking lot, but in the Dobrinja II settlement.¹²⁸² Two witnesses indicated, however, that there was a nuclear shelter of the Dobrinja IIIB community, located approximately 100 metres away from the parking lot behind a block of flats¹²⁸³ which was used by the ABiH forces.¹²⁸⁴ Other witnesses, all inhabitants of Dobrinja, testified that the nuclear shelters in Dobrinja were not used as military facilities or served any military purpose.¹²⁸⁵ The Majority finds that, regardless of whether the nuclear shelter located in the Dobrinja III settlement served as military facility, it is not reasonable to believe that it was the intended target of the attack,

¹²⁷⁵ Hadziabdić, T.6738; Hadžić, T. 12248, 12253; Witness AE, T. 6013.

¹²⁷⁶ Gavranović, T. 6723.

¹²⁷⁷ Fažlić, T.6621-3. He said that only cars were damaged as result of the shelling prior to the date of the incident. T. 6222-6223. He added that the area was shelled from the settlement of Dobrinja IV, the Serb-held part of Dobrinja, the Trapara houses and the barracks, Fažlić, T.6693.

¹²⁷⁸ Fažlić, T.6694. Fažlić testified that this shell was of the same calibre and had left similar marks as those that fell on the day of the incident. He believed the Serb side was informed of the tournament and that this had been a test, Fažlić, T. 6637-9.

¹²⁷⁹ Defence Final Trial Brief, para. 667; Motion to Acquit, p. 30.

¹²⁸⁰ Defence Motion to Acquit, p. 30.

¹²⁸¹ Defence Final Trial Brief, para. 665.

¹²⁸² Fažlić, T. 6644, 6646; Hadziabdić, T. 6770-1; P3732 (map of Dobrinja marked by Hadžić).

¹²⁸³ P3732 (map marked by Hadžić); D84 (map marked by Fažlić); P3097 (map marked by Refik Sokolar); Hadziabdić, T.6766.

¹²⁸⁴ Fažlić testified that ABiH soldiers were stationed there, Fažlić, T6644, 6655. Gavranović believed soldiers slept in this shelter, Gavranović, T. 6725.

¹²⁸⁵ Hadziabdić testified that it was possible that off-duty soldiers went there, but that it was not a military barracks, Hadziabdić, T. 6767-8. Sahabudin Ljusa said that the nuclear shelters in the Dobrinja area were not used by the army or by anyone during the war, Ljusa, T.7887. Enver Talasman, a member of the Dobrinja Civil Defence, said that the nuclear shelter in Dobrinja III served no military purpose, Taslaman, T.7221-3. Hadžić told the Trial Chamber that his brigade had no military headquarters in the nuclear shelters and no military equipment stored there. He said that members of the brigade under his command never used the nuclear shelters nor did they sleep there, although perhaps soldiers went into those shelters when off-duty. He added that the nuclear shelter in Dobrinja IIIB was used by a

since an attack carried out with mortars shells cannot inflict significant damage, if any, on such a facility. Considering that only two shells were fired, that these fell in quick succession and landed at almost the same spot on the parking lot, and that the second shell did not land any closer to the nuclear shelter, the Majority concludes that this was not the intended target of the attack.

383. The Majority heard contradictory evidence regarding the use of connecting trenches that existed in Dobrinja. Witness DP9 testified that a system of connecting trenches had been dug in the vicinity of the parking lot and that these were used by ABiH forces for “manpower and supplies”.¹²⁸⁶ Ismet Hadžić and Witness R, on the other hand, testified that these connecting trenches were only used by civilians.¹²⁸⁷ The Majority cannot reasonably exclude the possibility that these connecting trenches, although used by civilians, were also used by ABiH soldiers. However, considering the pattern of the firing and that the second shell fired did not fall any closer to the location of the trenches indicated by Witness DP9, the Majority concludes that these trenches were not the intended target of the attack.

384. The Defence presented evidence that suggests the establishment of a second line of defence in Dobrinja.¹²⁸⁸ The witnesses heard by the Trial Chamber testified that this second line of defence did not exist.¹²⁸⁹ Considering that the evidence in the Trial Record insufficiently demonstrates the exact location, or even the existence, of the second line of defence in Dobrinja, the Trial Chamber concludes that the attack was not aimed at an alleged second line of defence.

385. No other evidence gives the Majority reason to believe that any other military facility in this area was targeted, and missed.

civilian protection organisation to store food, and that a religious facility and a youth club were located there, Hadžić, T. 12295-7.

¹²⁸⁶ Witness DP9 indicated on D1770 (map of the area) that these ran across Lukavica Cesta in the vicinity of the parking lot. DP9, T. 14473, 14476. He testified that “[i]n this part that Lukavicka Cesta was dug up so that it can be used as a trench, as a connecting trench for communication towards the buildings of Dobrinja going towards this side, and towards the Mojmiilo hill. Just behind the road, there were these trenches, connecting trenches to which manpower and supplies came. And then there was another system of trenches which went towards this side of the water supply towards the top of Mojmiilo hill where there was a passage to the Mojmiilo locality and Alipašino locality. And there was another trench which runs through the fields and orchards up there”, T. 14476.

¹²⁸⁷ Hadžić said that these trenches were built in Dobrinja during the war to allow the citizens to move around in the area and to protect them against snipers. He testified further that his soldiers never fired from these trenches, T. 12221, 12242. Witness R testified that the first time she went to Dobrinja to barter for flour, she passed through connecting trenches. She believed these trenches had been dug for civilians and were not used by soldiers, Witness R, T. 8191-2.

¹²⁸⁸ D85 (order of the Command of the 5th ABiH Motorised Brigade, dated 20 March 1993 and signed by Bajro Murguz, Chief of Staff).

¹²⁸⁹ Fažlić testified that the ABiH had established only this one line of defence in Dobrinja, Fažlić, T.6660-1. Hadžić acknowledged that his brigade received an order from the 1st Corps Command to establish a second line of defence in Dobrinja, which was passed down by the Chief of Staff of the 5th ABiH Motorised Brigade to the units. However, the order was not carried out. Hadžić told the Trial Chamber that “by all elements, the configuration of the positions, the density of the buildings, it was impossible to carry out the establishment of this second line” in the Dobrinja area, Hadžić, T. 12219-21, 12237-8, 12241, 12287.

386. Witnesses heard by the Trial Chamber stated that a certain number of ABiH soldiers was present at the football match. Hadžić, the commander of the ABiH 5th Motorised Dobrinja Brigade, acknowledged that off-duty soldiers were among the casualties.¹²⁹⁰ He was of the opinion that the proportion of civilian and military killed or injured that day was roughly fifty-fifty.¹²⁹¹ Exhibit D25, an ABiH 5th Motorised Dobrinja Brigade command report dated 1 June 1993 signed by Hadžić, indicates that there were “six combatants killed and fifty-five wounded and five civilians killed and thirty-two wounded”.¹²⁹² Two eye-witnesses of the event, Gavranović and Hadziabdić, recalled seeing soldiers in uniform, although unarmed, among the spectators.¹²⁹³ Hadziabdić believed that the soldiers made up approximately a third to one-half of the crowd present at the parking lot.¹²⁹⁴ Gavranović was of the opinion that approximately 20 to 30 percent of the crowd was made up of soldiers in uniform.¹²⁹⁵ Yet, Fažlić, another eye-witness of the shelling incident, said that the crowd gathered for the football tournament was composed mainly of children, young people and a few women.¹²⁹⁶ He told the Trial Chamber that no one present at the game was in military uniform or wearing a military insignia or carrying weapons, although some may have been off-duty police officers or soldiers.¹²⁹⁷ According to this witness, all the players were wearing jogging or sports outfits.¹²⁹⁸ The eye-witnesses of the event testified further that the football tournament took place on a quiet day when there was a lull in hostilities.¹²⁹⁹ The Majority understands the evidence to show that there were soldiers present at the parking lot, who were off-duty, unarmed and not engaged in any military activity. It finds that, although soldiers were present at the improvised football pitch, the crowd gathered there was carrying out a civilian activity, i.e., playing football.

387. The Defence submits that the football pitch was located very close to the confrontation lines,¹³⁰⁰ where a civilian gathering would not normally be expected to take place.¹³⁰¹ According to the Defence, “the Bosnian-Serb forces could not see from any place whatsoever what was happening on the other side of the buildings”,¹³⁰² and “it is possible that soldiers heard noises and

¹²⁹⁰ Hadžić, T.12254-6; D25 para 2 (f) (ABiH 5th Motorised Dobrinja Brigade command report dated 1 June 1993).

¹²⁹¹ Hadžić, T.12254.

¹²⁹² D25 (ABiH 5th Motorised Dobrinja Brigade command report for 1 June 1993), para. 2 (f).

¹²⁹³ Hadziabdić, T.6793; Gavranović, T.6716, 6727.

¹²⁹⁴ Hadziabdić, T. 6793.

¹²⁹⁵ Gavranović, T.6716, 6727.

¹²⁹⁶ Fažlić, T.6604.

¹²⁹⁷ Fažlić, T.6605.

¹²⁹⁸ Fažlić, T.6605. Fažlić said that the players were young men between 16-20 years old and that some may have been off-duty soldiers, T.6608.

¹²⁹⁹ The eye-witnesses to this incident testified that no military activity was underway in the area at the time of the event, Fažlić, T. 6600; Gavranović, T. 6716; Hadziabdić, T. 6743. Commander Hadžić confirmed that his brigade units were not active on that day. It was an exceptionally peaceful day, Hadžić, T.12254-6.

¹³⁰⁰ Defence Final Trial Brief, paras 664-665. The Defence claims that the front line was only 50 metres away from the site of the event, Defence Closing Arguments, T. 21928.

¹³⁰¹ Defence Final Trial Brief, paras 666-667.

¹³⁰² Id., para. 667.

exclamations near the HQ location”¹³⁰³ and presumed that the ABiH was mounting an attack there.¹³⁰⁴ It alleges that “this hypothesis should obviously be held in discharge so that if a fire [...] had come from the areas under SRK control, the collateral damage would have been here perfectly understandable and explainable”.¹³⁰⁵ The evidence confirms the Defence’s submission that, due to its location, the parking lot was not visible from SRK lines.¹³⁰⁶ One witness believed the crowd could not be heard from the SRK side of Dobrinja.¹³⁰⁷ The Majority notes that the parking lot was shelled well after the tournament began. It finds that the Defence’s suggestion that, based on the noise made by the crowd yelling and cheering the game, the SRK forces could have suspected ABiH infantry troops to be preparing for attack is too improbable to accept, since these troops would not have normally revealed their presence to the enemy by making noise. Had the SRK forces launched two shells into a residential neighbourhood at random, without taking feasible precautions to verify the target of the attack, they would have unlawfully shelled a civilian area. The Majority notes that there is no evidence on the Trial Record that suggests that the SRK was informed of the event taking place in the parking lot. However, had the SRK troops been informed of this gathering and of the presence of ABiH soldiers there, and had intended to target these soldiers, this attack would nevertheless be unlawful. Although the number of soldiers present at the game was significant, an attack on a crowd of approximately 200 people, including numerous children, would clearly be expected to cause incidental loss of life and injuries to civilians excessive in relation to the direct and concrete military advantage anticipated. In light of its finding regarding the source and direction of fire, and taking account of the evidence that the neighbourhood of Dobrinja, including the area of the parking lot, was frequently shelled from SRK positions, the Majority finds that the first scheduled shelling incident constitutes an example of indiscriminate shelling by the SRK on a civilian area.

(vii) Scheduled Shelling Incident 2¹³⁰⁸

388. Enver Taslaman, an inhabitant of Dobrinja, testified that due to a water cut-off in Dobrinja, a suburb of Sarajevo, inhabitants of “C5”, a settlement in Dobrinja, replenished their water supply at well-known emergency water points.¹³⁰⁹ One of the water points in “C5”, a well, was located in

¹³⁰³ Defence Motion to Acquit, p. 30.

¹³⁰⁴ Defence Final Trial Brief, para. 667.

¹³⁰⁵ Id.

¹³⁰⁶ Fažlić, T. 6602, 6637; Gavranović, T. 6727; DP9, T. 14475.

¹³⁰⁷ Gavranović, T. 6730.

¹³⁰⁸ The Indictment alleges that on 12 July 1993 “an 82 mm mortar shell was fired upon about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakiye Turajlića (previously Aleja Branka Bulića then Spasenije Cane Babović) in Dobrinja, a residential settlement. Thirteen people were killed and fourteen people were wounded. The origin of fire was VRS-held territory approximately to the west-north-west”, Schedule 2 of the Indictment.

¹³⁰⁹ Taslaman, T. 7187, 7210-1; Zametica, T. 3481.

the front yard of the residence of the sister of the witness Husein Grebić, an off-duty soldier at that time.¹³¹⁰ Grebić testified that in the middle of the afternoon of 12 July 1993, a fairly clear day until 17:00 hours,¹³¹¹ on his way to visit his sister,¹³¹² he saw around a hundred or more canisters in the street.¹³¹³ While approaching his sister's house, Grebić saw "quite a few people, women and children with lots of canisters, plastic canisters and buckets", maybe twenty or twenty-five,¹³¹⁴ standing along the street leading to his sister's house.¹³¹⁵ These people, mostly elderly, were waiting for their turn to enter into the front yard of the house through an iron gate guarded by Enver Taslaman. Taslaman, retired since 1978 and a member of the territorial defence in 1993, was tasked with ensuring that no more than two persons from the queue would enter the front yard or pump more than thirty litres of water from the well located some four or five meters from the gate.¹³¹⁶ Rasim Mehonić, a retiree who had been queuing with his wife and two daughters since dawn, testified that he was crouched next to Taslaman, waiting for his turn to collect water¹³¹⁷ when, at approximately 15:00 hours, a mortar shell exploded. Witness AE, who was sitting in the rear seat of a car parked along a garage door opposite the well felt heat on her face when the shell landed¹³¹⁸ and when she looked up, she saw blood and body pieces flying everywhere as well as heard screaming.¹³¹⁹ Mehonić felt the left side of his body hit by shrapnel; it was "covered in wounds".¹³²⁰ Next to him, Taslaman was hit on the arm and the left leg.¹³²¹ Grebić who was knocking at the door of his sister's house, heard the sound of an explosion and felt the right side of his body burn.¹³²² He dived into the corridor of the house, expecting to hear a second shell's explosion. He was then given first aid assistance by his sister and sister's friend.¹³²³

389. After fifteen or twenty minutes, Grebić came out of the house. He saw "a lot of dead bodies and a lot of bodies in pieces".¹³²⁴ He believed that ten persons had been killed on the spot and that

¹³¹⁰ Grebić, T7264-5; the area of the well was a typical street location with houses on both sides and a five-meter wide traffic lane and sidewalks. Looking from the east, the southern sidewalk was bordered by a wire-net fence with gates leading to the yard with the well (see statement and report were admitted into evidence pursuant to Rule 92 *bis* (C) on 2 August 2002, "Čavčić Report"). There was no military operation in that location that day (Hadžić, T. 12352).

¹³¹¹ Grebić, T. 7285-6.

¹³¹² Grebić, T. 7264-65, T. 7284.

¹³¹³ Mehonić, T. 7339; according to the witnesses, their owners were hiding nearby in staircases, doors and sides of buildings to avoid being targeted by snipers (Mehonić, T. 7339; Taslaman, T. 7191-92); Witness AE testified that the police warned civilian that they risked their lives by going out every day (T. 6029).

¹³¹⁴ Grebić, T. 7264-5, 7286.

¹³¹⁵ Grebić, T. 7265.

¹³¹⁶ Taslaman, T. 7186.

¹³¹⁷ Mehonić, T. 7328-9.

¹³¹⁸ Witness AE, T. 6014-6.

¹³¹⁹ Witness AE, T. 6016. Čavčić Report states that the shell landed on a body.

¹³²⁰ Mehonić, T. 7330.

¹³²¹ Taslaman, T. 7205.

¹³²² Grebić, T. 7265.

¹³²³ Grebić, T. 7266.

¹³²⁴ Grebić, T. 7266.

more had been wounded.¹³²⁵ Taslaman described the scene after the shell had landed as “a massacre”: “the shrapnel was everywhere”, “I saw corpses down by the canisters and then shrapnel everywhere, dead bodies on both sides”.¹³²⁶ Mehonić fainted when he saw his wife’s and two daughters’ dead bodies.¹³²⁷ Witness AE, also wounded by shrapnel, described how the body of an old man leaning on the fence near her had been completely destroyed.¹³²⁸ Zineta Arifagić, deputy director of the Dobrinja hospital where the victims of the shelling incident had been transported, testified that a list of 30 persons injured or killed on 12 July 1993 by the shell which landed on Dobrinja “C5” well had been drawn up.¹³²⁹ Witness AK-2, who investigated the incident upon the request of UNPROFOR stated in his report that the mortar shell killed 11 persons and wounded 13 others.¹³³⁰

390. The Majority is convinced that the shelling incident in Dobrinja C5 dated 12 July 1993 occurred as eye witnesses recounted it and that the mortar shell, which landed on the water collection point on 12 July 1993 in Dobrinja C5 at approximately 15:00 hours upon approximately 50-60 persons,¹³³¹ killed over ten persons and wounded over ten more.

391. Three independent on-site investigations of the shelling incident were conducted by Hamdija Čavčić, a police investigator in the Department for Criminal and Technical Investigations in Sarajevo,¹³³² Witness AK-2¹³³³ and a UNMO, member of Witness AK-2’s team.¹³³⁴ The tail fin of the mortar shell fired that day was found on the impact site and led Čavčić, Witness AK-2, corroborated by a UNMO, to the same conclusion that the mortar shell fired on 12 July 1993 in Dobrinja “C5” was of an 82 mm calibre. The Majority has no doubt that the conclusion reached by Čavčić and Witness AK-2 is correct and that the mortar shell which landed on 12 July 1993 in Dobrinja “C5” and which caused civilian casualties was of a calibre of 82 mm.

¹³²⁵ Grebić, T. 7289.

¹³²⁶ Taslaman, T. 7195.

¹³²⁷ Mehonić, T. 7330.

¹³²⁸ Witness AE, T. 6016-7.

¹³²⁹ P3738 (list of dead people); Arifagić, T. 12683-9.

¹³³⁰ P1413 (Report of Witness AK-2); Witness AE testified that 29 people were wounded, T. 6020.

¹³³¹ Witness AE, T. 6026-7; Taslaman also testified that since the other well was out of order, there could have been between 100-150 people waiting their turn to pump water (T. 7191).

¹³³² Hamdija Čavčić’s task was to determine the trajectory, direction, type and calibre of mortar shells wrote a report on the shelling incident of 12 July 1993 in Dobrinja. In the Čavčić Report, it is stated that the mortar shell impact site was on Spasenije Cane Babović Street, next to number 105 namely outside the iron gate of the house of Grebić’s sister, and that the shell detonated upon striking a person before landing on the ground (Čavčić Report).

¹³³³ Witness AK-2, an expert on ballistics and member of the UNPROFOR, prepared a report on the incident (he made that report on the basis of investigations he conducted on the day of the incident and independently of the local police) in which he established that the explosion on 12 July 1993 was caused by a Russian 82mm mortar shell fired from the direction west-west-north (T. 12764).

¹³³⁴ Witness AK-2 testified that another UNMO member of his team prepared a separate and independent analysis which was consistent with his findings (T. 12751-2).

392. The Defence refutes that the shell was fired from SRK-held territory, in particular, the Prosecution's argument that "there is no place on the ABiH side of the confrontation line that the fire could conceivably have originated without it being known by the local populace",¹³³⁵ and argues that if "water distribution had been the target of the SRK within the scope of a campaign, there would obviously have been many more than the few examples found by the Prosecution".¹³³⁶

393. The Majority notes that the conclusions contained in the reports of Čavčić and Witness AK-2 (corroborated by the report of a UNMO) were taken on the basis of their *de visu* examination of the impact spot. The pattern on the ground of the shell impact led them to the conclusion that the direction of fire was "most probably" from west-north-west.¹³³⁷ The Defence expert witness Viličić's opinion that the direction of fire of the shell was most probably from "East-Southwest direction" was based on inverted pictures¹³³⁸ of the impact site and therefore cannot be seriously considered and is unreliable. The Majority finds the conclusion reached by both Čavčić and Witness AK-2 credible and reliable and is convinced that the fire originated from the direction west-north-west to the point of impact of the mortar shell.¹³³⁹

394. On the basis of that direction of fire, the Prosecution witness Richard Higgs drew an unbroken red line for the direction of fire and broken lines for the margin of error on a map of the area where the shell landed on 12 July 1993.¹³⁴⁰ The Majority accepts that a close examination of these lines shows that there is no place on the ABiH side of the confrontation line - going through Dobrinja "C5" at about 125 to 200 metres to the south of the well and at about 250-300 metres to

¹³³⁵ Prosecution Final Trial Brief, para. 507.

¹³³⁶ Defence Trial Brief, para. 669; the Defence also notes the proximity of the well to the confrontation line, Defence Trial Brief, para. 668.

¹³³⁷ Čavčić observed that the pavement surface where the shell stabiliser was found showed "radially disposed mechanical damages caused by mortar shell shrapnel" allowing a determination of the direction of the fire. These traces formed "an irregular arc, direction Northwest-West" (Čavčić Report). The distance between the two farthest arc points was 2.4 meters and, according to the police, this established that the shell exploded above the surface of the ground, thus upon impact with the body of the woman standing next to the fence. The orientation of the arc led the police to the conclusion that the shell had been fired from the direction of Nedarići ("i.e., from the west-north-west") (Čavčić Report); In his report, Witness AK-2 stated that "the form of the spray shows the direction of 5100 mils (WWN)". Witness AK-2 added in his report that the "vertical obstacles (houses) close to the point of impact exclude the origin of artillery shell, the flight angle being of 45 degrees". He noted that "the shell fell on a woman and the absence of characteristic crater and furrow of the fuse does not allow to determine the flight angle of the shell" (P1413). However, he concluded that it was highly probable that it came from VRS-held territory, the corridor of Nedarići-Ilidza North (P1413).

¹³³⁸ During cross-examination, Viličić admitted that the picture of a car damaged during the shelling incident and found in page 36 of Viličić Report and on which he partly based his assessment that the direction of fire was east-southwest was inverted to reflect that the shelling came from the "north" (T. 20361-5). Viličić stated that this inversion was not a surreptitious manipulation of the data as the negative of any picture can be printed either one way or by inverting that way by 180 degrees (T. 20364-5 and 20375-6).

¹³³⁹ Witness AK-2 stated that the direction of fire was west-west-north. That indication is equivalent to the indication "northwest-west", T. 12764.

¹³⁴⁰ P3644.RH, the margin of error can be measured on the map and the Prosecution suggests that in this instance that margin is 8 degrees on each side of the unbroken red line, Prosecution Final Trial Brief, para. 507.

the west-north-west of the well-¹³⁴¹ where the fire could have originated without it being known by the local population.¹³⁴² The area between the Dobrinja “C5” settlement and the front lines was an open area. The queue of people hiding and waiting their turn to pump water from the well stretched along the street leading to Grebić’s sister’s house over several hundred metres.¹³⁴³ Hadžić also testified that the Dobrinja settlement was a very acoustic area.¹³⁴⁴ Higgs testified that if a mortar shell is fired from a 300 metre distance, people would probably hear the noise and detect the firing position.¹³⁴⁵ Witnesses testified that they heard the noise made by the explosion of the mortar shell on the impact site, not the noise of the mortar shell being launched.¹³⁴⁶

395. Alternatively, the Defence submits that the intended target of the mortar shell fired on 12 July 1993 in Dobrinja “C5” was probably an ABiH military objective. There were several possible military targets in the area, one identified by the Defence as being the construction work for a trench leading to the Butmir-Dobrinja tunnel.¹³⁴⁷ That trench was to be dug 120 metres away from the site of the incident. The command of the 2nd Battalion in Dobrinja was also about 120 metres to the north-east of the site of the incident and the closest ABiH front line in the direction of fire of the said mortar shell was about 250 metres away from the impact site.¹³⁴⁸

¹³⁴¹ See P3644.RH, P3727 for distances.

¹³⁴² The settlement Dobrinja “C5” was on the ABiH side of the confrontation line, bounded by the airport (under UNPROFOR control) to the south, by the neighbourhoods of Ilidža and Nedarići (under SRK control (for example, P3644.RH, P3727, see also Sabljica, T. 5275.) to the west and north-west and by Momjilo (under ABiH control) to the north (for example, P3644.RH, P3727). The ABiH and SRK front lines extended around that settlement from the south (at about 125 metres to the well) to the south-west and to north-west (at about 250-350 metres of the well). (for example, P3644.RH, P3727). Therefore, if it is assumed, in accordance with Viličić’s submissions, that the mortar shell’s angle of descent was very steep – approximately 80-85° (this angle is suggested in view of the city location of the impact site; the location of houses around the impact site makes it logical that the angle of descent of the mortar shell might have been very steep, close to 90 degrees) that the shell had no increment charge so that the mortar shell would have been fired from a distance of 84-150 metres away from the well (Viličić Shelling Report, p. 36) then the mortar shell was fired from within ABiH-held territory. Viličić further stated that the distance would have been 229-450 metres with one increment charge in the mortar shell cartridge and higher with additional increment charges (Viličić Shelling Report, p. 36) thereby suggesting that there is no evidence that the mortar shell which landed on Dobrinja “C5” on 12 July 1993 was fired from Serb positions.

¹³⁴³ Taslaman, T. 7191-2.

¹³⁴⁴ Hadžić, an inhabitant of Dobrinja and commander of the ABiH Dobrinja Brigade, testified that the Dobrinja settlement was an acoustic area (T. 12254). He also testified that he could hear shells landing upon Dobrinja, generally originating from the direction of Nedarići (T. 12253) where one could also hear the actual firing of mortar shells quite clearly (T. 12254). Hadžić further stated that mortar shells fired from the area of Nedarići were of 82 mm and 120 mm calibre (T. 12254). Through the Defence military expert, Radovan Radovanović, the Defence produced military documents which refer to mortar shells originating from Nedarići fired in the direction of Dobrinja (see D254, D255).

¹³⁴⁵ Higgs, T. 12467-8.

¹³⁴⁶ Taslaman testified that he did not hear the mortar shell coming because according to him people were pumping water (T. 7195); Grebić testified that he heard “a strong detonation and explosion. That was a grenade.” [...] and that he could not hear the sound “but the explosion came from somewhere to the right” (T. 7265-6).

¹³⁴⁷ Witness AE testified that there were trenches some 50 metres away from the impact site and that ABiH soldiers were in them but she could not tell whether these trenches were in existence at the time of the incident (T. 6033-4). Hadžić testified that the entrance to the tunnel was situated in a house located some 30 to 50 metres away from the street where the shell landed on 12 July 1993 (T. 12259). However, Richard Higgs measured the distance between the spot of the incident and the entrance to the trench leading to the Dobrinja-Butmir tunnel to be 120 metres (T. 12472).

¹³⁴⁸ Hadžić further testified that the excavation of the trench commenced about ten days after the tunnel became operational, on 30 July 1993, Hadžić, T. 12374-6, T. 12362. Other witnesses confirmed that the tunnel was not

396. The Majority is convinced that there was no immediate military objectives near the well, which could have explained the firing of a shell in that area. Furthermore, the Majority heard evidence that the area around well where civilians pumped water was repeatedly shelled after the shelling incident of 12 July 1993;¹³⁴⁹ Grebić recounted how a mortar shell landed in the yard where the well is located a week after the incident of 12 July 1992 took place and wounded his sister.¹³⁵⁰ In view of the evidence in the Trial Record, the Majority is satisfied beyond reasonable doubt that the intended objective of the mortar shell fired on 12 July 1993 in Dobrinja “C5” was not the construction work for a trench leading to the airport tunnel, nor the ABiH command and frontlines, but the well where civilians were expected to be found and used.

397. On the basis of the above, the Majority finds that the water queue of civilians in Dobrinja “C5” was deliberately targeted on 12 July 1993 by an 82 mm mortar shell fired from SRK-held territory.

(viii) Scheduled Shelling Incident 4¹³⁵¹

398. In February 1994 Sabahudin Ljusa was 11 years old and was living at no. 3 Oslobodilaca Sarajeva Street.¹³⁵² Oslobodilaca Sarajeva Street ran approximately southwest to northeast. Immediately beyond its southern tip was Sarajevo airport. A line drawn due east from the site of the

operational at the time of the shelling incident, Karavelić, T. 11804, 11868 (see location of the tunnel in exhibit P3644.VK3); Grebić, T. 7193, see also D244 (order from the ABiH commander Rasim Delić dated 14 July 1993 which, *inter alia*, advises for the implementation of security measures while ABiH soldiers are crossing the airport runway, which suggests that the tunnel is not in operation). Hadžić testified that at that time the tunnel was still being dug; therefore there was no trench yet and the area between the entrance of the tunnel and the buildings of Dobrinja was a meadow. See exhibit P3732, the entrance of the tunnel is marked by a small red circle; Hadžić, T. 12374-6; Higgs, T. 12472, the trench built later was in any case located 120 meters away from the water well hit on 12 July 1993. Hadžić was also of the opinion that the SRK forces were not aware of the exact location of the entrance of the tunnel, Hadžić, T. 12258-60. Prior to 12 July 1993 that area was shelled indiscriminately like the rest of Dobrinja (Hadžić, T. 12242-5, 12258-9): ““e—very part of Dobrinja was exposed to severe shelling. One couldn't single out a specific area and say that it was shelled the more intensely than other parts. Thousands of shells were landing at the time. It was raining shells”, Hadžić, T. 12248. Witnesses testified that there were no military objectives in the direct vicinity of the well (Witness AE, T. 6030, Grebić, T. 7276, Taslaman, T. 7212). There was a Bosnian army front line and a Serb army frontline close together, which extended from south-west to north-west of the well that was shelled on 12 July 1993 (Grebić, T. 7276). According to one witness, the closest military target to the well could have been the command of the 2nd ABiH Battalion in Dobrinja II (Hadžić, T. 12215) which was located approximately 120 metres north-east of the impact site (P3732). The closest confrontation line in the direction of fire of the mortar shell was located approximately 250 meters away from the well (Higgs, T. 12460, P3732 (map marked by Hadžić). The ABiH forces thereby occupied evacuated civilian buildings and installations around the confrontation line and had their own water pump at a house there (Taslaman, T. 7193-4).

¹³⁴⁹ Grebić, T. 7276-7.

¹³⁵⁰ Grebić, T. 7277.

¹³⁵¹ The indictment alleges that on 4 February 1994 a “salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential area. The first landed to the front of a block of flats at Oslobodilaca Sarajeva Street hitting persons who were distributing and receiving humanitarian aid and children attending religious classes. The second and third landed among persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 such children, were wounded. The origin of fire was from VRS-held territory, approximately to the east”, Schedule 2 of the Indictment.

¹³⁵² Ljusa, T. 7862-3.

alleged incident would cross into SRK-controlled territory after no more than 600 metres. At a distance of about 1.8 kilometres to the east of this part of the line was Lukavica and the SRK's headquarters.¹³⁵³ On the 4th of that month humanitarian aid was brought by truck and unloaded into a warehouse at no. 10 Oslobodilaca Sarajeva Street, on the western side of the street. The witness was in the warehouse at the time. He crossed the street to get a broom from the offices at no. 9, from where the aid was being distributed. A crowd had assembled to receive it.¹³⁵⁴ Ljusa was just about to cross back to the warehouse, when he "felt a very loud explosion and I realised that something had hit me in the chest."¹³⁵⁵ He was knocked to the ground. After getting up and checking his wounds he walked to a nearby clinic. Along the way he noticed three injured people and many more at the clinic.¹³⁵⁶ He heard a second explosion while at the clinic.¹³⁵⁷ Ljusa was taken to Dobrinja hospital and from there to Koševo hospital where he remained for about three weeks.¹³⁵⁸ Medical records confirm that he sustained severe shrapnel wounds to the chest.¹³⁵⁹

399. On the same day, Fata Spahić and three other women left their homes in Svrakino in Novi Grad to go to Dobrinja to trade cigarettes for flour.¹³⁶⁰ In Dobrinja the playground by the parking lot where the trading was to take place was off Oslobodilaca Sarajeva Street. Spahić and her friends arrived around 10.30 a.m.¹³⁶¹ A group of about 20 women and children had gathered.¹³⁶² In a short while the witness heard a whistling sound, followed by the explosion of a shell falling on a nearby block of flats fronting Oslobodilaca Sarajeva Street.¹³⁶³ She heard cries of help coming from that direction as she and others ran for cover to the entrance of a building where humanitarian aid was being distributed.¹³⁶⁴ They remained in that place for about 15 minutes, after which they returned to the playground to retrieve their belongings.¹³⁶⁵ Fata Spahić described what happened as soon as they reached the playground:¹³⁶⁶ "We heard this sound, and as we bent down, the shell landed near us."¹³⁶⁷ After a moment she noticed that some of the injured were crawling away from the site, while two of her friends and two boys she did not know were killed or were dying.¹³⁶⁸ Spahić herself

¹³⁵³ P3644.RH (map); T. 7828, P3232 (map), and D102 (map); Eldar Hafizović, T. 3575, 3579-80, and P3097 (map) (Sokolar); Bešić, T. 4932; Hamill, T. 6116.

¹³⁵⁴ Ljusa, T. 7863, 7867.

¹³⁵⁵ Ljusa, T. 7865.

¹³⁵⁶ Ljusa, T. 7865-6, 7868.

¹³⁵⁷ Ljusa, T. 7867-8.

¹³⁵⁸ Ljusa, T. 7866.

¹³⁵⁹ P2252, P2252.1 (translation).

¹³⁶⁰ Spahić, T. 7905-7.

¹³⁶¹ Spahić, T. 7908-9.

¹³⁶² Spahić, T. 7909, 7939.

¹³⁶³ Spahić, T. 7910-11, 7940.

¹³⁶⁴ Spahić, T. 7910, 7916.

¹³⁶⁵ Spahić, T. 7910, 7916.

¹³⁶⁶ Spahić, T. 7917.

¹³⁶⁷ Spahić, T. 7911.

¹³⁶⁸ Spahić, T. 7912-3, especially 7946.

was injured.¹³⁶⁹ An ambulance came and took the injured to a local surgery.¹³⁷⁰ From there the witness heard the explosion of a third shell.¹³⁷¹

400. Like Špahić, Witness R went to Dobrinja on 4 February to barter for flour.¹³⁷² At the appointed place she sat down beside her bag of apples. Many people had gathered to exchange goods.¹³⁷³ Within half an hour Witness R heard the sound of a shell flying past: “One shell landed further away behind a building. That is how we felt it. And the other one landed in a spot where we were gathered.”¹³⁷⁴ Several minutes elapsed between the first and second explosions, and in that brief time Witness R and other women sought shelter in the entrance to a building, only to return to the original site believing the danger had past.¹³⁷⁵ Witness R was injured but was able to make her way to a nearby apartment from where she was eventually taken to a hospital in Dobrinja.¹³⁷⁶ She said that she had heard more explosions in Dobrinja in the course of that day but was in such a state of fear that she had lost count of them.¹³⁷⁷ A medical record from Dobrinja General Hospital attests to the fact that Witness R was “injured by shell explosion” in the leg on 4 February 1994.¹³⁷⁸

401. Another witness, Eldar Hafizović was 17 years old at the time of the incident and was living on the third floor of an apartment block at no. 5 Oslobodilaca Sarajeva Street, on the eastern side of the street.¹³⁷⁹ He was in his flat when he heard a loud explosion.¹³⁸⁰ It was the first he had heard that day.¹³⁸¹ He looked out the front window and saw that the building across Oslobodilaca Sarajeva Street had been hit.¹³⁸² He saw wounded people in the street calling out for help.¹³⁸³ He then went out onto a balcony in the back of the flat to look for his brother. The balcony had a view over a playground.¹³⁸⁴ A second explosion at that moment injured Hafizović in his right arm.¹³⁸⁵ The shell had hit the playground, wounding and killing people gathered there and scattering their goods.¹³⁸⁶ Hafizović went out onto Oslobodilaca Sarajeva Street, heading for a nearby clinic, when he heard another loud explosion.¹³⁸⁷ This third shell “was very near, although I didn’t see where it fell

¹³⁶⁹ Spahić, T. 7914-5, 7940.

¹³⁷⁰ Spahić, T. 7914.

¹³⁷¹ Spahić, T. 7915.

¹³⁷² Witness R, T. 8181.

¹³⁷³ Witness R, T. 8182, 8190, 8197.

¹³⁷⁴ Witness R, T. 8183, 8197.

¹³⁷⁵ Witness R, T. 8184.

¹³⁷⁶ Witness R, T. 8184-5, 8188.

¹³⁷⁷ Witness R, T. 8185, 8194-5.

¹³⁷⁸ P2251, P2251.1 (translation).

¹³⁷⁹ Hafizović, T. 7758-9, 7849.

¹³⁸⁰ Hafizović, T. 7759-60.

¹³⁸¹ Hafizović, T. 7766-7.

¹³⁸² Hafizović, T. 7759-60.

¹³⁸³ Hafizović, T. 7762-3.

¹³⁸⁴ Hafizović, T. 7762-4.

¹³⁸⁵ Hafizović, T. 7762-3.

¹³⁸⁶ Hafizović, T. 7764.

¹³⁸⁷ Hafizović, T. 7764.

exactly. ... It fell on the playground ... where I was wounded.”¹³⁸⁸ At this point the witness noticed a large hole and extensive damage at the ground-floor level of the building opposite his.¹³⁸⁹ At the clinic Hafizović was given first aid and was taken to Dobrinja hospital where he saw other casualties of the incident.¹³⁹⁰ A hospital record dated 4 February 1994 describes Hafizović’s injury.¹³⁹¹

402. The eye-witnesses had little to say about the direction and source of fire. Witness R testified that although she did hear the first shell fly past she was not able to tell the direction from which it had come.¹³⁹² Eldar Hafizović indicated the location of his apartment on a map.¹³⁹³ The back of it (which had a view over the playground where, according to the witness, the second and third shells had fallen), faced approximately southeast. The front of the building across the street from his apartment (which according to Hafizović took the first hit) faced the same direction.

403. The investigation team into the incident was headed by Zdenko Eterović, a judge and investigative magistrate. A report he prepared on 4 February 1994 states that the team arrived on-site at 12.30 p.m.¹³⁹⁴ The report’s findings are that the first two shells struck at the same time, around 11.30 a.m. One shell fell against the ground floor of no. 8 Oslobodilaca Sarajeva Street wounding a child. The other struck the rear of an apartment block further east, killing a woman and a boy. A few minutes later a third shell exploded on a footpath running between a playground and a covered parking lot. Eterović explained that he went to the local clinic and to Koševo hospital to count the casualties.¹³⁹⁵ Altogether eight people are listed as having been killed by the shells (two of them after they had been taken to hospital) and 22 as having been wounded.¹³⁹⁶ Among those assisting Eterović was Sead Bešić, a police officer and crime technician in Sarajevo since 1989.¹³⁹⁷ The witness noted that the investigation limited itself to an analysis of the effects of two of the three shells, namely the two that struck the area of the playground. Bešić photographed the site of these explosions.¹³⁹⁸ One photograph shows a flat rectangular concrete surface bounded by a footpath and a covered parking lot to the north and five-storey apartment blocks to the south. Lawns lie to the immediate east and west of the flat surface and these in turn are abutted by more five-storey

¹³⁸⁸ Hafizović, T. 7765.

¹³⁸⁹ Hafizović, T. 7765.

¹³⁹⁰ Hafizović, T. 7766.

¹³⁹¹ P3367.

¹³⁹² Witness R, T. 8197.

¹³⁹³ P3232, Hafizović, T. 7792; also D102, Hafizović, T. 7832.

¹³⁹⁴ P2247B, P2247B.1 (translation); Eterović, T. 8846-7.

¹³⁹⁵ Eterović, T. 8847-9.

¹³⁹⁶ The list of injured includes Sabahudin Ljusa, Fata Spahić, Eldar Hafizović, Witness R, and Refik Sokolar (on Sokolar, see below). The report mistakenly lists Sabahudin Ljusa also among those who died in hospital. Eterović put this down to “the chaos prevailing at the time” (Eterović, T. 8850). See also Arifagić, T. 12677-83 (concerning death certificates for five persons killed in the 4 February 1994 incident, as confirmed by witness Zineta Arifagić).

¹³⁹⁷ Bešić, T. 4791, 4862.

apartment blocks. An arrow indicates the place where one of the shells struck, on the north-western edge of the playground.¹³⁹⁹ Another photograph is a close-up of the crater left by this shell. As explained by Bešić, and as indicated by a compass included in the photograph, concentric lines on the ground caused by the force of the explosion fan out from the crater in an easterly direction.¹⁴⁰⁰ A view looking down on the crater shows the rear section of a stabilizing fin lodged in the ground; this was determined by the witness to belong to a 120 mm mortar shell.¹⁴⁰¹ The other explosion examined by Bešić occurred at the foot of a building at the southern end of the playground.¹⁴⁰² Rubble covers the site of this explosion. The tail-fin of what, according to the investigation team, was a 120 mm mortar is held clear of the rubble by its rod which is lodged in the rubble. An arrow and compass in one of the photographs has been placed parallel to the axis of the fin and suggests that the shell arrived from a direction east of northeast.¹⁴⁰³ Sead Bešić confirmed that another shell (the one whose explosion was recorded but which was otherwise only superficially dealt with by the investigation team) landed against the eastern side of a building on Oslobodilaca Sarajeva Street.¹⁴⁰⁴ A sketch made by Samir Salman, a crime technician working with the investigation team, shows the impact sites of the three shells in relation to the playground, the apartment blocks, and Oslobodilaca Sarajeva Street.¹⁴⁰⁵ Bešić prepared a report – under the signature of Samir Salman – in which he states that three 120 mm mortar shells fell in Dobrinja at around 11.25 a.m. killing seven named persons and wounding twenty.¹⁴⁰⁶ Bešić’s report notes that the incoming direction of two of the shells was determined by compass readings to be, respectively, east and east-northeast, and concludes that the three shells were fired by the “aggressors [...] from their positions at Lukavica”.¹⁴⁰⁷

404. The investigation team included Mirza Sabljica, a ballistics specialist.¹⁴⁰⁸ Sabljica prepared a report on the impact sites of the two shells north and south of the playground.¹⁴⁰⁹ In court he confirmed the report’s findings, namely that the shell that landed at the foot of the apartment block south of the playground was a 120 mm mortar that came from a direction east-northeast, “that is, the Energoinvest complex of buildings” in Lukavica; and that the shell that struck the north-western

¹³⁹⁸ P2247 (compilation of photographs with text); P2247.1 (English translation of text).

¹³⁹⁹ P2247 (photograph no. 1; see also no. 2); Bešić, T. 4839-40.

¹⁴⁰⁰ The witness explained the general principle: “Damage is much bigger in the direction from which the projectile came. [...] When it falls at an angle, that is, its inferior part, when it falls at an angle, you have considerable damage in the asphalt or in the ground” (Bešić, T. 4867-8).

¹⁴⁰¹ P2247 (photograph no. 5; see also no. 3 and 4); Bešić, T. 4847, 4849-51, 5015. On Bešić’s use of fin size to determine the size of a mortar, see Bešić, T. 4808, 4867.

¹⁴⁰² P2247 (photographs no. 1, 9-11); Bešić, T. 4839-40, 4848-9, 4936-7.

¹⁴⁰³ P2247 (photograph no. 11); Bešić, T. 5014.

¹⁴⁰⁴ Bešić, T. 4938-40.

¹⁴⁰⁵ P2247A, P2247A.1 (translation); Bešić, T. 4941-2.

¹⁴⁰⁶ D62, D62.1 (translation); Bešić, T. 4921, 4933.

¹⁴⁰⁷ D62, D62.1 (translation).

¹⁴⁰⁸ Bešić, T. 4920.

corner of the playground was of 120 mm calibre and landed from the east.¹⁴¹⁰ The witness conceded that it was “impossible” from the evidence to pinpoint the *position* from which the shells had been fired, even though there could be reasonable certainty about the direction.¹⁴¹¹ Compass readings taken in these circumstances were accurate to plus or minus five degrees.¹⁴¹² Sabljica acknowledged that he had not attempted to estimate the angle of descent of the projectiles but had instead drawn lines towards the east and east-northeast of the impact sites and found that these had met “somewhere around the Energoinvest building”.¹⁴¹³ That building “was only considered to be ... an orientation point”, not necessarily the source of the attack.¹⁴¹⁴ The Chamber notes that Sabljica’s report gives precise measurements of the impact marks. These were not challenged in cross-examination. In relation to the first site mentioned, Sabljica measured a 9 cm deep crater with traces forming an ellipse (axes measuring 25 cm and 135 cm) displaced eastwards from the crater’s centre; and in relation to the second site, the measurements were 7 cm for the depth of the crater and 35 x 170 cm for the ellipse formed by the traces, this again being markedly displaced towards the east.¹⁴¹⁵

405. The Trial Chamber now summarizes the evidence on the existence of military activity and possible military targets in the vicinity of the incident. Fata Spahić testified that she had encountered two ABiH soldiers that morning.¹⁴¹⁶ She came across them about five minutes prior to arriving in Oslobodilaca Sarajeva Street.¹⁴¹⁷ The soldiers advised the women not to proceed because of the intense shooting and shelling in Dobrinja.¹⁴¹⁸ The witness said there were no soldiers at the place where the people had gathered to receive humanitarian aid or at the playground where the witness had gone to trade.¹⁴¹⁹ Witness R did not see any soldiers or other armed individuals among the people gathered in Dobrinja to barter goods.¹⁴²⁰ Nor did she encounter any soldiers on the way to Dobrinja.¹⁴²¹ Eldar Hafizović said that at the time of the incident there had been no soldiers or any form of military activity in Oslobodilaca Sarajeva Street or in the playground behind his apartment.¹⁴²² He knew of a “small office that belonged to the army” in the building across the

¹⁴⁰⁹ P2247A, P2247A.1 (translation); Sabljica, T. 5157-9.

¹⁴¹⁰ Sabljica, T. 5162-3.

¹⁴¹¹ Sabljica, T. 5161.

¹⁴¹² Sabljica, T. 5354.

¹⁴¹³ Sabljica, T. 5355, 5357-8.

¹⁴¹⁴ Sabljica, T. 5358.

¹⁴¹⁵ P2247A, P2247A.1 (translation).

¹⁴¹⁶ Spahić, T. 7924, 7936.

¹⁴¹⁷ Spahić, T. 7926, 7949.

¹⁴¹⁸ Spahić, T. 7937.

¹⁴¹⁹ Spahić, T. 7925-6.

¹⁴²⁰ Witness R, T. 8182.

¹⁴²¹ Witness R, T. 8191-2.

¹⁴²² Hafizović, T. 7767.

street, that is 15 to 20 metres away from where he lived.¹⁴²³ He added: “Before the war, it was something like a kiosk [...] And there were a few soldiers there occasionally. I don’t know. I didn’t really notice them and I wasn’t interested in them at all.”¹⁴²⁴ Later he said: “I know that they would occasionally go in there, people wearing camouflage uniforms”. He could not recall whether they were armed.¹⁴²⁵ The witness was not specific as to the date of these observations. Sabahudin Ljusa testified that he did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca Sarajeva Street.¹⁴²⁶ However, near the entranceway to no. 6 Oslobodilaca Sarajeva Street, approximately 100 metres from the site of the first explosion, there was a “not very large” room or warehouse used by the Territorial Defence “just for the purposes of the protection of the local residents of this street during the war events. [...] I don’t think that it was a military facility of any importance.”¹⁴²⁷ There was also a nuclear shelter in the vicinity of the incident, but it was flooded, completely neglected, and not in use by anyone.¹⁴²⁸ The witness added that he was not aware of any ABiH mortar units located in Dobrinja.¹⁴²⁹ Sead Bešić, the crime technician, said that a command post of the 5th Motorised Brigade staff “probably was, must have been” located somewhere in Dobrinja. But he did not know where it might have been nor therefore how far from the site of the incident on 4 February 1994.¹⁴³⁰ Refik Sokolar was a crime investigator who lived in Dobrinja and worked at the local police station. He testified that while the ABiH had “smaller units” in parts of Dobrinja “there was no barracks, there was no place where they all came to”.¹⁴³¹ Finally, Ismet Hadžić, commander of the Dobrinja Brigade of the ABiH, testified that on 4 February 1994 there were no ABiH military units close to the site of the shelling incident.¹⁴³²

406. The Prosecution submitted that the evidence led on this shelling incident shows that all three rounds were fired “from the direction of the Energoinvest facility” in Lukavica.¹⁴³³ The only possible military target – the small room at no. 6 Oslobodilaca Sarajeva Street used by the Territorial Defence – was of no significance.¹⁴³⁴ The Defence made general submissions on the Dobrinja shelling incidents without addressing the incident of 4 February 1994 specifically. It stated that “these incidents occurred in close proximity of [confrontation] lines” and that “in Sarajevo, the

¹⁴²³ Hafizović, T. 7767, 7822-3; D102, T. 7832.

¹⁴²⁴ Hafizović, T. 7767, 7825; cf. 7812-3, 7833-5, 7839-40, 7847-8.

¹⁴²⁵ Hafizović, T. 7826.

¹⁴²⁶ Ljusa, T. 7867.

¹⁴²⁷ Ljusa, T. 7885-6.

¹⁴²⁸ Ljusa, T. 7887-8.

¹⁴²⁹ Ljusa, T. 7892.

¹⁴³⁰ Bešić, T. 4931-2.

¹⁴³¹ Sokolar, T. 3561-3565, 3569-72.

¹⁴³² Hadžić, T. 12200, 12205, 12264-5, 12352.

¹⁴³³ Prosecution Final Trial Brief, para. 532. At para. 533 the Prosecution also refers to the testimony of General Michael Rose (T. 10194-5), even though it is evident from General Rose’s brief remarks on this incident that he had no direct knowledge of it.

¹⁴³⁴ Prosecution Final Trial Brief, paras 535-6.

combats occurred on a daily basis”.¹⁴³⁵ The Defence further submitted that the Viličić Shelling Report “establishes, very clearly for all cases that [...] one cannot allege [...] that the fire could have come exclusively from the Serbian lines”.¹⁴³⁶ The suggestion here appears to be that the shells which hit Dobrinja on 4 February 1994 could have been fired by the ABiH. The Viličić Shelling Report makes several arguments concerning the incident of 4 February 1994.¹⁴³⁷ After examining a photograph taken by Sead Bešić of the back section of the stabilizing fin lodged in the north-western corner of the playground,¹⁴³⁸ the Viličić Shelling Report concludes that the shell’s “drop angle” was close to vertical. The Prosecution questioned Viličić on the plausibility of this assessment of the shell’s angle of descent given that the camera had been positioned directly above the fin in the crater, in response to which Viličić said that he could not see a problem with the procedure.¹⁴³⁹ According to his report, this shell was fired from as close as 300 metres from the site of impact, the implication being that it originated in ABiH-controlled territory. Inspection of a photograph of the other tail-fin (still attached to its rod and raised above the rubble) led the authors of the Viličić Shelling Report to attribute to it a drop angle of 45 degrees, and to the conclusion that it “could have been fired from the East-Southeast direction, from area near Lukavica 1800 m from the place of impact”.¹⁴⁴⁰

407. The Trial Chamber finds beyond reasonable doubt that on 4 February 1994 around 11.30 a.m. three mortar shells struck a residential neighbourhood in Dobrinja killing at least eight civilians including a child and injuring at least 18 people including two children. The shell which exploded against the eastern facade of the apartment block on Oslobodilaca Sarajeva Street, and which injured Sabahudin Ljusa, struck first. Thus far the allegations in the Indictment have been made out. However, the Trial Chamber is not in a position to determine the calibre of the first shell in view of the fact that the official investigation into the incident paid little attention to it. It is also not apparent from the evidence that this first shell landed among “persons who were distributing and receiving humanitarian aid and children attending religious classes”. According to Ljusa, aid was being distributed not at no. 8 Oslobodilaca Sarajeva Street, which took the first hit, but at no. 9, on the opposite side of the street. The information on the “religious classes” is very slight.¹⁴⁴¹ Ljusa

¹⁴³⁵ Defence Final Trial Brief, para. 662.

¹⁴³⁶ Id., para. 663.

¹⁴³⁷ See Viličić Shelling Report, pp. 44-6.

¹⁴³⁸ P2247 (photograph no. 4).

¹⁴³⁹ Viličić, T. 20508-9.

¹⁴⁴⁰ Viličić Shelling Report, p. 46.

¹⁴⁴¹ Sabahudin Ljusa testified: “I think that after I left hospital, I found out that lessons had been given at that time and that there were children in that flat. [...] But I think that they were on the other side, that is to say, in the other room which was facing in another direction. [...] I think that they were wounded there, too, but not very seriously wounded. These are things that I found out after I had returned from the hospital.” (T. 7870-1). See also Zdenko Eterović’s report, P2247B.1, and his oral evidence at T. 8853 (correcting the statement in his report as to a “Muslim primary school”); the source of this information is not stated.

testified to seeing three injured people on his way to the clinic, and more at the clinic, but he did not witness where they were or what they were doing prior to the explosion.

408. The allegation as to the second and third shell explosions has been made out. The most likely sequence is that the first of these struck the north-western edge of the playground bounded by buildings to the east of Oslobodilaca Sarajeva Street. The playground at the time was being used as a trading ground for essential civilian goods. The evidence establishes that the people gathered there ran for cover after hearing the explosion in Oslobodilaca Sarajeva Street. Several minutes later, after they had emerged to retrieve their goods, the second shell (which was the first shell to strike the playground) exploded. This was the shell that caused most of the casualties. After a short while another shell exploded at the foot of an apartment block to the south of the playground. The Trial Chamber accepts the forensic evidence that the latter two shells were 120 mm calibre and flew in from the east and from east-northeast, respectively. Each of these shells left impact marks on the ground that were longer to the east of the crater and strongly elliptical, indicating that the angle of descent in each case was not steep. The Trial Chamber thus rejects the claim of the Viličić Shelling Report that one of these shells could have been fired from a distance of only 300 metres, which would have resulted in a near-vertical angle of descent and near-circular impact traces.

409. A 120 mm mortar fired at the first increment charge at an angle close to 45 degrees has a range of 1,574 metres, according to the Viličić Report.¹⁴⁴² It is not known in this case what level of charge was used. Since the Trial Chamber has determined that the confrontation line east of the site of the incident was no more than 600 metres away, whatever the charge used the projectile would have been carried, at a gentle elevation angle, a distance greater than 600 metres. Therefore the Indictment's allegation that the origin of fire was SRK-held territory has been made out in relation to the two shells that were investigated in detail.¹⁴⁴³ It can reasonably be assumed that the first shell to strike formed part of the same attack and therefore also originated in SRK territory. This conclusion is not affected by any reasonable margin of error applied to the investigators' estimation of the direction of fire. The Trial Chamber finds that the three shells struck civilians engaged in peaceful activities. No military personnel were seen in the vicinity at the time of the attack. The Trial Chamber rejects the suggestion that the office of the Territorial Defence mentioned by Sabahudin Ljusa and Eldar Hafizović was the target of the attack. The sequence of shell explosions tended away from its supposed location, not closer to it, and there is no evidence that the office was damaged in the attack. There is no reasonable explanation of why both the second and third shells would land significantly short of the first shell if the first shell was directed at the Territorial

¹⁴⁴² Viličić Shelling Report, Table 2, p. 5.

¹⁴⁴³ See P3727 which indicates a range of possible firing positions bounded by dotted lines converging from the west on Alipašino Polje.

Defence office. The Trial Chamber does not see any merit in the other Defence submissions, which, as noted above, are of a general nature.

410. The Trial Chamber thus finds that the fourth scheduled shelling incident constituted an attack that was, *at the very least*, indiscriminate as to its target (which nevertheless was primarily if not entirely a residential neighbourhood), and was carried out recklessly, resulting in civilian casualties.

(e) Sarajevo Airport

411. The Trial Chamber considers the situation at the airport to be complex. The SRK had given up the airport to the UN for the delivery of humanitarian supplies and related purposes. UNPROFOR was therefore to control the use of the airport. UNPROFOR used it also to communicate with the rest of the world¹⁴⁴⁴ and as a meeting point for brokering negotiations among the belligerents.¹⁴⁴⁵ SRK troops were positioned on both sides of the airport runway, especially on the south-east.¹⁴⁴⁶

412. Notwithstanding the airport agreement, the BiH authorities permitted some people to cross the runway, and even issued permits to allow civilians through it.¹⁴⁴⁷ In some periods, between 80 and 300 people each night crossed the runway.¹⁴⁴⁸ ABiH troops dressed as civilians used to cross the runway with military supplies for the city.¹⁴⁴⁹ In fact, the Presidency seemed to allow the use of the airport, *inter alia*, for military purposes.¹⁴⁵⁰

413. The SRK, therefore, repeatedly complained that, during the night, the airport area was used by people to leave Sarajevo and by the ABiH to allow military personnel and supplies into the city.¹⁴⁵¹ On 3 April 1993, following these protests, an official order was issued by the commander of the SRK 4th Light Artillery Regiment to prevent by use of force any movement across the airport.¹⁴⁵² UNPROFOR battalions entrusted with the implementation of the airport agreement used

¹⁴⁴⁴ Indić, T. 18595; 18661-2; Tucker, T. 9931; Witness W, T. 9538; Mole, T. 11040-42.

¹⁴⁴⁵ Kupusović, T. 674; Witness W, T. 9646 (closed session).

¹⁴⁴⁶ DP35, T. 17600; Karavelić, T. 11878. The SRK also held some areas around the airport itself, such as Nedarići and the Airport Settlement, Witness DP4, T. 14147; Abdel-Razek, T. 11654-5; Carswell, T. 8359; Witness Y, T. 10872-3.

¹⁴⁴⁷ Witness Y, T. 10869-70.

¹⁴⁴⁸ Cutler, T. 8939.

¹⁴⁴⁹ Witness Y, T. 10870. In many cases, soldiers intercepted while crossing the runway and found to be armed would have their weapons confiscated by UNPROFOR, Witness W, T. 9700.

¹⁴⁵⁰ Witness Y, T. 10870; 10972.

¹⁴⁵¹ Tucker, T. 9931; Briquemont, T. 10052-4; Thomas, T. 9308; Pashchenko, T. 17363. According to witness W, a military in charge of the forces at the airport, crossing became a major problem in November 1992, T. 9696-9700.

¹⁴⁵² D1491 (Order issued by the commander of the 4th Light Artillery Regiment. Before shooting, however, the order apparently required SRK soldiers to file an oral protest to UNPROFOR about the presence of unauthorized people in the airport), Witness DP35, T. 17595-17606. The witness, relying on the assumption that no night-vision device was available to SRK troops around the airport, admitted that the order was to shoot indiscriminately at any type of detected movement.

to patrol the airport at night to stop such crossing:¹⁴⁵³ weapons found were seized and destroyed.¹⁴⁵⁴ However, the patrolling was not very effective; people were still able to cross, and, at the beginning, some people were able to bring weapons into the city due to mistakes by UNPROFOR or tricks devised by the ABiH.¹⁴⁵⁵

414. Regardless of the patrolling by UNPROFOR, General Abdel-Razek, UNPROFOR Commander of Sector Sarajevo from August 1992 to February 1993, stated that “every day we received reports, telling us that a lady was killed with her child while she was trying to cross.”¹⁴⁵⁶ In particular, between November 1992 and March 1993,¹⁴⁵⁷ many civilians were killed or injured each night on the airport’s runway.¹⁴⁵⁸ UN personnel were also victims of fire.¹⁴⁵⁹ On some occasions, at least up to January 1994,¹⁴⁶⁰ the airport was also shelled, both from SRK- and from ABiH-controlled territory.¹⁴⁶¹

415. The Trial Chamber is convinced by the evidence that SRK soldiers shot without knowing whether the movements they saw on the runway were caused by civilians or by soldiers dressed as civilians.¹⁴⁶² UN officials protested to the SRK command against such indiscriminate fire.¹⁴⁶³

416. The Trial Chamber finds that the SRK was well aware that civilians crossed the runway. The Accused stated that he intended to stop such movement “by all means”; that statement implies that he agreed that attacks would be carried out indiscriminately, thus also against civilians. However, the Prosecution has not presented decisive evidence to identify shooting locations around

¹⁴⁵³ Carswell, T. 8360.

¹⁴⁵⁴ Witness W, T. 9715.

¹⁴⁵⁵ Witness W, 9700-6.

¹⁴⁵⁶ Abdel-Razek, T. 11594-6.

¹⁴⁵⁷ Witness W, T. 9699; Witness Y, T. 10869; Abdel-Razek, T. 11596-7 (referring to the end of his period in Sarajevo). This was highlighted by many witnesses as the period with more attempts to flee Sarajevo, especially through the airport, due to the cold and the lack of food that greatly affected the morale of the civilian population in the city, Tucker, T. 9931.

¹⁴⁵⁸ UNPROFOR personnel seized the documents from the bodies and ascertained that both civilians and soldiers tried to cross the airstrip, Witness Y, T. 10870. See also Witness W, T. 9584 (closed session; tape of previous interview). The vast majority of the people trying to cross the airstrip, however, were civilians, Karavelić, T. 11877 (99% were civilians).

¹⁴⁵⁹ Briquemont, T. 10052-4; Tucker, T. 9932; Abdel-Razek, T. 11595.

¹⁴⁶⁰ Thomas, T. 9308-9, referring to P2064, UNPROFOR SitRep [situation report] covering 4 and 5 January 1994.

¹⁴⁶¹ Briquemont, T. 10095-7 and P2082, protest letter from Briquemont to Karadžić (regarding a shelling on 5 January 1993); Witness W, T. 9556-7 (“not much firing of Serb origin on the airport”, while more on the Bosnian areas in the vicinity of the airport); Cutler, T. 8937, 9008, stating that on one occasion in February 1993 it was concluded that rounds probably came from an ABiH mortar position. According to DP35, the tower of the airport was hit by ABiH fire from Igman, DP35, T. 17504.

¹⁴⁶² DP35, T. 17606; Witness Y, T. 10872-5; Abdel-Razek, T. 11594-6; Bukva, T. 18467-73. Also, DP35, in response to a question on how the SRK would have distinguished civilians from soldiers on the runway, stated that he did not know, and that it would have been the responsibility of the local brigade commander to tell his subordinates how to make the distinction, DP35, T. 17602. Nonetheless, there is some evidence that SRK troops surrounding the airport did have at their disposal night-vision devices, Carswell, T. 8362-4. According to Tucker, too, the firing against civilians at night happened through “night-sights”, Tucker, T. 9932. No evidence was however led at trial on their number, quality and availability.

¹⁴⁶³ Abdel-Razek, T. 11596. See also T. 11600-1, 11644.

the airport, to address the issue of visibility of people crossing the runway at night, to show the possible impact of night-vision devices on the ability of the SRK to target specific objects on the runway, or to ascertain the presence or intensity of nearby combat activity.¹⁴⁶⁴ The Trial Chamber is aware that, when there is doubt whether a person is a civilian or a military, that person is not a legitimate military target. Due to the considerations above, however, the Trial Chamber is not able to point to any specific death or injury as representative of the campaign charged in the Indictment. It nevertheless finds the episodes of indiscriminate firing against people crossing the runway relevant to establishing that indiscriminate fire against civilians by SRK forces was an accepted and known fact.

(f) Briješko Brdo Area

417. Witnesses testified that, throughout the armed conflict, the residential area around Briješko brdo Street, presently named Bulbulistan Street and which belongs to the local commune of Marinka Bradovica, Novi Grad municipality,¹⁴⁶⁵ was continuously attacked by shooting and shelling from the SRK side,¹⁴⁶⁶ although it was far from the confrontation lines.¹⁴⁶⁷ Houses in that neighbourhood, situated on a hill named Briješko brdo and controlled by the ABiH during the conflict,¹⁴⁶⁸ were badly damaged by frequent shelling and shooting.¹⁴⁶⁹

418. Rasema Menzilović, a resident of that area, testified that she lived in the basement of her house for a long time in order to protect herself from SRK shooting and shelling attacks.¹⁴⁷⁰ She would get up at night to do chores - such as drawing water, tilling land, repairing the roof damaged by shelling - because she feared being targeted during the day.¹⁴⁷¹ She also explained that the fetching of water was dangerous. Residents of the neighbourhood around Briješko brdo Street, left without running water,¹⁴⁷² fetched water from a well at a spring located about 50 metres from the

¹⁴⁶⁴ Witness W, T. 9594-9595.

¹⁴⁶⁵ Kundo, T. 5969.

¹⁴⁶⁶ Kovać, T. 956-57; Ramiza Kundo, T. 5938; Menzilović, T. 7006, 7009-12, 7023; P3673, Witness Statement of Ramiza Kundo, p. 3.

¹⁴⁶⁷ Ramiza Kundo, T. 5938; Menzilović, T. 6982, 7010.

¹⁴⁶⁸ Kovać, T. 924, 971; Hamill, T. 6182. The area of Briješko brdo was under the control of 2nd Vitez (or Viteska) Brigade of the 1st Corps of the ABiH; Kovać, T. 947. On the other side of the confrontation line, the Briješće Company (also called the 1st Company) of the Rajlovac Brigade of the SRK was positioned around the field area; Kovać, T. 957; Sinisa Krsman, T. 19033, 19047.

¹⁴⁶⁹ Menzilović, T. 6998, T. 7006, T. 7010-11. Ramiza Kundo stated that her house was quite badly damaged by shelling and there were shots coming through the wall at all hours; P3673, Witness Statement of Ramiza Kundo, pp. 2-3.

¹⁴⁷⁰ Menzilović, T. 7006.

¹⁴⁷¹ Menzilović, T. 6982, 6999, 7011-12, 7041.

¹⁴⁷² Ramiza Kundo, T. 5938-39; Menzilović, T. 6981.

neighbourhood to the northwest across Briješko brdo Street,¹⁴⁷³ which was exposed to SRK sniping fire.¹⁴⁷⁴

419. Ramiza Kundo, a neighbour of Menzilović, also testified that several civilians they knew had been shot by small-arms fire in this part of Briješko brdo Street when no military activity was going on.¹⁴⁷⁵ Both Kundo and Menzilović testified that in July 1993,¹⁴⁷⁶ a woman, Hasiba (called Haska) Dudević, was shot while heading towards the well;¹⁴⁷⁷ they also gave the example of Muharem Mešanović shot dead in late 1993 or early 1994,¹⁴⁷⁸ and of Mustafa Poljo shot in 1994.¹⁴⁷⁹

420. The Prosecution alleges two specific incidents of targeting of civilians as representative of small arm fire against civilians in that area in Schedule 1 of the Indictment, under numbers 16 and 17. The examination of these incidents below expresses the views of the Majority. Judge Nieto-Navia is dissenting and expresses his views on these incidents in a dissenting and separate opinion appended to this Judgement.

(i) Scheduled Sniping Incident 16

421. On 2 November 1993, at around 4 pm, Ramiza Kundo, 38 year old at that time, and Rasema Menzilović, were hurrying back with full 10-litre canister in each hand along Briješko Brdo Street from a well located about 50 metres away from Menzilović's house.¹⁴⁸⁰ While crossing the street,

¹⁴⁷³ Ramiza Kundo, T. 5939-40; Menzilović, T. 6981, 6983.

¹⁴⁷⁴ Menzilović, T. 6981, 6983-86; P3673, Witness Statement of Ramiza Kundo, p. 2. In the neighbourhood of the witnesses, the field area was called "Polje" (field). In fact, during her testimony in court, Menzilović used the term "Polje" instead of the field area; Menzilović, T. 7053.

¹⁴⁷⁵ Ramiza Kundo, T. 5981.

¹⁴⁷⁶ Ramiza Kundo stated that Hasiba Dudević was hit in June 1992; Ramiza Kundo, T. 5990.

¹⁴⁷⁷ Menzilović, T. 6986-88, 7021-24. Menzilović also testified that Dudević wore a skirt at the time she was wounded; Menzilović, T. 6988. She added that she heard the shot fired from the direction of the field area at the time Dudević was injured and that the neighbours could not take her to hospital immediately because shootings continued for a long time thereafter, although no soldiers or armed persons were in the vicinity at the time the incident; Menzilović, T. 6986-88, 7023-24.

¹⁴⁷⁸ P3673, Witness Statement of Ramiza Kundo, p. 3; Ramiza Kundo, T. 5979-81, 5989-90; Menzilović, T. 7001, 7061. Ramiza Kundo stated that Muharem Mesanović was shot about 50 metres further down from the site where she was injured; Ramiza Kundo, T. 5979. Ramiza Kundo and Menzilović did not remember exactly when this incident occurred; Ramiza Kundo, T. 5981, 5989-90; Menzilović, T. 7001. Admitting that she did not remember the exact date of the incident, Ramiza Kundo stated that Mesanović was shot before she was injured on 2 November 1993; Ramiza Kundo, T. 5981, 5989-5990. On the other hand, while stressing that she was not sure about the date of the incident, Menzilović said that he could have been shot in 1994; Menzilović, T. 7001.

¹⁴⁷⁹ Ramiza Kundo, T. 5979-81, 5990; Menzilović, T. 7962-63.

¹⁴⁸⁰ The Indictment alleges that on 2 November 1993, "Ramiza Kundo, a woman aged 38 years, was shot and wounded in her left leg while she was carrying buckets of water across Briješko brdo Street, presently Bulbulistan Street, in the west end of Sarajevo," Schedule 1 to the Indictment. Ramiza Kundo, T. 5939-40; Menzilović, T. 6988-89; P3673, Witness Statement of Ramiza Kundo, p. 2; D75 (Official Note issued by the Novi Grad Public Security Station). Ramiza Kundo's house appears on both of the 360 degree photographs; P3279V (360 degree photograph); P3279X (360 degree photograph). When looking at the street in the opposite direction of the field area, her house is located on the right-hand side of the street, Menzilović, T. 7016. Menzilović's house was at a distance of 20 metres from that of Ramiza Kundo, Menzilović, T. 7056-57. The video-taped testimony of Ramiza Kundo introduced by the Prosecution

which was on a gentle slope going downward, both witnesses heard a shot.¹⁴⁸¹ Ramiza Kundo testified that at first “I thought it was a stone, a pebble, which had hit me”, but then realized that it was a bullet.¹⁴⁸² The calf of her left leg started to bleed profusely.¹⁴⁸³

422. In her written statement, Ramiza Kundo stated that the shot had come from the “train depot.”¹⁴⁸⁴ Her husband, Hilmo Kundo stated in a written statement that “[she was] looking in the direction of enemy positions in Rajlovac, when she was shot from the direction of the depot.” The official note of the Novi Grad Public Security Station repeats that Ramiza Kundo was wounded by a shot fired from the direction of the “Rajlovać depot”.¹⁴⁸⁵ Ramiza Kundo testified however that she heard the shot coming from “below, where the Serbian lines were”, maybe to her right.¹⁴⁸⁶ She elaborated that “it was the Serbian field. I don’t know exactly what it was called. Bacici or something like that. Serbian field, Srpska pole. There was a railway station somewhere there”.¹⁴⁸⁷ Menzilović testified that she heard the sound of the shot coming from the direction of Polje, emphasising that “it was always from the direction of Polje since from the other side, as I have already said, nobody could ever see us. We were always visible only from Polje”.¹⁴⁸⁸ She added that one night, she was tilling land further down from her house when she saw the muzzle flashes of gunfire from an isolated house with a four-sided roof there,¹⁴⁸⁹ and referred to frequent “sniper”

indicates that the two women were going *towards* the well (P3280V, video-taped testimony of Ramiza Kundo). In court of the two witnesses indicated that the women were coming back *from* the well, Ramiza Kundo, T. 5946-50, 5973, 5978; Menzilović, T. 7036-37; P3673, Witness Statement of Ramiza Kundo, p. 2. Moreover, the fact that both witnesses testified about buckets *full of water* corroborates the finding that they were coming back *from* the spring to their houses, Ramiza Kundo, T. 5946; Menzilović, T. 6991.

¹⁴⁸¹ Ramiza Kundo, T. 5940, 5942, 5973; Menzilović, T. 6989.

¹⁴⁸² Ramiza Kundo, T. 5940. The Defence submits that the two witnesses were obviously biased against the SRK and therefore not reliable, Defence Final Trial Brief, paras 249, 251. Despite the fact that some statements made by the witnesses seem to imply prejudice against the SRK, the Trial Chamber observes that those statements do not refer to events critical for the Prosecution case (they relate to what happened on the front lines, remote from the direct context of the incident).

¹⁴⁸³ Ramiza Kundo, T. 5940, 5971; Menzilović, T. 6990-1. Hilmo Kundo, Ramiza Kundo’s husband (D76 Witness Statement of Hilmo Kundo) as well as a Police Report on the incident (D75) stated that the bullet hit the *right* leg but the victim denied having provided exact information on the wound. The victim was brought by the Civil Defence to Koševo hospital where she stayed for three days for treatment, Ramiza Kundo, T. 5942; P3673 (Witness Statement of Ramiza Kundo), p. 2.

¹⁴⁸⁴ P3673 (Witness Statement of Ramiza Kundo), p. 2.

¹⁴⁸⁵ D76 (Witness Statement of Hilmo Kundo); D75 (Official Note issued by the Novi Grad Public Security Station).

¹⁴⁸⁶ Ramiza Kundo, T. 5940, 5942, 5973-4.

¹⁴⁸⁷ Ramiza Kundo, T. 5974.

¹⁴⁸⁸ Menzilović, T. 6989, referring to T. 6985, when she had stated that the “side of the field” (Polje) was the only position they could have been shot at. She repeated this statement almost verbatim in T. 7025, see also T. 7011-2.

¹⁴⁸⁹ Menzilović, T. 6999-7000. The location of the house was marked by Menzilović with a black circle on a photograph presented before the court; Photo 1 of P1812A (Photographs taken of the field area and the site of incidents 16 and 17); Menzilović, T. 7000. Krsman admitted that the location of the red circle on the maps D1844, Map marked by Krsman and map 15 of P3728 (a series of 26 maps of portions of Sarajevo), marked by Karavelić (T. 11835) corresponds to the location of the black circle on Photo 1 of P1812.A marked by Menzilović; Krsman, T. 19067, 19091-2, 19096.

shots fired at her house from the field area.¹⁴⁹⁰ Karavelić also indicated that area as a regular source of fire by the SRK.¹⁴⁹¹

423. The Defence claims that the direction of fire of the bullet which hit Ramiza Kundo is not established,¹⁴⁹² and that Ramiza Kundo could not have been hit in her left leg by a bullet from her right.¹⁴⁹³ It also argues that “the [confrontation] lines held by the warring sides in that part of the battlefield were so deviated that the projectile could have been fired from the ABiH positions.”¹⁴⁹⁴ The Defence witness Sinisa Krsman testified that the “depot” was a service facility for train maintenance located approximately one kilometer from the site of the incidents to the west¹⁴⁹⁵ and denied that the shots could have come from there, claiming that there was no line of sight from the depot to the site of the incident.¹⁴⁹⁶ Krsman added that the field area (“Polje”) was an abandoned area where nobody lived during the armed conflict¹⁴⁹⁷ because being down below the hill of Briješko Brdo was geographically disadvantaged and therefore indefensible¹⁴⁹⁸ and that the SRK was stationed at least 150 metres behind the isolated house with the four-sided roof presented as a sniper nest by Menzilović.¹⁴⁹⁹

424. The Majority understands the testimonies of witnesses Menzilović and Ramiza Kundo to mean that the area between the station depot and Bačići, including Briješće, was actually regarded as a single area by people living uphill. The two witnesses to the incident clearly referred to the “Polje” area; with this expression, Menzilović clearly intended to point to the area around the isolated house close to the sign “Briješće” on the maps tendered into evidence.

425. According to Krsman and Karavelić, the ABiH line was located between 300 to 350 metres from the site of the incident.¹⁵⁰⁰ Karavelić marked the confrontation lines on a map which presents most parts of the field area, comprising the neighbourhoods of Briješće and Bačići, as SRK-held

¹⁴⁹⁰ Menzilović, T. 6998.

¹⁴⁹¹ Karavelić, T. 11835.

¹⁴⁹² Defence Final Trial Brief, para. 261.

¹⁴⁹³ Id., paras 257, 263; Acquittal Motion, para. 79.

¹⁴⁹⁴ Defence Final Trial Brief, para. 265.

¹⁴⁹⁵ Krsman, T. 19048, 19060. The location of the depot was marked with “D” on the electronic map D1843; Krsman, T. 19048.

¹⁴⁹⁶ Krsman, T. 19060-1.

¹⁴⁹⁷ Krsman, T. 19062. Krsman testified that the SRK line was right next to the house owned by the Božić family indicated by him on the left-hand side of the photograph, Krsman, T. 19067, 19072-3. Krsman marked the location of the Božić’s house on the maps presented in court with the letter “K” (D1843, Map marked by Krsman) and a square (D1844, Map marked by Krsman) respectively.

¹⁴⁹⁸ Krsman, T. 19062-3.

¹⁴⁹⁹ Krsman, T. 19081; D1844, Map marked by Krsman. He confirmed this statement looking at one of the photographs produced in court by the Prosecution (Photo 1 of P1812A, photographs taken of the field area and the site of incidents 16 and 17); D1843, map marked by Krsman with SRK confrontation lines. The ABiH confrontation line and the SRK confrontation line were printed with a light green line and a dark green line respectively on the maps. While indicating that the SRK line printed on D1844 was incorrect, Krsman confirmed that the location of the ABiH line printed on D1844 was correct, Krsman, T. 19057-8.

territory as of November 1993.¹⁵⁰¹ Despite the evidence of Krsman, who stated that the SRK line was located approximately 150 metres behind the alleged SRK firing position of the isolated house with the four-sided roof in the field area, the Majority is of the opinion that the operational capability of the SRK to shoot on the area of the incident was not impeded by the difference in the location of the SRK in the two descriptions of Krsman and Karavelić. This is true especially taking into account the location of the SRK line, next to the house owned by Božić as presented by Krsman.¹⁵⁰² The Majority is satisfied beyond reasonable doubt that the ABiH confrontation line was between 300 and 400 metres away from the site of the incident.¹⁵⁰³

426. The Defence also claims that the difference in altitude between the location indicated by a red circle on D1844 and the place where Ramiza Kundo was hit would exclude the possibility of direct shooting by an infantry weapon.¹⁵⁰⁴ The Majority rejects that argument. It estimates the difference in altitude between the field area and the spot where Ramiza Kundo was hit to be between 40 and 80 metres, most probably around 60 metres.¹⁵⁰⁵ Such a difference of altitude would, therefore, not prevent direct shots being fired from at least a couple of hundred meters by an infantry weapon towards the location where the victim was hit (a slope) and with an angle sufficient to hit her in the calf. In light of the above evidence, the Majority finds that Ramiza Kundo was wounded by a shot fired from the direction of “Polje,” a field in the area of Bačići and Briješće.

427. Bearing this finding in mind, the Majority now turns to examine whether the shot was fired from SRK-controlled territory as alleged by the Prosecution. Photographs of the site of the incident establish that there was no line of sight to nearby ABiH-controlled areas identified by both defence and prosecution witnesses. This leads the Majority to reject the suggestion by the Defence that the

¹⁵⁰⁰ D1843 and D1844 (maps marked by Krsman); map 15 of P3728 (map of the area marked by Karavelić).

¹⁵⁰¹ Karavelić, T. 11835; map 15 of P3728, map of the area marked by Karavelić.

¹⁵⁰² P1812A (Photographs taken of the field area and the site of incidents 16 and 17); Krsman, T. 19081; D1844 (Map marked by Krsman).

¹⁵⁰³ Krsman, T. 19057-8, 19081; D1843 (map marked by Krsman); D1844 (map marked by Krsman); map 15 of P3728; P3644 (copy of large map of Sarajevo); Karavelić, T. 11835, marked on map 15 of P3728, map of the area; Menzilović, T. 6982, 7010, 7024, 7057;

¹⁵⁰⁴ Defence Final Trial Brief, para. 258.

¹⁵⁰⁵ Krsman correctly states that the elevation near what appears to be a railway switchyard on D1844, black and white copy of part of a map of the area around the incident, is marked as an elevation of 492 metres (T.19064). The area around the red circle does not show contour lines as an indication of a different elevation; the closest of such isolines in the direction of the incident weaves around a railway, northeast of the red circle, and bears the number 500. The map marked by Krsman is – apart from the enlargement – similar to part of a black and white copy of P3644, copy of a map of Sarajevo. The Majority has carefully compared the black and white copy and the many enlarged colour sections of that map (a series of 26 maps admitted into evidence as P3728) with special regard to contour lines, the altitudes expressed in connection with such lines, as well as other elevation indicators. The Majority has further compared these maps with other maps in evidence and more specifically with contour lines and elevation features appearing on those maps (D1916, large colour map; P3724, copy of a large map of Sarajevo). The other maps support the findings of the Majority. The place where Ramiza Kundo was hit is closer on D1916 to the second contour (540 metres) uphill from the 500 metres contour line and further away from the third uphill line (560 metres). In fact, within that area, elevations 492 and 500 metres are marked, while no lower contour line (which would identify the elevation of 480 meters) appears.

shot may have been fired from ABiH positions.¹⁵⁰⁶ Furthermore, the Majority deems it unreasonable to suggest that the ABiH had any reason to fire a single bullet against a civilian walking in ABiH-controlled territory. The Majority also rejects the Defence's suggestion that the victim could not have been hit from the right on her left leg; obviously a person walking places one leg before the other, exposing both legs also to the right. From the evidence in the Trial Record, the Majority finds that Ramiza Kundo was injured by a bullet fired from SRK-held territory in the field area, where Brijesće and Bačići are.

428. Ramiza Kundo acknowledged that from 1992 to 1994 there was fighting and gunfire in the area where she lived¹⁵⁰⁷ but that there were no soldiers, military equipment or military activity in the vicinity at the time of the incident.¹⁵⁰⁸ Given the circumstances of the incident, the occurrence of similar incidents in the vicinity, the positions of the warring parties beneath the hill of Brijesko brdo, and evidence that there was no on-going combat activity in the relevant area at the time of the incident, the Majority does not accept the Defence's suggestion that the victim was hit by a stray bullet or a ricochet as a consequence of a regular combat activity.¹⁵⁰⁹

429. The Majority finds that, regardless of the exact colour in which Ramiza Kundo was dressed - she was wearing a long colourful skirt (red or violet),¹⁵¹⁰ a shirt and a pullover -¹⁵¹¹ and in view of the activity in which she was engaged at the time of the incident, the perpetrator, or a reasonable person in those circumstances, should not have ignored the probability of Ramiza Kundo being a civilian. The Majority therefore concludes that the victim was targeted from the SRK-controlled area, if not with the intention to attack her as a civilian, then at least in full awareness of the high risk that the target was a civilian.

430. Menzilović recounted, as follows, a similar incident, which occurred later in November 1993 to another neighbour of hers, Fatima Osmanović.

¹⁵⁰⁶ Defence Final Trial Brief, para. 265.

¹⁵⁰⁷ Ramiza Kundo, T. 5964-5.

¹⁵⁰⁸ Ramiza Kundo, T. 5943; Menzilović, T. 6990. Ramiza Kundo testified that, at the time she was wounded, she did not see anybody else in the vicinity apart from Menzilović and that there was no fighting in the area, but only "snipers who would fire", Ramiza Kundo, T. 5942; 5981. Menzilović testified that there was no military position near her house during the armed conflict, Menzilović, T. 7009. She also stated that, throughout the armed conflict, she had not seen any soldiers of the ABiH in her neighbourhood, Menzilović, 7039. Ramiza Kundo stated that an ABiH tank was stationed next to a church about 500 metres uphill from her neighbourhood for about a week, although she was not sure whether the tank was stationed there in 1993 or 1994 and whether it ever opened fire. Ramiza Kundo, T. 5965-6. While Menzilović testified that she never heard of the tank (Menzilović, T. 7038) Siniša Krsman, a company commander of the SRK in the area, also mentioned the tank, Krsman (T. 19052, 19085) who said that the tank was positioned slightly farther to the north-east of the position indicated by Ramiza Kundo, D1843 (map marked by Krsman). The Majority takes into consideration the position of the tank, but finds there is no ground to suggest that it was active at the time of the incident, nor that SRK soldiers would have any reason to target it with single shots fired from infantry weapons.

¹⁵⁰⁹ Defence Final Trial Brief, para. 264; Acquittal Motion, para. 79.

¹⁵¹⁰ Ramiza Kundo, T. 5942, stating that her skirt was violet; P3673 (Witness Statement of Ramiza Kundo), p. 3, where the skirt is described as red.

¹⁵¹¹ Menzilović, T. 6989.

(ii) Scheduled Sniping Incident 17

431. Menzilović testified that on or around 9 November 1993,¹⁵¹² approximately at noon,¹⁵¹³ she was going towards the well with one of her neighbours, Hata Pedisa, when she saw Fatima Osmanović returning home from the well.¹⁵¹⁴ Menzilović and Hata Pedisa were waiting for Osmanović to cross Briješko Brdo Street,¹⁵¹⁵ when, one or two metres away from the site where Ramiza Kundo the victim of the incident 16 had been shot,¹⁵¹⁶ Blood started to cover Osmanović's face.¹⁵¹⁷ She was injured in her cheek.¹⁵¹⁸ No precise evidence was presented in relation to the exact nature of the wound but the Majority deems that the precise nature of the wound is not an essential element in the determination of this incident nor is the apparent inconsistency with regard to the day of the incident stated in the Indictment and that stated by the witnesses in court. The Majority is satisfied that, on or around 9 November 1993, at around noon, Osmanović, aged 44, was shot in her cheek on Briješko Brdo Street while returning home from the well.

432. The Majority relies on the description of the events of incident 16, which bear a striking resemblance to those related by Menzilović and support the allegations by witnesses that deliberate shooting of civilians from SRK-controlled territory was common in the area, at least as of November 1993. In particular, Menzilović and Karavelić testified to the SRK firing position in the field area in a general context. Krsman provided an overall explanation of the topographic features of the area and the positions of the warring parties there. The overall evaluation of the evidence with regard to these two scheduled incidents 16 and 17, and of other strikingly similar events, indicating a pattern of conduct in the area, does not leave reasonable doubts as to the source of fire.

433. Menzilović recalled that at the time of incident, there were no soldiers, military equipment or military activity in the vicinity.¹⁵¹⁹ Accounts reported above with respect to the distance from the confrontation lines and military objectives, as well as to the military presence and combat activity

¹⁵¹² The Indictment alleges that on 13 November 1993, "Fatima Osmanović, a woman aged 44 years, was shot and wounded in the right side of her face while she was carrying water across Briješko brdo Street, presently Bulbulistan Street, in the west end of Sarajevo," Schedule 1 to the Indictment. While incident 17 is presented in the Indictment as having occurred on 13 November 1993, the Prosecution states in its Final Brief that it took place "about seven days after" incident 16, which occurred on 2 November 1993; Prosecution Final Trial Brief, para. 413. Both Ramiza Kundo and Menzilović indeed recalled that the date of incident 17 was "7 days after" the date of incident 16 (Ramiza Kundo, T. 5981; Menzilović, T. 6991).

¹⁵¹³ Menzilović, T. 6993.

¹⁵¹⁴ Menzilović, T. 6991.

¹⁵¹⁵ Menzilović, T. 6991, 7045, 7059; Photo 2 of P1812A (Photographs taken of the field area and the site of incidents 16 and 17).

¹⁵¹⁶ Menzilović, T. 7060; P3673, Witness Statement of Ramiza Kundo, p. 3. Menzilović marked the site of incident 16 with a circle, and also marked the site of incident 17 with a cross on Photo 2 of P1812A; Menzilović, T. 7059.

¹⁵¹⁷ Menzilović, T. 7045.

¹⁵¹⁸ Menzilović, T. 6992. No medical document was presented by the Prosecution regarding the incident. Menzilović and Ramiza Kundo said that the bullet was lodged in Fatima Osmanović's face, and that the doctors did not dare remove it after she was brought to hospital; Menzilović, T. 6992; Ramiza Kundo, T. 5979, 5981-82.

¹⁵¹⁹ Menzilović, T. 6995; Ramiza Kundo, T. 5981 (only snipers fired).

in the vicinity, apply to this incident. The Majority finds that the manner in which Osmanović was dressed – she was wearing a skirt, a T-shirt and a sweater –¹⁵²⁰ and the activity in which she was engaged at the time of the incident clearly reflected her civilian status. Taking into consideration all circumstances, the Majority finds that the perpetrator, or a reasonable person in those circumstances, should not have ignored the probability that Fatima Osmanović was a civilian. The Majority therefore concludes that the victim was targeted from the SRK-controlled area, if not with the intention to attack her as a civilian, then at least in full awareness of the high risk that the target was a civilian.

(g) Stari Grad Area

434. The Trial Record contains evidence from a variety of sources indicating that indiscriminate shelling in the general area of the old city centre known as Stari Grad harmed civilians.

(i) Old City Centre

435. Harding, a UNMO in Sarajevo from July 1992 until January 1993,¹⁵²¹ remembered that on 31 October 1992 he was in a building occupied by UN observers¹⁵²² located in Stari Grad,¹⁵²³ when a large number of shells started falling on the whole city.¹⁵²⁴ One of these shells landed near Harding's position, injuring five civilians whom the witness subsequently treated.¹⁵²⁵ Harding believed that the shelling taking place in the city that day "by the sheer amount of fire ... could only have come from outside the city, that being the Bosnian Serb army."¹⁵²⁶ With respect to another instance of shelling, an UNPROFOR report indicated that UN representatives had recorded over 400 artillery and mortar impacts on a single day in 1993 in the general area of Stari Grad.¹⁵²⁷ The authors of the report concluded that "There is no doubt that civilians [in that area] were deliberately targeted ... [because of the] unusually high volume of fire [there], which would seem to have no military value."¹⁵²⁸ Another UNPROFOR report indicated that an 82 mm mortar shell had exploded, killing two persons and injuring 6 others, in 1993 in an area neighbouring Stari Grad.¹⁵²⁹ UN representatives conducted a crater analysis after the incident and determined that the shell had arrived from the northeast; they also concluded that it was possible "that the shell was shot from a

¹⁵²⁰ Menzilović, T. 6993.

¹⁵²¹ Harding, T. 4311.

¹⁵²² Harding, T. 4378.

¹⁵²³ P3644.CH (Map marked by Carl Harding).

¹⁵²⁴ Harding, T. 4378 and 4380.

¹⁵²⁵ Harding, T. 4378-80.

¹⁵²⁶ Harding, T. 4381.

¹⁵²⁷ P925 (UNPROFOR report – admitted under seal).

¹⁵²⁸ Id. The UNPROFOR report implied that the party responsible for this shelling was the SRK.

¹⁵²⁹ P1568 (UNPROFOR report – admitted under seal). Fragments from the 82 mm shell were recovered after the incident by an unspecified party. The report did not indicate whether the victims of the incident were civilians.

Bosnian position [of the ABiH]. On the contrary, it is also probably from a Serbian position [of the SRK], because of the superior nature of the mortar – 3,000 m.”¹⁵³⁰

436. Local residents of Sarajevo confirmed that shells landed in the general area of Stari Grad during the conflict, harming civilians. On 15 January 1993, Witness P, a resident of Stari Grad,¹⁵³¹ observed a shell landing on a brewery in an area neighbouring Stari Grad known as Bistrik,¹⁵³² killing 15 persons and seriously injuring two children.¹⁵³³ She testified that Stari Grad was shelled frequently from firing positions she saw at Mount Trebević and Borije,¹⁵³⁴ which is located northeast of Stari Grad.¹⁵³⁵ Around noon on 14 October 1993, Witness AF witnessed the shelling of one of his relatives' house in Vratnik, an area neighbouring Stari Grad,¹⁵³⁶ which seriously injured his wife.¹⁵³⁷ Witness AF added that Vratnik was shelled frequently from the direction of Borije.¹⁵³⁸ Fatima Zaimović, head nurse in the children's surgery department of Koševo hospital,¹⁵³⁹ remembered treating children who had been injured on 9 and 10 November 1993 during shelling incidents,¹⁵⁴⁰ one of which took place at “Otoka, in Nemanjina Street, in Vase Miskina Street.”¹⁵⁴¹ She testified about the effect of sniping and shelling of the hospital where they were treated: “They were terribly afraid of the shells and the shooting. And that was probably because they had experienced the wounding, and so when they heard those terrible sounds of shooting and explosions, this had a terrible effect on the children”.¹⁵⁴² Mesud Jusufović, who served as a firefighter in Sarajevo during the conflict,¹⁵⁴³ remembered distributing water in front of a fire brigade station in Vratnik in 1993 when “a shell fell and five or six people were injured” and a young woman who was a volunteer firefighter was killed.¹⁵⁴⁴

437. The Prosecution alleges shelling incident 5 in Schedule 2 of the Indictment as representative of indiscriminate or deliberate attacks on civilians in Stari Grad from SRK-controlled territory. This

¹⁵³⁰ Id.

¹⁵³¹ P3670 (Map marked by Witness P).

¹⁵³² Witness P, T. 5555-6; P3670 (Map marked by Witness P).

¹⁵³³ Witness P, T. 5555-6.

¹⁵³⁴ Witness P, T. 5539-40 and 5553-4; P3670 (Map marked by Witness P). Witness P added, without elaborating, that both areas were under the control of the SRK. Witness P, T. 5540.

¹⁵³⁵ Witness DP21, T. 15459-60 and 15478-15479; D1787 (Map marked by Witness DP21).

¹⁵³⁶ See for example P3644.DF (Map marked by David Fraser), P3704 (Map pre-marked by Richard Mole) and D1820 (Map marked by Mykhaylo Tsynchenko).

¹⁵³⁷ Witness AF, T. 5482-5. Witness AF's wife died as a result of her injuries, Witness AF, T. 5485. Witness AF's mother-in-law was also lightly injured during the shelling incident, Witness AF, T. 5484.

¹⁵³⁸ Witness AF, T. 5487.

¹⁵³⁹ Zaimović, T. 1842-3.

¹⁵⁴⁰ Zaimović, T. 1846-7.

¹⁵⁴¹ Zaimović, T. 1843-5. Vase Miskina street lies immediately south of Maršala Tita street and west of the area known as Basčaršija. See for example P3670 (Map marked by Witness P) and P3637 (Maps marked by Witness D – admitted under seal).

¹⁵⁴² Zaimović, T. 1853-5.

¹⁵⁴³ Jusufović, T. 6517-8.

¹⁵⁴⁴ Jusufović, T. 6533. Jusufović did not state where the shelling had come from.

incident distinguishes itself from other shelling incidents alleged by the Prosecution as representative of a campaign of fire on civilians because of the considerable amount of technical evidence adduced at trial, which the Trial Chamber considers in some detail.

(ii) Scheduled Shelling 5¹⁵⁴⁵

a. Description of the Incident

438. Witnesses testified that on 5 February 1994, around noon, many people were shopping in the Markale open-air market,¹⁵⁴⁶ when a single explosion shook the area.¹⁵⁴⁷ Ezrema Boškailo, a resident of Sarajevo,¹⁵⁴⁸ recounted that she was shopping in the centre of the market that day,¹⁵⁴⁹ when an explosion knocked her over.¹⁵⁵⁰ Residents and by-passers in the area also testified about hearing a loud explosion,¹⁵⁵¹ which injured and killed a number of people present at the market.¹⁵⁵² People present in the market transported victims of the blast to local hospitals,¹⁵⁵³ and the evacuation of the victims was completed by 12:40 hours.¹⁵⁵⁴

¹⁵⁴⁵ The Indictment alleges that on 4 February 1994 “a salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential area. The first landed to the front of a block of flats at Oslobodilaca Sarajeva Street hitting persons who were distributing and receiving humanitarian aid and children attending religious classes. The second and third landed among persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 such children, were wounded. The origin of fire was from VRS-held territory, approximately to the east”, Schedule 2 of the Indictment.

¹⁵⁴⁶ Bešić, T. 4795; P2279A (Video footage of Markale market taken on 5 and 6 February 1994); Markale market occupies a surface area of 30 by 35 metres and is bordered by Marsala Tita street to the south, a supermarket to the north and a 20 metre-high building (the “December 22” building) to the north-east (P2261 (UN Report)); testimony of people present on Saturday 5 February 1994 described the market as “very crowded” and “jam-packed” (P2261 (UN Report)); a passer-by put the minimum number of persons present in the market at 600 or more persons, Travljanin, T. 6357; see also Niaz, T. 9091; P3663.A (Witness statement of Hamdija Čavčić dated 16 November 1995); Witness AK-1, T. 5452; D1917 (Viličić Shelling Report).

¹⁵⁴⁷ Kolp, T. 8247; Witness P, T. 5542-3; Travljanin, T. 6359; P2261 (UN Report).

¹⁵⁴⁸ Boškailo, T. 5041-2.

¹⁵⁴⁹ Boškailo, T. 5044-5; she testified that the people at the market were ordinary people who came for a walk or for shopping (T. 5053).

¹⁵⁵⁰ Boškailo, T. 5044-5, 5047-8.

¹⁵⁵¹ Witness P, T. 5542-3; Hadžimuratović, T. 5075-8; Travljanin, T. 6352-4, 6358-9; D81; Niaz, T. 9091-2; Witness AK-1, T. 5444, 5452-3; P3666 (Map of Sarajevo marked by Witness AK-1).

¹⁵⁵² Boškailo, T. 5045-7; P2265A (Results of medical examination of Ezrema Boškailo dated 11 February 1994); Hadžimuratović, T. 5077-9; Travljanin, T. 6355-6; Niaz, T. 9093-4; Suljić, T. 6811, 6905-6; P2365.1 (Official Report); P2262 (Photographs taken of Markale market on 5 February 1994); P2279A (Video footage of Markale market taken on 5 and 6 February 1994); P2309.1 (Report of Markale market incident by Stari Grad Public Security Station dated 6 February 1994 “Sabljica Ballistic Report”).

¹⁵⁵³ Travljanin, T. 6356; P2261 (UN Report); Hadžimuratović, T. 5078-80; Boškailo, T. 5049-52;

¹⁵⁵⁴ P2261 (UN Report).

439. Edin Suljić, on behalf of a local investigative team set up to investigate the incident, and Afzaal Niaz, on behalf of the UN, visited the hospitals and the morgue where the victims of the blast were taken.¹⁵⁵⁵ They each counted over 60 persons killed and over 140 persons injured.¹⁵⁵⁶

b. Investigations of the Causes of the Incident

440. Investigations to determine the cause of the incident were conducted by local investigators and UN representatives. Representatives of the Bosnian Serb army denied that they were responsible for the explosion¹⁵⁵⁷ and threatened to end their cooperation with UNPROFOR and humanitarian organisations if a joint military commission was not formed “composed of representatives of UNPROFOR, the Army of the Republic of Srpska and the so-called Army of ABiH that will, not later than at 8:00 hours on February 06, 1994, under the protection of UNPROFOR, start to establish the ballistic and all other circumstances that caused the incident and discover the side that committed the crime”. That commission was not established. According to the VRS, “since the Moslem side has refused to participate in formation and work of the joint commission, the General Staff of the Army of the Republik of Sprska is certain that they planned and realized this horrible massacre”.¹⁵⁵⁸ According to Bukva, an SRK intelligence officer, the commission was not set up because the security of Serb officers would have not been

¹⁵⁵⁵ Hadžimuratović, T. 5105; P2309A.1 (Sabljica Ballistic Report); Gavrankapetanović, T. 12620, 12624-7; Suljić, T. 6812-8 and 6821-2; Niaz, T. 9096-8; P2365.1 (Official Report); P2261 (UN Report); Niaz, T. 9096-7; Hamill, T. 6105; P3737A (Koševo hospital records) and see also Gavrankapetanović, T. 12524-7) .

¹⁵⁵⁶ Suljić reported that 67 individuals had died and 142 had been injured by the explosion, P2365.1 (Official Report). The results of Suljić’s investigations formed the basis of another Criminal Report signed on 19 February 1994 by the Sarajevo police which identified the persons who had been killed or injured by the explosion and which was attached to the Official Report as an enclosure (P2366.1 (Enclosures to the Official Report); Suljić, T. 6823-6). There is a slight discrepancy between the Criminal Report dated 19 February 1994, which indicated that the explosion had injured 142 persons, and an earlier list compiled on 17 February 1994, also an enclosure to the Official Report (P2366.1), by the Sarajevo security forces on the basis of the work of Suljić, which identified 151 persons as having been injured. The list of victims in the Criminal Report dated 19 February 1994 (P2366.1) indicated a smaller number of injured persons because, in the course of its investigation, the Sarajevo security forces could not verify the identity or injuries of some individuals mentioned in the lists dated 17 February 1994 (Suljić, T. 6825). Niaz testified that at 17:15 hours on 5 February 1994, he had personally counted 61 people dead and 148 wounded by the explosion (Niaz, T. 9097-8; P2261 (UN Report); other UN representatives stated that the blast killed between 25 to 61 persons and injured anywhere from 60 to 148 others (Hamill, T. 6104; P2261 (UN Report). The UN reported that the incident had killed 66 persons and wounded 197 others based on information provided by international news agencies and the UNPROFOR, D66 (UN report of military activity in Sarajevo). Many of the victims of the blast appeared to suffer from wounds caused by shell fragments. P2261 (UN Report). Suljić testified that victims were mainly aged persons (Suljić, T. 6814; see P2366 (enclosures to the Official Report), showing a breakdown of injured persons by sex and age, almost half of the injured persons were over 55 years old) and Niaz emphasised that there was a possibility that off-duty soldiers wearing civilian clothes were present at the market since the day of the incident was a rotation day, during which soldiers came from the front-line to exchange cigarettes against food (Niaz, T. 9157).

¹⁵⁵⁷ Bukva, T. 18478. See also D138.1 (English translation of VRS letter dated 5 February 1994).

¹⁵⁵⁸ D137.1 (English translation of VRS letter to UNPROFOR dated 5 February 1994) and D138.1 (English translation of VRS letter dated 5 February 1994).

guaranteed.¹⁵⁵⁹ The Defence solicited three shelling experts to review the results of the investigations conducted by the local and UN investigative teams.¹⁵⁶⁰

i. Local Investigative Team

441. An investigating magistrate led a local investigative team that arrived on the market at 13:20 hours on the day of the incident.¹⁵⁶¹ The investigations lasted approximately a week,¹⁵⁶² and resulted in a comprehensive official report produced on 17 February 1994 and incorporating separate reports by expert members, including ballistic experts Mirza Sabljica, Hamdija Čavčić and Berko Zečević.¹⁵⁶³

Sabljica Ballistic Report

442. Mirza Sabljica and Hamdija Čavčić investigated the cause of the explosion, the direction of origin, and the calibre of the device.¹⁵⁶⁴ In their report dated 8 February 1994 (“Sabljica Ballistic Report”),¹⁵⁶⁵ they described the crater found on 5 February 1994 and its exact location in the market.¹⁵⁶⁶ They measured the crater to be 9 centimetres deep.¹⁵⁶⁷ They also described that around the crater, the damage done to the asphalt formed an ellipse of 56 centimetres by 26 centimetres,¹⁵⁶⁸

¹⁵⁵⁹ Bukva, T. 18422.

¹⁵⁶⁰ These Defence experts (Prof. Dr. Aleksandar Stamatović,† Prof. Dr. Janko Viličić and Dr. Mirosljub Vukašinović) reviewed, among other things, official reports and notes of the police and judicial authorities of the Republic of Bosnia-Herzegovina, statements made by witnesses to representatives of this Tribunal, photographs and video footage of the site of the incident, and evidence introduced into the Trial Record. They also conducted an on-site visit, Viličić, T. 20185; D1917 (Viličić Shelling Report). They completed their analysis in June 2002, submitted their report to the Defence in September 2002, Viličić, T. 20185.

¹⁵⁶¹ Suljić, T. 6811; Sabljica, T. 5122; P2365.1 (Official Report); P3663.A (Witness statement of Čavčić dated 16 November 1995).

¹⁵⁶² On-the-scene investigations were carried out on 5 and 6 February 1994. Identification of persons injured or killed the day of the explosion started on 6 February 1994, contacts with the UN police were established on 7 and 8 February 1994 (victims had been admitted into the UN hospital) and interviews with victims and eye-witnesses of the incidents were carried out on 9, 10 and 11 February 1994.

¹⁵⁶³ Two parts of that official report - a description of the events of 5 February 1994 in Markale market and the Official Report from the Security Services Centre of Sarajevo signed by Suljić and two other criminal investigators- were tendered into evidence, P2365.1 (Official Report). The Official Report will not be considered systematically in this discussion of the incident since it repeats, without further elaboration information found in the Sabljica and Zečević Ballistic Reports. Where appropriate, reference to this Official Report will be made. Four enclosures to that Official Report (the list of persons killed at Markale market, the list of persons injured at Markale market, a schema of the breakdown of injured persons by sex and age and the criminal report dated 19 February 1994) were also tendered into evidence, P2366 (Enclosures to the Official Report).

¹⁵⁶⁴ Sabljica, T. 5331.

¹⁵⁶⁵ P2309.A1 (Sabljica Ballistic Report).

¹⁵⁶⁶ P2309A.1 (Sabljica Ballistic Report); P2365.1 (Official Report). John Hamill, one of the technical advisers to the UNPROFOR investigation team, confirmed that the crater lay “5 [metres] from the nearest small building to the north.” P2261 (UN Report). See also D73 (Video of Markale market dated 6 February 1994) and P2279A (Video footage of Markale market taken on 5 and 6 February 1994) for the general position of the central crater in relation to the rest of Markale market.

¹⁵⁶⁷ Sabljica, T. 5127; P2309A.1 (Sabljica Ballistic Report).

¹⁵⁶⁸ P2309A.1 (Sabljica Ballistic Report).

and that inside the crater, a tail-fin was embedded in the ground.¹⁵⁶⁹ After the area around the tail-fin was cleaned, the authors of the Sabljica Ballistic Report drew a line between the two most distant points on the ellipse and determined that the projectile had arrived from an east of north bearing of 18 degrees “with [+/-] 5 [degree] tolerance”.¹⁵⁷⁰ UN representatives arrived, extracted the tail-fin which could be seen in the video P2279A deeply embedded into the ground, and gave it to the local investigation team.¹⁵⁷¹ Shell fragments or shrapnel were also found at the market and were given to the local authorities so that they could be photographed and analyzed.¹⁵⁷² Sabljica testified that based on the tail-fin and shrapnel recovered on the site, Čavčić and himself concluded that only a 120 mm mortar shell could have caused the explosion at Markale market.¹⁵⁷³ In view of the depth of the crater, the damage caused by the shrapnel to the surroundings, and the presence of the tail-fin embedded into the ground of the market, they also determined that the 120 mm mortar shell had exploded upon contact with the asphalt surface of the market.¹⁵⁷⁴

Zečević Ballistic Report

443. On 6 February 1994, other experts on artillery and explosives joined the local team to determine the origin of fire.¹⁵⁷⁵ On arrival at the market at 12:30 hours,¹⁵⁷⁶ the market had been cleaned of debris.¹⁵⁷⁷ One of these experts, Berko Zečević, confirmed that their findings on the origin of fire appear in a report dated 7 February 1994 (“Zečević Ballistic Report”).¹⁵⁷⁸ This report also concludes that the incident “was caused by a 120mm M62P3 mortar projectile” of 12.6 kilogrammes, which had exploded on impact with the ground and had come from a northerly direction with a bearing of approximately¹⁵⁷⁹ 18 degrees.¹⁵⁸⁰ Zečević testified that the ground at the site of the explosion consisted of a thin layer of asphalt on top of a mixture of sand and “small rocks, gravel, small stones”.¹⁵⁸¹ The authors of the Zečević Ballistic Report estimated, by

¹⁵⁶⁹ P2309A.1 (Sabljica Ballistic Report).

¹⁵⁷⁰ Sabljica, T. 5125, 5127, 5131-6 and 5142-5; P2309A.1 (Sabljica Ballistic Report); P2365.1 (Official Report); P2262 (Photographs taken of Markale market on 5 February 1994); P2279A (Video footage of Markale market taken on 5 and 6 February 1994). The experts reported that their measurement of the angle had a margin of error of plus or minus 5 degrees, P2309A.1 (Sabljica Ballistic Report).

¹⁵⁷¹ Suljić, T. 6898; Bešić, T. 4797, 4806, 4917, 4980-1; Sabljica, T. 5338; P3663.A (Witness statement of Hamdija Čavčić dated 16 November 1995).

¹⁵⁷² Bešić, T. 4810, 4828-30, 4911-2; P3663.A (Witness statement of Hamdija Čavčić dated 16 November 1995); P2309A.1 (Sabljica Ballistic Report).

¹⁵⁷³ Sabljica, T. 5146; P2309A.1 (Sabljica Ballistic Report).

¹⁵⁷⁴ Sabljica, T. 5146; P2365.1 (Official Report).

¹⁵⁷⁵ Sabljica, T. 5330-1; Zečević, T.10319-21. From 1992 to 1993, Dr. Berko Zečević worked in the department of research and development for the ABiH, Zečević, T. 10312. The Trial Record does not disclose his occupation at the time of the explosion at Markale market; P3276.1.1 (English Translation of Zečević Ballistic Report).

¹⁵⁷⁶ P2365.1 (Official Report).

¹⁵⁷⁷ P2365.1 (Official Report), on 6 February 1994, the team of experts searched for additional shell fragments, which they found in the nearby supermarket and which they gave to the explosive experts for analysis.

¹⁵⁷⁸ P3276.1 (Zečević Ballistic Report); Sabljica, T. 5330-1.

¹⁵⁷⁹ With an accuracy of that measurement of +/- 5 degrees.

¹⁵⁸⁰ P3276.1 (Zečević Ballistic Report), conclusions 1, 4, 5 and 6.

¹⁵⁸¹ Zečević, T. 10330.

examining video footage and photographs of the market place taken by local authorities, that the part of the tail-fin where the cartridge of the basic charge could be seen formed a 20-30 degree angle with the surface,¹⁵⁸² and that, starting from the upper layer of the surface of the asphalt, the tail-fin had penetrated the ground to a depth of between 200 to 250 mm, depending on which side of the hole was measured.¹⁵⁸³ Zečević and his colleagues proceeded to “the reconstruction of the position of the stabiliser [which] allowed the angle of its front to be measured in relation to the surface, which was approximately 30° so the mortar projectile formed an approximate 60° angle with the surface” with a margin of error of 5 degrees.¹⁵⁸⁴ They observed that “the way the fragments were dispersed is typical for the explosion of a projectile with an angle of descent of 60° with the surface”.¹⁵⁸⁵ Zečević testified that this approximate angle was correct because if it had been lower, the mortar shell would have collided in flight with the roof of a kiosk located near the shell’s point of impact.¹⁵⁸⁶ Based on the angle determined by Zečević and his colleagues (55-65 degrees) and on the firing tables for 120 mm M6253 mortar shells, they determined the possible firing ranges of the mortar shell to have been between 1,640 metres (if fired with the initial (zero) charge and with one additional charge) and 6,546 metres (on 0+6 charges) and the “difference in elevation between the potential firing location and the centre of the explosion is 400 metres”.¹⁵⁸⁷ From this determination, the experts concluded that the mortar shell could have been fired from six locations along the northeastern direction they had determined.¹⁵⁸⁸ A cone drawn on a map attached to the Zečević Ballistic Report shows the possible origins of fire, including the area of Sedrenik at about two kilometres from Markale market, the SRK-controlled territory and higher up in the hills of the area of Mrkovići at about four kilometres from the market.¹⁵⁸⁹ The report situates one of the six possible firing locations in ABiH-controlled territory and the other five in SRK-controlled territory.¹⁵⁹⁰

444. Zečević refined this former determination during his testimony. He testified that, several years after the incident, he examined a report by Dr. Miroljub Vukasinović of the Military Institute of Belgrade, according to whom the tail-fin of a 120 mm mortar shell begins to lodge itself into the

¹⁵⁸² P3276.1 (Zečević Ballistic Report), p. 5.

¹⁵⁸³ Zečević, T. 10331.

¹⁵⁸⁴ Zečević, T. 10323, 10339-40; P3276.1 (Zečević Ballistic Report), p. 5. Zečević and his colleagues felt confident that the device which they were presented with was indeed the tail-fin originally recovered because, after “[using his] finger to remove the surplus earth that had fallen [inside the crater, it was possible,] without any effort or without using any kind of force, to place the [tail-fin in.]”, Zečević, T. 10324-5, 10345-6.

¹⁵⁸⁵ Zečević, T. 10323, 10339-40; P3276.1 (Zečević Ballistic Report), p. 5. Zečević and his colleagues felt confident that the device which they were presented with was indeed the tail-fin originally recovered because, after “[using his] finger to remove the surplus earth that had fallen [inside the crater, it was possible,] without any effort or without using any kind of force, to place the [tail-fin in.]”, Zečević, T. 10324-5, 10345-6.

¹⁵⁸⁶ Zečević, T. 10347-8.

¹⁵⁸⁷ Zečević, T. 10301; P3276.1 (Zečević Ballistic Report). Charges are increments of propellant that can be added to the base of the shell to give it a longer firing range, Hamill, T. 6074; Witness AD, T. 10590; Witness DP20, T. 15642; Knežević, T. 19025-6; Gray, T. 19776.

¹⁵⁸⁸ P3276.1 (Zečević Ballistic Report).

¹⁵⁸⁹ P3276 (BCS version of Zečević Ballistic Report), p. ERN 02115548.

ground after an explosion if the minimum impact speed of the shell is 154 metres per second (“m/s”), the speed necessary for the tail-fin to overcome the pushback effect of the detonation.¹⁵⁹¹ Zečević compared this with measures made by American scientists, according to whom the minimum impact velocity of the shell must be approximately 170 metres per second, plus or minus 20 metres per second.¹⁵⁹² Zečević calculated that for a tail-fin to be embedded into the ground to a depth of 250 mm, the tail-fin must have a residual speed after explosion of approximately 60 metres per second, plus or minus 10 metres per second.¹⁵⁹³ He reasoned, using the minimum values, that for a tail-fin to be embedded into the ground at a depth of 250 mm, its shell must have had a minimum impact speed of approximately 200 metres per second (150 + 50 metres per second).¹⁵⁹⁴ Zečević then took into account that a 120 mm M62P3 mortar shell,¹⁵⁹⁵ with one increment charge has an impact velocity of 110-120 metres per second depending on the angle of descent of the shell¹⁵⁹⁶ while if the shell is launched with 6 increment charges it has an *initial* velocity of 310 metres per second, the impact velocity being lesser.¹⁵⁹⁷ Zečević concluded that the 120 mm mortar shell, in order to gain the required speed of 200 metres per second or more on impact, would have had to be fired with a minimum of four increment charges.¹⁵⁹⁸ Excluding firing at 0+1, 0+2, or 0+3 increment charges, Zečević reviewed the conclusions of the Zečević Ballistic Report and testified that the firing range was between 4,900 and 6,000 metres from the market.¹⁵⁹⁹

ii. UN Investigative Teams

445. The UNMO¹⁶⁰⁰ and the members of the UN Frebat [French Battalion] 4 team who arrived at the site of the incident on 5 February 1994¹⁶⁰¹ observed that the crater showed no signs of having

¹⁵⁹⁰ P3276.1 (Zečević Ballistic Report).

¹⁵⁹¹ Zečević, T. 10296-8; D1917 (Viličić Shelling Report).

¹⁵⁹² Zečević “used equations obtained from Sukas and Walters”, T. 10306.

¹⁵⁹³ Zečević, T. 10299-10300, 10306, 10353; Zečević used formulas established by a French scientist, Saterline, T. 10306-7.

¹⁵⁹⁴ Zečević, T. 10302.

¹⁵⁹⁵ Zečević, T. 10299; the more charges a 120 mm mortar shell carries, the greater is its speed upon impact, Zečević, T. 10293-4, 10300.

¹⁵⁹⁶ Zečević, T. 10302; the initial speed for a shell with one increment charge is 140 metres per second, T. 10294.

¹⁵⁹⁷ Zečević, T. 10294-6.

¹⁵⁹⁸ Zečević, T. 10301 – 10302.

¹⁵⁹⁹ Zečević, T. 10301.

¹⁶⁰⁰ At least two of them arrived at Markale market almost immediately after the explosion, Kolp, T. 8247-8; P2261 (UN Report).

¹⁶⁰¹ The UN Frebat 4 team reached the market ten to fifteen minutes after the arrival of the local investigation team, Bešić, T. 4906; Sabljica, T. 5338. This team was ordered to investigate the incident by General Soubirou, commander of United Nations forces at Sector Sarajevo, because of the large number of victims caused by the explosion, Rose, T. 10196-9; these representatives included the French army officer Jean-Louis Segade (P2261, UN Report). One of the reports written by the authorities of Sarajevo referred to a United Nations investigator named “Jean Luis SEGADI”, probably a misspelling of Jean-Louis Segade’s name as written in the UNPROFOR investigation report, P2365.1 (Official Report).

been tampered with.¹⁶⁰² The UN team “chip[ped] away at the asphalt lip around the mouth of the crater, and enlarge[d] the actual hole formed by the penetration of the tail-fin”¹⁶⁰³ to extract the tail-fin from the ground with the help of a knife.¹⁶⁰⁴ The UN team determined that the tail-fin belonged to a 120 mm mortar shell¹⁶⁰⁵ and turned it over to Bešić, one of the local criminal investigators.¹⁶⁰⁶ The UN team conducted a first analysis of the crater at around 14:00 hours and determined a direction of the shell to be of a bearing of 620 mils (35 degrees).¹⁶⁰⁷ At 15:00 hours, another UN staff member, Captain Verdy, conducted a second crater analysis. As it transpired later, he made a mathematical error which led to flawed results.¹⁶⁰⁸ At 16:30 hours, another UN staff member, Major John Russell, conducted a third crater analysis, during which he measured the direction of the shell’s path to have been 450 mils (25 degrees),¹⁶⁰⁹ and its angle of descent to be 1,200-1,300 mils (67 to 73 degrees).¹⁶¹⁰

446. On 11 February 1994, another UN team was formed “To be complementary to earlier investigations conducted by the [United Nations], and [...] be confined to the crater analysis and related technical aspects of the explosion”.¹⁶¹¹ On 11 and 12 February 1994, three of these representatives, Major Sahaisar Khan, Commandant John Hamill, and Captain Jose Grande, each conducted an analysis of the crater at the market and measured the incoming direction of the shell to have been between 320 to 420 mils (18 to 23.6 degrees).¹⁶¹² On 11 February 1994, Khan and Hamill determined its angle of descent: Khan “worked out [an approximate angle of descent] from the approximate location of the [tail-fin] in the crater” to be 1,000-1,100 mils (56 to 62 degrees) and stated that these measures were a guide-line because the analysis took place six days after the

¹⁶⁰² P2261 (UN Report).

¹⁶⁰³ P2261 (UN Report).

¹⁶⁰⁴ Suljić, T. 6897-8; P3663.A (Witness statement of Hamdija Čavčić dated 16 November 1995); P2261 (UN Report); P2365.1 (Official Report). There is some uncertainty as to which member of the United Nations investigation team actually extracted the tail-fin. A report by the authorities of Sarajevo stated that Jean-Louis Segade performed the extraction, but the UN Report annexed an interview of the same Jean-Louis Segade, in which he stated that he had merely watched as members of his team removed the tail-fin from the ground of the market. P2635.1 (Official report of Sarajevo authorities dated 17 February 1994); P2261 (UN Report).

¹⁶⁰⁵ P2261 (UN Report).

¹⁶⁰⁶ Bešić, T. 4917; Sabljica, T. 5338.

¹⁶⁰⁷ P2261 (UN Report), annex C and pp. 10/46, 12/46; 1 degree equals 17.78 mils.

¹⁶⁰⁸ Captain Verdy had estimated the vertical angle from the crater to the top of an adjacent building along the bearing he had calculated, P2261 (UN Report).

¹⁶⁰⁹ P2261 (UN Report).

¹⁶¹⁰ P2261 (UN Report). The evidence in the Trial Record does not disclose the method used by Major John Russell to measure this angle of descent; Major John Russell also stated in the UN Report that there was a chisel and a red pipe wrench within one metre of the crater.

¹⁶¹¹ The deputy force commander of UNPROFOR in Zagreb ordered a follow-up investigation of the explosion, Hamill, T. 6077; Rose, T. 10196; Over three days, the team conducted a total of seven crater analyses at Markale market, reviewed reports produced after the explosion and interviewed UN personnel and liaison officers of the SRK and the ABiH, P2261 (UN Report).

¹⁶¹² P2261 (UN Report).

explosion.¹⁶¹³ Hamill, placing a stick inside the part of the crater where the tail-fin had been embedded and using a standard artillery protractor and a plumb line, measured the angle formed with the ground to be 950-1,100 mils (53 to 62 degrees) and stated that “it is not possible to be more accurate” because the analysis took place days after the explosion.¹⁶¹⁴ Grande, who undertook his analysis of the crater after Khan and Hamill, did not attempt to measure the angle of descent of the shell because previous investigation teams had told him that the crater had been excavated and slightly enlarged.¹⁶¹⁵

447. On 13 February 1994, another UN staff member, Chief-Sergeant Dubant, examined the crater, which he described as “clean and very sharply defined”.¹⁶¹⁶ He reported that the crater formed an ellipse, one side of it measuring approximately 25 centimetres. He measured the crater to be 11 centimetres deep.¹⁶¹⁷ Dubant did not estimate the angle at which the shell had landed because “this action became impossible since the [crater] had been changed and, more particularly, redug in order to extract the [tail-fin]”.¹⁶¹⁸

448. To supplement their inquiry, the UN investigators considered the accounts of victims, of UN representatives present in Sarajevo on the day of the explosion, and information provided to them by the SRK and the ABiH concerning military equipment and positions of units.¹⁶¹⁹ The report of the UN investigations was submitted on 15 February 1994 (the “UN Report”¹⁶²⁰). The authors of the report concluded that “the explosion occurred between 12:10 and 12:15 hours on 5 February 1994 into an exceptionally crowded Sarajevo market”, that the “explosion was caused by a conventional factory-produced 120mm high explosive mortar bomb”, which “detonated upon

¹⁶¹³ P2261 (UN Report), pp. 10/46, 16/46. In his written summary of his crater analysis, Major Sahaisar Khan did not elaborate on the manner in which he determined this angle of descent. On 12 February 1994, the same three UN representatives returned to the market and each conducted one additional crater analysis and all three measured again the direction of fire but, on this second day of their investigation, they did not attempt to measure the angle of descent of the projectile, P2261 (UN Report). In a memorandum summarising the results of his two crater analyses and annexed to the UN Report, Commandant John Hamill stated, without elaborating, that “the crater was disturbed between [his] first and second analyses, making the measurement impossible on the second occasion,” P2261 (UN Report). Commandant John Hamill explained that there had been “a change in [the United Nations] team leadership between the two periods, between the morning of the 11th and the morning of the 12th, and the new team leader decided that he wanted it done again so we went and did [crater analyses] again”, P2261.1 (UN Report) and T. 6087.

¹⁶¹⁴ Hamill, T. 6087-8; P2261 (UN Report), p. 10/46, 18/46.

¹⁶¹⁵ P2261 (UN Report).

¹⁶¹⁶ P2261.2 (Translation of Sergeant Dubant’s analysis of the crater at Markale market). The original version of P2261.2 was in French and was enclosed as an annex to P2261 (UN Report).

¹⁶¹⁷ P2261 (UN Report). The imprecision in the reference to the measurement of the shorter axis of the ellipse arises from the fact that in the copy of Chief-Sergeant’s report that was included in P2261, the unit digit indicated for the measurement of this axis is illegible, P2261 (Translation of Sergeant Dubant’s analysis of the Markale market incident). See also P2261.2 (Translation of Sergeant Dubant’s analysis of the crater at Markale market).

¹⁶¹⁸ P2261.2 (Translation of Sergeant Dubant’s analysis of the crater at Markale market).

¹⁶¹⁹ P2261 (UN Report). The UN team interviewed victims to consider whether the number of casualties matched their findings that a 120mm shell had exploded in Markale market.

¹⁶²⁰ P2261 (UN Report).

impact with the ground”.¹⁶²¹ Based on their crater analyses, the authors of the UN Report established that the incoming direction of the 120 mm mortar shell “was between 330 to 420 mils” (18.5 to 23.6 degrees).¹⁶²² Hamill testified that that bearing was consistent with the bearing found in the Sabljica Ballistic Report.¹⁶²³

449. In relation to the origin of fire, the authors of the UN Report noted that the methodologies used by the experts, at the exception of theses of the Frebat 4 team and Verdy, were conventional.¹⁶²⁴ In its conclusions, the UN Report endorsed the range of the shell’s angle of descent on 11 February 1994 found by Khan and Hamill of 950-1100 mils (53-62 degrees),¹⁶²⁵ and emphasised that “To assure accuracy, the angle must be measured when the tail-fin and fuse are in the ground, and this was not done on 5 Feb[ruary 1994].”¹⁶²⁶ The measurement of nearby buildings allowed the authors of the UN Report to conclude that the angle of descent could not have been less than 870 mils (49,15 degrees), allowing the conclusion “that the range to the point of origin of fire based on the full spectrum of trajectories in the firing tables, lies between 300 and 5,551 m from the point of impact”.¹⁶²⁷ The authors of the UN Report concluded that “Accordingly it is assessed that the results measured on 11 Feb[ruary 1994 by Khan and Hamill] are not sufficiently accurate to be used as a basis for a finding” and “to pinpoint a single distance to the source of fire” because “the distance of fire clearly overlaps each side of the confrontation line by 2,000 metres. Both parties are known to have 120mm mortars, and the bombs to go along with them. [...] There is insufficient physical evidence to prove that one party or the other fired the mortar bomb. The mortar bomb could have been fired by either side”.¹⁶²⁸

iii. Expert Report of the Defence

¹⁶²¹ P2261 (UN Report), p. 4/46. The UN team members explained that only the explosion of a mortar shell could have caused the crater found at the market. The inspection of the tail-fin recovered after the incident confirmed this finding. They also explained that they based their findings that the 120 mm mortar shell had exploded upon hitting the ground of the market on the shape of the crater left by the explosion, the type of damage sustained by stalls near the crater and the shape of scrapes left on the asphalt surface of the market, P2261 (UN Report).

¹⁶²² P2261 (UN Report). Hamill testified that a bearing can be expressed in terms of mils instead of degrees, with one degree corresponding approximately to 17.78 mils, Hamill, T. 6088-9. A bearing of about 350 mils from the north therefore corresponds approximately to a bearing of 18 degrees from the north, Hamill, T. 6098-9. UTM stands for Universal Transverse Mercator.

¹⁶²³ Hamill, T. 6098-9. Michael Rose, the British general who commanded UNPROFOR forces in Bosnia-Herzegovina from January 1994 to January 1995, confirmed that United Nations investigators determined that the mortar shell had been fired from a northeasternly direction, Rose, T. 10196.

¹⁶²⁴ P2261 (UN Report), p. 10/46.

¹⁶²⁵ P2261 (UN Report), p. 10/46.

¹⁶²⁶ P2261 (UN Report), p. 12/46.

¹⁶²⁷ P2261 (UN Report), p. 13/46.

¹⁶²⁸ P2261.1 (UN Report), p. 4/46; Hamill testified that the scope of the investigation was confined by the terms of reference that was given to the team, to the crater analysis and related technical aspects. The finding that there was insufficient evidence to prove which party fired was based on the investigations as confined by the terms of reference, Hamill, T. 6083-4 and P2261 (UN Report), p. 2/46; Rose also confirmed that the investigations in this regard did not go beyond a technical examination of the crater impact site Rose, T.10199.

450. The Viličić Shelling Report rejected the conclusions of the Sabljica Ballistic Report, the Zečević Ballistic Report, and the UN Report that the device which exploded at the market was a 120 mm mortar shell.¹⁶²⁹ The authors of the Viličić Shelling Report submitted that the pictures of shrapnel allegedly recovered after the incident did not resemble the remnants from a single type of explosive device and that the wounds sustained by the victims did not appear to have been caused by a 120 mm shell.¹⁶³⁰

451. Viličić testified that reinserting the tailfin into the ground, as Zečević did, was an unreliable method to measure the angle of descent.¹⁶³¹ However, using the measurements by Sabljica of the elliptical imprints left around the crater and having examined the photographs of it, Viličić trigonometrically calculated the angle of descent of the shell to be 62.5° for a 120 mm shell when fired at a 0+1 charge and 55.6° when fired at a 0+6 charge. The Trial Chamber notes that this is within the range measured by Zečević (55-65°).¹⁶³²

452. The authors of the Viličić Shelling Report submitted that it was technically impossible for the tail-fin of a 120 mm mortar shell to be embedded to a depth of 200 to 250 mm in the ground of Markale market, as claimed by the Zečević Ballistic Report.¹⁶³³ They computed that for a tail-fin to overcome the pushback effect and begin to lodge itself in the ground, the shell must travel at a speed of at least 154 metres per second before it detonates.¹⁶³⁴ Using equations developed by the Sandia National Laboratories in the U.S. in 1997 and 1998, they calculated that for the tail-fin to embed itself into concrete to a depth of 180 mm, the tail-fin must achieve a minimal speed of 374.8 metres per second.¹⁶³⁵ They computed that the tail-fin recovered at Markale market had to achieve a speed of at least 154 + 374.8 or 528.8 metres per second prior to impact, to both overcome the force of the explosion and embed itself to a depth of 180 mm in the ground, and stated that no known

¹⁶²⁹ The authors of the Report argue that there is no conclusive evidence that the tail-fin of a 120 mm mortar shell had indeed been recovered after the incident, D1917 (Viličić Shelling Report).

¹⁶³⁰ D1917 (Viličić Shelling Report); Viličić, T. 20314-5 concerning video footage of this shrapnel. The Defence experts submit that in the absence of a visual inspection supplemented by a chemical and metallurgical analysis of these fragments, no conclusive determination can be made that these remnants originated from a 120 mm mortar shell. With the exception of a tail-fin, no such fragments were tendered into evidence and the authors of the Viličić Shelling Report were not able to conduct such a detailed analysis, Acquittal Motion, para. 128; Defence Final Trial Brief, para. 626-30. One of the authors of the Shelling Report, Viličić, testified that reports that some of the victims of the explosion at the market had been injured in the lower limbs, are inconsistent with the manner in which fragments from an exploded mortar shell travel in the air, Viličić, T. 20317-8. He suggested that such injuries to the lower limbs were characteristic of the explosion of a special type of concave shell used in the JNA rather than of a mortar shell, Viličić, T. 20318.

¹⁶³¹ Viličić, T. 20268 and 20288-9.

¹⁶³² D1917 (Viličić Shelling Report); Viličić, T. 20560-1.

¹⁶³³ D1917 (Viličić Shelling Report).

¹⁶³⁴ Viličić, T. 20471; D1917 (Viličić Shelling Report).

¹⁶³⁵ D1917 (Viličić Shelling Report). To achieve a depth of penetration of 250 mm in concrete terrain of this type, the required minimal speed increases to 508.7 metres per second when there is no detonation, D1917 (Viličić Shelling Report).

mortar could attain such a speed.¹⁶³⁶ Having arrived at this conclusion, they did not proceed to determine the direction or range of fire of the shell.¹⁶³⁷

453. During his testimony, Viličić admitted that the calculations provided in the Viličić Shelling Report were made on the assumption that the ground of the market consisted entirely of concrete.¹⁶³⁸ He testified that if, instead, the ground consisted of a thin layer of asphalt resting on gravel stone,¹⁶³⁹ and using tables based on the “Berezansky” mathematical formula,¹⁶⁴⁰ the tail-fin of a 120 mm mortar shell must achieve a speed of 114.4 metres per second to penetrate the gravel stone to a depth of 200 mm plus 154 metres per second to overcome the pushback effect of the detonation (=268.8 m/s).¹⁶⁴¹ Viličić testified that if a mortar shell is fired from an altitude 500 metres above its intended target, it can achieve an impact velocity of over 260 metres per second.¹⁶⁴²

c. Non-technical evidence concerning the source of fire

454. Witness AF, a resident of Sarajevo, testified that on 5 February 1994 at about 12:00-12:30 hours, he was in the garden of his mother’s house located approximately 200 metres below Špicasta Stijena, an SRK position northeast of Sarajevo, when he heard the sound of a heavy weapon like a mortar being fired from behind Špicata Stijena, at Mrkovići,¹⁶⁴³ and then a detonation in the city.¹⁶⁴⁴ At the time of the incident, Witness AK-1 was at her house in Sedrenik, located approximately 500 metres south to the confrontation lines, when she heard firing from the direction of Mrkovići.¹⁶⁴⁵ Suljić testified that after it was determined that the shell was launched from the direction north north-east, he conducted interviews with persons living along the flight path of the shell and these

¹⁶³⁶ D1917 (Viličić Shelling Report), they observed that no known mortar shell can achieve such a high speed in flight and therefore concluded that the claim made in the Zečević Ballistic Report that the tail-fin of a 120 mm mortar shell had been found embedded in the ground of Markale market at an even greater depth of 200 to 250 mm market was technically impossible.

¹⁶³⁷ D1917 (Viličić Shelling Report).

¹⁶³⁸ Viličić, T. 20449; D1917 (Viličić Shelling Report).

¹⁶³⁹ Viličić, T. 20466. See as suggested during the testimony of Zečević, Zečević, T. 10330.

¹⁶⁴⁰ The “Berezansky” formula was developed at the beginning of the 20th century and produced exact result, more favourable to the case of the Prosecution, Viličić, T. 20215-17. Viličić had produced calculations using this formula in order to confirm the conclusions of the Viličić Shelling Report reached on the basis of the Sandia National Laboratories equations, Viličić, T. 20271-2. See also C8 (Table of the speed of the tail-fin of a 120 mm mortar shell required to penetrate different materials according to the Berezansky formula) and C9 (Table of the speed of the tail-fin of a 120 mm mortar shell required to penetrate different materials according to the Berezansky formula).

¹⁶⁴¹ Viličić, T. 20475-6 and 20479-80. Viličić implied during his testimony that such a mixed terrain would be harder to penetrate, requiring a higher speed of penetration than for a terrain consisting entirely of gravel stone, Viličić, T. 20476.

¹⁶⁴² Viličić, T. 20480-1; C5 (Chart showing the increase in speed of a mortar shell when fired from a higher position than its target).

¹⁶⁴³ Witness AF, T. 5524, 5499-5505.

¹⁶⁴⁴ Witness AF, T. 5524, 5499-5505.

¹⁶⁴⁵ Witness AK-1, T. 5444, 5446-7 and 5450-1.

interviewees confirmed that the shell was fired from the direction of Mrkovići.¹⁶⁴⁶ Weapon specialists indicated that the noise made by the firing of a mortar can be used to determine the approximate direction of fire.¹⁶⁴⁷ Hamill testified that an observer hearing the sound of a mortar being fired “will not [be able] to determine a location, just [a] direction.”¹⁶⁴⁸

455. The Trial Chamber notes that a close examination of the confrontation lines marked on maps in evidence are consistent as to the position of the confrontation lines.¹⁶⁴⁹ The distance between Markale market and the SRK confrontation line to the north-north east at the time of the incident was approximately 2,600 metres.¹⁶⁵⁰ The distance from Markale market to the ABiH confrontation line along the alleged direction of the shell’s course was in the order of 2,300 metres at the time of the incident.¹⁶⁵¹ A line drawn from the site of the incident running due north-north east would cut through the western tip of Sedrenik, emerge into the SRK-controlled territory through the eastern tip of Pašino Brdo, and cut through Mrkovići hill.¹⁶⁵²

d. Presence of Military Targets in the Area of Markale Market

456. Vahid Karavelić, commander of the 1st ABiH Corps, marked a map where the nearest location of a brigade headquarters appeared approximately 300 metres away from the market.¹⁶⁵³ Jacques Kolp, the UNPROFOR liaison officer at the time of the incident, testified that there was no particular military objective in the area of the Markale market.¹⁶⁵⁴ Bešić and Boškailo both testified that the “December 22” building adjacent to the market housed a factory which manufactured and sold uniforms for the army or police. Bešić emphasised though that at the time of the incident uniforms were not being manufactured there because there was no electricity and Boškailo testified that a friend of hers worked at the shop of the “December 22” building.¹⁶⁵⁵

¹⁶⁴⁶ Suljić, T. 6903.

¹⁶⁴⁷ Hamill, T. 6193-4; Kovacs, T. 11482-4; P3734 (Shelling report of Richard Higgs dated 12 February 2002).

¹⁶⁴⁸ Hamill, T. 6193-4.

¹⁶⁴⁹ The Trial Chamber used in particular the maps adduced into evidence by the Defence (D1790 to D1796) to estimate the positions of the confrontation lines in the estimated direction of fire of the shell.

¹⁶⁵⁰ P3644.RH (map of Sarajevo); maps were often used and marked by witnesses and although no scale was indicated on them, by comparison of the different maps the Trial Chamber was able to deduce the scale of these maps. The Trial Chamber agrees with the defence that the map, admitted into evidence under C2, has a scale of 1:50.000. The Chamber further verified its understanding of the scale of the maps on the basis of the latitudinal scale indicated on them, where it is of common knowledge that one degree of latitude equals approximately 111 kilometres, a minute being 1/60th of one degree.

¹⁶⁵¹ Higgs, T. 12447-8, 12460; P3727 (Maps of the five scheduled shelling incidents). Although the Trial Record is not entirely clear on this issue, it appears that Higgs positioned the ABiH front line on the map according to information provided to him by the Prosecution, Higgs, T. 12455.

¹⁶⁵² P3644 RH (map of Sarajevo); P3727 (set of 5 maps); P3644MS (map of Sarajevo).

¹⁶⁵³ P3644VK (Karavelić’s map).

¹⁶⁵⁴ Kolp, T. 8248-8250.

¹⁶⁵⁵ Bešić, T. 4925, 5033; Boskailo, T. 5044, 5059-62.

457. Hamill testified that due to the lack of adjusting rounds it would have been an extremely “lucky shot” for the mortar-launching team if it had hit the target that it was aiming at first time around and thus it was a “fluke” that the marketplace, if targeted, was hit.¹⁶⁵⁶ The Defence experts stated in the Viličić Shelling Report that the party responsible for firing the shell at Markale market could not have intended to hit Markale market since the theory of probability predicts that the likelihood of hitting a target the size of the market by firing a 120 mm mortar shell from a distance is very low, even assuming ideal firing conditions.¹⁶⁵⁷

458. According to Witness AD, who testified to his experience in targeting the Breza market, the market place was successfully targeted by firing two shells from two different launchers.¹⁶⁵⁸

459. The UN Report includes an “inprep” (incoming report) which indicates that between 05:30-05:35 hours in the morning of 5 February 1994, four mortar rounds were fired into the grid square beside the Markale area.¹⁶⁵⁹ Bešić and Travljanin, who operated a shop in the market, said that about 20 days before the incident, a shell had hit the top of the “December 22” building.¹⁶⁶⁰ Niaz, UNMO in Sarajevo from October 1993 to March 1994, testified that between 2 October 1993 and 5 February 1994, about 10-12 mortars fell around Markale market and that most of them were of a 120 mm calibre and originated from the general direction of Sedrenik.¹⁶⁶¹

460. The UN Report reveals that the UNMOs spoken to in February 1994, indicated that they had had no access to the northeast of the city since October 1993.¹⁶⁶² UN representatives visited two 120 mm mortar positions held by the ABiH on 9 February 1994. A representative of the SRK, Colonel Cvetković, confirmed to Hamill that there were a number of 120-mm mortars in Mrkovići along the estimated line of fire to the north-northeast of Markale.¹⁶⁶³ To the authors of the UN Report, Colonel Cvetković “said specifically that [the SRK] had not fired that particular round; however, he also said that in the previous year, [the SRK] had fired 30 to 40,000 rounds into the city and [why the authors of the UN Report] were so concerned about one round when [the SRK] had fired so many”.¹⁶⁶⁴

e. Arguments of the Parties

¹⁶⁵⁶ Hamill, T. 6191; 6218

¹⁶⁵⁷ For purposes of their calculations, the authors of the Shelling Report considered a distance ranging from 1,400 to 6,464 metres, which corresponds to the distance at which a 120 mm mortar shell would have had to be fired in order to land at an angle of 60 degrees on the ground of the market, D1917 (Viličić Shelling Report). They also assumed that the dimensions of the market were 36 by 30 metres, D1917 (Viličić Shelling Report).

¹⁶⁵⁸ Witness AD, T. 10759-60.

¹⁶⁵⁹ P2261 (UN Report), p. 43/46.

¹⁶⁶⁰ Bešić, T. 4802; Travljanin, T. 6359-60.

¹⁶⁶¹ Niaz, T. 9099-9100.

¹⁶⁶² Hamill, T. 6107; P2261 (UN Report), p. 43/46, item 4.

¹⁶⁶³ Hamill, T. 6109; P2261 (UN Report), p. 43/46, item 4.

¹⁶⁶⁴ Hamill, T. 6109; P2261 (UN Report), p. 43/46, item 4.

461. The Prosecution submits that the SRK fired a 120 mm¹⁶⁶⁵ mortar shell from the northeastern hilly region of Mrkovići into Markale market,¹⁶⁶⁶ and that there was no significant military facility or activity in the market.¹⁶⁶⁷

462. The Defence does not deny that an explosion took place at the market on 5 February 1994,¹⁶⁶⁸ but argues that there is insufficient reliable evidence to conclude that a 120mm mortar shell caused the incident, especially so because the Defence could not inspect the shrapnel and the tail-fin found at the site of the incident.¹⁶⁶⁹ The Defence argues, *inter alia*, that Zečević, Viličić, and Hamill each determined a similar approximate angle of descent, but it is necessary to determine what was the *exact* angle of descent, which could not be done because the crater and the tunnel caused by the shell had been disturbed.¹⁶⁷⁰ The Defence submits that “it is almost impossible to reach, with a single mortar fire, a set objective, and this even more so as it is small”.¹⁶⁷¹ Furthermore, the Defence contends that even if it is assumed that a 120 mm mortar shell exploded at the market, the possibility that the shell was fired from within the territory controlled by the ABiH cannot be ruled out.¹⁶⁷² It argues that the ABiH also possessed 120 mm mortars and that technical analysis reveals that the shell responsible for the explosion could have been fired from within ABiH-controlled territory¹⁶⁷³ and adds that certain units of the ABiH were psychologically capable of firing unto their own territory.¹⁶⁷⁴ It concludes that in doing so, these ABiH units may have sought to attract international sympathy for the Muslim population of Sarajevo.¹⁶⁷⁵

f. Conclusion on the Cause of the Explosion and Casualties

¹⁶⁶⁵ See T. 21936, where the Prosecution explained that “various [law-enforcement] departments [where the shrapnels would have been kept] in Sarajevo [had] moved [since the incident at the market]. And that clearly was the reason that the Prosecution was unable to produce [the shrapnel]”.

¹⁶⁶⁶ Response to Acquittal Motion, paras 113-4; Prosecution Final Trial Brief, para. 551.

¹⁶⁶⁷ Prosecution Final Trial Brief, para. 560.

¹⁶⁶⁸ Defence co-counsel, T. 10214.

¹⁶⁶⁹ Defence Final Trial Brief, paras 626-7, 647. The Defence experts raised the preliminary argument that the pictures of shrapnel allegedly recovered after the incident do not resemble the remnants from a single type of explosive device but from many - including mortar shells of different calibres and rocket projectiles. The Defence submits that in the absence of a visual inspection supplemented by a chemical and metallurgical analysis of these fragments, no conclusive determination can be made that these remnants originated from a 120 mm mortar shell. They also suggested that there was also no conclusive evidence that the tail-fin of a 120 mm mortar shell had indeed been recovered after the incident. See also Viličić, T. 20314-5 concerning video footage of this shrapnel and D1917 (Viličić Shelling Report): the authors of the Shelling Report submitted that with the exception of a tail-fin, no such fragments were tendered into evidence so they were not able to conduct such a detailed analysis. See also Response to Acquittal Motion, para. 115; Acquittal Motion, para. 128; Defence Final Trial Brief, para. 626-30.

¹⁶⁷⁰ Defence Final Trial Brief, paras 618-9, 622.

¹⁶⁷¹ Defence Final Trial Brief, para. 622, the Defence adds that even if the area was pre-recorded, a weapon is very sensitive to meteorological phenomena.

¹⁶⁷² Acquittal Motion, para. 128; Defence Final Trial Brief, para. 622.

¹⁶⁷³ *Id.*

¹⁶⁷⁴ Acquittal Motion, para. 128; Defence Final Trial Brief, para. 632.

¹⁶⁷⁵ Defence Final Trial Brief, paras 631-46.

463. The Trial Chamber finds that a projectile exploded in Markale market on 5 February 1994 between 12:00-12:30 hours. Suljić, on behalf of the local investigative team, and Niaz, on behalf of the UN, visited the hospitals and the morgue where the victims of the blast were taken. They each counted over 60 persons killed and over 140 persons injured. Both the local and UN investigation teams concluded, after having inspected the tail fin, the recovered shrapnel, and the traces left on the ground (as reflected in the Sabljica Ballistic Report, the Zečević Ballistic Report, and the UN Report) that the explosion at Markale market was caused by a 120 mm mortar shell which exploded upon contact with the ground. The Defence claims that it is not proven that a 120 millimetres shell exploded at Markale on 5 February 1994 because it could not examine the shrapnel and the tail-fin. The Trial Chamber notes however that the Defence inspected the tail-fin and, in view of the evidence in the Trial Record, is satisfied beyond reasonable doubt that a 120 mm mortar shell exploded upon contact with the ground in Markale market on 5 February 1994 between 12:00-12:30 hours, killing over 60 persons and injuring over 140 others.

g. Conclusion on the Source of Fire

464. The following conclusions are that of the Majority. Judge Nieto-Navia expresses his dissenting views on the source of fire and the alleged deliberateness of the attack carried out on 5 February 1994 in Markale market in a separate and dissenting opinion attached to this Judgement.

i. Direction of Fire

465. Sabljica measured the dimensions of the elliptical imprints caused by the explosion on the ground of Markale market to be 56 centimetres by 26 centimetres. Photographs and sketches tendered into evidence and depicting the crater and the imprints left by the explosion establish the elliptical shape of these imprints. From the dimensions of the ellipse, Sabljica derived the bearing of the mortar shell and concluded that it had been fired from a north north-eastern direction or at a bearing of approximately 18 degrees, with an accuracy of plus or minus 5 degrees. The Zečević Ballistic Report does not report the dimensions of the imprints left on the ground but does point to a similar bearing of approximately north north-east. UN representatives (Grande, Hamill, Khan) found a similar bearing after examining the traces on the ground. The UN representative Dubant reported the dimensions of the imprints of the explosion but one of the dimensions of the ellipse is illegible. However, Dubant also established the same bearing as Sabljica, Zečević, Hamill, Khan, and Grande. The Frebat 4 team, Verdy and Russell measured the bearing of the shell, but the UN Report only endorsed the conclusions reached by Hamill, Khan, Grande, and Dubant that the mortar shell had been fired from the direction north-northeast of Markale market, at a bearing of 18.5 to 23.6 degrees. The Chamber rejects the measurements of Frebat 4 team (620 mils) and Verdy (800-

1000 mils) on the same basis as the UN report rejects them: they are inherently inaccurate and Verdy made a mathematical error. The measurements of Russell (450 mils) has been considered in the UN report as among the eight analysis done in a conventional manner. The Majority understands however that because in its conclusion, the UN Report (p. 12/46) adopted a bearing outside the range determined by Russell, it implicitly rejected that estimated bearing of 330-420 mils. Non-technical evidence in relation to the direction of fire of the mortar shell was also adduced. Suljić testified that he interviewed persons living along the shell's estimated flight path, who told him that seconds before the Markale market incident, they heard a shell coming from the northeastern direction. The Majority of the Trial Chamber is satisfied beyond reasonable doubt that the 120 mm mortar shell that exploded in Markale market on 5 February 1994 was fired from the direction north northeast of the market or at a bearing of approximately 18 degrees.

ii. Range of Fire Related to the Angle of Descent

466. Following a variety of methods, several investigators and experts drew conclusions on the angle of descent of the mortar shell. By measurement and reconstruction of the impact site, and by interpretation of the shrapnel's impact pattern, most experts were led to the conclusion that the angle of descent was close to 60 degrees.¹⁶⁷⁶

467. The method of repositioning the tail fin in the tunnel and measurements on the tunnel after extraction of the tail fin have been challenged by Viličić as unreliable. The Majority accepts that the removal of the tail-fin may have caused some disturbance to the shape of the tunnel. However, the shrapnel imprints recognized by experts as typical for an angle of descent of approximately 60 degrees, as well as the range calculated by Viličić (55.6 to 62.5 degrees) based on measurements of the elliptical imprints by Sabljica, were not influenced by the disturbance of the tunnel and were consonant with the measurements performed by Zečević, using a quadrant after having replaced the tailfin. The Majority notes that Zečević has shown awareness of the possible disturbance of the tunnel and has testified that the lower part of the tunnel was relatively well preserved.

468. In its conclusions, the UN report rejected the measurements of the shell's angle of descent (about 80 degrees) made on 5 February 1994 by Verdy who made a mathematical error, ignored the measures made by Russell (68-73 degrees) on the same day, and gives a range of 950 to 1,100 mils (53.4 to 61.9 degrees), which the report emphasised was determined on 11 February 1994.¹⁶⁷⁷ The Majority understands that the UN Report endorsed the findings made by Khan and Hamill although

¹⁶⁷⁶ Khan, 56-62 degrees, Hamill, 53-62 degrees; Zečević Ballistic Report, 55-65 degrees; Viličić Shelling Report, 55,6-62,5 degrees.

it cautioned that on the basis of the condition of the crater it was not possible to estimate with any “acceptable degree of accuracy” the angle of descent. On this basis, the Majority rejects the measures of the shell’s angle of descent made by Verdy and Russell and accepts the range determined by Khan and Hamill, which is consistent with the results obtained from calculations based on measurements of earlier investigations.

469. The certain lower limit of the angle of descent is approximately 50 degrees, since at a lesser angle the shell would have collided with the surrounding buildings. On the basis of the evidence presented, the Majority finds that the shell’s angle of descent was approximately 60 degrees. Allowing for a margin of error of 5 degrees, the Majority finds that the angle of descent was not greater than 65 degrees.

470. The Defence claims that an exact angle of descent should be measured in order to determine whether the shell was fired from ABiH- or SRK-controlled territory. The Majority rejects this claim. Every measurement is by its very nature a measurement within a range. The more precise the measurement, the smaller the margin of error. The Majority considers that its finding as to the angle of descent are based not on one measurement method but on calculations based on the measurement of elliptical imprints, the interpretation of the shrapnel pattern by experts, and on other methods reviewed above. The Majority has also taken into consideration that measurements of a lesser precision were already adjusted to reflect the margin of error.

471. The UN report gives a range of 300 to 5,551 meters as the horizontal distance over which the mortar shell could have travelled. This stated range covers all possible angles of firing and charges.

472. The Majority accepts that from the angle of descent alone it is not possible to calculate the distance a shell travelled.¹⁶⁷⁸ The number of charges (1 to 6) used in addition to the initial (0) charge progressively increase the distance a shell travels.¹⁶⁷⁹

473. Thus a 120 mm mortar shell fired across a level field at an 0+1 charge at a steep angle (85°) and also landing at a steep angle (85.3 degrees) travels horizontally no more than 275 metres, whereas the same shell fired at an 0+6 charge at the same launch angle (85 degrees) and a similar

¹⁶⁷⁷ The Majority notes that the UN report does not include the statement of Russell (the statements of the Frebat team, Verdy, Khan, Hamill, Grande and Dubant are included) and gives no reason for that omission.

¹⁶⁷⁸ It appears from the tables of fire attached to Viličić Report that angles of descent are in some relation with angles of firing. In fact, decreasing the firing angle by one degree when closer to 90 degrees results in far greater distance gained than decreasing the firing angle by one degree when closer to 45 degrees. Therefore, upward changes of the firing angle in the area considered (between 50 and 65 degrees) increase the traveling distance much less than similar changes around the firing angle of 85 degrees.

¹⁶⁷⁹ If the angle of firing remains unchanged.

angle of descent (86.2 degrees) travels more than 1,160 metres. If fired at a low angle (45 degrees) with a 0+1 charge the shell travels horizontally no more than 1,574 metres (and lands at around 47.3 degrees), whereas the same shell fired at an 0+6 charge travels more than 6,400 meters (landing at around 55.6 degrees).¹⁶⁸⁰

474. It was not until the trial stage that both Prosecution and Defence experts introduced into their analyses the relation between the tail-fin's penetration into the ground of the market and the speed of the projectile at impact, an element ignored until then by any investigator or expert.

475. The experts' reasoning is based upon the following. The depth of penetration of the tail-fin is indicative of the velocity of the shell upon impact. This velocity is of course related to the velocity of the shell at the moment it was fired¹⁶⁸¹. The velocity at firing depends on the number of increment charges used. As indicated above, the greater the velocity, the greater the distance travelled, where the shell's launch angle is kept constant.

476. The mortar shell used in this case exploded on impact. The experts for both parties agree that the explosion creates a backwards thrust against the tail-fin. If the velocity of the shell, and therefore of the tail-fin, on impact had been 150 m/sec (taking the lowest figure presented to the Trial Chamber), the tail-fin would have just fallen to the ground. If the impact velocity was lesser, the tail-fin would have been propelled backwards. If the impact velocity had been greater, the tail-fin would have overcome the backwards thrust and continued forward.

477. In the present case, the tail-fin continued its trajectory in the forward direction at a speed reduced by 150 m/sec, but still sufficient to embed itself in the ground.¹⁶⁸²

478. Zečević estimated that the impact velocity of the shell must have been greater than 200 m/s for the tail-fin to have embedded itself at the depth he measured. In Zečević's opinion, such a velocity can only be achieved by a shell fired at a 0+4 charge or more. At an angle of descent of 65° the shell would have travelled more than 4.5 kilometres on an 0+4 charge. (As the Majority will explain below, even if, by taking the most favourable figures, an impact speed greater than 200 m/s could be achieved by the lower charge 0 + 3, this does not change the final conclusion.)

479. The Majority pauses here to note that Markale market is at an altitude of approximately 550 metres.¹⁶⁸³ The confrontation line to the north-east of the market was at an altitude of some 400

¹⁶⁸⁰ Table 2 in Viličić Shelling Report.

¹⁶⁸¹ That a higher velocity at firing results in a higher velocity at impact is not only a fact of common knowledge but also clearly illustrated in Table 2 in Viličić Shelling Report.

¹⁶⁸² The tail-fin of the mortar shell was found embedded in the ground; the UN team used a knife to remove the tail-fin from the ground. See the evidence above in relation to investigation by the UN and the local investigative team.

metres higher. Continuing in the same direction past the confrontation line, the ground further rose to reach heights of up to 500 to 650 metres above the market at around 2-2.5 kilometres past the line.

480. As discussed above, Viličić at first stated that for the tail-fin to embed itself at the depth measured by Zečević, the shell would have needed an impact velocity of 528.8 m/sec. This speed cannot be achieved by any known mortar. Viličić based this calculation on the assumption that the ground of impact was of solid concrete for the entire depth of the tail-fin's penetration. Confronted with evidence that the market had a top layer of 2 centimetres of asphalt resting on soil consisting of sand and stones,¹⁶⁸⁴ Viličić then reviewed his calculations and concluded that penetration of 20 cm by the tail-fin would require an impact velocity for the shell of 268.4 m/sec. A 120 mm mortar shell can achieve a speed of approximately 260 m/s if fired at an 0+6 charge and if the altitude of the impact site is 500 metres below the position from which the shell was fired.¹⁶⁸⁵

481. In brief, both experts, basing themselves on a drop angle of 55 to 65 degrees, concluded that an 0+4 or greater charge would be required to attain the impact velocity necessary for the tail-fin to penetrate the ground to the extent it did. At the 65 degrees angle of descent (which is, according to the Majority, the maximum conceivable angle on the evidence), tables provided by both experts show that the horizontal distance the shell would have travelled comes close to 6,000 metres at charge 0+6 and more than 4,500 meters at charge 0+4.¹⁶⁸⁶

482. It follows that the shell which exploded in Markale market travelled a distance considerably greater than 2,600 metres from the north-east direction, placing the position from which the shell was fired well within SRK-controlled territory.

483. Noting however that the Defence disputes the measure of the depth of penetration of the tail-fin in the ground, submitting that an error in that measure could lead to serious miscalculation of the range of fire, the Majority, out of an abundance of caution, will consider the possibility that the tail-fin penetrated the soil to a lesser depth than the one found by Zečević and that the shell was fired with an 0+3 increment charge, and therefore that the shell travelled a shorter distance than the one determined above.

¹⁶⁸³ Viličić testified that the altitude of the Markale market was at 600 meters. Maps in evidence that contain contour lines indicate a slightly lesser altitude. Similarly Viličić testified that no elevation higher than 1000 meters existed in the northerly direction up to Mrkovići, which is also contradicted by the maps, indicating elevations of above 1000 metres in and around locations called Gornji Mrkovići and Donji Mrkovići.

¹⁶⁸⁴ C9 mentions "ground and stone".

¹⁶⁸⁵ P3276.1 (Zečević Shelling Report).

¹⁶⁸⁶ Based on comparison of the tables in Zečević Shelling Report, p. 6 and C8, C9.

484. The Majority recalls briefly that on the day of the incident, Sabljica and Čavčić did not measure the depth of penetration of the tail-fin in the ground but measured a 9-centimetre deep crater. The day after the incident, Zečević and his colleagues measured the depth of penetration of the tail-fin in the ground from the top asphalt layer to the bottom of the tunnel where the tail-fin had been embedded to be 200 to 250 mm, depending on the side of the hole measured. The UN representatives did not measure the depth of penetration of the tail-fin in the ground giving the reason that such a measurement should have been taken right after the tail-fin was removed from the ground of Markale market. However, Dubant noticed that during his crater examination conducted on 11 February 1994, the crater was still sharply defined and was 11 centimetres deep. There is no evidence in the Trial Record which casts doubt on the measurements made by the local investigative teams. The Majority is convinced that the crater caused by the explosion was approximately 9 centimetres deep and that the depth of the tunnel of the tail-fin and the depth of the crater were together 200-250 mm.

485. The Majority will allow that the shell which struck Markale market impacted on ground consisting of a mixture of soil and stones, thus ignoring the force that would have been required to overcome the higher level of resistance presented by a top layer of asphalt. This favours the Defence case. The Majority also uses the most conservative measurement of the depth of the tail-fin's penetration, taking the length to be 10 cm. This, again, favours the Defence case.

486. To penetrate 10 cm of ground consisting of soil and stones, the tail-fin would need a post-explosion velocity of 57 m/sec.¹⁶⁸⁷ This gives a shell impact velocity of $150+57=207$ m/sec.

487. The firing velocity of a shell on an 0+3 charge is 211 m/s¹⁶⁸⁸. The Majority understands from the evidence of the experts that the impact velocity of a shell fired over a level field is slightly less than its velocity at firing. A shell fired at the 0+3 charge will lose about 30 m/s of its velocity between firing and impact. However, where the altitude of the impact site is less than that of the firing site, the shell will also gain about 30 m/s from having a longer drop trajectory. As always, in choosing these figures¹⁶⁸⁹ the Majority has interpreted the evidence in a fashion favourable to the Defence case.

¹⁶⁸⁷ C8, C9.

¹⁶⁸⁸ Table on p. 6 of Zečević Ballistic Report, this value is more favorable to the Defence case than the value of 219 m/sec for V° given by Viličić.

¹⁶⁸⁹ The Majority took the most favourable figures from table 2 in Viličić Shelling Report and C5: the loss of speed in flight was taken at minimum level, while the increase of speed caused by the difference of altitude was taken at a level, consistent with firing at an 0+3 charge, at a difference of altitude of 500 meters, both options resulting in a possibly higher speed of impact when firing at this lower charge.

488. A shell on an 0+3 charge fired over the height differential applicable in this case would have an impact velocity of around 211 m/s. This would be just sufficient for the tail-fin to embed itself to the stipulated depth. But it would also mean that, at a drop angle of 65 degrees, and taking into account a difference in altitude of 400 metres, the shell would have still travelled about 3.6 km from its point of origin to its point of impact. Once again, this places the point of origin well within SRK-controlled territory.

489. This further consideration assures the Majority that the experts' findings are buffered by a large margin of safety. There is no doubt that, given the characteristics of the remains of the explosion of the 120 mm mortar shell at Markale market, the shell could not have been fired from any place on the ABiH side of the confrontation lines in a direction north-northeast of Markale market.

490. Finally, the Majority notes that a shell fired at the 0+2 charge¹⁶⁹⁰ could not attain the required velocity over the given height differential for its tail-fin to penetrate the surface of Markale market to the measured extent.

iii. Non-technical Evidence in relation to the Source of Fire

491. The Majority also emphasises that non-technical evidence supports the finding that a heavy weapon was fired from the direction north-northeast of Markale market from SRK-controlled territory at the time of the incident. The Trial Chamber finds reliable the testimony of Witness AF who heard at the time of the incident the sound of a heavy weapon being fired from behind an SRK position, Spicasta Stijena, at Mrkovići. The fact that Witness AF was at his mother's house in Sedrenik when he heard that sound and not at his place in Vratnik does not cast doubt on his ability to assert a direction. The Majority is convinced by the evidence in the Trial Record, which establishes that the noise made by a firing mortar can be used to determine the approximate direction of fire.

492. The Majority wishes to address the Defence's contention that a possibility exists that the shell was fired from within territory controlled by the ABiH because certain units of the ABiH were psychologically capable of firing unto their own territory. The Defence argues that in doing so, these ABiH units may have sought to attract international sympathy for the Muslim population of

¹⁶⁹⁰ The velocity at firing at a 0+2 charge is approximately 40m/sec lower compared to firing at a 0+3 charge which velocity could not generate the velocity at impact needed to explain the embedment of the tailfin in the ground. But even if fired at a 0+2 level the shell would have been fired at a distance of 2577 m, which would still be approximately at the SRK-held confrontation line.

Sarajevo. The Majority finds not only unreasonable that ABiH forces would have fired in this case on their own civilians but also contrary to the material facts proved.

493. The Majority finds that the mortar shell which exploded at Markale market on 5 February 1994 was fired from SRK-controlled territory.

h. Conclusion on Deliberateness of the Attack

494. Evidence in the Trial Record establishes that a target, such as Markale market, can be hit from a great distance with one shot if the area is pre-recorded. Niaz testified that in the four months preceding the incident at Markale market, about 10 to 12 mortar shells fell around Markale market and that most of them were of a 120 mm calibre and originated from the direction north-northeast of Sedrenik. The UNMOs who wanted to investigate these attacks were not allowed access to the northeast area of the city controlled by the SRK. After the Markale incident, Hamill visited an SRK representative positioned in the northeastern area of the city, Colonel Cvetković, who confirmed to him that there were a number of 120 mm mortars in Mrkovići and along the estimated direction of fire to the north-northeast of Markale.

495. The Majority is convinced that the mortar shell which struck Markale was fired deliberately at the market. That market drew large numbers of people. There was no reason to consider the market area as a military objective. Evidence was presented in relation to the status of the “December 22” building located by the market, which manufactured uniforms for the police and the army. It is unclear whether manufacturing was still on-going at the time of the incident but in any case it is not reasonable to consider that the employees of such a manufacturing plant would be considered legitimate targets.

496. In sum, the Majority finds beyond reasonable doubt that the 120 mm mortar shell fired at Markale market on 5 February 1994, which killed over 60 persons and wounded over 140 others, was deliberately fired from SRK-controlled territory.

(h) Koševo Area

497. Koševo Hospital was one of the two main medical facilities in Sarajevo in operation during the conflict.¹⁶⁹¹ It was formally known as the “University Clinical Centre of Sarajevo”¹⁶⁹² or the “Clinical Centre of the University of Sarajevo”¹⁶⁹³ and consisted of a series of large buildings

¹⁶⁹¹ Kupusović, T. 664-665; Eterović, T. 8844, 12519; Witness Y, T. 10947; Mole, T. 11109.

¹⁶⁹² Witness DP51, T. 13582 (private session).

¹⁶⁹³ Gavrankapetanović, T. 12517.

located in the northeastern part of the center of Sarajevo.¹⁶⁹⁴ Witnesses called by both the Prosecution and the Defence provided uncontested testimonies that Koševo Hospital was a widely known civilian medical facility.¹⁶⁹⁵

498. The Trial Record contains extensive evidence from hospital staff and international observers indicating that Koševo hospital was regularly shelled throughout the Indictment Period, resulting in civilian casualties, as well as in damage to the hospital infrastructure. Fatima Zaimović, the head nurse at the Koševo Hospital children's surgery ward, remembered that the hospital was very frequently shelled during the Indictment period, and was also hit "by very large bullets that could go through the walls and cause real disaster".¹⁶⁹⁶ On one occasion in 1993, two of her colleagues were killed by a shell that hit their office.¹⁶⁹⁷ On another instance that same year, a shell hit a patient's room in another ward, killing two patients and wounding another.¹⁶⁹⁸ Witness DP51, a surgeon at the Koševo hospital, testified that he tried unsuccessfully to save the life of an engineer who had been seriously injured by shelling at the hospital in October or November 1992.¹⁶⁹⁹ John Ashton, who arrived in Sarajevo in July 1992 as a photographer,¹⁷⁰⁰ also witnessed two artillery shells landing on the hospital in October 1992, damaging two buildings. People outside the hospital who witnessed the firing informed him that the shells had originated in SRK territory.¹⁷⁰¹ Michael Carswell, a Canadian UNPROFOR representative in Sarajevo from January to April 1993,¹⁷⁰² testified that shells regularly landed on the hospital during his tour of duty in the city.¹⁷⁰³ Afzaal Niaz, a Pakistani officer who served as a UNMO in Sarajevo from October 1993 to March 1994,¹⁷⁰⁴ remembered investigating a shelling incident which had claimed the lives of three or four persons and had damaged a building of the hospital in December 1993 or January 1994.¹⁷⁰⁵ Francis Roy

¹⁶⁹⁴ Golić, T. 14887; Tucker, T. 10023. The streets of Stjepana Tomića and Marcela Šnajdera bound, respectively, the western and the northern parts of the main Koševo complex of buildings, which is itself approximately 800 meters long and 100 meters wide. Witness DP1, T. 13317; Witness DP51, T. 13599-601 (private session); D1755 (Map of Sarajevo marked by Witness DP1) and D1758 (Map of Sarajevo marked by Witness DP51); Golić, T. 14887; Tarik Kupusović testified that the hospital was "a large complex of clinics and hospitals," Kupusović, T. 664.

¹⁶⁹⁵ Many witnesses confirmed that either they or persons they knew were treated at the hospital during the conflict in Sarajevo. See for example Witness L, T. 2524, 2570; Jusović, T. 4150; Boškailo, T. 5052; Witness AK-1, T. 5484; Džonko, T. 5648; Kapetanović, T. 5769; Pita, T. 5915; Fažlić, T. 6611-2; Gavranović, T. 6715; Menzilović, T. 7045; Mehonić, T. 7331; Witness AI, T. 7666; Ljusa, T. 7866-7, 7879; Kapetanović, T. 7957; Arifagić, T. 12713; Witness DP51, T. 13627.

¹⁶⁹⁶ Zaimović, T. 1844. She recounted that the children's reaction to the shelling and shooting "was terrible. The children panicked, started screaming, and it was very difficult to calm them down", Zaimović, T. 1845.

¹⁶⁹⁷ Zaimović, T. 1845.

¹⁶⁹⁸ Zaimović, T. 1865.

¹⁶⁹⁹ Witness DP51, T. 13626.

¹⁷⁰⁰ Ashton, T. 1204.

¹⁷⁰¹ Ashton, T. 1265-8.

¹⁷⁰² Carswell, T. 8329.

¹⁷⁰³ When recalling which civilian targets were frequently shelled during his tenure, Carswell, testified that "the Koševo hospital, to use the biggest example, was targeted [on] a regular basis", Carswell, T. 8357.

¹⁷⁰⁴ Niaz, T. 9065.

¹⁷⁰⁵ Niaz, T. 9100-1.

Thomas, a Canadian officer who oversaw UNMOs in Sarajevo from October 1993 to July 1994,¹⁷⁰⁶ received reports that the hospital had been shelled several times during his stay in the city.¹⁷⁰⁷ Other UN reports similarly document shelling of the Koševo hospital taking place during the Indictment Period.¹⁷⁰⁸

499. Several UNPROFOR representatives explicitly attributed the shelling of the Koševo hospital to actions of the SRK. Harding, the commander of the United Nations military observers (“UNMOs”) on the PAPA side from July 1992 until January 1993,¹⁷⁰⁹ recalled that on 7 December 1992 an UNPROFOR report established that an attack the previous day had killed a nurse and injured several others.¹⁷¹⁰ Consequently, on 30 December 1992, Harding decided to conduct a battle damage assessment of the hospital in order to identify how the damage caused by shelling affected the hospital’s operations.¹⁷¹¹ He found that the hospital had been hit by artillery, anti-aircraft artillery (AAA) and possibly tank fire. The third floor had received several direct hits by 122mm artillery and 40mm AAA. One room in the intensive care unit had also been directly hit and damaged beyond repair by 20, 40 and 82 mm shells fired from a north-eastern direction.¹⁷¹² He established that the fire had originated from Poljine and Trebević,¹⁷¹³ both areas being within SRK-held territory during the Indictment period. During his testimony in court, Harding added that “[t]he damage that I inspected was on the vertical sides of the hospital and so did not come from the city centre”.¹⁷¹⁴

500. In 1993, Cutler, an officer who served as a senior UNMO in Sarajevo from 26 December 1992 to 15 March 1993,¹⁷¹⁵ received several reports indicating that the hospital had been hit on several occasions, including at the end of January 1993.¹⁷¹⁶ UN representatives visited the hospital

¹⁷⁰⁶ Thomas, T. 9255-7.

¹⁷⁰⁷ Thomas, T. 9303, 9309 (closed session); P1963 (UNMO SitRep dated 14 December 1993). Both Francis Briquemont, a Belgian general who commanded UN forces in Bosnia-Herzegovina from 12 July 1993 to 24 January 1994, and Jacques Kolp, a Belgian officer who served as a UN liaison officer in Sarajevo from March 1993 to November 1994, remembered that shells had landed on the hospital during their tenures, Briquemont, T. 10037-10039, 10086; Kolp, T. 8220-1, 8307.

¹⁷⁰⁸ See, e.g., D135 (Annex of 1994 UN Report on the situation in the former Yugoslavia); P1911 (UNMO daily SitRep for Sarajevo dated 1 December 1993); P1963 (UNMO daily SitRep dated 14 December 1993) and P2064 (UNMO daily SitRep dated 5 January 1994).

¹⁷⁰⁹ Harding, T. 4311.

¹⁷¹⁰ Harding, T. 4337-8; P3660 (Battle damage assessment of Koševo Hospital dated January 1993 by Carl Harding).

¹⁷¹¹ P3660 (Battle damage assessment of Koševo Hospital dated January 1993 by Carl Harding). Harding also reviewed the damage caused to the State Hospital on the next day, Harding, T. 4338. See P3661.

¹⁷¹² P3660 (Battle damage assessment of Koševo Hospital dated January 1993 by Carl Harding). As a result of the shelling, the whole casualty reception building was poorly heated and in certain parts, the temperature did not rise above 5°C; the building also lacked electricity and running water.

¹⁷¹³ P3660 (Battle damage assessment of Koševo Hospital dated January 1993 by Carl Harding).

¹⁷¹⁴ Harding, T. 6445.

¹⁷¹⁵ Cutler, T. 8897-8.

¹⁷¹⁶ Cutler, T. 8911-2. Cutler also remembered that when he arrived in Sarajevo, Mole informed him that the shelling of the Koševo hospital and the indiscriminately shelling of the city were among the concerns of UNPROFOR, Cutler, T. 8909. The UNPROFOR also reported that between 1 and 7 of December 1993, SRK soldiers deliberately shelled

on the 31st of January to investigate shelling incidents which had occurred on 29, 30 and 31 January 1993¹⁷¹⁷ and reported that the shelling significantly damaged the northern part of the hospital compound, injuring several staff members and patients.¹⁷¹⁸ Cutler attributed the 29 January 1993 shelling to the SRK because the 155 mm shell recovered after the incident was known to be used exclusively by the SRK.¹⁷¹⁹

501. The Trial Record discloses that SRK soldiers admitted such targeting of the hospital. In February 1993, Carswell spoke to SRK gun crews positioned in the southern part of Sarajevo who told him that they deliberately fired on the hospital.¹⁷²⁰ These gunners explained that the medical facility was a legitimate military target because they had been told by an unspecified source that the ABiH used the Koševo buildings as army barracks.¹⁷²¹

502. The statement of a high-ranking government member of the Republika Srpska corroborates the above evidence. In the spring of 1992, Dragan Kalinić, the Minister of Health of the Republika Srpska encouraged “[those] who will be planning the Sarajevo operation, either [by] liberating Sarajevo or [by] destroying the enemy forces in Sarajevo, [to plan] what to do with the medical facilities. And let me tell you this right now, if the Military Hospital is to end up in the hands of the enemy, I am for the destruction of the Koševo hospital so that the enemy has nowhere to go for medical help.”¹⁷²²

503. Several witnesses recounted that the shelling of the Koševo hospital was the subject of repeated protests by the UNPROFOR to the Accused, but it remained a regular target.¹⁷²³

Koševo hospital, P3714 (UNPROFOR military information summary dated 8 December 1993). Likewise, other UN representatives indicated that the shelling of the hospital between 13 and 14 December 1993 was carried out by “Serb forces”, P1963 (UNMO daily sit-rep dated 14 December 1993)

¹⁷¹⁷ P745 (UNPROFOR reports dated 31 January 1993 related to the shelling of Koševo Hospital).

¹⁷¹⁸ Id.

¹⁷¹⁹ Cutler, T. 9006, 9049-50; P745 (UNPROFOR reports dated 31 January 1993 related to the shelling of Koševo Hospital).

¹⁷²⁰ Carswell, T. 8337-8.

¹⁷²¹ Carswell, T. 8338-40. Izo Golić, a soldier of the SRK, testified that he did not know of any mortar or artillery crew located in the south of Sarajevo during the conflict which had either received orders to fire or had fired on Koševo hospital, Golić, T. 14919.

¹⁷²² P3683A. In one shelling incident, however, the Trial Record suggests that the source of fire lay within the city – and not in SRK-held territory at the perimeter of Sarajevo. John Hamill, an Irish officer who joined the UNPROFOR in the former Yugoslavia from May 1993 to July 1994, examined in December 1993 the damage caused by a shell which had landed on the hospital, Hamill, T. 6059-60, 6184. He determined that the shell had followed an almost horizontal trajectory from the north, Hamill, T. 6184-5, 6226. From this information, he concluded that the shell had been fired from a tank, thereby exculpating SRK forces since their positions in the area did not allow for the targeting of the hospital in such a manner, Hamill, T. 6184-6185. John Hamill admitted that he had not carried out a detailed investigation of the incident, Hamill, T. 6185. Carl Harding also examined a Koševo hospital building which appeared to have been damaged by a source of fire located to the north, Harding, T. 6445. During his testimony, he rejected the suggestion that the source of fire lay within the city, Harding, T. 6445.

¹⁷²³ General Hussein Abdel-Razek, who served as Sector Commander in Sarajevo from August 1992 to February 1993, also protested to the Accused personally on repeated occasions about the shelling of the “main hospital in the city”. Abdel-Razek, T. 11591-2. Cutler told of one instance where UN personnel sent a formal letter of protest to the Accused

504. The evidence in the Trial Record also indicates however that there was outgoing ABiH mortar fire from the Koševo Hospital grounds or from its vicinity, sometimes soliciting SRK counter-fire. The Prosecution has conceded that ABiH mortar fire originated from hospital grounds.¹⁷²⁴

505. Pyers Tucker, a British officer who served as assistant to general Morillon from October 1992 to March 1993,¹⁷²⁵ testified that a fellow British sergeant had told him that he had seen the ABiH fire from the hospital in January 1993. The sergeant was delivering fuel and had arrived at the hospital earlier than expected, which enabled him to observe ABiH soldiers firing with a mortar mounted on the back of a truck.¹⁷²⁶ The same sergeant told Tucker that on other occasions when he had delivered fuel, ABiH forces had stopped his vehicle a short distance away from the hospital and had instructed him to wait.¹⁷²⁷ Shortly thereafter, the sergeant would hear firing from the hospital, but when he was allowed to enter the hospital compound, he could find no traces of such activity.¹⁷²⁸ Tucker was also informed by journalists that they had attended a press conference in December 1992 during which the hospital was shelled.¹⁷²⁹ Based on the accounts of journalists present at the scene, Tucker estimated that the SRK had responded with its own fire on the hospital within a mere half an hour of ABiH mortar fire originating from the medical installation.¹⁷³⁰

506. Cutler deposed in January 1993 a British officer who told him that he had witnessed while escorting a fuel convoy on an unspecified date the ABiH fire five 82 mm mortar rounds from the hospital grounds.¹⁷³¹ Thirty minutes elapsed after the initial ABiH attack before the hospital came under mortar, artillery and anti-aircraft fire.¹⁷³² Other UNPROFOR representatives confirmed

after shells had landed on Koševo hospital on 29 and 30 January and also remembered raising the issue of the regular firing at the Koševo hospital with SRK Chief of Staff, Colonel Marčević, Cutler, T. 9005, 8930. Cutler did not specify when this conversation took place. Tucker testified about an incident during which shells apparently aimed at Koševo hospital had landed next to General Morillon's headquarter, some 400 metres away from the medical facility, Tucker, T. 9897-8. He recalled that UNPROFOR had concluded that the SRK had fired the projectiles and had accordingly lodged a protest with General Mladić, Tucker, T. 9897-8.

¹⁷²⁴ The Prosecution admitted during trial that "[the] evidence has been consistent throughout [the trial] that shots were fired –the shots were fired from the grounds of Koševo hospital." T. 10438. See also the Response to the Acquittal Motion, para. 37; Prosecution Final Trial Brief, para. 613.

¹⁷²⁵ Tucker, T. 9895-6. During his stay, Tucker became military assistant to UNPROFOR commander General Morillon. T. 9895-6.

¹⁷²⁶ Tucker, T. 9898-9, 10022.

¹⁷²⁷ Tucker, T. 10022.

¹⁷²⁸ Tucker, T. 10022.

¹⁷²⁹ Tucker, T. 9938, 9981, 10022-3.

¹⁷³⁰ Tucker, T. 9938-40, 9961, 10022-3. Tucker's testimony is confusing on this point as he later on suggested that the journalists had only witnessed the SRK return fire; based on their account, Tucker had then deduced that the ABiH had launched an initial attack from the hospital, provoking the SRK response, Tucker, T. 10022-3.

¹⁷³¹ Cutler, T. 8913-5. The British officer had confronted a hospital administrator about this practice who had replied: "I am not military. There is nothing I can do about this", Cutler, T. 8914.

¹⁷³² Cutler, T. 8914. In relation to the mobile mortars at the hospital, Cutler stated that he did not consider such mortars to be legitimate military targets "because [...] given the natural tendency of shells to be off-line in bearing and in range, there was a very high likelihood of hitting the hospital", Cutler, T. 9006. He added that he "would consider mortars on the front line, not in civilian areas, to be legitimate targets, but not those located near a hospital", T. 9006-9007.

receiving reports of the presence of ABiH mortars or military equipment at the hospital.¹⁷³³ The witnesses also recounted that the UNPROFOR lodged complaints with the ABiH and local authorities of Sarajevo about the use of mobile mortars from the hospital.¹⁷³⁴ Evidence from SRK soldiers also corroborates the testimonies of Tucker and Cutler.¹⁷³⁵

507. The evidence as to who was responsible for the firing from the Koševo hospital grounds or its vicinity was unclear. Vahid Karavelić, the commander of the ABiH 1st Corps during the conflict, testified that neither he nor, to the best of his knowledge, anyone else in the ABiH 1st Corps had ordered mobile mortars to fire from civilian buildings.¹⁷³⁶ He conceded that there were subversive elements operating in Sarajevo.¹⁷³⁷ Tucker was aware of “one particular mobile special mortar unit which was under the control of a radical part of the BiH army. [...] The units had these trucks and

¹⁷³³ For example, John Hamill believed that the ABiH positioned mortars on the grounds of the Koševo hospital based on reports from other UNMOs, Hamill, T. 6108-9, 6168-9, 6207, 6229. Michael Carswell received on at least 25 occasions information that the ABiH fired mortars from the Koševo hospital grounds, Carswell, T. 8428. Although he did not specify the basis for his assertion, Jacques Kolp testified that at least “on one occasion, a mortar position fired from [Koševo] hospital on to Serb positions”, Kolp, T. 8292-4. Carl Harding saw armoured personnel carriers next to the hospital at an unspecified date, Harding, T. 6455. Adrianus Van Baal, a Dutch officer who served as Chief of staff of UNPROFOR forces in Bosnia-Herzegovina from February to August 1994, received reports indicating that the ABiH had positioned a tank near Koševo hospital – though his forces were unable to spot and confiscate this vehicle, Van Baal, T. 9843-66, 11341-2.

¹⁷³⁴ General Morillon reportedly asked the head of the Koševo hospital why he allowed ABiH forces to fire from his facility, Tucker, T. 10023. The head of Koševo hospital denied knowing that the ABiH fired from his facility, but the UNPROFOR thought that the latter was a “radical hardliner” who would countenance such tactics, Tucker, T. 10023-4. Michael Rose remembered that UN forces warned the ABiH command “all the time” about firing from sensitive civilian buildings such as hospitals, Rose, T. 10211. Richard Mole, who served as Senior UNMO in Sarajevo from September to December 1992, had also concluded from reports that the ABiH would fire from hospital grounds so that it would draw SRK counterattacks, Mole, T. 9500-1, 11126-7, 11140. Despite this extensive circumstantial evidence regarding ABiH fire originating from the grounds of Koševo hospital, UN observers and others failed to spot a single ABiH mobile mortar during the entire conflict. Carl Harding never saw, or found traces related to, mortars firing from the vicinity of the hospital, Harding, T. 6437-8, 6454-5. He never observed, or received reports from observation posts or from other UNMOs, that the ABiH operated mortars mounted on trucks, even though UN observers specifically looked for such weapons, Harding, T. 4374, 6441, 6437. After a shelling incident had taken place at the hospital, Afzaal Niaz searched with his team the entire medical facility for military weapons or soldiers, but found none. Niaz, T. 9167. Francis Roy Thomas testified that although he suspected that the ABiH fired from the hospital, his unit was never “able to physically observe them on the [hospital] grounds”, Thomas, T. 9304. Witness Y, an officer who served with the UNPROFOR in Sarajevo during the Indictment Period, added that UN forces never formally established that the ABiH had positioned mortar units on hospital grounds, Witness Y, T. 10846-9, 10926-7. When he took over command of UNPROFOR forces in Sarajevo on 12 July 1993, General Briquemont was not told about the ABiH firing from Koševo hospital by his predecessor, General Morillon; General Briquemont therefore dismissed the information circulating about such ABiH activity as “rumors” of “no importance”, Briquemont, T. 10138. Van Lynden, a Dutch journalist, testified that “Koševo hospital is more than one building. It's a large academic hospital. I have never seen any artillery there, nor have I heard that it was being used for artillery purposes. The only thing I have heard is that the maternity hospital that belonged, that was a part of the Koševo hospital, that became a front line position, but that's some way away from the rest of the Koševo hospital”, Van Lynden, T. 2189.

¹⁷³⁵ Izo Golić, who served in an SRK mortar unit during the conflict, saw the ABiH fire from the hospital between 10 to 15 times but added that his own unit was not instructed to return fire, Golić, T. 14845, 14917-9. Witness DP11, a soldier in the 4th battalion of the SRK, also saw the ABiH fire with mortars on his unit from the hospital, Witness DP11, T. 14984, 14993. According to James Cutler, an SRK colonel named Marcetić had voiced his suspicions to UN personnel that the ABiH fired from the hospital, Cutler, T. 8905, 8915.

¹⁷³⁶ Karavelić, T. 11884. Whenever the UNPROFOR alerted him that ABiH mobile mortars were fired, Karavelić would immediately dispatch police forces to investigate but his men never found such mortar units, Karavelić, T. 11884, 12030.

¹⁷³⁷ Karavelić, T. 12030.

were able to move somewhere, fire quickly, and then move away quickly.”¹⁷³⁸ He believed it was “very plausible” that those responsible “were not subordinated to the hierarchy”.¹⁷³⁹

508. The witnesses indicated further that, despite occasional outgoing ABiH fire from hospital ground, the SRK attacks were in fact directed at the hospital and served no military purpose. As result of the incident reported to Cutler, Harding re-visited the Koševo hospital in January 1993 to assess whether it was being shelled as result of SRK counter-battery fire, or deliberately targeted.¹⁷⁴⁰ He could not find any of the distinctive traces usually left by mortars.¹⁷⁴¹ On the basis of his observations at the Hospital, Harding concluded that:

[i]f there was offensive action taken as a direct result of those mortars, it can be referred to as counter battery fire. However, when I went to the hospital, there was fresh damage as it was only a week or two after I conducted a battle damage assessment. And had the hospital been damaged by a 76 millimetre anti-tank rounds or armour-piercing rounds, and some of these rounds were presented to me, these rounds had hit the building very high up. So even if they had been fired whilst the mortar was firing, they would have been completely ineffective. Six or seven rounds had hit the hospital, and obviously they had been fired by a weapon aimed at the hospital rather than at any mortars that may or may not have been there. So the hospital had been attacked, and it was not a suitable weapon to use as counter battery fire [...] By high up, I mean that if it was counter battery fire, it would be aimed at something on the ground, but it obviously wasn't because it was on the first or second storey of the building. So if it had been fired at the same time as the mortars were firing, there was no way at all that it would ever have hit the mortars because it was just fired at the building. The building was the target, not any mortars.¹⁷⁴²

Mole, Senior UNMO from September to December 1992, stated the hospital was often hit in the context of return fire to the mortars fire outgoing from hospital grounds. However, he observed that “the imbalance between the number of rounds which were outgoing from the Presidency side and the number that were returned in apparent response was such that it was heavily in favour of the Serb side”.¹⁷⁴³ Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994, testified that according to UN sources, the hospital had been shelled before the ABiH ever began firing mortars from the facility.¹⁷⁴⁴ Morten Hvaal, a Norwegian photojournalist who lived close to the Koševo Hospital, said that “maybe on a dozen occasions”, always at night, he heard and saw mortars being fired from at least a hundred metres from hospital grounds. After firing a few rounds, these mortars would be disassembled, placed in the back of a car and transported away.¹⁷⁴⁵ He observed, however, that “there was frequently incoming fire in and around the hospital

¹⁷³⁸ Tucker, T. 9962.

¹⁷³⁹ Tucker, T. 10025.

¹⁷⁴⁰ Mole, T. 11140; Harding, T. 4371-2.

¹⁷⁴¹ Harding, T. 4371-3.

¹⁷⁴² Harding, T. 4372.

¹⁷⁴³ Mole, T. 11128.

¹⁷⁴⁴ Kolp, T. 8307.

¹⁷⁴⁵ Hvaal, T. 2298.

grounds. It often increased with the level of activity [of the hospital], vehicles arriving and leaving, people being carried on stretchers from building to building”.¹⁷⁴⁶

509. The Trial Chamber is satisfied beyond reasonable doubt that the Koševo hospital, a well-known civilian medical facility, was regularly targeted during the Indictment Period by the SRK. These attacks caused the death or injury of civilians present at Koševo hospital, significantly damaged its infrastructure, and substantially reduced the medical facility’s ability to treat patients. The Trial Chamber is further satisfied that ABiH mortar fire originated from the hospital grounds or from its vicinity and that these actions may have provoked SRK counter-fire. The frequency at which this occurred is unclear from the evidence in the Trial Record. However, given these circumstances, it is not possible for the Trial Chamber to establish what damage and which casualties may have resulted from this exchange of fire.¹⁷⁴⁷ Nevertheless, the evidence does reveal that, on occasions, the Koševo hospital buildings themselves were directly targeted, resulting in civilian casualties, and that this fire was certainly not aimed at any possible military target. For example, on one of these occasions, the third floor of a hospital building was struck by 122m artillery and 40m anti-aircraft artillery fired from SRK positions.¹⁷⁴⁸ The Trial Chamber considers that these direct attacks on Koševo hospital constitute examples of the campaign of attacks on civilians.

3. Sniping and Shelling of Civilians in Rural ABiH-held Areas of Sarajevo

(a) Sedrenik Area

510. The Prosecution alleges that the ridgeline on the SRK frontline known as Špicasta Stijena or “Spikey Rock” or “Sharpstone,” which overlooks the northeastern part of Sarajevo and the neighbourhood of Sedrenik, was a “notorious source of sniping fire”¹⁷⁴⁹ against civilians during the Indictment Period.¹⁷⁵⁰

(i) Špicasta Stijena

511. The Trial Chamber heard uncontested testimonies to the effect that Špicasta Stijena was under the control of the SRK during the conflict. Witness DP53 and Vaso Nikolić, both SRK

¹⁷⁴⁶ Hvaal, T. 2296. Hvaal witnessed mortars of various sizes and 155-millimetre howitzers rounds impacting the hospital or landing in its vicinity, as well as tank rounds, Hvaal, T. 2296. On one occasion during the winter of 1993-1994, a large-calibre howitzer round hit the hospital, killing hospital staff, Hvaal, T. 2297.

¹⁷⁴⁷ Although using hospitals or medical facilities to commit military acts is not in accordance with international humanitarian law, before these installations lose the protection to which they are entitled, the attacking side should provide a prior warning to cease such use and provide reasonable time to comply therewith. If the medical facility is to be attacked, appropriate precautions should be taken to spare civilians, the hospital staff and the medical installations.

¹⁷⁴⁸ See P3660 (Battle damage assessment of Koševo hospital dated January 1993 by Carl Harding).

¹⁷⁴⁹ Prosecution Final Trial Brief, para. 256.

soldiers,¹⁷⁵¹ testified that they were sometimes posted in the immediate vicinity of Špicasta Stijena.¹⁷⁵² They explained that SRK troops manned trenches and an observation post there, from which soldiers could peer into certain sections of Sedrenik,¹⁷⁵³ while the closest ABiH frontline lay approximately 50 metres below the ridgeline.¹⁷⁵⁴ Witness DP20, also an SRK soldier,¹⁷⁵⁵ occasionally went to this area¹⁷⁵⁶ and confirmed that the SRK had deployed troops at Špicasta Stijena.¹⁷⁵⁷ There was ongoing fighting between the ABiH and the SRK in this area¹⁷⁵⁸ and in April 1993 for example, the ABiH captured an SRK trench on the ridgeline.¹⁷⁵⁹ The SRK recaptured that trench a few days thereafter however¹⁷⁶⁰ and overall the confrontation lines in the area did not change throughout the conflict except in limited instances.¹⁷⁶¹

512. Witnesses who did not belong to the SRK corroborated this evidence. Major Francis Thomas, a representative of the United Nations,¹⁷⁶² recalled visiting trenches belonging to the SRK near Špicasta Stijena.¹⁷⁶³ Witness E, a resident of Sedrenik,¹⁷⁶⁴ concluded that the SRK controlled the ridgeline based on the shouts and expletives which she could hear coming from there.¹⁷⁶⁵ Nazija Ocuz, another resident of Sedrenik,¹⁷⁶⁶ testified that she too believed that the SRK controlled Špicasta Stijena because she had seen two SRK soldiers arguing there during the conflict.¹⁷⁶⁷

513. Based on the above uncontested evidence, the Trial Chamber is satisfied beyond reasonable doubt that the SRK controlled the immediate vicinity of Špicasta Stijena during the Indictment Period, with the ABiH positioned nearby, below the ridgeline.

514. The Prosecution called witnesses from a variety of backgrounds to testify to the small-arms fire experienced by civilians in Sedrenik. It called Witness E who testified about an instance when she was 9 year old and shot. That incident is alleged in Schedule 1 of the Indictment under number 2. The Prosecution also called, as a resident of the area, Mejra Jusović, who explained that shots

¹⁷⁵⁰ Id., para. 256.

¹⁷⁵¹ Witness DP53, T. 16114-5; Nikolić, T. 15962.

¹⁷⁵² Witness DP53, T. 16165, 16169, 16177-8; Nikolić, T. 15961-2 and 15981.

¹⁷⁵³ Witness DP53, T. 16170 and 16178; Nikolić, T. 15981.

¹⁷⁵⁴ Witness DP53, T. 16153; Nikolić, T. 15982.

¹⁷⁵⁵ Witness DP20, T. 15517.

¹⁷⁵⁶ Witness DP20, T. 15777.

¹⁷⁵⁷ Witness DP20, T. 15770-1.

¹⁷⁵⁸ Witness DP53, T. 16144; Nikolić, T. 15975.

¹⁷⁵⁹ Witness DP53, T. 16152-3; Nikolić, T. 15980 and 16005.

¹⁷⁶⁰ Witness DP53, T. 16155.

¹⁷⁶¹ Witness DP53, T. 16124. One of the consequences of this ongoing fighting was that the trees on the ridgeline were damaged and felled as the conflict wore on, Witness DP53, T. 16194-5.

¹⁷⁶² Thomas, T. 9255.

¹⁷⁶³ Thomas, T. 9325.

¹⁷⁶⁴ Witness E, T. 4033.

¹⁷⁶⁵ Witness E, T. 4067 and 4072-3.

¹⁷⁶⁶ Ocuz, T. 4164.

¹⁷⁶⁷ Ocuz, T. 4166 and 4188.

were fired daily from the direction of Špicasta Stijena into the area.¹⁷⁶⁸ She testified in particular about one instance where her son was gravely injured on 10 November 1992,¹⁷⁶⁹ and which is an incident specifically alleged as representative of fire against civilians in the area of Sedrenik in Schedule 1 to the Indictment, under number 8. The conclusions in the two following express the views of the Majority of the Trial Chamber. Judge Nieto-Navia expresses separate and dissenting views in relation to these incidents.

(ii) Scheduled Sniping Incident 3¹⁷⁷⁰

515. Witness E testified that on the day of the incident, she was a 9 year-old girl with long hair and was maximum 150 centimetres tall.¹⁷⁷¹ The weather was sunny and Witness E, who was wearing dark trousers and a blue jacket, had gone outside into her front yard to play underneath a window of her house in Sedrenik.¹⁷⁷² Approximately one hour and a half after being outside in the yard, she was hit by a single bullet as she was kneeling to play by herself with flowers near a wall in the front of her house; at the time, her back was to the wall of her house and she faced the direction of Špicasta Stijena.¹⁷⁷³ The bullet hit her in “the area of [her] shoulder blade ... went through [her] body and ended up in the wall”¹⁷⁷⁴ behind her. Witness E went towards her house to sit on the threshold, calling out to her mother for help and received first-aid from an aunt who was a nurse.¹⁷⁷⁵ Some unspecified time thereafter that same day, Witness E was transported in a car to a hospital in Sarajevo with the help of neighbours.¹⁷⁷⁶ A shot was fired at the car as it pulled away from Witness E’s house, hitting it in the back.¹⁷⁷⁷ The Majority is satisfied that Witness E testified reliably about the circumstances of her wounding and hospital records show that on the day of the incident, Witness E was treated for an entry-exit bullet wound which had injured her “cutaneous and sub-cutaneous layers of skin.”¹⁷⁷⁸

516. Witness E testified that she believed that the bullet responsible for her injury had been fired from the ridge known as Špicasta Stijena, which she was facing when she was shot and which could

¹⁷⁶⁸ Jusović, T. 4147.

¹⁷⁶⁹ Jusović, T. 4156. Mejra Jusović added that her son was not a combatant in the conflict, Jusović, T. 4157.

¹⁷⁷⁰ The Indictment alleges that Witness E, “a girl aged 9 years, was shot and wounded in her back while she was playing in the front garden of her house in the Sedrenik area of Sarajevo” on a date which was tendered confidentially into evidence and which falls within the Indictment Period, Schedule 1 to the Indictment; P3654E (Date of occurrence of scheduled sniping incident 3 as indicated by Witness E under seal).

¹⁷⁷¹ P1025.1 (English translation of hospitalisation record of Witness E under seal); P3654 (Pseudonym sheet for Witness E under seal); Witness E, T. 4084 and 4090.

¹⁷⁷² Witness E, T. 4034-5.

¹⁷⁷³ Witness E, T. 4036, 4053 and 4047.

¹⁷⁷⁴ Witness E, T. 4038; see also Witness E, T. 4039.

¹⁷⁷⁵ Witness E, T. 4039-40.

¹⁷⁷⁶ Id.

¹⁷⁷⁷ Witness E, T. 4040 and 4067.

¹⁷⁷⁸ P1025 (English translation of hospitalisation record of Witness E under seal).

be seen from the yard through two houses.¹⁷⁷⁹ She added that the back of the car taking her to the hospital was also facing Špicasta Stijena when it was hit.¹⁷⁸⁰ Two photographs tendered into evidence show that there are houses around the yard where Witness E was injured and that, in between two such houses, the ridge can be seen from the yard.¹⁷⁸¹ Other evidence in the Trial Record establishes that Špicasta Stijena afforded a view of Sedrenik and was controlled by the SRK.¹⁷⁸² According to witnesses who belonged to the latter army, SRK soldiers in the area did not fire at civilians,¹⁷⁸³ but the Majority notes that evidence from other witnesses from a wide variety of backgrounds, including a senior UN representative in Sarajevo and residents of the city, indicates that civilians in ABiH-controlled territory in the vicinity of Špicasta Stijena regularly experienced being shot at.¹⁷⁸⁴ Based on this last evidence, the unobstructed line of sight to Špicasta Stijena as well as the shooting which was directed at the car transporting Witness E to hospital and which came from the direction of this ridge, the Majority is satisfied that the bullet which injured Witness E was fired from the area of Špicasta Stijena. The Majority accepts in particular that since Witness E was kneeling and facing the ridge while playing with flowers, her posture would have caused her back to arch slightly, so that the bullet fired from Špicasta Stijena entered the upper part of her back before exiting through a lower region of her body.

517. Although the distance of approximately 1,111 metres between Špicasta Stijena and the site of the incident¹⁷⁸⁵ is significant, the Majority of the Trial Chamber is satisfied beyond reasonable doubt that Witness E was targeted deliberately. There was no military equipment or personnel near Witness E at the time and place of the incident.¹⁷⁸⁶ The victim, a child, was kneeling to play with flowers at the time of the incident so that the exposure of her body to a stray bullet fired over such a distance would have been small. In addition, although the two attacks might have been unrelated, some time after she was shot, Witness E along with others was targeted again from the direction of Špicasta Stijena as she was being taken to the hospital.

¹⁷⁷⁹ Witness E, T. 4042 and 4047.

¹⁷⁸⁰ Witness E, T. 4068.

¹⁷⁸¹ P3273 (Photographs of the location of the incident marked by Witness E under seal); P3279Q (360 degree photograph of location of scheduled sniping incident number 3 under seal). Neither P3273 nor P3279Q indicates whether the garden offered other lines of sight over a long distance.

¹⁷⁸² Witness DP53, T. 16170 and 16178; Nikolić, T. 15981; Thomas, T. 9325; DP53, T. 16170 and 16177-8; Nikolić, T. 15961-2 and 15981; DP20, T. 15770-1; Thomas, T. 9325; Witness E, T. 4067 and 4072-3; Ocuz, T. 4166 and 4188.

¹⁷⁸³ Nikolić, T. 16002-3, 16049 and 16091-2; DP53, T. 16184; DP34, T. 17892; Knezević, T. 18962-3.

¹⁷⁸⁴ Thomas, T. 9325-6; Šehbajraktarević, T. 1792; Witness AF, T. 5485-6, 5490 and 5499; Jusović, T. 4147-8 and Ocuz, T. 4176-7.

¹⁷⁸⁵ Hinchliffe, T. 12959. Witness E indicated on map P3243 the approximate position of her house in relation to Špicasta Stijena. Witness E, T. 4072. Although that map does not include an explicit scale, the gridding appearing thereon suggests that the distance between the house and Špicasta Stijena is a little over 1 kilometre, in substantial agreement with the measurement of Jonathan Hinchliffe. Witness E herself estimated that distance to be 2-3 kilometers by road, but added that the distance as the crow flies was probably less, Witness E, T. 4094.

¹⁷⁸⁶ Witness E, T. 4069 and 4099-4100. Witness E recalled that people, including at times soldiers, would regularly pass through the yard of her house, Witness E, T. 4052. She did not rule out that a couple of soldiers might have passed

518. The Majority of the Trial Chamber finds that Witness E, a civilian, was deliberately targeted from SRK-controlled territory.

(iii) Scheduled sniping incident number 8¹⁷⁸⁷

519. Mejra Jusović, who lived at 133B Sedrenik Street in Sedrenik, explained that she went with a neighbour to Pasino Brdo, a wooded area to the immediate northeast, to collect firewood around 3:00 hours on 24 July 1993.¹⁷⁸⁸ Once there, she gathered the wood into a bundle which she tied together with rope.¹⁷⁸⁹ At about 6:00 hours, she placed the load on her back and decided to return home.¹⁷⁹⁰ On that early July morning, the sky was cloudy and “overcast”.¹⁷⁹¹ Mejra Jusović was walking alone on her way back to her house - her neighbour had left about half an hour earlier -¹⁷⁹² when at approximately 200 metres from her house, she heard gunshots.¹⁷⁹³ She immediately lay down on the ground for cover.¹⁷⁹⁴ Two shots were fired, followed by a third one which hit her left buttock.¹⁷⁹⁵ After being wounded, she passed out and lay on the ground for about a half an hour before her son, who had been alerted by a neighbour, came to help her.¹⁷⁹⁶ She was then taken to a hospital where the bullet was extracted.¹⁷⁹⁷ At the time of the incident, Mejra Jusović was not wearing a military uniform.¹⁷⁹⁸ The Majority of the Trial Chamber is satisfied that Mejra Jusović testified credibly about the circumstances of her wounding.

520. Mejra Jusović believed that the bullet that hit her came from a ridge known as Špicasta Stijena, which was a frequent source of small-arms fire.¹⁷⁹⁹ Other witnesses confirmed that Špicasta

through the yard earlier during the day, but she was alone in the garden at the time of the incident, Witness E, T. 4052 and 4069.

¹⁷⁸⁷ The Indictment alleges that “Mejra Jusović, a woman aged 45 years, was shot and wounded in her left buttock while pulling a load of wood towards her home near Rasadnjak, Sedrenik area, Sarajevo” on 24 July 1993, Schedule 1 to the Indictment.

¹⁷⁸⁸ Jusović, T. 4139 and 4152. P3243 (Map marked by Witness E under seal); P3644 (Map marked by Mirza Sabljica); D82 (Map marked by Mehmed Travljanin).

¹⁷⁸⁹ Jusović, T. 4139-40.

¹⁷⁹⁰ Jusović, T. 4139-40.

¹⁷⁹¹ Jusović, T. 4140. Asked whether the sun had come up by that time, she responded: “no, it was overcast”. Again, upon the question: “Do you know approximately how far the visibility was at 6.00 in the morning on the 24th of July, 1993?”, the witness said: “To tell you the truth, it was overcast. You could see – you could see that there were clouds, clouds moving, and that it was clearing up.”

¹⁷⁹² Jusović, T. 4139.

¹⁷⁹³ Jusović, T. 4140.

¹⁷⁹⁴ Jusović, T. 4141.

¹⁷⁹⁵ Jusović, T. 4140-1.

¹⁷⁹⁶ Jusović, T. 4141.

¹⁷⁹⁷ Jusović, T. 4141. The Prosecution did not tender into evidence a medical certificate regarding Mejra Jusović’s injury.

¹⁷⁹⁸ Jusović, T. 4212; Ocuz, T. 4176, 4174-6: Nazija Ocuz also explained that since she hid with her family in her cellar during the daytime, she did not know if the immediate vicinity of her residential area was used by the military during the day.

¹⁷⁹⁹ Jusović, T. 4138 and 4206; P3280R (Video of location of scheduled sniping incident 8).

Stijena was controlled by the SRK and afforded a view into Sedrenik.¹⁸⁰⁰ A panoramic photograph and video of the area show that there was an unobstructed line of sight from the place where she was injured to Špicasta Stijena.¹⁸⁰¹ Witnesses called by the Defence and the Prosecution estimated the distance from Špicasta Stijena to the site of the incident to be between 600 and 900 metres as the crow flies.¹⁸⁰² Witnesses who belonged to the SRK testified that soldiers of their army in the area of Špicasta Stijena did not fire at civilians,¹⁸⁰³ but the Majority of the Trial Chamber also heard evidence from other witnesses from a wide variety of backgrounds, including a senior UN representative and residents of the city, that civilians in ABiH-controlled territory in the vicinity of Špicasta Stijena regularly experienced shooting.¹⁸⁰⁴ On the basis of this last evidence as well as both the approximate distance and the unobstructed line of sight between Špicasta Stijena and the site of the incident, the Majority is satisfied that the shot which injured Mejra Jusović originated from SRK-controlled territory in the area of Špicasta Stijena.

521. Although Mejra Jusović's did not indicate explicitly the light conditions at the time of the incident, the Majority is satisfied that the circumstances of the incident establish that the victim could only have been shot at deliberately. Mejra Jusović did not report that there was any ongoing fighting at the time of the incident¹⁸⁰⁵ and heard only two shots being fired before a third one hit her, as she lay on the ground. Furthermore, the victim was an easier target since she was not moving and the perpetrator was positioned higher up, in the elevated area of Špicasta Stijena. The sequence of events demonstrates conclusively that the victim, targeted by several bullets and in such a position, was made the object of the attacks. In reaching this conclusion, the Majority is aware that Witness E, a resident of Sedrenik,¹⁸⁰⁶ who marked on a map the position of trenches in the area immediately west of Pasino Brdo¹⁸⁰⁷ warned during her testimony about her placement of the trenches as she "can't read maps very well"¹⁸⁰⁸ and she "never went to [these] trenches,"¹⁸⁰⁹ relying instead on information she had heard from others when she was a little girl.¹⁸¹⁰ The Majority also notes that evidence from SRK soldiers posted in the area indicates that there were a series of ABiH

¹⁸⁰⁰ Witness DP53, T. 16170 and 16177-8; Nikolić, T. 15961-2 and 15981; Witness DP20, T. 15770-1; Thomas, T. 9325; Witness E, T. 4067 and 4072-3; Ocuz, T. 4166 and 4188.

¹⁸⁰¹ P3279R (360 degree photograph of the location of scheduled sniping incident number 8); P3280R (Video of location of scheduled sniping incident number 8).

¹⁸⁰² Nikolić, T. 15999; Jonathan Hinchliffe, T. 12978.

¹⁸⁰³ Nikolić, T. 16002-3, 16049 and 16091-2; Witness DP53, T. 16184; Witness DP34, T. 17892; Knezević, T. 18962-3.

¹⁸⁰⁴ Thomas, T. 9325-6; Šehbajraktarević, T. 1792; Witness AF, T. 5485-6, 5490 and 5499; Jusović, T. 4147-8 and Ocuz, T. 4176-7.

¹⁸⁰⁵ Mejra Jusović recalled that the ABiH and the SRK had fought on the day of the incident and that "[s]hells fell that day, and there was a lot of fire, gunfire," though she did not specify when this military activity began or ended, Jusović, T. 4206-7.

¹⁸⁰⁶ Witness E, T. 4035.

¹⁸⁰⁷ P3243 (Map marked by Witness E); Witness E, T. 4105-7 and 4109.

¹⁸⁰⁸ Witness E, T. 4108.

¹⁸⁰⁹ Witness E, T. 4129.

¹⁸¹⁰ Witness E, T. 4129-30.

trenches immediately behind the front lines at Špicasta Stijena 50 metres below the ridge,¹⁸¹¹ without any suggestion that there were additional ones close to the site of the incident.

522. Although it is convinced that at 6:00 hours in a July morning there is light, given the absence of explicit indications as to the exact level of luminosity at the time of the incident, the Majority cannot exclude the possibility that the person firing at Mejra Jusović failed to notice that she was a middle-aged civilian woman carrying wood. Nonetheless, the Majority is satisfied that the absence of military presence in the area of the incident,¹⁸¹² which consisted of open space except for three nearby houses,¹⁸¹³ should have cautioned the perpetrator to confirm the military status of his victim before firing.

523. The Majority therefore finds that Mejra Jusović was fired upon from SRK-controlled territory in reckless disregard of the possibility that she was a civilian.

(iv) Other Evidence of Targeting of Civilians from Špicasta Stijena

524. The Trial Chamber heard testimonies from witnesses from Sarajevo who visited or knew about civilian casualties in the area of Sedrenik and who testified that the people living there were subjected to regular small-arms fire. One such visitor, Witness AF, went regularly to Sedrenik to see his parents who lived about 200 metres away from Špicasta Stijena.¹⁸¹⁴ He testified that small-arms fire killed his father¹⁸¹⁵ and injured his mother on 31 March 1993 near their home.¹⁸¹⁶ Mirsad Kučanin, a criminal inspector with the Security Service Centre in Sarajevo,¹⁸¹⁷ personally investigated one incident where residents in Sedrenik had been targeted by small-arms fire during the Indictment Period,¹⁸¹⁸ and added that his colleagues had conducted inquiries into other similar incidents in the area.¹⁸¹⁹ Fuad Šehbajraktarević, the director of a funeral parlour in Sarajevo,¹⁸²⁰ testified that “lots of people were killed there, killed by snipers.”¹⁸²¹ He recalled in particular going to Sedrenik once at an unspecified date to see a carpenter whose 17- or 18-year old son had been

¹⁸¹¹ Witness DP53, T. 16153; Nikolić, T. 16070-2.

¹⁸¹² Jusović, T. 4212. Mejra Jusović did not indicate during her testimony that there was any ongoing military exchange which she could hear at the time of the incident. Another resident of Sedrenik, Nazija Ocuz, testified that from 1992 through 1994, she never saw any heavy military equipment or weapons in the area where both Mejra Jusović and she collected firewood at night, Ocuz, T. 4174-6.

¹⁸¹³ P3279R (360 degree photograph of the location of scheduled sniping incident number 8).

¹⁸¹⁴ Witness AF, T. 5485-6, 5489-90 and 5499.

¹⁸¹⁵ At the time of his death, the father of Witness AF was a pensioner and was not participating in the conflict, Witness AF, T. 5488.

¹⁸¹⁶ Witness AF, T. 5485-6, 5490 and 5499. Witness AF was not in Sedrenik at the time when his parents were fired upon, but rushed to see them when he received news of the incident, about an hour later, Witness AF, T. 5487.

¹⁸¹⁷ Kučanin, T. 4499.

¹⁸¹⁸ Kučanin, T. 4601 and 4606.

¹⁸¹⁹ Kučanin, T. 4601 and 4606.

¹⁸²⁰ Šehbajraktarević, T. 1743.

¹⁸²¹ Šehbajraktarević, T. 1790.

killed while in front of their house, which was located only “a hundred metres, 50, [or] 60 metres”¹⁸²² away from Špicasta Stijena. Mustafa Kovac, who held senior positions in the civil defence organisation in Sarajevo during the Indictment Period,¹⁸²³ testified that “there was continuous use of [firearms] that were shooting on Sedrenik, the broader area of Sedrenik and the district below it.”¹⁸²⁴

525. United Nations representatives also testified that civilians in Sedrenik were subjected to small-arms fire during the Indictment Period. As the senior UNMO in Sector Sarajevo from October 1993 to July 1994,¹⁸²⁵ Major Francis Thomas oversaw observers posted throughout Sarajevo.¹⁸²⁶ Some of these observers in the area of Sedrenik reported that persons in the ABiH-controlled side of the ridgeline were fired upon for no apparent reason.¹⁸²⁷ This fire caused “a significant number of [civilian] casualties,”¹⁸²⁸ prompting Major Francis Thomas or one of his local team commanders to lodge protests with the SRK.¹⁸²⁹ He also remembered visiting SRK trenches near Špicasta Stijena and found that they afforded “a very clear view”¹⁸³⁰ into territory controlled by the ABiH. Another United Nations representative, Colonel David Fraser, in Sarajevo from April 1994 onwards, confirmed that the UN investigated “incidents [involving firearms occurring at] a place called Sedrenik or Grdonj,”¹⁸³¹ though he did not specify in the course of his testimony whether the victims in these incidents were civilians.

526. Several Defense witnesses who belonged to the SRK denied that civilians in the area of Sedrenik were deliberately fired upon by soldiers of their army. Vaso Nikolić, who was deployed in the vicinity of Špicasta Stijena, explained that the soldiers in his company were forbidden to fire on civilians and that his military commanders repeated this injunction whenever fresh troops arrived.¹⁸³² Witness DP53 added that neither he nor any of his fellow SRK soldiers posted at Špicasta Stijena fired at civilians.¹⁸³³ Both Witness DP53 and Vaso Nikolić explained that, in any event, they could not see civilians in Sedrenik from their positions.¹⁸³⁴ Other SRK soldiers who sometimes visited Špicasta Stijena or were posted in the northeastern quadrant of Sarajevo corroborated aspects of the testimonies of Vaso Nikolić and Witness DP53. Witness DP20

¹⁸²² Šhbajraktarević, T. 1792; Šhbajraktarević also spoke of other residents of Sedrenik, the members of a family with the surname “Parla,” who were killed on an undisclosed date during the conflict, Šhbajraktarević, T. 1792.

¹⁸²³ Kovać, T. 839.

¹⁸²⁴ Kovać, T. 889.

¹⁸²⁵ Thomas, T. 9255.

¹⁸²⁶ Thomas, T. 9264.

¹⁸²⁷ Thomas, T. 9325.

¹⁸²⁸ Thomas, T. 9326.

¹⁸²⁹ Thomas, T. 9326.

¹⁸³⁰ Thomas, T. 9325.

¹⁸³¹ Fraser, T. 11189.

¹⁸³² Nikolić, T. 16002-3, 16049 and 16091-2.

¹⁸³³ Witness DP53, T. 16184.

confirmed that during his occasional visits to Špicasta Stijena, he did not see civilians in Sedrenik.¹⁸³⁵ DP34, a senior officer in the SRK's Koševo brigade¹⁸³⁶ which was positioned in parts of the northeastern quadrant of Sarajevo,¹⁸³⁷ recalled receiving on several occasions written orders prohibiting firing on civilians.¹⁸³⁸ Sasa Knezević, a soldier with the Koševo brigade until September 1993,¹⁸³⁹ had also received standing orders never to fire on civilians.¹⁸⁴⁰ The Trial Chamber evaluated the the evidence arising from SRK sources that no fire was directed from the area of Špicasta Stijena at civilians in Sedrenik during the Indictment Period in the light of evidence to the contrary from civilian residents of Sedrenik and international observers posted in Sarajevo during the Indictment Period, charged with monitoring fighting in Sarajevo. This evidence is overwhelming and satisfies the Trial Chamber, beyond reasonable doubt, that civilians in the area of Sedrenik experienced indiscriminate or direct small-arms fire originating from Špicasta Stijena, SRK-controlled territory, during the Indictment Period.

(b) Širokača Area

527. The Prosecution alleges that the ridgeline known as Baba Stijena or “Baba Rock,” which is located on the northern flank of Mount Trebević and which overlooks the neighbourhood of Širokača in Sarajevo, was under the control of the SRK and was a source of sniping fire against civilians during the Indictment Period.¹⁸⁴¹

(i) Mount Trebević and Baba Stijena

528. Maps marked by soldiers of both the SRK and the ABiH indicate that the two armies faced each other along a confrontation line located in the south-eastern quadrant of Sarajevo, with the ABiH controlling the northern base of Mount Trebević.¹⁸⁴² Testimonies heard by the Trial Chamber corroborated this evidence. DP1, who provided humanitarian relief for the Serb population living in Sarajevo during the conflict,¹⁸⁴³ explained that one of his acquaintances had dug trenches at the foot of Mount Trebević for the ABiH.¹⁸⁴⁴ Akif Mukanović, a soldier of the ABiH deployed in that

¹⁸³⁴ Witness DP53, T. 16173-4; Nikolić, T. 16073-4.

¹⁸³⁵ Witness DP20, T. 15783-5; Witness DP20 also testified that he was forbidden to fire on civilians, Witness DP20, T. 15787.

¹⁸³⁶ Witness DP34, T. 17799.

¹⁸³⁷ D1834 (Map of Sarajevo marked by Witness DP34). Witness DP34 indicated that his brigade was positioned from Gornji Hotonj to Grdonj, D1834 (Map of Sarajevo marked by Witness DP34).

¹⁸³⁸ Witness DP34, T. 17892.

¹⁸³⁹ Knezević, T. 18930-1.

¹⁸⁴⁰ Knezević, T. 18962-3.

¹⁸⁴¹ Prosecution Final Trial Brief, para. 236-241.

¹⁸⁴² D1778 (Map marked by Witness DP11); D1809 (Map marked by Witness DP16); P3728 (Map related to scheduled sniping incident number 11 marked by Vahid Karavelić).

¹⁸⁴³ Witness DP1, T. 13252-3.

¹⁸⁴⁴ Witness DP1, T. 13342 and 13346.

area,¹⁸⁴⁵ confirmed the existence of such trenches.¹⁸⁴⁶ Immediately east of the northern base of Mount Trebević, ABiH troops also controlled elevated positions in the vicinity of a hill called Colina Kapa.¹⁸⁴⁷

529. The SRK deployed forces in the area enabling it to control much of the remainder of Mount Trebević, including upper regions affording a view of Sarajevo. Radovan Radinović, a military expert called by the Defence,¹⁸⁴⁸ concluded after interviewing SRK officers and reviewing ABiH and SRK written orders that the SRK during the conflict controlled Mount Trebević, whose elevation offered a military advantage over neighbouring ABiH positions.¹⁸⁴⁹ He added that the control of this mountain constituted one of the few strategic advantages enjoyed by the SRK over the ABiH in that area of Sarajevo.¹⁸⁵⁰ Aernout van Lynden, a Dutch journalist who visited Sarajevo several times during the Indictment Period,¹⁸⁵¹ explained that he went in September 1992 to “[SRK]-held districts within Sarajevo, Grbavica, Hrasno, and the area adjoining what was known as the Jewish cemetery, also on Mount Trebević where the [SRK] had various positions overlooking the city much higher up.”¹⁸⁵² Richard Mole, Senior UNMO from September to December 1992,¹⁸⁵³ drew up in December 1992 a map representing the position of confrontation lines in Sarajevo.¹⁸⁵⁴ That map indicates that except for an area to the north and northwest, much of Mount Trebević, including its upper regions, lay in SRK-held territory.¹⁸⁵⁵

530. As for Baba Stijena, the evidence in the Trial Record about the zone of control under which it fell is mixed. Vahid Karavelić, who eventually became the commander of the ABiH 1st Corps during the conflict,¹⁸⁵⁶ believed that the ridgeline lay in SRK-held territory.¹⁸⁵⁷ Witness DP11, a soldier in the 4th battalion of the SRK stationed in the southeastern part of the city,¹⁸⁵⁸ disagreed,

¹⁸⁴⁵ Mukanović, T. 3097.

¹⁸⁴⁶ Mukanović, T. 3097 - 3099.

¹⁸⁴⁷ Harding, T. 4460; Witness DP11, T. 15004; Golić, T. 14868; Witness DP20, T. 15657; D1778 (Map marked by Witness DP11); P3704 (Map of Sarajevo); P3644.CH (Map of Sarajevo).

¹⁸⁴⁸ Radinović, T. 20865.

¹⁸⁴⁹ D1925 (Radinović Report).

¹⁸⁵⁰ D1925 (Radinović Report).

¹⁸⁵¹ Van Lynden, T. 2085 and 2092-3.

¹⁸⁵² Van Lynden, T. 2103.

¹⁸⁵³ Mole, T. 9500-1.

¹⁸⁵⁴ Mole, T. 9523-4.

¹⁸⁵⁵ P3704 (Map of Sarajevo).

¹⁸⁵⁶ Karavelić, T. 11786.

¹⁸⁵⁷ P3728 (Map relating to scheduled sniping incident numbers 2 & 11 marked by Vahid Karavelić); Karavelić, T. 11813 and 11832: Karavelić was shown P3728 in relation to scheduled sniping incidents 2 and 11 in which the alleged source of fire was Baba Stijena; he moved on that map in relation to scheduled sniping incident 11 the position of the SRK frontline north, so that the source of fire lay very close to SRK-controlled territory but not when shown the same map in relation to scheduled sniping incident 2. The Majority notes that Karavelić may not have taken sufficient time to examine carefully the map in relation to scheduled sniping incident 2 when being examined, but may have taken that time when he was given a more ample opportunity to work on (a.o.) the map in relation to scheduled incident 11 during a break, and therefore does not see meaningful contradiction in his testimony in relation to P3728.

¹⁸⁵⁸ Witness DP11, T. 14984-5.

testifying that the ridgeline lay in "a neutral area"¹⁸⁵⁹ between the confrontation lines. These differing testimonies and the absence of other conclusive evidence on the issue do not allow the Trial Chamber to determine whether the Baba Stijena ridgeline itself lay within territory controlled by the SRK or was in fact a no man's land. Evidence from both the SRK and the United Nations discloses, however, that the SRK regularly used the road on the northern flank of Mount Trebević which lies close to Baba Stijena¹⁸⁶⁰ and which leads to Pale.¹⁸⁶¹ In particular, Carl Harding, a UNMO serving in Sarajevo at the time Anisa Pita was shot,¹⁸⁶² explained that, except for one instance when the ABiH occupied a part of this road for a "short while"¹⁸⁶³ before retreating,¹⁸⁶⁴ the road leading to Pale was controlled by the SRK¹⁸⁶⁵ and that the position of the confrontation lines in this area was "very static because the ground was very difficult ... [and] is very, very steep and closely wooded [so that] the road that went to Pale was a significant boundary for both sides."¹⁸⁶⁶ The Trial Chamber is satisfied that this and the other evidence from a military expert for the Defence, an international journalist and a senior United Nations representative establish beyond reasonable doubt that the SRK operated from the general area of Baba Stijena.

531. Civilians described to the Trial Chamber the regular gunfire which they experienced in the neighbourhood of Širokača. Ekrem Pita and his wife Fatima, both residents of Širokača,¹⁸⁶⁷ explained that gunfire was directed daily into the neighbourhood after the conflict began.¹⁸⁶⁸ As a result, Ekrem Pita stopped going to work because commuting became dangerous.¹⁸⁶⁹ The Pitas also modified their daily habits, spending 90 percent of their time in their cellar¹⁸⁷⁰ and typically leaving their house under the cover of foggy weather to forage for basic necessities such as food and wood.¹⁸⁷¹ Ekrem Pita also recalled that after his daughter Anisa Pita was injured by a bullet on 13 December 1992, he took her regularly on foot to Koševo hospital during a three-week period for follow-up treatment.¹⁸⁷² These trips over a distance of 3 to 4 kilometres¹⁸⁷³ were very dangerous

¹⁸⁵⁹ Witness DP11, T. 15066.

¹⁸⁶⁰ Fatima Pita, T. 5879.

¹⁸⁶¹ Harding, T. 4462; Thomas, T. 9450; Witness DP11, T. 15056, 15060 and 15064. An SRK map indicating the position of the confrontation lines around Sarajevo in 1994 places within SRK-controlled territory the part of the road to Pale located on Mount Trebević, C2 (Map of Sarajevo) and Witness DP20, T. 15792. This part of the road was frequently attacked by the ABiH. Witness DP11, T. 15064.

¹⁸⁶² Harding served as a UNMO in Sarajevo from July 1992 to January 1993. Harding, T. 4311.

¹⁸⁶³ Harding, T. 4459-60. Harding did not indicate when this attack took place.

¹⁸⁶⁴ Harding, T. 4460. Witness DP11 confirmed that the ABiH frequently attacked this road. Witness DP11, T. 15064.

¹⁸⁶⁵ Harding, T. 4462.

¹⁸⁶⁶ Harding, T. 4447.

¹⁸⁶⁷ Ekrem Pita, T. 3970 and 3997-3998; Fatima Pita, T. 5875.

¹⁸⁶⁸ Ekrem Pita, T. 4011; Fatima Pita, T. 5906.

¹⁸⁶⁹ Ekrem Pita, T. 3995-6.

¹⁸⁷⁰ Ekrem Pita, T. 3971.

¹⁸⁷¹ Fatima Pita, T. 5882 and 5890.

¹⁸⁷² Ekrem Pita, T. 3977 and 3995.

¹⁸⁷³ Ekrem Pita, T. 3995, 3977.

because there was gunfire and shelling in the area.¹⁸⁷⁴ He and his wife recounted the instance where their daughter was shot, which the Prosecution alleges specifically in Schedule 1 of the Indictment under number 2.

(ii) Scheduled sniping incident number 2¹⁸⁷⁵

532. On 13 December 1992, Ekrem Pita testified that he left his house with his daughter Anisa, who was three-and-a-half years old, to fetch some water¹⁸⁷⁶ between 10 and 10:30 am.¹⁸⁷⁷ The weather was chilly and foggy and that there was no ongoing fighting when father and daughter left the house.¹⁸⁷⁸ They went to a water source about 150 metres from the house and people were already there so that they had to wait in line.¹⁸⁷⁹ Anisa Pita remained only a short while at the water source;¹⁸⁸⁰ she met there another child named Elma Smajkan and both girls decided to go back to the Pitas' house to play.¹⁸⁸¹ Ekrem Pita remained behind to collect water¹⁸⁸² and remembered hearing several shots some unspecified time after his daughter had left him to return home.¹⁸⁸³

533. The fog had lifted by the time Anisa Pita reached her house.¹⁸⁸⁴ Fatima Pita, who was standing inside the house about half a metre away from the front door, saw her daughter arrive and told her to take her dirty shoes off before entering.¹⁸⁸⁵ Between 10 and 11:00 am, as Anisa Pita was kneeling down to untie her shoe-laces while facing the front door,¹⁸⁸⁶ Fatima Pita heard one or more shots.¹⁸⁸⁷ At the time of the incident, Anisa Pita was wearing a dark red jacket, blue dungarees, a cap and white tennis shoes with laces.¹⁸⁸⁸

¹⁸⁷⁴ Ekrem Pita, T. 3977 and 3995.

¹⁸⁷⁵ The Prosecution alleges that "Anisa Pita, a girl aged 3 years, was shot and wounded in her right leg while she was taking off her shoes on the porch of her residence on Žagrići Street in the Širokača area of Sarajevo" on 13 December 1992, Schedule 1 to the Indictment.

¹⁸⁷⁶ After the conflict began in 1992, husband and wife Ekrem and Fatima Pita, who lived in a house on Žagrići Street in the neighbourhood of Širokača, stopped having access to running water. Ekrem Pita, T. 3971-2; Fatima Pita, T. 5880; P3704 (Map relating to scheduled sniping incident number 11 marked by Vahid Karavelić).

¹⁸⁷⁷ Ekrem Pita, T. 3974, 3977 and 3981. Ekrem Pita's wife Fatima remembered slightly differently. She believed, though she was unsure, that her husband and daughter had left the house earlier, between 8 and 9:00 am. Fatima Pita, T. 5881. Husband and wife also had different recollections about fighting which might have taken place in their neighbourhood the night before 13 December 1992. Ekrem Pita remembered that night as being generally quiet. Ekrem Pita, T. 4009-10. His wife, on the other hand, believed that there had been heavy shelling in the area and that the family had taken shelter in the basement. Fatima Pita, T. 5876-7, 5882 and 5919.

¹⁸⁷⁸ Fatima Pita, T. 5889; Ekrem Pita, T. 3974 and 4010.

¹⁸⁷⁹ Fatima Pita, T. 5581; Ekrem Pita, T. 3974-6.

¹⁸⁸⁰ Fatima Pita believed that Anisa Pita had returned only ten minutes after she had left the house, Fatima Pita, T. 5881.

¹⁸⁸¹ Fatima Pita, T. 5881-2 and 5901; Ekrem Pita, T. 3974-6.

¹⁸⁸² Ekrem Pita, T. 3974 - 3976; Fatima Pita, T. 5881.

¹⁸⁸³ Ekrem Pita, T. 3976.

¹⁸⁸⁴ Fatima Pita, T. 5892.

¹⁸⁸⁵ Ekrem Pita, T. 3978-9.

¹⁸⁸⁶ Fatima Pita, T. 5876, 5882 and 5902.

¹⁸⁸⁷ At first, she testified that she had heard several "shots" which injured her daughter, without clarifying whether she meant that only one bullet was fired at the time of the incident. Fatima Pita, T. 5882. Later, she explained that she had

534. In the meantime, Ekrem Pita was informed by a neighbour that his daughter had been injured and returned to his house.¹⁸⁸⁹ Both parents inspected their daughter and found that she had been injured above the knee of her right leg by a bullet which had subsequently exited the girl's body.¹⁸⁹⁰ With the help of his brother, Ekrem Pita carried his daughter to a clinic in Stari Grad where her wounds were bandaged.¹⁸⁹¹ Anisa Pita was then taken to the orthopaedic department of Koševo hospital for further treatment.¹⁸⁹² Despite some inconsistencies in the testimonies of Ekrem and Fatima Pita which do not relate directly to the shooting,¹⁸⁹³ the Trial Chamber is satisfied that both witnesses provided credible evidence that their daughter was shot in front of their house during the morning of 13 December 1992.¹⁸⁹⁴

535. Both parents believed that the bullet that had injured their daughter had been fired from a ridge known as Baba Stijena, because that location was visible from their house and was controlled by the SRK.¹⁸⁹⁵ Two photographs and a video taken from the front door of the Pitas' house show this entrance to be completely walled in by neighbouring houses and structures such as fences, offering only a narrow line of sight in the direction of Baba Stijena.¹⁸⁹⁶ The evidence in the Trial Record establishes that the SRK operated from the general area of Baba Stijena.¹⁸⁹⁷ Hinchliffe measured the distance from Anisa Pita's house to Baba Stijena to be 895 metres¹⁸⁹⁸ and maps tendered by the Defence in relation to this incident indicate that distance to be on the order of 900

"heard that [single] shot" which injured her daughter, without clarifying whether she meant that only one bullet was fired at the time of the incident, Fatima Pita, T. 5893. After this shooting, Fatima Pita heard her daughter scream and saw her head fall on the threshold of the front door, where she lay huddled. Fatima Pita, T. 5882. At that point, Elma Smajkan was already inside the house, Fatima Pita, T. 5902. That sight caused Fatima Pita to faint several times, Fatima Pita, T. 5882-3.

¹⁸⁸⁸ Fatima Pita, T. 5900; Ekrem Pita, T. 3988 (closed session).

¹⁸⁸⁹ Ekrem Pita, T. 3976; Fatima Pita, T. 5883. Ekrem Pita estimated that approximately one hour had elapsed between the time he had left the house and the time he had returned, Ekrem Pita, T. 3979-80.

¹⁸⁹⁰ Fatima Pita, T. 5883; Ekrem Pita, T. 3976-7.

¹⁸⁹¹ Ekrem Pita, T. 3977; Fatima Pita, T. 5883.

¹⁸⁹² Fatima Pita, T. 5883-4.

¹⁸⁹³ Furthermore Ekrem Pita explained that a bullet recovered by his relatives after the incident and believed by them to have injured Anisa Pita was kept by his elder brother after the incident, who later misplaced it, Ekrem Pita, T. 3977 and 3980. Fatima Pita on the other hand testified that she herself had kept the bullet, but subsequently lost it, Fatima Pita, T. 5916.

¹⁸⁹⁴ Medical records documenting Anisa Pita's injury were not tendered into evidence since Fatima Pita testified that she had misplaced them, Fatima Pita, T. 5915-6.

¹⁸⁹⁵ Ekrem Pita, T. 3990-1 and 4001; Fatima Pita, T. 5879 and 5899-5900; P3280P (video of the location of scheduled incident number 2). Fatima Pita had also seen firing, mostly in the form of shelling, originating from the area of Baba Stijena at night when she left her cellar to go to the bathroom on the ground floor of her house, Fatima Pita, T. 5918 and 5925.

¹⁸⁹⁶ P3266 (photograph taken from the location of scheduled incident number 2); P3279P (360 degree photograph of location of scheduled incident number 2); P3280P (video taken from the location scheduled incident number 2). A picture taken from the entrance to the Pita's house shows that a small tree lies in the direction of Baba Stijena, partially blocking the line of sight. P3267 (Photograph taken from entrance to the Pitas' house). Ekrem Pita explained though that this tree was planted after the incident, Ekrem Pita, T. 3992.

¹⁸⁹⁷ P3704 (Map of Sarajevo); Van Lynden, T. 2103; D1925 (Report by Defence military expert Radovan Radinović).

¹⁸⁹⁸ Hinchliffe, T. 12946. Ekrem Pita thought that the distance from his house to Baba Stijena was somewhere between 350 and 1,200 metres as the crow flies, but was unsure, Ekrem Pita, T. 3991 and 4003. Fatima Pita for her part estimated that distance to be between 200 and 300 metres, Fatima Pita, T. 5879.

metres.¹⁸⁹⁹ The Trial Chamber also notes that the Defence argued that no medical documents were tendered which would “provide information about the position of entry-and-exit wound on the leg of Anisa Pita, or which would provide the possibility to determine the direction of wound canal, including the angle and the direction from where the bullet came from.”¹⁹⁰⁰ Nonetheless, based on the approximate distance of 900 metres and the existence of a line of sight from the Pitas’ front entrance only in the direction of Baba Stijena, the Majority is satisfied beyond reasonable doubt that Anisa Pita was injured by a shot fired from the area of that ridge.

536. On the basis of the above evidence from both UN and SRK sources, the Majority is satisfied that SRK soldiers had access to the vicinity of the road to Pale, which was certainly not within ABiH territory, and the general area of the Baba Stijena ridge.

537. The Majority is also satisfied that Anisa Pita was targeted deliberately. The argument that a stray bullet could have covered the distance from the area of Baba Stijena to the Pitas’ house along a narrow line of sight, without colliding with surrounding obstacles such as houses, to hit a small child is unpersuasive.

538. Another resident of the area of Širokača, Nura Bajraktarević, who regularly went to an area called Brajkovac,¹⁹⁰¹ immediately south of Širokača,¹⁹⁰² to collect firewood during the conflict,¹⁹⁰³ testified that there was “constant shooting”¹⁹⁰⁴ in the area. She recounted that on an unspecified date, she saw a woman named Fadila Peljto carried away in a wheelbarrow from Brajkovac after she had been hit in the stomach by a bullet while she was gathering wood.¹⁹⁰⁵ She and Bajram Sopi recounted an instance where a civilian was shot at. The Prosecution alleges that specific incident in Schedule 1 of the Indictment under number 11.

(iii) Scheduled sniping incident number 11¹⁹⁰⁶

¹⁸⁹⁹ The Pitas’ house is separated from Baba Stijena by 5 centimetres on D49 (Map marked by Ekrem Pita). Although no scale is explicitly indicated on this map, the gridding appearing thereon would suggest that a measurement of 5.5 centimetres corresponds to 1,000 metres in actual distance D49 (Map marked by Ekrem Pita). Map D49 thus appears to indicate that the actual distance between the Pitas’ house and Baba Stijena is approximately $(1,000/5.5) \times 5 = 909$ metres, Ekrem Pita, T. 3991 and 4003.

¹⁹⁰⁰ Defence Final Trial Brief, para. 72. See also Acquittal Motion, para. 32.

¹⁹⁰¹ Bajraktarević, T. 5576.

¹⁹⁰² D1778 (Map marked by Witness DP11) and P3728 (Map regarding scheduled sniping incident number 11).

¹⁹⁰³ Bajraktarević, T. 5576 and 5601.

¹⁹⁰⁴ Bajraktarević, T. 5582.

¹⁹⁰⁵ Bajraktarević, T. 5598, 5621 and 5625. According to Nura Bajraktarević, Fadila Peljto subsequently died from her injury, Bajraktarević, T. 5598. Bajraktarević also knew of another woman who had been killed by gunfire at an unspecified date while on her way to wash clothes though, as with the incident involving Fadila Peljto, she did not witness that shooting at first-hand, Bajraktarević, T. 5622 and 5625.

¹⁹⁰⁶ The Indictment alleges that “Šaćir Bosnić, a man aged 56 years, was shot dead while gathering wood across the road from the Hambina Carina Reservoir and adjacent to Zelengorska Street, presently Hambina Carina Street, at Širokača, Skenderija” on 7 September 1993, Schedule 1 to the Indictment.

539. Bajram Sopi explained that, as they had done regularly, Šaćir Bosnić and he went to an area near a water reservoir in Širokača to collect firewood the morning of 7 September 1993.¹⁹⁰⁷ They were busy digging up roots on a hill, some 10 to 15 metres apart one another, when someone “shot once [at Šaćir Bosnić] and missed [him].”¹⁹⁰⁸ A second shot was fired and hit Šaćir Bosnić in his right temple.¹⁹⁰⁹ The shooting stopped and some unspecified time thereafter, an ambulance arrived to transport the victim to the hospital, who died as a result of his injury.¹⁹¹⁰ In the meantime, Nura Bajraktarević, another witness present near the site of the incident, returned home to inform Šaćir Bosnić’s wife about the incident.¹⁹¹¹ Both Bajram Sopi and Nura Bajraktarević remembered that Šaćir Bosnić was wearing civilian clothes the day of the incident.¹⁹¹²

540. A panoramic view from the hill where Šaćir Bosnić was killed shows that it offers an unobstructed view of the nearby surroundings, including a ridge called Baba Stijena,¹⁹¹³ from where the Prosecution alleges that the shot that killed Šaćir Bosnić was fired.¹⁹¹⁴ The evidence in the Trial Record establishes that the SRK operated from Baba Stijena lies.¹⁹¹⁵

541. The Trial Chamber is not satisfied however that the evidence in the Trial Record establishes beyond reasonable doubt that Šaćir Bosnić was shot from Baba Stijena. In his account of the incident, Bajram Sopi did not indicate where the bullet that killed Šaćir Bosnić had been fired from, nor did he provide any indication such as the position of the victim's body at the time of death which would allow the source of fire to be deduced. For her part, Nura Barjaktrević thought that the shot responsible for the death of the victim had come either from the boulder known as "Baba",¹⁹¹⁶ or from an area she referred to as "Kula,"¹⁹¹⁷ which she believed were both under the control of the SRK.¹⁹¹⁸ Her account does not permit the Trial Chamber to establish reliably the direction or source of fire as she explained that she had not paid close attention to the shooting taking place in the area and, for example, initially remembered hearing only one shot at the time of the incident, whereas two were fired according to Bajram Sopi.¹⁹¹⁹ Visual evidence in the form of a panoramic photograph of the site of the incident does not assist the Trial Chamber in determining the source of

¹⁹⁰⁷ P3663B (Witness statement of Bajram Sopi dated 27 February 1996).

¹⁹⁰⁸ P3663B; see also Bajraktarević, T. 5578 - 5579.

¹⁹⁰⁹ P3663B.

¹⁹¹⁰ P3663B.

¹⁹¹¹ Bajraktarević, T. 5579-80, 5611 and 5615.

¹⁹¹² Bajraktarević, T. 5582; P3663B. Neither Nura Bajraktarević nor Bajram Sopi described specifically the clothes worn by Šaćir Bosnić the day of the incident.

¹⁹¹³ Bajraktarević, T. 5591-4; P3279S (360 degree photograph of the location of scheduled sniping incident 11).

¹⁹¹⁴ Prosecution Final Trial Brief, para. 255; Response to Acquittal Motion, para. 72.

¹⁹¹⁵ P3704 (Map of Sarajevo); Van Lynden, T. 2103; D1925 (Radinović Report).

¹⁹¹⁶ Bajraktarević, T. 5591-2.

¹⁹¹⁷ Bajraktarević, T. 5595 and 5607. She further identified that area as containing "the road towards Lukavica", Bajraktarević, T. 5608.

¹⁹¹⁸ Bajraktarević, T. 5591 and 5595.

¹⁹¹⁹ Bajraktarević, T. 5578-9 and 5606-7; P3663B (Witness statement of Bajram Sopi dated 27 February 1996).

fire as the hill where Šaćir Bosnić was shot lay exposed in a number of directions.¹⁹²⁰ The Trial Chamber is therefore not satisfied that the evidence in the Trial Record allows for the determination beyond reasonable doubt of the source of fire.

542. The evidence in the Trial Record concerning this incident also fails to establish beyond reasonable doubt that Šaćir Bosnić was targeted deliberately. Although Bajram Sopi stated that the victim had been targeted twice, neither he nor Nura Barjaktarević described the weather conditions at the time of the incident.¹⁹²¹ Whether the visibility would have permitted the deliberate targeting of Šaćir Bosnić from a distance¹⁹²² cannot therefore be determined. The possibility allowed by both Bajram Sopi and Nura Barjaktarević that there might have been ongoing fighting in the area¹⁹²³ raise the possibility, when considered in conjunction with this absence of indication about visibility, that the victim might have been killed unintentionally by a stray bullet from a military exchange. Moreover, the Trial Chamber notes that the top of the hill where the victim was shot was a bushy area devoid of civilian dwellings, where civilians might not have been expected to congregate.¹⁹²⁴

543. Therefore, the Trial Chamber finds that the Prosecution has failed to establish beyond reasonable doubt that Šaćir Bosnić was targeted deliberately from SRK-held territory in full awareness of his status as a civilian or in reckless disregard of the possibility that he was a civilian.

(c) Vogošća Area

544. The Prosecution claims that to the north of Sarajevo, in the municipality of Vogošća, the neighbourhood of Kobilja Glava regularly received sniping fire during the Indictment Period from a group of houses known as Orahov Brijeg, which is part of Poljine, in an open rural setting close to the SRK frontline.¹⁹²⁵

(i) Orahov Brijeg

545. Residents or passers-by testified that Kobilja Glava, one of the largest rural communities in the Vogošća municipality, north of Sarajevo, was under constant fire. A farm belonging to the victim of a shooting incident, Witness G, not in the direct proximity of military installations, was regularly targeted by firearms throughout the conflict and most particularly in 1993.¹⁹²⁶ To access that farm, another witness, Witness K, stated that she had to use side roads, in particular “a road

¹⁹²⁰ P3279S (360 degree photograph of the location of scheduled sniping incident 11).

¹⁹²¹ Bajraktarević only indicated that the incident had occurred during summertime, Bajraktarević, T. 5578.

¹⁹²² Hinchliffe measured the distance from the location of the incident to Baba Stijena to be 460 metres, Hinchliffe, T. 12982.

¹⁹²³ Bajraktarević, T. 5582 and 5609; P3663B (Witness statement of Bajram Sopi dated 27 February 1996).

¹⁹²⁴ P3279S (360 degree photograph of the location of scheduled sniping incident 11).

¹⁹²⁵ Prosecution Trial Brief, para. 270.

which was a little out of the way, hidden, which was safer, safer from the point of view of combat operations” because there was gunfire and snipers positioned along the main road.¹⁹²⁷ Another visitor in that area, Witness L, testified that the fetching of water, the delivery of civilian goods, and other such activities of a civilian nature, were done at dawn or dusk, when civilians could not easily be seen¹⁹²⁸ by persons located on SRK-controlled territory who, according to Ifeta Šahić, a resident in that area, “[would] shoot at everyone, civilians, everything that moved.”¹⁹²⁹

546. All these witnesses testified to having experienced targeting from SRK-controlled territory, which specific instances are alleged in Schedule 1 of the Indictment under numbers 4, 9 and 14.

(ii) Scheduled Sniping Incident 4¹⁹³⁰

547. Witness G testified that on 25 June 1993 he was picking lettuce in the vegetable plot of his farm in Kobilja Glava when, around 13:20 hours, he heard sounds of shooting from Orahov Brijeg.¹⁹³¹ He lay down for two or three minutes and when he got up, he was shot in the back.¹⁹³² Upon receiving a “tremendous blow”, he turned 180 degrees, fell and fainted.¹⁹³³ Witness K who was visiting Witness G that day saw him lying on the ground, on his back, at a distance of 50 to 100 meters from his house.¹⁹³⁴ Witness K ran to assist Witness G who warned her to be careful because he had just been shot.¹⁹³⁵ Witness K went to get the assistance of a neighbour and returned with him to take Witness G away.¹⁹³⁶ While they were carrying Witness G, they heard intense shooting directed towards them.¹⁹³⁷ The three dropped on the ground. The shooting then stopped. They then ran several metres until the shooting restarted. Four or five times, they ran short distances, then fell to the ground to avoid being shot at.¹⁹³⁸ Witness K counted 10 to 15 shooting periods in total,¹⁹³⁹ and it took them 15 to 20 minutes to carry Witness G to the house.¹⁹⁴⁰ Witness G was then transported to hospital,¹⁹⁴¹ and hospitalised for a month.¹⁹⁴² The Trial Chamber has no doubt that

¹⁹²⁶ Witness G, T. 2395-6.

¹⁹²⁷ Witness K, T. 2505.

¹⁹²⁸ Witness L, T. 2522, 2553.

¹⁹²⁹ Šahić, T. 2587-93.

¹⁹³⁰ The Indictment alleges that Witness G, a man aged 52 years, was shot and wounded in the back and chest while trying to tend a vegetable plot in Kobilja Glava, north of Sarajevo, Schedule 1 to the Indictment.

¹⁹³¹ Witness G, T. 2396-7.

¹⁹³² Witness G, T. 2397-8.

¹⁹³³ Witness G, T. 2397-8.

¹⁹³⁴ Witness K, T. 2489-91.

¹⁹³⁵ Witness K, T. 2490-1.

¹⁹³⁶ Witness K, T. 2491-2.

¹⁹³⁷ Witness K, T. 2492.

¹⁹³⁸ Witness K, T. 2492.

¹⁹³⁹ Witness K, T. 2492.

¹⁹⁴⁰ Witness K, T. 2494.

¹⁹⁴¹ Witness G, T. 2407.

¹⁹⁴² Witness G, T. 2407.

the incident occurred as recounted by the eye-witnesses. It finds these witnesses credible and reliable.

548. The Trial Chamber has no doubt either that Witness G had civilian status on the day of the incident. The activity in which he was involved and the manner in which he was dressed (he was dressed in no more than a pair of shorts) were without any doubt the activity and dress of a civilian.

549. The Defence submits that the victim was not able to determine the source of fire¹⁹⁴³ and that Witness G's injuries "could not happen from the direction indicated and claimed".¹⁹⁴⁴ Witness G testified that his property was located partly on a slope facing approximately north-west and partly on top of a ridge,¹⁹⁴⁵ at approximately 500 meters from the frontline.¹⁹⁴⁶ Both witnesses said that there was no other military presence or military equipment in the close vicinity of Witness G's property.¹⁹⁴⁷ Witness G recounted that before being shot in the back, he heard sounds of shooting from Orahov Brijeg,¹⁹⁴⁸ which is part of Poljine and faces the northernmost boundary of his farm.¹⁹⁴⁹ Witness G explained that on that location, there was a group of houses called the Orahov Brijeg complex, which was on the frontline on the hills overlooking his property. According to Witness G, it was held by snipers.¹⁹⁵⁰ One of the houses there was locally known as "Tica's House": when shooting came from that house or a location in the vicinity of that house, people would say that fire came from "Tica's House".¹⁹⁵¹ Witness G was adamant that on 25 June 1993, gunfire came from Tica's House, which used to belong to the parents of a neighbour, nicknamed Tica.¹⁹⁵² According to Witness G, that was "the only location where there was a line of visibility" to his vegetable plot and from which a shooter could have seen him in the vegetable plot.¹⁹⁵³ Witness G indicated on the video and 360 degree photograph of the area where he was shot, the vegetable plot where he was shot, his position and stance at the time he was shot: the photograph depicts Witness G standing and bent forwards, with his back facing Orahov Brijeg.¹⁹⁵⁴ According to

¹⁹⁴³ Defence Final Trial Brief, paras 97, 98. The Defence called Witness DP14 and its expert witness in Ballistic, Milan Kundjadić. The expert concluded that he was not in a position to determine what kind of projectile hit the victim, Kunjadić Report, p. 5.

¹⁹⁴⁴ Defence Final Trial Brief, para. 97.

¹⁹⁴⁵ Witness G, T. 2394-95: There was a road on top of the ridge and another one at the lower boundary of the property.

¹⁹⁴⁶ Witness K, T. 2509; the garden of the property was located approximately 400 metres south of the ABiH front line and approximately 500 metres south from the SRK front line, D1793, D153.

¹⁹⁴⁷ Witness K, T. 2509; Witness G, T. 2395-6.

¹⁹⁴⁸ Witness G, T. 2396.

¹⁹⁴⁹ Witness G, T. 2412.

¹⁹⁵⁰ Witness G, T. 2411.

¹⁹⁵¹ Witness G, T. 2411.

¹⁹⁵² Witness G, T. 2411.

¹⁹⁵³ Witness G, T. 2397.

¹⁹⁵⁴ P3280A, P3279A.

Witness G, being higher up, the snipers there “had enough room to shoot from”.¹⁹⁵⁵ Witness K testified similarly that the source of fire was Orahov Brijeg.¹⁹⁵⁶

550. The Trial Chamber sees no reasons to doubt the witnesses’ assertion. Considering the number of times the party had to drop on the ground to avoid being targeted, it was easy for them to determine the direction of gunfire. The video and photographs of the area tendered into evidence further demonstrate that there was a line of sight between the area around “Tica’s House” and the spot where Witness G was wounded. Furthermore, the photograph tendered into evidence which depicts Witness G’s position and stance at the time he was shot shows that he was bent forwards, with his back towards Orahov Brijeg. The evidence of Witness G in relation to the entry and exit point of the bullet which wounded him and the photographs of his back showing scars caused by bullet wounds conclusively support the testimonies that the bullets fired at Witness G came from the direction of Orahov Brijeg, in the area of “Tica’s House”.¹⁹⁵⁷ The Trial Chamber is satisfied beyond reasonable doubt that the bullet which wounded Witness G was fired from the area around “Tica’s House”. The Defence Witness DP14, an SRK officer positioned in the North of Sarajevo, testified that the area around “Tica’s House” was held by SRK forces.¹⁹⁵⁸ The Trial Chamber is satisfied beyond reasonable doubt that the area around “Tica’s House” was held by SRK forces and that Witness G was shot from SRK-controlled territory.

551. The Defence argues that it was possible that the victim was shot by a stray bullet during an exchange of fire,¹⁹⁵⁹ because there was daily shooting along the confrontation lines, where the farm was, which extended to Orlić hill under the ABiH control after May 1992, Žuč hill under both armies’ control and Mijkica hill under VRS control.¹⁹⁶⁰ According to the Defence, the garden in which Witness G was shot was behind the ABiH positions and his house was located 20 to 30 meters away from those positions.¹⁹⁶¹ Witness G testified that his property was constantly targeted by firearms throughout the duration of the conflict and most particularly in 1993. However, there is

¹⁹⁵⁵ Witness G, T. 2411-2. The Trial Chamber understands this statement as meaning that the snipers there had a line of sight to the property of Witness G.

¹⁹⁵⁶ Witness K, T. 2492.

¹⁹⁵⁷ Witness G indicated in court that the sniping rifle bullet entered half-way down his back near the spine, and exited at the rear of his right shoulder (Witness G, T. 2399-2400, 2473). The medical certificate tendered into evidence states that Witness G had been shot in the middle of his back, in the spinal area, and that the bullet had exited from his right shoulder (Medical Discharge Summary, P1327, P1328, P1327.1, P1328.1). However, a photograph of the back of Witness G tendered into rebuttal evidence (P3808) confirmed the testimony of Witness G in relation to the point of entry and exit of the bullet. That evidence shows two scars made by bullet wounds in the spots indicated by Witness G in court. The observation of the photograph shows that one scar is located in the lower spinal area of the back of Witness G and another scar is located on the left upper side of the back of Witness G.

¹⁹⁵⁸ Witness DP14, T. 15952-3. He testified that in principle there could be a line of sight between Orahov Brijeg and the spot where Witness G was shot, but that “this would be a very difficult terrain for observation and for seeing targets”. Witness DP14, T. 15864. Witness DP14 testified that the wood and the orchard above the site of the sniping incident “would not represent an obstacle”, T. 15866.

¹⁹⁵⁹ Defence Final Trial Brief, paras 96, 99.

¹⁹⁶⁰ Cross-examination of Witness G, T. 2467; Defence Final Trial Brief, para. 99.

no evidence of ongoing military activity at the time and day of the incident, which could have justified a bullet being fired in the direction of Witness G's property. The Defence's argument is particularly untenable in view of the account of the incident by Witnesses G and K. Witness K recounted how, while Witness G was being taken to cover by a neighbour and herself - both also dressed in civilian clothing- the three of them were repeatedly shot at, one or more perpetrators waiting for them to stand up and run several meters before shooting again. The Trial Chamber is satisfied beyond reasonable doubt that in view of Witness K's account of the incident, one or more perpetrators were deliberately targeting civilians. Therefore, the Trial Chamber finds that Witness G, a civilian, was shot deliberately from SRK-controlled territory.

(iii) Scheduled Sniping Incident 9¹⁹⁶²

552. Ifeta Šahić was 14 years old in August 1993 and was living at her sister's house in Kobilja Glava when on 5 August 1993, around noon, she was asked to go and fetch water with her two girlfriends, Sabina Zeković and Vildana Kapur.¹⁹⁶³ Šahić testified that there was neither water nor electricity in houses during the conflict, and that the fetching of water was usually done at the nearby river at dawn or dusk, to avoid being detected and shot at. However, on that day, they had not heard any shooting.¹⁹⁶⁴ On their way back, while walking along Stara Cesta Street, and pulling a wheelbarrow loaded with jerry cans of water, Šahić and her friends heard gunshots ahead of them. Bullets stroke the ground around their feet.¹⁹⁶⁵ Šahić saw the flash from a machine gun, the so-called "death sower", shooting at them.¹⁹⁶⁶ They ran and sought shelter in an orchard on the left side of the street. Ifeta Šahić and Sabina Zeković lay down on the grass. Vildana Kapur leaned against a tree and was then shot in her left leg.¹⁹⁶⁷ Šahić sought the assistance of policemen dressed in civilian clothes¹⁹⁶⁸ (off-duty policemen according to the witness) at the canteen located in the meadow nearby,¹⁹⁶⁹ which belonged to the police station. Vildana Kapur was then taken to the hospital.¹⁹⁷⁰ Although the witness was of a young age at the time of the event, the Trial Chamber finds her testimony credible and reliable. The Trial Chamber has no doubt that the incident occurred as Šahić recounted it.

¹⁹⁶¹ Defence Final Trial Brief, para. 94.

¹⁹⁶² The Indictment alleges that on "5 August 1993, Vildana Kapur, a woman aged 21 years, was shot and wounded in the leg while carrying water home along Stara cesta, Hotonj area", Schedule 1 to the Indictment.

¹⁹⁶³ Šahić, T. 2588-9

¹⁹⁶⁴ Šahić, T. 2589, 2613; sometimes it was necessary to fetch water during the day (Šahić, T. 2592).

¹⁹⁶⁵ Šahić, T. 2594-5.

¹⁹⁶⁶ Šahić, T. 2594-5.

¹⁹⁶⁷ Šahić, T. 2594, 2638.

¹⁹⁶⁸ Šahić, T. 2594, 2641, 2643-4.

¹⁹⁶⁹ The canteen was below the road, therefore below the line of the shots, Šahić, T. 2647.

¹⁹⁷⁰ Šahić, T. 2594-5.

553. The Trial Chamber is also satisfied beyond reasonable doubt that the three girls were civilians and that they could not be confused with members of an armed force. On the morning of the incident, the weather was fine, the friends were dressed in civilian clothes (tee-shirts and denims) and were engaged in a civilian activity.

554. The Defence argues that it is not possible to determine the source of fire¹⁹⁷¹ because no on-site investigations were carried out to determine “the angle of descent in which the projectile, or part of the projectile, entered the body of Vildana Kapur”.¹⁹⁷² The Trial Chamber does not consider the absence of on-site investigations or technical data concerning the point of entry of a bullet into the body critical to a determination of the source of fire. Šahić testified that she could see the SRK front line from Stara Cesta Street and that often the Stara Cesta Street area was targeted.¹⁹⁷³ That front line was in the area north of Stara Cesta Street called Poljine, at a distance of approximately 300-400 metres from the spot where Vildana Kapur was shot.¹⁹⁷⁴ Periodically, flashes of gunfire would be seen coming from Poljine.¹⁹⁷⁵ Šahić further testified that on the day of the shooting, while she and her girlfriends were walking on Stara Cesta Street, the machine-gun flashes were visible in front of them on the SRK side of confrontation lines.¹⁹⁷⁶ On the 360 degree photograph of the area where the shooting occurred, she pointed out a group of white houses beneath a rocky ridge with a dome on it where the shots had come from.¹⁹⁷⁷ The Defence Witness DP14 testified that the area approximately north of Stara Cesta Street and the orchard was held by “VRS forces”.¹⁹⁷⁸ The Trial Chamber has no reason not to believe that Šahić was in a position to determine where the bullets striking the ground around her and her girlfriends came from. The Trial Chamber is satisfied beyond reasonable doubt that the bullet which wounded Vildana Kapur was fired from SRK-held territory.

555. The Defence suggests that the intended target was not the victim but the police canteen because “this canteen was beneath the road they were walking, which means it was in the same direction of the shooting, when firing from the positions of SRK forces”.¹⁹⁷⁹ A Defence witness further points out that in principle, the surrounding forest¹⁹⁸⁰ and the orchard where the girls sought shelter would be a very difficult terrain for observation and for seeing targets.¹⁹⁸¹ The Trial

¹⁹⁷¹ Defence Final Trial Brief, para. 156.

¹⁹⁷² Id.

¹⁹⁷³ Šahić, T. 2595.

¹⁹⁷⁴ D153, D1793.

¹⁹⁷⁵ Šahić, T. 2595.

¹⁹⁷⁶ Šahić, T. 2595.

¹⁹⁷⁷ Šahić, T. 2624.

¹⁹⁷⁸ DP14, T. 15840-1.

¹⁹⁷⁹ Defence Trial Brief, para. 153.

¹⁹⁸⁰ The forest was getting more damaged with the time passing by according to DP14, T. 15864.

¹⁹⁸¹ Witness DP14, T. 15865-6.

Chamber does not find that the intended target could have been the canteen of the police forces. There is no evidence to support the Defence's assertion that the victim was shot during an exchange of fire. Šahić testified that there had been no shooting on the morning of the 5 August 1993.¹⁹⁸² She also testified that there were no military vehicles or other military equipment at the time of the shooting in the vicinity of the incident.¹⁹⁸³ The account of the incident by Šahić conclusively demonstrates that the first bullets were clearly shot at Šahić and her friends, striking the ground around their feet while they were walking along Stara Cesta Street. The shooting continued while they ran for shelter to the orchard, indicating that they were the intended target. And despite their having moved into the orchard, the shooting continued. Furthermore, and contrary to the Defence's assertion, the canteen of the police station was not in the direct vicinity of where the girls were walking but further down the road, in a meadow, thus not in the line of fire.¹⁹⁸⁴ The Trial Chamber is convinced that the three girlfriends were deliberately targeted. Therefore, the Trial Chamber finds that Vildana Kapur, a civilian, was deliberately targeted from SRK-controlled territory.

(iv) Scheduled Sniping Incident 14¹⁹⁸⁵

556. Witness L testified that on 7 October 1993 he broke his habit of visiting his parents – who lived in an area subject to frequent gunfire at almost exclusively civilians in Kobilje Glava –¹⁹⁸⁶ at night and brought them bread at dawn.¹⁹⁸⁷ He was walking downward¹⁹⁸⁸ along Stara Cesta Street in the direction of Vogošća, pulling a trolley with his right hand, when he heard a burst of gunfire.¹⁹⁸⁹ Two or three bullets passed by him, then one bullet hit the upper part of his left arm.¹⁹⁹⁰ The bullet exited from the outer side of the arm. Witness L sought shelter in a ditch on the side of the road, to his right.¹⁹⁹¹ He was later assisted by the driver of a passing car,¹⁹⁹² who took him to an infirmary. Later, Witness L went to the Koševo hospital for treatment.¹⁹⁹³ The incident was reported to the police, which drew a note tendered into evidence.¹⁹⁹⁴ That note attests that Witness L was wounded in the vicinity of the “Lelja Checkpoint”.¹⁹⁹⁵ During cross-examination, Witness L

¹⁹⁸² Šahić, T. 2613.

¹⁹⁸³ Šahić, T. 2613.

¹⁹⁸⁴ Šahić, T. 2647.

¹⁹⁸⁵ The Indictment alleges that Witness L, a man aged 29 years, was shot and wounded in the left upper arm while walking in Stara cesta Road, Hotonj Area, in the direction of Poljine, Schedule 1 to the Indictment.

¹⁹⁸⁶ Witness L, T. 2553.

¹⁹⁸⁷ Witness L, T. 2522, 2554.

¹⁹⁸⁸ Witness L, T. 2545.

¹⁹⁸⁹ Witness L, T. 2523, 21, 2576.

¹⁹⁹⁰ Witness L, T. 2523.

¹⁹⁹¹ Witness L, T. 2576, 2523.

¹⁹⁹² Witness L, T. 2576, 2523-4.

¹⁹⁹³ Witness L, T. 2524.

¹⁹⁹⁴ D31; Witness L, T. 2560-1.

¹⁹⁹⁵ D31.

testified that he was not aware of the existence of a “Lelja Checkpoint” in the vicinity of the Stara Cesta Road.¹⁹⁹⁶

557. The Defence submits that the civilian status of the victim was not established.¹⁹⁹⁷ It argues, *inter alia*, that because Witness L was pulling a cart, he was “surely bringing goods for necessities of the army, maybe he was bringing bread or food also” to the police canteen located there.¹⁹⁹⁸ The Trial Chamber notes that such assertion was not put to the witness. To pull a cart is not in itself an activity which may put one on notice that an ABiH combatant is approaching. The Trial Chamber sees no reason to doubt that Witness L was carrying bread in the cart he was pulling the day of the incident. The Defence further argues that because of his age, the victim was “certainly a military conscript”.¹⁹⁹⁹ Witness L testified that prior to June 1993, he was a member of the territorial defence and wore a uniform,²⁰⁰⁰ and that in June 1993, he became a member of the civil defence.²⁰⁰¹ He was to “distribute humanitarian aid to the population”, “to look after the cleanliness of streets and the whole neighbourhood”.²⁰⁰² Witness L was dressed in civilian clothes, a multi-coloured jumper and a pair of jeans.²⁰⁰³ The Trial Chamber sees no reasons either to doubt the testimony of Witness L in this regard, nor that on the morning of 7 October 1993, he was dressed in civilian clothes and did not carry arms. Yet, the Trial Chamber is left with some doubt as to whether his status of civilian was reasonably clear to any armed force on that morning. Witness L testified that the incident occurred in the “early morning hours”,²⁰⁰⁴ that although there was no fighting in the area, the area was full of troops.²⁰⁰⁵ The evidence also shows that there was a check-point in the vicinity of the incident. Because it is reasonably possible that, in view of the location of the victim and other conditions such as the presence of troops and a check-point in the vicinity, SRK forces reasonably considered Witness L to be an enemy soldier advancing toward the frontline, the Trial Chamber is left with some doubt as to whether Witness L was deliberately targeted as a civilian. Therefore, the Trial Chamber cannot conclude beyond reasonable doubt that Witness L was deliberately targeted as a civilian and cannot consider this incident as representative of a campaign of fire against civilians.

(v) Other Evidence of Targeting of Civilians from the area of Kobilja Glava

¹⁹⁹⁶ Witness L, T. 2559.

¹⁹⁹⁷ Defence Final Trial Brief, paras 225 *et seq.*

¹⁹⁹⁸ Defence Final Trial Brief, para. 225.

¹⁹⁹⁹ Defence Final Trial Brief, para. 225.

²⁰⁰⁰ Witness L, T. 2539-40.

²⁰⁰¹ Witness L, T. 2539.

²⁰⁰² Witness L, T. 2539.

²⁰⁰³ Witness L, T. 2568.

²⁰⁰⁴ Witness L, T. 2554.

²⁰⁰⁵ Witness L, T. 2553, 2556-7.

558. The Trial Chamber also heard evidence about another incident representative of small arm fire against civilians taking place southeast of Kobilja Glava.

559. Mirsad Kučanin remembered investigating the shooting of a 2-year old girl named Elma Jakupović which had taken place during the evening of 20 July 1993 in Koševo brdo.²⁰⁰⁶ The victim was hit in the forehead while asleep in her home²⁰⁰⁷ in a neighbourhood where there was no military activity.²⁰⁰⁸ Kučanin believed that the shooting “was simply fire opened randomly at a civilian locality.”²⁰⁰⁹ The bullet, which lodged itself in a sofa, was recovered and identified as originating from a 7.9-mm calibre weapon.²⁰¹⁰ Kučanin’s investigation determined that the source of fire lay in an area called Kromolj,²⁰¹¹ which is located in SRK-controlled territory²⁰¹² north of Koševo stadium,²⁰¹³ and which was known as a source of “constant fire”.²⁰¹⁴

560. In addition to shooting incidents, the Trial Chamber heard evidence about shelling taking place in the general area of Vogošća. Patrick Henneberry, Senior UNMO at the time, remembered seeing civilian houses in that area being hit in mid-September 1992 by heavy weapon fire “Dozens and dozens of times,”²⁰¹⁵ adding that UN observation posts had determined that this fire came from SRK-controlled territory.²⁰¹⁶ Jeremy Hermer, a UNMO at LIMA positions from August 1993 to January 1994,²⁰¹⁷ observed a shelling incident taking place in late November or December 1993 during which a civilian house on the Žuč hill disintegrated in a ball of fire.²⁰¹⁸ A UN team investigated the incident and determined that there had been no target of military value in the area of the hill and that two civilians had been killed by the explosion.²⁰¹⁹ Hermer also remembered that “the Lukavica team [of UN observers monitoring SRK-controlled territory reported] ... outgoing fire which coincided, almost to the second, with the impact which [Hermer] observed on Žuč [hill]”.²⁰²⁰

²⁰⁰⁶ Kučanin, T. 4545-6.

²⁰⁰⁷ Kučanin, T. 4546-7.

²⁰⁰⁸ Kučanin, T. 4554.

²⁰⁰⁹ Kučanin, T. 4553-4.

²⁰¹⁰ Kučanin, T. 4547.

²⁰¹¹ Kučanin, T. 4552.

²⁰¹² D1834 (Map marked by Witness DP21).

²⁰¹³ See for example D1836 (Map marked by Witness DP34) and P3235 (Map marked by Akif Mukanović).

²⁰¹⁴ Kučanin, T. 4552.

²⁰¹⁵ Henneberry, T. 8604. Henneberry did not specify whether civilians were injured as a result of this shelling.

²⁰¹⁶ Specifically, Henneberry explained that the fire would originate from territory monitored by UN observation posts LIMA 11 and LIMA 12, Henneberry, T. 8604. The UN “Lima” posts monitored SRK-controlled territory during the conflict, O’Keefe, T. 9180.

²⁰¹⁷ Hermer, T. 8439.

²⁰¹⁸ Hermer, T. 8474 – 8476.

²⁰¹⁹ Hermer, T. 8474 – 8475. The destroyed civilian house was located approximately 1500 metres west of the nearest confrontation line, Hermer, T. 8476.

²⁰²⁰ Hermer, T. 8475.

4. Pattern of Fire into ABiH-held Areas of Sarajevo

561. A general pattern of fire was noticed in Sarajevo during the Indictment Period. The evidence is that the shelling of the city was fierce in 1992 and 1993. Mole, Senior UNMO from September to December 1992, testified that throughout the three months he spent in Sarajevo, there was not a single day where there were no shell impacts in the city. There was continual background noise of small arms and mortars and artillery.²⁰²¹ Fatima Pita, whose daughter was shot at the entrance of their house on 13 December 1992,²⁰²² and Hadžić likened the frequency of shells falling in their neighbourhoods at that time as being like daily drops of rain.²⁰²³ Mandilović, surgeon at the State Hospital, testified similarly that: “As far as I remember, the most intensive shelling took place in the second half of 1992, in 1993, and that during 1994, the shelling slowly subsided”.²⁰²⁴ Kupusović concurred and testified that in winter 1993 and the beginning of 1994, the shooting was intensified, “smaller massacres” (killing of 4 or 5 people) occurred, usually at localities where people would gather for such activities as fetching water or buying bread.²⁰²⁵ Within this overall pattern, with the exception of the immediate post-Markale period, there were daily and weekly fluctuations. Cutler, an officer who served as a senior UNMO in Sarajevo from 26 December 1992 to 15 March 1993, noticed that the shelling seemed to have troughs and peaks, with periods of several days when there was very little firing, followed by days of extreme activity.²⁰²⁶ Even so, the lulls were relative. As with shelling, the sniping followed patterns of troughs and peaks. The sniping was continuous and frequent, nearly every day, although some days would be more intense than others.²⁰²⁷ Witness Y posted in Sarajevo during the first part of 1993 observed that the shelling within the city, while not of the same intensity, was deadly because of its random nature.²⁰²⁸ Tucker, a British officer who served as assistant to general Morillon from October 1992 to March 1993, added that “there was daily random shelling of various parts of the city. There was constant sniper fire and there were intense periods of small arms and artillery fire around the perimeter from time to time as attacks by one side or the other continued. It was a horrible situation”.²⁰²⁹

²⁰²¹ Mole, T.9812-3.

²⁰²² Scheduled sniping incident 2.

²⁰²³ Fatima Pita, T.5875; Hadžić, T. 12248.

²⁰²⁴ Mandilović, T.1094. To the same effect see Ashton, T.1226-7.

²⁰²⁵ See also evidence of intense shelling in December 1993, January and early February 1994 (prior to the Markale incident), Thomas, T.9292-T.9312.

²⁰²⁶ Cutler, T.8916-8.

²⁰²⁷ Cutler, T.8918-9.

²⁰²⁸ Witness Y stated that this was “in keeping with my prior statement, when I said that the artillery fire on Sarajevo aimed either at supporting proper military action on the front line with major destruction of buildings or at having random shelling which, in that case, would not destroy as much.” When asked whether “as to the random firing, was it minor?”, he responded: “Yes, it can't be minor if it kills people.” And he added that “If you talk about the amount of shells fired, if it is random firing, the consumption, the number of shells fired is far less than when you have concentrated fire.” (T.10941, closed session)

562. The most intense period was in February 1994,²⁰³⁰ prior to the UNSC Resolution 900, comprising an ultimatum to withdraw all the weapons further away from town. In March 1994, after the UN-demand was complied with, a “calm period” began with regard to the shelling and sniping.²⁰³¹ Other witnesses testified that following the Markale incident of 5 February 1994, the shelling of the city ceased almost completely for some weeks. Rose recalled the way the overall situation changed after the Markale incident in that “it created an opportunity for progress towards peace. [...] That transformed the whole of Bosnia. [...] And indeed, Sarajevo started to slowly return to normality.”²⁰³² In the wake of Markale, Thomas observed that after the cease-fire agreement until he left in July 1994, there was no artillery fire into the city, but the sniping resumed on 1 March 1994 and was actually increasing in intensity when he departed.²⁰³³ Rose added that the withdrawal of the heavy weapons from Sarajevo (pursuant to the February 1994 agreement) allowed the Bosnian Serb to re-deploy them “to other places such as Gorazde or Bihac, where they were able to intensify the fighting.”

563. The evidence of Hvaal supports that of Thomas that sniping was still on-going in 1994. He said that between September 1992 and August 1994 he observed, while driving and walking around Sarajevo, “people being targeted almost every day” and concluded that they were “definitely deliberately targeted.”²⁰³⁴ He actually saw persons being hit, between approximately 30-50 times per month.²⁰³⁵ About the pattern of fire in 1994, Mandilović noted that “looking at the situation as a whole, of course this does not mean that there were not a great many casualties in the latter half. The shelling might have been less frequent, but their destructive power was still very great.”²⁰³⁶ Witnesses testified that periods of relative inactivity in the shelling lulled civilians into a false sense of security, causing them to venture out of hiding, thereby exposing themselves. This particularly applied to children. Zaimović said about them: “They would go silent for a day or two, then the

²⁰²⁹ Tucker, T.9900.

²⁰³⁰ Thomas, T. 9292-9312.

²⁰³¹ Kupusović, T.670.

²⁰³² Rose, T. 10199

²⁰³³ Thomas, T.9463. Thomas clarified that a proposed anti-sniping agreement in February was never signed. “General Rose announced in front of the media and the face of the two parties that there had been too much signing already, and that he expected at noon the next day that both sides would stop firing, and if anybody shot after that, the media there would know which side was not adhering to the cease-fire. So there was actually no physical signing, which actually created a problem for us in some ways because there was no document.” This agreement was a “missed opportunity,” because the soldiers on the ground on both sides seemed to want it to hold, but by March, the casualties resumed. The ABiH took advantage of the cease-fire to improve their positions, which the Serbs complained about. Thomas saw the ABiH trenches move forward. Both sides killed each other with sniper fire during the cease-fire, Thomas, T. 9276-7, Fraser, who arrived in April 1994, also noted an increase in sniping, Fraser, T. 1195-6.

²⁰³⁴ Hvaal, T. 2275-6.

²⁰³⁵ Hvaal, T. 2353-4.

²⁰³⁶ Mandolović, T.1094. To the same effect see Ashton, T.1226-7.

children would feel more relaxed, go out into the streets, and then they would open fire and kill those innocent children”.²⁰³⁷

5. Were Sniping and Shelling Attacks on Civilians in ABiH-held Areas of Sarajevo Committed with the Aim to Spread Terror?

564. The Prosecution alleges that the underlying reason for the “campaign” of sniping and shelling was that of terrorizing the civilian population of Sarajevo.²⁰³⁸ The Defence military expert, Radovan Radinović, argued that the actions of the SRK were not aimed at terrorizing the civilian population in Sarajevo.²⁰³⁹

565. The Defence claims that the pattern of fire into the city of Sarajevo shows that the Serbian forces wanted peace, harboured no territorial ambition and merely wished to “defend” territory regarded as belonging to the Bosnian Serbs, and which was already within the purview of the SRK. To this end, SRK’s operations were defensive in nature, not aggressive.²⁰⁴⁰ Many Defence witnesses who were SRK front-line infantry frequently gave evidence that their orders were to not fire at civilians, whom they defined as women, children and anyone not wearing a uniform.²⁰⁴¹ Some considered persons to be legitimate targets if they were armed.²⁰⁴² They were only to fire if attacked.²⁰⁴³

566. Tucker explained that indeed “from about December 1992 onwards, the Bosnian Serb side wanted peace. They wanted an overall cease-fire in order to consolidate the territory of which they

²⁰³⁷ Zaimović, T.1847.

²⁰³⁸ Prosecution Final Trial Brief, paras 62; 580; Prosecution Closing Arguments, T. 21776; 21796; 21946.

²⁰³⁹ Radinović Report, paras 217-242.

²⁰⁴⁰ Defence Final Trial Brief, para. 738-46.

²⁰⁴¹ DP14: “I received orders from the command of the brigade that civilians are not to be targeted, that ammunition is to be spared, and that’s what I forwarded and told my fighters, my soldiers. Although, because of the area where we held our positions, in this sector there were no civilians. Not at all. Q. Did you give your subordinates any assistance in order to determine whether someone they saw on the other side was to be regarded as a civilian or a combatant? A. Of course. He is not in uniform, if he doesn’t have any weapons, he was considered a civilian, and if he is more than 300 metres away from the line. If he is on the first front line, then he is a soldier.” T. 15905. DP 10: The instructions of my superiors were never to open fire on civilians. [...] To my mind and to my troops, a civilian was every person without a uniform”, T. 14321. DP 9: We could open fire only at the orders of our superiors and only when our lives were threatened. Civilians never did this, they never threatened anyone”, T. 14537. DP 6: “we had strict orders not to fire at civilians, women, and children. They kept telling us over the telephone that we were not to fire on civilians, women, and children [...] Q. [...] if you saw a male of military age not wearing a uniform, you did not fire upon that person; is that correct? A. I wouldn’t, because you cannot see whether a man is of military age or not, because if you see someone at a distance, you can see that it’s a civilian, then naturally you don’t fire at him because that is what our orders were. Q. And you accept that if there was any doubt in your mind as to whether the person you could see was military or civilian, if there was any doubt, then you should not target that person; correct? A. Yes. Yes, one was not supposed to open fire then,” T. 14072-3.

²⁰⁴² DP50: “Q. [...] what did you mean by enemy live forces? A. Any soldier who had weapons on him. Whether he had a uniform or civilian clothes because at the time, there were no uniforms, and people went to the front lines in civilian clothes. So even a civilian who had firearms on him was a soldier. [...] a soldier or a civilian who is bearing firearms, they are the targets. While a civilian who has no weapons, then that person is not a target”, T.16309-10.

²⁰⁴³ See DP9, T.14537; DP10, T.14408.

had taken control of.” The Bosnians, on the other hand, could not accept a cease-fire which “meant accepting the status quo.”²⁰⁴⁴ Rose also said that it was true that “the forces commanded by General Galić wished not to have war, on the contrary, to have global cease-fire.” He added though, that the Bosnian Serb Army “was in the military ascendancy and that it was in their interest to halt the fighting at the moment, politically.”²⁰⁴⁵ Rose added that the international community had some difficulties in accepting peace-plans: “There was certainly a desire amongst the international community not to reward the aggressor.”²⁰⁴⁶ In re-examination, the witness repeated that “the Serbs could never be described as peacemongers. They were the aggressors. They had taken much of Sarajevo as well as Bosnia”.²⁰⁴⁷

567. That evidence is supported by other evidence in the Trial Record from a considerable number of UN military personnel that, as early as autumn 1992, sniping and shelling fire onto the city of Sarajevo from SRK-held territories was not justified by military necessity, but rather was aimed at terrorizing the civilian population in ABiH-held areas of Sarajevo.

568. Referring to the battle around Otes in early December 1992, Richard Mole, Senior UNMO in Sarajevo from September to December 1992, recounted that “all the fire that was incoming to the city of Sarajevo was analyzed along what the objective of that fire would be. If it wasn’t seen to be in response to any military events, one can only assume that the indiscriminate fire was being used to fashion terror because there was no military objective”.²⁰⁴⁸ Piers Tucker, the military assistant to General Morillon in Sarajevo from October 1992 to March 1993, stated that he believed that there were no major attempts to capture Sarajevo after December 1992 “but there was non-stop shelling of the citizens of Sarajevo, and the siege of Sarajevo and the prevention of food aid and the repair of utilities continued throughout.” He also maintained that the “analysis of the targets that were [...] fired against, indicates very strongly that the heavy artillery was not being used principally against military targets, but was being used in order to terrorise the civilian population”; officials at the UNPROFOR Headquarters interpreted these elements, overall “as being the continuation of the terrorism of the population of Sarajevo.”²⁰⁴⁹

²⁰⁴⁴ Tucker, T. 9966. See also Briquemont, who was also of the view that Serb forces launched attacks in Sarajevo as a means of “putting constant pressure in order to make the Muslims sign a peace agreement”. “In fact, both parties were uninterested in having a calm situation in Sarajevo,” T.10105.

²⁰⁴⁵ Rose, T. 10221 (see also T. 10222-3). Serbs controlled 70 per cent of the territory of BH, and it was in their interests to negotiate a cease-fire and pursue a political settlement, Rose, T. 10228.

²⁰⁴⁶ Rose, T. 10247.

²⁰⁴⁷ Rose, T. 10265.

²⁰⁴⁸ Mole, T. 11033. In this context, the Trial Chamber understands the use by the witness of the expression “indiscriminate fire” to mean shelling of areas where no specific military target is present.

²⁰⁴⁹ Tucker, T. 10028, 9969.

569. Patrick Henneberry, an officer with UNPROFOR from July 1992 to February 1993, remarked that SRK positions around LIMAs 10 and 11 would open fire frequently around supper-time, and the reason for this pattern was, in his mind, to terrorise people.²⁰⁵⁰ He elaborated that Bosnian Serb troops positioned around LIMA 7 mostly fired “primarily to invoke terror”, and this was true in part also for positions around LIMAs 10 and 11. He added that shells were indeed fired from “positions 10 and 11”, “in a manner that kept people running building to building, 'on their toes' [.]”²⁰⁵¹ In general terms, he stated that this strategy was clearly planned:

[o]n the civilian side, the impact of the psychological warfare application was working. They were indeed terrorised and on edge.²⁰⁵²

570. Carl Harding, a UNMO posted in Sarajevo from late July 1992 to 23 January 1993, concurred. He stated that “a single round of artillery or mortar to land at any time and virtually anywhere within the city” was such a normal occurrence that they even avoided to report it. Many of these rounds were not aimed at the military targets or at the front lines; this way of shelling achieved maximum surprise and increased the psychological effects on the civilians of the city with a minimum military effort.²⁰⁵³

571. Witness Y, a member of the UNPROFOR posted in Sarajevo in the first part of 1993, explained that in his opinion “the objective they [SRK forces] pursued was to make every inhabitant in Sarajevo feel that nobody was sheltered or protected from [...] the shooting and that the shooting was not aimed at military objectives but rather to increase the helplessness of the population [...] and was aimed at cracking them and to make them collapse, nervously speaking[.]”²⁰⁵⁴ He reiterated the same comment with regard to sniping: “The idea was to exercise psychological pressure, and there we realised that the objectives were very specifically civilian ones.”²⁰⁵⁵

572. Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994, considered that “as far as the local population is concerned, the objective [of sniping] was clear, is to create a climate of terror and atmosphere of terror in the centre of the city, to make people feel on the edge.”²⁰⁵⁶ John Hamill, a major with the Irish Army and a UNMO between May

²⁰⁵⁰ Henneberry, T. 8555-6.

²⁰⁵¹ Henneberry, T. 8758-9.

²⁰⁵² Henneberry, T. 8599-8600.

²⁰⁵³ Harding, T. 4394-5.

²⁰⁵⁴ Witness Y, T. 10855 (closed session).

²⁰⁵⁵ Witness Y, T. 10861-2 (closed session).

²⁰⁵⁶ Kolp, T. 8243.

1993 and July 1994, also believed that sniping by the SRK was used as an instrument by the military authorities “as an instrument of terror against the opposing side.”²⁰⁵⁷

573. General Van Baal, UNPROFOR Chief of Staff in Bosnia-Herzegovina in 1994, testified that sniping in Sarajevo was “without any discrimination, indiscriminately shooting defenceless citizens, women, children, who were unable to protect and defend themselves, at unexpected places and at unexpected times” and that this led him to conclude that its objective was to cause terror; he specified that women and children were the predominant target.²⁰⁵⁸ A similar assessment was provided by Francis Briquemont, Commander of UN forces in BiH from July 1993 to January 1994, for whom “the objectives [of the campaign] were basically civilians in order to put pressure on the population”.²⁰⁵⁹ He added that in a number of cases, either experienced by himself personally or by others, the SRK conducted what he called “quasi-sniping or playing at snipers,” a tactic of hitting a target with the aim of actually not neutralising it; this terrorised the population.²⁰⁶⁰

574. Morten Hvaal, a Norwegian journalist covering the conflict from September 1992 to August 1994, observed a similar pattern. Hvaal, recounted that quite often he would witness civilians being hit by sniper’s fire on the street without being killed on purpose, in order to attract more persons to the spot and shoot them, too. He explained that this strategy had no military purpose, but seemed a “fairly morbid kind of fun.”²⁰⁶¹

575. With regard to shelling, Aernout Van Lynden, a Dutch journalist who visited Sarajevo several times during the Indictment period,²⁰⁶² reached the same conclusion. He found that sporadic fire “here and there” did not serve any military goal, but “the effect was to cause fear with anyone, because people feared that whenever you went outside your house, you could – you were in danger; you were never safe.”²⁰⁶³ Similarly, Ashton, who arrived in Sarajevo in July 1992 as a photographer, recalled that a student of medicine specifically remarked in October 1992 that the sniping in Sarajevo was “to terrorize and humiliate the population[,] a way that the Serbs were

²⁰⁵⁷ Hamill, T. 6224-5. His assessment was that “if the political and military authorities had wished, they could have stopped sniping,” but they did not wish so, the sniping continued and civilians kept getting targeted.

²⁰⁵⁸ Van Baal, T. 9873-4.

²⁰⁵⁹ Briquemont, T. 10155-6.

²⁰⁶⁰ Briquemont, T. 10165.

²⁰⁶¹ Hvaal, T. 2366-8.

²⁰⁶² Van Lynden was in Sarajevo between May and August 1992, in September 1992 and from the end of October to December 1992, T. 2089-2092.

²⁰⁶³ Van Lynden, T. 2135-7.

trying to get their point across.”²⁰⁶⁴ This kind of conversation was repeated in 1993 and the first half of 1994 with several people,

and the results were much the same from different people that this was active terrorism, it was an act of horror. [They said: t]hey wanted to horrify people, they wanted to destroy us[.] They all felt that at some point they were going to be killed. They felt that there was no hope. All hope had been given up for a lot of the people there, and there was just a sense of complete abandonment.²⁰⁶⁵

576. The Prosecution submits that the purpose behind the campaign of targeting civilians, which was built on the territorial, topographical,²⁰⁶⁶ weaponry and munitions²⁰⁶⁷ advantages enjoyed by the SRK over its opponent,²⁰⁶⁸ was a crude application of pressure on the BH government. It explains that the purposes of the campaign was to undermine the government’s popular support from within the city to maintain the conflict, and to undermine the morale of the ABiH combatants, by reminding them that so long as they fought, their families behind them were in more danger than themselves.²⁰⁶⁹ The Trial Chamber understands that submission as pointing to the ultimate purpose of the campaign of sniping and shelling against civilians in Sarajevo.

577. Witness Y’s evidence supports that submission. Elaborating on the “specific mission that the snipers on the Serbian side had”, which was “to exercise psychological pressure on the civilian population, and there we realised that the objectives were very specifically civilian ones,”²⁰⁷⁰ he stated that: “I think that the fact that when one sees a population under fire the way it was, whatever its nature is, to see children, women, men, that makes people desperate. And I think that this is obviously a means of pressure on the local authorities to force them to act differently.”²⁰⁷¹ This explanation is consistent with that given by Tucker who testified that at the end of October 1992 was “the last major Bosnian Serb military offensive” in the Sarajevo theatre of armed conflict;

²⁰⁶⁴ Ashton, T. 1410-1. In another portion of his testimony, Ashton stated that Major Indić from the SRK told him that “he didn’t want to destroy the city. He wanted to wear the people down until they would surrender or give up,” although cautioned that these were not the exact words used, Ashton, T. 1295.

²⁰⁶⁵ Ashton, T. 1412.

²⁰⁶⁶ E.g., Van Lynden: “[...] because of the terrain, because Sarajevo is an elongated city lying in a valley along the river Miljacka, and because the Bosnian Serbs held the high ground, they were in positions to literally shoot down streets within the new part of Sarajevo and within the central part of Sarajevo. And places like Marin Dvor square, much of the length of the Marshal Tito Boulevard, the main road in Sarajevo, were open to sniper fire.” T.2116-7. See also Kolp T.8255-6.

²⁰⁶⁷ Mole said that the SRK was never considered as being poorly re-supplied. They generally seemed to have as much ammunition as they required. “We often saw the re-supply runs. They were unhindered. So there was no reason to believe that they would be short of munitions”, T. 9803-5.

²⁰⁶⁸ Kolp stated that since the city was under siege, the besieging forces were familiar with the layout of the city and they “know very well where they have to fire, when they have to fire.” There were military advantages that accrue from being familiar with the city. The VRS had an advantage based on their knowledge of the city, their training and the nature of their army. He stated that any good military person, armed with the familiarity of the target area, could use mortars with precision, T. 8254-5. With their high level of training, the VRS mortar crews could hit a target on the first shot, T. 8306.

²⁰⁶⁹ Prosecution Final Trial Brief, para. 67.

²⁰⁷⁰ Witness Y, T.10861.

²⁰⁷¹ Witness Y, T.10863.

“from then on, they basically carried out defensive operations and tried to terrorise the Bosniak population and the Presidency into accepting this status quo”.²⁰⁷²

6. Number of Civilians Killed or Injured in ABiH-controlled Parts of Sarajevo during the Indictment Period

578. The Prosecution tendered an expert report prepared by Ewa Tabeau and others²⁰⁷³ (the “Tabeau Report”) concerning the number of civilians killed or injured during the Indictment Period within ABiH-controlled areas of Sarajevo. The authors of the Tabeau Report consulted several sources,²⁰⁷⁴ including the results of a 1994 survey of approximately 85,000 households, in the Sarajevo municipalities of Centar, Novi Grad, Stari Grad, Novo Sarajevo, Ilidža, and Vogošća (“the 1994 Survey”).²⁰⁷⁵ The authors validated the survey against other sources of information concerning the population in the period.

579. According to the Tabeau Report, the *minimum* number of persons killed within the confrontation line in Sarajevo during the indictment period was 3,798, of whom 1,399 were civilians. The minimum number of wounded for the same period was 12,919, including 5,093 civilians.²⁰⁷⁶ Women, children (up to 17 years of age), and the elderly (aged 70 and over) were among the casualties, with at least 670 women, 295 children, and 85 elderly killed, and 2,477 women, 1,251 children, and 179 elderly wounded.²⁰⁷⁷ The Tabeau report finds that shelling and sniping and other arms fire were the most significant causes of injury or death.²⁰⁷⁸ About 932 civilians were killed and 3,405 were injured in shelling attacks, and about 253 civilians were killed and 1,296 were injured in sniping incidents. Other arms fire accounted for the killing of 101 civilians and the wounding of 288 more.²⁰⁷⁹ The monthly average of civilians killed fell from 105 in September to December 1992, to around 64 in 1993, to around 28 in the first six months of 1994.²⁰⁸⁰ The Tabeau Report does not determine the number of civilians killed or wounded as result of *intentional* targeting.²⁰⁸¹

²⁰⁷² Tucker, T.9967.

²⁰⁷³ P3731 (*Population Losses in the “Siege” of Sarajevo, 10 September 1992 to 10 August 1994*, dated 10 May 2002).

²⁰⁷⁴ P3731 (Tabeau Report), p. 18.

²⁰⁷⁵ P3731, p. 10. The survey asked respondents to list, among other things, members of their household who had been killed or wounded during the conflict, to indicate any affiliation of these reported household members with the military, as well as provide the date, place, and cause of the reported injury or death (P3731, p. 11).

²⁰⁷⁶ Id., Table 1.

²⁰⁷⁷ Id.

²⁰⁷⁸ Id., p. 5.

²⁰⁷⁹ Id.

²⁰⁸⁰ P3731. From September to December 1992, the corresponding daily average of civilians killed was 3.67, which dropped to 2.04 for 1993 before further decreasing to 0.93 to the first months of 1994, P3731, Table 5, p. 27.

²⁰⁸¹ The authors of the Tabeau Report attempted to determine if there was a correlation in terms of timing between the killing or wounding of soldiers and the killing and wounding of civilians, P3731 (Tabeau Report), pp 32-37. They

580. The Defence tendered an expert report prepared by Dr. Svetlana Radovanović in answer to the Tabeau Report. Radovanović did not dispute that the conflict in the city led to “human casualties”,²⁰⁸² but neither did she attempt to determine their number. Instead, she challenged the main conclusions of the Tabeau Report, resorting to arguments which essentially misinterpret or distort the information found in the Tabeau Report. For example, she questioned the reliability of the sources used and described the 1994 Survey as a “pile of amateurishly obtained reports,”²⁰⁸³ adding that no “precise methodological explanations”²⁰⁸⁴ were provided on the manner in which this survey was conducted. Radovanović said during her testimony that she had not consulted the sources used in the Tabeau Report.²⁰⁸⁵

581. The Trial Chamber considers that the main conclusions of the Tabeau Report are supported by other evidence in the Trial Record, including evidence tendered by the Defence,²⁰⁸⁶ which shows that the conflict in Sarajevo led to the death or injury of a large number of civilians.²⁰⁸⁷ The Trial Chamber recalls that the Tabeau Report presents minimum numbers, from only six municipalities. Bearing in mind these limitations, the Trial Chamber finds beyond reasonable doubt that many hundreds of civilians were killed and thousands were injured in ABiH-controlled areas during the Indictment Period.

concluded in tentative language that “civilians were becoming victims [of shooting and shelling] *not necessarily* when soldiers were killed or wounded. This would *suggest* that the losses of the population were *perhaps* caused by mechanisms other than those accounting for [the] killing or wounding [of] soldiers”, P3731, p. 37 (emphasis added). As the Radovanović Report correctly argues though, such an attempt to compare the dates on which civilians were killed or injured with the dates on which soldiers were killed or injured to determine whether civilians were deliberately targeted is speculative, D1922 (Radovanović Report), p. 19.

²⁰⁸² D1922 (Radovanović Report), pp 3-4.

²⁰⁸³ *Id.*, p. 9.

²⁰⁸⁴ *Id.*

²⁰⁸⁵ Radovanović, T. 21422-3.

²⁰⁸⁶ The Defence tendered a document of information which identifies hundreds of persons who were killed or injured by shooting on the basis of reports from entities such as medical institutions or the police. See D1928 (Compilation of reports of shooting incidents). Radovanović added that D1928 itself raised some concerns as a source of information, such as the distinction made between civilians and soldiers, Radovanović, T. 21330. See also D1927 for another compilation of shooting incidents similar to D1928 tendered by the Defence.

²⁰⁸⁷ A Defence witness, DP51, who was in charge of admissions at Koševo Hospital during the conflict, estimated that from May 1992 to January 1994, 3,000 to 4,000 patients were admitted at his medical facility, approximately 75% of whom were soldiers, Witness DP51, T. 16953-16954. He added that he determined that a patient was a civilian if he was an old person, a child or a person not wearing a uniform, Witness DP51, T. 16954-5. Persons who had been wounded represented the largest proportion of these admissions, though such proportion could vary considerably, Witness DP51, T. 13627. Bakir Nakaš, the director of the State Hospital, testified that his hospital admitted 3,698 civilians and 4,407 persons affiliated with the military from 1992 to 1995 and sample hospital records confirm that patients identified in these records as civilians were treated for injuries due to shooting and shelling during the Indictment Period, Nakaš, T. 1190-1. Nakaš compiled this information from reports from the emergency ward of the hospital, Nakaš, T. 1190-1. A patient was indicated as affiliated with military if he or she was covered by a military insurance scheme, although this latter insurance scheme could also apply to civilian dependents of a military person and retired military personnel, Nakaš, T. 1173, 1193-4; see P3573.1 (English translation of records from State hospital). Tarik Kupusović, an elected municipal representative who became town mayor of Sarajevo in 1994, explained that municipal authorities received regular reports concerning civilian deaths during the conflict from an institute for public health in the city, newspapers, a public funeral society and associations of religious communities, Kupusović, T. 612, 667. These reports indicated that from May 1992 to October 1995, approximately 12,000 civilians died from shooting and shelling, including 1,600

7. Conclusion on Whether there was a Campaign of Sniping and Shelling in Sarajevo by SRK Forces

582. This conclusion on whether there was a campaign of sniping and shelling fire in Sarajevo against the civilian population of Sarajevo conducted by SRK forces during the Indictment Period is that of the majority of the Trial Chamber. Judge Nieto-Navia, dissenting, expresses his view in the separate and dissenting opinion appended to this Judgement.

583. The Trial Chamber stated earlier that it understood the term “campaign” in the context of the Indictment to cover military actions in the area of Sarajevo involving widespread or systematic shelling and sniping of civilians resulting in civilian death or injury. The Majority believes that such a campaign existed for the reasons given below.

584. All residents of ABiH-held areas of Sarajevo who appeared before this Trial Chamber testified to the effect that no civilian activity and no areas of Sarajevo held by the ABiH seemed to be safe from sniping or shelling attacks from SRK-held territory. The Majority heard reliable evidence that civilians were targeted during funerals, in ambulances, in hospitals, on trams, on buses, when driving or cycling, at home, while tending gardens or fires or clearing rubbish in the city. Sniping incidents 22 in Dobrinja and 24 in Novo Sarajevo examined above are examples of how civilians were targeted while using public transport vehicles running during cease-fires. In sniping incident 20, the witness Akif Mukanović recounted in detail how his wife was killed by a bullet while at home in Hrasno. In sniping incident 18, the victim recounted how she was targeted while cycling back from the hospital in Dobrinja; in sniping incident 15, the victim told the Trial Chamber how he was targeted while collecting rubbish in the area of Hrasno under the escort of the UNPROFOR. Witnesses G and K both testified about how they were repeatedly and deliberately targeted in Kobilja Glava. Other witnesses testified about civilians being targeted while crossing intersections in Novo Sarajevo, in Hrasno, in Dobrinja, in Novi Grad, in Alipašino Polje, or in Stari Grad. The scheduled sniping incidents 23 (Momjilo) and 25 (Alipašino Polje) are representative of such targeting from SRK-controlled territory. Residents of urban or rural areas of Sarajevo testified about the targeting of civilians fetching water and detailed evidence to prove examples of such targeting was adduced, such as sniping incident 6 in Dobrinja IV, shelling incident 2 in Dobrinja C5, sniping incidents 16 and 17 in Novi Grad, sniping incident 9 in Kobilja Glava. Civilians were targeted while shopping (shelling incident 5 in Stari Grad), while gathered in square (shelling incident 4 in Alipašino Polje) or during sportive festivities organised on a public day (shelling 1 in Dobrinja). Even children were targeted in schools, or while playing outside, riding a bicycle, near

children, Kupusović, T. 666-7. The Trial Chamber only considers the numbers given by Kupusović as an indication that

their home, or in the street. Sniping incidents 2 (Šikorača), 8 (Sedrenik) and 27 (Hrasno) and shelling incident 3 (Alipašino Polje) examined above are representative of such targeting. The most populated areas of Sarajevo seemed to be particularly subject to indiscriminate or random shelling attacks. Hadžić testified about every single part of Dobrinja, a very populated neighbourhood, exposed to severe shelling originating from SRK-controlled territory. A resident of Alipašino Polje, Diho, testified about entire façades of houses on Ante Babića street “pock-marked” with shell pieces and grenades of all calibres and other apartment blocks targeted by SRK forces. Photographs adduced into evidence show the extensive destruction of civilian inhabitations in Sarajevo during the Indictment Period.

585. The natural and urban topography of the city of Sarajevo, such as ridges and high-rise buildings, provided vantage-points to SRK forces to target civilians moving around the city. The Trial Chamber heard evidence of the existence of specific areas throughout the city of Sarejevo which became notorious as sources of sniping fire directed at civilians. In the general area of Grbavica, witnesses testified that fire was opened against civilians from different high-rise buildings on the southern side of the Miljacka River, in the SRK-controlled neighbourhood of Grbavica. These positions allowed soldiers to “literally shoot down streets” in the central part of Sarajevo, exposing all pedestrians at intersections, as well as cars, buses and trams travelling from the east to the west of the city, to sniper fire. The main thoroughfare of Sarajevo, part of which was called Marshal Tito Boulevard, became known as “Sniper Alley” as it was particularly prone to regular gunfire. The Trial Chamber recalls the testimony of Van Lynden, who said that from Grbavica the SRK “basically controlled a large chunk of the road that you had to travel to get to the western part of the city. So it was a case of picking up as much speed as you could in your car and going past there as fast as you possibly could”. Containers were set up at intersections, such as near the Presidency and Energoinvest buildings and in the proximity of the Holiday Inn, to shield civilians against fire coming from the tall buildings in Grbavica. The central district of Marin Dvor, in particular Marin Dvor square, was also particularly targeted from this area. Fuad Šehbajraktarević, a local resident, testified that “as you passed along Titova Street, you had the protection of buildings on either side. As soon as you reached Marin Dvor, it’s all over. There are snipers that can hit from any side from Grbavica.” Residents of the area of Hrasno described the small-arms fire they experienced from the SRK-controlled area of Ozrenska Street, on Hrasno Brdo, as well as from what was referred to as the shopping center building of Grbavica. Throughout the city of Sarajevo, witnesses described points in SRK-controlled territory, such as the Jewish Cemetery, the Orthodox Church and the School for the Blind in the area of Nedarići, Špicasta Stijena, Mount Trebević and Baba Stijena or Orahov Brijeg as prominent sources of sniper fire

there was a large number of casualties.

against civilians. The same pattern of regular fire at civilians from SRK-controlled positions or areas appears consistently throughout ABiH-held areas of the city of Sarajevo during the Indictment Period.

586. The evidence in the Trial Record also discloses that although civilians adapted to that hostile environment by closing schools, living at night, hiding during the day in their apartment or cellar, moving around the city of Sarajevo as little as possible, setting up containers and barricades to provide shelter against sniping fire, they were still not safe from sniping and shelling fire from SRK-controlled territory. Witnesses recounted how civilians tilled at night, fetched water or collected wood at night or when the visibility was reduced or developed alternative routes to traverse the city to avoid sniping fire directed against civilians seen from SRK-controlled territory. Nevertheless, they were still seen and targeted. Sniping incidents 5 (Novo Sarajevo) and 10 (in Hrasno) are representative of the targeting of civilians who were seen through gaps between containers set up along streets and main avenues in the city of Sarajevo and were targeted from SRK-controlled territory. The testimony of Akir Mukanović, an ABiH soldier, is speaking for itself: he felt safer at the frontline than anywhere else in Sarajevo.

587. The evidence of residents of Sarajevo or victims of attacks is supported by evidence from international military personnel present in Sarajevo during the Indictment Period, which testified uniformly that civilians in Sarajevo were targeted by small arm fire or shelling from SRK-controlled areas. The Majority particularly recalls the testimony of Hamill, an UNPROFOR officer present in Sarajevo almost throughout the Indictment Period, that few shelling incidents stand out in his mind because there was “a whole series of attacks that went on killing civilians in the city of Sarajevo”. An UNPROFOR report concluded that in view of the unusually high volume of fire one day of 1993 in the area of Stari Grad (400 artillery and mortar impacts recorded), there was no doubt that civilians were targeted. UNPROFOR representatives who carried out investigations following shelling attacks in Dobrinja noticed that shelling affected very populated streets in Dobrinja.

588. Both Ashton and Hvaal, journalists, also observed that the majority of the targets they saw were civilians. They testified that they saw civilians being shot at almost every day. Ashton testified about SRK positions he visited and where gunners admitted firing indiscriminately in the city. He had no doubt that SRK forces shot civilians.

589. On many occasions, international military personnel, residents of ABiH-held areas of Sarajevo or visitors encountered difficulties to determine with certainty the source of fire on civilians. The Majority recalls that the conflict in the city of Sarajevo was mainly static; apart from some changes, most of the confrontation lines remained unchanged during the Indictment period.

ABiH-held territory, including most of the city, was almost completely surrounded by SRK forces and distances were so short in some areas (see the map 1 attached in annex D to this Judgement) that one belligerent party could fire into the territory of the other party and also over that territory into its own positions. Evidence to the effect that ABiH forces attacked their own civilians was adduced at trial. UN representatives stationed in Sarajevo testified that, during the conflict, information had been gathered indicating that elements sympathetic or belonging to the ABiH *may* have shelled on occasions the Muslim population of Sarajevo. More generally, such elements would have engaged in behaviour objectively putting civilians in ABiH-controlled territory at risk in order to draw international sympathy. The Majority cannot exclude that this firing occurred on some occasions to attract the attention of the international community. However, only a minimal fraction of attacks on civilians could be reasonably attributed to such conduct, which would be, in any case, difficult to carry out or keep secret for long. The protective barriers faced the SRK side. The Majority also accepts that stray bullets may have struck a number of civilians. But again, stray bullets, being by definition random in their direction and lacking a target, could not possibly explain but a fraction of incidents involving civilians. It is finally possible that some civilians were shot in the honest belief that they were combatants. Again, while not excluding this possibility, the Majority can think of few other examples of combat rivaling the 1992-94 Sarajevo conflict for close contact. In such circumstances, in the relatively cramped fighting conditions of Sarajevo, the accidental targeting of civilians could not be said to represent the whole real course of events that took place in Sarajevo. The evidence in the Trial Record conclusively establishes that the pattern of fire throughout the city of Sarajevo was that of indiscriminate or direct fire at civilians in ABiH-held areas of Sarajevo from SRK-controlled territory not that of combat fire where civilians were accidentally hit.

590. Fire into ABiH-held areas of Sarajevo followed a temporal pattern. Fire into that city was intense between September and December 1992, still important throughout the year 1993, with daily or weekly fluctuations (days of little shootings followed by days of extreme activity), with an intensification of fire in winter 1993 and up to the wake of the Markale shelling incident in February 1994 and then subsided. The Majority recalls the testimony of Mole, present in Sarajevo between September and December 1992, who said that there was a constant background noise of small arm, mortar and artillery fire. Witnesses emphasised that although there were periods of relative inactivity of shelling during the year 1994, people venturing outside were still targeted.

591. The Majority is convinced by the evidence in the Trial Record that civilians in ABiH-held areas of Sarajevo were directly or indiscriminately attacked from SRK-controlled territory during the Indictment Period, and that as a result and as a minimum, hundreds of civilians were killed and thousands others were injured.

592. The evidence in the Trial Record reveals the reason why civilians in ABiH-held areas of Sarajevo were targeted from SRK-controlled territory. The evidence, especially in relation to the nature of the civilian activities targeted, the manner in which the attacks on civilians were carried out and the timing and duration of the attacks on civilians, consistently shows that the aim of the campaign of sniping and shelling in Sarajevo was to terrorise the civilian population of the city. UN military personnel present in Sarajevo during the Indictment Period who observed and analysed the attacks launched into the city *not* made in relation to military objectives concluded that the purpose of the attacks was to spread terror among the civilian population. Mole noticed already early December 1992 that incoming indiscriminate fire to the city of Sarajevo was not in response to military events but to “fashion terror”. Tucker believed that there was no major attempt to capture Sarajevo after December 1992, but there still were non-stop shelling and sniping attacks launched into the city to terrorise the civilian population. Henneberry, Senior UNMO and later UNPROFOR commander of the North LIMA side of Sarajevo from July 1992 to February 1993, noticed that frequent fire around supertime for no reason or for making “people running building to building on their toes”; it was for him an “application of psychological warfare” on civilians and it was working because “they were indeed terrorised and on edge”. For Witness Y, “the objective they [the SRK] pursued was to make every inhabitant in Sarajevo feel that nobody was sheltered or protected from [...] the shooting and that the shooting was not aimed at military objectives but rather to increase the helplessness of the population”. Other UN military personnel shared that view: Harding, Kolp, Hamill, Van Baal and Briquemont all testified that the attacks by sniping and shelling on civilians in the city of Sarajevo to spread terror among that population was an instrument by the Bosnian Serb military authorities to impose a psychological pressure on the civilian population of the city. Van Baal even emphasised that women and children were the predominant target. Media representatives, Ashton and Hvaal, had the same impression that civilians were being terrorised. Witness Y finally emphasised that for the ABiH authorities to see the population of Sarajevo under fire was a means to make them act differently.

593. In view of the evidence in the Trial Record it has accepted and weighed, the Majority finds that the attacks on civilians were numerous, but were not consistently so intense as to suggest an attempt by the SRK to wipe out or even deplete the civilian population through attrition. The attacks on civilians had no discernible significance in military terms. They occurred with greater frequency in some periods, but very clearly the message which they carried was that no Sarajevo civilian was safe anywhere, at any time of day or night. The evidence shows that the SRK attacked civilians, men and women, children and elderly in particular while engaged in typical civilian activities or where expected to be found, in a similar pattern of conduct throughout the city of Sarajevo. The

Majority finds that the only reasonable conclusion in light of the evidence in the Trial Record is that the primary purpose of the campaign was to instill in the civilian population a state of extreme fear.

594. In sum, the Majority finds that a series of military attacks on civilians in ABiH-held areas of Sarajevo and during the Indictment Period were carried out from SRK-controlled territories with the aim to spread terror among that civilian population. The Majority accepts the Prosecution's stand that as such, these attacks carried out with a specific purpose, constituted a campaign of sniping and shelling against civilians.

D. Legal Findings

1. Offences under Article 3 of the Statute

595. In the present instance, it is not disputed that a state of armed conflict existed between Bosnia-Herzegovina and its armed forces on the one hand, and the Republika Sprska and its armed forces, on the other. There is no doubt, from a reading of the factual part of this Judgement, that all the criminal acts described therein occurred not only within the framework of, but in close relation to, that conflict.

596. The Trial Chamber is satisfied beyond reasonable doubt that the crime of attack on civilians within the meaning of Article 3 of the Statute was committed against the civilian population of Sarajevo during the Indictment Period. In relation to the *actus reus* of that crime, the Trial Chamber finds that attacks by sniping and shelling on the civilian population and individual civilians not taking part in hostilities constitute acts of violence. These acts of violence resulted in death or serious injury to civilians. The Trial Chamber further finds that these acts were wilfully directed against civilians, that is, either deliberately against civilians or through recklessness.

597. The Majority is also satisfied that crime of terror within the meaning of Article 3 of the Statute was committed against the civilian population of Sarejevo during the Indictment Period. In relation to the *actus reus* of the crime of terror as examined above, the Trial Chamber has found that acts of violence were committed against the civilian population of Sarajevo during the Indictment Period. The Majority has also found that a campaign of sniping and shelling was conducted against the civilian population of ABiH-held areas of Sarajevo with the primary purpose of spreading terror.

2. Offences under Article 5 of the Statute

598. Based upon the facts found in the factual part of this Judgement, the Trial Chamber finds that the required elements under Article 5 of the Statute that there must be an attack, that the attack

must be directed against any civilian population, and that the attack be widespread or systematic have been satisfied. The Trial Chamber also finds that the crimes committed in Sarajevo during the Indictment Period formed part of an attack directed against the civilian population and this would have had been known to all who were positioned in and around Sarajevo at that time.

599. The Trial Chamber is further satisfied that, as examined in this Part of the Judgement, murder and inhumane acts falling within the meaning of Article 5 of the Statute were committed in Sarajevo during the Indictment Period.

600. In sum, the Majority of the Trial Chamber finds that each of the crimes alleged in the Indictment – crime of terror, attacks on civilians, murder and inhumane acts – were committed by SRK forces during the Indictment Period.

601. The issue of whether responsibility for attacks on civilians and crime of terror charged under Article 3 of the Statute, and murder and inhumane acts charged under Article 5 of the Statute is to be imputed to the Accused must now be addressed.

602. In examining the central issue about whether the Accused played a role in the commission of these crimes proved at trial and in accordance to which theories of responsibility, the Trial Chamber will keep at the forefront of its consideration the presumption of innocence embodied in Article 21 of the Statute, which means that the Trial Chamber will find an accused guilty only if it is convinced of the accused's guilt beyond a reasonable doubt.

IV. CRIMINAL RESPONSIBILITY OF GENERAL GALIĆ

A. Introduction

1. General Galić's Personal Background

603. Stanislav Galić was born on 12 March 1943, in the village of Goleš in the municipality of Banja Luka, Bosnia and Herzegovina.²⁰⁸⁸ Prior to the war in Bosnia, he was commander of the 30th Partizan Brigade of the 1st Krajina Corps operating in the area south-west of Banja Luka.²⁰⁸⁹

604. On 7 September 1992, the minister of Defence of Republika Srpska appointed him commander of the Sarajevo Romanija Corps. General Galić assumed his new duty from the

²⁰⁸⁸ Radinović Report, para. 178.

²⁰⁸⁹ Radinović Report, paras 185 *et seq.*

outgoing officer, Major General Tomislav Šipčić, on 10 September 1992.²⁰⁹⁰ In November 1992 the Accused was promoted to the rank of Major General.²⁰⁹¹

605. General Galić was described as a “well-respected and very intelligent military man”, with a “commanding presence”, “respected for his military abilities and knowledge by his staff and by the military observers”.²⁰⁹² He was a “hands-on” commander,²⁰⁹³ “hard, direct, unyielding and suspicious with a certain rough humour”,²⁰⁹⁴ who remained calm²⁰⁹⁵ and underscored the importance of respecting the Geneva Conventions.²⁰⁹⁶

What I recall of General Galić was, he was a very confident man. He would take command of the situation, lecture us. He would never give us any ground or latitude. He would make sure that he argued adamantly for his position. I would not personally want to cross him because he was a very strong -- had a strong character. And negotiations with him were difficult.²⁰⁹⁷

2. The Command Position Held by the Accused Throughout the Relevant Period

606. There is no dispute between the parties that General Galić assumed the post of the commander of the Sarajevo Romanija Corps during the Indictment Period and that he was directly reporting to General Mladić.²⁰⁹⁸ For all military persons present in Sarajevo, there was no doubt that General Galić was the *de jure* SRK Corps Commander, his superiors being the Chief of Staff of the VRS, General Ratko Mladić,²⁰⁹⁹ and the supreme commander of the VRS, Radovan Karadžić.

607. General Galić remained in this capacity until 10 August 1994 when Dragomar Milošević, his Chief of Staff, assumed command.²¹⁰⁰

608. There is no dispute either between the parties that during the time of his tenure, General Galić remained on the premises of the Command post located in the former JNA Lukavica barracks

²⁰⁹⁰ Philipps, T. 11530-1.

²⁰⁹¹ Mole, T. 10991.

²⁰⁹² Henneberry, T. 8595.

²⁰⁹³ DP17, T. 16819.

²⁰⁹⁴ Witness Y, T. 10886.

²⁰⁹⁵ DP34, T. 17908: during his Corps briefings, General Galić was always very calm, even when discussions arose about whether his orders had been fully complied with.

²⁰⁹⁶ DP17, T. 16791-2; DP35, T. 17519-20, Radinović Report, Filing Page number 8023 (Order for undisturbed passing of humanitarian aid, delivery, by General Galić, dated 15 May 1993).

²⁰⁹⁷ Fraser, T. 11199-11200.

²⁰⁹⁸ The relationship between the two men was one of a deciding senior commander to an obedient and disciplined subordinate (Tucker, T. 9910 – closed session).

²⁰⁹⁹ Fraser, T. 11201; General Galić seemed to work well with his direct superior; Mladić had the authority to approve the humanitarian convoys (Indić, T. 18542, 18654) and he relied on the Corps commander to ensure safe passage to all the convoys (Indić, T. 18673, 18768).

²¹⁰⁰ Philipps, T. 11531. Philipps referred to a letter signed by Dragomar Milošević indicating General Galić's departure. General Galić's chiefs of staff were Dragan Marčetić from September 1992 to June 1993 and Milošević from June 1993 to August 1994, Philipps, T. 11531; see also T. 446-9, 453-4.

or toured the SRK Forward Command Posts scattered along the confrontation lines.²¹⁰¹ The barracks in Lukavica where the SRK command stayed and functioned throughout the conflict were located east of Dobrinja, south of Sarajevo, within range of the combat actions of the companies on the front line.²¹⁰²

3. The Role of General Galić

609. There is no dispute between the parties that General Galić, as Corps commander, was in charge of continuing the planning and execution of the military encirclement of Sarajevo.²¹⁰³ At the time of General Galić's appointment as commander of the SRK, the military encirclement of Sarajevo was achieved. In itself, that encirclement is not directly relevant to the charges of the Indictment. Neither are the military attacks, which were not illegitimate even where such attacks may have resulted in proportionate or incidental civilian casualties or fear.

610. The Prosecution's case is that the civilian population of Sarajevo was subjected, contrary to the principle of distinction, by forces under the Accused's command or control to an unlawful campaign of sniping and shelling which by its scale and continuity indicates a deliberate intent to illegally attack civilians.²¹⁰⁴ The Prosecution submits in particular that after the Accused assumed command of the SRK in September 1992, there was no perceptible change in the campaign of sniping and shelling.²¹⁰⁵ According to the Prosecution, the Accused thus became the implementor of a pre-existing strategy and participated in both the legitimate military campaign against the ABiH and the unlawful attacks directed against the civilian population in Sarajevo.²¹⁰⁶

611. The Trial Chamber has already made findings in relation to the role of the SRK in the campaign of sniping and shelling attacks waged in Sarajevo during the Indictment Period in part III of this Judgement.

612. The Indictment alleges that General Galić is criminally responsible for his participation in the crimes pursuant to Article 7(1) of the Statute. Article 7(1) is pleaded in its entirety but the Prosecution was more specific in its opening statement and claimed that the criminal acts which form the basis of the Indictment were planned or ordered by the Accused. In its Final Trial Brief, the Prosecution narrowed its case. It alleges that evidence concerning General Galić's knowledge of crimes committed in Sarajevo by forces under his command, the high degree of discipline he

²¹⁰¹ See map C2 marked by DP35 showing the Forward Command Posts.

²¹⁰² Radinović Report, para. 200. According to the Defence military expert Radinović, usually, such high ranking commands are stationed within the operative depth and at a safe distance.

²¹⁰³ Prosecution Final Trial Brief, para. 94; Defence Final Trial Brief, para. 18; Defence Pre-trial Brief, para. 2.20.

²¹⁰⁴ Prosecution pre-Trial Brief, para. 4.

²¹⁰⁵ Prosecution pre-Trial Brief, para. 35.

²¹⁰⁶ Prosecution Pre-Trial Brief, para. 35..

enjoyed from his subordinates and his failure to act upon knowledge of commission of crimes “establishes beyond reasonable doubt that the targeting of civilians was ordered by him”.²¹⁰⁷

613. Therefore, and also because General Galić admits that he was the “*de jure* and *de facto* commander”²¹⁰⁸ of the SRK troops deployed around Sarajevo, the Trial Chamber turns to examine first whether General Galić was in effective command control of the SRK forces throughout the relevant period, then whether General Galić knew about the crimes proved at trial and what, if any, his participation in the crimes proved at trial was. The Trial Chamber will finally conclude on whether, as alleged by the Prosecution, General Galić incurs criminal responsibility under Article 7(1) of the Statute for ordering the crimes proved at trial.

B. Was General Galić in Effective Command of the SRK Forces throughout the Relevant Period?

614. The Prosecution bases its case upon the premise that General Galić exerted a tight control over his subordinates,²¹⁰⁹ but the Defence argues that General Galić cannot be held criminally responsible for acts committed by his subordinates because such “individual[s] would certainly not freely report his eventual illegal behaviour”.²¹¹⁰

1. The Chain of Command

(a) The Structure of the SRK

615. The Trial Chamber received consistent, credible and reliable evidence corroborating the admission that “General Galić had *de jure* and *de facto* control of the soldiers constituting the organisational structure of the VRS”.²¹¹¹ The command and organisation of the SRK was very similar to the JNA’s.²¹¹² The Corps headquarters of the SRK located in Lukavica, south of Sarajevo,

²¹⁰⁷ Prosecution Final Trial Brief, para. 86; The Prosecution seeks to establish the Accused’s guilt by reliance upon various bodies of complementary and corroborative evidence, such as General Galić’s high degree of command and control generally, and admission and threats made by him that he was indeed deliberately targeting civilians, either specifically or by indiscriminate fire, Prosecution Pre-trial Brief, para. 85-91; Prosecution Final Trial Brief, para. 2.

²¹⁰⁸ Defence Pre-trial Brief, para. 7.14.

²¹⁰⁹ Prosecution Final Trial Brief, para. 95.

²¹¹⁰ Defence Final Trial Brief, para. 24.

²¹¹¹ Defence Pre-trial Brief, para. 7.14.

²¹¹² Philipps, T. 11542; within the composition of the SRK entered three brigades from the earliest composition of the 4th Corps of the JNA which was located before the war in the broader region of Sarajevo : the 49th Motorized Brigade reformed and renamed into the 1st Motorized Brigade with the seat in Lukavica; the 120th Light Infantry Brigade (Zenica) renamed into the 2nd Sarajevo Light infantry Brigade and located in Vojkovići and the 216th Mountain Brigade (Han Pijesak) renamed into the 1st Romanija Infantry Brigade and located to the East of Sarajevo, with the seat in Pale, Radinović Report, para. 92.

consisted of four sections, each headed by an assistant Corps commander.²¹¹³ The Corps was formed of ten brigades, numbering about 18,000 personnel.²¹¹⁴ Each brigade headquarters included a staff whose structure replicated that of the Corps headquarters in order to facilitate communication with the latter.²¹¹⁵ SRK brigades ranged from a few dozen troops to several thousand²¹¹⁶ and generally consisted of several battalions, with each battalion ranging in size from 56 to over 700 troops.²¹¹⁷ A battalion was divided into companies, with a company consisting of 100 or more troops.²¹¹⁸ A company was itself divided into platoons ranging in size from twenty-four to thirty-two members.²¹¹⁹

616. According to the Defence military expert Radinović, the situation in which General Galić found the Corps when he took up his duties was “almost chaotic”. The Bosnian Serbs were organised into a proper army during the month of June 1992, but it was only at the end of September 1992, that an increased level of military organisation, with discipline and responsibilities of soldiers set up, could be sensed.²¹²⁰ The organisation and composition of the SRK was finalised during the summer and autumn of 1992. The brigades were reconstituted, so that the Trnovo and Novo Sarajevo Brigades were brought under the 1st Romanija Infantry Brigade,²¹²¹ and from the Blažuj and Hadžić Brigades, the Igman Brigade was formed.²¹²² At the end of November 1992, the Romanija Motorized Brigade and the Rogatica Brigade were transferred to the VRS Drina Corps,²¹²³ so that the number of SRK brigades was brought down to nine.²¹²⁴ Toward the end of 1993,²¹²⁵ or early 1994,²¹²⁶ the Rajlovac, Vogošća and Koševo Brigades were integrated into a new 3rd Sarajevo Brigade and the total number of brigades was reduced to seven.²¹²⁷ The number of brigades in the Corps fluctuated over time depending on the circumstances.²¹²⁸ In the first phase of

²¹¹³ Philipps, T. 11531; in particular, the operations and training section headed at the time of General Galić’s tenure by Colonel Cedo Sladoje was responsible for drawing up the written instructions for implementing the Corps commanders’ orders and ensuring the readiness of the troops, T. 11536 and T. 11541.

²¹¹⁴ Stipulated Fact 20.

²¹¹⁵ Philipps, T. 11692-3.

²¹¹⁶ Philipps, T. 11546; for instance the 2nd Sarajevo light brigade was composed of 56 men as of April 11, 1993 (T. 11558), the Ilidža brigade of 3,000 troops as of April 11, 1993 (T. 11559) and the Ilijas Brigade of 4,738 troops as of February 1994 (T. 11560).

²¹¹⁷ Philipps, T. 11554: their number fluctuated depending on their role and the number of casualties that they had incurred.

²¹¹⁸ Philipps, T. 11555; DP4, T. 14201.

²¹¹⁹ DP9, T. 14505-7.

²¹²⁰ DP4, T. 14133.

²¹²¹ On 25 May 1993, some units of the ministry of the interior (the MUP) were temporarily attached to the 1st Romanija infantry brigades in what is to Richard Philipps’ knowledge, the only instance where troops of the MUP were attached to a structure outside of the MUP, Philipps, T. 11694.

²¹²² DP18, T. 16433-4.

²¹²³ Philipps, T. 11528; Chart 2.

²¹²⁴ Philipps, Chart 2 (nine brigades).

²¹²⁵ According to Philipps, Chart 3.

²¹²⁶ According to Radinović Report, para. 13 of summary and conclusions.

²¹²⁷ Philipps, Chart 3 (seven brigades); Radoslav Radinović Report, para. 13 of summary and conclusions.

²¹²⁸ Philipps, T. 11685-6.

its existence,²¹²⁹ the SRK consisted of thirteen brigades, three independent regiments for support, and five battalions for servicing and supplies.²¹³⁰

617. The international personnel present in Sarajevo throughout the Indictment Period had the impression that the SRK soldiers were professional and efficient.²¹³¹ Richard Mole, Senior UNMO from September to December 1992 in Sector Sarajevo, noted in relation to the Otes Offensive that "The command and control of the artillery positions was such that they could bring to bear a very effective fire mission".²¹³² Jeremy Hermer, a UNMO at LIMA positions from August 1993 to January 1994, noticed that "There were obviously professional officers working in that organisation who were able to maintain that rigid chain of command".²¹³³ Jorma Gardemeister, Senior UNMO for Sector Sarajevo from June to October 1993, visited most of the Bosnian Serb artillery positions and had discussions with the artillery officers "about how they are maneuvering with their devices and artillery, mortars." He was rather surprised by the "good professionalism of the artillery officers", and although he "did not speak to all the gun soldiers or privates", "the overall impression was professional".²¹³⁴ According to Christian Bergeron, *Chef de Cabinet* to UNPROFOR Commander of Sector Sarajevo from April 1993 to April 1994, General Galić appeared to be "in charge of everything going on around Sarajevo including the Serb forces outside Sarajevo".²¹³⁵ Patrick Henneberry, Senior UNMO and later UNPROFOR commander of the North LIMA side of Sarajevo from July 1992 to February 1993, noticed, along with others,²¹³⁶ that:

²¹²⁹ At the creation of the SRK; see *supra* para. 201.

²¹³⁰ Radinović's chart: the Brigades were the following: 1st Sarajevo Mechanized Brigade, the 2nd Sarajevo Light Infantry Brigade, Novo Sarajevo Brigade, the 1st Romanija Infantry Brigade, 2nd Romanija Motorized Brigade, Koševo, Vogošća, Ilijaš, Ilidža, Blažuj, Hadžići, Rogatica and Trnovo Light Brigades. There were also regiments (artillery, anti-tank and anti-armor) and independent battalions (military police, medical, engineering, transportation and communication).

²¹³¹ Hvaal, in particular, testified in relation to the control over movement on SRK-held territory. "There was no way you could move around on Bosnian Serb [...] army-held territory [...] without an escort and without having gone through the proper procedure [...] in advance." There would be officers present during these trips, who would join him for instance in Lukaviča. (Hvaal, T. 2256-8) "It's a fairly bureaucratic approach, and it was (permission to visit) very often declined. It was very rare that you would actually get a permission to visit, on your first attempt." (Hvaal, T. 2258).

²¹³² Mole, T. 9797.

²¹³³ Hermer, T. 8463.

²¹³⁴ Gardemeister, T. 8955.

²¹³⁵ Bergeron, T. 11259-60: (in relation to the forces outside Sarajevo) "[t]hroughout the time I was there, it was clear that General Galić, for me, in my opinion, was in effect commander of the Romanija Corps and he was in charge of everything that was going on around Sarajevo: all the negotiations, all the discussions, any talks that we had for the programme regarding the repair of the utilities, the facilities, the supplies, the gas, the electricity, and so on.[...] The bottom line was that we were always referred to speak to General Galić. If we had talks regarding the access to humanitarian convoys, again, at the end of the line, it would always end up with in General Galić's office. If we had any incidents to discuss, any protests, it was always to do with the office of General Galić.[...] For me it was very clear that General Galić, as the commander of the Romanija Corps, was in control of all the activities around Sarajevo".

²¹³⁶ Van Baal formed the view that the VRS had a centralised and effective command system (T. 9862-3). He also confirmed the contents of a SitRep [situation report] generated in relation to a UNMO patrol that had gone missing on SRK-held territory, which stated: "Brigadier General Van Baal requested that all possible means be used to locate the UNMO patrol, knowing that nothing occurs in the regions under BSA [Bosnian Serb Army] control unless with HQ knowledge, as a result of excellent military discipline" (P3712; T. 9884-5 – closed session). He said that in his

Generally, for the most part and for most of the time, there was a recognisable and effective hierarchy structure with the Corps commander at the top, his staff advising him, various levels of command underneath that down to the section or squad level, section or squad being a handful of men. And the hierarchy was recognisable and, in effect, there were occasional lapses but, again, usually the command structure was working.²¹³⁷

(b) The Reporting and Monitoring Systems of the SRK

618. General Galić, present on the battlefield of Sarajevo throughout the Indictment Period, actively monitored and controlled the military situation in Sarajevo, in particular from the Lukavica Command post. That Command post²¹³⁸ was accessible to all UN representatives, military members of the VRS and paramilitaries.²¹³⁹ It was directly linked to the Operation Centre of the Command - also located on the premises of the command - via telephone.²¹⁴⁰

619. According to an SRK officer, the central core of the SRK command were the Corps briefings which were usually held at Lukavica barracks but could sometimes take place in Butila (in the western part of Sarajevo) or in Jahorina.²¹⁴¹ There were meetings in the command post every morning at 07:00 hours and every evening at 19:00 hours.²¹⁴² These meetings were usually attended by members of the Corps command, the brigade commanders, the commanders of independent regiments and battalions,²¹⁴³ but the Corps officer who liaised with UNPROFOR and other UN personnel could also attend them.²¹⁴⁴ During these meetings, reports from all commanders of the brigades and regiments were given, and General Mladić or some of the officers from the main staff could appear.²¹⁴⁵ General Galić usually chaired these meetings.²¹⁴⁶ He received oral reports from his assistants and members of the staff about the situation in the front, about urgent tasks, or methods and deadlines for execution.²¹⁴⁷ The brigade commanders would submit and read out written reports about the situation in their respective territory²¹⁴⁸ such as the logistical problems encountered,²¹⁴⁹

experience, during his period in Sarajevo, all that happened on the Bosnian Serb side was controlled from the top down (T. 11405).

²¹³⁷ Henneberry, T. 8594.

²¹³⁸ It consisted of a ground floor and a first floor, DP35, T. 17499.

²¹³⁹ Kolp, T. 8232-33: "on many occasions there were members of the paramilitary formations present there as well".

²¹⁴⁰ The Bosnian Serb army had very efficient and comprehensive communications, Tucker, T. 9918-9.

²¹⁴¹ DP34, T. 17900, corroborated by DP17, T. 16814-5.

²¹⁴² DP34, T. 17901, T. 17836-7 (DP34 attended meetings once or twice a month).

²¹⁴³ DP34, T. 17901, 17836-7.

²¹⁴⁴ DP34, T. 17907.

²¹⁴⁵ DP35, T. 17575.

²¹⁴⁶ DP34, T. 17901; DP35, T. 17505: in General Galić's absence or when he was in the field, the Chief of staff or the first official from among the assistants chaired the meetings.

²¹⁴⁷ Radinović Report, para. 203, quoting the statements of Generals Lugonia, Žarković and Sladoje given to the Prosecution.

²¹⁴⁸ Reports were prepared by the battalion commander and the assistant commander for morale, for logistics, for security (DP17, T. 16753), to gather all the events that happened throughout the day and sent to the brigade command. "Every day, at the end of the day, in the hours of the evening, following reception of reports from battalions, that is from the entire area of responsibility of the brigade in question, there would be a report compiled that would go to the Corps command. And these reports mostly contained the security situation in the brigade, the numbers, that is the strength in the brigade, activity with the brigade, enemy activity, logistics support, the morale in the brigade" (DP17, T.

the morale in the brigade, or intelligence on enemy activity.²¹⁵⁰ As part of their reporting, these commanders would also propose ways to address problems encountered by their units.²¹⁵¹ Members of the Corps command who dealt with the areas concerned by these proposals would submit their own report on the matter and make their own suggestions.²¹⁵² At these meetings, General Galić gave the impression to his staff that he had a good grasp of the overall situation of the SRK.²¹⁵³

620. General Galić personally observed the situation in the field. Although roads around the frontline were very narrow, the terrain very hilly and overall progress was slow, there was no impediment to travel along the frontline.²¹⁵⁴ SRK officers testified that General Galić travelled in particular to Butila, Nišići, in the surroundings of Trnovo, and more generally to visit the permanent brigades command positions and forward command positions,²¹⁵⁵ when necessary, without a strict schedule.²¹⁵⁶ Witness DP35, an SRK commander, explained that General Galić could not visit certain positions, although at a limited distance of Lukavica barracks (such as troops in Ilijaš or the 3rd Sarajevsko or the Igman Brigade), because Lukavica was cut off from that part of the battlefield; but he emphasised that General Galić controlled these positions from other positions nearby.²¹⁵⁷ Another SRK officer, DP17, testified that all throughout the Indictment Period, General Galić inspected the Ilidža Brigade about ten times, every month or two.²¹⁵⁸ During such inspections, General Galić would visit the front lines of the area of responsibility, the hospital, the injured, as well as the rear or the logistics²¹⁵⁹ and discuss reports submitted by the brigade commander.²¹⁶⁰

621. DP17 further testified that he thought that General Galić also inspected other brigades.²¹⁶¹ Witness DP34, an SRK brigade commander, confirmed this. He testified that General Galić visited the area of responsibility of the Koševo brigade on two occasions and would otherwise pass through the region on his way to the western part of the battlefield towards Vogošća.²¹⁶² DP34 explained

16753); for instance, if something important occurred, it was described in a written report, which would be submitted through the Vogošća group, to the Koševo Brigade and then to the Corps duty operations officers at a prescribed time (DP34, T. 17910-1).

²¹⁴⁹ DP34, T. 17906.

²¹⁵⁰ DP17, T. 16814-5.

²¹⁵¹ DP34, T. 17906.

²¹⁵² DP34, T. 17906.

²¹⁵³ DP34, T. 17907-8.

²¹⁵⁴ Mole, T. 9809.

²¹⁵⁵ DP35, T. 17573. Forward command posts did not exist throughout the period. On the Nišići plateau, the forward command post was established in 1993, not before, and it was there until 1994, until sometime after General Galić left his duties, Id.

²¹⁵⁶ Radinović Report, para. 204.

²¹⁵⁷ DP35, T. 17574.

²¹⁵⁸ DP17, T. 16756, 16816.

²¹⁵⁹ DP17, T. 16866.

²¹⁶⁰ DP17, T. 16817: DP17 had the opportunity to accompany the Accused personally on two occasions: once it was the south-western part, that is the part on the slope of Igman; the other occasion, it was the north-eastern side, on the line in the direction of the Dobrinja river.

²¹⁶¹ DP17, T. 16818-9.

²¹⁶² DP34, T. 17902.

that during his two visits there, General Galić familiarised himself with the situation of the brigades, observed the confrontation lines and issued orders, insisting on the need to have a “decisive defence”.²¹⁶³ Witness DP34 further testified that General Galić’s assistant Corps commanders also visited the brigades and reported back to him.²¹⁶⁴ DP17 and DP18 emphasised that communications within the SRK was made by phone or radio²¹⁶⁵ and, as mentioned above, through daily written reports.²¹⁶⁶

622. General Galić gave a similar impression to UNPROFOR representatives that he was well conversant with the situation in Sarajevo. According to Victor Vorobev, the UNPROFOR commander of the Russian Battalion in Sarajevo from February to November 1994, General Galić could inform newly arrived UNPROFOR representatives precisely “where his units were deployed and what they were doing. He was perfectly conversant with the map”.²¹⁶⁷ Vorobev noticed that discussions with General Galić led to effective results concerning the passage of goods through SRK checkpoints.²¹⁶⁸ Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994,²¹⁶⁹ also noticed that the VRS chain of command was very rigid and that information would flow up and down:

As far as I know, in a part of the Bosnian Serbian Army, the chain of command was very rigid. A head is a head, a chief is a chief. He would not accept that something else should be done opposite to what he said, although every chief had some initiatives that he could take, but as far as the most important things were concerned, it is clear that the General knew in any case, since Major Indić had to report to him on a regular basis, about what was going on.²¹⁷⁰

²¹⁶³ DP34, T. 17902-3; the first visit was a matter of protocol to allow General Galić to introduce himself to the brigade; the second visit took place during the winter period of 1993-1994, DP34, T. 17903. The first visit lasted about one hour and the second visit lasted longer, in part because General Galić visited the forward command post in the area of Pretrzanj and viewed some of the artillery positions of the Koševo brigade located there, DP34, T. 17904.

²¹⁶⁴ DP34, T. 17904-5.

²¹⁶⁵ DP17, T. 16798; DP18, T. 16436 (he was in a unit within the Igman Brigade).

²¹⁶⁶ DP17, T. 16798.

²¹⁶⁷ Vorobev, T. 17431.

²¹⁶⁸ Vorobev, T. 17436: in June 1994, he met with General Galić to discuss additional equipment to be delivered to the Russian battalion, which had arrived in the Zvornik area and which needed to be transferred to Sarajevo. Once this issue was raised with General Galić, the witness did not encounter any difficulties in getting his equipment through these checkpoints to Vrace. There was another meeting on 20 February 1994 with General Galić: during that meeting held in the area of deployment of the battalion at the police school (T. 17433), Galić informed the witness in general terms about what was being done, the area of responsibility of the battalion, that they were in the area where the 1st Sarajevo Brigade was deployed, Commanded by Veljko Stojanović (T. 17438), and that the witness should cooperate directly with him when establishing his posts (T. 17432). “At the meeting were present Soubirou, other head of UNPROFOR bat and Serb officials such as Veljko Stojanović, commander of the 1st Sarajevo Brigade”, Vorobev, T. 17433.

²¹⁶⁹ Kolp, T. 8220.

²¹⁷⁰ Kolp, T. 8225. Indić was the liaison officer of the VRS posted in Sarajevo; see *infra*, para 686 and references thereof.

Tucker, the UNPROFOR military assistant to General Morillon from October 1992 to March 1993, concluded that the SRK had “efficient and comprehensive communications”.²¹⁷¹

623. UNMOs similarly testified that, on two occasions, UNMOs had been held illegally by individuals on the Serb side, General Galić who was perceived as having a very good grasp of what the UNMO were doing and what their mandate was, was asked to assist. That assistance was given “effectively, efficiently, and quickly”. The UNMOs were released and returned to duty.²¹⁷²

(c) Was the SRK Personnel under Strict Control?

(i) Procedure for Instructions and Orders

624. Witness DP34, an SRK brigade commander, testified that, on the basis of reports from his staff, General Galić issued orders,²¹⁷³ and that in general, his orders were carried out by the chain of command.²¹⁷⁴ Vorobev testified that his subordinates asked for additional information at times.²¹⁷⁵ Witness D, a member of an SRK platoon, gave evidence in relation to the mode and chain of command of the SRK companies stationed in Grbavica. He testified that his platoon received orders from their platoon and company commanders, orally, usually during the evening reviews and in the mornings before they left to take up their positions at their company headquarters.²¹⁷⁶ Their commanders received their orders from the Battalion Command headquarters, and if a problem arose at platoon or company level, their commanders would say that they would raise it with the Battalion headquarters.²¹⁷⁷ They had a military telephone link to their headquarters from their positions in the field, which is where their platoon commander would usually remain. At their daily review, they could raise any matter they wished with their commanders. Witness D testified that the platoon commander told them that the “orders were that we could open fire freely [...] they told us that we could shoot at anything that moved”.²¹⁷⁸ Witness D also had the impression that the snipers who operated from the skyscrapers at Grbavica received their orders from the battalion headquarters.²¹⁷⁹

²¹⁷¹ Tucker testified that “[i]t was very clear during the time that I was in Bosnia that the Bosnian Serb army had very efficient and comprehensive communications. Whenever General Mladić wanted to speak with someone or find out something out from someone, it always happened quickly”, Tucker, T. 9918.

²¹⁷² Mole, T. 9798; Carswell, T. 8347.

²¹⁷³ DP34, T. 17906, 17837.

²¹⁷⁴ DP34, T. 17908-9.

²¹⁷⁵ Vorobev, T. 17432.

²¹⁷⁶ Witness D, T. 1909-10.

²¹⁷⁷ Witness D, T. 1910-12.

²¹⁷⁸ Witness D, T. 1912.

²¹⁷⁹ Witness D, T. 1919-21; Thomas came to the conclusion that snipers were controlled at the brigade or even battalion level, because “there would be instances of sniper fire which appeared to me to be done within a battalion area and had no reference to the overall Corps situation”, Thomas, T. 9486.

625. Witness AD, an SRK section commander in a mortar unit posted on the so-called external ring of the confrontation lines, gave evidence in relation to the chain of command of the Ilijaš Brigade. He explained that his orders to fire would come from either the duty officer of the Brigade command in Ilijaš or from the headquarters of his Battalion command (the Mrakovo Battalion).²¹⁸⁰ The orders would include the time, number of shells and target.²¹⁸¹ If the orders came from the Brigade headquarters they were sometimes in writing; he did not recall seeing written orders from the battalion level.²¹⁸² The written orders were for pre-arranged shellings, whereas the oral orders were for spontaneous ones.²¹⁸³ "Spontaneous fire" meant firing off two tubes of 120 millimetres or 82 millimetres mortars "within seconds or less than a minute or two."²¹⁸⁴

626. Both Witness AD and Witness DP35 also testified about the content of their orders. Witness AD testified that on a few occasions he had confronted his superiors over orders to target civilian places at his brigade command headquarters.²¹⁸⁵ His brigade commander threatened to punish him and the other members of his unit.²¹⁸⁶ For Witness AD, his commander did not dare raise the problem of civilian casualties before his own superiors. He testified that therefore, in his opinion, there was a possibility that General Galić did not know these facts.²¹⁸⁷ Witness DP35 stated that his orders from the chain of command were to prevent the crossing of the airport. According to him, a manner of preventing the crossing of the airport was to fire in an indiscriminate way.²¹⁸⁸ He explained that the "SRK didn't have a device for firing at night",²¹⁸⁹ thus "they couldn't know whether the person in question was a soldier or civilian".²¹⁹⁰

627. Other SRK officers testified that the chain of command within the SRK worked perfectly well and that a platoon commander received his orders from the company commander or through the field phone in case of attack.²¹⁹¹ According to Witness DP10, an SRK platoon commander, the command was very correct, very strict and disciplined.²¹⁹² A platoon commander could not issue any orders on his own and always had to consult with his superiors, except in case of attack from

²¹⁸⁰ Witness AD, T. 10834 (closed session).

²¹⁸¹ Witness AD, T. 10591-2 (closed session).

²¹⁸² Witness AD, T. 10691-4 (closed session).

²¹⁸³ Witness AD, T. 10699-701 (closed session).

²¹⁸⁴ Witness AD, T. 10837 (closed session).

²¹⁸⁵ Witness AD, T. 10578 (closed session).

²¹⁸⁶ Witness AD, T. 10579-80 (closed session).

²¹⁸⁷ Witness AD, T. 10720-1, 10807 (closed session).

²¹⁸⁸ DP35, T. 17605-6.

²¹⁸⁹ DP35, T. 17605.

²¹⁹⁰ DP35, T. 17606.

²¹⁹¹ See, e.g., DP10, T. 14323.

²¹⁹² DP10, T. 14388.

the ABiH side.²¹⁹³ For DP10, it was impossible for the platoon members to carry out orders or execute his orders badly without his knowledge.²¹⁹⁴

628. Victor Vorobev, the UNPROFOR Commander of the Russian Battalion in Sarajevo from February to November 1994, testified that General Galić, at the top of the SRK chain of command, was able to issue precise orders to the commanders under him, and that his subordinates sounded very literate.²¹⁹⁵

(ii) Control over Sniping Activity

629. James Fraser, an UNPROFOR representative in Sarajevo from April 1994 onwards,²¹⁹⁶ observed that the Serbian snipers were professionally trained – they were very skilled shooters who injured many Bosnian civilians (and some UN personnel) – and their “activity appeared to have been coordinated because of the incidents and how they seemed to happen around the city”.²¹⁹⁷ He noted that snipers were so well hidden that UN forces had trouble locating their positions,²¹⁹⁸ when the French soldiers of the SFOR took up position in what was colloquially known as 'Sniper Alley', they were greeted with shots aimed at a telephone pole indicating that the Serbian snipers too were in position.²¹⁹⁹

The soldiers indicated to us that in the morning, when they adopted their positions along sniper alley, from time to time shooters from the Serbian side would fire at a telephone pole to indicate they were in position. And once in a while they would – I would call [it] “range” their weapons by firing shots off the UN vehicles to get an indication of where their rifles were firing. And then they would wait during the day to conduct their operations. That indicates to me that these are people who know what they are doing and are fairly confident in their skills because there were several hundred soldiers trying to find out where these people were so that we could stop them from doing what they were there to do.²²⁰⁰

If the SFOR formal complaints were followed up with a face-to-face meeting with General Galić, only such meetings resulted in a decrease in the sniping.²²⁰¹

630. Many other military international personnel shared the impression that the SRK small arms fire was under strict order from the chain of command and that General Galić effectively controlled the sniping and shelling activity of his troops. Vorobev testified that the UNPROFOR alerted SRK brigades at meetings that, in some Observation Posts' areas of responsibility, there was intensive

²¹⁹³ DP10, T. 14388-9.

²¹⁹⁴ DP10, T. 14408.

²¹⁹⁵ Vorobev, T. 17431.

²¹⁹⁶ Fraser, T. 11186.

²¹⁹⁷ Fraser, T. 11193.

²¹⁹⁸ Fraser, T. 11190, 11198.

²¹⁹⁹ Fraser, T. 11191.

²²⁰⁰ Fraser, T. 11191.

fire during cease-fire agreement. For Vorobev, meetings on a weekly basis had an effect on the conduct of the hostilities in his area of responsibility and, gradually, “there were no more casualties, at least to my knowledge”.²²⁰²

631. Jeremy Hermer, a UNMO Military Information Officer in Sarajevo, lodged a complaint once to Major Indić, the liaison officer of General Galić, concerning severe sniping.²²⁰³ When Indić denied any SRK involvement, Hermer fabricated a story that a CNN news crew was present at the site. Indić then informed Hermer that he would get back to him and indeed called back and informed him that although there was a legitimate reason for the sniping, it would stop. The sniping stopped shortly thereafter.²²⁰⁴ Patrick Henneberry gave similar evidence that the SRK high-ranking officers had the material ability to prevent further sniping.²²⁰⁵

632. Members of the UNPROFOR also noticed that although the warring parties admitted that it was extremely difficult to control the deployment of snipers whether this was wanted or not,²²⁰⁶ the speed of implementation of orders by snipers after the cease fires were signed was quick, at the most half a day. The command and control system was operating perfectly.²²⁰⁷

633. Michael Rose, the commander of the UNPROFOR in BiH from February 1993 to January 1994,²²⁰⁸ said, of the heavy weapons Exclusion Zone agreement dated February 1994: “The halting of the shelling and the almost [but] total halting of the sniping at that time showed that there was a total and absolute control on both sides of the military machine”.²²⁰⁹

634. Similarly, Aernout Van Lynden, a war correspondent in Sarajevo,²²¹⁰ observed the impact of the cessation of sniping on the ground after February 1994 at one of the most exposed areas of the city where civilians were previously targeted, being Marin Dvor Square:

all shooting in Sarajevo stopped. I had been initially in Pale. After this agreement was reached, I went into Sarajevo. And in March did, indeed, for the first time during the war

²²⁰¹ Fraser, T. 11193-7.

²²⁰² Vorobev, T. 17445-6.

²²⁰³ Hermer, T. 8461.

²²⁰⁴ Hermer, T. 8460-1.

²²⁰⁵ Henneberry, T. 8572.

²²⁰⁶ Van Baal, T. 9869: General Adrianus Van Baal, the Chief of Staff to the UNPROFOR commander in BiH from February to August 1994, testified that, although the parties often claimed that they lacked control over what was happening on the ground in Bosnia-Herzegovina, "in a great many cases, at least during (the witness's) period, it was clear that there was indeed very rigid control, and there was some influence on the ground activities, especially with respect to the use of heavy arms, and these specialized snipers with specialized weapons must have been under control in military respects".

²²⁰⁷ Witness Y, T. 10861 (closed session).

²²⁰⁸ Rose, T. 10185.

²²⁰⁹ Rose, T. 10203. Similarly, based on the fact that after the February cease-fire agreement there were no instances of SRK artillery or mortar being launched into the city, Major Thomas concluded that the Accused had a firm grip on command and control issues; Thomas, T. 9475-6.

²²¹⁰ Van Lynden, T. 2089-92.

walk across Marin Dvor Square, which would have been a ridiculous thing to do at any other time. But we were not fired at and we were not in danger.²²¹¹ [Previously] practically always there was fire every single day on Marin Dvor Square from the Bosnian Serb positions [...] from Grbavica.²²¹²

635. Witness Y, a member of the UNPROFOR from January to July 1993, observed a similar pattern of fire and concluded that “snipers” were under strict control of the chain of command, which comes as no surprise in a “Yugoslav army” where initiative is rare and orders generally come from the top level.²²¹³ When asked about the “degree of effective command and control that General Galić exercised over his forces” and whether “the snipers from the Serb army side of the confrontation line were effectively controlled by the Corps leadership,”²²¹⁴ he said:

When I arrived in Sarajevo, I was very worried about the fact that, you know, snipers had been put in because I thought that the snipers were absolutely out of control, uncontrolled, and I thought that if ever the hostilities were to cease, these people would still be uncontrolled and would continue to carry out this type of activity. And soon, very soon, I realised that whenever there was a need for the shooting to stop, whenever there was a cease-fire, a temporary cease-fire agreement signed – because cease-fires never lasted very long – then the snipers would stop their activity, suddenly. Equally, when we would have negotiations or when General Morillon carried out negotiations where I was present and when were we trying to bring the various delegations back to Sarajevo or Lukavica or to Kiseljak for the Croats, then we had no security problems whatsoever. Apparently, all the troops concerned, and more specially so the snipers, were perfectly under control.²²¹⁵

He went on to say that the cease-fires “would happen very quickly. It was always surprising for us every time it showed that the commander [sic] and control system was operational, was operating perfectly. I had no direct idea, but at the most, it was something like half a day, at the most. So it was very quick and it was perfectly implemented by all the parties concerned.”²²¹⁶

636. Another UNPROFOR representative also gave evidence that sniping activity was under strict control because that activity was used as means of pressure. General Van Baal testified that SRK and VRS officers threatened the other warring party and the UN observers that civilians would be sniped at or shelled if their various military demands were not met.²²¹⁷ General Milanović, the Chief of the Main Staff of the VRS, and therefore an immediate subordinate of the Accused’s direct superior General Mladić, threatened that if trams in Sarajevo continued to run, he would ensure that

²²¹¹ Van Lynden, T. 2144.

²²¹² Van Lynden, T. 2146.

²²¹³ Witness Y, T. 10860-1 (closed session).

²²¹⁴ Witness Y, T. 10860 (closed session).

²²¹⁵ Witness Y, T. 10860-1 (closed session).

²²¹⁶ Witness Y, T. 10861 (closed session).

²²¹⁷ See, e.g., Tucker on Žarčević, Abdel-Razek on General Galić and Van Baal on Milanović.

they and their passengers would be targeted. General Van Baal said that following the threat, the trams, which continued to run, were indeed targeted.²²¹⁸

(iii) Control over Shelling Activity

637. Many international personnel testified that the SRK shelling activity was under strict control by and on order from the chain of command because of the high level of co-ordination of that activity.

638. Carl Harding, an artillery officer with the UNPROFOR from August 1992 to January 1993, testified that, on 31 October 1992, he witnessed a highly co-ordinated attack of an indiscriminate nature on the city by SRK forces, which bespoke of “a certain amount of command and control and orders given for them to start firing at the same time”.²²¹⁹ One artillery round had landed just outside his office,²²²⁰ he could see a number of casualties (“all civilian people”).²²²¹ Harding recounted the incident of that day:

it started exactly at 1000 hours and stopped exactly at 1600 hours. That was a timed, concerted effort to bombard the city with no specific military objective that could be identified either by myself or by the observers in any of the PAPA positions.²²²²

He emphasised:

It could only have come from outside the city, that being the Bosnian Serb army,²²²³ [...] because of the amount of ammunition that was coming in. There was so much it could not have been fired from along the front lines, and the PAPA observation post not see it because there would be muzzle flashes, there would be smoke from artillery pieces and from mortars. So you would see it and you would hear it. But all they were observing were the impacts into the city.²²²⁴

639. Tucker, a British officer who served as assistant to general Morillon before Fraser took office in April 1994, also concluded that the shelling in the city of Sarajevo was ordered. He testified about heavy shelling in the city of Sarajevo at midnight on Christmas’ Eve 1992 and again on 7 January 1993 (Christmas according to the Orthodox calendar). For him there was no doubt that this shelling had been ordered because:

every single artillery gun, mortar, tank, machine gun, around Sarajevo, started firing in a huge barrage into Sarajevo for about 20 minutes. [...] This fire was co-ordinated and all started at one moment and a huge amount of ammunition was expended. It looked like a

²²¹⁸ Van Baal, T. 9862-3.

²²¹⁹ Harding, T. 4383.

²²²⁰ Harding, T. 4378

²²²¹ Harding, T. 4380; Harding drafted a report about the incident, P3659, where he stated that 5 civilians were killed or injured.

²²²² Harding, T. 4381.

²²²³ Harding, T. 4381.

²²²⁴ Harding, T. 6480.

fireworks demonstration, there was that much ammunition fired, except that this was a lethal fireworks demonstration.²²²⁵

Tucker further stated:

I am an artillery officer and I know how much co-ordination it takes in order to arrange for so many weapons in so many different locations to be manned at midnight on Christmas Eve, to have the artillery ammunition in place, to have the targets coordinated in order to achieve what was carried out that evening.²²²⁶

Tucker had little doubt that the systematic and indiscriminate use of multiple rocket launchers in the city of Sarajevo was approved:²²²⁷

These weapons were firing from the mountains and high ground around Sarajevo and the impacts of the weapons were inside Sarajevo and, therefore, could only have been weapons of the Bosnian Serb army”.²²²⁸ [...] The usage of such large amounts of ammunition had to have been approved at a fairly high level. This concentration of fire, can only have been carried out by the order of and with the approval of the senior most commanders of the Bosnian Serb army surrounding Sarajevo. The communications required in order to co-ordinate this can only have passed through the headquarters of the Bosnian Serb forces surrounding Sarajevo.²²²⁹

640. Harding made similar observations in relation to the Serbian New Year a week later, recalling “the sheer amount of fire that occurred to commemorate or to recognise the New Year it seemed that every weapon around the city opened up at the same time of all calibres.”²²³⁰ According to him, it went on for “at least five to eight minutes, a “considerable time, bearing in mind the amount of ammunition that would be expected during that time”.²²³¹ The weaponry used “would start from small calibre, 7.65, rifles right through the automatic series, 12.7, and there were some heavy weapons firing in the background. So I would say probably about 40 millimeters, I suppose. The anti-aircraft weapons, they had a constant discharge of ammunition, steady note going off. And also the amount of tracer that was flying around, you could clearly see it, so it was from the larger calibre, the 12.7s or the 20 millimeters, that sort of size.”²²³² He estimated that 50 to 60 per cent of the shells were hitting the city in the area “from PAPA HQ and to the east, to the area known as Stari Grad”.²²³³

641. James Cutler, the Senior UNMO who replaced Mole on 26 December 1992, observed the same event that Harding witnessed, but from his position he thought the firing was directed at Žuč,

²²²⁵ Tucker, T. 9923-5.

²²²⁶ Tucker, T. 9925.

²²²⁷ This “area weapon” is inherently inaccurate when applied to a specific relatively small target, Hermer, T. 8477.

²²²⁸ Tucker, T. 9925-6.

²²²⁹ Tucker, T. 9926.

²²³⁰ Harding, T. 4375.

²²³¹ Harding, T. 4376.

²²³² Harding, T. 4376.

²²³³ Harding, T. 4378, PAPA headquarters was adjacent to the Presidency.

and heard an anecdote (of which he had no proof) that drunken Serb soldiers may have been responsible.²²³⁴

642. Witness Y also observed a definite pattern of shelling in the city of Sarajevo in 1993. According to him, the shelling peaks would correspond to three factors. The first factor was in keeping with military action or reaction on the ground. The second factor would be psychological support to a visit by the authorities to Sarajevo. The third factor would accompany (and this is also a psychological factor) negotiations taking place outside, be it in New York or in Geneva. Witness Y gave examples of shelling peaks. In late March 1993, the Bosnians tried to cut off the supply route of the Serbs through the small mountain road between Lukavica and Pale. The 10th Bosnian Mountain Brigade attacked around the area of the Jewish cemetery. To repel them, the Serbs shelled the Bosnian troops that were attacking and the city, to have an impact on the population and the local authorities to stop the attacks. It was a way to reinforce the action against the troops to shell the town and especially the Old Town. A second example is a visit of the UNHCR figure, Mrs. Ogata. As soon as her plane landed, most of the artillery pieces from both sides (there was fire and counter-fire) was unleashed and the shooting eased down as soon as her plane took off in the late afternoon. When there were negotiations, there was increased activity of this type over Sarajevo.²²³⁵ Similarly, Briquemont, who commanded UN forces in Bosnia-Herzegovina from July 1993 to January 1994, observed a relationship between negotiations in Geneva and the level of fire into the city of Sarajevo.²²³⁶

643. Christian Bergeron, *Chef de Cabinet* to UNPROFOR Commander of Sector Sarajevo from April 1993 to April 1994,²²³⁷ based his conclusion that the shelling of the city was under control on the observation of a period of calm which lasted two months in summer 1993 and which coincided with high-level negotiations in Geneva. "And this was manifested on the ground, if I can remember."²²³⁸ "When the negotiations did not have a result, then obviously, shortly afterwards, the shelling resumed."²²³⁹

644. Hermer concluded similarly that the indiscriminate shelling of the city of Sarajevo was well coordinated and ordered because of the use of inaccurate weapons such as multiple rocket launchers, which would require a high level of authorisation. He explained that a multiple rocket

²²³⁴ Cutler, T. 8919-20.

²²³⁵ Witness Y, T. 10866-7 (closed session).

²²³⁶ Briquemont, T. 10054-6; see also P3717 (Total Number of Wounded, state hospital Sarajevo) shows that the number of wounded is very low in March 1993 when the warring parties were in Geneva and the next low part similarly corresponds to the second conference in Geneva in September 1993.

²²³⁷ Bergeron, T. 11251.

²²³⁸ Bergeron, T. 11257-8.

²²³⁹ Bergeron, T. 11258.

launcher is an “area weapon” which is inherently inaccurate when applied to a specific, relatively small, target.²²⁴⁰ Hermer said that in about October 1993, there were reports, including incoming reports (INCREPs) of the use of multiple launched rocket systems (“MLRS”) in attacks on the city; he recalled hearing an incoming rocket in one instance.²²⁴¹ He said that rockets are designed to have a rapid and devastating effect on the target and on an area target, these systems “are not accurate by any stretch of the imagination.”²²⁴² They are designed to have a great psychological effect on the troops or targets against which they are used, but they are generally not used in close support, as they are not accurate against specific targets (it “would be to generally suppress or harass a large area”).²²⁴³

645. Henneberry observed further attacks with this kind of weapon after August 1993.²²⁴⁴ He said in relation to such weapons:

This multiple barrel rocket launcher is designed to have a spread pattern of tens of metres, if not hundreds of metres, depending on the type, when the shells land on the ground. It is not possible to fire the weapon and have the shells land in a very small area. They spread out in flight and then land over literally up to a kilometre square. Q. Are they designed so that the rockets all land at the same instant or at different times? A. They can – generally at different times, they can be fired. The rockets can be fired individually in banks such as eight across or rapidly one after another. Q. If they are fired in banks, is the intention that they detonate together? A. Close together, yes, sir.²²⁴⁵

This testimony continues:

Q. How appropriate would its use be in an urban setting in terms of areas where there are civilians and military together? A. Inappropriate. If for no other reason than, again, the spread pattern can be a kilometre or more, if there are more weapons, as well as the, if I may use the word topography, the height of the buildings would cause some of the shells to strike buildings; others to go over them. It would be impossible to have control of the area where the rockets would land – or to predict, rather, not have control, but predict, where the rockets would land.²²⁴⁶

646. The international personnel present in Sarajevo throughout the Indictment Period also gave evidence that the SRK chain of command was under strict orders and well co-ordinated because indiscriminate shelling was used as a means of bringing pressure on the Presidency. Tucker commonly observed the practice of what was called “punitive shelling” used against the civilian population and which bespoke a high level of command and control.²²⁴⁷

²²⁴⁰ Hermer, T. 8478-9.

²²⁴¹ Hermer, T. 8478-9.

²²⁴² Hermer, T. 8480.

²²⁴³ Hermer, T. 8478-9.

²²⁴⁴ Henneberry, T. 8614-5.

²²⁴⁵ Henneberry, T. 8613-4.

²²⁴⁶ Henneberry, T. 8615.

²²⁴⁷ Tucker, T. 9923; Ashton also observed that practice, T. 1310-1.

647. Mole, Senior UNMO from September to December 1992, gave specific examples of a number of incidents of threats, admissions and actions of the SRK forces where, he believed, indiscriminate shelling was used as a means of bringing pressure to bear on the Presidency. He referred to several entries in his monthly Senior Military Observer's report.²²⁴⁸ The entry in his Senior Military Observer's report for 18 October 1992 reads:

It appears that a large part of the shelling of the city by Serb forces was due to the Serb view that the Presidency was unwilling to participate in a POW and body exchange. The shelling of the city by the Serbs resulted in an immediate meeting between Serb and Presidency representatives, with SMO [Senior UNMO] as the mediator.²²⁴⁹ A POW and body exchange to be monitored by UNPROFOR has been arranged for later this week.²²⁵⁰

Mole confirmed that the reference to shelling of the city in the passage referred to indiscriminate fire into the city, rather than shelling of military targets.²²⁵¹ Mole gave another example of such "indiscriminate fire" as a means to bring pressure on the Presidency with the entry for 7 November 1992, which reads:

General alert declared by Presidency in city in response to Serb threat of dire consequences if the approximately 6,000 refugees were not allowed to leave the city by 1400 hours today.

The following day's entry, reads:

Yesterday's threat by Serbs to Presidency of dire consequences if the approximately 6,000 refugees were not allowed to leave the city were apparently not followed through in any large measure, although general shelling activity somewhat heavier today.²²⁵²

The entry for 22 November 1992 notes a high level of activity with 192 rounds incoming to the Presidency side and two rounds incoming to the Serb side. Further down, these words appear:

Today, General Morillon requested an update on the activity in the sector, and when apprised of the heavy shelling into the city, directed that the Serbs be asked the reason for this activity. When asked, the Serbs answered that the shelling was in response to a mid-morning attack by Presidency forces against Hreša [...] grid 4058. The attack was said to have been made by infantry supported by hand-held anti-tank weapons. Furthermore, they indicated that the artillery then followed the retreating forces back into the city. It should be noted that the UNMO position observing Hreša was unaware of any infantry attacks to the area. Furthermore, the pattern of shelling by the Serbs did not

²²⁴⁸ Mole, T. 11008-9.

²²⁴⁹ Mole, as the Senior UNMO, attended the said meeting, T. 11009.

²²⁵⁰ Mole, T. 11008: P3689.

²²⁵¹ Mole, T. 11009.

²²⁵² Mole, T. 11011-12. Tucker also gave evidence about this incident, which involved the "negotiations about the evacuation of several thousand Croats from Sarajevo to Split and several thousand Serbs to Belgrade, using buses provided by Sarajevo". At one point, "we were told by the HQ Sector Sarajevo around 4 or 5 November 1992, that Colonel Žarković, a Bosnian Serb Colonel, had sent a message saying that if the Serb convoy was not allowed to leave the city by 1300 hours that day, that he would shell the city." It was his understanding "that this was a threat and the execution of the threat implied the firing of artillery shells at random into Sarajevo, in other words, at the civilian population in Sarajevo." Tucker, T. 9907.

indicate a specific operation in support of forces in Hreša but was widely spread throughout the city. Shelling into the city still continues at the time of writing of this report.²²⁵³

Essentially, the witness has recorded in the entry that the explanation provided by the representatives of the Serb forces was inconsistent with the observations by UNMOs.²²⁵⁴

At approx. [8 p.m. on 7 December 1992] Serbs threatened to renew shelling of city if Presidency shelling of Lukavica did not cease. Presumably Serbs not satisfied with response because as of [9.30 p.m.], Serbs have commenced shelling of city.²²⁵⁵

The threat was followed with effect. The witness has recorded in the entry of 8 December 1992 that the "Indiscriminate shelling of city [is] intensifying" and that the "Shelling [is] widely dispersed throughout city".²²⁵⁶

648. Tucker confirmed Mole. He stated that targets were analysed, and the results indicated that heavy artillery was not directed towards military targets, but rather was used to terrorise the civilian population and apply pressure to the Bosnian authorities. Tucker went on to say that:

And the reason that I say that is that it is entirely illegitimate, in my view, to be using artillery or mortars which have the inaccuracies which have been described just now in order to try and attack so-called military targets consisting of one building or one vehicle or somewhere when the ability of artillery or mortar, mortars, to hit that target are negligible and the chances of that artillery or mortars of hitting the surrounding civilian houses is 99.9 per cent.²²⁵⁷

649. Tucker also testified about VRS officers threatening the other warring party and the UN observers that civilians would be sniped at or shelled if their various military demands were not met. He recounted that in November 1992, Colonel Žarković, "a senior commander of the Bosnian Serb forces surrounding Sarajevo who attended many of the negotiations which General Morillon had with the commanders on the Bosnian Serb side", sent a message to UNPROFOR Headquarters, and to the Presidency. In that message, Žarković stated that if a particular Serb convoy was not allowed to leave the city by 13:00 hours that day, he would shell the city. Tucker said "my understanding was that this was a threat and the execution of the threat implied the firing of artillery shells at random into Sarajevo, in other words, at the civilian population in Sarajevo."²²⁵⁸

650. Witness Y had a similar experience. He testified that at one point, he tried to meet with General Galić in order "to ask him to stop this random shelling on various neighbourhoods of

²²⁵³ Mole, T. 11017-8.

²²⁵⁴ Mole, T. 11018.

²²⁵⁵ Mole, T. 11028-9.

²²⁵⁶ Mole, T. 11031.

²²⁵⁷ Tucker, T. 10028-9.

²²⁵⁸ Tucker, T. 9907.

Sarajevo”.²²⁵⁹ He wrote a report which included a Commander’s Assessment: “today’s important shelling from the Serb side looks like a will [sic] to gain grounds around the airport [Butmir, Dobrinja, Stup] to harass the population of the city itself to start a strong reaction from the Bosnian side and so endanger peace talks in New York”.²²⁶⁰ In that respect, Witness Y confirmed the contents of Exhibit P945, which summarised a meeting he had with General Galić on 27 March 1993. The document states that “General Galić said that that he would abide by the cease-fire but would respond “stronger than ever” if the other side made a violation.”²²⁶¹ Witness Y further testified that, in his views, General Galić did not support these cease-fires.²²⁶²

651. Witness Y gave an example of how attacks were launched against civilians. In late March (1993) the ABiH attacked the road between Pale and Lukavica. On one hand, in order to repel them, the SRK shelled the ABiH attacking troops. “And on the other hand, they reinforced the action through shelling on the town and especially on the Old Town. So this is the military action or reaction as it were.”²²⁶³ The Defence suggested to him that this fire was directed at Bistrik, where the headquarters of the ABiH 10th Mountain Brigade was located. He replied: “I can tell you that it was way beyond that scope, and Serb artillery men always were reputed for being exactly extremely accurate, that would be very amazing”.²²⁶⁴

652. Cutler also testified about an instance where, in the context of the conflict between warring parties in relation to Mount Igman, demands of the SRK were not met and subsequent shelling of civilians occurred.²²⁶⁵ Marčetić asked Cutler to “Tell the Bosnians to stop firing on Ilidža or we will hit Sarajevo”.²²⁶⁶ Indeed Cutler could hear Ilidža being hit, and the Serb HQ said the fire was coming from Igman. Cutler told the Bosnians to “stop firing” but that did not occur, and Sarajevo was shelled.²²⁶⁷

(iv) Control over SRK Weaponry

²²⁵⁹ Witness Y, T. 10880 (closed session).

²²⁶⁰ Witness Y, T. 10882, with reference to P932 (closed session).

²²⁶¹ Witness Y, T. 10885 (closed session).

²²⁶² Witness Y, T. 10975, 10986-7: [t]here is little doubt that he feels betrayed by his superiors and others who have made this latest deal. He will abide by it but only under orders, and he does not support it. [...] General Galić was concerned that things were moving too quickly. Events in New York and Belgrade seemed to have caught him by surprise and he was having difficulties [in coming] to terms with the prospects of a new order. [...] My impression of the meeting is that General Galić feels very much betrayed by his leadership and General Morillon. I expect that he will abide by the cease-fire initially but will use any violation as an excuse to respond with extreme violence. [...] [The Accused] would always have to put up with the decisions made by his superiors regarding cease-fires or just lulls or stops. Maybe he thought that his superiors should not have signed such cease-fires which were against the tactics adopted.

²²⁶³ Witness Y, T. 10867 (closed session).

²²⁶⁴ Witness Y, T. 10936 (closed session).

²²⁶⁵ Cutler, T. 8918.

²²⁶⁶ Cutler, T. 8918.

²²⁶⁷ Cutler, T. 8918.

653. Under regular military practice, as Corps commander, General Galić was in control of the SRK weaponry. According to DP35, all pieces were under control, directly and indirectly through brigade, company or battery commanders.²²⁶⁸ Mole emphasised that the frontline was approximately 65 kilometres²²⁶⁹ and noted that the Accused:

might not know the detail, but he would certainly be expected to comprehend such issues as logistic re-supply. And if I may take as an example, units were using ammunition, it would be a fair question to ask those units commanders why they were using that ammunition. Whether he was present or not, it is his job to know what his commanders are doing.²²⁷⁰

(d) Was General Galić in a Position to Punish his Subordinates?

654. The Defence does not deny that General Galić had the ability to prevent or punish commissions of crimes but argues that he did not have the need to do so. “General Galić had requested investigation to be carried out regarding some of the UNPROFOR protests, but [...] the return information provided by the lower units and competent services of the SRK indicated that the SRK units did not take part in any illegal actions”.²²⁷¹

655. On the other hand, the Defence also admits that “[g]reat problems were created with the arrival of the volunteers, who were acting initially along the principle of paramilitary formations, such as the Bokan group, the so-called Jova’s group, the Group Saint George, and others. General Galić undertook urgent measures for subordination of these units and their merger into the VRS units, while some others were disbanded and eliminated from the zone of responsibility, and against some of them judicial proceedings were initiated”.²²⁷²

656. Major Indić corroborated that statement. He testified that at the beginning of the war, there were groups which did not respect the chain of command and during the first half of 1993, these groups were dismantled and their members reassigned to other units. According to Major Indić however this “did not completely solve the problem of paramilitaries, because every single soldier who disregards / disobeys an order is a paramilitary in himself”.²²⁷³ “Vojvoda Brne was a

²²⁶⁸ DP35, T. 17511.

²²⁶⁹ Mole, T. 9808.

²²⁷⁰ Mole, T. 11098.

²²⁷¹ Defence Pre-trial Brief, para. 7.25; Defence Final Trial Brief, para. 24.

²²⁷² Defence Pre-trial Brief, para. 2.34, 7.26: the Defence submits that “General Galić did undertake all the necessary measures to eliminate from the zone of his responsibility, certain organized groups which were acting outside of his control, and that they were eliminated during the year 1993”. There “were some information that in some situations they [the certain groups] acted illegally, General Galić having, thus, undertaken and implemented measures to prevent such conduct”.

²²⁷³ Indić, T. 18593.

paramilitary group stationed at Rakovica / Blažuj. A military police unit was sent to dismantle this group, and they were allowed to use force when necessary”.²²⁷⁴

657. General Michael Rose also noted that General Galić had the ability to punish the commission of crimes. He testified that when “mercenaries” were no longer wanted by the Serb forces to operate in the vicinity of the Jewish Cemetery in March 1994 in the immediate aftermath of the Markale shelling, force was used by the Serb forces to remove them.²²⁷⁵

658. There is some evidence that SRK brigade commanders also had authority to punish subordinate perpetrators of offences. DP34, an SRK brigade commander, prided himself in the fact that his unit was the most disciplined brigade in the SRK Corps, that all orders were carried out,²²⁷⁶ and that any transgression, such as drunkenness or lack of discipline, was punished.²²⁷⁷ There is also some evidence that soldiers had been punished for offences by their superiors. Grdan Vuković, a military police soldier attached to the SRK in Lukavica, testified that SRK soldiers had been arrested and investigations had been conducted.²²⁷⁸ There was a detention centre in Lukavica and a military prosecutor became involved at some point in the investigation.²²⁷⁹

2. Conclusions about the Effectiveness of the Command and Control of the Chain of Command

659. The Trial Chamber has no doubt that General Galić was an efficient and professional military officer. Upon his appointment, he finalised the composition and organisation of the SRK. General Galić gave the impression to his staff and to international personnel that he was in control of the situation in Sarajevo.

660. General Galić was present on the battlefield of Sarajevo throughout the Indictment Period, in close proximity to the confrontation lines, which remained relatively static, and he actively monitored the situation in Sarajevo. General Galić was perfectly cognisant of the situation in the battlefield of Sarajevo. The Trial Record demonstrates that the SRK reporting and monitoring systems were functioning normally. General Galić was in a good position to instruct and order his troops, in particular during the Corps briefings. Many witnesses called by the Defence gave evidence in relation to the fact that the orders went down the chain of command normally. They recalled in particular that orders were usually given in an oral form, the communication system of the SRK being good.

²²⁷⁴ Indić, T. 18593-4; see also Radinović Report, para. 314: General Galić issued an order placing under control of military commands of all the paramilitaries or their disbanding and expulsion, in case they should resist.

²²⁷⁵ Rose, T. 10208-9.

²²⁷⁶ DP34, T. 17830-1.

²²⁷⁷ DP34, T. 17831.

²²⁷⁸ Vuković, T. 14674-5.

²²⁷⁹ Vuković, T. 14688.

661. There is a plethora of evidence from many international military personnel that the SRK personnel was competent, and under that degree of control by the chain of command which typifies well-regulated armies. That personnel concluded that both sniping and shelling activity by the SRK was under strict control by the chain of command from observation of co-ordinated military attacks launched in the city of Sarajevo in a timely manner, of the speedy implementation of cease-fire agreements, of threats of attacks followed by effect, or of the type of weaponry used. The Trial Chamber is convinced that the SRK personnel was under normal military command and control.

662. On the basis of the Trial Record, the Trial Chamber is also satisfied beyond reasonable doubt that General Galić, as a Corps commander, had the material ability to prosecute and punish those who would go against his orders or had violated military discipline, or who had committed criminal acts.

663. The Trial Chamber finds that the Accused General Galić, commander of the Sarajevo Romanija Corps, had effective control, in his zone of responsibility, of the SRK troops.

664. Having found that the Accused had effective control over his troops, the Trial Chamber turns now to examine whether, as alleged by the Prosecution, General Galić knew that crimes were being committed or had been committed in his zone of responsibility and by forces under his command.

C. Did General Galić Know of the Crimes Proved at Trial?

1. Introduction

665. There is a fundamental disagreement between the parties as to the actual knowledge of General Galić of the crimes proved at trial. The Prosecution argues that there is direct evidence that General Galić knew that his subordinates were carrying out a campaign of widespread sniping and shelling, which forms the basis of the charges in the Indictment.²²⁸⁰

666. By contrast, the Defence denies that the Accused possessed such knowledge and argues that “without clearly specified individual incidents, location of incidents, time of the incidents, it is not possible to assume that General Galić had knowledge about any such incident so that he could have ordered any efficient investigation, provided the said incidents did at all take place”.²²⁸¹ The Defence also objects that General Galić had direct knowledge through the media that crimes of a systematic character were committed within his zone of responsibility. It argues that it was “the

²²⁸⁰ Prosecution’s Pre-Trial Brief, para. 107, Prosecution Final Trial Brief, para. 2.

²²⁸¹ Defence Pre-trial Brief, para. 7.33; Defence Final Trial Brief, para. 24.

Muslim side which was using the Media for [...] creating a false image of the situation at the battle front and around Sarajevo”.²²⁸²

2. Protests Delivered in Person to General Galić

667. The Trial Chamber received consistent evidence that a considerable number of knowledgeable United Nations’ representatives and other intermediaries present in the area throughout the entire duration of the battle of Sarajevo protested against indiscriminate firing on civilians to General Galić. They delivered their protests in person directly to the Accused.²²⁸³ These protests, general or specific depending on the complainant, concerned unlawful sniping and shelling activity in the city of Sarajevo attributed to Bosnian Serb forces, and were transmitted either orally during the fortnightly meetings the UNPROFOR members had with General Galić or in written form.

668. Abdel-Razek, UNPROFOR Commander of Sector Sarajevo from August 1992 to February 1993,²²⁸⁴ met with General Galić in Lukavica on a regular basis and complained about the shelling of the city.²²⁸⁵ On the basis of information contained in reports from mass media and official quarters, Abdel-Razek informed General Galić that his military campaign caused heavy losses among civilians:

So I used to talk to him in this way concerning the shelling incidents. I also talked to him about the shelling of the hospital. And many other similar issues, we used to talk in a general way. There was a shelling incident on the city. This shelling affected the civilian population and it does also impact on our work in a great deal.²²⁸⁶

669. Patrick Henneberry, who was permanently based at the Lukavica barracks in December 1992, visited artillery emplacements and observed the weaponry being indiscriminately fired into the city.²²⁸⁷ He met General Galić on a number of occasions, and complained, in particular, about the indiscriminate shelling of the city of Sarajevo.²²⁸⁸ As a result of these meetings, he had no doubt that the Accused was aware of the indiscriminate shelling into Sarajevo, and that there was a psychological reason for it, to terrorise the local civilians and the Muslim forces.²²⁸⁹

²²⁸² Defence Pre-trial Brief, paras 7.18 and 7.19.

²²⁸³ Prosecution’s Pre-Trial Brief, para. 108

²²⁸⁴ Abdel-Razek, T. 11581 (he replaced MacKenzie as Commander of Sector Sarajevo).

²²⁸⁵ Abdel-Razek, T. 11584-85.

²²⁸⁶ Abdel-Razek, T. 11591-2.

²²⁸⁷ Henneberry, T. 8551-9; T. 8562.

²²⁸⁸ Henneberry, T. 8590; fire was indiscriminate and without apparent reasons, T. 8547.

²²⁸⁹ Henneberry, T. 8599.

670. Bergeron testified that he met General Galić “very often [...] at least 25 times,”²²⁹⁰ and complained about the number of casualties:

When we would meet him, we were trying to stick to some kind of a procedure. And generally speaking, we would take stock of the situation, see what had happened since the previous meeting. In some cases we could mention, so if the time that had elapsed was one week we said, well, in the last seven days, we counted so many shelling, mortar shelling incidents, so many sniping, you know, "X" amount of casualties, as far as we knew. So we would report those figures recapitulating what had happened since the last meeting.²²⁹¹

He also specifically complained about the terrorisation of the civilian population:

we would often mention the fact that there were snipers – the fact that snipers would kill civilians, be it women, children, elderly people, for apparently no other reason than to terrorise the population, than to demoralise the population.²²⁹²

671. Donough O’Keeffe, the Senior UNMO in post in Sarajevo from March to June 1993, recalled that at a meeting in about April 1993 he protested to the Accused about indiscriminate sniping and shelling.²²⁹³ James Fraser, an UNPROFOR representative in Sarajevo from April 1994 onwards, testified that the SFOR “conducted protests for any sniping incident, shelling incident, weapons in the exclusion zone, if they were not in the weapon collecting points. Anytime there was a contradiction in the UN agreement, we would go to General Galić and protest those cases in two ways: we would send a letter, a written form, to him, and more effectively, we would ask for a meeting to discuss these incidents in order that we could press the point and get him to cease these activities on Sarajevo.”²²⁹⁴

672. Witness W, a member of the UNPROFOR, testified that he met the Accused, in the presence of Major Indić and sometimes also in the presence of one or several of General Galić’s assistants, “just under 10 times or so”.²²⁹⁵ Many issues were discussed but the "most important and major criticism" was related to incidents where civilians on the Bosnian government side of the confrontation lines, had been killed as a result of shells fired from territory under the control of the SRK side of the confrontation lines.²²⁹⁶ Witness W testified that he officially protested about attacks against civilians committed in his area of responsibility. He also protested about incidents that occurred elsewhere outside his area of responsibility out of personal indignation and the need to

²²⁹⁰ Bergeron, T. 11270.

²²⁹¹ Bergeron, T. 11271.

²²⁹² Bergeron, T.11268.

²²⁹³ O’Keeffe, T. 9184-6.

²²⁹⁴ Fraser, T.11194.

²²⁹⁵ Witness W, T. 9541(closed session).

²²⁹⁶ Witness W, T. 9551 (closed session). At such meetings, the witness was mostly accompanied by Serb interpreters, or possibly Croatian, because "the Lukavica headquarters did not accept Bosniak Muslim interpreters" and Witness W was not aware of any serious problem with the interpreting at any of the meetings, T. 9553-4.

communicate to the SRK his disapproval of their actions which the witness “considered as being contrary to human rights”.²²⁹⁷ He stated that:

Every day the Sarajevo Sector produced a list of incidents that had occurred the previous day. In particular, the shelling of the city by artillery pieces, which were positioned and located on the Serb side or by snipers located in the Serb zone. When I was in a position to meet Colonel Galić or other people in responsible positions on the Serb side, I took advantage of that situation to protest against such action. Moreover, the Sarajevo Sector informed us of their own official protests and I took care to associate with these protests when meeting Colonel Galić.²²⁹⁸

673. Fraser had a couple of meetings with General Galić in May, June or July 1994 to protest against the killing of Bosnian civilians by Serb snipers.²²⁹⁹ Fraser concluded that these snipers were acting on orders because the sniping incidents reflected a definite pattern and the meetings with General Galić resulted in a decrease of Serbian sniping.²³⁰⁰

It is my opinion that these snipers were acting on orders from a higher organisation than the areas because the three areas that I described, Sedrenik, sniper alley and the airport, crossed a number of different Serbian brigades. And the activities appeared to have been coordinated because of the incidents and how they seemed to happen around the city, that there seemed to be some structure. And when there was an incident, we would protest. And in those protests, and in the discussions with General Galic and his headquarters, there seemed to be some control over the level of activity that these snipers had upon the citizens and the UN.²³⁰¹

674. As stated above, both UNMO and UNPROFOR representatives concluded that some of the indiscriminate shelling of the city was ordered as “reprisal” or as a means of pressure. UNMO who observed civilians being sniped at and shelled, concluded that such targeting had two objectives: to terrorise the civilian population and to apply pressure to the Bosnian authorities.²³⁰² Mole, a Senior UNMO, explained that “There was an accepted norm that if the Serb side failed to achieve their objectives – and I use that in the widest context, so that could be anything from a local complaint to something else that happened within Bosnia – the general perception was that Sarajevo would suffer as a result. This was always interpreted to mean that artillery fire would be brought to bear on the city in response. There were instances where this was quite specifically made as a threat”.²³⁰³ Consequently, his morning briefing about events elsewhere in Bosnia alerted him to the possibility of repercussions within the Sarajevo sector.²³⁰⁴ In such instances, he would speak with General Galić with the objective of preventing repercussions in Sarajevo, in response to these outside

²²⁹⁷ Witness W, T. 9551-2 (closed session).

²²⁹⁸ Witness W, T. 9554-5 (closed session).

²²⁹⁹ Fraser T. 11193-4.

²³⁰⁰ Fraser T. 11193-4.

²³⁰¹ Fraser, T. 11193.

²³⁰² Tucker, T. 10028-9.

²³⁰³ Mole, T. 9831.

²³⁰⁴ Mole, T. 10989-90.

events.²³⁰⁵ On the two occasions – in the second half of February 1993 and on 25 March 1993 – Michael Carswell, a UNMO, met with the Accused in the operations room at Lukavica, he protested against the shelling of UNMOs and against random shelling and other firing which occasioned civilian casualties.²³⁰⁶

675. The SFOR also, as a practice, protested whenever it was confronted with concrete physical evidence of a sniping incident (such as discovering the body of a dead Bosnian civilian). The SFOR would first send a written protest to General Galić to establish a record of the protest. General Galić was also informed about the shelling incident 1 (Dobrinja IIIB soccer match).²³⁰⁷

3. General Galić's Responses to Protests

676. The responses of General Galić to these protests varied. They were sometimes direct. Abdel-Razek testified that when he complained, early 1993, to General Galić about the indiscriminate targeting of those who crossed the airport tarmac, General Galić was adamant that he would continue to stop the crossing of the airport using all means. According to him, General Galić had some doubts as to whether those movements might be for military purposes.²³⁰⁸ Abdel-Razek recounted that the Accused made a similar threat to one of his subordinate. General Galić admitted to his subordinate a deliberate policy of targeting civilians,²³⁰⁹ and was determined to pursue such a policy of shelling and to target those who tried to cross the perimeter of the airport.²³¹⁰

677. When Witness W complained in vague terms²³¹¹ about the shelling of a water supply point south of Sarajevo toward the end of year 1992 “which seemed to be intentional against the civilian population” and which resulted in the death of a number of civilians,²³¹² General Galić answered with the attitude “of someone who was assuming or was taking on board what happened, was not rejecting it. And was surprised or wasn't particularly pleased that I was reproaching this to him”. General Galić's response motivated in Witness W a profound indignation, which broke their relationship:²³¹³

The explanations given to me by Colonel Galic, it seemed that it was his troops that attacked the civilians, that his troops did act within the framework of his orders, that he considered it normal that his forces would attack civilians and [...] therefore, I had [...]

²³⁰⁵ Mole, T. 10990-91.

²³⁰⁶ Carswell, T. 8344-6, 8407.

²³⁰⁷ Witness Y, T. 10866 (closed session).

²³⁰⁸ Abdel-Razek, T. 11596.

²³⁰⁹ Abdel-Razek, T. 11600-1.

²³¹⁰ Abdel-Razek, T. 11600, 11644.

²³¹¹ Witness W, T. 9564 (closed session).

²³¹² Witness W, T. 9557 (closed session).

²³¹³ Witness W, T. 9566 (closed session).

full reason to describe this as criminal act and that I could not continue to have a dialogue with him in these circumstances.²³¹⁴

678. Similarly, when Carswell protested, in the witness' understanding, General Galić did not deny responsibility, but answered – in general terms – that “it would have been in defence of the Serbian homeland and it is their attempt to preserve the culture”.²³¹⁵

679. On other instances when General Abdel-Razek, UNPROFOR Commander of Sector Sarajevo from August 1992 to February 1993, informed General Galić that the shelling of the PTT building by Bosnian Serb forces should stop, General Galić always said that it was the other side which was doing the shelling.²³¹⁶

But when I reviewed the reports coming from the checkpoints, and most of these reports are at the disposal of the UN, these reports showed clearly that the shelling came from the Serbian forces, the Serb forces. And when I insisted on stopping the shelling, he said to me: "You allow the other side to fire from this side, from the perimeter of the PTT building, and when we respond, some of the rounds might fall close to the PTT building." He said to me, "It is your responsibility to stop the other party, the other side, to stop the shelling." That is the way he dealt with us when it came to discussing the shelling.²³¹⁷

680. General Galić used to say that the other party did that in order to attract the support of the international community and sympathy.²³¹⁸ Abdel-Razek testified that General Galić stated during one of the meetings they had together in relation to a complaint about indiscriminate fire on the city by SRK forces that “if the other party continued in firing his troops [...] he shall continue attacking them”. General Galić had said “I shall make them live difficult times.”²³¹⁹

681. Henneberry testified that General Galić repeated that statement to him on a day he believed to be 16 December 1992. That day, before a reunion to discuss a corridor to allow civilians to leave Sarajevo and where Mole was also present,²³²⁰ Henneberry complained to General Galić that the indiscriminate shelling continued. General Galić confirmed to him that the ultimate goal was to either destroy the city or rid it of Muslims.²³²¹ The witness was disturbed by that statement emanating from a professional and respected military man:

And after meeting with General Galić and talking with his staff, it was difficult and perhaps disturbing to reconcile that General Galić was well-respected and a very intelligent military man. There was no doubt of that. He had a commanding presence. He was respected for his military abilities and knowledge by his staff and by the military observers. The disturbing part of that was his focus on destroying the city or ridding it of

²³¹⁴ Witness W, T. 9607-8 (closed session).

²³¹⁵ Carswell, T. 8345.

²³¹⁶ Abdel-Razek, T. 11587-8.

²³¹⁷ Abdel-Razek, T. 11588.

²³¹⁸ Abdel-Razek, T. 11593.

²³¹⁹ Abdel-Razek, T. 11594.

²³²⁰ Henneberry, T. 8661, 8664.

²³²¹ Henneberry, T. 8590-1.

Muslims, which was not in accordance with recognisable rules of [...] armed conflict. It, in fact, to be honest, was disturbing and somewhat scary. Q. What was that? Could you spell that out. A. I would have to hearken back to the Nuremberg trials, where very intelligent men made decisions that were illegal and against the law and caused the death of civilians and military. And I couldn't help but thinking that General Galić, again being an intelligent military man with the respect of all, had the power within him to rid the city of the Muslims mostly, and knowing what was inside the city, I recognised and realised that that meant the death of a lot of innocents. Innocents, which I categorise as the young, the elderly, and the non-combatants, and he was determined to do that.²³²²

Mole who was present during that meeting explained that General Galić made threats of attacks against the population of Sarajevo. He provided the example in relation to Mount Igman. General Galić threatened that if the firing from Mount Igman did not cease, there would be reciprocal firing by his weapons onto the city of Sarajevo.²³²³ Such threats were expressed again in the course of other meetings, between five to ten times directly to him, and in relation to other parts of the territory of Bosnia-Herzegovina.²³²⁴ Mole explained it as follows:

The point with Sarajevo is that it was a policy of containment which he was exercising, and as a result of that, he considered that his military capability could be brought to bear on the city in response to activities elsewhere, and one interprets that by virtue of his weapons disposition to be the application of his artillery pieces to maintain that policy of containment.²³²⁵

682. In other instances when Witness W protested to General Galić about offences that had been committed against civilians in his area of responsibility,²³²⁶ the response was either a denial of the incidents or a denial that the SRK was involved or the announcement of an investigation of the incident.²³²⁷

683. In relation to the negotiations for a sniping cease-fire in the aftermath of Markale incident, Fraser had a somehow similar response from General Galić. He testified that:²³²⁸

our meetings with him starting off by being lectured, a denial of what it was we were trying to discuss. However, there was some acknowledgment about sniping around the city and a general consensus that it would be nice if they had an anti-sniping agreement. One which was written up, was not signed by neither party later in that summer, but it is something that we wanted. However, having gone through the meeting with General Galić, the incidents of sniping around the city did diminish somewhat for a period of time. So the meeting was effective.²³²⁹

684. According to Witness DP17, an SRK officer, the topic of United Nations' complaints about the sniping of civilians was discussed at least once during a visit by General Galić to his brigade.

²³²² Henneberry, T. 8595-6.

²³²³ Mole, T. 9834-5.

²³²⁴ Mole, T. 9837.

²³²⁵ Mole, T. 9836-7.

²³²⁶ Witness W, T. 9552 (closed session).

²³²⁷ Witness W, T. 9555 (closed session).

²³²⁸ Fraser, T. 11193-96.

According to the witness, it was always stressed that civilians were not to be targeted.²³³⁰ Another SRK officer, the Defence Witness DP35, confirmed that during the Corps briefings, General Galić would mention protests he had received²³³¹ and “would not just have a glance at such protests but would deal with it seriously, either a protest concerning sniping or shelling”.²³³²

there was a warning that was given to the relevant persons who would forward that warning and check it in the units whether fire was opened, for instance. Or there was a warning – that was the task given to the liaison officer with UNPROFOR to check whether the protest was based on facts, on something that had really happened. And we always stressed that there were many protests that occurred which were not based factually and that practically people were just involved in studying this, discussing it, and then the opposite thing was true. [And] firing was also discussed in relation to the weapons which need not have had optical sights.²³³³

4. Protests Delivered to General Galić’s Subordinates

685. Formal protests against apparent violations of the laws of armed conflict were also delivered to General Galić’s subordinates. Witness Y testified that these formal protests were transmitted during the fortnightly meetings the UNPROFOR members had with one of General Galić’s deputy when the Accused was not there or did not want to see him. According to him, this happened when it was difficult for the Accused to give explanations about attacks upon civilians. Protests were also passed on General Galić through the liaison officers team based at the PTT building where UNPROFOR had its headquarters.²³³⁴ The liaison officer could then contact the Command headquarters in Lukavica through hand-held wireless set or landline.²³³⁵ UNPROFOR also very regularly sent written protests through the liaison officers to both parties when there was a series of violence, attack upon attack, shooting upon shooting, initial shooting and return shooting, or to one side only.²³³⁶ According to UNPROFOR personnel, such written protests were faxed to the respective commands.²³³⁷

686. Major Indić, the liaison officer of General Galić, whose office was close to the offices of the SRK Chief of Staff and General Galić,²³³⁸ confirmed this.²³³⁹ He testified that within the

²³²⁹ Fraser, T. 11196.

²³³⁰ DP17, T. 16808-9.

²³³¹ DP35, T. 17731.

²³³² DP35, T. 17727.

²³³³ DP35, T. 17731.

²³³⁴ Witness Y, T. 10857 (closed session).

²³³⁵ Carswell, T. 8348, 8429.

²³³⁶ Witness Y, T. 10857 (closed session). Fraser, T. 11193-7. See P784 as an example of written protest sent to the liaison officer.

²³³⁷ Witness Y, T. 10869 (closed session).

²³³⁸ Kolp, T. 8224; Indić was a coordinator and direct associate of the commander General Galić to whom he reported, T. 8224-5.

²³³⁹ Defence Witness DP35 corroborated this statement: “They were made aware of each protest because it was their duty to report to the commander about this, to inform the commander about this, and they would follow how this protest was developing on the basis of the commander’s decision and the task that he assigned. The task would be to check to

UNPROFOR structure, various levels were in a position to protest and had protested: UNMOs, liaison officers from UNPROFOR battalions, the UNPROFOR command of the Sarajevo sector, and the BiH UNPROFOR command. Protests from the latter were usually in written form, transmitted “directly” and “as fast as possible” to the Main Staff of VRS.²³⁴⁰ The protests from UNMOs and liaison officers of UNPROFOR battalions located in Sarajevo²³⁴¹ were ninety-five percent verbal.²³⁴² Major Indić transmitted these protests to the SRK Corps Command and waited for feedback from the duty officer or from the Corps commander.²³⁴³

687. Major Indić testified that written protests from UNPROFOR command of Sector Sarajevo were mostly related to cease-fire violations, and simultaneously addressed to both warring sides. Other protests were sent if, for any reason, there was a threat to UN units or members.²³⁴⁴ There were about fifty written protests of these kinds during the relevant period which had been forwarded to the Corps commander or, if he was absent, to his Chief of Staff. Major Indić does not know what the “Corps Command” did upon receipt of protests, but “either one of them” would personally write an answer and give it to the group members for it to be translated and forwarded to UNPROFOR.²³⁴⁵

688. Major Indić denied first that he ever received specific protests saying that persons (civilians)²³⁴⁶ had been killed by sniping or shelling,²³⁴⁷ so no action could be taken.²³⁴⁸ Later during his testimony, he stated that an investigation in relation to the shelling of the Markale market had been undertaken by the SRK,²³⁴⁹ and that he indeed received about a hundred protests to the effect that sniper fire had been opened.²³⁵⁰ The Defence Witness DP35 confirmed that Major Indić received protests to the effect that civilians had been attacked. He testified that investigations by the SRK into protests were difficult because of the lack of precision of the protests,²³⁵¹ but protests alleging that civilians were targeted²³⁵² were passed on through the liaison officer of the SRK,

see whether such an incident had occurred, the incident with regard to which a protest had been lodged”, DP35, T. 17501.

²³⁴⁰ Indić, T. 18560.

²³⁴¹ Indić, T. 18558.

²³⁴² Indić, T. 18857-58.

²³⁴³ Indić, T. 18677. Major Indić also testified that verbal protests were never responded to in writing. No records were kept, and therefore no records could be transmitted to the General Staff (Indić, T. 18678-9).

²³⁴⁴ Indić, T. 18571.

²³⁴⁵ Indić, T. 18572.

²³⁴⁶ Indić, T. 16080.

²³⁴⁷ Indić, T. 18570, 18571, 18681.

²³⁴⁸ Indić, T. 18565-6.

²³⁴⁹ Indić, T. 18634.

²³⁵⁰ Indić, T. 18721-2.

²³⁵¹ DP35, T. 17646: reports of investigations were forwarded to the main staff of the VRS and they were in any case in daily combat reports.

²³⁵² DP35, T. 17644, Major Indić attended the meetings at the operations centre on a daily basis along with DP35, General Galić and other senior subordinates when protests were discussed.

Major Indić from September 1992 to August 1994.²³⁵³ As to why protests were not regarded as specific, DP35 conceded that it was because names of casualties were not mentioned in the protests.²³⁵⁴ Under cross-examination, Major Indić also clarified his previous statement. For him, a protest was specific and allowed proper reaction only if it included details such as the time, the location, the direction of the fire, the type of weapon used and the consequences of the fire. Most of the protests that he received were incomplete, thus not officially received.²³⁵⁵ He added that although additional information would be asked for, it was never received.²³⁵⁶

689. Many international personnel confirmed that Major Indić received protests concerning attacks against civilians. Major Indić's responses upon protests could be direct. Henneberry testified that, after he had won Major Indić's confidence, Indić repeatedly admitted to him that he knew that civilians were being shelled and he believed that it was wrong but that it was part of the Corps' plan and that it would continue.²³⁵⁷ Henneberry's immediate superior, Senior UNMO James Cutler, corroborated him to the extent that he recalled seeing Henneberry upset because "the Serb liaison officer had told him that the shelling into Sarajevo and the killing of civilians was deliberate. I interpreted that to mean that it was an intentional part of the Corps plan of the siege of Sarajevo [...] To me, it was very evident that that had been going on. It wasn't earth-shattering news to me at all because I had come to the conclusion that harassing morale-lowering fire was a *fait accompli* in that situation."²³⁵⁸ When John Ashton, who arrived in Sarajevo in July 1992 as a photographer,²³⁵⁹ showed to Major Indić photographs of damages caused to the city of Sarajevo by shelling in September and October 1992 and the great number of civilian casualties in hospital, the response was "what a pity [...] we obviously can't use it [the hospital] anymore".²³⁶⁰ Major Indić said to Ashton that he did not want to destroy the city but wear people down until they surrender or give up or go back to Turkey,²³⁶¹ and asserted that "they" would not cease shelling the Hospital until the "Muslims surrendered the city".²³⁶²

²³⁵³ Indić, T. 18541.

²³⁵⁴ DP35, T. 17501-2: They did receive protests in the command but not directly from the BH army. They were sent through the liaison officer for UNPROFOR. For each protest lodged and in which victims were mentioned, this would be checked in the field to determine whether it was possible that one of their units had opened fire. Names of the casualties were not mentioned in those protests. The witness personally participated or acted on some protests.

²³⁵⁵ Indić, T. 18687.

²³⁵⁶ Indić, T. 18565-6.

²³⁵⁷ Henneberry, T. 8577-8.

²³⁵⁸ Cutler, T. 8935-6.

²³⁵⁹ Ashton, T. 1428. Indić testified that he believed that Ashton was supposedly a CIA agent (T. 18772) - and the SRK never tried to forbid Ashton to travel on SRK territory (T. 18780-2) - because he had far more authority than a simple photographer, he could influence things with regard to the UNHCR activity and had open doors to the Sarajevo sector command (T. 18798). The Trial Chamber does not consider the evidence of Ashton unreliable because of his alleged membership to an intelligence organisation.

²³⁶⁰ Aston, T. 1295-6.

²³⁶¹ Ashton, T. 1295.

²³⁶² Ashton, T. 1296.

690. Some other international military personnel received different responses from Indić. According to Jacques Kolp, UNPROFOR Liaison Officer with the ABiH from March 1993 to November 1994, Major Indić's reaction to protests would usually be either to say that he would see²³⁶³ or that it was not important, just some shootings.²³⁶⁴ Henneberry said that Indić's responses to complaints were to deny the shelling of civilians or say that it was an uncontrollable element, or, when Henneberry won his confidence, even admit it and say that it was wrong but necessary.²³⁶⁵ Henneberry explained that when hearing complaints about the shelling not always hitting military targets, Indić's response was to say that he would send the request up the chain of command for consideration, and most of the times he also requested some action on the part of the UN or by the "Muslim side".²³⁶⁶ He noticed that on several occasions, the firing would stop after the complaint.²³⁶⁷

691. Jeremy Hermer, a UNMO Military Information Officer from August 1993 to January 1994, testified to the same effect. He also complained repeatedly to Major Indić over the phone about extensive shelling or sniping in one particular area that was not directed to any specific military target, and that possibly civilians were being injured.²³⁶⁸ "There were a number of types of response one could expect to receive. And they ranged from total indifference and unwillingness to communicate to a denial, a flat denial of any action taking place. It may well be that he would be aware of what I was referring to and his retort was that this was legitimate military action and a response to earlier Bosnian actions. On occasion he would, again, appear to be aware of what I was referring to and would, in fact, say that he would try to do something positive to help the situation".²³⁶⁹

692. Hermer testified that, at times, Major Indić seemed to be able to cause an effect on the battlefield, in that when a request or complaint had been lodged, the incident to which the complaint referred often ceased.²³⁷⁰

There was always the possibility that contacting Lukavica barracks would elicit some kind of positive action. Therefore, I was dutybound always to make that contact in the hope that something positive could – could happen. As I said previously, it wasn't always the case. But on the occasions where either Major Indić, directly or through one of my colleagues on the Lima side, indicated something could happen then generally something did appear to happen. So I would say that there was a chance that something would happen when a request was lodged and, therefore, there was the possibility that our

²³⁶³ Kolp, T. 8309

²³⁶⁴ Kolp, T. 8310

²³⁶⁵ Henneberry, T. 8585.

²³⁶⁶ Henneberry, T. 8569-70.

²³⁶⁷ Henneberry, T. 8572-3.

²³⁶⁸ Hermer, T. 8456-7.

²³⁶⁹ Hermer, T. 8457-8.

²³⁷⁰ Hermer, T. 8457.

request would be granted, which leads me to believe that Major Indić, or somebody in that headquarters, had the ability to cause an effect on the front line.²³⁷¹

Indić confirmed that there were a number of protests while combat operations were ongoing that they were able to act promptly upon.²³⁷²

693. Ashton also testified that in September 1992, he saw General MacKenzie coming into Major Indić's office to tell him loudly in an angry tone that "that has got to stop". MacKenzie was complaining about shelling around the area of the PTT, including shelling of civilians, at one time the so-called iron cross was being used.²³⁷³ Ashton testified that the iron cross was a form of punishment used whenever a Serb was killed by the other side or if the Bosnian fired a mortar round. It consisted of shelling heavily an area in the pattern of an orthodox cross.²³⁷⁴

694. Complaints were also made directly to Colonel Marčetić, the SRK Chief of Staff, with respect to shelling and sniping of civilians and UN troops.²³⁷⁵ Noticeably, when UN representatives would complain to persons other than General Galić, the response would range from sincere concern, with promise that criminal activity would cease,²³⁷⁶ or with a proposal to undertake investigations,²³⁷⁷ to indifference²³⁷⁸ with a denial of SRK responsibility, to outright laughter.²³⁷⁹ Some SRK high officers were concerned, but they generally continued with the shelling.²³⁸⁰

5. Media Reports

695. There is also some evidence that the SRK was put on notice via the media coverage that criminal activity attributed to forces under General Galić's command and control had been perpetrated. DP35 gave examples of investigations following information received via the media and forwarded to the main VRS staff by General Galić. At the beginning of February 1994, Witness DP35, as operations duty officer, "received via the media (radio) information according to which

²³⁷¹ Hermer, T. 8460.

²³⁷² Indić, T. 18568. The procedure when a request to stop fire arrived was to transmit it through the duty operations officer at the Corps command. He would call the brigade commander of the area of responsibility in question in order to check the authenticity of the protest and to see what was really going on. Mostly these were mutual combat operations. UNMOs would mediate in order to establish the time at which the firing should stop.

²³⁷³ Ashton, T. 1313-14.

²³⁷⁴ Ashton, T. 1310. An SRK gunner in Pale explained to Ashton what the job consisted of. A gunner must "set the gun at a range of .2 degrees and fire upwards once they established the first round, and then the shells would go straight up a line and then they would move the gun and fire five shots at calibrated degrees across the city. He said they would average 8 to 10 shots up and 5 across", Ashton, T. 1311.

²³⁷⁵ Cutler, T. 8930-2; Carswell, T. 8345.

²³⁷⁶ General Van Baal noted that a daily SitRep [situation report] for 13 July 1994 recorded that the previous day: "the commander of the 1st Battalion of the BSA Illidža Brigade admitted the sniping by BSA from Bravo PAPA 859578 (house for the blind people). He promised that there would be no more sniping from that place", Van Baal, T. 9880-1.

²³⁷⁷ Witness W, T. 9555 (closed session).

²³⁷⁸ Henneberry, T. 8574-5.

²³⁷⁹ Henneberry, T. 8602.

²³⁸⁰ Henneberry, T. 8600, 8602, 8604. The commanders of positions around LIMA 3, LIMA 10 and someone Henneberry believed to be a brigade commander in Vogošća were concerned but continued their operations of shelling.

their units had been active and their action had resulted in casualties in the Dobrinja region. A team was formed by the Chief of Staff that tried to establish whether there had been such action. This wasn't confirmed. And the liaison officer for UNPROFOR never provided an official protest, either written or some other form".²³⁸¹ The main staff would be provided with this report. "And such report would be sent to the main staff with this person's signature and authorisation".²³⁸² Witness DP36, an SRK soldier, testified that he was convinced that the media was propagating lies "about the SRK and its way of operating".²³⁸³

6. Artillery Assets

696. According to the Prosecution, "Given the critical importance of the Accused's heavy weaponry and munitions advantage over the ABiH as a counterbalance to his infantry disadvantage, the Accused surely had to carefully monitor the use of this key asset. Put simply, it was critical to his continued survival against otherwise overwhelming odds. The same applied to his professional snipers, given the urban nature of the conflict. For these reasons, it was also important that these assets operate in a professional manner".²³⁸⁴

697. The testimony of Mole supports the Prosecution's propositions. He noted that:

One would presumably expect the commander of the SRK to depend on his artillery as his principal strength. Given his dependency on artillery, that being his principal strength, it would be essential for the Accused to carefully monitor the use of it, which would extend to both the rate of use of the munitions and the type of target. If there is an ammunition expenditure on a daily basis, which there was, it had to be recorded and be known. If, therefore, ammunition was being replaced on a daily basis, it must be going somewhere. So the question begs: Where was it going? As a commander, I would hope to know where it was going.²³⁸⁵

698. The evidence given by other international military personnel also bears out these propositions. Carswell testified that on the basis of information received from his LIMA UNMO's, orders would come from Pale through to Lukavica, and then Lukavica would assign the target list to the various gun positions. The battery command post would receive that target list. They would plot the targets, send the information to the gun crews, which would then fire on the order of the battery headquarters. The gunners would obtain their orders once they manned one of the gun batteries.

²³⁸¹ DP35, T. 17502.

²³⁸² DP35, T. 17503.

²³⁸³ DP36, T. 18103-9.

²³⁸⁴ Prosecution's Trial Brief, para. 99.

²³⁸⁵ Mole, T. 9807-8.

Carswell saw two forms of communication systems at the gun sites; landline telephones and wireless radios, linking Lukavica to the gun battery command posts.²³⁸⁶

699. The evidence given by Indić confirmed that indeed it was inconceivable that an organised army, as the Trial Chamber has found the SRK was, would allow its gunners to fire according to their own volition, without the knowledge of the hierarchy. Indić explained that every brigade has an artillery group [...] and that the use of a brigade artillery group is within the province of the brigade commander. He emphasised that an order to fire need not be in written form, but any activity by a brigade, must be reported on, and that such an order will be recorded in a report that is submitted thereafter.²³⁸⁷ He continued: “All orders at the level of the brigade are in principle issued by the brigade commander. If an order to open fire is given to the brigade commander, he would have to receive such order from the superior command, that is, the Corps command, usually the Corps commander, in his absence, the Chief of Staff. Or in the absence of the Chief of Staff, the duty operations officer. The same applies for an order to stop firing”.²³⁸⁸

7. Conclusions about General Galić’s Knowledge of Criminal Activity of the SRK

700. Although it has found that the reporting and monitoring system of the SRK was good, the Trial Chamber cannot discount the possibility that General Galić was not aware of each and every crime that had been committed by the forces under his command. As pointed out by the Defence Witness DP34, it was physically impossible for the commander of the Koševo brigade to literally know about every single incident, which occurred in his area of responsibility.²³⁸⁹ As one goes up the military hierarchy, including up to General Galić’s position as Corps commander, this difficulty to master every single detail increases.²³⁹⁰

701. The Trial Chamber recalls however that the level of evidence to prove such knowledge is not as high for commanders operating within a highly disciplined and formalised chain of command as for those persons exercising more informal types of authorities, without organised structure with established reporting and monitoring systems.²³⁹¹ The Trial Chamber has found that the SRK’s chain of command functioned properly. The Defence admits that protests were addressed to subordinates of General Galić. It denies however that they allowed General Galić to be fully appraised of the situation in the city of Sarajevo and its surrounding.

²³⁸⁶ Carswell, T. 8340-2.

²³⁸⁷ Indić, T. 18630.

²³⁸⁸ Indić, T. 18791.

²³⁸⁹ DP34, T. 17867.

²³⁹⁰ DP34, T. 17868.

²³⁹¹ See *supra*, para 174.

702. The Trial Chamber rejects that view. First, there is a plethora of credible and reliable evidence that General Galić was informed personally that SRK forces were involved in criminal activity. The Accused's responses to formal complaints delivered to him form the backdrop of his knowledge that his subordinates were committing crimes, some of which are specifically alleged in the Indictment. Not only General Galić was informed personally about both unlawful sniping and unlawful shelling activity attributed to SRK forces against civilians in Sarajevo, but his subordinates were conversant with such activity. The Trial Chamber has no doubt that the Accused was subsequently informed by his subordinates.

703. Second, as noted above, it would be inconceivable that given the importance of artillery assets for a Corps commander, especially one with an infantry disadvantage,²³⁹² the Accused was not fully appraised of the use of SRK artillery. At a minimum, and as mentioned by witnesses, the daily ammunition expenditure had to be recorded and be known. The Trial Chamber has already made findings in relation to the widespread character of unlawful activities. These criminal activities had to be carried out by using a vast amount of ammunition. The rate of use of ammunition which would have been in excess of what was required for regular military operations, is among the reasons which allow the Trial Chamber to infer that the Accused knew of criminal activities by his troops. The Trial Chamber is convinced that the Accused, as a Corps commander, was in full control of SRK artillery assets and knew of the rate of use of ammunition.

704. Third, in view of the circumstances which prevailed during the conflict, the notoriety of certain of the incidents scheduled in the Indictment and the systematic character of these criminal acts which extended over a prolonged period of time, in conjunction with the media coverage of which the SRK Corps command was aware, renders the Accused's professed ignorance untenable.

705. The Trial Chamber finds that General Galić, beyond reasonable doubt, was fully appraised of the unlawful sniping and shelling at civilians taking place in the city of Sarajevo and its surroundings.

706. Having found that General Galić had the actual knowledge that criminal acts were being committed by forces under his effective command and control, the Trial Chamber does not consider it necessary to dwell on the reasons the Accused had to know about the crimes proved at trial. It may only recall, briefly, that the information available to the Accused of the widespread sniping and shelling that forms the basis of the Indictment was available in numerous forms. The numerous complaints from the UN representatives would have, at a minimum, indicated to any reasonable commander a need for additional investigation in order to ascertain whether offences were being

committed or were about to be committed by his subordinates. Given the nature of the Accused's command and the reporting and monitoring systems at his disposal, any continuing lack of actual knowledge on the part of the Accused of the unlawful acts perpetrated by forces under his command or control could only have stemmed from a deliberate refusal on his part to acquaint himself with that information which was readily available to him.

D. Did General Galić Take Reasonable Measures upon his Knowledge of Crime?

1. Prevention of Crimes and Punishment of Perpetrators thereof

707. Witnesses called by the Defence testified that General Galić gave orders not to target civilians, to “only target people with weapons and soldiers at the lines and orders to save ammunition”.²³⁹³ The Defence military expert Radinović presented to the Trial Chamber examples of written orders by General Galić not to target civilians.²³⁹⁴ According to Witness DP17, orders not to indiscriminately target civilians were given when the brigade commander, chief of artillery, chief of engineering section, etc., were there,²³⁹⁵ and these orders were relayed to subordinates and soldiers at the lines.²³⁹⁶ Military people would refer to this type of order as a standing order, *i.e.* an order that is in effect indefinitely until it is rescinded.²³⁹⁷ These persons were supposed to forward the orders on to their subordinates.

708. There is some evidence to the effect that General Galić issued orders to respect the 1949 Geneva Conventions.²³⁹⁸ DP35 testified however that when documents such as the order of General Galić dated 20 September 1993, which contained a reminder to respect the 1949 Geneva Conventions, and during combat operations, “there is no point, there is no time for a document to be studied, to study certain rules, because we had no opportunity to carry with us or put away or let alone study them. It would have meant that several thousands of soldiers would need to study this, to have a seminar in the Corps, to study certain items of the protocol from the conventions”.²³⁹⁹

709. The lack of proper instruction was clear. According to the Defence Witness DP14, a person cannot be targeted “if it is not in uniform, if he doesn't have any weapons, and if he is more than

²³⁹² The SRK was composed of 18,000 troops while the ABiH numbered approximately twice that number of troops.

²³⁹³ DP17, T. 16764, 16820, 16820; see also DP6, T. 14071, DP4, T. 14215-6.

²³⁹⁴ Radinović Report; see, for example, Ex. D1492.1 (Order signed by General Galić dated 15 September 1993).

²³⁹⁵ DP17, T. 16865.

²³⁹⁶ DP17, T. 16764, T. 16866.

²³⁹⁷ DP17, T. 16828, 16830: the witness also stated that it is “entitled to repeat” standing orders to ensure compliance.

²³⁹⁸ Exhibit D1492 is an order by General Galić to his troops dated 15 September 1993; one of the items of the order concerns a reminder to comply with the Geneva Conventions.

²³⁹⁹ DP35, T. 17620.

300 metres away from the line, he is considered a civilian. If he is on the first front line, the very first line of defence of the enemy, then he is a soldier”.²⁴⁰⁰

710. Witness DP34, an SRK brigade commander, does not recall receiving any orders that gave him concerns about the legitimacy of the targets.²⁴⁰¹ On the contrary, Witness DP35 and Witness AD testified about their orders to fire in an indiscriminate manner.

711. Francis Briquemont believed that the lack of preventive measures was deliberate. He testified that the French Battalion drew up a map of sniping positions. Generals Mladić and Delić were informed about that situation but nothing was done to stop such sniping activity.²⁴⁰²

712. The Trial Record is replete with evidence adduced by Defence witnesses that no measures were taken to punish perpetrators of unlawful attacks against civilians. DP35, an SRK commander, testified that he was not aware of anyone at all being charged as a result of an investigation carried out within the SRK in the relevant period for unlawful behaviour resulting in the injury or death of civilians on the other side of the confrontation line.²⁴⁰³

713. DP34 testified that, during the Indictment Period, he was never instructed to conduct any type of investigation concerning the unlawful targeting by the SRK of Muslim civilians.²⁴⁰⁴ He added that no complaint was ever made to him regarding any violations such as breaches of cease-fires.²⁴⁰⁵ He remembered vaguely hearing that there had been some investigation undertaken within the SRK concerning such unlawful targeting.²⁴⁰⁶ He recalled that during the SRK Corps briefings, mention was made that the unlawful targeting of Muslim civilians would lead to criminal prosecution.²⁴⁰⁷ The point was made too that such targeting would be detrimental since it would damage the image of the SRK in the eyes of the international community.²⁴⁰⁸ He emphasised though that no mention was ever made during those meetings that a specific investigation had been launched because of such targeting and that he had no recollection of any military court being set up before 1995.²⁴⁰⁹

²⁴⁰⁰ DP14, T. 15905.

²⁴⁰¹ DP34, T. 17920.

²⁴⁰² Briquemont, T. 10057-8, Briquemont stated that “Not one single political leader, whether Serb, Croat or Muslim, ever came out against that sniper activity in public”; see also Harding, T. 4477.

²⁴⁰³ DP35, T. 17647-8.

²⁴⁰⁴ DP34, T. 17922.

²⁴⁰⁵ Id.

²⁴⁰⁶ Id.

²⁴⁰⁷ DP34, T. 17923.

²⁴⁰⁸ Id.

²⁴⁰⁹ DP34, T. 17924, 17826.

714. DP10, an SRK platoon commander in Grbavica, testified similarly that during the period covered in the Indictment, he was aware of no incidents in which any members of his company, his battalion, his brigade or his Corps were reported or disciplined for failing to follow an order.²⁴¹⁰

715. According to DP9, a member of an SRK platoon, orders had to be carried out,²⁴¹¹ and everyone in his platoon always carried out orders. There was no need for anyone to be disciplined.²⁴¹² DP9 knows about disciplinary measures taken, for example for not turning up on time for shifts, but he does not know or did not hear of any soldiers in his company being disciplined for failure to obey orders.²⁴¹³

716. There is some evidence however that in relation to an attack against an UNPROFOR position, the SRK punished the perpetrator. Gardemeister, Senior UNMO for Sector Sarajevo from June to October 1993, elaborated on a SitRep (Exhibit P1448) which referred to an inquiry he made into an incident during which the French Battalion had received “fire [...] mortar and artillery” in their camp which was “co-located” with the stadium in Sarajevo.²⁴¹⁴ A crater analysis indicated that the source of fire was to the north.²⁴¹⁵ He submitted his report to the UNPROFOR Headquarters. About one week later, they received a letter from Lukavica admitting responsibility, and informing them that “the officer in charge has been punished and the case is closed”.²⁴¹⁶

2. Conclusions

717. General Galić may have issued orders to abstain not to attack civilians. The Trial Chamber is concerned that, as examined in Part III of this Judgement, civilians in Sarajevo were nevertheless attacked from SRK-controlled territories. Although SRK officers were made aware of the situation on the field, acts of violence against civilians in Sarajevo continued over an extended period of time.

²⁴¹⁰ DP10, T. 14390-1.

²⁴¹¹ DP9, T. 14510.

²⁴¹² DP9, T. 14511-2.

²⁴¹³ Id.

²⁴¹⁴ Gardemeister, T. 8953; the exact location was Skenderija, Gardemeister, T. 8975.

²⁴¹⁵ Gardemeister, T. 8953-4: he travelled to Vogošća where he met the SRK Chief of Staff (Milošević), and Colonel Milovanović, who was the responsible commander of two brigades in the north. He was given permission to travel, together with a liaison officer, Colonel Bartula, to the site where they thought the fire had originated. He noted there was a direct line to the French UNPROFOR camp and concluded that the fire originated from that position because (i) the calibre used was not normally used by the ABiH; (ii) the direction fitted the BSA position; and (iii) there was no record of outgoing ABiH mortar or artillery fire in UNMO logbooks at the relevant time. When he informed the Bosnian Serb Army Colonels of his conclusion, Colonel Bartula denied that the Bosnian Serb Army positions had fired the artillery shots, and said: “you can report whatever you want, but we are not to blame, it is the Bosniak side to blame.”

²⁴¹⁶ Gardemeister, T. 8954.

718. There is also some evidence that General Galić conveyed instructions to the effect of the respect of the 1949 Geneva Conventions. The testimonies of DP35 and DP14, both SRK officers, reveal however the extent of the lack of proper knowledge in relation to the protection of civilians. In particular, the statement from DP35, an SRK battalion commander, that a civilian must necessarily be 300 metres away from the confrontation line in order not to be shot at gives rise to concern. In an urban battlefield, it is almost impossible to guarantee that civilians will remain at least 300 meters away from a frontline. Witness DP34 also testified that information about formal protests against unlawful sniping or shelling was never relayed to him.

719. The Trial Chamber has already found that the chain of command within the SRK functioned properly. Taking into account the lack of proper instruction to SRK troops, and considering that the criminal activity attributed to SRK forces extended over a period of twenty-three months, a strong inference is that, at the least, no reasonable measures were taken to prevent the commission of criminal acts perpetrated against civilians and that no reasonable commander could have considered measures such as occasionally reiterating the obligation to respect the Geneva Conventions a reasonable way of addressing complaints of indiscriminate fire at civilians.

720. In relation to General Galić's duty to prosecute and punish perpetrators of crimes, the Trial Chamber has found that the Accused had the material ability to enforce usual military discipline among his troops. Accordingly, General Galić's failure to prevent or punish with regard to unlawful conduct on the part of his subordinates cannot derive from a lack of capacity to enforce the laws of armed conflict due to the exigencies of warfare. The testimony of Gardemeister in relation to the instance where the SRK took measures to punish the perpetrator of the attack against an UNPROFOR position is but an example that confirms that conclusion.

721. There is no evidence in the Trial Record that SRK troops were prosecuted or punished for having unlawfully targeted civilians. The Trial Chamber recalls the testimony of Indić who attempted to explain the fact that no-one was ever prosecuted for having unlawfully attacked civilians by suggesting that only a specific formal protest could allow proper action to be taken. For him, a protest was specific and allowed proper reaction, if it included details such as the time, the location, the direction of the fire, the type of weapon used and the consequences of the fire.²⁴¹⁷

722. Having found that the chain of command functioned effectively and that the Accused was reminded on a regular basis, by formal protests or by the media that criminal activity attributed to troops under his command was committed, the Trial Chamber is not convinced by Indić's suggestion. The lack of responsiveness by the SRK command rather demonstrates rather, at the

least, a deliberate intent to let the situation pervade and continue rather than the impossibility of properly investigating, prosecuting and punishing.

723. In view of the above, the Trial Chamber finds that the Accused did not take reasonable measures to prosecute and punish perpetrators of crimes against civilians.

724. The Trial Chamber turns now to examine the contention of the Prosecution that General Galić, in fact, not only permitted the crimes – now proved at trial – but ordered them in furtherance of a Corps' plan.

E. Did General Galić and his Subordinates Act in Furtherance of a Plan?

725. The Prosecution claims that direct evidence, such as admission by the Accused, and circumstantial evidence such as admissions by senior subordinates, “and independently, in conjunction with evidence to the effect that the Accused enjoyed a disciplined chain of command and an effective chain of communication”²⁴¹⁸ corroborate the evidence that allows the inference that General Galić not only knew about the crimes committed in Sarajevo and attributed to SRK forces but was acting in accordance to a plan.²⁴¹⁹

726. There is evidence that on 12 May 1992, a reunion of Serbian leaders took place, during which a plan to ensure that Sarajevo became the political capital of the Republika Srpska was contemplated. During that meeting, strategic objectives, one of them being that “Sarajevo must be divided or razed to the ground”, were adopted by the Serbian Assembly in Banja Luka.²⁴²⁰ At the same meeting, the VRS was created; the Minister of Health of the Serbian Republic of Bosnia Herzegovina also advocated destroying the Koševo hospital, and Ratko Mladić is mentioned to have proposed to withhold vital municipal services from the besieged city while blaming the Bosnian government side.²⁴²¹ Two days later, General Galić presided over a meeting with the presidents of the municipalities in the zone of responsibility of the 1st Partizan Division where the conclusions from the meeting of 12 May 1992 were presented, as well as the strategic goals formulated at that meeting, in particular one that said that “Sarajevo must be either divided or razed to the ground”. At the end of the meeting of 14 May 1992, General Galić proposed, *inter alia*, to “implement the decisions from the meeting in Banja Luka [of 12 May 1992], but submit them to the

²⁴¹⁷ Indić, T. 18687; T. 18565-6.

²⁴¹⁸ Prosecution Final Trial Brief, para. 192.

²⁴¹⁹ The Prosecution claims that circumstantial evidence such as admissions by senior subordinates, “and independently, in conjunction with evidence to the effect that the Accused enjoyed a disciplined chain of command and an effective chain of communication” (Prosecution’s Final Brief, para. 192) corroborate the evidence that allows the inference that the Accused was simply acting in accordance with a pre-established plan.

²⁴²⁰ Donia Report, p. 11.

²⁴²¹ Donia Report, p. 13.

commands of units and municipalities; hold the present positions and defend them without war”.²⁴²²
The conclusions proposed by General Galić were unanimously adopted.²⁴²³

727. The Trial Chamber has already examined the evidence of, in particular, Carswell, Abdel-Razek, Witness W, O’Keeffe, Henneberry, Mole, which purports to demonstrate that General Galić not only knew about military attacks carried against the civilian population of Sarajevo by his forces but intended such attacks in furtherance of a plan. The Trial Chamber recalls that evidence briefly. According to Abdel-Razek, General Galić admitted deliberately targeting civilians crossing the airport.²⁴²⁴ Witness W had the impression from General Galić’s response to his complaint about indiscriminate fire against civilians that General Galić’s troops acted “within the framework of his orders, that he considered it normal that his forces would attack civilians”.²⁴²⁵ Carswell said that General Galić justified indiscriminate attacks which would have been in defence of the Serbian homeland and it is their attempt to preserve the culture.²⁴²⁶ When confronted by O’Keeffe upon the absence of military purpose behind military attacks launched on the city by SRK forces, General Galić responded that he was “going to make this area safe for his children’s children.”²⁴²⁷ Similarly, General Galić confirmed to Henneberry that the ultimate goal was either to destroy the city or rid it of Muslims.²⁴²⁸ To Mole, General Galić said that he would take measures if his demands were not met by the Presidency.²⁴²⁹

728. The Trial Chamber has also examined evidence, indicating the intent of some high level VRS officers in relation to Sarajevo and briefly recalls it. Major Indić said that he did not want to destroy the city but wear people down until they surrendered or gave up or went back to Turkey,²⁴³⁰ and asserted they would not cease shelling the hospital until the Muslims left the city.²⁴³¹ Henneberry also testified that Indić told him that the shelling of civilians was wrong but it was part of the Corps’ plan and that it would continue.²⁴³²

729. Henneberry had no doubt that the plan designed to attack civilians was disclosed to subordinate units of the Bosnian Serb forces because he “witnessed the ways in which the

²⁴²² P3683 (minutes of meeting with presidents of municipalities in the zone of responsibility of the “division of the 1st Partizan Brigade”), p. 3.

²⁴²³ P3683, p. 4.

²⁴²⁴ Abdel-Razek, T. 11600-1, 11644.

²⁴²⁵ Witness W, T. 9607-08

²⁴²⁶ Carswell, T. 8345.

²⁴²⁷ O’Keeffe, T. 9184-6.

²⁴²⁸ Henneberry, T. 8590-1.

²⁴²⁹ Mole, T. 9836-7.

²⁴³⁰ Ashton, T. 1295.

²⁴³¹ Ashton, T. 1296.

²⁴³² Henneberry, T. 8577-8.

information would flow from the Corps' headquarters right down to individual soldiers".²⁴³³ He explained that he frequently saw brigade commanders attending the Lukavica barracks.²⁴³⁴ Henneberry also frequently raised his concerns about the nature of several shelling targets with the local commander positioned in the areas of LIMA 5 and LIMA 7, and commanders in other positions. In the area of LIMA 5, the response to protests was that the tactic was to destroy the city and kill all of the Muslims inside.²⁴³⁵ At the position of LIMA 7, the commander responded that it was a part of a military plan. At other times, there was no response, and the gunners would smile and deny that the weapons Henneberry had seen being fired had indeed been fired.²⁴³⁶ Henneberry added that "I have no doubt there was a broader Corps plan based on normal military application and hierarchy".²⁴³⁷

F. Conclusion: Does General Galić Incur Criminal Responsibility under Article 7(1) of the Statute?

730. This conclusion expresses the view of a majority of the Trial Chamber. Judge Nieto-Navia dissents and expresses his view in the appended separate and dissenting opinion to this Judgement.

1. Introduction

731. The Prosecution submits that evidence concerning General Galić's knowledge of crimes committed in Sarajevo by forces under his command, the high degree of discipline he enjoyed from his subordinates and his failure to act upon knowledge of commission of crimes "establishes beyond reasonable doubt that the targeting of civilians was ordered by him".²⁴³⁸

732. The Defence argues that the absence of written orders by the Accused relating to the alleged campaign is evidence that it did not exist because within the SRK's command system, such general orders would have been issued in a written form.²⁴³⁹ The Defence further argues that the Prosecution has not proved that the Accused ordered any of the scheduled sniping incidents.²⁴⁴⁰ It submitted, through its military expert Radinović a set of orders by General Galić, ordering the non-shelling of the city, for instance a copy of an order signed by General Galić on 15 May 1993, which

²⁴³³ Henneberry, T. 8579.

²⁴³⁴ Henneberry, T. 8579-80 ("orders were usually transmitted verbally", T. 8580).

²⁴³⁵ Henneberry, T. 8561.

²⁴³⁶ Henneberry, T. 8557-9, T. 8572.

²⁴³⁷ Henneberry, T. 8604.

²⁴³⁸ Prosecution Final Trial Brief, para. 86.

²⁴³⁹ Defence Final Trial Brief, para. 522.

²⁴⁴⁰ Defence Final Trial Brief, para. 534.

requests, *inter alia*, SRK troops to respect international instruments for the protection of victims of conflicts.²⁴⁴¹

2. Did General Galić Order the Commission of Crimes Proved at Trial?

733. The Majority has already found from the evidence of the frequency, intensity and geographical spread of the sniping and shelling attacks against civilians that there was a “campaign” of sniping and shelling attacks against civilians in Sarajevo during the Indictment Period by the SRK forces. The Trial Record is replete with evidence from a number of military and international personnel who testified to a pattern of sniping and shelling against civilians and concluded, in particular from the reduction of fire after cease-fire agreements or after complaints were lodged, that the sniping and shelling of civilians was maintained by the Bosnian Serb chain of command.

734. The Majority particularly recalls the testimony of General Rose, Van Lynden and Witness Y in relation to the speed of implementation of cease-fire agreements. Van Lynden testified how, in March 1994, after the TEZ [Total Exclusion Zone] agreement was signed, it became suddenly safe to walk across Marin Dvor Square, one of the most notorious “sniping” places in Sarajevo; before that date, any person crossing that square would be shot at from SRK positions in Grbavica. To General Rose, the speed of implementation of the TEZ agreement showed that the warring parties had total and absolute control over their military machines. Witness Y noted that the level of control over sniping activity was so high that when a cease-fire agreement was implemented, sniping stopped within half day, at the most. Fraser noticed that SRK snipers were well-coordinated and concluded that they were acting under orders coming from the chain of command. He also testified that General Galić could influence the level of sniping activity if complaints were communicated to him.²⁴⁴² Vorobev and Hermer had a similar experience. They observed a decrease in the number of civilian casualties after complaints were lodged to SRK officers. The Majority is satisfied beyond reasonable doubt that orders were periodically given in the SRK’s chain of command to decrease sniping fire against the civilian population.

735. The Majority has no doubt that orders to resume or increase sniping fire were also given. General Van Baal, UNPROFOR Chief of Staff in Bosnia-Herzegovina in 1994, gave reliable evidence about a pattern of sniping of civilians occurring when demands from the Serb military authorities were not met. General Van Baal recounted how civilians using trams in Sarajevo were

²⁴⁴¹ See in Radinović Report, filing page number 8023.

²⁴⁴² Fraser recalled in particular that incident when SRK snipers along the “Sniper Alley” made their position known to the French soldiers of the SFOR.

targeted by SRK forces because the demand of General Milanović, a VRS officer, that trams should not continue to run was not met by the Presidency authorities.

736. The Majority also takes account of the evidence adduced in relation to the pattern of the shelling of civilian areas, from which it infers that fire against civilians was ordered by the chain of command. The Majority is convinced that the events recounted by Harding and Tucker in relation to the highly co-ordinated attacks of an indiscriminate nature launched on the city of Sarajevo from different locations in October 1992, December 1992 and January 1993 occurred and that the witnesses' assessment that these attacks against civilians could only have been ordered by the SRK's chain of command is correct. That evidence is supported by the evidence of Witness Y and Hermer. These two witnesses both observed a definite pattern of indiscriminate shelling of civilians in the city of Sarajevo and concluded that such fire was ordered by the chain of command. That conclusion is further supported by evidence of highly co-ordinated artillery fire brought to bear on the civilian population of the city. Tucker concluded from that pattern of indiscriminate fire that SRK heavy artillery was not directed towards military targets, but rather was used to terrorise the civilian population in order to bring pressure to bear on the Bosnian authorities. Witness Y similarly testified in relation to a specific instance that the heavy shelling from the Serb side was intended to harass the population of the city and provoke a reaction from the Presidency authorities.

737. The concerted efforts of the SRK to stop at a given moment the direct or indiscriminate sniping and shelling of the city and then let it increase to its previous level again, from so many different locations, the use of certain types of weapons or the sheer amount of ammunition fired without direct military purpose leads to the only reasonable inference that direct or indiscriminate fire upon civilians by SRK forces was ordered by the chain of command to terrorise the civilian population of Sarajevo. That conclusion is supported by the fact that it is not conceivable that the duration of the period over which crimes against civilians were committed is not the result of a deliberate action to have the situation continue.

738. The Majority is convinced that orders from the Bosnian Serb's chain of command were relayed down the chain of command of the Bosnian Serb troops positioned around the city of Sarajevo and its surroundings to target civilians or the civilian population of Sarajevo. Having said that, the Majority examines now whether General Galić ordered the crimes proved at trial as alleged by the Prosecution.

739. The Defence submits that there was no written order to evidence that General Galić ordered sniping at civilians in the city of Sarajevo. To the Defence, such orders, because of their importance, would have been in a written form. The Majority notes that the Prosecution's case does not depend upon written orders given by General Galić but on evidence concerning General Galić's

knowledge of crimes committed in Sarajevo by forces under his command, the high degree of discipline he enjoyed from his subordinates and his failure to act upon knowledge of commission of crimes, which, according to the Prosecution, “establishes beyond reasonable doubt that the targeting of civilians was ordered by him”.

740. The Defence’s argument that there is no evidence of written orders establishing that General Galić ordered fire against civilians in Sarajevo is not persuasive. First, as mentioned in Part II of this Judgement in the section on the law concerning Article 7 of the Statute, an order need not to be in a particular form, it can be given in a wide variety of manners. Secondly, the Trial Chamber received reliable evidence that oral orders were issued on a daily basis by General Galić or the chain of command during the Sarajevo Romanija Corps briefings. The evidence of Witness DP35 and Witness AD that oral orders by the SRK chain of command were not unusual is supported by the evidence of many other Defence witnesses that General Galić ended his morning and evening briefings at the Corps command by issuing oral instructions and orders to his subordinates.

741. While the Majority has no doubt that, indeed, General Galić issued such orders, it has found that crimes were committed against civilians in a widespread fashion and over a long period of time by SRK troops. The Majority has already noted above that the manner of commission of these crimes reveals a striking similarity of pattern throughout. All this has led the Majority to draw the conclusion that the criminal acts were not sporadic acts of soldiers out of control but were carried out pursuant to a deliberate campaign of attacking civilians, which must have emanated from a higher authority or at least had its approval.

742. The Trial Chamber has already found that the Bosnian Serb troops positioned in and around Sarajevo were under the command of General Galić, who exerted control over them. The Trial Chamber has also found that General Galić was fully apprised of the criminal acts committed by forces under his command and within his zone of responsibility, which, at the least, he did not prevent the commission nor did he punish the perpetrator(s) thereof. According to the Majority, there is an irresistible inference to be drawn from the evidence on the Trial Record that what the Trial Chamber has found to be widespread and notorious attacks against the civilian population of Sarajevo could not have occurred without it being the will of the commander of those forces which perpetrated it and that the lack of measures to prevent illegal sniping and shelling activities was deliberate.

743. This conclusion finds support in the evidence of Abdel-Razek and Witness DP35, which counteracts the Defence’s various arguments that orders were not given to SRK troops to fire either in a deliberately indiscriminate manner or specifically against civilians. General Galić admitted to Abdel-Razek that civilians who crossed the airport tarmac were targeted because he had doubts that

those movements might be for military purpose. The Trial Chamber has no doubt that Abdel-Razek is credible and his evidence reliable. DP35, an SRK brigade commander, further supported Abdel-Razek's evidence to the extent that he explained that the members of his brigade followed the orders to prevent the crossing of the airport by using indiscriminate fire. That evidence suggests that indiscriminate fire was, in some occasions, not only a necessity – according to DP35, his brigade had no night vision equipment – but also a manner in which the SRK conducted hostilities. Having found how efficient and effective the reporting and monitoring systems of the SRK were, the Majority is convinced that General Galić was aware that his orders in relation to preventing the crossing of the airport tarmac were followed and meant that a number of civilians trying to cross the airport tarmac were targeted in full awareness of their civilian status or in the reckless disregard of the possibility that they were civilians. Some significance must also be given to the evidence of Witness W who complained to General Galić about the shelling of a water supply point which had resulted in a certain number of civilian casualties and was given explanations assuring him that General Galić's troops had acted within the framework of his orders when attacking civilians.

744. The Majority also recalls the evidence of Witness AD, a member of the SRK forces, who testified that he confronted his superiors over orders to target civilian places at his brigade command headquarters and that his brigade commander threatened to punish him and the other members of his unit. To Witness AD, his commander did not dare raise the problem of civilian casualties before his own superiors and so there was a possibility that General Galić did not know these facts. This testimony, on the face of it, lends itself to two interpretations; either that the commander of the brigade acted on his own initiative and without any knowledge of his superiors or that he, to the contrary, was acting on orders from his superiors. The latter alternative is the only sound explanation in view of the fact that the SRK was a well functioning and disciplined Corps. Furthermore, the Trial Chamber has already found that General Galić was fully aware, in particular through official protests, that civilians were being targeted by shelling and sniping activities attributed to SRK forces and that, upon that knowledge, he remained passive or at times, reacted to decrease the level of attacks only to increase it later.

745. An evaluation of the Trial Record makes it also abundantly clear that although General Galić called occasionally for decrease of fire against the civilian population of Sarajevo, when prompted by outside action, he also, at other times, intended to target, by direct or indiscriminate fire, civilians and the civilian population in the city of Sarajevo to spread terror within the civilian population of Sarajevo. The Majority recalls the evidence of Henneberry, O'Keeffe, Mole and Bergeron. All four witnesses protested to General Galić against the indiscriminate targeting of civilians. Bergeron testified that General Galić was put on notice that "snipers would kill civilians, be it women, children, elderly people, for apparently no other reason than to terrorise the

population”.²⁴⁴³ General Galić’s response to Henneberry and O’Keeffe that the ultimate goal was to either destroy the city or rid it of Muslims and that “he was going to make this area safe for his children’s children” speaks for itself. The only reasonable conclusion is that General Galić acted in furtherance of a strategy to attack the civilian population of Sarajevo to spread terror within that population. That conclusion is supported by the evidence of Henneberry that a plan in relation to Sarajevo was communicated to General Galić’s subordinate units. Furthermore, the Trial Chamber has found that General Galić’s knowledge of crimes, examples of which were proved at trial, was substantial. The inference is compelling that failure to act for a period of approximately twenty-three months by a Corps commander who has substantial knowledge of crimes committed against civilians by his subordinates and is reminded on a regular basis of his duty to act upon that knowledge bespeaks a deliberate intent to inflict acts of violence on civilians.

746. The Majority is convinced that General Galić promoted the goals of his superiors for Sarajevo by implementing and furthering a campaign of sniping and shelling against the civilian population of Sarajevo, and that by relaying orders down the SRK’s chain of command to conduct that campaign in a manner that reveals a primary purpose to spread terror, sanctioning thereby the use of SRK’s personnel and equipment to an unlawful purpose, he intended that crimes against civilians be committed or to be committed by forces under his command.

747. In finding that General Galić conducted, by upholding orders down the SRK chain of command, the campaign of sniping and shelling against the civilian population of Sarajevo with the intent to spread terror among that population, the Majority recalls that it does not find that General Galić was the unique architect of that campaign. The Trial Record contains evidence which establishes that other VRS officers, including General Galić’s direct superior were present in the battle-field and were closely monitoring the situation in Sarajevo. The Bosnian Serb officer who ordered the targeting of trams used by civilians as a means of pressure upon the Presidency was a VRS officer. There is no evidence in the Trial Record that General Milanović, a VRS officer subordinate to General Mladić, was in effect subordinated to General Galić. However, in light of the findings made in relation to the reporting and monitoring system of the SRK, the Majority is convinced that General Galić’s forces carried out the sniping at trams in Sarajevo, thereby furthering his orders. An evaluation of the Trial Record leads to the conclusion that General Galić, the Corps commander of a subordinate organ of the VRS, coordinated the campaign of sniping and shelling against the civilian population of Sarajevo, allowing the use of the personnel and equipment of the SRK to carry out unlawful acts of violence against civilians. It stands to reason that the commander of the SRK, the subordinate Corps of the VRS stationed in the area of Sarajevo,

²⁴⁴³ Bergeron, T. 11268.

would be in charge of implementing, furthering and coordinating the campaign of sniping and shelling fire against civilians in Sarajevo and the evidence bears this out.

748. The Majority finds that the Accused, General Galić, satisfies all requirements of *actus reus* and *mens rea* of the crimes proved at trial.

749. In sum, the evidence impels the conclusion that General Galić, although put on notice of crimes committed by his subordinates over whom he had total control, and who consistently and over a long period of time (twenty-three months) failed to prevent the commission of crime and punish the perpetrators thereof upon that knowledge, furthered a campaign of unlawful acts of violence against civilians through orders relayed down the SRK chain of command and that he intended to conduct that campaign with the primary purpose of spreading terror within the civilian population of Sarajevo. The Majority finds that General Galić is guilty of having ordered the crimes proved at trial.

750. Having found that General Galić is guilty of the crimes proved at trial under Article 7(1) of the Statute, the Majority does not deem it necessary to pronounce on whether General Galić is cumulatively guilty under Article 7(3) of the Statute.

751. General Galić is charged with the crime of terror (count 1) and attacks on civilians (counts 4 and 7) as violations of the law or customs of war and with the crimes of murder (count 2 and 5) and inhumane acts (counts 3 and 6) as crimes against humanity based on the campaign of sniping and shelling conducted by the Accused during the Indictment Period. The Majority of the Trial Chamber has found in Part III of this Judgement, in the section 'Legal Findings', that the crimes charged in the Indictment were committed by forces under the command and control of General Galić. In this part, the Majority finds that General Galić directly participated into the commission of these crimes by ordering the campaign of sniping and shelling at civilians in Sarajevo during the Indictment Period with the aim of spreading terror among the civilian population. As noted in Part II of this Judgement, in the section 'Cumulative Convictions', it is not permissible to enter multiple convictions based on the same criminal conduct for attacks on civilians and the crime of terror, if the latter is proved.

752. In sum, the Majority of the Trial Chamber finds the accused General Galić guilty of the crime of terror (charged in count 1 of the Indictment), murder (charged in counts 2 and 5) and inhumane acts (charged in counts 3 and 6). The charges of attacks on civilians contained in counts 4 and 7 (because they are subsumed under count 1) are dismissed.

753. The Trial Chamber now proceeds to determine the sentence which is to be imposed on General Galić in light of the convictions entered.

V. SENTENCING

A. Submissions of the Parties

754. The Prosecution submits that General Galić should receive “life sentences for the offences”.²⁴⁴⁴ According to the Prosecution, the gravity of the crimes proved at trial is established by the large number of victims, the extent of the mental and physical suffering of the victims and survivors.²⁴⁴⁵ To the Prosecution, “the offences are aggravated by the respect in which the Accused was held by his subordinates, since this would have made it easier for him to ensure that his unlawful orders were carried out, including by decent subordinate soldiers who would not otherwise have acted in this way, doubtless causing them much internal conflict”.²⁴⁴⁶ The Prosecution emphasises that General Galić was certainly not reluctant “to implement the campaign which extended under his command for some 23 months” and insists that the crimes were not committed “in the heat of battle, or with little time to reflect on their consequences. Rather, they were continuing crimes, in which his mens rea was refreshed on a daily basis”.²⁴⁴⁷

755. The Defence submits that the sentencing practice in former Yugoslavia suggests that the most severe sentence the Tribunal could pronounce in this case would be a sentence of 20 years’ imprisonment.²⁴⁴⁸ The Defence further submits that the Trial Chamber “must take care to individualise the sentence in relation to the Accused”²⁴⁴⁹ who was “a professional soldier who has to abide with orders”,²⁴⁵⁰ “carried out his duties of Corps Commander pursuant to rules of military service”,²⁴⁵¹ and “took all measures to prevent activity of paramilitary formations, in order to avoid or reduce possibilities of events that would violate the Laws and Customs of War”.²⁴⁵² The Defence argues that because General Galić’s behaviour during the Indictment Period towards UNPROFOR

²⁴⁴⁴ Prosecution Final Trial Brief, paras 778-81.

²⁴⁴⁵ “The measure of the Accused’s criminality, comprises the fact of injury and death to the civilians who were the direct victims of the campaign, the mental suffering in the form of the terror occasioned to them and other civilians as a result of the campaign, and the physical impact on the ordinary lives of civilians during the indictment period as they survived under the constant threat of being shelled or sniped. Further, it is relevant to take into account the lasting effects of the campaign on the survivors”. For instance, Jufovic said of the lasting effects of the terror: “The traumas have affected all of us, including the fire fighters. It was a traumatic experience. The first time that ten of us fire fighters went to Austria, in Split, we walked around - - and this was in 1998. We were walking along the seaside and a ship anchored, and we heard a whistle. And we all threw ourselves to the ground. People thought that we had gone mad. We thought it was a shell. So you see, the memory stuck in our minds,” (T. 6541), Prosecution Final Trial Brief, para. 778.

²⁴⁴⁶ Prosecution Final Trial Brief, para. 779.

²⁴⁴⁷ Id., para. 780-1.

²⁴⁴⁸ Defence Final Trial Brief, paras 1129-1140.

²⁴⁴⁹ Id., para. 1142; Closing argument, T. 21870.

²⁴⁵⁰ Defence Final Trial Brief, para. 1144.

²⁴⁵¹ Id., para. 1145.

²⁴⁵² Id., para. 1146.

was very cooperative, he was “invited to offer his resignation”.²⁴⁵³ The Defence also submits that General Galić was respectful of other people’s nationality and religion,²⁴⁵⁴ and emphasizes that although General Galić was arrested in a “brutal” fashion, he fully cooperated with the international authorities in Bosnia-Herzegovina.²⁴⁵⁵

B. Applicable Provisions and Sentencing Principles

756. The sentence must be determined with reference to the provisions of Articles 23²⁴⁵⁶ and 24²⁴⁵⁷ of the Statute, and to Rules 87 (C)²⁴⁵⁸ and 101²⁴⁵⁹ of the Rules of Procedure and Evidence. These provisions specify the nature of the penalty a Trial Chamber may impose (imprisonment), the factors to be taken into consideration in determining the sentence, and the manner in which a sentence should be imposed (whether a single sentence or multiple sentences).

757. The jurisprudence of the Tribunals has specified two primary objectives of sentencing: to punish an individual for the crimes committed and to deter other individuals from committing crimes.²⁴⁶⁰ Rehabilitation is also an objective which the Trial Chamber should consider when determining a sentence.²⁴⁶¹

²⁴⁵³ Id., paras 1147-8.

²⁴⁵⁴ Id., para. 1149.

²⁴⁵⁵ Id., paras 1151-3.

²⁴⁵⁶ Article 23 states, in pertinent part, that “1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law”.

²⁴⁵⁷ Article 24 states: “1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia. 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. 3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners”.

²⁴⁵⁸ Rule 87 (C) states “[i]f the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.”

²⁴⁵⁹ (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person’s life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

²⁴⁶⁰ *Aleksovski* Appeals Judgment, para. 185; *Čelebići* Appeal Judgement, para. 806; *Tadić* Sentencing Appeal Judgement, para. 48.

²⁴⁶¹ *Blaškić* Trial Judgement, paras 779-80; *Kvočka* Trial Judgement, para. 704.

758. The Tribunal has often reiterated in its Judgements that the primary factor to be taken into account in imposing a sentence is the gravity of the offence, including the impact of the crimes on the victims.²⁴⁶² This is true irrespective of the form of criminal participation of the individual.²⁴⁶³ In general, the Trial Chamber will assess the gravity of the offences proven in this case by taking into account the number of victims, the effect of the crimes on the broader targeted group, and the suffering inflicted on the victims.²⁴⁶⁴

759. In determining a sentence, the Trial Chamber must also take into consideration the individual circumstances of the accused, including any mitigating or aggravating circumstances. Neither the Statute nor the Rules stipulate which factors are to be considered as aggravating or mitigating circumstances, except that Rule 101(B)(ii) requires the Trial Chamber to take into account any “significant cooperation” with the Prosecutor as a mitigating factor. In general, factors peculiar to the convicted person are considered as aggravating or mitigating circumstances.²⁴⁶⁵ By taking into consideration factors pertaining to the individual circumstances of the convicted person, the Trial Chamber is able to more accurately assess the possibility of rehabilitation.²⁴⁶⁶ Relevant individual factors may include voluntary surrender,²⁴⁶⁷ demonstrations of remorse,²⁴⁶⁸ or no history of violent behavior.²⁴⁶⁹ Mitigating circumstances are determined on the balance of probabilities.

760. The jurisprudence of the Tribunal has also identified potentially aggravating factors, such as the type of criminal participation, premeditation,²⁴⁷⁰ discriminatory state of mind where discrimination is not an element of the offence,²⁴⁷¹ the motives of the convicted person,²⁴⁷² or the zealotry with which a crime was committed.²⁴⁷³ Only those matters which are proven beyond reasonable doubt against an accused may be taken into account as aggravating factors.²⁴⁷⁴

761. In imposing a sentence, the Trial Chamber also takes into consideration the general practice regarding prison sentences in the courts of the former Yugoslavia. The Trial Chamber’s discretion

²⁴⁶² *Kvočka* Trial Judgement, para. 701; citing the Trial Chamber in the *Čelebići* case which stated that the gravity of the offence was “[b]y far the most important consideration, which may be regarded as the litmus test for the appropriate sentence”, *Čelebići* Trial Judgement, para. 1225.

²⁴⁶³ *Čelebići* Appeal Judgement, para. 741.

²⁴⁶⁴ *Kvočka* Trial Judgement, para. 701, citing the *Čelebići* Trial Judgement, para. 1226, *Erdemović* Appeals Sentencing Judgement, para. 15; *Kambanda* Sentencing Judgement, para. 42; *Kayishema* Trial Judgement, para. 26; *Kordić* Trial Judgement, para. 852.

²⁴⁶⁵ *Krstić* Trial Judgement, para. 704.

²⁴⁶⁶ See *supra*, *Blaškić* Trial Judgement, paras 779-80; *Kvočka* Trial Judgement, para. 704.

²⁴⁶⁷ *Plašvić* Sentencing Judgment, para. 84.

²⁴⁶⁸ *Kunarac* Trial Judgement, para. 868.

²⁴⁶⁹ *Jelišić* Trial Judgement, para. 124, *Furundžija* Trial Judgement, para. 284.

²⁴⁷⁰ The Trial Chamber bears in mind that “[t]he same elements should not be reviewed a first time as a constitutive element of the crime and a second time as an aggravating circumstance”, *Krstić* Trial Judgement, para. 707.

²⁴⁷¹ *Vasiljević* Trial Judgement, para. 278.

²⁴⁷² *Krstić* Trial Judgement, paras 705 *et seq*; see also *Čelebići* Appeal Judgement, para. 847.

²⁴⁷³ *Kvočka* Trial Judgement, para. 705.

²⁴⁷⁴ *Čelebići* Appeal Judgement, para. 763.

in imposing a sentence is not curtailed by such practice.²⁴⁷⁵ At the time of the commission of the crimes proved at trial, sentencing by the courts of the former Yugoslavia was based on the provisions of the SFRY criminal code, in particular Article 41(1)²⁴⁷⁶ of Chapter XVI (“Criminal Acts Against Humanity and International Law”).²⁴⁷⁷ Article 38(2) of the SFRY criminal code permitted courts to hand down a sentence of twenty years in prison in lieu of the death penalty.²⁴⁷⁸ For aggravated murders, a minimum prison sentence of ten years and a maximum of fifteen years were stipulated as the penalty.²⁴⁷⁹

C. Determination of General Galić’s Sentence

762. That determination is that of the Trial Chamber, by majority of its member.

763. The Majority of the Trial Chamber has found that General Galić participated in a campaign of sniping and shelling and that crimes charges in the Indictment were made out. For his participation in these crimes, General Galić has been found guilty of unlawfully committing the crimes of terror upon civilians (under Article 3 of the Statute; count 1), murder (under Article 5 of the Statute; counts 2 and 5), and inhumane acts (under Article 5 of the Statute; counts 3 and 6). The commission of these crimes would have attracted the harshest of sentences in the former Yugoslavia.

764. Several aspects of this case were critical to the Majority of the Trial Chamber’s decision that the defendant participated significantly in the crimes proved at trial, which were part of a campaign of sniping and shelling. The first aspect is the pervasive and continuous nature of the attacks recounted in detail in Part III of this Judgement. The gravity of the offences committed by General Galić is established by their scale, pattern and virtually continuous repetition, almost daily, over many months. Inhabitants of Sarajevo – men, women, children and elderly persons – were terrorized and hundreds of civilians were killed and thousands wounded during daily activities such

²⁴⁷⁵ *Tadić Appeals Sentencing Judgement*, para. 21.

²⁴⁷⁶ Article 41(1) of the Criminal Code of the SFRY (adopted on 28 September 1976, entered into force on 1 July 1977) states (in translation): "The court shall determine the sentence for the perpetrator of a given crime within the limits prescribed by the law for this crime, bearing in mind the purpose of the punishment and taking into account all the circumstances that could lead to this sentence being more or less severe, in particular: the degree of criminal responsibility, the motives of the crime, the degree of the threat or damage to protected property, the circumstances under which the crime was committed, the background of the perpetrator, his personal circumstances and behaviour after the commission of the crime as well as other circumstances which relate to the character of the perpetrator".

²⁴⁷⁷ See Chapter XVI of the Criminal Code of the former Yugoslavia "Crimes Against Humanity and International Law", Articles 141 and 142(1) dealt with the crimes of genocide and other war crimes committed against civilians. See also Articles 142-156 and Articles 38 "Imprisonment", 41 "Sentences", and 48 "Coincidence of several offences." Crimes against peace and international law, including the crime of genocide and war crimes against a civilian population, were punishable by a sentence of 5-15 years in prison, by the death penalty or by 20 years in prison if a prison sentence was substituted for the death penalty.

²⁴⁷⁸ *Kordić Trial Judgement*, para. 849.

²⁴⁷⁹ *Kvočka Trial Judgement*, para. 700.

as attending funerals, tending vegetable plots, fetching water, shopping, going to hospital, commuting within the city, or while at home. The Majority of the Trial Chamber also takes into consideration the physical and psychological suffering inflicted on the victims. Sarajevo was not a city where occasional random acts of violence against civilians occurred or where living conditions were simply hard. This was an anguishing environment in which, at a minimum hundreds of men, women, children, and elderly people were killed, and thousands were wounded and more generally terrorized.

765. Moreover, the defendant was not – contrary to his assertion – just a professional soldier. General Galić was an experienced military officer of 49 years of age at the time of his appointment as commander of the SRK. As a military professional, General Galić was well aware of the extent of his obligations laid out in the military codes of the former JNA and then of the VRS. The majority of the Trial Chamber has already affirmed General Galić’s voluntary participation in the crimes of which he has been found guilty. He had a public duty to uphold the laws or customs of war. The crimes that were committed by his troops (or at least a high proportion of these) would not have been committed without his assent. The Majority of the Trial Chamber is mindful of the siege-like conditions in the city of Sarajevo where one party to the conflict (the ABiH) was mixed with the civilian population which could be compared as a stalemate situation²⁴⁸⁰ and of the evidence which suggests that, at times, the other warring party sought to attract sympathy from the international community by attracting SRK counter-fire or fire at its own civilians.²⁴⁸¹ The behaviour of the other party, however is not an excuse for the deliberate targeting of civilians and, as such, does not alleviate the responsibility of the Accused. The Majority finds that the fact that General Galić occupied the position of VRS Corps commander, and repeatedly breached his public duty from this very senior position, is an aggravating factor.

766. The Majority has carefully considered whether other circumstances, such as those determined by the case-law, apply to this case. Although sympathetic to General Galić’s arrest and family situation, the Majority of the Trial Chamber considers that the arrest of an accused is not a factor for determining sentence and that his family situation is not so atypical that it is a relevant factor in this case to go towards mitigating his sentence. However, the Majority of the Trial Chamber notes the exemplary behaviour of General Galić throughout the proceedings before the International Tribunal.

²⁴⁸⁰ Fraser stated that “to get inside to a target who is surrounded by non-combatants [is] a soldier’s worst nightmare”, T. 11238.

²⁴⁸¹ Tucker stated that: “To put it bluntly, the more suffering the better because that played to the television cameras and would ultimately lead to the pressure that they wanted in order to achieve international intervention.” Tucker, T. 10030-1.

767. The Majority of the Trial Chamber's overall assessment is that General Galić was a professional soldier who not only made little effort to distinguish civilian from military objectives but willingly oversaw the targeting of civilians in Sarajevo.

768. The Prosecution submits that General Galić should be sentenced to life sentences for each count of the Indictment of which he is found guilty.²⁴⁸² However, in view of the fact that General Galić is guilty of crimes which form part of a single campaign committed in a geographically limited territory over an uninterrupted period of time, the Majority of the Trial Chamber holds it preferable to impose a single sentence.

²⁴⁸² The Prosecution is unclear in its formulation of a sentence but uses the plural "life sentences". The Chamber considers that the Prosecution suggests a life imprisonment sentence for each proven offence.

VI. DISPOSITION

769. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments of the parties, and having excluded from consideration those incidents which the Prosecution has failed to prove exemplary of the crimes charged in the Indictment, the Trial Chamber, Judge Nieto-Navia dissenting, makes the following disposition in accordance with the Statute and Rules:

Stanislav Galić is found **GUILTY** on the following counts, pursuant to Article 7(1) of the Statute of the Tribunal:

COUNT 1: Violations of the Laws or Customs of War (acts of violence the primary purpose of which is to spread terror among the civilian population, as set forth in Article 51 of Additional Protocol I to the Geneva Conventions of 1949) under Article 3 of the Statute of the Tribunal.

COUNT 2: Crimes against Humanity (murder) under Article 5(a) of the Statute of the Tribunal.

COUNT 3: Crimes against Humanity (inhumane acts – other than murder) under Article 5(i) of the Statute of the Tribunal.

COUNT 5: Crimes against Humanity (murder) under Article 5(a) of the Statute of the Tribunal.

COUNT 6: Crimes against Humanity (inhumane acts – other than murder) under Article 5(i) of the Statute of the Tribunal.

The finding of guilt on count 1 has the consequence that the following counts are **DISMISSED**:

COUNT 4: Violations of the Laws or Customs of War (attack on civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) under Article 3 of the Statute of the Tribunal.

COUNT 7: Violations of the Laws or Customs of War (attack on civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) under Article 3 of the Statute of the Tribunal.

The Trial Chamber, by Majority, hereby **SENTENCES** Stanislav Galić to a single sentence of 20 (twenty) years of imprisonment.

770. Pursuant to Rule 101(C) of the Rules, the accused is entitled to credit for time spent in detention. General Galić was arrested by SFOR on 20 December 1999, and since that date, he has been detained in the United Nations Detention Unit, The Hague, Netherlands. He is entitled to credit for this period towards service of the sentence imposed, together with such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Stanislav Galić shall remain in custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done on the Fifth Day of December 2003 in English and French, the English text being authoritative.

At The Hague,

The Netherlands

Judge Amin El Mahdi

Judge Alphonse Orie

Judge Rafael Nieto-Navia

Presiding

**VII. SEPARATE AND PARTLY DISSENTING OPINION OF JUDGE NIETO-
NAVIA**

VIII. ANNEXES

A. Indictment against General Galić

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the Tribunal charges:

STANISLAV GALIĆ

with **CRIMES AGAINST HUMANITY** and **VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR** as set forth below:

BACKGROUND:

1. Sarajevo is the capital of Bosnia and Herzegovina and is situated on an east-to-west axis along the Miljacka River valley in central Bosnia. The city is dominated by steep surrounding mountain slopes. To the east there is a dense city centre making up a residential and commercial old town which spreads up the adjacent hillsides. There are new municipalities with commercial development and extensive residential accommodation on more open ground to the west. The city traces its history back nearly two thousand years. Before 1992, Sarajevo was a flourishing multi-ethnic community and a cultural and economic centre in the former Yugoslavia. A 1991 census indicated that the city and immediate surroundings had a population of some 525,980, with an ethnic composition of 49.3% Muslim, 29.9% Serb, 6.6% Croat, 10.7% describing themselves as Yugoslav and 3.5% other groups. Sarajevo accounted for 11% of the population of Bosnia and Herzegovina.
2. Shortly after Bosnia and Herzegovina was internationally recognised as an independent state on 06 April 1992, armed hostilities broke out in Sarajevo. Even before the conflict began, armed forces supporting the Serbian Democratic Party (SDS) and elements of the Yugoslav People's Army (JNA), including units of the 4th Corps of the 2nd Military District, occupied strategic positions in and around Sarajevo. The city was subsequently subjected to blockade and relentless bombardment and sniper attacks from these positions. Much of the bombardment and sniping was from positions in the hills around and overlooking Sarajevo, from which the attackers had a clear, detailed and commanding view of the city and its civilian population.
3. On or around 20 May 1992, after a partial withdrawal of JNA forces from Bosnia, the 2nd Military District was effectively transformed into part of the Bosnian Serb Army (VRS - "Vojska Republika Srpska"). As part of this transformation, the 4th Corps, 2nd Military District, became the Sarajevo Romanija Corps with its headquarters in Lukavica Barracks just to the south west of Sarajevo.
4.
 - (a) For forty-four months, the Sarajevo Romanija Corps implemented a military strategy which used shelling and sniping to kill, maim, wound and terrorise the civilian inhabitants of Sarajevo. The shelling and sniping killed and wounded thousands of civilians of both sexes and all ages, including children and the elderly.
 - (b) The Sarajevo Romanija Corps directed shelling and sniping at civilians who were tending vegetable plots, queuing for bread, collecting water, attending funerals, shopping in markets, riding on trams, gathering wood, or simply walking with their children or friends. People were even injured and killed inside their own homes, being hit by bullets that came through the windows. The attacks on Sarajevo civilians were often unrelated to military actions and were designed to keep the inhabitants in a constant state of terror.
 - (c) Because of the shelling and sniping against civilians, the life of every Sarajevo inhabitant became a daily struggle to survive. Without gas, electricity or running water, people were forced to venture outside to find basic living necessities. Each time they did, whether to collect wood, fetch water or buy some bread, they risked death. In addition to the sheer human carnage that

the shelling and sniping caused, the endless threat of death and maiming caused extensive trauma and psychological damage to the inhabitants of Sarajevo.

THE ACCUSED:

5. **STANISLAV GALIĆ** was born the son of Dusan, on 12 March 1943, in Goles village, Banja Luka Municipality. He has held the rank of Major General in the Bosnian Serb army (VRS). He assumed command of the Sarajevo Romanija Corps on or about 10 September 1992 and remained in that position until about 10 August 1994, during which time, the forces under his command and control conducted a campaign of sniping and shelling against the civilian population of Sarajevo.

GENERAL ALLEGATIONS:

6. The Sarajevo Romanija Corps formed a significant part of the VRS under the ultimate command of Ratko MLADIĆ, the Commander of the Main Staff and Radovan KARADŽIĆ, initially President of the Presidency of the Bosnian Serb administration in Bosnia and Herzegovina and, subsequently, as President of the "Republika Srpska" and designated Supreme Commander of its armed forces.
7. By 10 September 1992 the Sarajevo Romanija Corps controlled all the Bosnian Serb territory around Sarajevo, including established confrontation lines and artillery positions.
8. **STANISLAV GALIĆ**, during his period as Corps Commander of the Sarajevo Romanija Corps, was in a position of superior authority to approximately 18,000 military personnel, formed into 10 brigades.
9. As Corps Commander of the Sarajevo Romanija Corps, **STANISLAV GALIĆ** demonstrated his authority and control over forces comprising and attached to the Sarajevo Romanija Corps, inter alia, by participating in negotiations and the implementation of a heavy weapons total exclusion zone (TEZ), controlling access of UNPROFOR and other UN personnel to territory around Sarajevo and, in particular, heavy weapon sites.
10. **STANISLAV GALIĆ** bears individual criminal responsibility for planning, instigating, ordering, committing, or otherwise aiding and abetting, in the planning, preparation or execution of the campaign of shelling and sniping against the civilian population of Sarajevo and the acts set forth below by the forces and persons under his command, pursuant to Article 7(1) of the Statute of the Tribunal.
11. **STANISLAV GALIĆ** also bears individual criminal responsibility as a Commander of the Sarajevo Romanija Corps, responsible for the conduct of subordinates in respect of whom he was in a position of superior authority. **STANISLAV GALIĆ** is responsible for the acts and omissions of his subordinates, knowing, or having reason to know, that the subordinates were about to commit such acts, or had done so, failing to take reasonable steps to prevent such acts, or to punish the perpetrators thereof. By failing to take the actions required of a person in superior authority, **STANISLAV GALIĆ** is responsible for the acts and omissions set forth below pursuant to Article 7(3) of the Statute of the Tribunal.
12. At all material times relevant to this indictment, an armed conflict existed in Bosnia and Herzegovina in the territory of the former Yugoslavia.
13. Wherever a crime against humanity, a crime recognised by Article 5 of the Statute of the Tribunal, is charged in this indictment, the alleged acts or omissions were part of a widespread or systematic or large scale attack directed against a civilian population.
14. Wherever a violation of the laws or customs of war, a crime recognised by Article 3 of the Statute of the Tribunal, is charged in this indictment, the acts or omissions were directed against civilian persons.

15. All Counts in this indictment allege the totality of the campaigns of sniping and shelling against the civilian population but the scale was so great that the Schedules to the individual groups of counts in this indictment set forth only a small representative number of individual incidents for specificity of pleading.

16. At all relevant times, **STANISLAV GALIĆ** was required to abide by the laws or customs governing the conduct of war.

CHARGES:

**COUNT 1
(INFLECTION OF TERROR)**

From about 10 September 1992 to about 10 August 1994, **STANISLAV GALIĆ**, as Commander of Bosnian Serb forces comprising or attached to the Sarajevo Romanija Corps, conducted a protracted campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population thereby inflicting terror and mental suffering upon its civilian population.

By his acts and omissions, **STANISLAV GALIĆ** is responsible for:

COUNT 1: Violations of the Laws or Customs of War (unlawfully inflicting terror upon civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal.

**COUNTS 2 to 4
(SNIPING)**

Between 10 September 1992 and 10 August 1994, **STANISLAV GALIĆ**, as Commander of Bosnian Serb forces comprising or attached to the Sarajevo Romanija Corps, conducted a coordinated and protracted campaign of sniper attacks upon the civilian population of Sarajevo, killing and wounding a large number of civilians of all ages and both sexes, such attacks by their nature involving the deliberate targeting of civilians with direct fire weapons. Specific instances of these attacks include, by way of representative allegations, those matters set forth in the First Schedule to this indictment.

By his acts and omissions, **STANISLAV GALIĆ** is responsible for:

COUNT 2: Crimes against Humanity (murder) punishable under Article 5(a) of the Statute of the Tribunal.

COUNT 3: Crimes against Humanity (inhumane acts-other than murder) punishable under Article 5(i) of the Statute of the Tribunal.

COUNT 4: Violations of the Laws or Customs of War (attacks on civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal.

**COUNTS 5 to 7
(SHELLING)**

Between 10 September 1992 and 10 August 1994, **STANISLAV GALIĆ**, as Commander of Bosnian Serb forces comprising or attached to the Sarajevo Romanija Corps, conducted a coordinated and protracted campaign of artillery and mortar shelling onto civilian areas of Sarajevo and upon its civilian population. The campaign of shelling resulted in thousands of civilians being killed or injured. Specific instances of this shelling include, by way of representative allegations, the matters set forth in the Second Schedule to this indictment.

By his acts and omissions, **STANISLAV GALIĆ** is responsible for:

- COUNT 5:** **Crimes against Humanity** (murder) punishable under Article 5(a) of the Statute of the Tribunal.
- COUNT 6:** **Crimes against Humanity** (inhumane acts-other than murder) punishable under Article 5(i) of the Statute of the Tribunal.
- COUNT 7:** **Violations of the Laws or Customs of War** (attacks on civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal.

Date: Signed:
Louise Arbour
Prosecutor

B. Procedural History of the Case

1. The Indictment and the Accused

771. An indictment against Stanislav Galić and Dragomir Milošević was confirmed by Judge Antonio Cassese on 24 April 1998. Judge Cassese ordered that copies of the arrest warrants be transmitted to the Prosecution and to the International Stabilization Force (“SFOR”)²⁴⁸³ and that there be no disclosure of the indictment and supporting material until such time as the two Accused had been arrested or until otherwise ordered.²⁴⁸⁴ On 15 March 1999 Judge Cassese granted leave to the Prosecution to redact the indictment and deliver to the Registry a separate indictment naming only Stanislav Galić, for transmission to the Prosecution and to SFOR.²⁴⁸⁵ On 17 March 1999 Judge Cassese rendered an order to vacate in part the Order for Non-Disclosure dated 24 April 1998, to take effect upon the detention or arrest of one of the Accused and in respect of the documents relevant to that accused.²⁴⁸⁶ On 2 November 2001 Judge Rafael Nieto-Navia ordered that the Order for Non-Disclosure filed on 24 April 1998 be vacated in full.²

772. The indictment attached in Annex A was filed on 26 March 1999 and charges the Accused with seven counts under Articles 3 and 5 and Article 7(1) and 7(3) of the Statute for his participation in a campaign of sniping and shelling against civilians in Sarajevo from September 1992 to August 1994.

773. Two schedules which “set forth a small representative number of individual incidents for specificity of pleading”²⁴⁸⁷ are annexed to the indictment. The First Schedule refers to sniping incidents allegedly committed against civilians by forces under the command and control of the Accused. The Second Schedule lists a number of shelling incidents allegedly committed against civilian targets by forces under the command and control of the Accused.

²⁴⁸³ Review of the indictment, 24 April 1998.

²⁴⁸⁴ *The Prosecutor v. Stanislav Galić and Dragomir Milošević*, Order for Non-Disclosure, IT-98-29-I, 24 April 1998.

²⁴⁸⁵ *Ex parte* and Confidential Order on Prosecution Motion, IT-98-29-I, 15 March 1999.

²⁴⁸⁶ *Confidential* Decision on Application to Vacate in Part an Order for Non-Disclosure, 17 March 1999.

²⁴⁸⁷ Indictment, para. 15.

774. Stanislav Galić was arrested by the SFOR on 20 December 1999 and was transferred to the United Nations Detention Unit on 21 December 1999.²⁴⁸⁸ The Defence, on 7 April 2000, filed a motion for provisional release pursuant to Rule 65 of the Tribunal's Rules of Procedure and Evidence. After hearing the parties,²⁴⁸⁹ the Trial Chamber denied the motion on the grounds that the Accused failed to demonstrate that, if released, he would not pose a danger to a victim, witness, or other person and would return for trial.²⁴⁹⁰

775. On 23 December 1999 the Registrar appointed Nikola Kostich as temporary defence counsel for the Accused,⁵ and then, on 16 June 2000, as lead counsel.⁶ The Accused made a request dated 3 October 2000 but filed on 25 October 2000⁷ to have his counsel withdrawn and replaced by Mara Pilipović, on the ground that the Trial Chamber had repeatedly admonished his counsel, Kostich, for the quality of his work and had issued him a warning for his conduct on 10 July 2000 pursuant to Rule 46 of the Rules. In a Decision of 16 November 2000, being effective on 24 November 2000, the Registrar, acting pursuant to Article 20 (A) (i) of the Directive on Assignment of Defence Counsel, withdrew Kostich as counsel and appointed Mara Pilipović as the new lead counsel.²⁴⁹¹ On 8 October 2001 he appointed Stéphane Piletta-Zanin as co-counsel as of 2 October 2001.²⁴⁹²

776. A motion on the form of the indictment, filed by Defence counsel Kostich on 7 April 2000²⁴⁹³ was rejected by the Trial Chamber on 11 May 2000 on the ground that it was not submitted within 30 days after disclosure of the Prosecution under Rule 66(A)(i), as required by Rule 72(A)(ii) of the Rules.²⁴⁹⁴ The Prosecution filed two revised schedules to the indictment on 10 October 2001 whereby it deleted ten incidents and added five incidents with respect to the First Schedule, and deleted one incident with respect to the Second Schedule.²⁴⁹⁵ The Defence argued that that the revised schedules were to be regarded as amendments to the indictment which it should be entitled to challenge through a preliminary motion on the form of the indictment.²⁴⁹⁶ The Trial Chamber deemed that only one added incident to the First Schedule (incident no. 1) constituted an amendment to the indictment and rejected this incident on the ground that it was not submitted on time and that it would go contrary to the sound administration of justice to accept an amendment to the indictment at that stage of proceedings.²⁴⁹⁷ The Trial Chamber nevertheless recognized that that incident 1 could be used as evidence corroborating a consistent pattern of conduct.²⁴⁹⁸ Seized of a Defence request for leave to appeal the Trial Chamber decision, a bench of three judges of the Appeals Chamber refused the Defence's application for leave to appeal on the ground that the issue at stake was not

²⁴⁸⁸ Order in Respect of Detention on Remand, IT-98-29-I, 29 December 1999.

²⁴⁸⁹ Motion Hearings of 10 July 2000 and 27 July 2000.

²⁴⁹⁰ Order on the Defence Motion on Provisional Release, 25 July 2000.

²⁴⁹¹ Ms. Pilipović was present in court for the first time, together with Mr. Kostich, at the status conference of 27 November 2001.

²⁴⁹² Decision of the Registrar, 8 October 2001.

²⁴⁹³ Motion to Suppress Insufficiency of Indictment, 7 April 2000.

²⁴⁹⁴ Order on the Defence Motion to Suppress Insufficiency of Indictment, 11 May 2000.

²⁴⁹⁵ Prosecutor's Filing of Revised Schedules to the Indictment, 10 October 2001.

²⁴⁹⁶ The Defence's Request for Indicating that First and Second Schedule to the Indictment Dated 10th October 2001 Should be Considered as the Amended Indictment, 12 October 2001.

²⁴⁹⁷ The trial was scheduled to begin on 3 December 2001.

²⁴⁹⁸ Decision on the Defence Motion for Indicating that the First and Second Schedule to the Indictment Dated 10th October 2001 Should be Considered as the Amended Indictment, 19 October 2001.

of a general interest for the development of international law. The bench noted however that the Trial Chamber has erred in the exercise of its discretion when the Trial Chamber did not find that any alteration made to the indictment, including its annexes, necessarily constituted an amendment, which could not be made without leave being granted²⁴⁹⁹ and suggested that, should the Accused demonstrate that the amendments made disrupted the preparation for his defence, the Trial Chamber must either prevent the Prosecution from leading evidence on the newly added incidents, or adjourn the trial until the Accused has had adequate opportunity to investigate the new allegations.²⁵⁰⁰

2. Stages of the Proceedings

(a) Pre-Trial Stage

777. On 22 December 1999 Judge Florence Mumba, Acting President, assigned the *Galić* case to Trial Chamber I, composed of Judges Almiro Rodrigues (Presiding), Fouad Riad, and Patricia Wald.²⁵⁰¹ Judge Rodrigues was assigned as the pre-trial judge.²⁵⁰² The initial appearance was held on 29 December 1999 and the Accused pleaded not guilty to each count charged in the indictment.²⁵⁰³

(b) Preparation of Prosecution case

778. Pursuant to Rule 65ter (E) (i), the Prosecution filed a provisional pre-trial brief on 20 February 2001²⁵⁰⁴ and a final pre-trial brief 23 October 2001.²⁵⁰⁵ A list of 217 Prosecution witnesses was filed on 29 October 2001,²⁵⁰⁶ and a corrigendum to the witness list was filed 2 November 2001.²⁵⁰⁷ A confidential list of Prosecution exhibits was filed on 01 November 2001,²⁵⁰⁸ and a revised list of exhibits was filed on 15 November 2001.²⁵⁰⁹ A Pre-Trial Conference, as required by Rule 73 bis, was held on 8 and 12 November 2001.²⁵¹⁰

(c) Change in Composition of Trial Chamber

779. The mandates of Judges Rodrigues, Riad, and Wald ended on 16 November 2001 and on 23 November 2001 the President assigned the case to Trial Chamber I, composed of Judges Liu Daqun,

²⁴⁹⁹ Decision on Application by Defence for Leave to Appeal, IT-98-29-AR72, 30 November 2001 (“the Appeals Chamber’s Decision”), para. 14.

²⁵⁰⁰ The Appeals Chamber’s Decision, para. 19.

²⁵⁰¹ Order of the Acting President Assigning a Case to a Trial Chamber and for the Conduct of Routine Matters, IT-98-29-I, 22 December 1999.

²⁵⁰² Status Conference of 11 April 2000, T. 24.

²⁵⁰³ T. 18-20.

²⁵⁰⁴ Prosecutor’s Pre-Trial Brief Pursuant to Rule 65ter (E) (i) (Provisional), 20 February 2001.

²⁵⁰⁵ Prosecutor’s Pre-Trial Brief Pursuant to Rule 65ter (E) (i), 23 October 2001.

²⁵⁰⁶ Confidential Prosecutor’s List of Witnesses Pursuant to Rule 65ter, 29 October 2001.

²⁵⁰⁷ Confidential Prosecutor’s “Motion” Corrigendum to Witness List Filed Pursuant to Rule 65ter (E)(ii)(a), 02 November 2001.

²⁵⁰⁸ Confidential Prosecutor’s List of Exhibits Pursuant to Rule 65 ter (E)(iii), 01 November 2001.

²⁵⁰⁹ Confidential Prosecution’s Notice of the Filing of its Revised List of Exhibits Pursuant to Rule 65 ter (E)(iii), 15 November 2001.

²⁵¹⁰ Scheduling Order, 5 October 2001; T. 434 to 559.

Presiding, Alphons Orié, and Amin El Mahdi.²⁵¹¹ On 30 November 2001 the President assigned Judge Rafael Nieto-Navia as the *ad litem* judge to the case and confirmed that Trial Chamber I, Section B, would be in charge of the case and would be composed of Judges Orié, presiding, El Mahdi, and Nieto-Navia.²⁵¹²

(d) Stipulated Facts

780. A confidential list of stipulated facts, submitted by the Prosecution on 26 October 2001, was signed and filed by both parties on 4 December 2001.²⁵¹³ Following the Pre-Trial Conference, the Trial Chamber, in a decision dated 16 November 2001, requested the parties to submit a joint document on stipulated facts which would state all the agreed points, “including those contained in the document on stipulated facts submitted by the Prosecution on 26 October, those agreed during the [Pre-Trial Conference] and other new points which the parties may consider of relevance to this trial.”²⁵¹⁴ The parties however did not submit such document. The Trial Chamber made another attempt to urge the parties to reach agreement at the end of the Prosecution case and after reading the Defence’s Motion for Judgement of Acquittal submitted on 2 September 2002. The matter was first raised by the judges on 20 September 2002 during a status conference. The presiding judge, acting as a pre-trial judge pursuant to Rule 65*ter* (I), also convened the parties for a meeting to discuss the matter. A decision was then rendered, on the basis of what was said during the Pre-Defence Conference and the meeting with the presiding judge, and the parties were requested to submit a joint document setting out all agreed points reached by the parties.²⁵¹⁵ However, the parties once again did not submit such document.

(e) Preparation of Defence Case

781. After the first stage of the Prosecution case had closed, and pursuant to Rule 65 *ter*, the Defence filed a provisional exhibit and witness list on 2 August 2002.²⁴ Final lists of Defence witnesses and exhibits were filed on 19 September 2002. The Pre-Defence Conference was held on 3 October 2002 in accordance with Rule 73 *ter*.²⁵¹⁶

3. Trial Stage

782. The Trial commenced on 3 December 2001 and lasted 223 days. The Prosecution case lasted 127 days and ended on 2 August 2002. The Defence filed a confidential Motion for Judgement of Acquittal pursuant to Rule 98 *bis* on 2 September 2002, where it requested that Stanislav Galić be acquitted of all charges.⁴⁶ After hearing the parties, the Trial Chamber entered a Judgement of acquittal on those parts of the

²⁵¹¹ Order of the President on the Composition of a Trial Chamber for a Case, IT-98-29-PT, 23 November 2001.

²⁵¹² Order of the President Assigning an *Ad Litem* Judge to a Trial, IT-98-29-T, 30 November 2001.

²⁵¹³ Schedule of Facts Stipulated by the Parties, 4 December 2001.

²⁵¹⁴ Decision, 16 November 2001.

²⁵¹⁵ Decision on Co-operation Between the Parties, 16 October 2002 (Certification of appeal denied on 13 November 2002).

²⁵¹⁶ Scheduling Order, 27 September 2002.

indictment concerning sniping incidents nos. 7, 12, and 19. The Trial Chamber denied the rest of the motion.²⁵¹⁷

783. The Defence case started on 7 October 2002 and lasted 96 days. The Prosecution was allowed to call one witness in rebuttal on a specific issue.²⁵¹⁸ The oral request made by the Defence on 24 March 2003²⁸ to recall an expert witness in rejoinder was denied²⁵¹⁹ and no evidence was adduced in rejoinder. The Defence submitted its closing brief on 22 April 2003.²⁵²⁰ The Prosecution filed its closing brief confidentially on 23 April 2003²⁵²¹ and a public version thereof was filed on 28 April 2003.²⁵²² The closing arguments were heard pursuant to Rule 86 from 6 to 9 May 2003.²⁵²³

784. Overall, 171 witnesses were heard, five Rule 92 *bis* witness statements were admitted, as well as 15 expert reports. All expert witnesses were heard in court. A total of 603 Prosecution exhibits, 651 Defence exhibits, and 14 Chamber exhibits were admitted into evidence. 32 documents were marked for identification.

(a) Issues Related to Witnesses

785. The Prosecution called 120 witnesses, of whom 27 were granted protective measures by the Trial Chamber under Rule 75. The Defence called 51 witnesses, 26 with protective measures.

(i) Protective measures

786. The Prosecution filed 17 motions for protective measures pursuant to Rule 75.²⁵²⁴ The Defence filed two motions for protective measures.²⁵²⁵ The Trial Chamber requested additional information from the Defence in relation to certain witnesses on 19 November 2002. On 27 November 2002 the Defence filed a “Confidential Brief Regarding Protective Measures”. Several requests for protective measures were also made orally by both parties during trial and protective measures were ordered both orally and in written decisions.²⁵²⁶ The protective measures granted by the Trial Chamber included the use of pseudonyms, face and voice distortion, and closed or private session. In some instances, prior to orally granting protective

²⁵¹⁷ Decision on the Motion for Entry of Acquittal of the Accused Stanislav Galić, 03 October 2002.

²⁵¹⁸ Decision on Rebuttal Evidence, 2 April 2003. The witness testified on 24 March 2003.

²⁵¹⁹ Decision on Rejoinder Evidence, 2 April 2003.

²⁵²⁰ Defence’s Final Trial Brief, 22 April 2003.

²⁵²¹ Confidential Prosecution’s Final Trial Brief, 23 April 2003.

²⁵²² Prosecution’s Final Trial Brief, 28 April 2003.

²⁵²³ T. 21669 to 22015.

²⁵²⁴ 29 October 2001, 30 October 2001, 12 November 2001, 3 December 2001, 5 December 2001, 14 January 2002, 25 January 2002, 22 March 2002, 28 March 2002, 24 April 2002, 16 May 2002, 24 May 2002, 29 May 2002, 01 July 2002, 25 July 2002, 31 July 2002.

²⁵²⁵ 24 September 2002 and 21 October 2002.

²⁵²⁶ *Confidential* Decision on the Prosecutor’s Request for Protective Measures, 14 March 2002; *Confidential* Decision on Prosecutor’s Request for Protective Measures for, And Addition to the Prosecution’s Witness List, Of Witness AD, 31 May 2002 (Certification of Appeal denied on 7 June 2002); *Confidential* Decision on the Prosecutor’s Request for Protective Measures in Respect of Witnesses W and Y, 7 June 2002; *Confidential* Decision on the Prosecutor’s Request for Protective Measures in Respect of Witness X, 28 June 2002; *Confidential* Decision on the Defence’s Request for Protective Measures, 19 November 2002.

measures, the Trial Chamber heard in closed session, directly from the witness, the reasons for which he or she had made the request.

(ii) Rule 70

787. On 22 January 2002, the Chamber rendered a confidential decision²⁵²⁷ on the “Prosecution Confidential Motion for Protective Measures for Rule 70 Witnesses and Documents”, filed on 29 October 2001.²⁵²⁸

(iii) Video-Link

788. On 14 January 2002, the Prosecution filed a “Confidential Motion for Testimony with Protective Measures via Video-Conference Link” for ten witnesses and, subsequent to the Trial Chamber’s oral request of 24 January 2002, filed confidential supplementary information to that motion on 25 January 2002. An additional “Motion for Two Witnesses to Testify Via Video-Link” was filed on 31 January 2002, which concerned two witnesses. By written decision of 12 February 2002 dealing with both motions²⁵²⁹ the Trial Chamber granted the motions in respect of six witnesses and ordered additional information to be provided in respect of four witnesses. The motions were denied in respect of two witnesses. In total, six witnesses testified via video link from Sarajevo for the Prosecution. The Defence filed a confidential motion on 12 October 2002 for evidence to be heard from four witnesses via video link.⁴⁵ The Trial Chamber granted the motion in respect of two witnesses. One of them was eventually unable to testify for medical reasons and the other was heard via video link from Sarajevo.

(iv) Summons

789. The Trial Chamber, upon the request of the Prosecution, confidentially ordered a person to appear as witness on 18 April 2002. The person did not appear. The Defence confidentially submitted a “Request for Witnesses Summonses” on 9 January 2003, in respect of five individuals who were present in Sarajevo as international staff during the conflict. The Trial Chamber denied the request on 19 March 2003, considering that the Defence did not exercise the diligence that could be expected in respect of witnesses of significant importance to its case.²⁵³⁰

(v) Safe Conducts

²⁵²⁷ Decision on the Prosecutor’s Request for Protective Measures in Respect of United Nations Rule 70 Witnesses and Documents, 21 January 2002.

²⁵²⁸ Further Submissions were filed on 12 November 2001.

²⁵²⁹ Confidential Decision on the Prosecutor’s Motion for Testimony with Protective Measures via Video-Conference Link Pursuant to Rule 71*bis*, 12 February 2001.

²⁵³⁰ Decision on the Defence Request to Summon Witnesses, 19 March 2003.

790. The Defence requested an order for safe conduct in respect of ten witnesses. The Defence withdrew its request in respect of two witnesses and eight orders for safe conduct were issued by the Trial Chamber.²⁵³¹

(vi) Concerning the Possibility of the Accused as Witness

791. The Defence first announced in its witness list submitted on 19 September 2001 that Gen. Galić may testify at the end of its case, but reserved its final decision. On 22 January 2003 the Trial Chamber orally ruled that the Accused, if he so decided, was to testify before the expert witnesses called by the Defence were heard, and that in such case the Defence should provide the Prosecution at the earliest opportunity with a detailed survey of subjects the Accused would testify about.²⁵³² The Defence asked for a certification to appeal this ruling, claiming that to compel the Accused to testify before the expert witnesses were heard infringed upon his fundamental rights under Article 21(4) of the Statute.²⁵³³ On 4 February 2003, the Trial Chamber denied the certification to appeal its oral decision on the grounds that the oral decision did not prevent the Accused from freely deciding whether to testify or not and that Rule 90(F) authorizes the Trial Chamber to exercise control over the order of hearing witnesses and presenting evidence. The Trial Chamber further found that the oral decision did not involve an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial for which an immediate resolution by the Appeals Chamber could materially advance the proceedings.²⁵³⁴ The Accused did not testify.

(vii) Expert Witnesses

792. Overall, 16 expert witness statements were submitted by the parties according to Rule 94*bis* of the Rules. A series of issues arose in this context and 15 reports were eventually admitted.

793. Regarding the expert witnesses called by the Prosecution, the Defence requested the Trial Chamber, on 13 March 2003, to render a decision instructing the Prosecution to file the expert witness statements within a prescribed time limit before calling them to appear before the Trial Chamber. The Trial Chamber ordered the Prosecution to file the expert witness statements by 25 May 2002 and requested the Defence to inform the Trial Chamber of whether it accepts the statement within 30 days of filing. The Trial Chamber further requested the Defence to indicate as soon as possible the estimated length of each cross-examination it intended to conduct and ordered the Prosecution to respect a time-limit of at least 45 days between the filing of the expert witness statement and the appearance of that witness.²⁵³⁵

794. Both parties expressed their wish to cross-examine all expert witnesses presented by the other party and all of them were heard in court. The parties, in most cases, contested that the witnesses qualified as

²⁵³¹ Five orders were issued on 12 November 2002; three orders were issued on 18 November 2002.

²⁵³² T. 18076 (22 January 2003).

²⁵³³ Requête de la défense en vue de la certification d'un appel contre la décision de la Chambre relativement au calendrier pour la détermination de l'audition éventuelle de l'Accusé comme témoin, 24 January 2003

²⁵³⁴ Confidential Decision on Certification Pursuant to Rule 73 (B) Regarding the Possible Testimony of the Accused as a Witness, 4 February 2003.

expert witnesses. These contests lead the Trial Chamber to specify on several occasions what it considered an expert witness.²⁵³⁶ The Trial Chamber, after putting questions to a witness called by the Prosecution as an expert in sniping, orally ruled that he did not qualify as an expert. The witness concerned was heard as a regular factual witness on certain topics and his statement was not admitted.²⁵³⁷

795. The Defence also objected to the admission of an expert report submitted by the Prosecution on the ground that the Prosecution failed to provide the Defence with the correct version of the report.²⁵³⁸ The Prosecution recognized that the Defence was mistakenly provided with an earlier rough draft and submitted the final version of the statement, in both Hungarian and English, on 19 July 2002, 10 days after the witness came to testify.²⁵³⁹ The witness was for that reason recalled on 25 July. While recognizing that this situation was highly inconvenient for the Defence, the Trial Chamber took into account that the final English version contained only two additional pages compared to the version first disclosed to the Defence, and that the witness was recalled for cross-examination. The Trial Chamber concluded that the possible disadvantageous situation in which the Defence was put had been remedied, and admitted the statement.²⁵⁴⁰

(viii) Rule 92 bis Statements

796. On 12 and 18 April 2002 the Trial Chamber partially admitted into evidence the statements of two deceased persons in accordance with Rule 92 bis (C), to support testimony concerning shelling incidents nos. 2 and 5²⁵⁴¹ (“the First Decision”) and sniping incident no. 11²⁵⁴² (“the Second Decision”). The Trial Chamber granted the Defence certification to appeal on 25 April 2002, which the Defence lodged on 2 May 2002. The Appeals Chamber dismissed the appeal against the Second Decision but considered that the Trial Chamber failed to determine whether the evidence in question was so pivotal to the case that it would be unfair to the Accused to admit it in a written form with respect to the First Decision.²⁵⁴³ The Trial Chamber, having received the submissions of the parties,²⁵⁴⁴ found that the statement concerned was not so pivotal to the Accused as to prevent its being admitted. It however excluded those parts of the statement concerning the

²⁵³⁵ Decision on the Defence Request Based on Rule 94bis(A) of the Rules, 12 April 2002.

²⁵³⁶ See the Decision Admitting Berko Zečević as an Expert Witness, 31 May 2002 (Certification of appeal was denied on 18 June 2002); Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002 (Certification of appeal denied on 22 July 2002); Decision on the Expert Witness Statements Submitted by the Defence, 27 January 2003; Decision on the Prosecution Motion for Reconsideration of the Admission of the Expert Report of Professor Radinović, 21 February 2003.

²⁵³⁷ Hinchliffe, T. 12954.

²⁵³⁸ Kovacs Report.

²⁵³⁹ Dr. Vilmos Kovacs testified on 9 and 10 July 2002.

²⁵⁴⁰ Decision on the Admission into Evidence of Dr. Vilmos Kovacs’ Expert Report, 2 August 2002 (Certification of appeal denied on 2 September 2002).

²⁵⁴¹ Decision on the Prosecutor’s Motion for the Admission into Evidence of Written Statement by a Deceased Witness, and Related Report Pursuant to Rule 92bis(C), 12 April 2002.

²⁵⁴² Decision on the Prosecutor’s Second Motion for the Admission into Evidence of Written Statement by Deceased Witness Bajram Šopi, Pursuant to Rule 92bis(C), 18 April 2002.

²⁵⁴³ Appeals Chamber’s Decision, paras 13-19.

²⁵⁴⁴ Prosecution’s Submissions Pursuant to Rule 92bis, following the Appeals Chamber Decision of 7 June 2002, 24 June 2002; Defence Rule 92bis Submissions, 5 July 2002; Prosecution’s Reply to Defence Rule 92bis Submissions, 12 July 2002.

burning of the National Library, an event situated outside the time-frame of the indictment. The statement was therefore partially admitted on 2 August 2002.²⁵⁴⁵

797. On 6 June 2002 the Prosecution filed an application for admission of 21 statements under Rule 92*bis*. The Defence opposed the admission of all statements.²⁵⁴⁶ After hearing the parties²⁵⁴⁷ the Trial Chamber rendered a written decision whereby it admitted portions of two witness statements without cross-examination and of three witness statements provided that the witnesses concerned were called for cross-examination and rejected the admission of the remainder of the statements. The Trial Chamber also admitted five witness statements in full provided that the witnesses concerned were called for cross-examination.²⁵⁴⁸ After the decision was rendered, the Prosecution reviewed its application and called one witness for cross-examination.²⁵⁴⁹ The Prosecution later applied for the admission of two additional Rule 92*bis* statements.²⁵⁵⁰ This was rejected by the Trial Chamber.²⁵⁵¹

(b) Issues Related to Disclosure and Documentary Evidence

(i) Order for Production of Documents

798. On 18 March 2002, midway through the Prosecution case, the Prosecution filed confidentially and *ex parte* an application for an order to the Republika Sprska (“RS”), Bosnia and Herzegovina, for the production of documents concerning Stanislav Galić. Additional submissions were filed on the matter on 12 April 2002.²⁵⁵² The Prosecution thereby requested the Trial Chamber to order RS to produce a series of military documents. The Trial Chamber granted the request on 19 April 2002.²⁵⁵³ In a hearing of 31 July 2002 and in a request of 1 August 2002²⁵⁵⁴ the Prosecution requested the Trial Chamber to direct RS to provide further information on the chain of custody of the documents received by RS on 26 July 2002. It however withdrew its request on 1 November 2002.²⁵⁵⁵

(ii) Reciprocal Disclosure

²⁵⁴⁵ Decision on the Admission into Evidence of Written Statement by a Deceased Witness, Hamdija Čavčić, and Related Report Pursuant to Rule 92 *bis* (C), 2 August 2002.

²⁵⁴⁶ Détermination de la Défense en Relation à l'article 92 *bis* et suite à la Requête du Procureur en Date du 24 Jun [sic] 2002 (confidentielle), 3 July 2002.

²⁵⁴⁷ On 4 July 2002.

²⁵⁴⁸ Decision on the Prosecution's Request for Admission of Rule 92*bis* Statements, 26 July 2002.

²⁵⁴⁹ Smail Cekić.

²⁵⁵⁰ Prosecution's Application to Have Witness Barry Hogan Added to its Witness List and His Evidence Admitted Pursuant to Rule 92*bis*, 4 July 2002; Prosecution's Application to Have Admitted into Evidence the Witness Statement of Zoran Lešić, Pursuant to Rule 92*bis* (A), 23 July 2002.

²⁵⁵¹ Decision on the Prosecution's Application to Have Witness Barry Hogan Added to Its Witness List And His Evidence Admitted Pursuant to Rule 92*bis*, 2 August 2002; *confidential* Decision on the Prosecution's Application for the Admission of Zoran Lešić's Statement, Pursuant to Rule 92*bis* (A), 2 August 2002.

²⁵⁵² Confidential, *ex parte*, Additional Submissions Concerning the Prosecutor's Application for an Order to the Republika Sprska, Bosnia and Herzegovina for the Production of Documents Concerning or Related to Stanislav Galić.

²⁵⁵³ Order to the Republika Sprska for the Production of Documents, 19 April 2002.

²⁵⁵⁴ Confidential, *ex Parte*, Prosecution's Request for Clarification Concerning the Recent Submission of Documents by the Authorities of the Republika Sprska, dated 25 June 2002, 01 August 2002.

²⁵⁵⁵ Confidential, *ex parte*, Prosecution's Withdrawal of Request for a Further Order by the Trial Chamber with Respect to Documents from Republika Sprska Authorities

799. The Defence utilized the reciprocal disclosure mechanism set forth under Rules 66(B) and 67(C).²⁵⁵⁶ At the status conference of 7 September 2001 the Prosecution explained that 380,000 documents comprising some two and a half million pages were examined in this context, and that 2,525 were eventually disclosed. The Prosecution announced that an additional 900 documents were to be disclosed to the Defence in the near future.²⁵⁵⁷ Later during the trial, the Defence requested that it be provided with all documents of the ABiH 1st Corps within the possession of the Prosecution and intercept tapes of General Galić.²⁵⁵⁸ The Prosecution replied that it should not disclose to the Defence orders and reports which did not pertain to the armed conflict in Sarajevo during the indictment period but that it would check the material identified by the Defence to confirm that it does not touch upon Sarajevo at the time-period covered in the indictment. The Prosecution further stated that it did not possess any tape of intercepted conversations involving the Accused.²⁵⁵⁹

(iii) Notification during Trial

800. The Trial Chamber requested that the parties make notification seven days in advance of the witnesses to be called as well as a list of potential exhibits to be tendered through each witness. When examining witnesses, the Parties were ordinarily granted equal time for examination-in-chief and cross-examination within a time limit set by the Trial Chamber. As a general rule, after hearing oral submissions from the Parties in relation to the admissibility of evidence, documents were admitted by oral decision of the Trial Chamber after completion of the witness's testimony.

(iv) Documentary Evidence Admitted from Bar Table

801. A number of documents were admitted from the Bar Table at the end of the Prosecution case as well as at the end of the Defence case. The opposite party each time submitted its objections and comments in writing, upon which the Trial Chamber rendered a written decision.²⁵⁶⁰

(c) Issue of Visit to Sarajevo

802. On 14 July 2000, the Prosecution filed a motion for the Trial Chamber to travel to Sarajevo and its immediate surroundings in Bosnia and Herzegovina some time after the filing of the Parties' pre-trial briefs but prior to the start of the trial. Four status conferences were held to discuss the matter.²⁵⁶¹ On 7 September 2001, after the pre-trial Chamber issued a scheduling order requesting the Parties to reach an agreement regarding the so-called Travel Protocol, the pre-trial Chamber announced that the issue of an on-site visit should be addressed to the new Trial Chamber that would be hearing the case.

²⁵⁵⁶ Status conference of 11 April 2000, T. 39, confirmed at the status conference of 10 July 2000, T. 151.

²⁵⁵⁷ T. 402.

²⁵⁵⁸ Request of the Defence for Trial Chamber's Order in Relation to Material Evidences, 4 March 2002.

²⁵⁵⁹ Prosecution's Response to the Request by the Defence for Trial Chamber's Order in Relation to Material Evidences, Dated 5 March 2002, 11 March 2002.

803. Trial Chamber I, Section B, when considering the matter in July 2002, asked the Parties to inform the Trial Chamber of their respective positions in relation to the possible on-site visit. Discussion between the Parties and the Trial Chamber focused on several issues including whether the visit should be considered part of the trial, whether it should be a silent visit, the practicalities of an on-site visit, and whether the Accused should be present during the visit.

804. Both Parties agreed that an on-site visit should take place and that the on-site visit should be part of the trial. The right of the Accused to be tried in his presence and to defend himself led the parties to the position that the on-site visit should only take place in the presence of the Accused, unless the Accused waived his right to be present. In December 2002 the Parties re-submitted their views regarding the possible on-site visit, and the Trial Chamber noted that while it had initially agreed on a visit conducted without the Accused, the Defence had now reversed its position and insisted that the Accused be present during such a visit.

805. In a decision dated 4 February 2003, the Trial Chamber agreed that “in principle an accused should be present during an On-site Visit” but was of the view that “the presence of the Accused in Sarajevo during a visit by the Trial Chamber would pose a considerable security risk for the Parties and the accompanying staff”. The Trial Chamber also concluded that it would be virtually impossible to guarantee the safety of the Accused during the visit, considering the charges brought against him, his former position in the VRS, and the locations to be visited. The Trial Chamber noted that the purpose of an on-site visit was for it to become better acquainted with certain locations in Sarajevo and its surroundings. It however found that those places were described by witnesses, that photographs and maps of the locations were shown, that videos were played during trial, and that “such visualization was of substantial assistance to the Trial Chamber in its process of adopting an image of the terrain”. The Trial Chamber considered that denying the motion of 14 July 2000 did not affect the Accused’s rights nor did it affect the Trial Chamber’s ability to decide upon the case against the Accused. Consequently the Trial Chamber denied the motion.²⁵⁶²

(d) Amicus Curiae

806. On 3 March 2003 a “Memorial *Amicus Curiae* Submitted Pursuant to Article 74 of the Rules of Procedure and Evidence” was filed by Francisco Forrest Martin, President of the Center for International Human Rights Law in Coral Gables, Florida. Noting, *inter alia*, that the parties did not make any submissions on its admission, the Trial Chamber did not find it necessary for the proper determination of the case to admit the brief and rejected the application for leave to submit it.²⁵⁶³

²⁵⁶⁰ Decision on the Admission into Evidence of Documents Tendered from the Bar Table by the Prosecutor, 11 September 2002; Decision on Admission of Documents Tendered During the Testimony of Radoslav Radinović, Dusan Dunjić, Svetlana Radovanović and on Motion Regarding Document of 14.05.1992, 11 April 2003.

²⁵⁶¹ Status conferences of 27 November 2000, 30 January 2001, 15 March 2001, 2 May 2001.

²⁵⁶² Decision on the Prosecution’s Motion for the Trial Chamber to Travel to Sarajevo, 04 February 2003.

²⁵⁶³ Decision on Memorial *Amicus Curiae*, 13 March 2003.

4. Motion to Disqualify Presiding Judge

807. On 23 January 2003, the Defence filed a “Request for Withdrawal of Judge Alphons Orie, Presiding”, before Trial Chamber I, Section B, whereby it claimed that Judge Orie had to withdraw from the *Galić* case as a result of his confirmation of the amended indictment against Ratko Mladić on 8 November 2002, in which Mladić is charged with crimes related to the case against Stanislav Galić. The request was redirected to Judge Liu Daqun, Presiding judge of Trial Chamber I, pursuant to Rule 15(B) of the Rules. Judge Liu Daqun dismissed the request principally on the basis of the fundamental difference that exists between the judicial functions of a judge who confirms an indictment and a judge who sits at trial. He also pointed out that the request was not submitted in a timely fashion since it was filed two-and-a-half months after the amended indictment against Ratko Mladić was confirmed.²⁵⁶⁴ The Defence then filed a request before Trial Chamber I, Section B, to obtain certification to appeal this decision.²⁵⁶⁵ Trial Chamber I, composed of Judges Liu Daqun, Presiding, El Mahdi, and Orie, noted that no procedure for appeal of decisions taken by a Presiding Judge under Rule 15 (B) of the Rules was envisioned in the Rules and referred the matter to the Appeals Chamber.²⁵⁶⁶ In the meantime, the Defence also filed before the Appeals Chamber a “Motion to Suspend Proceedings and Make Further Submissions” on 5 March 2002. The Appeals rendered a decision on 13 March 2003, where it deemed that the appeal was to be lodged with the Bureau, according to Rule 15 (B) of the Rules²⁵⁶⁷ and referred the request to the Bureau. With respect to the motion to suspend, the Appeals Chamber considered that such application was to be made directly before Trial Chamber I, Section B.²⁵⁶⁸ The Defence filed its “Request to Suspend Proceedings” before Trial Chamber I, Section B, on 24 March 2003. The Bureau rendered a decision on 28 March 2003 in which it denied the motion to disqualify Judge Orie.²⁵⁶⁹ As a result, Trial Chamber I, Section B, denied the request to suspend trial on 1 April 2003.²⁵⁷⁰ On 3 April 2003, the Defence again filed before Trial Chamber I, Section B, a Request for certification to appeal the decision rendered by Judge Liu Daqun on 3 February 2003, arguing that the Bureau was not the appropriate authority to deal with a request for disqualification.²⁵⁷¹ On 10 April 2003 the Trial Chamber declared that it was incompetent to deal with the request.²⁵⁷²

5. Late disclosure of Material

808. In August 2003, the Prosecution disclosed material pursuant to Rule 68. On 1 September 2003, the Defence filed a “Response to Material Additionally Disclosed by the Prosecution Pursuant to Rule 68 of the Rules”, claiming, *inter alia*, that some documents, disclosed by the Prosecution after the end of the proceedings pursuant to Rules 67(D)

²⁵⁶⁴ Decision on the Defence Motion for Withdrawal of Judge Orie, 3 February 2003.

²⁵⁶⁵ Request for Certification to Appeal against Judge Liu Daqun’s Decision on the Request for the Withdrawal of Judge Alphons Orie Rendered on 3 February 2003 but Delivered on 4 February, 10 February 2003.

²⁵⁶⁶ Decision on the Defence Request for Certification to Appeal the Presiding Judge’s Decision on Withdrawal of Judge Orie, 26 February 2003.

²⁵⁶⁷ Decision on Appeal from Refusal of Application for Disqualification and Withdrawal of Judge, para. 8.

²⁵⁶⁸ Decision on Appeal from Refusal of Application for Disqualification and Withdrawal of Judge, para. 9.

²⁵⁶⁹ Decision on Galić’s Application Pursuant to Rule 15(B).

²⁵⁷⁰ Decision on the Defence Motion to Suspend Proceedings.

²⁵⁷¹ Request for Certification, 3 April 2003.

²⁵⁷² Decision on the Defence Request for Certification to Appeal the Bureau’s Decision on Galić’s Application Pursuant to Rule 15(B), 10 April 2003.

and 68 of the Rules, were “exculpatory” in nature. On 1 October 2003, the Trial Chamber ordered the parties to make submissions on the matter. The Trial Chamber, upon review of the material disclosed, has admitted only one of the documents, and that only for a limited purpose (see the introduction to “General Remarks on Terminology and Evidence”).

809. On 18 November 2003, the Prosecution disclosed additional material pursuant to Rule 68. The Defence did not react. The Trial Chamber refrained from taking a decision regarding this material.

C. GLOSSARIES

1. Glossary - Legal Citations

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| Decision on the Motion for Acquittal | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galić, 3 October 2002 |
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| Defence Final Trial Brief | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Defence’s Final Trial Brief, 22 April 2003 |
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| <i>Aleksovski</i> Appeal Judgement | <i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT- 95-14/1-A, Judgement, 24 March 2000 |
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| <i>Blaškić</i> Trial Judgement | <i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgement, 3 March 2000 |
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| <i>Čelebići</i> Appeal Judgement | <i>Prosecutor v. Zejnil Delalić et al</i> , Case No. IT-96-21-A, Judgement, 20 February 2001 |
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| <i>Galić</i> Decision on Interlocutory Appeal Concerning Rule 92 bis (C) | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis (c), 7 June 2002 |
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| <i>Plavšić</i> Sentencing Judgement | <i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39 & 40/1-S, Sentencing Judgement, 27 February 2003 |
| <i>Simić</i> Sentencing Judgement | <i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 |
| <i>Strugar</i> Interlocutory Appeal | <i>The Prosecutor v. Pavle Strugar, Miodrag Jokić & Others</i> , Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 November 2002 |
| <i>Tadić</i> Jurisdiction Decision | <i>Prosecutor v. Duško Tadić a/k/a "Dule"</i> , Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 |
| <i>Tadić</i> Trial Judgement | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997 |
| <i>Tadić</i> Sentencing Judgement I | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997 |
| <i>Tadić</i> Extension of Time-Limit Appeal Decision | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1, Tadić Appeals Chamber decision on Appellant's Motion for Extension of Time-Limit and Admission of Additional Evidence, 15 October 1998 |
| <i>Tadić</i> Appeal Judgement | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999 |
| <i>Tadić</i> Sentencing Judgement II | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A and IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999 |
| <i>Tadić</i> Sentencing Appeal Judgement | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A and IT-94-1-A bis, Judgement in Sentencing Appeals, 26 January 2000 |
| <i>Talić</i> Decision on Motion for Review | <i>Prosecutor v. Duško Talić</i> , Case No. IT-94-1-R, Decision on Motion for Review, 30 July 2002 |
| <i>Todorović</i> Sentencing Judgement | <i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001 |
| <i>Vasiljević</i> Trial Judgement | <i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002 |

ICTR JUDGEMENTS

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| <i>Akayesu</i> Trial Judgement | <i>Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Judgement, 2 September 1998 |
| <i>Kambanda</i> Sentencing Judgement | <i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR 97-23-S, Sentencing Judgement, 4 September 1998 |
| <i>Kayishema</i> Trial Judgement | <i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999 |

2. Glossary - Main Abbreviations

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| ABiH | Armed Forces of the Republic of Bosnia and Herzegovina |
| Additional Protocol I | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977 |
| Additional Protocol II | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977 |
| BiH | Bosnia and Herzegovina |
| C | Chamber exhibit |
| D | Defence exhibit admitted into evidence |
| ECHR | European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1959 |
| Geneva Convention I | Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces in the Field, August 12, 1949, 75 UNTS 31 |
| Geneva Convention II | Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, August 12, 1949, 75 UNTS 85 |
| Geneva Convention III | Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 75 UNTS 135 |
| Geneva Convention IV | Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 UNTS 2 |
| HVO | Croat Council of Defence |
| ICC | International Criminal Court |
| ICCPR | International Convention on Civil and Political Rights, December 16, 1966, 999 UNTS 171 |
| ICC Statute | Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9 |
| ICJ | International Court of Justice |
| ICRC | International Committee of the Red Cross |
| ICRC Commentary | <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> , Yves Sandoz, Christophe Swinarski, Bruno Zimmerman (ed.), International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1987 |
| ICTR | 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 |
| ICTR Rules | Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, July 5, 1995, as amended |
| ICTR Statute | Statute of the International Criminal Tribunal for Rwanda, <i>in</i> Security Council Resolution 955, UN SCOR, 49 th Year, Res. And Dec., at 15, UN Doc. S/INF/50 (1994) |
| ICTY | 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 |

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| ILM | International Legal Materials |
| IMT | International Military Tribunal sitting at Nuremberg, Germany |
| IMTFE | International Military Tribunal for the Far-East sitting at Tokyo, Japan |
| Indictment Period | From 10 September 1992 to 10 August 1994 |
| LIMA | UNMO position checking SRK (“Lukavica”) forces |
| LNOJ | League of Nations Official Journal |
| JNA | Yugoslav Peoples’ Army (Army of the Socialist Federal Republic of Yugoslavia) |
| MUP | Republika Srpska Ministry of the Interior Police |
| NGO | Non-governmental organisation |
| Nuremberg Charter | Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, Berlin, 6 October 1945 |
| Nuremberg Judgement | Trial of Major War Criminals Before the International Military Tribunal, Nuremberg, 14 Nov 1945 – 1 Oct 1946 |
| OTP/Prosecution | Office of the Prosecutor |
| P | Prosecution Exhibit admitted into evidence |
| p. | Page |
| pp | Pages |
| PAPA | UNMO position checking ABiH (Presidency) forces |
| Para. | Paragraph |
| Paras | Paragraphs |
| Records | Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 17 vols. (Geneva: ICRC, 1974-77) |
| Rules | Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, March 14, 1994, as amended |
| Rules of Detention | Rules Governing the Detention of Persons Awaiting Trial or Appeal Before Detention the Tribunal or Otherwise Detained on the Authority of the Tribunal |
| Sassòli & Bouvier | M. Sassòli and A. A. Bouvier (eds.), <i>How Does Law Protect in War?</i> (Geneva: ICRC, 1999) |
| SDA | Party of Democratic Action |
| SDS | Serbian Democratic Party |
| SFOR | Multinational Stabilisation Force |
| SFRY | Socialist Federal Republic of Yugoslavia |
| SRBiH | Republic of Serbian People of Bosnia and Herzegovina (later <i>Republika Srpska</i>) |
| SRK | Sarajevo Romanija Corps |
| Statute | Statute of the International Criminal Tribunal for the Former Yugoslavia |
| T. | Transcript page from hearing. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript. Minor differences may therefore exist between the pagination therein and that of the final transcript released to the public |
| TO | Territorial Defence forces |
| Tokyo Charter | Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946 |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| UNMO | United Nations Military Observer |
| UNPROFOR | United Nations Protection Force |
| UNTS | United Nations Treaty Series |
| VJ | Army of the Federal Republic of Yugoslavia |
| VRS | Republika Srpska Army |

D. Maps

810. The two maps below are not authoritative and do not necessarily reflect any finding of the Trial Chamber; they are attached exclusively in order to assist readers to better orient themselves. Map 1 is a portion, reduced in size, of a map admitted into evidence as Exhibit C2, originating from the SRK. This Map shows confrontation lines in the wider area of Sarajevo (“CPK” being the cyrillic form for “SRK” and “1.K” identifying the ABiH 1st Corps). Map 2 is a reduced copy of a large map, parts of which were presented in Court to witnesses to mark certain positions. This Map shows the narrower Sarajevo area; topographical and geographical data have been added.