

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

(UKRAINE V. RUSSIAN FEDERATION)

**VOLUME XIV OF THE ANNEXES
TO THE MEMORIAL
SUBMITTED BY UKRAINE**

12 JUNE 2018

TABLE OF CONTENTS

- Annex 465 Prosecutor v. Martić, Case No. IT-95-11-T, Trial Chamber Judgment, paras. 4 n.4, 472 (12 June 2007)
- Annex 466 Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, Trial Chamber Judgment, p. 291, para. 881 (12 December 2007)

Annex 465

Prosecutor v. Martić, Case No. IT-95-11-T, Trial Chamber Judgment, paras. 4 n.4, 472 (12 June 2007)



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-95-11-T
Date: 12 June 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Bakone Justice Moloto, Presiding
Judge Janet Nosworthy
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Judgement of: 12 June 2007

PROSECUTOR

v.

MILAN MARTIĆ

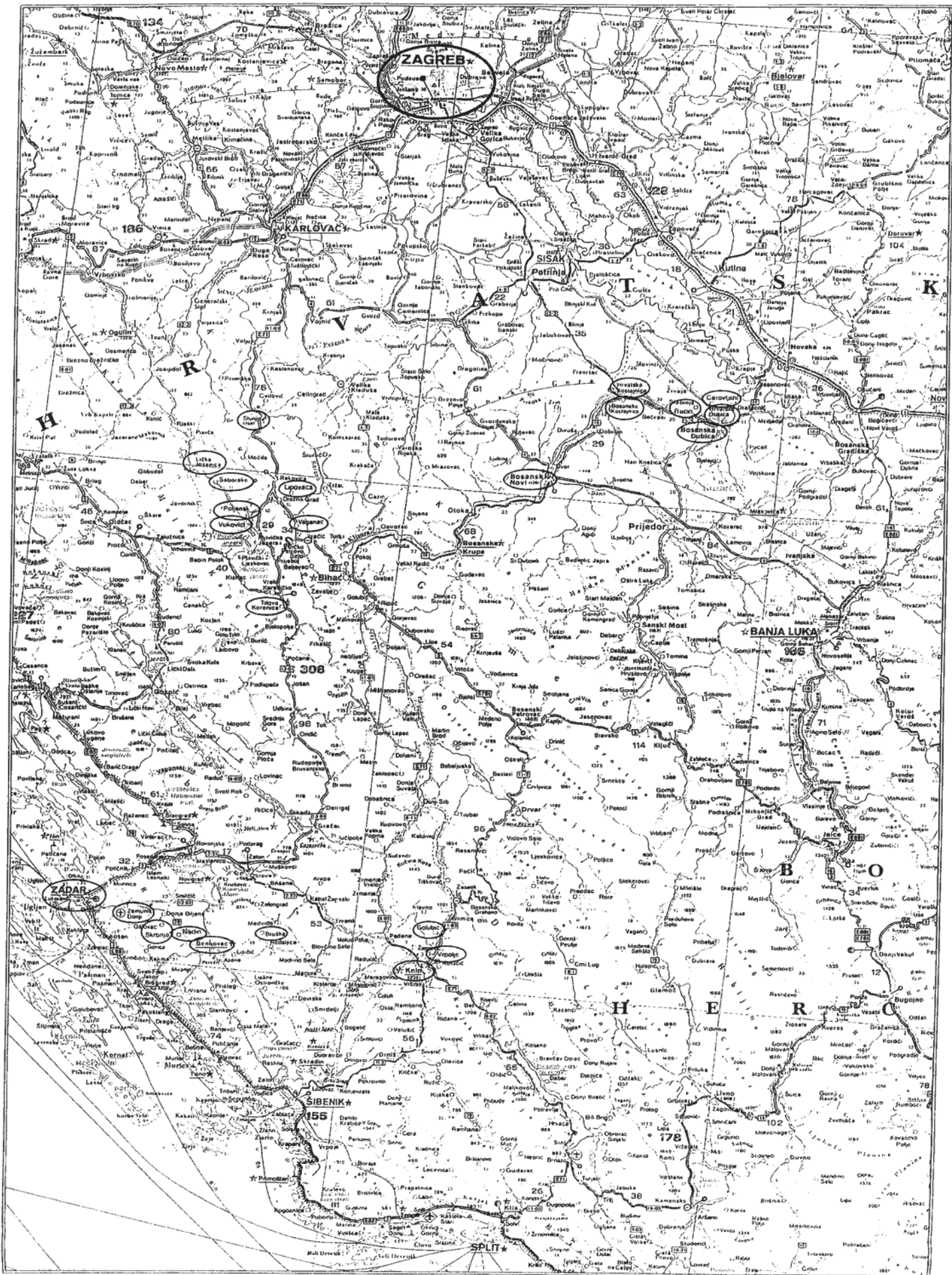
JUDGEMENT

The Office of the Prosecutor:

Mr. Alex Whiting
Ms. Anna Richterova
Mr. Colin Black
Ms. Nisha Valabhji

Counsel for Milan Martić:

Mr. Predrag Milovančević
Mr. Nikola Perović



Map of the Balkan Peninsula, showing major cities, roads, and rivers. 1960 Edition, scale 1:500,000.

Contents

List of abbreviations and acronyms	5
I. INTRODUCTION	7
A. The Accused Milan Martić.....	7
B. Overview of the case against Milan Martić.....	7
C. Interpretation of the Indictment.....	9
D. General considerations regarding the evaluation of evidence	12
1. General.....	12
2. Witnesses whose evidence has been assessed with particular caution	15
II. APPLICABLE LAW	18
A. General requirements of Article 3 of the Statute	18
1. Generally.....	18
2. Existence of an armed conflict and the nexus requirement	19
3. The <i>Tadić</i> conditions.....	20
4. “Persons taking no active part in the hostilities”	21
B. General requirements of Article 5 of the Statute.....	21
1. Elements.....	21
2. Applicability of Article 5 to non-civilians	23
C. Murder.....	27
D. Extermination.....	28
E. Attacks on civilians	29
F. Torture	30
G. Cruel treatment.....	32
H. Other inhumane acts.....	32
I. Imprisonment.....	33
J. Wanton destruction of villages, or devastation not justified by military necessity.....	34
K. Destruction or wilful damage done to institutions dedicated to education or religion	36
L. Plunder of public or private property	37
M. Deportation and other inhumane acts (forcible transfer).....	38
N. Persecution.....	40
O. The Defence’s challenge to the concept of JCE	42
III. FACTUAL FINDINGS	43
A. Background	43
B. The SAO Krajina.....	44
1. Development of the SAO Krajina.....	44
2. Support provided to the SAO Krajina.....	49
3. Training camp in Golubić and “Martić’s Police”	51
C. The RSK.....	53
1. Development of the RSK.....	53
2. Cooperation with and assistance from Serbia.....	58
D. Armed clashes between Serb and Croatian forces	60
1. During spring and summer of 1991	60
2. Hrvatska Dubica, Cerovljani and Baćin.....	63
(a) Take-over of Hrvatska Kostajnica and Hrvatska Dubica	63
(b) Hrvatska Dubica.....	64
(c) Cerovljani.....	68
(d) Baćin and surroundings.....	69
(e) Destruction in Cerovljani, Hrvatska Dubica, and Baćin after December 1991.....	71
3. Saborsko area	72
(a) Municipality of Plaški	72

(b) Lipovača.....	73
(c) Poljanak and Vukovići	76
(d) Saborsko.....	79
(i) Attack on Saborsko on 12 November 1991	81
(ii) Killings in Saborsko on 12 November 1991.....	83
4. Škabrnja and Nadin.....	86
(a) Škabrnja, Nadin and surrounding villages	86
(b) Situation in Škabrnja, Nadin and surroundings prior to 18 November 1991	86
(c) Attack on Škabrnja and Nadin on 18 and 19 November 1991	88
(d) Evidence of units present in Škabrnja.....	90
(e) Killings in Škabrnja and Nadin	92
(i) Killings at Slavko Šegarić’s house in Ambar on 18 November 1991	92
(ii) Killings at Petar Pavičić’s house in Škabrnja on 18 November 1991	93
(iii) Killings at Pere Sopić’s house in Nadin on 19 November 1991	95
(iv) Other killings in Škabrnja and Nadin	96
(f) Investigations into the events in Škabrnja and Nadin on 18 and 19 November 1991	100
(g) Destruction in Škabrnja and Nadin	100
5. Bruška	101
E. Detention-related crimes	104
1. SJB in Titova Korenica.....	104
2. Detention facilities in Benkovac.....	105
3. Detention facilities in Knin.....	105
(a) Detention at the JNA 9 th Corps barracks	106
(b) Detention facility at the old hospital in Knin.....	107
F. Crimes of deportation and forcible transfer.....	110
G. Attacks on Zagreb on 2 and 3 May 1995	113
1. “Operation Flash”	113
2. Shelling of Zagreb.....	114
(a) 1 May 1995 – Preparation for attack.....	114
(b) 2 May 1995	114
(c) 3 May 1995.....	116
3. Involvement of the RSK leadership in the shelling of Zagreb.....	117
H. Acts of persecution carried out against non-Serbs in the SAO Krajina and the RSK	120
1. 1991.....	120
2. 1992.....	121
3. 1993-1995	122
I. The political objective of the Serb leadership	122
J. Milan Martić’s knowledge of and reactions to crimes committed.....	125
IV. RESPONSIBILITY OF MILAN MARTIĆ	129
A. Findings on the crimes charged	129
1. General requirements of Article 3 of the Statute	129
2. General requirements under Article 5 of the Statute	131
3. Counts 1, 3 to 4, and 12 to 14 – Persecution, murder, destruction and plunder (Articles 3 and 5).....	132
(a) Hrvatska Dubica.....	132
(b) Cerovljani.....	134
(c) Baćin and surroundings	135
(d) Lipovača and neighbouring hamlets	137
(e) Vukovići and Poljanak	138
(f) Saborsko	140
(g) Vaganac.....	142
(h) Škabrnja	143
(i) Bruška	147
4. Count 2 – Extermination.....	148

5. Counts 1 and 5 to 9 – Detention-related crimes and persecution	149
(a) Detention facility at the JNA 9 th Corps barracks in Knin.....	149
(b) Detention facility at the old hospital in Knin	150
(c) Detention facility at the SJB in Titova Korenica	151
(d) Detention facilities in Benkovac	152
6. Counts 1, 10 and 11 – Persecution, deportation and forcible transfer.....	153
7. Counts 1 and 15 to 19 – Shelling of Zagreb on 2 and 3 May 1995	155
B. Findings on the individual criminal responsibility of Milan Martić	156
1. JCE pursuant to Article 7(1) of the Statute	156
2. Ordering pursuant to Article 7(1) of the Statute	158
3. Findings on Counts 1 to 14	158
(a) Common purpose	158
(b) Plurality of persons	160
(c) Milan Martić’s participation in the JCE	161
4. Findings on Counts 1 and 15 to 19	164
(a) Milan Martić’s ordering of the shelling of Zagreb on 2 and 3 May 1995.....	164
(b) Military targets in Zagreb and the nature of the M/87 Orkan	165
(c) Defence argument on reprisals	166
(d) General requirements of Article 3 and Article 5 of the Statute.....	168
(e) Counts 15 and 16 – Murder.....	169
(f) Counts 17 and 18 – Inhumane acts under Article 5(i) and cruel treatment under Article 3 ..	169
(g) Count 19 – Attacks on civilians under Article 3.....	169
(h) Count 1 – Persecution	170
C. Cumulative convictions.....	170
D. Summary of the Trial Chamber’s findings in relation to each count.....	172
V. SENTENCING LAW AND FACTS	173
A. Applicable law	173
1. Principles and purposes of sentencing	175
2. Gravity and individual circumstances of the convicted person	175
3. Aggravating and mitigating factors	177
(a) Aggravating circumstances	178
(b) Mitigating circumstances	180
4. General practice regarding sentencing in the former Yugoslavia.....	183
VI. DISPOSITION.....	185
ANNEX A – PROCEDURAL HISTORY.....	187
A. Pre-trial proceedings	187
B. Trial proceedings.....	189
1. Overview.....	189
2. Testimony and evidence of Milan Babić	191
3. Site visit	193
ANNEX B – LIST OF CASES, SOURCES AND SHORT CITES	194
C. ICTY.....	194
D. ICTR.....	197
E. ICJ.....	197
F. Other	197

List of abbreviations and acronyms

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
APC	Armoured Personnel Carrier (vehicle)
BiH	Bosnia and Herzegovina
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Defence	Defence of Milan Martić
Defence Final Trial Brief	Final trial brief of Milan Martić, filed confidentially on 5 Jan 2007; public version filed on 17 Jan 2007
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950
Ex.	Exhibit
fn	Footnote
FNU	First name unknown
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949
Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949
Geneva Conventions	Geneva Conventions I to IV of 12 August 1949
HDZ	Croatian Democratic Union
HVO	Croatian Armed Forces
ICCPR	International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171
ICRC	International Committee of the Red Cross
Indictment	Second Amended Indictment in this case, filed on 9 Dec 2005
JCE	Joint criminal enterprise pursuant to Article 7(1) of the Statute
JNA	Yugoslav People's Army
MUP	Ministry of Interior
p.	Page
pp	Pages
para.	Paragraph
paras	Paragraphs
PJM	Special Police Brigade
Prosecution	The Office of the Prosecutor
Prosecution Final Trial Brief	Final Trial Brief of the Prosecution, filed confidentially on 5 Jan 2007; public version filed on 17 Jan 2007
Rules	Rules of Procedure and Evidence of the Tribunal
Rules of Detention	Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the ICTY
RS	Republika Srpska in Bosnia and Herzegovina
RSK	Republic of Serbian Krajina
SAO	Serbian Autonomous District
SDB	State Security Service
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia

SJB	Public Security Station, <i>i.e.</i> police station
SNC	Serbian National Council
Statute	Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827, as amended by Resolution 1481
SUP	Secretariat for Internal Affairs
SVK	Army of the Republic of Serbian Krajina
T.	Page in the transcript of this trial
TO	Territorial Defence
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNCRO	United Nations Confidence Restoration Operation
UNDU	United Nations Detention Unit
UNMO	United Nations Military Observers
UNPA	United Nations Protected Area
UNPROFOR	United Nations Protection Force
VRS	Army of the Republika Srpska
VJ	Army of the Federal Republic of Yugoslavia
Z-4 Plan	Zagreb 4 Plan
ZNG	Croatian National Guards Corps

I. INTRODUCTION

A. The Accused Milan Martić

1. Milan Martić was born on 18 November 1954 in the village of Žagrović, Knin municipality in the Republic of Croatia, SFRY.¹ He graduated from the Post-Secondary Police School in Zagreb and between 1976 and 1981 worked as a policeman at the Public Security Station (“SJB”) in Šibenik. After 1982, Milan Martić was a Junior Police Inspector in Knin and was eventually promoted to Chief of the SJB.²

2. From 4 January 1991 until August 1995, Milan Martić held various positions within the Serbian Autonomous Region of Krajina (“SAO Krajina”) and the Republic of Serbian Krajina (“RSK”) governments, including Chief of the Police in Knin, Secretary for Internal Affairs of the SAO Krajina, Minister of Defence of the SAO Krajina, Deputy Commander of the TO of the SAO Krajina, Minister of the Interior of the SAO Krajina and of the RSK, and President of the RSK.³

B. Overview of the case against Milan Martić

3. The Prosecutor (“Prosecution”) charges Milan Martić with 19 counts brought under Article 3 and Article 5 of the Statute of the Tribunal (“Statute”).⁴

4. The Prosecution alleges that Serb forces, comprised of, *inter alia*, units of the Yugoslav People’s Army (“JNA”), later the Yugoslav Army (“VJ”), the Republika Srpska (“RS”) army (“VRS”), the Territorial Defence (“TO”), and forces of the Ministry of the Interior (“MUP”) of both the SAO Krajina, later the RSK, and the Republic of Serbia (“Serbia”), including the police forces of the SAO Krajina and the RSK, commonly referred to as “Martić’s Police”, and paramilitary units, committed persecutions in the SAO Krajina and the RSK between August 1991 and December 1995. It is further alleged that these acts of persecution included the extermination and murder of hundreds of Croats, Muslims and other non-Serb civilians, including in the villages of Hrvatska Dubica, Cerovljani, Baćin, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača (and neighbouring villages), Škabrnja, Nadin, and Bruška (including the hamlet of Marinovići), the prolonged and routine imprisonment of hundreds of Croats, Muslims and non-Serb

¹ Ex. 76. *See also* Ex. 493, p. 1, which provides Milan Martić’s birthplace as “Žagorić near Knin”.

² Ex. 493, p. 1.

³ *See infra* paras 135, 151, 156.

⁴ Article 3: Counts 4 and 16: Murder, Count 8, Torture, Counts 9 and 18: Cruel treatment, Count 12: Wanton destruction of villages, or devastation not justified by military necessity, Count 13: Destruction or wilful damage done to institutions dedicated to education or religion, Count 14: Plunder of public or private property, Count 19: Attacks on civilians. Article 5: Count 1: Persecutions, Count 2: Extermination, Counts 3 and 15: Murder, Count 5: Imprisonment, Count 6: Torture, Count 7 and 17: Inhumane Acts, Count 10: Deportation, Count 11: Other inhumane Acts (Forcible transfer).

civilians in specified detention facilities, the torture and inhumane treatment of prisoners, and the deportation and forcible transfer of tens of thousands of non-Serb civilians from the territory of the SAO Krajina and the RSK. In addition, it is alleged that public and private property in the SAO Krajina and the RSK was intentionally destroyed or plundered, including buildings dedicated to religion or education, that restrictive and discriminatory measures were imposed against the Croat, Muslim and other non-Serb civilian population. Moreover, it is alleged that unlawful attacks were carried out on Zagreb and undefended Croat and Muslim villages.

5. For each count, individual criminal responsibility is charged under both Article 7(1) and (3) of the Statute. The Prosecution alleges that Milan Martić participated in a joint criminal enterprise (“JCE”) together with, among others, Slobodan Milošević, Veljko Kadijević, Blagoje Adžić, Milan Babić, Jovica Stanišić, Franko “Frenki” Simatović, Radovan Karadžić, Ratko Mladić and other named and unnamed individuals of, *inter alia*, the JNA, later the VJ, the RSK army (“SVK”), the VRS, the TO, and forces of the MUP of both the SAO Krajina, later the RSK, and Serbia, including “Martić’s Police”, and the State Security Service (“SDB”) of Serbia, and Serb paramilitary forces. It is alleged that the JCE came into existence before 1 August 1991 and continued until at least August 1995, and that the common purpose of the JCE was “the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia [“Croatia”] and large parts of the Republic of Bosnia and Herzegovina [“BiH”] in order to make them part of a new Serb-dominated state.”⁵ The Prosecution alleges that all crimes charged in the Indictment were within the object of the JCE and that at all relevant times Milan Martić held the necessary state of mind for the commission of each of these crimes. In the alternative, the Prosecution alleges that the crimes enumerated in Counts 1 to 9 and 12 to 19 were a natural and foreseeable consequence of the execution of the common purpose of the JCE and that Milan Martić was aware that such crimes were the possible outcome of the execution of the JCE.

6. The Prosecution alleges that Milan Martić participated in the JCE by, *inter alia*, creating, financing, supplying, training and directing the “Martić’s Police” and the TO of the SAO Krajina and the RSK, and by creating, training and directing special police forces of the SDB of Serbia. Moreover, the Prosecution alleges that Milan Martić participated in the planning, preparation and execution of the take-over of territories in the SAO Krajina and RSK territory, and that Milan Martić personally participated in military actions and subsequent crimes of these forces, including in the subsequent removal of the non-Serb population.

⁵ Indictment, paras 4, 6.

7. The Prosecution also charges Milan Martić with responsibility for each count pursuant to Article 7(1) for having planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, execution and commission of these crimes.

8. The Prosecution alleges that Milan Martić, by virtue of the various positions he held from 1991 to 1995 in the SAO Krajina and the RSK, is individually criminally responsible pursuant to Article 7(3) of the Statute as a superior for failing to prevent or punish the crimes charged and allegedly committed by the above-mentioned forces.

C. Interpretation of the Indictment

9. Pursuant to Article 18(4) of the Statute, an indictment shall contain “a concise statement of the facts and the crime or crimes with which the accused is charged”. According to the well established jurisprudence of the Tribunal, this means that the indictment must set out the material facts underpinning the charges “with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.”⁶

10. Some paragraphs of the Indictment identify specific victims and/or sites of alleged crimes,⁷ while other paragraphs of the Indictment use a non-exhaustive enumeration of victims and crime sites.⁸ The Trial Chamber also heard evidence regarding victims and sites of crimes, which are not specified in the Indictment. Having regard to the right of the accused to be informed promptly and in detail of the nature and cause of the charges against him,⁹ and in view of the degree of specificity required in the Indictment, the Trial Chamber has considered the evidence as described below.¹⁰

⁶ *Kupreškić et al.* Appeal Judgement, para. 88. See also *Naletilić and Martinović* Appeal Judgement, para. 23; *Stakić* Appeal Judgement, para. 116; *Kvočka et al.* Appeal Judgement, para. 28; *Blaškić* Appeal Judgement, para. 209.

⁷ E.g. paras 26, 28-29, 32-34 and 39 of the Indictment.

⁸ E.g. paras 23(a), 23(b)-(d), 30-31 of the Indictment.

⁹ Article 21(4) (a) of the Statute.

¹⁰ The Appeals Chamber in *Kupreškić et al.* held that: “A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment *is the nature of the alleged criminal conduct charged to the accused*,” *Kupreškić et al.* Appeal Judgement, para. 89 (emphasis added). In a case based upon individual responsibility where it is *not* alleged that the accused personally committed the acts for which he is to be held responsible, what is most material is the conduct of the accused by which he may be found to have planned, instigated, ordered, committed or otherwise aided and abetted, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 Feb 2000, para. 18. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted the alleged crimes, the Prosecution is required to identify the “particular acts” or “the particular course of conduct” on the part of the accused which forms the basis for the charges in question, *Naletilić and Martinović* Appeal Judgement, para. 24. If the Prosecution relies upon a theory of JCE, it must plead the purpose of the enterprise, the identity of the participants, and the nature of the accused’s participation in the enterprise, *Kvočka et al.* Appeal Judgement, para. 28. The degree of precision required for the material facts relating to those acts of other persons is higher than that required for an allegation of superior responsibility, but lower than where the accused is alleged to have personally done the acts in question, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 Feb 2000, para. 18. See also *Prlić Decision*, para. 46. Furthermore, in certain cases “the sheer scale of the alleged crimes ‘makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes,’” *Kupreškić et al.* Appeal Judgement, para. 89.

11. In determining the innocence or guilt of Milan Martić in relation to the charges in paragraphs 26, 28, 29, and 32 to 34 of the Indictment, in light of the wording of these paragraphs,¹¹ the Trial Chamber has only considered evidence concerning victims listed in Annex 1 of the Indictment.

12. In determining the innocence or guilt of Milan Martić in relation to the charges in paragraphs 27, 30 and 31 of the Indictment, in light of the wording of these paragraphs, the Trial Chamber has considered evidence concerning victims who are not listed in Annex I to the Indictment but who are proven beyond reasonable doubt as having been killed during the events described in those paragraphs.¹²

13. In determining the innocence or guilt of Milan Martić under Count 1 (Persecutions), the Trial Chamber has considered evidence concerning unlisted victims of the events described in paragraph 23(a) of the Indictment only with respect to the events described in paragraphs 27, 30 and 31 of the Indictment.

14. Concerning the events described in paragraphs 23(b) to (d) of the Indictment relevant to crimes allegedly committed in detention facilities, the Trial Chamber is of the view that the range of crime sites shall correspond to the scope of paragraph 39 of the Indictment.

15. As to paragraph 39 of the Indictment, and in relation to Count 5 (Imprisonment), Counts 6 and 8 (Torture), Count 7 (Inhumane acts) and Count 9 (Cruel treatment), in light of the wording of paragraph 38 of the Indictment, the Trial Chamber finds that the relevant time period applicable to these counts is from August 1991 to December 1992. The Trial Chamber finds that this time period shall also govern paragraphs 23(b) to (d) of the Indictment relating to Count 1 (Persecutions), which concern the same events.

16. In determining the innocence or guilt of Milan Martić under Count 12 (Wanton destruction or devastation), Count 13 (Destruction or wilful damage done to institutions dedicated to education or religion) and Count 14 (Plunder), in light of the wording of paragraph 47 of the Indictment, the

¹¹ These paragraphs provide an exhaustive enumeration of victims allegedly killed in each village and further identify each victim by referring to Annex I to the Indictment listing their names. Paragraph 26 refers to “fifty-six victims” allegedly killed in a location near the village of Baćin and “thirty civilians from Baćin and twenty-four from the villages Dubica and Cerovljani” allegedly killed into an unknown location. Paragraph 28 refers to “seven civilians” allegedly killed in Lipovača. Paragraph 29 refers to the alleged execution of “ten civilians” in Vukovići near Poljanak. Paragraph 32 refers to the killing of “seven non-Serb civilians” in the village of Nadin; paragraph 34 refers to “ten civilians, among them nine Croats” allegedly killed in the village of Bruška (emphasis in original).

¹² These paragraphs provide a non-exhaustive enumeration of victims allegedly killed in each village. Paragraph 27 alleges that members of Martić’s Police and other Serb forces entered the villages of Saborsko, Poljanak and Lipovača and they allegedly killed “all remaining non-Serb inhabitants they found”. Paragraph 30 alleges that “members of Martić’s Police and the JNA and the TO entered the village of Saborsko where they allegedly killed at least twenty-nine

Trial Chamber has considered only evidence concerning destruction and plunder allegedly committed in the villages listed in paragraph 47 during the period between August and December 1991. The Trial Chamber further finds that this time period shall also govern paragraph 23(j) of the Indictment relating to Count 1, which concerns the same events.

17. There are situations where the Trial Chamber is satisfied that the Defence has been put on notice of the Prosecution's case regarding a particular unspecified victim or crime site that is not specifically included in the Indictment, in a manner which has allowed the Defence to prepare its case adequately.¹³ In such cases, the Trial Chamber has considered this evidence as a basis for a conviction under the relevant counts.

18. The Trial Chamber notes that in cases where the evidence on unspecified victims and crime sites was not relied upon to determine the innocence or guilt of Milan Martić, such evidence has been utilised, where appropriate, as corroborative of a consistent pattern of conduct, from which inference may be drawn relevant to the elements of crimes with which Milan Martić is charged.¹⁴

19. The Trial Chamber notes that the Prosecution has decided "not to pursue those crimes alleged in the indictment that occurred in Bosnia and Herzegovina, with the exception of those crimes occurring in Bosanski Novi (including Bosanski [*sic*] Kostajnica [...])."¹⁵ At the Rule 98 *bis* stage of the trial, the Prosecution stated that it had reviewed the evidence and concluded that the evidence did not, even under the standard applicable pursuant to Rule 98 *bis*, support a conviction on the factual allegations under Counts 5 to 9 concerning detention at the Bosanska Kostajnica SJB and the Bosanski Novi SJB.¹⁶ The Trial Chamber will therefore only consider evidence relating to

Croat civilians". Paragraph 31 alleges that members of Martić's Police and other Serb forces entered Škabrnja and allegedly "killed at least thirty-eight non-Serb civilians in their homes or in the streets" (emphasis in original).

¹³ The Prosecution Pre-Trial Brief, its opening statement and Rule 65 *ter* witness summaries provided to the Defence sufficiently in advance could satisfy this requirement, *Naletilić and Martinović* Appeal Judgement, paras 27, 45; *Kupreškić et al.* Appeal Judgement, paras 114-124; *Kvočka et al.* Appeal Judgement, paras 34, 43-54; *Gacumbitsi* Appeal Judgement, paras 55-58. The relevant factors to be considered should be: the timing of these filings, the relevance of the information to the ability of the accused to prepare his defence, and the impact of the newly-disclosed material facts on the Prosecution case, *Ntakirutimana* Appeal Judgement, para. 27; *Kupreškić et al.* Appeal Judgement, paras 119-121. The mere provision of witness statements or of potential exhibits by the Prosecution pursuant to the disclosure requirements does not suffice to inform an accused of material facts which the Prosecution intends to prove at trial, *Naletilić and Martinović* Appeal Judgement, para. 27; *Ntakirutimana* Appeal Judgement, para. 27, citing *Prosecution v. Radoslav Brdanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 Jun 2001, para. 62. The Defence's submissions at trial, for example in a motion for judgement of acquittal, Final Trial Brief or closing arguments, may in some instances assist in an assessment as to what extent the Defence was put on notice of the Prosecution's case and was able to respond to the Prosecution's allegations, *Naletilić and Martinović* Appeal Judgement, para. 27, citing *Kvočka et al.* Appeal Judgement, paras 52, 53; *Kordić and Čerkez* Appeal Judgement, para. 148. Cf. *Mrkšić et al. Decision*, para. 19.

¹⁴ Rule 93 of the Rules; *Kvočka et al.* Trial Judgement, fn 7, paras 547, 556; *Krnjelac* Trial Judgement, para. 230.

¹⁵ Prosecution's Estimate of Time Required for Prosecution Case, 23 November 2005, para. 2; Pre-Trial Conference, 12 Dec 2005, T. 222.

¹⁶ Indictment, paras 39 (d) and (e), respectively; Rule 98 *bis* arguments, 26 Jun 2006, T. 5889-5890.

Bosanski Novi and Bosanska Kostajnica under Counts 1 (except evidence under paragraph 23(b) of the Indictment, which concerns detention), 10 and 11.

D. General considerations regarding the evaluation of evidence

1. General

20. The Trial Chamber has considered the charges against Milan Martić in light of the entire trial record, and in this regard has carefully assessed and weighed the evidence in accordance with the Statute and its Rules of Procedure and Evidence (“Rules”). Where no guidance is given by these sources, it has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.¹⁷

21. Article 21(3) of the Statute provides that the accused shall be presumed innocent until proven guilty.¹⁸ The Prosecution therefore bears the burden of proving the guilt of the accused, and in accordance with Rule 87(A) of the Rules, the Prosecution must do so beyond reasonable doubt.¹⁹ In determining whether the Prosecution has done so with respect to each particular count, the Trial Chamber has carefully considered whether there is any reasonable conclusion available from the evidence other than the guilt of the accused.²⁰

22. Article 21(4)(g) of the Statute provides that no accused shall be compelled to testify against himself. In the present case, Milan Martić exercised his right not to testify.²¹ No adverse inferences were drawn from the fact that he did not testify.

23. Pursuant to Rule 84 *bis* of the Rules, Milan Martić made a statement on 13 December 2005.²² In accordance with Rule 84 *bis* (B) of the Rules, the Trial Chamber has considered the probative value, if any, of the statement and has found that the statement does not have any probative value.²³

¹⁷ Rule 89(B) of the Rules.

¹⁸ This provision is in accordance with all major human rights instruments, *see e.g.* International Covenant on Civil and Political Rights, Article 14(2); European Convention on Human Rights, Article 6(2).

¹⁹ *E.g. Krnojelac* Trial Judgement, para. 66; *Limaj et al.* Trial Judgement, para. 10. *See also Ntakirutimana* Appeal Judgement, para. 140; *Niyitegeka* Appeal Judgement, para. 60. The fact that the Defence has not challenged certain factual allegations contained in the Indictment does not mean that the Trial Chamber has accepted these facts to be proven. Furthermore, the Trial Chamber interprets the standard “beyond reasonable doubt” to mean a high degree of probability; it does not mean certainty or proof beyond a shadow of a doubt.

²⁰ *Čelibići* Appeal Judgement, para. 458.

²¹ Hearing, 24 Aug 2006, T. 7122.

²² Hearing, 13 Dec 2005, T. 296-318.

²³ With respect to the opening statement of Milan Martić, *see* Rule 84 *bis* (B) of the Rules.

24. The Trial Chamber issued a decision adopting guidelines on the standards governing the admission of evidence.²⁴ In addition to direct evidence, the Trial Chamber has admitted hearsay and circumstantial evidence.²⁵ In evaluating the probative value of hearsay evidence, the Trial Chamber has carefully considered all indicia of its reliability, including whether the evidence was “voluntary, truthful and trustworthy”, and has considered its content and the circumstances under which the evidence arose.²⁶ In some instances, the Trial Chamber has relied upon circumstantial evidence in order to determine whether or not a certain conclusion could be drawn. The Trial Chamber recalls that the conclusion must be the only reasonable conclusion available.²⁷

25. In evaluating the evidence given *viva voce*, the demeanour and conduct of witnesses has been considered. The Trial Chamber has also given due regard to the individual circumstances of a witness, including the witness’ possible involvement in the events and fear of self-incrimination, the witness’ relationship with Milan Martić and any protective measures granted to the witness. The Trial Chamber has also assessed the internal consistency of each witness’ testimony and other features of his or her evidence, as well as whether there is corroborating evidence. Mindful that the evidence presented in this case relates to events which occurred between 1991 and 1995, the Trial Chamber has in general not treated minor discrepancies between the evidence of witnesses, or between the evidence of a particular witness in court and his or her prior statement, as discrediting their evidence where that witness nevertheless recounted the essence of an incident charged in acceptable detail.²⁸

26. In some instances only one witness has given evidence of an incident with which Milan Martić has been charged. In this regard the Trial Chamber recalls that the Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration.²⁹

27. Pursuant to Rule 92 *bis* and Rule 92 *ter*, which allow the admission of written statements and former testimony of witnesses with or without cross-examination, the Trial Chamber has admitted such statements and testimony in lieu of *viva voce* testimony. As regards evidence in

²⁴ Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 Jan 2006 (“Guidelines”).

²⁵ Hearsay evidence is evidence of facts not within the testifying witness’ own knowledge, *Halilović Trial Judgement*, para. 15; *Blagojević and Jokić Trial Judgement*, para. 21. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999, para. 14. Circumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred, *Blagojević and Jokić Trial Judgement*, para. 21; *Brdanin Trial Judgement*, para. 35; Guidelines, para. 10.

²⁶ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on Defence Motion on Hearsay, 5 Aug 1996, para. 16. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 Feb 1999, para. 15, cited in the Guidelines, Annex, para. 8.

²⁷ *Čelebići Appeal Judgement*, para. 458.

²⁸ *Kupreškić et al. Appeal Judgement*, para. 31. See also *Čelebići Appeal Judgement*, paras 485, 496-498.

²⁹ *Tadić Appeal Judgement*, para. 65; *Aleksovski Appeal Judgement*, para. 62; *Kupreškić et al. Appeal Judgement*, para. 33.

statements and testimony admitted without cross-examination, the Trial Chamber recalls that “evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement”.³⁰ Such “other evidence” may include other witnesses’ testimony, documentary evidence or video evidence.³¹

28. The Parties tendered into evidence a statement of agreed facts pursuant to Rule 65 *ter* (H). The Trial Chamber admitted the evidence based on the agreed facts subject “to the tests of relevance, probative value and reliability” in accordance with Rule 89 of the Rules.³²

29. The Trial Chamber has also assessed and weighed the testimony of expert witnesses. When weighing an expert’s oral and written evidence, the Trial Chamber considered factors such as “the professional competence of the expert, the methodologies used by the expert and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.”³³ In addition, the Trial Chamber has duly taken into consideration all factors relevant to the position or positions held by an expert witness, such as his or her status as an employee of the Prosecution or a party-related agency, as well as his or her involvement in the respective party’s case preparations.³⁴ The Trial Chamber also carefully examined the limitation of the expertise of each expert witness and the relevance and reliability of his or her evidence.³⁵

³⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis* (C), 7 Jun 2002, fn 34.

³¹ *Blagojević and Jokić Trial Judgement*, para. 26; *Halilović Trial Judgement*, para. 19.

³² *Halilović Trial Judgement*, para. 20; *Blagojević and Jokić Trial Judgement*, para. 28. *See also Prosecutor v. Vidoje Blagojević and Dragan Jović*, Case No. IT-02-60-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 Dec 2003, para. 13.

³³ *Vasiljević Trial Judgement*, para. 20; *Blagojević and Jokić Trial Judgement*, para. 27.

³⁴ The Trial Chamber notes in this regard Reynaud Theunens, who is an employee of the Office of the Prosecutor of the ICTY and who was accepted as a military expert for the Prosecution; Ivan Grujić, who is the President of the Croatian Government Commission for Detainees and Missing Persons and Assistant Minister of the government of the Republic of Croatia and who was accepted as an expert in the field of exhumation for the Prosecution; Davor Strinović, who is a member of the Croatian Government Commission for Detainees and Missing Persons and who was accepted as a forensic expert for the Prosecution; Jožef Poje who is an employee of the Ministry of Defence of the Republic of Slovenia and who was accepted as an artillery expert for the Prosecution; and Mladen Lončar who is a coordinator of the National Programme of Psychosocial Aid to the War Victims within the government of the Republic of Croatia and who was accepted as an expert in the field of psychiatry for the Prosecution. *See also* Decision on Defence’s Motion to Exclude the Evidence of Reynaud Theunens and to Call an Independent Military Expert with Confidential Annexes A, B, C, D and E, 28 Nov 2006, p. 5; Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006, paras 39-41. *See further Prosecutor v. Milan Milutinović et al.*, Oral Decision, 13 Jul 2006, T. 840-844. *See also Milutinović et al. Decision*, para. 10.

³⁵ In this regard, the Trial Chamber is of the view that the factors to be examined in determining the admission of an expert report, indicated in its Decision on Defence’s Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 *bis*, 9 November 2006, paras 5-12, are *mutatis mutandis* applicable when assessing the weight to be attached to an expert’s evidence in light of the entire trial record. The Trial Chamber further observes that an expert witness may not offer his opinion on the criminal liability of the accused, a matter which falls within the sole jurisdiction of the Chamber at the close of the trial, Decision on Defence’s Submission on the Expert Report of Milisav Sekulić Pursuant to Rule 94 *bis*, and on Prosecution’s Motion to Exclude Certain Sections of the Military Expert Report of Milisav Sekulić, and on Prosecution Motion to Reconsider Order of 7 November 2006, 13 Nov 2006, p. 5 with further references.

30. In order to assess the authenticity of documentary evidence, the Trial Chamber considered the source of the evidence and its chain of custody, to the extent known. The Trial Chamber did not consider unsigned, undated or unstamped documents *a priori* to be void of authenticity. Furthermore, when the Trial Chamber was satisfied of the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts.³⁶ The Trial Chamber evaluated all evidence within the context of the trial record as a whole.³⁷

31. Between 25 and 30 September 2006, the Trial Chamber and the Parties conducted a site visit to locations in the Republic of Croatia. The locations visited were Zagreb, Hrvatska Dubica, Cerovljani, Baćin, Slunj, Hrvatska Kostajnica, Dvor na Uni, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača, Vaganac, Hrvatska Korenica, Škabrnja, Nadin, Bruška (including the hamlet of Marinovići), Knin, Vrpolje and Golubić. The purpose of the site visit was to obtain first-hand observations of the geography and topography of the relevant areas, which are of direct consequence to the counts with which Milan Martić is charged.

2. Witnesses whose evidence has been assessed with particular caution

32. The Trial Chamber considers that the testimony of the following witnesses should be assessed with particular caution in light of the circumstances surrounding their testimony: Milan Babić, Ari Kerckanen, Witness MM-003 and Witness MM-079.

33. On 15 to 17, 20 and 21 February and 2 and 3 March 2006, Milan Babić, who was previously convicted by this Tribunal, testified as a witness for the Prosecution. However, Milan Babić died prior to the completion of his cross-examination.³⁸ The Trial Chamber has assessed the evidence of Milan Babić in light of the entire trial record, taking into account the full range of circumstances surrounding his testimony.³⁹ The Trial Chamber has given due consideration to the fact that the Defence was unable to complete the cross-examination of Milan Babić. In this regard, the Trial Chamber recalls the practice of the Tribunal requiring corroboration of evidence which has not been cross-examined when such evidence leads to a conviction of an accused.⁴⁰ In order to remedy or

³⁶ Guidelines, para. 5. The Trial Chamber notes in this respect that it has admitted into evidence excerpts of books, *e.g.* Ex. 24, Ex. 860, Ex. 238, Ex. 793, Ex. 476, Ex. 870, Ex. 874, Ex. 937, Ex. 931, Ex. 1011. The Trial Chamber has considered only the parts of the books admitted in light of the trial record as a whole.

³⁷ Guidelines, para. 6.

³⁸ The Defence filed a motion to exclude the evidence of Milan Babić from the trial record as a result of the incomplete cross-examination. On 9 June 2006, the Trial Chamber denied the motion. This Decision was affirmed by the Appeals Chamber on 14 September 2006. *See infra* paras 537-540. As a result, the evidence of Milan Babić as a whole remains in the record.

³⁹ In this regard, the Trial Chamber recalls its Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, paras 71-76.

⁴⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal concerning Rule 92 *bis*, 7 Jun 2002, in 34; *Brdanin* Trial Judgement, 1 Sep 2004, in 944; Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, paras 73-75.

ameliorate any potential unfairness which might arise out of the incomplete cross-examination, the Trial Chamber afforded the Defence an opportunity to file the following additional evidence: (i) a list of the portions of the evidence-in-chief of Milan Babić upon which it intended, but was unable, to cross-examine as a result of his death, and (ii) any documents it intended to use in order to challenge those specific portions of Milan Babić's evidence-in-chief.⁴¹ The Defence availed itself of this opportunity and tendered excerpts of Milan Babić's interviews with the Prosecution.⁴² In response, and in view of the fact that the Prosecution was unable to re-examine Milan Babić, the Prosecution tendered other portions of those same interviews.⁴³ The Trial Chamber gave close attention to these documents in its assessment of the parts of Milan Babić's testimony which were not subject to cross-examination or re-examination.

34. Furthermore, the Trial Chamber considered the alleged inconsistencies between Milan Babić's testimony and his prior testimony or statements as well as the fact that Milan Babić testified pursuant to a plea agreement.⁴⁴ In relation to the latter, the Trial Chamber took into consideration that some charges against Milan Babić were dropped without prejudice, that the Appeals Chamber had decided upon his appeal against his sentence at the time he appeared before this Trial Chamber, and that he testified under solemn declaration.⁴⁵ The Trial Chamber has also considered that Milan Babić pled guilty as co-perpetrator in a joint criminal enterprise which allegedly comprised, *inter alia*, Milan Martić. The Trial Chamber is therefore of the view that Milan Babić's evidence should be treated with caution and requires corroboration.

35. On 4, 5 and 9 May 2006, Ari Kerckanen, who was previously employed as a Criminal Intelligence Analyst by the Prosecution, testified before the Trial Chamber as a witness for the Prosecution.⁴⁶ His written statement was admitted in redacted form on 19 April 2006.⁴⁷ The Trial Chamber recalls that Ari Kerckanen was one of the organisers of, and participants in, several archive missions undertaken by the Prosecution, including to the Croatian State Archive, to collect documents on the MUP of the SAO Krajina and of the RSK.⁴⁸ The Trial Chamber observes that both during his testimony and in his written statement on the documents collected, Ari Kerckanen presented views on and drew conclusions from the information contained in the documents,

⁴¹ Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, para. 81.

⁴² Defence's Submission Pursuant to the Trial Chamber's Order of 9 Jun 2006, 4 Oct 2006.

⁴³ Prosecution's Response to the Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 16 Oct 2006.

⁴⁴ Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 2 May 2006, paras 22-31 and Annex A.

⁴⁵ Decision on Defence Motion to Exclude the Testimony of Witness Milan Babić, Together with Associated Exhibits, From Evidence, 9 Jun 2006, para. 76; *Blagojević and Jokić Trial Judgement*, para. 24.

⁴⁶ Ex. 459, p. 2; Ari Kerckanen, 4 May 2006, T. 3997.

⁴⁷ Decision on the Prosecution Motion for the Admission of a Statement of a Witness Pursuant to Rule 89(F), with Confidential Annex A, filed confidentially on 28 Apr 2006.

although he neither possesses expertise in this area nor personal knowledge of the information.⁴⁹ Accordingly, the Trial Chamber has attached no weight whatsoever to such views, conclusions and analyses of Ari Kerckanen.

36. Witness MM-003 testified from 8 to 10 March 2006. In its Final Trial Brief, the Prosecution accepted that the evidence of Witness MM-003 should be examined “with care” since “he sought and received assistance from the OTP in order to remain in the country where he is now living”.⁵⁰ The Defence submitted that this would be a factor negating the credibility of his testimony.⁵¹ On 9 April 2007, the Prosecution sent a letter to the Defence disclosing details of its assistance provided to Witness MM-003 in his asylum case.⁵²

37. Witness MM-079 testified on 31 March, 3 and 4 April 2006. In its Final Trial Brief, the Prosecution acknowledged that the evidence of Witness MM-079 should be “scrutinized with care” since “he said that he hoped to receive the assistance of the OTP to remain in the country where he is relocated.”⁵³ Witness MM-079 testified that after his lawyer had suggested that he contact the Tribunal to seek assistance with his asylum, he was interviewed by the Prosecution, and that he was subsequently informed that the Prosecution had written a letter to the authorities of the state where he currently lives to ask that he be allowed to stay there until he finishes testifying at the Tribunal.⁵⁴ The Trial Chamber notes that the Defence did not raise objections as to the credibility of this witness.

38. The Trial Chamber notes that both Witness MM-003 and Witness MM-079 sought assistance from the Prosecution, which also provided such assistance to both witnesses. The Trial Chamber therefore considers that there is significant doubt as to the credibility of both witnesses and has consequently given weight only to the parts of their respective evidence which are corroborated by other evidence.

⁴⁸ Ex. 459, pp 2-4.

⁴⁹ Prosecution’s Reply to Defense Response to Prosecution’s Motion for Admission of Statement of Witness MM-014 Pursuant to Rule 89 (F), filed confidentially on 19 Apr 2006, para. 6, where the Prosecution acknowledges that Ari Kerckanen lacks expertise.

⁵⁰ Prosecution Final Trial Brief, para. 44.

⁵¹ Witness MM-003, 10 Mar 2006, T. 2175-2188; Defence Closing Argument, 11 Jan 2007, T. 11330-11331.

⁵² Letter from Alex Whiting to Predrag Milovančević, dated 9 April 2007. The Trial Chamber was copied on this letter.

⁵³ Prosecution Final Trial Brief, para. 85; Witness MM-079, 31 Mar 2006, T. 3025-3028.

⁵⁴ Witness MM-079, 31 Mar 2006, T. 3025-3026.

II. APPLICABLE LAW

A. General requirements of Article 3 of the Statute

1. Generally

39. Milan Martić is charged with the following crimes as violations of the laws and customs of war punishable under Article 3 of the Statute: murder, torture and cruel treatment, based on Article 3 common to the four Geneva Conventions of 12 August 1949 (“Common Article 3”), and attacks on civilians based on Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II.⁵⁵ In addition, Milan Martić is charged with wanton destruction of villages, or devastation not justified by military necessity, destruction or wilful damage done to institutions dedicated to education or religion, and plunder of public or private property, punishable under Article 3 (b), (d) and (e), respectively.⁵⁶ Article 3 of the Statute provides in its relevant parts:

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: [...]

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; [...]

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property.

40. Article 3 of the Statute has been defined in the jurisprudence of the Tribunal as a general clause covering all violations of international humanitarian law not covered by Articles 2, 4 or 5 of the Statute.⁵⁷ The application of Article 3 of the Statute requires a determination that a state of armed conflict existed at the time the crime was committed and that the alleged crime was “closely

⁵⁵ Counts 4 and 16 (murder), Count 8 (torture), Counts 9 and 18 (cruel treatment), Count 19 (attacks on civilians) of the Indictment. Common Article 3, in its relevant parts, reads:

In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions;

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the abovementioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; [...]

⁵⁶ Counts 12-14 of the Indictment.

⁵⁷ *Tadić* Jurisdiction Decision, para. 89, re-affirmed in *Čelebići* Appeal Judgement, paras 133-136.

related” to the armed conflict.⁵⁸ Furthermore, four conditions, known as the *Tadić* conditions, must be fulfilled for a crime to fall within the jurisdiction of the Tribunal.⁵⁹

2. Existence of an armed conflict and the nexus requirement

41. An armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”⁶⁰ Until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply “in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there”.⁶¹

42. Common Article 3 requires the warring parties to abide by certain fundamental humanitarian standards by ensuring “the application of the rules of humanity which are recognized as essential by civilized nations” and as such the provisions of Common Article 3 have general applicability.⁶² When an accused is charged with violation of Article 3 of the Statute, it is immaterial whether the armed conflict was international or non-international in nature.⁶³

43. When the alleged crime did not occur at a time and place in which fighting was actually taking place, “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”⁶⁴ The crime “need not have been planned or supported by some form of policy”.⁶⁵ The armed conflict “need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.”⁶⁶

⁵⁸ *Tadić* Jurisdiction Decision, paras 67-70.

⁵⁹ *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac et al.* Appeal Judgement, para. 66.

⁶⁰ *Tadić* Jurisdiction Decision, para. 70. The term “protracted” is significant in excluding mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts, see *Kordić and Čerkez* Appeal Judgement, para. 341.

⁶¹ *Tadić* Jurisdiction Decision, para. 70. See also *Kunarac et al.* Appeal Judgement, paras 57, 64. In para. 64, the Appeals Chamber held that: “the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

⁶² ICRC Commentary on Geneva Convention IV, p. 34.

⁶³ *Tadić* Jurisdiction Decision, para. 137; *Čelebići* Appeal Judgement, paras 140, 147-150, 420, where the Appeals Chamber held that the provisions of Common Article 3 are applicable to both international and non-international conflicts. See also *Galić* Appeal Judgement, para. 120.

⁶⁴ *Kunarac et al.* Appeal Judgement, para. 57. The Trial Chamber notes that the term “hostilities” is not synonymous with the term “armed conflict.” An armed conflict may continue to exist after the hostilities in an area have ceased. The state of armed conflict ends when a peace agreement has been achieved or – in case of a non-international conflict – if a peaceful settlement has been reached, see *Tadić* Jurisdiction Decision, para. 70.

⁶⁵ *Kunarac et al.* Appeal Judgement, para. 58.

⁶⁶ *Kunarac et al.* Appeal Judgement, para. 58.

However, “[i]t is essential, [...] that a Trial Chamber establish the existence of a geographical and temporal linkage between the crimes ascribed to the accused and the armed conflict.”⁶⁷

3. The *Tadić* conditions

44. The four *Tadić* conditions referred to above are: (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;⁶⁸ (iii) the violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.⁶⁹

45. With regard to murder, torture and cruel treatment, the Appeals Chamber has held that Common Article 3 “is indeed regarded as being part of customary international law, and serious violations thereof would at once satisfy the four requirements”.⁷⁰ In relation to attacks on civilians, the Appeals Chamber in *Strugar* held that “the principles” contained in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II have attained the status of customary international law.⁷¹ Moreover, it is clear that attacks against civilians undoubtedly breach rules protecting important values and involves grave consequences for the victim.⁷² The Appeals Chamber in *Strugar* also found that “[c]ustomary international law establishes that a violation of these principles entails individual criminal responsibility.”⁷³

46. Concerning the crimes of wanton destruction of villages, or devastation, and destruction or wilful damage done to institutions dedicated to education or religion, it is established in the jurisprudence of the Tribunal that the crimes meet the four *Tadić* conditions.⁷⁴ Concerning the

⁶⁷ *Stakić* Appeal Judgement, para. 342.

⁶⁸ These conditions are that the treaty (i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogated from peremptory norms of international law, as are most customary rules of international humanitarian law, *Tadić* Jurisdiction Decision, para. 143.

⁶⁹ *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac et al.* Appeal Judgement, para. 66.

⁷⁰ *Kunarac et al.* Appeal Judgement, para. 68, referring to *Tadić* Jurisdiction Decision, paras 98-34 and *Čelebići* Appeal Judgement, para. 125.

⁷¹ *Prosecutor v. Pavle Strugar et al.*, Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 Nov 2002, 22 Nov 2002, para. 9; *Blaškić* Appeal Judgement, paras 157-158.

⁷² *Galić* Trial Judgement, paras 27, 45; *Strugar* Trial Judgement, para. 221.

⁷³ *Prosecutor v. Pavle Strugar et al.*, Case No. IT-01-42-AR72, Decision on Interlocutory Appeal, 22 Nov 2002, 22 Nov 2002, para. 10.

⁷⁴ Regarding wanton destruction of villages, or devastation not justified by military necessity pursuant to Article 3(b) of the Statute, see *Hadžihasanović and Kubura* Rule 98 bis Appeal Decision, para. 30 (see also paras 28-29); *Brdanin* Trial Judgement, para. 157; *Strugar* Trial Judgement, para. 231. Regarding destruction or wilful damage done to institutions dedicated to education or religion pursuant to Article 3(d), see *Hadžihasanović and Kubura* Rule 98 bis Appeal Decision, paras 44-48, with further references; *Hadžihasanović and Kubura* Trial Judgement, para. 63; *Brdanin* Trial Judgement, para. 157; *Strugar* Trial Judgement, para. 232.

crime of plunder, it is well-established that the first, second and fourth conditions are met.⁷⁵ As regards the third condition, the Trial Chamber finds that the jurisprudence establishes that the crime is a breach of a rule protecting important values,⁷⁶ and that whether the breach involves grave consequences for the victim has to be decided on a case-by-case basis.⁷⁷

4. “Persons taking no active part in the hostilities”

47. In relation to charges based on Common Article 3, including in this case, the charges of murder, torture and cruel treatment, the Prosecution must prove that the victim was taking no active part in the hostilities when the crime was committed.⁷⁸ The perpetrator of the crime must have known or should have been aware that the victim was taking no active part in the hostilities.⁷⁹ It is the specific situation of the victim at the moment the crime was committed that must be taken into account in determining the victim’s protection under Common Article 3.⁸⁰

B. General requirements of Article 5 of the Statute

1. Elements

48. Milan Martić is charged with the following crimes against humanity punishable under Article 5 of the Statute: murder, extermination, deportation, imprisonment, torture, persecution, and other inhumane acts (including forcible transfer). Article 5 of the Statute provides:

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

In order to constitute a crime against humanity under Article 5 of the Statute, the acts of the accused must have been carried out during armed conflict, whether international or non-international in

⁷⁵ *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 37-38, with further references.

⁷⁶ *Kordić and Čerkez* Appeal Judgement, para. 81.

⁷⁷ *Kordić and Čerkez* Appeal Judgement, paras 82-83.

⁷⁸ *Čelebići* Appeal Judgement, para. 420; *Tadić* Trial Judgement, para. 615.

⁷⁹ *Halilović* Trial Judgement, para. 36; *Krajišnik* Trial Judgement, para. 847.

⁸⁰ *Tadić* Trial Judgement, paras 615-616; *Halilović* Trial Judgement, paras 33-34. *See also* ICRC Commentary on Geneva Convention III, p. 39: “a man who has surrendered individually is entitled to the same humane treatment as he would receive if the whole army to which he belongs had capitulated. The important thing is that the man in question will be taking no further part in the fighting.”

character.⁸¹ This is a jurisdictional requirement which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused were linked geographically as well as temporally with the armed conflict.⁸²

49. The acts of the accused must have formed part of a widespread or systematic attack directed against any civilian population.⁸³ Five elements have been set out in the jurisprudence for the establishment of this requirement:

(1) ‘Attack’ may be defined as a course of conduct involving the commission of acts of violence.⁸⁴ It is not limited to the use of armed force but may also encompass any mistreatment of the civilian population.⁸⁵ ‘Attack’ is a concept different from that of “armed conflict”. The attack may precede, outlast or continue during the armed conflict and need not be part of it.⁸⁶

(2) The attack must be directed against any civilian population, that is, it must be established that the civilian population was the primary object of the attack.⁸⁷ It is not required that the entire population be subjected to the attack, however the Chamber must be satisfied that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.⁸⁸

(3) The attack must be widespread or systematic. ‘Widespread’ refers to the large-scale nature of the attack and the number of targeted persons, while the phrase ‘systematic’ refers to the organised

⁸¹ *Tadić* Jurisdiction Decision, paras 70, 142; *Kunarac et al.* Appeal Judgement, para. 86. See *infra* section II A.

⁸² *Kunarac et al.* Appeal Judgement, paras 83-84, referring to *Tadić* Appeal Judgement, paras 249, 251.

⁸³ *Blaškić* Appeal Judgement, para. 98 (with further references).

⁸⁴ *Kunarac et al.* Trial Judgement, para. 415, affirmed by *Kunarac et al.* Appeal Judgement, para. 89.

⁸⁵ *Kunarac et al.* Appeal Judgement, para. 86.

⁸⁶ *Tadić* Appeal Judgement, para. 251; *Kunarac et al.* Appeal Judgement, para. 86.

⁸⁷ *Kunarac et al.* Appeal Judgement, para. 91. See also *Blaškić* Appeal Judgement, paras 110-115, where the Appeals Chamber discussed in detail the scope of the term “civilian population”.

⁸⁸ *Kunarac et al.* Appeal Judgement, para. 90. The Appeals Chamber also held (para. 91) that:

[i]n order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, 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 requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.

nature of the acts of violence and the improbability of their random occurrence.⁸⁹ It is settled jurisprudence that the existence of a plan need not be proven.⁹⁰

(4) The acts of the perpetrator must objectively form part of the attack on the civilian population. However, it is not required that the acts be committed in the midst of the attack. A crime which is committed before or after the main attack or away from it must be sufficiently connected with the attack and not be an isolated act.⁹¹

(5) The perpetrator must have known of the attack on the civilian population and that his or her acts formed part of the attack, or at least have taken the risk that his or her acts were part of the attack.⁹² However, the perpetrator need not know of the details of the attack.⁹³ It is the attack, not the acts of the accused, which must be directed against the target population.⁹⁴

2. Applicability of Article 5 to non-civilians

50. As a preliminary point, the Trial Chamber notes that it is well established that the term “civilian population” in the general requirements of Article 5 should be given a broad definition and that the presence of combatants within a civilian population does not necessarily alter its characterisation as such.⁹⁵

51. The Trial Chamber now turns to the question of the required status of the victims under Article 5. As held by the Appeals Chamber in *Blaškić*, “the status of the victim as a civilian” is one of the elements which characterises a crime against humanity.⁹⁶ In defining the term “civilian”, the Appeals Chamber in *Blaškić* relied upon the provisions of Article 50 of Additional Protocol I,

⁸⁹ *Kordić and Čerkez* Appeal Judgement, para. 94 (with further references). Relevant factors include “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, and any identifiable patterns of crimes”, *Kunarac et al.* Appeal Judgement, para. 95.

⁹⁰ *Blaškić* Appeal Judgement, para. 120 (with further references), also holding that the existence of a plan “may be evidentially relevant in proving that an attack was directed against a civilian population and that it was widespread or systematic”, *ibid.*

⁹¹ *Kunarac et al.* Appeal Judgement, paras 85, 99-101 (with further references). A crime would be regarded as an “isolated act” when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack, *ibid.*

⁹² *Kunarac et al.* Appeal Judgement, paras 99, 102, also holding (para. 103) that “the motives of the accused for taking part in the attack are irrelevant and a crime against humanity may be committed for purely personal reasons.”

⁹³ *Kunarac et al.* Appeal Judgement, para. 102.

⁹⁴ *Kordić and Čerkez* Appeal Judgement, para. 99; *Kunarac et al.* Appeal Judgement, para. 103.

⁹⁵ Article 50 of Additional Protocol I provides that the “civilian population comprises all persons who are civilians” and that the “presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.” See also *Blaškić* Appeal Judgement, which held that “[t]hus, in order to determine whether the presence of soldiers within a civilian population deprives the population of its civilian character, the number of soldiers, as well as whether they are on leave, must be examined,” para. 115.

⁹⁶ *Blaškić* Appeal Judgement, para. 107.

which it found “may largely be viewed as reflecting customary law.”⁹⁷ Article 50 of Additional Protocol I defines civilians as follows:

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.⁹⁸

In light of this finding of the Appeals Chamber, the Trial Chamber finds no reason why Article 50 of Additional Protocol I should not also be applied when determining to the status of victims under Article 5 of the Statute.

52. The Appeals Chamber in *Blaškić* further held that, “[r]ead together, Article 50 of Additional Protocol I and Article 4A of Geneva Convention III establish that members of the armed forces, and members of militias or volunteer corps forming part of such armed forces, cannot claim civilian status”.⁹⁹ The *Blaškić* Appeals Chamber continued that neither may “members of organized resistance groups” claim civilian status, provided that they are commanded by a person responsible

⁹⁷ *Blaškić* Appeal Judgement, para. 110.

⁹⁸ Article 4 A (1), (2), (3) and (6), of Geneva Convention III provides:

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;

(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.“

Article 43 of Additional Protocol I provides:

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 of 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.

for his subordinates, that they have a fixed distinctive sign recognisable at a distance, that they carry arms openly, and that they conduct their operations in accordance with the laws and customs of war.¹⁰⁰ In determining the status of the victim at the time the crimes were committed, the Appeals Chamber held that:

the specific situation of the victim at the time the crimes are committed may not be determinative of his civilian or non-civilian status. If he is indeed a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status.¹⁰¹

53. The Appeals Chamber in *Kordić and Čerkez* appears to have taken a different approach to that taken by the Appeals Chamber in *Blaškić*, by expanding the concept of “civilian”. The Appeals Chamber in *Kordić and Čerkez* repeated the language of the Appeals Chamber in *Blaškić* in relying upon Article 50 of Additional Protocol I as part of customary international law.¹⁰² It also followed the Appeals Chamber in *Blaškić*, finding that “during an armed conflict, until a soldier is demobilized, he is considered a combatant whether or not he is in combat, or for the time being armed.”¹⁰³ However, the *Kordić and Čerkez* Appeals Chamber continued, concerning evidence underlying, *inter alia*, Count 7, murder under Article 5 of the Statute:

read together, the above excerpts [...] constitute evidence that numerous persons were killed during their arrest, simply because they were Muslims, and ABiH soldiers were killed after their arrest, after being placed *hors de combat*. These persons, wilfully killed by Croat forces, were without doubt [...] “civilians” in the sense of Article 5 of the Statute.¹⁰⁴

Nevertheless, the Appeals Chamber appears to have followed the reasoning of the Appeals Chamber in *Blaškić* in overturning the finding of the Trial Chamber in relation to the killing of a man and a woman shot by the HVO in their apartment. It held that “as TO members, the two victims are to be considered as ‘combatants’ and cannot claim the status of civilians.”¹⁰⁵

54. The Appeals Chamber in *Galić* supported the view of the *Blaškić* Appeal Chamber that a person *hors de combat* is not a civilian in the context of international humanitarian law:

Persons *hors de combat* are certainly protected in armed conflicts through Common Article 3 of the Geneva Conventions. This reflects a principle of customary international law. Even *hors de combat*, however, they would still be members of the armed forces of a party to the conflict and therefore fall under the category of persons referred to in Article 4(A)(1) of the Third Geneva

⁹⁹ *Blaškić* Appeal Judgement, para. 113.

¹⁰⁰ *Blaškić* Appeal Judgement, para. 113, referring to Article 4 A of Geneva Convention III.

¹⁰¹ *Blaškić* Appeal Judgement, para. 114.

¹⁰² *Kordić and Čerkez* Appeal Judgement, para. 97.

¹⁰³ *Kordić and Čerkez* Appeal Judgement, para. 421. *See also* para. 50.

¹⁰⁴ *Kordić and Čerkez* Appeal Judgement, paras 421-422. The Appeals Chamber thus upheld the Trial Chamber’s finding of murder under Article 5 and wilful killing under Article 2.

¹⁰⁵ *Kordić and Čerkez* Appeal Judgement, para. 458. The Appeals Chamber also found that “members of the armed forces resting in their homes in the area of the conflict, as well as members of the TO residing in their homes, remain combatants whether or not they are in combat, or for the time being armed,” *Kordić and Čerkez* Appeal Judgement, para. 51. The Appeals Chamber also only applied the crime of imprisonment to those who were proved at trial to be civilians, *ibid.* paras 591-640.

Convention; as such, they are not civilians in the context of Article 50, paragraph 1, of Additional Protocol I. Common Article 3 of the Geneva Conventions supports this conclusion in referring to “persons taking no active part in the hostilities, including *members of armed forces* who have laid down their arms *and those placed hors de combat* by sickness, wounds, detention, or any other cause” (emphasis added).¹⁰⁶

55. The Trial Chamber agrees with the findings of the Appeals Chamber in *Blaškić* and *Galić* that the term civilian is one which is narrowly defined. The Trial Chamber does not, therefore, follow the logic of the Appeals Chamber in *Kordić and Čerkez*, which appeared to expand the term “civilian” to cover persons *hors de combat*. In the view of the Trial Chamber, such an interpretation is not in keeping with the definition of civilians as set out in Article 50 which the Appeals Chamber found “may be largely viewed as reflecting customary international law”.¹⁰⁷ As held by the Appeals Chamber in *Blaškić* and *Galić*, the fact that a person, who is not a civilian according to Article 4A of Geneva Convention III and Article 43 Additional Protocol I, is not armed or in combat, or is *hors de combat* at the time of the commission of crime, does not render them civilian for the purposes of Article 5 of the Statute.

56. That Article 5 of the Statute is applicable to civilians is in keeping with the fundamental principle of the distinction between civilians and combatants, which permeates the laws of war and international humanitarian law. In this respect, the Trial Chamber recalls the ICRC Commentary to Article 50 of Additional Protocol I, which provides that:

[t]he principle of the protection of the civilian population is inseparable from the principle of the distinction which should be made between military and civilian persons. In view of the latter principle, it is essential to have a clear definition of each of these categories.¹⁰⁸

Article 5 of the Statute defines crimes against humanity more narrowly than required under customary international law by including a requirement of a nexus between the crime and the armed conflict.¹⁰⁹ This requirement in Article 5 necessarily links crimes against humanity to an armed conflict in which distinction must be made between combatants and non-combatants. Therefore, to allow for the term “civilians” to include all persons who were not actively participating in combat,

¹⁰⁶ *Galić* Appeal Judgement, fn 437.

¹⁰⁷ *Blaškić* Appeal Judgement, para. 110. The Trial Chamber recalls that the Appeals Chamber in *Kordić and Čerkez* relied upon the Appeals Chamber in *Blaškić*: “The Appeals Chamber considers that Article 50 of Additional Protocol I contains a definition of civilians and civilian populations, and the provisions in this article may largely be viewed as reflecting customary law. As a result, they are relevant to the consideration at issue under Article 5 of the Statute, concerning crimes against humanity” (footnotes omitted), *Kordić and Čerkez* Appeal Judgement, para. 97.

¹⁰⁸ ICRC Commentary on Additional Protocols, para. 1911.

¹⁰⁹ *Tadić* Jurisdiction Decision, paras 140-141, wherein the Appeals Chamber stated (*ibid.* para. 141) that:

It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed, as the Prosecutor points out, customary international law may not require a connection between crimes against humanity and any conflict at all. Thus, by requiring that crimes against humanity be committed in either internal or international armed conflict, the Security Council may have defined the crime in Article 5 more narrowly than necessary under customary international law. There is no question, however, that the definition of crimes against humanity adopted by the Security Council in Article 5 comports with the principle of *nullum crimen sine lege*.

including those who were *hors de combat*, at the time of the crime would impermissibly blur this necessary distinction.

C. Murder

57. Milan Martić is charged with murder, both as a violation of the laws or customs of war pursuant to Article 3 of the Statute (Counts 4 and 16) and as a crime against humanity pursuant to Article 5(a) of the Statute (Counts 3 and 15).

58. The elements of the crime of murder under Article 3 and under Article 5 are identical, with the exception that the respective general requirements for the application of these provisions must be met.¹¹⁰ The common elements are the following:

1. the death of a victim;
2. the death was the result of an act or omission of the accused or of one or more persons for whom the accused is criminally responsible;
3. the act or omission was committed with intent to kill, or in the knowledge that death was a probable consequence of the act or omission.¹¹¹

59. For the proof of the death of the victim, there is no requirement that the body be recovered. Rather, the death may be established by circumstantial evidence, provided it is the only reasonable inference available from the evidence.¹¹²

60. The *mens rea* of murder is the intent to kill, including indirect intent, that is the knowledge that the death of the victim was a probable consequence of the act or omission.¹¹³ This Trial Chamber does not consider it to be sufficient that the perpetrator knew that death would be a *possible* consequence of his act or omission.¹¹⁴ In connection with the identity of victims, it is not required for the perpetrator to have intended to target a certain individual; indiscriminate intent to kill whoever is fatally injured as a result of his action is sufficient.

¹¹⁰ *Kordić and Čerkez* Trial Judgement, paras 229, 233, 236; *Brdanin* Trial Judgement, para. 380; *Strugar* Trial Judgement, para. 236; *Orić* Trial Judgement, para. 345.

¹¹¹ *Kvočka et al.* Appeal Judgement, para. 261.

¹¹² *Kvočka et al.* Appeal Judgement, para. 260; *Brdanin* Trial Judgement, paras 383-385; *Krnjelac* Trial Judgement, paras 326-327; *Tadić* Trial Judgement, para. 240. Relevant factors to be considered include, but are not limited to, proof of incidents of mistreatment directed against the victim, patterns of mistreatment and disappearances of other victims, the coincident or near-coincident time of death of other victims, the fact that the victims were present in an area where an armed attack was carried out, when, where and the circumstances in which the victim was last seen, behaviour of soldiers in the vicinity, as well as towards other civilians, at the relevant time, and lack of contact by the victim with others whom he/she would have been expected to contact, such as his/her family, *Halilović* Trial Judgement, para. 37; *Krnjelac* Trial Judgement, para. 327.

¹¹³ *Strugar* Trial Judgement, paras 235-236; *Limaj et al.* Trial Judgement, para. 241. See also *Orić* Trial Judgement, para. 348. Neither negligence nor gross negligence on the part of the perpetrator is sufficient to satisfy the mental element, *Stakić* Trial Judgement, para. 587; *Brdanin* Trial Judgement, para. 386; *Orić* Trial Judgement, para. 348.

¹¹⁴ *Strugar* Trial Judgement, para. 236.

D. Extermination

61. Milan Martić is charged with extermination, a crime against humanity under Article 5(b) of the Statute (Count 2).

62. Extermination is the act of killing on a large scale.¹¹⁵ The crime of extermination subsumes the elements of murder.¹¹⁶ The *actus reus* consists of any act or omission, which contributes directly or indirectly to the killing of a large number of individuals.¹¹⁷ The *actus reus* also includes subjecting a large number of people “to conditions of living that would inevitably lead to death”.¹¹⁸

63. The requirement that killings occurred on a large scale does not suggest a numerical minimum.¹¹⁹ An assessment of whether this requirement has been met must be made on the basis of a case-by-case analysis of all relevant factors.¹²⁰ Extermination may be established “on an accumulation of separate and unrelated incidents, meaning on an aggregated basis”, where a large number of killings did not occur during a single incident in a concentrated place over a short period.¹²¹

64. It is not required that the perpetrator targeted the victims on national, ethnical, racial or religious grounds.¹²² Neither is a “vast scheme of collective murder”, nor knowledge of such a scheme, an element of extermination.¹²³ Moreover, it is not necessary that the victims of extermination be precisely identified by name; it is sufficient for it to be proven that killings occurred on a large scale.¹²⁴

65. The *mens rea* element of extermination requires that the act or omission was committed with the intent to kill persons on a large scale or in the knowledge that the deaths of a large number of people were a probable consequence of the act or omission.¹²⁵ In other words, the *mens rea* encompasses direct intent and indirect intent.¹²⁶

¹¹⁵ *Ntakirutimana* Appeal Judgement, para. 516 and fn 880; *Stakić* Appeal Judgement, para. 259.

¹¹⁶ *Krajišnik* Trial Judgement, para. 716. As regards the elements of murder, see *infra* section II C.

¹¹⁷ *Vasiljević* Trial Judgement, para. 229; *Brdanin* Trial Judgement, para. 389. See also *Rutaganda* Trial Judgement, para. 83; *Musema* Trial Judgement, para. 219.

¹¹⁸ *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 522.

¹¹⁹ *Stakić* Appeal Judgement, para. 260; *Ntakirutimana* Appeal Judgement, para. 516.

¹²⁰ *Stakić* Trial Judgement, para. 640; *Brdanin* Trial Judgement, para. 391; *Blagojević and Jokić Trial Judgement*, para. 573. The relevant factors include “the time and place of the killings, the selection of the victims, and the manner in which they were targeted”, *Krajišnik* Trial Judgement, para. 716. See also *Nahimana et al.* Trial Judgement, para. 1061.

¹²¹ *Brdanin* Trial Judgement, para. 391. See also *Stakić* Trial Judgement, para. 640.

¹²² *Krstić* Trial Judgement, paras 499-500; *Stakić* Trial Judgement, para. 639.

¹²³ *Stakić* Appeal Judgement, paras 258-259. See also *Krstić* Appeal Judgement, para. 225.

¹²⁴ *Ntakirutimana* Appeal Judgement, para. 521, endorsed by *Stakić* Appeal Judgement, fn 552.

¹²⁵ *Stakić* Appeal Judgement, para. 259; *Ntakirutimana* Appeal Judgement, para. 522.

¹²⁶ *Krstić* Trial Judgement, para. 495; *Stakić* Trial Judgement, paras 587, 641-642; *Brdanin* Trial Judgement, para. 395.

E. Attacks on civilians

66. Milan Martić is charged with attacks on civilians, a violation of the laws or customs of war pursuant to Article 3 of the Statute (Count 19).

67. The crime of attacks on civilians is based upon Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, both of which provide, in their relevant parts, that “[t]he civilian population as such, as well as individual civilians, shall not be made the object of attack.”¹²⁷

68. Article 49 of Additional Protocol I defines the term “attack” as “acts of violence against the adversary, whether in offence or in defence”.¹²⁸ In relation to attacks on civilians, the Appeals Chamber in *Blaškić* held that there is an absolute prohibition in customary international law against the targeting of civilians.¹²⁹ In *Kordić and Čerkez*, the Appeals Chamber held that “the prohibition against attacking civilians and civilian objects may not be derogated from because of military necessity”.¹³⁰ According to Article 52(2) of Additional Protocol I only military objectives may be lawfully attacked, that is “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”.¹³¹

69. The prohibition against targeting the civilian population does not exclude the possibility of legitimate civilian casualties incidental to an attack aimed at military targets.¹³² However, such casualties must not be disproportionate to the concrete and direct military advantage anticipated before the attack.¹³³ In particular, indiscriminate attacks, that is attacks which affect civilians or civilian objects and military objects without distinction, may also be qualified as direct attacks on

¹²⁷ The Indictment provides: “Count 19: Attacks on civilians, a Violation of the Laws or Customs of War, as recognised by Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the Geneva Conventions of 1949, punishable under Articles 3 and 7(1) and 7(3) of the Statute of the Tribunal”.

¹²⁸ This definition of attack has been endorsed in *Kordić and Čerkez* Appeal Judgement, para. 47.

¹²⁹ *Blaškić* Appeal Judgement, para. 109; *Galić* Appeal Judgement, para. 190.

¹³⁰ *Kordić and Čerkez* Appeal Judgement, para. 54 (as revised by Corrigendum of 26 January 2005).

¹³¹ Article 52(2) of Additional Protocol I. See also *Kordić and Čerkez* Appeal Judgement, para. 53. In this context, see the Trial Chamber’s discussion on reprisals, *infra* section IV B 4 (c).

¹³² *Galić* Appeal Judgement, para. 190.

¹³³ *Galić* Appeal Judgement, para. 190. The Appeals Chamber also endorsed the Trial Chamber’s finding in *Galić* according to which the parties to a conflict have 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”. 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”, *Galić* Appeal Judgement, para. 194.

civilians.¹³⁴ In this regard, a direct attack against civilians can be inferred from the indiscriminate character of the weapon used.¹³⁵

70. It is an element of the crime that the attacks resulted in death or serious bodily injury within the civilian population at the time of such attacks.¹³⁶

71. The Trial Chamber recalls that the Appeals Chamber has considered that “Article 50 of Additional Protocol I contains a definition of civilians and civilian populations”, which may largely be viewed as reflecting customary law.¹³⁷

72. The *mens rea* required for attacks against civilians is direct and indirect intent.¹³⁸

F. Torture

73. Milan Martić is charged with torture as a crime against humanity under Article 5(f) of the Statute (Count 6), and as a violation of the laws or customs of war under Article 3 of the Statute (Count 8), respectively.

74. The torture of persons not taking an active part in hostilities is expressly prohibited by the Geneva Conventions and the Additional Protocols, both in international and non-international

¹³⁴ *Galić* Appeal Judgement, para. 132, referring to *Galić* Trial Judgement, para. 57. See also ICJ Advisory Opinion: *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, para. 78.

¹³⁵ *Galić* Appeal Judgement, para. 132. The Appeals Chamber upheld the Trial Chamber’s finding in *Galić* which relied, *inter alia*, on the *Martić* Rule 61 Decision, 8 Mar 1996, paras 23-31, according to which the Trial Chamber regarded the use of a cluster bomb warhead as evidence of Milan Martić’s intent to deliberately attack the civilian population. The Appeals Chamber noted also that the Trial Chamber is, in principle, entitled to determine on a case-by-case basis that the indiscriminate character of an attack can assist it in determining whether the attack was directed against the civilian population. Among the elements that the Trial Chamber may take into account in its determination as to whether the attack was directed against civilians are “the means and method used in the course of the attack, the status of the victims, their number, [...] 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 requirements of the laws of war”, *Galić* Appeal Judgement, para. 132 referring to *Kunarac et al.* Appeal Judgement, para. 91 and *Blaškić* Appeal Judgement, para. 106.

¹³⁶ *Kordić and Čerkez* Appeal Judgement, paras 55-67.

¹³⁷ *Kordić and Čerkez* Appeal Judgement, para. 97; *Blaškić* Appeal Judgement, para. 110. The Appeals Chamber based its holding on the ICRC Commentary on Additional Protocols, pp 611-612 (regarding Article 50(3) of Additional Protocol I), which explains the principle as follows:

[I]n war time conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.

¹³⁸ Article 85(3)(a) of Additional Protocol I qualifies as a grave breach the act of “wilfully [...] making the civilian population or individual civilians the object of attack”. The ICRC Commentary on Additional Protocols, para. 3474, concerning this provision reads: “*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.” See also *Galić* Appeal Judgement, para. 140.

armed conflicts.¹³⁹ The definition of torture is identical under both Article 3 and Article 5 of the Statute.¹⁴⁰ It comprises the following elements:

1. The intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental;
2. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person (“prohibited purpose”).¹⁴¹

75. The pain and suffering inflicted during acts of torture is more severe than the pain and suffering inflicted during other forms of mistreatment and cruel treatment.¹⁴² The Trial Chamber will assess on a case-by-case basis whether the acts or omissions charged as torture, inflicted severe physical or mental pain or suffering on the part of the victim.¹⁴³ In its assessment of the severity of the pain or suffering inflicted, the Trial Chamber may take several factors into account, including the duration of the suffering inflicted, the nature of the crimes, the physical or mental condition of the victim, the effect of the acts on the victim, the victim’s age, and the victim’s position of inferiority to the perpetrator.¹⁴⁴

76. In the jurisprudence of the Tribunal several acts have been listed as rising to the level of seriousness necessary to constitute torture. These acts include beatings, administering electric shocks, forcing victims to watch executions of others, rape, forcing victims to bury the bodies of their neighbours and friends, and causing burn injuries.¹⁴⁵

77. As to the *mens rea*, the perpetrator’s acts or omissions must be committed for a prohibited purpose. The definition of torture provides a non-exhaustive list of prohibited purposes.¹⁴⁶ There is no requirement that the act of the perpetrator be committed solely or predominantly to serve this prohibited purpose.¹⁴⁷ Once the conduct has been carried out for one of the prohibited purposes, it

¹³⁹ *Čelebići* Trial Judgement, para. 446, referring in fn 455 to Article 12 Geneva Conventions I and II; Article 50 Geneva Convention I; Article 51 Geneva Convention II; Articles 17, 87 and 130 Geneva Convention III; Articles 32 and 147 Geneva Convention IV; Common Article 3 Geneva Conventions I–IV; Article 75 Additional Protocol I; Article 4 Additional Protocol II.

¹⁴⁰ The definition of torture is largely based on the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26 June 1987.

¹⁴¹ See e.g. *Kunarac et al.* Appeal Judgement, paras 142-144; *Brdanin* Trial Judgement, para. 481; *Furundžija* Trial Judgement, para. 162.

¹⁴² *Brdanin* Trial Judgement, para. 483. See also *Čelebići* Trial Judgement, para. 468.

¹⁴³ *Naletilić and Martinović* Appeal Judgement, para. 299; *Čelebići* Trial Judgement, para. 469.

¹⁴⁴ *Naletilić and Martinović* Appeal Judgement, para. 300; *Brdanin* Trial Judgement, para. 484, citing *Kvočka et al.* Trial Judgement, para. 143 and *Krnjelac* Trial Judgement, para. 182.

¹⁴⁵ See e.g. *Kunarac et al.* Appeal Judgement, para. 151; *Čelebići* Trial Judgement, para. 495-496, 971, 973, 976-77; *Naletilić and Martinović* Trial Judgement, paras 350-352; *Brdanin* Trial Judgement, paras 492, 503-511, 524.

¹⁴⁶ *Čelebići* Trial Judgement, para. 470; *Brdanin* Trial Judgement, para. 487.

¹⁴⁷ *Kunarac et al.* Appeal Judgement, para. 155; *Čelebići* Trial Judgement, para. 470.

is immaterial whether there is another purpose behind the conduct.¹⁴⁸ In addition, it needs to be established that the perpetrator acted or omitted to act with direct or indirect intent.

G. Cruel treatment

78. Milan Martić is charged with cruel treatment as a violation of the laws or customs of war, as recognised in Common Article 3, pursuant to Article 3(1)(a) of the Statute (Counts 9 and 18).

79. The crime of cruel treatment is defined in the jurisprudence as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity, committed against a person not taking an active part in hostilities.¹⁴⁹ The perpetrator must be shown to have acted with direct intent or with indirect intent, that is, in the knowledge that cruel treatment was a likely consequence of his act or omission.¹⁵⁰

80. It is not required that the suffering caused by the cruel treatment be “lasting”.¹⁵¹ In its assessment of the seriousness of the act or omission, the Trial Chamber will take all circumstances into consideration, including factors such as the age and health of the victim, and the physical and mental effects of the crime upon the victim.¹⁵² Moreover, it is not required that the seriousness of the suffering or injury amounts to the level of seriousness required for torture.¹⁵³

H. Other inhumane acts

81. Milan Martić is charged with three counts of other inhumane acts, as crimes against humanity pursuant to Article 5(i) of the Statute. Count 7 charges Milan Martić with “inhumane acts” in relation to events in detention centres, Count 11 charges Milan Martić with “inhumane acts (forcible transfers)” in relation to the removal of non-Serb inhabitants of the SAO Krajina and the RSK, and Count 17 charges Milan Martić with “inhumane acts” in relation to the shelling of Zagreb.¹⁵⁴

¹⁴⁸ *Kunarac et al.* Appeal Judgement, para. 155.

¹⁴⁹ *Čelebići* Appeal Judgement, para. 424; *Limaj et al.* Trial Judgement, para. 231.

¹⁵⁰ The Trial Chamber notes that in the jurisprudence “likely” is synonymous to “probable”, see e.g. *Prosecutor v. Radoslav Brdanin and Momir Talić*, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 Jun 2001, para. 29; *Simić et al.* Trial Judgement, para. 76, citing *Vasiljević* Trial Judgement, para. 236; *Limaj et al.* Trial Judgement, para. 231.

¹⁵¹ *Kunarac et al.* Trial Judgement, para. 501.

¹⁵² *Simić et al.* Trial Judgement, para. 75; *Vasiljević* Trial Judgement, para. 235; *Krnjelac* Trial Judgement, para. 131.

¹⁵³ *Čelebići* Trial Judgement, para. 510; *Kordić and Čerkez* Trial Judgement, para. 245. See *supra* section II F.

¹⁵⁴ The elements of the crime of other inhumane acts (forcible transfer) are discussed in the context of deportation pursuant to Article 5(d) of the Statute, see *infra* section II M.

82. “Other inhumane acts” is a residual category of crimes against humanity recognised as forming part of customary international law.¹⁵⁵ It must be emphasised that the Trial Chamber must exercise great caution in finding that an alleged act, which is not regulated elsewhere in Article 5 of the Statute, amounts to “other inhumane acts” within the meaning of Article 5(i).¹⁵⁶

83. In addition to meeting the general requirements for application of Article 5, an act or omission must satisfy the following elements to fall within the category of other inhumane acts:

1. the act or omission was of similar seriousness to the other crimes enumerated in Article 5;
2. the act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity; and
3. the act or omission was carried out intentionally by the accused or by persons for whom the accused bears criminal responsibility.¹⁵⁷

84. The element of “similar seriousness” is to be evaluated in light of all factual circumstances, including the nature of the act or omission, the context within which it occurred, the individual circumstances of the victim as well as the physical and mental effects on the victim.¹⁵⁸ There is no requirement that the effects on the victim be long-term, however any such effects will form part of the determination whether the act or omission meets the “similar seriousness” requirement.¹⁵⁹

85. The *mens rea* required is that the perpetrator had direct or indirect intent to inflict, by act or omission, serious physical or mental suffering or to commit a serious attack on the victim’s human dignity.¹⁶⁰

I. Imprisonment

86. Milan Martić is charged with imprisonment as a crime against humanity pursuant to Article 5(e) of the Statute (Count 5).

¹⁵⁵ *Stakić* Appeal Judgement, para. 315, noting in fn 649 that the category of other inhumane acts was included in Art. 6(c) of the Nuremberg Charter, Art. 5(c) of the Tokyo Charter, and Art. II(1)(c) of Control Council Law No. 10, and that convictions have been entered on this ground. The Appeals Chamber also noted “that numerous human rights treaties also prohibit inhuman and degrading treatment”, including the ICCPR and the ECHR, *ibid. Kordić and Čerkez* Appeal Judgement, para. 117, affirming *Kupreškić et al.* Trial Judgement, para. 563.

¹⁵⁶ *Kordić and Čerkez* Appeal Judgement, para. 117. In that case, the Appeals Chamber noted that “‘other inhumane acts’ [were] charged exclusively as injuries”, *ibid. See also Blagojević and Jokić* Trial Judgement, para. 625, which held in relation to Article 5(i) that “norms of criminal law must always provide individuals with sufficient notice of what is criminal behaviour and what is not.”

¹⁵⁷ *Kordić and Čerkez* Appeal Judgement, para. 117. *See also Krnojelac* Trial Judgement, paras 130-131; *Vasiljević* Trial Judgement, para. 234.

¹⁵⁸ *Galić* Trial Judgement para. 153; *Vasiljević* Trial Judgement, para. 235; *Krnojelac* Trial Judgement, para. 131; *Čelebići* Trial Judgement, para. 536; *Kunarac et al.* Trial Judgement, para. 501.

¹⁵⁹ *Vasiljević* Trial Judgement, para. 235.

¹⁶⁰ *Krnojelac* Trial Judgement, para. 132; *Vasiljević* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgement, para. 153.

87. Imprisonment is defined as arbitrary imprisonment, that is the deprivation of liberty of an individual without due process of law.¹⁶¹

88. Deprivation of liberty can be achieved by an act or omission on the part of the perpetrator.¹⁶² The act or omission must be committed with the intent to deprive a civilian of his or her physical liberty without due process of law or in the reasonable knowledge that his act or omission was likely to cause the deprivation of physical liberty without due process of law.¹⁶³

J. Wanton destruction of villages, or devastation not justified by military necessity

89. Milan Martić is charged with wanton destruction of villages, or devastation not justified by military necessity, violations of the laws or customs of war pursuant to Article 3(b) of the Statute.¹⁶⁴

90. The following elements must be proven in relation to these violations:

1. the destruction of property has occurred on a large scale;
2. the destruction was not justified by military necessity; and
3. the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.¹⁶⁵

91. The Trial Chamber considers that there is no material difference between the elements of the crimes of wanton destruction and devastation in the context of this case.¹⁶⁶

¹⁶¹ *Kordić and Čerkez* Appeal Judgement, para. 116. The Appeals Chamber noted that the Trial Chamber had used the term “individual” in the sense of the term “civilian”, *Kordić and Čerkez* Appeal Judgement, fn 139. The Trial Chamber notes that the Appeals Chamber also included the requirement “as part of a widespread or systematic attack directed against a civilian population” in its definition of the crime of imprisonment. The Trial Chamber recalls that this is a general requirement for crimes against humanity. Accordingly, this requirement does not need to be included in the definition of elements of the crime of imprisonment.

¹⁶² *Krnjelac* Trial Judgement, para. 115, cited in *Simić et al.* Trial Judgement, paras 64-65.

¹⁶³ *Simić et al.* Trial Judgement, paras 64-65, citing *Krnjelac* Trial Judgement, para. 115. The Trial Chamber notes that the Trial Chambers in *Krnjelac* and in *Simić et al.* included that the acts or omission be “performed by *the accused or a person or persons for whom the accused bears criminal responsibility*”, *ibid.* (emphasis added). The Trial Chamber considers that these words comprise definitions included in elements of Article 7(1) and 7(3) and that there is no need to include them in the definition of a crime.

¹⁶⁴ *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 26; *Brđanin* Trial Judgement, para. 591. Article 3(b) of the Statute is derived from Article 23(g) of the Hague Convention (IV) of 1907 and the annexed Regulations (“Hague Regulations”). Article 23 of the Hague Regulations reads, in its relevant part:

In addition to the prohibitions provided by special Conventions, it is especially forbidden: [...]

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war; [...]

¹⁶⁵ *Kordić and Čerkez* Appeal Judgement, para. 74, reiterating *Kordić and Čerkez* Trial Judgement, para. 346. *See also Naletilić and Martinović* Trial Judgement, para. 579; *Hadžihasanović and Kubura* Trial Judgement, para. 41; *Orić* Trial Judgement, para. 581.

¹⁶⁶ For a similar opinion with which this Trial Chamber agrees, *see Strugar* Trial Judgement, paras 290-297, reaching this conclusion both from a linguistic point of view and with reference to international instruments (*e.g.* Article 6(B) of

92. The element of destruction of property “on a large scale” requires that a considerable number of objects were destroyed. However, it is not required that a city, town or village has been destroyed in its entirety.¹⁶⁷ The Trial Chamber will assess on a case-by-case basis whether the extent of any proven destruction of a particular village was of sufficient scale to meet this element.¹⁶⁸

93. The destruction or devastation of property is prohibited, except where justified by military necessity.¹⁶⁹ The Trial Chamber considers that military necessity may justify the infliction of collateral damage to civilian objects and as such constitutes an exception to the principles of the protection of civilian objects.¹⁷⁰ The protection of civilian objects may cease entirely or be reduced or suspended when belligerents cannot avoid causing collateral damage to civilian property even though the object of a military attack is comprised of military objectives.¹⁷¹ In order to establish that the destruction was not justified by military necessity, the Prosecution has to prove not only that the destruction occurred, but also when and how the destruction occurred.¹⁷² An assertion of military necessity or the absence thereof will be assessed on a case-by-case basis. In principle, destruction carried out before fighting begins or after fighting has ceased cannot be justified by claiming military necessity.¹⁷³

94. The *mens rea* of wanton destruction and devastation under Article 3(b) of the Statute is that the perpetrator acted with direct or indirect intent.¹⁷⁴

the Nuremberg Charter; Article II (1)(b) of Control Council Law No. 10) treating “destruction” and “devastation” together. *See also Brdanin* Trial Judgement, paras 591-593.

¹⁶⁷ *Orić* Trial Judgement, para. 585; *Hadžihasanović and Kubura* Trial Judgement, para. 43.

¹⁶⁸ *Orić* Trial Judgement, para. 585. The Trial Chamber in *Hadžihasanović and Kubura* held that “destruction is large scale either when a large quantity of property has been destroyed or when the value of a single destroyed object is sufficiently great”, *Hadžihasanović and Kubura* Trial Judgement, para. 43.

¹⁶⁹ *Kordić and Čerkez* Appeal Judgement, para. 495; *Kordić and Čerkez* Trial Judgement, para. 346; *Naletilić and Martinović* Trial Judgement, para. 579; *Brdanin* Trial Judgement, para. 592; *Strugar* Trial Judgement, para. 295; *Hadžihasanović and Kubura* Trial Judgement, para. 45. Article 14 of the 1863 Lieber Code provides that “[m]ilitary necessity, as understood in modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war”.

¹⁷⁰ *Hadžihasanović and Kubura* Trial Judgement, para. 45; *Galić* Appeal Judgement, para. 190.

¹⁷¹ *Kupreškić et al.* Trial Judgement, para. 522, cited by *Hadžihasanović and Kubura* Trial Judgement, para. 45.

¹⁷² *Kordić and Čerkez* Appeal Judgement, para. 495.

¹⁷³ *Orić* Trial Judgement, para. 588; *Naletilić and Martinović* Trial Judgement, para. 589. However, there may be rare occasions in which pre-emptive destruction could arguably fall within the scope of ‘military necessity’, when such destruction is reasonably connected with the overcoming of enemy forces, *Orić* Trial Judgement, para. 588.

¹⁷⁴ *Kordić and Čerkez* Trial Judgement, para. 346; *Naletilić and Martinović* Trial Judgement, fn 1440; *Brdanin* Trial Judgement, para. 593; *Strugar* Trial Judgement, para. 296; *Hadžihasanović and Kubura* Trial Judgement, para. 40; *Orić* Trial Judgement, para. 589.

K. Destruction or wilful damage done to institutions dedicated to education or religion

95. Milan Martić is charged with destruction or wilful damage done to institutions dedicated to religion or education, a violation of the laws or customs of war pursuant to Article 3(d) of the Statute (Count 13).¹⁷⁵

96. The crime of destruction or wilful damage done to institutions dedicated to religion or education has the following elements:¹⁷⁶

1. an act has caused damage to, or destruction of, an institution dedicated to religion or education;
2. the damaged or destroyed institution was not used for military purposes at the time of the act; and
3. the act was carried out with intent to destroy or damage, or in reckless disregard of the likelihood of the destruction or damage to the institution in question.

97. Article 3(d) of the Statute is considered as comprising of two types of protection for cultural, historical, and religious monuments: general protection and special protection.¹⁷⁷ General protection applies to civilian objects, that is all objects which are not military objects.¹⁷⁸ Special protection is granted to “historic monuments, works of art, and places of worship, provided they constitute the cultural or spiritual heritage of peoples”.¹⁷⁹ The “cultural or spiritual heritage of peoples” covers “objects whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of a people”.¹⁸⁰ Thus, special protection does not encompass all the buildings or institutions dedicated to education or religion.¹⁸¹

¹⁷⁵ Article 3(d) of the Statute prohibits “seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.” Article 3(d) of the Statute is derived from Articles 27 and 56 of the Hague Regulations, and also has its basis in the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (“1954 Hague Convention”), Articles 52 and 53 of Additional Protocol I, and Article 16 of Additional Protocol II, *Kordić and Čerkez* Appeal Judgement, paras 89-91; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, paras 45-46; *Brdanin* Trial Judgement, para. 595; *Strugar* Trial Judgement, paras 303-306.

¹⁷⁶ *Strugar* Trial Judgement, para. 312.

¹⁷⁷ *Kordić and Čerkez* Appeal Judgement, paras 89-91; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 45. General protection is codified, *inter alia*, in Article 52 of Additional Protocol I.

¹⁷⁸ *Kordić and Čerkez* Appeal Judgement, para. 89; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 45.

¹⁷⁹ *Kordić and Čerkez* Appeal Judgement, para. 90; *Hadžihasanović and Kubura* Rule 98 *bis* Appeal Decision, para. 46, both referring to Article 53 of Additional Protocol I. Article 16 of Additional Protocol II reiterates the protection for the same categories of property. *See also* Article 1(a) of the 1954 Hague Convention, which also codifies the special protection.

¹⁸⁰ *Kordić and Čerkez* Appeal Judgement, para. 91; ICRC Commentary on Additional Protocols, paras 2063-2068 (regarding Article 53 of Additional Protocol I), paras 4840-4844 (regarding Article 16 of Additional Protocol II).

¹⁸¹ *Kordić and Čerkez* Appeal Judgement, paras 89-90, 92; *Brdanin* Trial Judgement, fn 1505.

98. The protection of institutions dedicated to religion or education is lost if such institutions are used for a military purpose.¹⁸² The Trial Chamber considers that this exception applies both to general protection and special protection under Article 3(d) of the Statute.¹⁸³ However, the protection is not lost simply because military activities or military installations are situated in the immediate vicinity of the institution. It is the use of an institution and not its location which is the decisive factor.¹⁸⁴

99. The *mens rea* of this crime is that the perpetrator acted with direct or indirect intent.¹⁸⁵

L. Plunder of public or private property

100. Milan Martić is charged with plunder of public and private property, a violation of the laws or customs of war pursuant to Article 3(e) of the Statute (Count 14).¹⁸⁶

101. Plunder of public or private property under Article 3(e) of the Statute is committed “when private or public property is appropriated intentionally and unlawfully”.¹⁸⁷ The prohibition of plunder includes “all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as ‘pillage’”.¹⁸⁸ There is no difference between public and private property under the Statute.¹⁸⁹

102. For the crime of plunder to be established, the appropriation of private or public property must be done without lawful basis or legal justification. Belligerent occupants may, in certain instances, lawfully use private or public property in the occupied territory for their military needs.¹⁹⁰ A party to the conflict is also allowed to seize enemy military equipment captured or found on the battlefield as war booty, with the exception that the personal belongings of the

¹⁸² *Kordić and Čerkez* Trial Judgement, paras 361-362; *Naletilić and Martinović* Trial Judgement, para. 605; *Brdanin* Trial Judgement, para. 598; *Strugar* Trial Judgement, para. 310; *Hadžihasanović and Kubura* Trial Judgement, paras 58, 60-61.

¹⁸³ *Hadžihasanović and Kubura* Trial Judgement, paras 60-61. See also ICRC Commentary on Additional Protocols, paras 2069-2079 (regarding Article 53 of Additional Protocol I).

¹⁸⁴ *Naletilić and Martinović* Trial Judgement, para. 605; *Strugar* Trial Judgement, para. 310.

¹⁸⁵ *Brdanin* Trial Judgement, para. 599; *Hadžihasanović and Kubura* Trial Judgement, para. 59.

¹⁸⁶ The offence of plunder has also been codified in the following instruments: Article 6(b) of the Nuremberg Charter and Article 2(1)(b) of Control Council Law No. 10, punishing the war crime of “plunder of public and private property”; Articles 28 and 47 of the Hague Regulations, Article 7 of Hague Convention IX, and Article 33 of Geneva Convention IV, Article 4(2)(g) of Additional Protocol II, prohibiting pillage; Article 46 of the Hague Regulations, prohibiting confiscation of private property.

¹⁸⁷ *Kordić and Čerkez* Appeal Judgement, para. 84.

¹⁸⁸ *Kordić and Čerkez* Appeal Judgement, para. 79. See also *Blaškić* Appeal Judgement, para. 147. Acts of unjustified appropriation of property range from isolated acts of looting, theft or plunder committed by individuals for private gain, to organised seizure of property in violation of the rights of the owners, undertaken within the framework of a systematic economic exploitation of the targeted area, *Čelebići* Trial Judgement, para. 590; *Jelišić* Trial Judgement, para. 48; *Kordić and Čerkez* Trial Judgement, para. 352.

¹⁸⁹ *Kordić and Čerkez* Appeal Judgement, para. 79.

prisoners of war may not be taken away.¹⁹¹ According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle.¹⁹²

103. It is required that the property unlawfully appropriated be of “sufficient monetary value” for its appropriation to involve grave consequences for the victim.¹⁹³ The assessment of whether a piece of property holds the required value “can only be made on a case-by-case basis and only in conjunction with the general circumstances of the crime”.¹⁹⁴ This requirement could be met in cases where appropriations take place *vis-à-vis* a large number of people, even though they do not lead to grave consequences for each individual.¹⁹⁵ What needs to be considered here is “the overall effect on the civilian population and the multitude of offences committed”.¹⁹⁶

104. With respect to the *mens rea* of this crime, the unlawful appropriation of property must have been perpetrated with either direct or indirect intent.¹⁹⁷

M. Deportation and other inhumane acts (forcible transfer)

105. Milan Martić is charged with deportation and other inhumane acts (forcible transfers) under Article 5(d) and (i), respectively (Counts 10 and 11).¹⁹⁸

106. The protected interests underlying the prohibitions against deportation and forcible transfer “include the right of the victim to stay in his or her home and community and the right not to be deprived of his or her property by being forcibly displaced to another location.”¹⁹⁹

¹⁹⁰ *Naletilić and Martinović* Trial Judgement, para. 616; *Hadžihasanović and Kubura* Trial Judgement, para. 51.

¹⁹¹ *Hadžihasanović and Kubura* Trial Judgement, para. 51. *See also* Lieber Code, Article 45; Hague Regulations, Article 4; Geneva Convention III, Article 18 (1).

¹⁹² Hague Regulations, Articles 51-53. Article 52 provides that “Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible”. *See also* Geneva Convention IV, Articles 55(2) and 57; *Naletilić and Martinović* Trial Judgement, para. 616; *Simić et al.* Trial Judgement, para. 100. Article 4(2)(g) of Additional Protocol II prohibits pillage in non-international armed conflicts, *see Hadžihasanović and Kubura* Trial Judgement, para. 52; *Customary International Humanitarian Law*, ICRC, Volume I, pp 181-182.

¹⁹³ *Čelebići* Trial Judgement, para. 1154, *referred to by Kordić and Čerkez* Trial Judgement, para. 352 and later upheld by *Kordić and Čerkez* Appeal Judgement, para. 82.

¹⁹⁴ *Kordić and Čerkez* Appeal Judgement, para. 82; *Hadžihasanović and Kubura* Trial Judgement, para. 55.

¹⁹⁵ *Kordić and Čerkez* Appeal Judgement, para. 83; *Naletilić and Martinović* Trial Judgement, para. 614; *Hadžihasanović and Kubura* Trial Judgement, para. 55.

¹⁹⁶ *Kordić and Čerkez* Appeal Judgement, para. 83.

¹⁹⁷ *Hadžihasanović and Kubura* Trial Judgement, para. 50; *Orić* Decision on the Motion for Acquittal pursuant to Rule 98 *bis*, Hearing, 8 Jun 2005, T. 9027.

¹⁹⁸ In this judgement, the term “forcible transfer” will be used concerning displacement charged in Count 11.

¹⁹⁹ *Stakić* Appeal Judgement, para. 277, *accepting Stakić* Trial Judgement, para. 681.

107. The *actus reus* of deportation is “the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a *de jure* border or, in certain circumstances, a *de facto* border, without grounds permitted under international law.”²⁰⁰ The *actus reus* of forcible transfer is the forced displacement of persons within national boundaries.²⁰¹

108. The element that the displacement be forced requires that the victims had no genuine choice in their displacement.²⁰² In situations where the victims have consented, or even requested, their removal, that consent “must be real in the sense that it is given voluntarily and as a result of the individual’s free will, assessed in the light of surrounding circumstances.”²⁰³

109. International law permits involuntary displacements on humanitarian grounds.²⁰⁴ Thus, in cases where displacements are permitted on humanitarian grounds, the act of displacement cannot constitute the *actus reus* of deportation or forcible transfer.²⁰⁵ However, displacements for humanitarian reasons are not justifiable where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity.²⁰⁶

110. With regard to deportation, the *Stakić* Appeals Chamber found that “the default principle under customary international law [...] is that there must be expulsion across a *de jure* border to another country.”²⁰⁷ The Appeals Chamber has also held that under certain circumstances displacement across a *de facto* border may be sufficient to amount to deportation.²⁰⁸

111. The *mens rea* of deportation is that the perpetrator must intend to displace the victims across the border.²⁰⁹ The *mens rea* of forcible transfer is that the perpetrator must intend to displace the

²⁰⁰ *Stakić* Appeal Judgement, para. 278.

²⁰¹ *Stakić* Appeal Judgement, para. 317.

²⁰² *Stakić* Appeal Judgement, para. 279. The absence of genuine choice has been interpreted to include displacement as a result of threats or the use of force, fear of violence, and illegal detention, *Krnjelac* Appeal Judgement, para. 229. The Appeals Chamber has held that factors other than force may render an act involuntary, such as taking advantage of coercive circumstances, *Kunarac et al.* Appeal Judgement, para. 129 (in the context of rape).

²⁰³ *Stakić* Appeal Judgement, para. 279, referring to *Krnjelac* Appeal Judgement para. 299 and *Kunarac et al.* Appeal Judgement, paras 127-128 (the latter in the context of rape).

²⁰⁴ Article 49(2) of Geneva Convention IV, which is applicable to international armed conflict, provides that “the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.” Similarly, Article 17 of Additional Protocol II, which is applicable to non-international armed conflict, provides that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.” While Article 17 of Additional Protocol II does not use the term “evacuation” it is clear from reading the provision that the same temporary measure as described in Article 49(2) of Geneva Convention IV is intended.

²⁰⁵ *Stakić* Appeal Judgement, para. 286, noting that “the participation of an NGO in facilitating displacements does not in and of itself render an otherwise unlawful transfer lawful”, *ibid.*

²⁰⁶ *Stakić* Appeal Judgement, para. 287.

²⁰⁷ *Stakić* Appeal Judgement, para. 300.

²⁰⁸ In general, the question whether a particular *de facto* border is sufficient for the purposes of the crime of deportation should be examined on a case by case basis in light of customary international law, *Stakić* Appeal Judgement, para. 300, (footnotes omitted).

²⁰⁹ *Stakić* Appeal Judgement, para. 278.

victims within the relevant national border.²¹⁰ It is not necessary for either crime that the perpetrator intends the displacement to be permanent.²¹¹

N. Persecution

112. Milan Martić is charged with persecution, as a crime against humanity pursuant to Article 5(h) of the Statute (Count 1).

113. The crime of persecution consists of an act or omission, which:

1. discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law; and
2. was carried out deliberately with the intention to discriminate on political, racial or religious grounds.²¹²

114. Each of the three grounds listed is in itself sufficient to qualify conduct as persecution, notwithstanding the conjunctive “and” in the text of Article 5(h).²¹³

115. What distinguishes persecution from other crimes against humanity is that the underlying act is committed on discriminatory grounds.²¹⁴ There is no comprehensive list of the acts which may constitute persecution.²¹⁵ Such acts may be one of those listed under Article 5 of the Statute, or one of the acts constituting a crime under other articles of the Statute.²¹⁶ Furthermore, a persecutory act need not be prohibited explicitly either in Article 5 or elsewhere in the Statute.²¹⁷

116. It is not the case, however, that *any* act, if committed with the requisite discriminatory intent, amounts to persecutions as a crime against humanity.²¹⁸ There must be clearly defined limits on the expansion of the types of acts which qualify as persecution.²¹⁹ In order to amount to persecutions, the act must constitute a denial or infringement of a fundamental right laid down in

²¹⁰ *Stakić* Appeal Judgement, para. 317.

²¹¹ *Stakić* Appeal Judgement, paras 278, 317.

²¹² *Kvočka et al.* Appeal Judgement, para. 320; *Krnojelac* Appeal Judgement para. 185; *Vasiljević* Appeal Judgement para. 113; *Blaškić* Appeal Judgement, para. 131; *Kordić and Čerkez* Appeal Judgement para. 101; *Stakić* Appeal Judgement, para. 327.

²¹³ *Tadić* Trial Judgement, para. 713. See e.g. *Krnojelac* Appeal Judgement, para. 184.

²¹⁴ *Kupreškić et al.* Trial Judgement, para. 607.

²¹⁵ *Vasiljević* Trial Judgement, para. 246, citing *Tadić* Trial Judgement, para. 694; *Kupreškić et al.* Trial Judgement, paras 567-568, 614; *Blaškić* Trial Judgement, 218-219; *Kordić and Čerkez* Trial Judgement, para. 192; *Krnojelac* Trial Judgement, para. 433.

²¹⁶ *Krnojelac* Appeal Judgement, para. 219.

²¹⁷ *Kupreškić et al.* Trial Judgement, para. 614. The Trial Chamber in *Tadić* held that “the persecutory act must be intended to cause, and result in, an infringement on an individual’s enjoyment of a basic or fundamental right”, *Tadić* Trial Judgement, para. 715. Furthermore, it has been held that the acts themselves do not have to be inherently criminal, but they may become criminal and persecutory if committed with discriminatory intent, *Kvočka et al.* Trial Judgement, para. 186. See also *Tadić* Trial Judgement, para. 710.

²¹⁸ *Blaškić* Appeal Judgement, para. 139.

²¹⁹ *Kupreškić et al.* Trial Judgement, para. 618; *Kordić and Čerkez* Trial Judgement para. 194.

customary international law.²²⁰ Furthermore, not every act which constitutes a denial or infringement of a fundamental right is serious enough to constitute persecution. Acts of persecution must be of equal gravity to the acts enumerated under Article 5.²²¹

117. A single act or omission may be sufficient to constitute persecution “as long as this act or omission discriminates in fact and was carried out deliberately with the intention to discriminate on one of the listed grounds.”²²² Therefore, the act or omission itself must have discriminatory consequences and not just be carried out with discriminatory intent.²²³

118. It has been held that an act is discriminatory when a victim is targeted because of membership of a “group defined by the perpetrator on a political, racial or religious basis”.²²⁴ However, it is not necessary that a victim actually *be* a member of the targeted group. Thus, a Serb mistaken for a Muslim may still be the victim of the crime of persecution.²²⁵

119. The jurisprudence holds that the following acts, which the Prosecution has charged under Count 1 of the Indictment, may constitute the underlying acts of the crime of persecution: extermination and murder; imprisonment, inhumane living conditions, torture, beatings, sexual assault, unlawful attacks on civilians, restrictive and discriminatory measures, robbery, deportation or forcible transfer, destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites.²²⁶

²²⁰ *Kordić* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 139.

²²¹ *Blaškić* Appeal Judgement, para. 160; *Kupreškić et al.* Trial Judgement para. 619.

²²² *Vasiljević* Appeal Judgement, para. 113. *See also Kordić and Čerkez* Appeal Judgement, para. 102.

²²³ *Blaškić* Appeal Judgement, para. 135. *See also Blagojević and Jokić* Trial Judgement, para. 583; *Stakić* Trial Judgement, para. 733.

²²⁴ *Blagojević and Jokić* Trial Judgement, para. 583.

²²⁵ *Krnjelac* Appeal Judgement para. 185.

²²⁶ *Blaškić* Appeal Judgement, paras 143, 153, 155, 159; *Kordić and Čerkez* Appeal Judgement paras 104-106, 108, 672; *Krnjelac* Appeal Judgement, paras 221-222; *Brdanin* Trial Judgement, paras 999, 1029 *et seq*; *Krnjelac* Trial Judgement, paras 438-443; *Kupreškić et al.* Trial Judgement, para. 615; *Stakić* Trial Judgement, para. 757 (holding that “not only rape, but also any other sexual assault falling short of actual penetration is punishable [as persecution]”); *Tadić* Trial Judgement, para. 717. While robbery has not previously been expressly considered as a crime which may constitute an underlying act of persecutions, the Trial Chamber notes that the fundamental right to property is recognised in the Tribunal’s jurisprudence, *see e.g. Blaškić* Appeal Judgement, para. 145, *Blagojević* Trial Judgement, paras 593-594; *Naletelić and Martinović* Trial Judgement, para. 699 (and authorities cited therein); *Kordić and Čerkez* Appeal Judgement, para. 81. The Trial Chamber further notes that destruction of property may constitute an underlying act of the crime of persecutions, *see e.g. Blaškić* Appeal Judgement, para. 146 (and authorities cited therein); *Kordić and Čerkez* Appeal Judgement, para. 108. Aggravated forms of crimes against property in the context of plunder under Article 3 of the Statute have been recognised as acts of persecutions, *see e.g. Kupreškić et al.* Trial Judgement, para. 631; *Kordić and Čerkez* Trial Judgement, para. 205. Moreover, theft and robbery have been considered in the context of a persecutory campaign, *see e.g. Kvočka et al.* Trial Judgement, para. 496, in which the Trial Chamber held “[the Accused] was involved in the extortion of detainees and stealing money from detainees in Omarska camp, which in this context can be characterized as part of the harassment inflicted upon detainees in the camp and thus a part of the persecutory campaign”. *See also Kvočka et al.* Trial Judgement, para. 731, *Kordić and Čerkez* Trial Judgement, paras 514-520. The Trial Chamber is therefore satisfied that the appropriation of property with violence in the form of robbery may constitute an underlying act of the crime of persecution if perpetrated with the requisite intent. In relation to destruction, the Trial Chamber in *Kupreškić et al.* found that the comprehensive destruction of homes and property,

120. The crime of persecution requires evidence of a specific intent to discriminate on political, racial or religious grounds.²²⁷ This intent must be aimed at a group, rather than an individual; thus the *mens rea* “is the specific intent to cause injury to a human being because he belongs to a particular community or group.”²²⁸

121. Discriminatory intent may be inferred, for example from the discriminatory nature of an attack characterised as a crime against humanity provided that the circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.²²⁹ However, discriminatory intent may not be inferred directly from the *general* discriminatory nature of such an attack, that is such a context may not in and of itself amount to evidence of discriminatory intent.²³⁰

122. Circumstances which may be taken into consideration when inferring discriminatory intent include “the systematic nature of the crimes committed against a racial or religious group and the general attitude of the alleged perpetrator as demonstrated by his behaviour”.²³¹ Generally, such specific intent can only be inferred from “objective facts and the general conduct of an accused seen in its entirety.”²³²

O. The Defence’s challenge to the concept of JCE

123. In its closing arguments, the Defence submitted that JCE is not envisaged in the Statute as a mode of liability and that its existence and applicability can only be established by the United Nations Security Council.²³³ The Defence therefore submits that the application of JCE in the instant case is beyond the competence of the Trial Chamber.²³⁴ This conclusion, in the Defence’s view, is not affected by the consideration that JCE has been applied in previous cases.²³⁵

which constituted the destruction of the livelihood of a certain population, may constitute a gross or blatant denial of fundamental rights, and if committed on discriminatory grounds, could amount to persecutions, *Kupreškić et al.* Trial Judgement, para. 631. The Trial Chamber in *Kordić and Čerkez* held that the destruction and damage of religious or educational institutions may constitute persecution, *Kordić and Čerkez* Trial Judgement, para. 207. In relation to plunder, the Appeals Chamber in *Kordić and Čerkez* held that it must be considered whether an act of plunder, committed separately or cumulatively, with discriminatory intent *in concreto* amounts to persecutions being of an equal gravity as the other crimes against humanity listed in Article 5 of the Statute, *Kordić and Čerkez* Appeal Judgement para. 109. *See also Blaškić* Trial Judgement, para. 227; *Kordić and Čerkez* Trial Judgement para. 205; *Kupreškić et al.* Trial Judgement para. 631; *Tadić* Trial Judgement paras 707, 710.

²²⁷ *Kvočka et al.* Appeal Judgement, para. 460; *Blaškić* Appeal Judgement, para. 165.

²²⁸ *Kordić and Čerkez* Appeal Judgement, para. 111.

²²⁹ *Blaškić* Appeal Judgement, para. 164, citing *Krnjelac* Appeal Judgement, 184. *See also Kordić and Čerkez* Appeal Judgement paras 110, 950; *Kvočka et al.* Appeal Judgement para. 366; *Naletelić and Martinović* Appeal Judgement, paras 131, 146, 572.

²³⁰ *Kvočka et al.* Appeal Judgement, para. 460 (emphasis added).

²³¹ *Kvočka et al.* Appeal Judgement, para. 460.

²³² *Kordić and Čerkez* Appeal Judgement, para. 715.

²³³ Defence Closing Argument, 11 Jan 2007, T. 11325-11327.

²³⁴ *Ibid.*

²³⁵ *Ibid.*

124. The Trial Chamber will discuss JCE as a mode of liability later in the judgement.²³⁶ However, as the Defence has effectively raised a jurisdictional challenge in relation to the application of JCE to the instant case, the Trial Chamber considers it necessary to deal with the Defence submission in the present section.

125. The principle of individual criminal responsibility is laid down in Article 7(1) of the Statute, which provides as follows:

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.

126. The Appeals Chamber found that the Statute does not confine itself to providing for jurisdiction over those persons who plan, instigate, order, physically perpetrate a crime or otherwise aid and abet in its planning, preparation or execution.²³⁷ This is established jurisprudence. In other words, the Statute does not exclude other modes of liability such as JCE, which are based in customary international law. After reviewing relevant treaties and national legislation, as well as several post-World War II war-crimes cases, the Appeals Chamber held that JCE existed as a mode of individual criminal responsibility in customary international law at the time of the events in the former Yugoslavia.²³⁸ The Appeals Chamber therefore found that JCE is a form of “commission” under Article 7(1) of the Statute for which the Tribunal has jurisdiction *ratione personae*. The Defence argument is therefore dismissed.

III. FACTUAL FINDINGS

A. Background

127. In April and May 1990, multi-party elections were held in the Socialist Republic of Croatia.²³⁹ The Croatian Democratic Union (“HDZ”) won 41.5% of the votes and two-thirds of the seats in the Parliament.²⁴⁰ On 30 May 1990, the HDZ candidate Franjo Tudman was elected President of the Presidency of the Socialist Republic of Croatia.²⁴¹ As a result of the elections, the

²³⁶ See *infra* Section IV, B 1.

²³⁷ *Tadić* Appeal Judgement, para. 190.

²³⁸ *Tadić* Appeal Judgement, para. 226. See also *Brđanin* Appeal Judgement, paras 363-365.

²³⁹ Ex. 820, Agreed Facts, para. 3. See also Veljko Džakula, 16 Jan 2006, T. 344; Milan Babić, 3 Mar 2006, T. 1852; Vlado Vuković, 27 Mar 2006, T. 2681; Witness MM-036, 4 Apr 2006, T. 3198; Ratko Ličina, 14 Aug 2006, T. 6370.

²⁴⁰ Ex. 820, Agreed Facts, para. 3. See also Milan Babić, 15 Feb 2006, T. 1358, 21 Feb 2006, T. 1720; Witness MM-022, 20 Mar 2006, T. 2321; Vlado Vuković, 27 Mar 2006, T. 2681; Witness MM-078, 25 May 2006, T. 4481; Witness MM-096, 18 Aug 2006, T. 6728.

²⁴¹ Ex. 820, Agreed Facts, para. 3. See also Veljko Džakula, 17 Jan 2006, T. 453-454; Milan Babić, 21 Feb 2006, T. 1720.

Serbian Democratic Party (“SDS”) gained power in the municipalities of Benkovac, Donji Lapac, Gračac, Glina, Korenica, Knin, Obrovac, and Vojnić.²⁴²

128. On 25 July 1990, a Serbian Assembly was established in Srb, north of Knin, as the political representation of the Serbian people in Croatia.²⁴³ The Serbian Assembly declared sovereignty and autonomy of the Serb people in Croatia.²⁴⁴ On 31 July 1990, Milan Babić became president of the Serbian National Council (“SNC”), the executive body of the Serbian Assembly.²⁴⁵ On 16 August 1990, the SNC called for a referendum on the autonomy of Serbs in Croatia to be held between 19 August and 2 September 1990.²⁴⁶ The following day, 17 August 1990, the Government of Croatia declared the referendum illegal. The Croatian police moved towards several Serb-majority towns in the Krajina region and removed weaponry from the SJBs.²⁴⁷ Serbs responded by putting up barricades in Knin and surroundings.²⁴⁸ The referendum was held between 19 August and 2 September 1990: 97.7% voted in favour of autonomy.²⁴⁹

B. The SAO Krajina

1. Development of the SAO Krajina

129. On 21 December 1990, the SAO Krajina was proclaimed by the municipalities of the regions of Northern Dalmatia and Lika, in south-western Croatia.²⁵⁰ Article 1 of the Statute of the SAO Krajina defined the SAO Krajina as “a form of territorial autonomy within the Republic of Croatia” on which the Constitution of the Republic of Croatia, state laws and the Statute of the SAO Krajina were applied.²⁵¹

²⁴² Veljko Džakula, 16 Jan 2006, T. 344; Milan Babić, 15 Feb 2006, T. 1359; Witness MM-037, 28 Mar 2006, T. 2767-2668; Ratko Ličina, 14 Aug 2006, T. 6381-6382, 6403-6404; Branko Popović, 8 Sep 2006, T. 7996-7997. The SDS’ aims and goals included “creating conditions for the full self-confirmation of the spiritual and cultural identity of each Yugoslav people by itself, independently of which federal unit it belonged to; ensuring constitutional possibility for establishing territorial autonomies inside the federal units, if the population on the territories with a special ethnic composition or cultural and historical identity decides so on a referendum”, Ex. 138. *See also* Veljko Džakula, 16 Jan 2006, T. 344; Ratko Ličina, 14 Aug 2006, T. 6371; Ex. 23, pp 20, 24-25.

²⁴³ Ex. 820, Agreed Facts, para. 4. *See also* Ex. 23, p. 25.

²⁴⁴ Ex. 820, Agreed Facts, para. 4. *See also* Veljko Džakula, 16 Jan 2006, T. 385, 18 Jan 2006, T. 507; Milan Babić, 21 Feb 2006, T. 1743-1744; Ratko Ličina, 15 Aug 2006, T. 6497, 17 Aug 2006, T. 6693-6696; Lazar Macura, 13 Sep 2006, T. 8272; Ex. 141.

²⁴⁵ Milan Babić, 15 Feb 2006, T. 1327.

²⁴⁶ Ex. 820, Agreed Facts, para. 5. *See also* Ex. 179.

²⁴⁷ Witness MM-096, 18 Aug 2006, T. 6755, 6761-6762, 6769. *See also* Ex. 22; Ex. 23.

²⁴⁸ This is also referred to as the “Log Revolution”, Ex. 820, Agreed Facts, para. 6. *See also* Ex. 496, p. 6; Ex. 497; Witness MM-003, 8 Mar 2006, T. 1968-1969; Witness MM-078, 25 May 2006, T. 4475; Ratko Ličina, 14 Aug 2006, T. 6397, 6400; Witness MM-096, 18 Aug 2006, T. 6777-6778.

²⁴⁹ Ex. 820, Agreed Facts, para. 7. *See also* Veljko Džakula, 18 Jan 2006, T. 508; Milan Babić, 21 Feb 2006, T. 1746-1747, 2 Mar 2006, T. 1771; Ex. 142.

²⁵⁰ Ex. 820, Agreed Facts, para. 9. *See also* Milan Babić, 21 Feb 2006, T. 1747; Ex. 143.

²⁵¹ Ex. 820, Agreed Facts, para. 9. *See also* Milan Babić, 21 Feb 2006, T. 1747-1748. Art 4 of the Statute provided that “[t]he Serbian Autonomous District of Krajina shall have territory that is comprised of territories of the present Union of Municipalities of Northern Dalmatia and Lika, territories of municipalities with majority Serbian populations which

130. On 22 December 1990, the Parliament of Croatia adopted a new constitution, wherein Croatia was defined as “the national state of the Croatian nation and a state of members of other nations and minorities who are citizens: Serbs [...] who are guaranteed equality with citizens of Croatian nationality [...]”.²⁵² The Serb population in the Krajina region considered that by the adoption of the new constitution, they had been deprived of the right to be a constituent nation in Croatia, which would include the right of self-determination.²⁵³

131. On 4 January 1991, the Executive Council of the SAO Krajina established the Regional Secretariat for Internal Affairs (“SUP”) in Knin.²⁵⁴ On the same date, Milan Martić was appointed the Secretary for Internal Affairs of the SAO Krajina.²⁵⁵ On 5 January 1991, the Executive Council informed the MUP of Croatia that the establishment of the SUP revoked the authority of the MUP of Croatia in the SAO Krajina territory.²⁵⁶

132. In March 1991, there were armed clashes in Pakrac in Western Slavonia and in Plitvice between Titova Korenica and Saborsko between Croatian MUP special police forces and the police of the SAO Krajina. In both of these clashes, the JNA intervened to separate the two sides.²⁵⁷

133. On 1 April 1991, Milan Babić as President of the Executive Council of the SAO Krajina ordered mobilisation of the TO and volunteer units of the SAO Krajina.²⁵⁸ However, the evidence shows that between January and August 1991 the municipal TO staffs and units only existed on paper.²⁵⁹ In the same order, Milan Babić requested the MUP of Serbia to provide technical and

adopt decisions to joint the Serbian Autonomous District of Krajina, and settlements in which Serbian people comprise the majority of the population and which have voted at a referendum in favour of joining one of the existing or newly established municipalities with a majority Serbian population”, Ex. 143.

²⁵² Ex. 910, p. 9; Veljko Džakula, 18 Jan 2006, T. 513.

²⁵³ Ratko Ličina, 14 Aug 2006, T. 6386, 16 Aug 2006, T. 6542-6543; Witness MM-090, 1 Sep 2006, T. 7563-7573.

²⁵⁴ Ex. 183. The SUP in Knin included SJBs of Obrovac, Benkovac, Knin, Gračac, Titova Korenica, Donji Lapac, Dvor na Uni, Glina, Kostajnica, Vojnić, *ibid.*; Witness MM-096, 21 Aug 2006, T. 6829, 6831-6832. *See also* Ex. 182; Ex. 181; Reynaud Theunens, 26 Jan 2006, T. 686-687; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 10-16; Ex. 1044.

²⁵⁵ Ex. 820, Agreed Facts, para. 10. *See also* Milan Babić, 15 Feb 2006, T. 1397-1398, 1406, 2 Mar 2006, T. 1800; Reynaud Theunens, 3 Feb 2006, T. 1013; Ex. 33.

²⁵⁶ Ex. 183. *See also* Ex. 485, Decree on Internal Organisation and Operation of the Ministry of the Interior, providing that there were two services within the MUP, the Public Security Service and the State Security Service (Art. 7), and that in the event of a state of war or imminent threat of war “special police units” would be formed (Art. 6a).

²⁵⁷ Veljko Džakula, 18 Jan 2006, T. 516-517; Milan Babić, 17 Feb 2006, T. 1506-1507, 1510-1513, (also testifying that a Croat and a Serb policeman were killed), 20 Feb 2006, T. 1600; Marko Vuković, 24 Mar 2006, T. 2571; Vlado Vuković, 27 Mar 2006, T. 2651, 2686-2688, 28 Mar 2006, T. 2722, 2729; Witness MM-037, 28 Mar 2006, T. 2758; Ex. 268, T. 11621; Slobodan Perić, 7 Sep 2006, T. 7908-7910; Lazar Macura, 12 Sep 2006, T. 8208; Stevo Plejo, 20 Sep 2006, T. 8676-8677; Nikola Medaković, 9 Oct 2006, T. 8957-8958; Ex. 476, p. 251.

²⁵⁸ Ex. 29. In the SFRY, the TO was organised, funded and equipped on the level of the Republics of the SFRY, Reynaud Theunens, 26 Jan 2006, T. 656; Ex. 6, p. 6. *See also* Ex. 147.

²⁵⁹ Milan Babić, 15 Feb 2006, T. 1393-1395, testifying that the only armed units of the SAO Krajina during this time period were the *Milicija Krajine* and volunteer units, *see also* Radoslav Maksić, 6 Feb 2006, T. 1154-1155, 1171. Ex. 30 providing (p. 1) that the Benkovac municipality TO staff, following a decision by the SAO Krajina Government of 15 July 1991, began “forming and arming the TO units of Benkovac Municipality on 17 July 1991”. It is also stated (p. 1) that “the most difficult problem during the beginning of the formation of TO units was that there was a very small quantity of weapons available.”

personnel support to the SUP of the SAO Krajina.²⁶⁰ Also on 1 April 1991, the Executive Council of the SAO Krajina passed a decision joining the SAO Krajina to Serbia, wherein it was stipulated that the constitution and laws of Serbia, as well as the constitutional-legal system of the SFRY, were to apply in the SAO Krajina.²⁶¹ It was also decided that a referendum was to be held on the question: “[a]re you in favour of the annexation of the SAO Krajina to the Republic of Serbia on the 30th of April?”²⁶² The President of Serbia, Slobodan Milošević, publicly opposed the referendum on joining the SAO Krajina with Serbia, stating that the ballot would have to read instead “in favour of remaining in Yugoslavia”; moreover, he asked that the decision on the annexation of the SAO Krajina to Serbia, be withdrawn.²⁶³

134. On 12 May 1991, after the intervention of Slobodan Milošević, the referendum was held on the following question: “[a]re you in favour of the SAO Krajina joining the Republic of Serbia and staying in Yugoslavia with Serbia, Montenegro and others who wish to preserve Yugoslavia?” with 99.8% voting in favour.²⁶⁴ On 16 May 1991, the Assembly of the SAO Krajina approved the outcome of the referendum and stated that “the territory of the SAO Krajina is a constitutive part of the unified state territory of the Republic of Serbia”.²⁶⁵ Both Milan Babić and Milan Martić publicly expressed views that SAO Krajina belonged with Serbia.²⁶⁶ On 19 May 1991, a referendum was held in Croatia, except in predominantly Serb areas, concerning independence of Croatia from Yugoslavia. 94.1% of those voting came out in favour of independence.²⁶⁷

135. On 29 May 1991, the SAO Krajina government was established with Milan Babić as President.²⁶⁸ Milan Babić appointed Milan Martić as Minister of Defence.²⁶⁹ On the same day, the Assembly of the SAO Krajina established “special purpose police units” named *Milicija Krajine*, in addition to the previously established Public Security Service police and State Security Service police.²⁷⁰ The *Milicija Krajine* was established within the MUP, but was put under the authority of

²⁶⁰ Ex. 29.

²⁶¹ Ex. 820, Agreed Facts, para. 11. *See also* Milan Babić, 16 Feb 2006, T. 1511; Ex. 144; Ex. 145.

²⁶² Milan Babić, 2 Mar 2006, T. 1824, 1830-1832; Ex. 148.

²⁶³ Ex. 235. *See also* Ex. 201, p. 3; Mile Dakić, 25 Oct 2006, T. 10025-10026; Milan Babić, 16 Feb 2006, T. 1476-1477, 2 Mar 2006, T. 1830-1831; Lazar Macura, 14 Sep 2006, T. 8326.

²⁶⁴ Ex. 820, Agreed Facts, para. 13. *See also* Milan Babić, 2 Mar 2006, T. 1830; Ex. 146; Ex. 148; Ex. 234.

²⁶⁵ Ex. 613, Art. 3, p. 45. *See also* Ex. 149. Following this decision, an SAO Krajina delegation went to Belgrade to present the results of the referendum as well as the request on the annexation of the SAO Krajina to Serbia, however the delegation was not received by the Serbian Assembly, Lazar Macura, 12 Sep 2006, T. 8201-8203. *See also* Ljubica Vujanić, 15 Sep 2006, T. 8479-8480, 18 Sep 2006, T. 8535-8538; Ex. 956.

²⁶⁶ Ex. 973; Ex. 955, pp 3-4. *See also* Witness MM-105, 1 Nov 2006, T. 10496-10497. On 29 May 1991, the Assembly of the SAO Krajina passed the Constitutional Law of the SAO Krajina which defined the SAO Krajina as part of the federative Yugoslavia, Ex. 820, Agreed Facts, para. 13.

²⁶⁷ Ex. 820, Agreed Facts, para. 14. *See also* Ex. 1019, p. 5.

²⁶⁸ Milan Babić, 15 Feb 2006, T. 1328.

²⁶⁹ Milan Babić, 15 Feb 2006, T. 1405-1407. *See also* Ex. 154.

²⁷⁰ Ex. 820, Agreed Facts, para. 15. *See also* Ex. 485. The Public Security Service was responsible for maintaining law and order. The SDB handled political crime, terrorism, extremism, and intelligence work. The *Milicija Krajine* units

the Ministry of Defence.²⁷¹ The *Milicija Krajine* units wore patches on the sleeves of their uniforms reading in Cyrillic “Milicija Krajine”.²⁷² On 27 June 1991, Milan Martić was appointed Minister of Interior.²⁷³ According to Milan Babić, on this day Milan Martić withdrew from his position as Minister of Defence.²⁷⁴

136. On 25 June 1991, Croatia and Slovenia declared independence from Yugoslavia.²⁷⁵ However, on 8 July 1991, an international agreement was reached that Croatia and Slovenia would suspend implementation of their independence until 8 October 1991.²⁷⁶

137. On 1 August 1991, the SAO Krajina government decided to apply the Law on Defence of Serbia in the SAO Krajina. Accordingly, the *Milicija Krajine* units together with the TO made up the armed forces of the SAO Krajina.²⁷⁷ The evidence shows that the TO used JNA solid-colour uniforms with patches reading “SAO Krajina” in Cyrillic, on the sleeve.²⁷⁸ Milan Babić, as President, was the Commander of the TO of the SAO Krajina.²⁷⁹ On 8 August 1991, Milan Martić was appointed Deputy Commander of the TO of the SAO Krajina, in which position he remained

defended the territorial integrity of the [SAO Krajina], secured vital facilities, infiltrated sabotage groups, and could also be used in military operations, Radoslav Maksić, 6 Feb 2006, T. 1169-1170; Witness MM-079, 31 Mar 2006, T. 3030-3031; Nikola Medaković, 10 Oct 2006, T. 9054; Witness MM-117, 18 Oct 2006, T. 9674; Ex. 32.

²⁷¹ Ex. 820, Agreed Facts, para. 15. The Trial Chamber notes the evidence that a clash occurred between Milan Babić and Milan Martić as a result of the former’s decision to appoint Dušan Vještica as Minister of Interior, and that according to Milan Babić, Milan Martić only accepted the appointment as Minister of Defence on condition that he “could still maintain his control over the special police units which were being trained at Golubić”, Milan Babić, 15 Feb 2006, T. 1406, 1408; Ex. 44; Ex. 544; Ex. 1028, Group 2, p. 13. *See also* Ex. 485, Art. 6b, according to which the “leader” of the future *Milicija Krajine* Service would be accountable to the Minister of the Interior.

²⁷² Vlado Vuković, 27 Mar 2006, T. 2701-2703; Nikola Medaković, 10 Oct 2006, T. 9052; Ex. 266.

²⁷³ Ex. 820, Agreed Facts, para. 16. *See also* Milan Babić, 15 Feb 2006, T. 1408, 2 Mar 2006, T. 1803-1804; Ex. 34. With the establishment of the government in May 1991, the SUP of the SAO Krajina was changed into the MUP of the SAO Krajina, Milan Babić, 15 Feb 2006, T. 1406-1407; Ex. 44. On 1 August 1991, a decision was reached about the application of the law on internal affairs of the Republic of Serbia on the territory of Krajina, Milan Babić, 15 Feb 2006, T. 1403-1404.

²⁷⁴ Milan Babić, 15 Feb 2006, T. 1407. The Trial Chamber notes that while Ex. 582, dated 23 July 1991 and Ex. 215, dated 19 August 1991, refer to Milan Martić as Minister of Defence, it however accepts the evidence of Milan Babić.

²⁷⁵ Ex. 820, Agreed Facts, para. 14.

²⁷⁶ Ex. 820, Agreed Facts, para. 17. *See also* Milan Babić, 2 Mar 2006, T. 1836, 3 March 2006, T. 1882, 1887, 1923.

²⁷⁷ Ex. 31, Art. 5.

²⁷⁸ Witness MM-037, 28 Mar 2006, T. 2787-2788, 29 Mar 2006, T. 2813; Ex. 188. Regarding JNA uniforms, *see infra* fn 283.

²⁷⁹ Ex. 31, Art. 6. The Trial Chamber notes that the *Milicija Krajine* is not mentioned in this provision, Milan Babić, 16 Feb 2006, T. 1422-1424. *See also* Ex. 189; Radoslav Maksić, 6 Feb 2006, T. 1154.

until 30 September 1991.²⁸⁰ He continued to hold the position of Minister of the Interior while he was Deputy Commander of the TO.²⁸¹

138. As will be discussed below, there were several ongoing clashes between Croatian armed forces and formations and the forces of the SAO Krajina from the spring of 1991, including in Kijevo, Drniš, Hrvatska Dubica, Saborsko, and Škabrnja.²⁸² During the second half of 1991, there were numerous cease-fire agreements and agreements on the withdrawal of the JNA from Croatia.²⁸³ On 23 November, the Vance Plan was signed by the President of Croatia Franjo Tuđman, the President of Serbia Slobodan Milošević and the SFRY Federal Secretary for Defence General Veljko Kadijević.²⁸⁴ The Vance Plan made provision for the deployment of a United Nations Protection Force (“UNPROFOR”) in the Krajina, Western Slavonia and Eastern Slavonia, for demilitarisation, and eventual return of refugees and displaced persons.²⁸⁵ Importantly, the Vance Plan stated that “[t]he role of the United Nations troops would be to ensure that the areas remained demilitarised and that all persons residing in them were protected from fear of armed attack.”²⁸⁶

139. On 30 November 1991, the SAO Krajina adopted its own Law on Defence, whereby the Law on Defence of Serbia ceased to apply in the SAO Krajina.²⁸⁷ According to the new law, the TO

²⁸⁰ Ex. 820, Agreed Facts, para. 19. *See also* Milan Babić, 15 Feb 2006, T. 1395-1396, 16 Feb 2006, T. 1435-1437, testifying that in early August 1991 Slobodan Milošević requested him to appoint Milan Martić as Commander of the TO, however he refused to do this because Milan Martić “was not qualified to hold that position, that this was something that a general of the army should do”, and that Milan Martić was instead appointed Deputy Commander of the TO to prevent him from becoming “independent of the government”; Radoslav Maksić, an officer in the SAO Krajina TO and subsequently TO Commander, testifying that he had numerous meetings with Milan Babić as Supreme Commander and only rarely with Milan Martić, Radoslav Maksić, 7 Feb 2006, T. 1230-1231; Reynaud Theunens, 6 Feb 2006, T. 1128-1129; Ex. 37.

²⁸¹ Milan Babić, 15 Feb 2006, T. 1395-1396, 16 Feb 2006, T. 1436. *See also* Ex. 121; Reynaud Theunens, 6 Feb 2006, T. 1128-1129.

²⁸² *See infra* paras 161-171, 173-175, 220-224, 236-243.

²⁸³ These cease-fire agreements included the Brioni Moratorium, Ex. 820, Agreed Facts, para. 17. *See also* Veljko Džakula, 18 Jan 2006, T. 527-528; Milan Babić, 2 Mar 2006, T. 1834-1835, 3 Mar 2006, T. 1871-1872; the Carrington Plan, Milan Babić, 20 Feb 2006, T. 1614-1615, 1634-1635; Lazar Macura, 14 Sep 2006, T. 8328. On 8 October 1991, the JNA and the Croatian armed forces signed an agreement, under the auspices of the European Community, concerning the withdrawal of JNA units from Croatia, Ex. 240; Milan Babić, 3 March 2006, T. 1922-1923. In the SFRY, JNA was a federal institution, Reynaud Theunens, 26 Jan 2006, T. 656; Ex. 6, p. 6. The evidence shows that JNA soldiers wore solid-colour uniforms, which witnesses described as olive-grey or olive-green in colour. The evidence also shows that from 1992 or 1993 camouflage uniforms were introduced for JNA units. The caps had a five-pointed star and the officers had shoulder patches to denote rank, Vlado Vuković, 27 Mar 2006, T. 2706; Lazar Macura, 15 Sep 2006, T. 8401, 8405.

²⁸⁴ Ex. 820, Agreed Facts, para. 22. *See also* Milan Babić, 20 Feb 2006, T. 1639, 3 March 2006, T. 1914, 1923-1924; Lazar Macura, 14 Sep 2006, T. 8329; Ex. 948.

²⁸⁵ Veljko Džakula, 16 Jan 2006, T. 406-407; Milan Babić, 20 Feb 2006, T. 1635; Charles Kirudja, 30 May 2006, T. 4787-4788, 1 Jun 2006, T. 4901-4902; Lazar Macura, 13 Sep 2006, T. 8225-8231, 14 Sep 2006, T. 8337; Ex. 115; Ex. 478, p. 1. A cease-fire agreement was subsequently signed on 2 January 1992, Ex. 820, Agreed Facts, para. 24. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Charles Kirudja, 31 May 2006, T. 4888; Slobodan Jarčević, 13 Jul 2006, T. 6196-6197; Ex. 766.

²⁸⁶ Ex. 115, paras 7, 10-11.

²⁸⁷ Ex. 36.

was “part of the unified armed forces of the [SFRY]” and the President of the SAO Krajina led “the armed forces in times of peace and in times of war.”²⁸⁸

2. Support provided to the SAO Krajina

140. As early as August 1990 and through the summer of 1991, officials of the MUP of Serbia, including the Chief of the SDB, Jovica Stanišić, and an official thereof, Franko “Frenki” Simatović, met with the SAO Krajina leadership, in particular with Milan Martić, concerning the provision of financial, logistical and military assistance.²⁸⁹ From January 1991, Milan Martić went on occasion to Belgrade to meet with these officials and with Radmilo Bogdanović, the Minister of the Interior of Serbia, concerning the provision of support to the SAO Krajina.²⁹⁰

141. The SAO Krajina budget was very small as a result of Croatia having ceased to provide budget allocations to Serb municipalities in May 1991.²⁹¹ The SAO Krajina government, including Milan Martić, sent requests to the government of Serbia for military assistance and the evidence shows that these requests were frequently met.²⁹² The police of the SAO Krajina were mainly

²⁸⁸ Ex. 36, Articles 6 and 31.

²⁸⁹ Milan Babić, 17 Feb 2006, T. 1524-1526; Witness MM-003, 8 Mar 2006, T. 1987-1988, 1991-1992. *See also* Radoslav Maksić, 6 Feb 2006, T. 1179-1180.

²⁹⁰ Milan Babić, 17 Feb 2006, T. 1525; Witness MM-003, 8 Mar 2006, T. 1994-1995; 10 Mar 2006, T. 2134. *See also* Milan Babić, 15 Feb 2006, T. 1392, 16 Feb 2006, T. 1426-1427; Witness MM-079, 3 Apr 2006, T. 3061; Rade Rašeta, 2 May 2006, T. 3921-3924; Witness MM-018, 9 Jun 2006, T. 5354; Ex. 460; Ex. 619. Milan Babić testified that on Slobodan Milošević’s recommendation he met the Ministry of Defence of Serbia to discuss the need to finance and equip the TO “a couple of times” in September of 1991 and in November 1991 in Belgrade, Milan Babić, 16 Feb 2006, T. 1461-1462, 1464. On 1 August 1991, Milan Babić, as President of the SAO Krajina, abolished the SDB of the SAO Krajina, and thereby the SDB of Serbia, on the territory of the SAO Krajina. Milan Babić testified that this was done in order to establish government control over Ministry of Defence of the SAO Krajina. However, the decision was ultimately unsuccessful, which Milan Babić claimed was due to the close ties between the SDB of Serbia and the MUP of the SAO Krajina, Ex. 187; Milan Babić, 16 Feb 2006, T. 1417, 1420 onwards, 2 Mar 2006, T. 1802; Ex. 523 (confirming that the SDB of Serbia was still active and operating in the SAO Krajina in November 1991). *See also* Witness MM-079, 3 Apr 2006, T. 3078-3079. Milan Babić also testified that he asked Slobodan Milošević to remove Franko Simatović from the SAO Krajina, which eventually happened, however by the time of the attack on Lovinac, Franko Simatović had returned, Milan Babić, 16 Feb 2006, T. 1431. Furthermore, Milan Babić testified that Milan Martić was controlled by the SDB of Serbia and by Slobodan Milošević to such an extent that a “parallel structure” was created to the SAO Krajina government and authorities. According to Milan Babić, this parallel structure included the Minister of the Interior of Serbia, Radmilo Bogdanović, officials of the SDB of Serbia, in particular Jovica Stanišić, Franko Simatović, and Captain Dragan Vasiljković, and some representatives of the SDS and of the police in the Serb municipalities in the Krajina, Milan Babić, 15 Feb 2006, T. 1390-1393, 20 Feb 2006, T. 1601-1602. The Trial Chamber notes that Milan Babić characterised Milan Martić as “the most powerful man within the [parallel] structure in the SAO Krajina” and that he was unable to give orders to Milan Martić, Milan Babić, 15 Feb 2006, T. 1390-1392; Ex. 1037, Group 11, pp 4-6 where Milan Babić defines himself as a “spokesman” of the people in Krajina who was incapable of ordering Milan Martić. Contrary to this, Mile Dakić, testified that Milan Martić “was a clerk, an administrator in the SAO government [who] was far below Milan Babić.” Mile Dakić recognised that Milan Martić “may have out-topped Babić in terms of popularity, the press coverage he received and so on and so forth. However, Milan Babić was the political figure at the head of the SAO Krajina leadership”, Mile Dakić, 25 Oct 2006, T. 10021-10022.

²⁹¹ Milan Babić, 16 Feb 2006, T. 1454-1455, testifying that also the SAO Krajina ceased payments to Croatia, T. 1458-1459; Witness MM-003, 9 Mar 2006, T. 2086-2087.

²⁹² Milan Babić, 16 Feb 2006, T. 1460; Radoslav Maksić, 7 Feb 2006, T. 1243-1244; Ex. 41; Ex. 129; Ex. 190; Ex. 193. *See also* Ex. 204; Milan Dragišić, 19 Sep 2006, T. 8644, testifying that Milan Babić desired to create a Serb army of the SAO Krajina, something which Milan Martić opposed, instead advocating cooperation with the JNA.

financed with funds and material from the MUP and SDB of Serbia.²⁹³ Moreover, there is evidence that weapons were sent from Serbia by Radmilo Bogdanović via Bosanski Novi, BiH, to the SAO Krajina.²⁹⁴ Beginning at the end of April 1991, Dušan Smiljanić, Chief of Security of the JNA 10th Zagreb Corps, made contact with leading figures in the SDS in the SAO Krajina and provided large amounts of infantry and artillery weapons to Serbs in Krajina from JNA depots.²⁹⁵

142. The SFRY Federal Secretariat of National Defence of the JNA (“SSNO”) made unit and personnel changes within the SAO Krajina armed forces.²⁹⁶ There is evidence that beginning after the summer of 1991, the SAO Krajina TO was subordinate to the JNA.²⁹⁷ There is also evidence of operational cooperation between the JNA and the armed forces of the SAO Krajina. Any resubordination of MUP units to the JNA for temporary assignment required prior approval of the Minister of Interior of the SAO Krajina.²⁹⁸ When resubordinated, the MUP unit would be under the command of the JNA unit commander. However, if the MUP unit was merely acting in cooperation or concert with the JNA unit, it would remain under the command of the MUP commander.²⁹⁹ After

²⁹³ Milan Babić, 16 Feb 2006, T. 1458-1460; Radoslav Maksić, 6 Feb 2006, T. 1179-1180; Witness MM-003, 8 Mar 2006, T. 1982-1984, 1987-1988, 9 Mar 2006, T. 2086-2087; Lazar Macura, 14 Sep 2006, T. 8339; Ex. 213. The Krajina was a poor area with few indigenous resources and it was dependent on the life-line that came through BiH from Serbia, Peter Galbraith, 25 Apr 2006, T. 3756. *See also* Ex. 498.

²⁹⁴ Milan Babić, 17 Feb 2006, T. 1527, 1575. *See also* Milan Babić, 17 Feb 2006, T. 1544-1545, 20 Feb 2006, T. 1603. Ex. 476, p. 283, wherein Borisav Jović, a member of the SFRY Presidency, describes a meeting with Slobodan Milošević, Veljko Kadijević and Blagoje Adžić on 5 April 1991 and stating that the “Serb nation in Croatia” had not armed itself but was counting on protection by the JNA.

²⁹⁵ Ex. 206. Milan Babić testified to meeting with Dušan Smiljanić during the summer of 1991, Milan Babić, 17 Feb 2006, T. 1531-1532. *See also* Ex. 24, p. 77, wherein Veljko Kadijević stated that “the future army of the Serbian Krajina was actually built up in the course of fighting, and equipped by the JNA with corresponding arms and material”; Ex. 857, p. 5, wherein Željko “Arkan” Raznjatović stated that he provided weapons and money to “Knin”.

²⁹⁶ Witness MM-037, 28 Mar 2006, T. 2782-2783, 29 Mar 2006, T. 2823-2825, Ex. 268, T. 11579-11580; Ex. 120; Ex. 122; Ex. 124.

²⁹⁷ Nikola Medaković, 9 Oct 2006, T. 8991; Borislav Đukić, 19 Oct 2006, T. 9771-9772; Ex. 26. Milan Babić encountered resistance from the JNA concerning the appointments to TO positions which he made during the spring and summer of 1991. However, the resistance ceased in September 1991 when Milan Babić began signing appointments of officers who had been sent from Belgrade. In this respect, the Trial Chamber notes that on 28 November 1991 Radoslav Maksić succeeded Ilija Đujić as TO Commander and that Radoslav Maksić testified that only the SSNO could appoint him as TO commander, Milan Babić, 16 Feb 2006, T. 1445-1447, 17 Feb 2006, T. 1568, 20 Feb 2006, T. 1588-1590; Radoslav Maksić, 6 Feb 2006, T. 1153-1155, 1186, 7 Feb 2006, T. 1197; Ex. 121; Ex. 128; Ex. 219. The SAO Krajina TO Staff in Knin was subordinated to the 9th Corps of the JNA, headquartered in Knin. The 9th Corps was subordinated to the JNA Naval Military District, headquartered in Split. The 9th Corps was composed, *inter alia*, of the 221st Motorised Brigade, commanded by Borislav Đukić until April 1992, the 180th Motorised Brigade (headquartered at the barracks in Benkovac), the 2nd TO Brigade, 1st TO Partisan Brigade, and a military police battalion, Milan Babić, 16 Feb 2006, T. 1448-1449, 17 Feb 2006, T. 1568, 20 Feb 2006, T. 1583, 1593; Radoslav Maksić, 6 Feb 2006, T. 1153-1155, 1160-1161, 7 Feb 2006, T. 1254-1255; Witness MM-080, 8 Jun 2006, T. 5245-5246, 5279-5280; Borislav Đukić, 18 Oct 2006, T. 9684-9686; Ex. 49.

²⁹⁸ Radoslav Maksić, 6 Feb 2006, T. 1166-1167. The Minister of the Interior and the MUP would be copied on the resulting order, or at least the parts relating to the MUP units participating in the operation. When resubordinated, regular police units would normally be employed to secure the implementation of the operation, by securing roads, buildings or areas from ambushes and sabotage actions. They could also provide personal security. However, in view of their strength and level of training for combat activities these units could not really participate in combat operations. If regular police units of a company or higher strength were involved, they could however take part in combat activities but this happened rarely, Radoslav Maksić, 6 Feb 2006, T. 1166-1167, 1171-1174. In this respect, the Trial Chamber recalls the evidence that in August and September 1991, Milan Martić cooperated with the 9th JNA Corps concerning coordination between JNA and MUP units, Milan Babić, 16 Feb 2006, T. 1445-1446.

²⁹⁹ Radoslav Maksić, 6 Feb 2006, T. 1173-1174.

the completion of a mission where it had been resubordinated, the MUP unit would return into the structure of the MUP.³⁰⁰ For the purpose of combat operations, TO units could also be resubordinated to JNA units.³⁰¹ When resubordinating, the largest unit of either the TO or the JNA would command, which would normally be the JNA unit in a given area. Such resubordination of TO units would be carried out by the JNA.³⁰²

143. In early September 1991, Milan Martić was arrested and detained for one to two days by the police in Otoka, close to Bosanska Krupa in BiH, which was a mostly Muslim area.³⁰³ The evidence shows that there was strong coordination between the leaderships of the SAO Krajina, Serbia and BiH, through Milan Babić, Slobodan Milošević, Radovan Karadžić, and Jovica Stanišić, in securing Milan Martić's release.³⁰⁴

3. Training camp in Golubić and "Martić's Police"

144. In early 1991, the SUP in Knin established a training camp in Golubić, a small village located approximately 9 kilometres north of Knin, because Milan Martić wanted properly trained police officers.³⁰⁵ There is evidence that this training camp still existed in 1993.³⁰⁶ The training camp was run and funded by the MUP of the SAO Krajina and by the MUP and SDB of Serbia.³⁰⁷ Furthermore, there is evidence that Milan Martić visited the camp.³⁰⁸ Captain Dragan Vasiljković

³⁰⁰ Radoslav Maksić, 7 Feb 2006, T. 1188.

³⁰¹ Witness MM-080, 8 Jun 2006, T. 5303.

³⁰² Radoslav Maksić, 6 Feb 2006, T. 1160-1161, 1167, 7 Feb 2006, T. 1262, also testifying that if a MUP unit was the largest unit in an operation then any participating TO units would be resubordinated to the MUP unit. Ex. 47 gives an example of a JNA platoon of T-34 tanks, which was resubordinated to the 1st TO Brigade (p. 2). *See also* Reynaud Theunens, 26 Jan 2006, T. 718; Ex. 130.

³⁰³ Milan Babić, 16 Feb 2006, T. 1441-1442, 20 Feb 2006, T. 1616-1618; Ex. 206.

³⁰⁴ Ex. 223; Ex. 224; Ex. 225; Ex. 226; Ex. 227.

³⁰⁵ Milan Babić, 16 Feb 2006, T. 1426-1427, 17 Feb 2006, T. 1539-1541, 1543-1544; Witness MM-003, 8 Mar 2006, T. 1999-2000, 2002, 10 Mar 2006, T. 2149-2150, 2195-2196; Ex. 268, T. 11569-11570, 11572; Witness MM-078, 24 May 2006, T. 4435-4437, 25 May 2006, T. 4538-4539; Witness MM-096, 22 Aug 2006, T. 6948, 23 Aug 2006, T. 6955, 25 Aug 2006, T. 7194; Witness MM-090, 4 Sep 2006, T. 7636; Lazar Macura, 14 Sep 2006, T. 8318; Stevo Plejo, 20 Sep 2006, T. 8692-8694, 8705; Nikola Medaković, 9 Oct 2006, T. 8965-8966, 10 Oct 2006, T. 9051, 9054; Borislav Đukić, 20 Oct 2006, T. 9815-9816, 23 Oct 2006, T. 9946, 9949; Dragan Knežević, 3 Nov 2006, T. 10698-10699; Ex. 244; Ex. 464; Ex. 619; Ex. 623; Ex. 627; Ex. 674; Ex. 675. *See also* Witness MM-037, 28 Mar 2006, T. 2804; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 19-27; Ex. 1044.

³⁰⁶ Dragan Knežević, 3 Nov 2006, T. 10723; Ex. 674; Ex. 675. There is also evidence that training camps were established in Šamarica, Bruška and Korenica and that the SDB of Serbia was involved in the training in Bruška and Korenica, Milan Babić, 17 Feb 2006, T. 1541-1542, 1546-1547; Witness MM-003, 8 Mar 2006, T. 2002-2003, 10 Mar 2006, T. 2205; Ante Marinović, 23 Mar 2006, T. 2510; Rade Rašeta, 2 May 2006, T. 3922; Witness MM-078, 24 May 2006, T. 4435-4436; Ex. 565; Ex. 567; Ex. 568; Ex. 613, p. 25 (ERN 02011443).

³⁰⁷ Milan Babić, 16 Feb 2006, T. 1459, 17 Feb 2006, T. 1539-1543 (testifying that Milan Martić's assistant "was in charge of the administration of the camp" and "was overseeing the whole camp"), 2 Mar 2006, T. 1822; Witness MM-003, 8 Mar 2006, T. 1999, 2001-2004, 9 Mar 2006, T. 2086; Witness MM-079, 31 Mar 2006, T. 3050; Witness MM-078, 24 May 2006, T. 4436-4438; Lazar Macura, 14 Sep 2006, T. 8327-8328; Borislav Đukić, 23 Oct 2006, T. 9949-9950. *See also* Witness MM-078, 25 May 2006, T. 4539, 4547-4548; Ex. 244; Ex. 620; Ex. 621; Ex. 622; Ex. 623; Ex. 624; Ex. 677.

³⁰⁸ Witness MM-078, 24 May 2006, T. 4436-4437, 25 May 2006, T. 4547-4548.

from the SDB of Serbia trained special purpose units at the Golubić camp and was paid for this service by the SDB of Serbia.³⁰⁹

145. The training in Golubić included: drill practice, ambush training, ideological training geared towards loyalty to the state, not political parties, weapons training (including artillery training, mining training, sniper shooting and target practice), physical exercise, training in the securing of persons, self-protection and abseiling.³¹⁰ On average the training lasted for approximately 20 days.³¹¹ Some witnesses testified that the training was classical police training,³¹² whereas other witnesses testified that the training was of a military nature.³¹³ Based on the elements of the training described above, the Trial Chamber finds that the training in Golubić was predominantly military in character.

146. The trainees wore blue camouflage uniforms, which were different from ordinary police uniforms.³¹⁴ There is evidence that some trainees wore a patch on their sleeve, which was semi-circular with the words *Milicija Krajine* and the Serbian tricolour.³¹⁵ The training groups consisted of between 40 and 100 trainees per group.³¹⁶ The men who had trained at Golubić set up further units and trained people in their municipalities.³¹⁷

147. There is evidence of groups referred to as “Martić’s Police” and “Martić’s Men (*Martićevci*)” who were active in the territory of the SAO Krajina and the RSK during the Indictment period. Some witnesses testified that the term Martić’s Police or Martić’s men (*Martićevci*) referred to all those who had completed the training at the Golubić camp and were

³⁰⁹ Witness MM-003, 10 Mar 2006, T. 2209-2210; Milan Babić, 16 Feb 2006, T. 1427, 1429-1430, 17 Feb 2006, T. 1543; Ex. 478, p. 2; Ex. 626.

³¹⁰ Milan Babić, 17 Feb 2006, T. 1541-1544, 2 Mar 2006, T. 1822; Witness MM-003, 8 Mar 2006, T. 2002-2005; Witness MM-078, 24 May 2006, T. 4412, 25 May 2006, T. 4539; Stevo Plejo, 20 Sep 2006, T. 8693-8695, 21 Sep 2006, T. 8782; Nikola Medaković, 9 Oct 2006, T. 8968-8969, 10 Oct 2006, T. 9074-9075, 12 Oct 2006, T. 9281, 9284, 9286; Borislav Đukić, 20 Oct 2006, T. 9815-9816; Dragan Knežević, 03 Nov 2006, T. 10699-10700; Ex. 622.

³¹¹ Stevo Plejo, 20 Sep 2006, T. 8693-8695; Nikola Medaković, 9 Oct 2006, T. 8968; Borislav Đukić, 23 Oct 2006, T. 9946; Dragan Knežević, 3 Nov 2006, T. 10698; Ex. 620.

³¹² Stevo Plejo, 20 Sep 2006, T. 8694. *See also* Witness MM-078, 25 May 2006, T. 4506; Dragan Knežević, 3 Nov 2006, T. 10703.

³¹³ Witness MM-003, 9 Mar 2006, T. 2100; Witness MM-096, 25 Aug 2006, T. 7196. *See also* Milan Babić, 15 Feb 2006, T. 1382, 2 Mar 2006, T. 1769-1770.

³¹⁴ Dragan Knežević, 3 Nov 2006, T. 10723-10724.

³¹⁵ Nikola Medaković, 9 Oct 2006, T. 8969, 10 Oct 2006, T. 9052-9053, 12 Oct 2006, T. 9289; Ex. 266, *Milicija Krajine* patch. Dragan Knežević testified that the only emblems the trainees had was the Yugoslav tricolour on the beret, Dragan Knežević, 3 Nov 2006, T. 10724.

³¹⁶ Borislav Đukić, 20 Oct 2006, T. 9817. *See also* Witness MM-003, 10 Mar 2006, T. 2195; Stevo Plejo, 20 Sep 2006, T. 8694, 8696-8697; Ex. 625, selection of JNA operative intelligence reports, p. 1, mentioning that 150 people were being trained at Golubić before 12 May 1991; Ex. 464, List of persons from Knin municipality region who finished training in Golubić settlement, listing 190 people who finished training at Golubić. Ex. 625, selection of JNA operative intelligence reports, p. 1.

³¹⁷ Milan Babić, 17 Feb 2006, T. 1542-1543; Witness MM-003, 8 Mar 2006, T. 2006; Stevo Plejo, 20 Sep 2006, T. 8696-8697, 9704-9705, 21 Sep 2006, T. 8793-8794; Nikola Medaković, 10 Oct 2006, T. 9051; Dragan Knežević, 3 Nov 2006, T. 10698-10699, 10722; Ex. 568; Ex. 600; Ex. 620; Ex. 1028, L0079797. *See also* Ex. 471.

employed in the SJBs.³¹⁸ One witness testified that the reason for that name was that Milan Martić established the Golubić training camp.³¹⁹ Other witnesses testified that these terms referred generally to the police force of the SAO Krajina and the RSK.³²⁰ Nikola Medaković, who was the commander of the *Milicija Krajine* unit in Plaški in 1991, testified that the members of that unit were trained at the Golubić training camp and that they were referred to as “Martić’s men”.³²¹ Witness MM-037 called all of those who were led by Nikola Medaković “Martić’s police”.³²²

148. The evidence shows that groups trained in Golubić were, in some instances, referred to as Martić’s Men or Martić’s Police (*Martićevci*). However, the evidence is insufficient to conclude that all groups that were referred to by these names, or referred to themselves by these names, were trained in Golubić. The evidence also shows that members of the *Milicija Krajine* were trained in Golubić. The evidence is insufficient to conclude that all members of the police of the SAO Krajina were referred to as Martić’s Men or Martić’s Police (*Martićevci*).

C. The RSK

1. Development of the RSK

149. On 19 December 1991, the RSK was proclaimed by the Assembly of the SAO Krajina with Milan Babić as its President, and the RSK Constitution was passed.³²³ The TO constituted the

³¹⁸ Witness MM-078, 24 May 2006, T. 4439. According to Witness MM-078, these policemen were called Martić’s Men or the *Martićevci*, and considered by the citizens to be specialists or an elite, more capable, trained “and even more loyal to the system”, as compared to the other policemen in the SJBs. The reason for the name was that “Martić set up the whole thing and [...] it was after him that [...] they were named”, Witness MM-078, 24 May 2006, T. 4439. Hamdija Krupić testified that there were also policemen in the municipality Bosanski Novi, BiH, who had undergone the training in Golubić “to carry out special tasks” and were called “Martić’s Police”. These men were from the Bosnian Krajina, Hamdija Krupić, 30 Mar 2006, T. 2958-2960. According to Witness MM-037, younger policemen at the Plaški SJB were sent to Golubić for training, and when they returned, they started to call themselves “Martić’s police”, Witness MM-037, 28 Mar 2006, T. 2749, 2804, Ex. 268, T. 11569-11570. The Trial Chamber notes that the units that had been trained at Golubić were also called the Special Police, Specials, Specialists or Special Purpose Units of the Krajina police, Witness MM-003, 8 Mar 2006, T. 2006-2007, 10 Mar 2006, T. 2195-2196; Milan Babić, 17 Feb 2006, T. 1539-1541; Ex. 1028, L0079768.

³¹⁹ Witness MM-078, 24 May 2006, T. 4439.

³²⁰ Radoslav Maksić testified that the term *Martićevci* or Martić’s Men was a colloquial term which referred “to the police force of the [SAO Krajina MUP]”, Radoslav Maksić, 7 Feb 2006, T. 1191. Witness MM-096 also testified that the term was used to refer to the entire police force in the SAO Krajina and the RSK “or even something much broader, sometimes even all the citizens who were wearing uniforms”, Witness MM-096, 25 Aug 2006, T. 7194. Witness MM-003 testified that the term Martić’s police, the abbreviated name of which was *Martićevci* and Martić’s Men, “applied to the overall police” of the SAO Krajina, Witness MM-003, 10 Mar 2006, T. 2194 -2195.

³²¹ Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8999, 10 Oct 2006, T. 9051, 9056, also testifying that in May 1991, he met with Milan Martić in Knin to request weapons to reinforce the Plaški municipality police, and that Milan Martić replied that long-barrelled weapons could only be given to persons who had been trained in Golubić. *See also* Ex. 507, p. 2, providing that Nikola Medaković was commander of the *Martićevci* or “Martić’s men” and that this unit was part of the regular police commanded by Dušan Latas.

³²² Witness MM-037, 28 Mar 2006, T. 2795.

³²³ Ex. 820, Agreed Facts, para. 23. *See also* Reynaud Theunens, 27 Jan 2006, T. 759; Witness MM-090, 29 Aug 2006, T. 7373; Witness MM-090, 5 Sep 2006, T. 7777-7779. The RSK was defined as a national state of the Serbian people and of all the citizens residing therein, Ex. 820, Agreed Facts, para. 23.

armed forces of the RSK.³²⁴ On 16 February 1992, the government fell as Milan Babić was removed from the office of President of the RSK by the RSK Assembly due to his opposition to Slobodan Milošević in respect of the Vance Plan.³²⁵ Milan Martić, who had previously opposed the Vance Plan, now publicly supported the adoption of the Vance Plan.³²⁶ After Milan Babić was removed from office, the Vance plan was adopted by the Assembly of the RSK.³²⁷

150. On 21 February 1992, the UN Security Council adopted Resolution 743 implementing the Vance Plan and establishing UNPROFOR in certain areas of Croatia designated as “United Nations Protected Areas” (“UNPAs”).³²⁸ The UNPAs were areas where Serbs constituted the majority or a substantial minority of the population and where inter-communal tensions had previously led to armed conflict.³²⁹ The Vance Plan defined three UNPAs, which covered four sectors: UNPA Krajina, covering Sector South (Lika and Dalmatia) and Sector North (Banija and Kordun), UNPA Western Slavonia, covering Sector West, and UNPA Eastern Slavonia, covering Sector East.³³⁰ The UNPAs were to be demilitarised, with all armed forces to be either withdrawn or disbanded.³³¹ However, the plan foresaw maintaining the local police who could carry weapons and wear uniforms.³³² UN police monitors, UNCIVPOL, were to ensure that the local police carried out their duties without discriminating or violating human rights.³³³ UNCIVPOL reported any incidents both

³²⁴ Ex. 166, Art. 102. *See also* Ex. 6, p. 123.

³²⁵ Milan Babić, 20 Feb 2006, T. 1639-1642, 1644 (testifying that he wanted a change in the Vance Plan to the effect that the JNA would remain in the Krajina as a military force that would protect the Krajina until a political solution [was] found for the status); Lazar Macura, 12 Sep 2006, T. 8206. *See also* Ex. 657; Charles Kirudja, 31 May 2006, T. 4888; Slobodan Jarčević, 13 Jul 2006, T. 6196-6197; Lazar Macura, 13 Sep 2006, T. 8226-8231, 14 Sep 2006, T. 8337, 8396-8397.

³²⁶ Milan Babić, 20 Feb 2006, T. 1644-1645; Mile Dakić, 25 Oct 2006, T. 10044; Ex. 230. *See also* Lazar Macura, 14 Sep 2006, T. 8347.

³²⁷ Veljko Džakula, 16 Jan 2006, T. 405-406; Borislav Đukić, 23 Oct 2006, T. 9936.

³²⁸ Ex. 820, Agreed Facts, para. 25. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Peter Galbraith, 25 Apr 2006, T. 3744; John McElligott, 26 May 2006, T. 4553-4554; Charles Kirudja, 30 May 2006, T. 4785-4786, 1 Jun 2006, T. 4901-4905; Ratko Ličina, 15 Aug 2006, T. 6435, 17 Aug 2006, T. 6629-6630; Lazar Macura, 14 Sep 2006, T. 8332; Borislav Đukić, 23 Oct 2006, T. 9903-9904; Ex. 115.

³²⁹ Ex. 820, Agreed Facts, para. 25. *See also* Veljko Džakula, 18 Jan 2006, T. 559; Ex. 864.

³³⁰ Veljko Džakula, 18 January 2006, T. 559, 19 Jan 2006, T. 610; Ex. 115; Ex. 61; Ex. 724. Charles Kirudja, 31 May 2006, T. 4805. The Croats and the Serbs differed in their interpretation of the borders of the UNPAs, with the Croats seeing the borders of municipalities as borders of the UNPAs and the Serbs seeing the confrontation line as the border of the UNPAs, Charles Kirudja, 31 May 2006, T. 4805-4809; Ex. 746.

³³¹ Ex. 820, Agreed Facts, para. 25, providing that as UNPROFOR assumed its responsibilities, all JNA forces deployed in Croatia would be relocated outside Croatia. *See also* Veljko Džakula, 16 Jan 2006, T. 407; John McElligott, 26 May 2006, T. 4553; Charles Kirudja, 30 May 2006, T. 4788, 31 May 2006, T. 4810, 1 Jun 2006, T. 4902-4903; Slobodan Jarčević, 13 Jul 2006, T. 6197-6198, 6245; Slobodan Perić, 6 Sep 2006, T. 7837-7838; Witness MM-117, 13 Oct 2006, T. 9353; Borislav Đukić, 19 Oct 2006, T. 9721-9722, 23 Oct 2006, T. 9904; Ex. 115.

³³² Borislav Đukić, 19 Oct 2006, T. 9723. The weapons were to be placed under a double-key system; one key for UNPROFOR and one key for the RSK authorities, Charles Kirudja, 31 May 2006, T. 4818-4819, 4821-4822; Slobodan Jarčević, 13 Jul 2006, T. 6198-6199, 6244; Ratko Ličina, 15 Aug 2006, T. 6436-6437; Witness MM-096, 22 Aug 2006, T. 6879; Slobodan Perić, 6 Sep 2006, T. 7838; Borislav Đukić, 23 Oct 2006, T. 9904; Ex. 748.

³³³ Ex. 115; John McElligott, 26 May 2006, T. 4553, 4555-4557, 29 May 2006, T. 4660-4662, 4669-4673, 30 May 2006, T. 4770-4771; Witness MM-096, 22 Aug 2006, T. 6880-6882; Ex. 721; Ex. 722; Ex. 723; Ex. 725. Milan Martić issued instructions regulating in detail the mode of cooperation with UNPROFOR and UNCIVPOL, Witness MM-117, 18 Oct 2006, T. 9648-9649.

within its own chain of command, as well as to the relevant Croatian or RSK local police, however in serious cases reports were also sent directly to the relevant government.³³⁴

151. On 26 February 1992, the SAO Western Slavonia and the SAO Eastern Slavonia, Baranja and Western Šrem joined the RSK.³³⁵ In the new RSK government, Zdravko Zečević became Prime Minister, Goran Hadžić was elected President, and Milan Martić was re-elected Minister of the Interior.³³⁶ In April 1992, UNPROFOR troops started arriving in the UNPAs.³³⁷ In addition, UNPROFOR was also mandated to patrol the so-called “pink zones” outside the UNPAs, which were areas under JNA control, in many instances with a significant Serb presence.³³⁸

152. The evidence shows that the RSK was not demilitarised in its entirety in accordance with the Vance Plan.³³⁹ On 28 April 1992, Special Police (“PJM”) Brigades and a PJM Administration were established within the RSK Ministry of Defence by the SSNO of Serbia.³⁴⁰ General Borislav Đukić, a JNA officer, was appointed Chief of the PJM Administration.³⁴¹ The PJM Brigades were connected both to the Ministry of Defence and to the MUP of the RSK.³⁴² The members of PJM units wore blue uniforms and used the side arms and the equipment of the TO.³⁴³ There is also evidence that TO vehicles were repainted in blue and used by the PJM.³⁴⁴ On 18 May 1992, the

³³⁴ John McElligott, 26 May 2006, T. 4565-4567, 29 May 2006, T. 4669-4671, 4676-4679, 30 May 2006, T. 4731, 4733; Witness MM-096, 22 Aug 2006, T. 6881-6882, 6929-6931, 24 Aug 2006, T. 7106.

³³⁵ Ex. 820, Agreed Facts, para. 26. *See also* Veljko Džakula, 16 Jan 2006, T. 347-348 (testifying that the SAO Western Slavonia had been declared on 12 August 1991), 358; Ratko Ličina, 15 Aug 2006, T. 6493.

³³⁶ Ex. 820, Agreed Facts, para. 26. Slobodan Jarčević was Minister of Foreign Affairs of the RSK from October 1992 to April 1994, when he was replaced by Milan Babić, Slobodan Jarčević, 12 Jul 2006, T. 6133, T. 6169; Ex. 191. *See also* Veljko Džakula, 16 Jan 2006, T. 358, 19 Jan 2006, T. 621.

³³⁷ Charles Kirudja, 30 May 2006, T. 4781, 4789, 31 May 2006, T. 4804-4805; Witness MM-096, 22 Aug 2006, T. 6873.

³³⁸ Veljko Džakula, 19 Jan 2006, T. 610-611; John McElligott, 26 May 2006, T. 4569, 29 May 2006, T. 4629-4630. *See also* Charles Kirudja, 31 May 2006, T. 4805-4809.

³³⁹ Veljko Džakula, 16 Jan 2006, T. 406-407; Milan Babić, 20 Feb 2006, T. 1645; Slobodan Jarčević, 13 Jul 2006, T. 6245, 6248; Ex. 75, pp 2-4. *See also* Borislav Đukić, 19 Oct 2006, T. 9722.

³⁴⁰ Ex. 978. The PJM brigades were subordinated to the PJM Administration in both peacetime and wartime, Ex. 978, p. 2, item 10; Borislav Đukić, 19 Oct 2006, T. 9723-9724, 9730.

³⁴¹ Ex. 71; Borislav Đukić, 19 Oct 2006, T. 9740-9741; Ex. 633. *See also* Ex. 978; Witness MM-117, 18 Oct 2006, T. 9676-9677.

³⁴² Borislav Đukić, 19 Oct 2006, T. 9793-9794, also testifying that “[t]he professional part of the execution of the task was connected to the [MUP]” that the PJM Brigades “carried out tasks from within the police force and were linked to the Minister of the Interior”, 23 Oct 2006, T. 9911-9913; Ex. 72.

³⁴³ Charles Kirudja, 31 May 2006, T. 4816; Ex. 747; Slobodan Perić, 7 Sep 2006, T. 7942-7943.

³⁴⁴ Slobodan Perić, 7 Sep 2006, T. 7942-7943. *See also* Ex. 68; Ex. 696. In Ex. 747, p. 4, Charles Kirudja wrote:

The recent emergence of a newly fortified militia is hard not to notice. Former military vehicles have been repainted from green to blue – the colors of the present police force. Many of the militiamen have begun to sport new blue uniforms and appear to be deployed along the front line.

See further Ex. 73; Ex. 74; Ex. 75; Ex. 730; Ex. 864; Ex. 985.

SVK was established.³⁴⁵ In peacetime, the SVK was to consist of TO units, however in the event of imminent threat of war and during wartime the PJM units would join the SVK.³⁴⁶

153. The RSK leadership was against the demilitarisation of the RSK, asserting it would be unable to defend itself in the event of Croatian attacks.³⁴⁷ Thus, the Vance Plan was interpreted by the RSK authorities to mean that UNPROFOR was to protect the population in the areas of deployment.³⁴⁸ In this context, the Trial Chamber notes that Croatian forces carried out several armed incursions into the UNPAs between 1992 and 1995, including on the Miljevac plateau on 21 June 1992, Maslenica on 22 January 1993, Medak pocket on 9 and 12 September 1993, and Operation Flash from 1 May 1995.³⁴⁹

154. During the spring of 1992, the road which went through the so-called Posavina Corridor, a predominantly Bosnian Croat strip of land in north-eastern BiH, had been blocked in the region of Doboj by Croatian forces in alliance with the forces of BiH.³⁵⁰ The area was of strategic importance as it linked the Croatian and Bosnian Krajina regions with Serbia.³⁵¹ In two phases, during the summer and late autumn of 1992, a military operation known as “*Koridor 92*” was carried out in the Posavina Corridor. While there is evidence that the objective of the operation was to resolve a humanitarian situation which had arisen as a result of the blocking of the road near Doboj, there is significant evidence that the main objective was to link Serb lands.³⁵² As part of the operation, the

³⁴⁵ Ex. 6, p. 141, citing Constitutional Amendment No. VIII.

³⁴⁶ Law on Defence as amended, cited in Ex. 6, p. 142.

³⁴⁷ Veljko Džakula, 16 Jan 2006, T. 405-406; Milan Babić, 20 Feb 2006, T. 1644; John McElligott, 29 May 2006, T. 4631; Slobodan Jarčević, 13 Jul 2006, T. 6199-6200; Ratko Ličina, 15 Aug 2006, T. 6439-6440; Ex. 574, p. 1; Ex. 750. See also Charles Kirudja, 31 May 2006, T. 4837-4838, 1 Jun 2006, T. 4981-4982; Borislav Đukić, 19 Oct 2006, T. 9721-9722.

³⁴⁸ Ratko Ličina, 15 Aug 2006, T. 6439; Witness MM-096, 22 Aug 2006, T. 6880; Witness MM-090, 31 Aug 2006, T. 7484-7485.

³⁴⁹ John McElligott, 29 May 2006, T. 4631-4632, 4641, 4648-4649; Charles Kirudja, 1 Jun 2006, T. 4921-4922, 4928, 4942-4943; Ratko Ličina, 15 Aug 2006, T. 6450-6453, 6462-6464; Witness MM-096, 22 Aug 2006, T. 6880; Witness MM-090, 4 Sep 2006, T. 7706-7707; Slobodan Perić, 6 Sep 2006, T. 7841; Witness MM-117, 13 Oct 2006, T. 9383-9384, 9388; Patrick Barriot, 9 Nov 2006, T. 10764; Ex. 75, pp 1-2; Ex. 885. After the incursions on Maslenica and Medak pocket, the RSK removed weapons from storage depots, Charles Kirudja, 31 May 2006, T. 4819-4822, 1 Jun 2006, T. 4981-4982; Ratko Ličina, 17 Aug 2006, T. 6635. See also Peter Galbraith, 25 Apr 2006, T. 3795-3796; Slobodan Perić, 7 Sep 2006, T. 7945-7946.

³⁵⁰ Veljko Džakula, 17 Jan 2006, T. 432, 19 Jan 2006, T. 588; Charles Kirudja, 1 Jun 2006, T. 4966; Slobodan Jarčević, 13 Jul 2006, T. 6192; Borislav Đukić, 19 Oct 2006, T. 9778-9779, 9788-9789, 23 Oct 2006, T. 9918 (testifying that as a result of the blocking of the road a difficult humanitarian situation arose in Krajina and Bosanska Krajina); Witness MM-105, 2 Nov 2006, T. 10610; Ex. 6, p. 169; Ex. 103. See also Reynaud Theunens, 27 Jan 2006, T. 796-797.

³⁵¹ The importance of this area was stated by Milan Martić in an article in *Vojska Krajine*, 3 Jun 1993, p. 3, see Ex. 6, p. 169. See also Reynaud Theunens, 27 Jan 2006, T. 797. Moreover, on 12 May 1992, at a session of the Assembly of the Serbian People in BiH, the President of the RS Radovan Karadžić announced as a strategic goal of the Serb people to establish a corridor between the Krajina region and Semberija in Serbia in order to “[integrate] the Serbian lands”, Ex. 45, pp 13-14; Veljko Džakula, 19 Jan 2006, T. 589; Slobodan Jarčević, 13 Jul 2006, T. 6192.

³⁵² Regarding the humanitarian situation, see Borislav Đukić 19 Oct 2006, T. 9779, 9788-9789; Witness MM-105, 2 Nov 2006, T. 10609 (see also Veljko Džakula, 17 Jan 2006, T. 589; Ex. 6, p. 169; Reynaud Theunens, 27 Jan 2006, T. 813). The Trial Chamber notes that of these witnesses only Borislav Đukić testified to the existence of a grave humanitarian situation. Regarding the linking of Serb lands, see Ex. 944; Lazar Macura, 15 Sep 2006, T. 8412-8413; Ex. 45, pp 13-14; Slobodan Jarčević, 13 Jul 2006, T. 6192 (see also Witness MM-003, 9 Mar 2006, T. 2040-2041).

whole of the Posavina area was devastated; many houses were torched and many civilians, including Croats, were killed.³⁵³

155. On 20 April 1993, the RSK Supreme Defence Council was established, which was composed of the President of the RSK, the Prime Minister, the Minister of Defence, the Minister of the Interior, and the Commander of the SVK.³⁵⁴ The President of the RSK “[led] the [SVK] in times of peace and war, in accordance with the [RSK] Constitution and decisions adopted by the Supreme Defence Council, and [presided] over the Supreme Defence Council”.³⁵⁵ The Supreme Defence Council was mandated to “adopt decisions on the readiness, mobilisation and deployment of the [SVK] and on other matters in accordance with the Constitution and the law.”³⁵⁶

156. On 25 January 1994, Milan Martić was elected President of the RSK, defeating Milan Babić.³⁵⁷ On 21 April 1994, a new government was formed under Milan Martić, *inter alia*, with Borislav Mikelić as Prime Minister and Milan Babić as Foreign Minister.³⁵⁸ The new government’s aim was to achieve “sovereignty of the RSK and the right of the Serb people to self-determination and unification with other parts of the Serb people.”³⁵⁹

157. Following on from the Zagreb Agreement, which had been signed on 29 March 1994,³⁶⁰ in January 1995 the Z-4 Plan was presented, envisaging a high degree of autonomy within Croatia for the Krajina region and that Eastern Slavonia, Baranja, and Šrem, and Western Slavonia would be

³⁵³ Veljko Džakula, 19 Jan 2006, T. 590-592, 613, also stating that he heard that “there was damage inflicted and destruction wrought in places where there was no direct fighting or combat”, and that the Posavina Corridor was “razed to the ground, devastated and laid [to] waste”.

³⁵⁴ Ex. 78, p. 3.

³⁵⁵ Ex. 78, p. 3. *See also* Ex. 79, Art. 40, p. 1.

³⁵⁶ Ex. 78, p. 4.

³⁵⁷ Ex. 820, Agreed Facts, para. 29.

³⁵⁸ The government also comprised Ilija Prijić as Minister of Interior and Rade Tanja as Minister of Defence, Milan Babić, 15 Feb 2006, T. 1328-1329; Witness MM-117, 18 Oct 2006, T. 9646; Ex. 970, p. 2. Milan Babić remained as Foreign Minister until 27 July 1995 when he became Prime Minister, Milan Babić, 15 Feb 2006, T. 1328-1329; Nikola Dobrijević, 10 Nov 2006, T. 10855, 10902.

³⁵⁹ Ex. 970, p. 2 (quoting Borislav Mikelić as saying that “our negotiating position is and will be territorial integrity and sovereignty of the Republic of Serb Krajina. The RSK will sooner or later unite with the Serb republic and Montenegro into a unified state”). *See also* Witness MM-117, 16 Oct 2006, T. 9494-9495, 9483-9484.

³⁶⁰ The Zagreb Agreement foresaw the creation of two cantons within Croatia and also regulated the withdrawal of all indirect weaponry and artillery from the border between Croatia and the RSK. Moreover, all weapons were to be under UN control, Slobodan Jarčević, 12 Jul 2006, T. 6167-6168; Charles Kirudja, 1 Jun 2006, T. 4935-4936; Ex. 929. Two economic agreements ensued, signed in November and early December 1994, and the RSK government undertook measures to abide by these agreements, Milan Babić, 21 Feb 2006, T. 1660; Peter Galbraith, 25 Apr 2006, T. 3743-3745, 3794, 3815, 3796-3797; Charles Kirudja, 1 Jun 2006, T. 4935-4936; Slobodan Jarčević, 12 Jul 2006, T. 6169, 6175; Ratko Ličina, 15 Aug 2006, T. 6451-6452; Slobodan Perić, 6 Sep 2006, T. 7841. Previously during 1993, several unsuccessful attempts had been made at concluding agreements between Croatia and the RSK: the Daruvar Agreement on 18 February 1993 (Veljko Džakula, 16 Jan 2006, T. 359-362; Milan Babić, 20 Feb 2006, T. 1653-1654; Witness MM-105, 1 Nov 2006, T. 10534-10535, 10573-10574, in April 1993, an agreement was negotiated in Geneva (Slobodan Jarčević, 14 Jul 2006, T. 6281-6282), the Erdut Agreement in July 1993 (Slobodan Jarčević, 12 Jul 2006, T. 6151-6153, T. 6162-6163; Ex. 876), the Oslo agreement on 4 November 1993 (Slobodan Jarčević, 12 Jul 2006, T. 6157-6160), the Dobanovci Negotiations in December 1993 (Peter Galbraith, 25 Apr 2006, T. 3741; Slobodan Jarčević, 12 Jul 2006, T. 6163-6165).

reincorporated into Croatia with lesser forms of autonomy.³⁶¹ The Z-4 Plan provided for a five-year transition period for the restoration of full sovereignty for Croatia.³⁶² On 30 January 1995, Milan Martić, as President of the RSK, refused to accept the Z-4 Plan, as Croatia had announced that it would not accept an extension of UNPROFOR's mandate.³⁶³ The mandate was eventually extended in March 1995 and focused on reconstruction and cooperation, however Milan Martić continued to refuse to negotiate the Z-4 Plan because the reshaped UNPROFOR, now called UNCRO, was not a protection force.³⁶⁴ There is evidence that Milan Martić acted under the instruction of Slobodan Milošević to reject the Z-4 Plan.³⁶⁵ The negotiations between the RSK and Croatia continued through the first half of 1995, with the RSK government appearing seemingly more amenable to the Z-4 plan.³⁶⁶

158. On 2 August 1995, Milan Babić, as Prime Minister of the RSK, accepted the Z-4 Plan "in substance".³⁶⁷ On 4 August 1995, the Croatian Army and police forces launched a military operation, called Operation Storm, on the RSK and the UNPAs, which eventually resulted in them taking control of the territory of the RSK.³⁶⁸

2. Cooperation with and assistance from Serbia

159. Throughout 1992, 1993 and 1994, the RSK leadership, including Milan Martić, requested financial, logistical and military support from Serbia on numerous occasions, including directly from Slobodan Milošević.³⁶⁹ Most of these requests were fulfilled, and support was given to the RSK MUP³⁷⁰ and to the TO and the SVK.³⁷¹ In January 1992, Milan Martić stated that cooperation

³⁶¹ Veljko Džakula, 17 Jan 2006, T. 440-441, 19 Jan 2006, T. 596-597; Milan Babić, 20 Feb 2006, T. 1654; Peter Galbraith, 25 Apr 2006, T. 3742-3743, 3754-3755 (testifying that the Krajina area was to have the right to its own flag and language and competence to decide on legislature, housing, education, culture, public services, energy, business and many other aspects of its society); Slobodan Jarčević, 12 Jul 2006, T. 6177-6178; Slobodan Perić, 7 Sep 2006, T. 7944-7945; Lazar Macura, 13 Sep 2006, T. 8232; Ex. 381.

³⁶² Veljko Džakula, 19 Jan 2006, T. 597; Peter Galbraith, 25 Apr 2006, T. 3803.

³⁶³ Milan Babić, 20 Feb 2006, T. 1654-1655; Peter Galbraith, 25 Apr 2006, T. 3749-3751, 3801-3802; Slobodan Jarčević, 14 Jul 2006, T. 6299-6300; Lazar Macura, 13 Sep 2006, T. 8233, 14 Sep 2006, T. 8349.

³⁶⁴ Peter Galbraith, 25 Apr 2006, T. 3750, 3801-3802; Slobodan Jarčević, 12 Jul 2006, T. 6181-6183. *See also* Lazar Macura, 14 Sep 2006, T. 8350.

³⁶⁵ Rade Rašeta, 2 May 2006, T. 3918-3919 (testifying that Slobodan Milošević told Milan Martić to reject the Z-4 Plan *a priori*); Mile Dakić, 25 Oct 2006, T. 10055-10056 (testifying that the RSK leadership was "awaiting a response from Belgrade [which] was a higher level that was deciding about [whether] the Z-4 Plan would be accepted or not"). *See also* Peter Galbraith, 25 Apr 2006, T. 3751-3753; Charles Kirudja, 1 Jun 2006, T. 4957; Ex. 769, p. 2.

³⁶⁶ Peter Galbraith, 25 Apr 2006, T. 3793; Witness MM-117, 16 Oct 2006, T. 9450-9451, 17 Oct 2006, T. 9596; Ex. 391.

³⁶⁷ Milan Babić, 20 Feb 2006, T. 1656-1657; Peter Galbraith, 25 Apr 2006, T. 3747-3749. *See also* Witness MM-117, 18 Oct 2006, T. 9623-9625.

³⁶⁸ Ex. 820, Agreed Facts, para. 32.

³⁶⁹ Ex. 11 (identical to Ex. 659); Ex. 12; Ex. 68; Ex. 69; Ex. 194; Ex. 707; Ex. 840; Peter Galbraith, 25 Apr 2006, T. 3756-3757.

³⁷⁰ The RSK MUP received support from Serbia and the JNA/VJ, in many cases pursuant to a standing SSNO order of 20 April 1992 concerning supply of ammunition to the RSK MUP: Ex. 67; Ex. 692; Ex. 694; Ex. 695; Ex. 697; Ex. 698; Ex. 699, Ex. 700, Ex. 701, Ex. 702, Ex. 703, and Ex. 704. Milan Babić testified that in 1992 the RSK police was financed in the same way as in 1991 with the SAO Krajina, Milan Babić, 16 Feb 2006, T. 1465.

with Serbia never ceased and was good.³⁷² There is evidence describing the relationship between the RSK and Serbia as one “between two states” although the RSK listened to “the opinions of our ally.”³⁷³ There was a representation office in Belgrade of the RSK Foreign Minister’s office.³⁷⁴ The RSK Minister of Foreign Affairs was paid by Serbia as a result of being employed by the Ministry of Foreign Affairs of Serbia.³⁷⁵ As President of the RSK, Milan Martić enjoyed the full support of the VJ.³⁷⁶

160. In respect of the cooperation between the RSK and the RS, the Trial Chamber notes the evidence regarding operation *Koridor 92*.³⁷⁷ Both phases of the operation included units of the RSK police, PJM and TO, and the operation was led by the VRS and RS police.³⁷⁸ Milan Martić visited the Posavina Corridor on several occasions during the first phase of the operation in June and July 1992.³⁷⁹ During the second phase of Operation Corridor, two RSK PJM brigades participated.³⁸⁰ Milan Martić and Borislav Đukić commanded a “strong” RSK police detachment during this phase of operation *Koridor 92*.³⁸¹ The evidence shows that following operation *Koridor 92*, Milan Martić’s popularity in the RSK increased significantly.³⁸²

³⁷¹ Milan Babić, 16 Feb 2006, T. 1466-1467. The support from Serbia to the SVK covered all aspects of its functioning, including personnel, operational and logistical support, Rade Rašeta, 2 May 2006, T. 3894-3896 (between 150-200 VJ officers were seconded to the SVK to leading positions), T. 3903 (testifying that the SVK and the VJ “were actually one and the same organisation, but positioned at two different locations”), T. 3907-3910, 3953-3954, Rade Rašeta, 3 May 2006, T. 3978; Slobodan Perić, 7 Sep 2006, T. 7933; Lazar Macura, 14 Sep 2006, T. 8338-8339; Borislav Đukić, 23 Oct 2006, T. 9927-9928; Ex. 63, p. 2; Ex. 64; Ex. 65, Ex. 456. The SSNO continued to order organisational changes in the SAO Krajina TO, Ex. 62; Ex. 71; Ex. 978. *See also* Ex. 6, pp 161-68; Reynaud Theunens, 27 Jan 2006, T. 806.

³⁷² Ex. 951, p. 1.

³⁷³ Slobodan Jarčević, 13 Jul 2006, T. 6254.

³⁷⁴ Slobodan Jarčević, 12 Jul 2006, T. 6139, 13 Jul 2006, T. 6253-6254.

³⁷⁵ Slobodan Jarčević, 12 Jul 2006, T. 6139, 13 Jul 2006, T. 6170, 6253-6254, 14 Jul 2006, T. 6322-6323.

³⁷⁶ Rade Rašeta, 2 May 2006, T. 3907-3908. The JNA became the VJ when the SFRY ceased to exist and Serbia and the Republic of Montenegro made up the Federal Republic of Yugoslavia, Lazar Macura, 15 Sep 2006, T. 8428.

³⁷⁷ *See supra* para. 154.

³⁷⁸ On 5 June 1992, Milan Martić ordered the SUPs and MUP Brigades in the RSK to form “volunteer police companies” of 120 men each and armed with automatic weapons and wearing Krajina police insignia “in order to carry out tasks of interest for the [RSK] and the Serbian people as a whole”, Ex. 635. On 10 June 1992, Milan Martić ordered these units to march along certain axes into BiH, Ex. 461. The RSK MUP forces formed part of TG-2, commanded by Colonel Mile Novaković, and were deployed in BiH at least as of 24 June 1992, Ex. 634, pp 4, 9. On 19 June 1992, the Ministers’ Cabinet of the RSK MUP announced that RSK MUP units were participating in Operation Corridor, Reynaud Theunens, 27 Jan 2006, T. 813; Ex. 646. *See also* Ex. 6, p. 170; Ex. 568.

³⁷⁹ Ex. 634, pp 14, 48, 63, 93, 123.

³⁸⁰ Ex. 87 (Order, dated 13 November 1992, for the two PJM brigades to participate “with the aim of expanding the corridor and liberating all Serbian Territories”).

³⁸¹ Veljko Džakula, 17 Jan 2006, T. 432-433. *See also* Witness MM-003, 9 Mar 2006, T. 2041, 10 Mar 2006, T. 2211. There is also evidence that on 22 November 1992 Milan Martić, Borislav Đukić and General Momir Talić of the VRS held a meeting to assess “the situation regarding the forthcoming combat operations” in the area of Gradačac and Orašje, *see* Ex. 6, p. 173.

³⁸² Veljko Džakula, 16 Jan 2006, T. 404.

D. Armed clashes between Serb and Croatian forces

1. During spring and summer of 1991

161. Several armed clashes occurred between Croatian and SAO Krajina armed forces in several locations during the spring and summer of 1991.³⁸³

162. As noted above, in March 1991 there were armed clashes in Pakrac and in Plitvice between Croatian MUP special police forces and the police of the SAO Krajina. On both occasions, the JNA intervened after these clashes to separate the two sides.³⁸⁴

163. In June 1991, there was a Croatian SJB in Lovinac, in Gračac municipality north-west of Knin, and as a consequence the village was attacked by the police of the SAO Krajina.³⁸⁵ Witness MM-003 testified that Milan Martić was in command of this attack. The Trial Chamber recalls its finding that the evidence of Witness MM-003 requires corroboration and notes that this piece of evidence is uncorroborated. However, the Trial Chamber notes Milan Babić's testimony that Milan Martić "participated" in the attack together with Franko Simatović.³⁸⁶ While the evidence does not support a finding that Milan Martić commanded the attack on Lovinac, the Trial Chamber finds it established beyond reasonable doubt that Milan Martić participated in the attack.³⁸⁷

164. On 2 July 1991, the village of Ljubovo, south-west of Titova Korenica, was attacked by the *Milicija Krajine* because members of the Croatian MUP had stationed themselves there following the conflict in Plitvice. In public statements, Milan Martić said that this attack was carried out because an ultimatum of the SAO Krajina government had expired which required that all members and units of the Croatian MUP withdraw from the SAO Krajina territory and because of arrests and mistreatment by Croats of Serbs in the area of Lika.³⁸⁸

³⁸³ There is also evidence that there were several similar armed clashes and attacks in other villages during the spring and summer of 1991, including in Potkonje, Vrpolje, and Lički Osik: Potkonje and Vrpolje: Sometime before June 1991, about 60 members of the SAO Krajina police raided the small Croat villages of Potkonje and Vrpolje located in the municipality of Knin, allegedly to locate a radio transmitter. Nobody was killed in this action, however the incident caused the civilian population to leave the area, Witness MM-078, 24 May 2006, T. 4453, 25 May 2006, T. 4520-4521; Witness MM-096, 21 Aug 2006, T. 6846-6849 (testifying that 60 automatic rifles and ammunition were found with some persons, that criminal charges were brought against them but that they were eventually released), 24 Aug 2006, T. 7067-7068, 7072-7073; Ex. 1037, L0092049. Lički Osik: On 2 July 1991, Croatian police in the town of Lički Osik were attacked by "Krajina forces", Ex. 214, p. 3, wherein Milan Martić described this as "our first offensive action".

³⁸⁴ See *supra* para. 132.

³⁸⁵ Milan Babić, 16 Feb 2006, T. 1432-1433; Witness MM-003, 8 Mar 2006, T. 2010-2011; Ratko Ličina, 14 Aug 2006, T. 6408.

³⁸⁶ Witness MM-003, 8 Mar 2006, T. 2010-2011; Milan Babić, 16 Feb 2006, T. 1432-1433.

³⁸⁷ The Trial Chamber recalls its findings that Milan Babić's evidence, as well as that of Witness MM-003, requires corroboration, see *supra* section I D 2. The Trial Chamber considers, however, that where the evidence of one of these witnesses corroborates the evidence of the other, such corroboration is sufficient.

³⁸⁸ Ex. 211; Ex. 973; Ex. 975. See also MM-003, 8 Mar 2006, T. 2005-2006. Ratko Ličina testified that the SAO Krajina police only reacted to the establishment of Croatian SJBs in municipalities where the Serbs were in majority, as

165. In mid-July 1991, the town of Glina, located in the Banija area north-west of Dvor, was attacked by a unit under the command of Captain Dragan Vasiljković.³⁸⁹ The JNA intervened after the attack by creating a buffer zone.³⁹⁰ On 25 July 1991, the village of Struga, a few kilometres north of Dvor along the Una river, was attacked by units under the command of Captain Dragan Vasiljković and the Glina War Staff: 50 members of a “special forces” unit, 50 policemen and 700 civilians participated in the operation.³⁹¹ Following the attack, the JNA intervened and created a buffer zone.³⁹²

166. On 26 August 1991, the Croat village of Kijevo, situated 15 kilometres east of Knin, was attacked because the MUP of Croatia had established an SJB in the village.³⁹³ The decision to attack Kijevo was taken by Milan Martić in coordination with the JNA and followed an ultimatum issued by him to the Croatian SJB, in which he stated that “[y]ou and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in our Serbian territories of the SAO Krajina is impossible”.³⁹⁴ In relation to the civilian population in Kijevo, the ultimatum provided that:

We also want to advise the population of Kijevo to find safe shelters on time so that there should be no casualties among them. We would like to stress that we want co-existence and understanding between the residents of the Serbian villages and the Croatian population in Kijevo, and we guarantee civil and human rights to everyone.³⁹⁵

167. Units of the JNA 9th Corps in Knin, the *Milicija Krajine* and the local TO participated in the attack.³⁹⁶ The evidence establishes that there was coordination between the JNA and the MUP, and that the JNA was in command of the participating forces.³⁹⁷ The evidence is inconsistent as to the strength of the Croatian forces present in Kijevo.³⁹⁸ Prior to the attack, between 23 and 25 August

was the case in Plitvice (Titova Korenica municipality), in Lovinac (Gračac municipality), in Kijevo (Knin municipality), in Kruševo (Obrovac municipality), in Škabrnja (Benkovac municipality), in Vidusevac (Glina municipality), Ratko Ličina, 14 Aug 2006, T. 6428, 15 Aug 2006, T. 6507-6508.

³⁸⁹ Aernout van Lynden, 2 Jun 2006, T. 5002, 5012-5014.

³⁹⁰ Aernout van Lynden, 2 Jun 2006, T. 4996-4999, 5007.

³⁹¹ Ex. 587. *See also* Ex. 582 (stating that Milan Martić, Captain Dragan Vasiljković and Bogdan Vajagić met on 23 July 1991 to discuss the situation in the Banija area).

³⁹² Aernout van Lynden, 2 Jun 2006, T. 5008. *See also* Ex. 587, p. 1.

³⁹³ Milan Babić, 17 Feb 2006, T. 1553-1556; Ex. 1037, L0079681.

³⁹⁴ Ex. 820, Agreed Facts, para. 20. *See also* Milan Babić, 16 Feb 2006, T. 1438-1439, 17 Feb 2006, T. 1555, Ex. 1037, Group 11, L0079292-3, L0079682; Ex. 212.

³⁹⁵ Ex. 212; Milan Babić, 17 Feb 2006, T. 1555. *See also* Ex. 496, p. 11; Ex. 1037, L0079294, L0079682.

³⁹⁶ Milan Babić, 17 Feb 2006, T. 1558-1559; Milan Dragišić, 19 Sep 2006, T. 8655-8656.

³⁹⁷ Ex. 45, p. 48; Ex. 496, p. 11. *See also* Witness MM-003, 09 Mar 2006, T. 2035.

³⁹⁸ Witness MM-078, 24 May 2006, T. 4443 (members of the Croatian MUP were billeted in the culture hall in Kijevo). Milan Dragišić, 19 Sep 2006, T. 8655-8656 (there were at least 300 armed men in Kijevo, including ZNG); Borislav Đukić, 20 Oct 2006, T. 9875 (there was a gradual reinforcement of the Croatian forces in Kijevo, which eventually numbered 1,000 men).

1991, the commander of the Croatian SJB evacuated almost the entire civilian population of Kijevo.³⁹⁹

168. The attack on Kijevo on 26 August 1991 only lasted a few hours.⁴⁰⁰ There is differing evidence as to the purpose of the attack. Witnesses testified that the purpose was “to cleanse Kijevo of its Croatian population”, to link up the two Serb villages of Polace and Civljani on either side of Kijevo, to “liberate the area”, and to provide for further advancement of the JNA.⁴⁰¹ Borislav Đukić, who at the time was commander of Tactical Group 1 (“TG-1”) of the JNA 9th Corps in Knin, testified that the attack had not been planned beforehand but was provoked by a Croatian attack on 25 August 1991 on buffer zones previously established by TG-1. According to Borislav Đukić, the purpose of the attack was to lift the blockade along the Kijevo road, set up by the Croatian SJB in Kijevo.⁴⁰²

169. The Catholic church in Kijevo was damaged during the attack, and was later destroyed.⁴⁰³ The evidence also shows that private houses were looted and torched.⁴⁰⁴

170. On 28 August 1991, TG-1 of the JNA 9th Corps also attacked the mixed Croat and Serb village of Vrlika, located south of Knin near Kijevo.⁴⁰⁵ After the attack, an SJB of the SAO Krajina MUP was established in Vrlika.⁴⁰⁶ Subsequently, members of this SJB indirectly participated in the widespread looting by allowing lorries carrying looted goods to proceed towards Knin.⁴⁰⁷

171. On 16 September 1991, Drniš, which is located near Knin and at the time was 75% Croat, was attacked by forces and artillery of TG-1 of the JNA 9th Corps.⁴⁰⁸ During the attack, and the following days, the centre of Drniš was almost completely destroyed.⁴⁰⁹ Widespread looting was

³⁹⁹ Borislav Đukić, 20 Oct 2006, T. 9872.

⁴⁰⁰ Borislav Đukić, 20 Oct 2006, T. 9880.

⁴⁰¹ Witness MM-003, 9 Mar 2006, T. 2030, 2032-2035; Witness MM-078, 24 May 2006, T. 4443.

⁴⁰² Borislav Đukić, 20 Oct 2006, T. 9871-9873, 9875-9876; Milan Dragišić, 19 Sep 2006, T. 8655-8656. Milan Babić testified that the residents of Kijevo had blocked the road, Milan Babić, 17 Feb 2006, T. 1551-1552. *See also* Ex. 105.

⁴⁰³ Milan Babić, 3 Mar 2006, T. 1931; Witness MM-078, 24 May 2006, T. 4444; Borislav Đukić, 19 Oct 2006, T. 9767, 20 Oct 2006, T. 9886; Ex. 106 (reporting that ZNG was deployed in the church).

⁴⁰⁴ Witness MM-078, 24 May 2006, T. 4434-4435; Borislav Đukić, 20 Oct 2006, T. 9885-9886. *See also* Ex. 496.

⁴⁰⁵ Milan Babić, 17 Feb 2006, T. 1567; Witness MM-078, 24 May 2006, T. 4444; Borislav Đukić, 20 Oct 2006, T. 9887.

⁴⁰⁶ Witness MM-078, 24 May 2006, T. 4445.

⁴⁰⁷ Witness MM-078, 24 May 2006, T. 4445; Borislav Đukić, 20 Oct 2006, T. 9887-9888 (testifying that the JNA lifted the Croatian siege of Vrlika and that the JNA did not participate in looting); Ex. 221.

⁴⁰⁸ Witness MM-078, 24 May 2006, T. 4446, 4450-4451; Borislav Đukić, 20 Oct 2006, T. 9888, 9894-9895; Ex. 984, pp 7-12. Two JNA military facilities were located outside of Drniš and were blocked by the Croatian forces, Borislav Đukić, 20 Oct 2006, T. 9888-9889. There was no Croatian SJB in Drniš, Witness MM-078, 24 May 2006, T. 4452.

⁴⁰⁹ Witness MM-078, 24 May 2006, T. 4450, 25 May 2006, T. 4542.

committed by members of the JNA and the MUP and by local citizens.⁴¹⁰ Approximately 10-15 days after the attack, an SJB of the SAO Krajina MUP was set up in Drniš.⁴¹¹

172. Following these attacks, several larger clashes and attacks occurred in predominantly Croat areas of the SAO Krajina. These will be more fully described below.

2. Hrvatska Dubica, Cerovljani and Baćin

(a) Take-over of Hrvatska Kostajnica and Hrvatska Dubica

173. In 1990, Hrvatska Dubica, Cerovljani and Baćin were mixed or predominantly Croat villages in the Hrvatska Kostajnica municipality situated in north-eastern Croatia.⁴¹² In 1990, Hrvatska Dubica had around 2,000 to 2,500 inhabitants.⁴¹³ Cerovljani is situated about three to six kilometres north of Hrvatska Dubica and in 1990 its population was some 500 people.⁴¹⁴ Baćin is situated about three to five kilometres west of Hrvatska Dubica and in 1990 it had 200 to 500 inhabitants.⁴¹⁵

174. In the area of Hrvatska Kostajnica, there was intensive fighting during August and September 1991, which lasted until the beginning of October.⁴¹⁶ In September 1991, Milan Martić went together with Colonel Dušan Smiljanić, Chief of Security of the JNA 10th Zagreb Corps, to coordinate combat activities in relation to the “liberation of Kostajnica”.⁴¹⁷

175. On 12 or 13 September 1991, Serb forces, including the SAO Krajina TO, took control over Hrvatska Kostajnica.⁴¹⁸ The special police unit of the SAO Krajina police at Dvor na Uni participated and cooperated with the TO.⁴¹⁹ Following the takeover of Hrvatska Kostajnica, the

⁴¹⁰ Witness MM-078, 24 May 2006, T. 4450; Borislav Đukić, 20 Oct 2006, T. 9889-9890.

⁴¹¹ Witness MM-078, 24 May 2006, T. 4452.

⁴¹² Villages surrounding Hrvatska Dubica are Baćin, Cerovljani, Predore (about eight kilometres from Hrvatska Dubica), Slabinja, Živaja. Directly adjacent to Hrvatska Dubica across the river Una on the side of BiH is Bosanska Dubica, which in 1990 had approximately 10,000 inhabitants (about 40% Serbs, 45% Muslims and 500 Croats). Živaja (situated slightly north of Cerovljani and about eight to fifteen kilometres from Hrvatska Dubica) and Slabinja (ten to fifteen kilometres west of Hrvatska Dubica) were predominantly Serb villages, Witness MM-022, 20 Mar 2006, T. 2278, 2361; Witness MM-025, 12 Jun 2006, T. 5410, 5422-5424; Ex. 265, pp 2-3; Nikola Dobrijević, 10 Nov 2006, T. 10883-10884; Mijo Ciprić, Ex. 274, p. 2; Ex. 23, Atlas p. 21. *See also* Ex. 301, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 42-59 and DVD 2, pp 1-7; Ex. 1044.

⁴¹³ Ex. 265, p. 2; Ex. 301, p. 2, in 1991, the population was 50% Croat and 38% Serb.

⁴¹⁴ Ex. 265, p. 2. In 1991, 52.9% were Croats, and 39.5% were Serbs, Ex. 301, p. 3.

⁴¹⁵ Witness MM-022, 20 Mar 2006, T. 2278; Ex. 265, p. 3; Mijo Ciprić, Ex. 274, p. 2; Ex. 301, p. 1, also stating that 94.9% were Croat, and 1.5% were Serb.

⁴¹⁶ Milan Babić, 20 Feb 2006, T. 1597-98; Ex. 1034, L0092283; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 7-8; Ex. 1044.

⁴¹⁷ Milan Babić, 16 Feb 2006, T. 1441-1442. *See also* Ex. 206; Milan Babić, 17 Feb 2006, T. 1532-1533.

⁴¹⁸ Nikola Dobrijević, 10 Nov 2006, T. 10873, 10878, 10882-10883. Nikola Dobrijević testified that among 500 or 600 members of the TO, there were 111 Croats and a few percent of Muslims, Nikola Dobrijević, 10 Nov 2006, T. 10881-10882, 13 Nov 2006 T. 10980-10981; Antun Blažević, Ex. 273, p. 2.

⁴¹⁹ Ex. 568, p. 3; Nikola Dobrijević, 13 Nov 2006, T. 10955. *See also* Ex. 957, p. 2, stating that as of 2 September 1991 “[t]here are strong MUP forces in Dubica and Šita”.

operation continued in order to take over the rest of the villages along the axis between Kostajnica and Novska, including the villages of Hrvatska Dubica, Cerovljani and Baćin.⁴²⁰ A front line between the SAO Krajina and Croatian forces was established from Sunja to Hrvatska Dubica and further towards Novska.⁴²¹ Following this operation, there were daily conflicts on the front line.⁴²²

(b) Hrvatska Dubica

176. In 1991, the Croatian MUP took over the SJB in Hrvatska Dubica.⁴²³ From mid-1991, ZNG units were formed in Hrvatska Dubica.⁴²⁴ Around the same time, the Serb inhabitants started to move out of Hrvatska Dubica.⁴²⁵

177. After the occupation of Hrvatska Kostajnica around 12 or 13 September, Hrvatska Dubica was shelled from Hrvatska Kostajnica and from Bosanska Dubica, BiH.⁴²⁶ Subsequently, the ZNG and Croatian MUP withdrew from Hrvatska Dubica and the surrounding villages and the civilian inhabitants started to leave.⁴²⁷ After 13 September 1991, only about 60 Croats, mainly elderly and women, remained in Hrvatska Dubica.⁴²⁸

178. An SAO Krajina TO force and a police force, including a unit of the *Milicija Krajine* consisting of 30 policemen from the area, were set up in Hrvatska Dubica.⁴²⁹ Veljko “Velja” Radunović, his son Stevo Radunović and Momčilo Kovačević were in charge of the *Milicija Krajine* unit, which had a command post at the old school building in Hrvatska Dubica.⁴³⁰ There

⁴²⁰ Nikola Dobrijević, 10 Nov 2006, T. 10883-10884; Antun Blažević, Ex. 273, pp 2-3; Mijo Ciprić, Ex. 274, pp 3-4; Ex. 568, p. 4; Ex. 599, p. 5.

⁴²¹ Nikola Dobrijević, 10 Nov 2006, T. 10884-10886. According to Witness MM-022, the front line was between Jasenovac and Sunja along the Sava River, Witness MM-022, 20 Mar 2006, T. 2350-2351.

⁴²² Nikola Dobrijević, 10 Nov 2006, T. 10886.

⁴²³ Josip Josipović, 6 Apr 2006, T. 3338.

⁴²⁴ Witness MM-022, 20 Mar 2006, T. 2281-2283, 2324. There were about four units, each made up of four to five men, who did not have uniforms. The units had one firearm between them and some carried personal hunting rifles. The headquarters was in Hrvatska Dubica, close to the bridge between Hrvatska Dubica and Bosanska Dubica, Ex. 265, p. 5; Josip Josipović, 6 Apr 2006, T. 3297-3298, 3348.

⁴²⁵ Witness MM-022, 20 Mar 2006, T. 2284, 2325, 2330; Ana Kesić, 21 Mar 2006, T. 2385; Josip Josipović, 6 Apr 2006, T. 3304-3305, 3333-3334; Witness MM-025, 12 Jun 2006, T. 5421.

⁴²⁶ Tomislav Kozarčanin, Ex. 828, p. 2. See also Antun Blažević, Ex. 273, p. 2.

⁴²⁷ Witness MM-022, 20 Mar 2006, T. 2281, 2286-2287, 2289; Josip Josipović, 6 Apr 2006, T. 3298, 3346-3347; Witness MM-025, 12 Jun 2006, T. 5414, 5421, Ex. 265, p. 4; Tomislav Kozarčanin, Ex. 828, p. 2.

⁴²⁸ Witness MM-022, 20 Mar 2006, T. 2292-2293; Ana Kesić, 21 Mar 2006, T. 2385-2386; Witness MM-025, 12 Jun 2006, T. 5421-5422, Ex. 265, p. 4.

⁴²⁹ Witness MM-022, 20 Mar 2006, T. 2289-2290, 2293, 2316, 2336, 2350; Josip Josipović, 6 Apr 2006, T. 3297-3298.

⁴³⁰ Witness MM-022, 20 Mar 2006, T. 2291, 2297-2298, 2308; Josip Josipović, 6 Apr 2006, T. 3309-3310, 3314. Other *Milicija Krajine* members were Mirko Sarac, Milan Petrović, Đorđe Ratković, Đuro Jerinić, Marjan Prvalo, Mladen Pozar, Rajko Pauković, Dubravko Pauković, Mico Tepić, and Branko Kotur, Josip Josipović, 6 Apr 2006, T. 3309, 3318.

were “reservists” in Živaja under the command of Stevo Borojević.⁴³¹ The reservists wore old military olive-green-grey uniforms.⁴³²

179. On 15 September 1991, the JNA, the TO and the police surrounded Predore, approximately 8 kilometres from Hrvatska Dubica, and proceeded to search houses.⁴³³ They rounded up people and took six or seven, including Josip Josipović, a ZNG member, to the Sava river to reconnoitre the area using them as a live shield, and then returned them to the village.⁴³⁴ Josip Josipović and his cousin Mićo Ćorić were then taken to Dubička Brda where they were detained for one month.⁴³⁵ Thereafter, they were transferred to the school building in Hrvatska Dubica, which was used as a command post by Serb forces, including the TO and the police.⁴³⁶ Present at the school building were Momčilo Kovačević and Veljko Radjunović, who issued orders and participated in the beatings of detainees at the school building.⁴³⁷ Josip Josipović identified Momčilo Kovačević, Stevo Radjunović, Mirko Šarac, Milan Petrović, Djordje Ratković, Djuro Jerinić, Marjan Prvalo and Miša Pozar as the soldiers guarding them.⁴³⁸ Josip Josipović testified that he overheard the soldiers discussing amongst themselves and understood them as saying that they were receiving orders from Milan Martić.⁴³⁹

180. After the take-over of Hrvatska Dubica until mid-October 1991, some houses were torched in Hrvatska Dubica: approximately eight belonged to Croats, two belonged to couples of mixed marriages, and one belonged to a Serb.⁴⁴⁰ There was also widespread looting, committed by the JNA, the TO, the *Milicija Krajine*, and local Serbs.⁴⁴¹ Detained Croats were also forced to loot.⁴⁴² All the houses of people who had fled, both Croats and Serbs, were looted and cars, tractors, tools,

⁴³¹ Witness MM-022, 20 Mar 2006, T. 2289, 2293.

⁴³² Witness MM-022, 20 Mar 2006, T. 2293. The Serb forces in the area at the time wore a variety of insignia, including the five-pointed star and emblems with the inscription “SAO Krajina”, with “*Milicija Krajine*”, with a double-headed eagle and crossed swords, with four Cyrillic “S”. It was not possible to tell to which unit soldiers belonged. There is also evidence of soldiers with patches reading “Special Police Units”, “Blue”, and “Ugljevik”, worn by Serbs who came from BiH, Josip Josipović, 6 Apr 2006, T. 3299-3300, 3300-3303, 3353, 7 Apr 2006, T. 3382-3383; Ex. 266; Ex. 288.

⁴³³ Josip Josipović, 6 Apr 2006, T. 3294, 3309, 3349-3350.

⁴³⁴ Josip Josipović, 6 Apr 2006, T. 3310, 3350.

⁴³⁵ Josip Josipović, 6 Apr 2006, T. 3310-3311. The Trial Chamber considers that the Defence has not been put on notice regarding a detention facility in Dubička Brda and will not consider this evidence for a conviction, *see supra* section I C.

⁴³⁶ Josip Josipović, 6 Apr 2006, T. 3311, 3314.

⁴³⁷ Josip Josipović, 6 Apr 2006, T. 3314.

⁴³⁸ Josip Josipović, 6 Apr 2006, T. 3318, 7 Apr 2006, T. 3375.

⁴³⁹ Josip Josipović, 6 Apr 2006, T. 3356.

⁴⁴⁰ Witness MM-022, 20 Mar 2006, T. 2295-2296.

⁴⁴¹ Witness MM-022, 20 Mar 2006, T. 2293-2295, 2336.

⁴⁴² Josip Josipović, 6 Apr 2006, T. 3312-3313.

machinery, furniture and cattle were stolen.⁴⁴³ Serbs who had withdrawn from the areas of Pakrac and Lipik moved into the houses of the people who had fled.⁴⁴⁴

181. In the morning on 20 October 1991, a truck bearing the insignia “Milicija SAO Krajina” with Veljko Radunović, Radovan Šoša and a man nicknamed “Janjeta” came to Ana Kesić’s house and told her and her sister-in-law Katarina to come with them and attend a meeting.⁴⁴⁵ Thereafter the truck picked up several other civilians and brought them to the fire station in Hrvatska Dubica.⁴⁴⁶ On the same date, Tomislav Kozarčanin was told by Branko Majstorović, who was wearing a JNA uniform, to go to the fire station to attend a meeting, which he did.⁴⁴⁷ A second bus arrived at the fire station after ten minutes bringing another 20 people.⁴⁴⁸ In total, there were then more than 40 people in the fire station but more people arrived later.⁴⁴⁹ They were mostly Croats, although there were also Serbs and Muslims.⁴⁵⁰

182. The people in the fire station were guarded by Katarina “Kaća” Pekić and Stevo Radunovic, who were armed and wore JNA uniforms, and a man with the last name Kovačević.⁴⁵¹ The detainees were not free to leave.⁴⁵² Every two or three hours there was a change of guard, and the detainees’ names would be read out from a list to check no one was missing.⁴⁵³ Over the course of the day, eleven of the detainees were released or managed to escape, including Tomislav Kozarčanin.⁴⁵⁴

183. Several witnesses testified to having heard, including from Serb soldiers in Hrvatska Dubica, that the people detained in the fire station on 20 October 1991 were taken the following day

⁴⁴³ Witness MM-022, 20 Mar 2006, T. 2294-2296; Ana Kesić, 21 Mar 2006, T. 2383. *See also* Josip Josipović, 6 Apr 2006, T. 3313.

⁴⁴⁴ Witness MM-022, 20 Mar 2006, T. 2296.

⁴⁴⁵ Witness MM-022, 20 Mar 2006, T. 2298-2301; Ana Kesić, 21 Mar 2006, T. 2388-2390, Ex. 258, p. 2.

⁴⁴⁶ Those who were picked up included Vera Franković, Veronika Stanković, Pavle Kropf, Bara Kropf and her daughter, an 80-year old man nicknamed “Brico”, Danica Krizmanović, Ruza Dikulić, Sofija Dikulić, and Nikola Lončar, Witness MM-022, 20 Mar 2006, T. 2299-2301; Ana Kesić, 21 Mar 2006, T. 2388-2389, Ex. 258, p. 2. The Trial Chamber considers that Vera Stanković, born 1915, is Veronika Stanković in Annex I to the Indictment, that Pavle Kropf, aged 60, is Pavao Kropf in Annex I, that Bara Kropf, aged 60, is Barbara Kropf in Annex I, and that Nikola Lončar is Nikola Lončarević in Annex I. *See also* Josip Josipović, 6 Apr 2006, T. 3324; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 49-53.

⁴⁴⁷ Tomislav Kozarčanin, Ex. 828, p. 2.

⁴⁴⁸ Witness MM-022, 20 Mar 2006, T. 2301.

⁴⁴⁹ Witness MM-022, 20 Mar 2006, T. 2301-2302. *See also* Ex. 380, pp 10, 12.

⁴⁵⁰ Witness MM-022, 20 Mar 2006, T. 2303.

⁴⁵¹ Witness MM-022, 20 Mar 2006, T. 2343-2344; Tomislav Kozarčanin, Ex. 828, p. 3; Ex. 380, pp 11-12.

⁴⁵² Tomislav Kozarčanin, Ex. 828, p. 3

⁴⁵³ Witness MM-022, 20 Mar 2006, T. 2302, 2343-2344. Two Serbs, Mićo Kesonja and Đuro Kesonja, made a list of all the people who remained in Hrvatska Dubica during the period of their occupation, Tomislav Kozarčanin, Ex. 828, pp 3-4.

⁴⁵⁴ Those released were three Serbs, one Muslim and seven Croats whose Serb neighbours or friends contacted the guards, Witness MM-022, 20 Mar 2006, T. 2304-2306, 2360; Ana Kesić, 21 Mar 2006, T. 2390, 2393-2394, Ex. 258, pp 2-3; Tomislav Kozarčanin, Ex. 828, p. 3; Ex. 380, pp 11-12.

to a place called Krečane near Baćin where they were killed.⁴⁵⁵ The bodies of the following 32 civilians, who the evidence shows had been detained in the fire station on 20 October 1991, were subsequently exhumed from several graves, including one at Krečane near Baćin:⁴⁵⁶ Katarina Alavančić, Terezija Alavančić, Josip Antolović,⁴⁵⁷ Marija Batinović,⁴⁵⁸ Mara Ćorić,⁴⁵⁹ Mijo Ćović,⁴⁶⁰ Marija Delić, Ana Dikulić, Ruža Dikulić, Sofija Dikulić, Antun Đukić, Marija “Maca” Đukić,⁴⁶¹ Ana Ferić, Juraj Ferić, Kata Ferić, Filip Jukić, Marija Jukić, Antun Krivajić, Barbara Kropf, Pavao Kropf, Ivan Kulišić,⁴⁶² Nikola Lončarić, Antun Mucavac,⁴⁶³ Ivo Pezo, Sofija Pezo, Anka Piktaja,⁴⁶⁴ Štjepan Sabljar, Veronika Stanković, Antun Švračić, Marija Švračić, Ana Tepić,⁴⁶⁵ and Katarina Vladić.⁴⁶⁶ Moreover, the evidence shows that the following 9 civilians, whose bodies have not been recovered, were detained in the fire station on 20 October 1991 and killed the following day at Krečane near Baćin: Štjepan Dikulić, Antun Đurinović, Jozo Karanović, Reza Krivajić, Dušan Tepić, Ivan Trninić, Ivo Trninić, Kata Trninić and Terezija Trninić.⁴⁶⁷ Although their bodies have not been recovered, in light of the fact that they were detained in the fire station at the same time as the above-mentioned 32 persons who were subsequently killed, the Trial Chamber considers that it has been established beyond reasonable doubt that they were killed.⁴⁶⁸ All of the above victims were Croats, except for Ana Tepić and Dušan Tepić, who were Serbs.⁴⁶⁹

184. After Tomislav Kozarčanin fled from the fire station, he hid for seven or eight days. When he returned to his house, he was picked up by Đuro Majstorović and two others with the same surname. They wore JNA uniforms and carried automatic rifles. He was handcuffed, blindfolded

⁴⁵⁵ Witness MM-022, 20 Mar 2006, T. 2310-2311; Josip Josipović, 6 Apr 2006, T. 3324-3325, 3354; Ana Kesić, 21 Mar 2006, T. 2381-2382, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 3. *See also* Ex. 265, p. 6; Ex. 257.

⁴⁵⁶ In 1997, 56 bodies were exhumed from a mass grave in Krečane near Baćin, Davor Strinović, 12 Apr 2006, T. 3669; Ana Kesić, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 3; Antun Blažević, Ex. 273, p. 4; Mijo Ciprić, Ex. 274, p. 4; Ex. 301, p. 1; Ex. 380; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 5-7; Ex. 1044.

⁴⁵⁷ Ex. 315.

⁴⁵⁸ Ex. 316.

⁴⁵⁹ Ex. 310; Josip Josipović, 6 Apr 2006, T. 3324-3325.

⁴⁶⁰ Ex. 317.

⁴⁶¹ Ex. 308.

⁴⁶² There is evidence that an individual called “Ivo Kuliša” remained in Hrvatska Dubica, Tomislav Kozarčanin, Ex. 828, p. 2. However, the Trial Chamber cannot conclude that this person is the same person as Ivan Kulišić.

⁴⁶³ Ex. 307.

⁴⁶⁴ Ex. 314.

⁴⁶⁵ Ex. 306.

⁴⁶⁶ With respect to these 32 individuals, *see* Ex. 257 (listing all of them except for Marija Batinović); Witness MM-022, 20 Mar 2006, T. 2312-2313; Ex. 302, Ex. 323. Ex. 302 indicates that all of them except for Marija Delić and Ivo Pezo, were exhumed from a mass grave in Krečane near Baćin. Ex. 323 identifies their causes of death as either gunshot wounds, trauma wounds or blast wounds, except for Ivan Kulišić, for whom Ex. 323 states the cause of death as unknown. Ex. 257 also lists FNU Jukić, FNU Krnić and FNU Šestić as having been detained in the fire station. There is no further evidence concerning these persons and in view of this lack of evidence the Trial Chamber is unable to identify them. Having regard to the Trial Chamber’s finding as to the interpretation of the Indictment (*see supra* section I C) the Trial Chamber will not make any further finding regarding these persons.

⁴⁶⁷ Ex. 257; Ex. 302; Ex. 323.

⁴⁶⁸ In this respect, the Trial Chamber notes the evidence of Mijo Ciprić that there is a possibility that bodies were washed away from the mass grave at Krečane near Baćin as that grave is on the bank of the river Una, Mijo Ciprić, Ex. 274, 7-8 Nov 2000, p. 4. *See also* Ex. 1042; Ex. 1043, DVD 2, pp 5-7.

and beaten, after which he was taken in their car to an abandoned house. He was beaten throughout the journey, which resulted in broken ribs, and his legs were cut with a knife. They then drove him to another location, removed his handcuffs and abandoned him. A Serb later took him to the SJB in Hrvatska Dubica, where he described what had happened to him.⁴⁷⁰

185. After Ana Kesić and her sister-in-law Katarina were released from the fire station, they heard from one of their relatives, Milan Šestić, that three neighbours had been killed and that he dug graves for them.⁴⁷¹ There is no other evidence as to these three persons.⁴⁷² The Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt that these three persons were killed.⁴⁷³

(c) Cerovljani

186. Following the advice of the Croatian police and ZNG, most of the residents of Cerovljani left the village in August and early September 1991, after which only elderly people remained.⁴⁷⁴

187. On 13 and 21 September 1991, Serbs came to Cerovljani and burnt Croat houses.⁴⁷⁵ The Serbs who came on 21 September were armed and about fifty in number, the majority wearing civilian clothes, although a few wore military uniforms.⁴⁷⁶ The commander was Nikola Begović from Babin Rijeka near Hrvatska Kostajnica and most of the members were from Živaja, Šaš and the surroundings of Hrvatska Dubica.⁴⁷⁷ On 24 September, the armed Serbs came again in the afternoon and shooting could be heard; that night three dead bodies were found.⁴⁷⁸ On the same date, the houses of Đuro Petrović, Nikola Dragocajać, Anka Barišić and Željko Blinja were torched

⁴⁶⁹ Witness MM-022, 20 Mar 2006, T. 2313.

⁴⁷⁰ Tomislav Kozarčanin, Ex. 828, p. 3.

⁴⁷¹ Ana Kesić, Ex. 258, p. 3.

⁴⁷² These three were Luka Krnić, Štef Uska and FNU Batinović, Ana Kesić, 21 Mar 2006, T. 2381, Ex. 258, p. 3. Annex I to the Indictment contains two individuals with the last name Batinović, however the Trial Chamber cannot find that this individual is the same person as either of those mentioned in Annex I.

⁴⁷³ There is evidence that Milan Šestić disappeared from Hrvatska Dubica, Ana Kesić, 21 Mar 2006, T. 2381, Ex. 258, p. 3. *See also* Ex. 302, p. 4. Documentary evidence also shows that Mijo Mišić disappeared from Hrvatska Dubica, Ex. 302, p. 4. Milan Šestić and Mijo Mišić are mentioned in Annex I to the Indictment as victims killed in Bačin and surroundings. However, in view of the evidence regarding these persons provided to the Trial Chamber (Ex. 302, Ex. 323), the Trial Chamber cannot conclude that these individuals are dead or were killed. Maca Dikulić (age 86) is listed in Annex I to the Indictment. There is evidence that she remained in Hrvatska Dubica after the occupation, Ana Kesić, Ex. 258, p. 3; Tomislav Kozarčanin, Ex. 828, p. 2. However, no other information is provided to the Trial Chamber in relation to this person (Ex. 302, Ex. 303). The Trial Chamber cannot conclude that this individual is dead or was killed.

⁴⁷⁴ Antun Blažević, Ex. 273, p. 3.

⁴⁷⁵ Antun Blažević, Ex. 273, p. 3. On 13 September 1991, "the Serbs" burnt three Croatian houses which were on the Živaja side of Cerovljani. On 21 September, they burnt three more, Antun Blažević, Ex. 273, p. 3.

⁴⁷⁶ Antun Blažević, Ex. 273, p. 3.

⁴⁷⁷ Antun Blažević, Ex. 273, p. 3.

⁴⁷⁸ The victims were Barbara Blinja, Nikola Likić, and Đuro Petrović, Antun Blažević, Ex. 273, pp 3-4. The Trial Chamber finds that these victims were killed by armed Serbs from Živaja under the command of Nikola Begović. The Trial Chamber notes that Barbara Blinja Nikola Likić, and Đuro Petrović are not listed in Annex I to the Indictment. The Trial Chamber considers that the Defence has not been on notice regarding these killings and will therefore not enter a conviction based on them. *See supra* section I C.

by the Serbs and rocket launchers were fired at the Catholic church which damaged the bell tower.⁴⁷⁹ Some of the armed Serbs also stole the car of Antun Blažević.⁴⁸⁰

188. The evidence shows that some time in October 1991, unidentified armed Serbs gathered the remaining civilians in Cerovljani into the local community centre under the pretext of having a meeting, following which they were detained for the night. The next morning they were taken away.⁴⁸¹ The bodies of Marija Antolović,⁴⁸² Ana Blinja,⁴⁸³ Josip Blinja,⁴⁸⁴ Katarina Blinja,⁴⁸⁵ Andrija Likić,⁴⁸⁶ Ana Lončar,⁴⁸⁷ and Kata Lončar (born 1906)⁴⁸⁸ were subsequently discovered in the mass grave in Krečane near Baćin.⁴⁸⁹ Another woman also by the name of Kata Lončar, who was a Croat, remained in the village throughout the occupation because she had “connections with the Serbs”.⁴⁹⁰ The bodies of Nikola Blinja, Antun Lončar and Nikola Zaočević, who were also rounded up, have not been recovered.⁴⁹¹ In relation to Nikola Zaočević, the Trial Chamber notes that he is not mentioned in Annex I to the Indictment and recalls its interpretation of the Indictment in this respect.⁴⁹² Moreover, the Trial Chamber considers that the Defence has not been on notice concerning this victim and the Trial Chamber is therefore unable to consider this victim further. With regard to Nikola Blinja and Antun Lončar, in light of the evidence that they were detained with the other persons named above, all of whom were subsequently killed, the Trial Chamber finds it established beyond reasonable doubt that also they were killed at the same time.

(d) Baćin and surroundings

189. Following the take-over of Baćin, all the inhabitants left, with the exception of around thirty mostly elderly civilians, among whom were the following 22 persons: Željko Abaza, Matija Barunović, Antun Bunjevac, Tomo Bunjevac, Antun Čorić, Barica Čorić, Josip Čorić (30 years old), another man by the name of Josip Čorić (60 years old), Vera Čorić, Nikola Felbabić, Grga Glavinić, Anka Josipović, Ankica Josipović, Ivan Josipović, Josip Karagić, Kata Lončar (born 1931), Štjepan Lončar, Antun Ordanić, Luka Ordanić, Antun Pavić, Matija Pavić, and Nikola

⁴⁷⁹ Antun Blažević, Ex. 273, p. 3.

⁴⁸⁰ Antun Blažević, Ex. 273, p. 3.

⁴⁸¹ Antun Blažević, Ex. 273, p. 4.

⁴⁸² Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 311; Ex. 323, p. 4.

⁴⁸³ Antun Blažević, Ex. 273, 23 Jun 2003, p. 1; Ex. 302; Ex. 323, p. 4.

⁴⁸⁴ Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 323, p. 4.

⁴⁸⁵ Antun Blažević, Ex. 273, 23 Jun 2003, p. 1; Ex. 302; Ex. 323, p. 4.

⁴⁸⁶ Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 309; Ex. 323, p. 5.

⁴⁸⁷ Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 323, p. 5.

⁴⁸⁸ Antun Blažević, Ex. 273, p. 4; Ex. 302; Ex. 313; Ex. 323, p. 5.

⁴⁸⁹ Antun Blažević, Ex. 273, p. 4, 23 Jun 2003, p. 1; Ex. 302.

⁴⁹⁰ Antun Blažević, Ex. 273, p. 4.

⁴⁹¹ Antun Blažević, Ex. 273, p. 4; Ex. 302 (regarding Nikola Blinja and Antun Lončar).

⁴⁹² See *supra* section I C.

Vrpoljac.⁴⁹³ The evidence shows that Željko Abaza was detained in mid-October in a toilet in the old school building in Hrvatska Dubica, that he was later killed by members of the *Milicija Krajine*, and that his body was thrown into the Una river by those members.⁴⁹⁴ The evidence further shows that the bodies of Antun Bunjevac and Tomo Bunjevac were exhumed from individual graves in Hrvatska Dubica.⁴⁹⁵ There is no exhumation evidence concerning the other persons listed above. The Trial Chamber notes the evidence that in October 1991 all of the people who remained in the village were taken to Krečane near Baćin, where they were killed along with a number of others who were brought from Cerovljani and Hrvatska Dubica.⁴⁹⁶

190. In light of the evidence that Željko Abaza was killed in Hrvatska Dubica and not buried but thrown into the Una river, and that Antun Bunjevac and Tomo Bunjevac were buried in Hrvatska Dubica, the Trial Chamber cannot conclude that the above-named persons were killed as one group. However, the Trial Chamber takes particular note of the situation in the area in October 1991 and that there is no evidence of fighting going on in Baćin proper at this time. The Trial Chamber further recalls the evidence that numerous killings of persons from Hrvatska Dubica, Cerovljani and Baćin were committed in Krečane near Baćin around 21 October 1991. In this connection, the Trial Chamber recalls that it visited Baćin and Krečane during the site visit to Croatia, and notes that Krečane is on the outskirts of Baćin and less than a ten-minute walk from the Catholic church in Baćin.⁴⁹⁷ In light of the above, and the totality of the evidence, the Trial Chamber therefore considers that the evidence proves beyond reasonable doubt that the above-named persons were killed around October 1991, albeit not necessarily on one occasion or at one and the same location.

191. Annex I to the Indictment lists Ivo Barunović, Nikola Barunović, Kata Bunjevac, Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević as having been killed in or around Baćin. The evidence shows that Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević were exhumed from the mass

⁴⁹³ Mijo Ciprić, Ex. 274, p. 3.

⁴⁹⁴ Josip Josipović was detained together with Željko Abaza, Antun Knežević and Idriz Čaušević. Idriz Čaušević was killed by persons under Veljko Radunović's and Momčilo Kovačević's command at the old school building in Hrvatska Dubica. Three days later, Željko Abaza and Ante Knežević had their throats slit and Josip Josipović and Mićo Ćorić were forced by Stevo Radunović, Momčilo Kovačević, Mirko Sarac, Milan Petrović, Đorđe Ratković, Đuro Jerinić, Marjan Prvalo, and Mladen Pozar to load the dead bodies of Željko Abaza and Antun Knežević onto a truck. Subsequently, the truck drove the three of them and the two bodies to the river and the bodies were thrown into the water by the same Serbs, Josip Josipović, 6 Apr 2006, T. 3315-3320, 7 Apr 2006, T. 3375-3377. The Trial Chamber finds that these three individuals were killed. However, none of these victims are mentioned in Annex I to the Indictment. The Trial Chamber considers that the Defence has not been on notice with regard to these killings and will not consider this evidence for a conviction. In this regard, the Trial Chamber recalls its findings on the interpretation of the indictment, *see supra* section I C. *See also* Mijo Ciprić, Ex. 274, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 46-48.

⁴⁹⁵ Ex. 302; Ex. 323.

⁴⁹⁶ Mijo Ciprić, Ex. 274, p. 3.

⁴⁹⁷ *See* Ex. 1043, DVD 2, pp 5-6; Ex. 1044, pp 5, 8-9.

grave in Krečane near Baćin.⁴⁹⁸ Moreover, the evidence shows that Nikola Barunović was exhumed from the mass grave at Višnjevački Bok, where Ivo Pezo, who had previously been detained at the fire station in Hrvatska Dubica, was also exhumed.⁴⁹⁹ Furthermore, Ivo Barunović was exhumed from an individual grave in Baćin.⁵⁰⁰ With regard to Kata Bunjevac, the evidence shows that she went missing from Kostričićima, however there is no further evidence in relation to her.⁵⁰¹ The Trial Chamber concludes that the above-mentioned victims were killed, except for Ivo Barunović and Kata Bunjevac, in relation to whom the Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt that they were killed.

192. With respect to the following 22 individuals listed in Annex I to the Indictment, no evidence has been provided to the Trial Chamber: Sofija Barić, Marija Barunović, Anka Batinović, Danica Đukić, Kata Đukić, Liza Đukić, Iva Jukić, Marija Juratović, Janja Jurić, Marija Krnić, Štefo Krnić, Ivica Kulišić, Mijo Lazić, Anka Likić, Antun Likić, Jelka Likić, Antun Lončarević, Janja Lujić, Dragica Matijević, Mara Mucavac, Jula Šestić and Pero Vuković.⁵⁰² The Trial Chamber therefore finds that there is insufficient evidence to establish beyond reasonable doubt that these individuals were killed. With regard to Nevenka Perković, Vlado Perković and Zoran Perković, who are also listed in Annex I to the Indictment, the evidence shows that they were found alive.⁵⁰³

(c) Destruction in Cerovljani, Hrvatska Dubica, and Baćin after December 1991⁵⁰⁴

193. Prior to August 1993, a Catholic church in Hrvatska Dubica was razed to the ground and its foundations were removed.⁵⁰⁵ The Orthodox church remained intact and was still standing in 1995.⁵⁰⁶ Towards the end of 1992 and beginning of 1993, looting and torching of houses was carried out by local Serbs.⁵⁰⁷ By 1995, many houses in Hrvatska Dubica belonging to Croats had been destroyed.⁵⁰⁸ The part of the village which contained both Serb and Croat houses remained intact.⁵⁰⁹ By 1995, most houses had been looted.⁵¹⁰

⁴⁹⁸ Ex. 302. Regarding Soka Volarević, *see also* Ex. 312; Ex. 323.

⁴⁹⁹ Ex. 302. Ex. 323 indicates that the cause of death of Nikola Barunović was a blast wound and that the cause of death of the other victims was gunshot wounds.

⁵⁰⁰ Ex. 302; Ex. 323, providing that the cause of death is unknown.

⁵⁰¹ Ex. 302; Ex. 323.

⁵⁰² Ex. 302, pp 2-4, indicating that there is no information on these individuals.

⁵⁰³ Ex. 302, p. 4; Ivan Grujić, 10 Apr 2006, T. 3476.

⁵⁰⁴ The Trial Chamber recalls that the period governing the Indictment as to Counts 12 to 14 is 1 August 1991-31 December 1992, Indictment, para. 47.

⁵⁰⁵ Witness MM-022, 20 Mar 2006, T. 2365; Ana Kesić, 21 Mar 2006, T. 2383. *See also* Mijo Ciprić, Ex. 274, p. 3; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 53-54; Ex. 1044.

⁵⁰⁶ Ana Kesić, 21 Mar 2006, T. 2383. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 54-59; Ex. 1044.

⁵⁰⁷ Tomislav Kozarčanin, Ex. 828, p. 4.

⁵⁰⁸ Ana Kesić, 21 Mar 2006, T. 2383, Ex. 258, p. 3; Witness MM-022, 20 Mar 2006, T. 2361; Mijo Ciprić, Ex. 274, p. 3.

⁵⁰⁹ Mijo Ciprić, Ex. 274, pp 3-4.

⁵¹⁰ Witness MM-022, 20 Mar 2006, T. 2318; Tomislav Kozarčanin, Ex. 828, p. 4.

194. There is evidence that by 1995, Croat houses in Cerovljani had been burnt or blown up, and that the Catholic church had been destroyed.⁵¹¹

195. There is evidence that by 1995, half of the houses in Baćin were destroyed or torched.⁵¹² The Catholic church in Baćin had been completely destroyed.⁵¹³ Many houses in the surrounding villages suffered damage, and the village of Predore was razed to the ground.⁵¹⁴

3. Saborsko area

196. Saborsko is located in north-western Croatia and stretches seven kilometres along the Korenica-Ogulin road, which goes through Plitvice, Poljanak, Saborsko, Lička Jasenica, Plaški, and Josipdol before reaching Ogulin.⁵¹⁵ Purely or predominantly Croat villages were located south of Saborsko near the Plitvice Lakes,⁵¹⁶ whereas Serb villages, such as Plaški and Lička Jasenica, were located to the north of Saborsko.⁵¹⁷

(a) Municipality of Plaški

197. In 1990, Plaški was within the municipality of Ogulin.⁵¹⁸ Following a referendum, Plaški formed its own municipality and joined the SAO Krajina. Nikola Medaković became the first president of the new municipality.⁵¹⁹ Plaški municipality comprised *inter alia* the Serb villages of Vojnovac, Plaški, Blata and Lička Jasenica and was surrounded by Croat villages.⁵²⁰

198. Following the armed clash in Plitvice in March 1991, a split occurred in the Plaški SJB, whereby policemen of Croat origin left the SJB and were replaced with Serb policemen from the

⁵¹¹ Witness MM-022, 20 Mar 2006, T. 2362-2363; Antun Blažević, Ex. 273, p. 4; Mijo Ciprić, Ex. 274, p. 3. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 1-2; Ex. 1044.

⁵¹² Witness MM-022, 20 Mar 2006, T. 2362; Mijo Ciprić, Ex. 274, p. 3.

⁵¹³ Mijo Ciprić, Ex. 274, p. 3.

⁵¹⁴ Witness MM-022, 20 Mar 2006, T. 2362.

⁵¹⁵ Ex. 22, Map 8; Ex. 23, p. 19; Marko Vuković, 24 Mar 2006, T. 2610; Vlado Vuković, 27 Mar 2006, T. 2655, 2710; Witness MM-037, 28 Mar 2006, T. 2797; Nikola Medaković, 9 Oct 2006, T. 8961; Ana Bićanić, Ex. 276, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 30-41 and DVD 3, pp 1-10; Ex. 1044.

⁵¹⁶ Such as Sertić Poljana and Poljanak, Marko Vuković, 24 Mar 2006, T. 2568.

⁵¹⁷ Other Serb villages in this area were Blata, Plavca Draga, Haski, Latin, and Vojnovac, Marko Vuković, 24 Mar 2006, T. 2568; Witness MM-037, 28 Mar 2006, T. 2747; Nikola Medaković, 9 Oct 2006, T. 8946. There were JNA barracks and a large fuel depot in Lička Jasenica, Vlado Vuković, 27 Mar 2006, T. 2655; Marko Vuković, 24 Mar 2006, T. 2574, 2605; Witness MM-037, 28 Mar 2006, T. 2751-2752; Nikola Medaković, 9 Oct 2006, T. 8972.

⁵¹⁸ Witness MM-037, 28 Mar 2006, T. 2746-2747; Nikola Medaković, 9 Oct 2006, T. 8945-8947, 10 Oct 2006, T. 9086.

⁵¹⁹ Witness MM-037, 28 Mar 2006, T. 2747-2748, Ex. 268, T. 11570, 11572; Nikola Medaković, 9 Oct 2006, T. 8948, 10 Oct 2006, T. 9055.

⁵²⁰ The Croat villages included Slunj, Ogulin, the area of Stajnica, Lipice, and Saborsko, Witness MM-037, 28 Mar 2006, T. 2746-2748, 2770-2771; Nikola Medaković, 9 Oct 2006, T. 8975-8976, 10 Oct 2006, T. 9046.

area.⁵²¹ After this, the SJB consisted of 10 to 15 employees and the Chief of the SJB was Dušan Lataš.⁵²²

199. During the spring and early summer of 1991, a unit of the *Milicija Krajine* was set up in Plaški following training at Golubić. Nikola Medaković, who had also undergone the training, commanded the unit, which at its fullest capacity consisted of 50 policemen.⁵²³ The members of the unit called themselves “Martić’s Police”.⁵²⁴ In September 1991, a TO Brigade was established in Plaški into which members of the *Milicija Krajine* unit were transferred.⁵²⁵

200. Following the armed clash in Plitvice and through the summer of 1991, both Serb and Croat forces set up roadblocks on the road from Saborsko through Lička Jasenica to Ogulin.⁵²⁶ After the summer 1991, the road was closed by the Croatian MUP which set up barriers in Josipdol to the north of Plaški and Saborsko to the south, which resulted in a blockade of Plaški as well as the JNA training grounds in Slunj.⁵²⁷ There were neither telephone lines nor electricity, nor basic necessities, such as food or medicine.⁵²⁸

(b) Lipovača

201. Lipovača was in the municipality of Slunj, approximately 25 kilometres from Saborsko and 18 kilometres from the town of Slunj and the former training ground of the JNA 5th Military District

⁵²¹ The reason for the split was that the policemen of Croat ethnicity refused to sign a pledge of allegiance to the SAO Krajina, Marko Vuković, 24 Mar 2006, T. 2570-2571; Vlado Vuković, 27 Mar 2006, T. 2653; Nikola Medaković, 10 Oct 2006, T. 9094; Witness MM-037, Ex. 268, T. 11569, 11616. Regarding the clash in Plitvice, *see supra* para. 132.

⁵²² Witness MM-037, 28 Mar 2006, T. 2749, 2751, 29 Mar 2006, T. 2821, Ex. 268, T. 11568-11569; Nikola Medaković, 9 Oct 2006, T. 8959, 8971, 8973.

⁵²³ Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8970, 10 Oct 2006, T. 9051, 9054; Witness MM-037, 28 Mar 2006, T. 2748, 2804, Ex. 268, T. 11569-11570, 11572.

⁵²⁴ Witness MM-037, 28 Mar 2006, T. 2749, Ex. 268, T. 11570; Ex. 507, p. 2.

⁵²⁵ Nikola Medaković, 10 Oct 2006, T. 9054. The evidence is unclear as to whether all members of the *Milicija Krajine* unit became part of the TO Brigade at this point in time. Nikola Medaković testified that 15-20 *Milicija Krajine* members refused to join the TO Brigade and established a group of their own under the command of Rade Milanović. Eventually, though it is unclear when, this group was subsumed “in other units”, Nikola Medaković, 10 Oct 2006, T. 9054, 9058-9070. The TO had semi-automatic rifles, machine-guns and olive-drab uniforms, Nikola Medaković, 10 Oct 2006, T. 9112-9113; Witness MM-037, 28 Mar 2006, T. 2787-2788, Ex. 268, T. 11577-11579; Ana Bičanić, Ex. 276, p. 2. By the summer of 1991, there were Serb forces including police, TO and JNA, in both Plaški and in Plitvice, on both sides of the villages of Saborsko, Vukovići and Poljanak, Nikola Medaković, 10 Oct 2006, T. 9047.

⁵²⁶ Vehicles and passengers were searched and communications in the area were affected, Marko Vuković, 24 Mar 2006, T. 2569, 2571, 2630; Vlado Vuković, 27 Mar 2006, T. 2656, 28 Mar 2006, T. 2722; Witness MM-037, 28 Mar 2006, T. 2758-2759, Ex. 268, T. 11567-11568, 11588, 11617; Nikola Medaković, 9 Oct 2006, T. 8974, 10 Oct 2006, T. 9044, 9120; Ana Bičanić, Ex. 276, p. 2.

⁵²⁷ Vlado Vuković, 27 Mar 2006, T. 2694; Nikola Medaković, 9 Oct 2006, T. 8961, 8975-8977, 10 Oct 2006, T. 9097-9098 (testifying that after August, the JNA could not pass the road between Slunj and Plitvice, because the town of Slunj was under control of the Croatian MUP), 12 Oct 2006, T. 9273-9275; Witness MM-037, Ex. 268, T. 11567, 11588, 11633-11636. The JNA training grounds in Slunj stretched from Slunj towards Saborsko and Plaški, Marko Vuković, 24 Mar 2006, T. 2574, 2604-2605; Vlado Vuković, 27 Mar 2006, T. 2710-2711; Nikola Medaković, 10 Oct 2006, T. 9096; Witness MM-037, Ex. 268, T. 11585. *See also* Reynaud Theunens, 3 Feb 2006, T. 1051; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 11-15.

⁵²⁸ Nikola Medaković, 9 Oct 2006, T. 8976.

in Slunj.⁵²⁹ In 1991, Lipovača was a predominantly Croat village with a total of 267 inhabitants.⁵³⁰ The Croat inhabitants of Lipovača had guards with a few rifles mounted along the road that passed through the village in case the JNA troops would arrive.⁵³¹ There were a few ZNG forces in the nearby Drežnik Grad, Rakovica and Slunj.⁵³² In 1991, helicopters were used by the JNA to carry weapons and ammunition, which were distributed to local Serbs.⁵³³

202. At the end of September or in early October 1991, the JNA entered Lipovača and almost all civilian inhabitants fled, with the exception of about 20-50 people.⁵³⁴ The JNA stayed for seven to eight days and fired from tanks at the Croatian police in Drežnik Grad and Rakovica and a Catholic church in Drežnik Grad.⁵³⁵ During this stay, some JNA soldiers warned a witness that “[w]hen we leave, beware of the reserve forces of those paramilitary units “who would” beat the people, set houses on fire, loot “and who would kill” regardless of age.”⁵³⁶ When the JNA troops left, several of the people who remained in the village fled to the forest and spent the night there.⁵³⁷

203. Sometime in October 1991, after the JNA had left, armed units including “Serb paramilitary units” from the region and outside of the region arrived in Lipovača.⁵³⁸ These forces were called “reserve forces, Martić’s troops or Martić’s army”, and that they wore uniforms “like the ones that the army had”.⁵³⁹

204. On 27 October 1991, a JNA Military Police unit led by Milan Popović, together with members of the TO and uniformed local Serbs, arrived in the village of Nova Kršlja adjacent to Lipovača.⁵⁴⁰ The JNA soldiers wore JNA uniforms whereas the TO soldiers wore black uniforms.⁵⁴¹ They arrested all of the young Croat men, including Ivan Marjanović’s son Marijan,⁵⁴²

⁵²⁹ Witness MM-036, 4 Apr 2006, T. 3183-3184, 3201; Nikola Medaković, 10 Oct 2006, T. 9096; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 21-24; Ex. 1044.

⁵³⁰ Ivan Grujić, 12 Apr 2006, T. 3629. Ex. 301, p. 9. About 60 houses belonged to Croats and about 15 houses belonged to Serbs, Witness MM-036, 4 Apr 2006, T. 3183-3184; Ex. 301, p. 9, states that 83.15% were Croats, and 16.48% were Serbs. It is near the Croat villages of Drežnik, Rakovica, Selište, Čatrinja, Smaljanac and Nova Kršlja and the Serb villages of Stara Kršlja, Jamari, Mucila, Witness MM-036, 4 Apr 2006, T. 3184; Ivan Marjanović, Ex. 426, T. 25005, 25013; Ex. 23, p. 19; Ex. 1044.

⁵³¹ Witness MM-036, 4 Apr 2006, T. 3200-3201.

⁵³² Witness MM-036, 4 Apr 2006, T. 3204.

⁵³³ Witness MM-036, 4 Apr 2006, T. 3186-3187, T. 3189, 3206-3207.

⁵³⁴ Witness MM-036, 4 Apr 2006, T. 3190.

⁵³⁵ Witness MM-036, 4 Apr 2006, T. 3205, 3210.

⁵³⁶ Witness MM-036, 4 Apr 2006, T. 3191-3192, 3208.

⁵³⁷ Witness MM-036, 4 Apr 2006, T. 3207.

⁵³⁸ Witness MM-036, 4 Apr 2006, T. 3190-3191.

⁵³⁹ Witness MM-036, 4 Apr 2006, T. 3207, T. 3191. The Trial Chamber notes that Witness MM-036 testified that to him a paramilitary unit is the same thing as a reserve force or the TO, Witness MM-036, 4 Apr 2006, T. 3207.

⁵⁴⁰ Ivan Marjanović, Ex. 426, T. 25005-25006, 25035, Milan Popović wore a standard JNA uniform and a cap with the five pointed star; Ivan Marjanović, Ex. 427, p. 2.

⁵⁴¹ Ivan Marjanović, Ex. 427, p. 2.

⁵⁴² Ivan Marjanović’s son was released after 15 days with bruises all over his body, Ivan Marjanović, Ex. 426, T. 25006, 25032, upon his return the JNA gave him the choice of joining the army or of performing forced labour.

and searched Ivan Marjanović's house for weapons.⁵⁴³ On the next day, the soldiers returned to Ivan Marjanović's house and demanded that he surrender his rifle to them, even though he did not have one.⁵⁴⁴ The soldiers then beat him severely, kicked him in the groin and broke his wrist.⁵⁴⁵ They again returned the next day and told him he was not allowed to leave his house or its immediate surroundings.⁵⁴⁶

205. At the end of October 1991, some time after the arrival of the paramilitary units, the bodies of Franjo Brozinčević, Marija Brozinčević, Mira Brozinčević, and Katarina Cindrić were found in Franjo Brozinčević's house in Lipovača.⁵⁴⁷ All four victims were dressed in civilian clothes and had been killed by gunshots.⁵⁴⁸

206. Between 29 and 31 October 1991, Nedo Kotur, a local Serb commander,⁵⁴⁹ came to the house of Ivan Marjanović and told him that "the Serbs" had killed some Croats and told Ivan Marjanović to go with him to Lipovača to bury the victims.⁵⁵⁰ Nedo Kotur, Ivan Marjanović, and three other Croat villagers, drove to Lipovača and passed a checkpoint manned by "Martić's men".⁵⁵¹

207. The group of men arrived in Lipovača at 0900 hours and went to the house of Mate Brozinčević, where they found his body in the kitchen with several bullet holes in the stomach.⁵⁵² Mate's wife, Roža, had also been shot, and the body of their son Mirko was lying at the entrance to the bedroom with a bullet hole in the neck.⁵⁵³ All victims wore civilian clothing.⁵⁵⁴

⁵⁴³ Ivan Marjanović, Ex. 426, T. 25006, 25035.

⁵⁴⁴ Ivan Marjanović, Ex. 426, T. 25007.

⁵⁴⁵ Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

⁵⁴⁶ Ivan Marjanović, Ex. 426, T. 25007.

⁵⁴⁷ Witness MM-036, 4 Apr 2006, T. 3192; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 21-23.

⁵⁴⁸ Witness MM-036, 4 Apr 2006, T. 3193-3194; Ivan Marjanović, Ex. 426, T. 25007, 25009, Ex. 427, p. 4; Ex. 304, pp 8-12; Ex. 323, p. 2. *See also* Ex. 375, pp 5-8, indicating that the deaths of these four victims were violent.

⁵⁴⁹ The Trial Chamber notes that Ivan Marjanović's evidence is contradictory as to the uniform that Nedo Kotur was wearing. In his testimony in the *Milošević* trial, he testified that Nedo Kotur was dressed in the JNA uniform of a reserve officer and a JNA hat with a red star, Ivan Marjanović, Ex. 426, T. 25007, 25023-25037. In a statement given in 2001, Ivan Marjanović stated that Nedo Kotur was wearing a black police uniform, with a patch of the SAO Krajina on it and a knit cap with a cockade, Ivan Marjanović, Ex. 427, p. 3. The Trial Chamber cannot draw any conclusions on the basis of this evidence.

⁵⁵⁰ Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

⁵⁵¹ Ivan Marjanović, Ex. 426, T. 25007, Ex. 427, p. 3.

⁵⁵² Ivan Marjanović, Ex. 426, T. 25007; Ex. 323, p. 2. *See also* Ex. 304, pp 6-7; Ex. 375, pp 3-4; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 23-24.

⁵⁵³ Ivan Marjanović, Ex. 426, T. 25007; Ex. 323, p. 2. *See also* Ex. 304, pp 4-6; Ex. 375, pp 2-3; Witness MM-036, 4 Apr 2006, T. 3194.

⁵⁵⁴ Ex. 304, pp 4-7; Ex. 375, pp 2-4; Ivan Marjanović, Ex. 426, T. 25007, 25009, 25022, Ex. 427, p. 4; Ex. 375, pp 2-4.

208. In June 1996, the above-mentioned seven individuals, who are listed in the Indictment, were exhumed from mass graves in Lipovača Drežnička.⁵⁵⁵

209. Milan Babić travelled to Lipovača and villages in the surrounding area in 1993 and testified that he saw “villages which used to be populated by Croats and Croat houses were devastated and there were no Croat residents any more.”⁵⁵⁶ Upon returning to Lipovača in 1995, Witness MM-036 found Lipovača and other villages in the municipality looted and burnt.⁵⁵⁷

(c) Poljanak and Vukovići

210. Poljanak is located about 14 kilometres south-east of Saborsko and 8 km north-west of Plitvice.⁵⁵⁸ In 1991, there were around 30-50 predominantly Croat households in Poljanak.⁵⁵⁹ The Croat hamlet of Vukovići, which is less than one kilometre away from Poljanak, consisted of about six or seven houses.⁵⁶⁰

211. Poljanak was shelled for the first time on 28 August 1991 and was shelled daily after that.⁵⁶¹ A few families initially left but returned two to three days later.⁵⁶²

212. On 5 September 1991, women with small children and minors in Poljanak and the surrounding villages left for Kraljevica, south-east of the city of Rijeka on the Adriatic coast.⁵⁶³ Vukovići was shelled at around noon on 8 October 1991, after which there was shooting in the village by unidentified armed Serbs.⁵⁶⁴ The next morning, Tomo Vuković was found dead in front of his burnt down house and at least two more houses had burnt down.⁵⁶⁵ Around 14 October 1991, Mile Lončar, an invalid man, and his father, Ivan Lončar, were found hanged in their house.⁵⁶⁶

⁵⁵⁵ Ex. 302. The Trial Chamber notes that also the following persons were killed in Lipovača: Ana Pemper, Barbara Vuković, Juraj Šebalj, Juraj Conjar, and Milan Smolčić, Ex. 304, pp 13-15; Ex. 375, pp 9-10. These victims are not listed in the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment and concludes that the Defence has not been on notice regarding these victims, *see supra* paras section I C.

⁵⁵⁶ Milan Babić, 20 Feb 2006, T. 1600-1601.

⁵⁵⁷ Witness MM-036, 4 April 2006, T. 3195. *See also id* at T. 3211.

⁵⁵⁸ Marica Vuković, 22 Mar 2006, T. 2403-2404; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 24-26; Ex. 1044.

⁵⁵⁹ Marica Vuković, 22 Mar 2006, T. 2403, 2438, 2451; Witness MM-038, 24 Mar 2006, T. 2563.

⁵⁶⁰ Witness MM-038, 24 Mar 2006, T. 2451, 2457, 2561; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 26-29; Ex. 1044.

⁵⁶¹ Marica Vuković, 22 Mar 2006, T. 2411.

⁵⁶² Marica Vuković, 22 Mar 2006, T. 2414. The shelling usually came from Bigina Poljana, a Serb village, Plitvice and Rastovača, a Croat village that had been burnt down and occupied by Serbs, Marica Vuković, 22 Mar 2006, T. 2415-2416. These villages were about a kilometre away from Poljanak, Marica Vuković, 22 Mar 2006, T. 2442. Marica Vuković did not know which units were stationed in these villages, *ibid*.

⁵⁶³ Marica Vuković, 22 Mar 2006, T. 2408, 2414-2415.

⁵⁶⁴ Marica Vuković, 22 Mar 2006, T. 2417.

⁵⁶⁵ Marica Vuković, 22 Mar 2006, T. 2404, 2416-2417 (testifying that the houses were “Pero’s house and Aunt Lucilja’s house”); Ex. 261, p. 2; Ex. 376, pp 6-7, concluding that Tomo Vuković was killed by a gunshot to the thorax; Witness MM-038, 24 Mar 2006, T. 2561-2562. The Trial Chamber notes that although paragraph 27 of the Indictment refers to Poljanak, paragraph 29 refers to the hamlet of Vukovići near Poljanak. Moreover, the Rule 65 *ter* summaries of Marica Vuković and Witness MM-038 contain references to the killing of Tomo Vuković. The Trial Chamber considers

213. There were no Croatian military units in Poljanak in the summer and autumn of 1991.⁵⁶⁷ However, there was a civilian protection force that would keep watch, but the members were either unarmed or had two to three hunting rifles at their disposal.⁵⁶⁸

214. On 7 November 1991, there was a large group of soldiers present in Vukovići. The soldiers were dressed in green camouflage uniforms and their commanders wore JNA caps with a red star.⁵⁶⁹ There were local people among these troops and there was also a JNA special unit present from Niš, Serbia, who wore darker camouflage uniforms.⁵⁷⁰ The soldiers came to Nikola “Šojka” Vuković’s house in Vukovići and lined up and killed Dane Vuković (son of Poldin), Dane Vuković (son of Mate),⁵⁷¹ Lucija Vuković, Milka Vuković, Vjekoslav Vuković, Joso Matovina and Nikola Matovina.⁵⁷² Nikola “Šojka” Vuković (born 1926) was too sick to leave the house and was shot from the window while lying in his bed.⁵⁷³ All killed individuals were Croat civilians.⁵⁷⁴ The evidence shows that one or two houses were burnt in Vukovići on 7 November 1991 by members of these units.⁵⁷⁵

215. The Defence pointed out certain discrepancies in the evidence concerning how the killings in Vukovići on 7 November 1991 were carried out.⁵⁷⁶ However, the Trial Chamber considers that these discrepancies are not material and therefore do not affect its finding that these killings were committed.

216. Also on 7 November 1991, 20 armed soldiers dressed in camouflage and olive-drab uniforms surrounded the house of Marica Vuković, a Croat, in Poljanak.⁵⁷⁷ Marica Vuković did not know where the soldiers were from but concluded that some must be locals because they appeared well informed about Marica Vuković and her family.⁵⁷⁸ As soon as they arrived, the soldiers

that the reference in paragraph 27 to Poljanak includes the hamlet of Vukovići and that the Defence has therefore been on notice in relation to the killing of Tomo Vuković.

⁵⁶⁶ Marica Vuković, 22 Mar 2006, T. 2419-2420, 2445. It is not clear from the evidence whether these men committed suicide or were killed; *see also* Ex. 261, p. 3.

⁵⁶⁷ Marica Vuković, 22 Mar 2006, T. 2412-2413.

⁵⁶⁸ Marica Vuković, 22 Mar 2006, T. 2414, 2423; Ex. 261, p. 3; Witness MM-038, 23 Mar 2006, T. 2555.

⁵⁶⁹ Ex. 261, p. 5. It is not clear how many soldiers there actually were in Vukovići on that day. One witness stated that there were between 90-100 soldiers, Witness MM-038, 23 Mar 2006, T. 2549-2551.

⁵⁷⁰ Witness MM-038, 23 Mar 2006, T. 2551-2552, 2560, 2563-2564 (also testifying that the local people wore the same uniforms and served as guides); Milan Babić, 20 Feb 2006, T. 1599-1600; Radoslav Maksić, 7 Feb 2006, T. 1253; Ex. 261, p. 5.

⁵⁷¹ Ex. 262; Ex. 302, p. 6.

⁵⁷² Ex. 261, p. 4; Witness MM-038, 23 Mar 2006, T. 2535-2542. *See also* Marica Vuković, 22 Mar 2006, T. 2432; Ex. 376; Ex. 302, p. 6; Ex. 323; Ex. 715; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 26-29.

⁵⁷³ Ex. 261, p. 4; Ex. 376, p. 5; Ex. 302; Ex. 323.

⁵⁷⁴ Witness MM-038, 23 Mar 2006, T. 2519.

⁵⁷⁵ Witness MM-038, 23 Mar 2006, T. 2551, 24 Mar 2006, T. 2562, Ex. 261, p. 5.

⁵⁷⁶ Witness MM-038, 23 Mar 2006, T. 2535-2542; Ex. 262; Ex. 263; Ex. 264.

⁵⁷⁷ Marica Vuković, 22 Mar 2006, T. 2443-2444, 2455. *See also id.* at T. 2424, 2450; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 24-26.

⁵⁷⁸ Marica Vuković, 22 Mar 2006, T. 2424, 2426, 2446-2447.

“captured” Marica Vuković and the others present in the house.⁵⁷⁹ The soldiers tied the arms of Marica Vuković’s husband Nikola Vuković (born 1938) and her father Ivan Vuković.⁵⁸⁰ Marica Vuković, her daughter Mira Vuković, her mother-in-law Jelena Vuković and her neighbour Marija Vuković were put under a plum tree where they were slapped, insulted and interrogated.⁵⁸¹ One of the soldiers threatened Marica Vuković and also put a knife at her throat.⁵⁸² The soldier wore a glove and said that it was “so that I won't get my hand bloody when I slit the throats of Ustashas.”⁵⁸³

217. The women were separated from Ivan Vuković and Nikola Vuković (born 1938) and taken to a nearby maize field whereupon two or three other soldiers came from the direction of Vukovići, together with a boy. The boy was put with the women.⁵⁸⁴ Subsequently, shooting was heard from the house where Ivan Vuković and Nikola Vuković had been left.⁵⁸⁵

218. Soon thereafter, a soldier came to the women and told them to flee. The women and the boy hid in the woods for a few hours.⁵⁸⁶ After having seen some cars move away from the village, Marica Vuković returned to her house and then came across the bodies of her father and husband in the maize field.⁵⁸⁷ She saw that her husband’s “brains were shattered” and that her father’s “skull wasn’t in place any more”.⁵⁸⁸ On that day, neither her husband nor her father was armed or wearing a uniform, nor were they members of a military force or the police.⁵⁸⁹

219. The evidence shows that several houses, sheds and cars were burnt in Poljanak on 7 November 1991, by the soldiers present in the village. The evidence also shows that before the houses were burnt private property was looted or destroyed.⁵⁹⁰ When torching the houses, some soldiers made comments, such as “Milošević built the house and Milošević is going to destroy it” and “what’s Tuđman done for you? All you are going to get from him is a bullet in your head”.⁵⁹¹

⁵⁷⁹ Marica Vuković, 22 Mar 2006, T. 2424-2425.

⁵⁸⁰ The Trial Chamber notes that both Marica Vuković’s husband and her uncle were named Nikola Vuković, that her husband was born 1938, and that her uncle was nicknamed “Šojka” (born 1926), Marica Vuković, 22 Mar 2006, T. 2424-2425. Both Nikola Vuković and Ivan Vuković were Croat, Marica Vuković, 22 Mar 2006, T. 2405.

⁵⁸¹ Marica Vuković, 22 Mar 2006, T. 2425, 2454.

⁵⁸² Marica Vuković, 22 Mar 2006, T. 2426.

⁵⁸³ Marica Vuković, 22 Mar 2006, T. 2426-2427.

⁵⁸⁴ Marica Vuković, 22 Mar 2006, T. 2425-2426.

⁵⁸⁵ Ex. 261, p. 5.

⁵⁸⁶ Marica Vuković, 22 Mar 2006, T. 2427-2429.

⁵⁸⁷ Marica Vuković, 22 Mar 2006, T. 2429.

⁵⁸⁸ Marica Vuković, 22 Mar 2006, T. 2430, also testifying that she wrapped the bodies in blankets which were later found during the exhumation; Ex. 376, pp 2-5. *See also* Ex. 323; Ex. 302.

⁵⁸⁹ Marica Vuković, 22 Mar 2006, T. 2430.

⁵⁹⁰ Marica Vuković, 22 Mar 2006, T. 2428-2429, 2457, also testifying that the soldiers took people out of houses and cars and then set fire to them. Ex. 259, 11 photographs of houses and places described by Marica Vuković. *See also* Milan Babić, 20 Feb 2006, T. 1600-1601, testifying that in 1993 he found Poljanak devastated and there were no Croat residents there anymore.

⁵⁹¹ Marica Vuković, 22 Mar 2006, T. 2428.

(d) Saborsko

220. In early 1991, there were 600 to 850 people, mostly Croats, living in the 300 households of Saborsko.⁵⁹² In the centre of Saborsko, there was a large church called the church of St. John. Slightly outside the centre, there was a smaller church, the church of the Mother of God.⁵⁹³

221. On 2 April 1991, the Croat members of the Ogulin SJB established an outpost in Saborsko.⁵⁹⁴ There were around 30 policemen, armed with automatic rifles and pistols, who engaged in regular police work but also manned check-points in case of an attack on Saborsko.⁵⁹⁵ Between April and August 1991, JNA armoured vehicles were allowed to pass through roadblocks and patrolled daily through Saborsko going between Plitvice and Lička Jasenica.⁵⁹⁶ From around June 1991, about 20 or 30 local men were organised in Saborsko and patrolled the village at night carrying "hunting guns or some military rifles."⁵⁹⁷ Between June and August 1991, Saborsko was fired upon with rifle and artillery fire. It was mostly one of the churches and the school that were shot at and the fire came from Lička Jasenica and from Pištenik hill.⁵⁹⁸

222. In the early morning of 5 August 1991, Saborsko was shelled by mortars from the direction of the Lička Jasenica JNA barracks.⁵⁹⁹ Shells fell on the cemetery and central parts of the village.⁶⁰⁰ At the time of the shelling, a Croatian special police unit from Duga Resa, numbering 20-30 policemen, had taken up a defence line at the primary school in the centre of the village.⁶⁰¹ On the

⁵⁹² Vlado Vuković, 27 Mar 2006, T. 2648-2649, 2679, 28 Mar 2006, T. 2730; Marko Vuković, 24 Mar 2006, T. 2567-2568; Ana Bičanić, Ex. 276, p. 2; Milan Babić, 20 Feb 2006, T. 1600; In 1991, Saborsko had 852 inhabitants (93.9% were Croat, and 3.3% were Serbs), Ex. 301, p. 7.

⁵⁹³ Nikola Medaković, 9 Oct 2006, T. 9014; Ana Bičanić, Ex. 276, p. 5. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 30-35, 38-39.

⁵⁹⁴ Vlado Vuković, 27 Mar 2006, T. 2651-2652; Marko Vuković, 24 Mar 2006, T. 2572-2573, 2598; Lazar Macura, 14 Sep 2006, T. 8321; Nikola Medaković, 9 Oct 2006, T. 8960.

⁵⁹⁵ Marko Vuković, 24 Mar 2006, T. 2572-2573, 2602-2603; Vlado Vuković, 27 Mar 2006, T. 2654, 2686, 2689; Nikola Medaković, 9 Oct 2006, T. 8962-8963, also testifying that the outpost in Saborsko consisted of about 60 men, *id.* at T. 8960.

⁵⁹⁶ Marko Vuković, 24 Mar 2006, T. 2574; Vlado Vuković, 27 Mar 2006, T. 2655; Nikola Medaković, 10 Oct 2006, T. 9095; Ana Bičanić, Ex. 276, p. 3.

⁵⁹⁷ Ana Bičanić, Ex. 276, p. 3.

⁵⁹⁸ Ana Bičanić, Ex. 276, p. 2. In July 1991, Croatian social workers evacuated several elderly persons, younger women and children, *ibid.*, p. 3. As a result of the attacks in June and July 1991, 10 people were killed, including Ivica Krizmanić, Marko Krizmanić, Tomo Matovina, Ante Kovačić, Pere Matovina and Joso Matovina, and there was a large number of wounded, *id.* at p. 3.

⁵⁹⁹ Marica Vuković, 22 Mar 2006, T. 2412, 2441; Marko Vuković, 24 Mar 2006, T. 2574-2576, 2608; Vlado Vuković, 27 Mar 2006, T. 2657-2659, 28 Mar 2006, T. 2724; Nikola Medaković, 10 Oct 2006, T. 9122; Ana Bičanić, Ex. 276, p. 3. *See also* Marko Vuković, 24 Mar 2006, T. 2577-2578; Ex. 38; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 5-8. Vlado Vuković also testified, in relation to who fired upon Saborsko, that "it's well-known who it is; it's the JNA and the local leaders, so-called Martić's men", Vlado Vuković, 27 Mar 2006, T. 2658. Based solely on this evidence, the Trial Chamber is unable to draw a conclusion as to who was responsible for this shelling.

⁶⁰⁰ Vlado Vuković, 27 Mar 2006, T. 2659, 2692.

⁶⁰¹ Marko Vuković, 24 Mar 2006, T. 2576 (also testifying that this unit fled towards Slunj at 2200 or 2300 hours in the evening), 2606-2607; Vlado Vuković, 27 Mar 2006, T. 2658, 2690-2692 (also testifying that the unit arrived in late July 1991 and that it was armed with side arms and long-barrelled weapons), 28 Mar 2006, 2732; Nikola Medaković, 9 Oct 2006, T. 8963. Nikola Medaković testified that less than 50 metres from the church of the Mother of God, there were fortified Croat positions which constituted a line of defence, Nikola Medaković, 9 Oct 2006, T. 9015-9016.

night of 5 August 1991, most of the civilian population of Saborsko fled through Rakovica to Grabovac, where the Red Cross had arrived with three buses. About 100 to 150 civilians were evacuated to areas under Croatian control, whereas around 400 persons returned to Saborsko in the following days.⁶⁰²

223. After 5 August 1991, Saborsko was shelled almost every day from various directions, including from the direction of the barracks at Lička Jasenica.⁶⁰³ After this date, the policemen stationed at the Saborsko outpost were no longer engaged in regular police work, but were deployed in combat positions.⁶⁰⁴ On 6 August 1991, 15-20 policemen armed with rifles and pistols came from Slunj to support the Saborsko police.⁶⁰⁵ When the unit from Slunj had left, further reinforcements arrived from Drežnik Grad.⁶⁰⁶ The church of St. John was the most hit during the shelling, though many other buildings in Saborsko were also damaged.⁶⁰⁷ Around this time, there was also an attempt by the Serb side to take Kušelj, a hamlet of Saborsko, in which some members of the Croatian forces were wounded and killed.⁶⁰⁸

224. Around 25 September 1991, a unit of the Croatian MUP reserve was deployed from Zagreb to support the defence of Saborsko. The unit consisted of between 100 and 200 persons who were armed with automatic rifles, sub-machine guns, two mortars and an anti-aircraft gun.⁶⁰⁹ The unit took up positions around Saborsko, in the hamlets of Sivnik, Alan, Kušelj, Borik and Strk, and remained until Saborsko fell on 12 November 1991.⁶¹⁰ There is evidence that the Croatian MUP reserve unit was partly deployed in the church of St. John, which was used as an observation point, machinegun nest and ammunition store.⁶¹¹ In early October, there was an armed clash in the area of Sertic Poljana.⁶¹² In October 1991, a convoy carrying food and weapons arrived in Saborsko, escorted by between 20 and 50 reserve policemen armed with automatic and semi-automatic rifles. These policemen remained in Saborsko.⁶¹³ Beginning on 4 November 1991, Croatian MUP and ZNG forces, including from Saborsko, launched an attack on the barracks at Lička Jasenica and an

⁶⁰² Marica Vuković 22 Mar 2006, T. 2412; Marko Vuković, 24 Mar 2006, T. 2578-2579, 2607-2608, 2629; Vlado Vuković, 27 Mar 2006, T. 2659, 2693; Nikola Medaković, 10 Oct 2006, T. 9048; Ana Bičanić, Ex. 276, p. 3.

⁶⁰³ Marko Vuković, 24 Mar 2006, T. 2584-2586 (also testifying about aerial attacks); Vlado Vuković, 27 Mar 2006, T. 2659; Ana Bičanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2.

⁶⁰⁴ Vlado Vuković, 27 Mar 2006, T. 2696-2697.

⁶⁰⁵ This unit took up positions in some of the hamlets of Saborsko and stayed at least for 12 days, Marko Vuković, 24 Mar 2006, T. 2579-2580, 2608-2611; Vlado Vuković, 27 Mar 2006, T. 2692, 2694 (testifying that this reinforcement remained in Saborsko for "two or three days").

⁶⁰⁶ Marko Vuković, 24 Mar 2006, T. 2609.

⁶⁰⁷ Vlado Vuković, 27 Mar 2006, T. 2659-2660.

⁶⁰⁸ Marko Vuković, 24 Mar 2006, T. 2585.

⁶⁰⁹ Marko Vuković, 24 Mar 2006, T. 2580, 2588, 2597-2598; 2614-2615, 2620; Vlado Vuković, 27 Mar 2006, T. 2660-2662 (testifying at T. 2661 that the members of this unit wore green uniforms), 2695-2696; Nikola Medaković, 9 Oct 2006, T. 8964, 8981, 8983, 11 Oct 2006, T. 9134.

⁶¹⁰ Marko Vuković, 24 Mar 2006, T. 2584, 2618. *See also* Nikola Medaković, 9 Oct 2006, T. 8984.

⁶¹¹ Nikola Medaković, 9 Oct 2006, T. 9028-9029.

⁶¹² Marko Vuković, 24 Mar 2006, T. 2619-2620.

area called Glibodolski Križ nearby.⁶¹⁴ During the attack, Serb civilians were killed by the Croatian forces.⁶¹⁵ The Croatian attack was eventually repelled on 8 November 1991.⁶¹⁶

(i) Attack on Saborsko on 12 November 1991

225. Saborsko was attacked mid-morning on 12 November 1991 by Tactical Group 2 (“TG-2”), under the command of Colonel Čedomir Bulat, and the 5th Partisan Brigade, both of which were within the structure of the JNA 13th Corps.⁶¹⁷ A unit of the Plaški SDB,⁶¹⁸ the Plaški TO Brigade⁶¹⁹ and *Milicija Krajine* units participated in the attack.⁶²⁰ Within the Plaški TO Brigade, a battalion consisting of three companies under the command of Bogdan Grba participated.⁶²¹

226. The attack commenced with aerial bombing followed by an artillery attack.⁶²² Afterwards, ground units, including tanks, moved in on Saborsko from three axes.⁶²³ During the attack, the church of St. John was hit by a tank shell but the tower remained standing.⁶²⁴ The church of the

⁶¹³ Marko Vuković, 24 Mar 2006, T. 2586, 2621-2622; Ana Bičanić, Ex. 276, p. 3

⁶¹⁴ Nikola Medaković, 9 Oct 2006, T. 8984-8987, 9003-9004, 11 Oct 2006, T. 9173-9174; Ex. 108, items 3-9; Ex. 962. Fire was guided in from Saborsko because it was at a higher elevation than Lička Jasenica, *ibid.* The presence in Saborsko, between September and November 1991, of a small number of ZNG members is confirmed by Marko Vuković, 24 Mar 2006, T. 2612-2614, 2628; Ex. 52.

⁶¹⁵ Witness MM-037, 28 Mar 2006, T. 2754-2755, 2781-2783; Ex. 268, T. 11625-16266; Nikola Medaković, 9 Oct 2006, T. 8985-8987, 8993-8995, 11 Oct 2006, T. 9167, 9174-9177, 12 Oct 2006, 9268-9269; Ex. 108, item 13; Ex. 605, pp 1-2.

⁶¹⁶ Witness MM-037, 28 Mar 2006, T. 2752, 2780-2781; Nikola Medaković, 11 Oct 2006, T. 9180.

⁶¹⁷ Radoslav Maksić, 7 Feb 2006, T. 1235 (also testifying that the 13th Corps had a forward command post in the village of Mukinje in the vicinity of Saborsko); Milan Babić, 20 Feb 2006, T. 1599-1600; Witness MM-037, 28 Mar 2006, T. 2789-2790, 2798; Ex. 268, T. 11591; Nikola Medaković, 9 Oct 2006, T. 8988-8989, 8998-8999, 9009, 12 Oct 2006, T. 9225-9226; Imra Agotić, Ex. 398, T. 23315, 23402; Ex. 51, pp 2-3; Ex. 52, p. 3; Ex. 108, item 18; Ex. 422; Ex. 507, p. 4; Ex. 603; Ex. 605, p. 2. TG-2 was established on 23 October 1991 by the 5th Army District, Ex. 960; Ex. 507, p. 4.

⁶¹⁸ Ex. 603; Ex. 605, p. 1.

⁶¹⁹ The Plaški TO Brigade was subordinated to TG-2, Witness MM-037, 28 Mar 2006, T. 2751, 2789-2790; Ex. 51, pp 2-3; Ex. 52, p. 3.

⁶²⁰ Ex. 605, p. 1.

⁶²¹ These companies were of an *ad hoc* nature and were extracted from the TO Brigade and the police in Plaški, Nikola Medaković, 10 Oct 2006, T. 9104; Ex. 607. Nikola Medaković testified that his company consisted of about 60 men, including former members of the *Milicija Krajine* unit in Plaški who had been transferred to the Plaški TO Brigade in September 1991, Nikola Medaković, 9 Oct 2006, T. 8988, 8990-8992, 8998-8999, 10 Oct 2006, T. 9055, 12 Oct 2006, T. 9287; Witness MM-037, 28 Mar 2006, T. 2751, 2794-2795, 29 Mar 2006, T. 2821; Ex. 607, p. 2; Ex. 507, p. 4. The company in the middle was commanded by Đuro Ogrizović, Nikola Medaković, 9 Oct 2006, T. 9018, 10 Oct 2006, T. 9103; Ex. 607, p. 3; Ex. 608, p. 3; Witness MM-037, 28 March 2006, T. 2803-2804. An armoured company with about ten tanks advanced in the centre of the three companies, along the asphalt road, Nikola Medaković, 9 Oct 2006, T. 9014, 9018; Jure Vuković, Ex. 277, p. 2.

⁶²² Witness MM-037, 28 Mar 2006, T. 2798, stating that the attack started just after 0900 hours. *See also* Ex. 268, T. 11593-11594, 11627 (stating that the artillery consisted of mortars and tanks positioned on elevations surrounding Saborsko and in Slunj); Nikola Medaković, 9 Oct 2006, T. 9010-9011, 11 Oct 2006, T. 9160; Ana Bičanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2; Imra Agotić, Ex. 398, T. 23314-23315; Ex. 422; Ex. 507, p. 4; Ex. 608, p. 2. One of the bombs from the airplanes fell on the house of a neighbour of Jure Vuković and three floors of the house collapsed, Jure Vuković, Ex. 277, p. 2.

⁶²³ Nikola Medaković, 9 Oct 2006, T. 9009 (testifying that his company started in the village of Momčilovići, went towards Vukelić Poljana and Borik), 9017-9019 (at T. 9018 testifying that one company went towards Sivnik, that Đuro Ogrizović led the company in the centre, including ten tanks, going towards Saborsko itself along the road). *See also* Witness MM-037, 28 Mar 2006, T. 2798, 29 Mar 2006, T. 2798, 2803, Ex. 268, T. 11595; Nikola Medaković, 12 Oct 2006, T. 9238; Jure Vuković, Ex. 277, p. 2; Ex. 607, p. 3. Ex. 608, p. 3.

⁶²⁴ Witness MM-037, 28 Mar 2006, T. 2753; Jure Vuković, Ex. 277, p. 2.

Mother of God was also shelled and damaged during the attack.⁶²⁵ That church was used as an observation post because there was a clear view of the Lička Jasenica barracks from it.⁶²⁶ The fighting went on until some point between 1400 hours and 1700 hours; the tanks withdrew around 1800 hours.⁶²⁷ There were no casualties on the Serb side whereas “[o]n the Croatian [MUP] side” there were 50 dead.⁶²⁸

227. After the attack, there were many Serb soldiers and policemen in the centre of Saborsko.⁶²⁹ The evidence shows that a shop was looted by Zdravko Pejić and individuals with the last names Cekić or Cvekić, and Momčilović, both of whom were members of Đuro “Snjaka” Ogrizović’s company.⁶³⁰ An individual identified as “Peić” together with Željko “Buba” Mudrić and Nedeljko “Kiča” Trbojević, as well as “other Martić’s men” drove away in private cars they found in Saborsko.⁶³¹ Moreover, all the tractors in Saborsko were driven away, subsequently to be put up for auction, and household goods were stolen by plunderers.⁶³² There is also evidence that more than 50 cattle from Saborsko were brought to Plaški and that 17 sheep were taken to Kunić.⁶³³ Many houses in Saborsko were set alight and burnt after the attack.⁶³⁴ The evidence shows that the perpetrators, who were engaged in the burning of the houses included Nedeljko “Kiča” Trbojević, “Peić”, Željko “Buba” Mudrić, as well as “other Martić’s men”.⁶³⁵ Houses in the hamlets of Tuk and Dumenčići, and in the Serb hamlet of Solaje, were also set alight.⁶³⁶ In Borik, both Croat and Serb houses were burned.⁶³⁷ By mid-December 1991, both the church of St. John and the church of the Mother of God had been destroyed.⁶³⁸ By 1995, the whole of Saborsko, including the school,

⁶²⁵ Nikola Medaković, 9 Oct 2006, T. 9015-9016.

⁶²⁶ Nikola Medaković, 9 Oct 2006, T. 9016, testifying that there was a clear line of sight between the church of the Mother of God and the Lička Jasenica barracks.

⁶²⁷ Nikola Medaković, 9 Oct 2006, T. 9017-9019; Ex. 108, item 18.

⁶²⁸ Ex. 605, p. 3. *See also* Witness MM-037, 29 Mar 2006, 2812, Ex. 268, T. 11596.

⁶²⁹ Witness MM-037, Ex. 268, T. 11599-11601; Nikola Medaković, 11 Oct 2006, T. 9188, 12 Oct 2006, T. 9236-9237; Ex. 507, p. 4.

⁶³⁰ Witness MM-037, 28 Mar 2006, T. 2803, 29 Mar 2006, 2808-2810; Ex. 268, T. 11597-11600.

⁶³¹ Ex. 507, p. 4-5 (on p. 4 Nedeljko Trbojević’s nickname is listed as “Kičin”), providing, *inter alia*, that Mate Matovina’s car was taken by Željko “Buba” Mudrić, and that Jura Matovina’s lorry was torched in Saborsko. Ex. 606 lists Miloš Momčilović and Željko Mudrić as members of the “Reconnaissance-sabotage squad (Special forces) in Plaški” within the DB. Nikola Medaković testified that both these individuals went to the training ground in Slunj and were mobilised in the JNA after the *Milicija Krajine* unit was merged into the TO Brigade, Nikola Medaković, 10 Oct 2006, T. 9106.

⁶³² Ex. 507, p. 4, also providing that nearly every household in Saborsko had a tractor.

⁶³³ Nikola Medaković, 9 Oct 2006, T. 9025; Ex. 507, p. 4; Ex. 963, p. 2, providing that Slavko Dumenčić saw a man in military uniform, recognised as Milan Grković, move 25 sheep.

⁶³⁴ Milan Babić testified that by 1993 Saborsko, Poljanak and Lipovača contained no Croat residents and that Croat houses were devastated, Milan Babić, 20 Feb 2006, T. 1600-1601.

⁶³⁵ Ex. 507, p. 5, also provides that “Nedeljko Trbojević [...] went from house to house [...], hurled grenades into cellars and set hay stacks on fire [burning] around 20 houses”.

⁶³⁶ Vlado Vuković, 27 Mar 2006, T. 2714; Witness MM-037, 28 Mar 2006, T. 2803, Ex. 268, T. 11597-11598; Imra Agotić, Ex. 398, T. 23315-23316; Ex. 507, pp 4-5.

⁶³⁷ Vlado Vuković, 28 Mar 2006, T. 2730, 2733; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 3-4.

⁶³⁸ Witness MM-037, 28 Mar 2006, T. 2753; Nikola Medaković, 12 Oct 2006, T. 9245.

had been destroyed.⁶³⁹ The only houses left standing were two Serb houses, which had been very badly damaged.⁶⁴⁰

228. Following the attack, most of the inhabitants of Saborsko fled to Karlovac, Zagreb, and Ogulin.⁶⁴¹ However, about 30 to 60 elderly villagers remained in the village and were brought to the Lička Jasenica barracks by the Plaški TO. After spending the night at the barracks, they were taken by bus towards Ogulin and released in territory controlled by the Croatian side.⁶⁴²

(ii) Killings in Saborsko on 12 November 1991

229. During the aerial bombing of 12 November 1991, Ana Bićanić and her husband Milan Bićanić, took shelter in the basement of Petar “Krtan” Bićanić’s house, where around 20 people had gathered, including the young boy, Jure Vuković.⁶⁴³ Once it became quiet outside in the afternoon, Milan Bićanić heard someone say “give me the matches” which led him to believe that soldiers, who had entered the village, were burning houses and that they were going to be burned inside.⁶⁴⁴ In order to prevent this, they waved a white undershirt tied to a piece of wood through the basement door, shouting that they were civilians.⁶⁴⁵ There were soldiers outside wearing camouflage and olive-grey uniforms, as well as two soldiers dressed in “Serbian dark grey uniforms and wearing helmets with a five pointed red star”.⁶⁴⁶ The soldiers told all of the villagers to come out of the basement.⁶⁴⁷ The soldiers were armed and spoke in a Serbian dialect.⁶⁴⁸ Some of the soldiers swore at them, saying “fuck your Ustaša mother” and that all of them should be slaughtered.⁶⁴⁹

230. One of the soldiers threw a hand grenade into the empty basement.⁶⁵⁰ The soldiers separated the men from the women and lined them up opposite each other.⁶⁵¹ The soldiers searched the men

⁶³⁹ Marko Vuković, 24 Mar 2006, T. 2590, 2631; Ana Bićanić, Ex. 276, p. 4; Vlado Vuković, 27 Mar 2006, T. 2674-2675.

⁶⁴⁰ Witness MM-039, Ex. 277, p. 4.

⁶⁴¹ Vlado Vuković, 28 Mar 2006, T. 2727. *See also* Imra Agotić, Ex. 398, T. 23315-23316, testifying that in more or less all Croat villages in the area, including Vagnac, Drežnik Grad and Rakovica, civilians were displaced, after which the houses and all facilities were devastated.

⁶⁴² Witness MM-037, 28 Mar 2006, T. 2801-2803, Ex. 268, T. 11603-11604, 11612-11613, 11637; Nikola Medaković, 9 Oct 2006, T. 9019-9020. *See also* Ex. 963, pp 2-3.

⁶⁴³ Ana Bićanić, Ex. 276, p. 3. The persons in the basement were: Petar Bićanić and his wife Kate Bićanić, Ana Bićanić and her husband, Ivan Vuković, Nikola Bićanić, Pero Bićanić, Jure Štrk and his wife Kate Štrk, Jure Vuković and his half brother whose name was also Jure Vuković (nicknamed Jura Zenkov), Kate Vuković and her son Jure Vuković (who was 8-10 years old), a second woman named Ana Bićanić, Bara Bićanić, Ana Vuković, Jeka Vuković, a third woman named Ana Bićanić (born 1924), Marija Hodak, Jeka Dumančić, and Marija Štrk, Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 1-2.

⁶⁴⁴ Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, pp 2-3

⁶⁴⁵ Ana Bićanić, Ex. 276, p. 3; Jure Vuković, Ex. 277, p. 3.

⁶⁴⁶ Ana Bićanić, Ex. 276, p. 4.

⁶⁴⁷ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

⁶⁴⁸ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

⁶⁴⁹ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

⁶⁵⁰ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

⁶⁵¹ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3; Marko Vuković, 24 Mar 2006, T. 2588.

and took their money and valuables.⁶⁵² While the men were being searched, one soldier hit Jure Štrk and Milan Bićanić.⁶⁵³ After about 15 minutes, the men were taken around a corner of Ivan Bićanić's house.⁶⁵⁴ Two soldiers wearing Serbian dark grey uniforms shot and killed the men with automatic rifle fire.⁶⁵⁵ The following seven men were killed: Milan Bićanić, Nikola Bićanić, Petar Bićanić, Jure Štrk,⁶⁵⁶ Ivan Vuković, Jure Vuković and his half brother also named Jure Vuković.⁶⁵⁷

231. After the killings, the two soldiers returned to the rest of the group.⁶⁵⁸ One of the two soldiers pointed the gun at Ana Bićanić and told them that they had an hour to leave or they would be killed.⁶⁵⁹ As they ran away the soldiers shot at them.⁶⁶⁰ Jeka Vuković fell, and that was the last time that Jure Vuković saw her.⁶⁶¹ They fled towards Borik and after three days, on 15 November 1991, they came to the HVO barracks in Lipice, east of Saborsko.⁶⁶²

232. After the attack on Saborsko, Nikola Medaković, in his capacity as president of the municipality of Plaški, issued an order to bury human corpses after which he received a report that the bodies of more than 20 people had been buried, including civilian women and elderly men.⁶⁶³

⁶⁵² Ana Bićanić, Ex. 276, p. 4.

⁶⁵³ Ana Bićanić, Ex. 276, p. 4.

⁶⁵⁴ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3.

⁶⁵⁵ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3. *See also* Marko Vuković, 24 Mar 2006, T. 2588-2589.

⁶⁵⁶ Jure Vuković, Ex. 277, p. 3; Ana Bićanić, Ex. 276, p. 4 (mentioning him as "Juraj"). The Trial Chamber notes that Annex I to the Indictment lists a Josip Štrk but cannot conclude that this is the same individual. However, the Trial Chamber recalls its interpretation of the Indictment in this respect and will consider the killing of Jure Štrk for a conviction, *see supra* section I C.

⁶⁵⁷ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 3. Witness MM-037 was told in the evening on 12 November 1991 by a Serb soldier that five or six soldiers had killed Petar "Krtan" Bićanić and two more men. Witness MM-037 believed that perpetrators were a group of "renegades", members of Martić's Police, who thought Petar Bićanić was carrying a lot of money on him, Witness MM-037, 28 Mar 2006, T. 2800-2801. Witness MM-037 further named Đuro "Snjaka" Ogrizović and individuals called Lecin, Cvekić and Pejić, Witness MM-037, 29 Mar 2006, T. 2814-2815; Ex. 268, T. 11602, 11608-11609, 11613-11614, 11638-11639. The Trial Chamber notes the evidence that a Peić or Pejić was "the worst of all Martić's men" and that he, together with Željko "Buba" Mudrić, boasted about having "shot dead eight people in front of the Centre in Saborsko", Ex. 507, p. 4. However, the Trial Chamber cannot conclude beyond reasonable doubt that this reference to killings in the centre of Saborsko refers to the killings at Petar "Krtan" Bićanić's house. Vlado Vuković knows of one family that was killed as well as his aunt and uncle who had gone to their Serb neighbours' house seeking protection but were nonetheless killed, Vlado Vuković, 28 Mar 2006, T. 2730, 2733. The Trial Chamber notes that victims with the last name "Bićanić" are listed as "Bičanić" in Annex I to the Indictment. *See also* Marko Vuković, 24 Mar 2006, T. 2588-2589. The Trial Chamber has also been furnished with evidence that during the attack on Saborsko, Kata Dumaničić and Nikola "Dika" Dumaničić were killed in front of their house, Ex. 963, p. 2. The Trial Chamber considers that similar names Kata Dumeničić and Nikola Dumeničić listed in Annex I to the Indictment refer to these victims, and will consider these persons for a conviction.

⁶⁵⁸ Ana Bićanić, Ex. 276, p. 4.

⁶⁵⁹ Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, pp 3-4; Marko Vuković, 24 Mar 2006, T. 2588.

⁶⁶⁰ Jure Vuković, Ex. 277, p. 4.

⁶⁶¹ Jure Vuković, Ex. 277, p. 4. Annex I to the Indictment lists a Jela Vuković and the Trial Chamber considers this to refer to Jeka Vuković.

⁶⁶² Ana Bićanić, Ex. 276, p. 4; Jure Vuković, Ex. 277, p. 4.

⁶⁶³ Nikola Medaković, 9 Oct 2006, T. 9021-9022, 9027-9028, 10 Oct 2006, T. 9250. Nikola Medaković testified that the victims were to be buried as close as possible to where they had been killed and with everything found on them, including identification, Nikola Medaković, 9 Oct 2006, T. 9027.

233. Beginning in October 1995, several grave sites were exhumed in Saborsko.⁶⁶⁴ The biggest site was at Popov Šanac, located close to the church of St. John, where the following 14 victims were found: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Kata Dumenčić, Nikola Dumenčić, Mate Matovina (born 1895), Milan Matovina, Mate Špehar, Ivan Vuković, Jeka Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković.⁶⁶⁵ In the grave site at Borik, the following three victims were found: Darko Dumenčić, Ivica Dumenčić, and Josip Štrk.⁶⁶⁶ The following ten victims were found in individual graves in Saborsko: Leopold Conjar, Ante Dumenčić, Ivan Matovina, Kata Matovina (born 1920), Kata Matovina (born 1918), Lucija Matovina, Marija Matovina, Marta Matovina, Slavica Matovina, and Slavko Sertić.⁶⁶⁷

234. Considering in particular that there is direct evidence regarding the killing of eight of the victims exhumed from the mass grave in Popov Šanac, the Trial Chamber finds that all 14 victims exhumed from that mass grave were killed in Saborsko on 12 November 1991. Moreover, based on evidence indicating their causes of death, the Trial Chamber considers it established beyond reasonable doubt that also Ivica Dumenčić, Kata Matovina (born 1920) and Slavko Sertić were killed in Saborsko on 12 November 1991. Furthermore, considering that Darko Dumenčić and Josip Štrk were found in the same mass grave as Ivica Dumenčić, who was killed on 12 November 1991, the Trial Chamber considers it established beyond reasonable doubt that these two persons were killed on the same date. Lastly, while the body of Jure/Juraj Štrk has not been recovered, the direct evidence establishes that he was killed on 12 November 1991. The Trial Chamber therefore finds beyond reasonable doubt that 20 persons were killed on 12 November 1991. For the remaining victims (Leopold Conjar, Ante Dumenčić, Ivan Matovina, Kata Matovina (born 1918), Lucija Matovina, Marija Matovina, Marta Matovina, and Slavica Matovina), the evidence is insufficient to establish when, where and by whom they were killed.

⁶⁶⁴ Marko Vuković, 24 Mar 2006, T. 2590-2591; Vlado Vuković, 27 Mar 2006, T. 2676; Davor Strinović, 12 Apr 2006, T. 3667. *See also* Ex. 302.

⁶⁶⁵ Vlado Vuković, 27 Mar 2006, T. 2676; Marko Vuković, 24 Mar 2006, T. 2591; Ivan Grujić, 10 Apr 2006, T. 3477; Ex. 302; Ex. 323 (providing that the cause of death was gunshot wounds for Mate Matovina (born 1895), Mate Špehar, Ivan Vuković, Jeka Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković); Ex. 963 (regarding Kata Dumenčić and Nikola Dumenčić). *See also* Nikola Medaković, 12 Oct 2006, T. 9244-9245. The Trial Chamber visited Popov Šanac during the site visit, Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 36-38.

⁶⁶⁶ Ex. 302; Ex. 323, providing that the cause of death for Ivica Dumenčić was “probably trauma wounds”. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 40-41.

⁶⁶⁷ Ex. 323 (providing that the cause of death of Slavko Sertić and Kata Matovina (born 1920) were gunshot wounds). Mate Matovina (in Annex I to the Indictment listed with birth date unknown) is listed as killed in the list of victims which was created by the Office for Detainees and Missing Persons of the Government of Croatia, Davor Strinović, 12 Apr 2006, T. 3667-3668. His body was not exhumed from any of the graves and there is no other evidence concerning his alleged death. Based on the evidence, therefore, the Trial Chamber is unable to find that this Mate Matovina is dead. *See also* Ex. 302.

4. Škabrnja and Nadin

(a) Škabrnja, Nadin and surrounding villages

235. Škabrnja is located in south-western Croatia and in 1991 formed part of the municipality of Zadar, which bordered the Benkovac municipality to the south-east.⁶⁶⁸ Škabrnja had about 2,000 inhabitants and was almost exclusively Croat.⁶⁶⁹ There were three churches in and around Škabrnja, the church of the Assumption of the Virgin in the centre of Škabrnja, St. Mary's Church in the hamlet of Ambar, and St. Luke's Church to the west of the centre of Škabrnja.⁶⁷⁰ In 1991, Nadin was located in the Benkovac municipality and was approximately three kilometres south-east of Škabrnja.⁶⁷¹ Nadin, which was also almost exclusively Croat, had between 300 and 660 inhabitants living in approximately 120 to 150 houses.⁶⁷² Croat villages were located to the south of Škabrnja, whereas predominantly Serb villages were located to the north and north-east of Škabrnja, towards Benkovac municipality.⁶⁷³

(b) Situation in Škabrnja, Nadin and surroundings prior to 18 November 1991

236. In August 1991, running water and electricity to Nadin had been switched off from Benkovac.⁶⁷⁴ Around September 1991, approximately 240 Croatian reserve police members and local volunteers were present in Škabrnja.⁶⁷⁵ In September 1991, Škabrnja and Nadin were shelled and subjected to aerial bombings, including by cluster bombs.⁶⁷⁶ On 2 October 1991, three villagers

⁶⁶⁸ Marko Miljanić, 30 Mar 2006, T. 2915; Zoran Lakić, 26 Oct 2006, T. 10151; Ex. 22, Map 8; Ex. 23, pp 24-25; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 31-50 and DVD 5, pp 1-12.

⁶⁶⁹ Marko Miljanić, 29 Mar 2006, T. 2862; Zoran Lakić, 26 Oct 2006, T. 10164; Ex. 301, p. 4; Marko Miljanić, 29 Mar 2006, T. 2862; Jasna Denona, 9 Feb 2006, T. 1280; Tomislav Šegarić, Ex. 826, p. 2; Ex. 301, p. 4 (providing that 1991, 97.59% were Croats, and 2.15% were Serbs).

⁶⁷⁰ Neven Šegarić, 29 Mar 2006, T. 2848 (referring to Ex. 271, ERN 0468-7818); Luka Brkić, 7 Apr 2006, T. 3393-3394; Ex. 109, p. 1; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 42-50 and DVD 5, pp 8-12; Ex. 1044.

⁶⁷¹ Witness MM-083, 16 Jun 2006, T. 5730; Zoran Lakić, 26 Oct 2006, T. 10151; Nada Pupovac, 31 Oct 2006, T. 10366; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 12-20; Ex. 1044.

⁶⁷² Witness MM-083, 16 Jun 2006, T. 5730-5731; Marko Miljanić, 29 Mar 2006, T. 2862; Ex. 301 (97.6% were Croats and 1.95% were Serbs).

⁶⁷³ Marko Miljanić, 29 Mar 2006, T. 2862 (testifying that Biljane was an exclusively Serb village and that some Croat villages surrounding Škabrnja, including Donji Zemunik, had some Serb population); Zoran Lakić, 27 Oct 2006, T. 10229-10230.

⁶⁷⁴ Witness MM-083, 16 Jun 2006, T. 5731.

⁶⁷⁵ Marko Miljanić, 29 Mar 2006, T. 2862-2864 (testifying that following an order from the Chief of the Zadar police administration, Marko Miljanić, a Croatian MUP member, placed road check-points near Biljane and Zemunik and erected two barricades in Škabrnja; there was also a manned check-point in the hamlet of Ambar, Luka Brkić, 7 Apr 2006, T. 3391-3392), 2864-2865 (testifying that they were armed with six light machine-guns, two hand-held launchers, automatic and semi-automatic rifles and pistols), Marko Miljanić, 30 Mar 2006, T. 2890-2891; Luka Brkić, 5 Apr 2006, T. 3224-3226 (testifying that the village guards wore second-hand uniforms from East Germany and that he was issued with an automatic rifle three to five days prior to 18 November 1991). There were also mortars in Škabrnja, Witness MM-080, 8 Jun 2006, T. 5254-5255; Ex. 116, p. 2. In Nadin at this time, the only weapons were hunting rifles, Witness MM-083, 16 Jun 2006, T. 5731.

⁶⁷⁶ Marko Miljanić, 29 Mar 2006, T. 2863, 2871; Tomislav Šegarić, Ex. 826, p. 2. There is also evidence of snipers shooting at Škabrnja, Neven Šegarić, Ex. 251, p. 2. Nadin was shelled on 18 September 1991 from the direction of the

were killed, and it was decided to evacuate the civilian population, following which only members of the reserve police force and the volunteers remained in Škabrnja to guard the village.⁶⁷⁷ Around 2 October 1991, Nadin was attacked by the JNA, whereupon two men were killed.⁶⁷⁸ This attack was conducted in order to deblockade the road from Benkovac to the airport in Zemunik.⁶⁷⁹ On 9 October 1991, an agreement was concluded between, *inter alia*, the 9th Corps command located in Knin and representatives of the Zadar municipality on cessation of combat operations, raising of the blockade of Zadar, and a pull-out of JNA from the Zadar garrison and the Zemunik airport to Benkovac.⁶⁸⁰

237. On 10 October 1991, Marko Miljanić was appointed commander for the defence of Škabrnja, Nadin, Gornji Zemunik, Donji Zemunik, Prkos, Gorica, Galovac and Glavica.⁶⁸¹ This defence force was called the Škabrnja Independent Battalion and consisted of some 730 reserve police and volunteers from the local area.⁶⁸² The Škabrnja Independent Battalion placed minefields in and around Škabrnja.⁶⁸³ On 6 November 1991, the villagers who had been evacuated on 2 October returned to Škabrnja.⁶⁸⁴

238. In 1991, units of the JNA 9th Corps, of the Benkovac TO and of the SAO Krajina police were active in the area of Northern Dalmatia, including in the areas around Škabrnja, Nadin and Bruška.⁶⁸⁵ The 180th Motorised Brigade was located in Benkovac and was within the structure of

Serb villages of either Biljane or Lišane, following which women and children went to the Croat village of Polača, Witness MM-083, 16 Jun 2006, T. 5732.

⁶⁷⁷ Marko Miljanić, 29 Mar 2006, T. 2863, 2865; Tomislav Šegarić, Ex. 826, p. 2; Neven Šegarić, Ex. 251, p. 2.

⁶⁷⁸ Witness MM-083, 16 Jun 2006, T. 5732-5733.

⁶⁷⁹ Nada Pupovac, 30 Oct 2006, T. 10342-10344 (testifying that the attack was ultimately unsuccessful due to minefields on the Benkovac side of Nadin), 10421-10422; Zoran Lakić, 27 Oct 2006, T. 10214-10216. According to Witness MM-080, from the direction of Škabrnja, some of the Croat forces opened fire on JNA vehicles that moved along the Benkovac-Zemunik road to Zemunik airport, where the JNA was based. According to information available to the JNA, an independent battalion located in Škabrnja and consisting of 250 to 300 men, opened fire upon the JNA vehicles, Witness MM-080, 8 Jun 2006, T. 5250, 5254-5255, 5260. *See also* Ex. 40, a report of the SAO Krajina TO, indicates that on 16 September 1991, Milan Martić ordered the Benkovac TO Staff to “provide as many men as possible for Lieutenant Colonel Živanović who would command the operation to lift the blockade of Zemunik”.

⁶⁸⁰ Milan Babić, 20 Feb 2006, T. 1604-1605; Ex. 1030. The Trial Chamber is unable to conclude on the basis of the evidence whether this agreement was complied with, *see* Zoran Lakić, 26 Oct 2006, T. 10148-10152 (testifying that the pull-out of the JNA was obstructed by the ZNG and Croatian police), 27 Oct 2006, T. 10221-10222; Ex. 991 (providing that by 14 October 1991 there had been no major difficulties during the evacuation of the Zadar garrison). Witness MM-080 testified that during November 1991 the JNA convoys from Zadar garrison and Zemunik airport were shot at by Croatian forces before they reached Biljane Donje, Witness MM-080, 8 Jun 2006, T. 5251, 5253, 5260. *See also* Ex. 784; Nada Pupovac, 31 Oct 2006, T. 10443.

⁶⁸¹ Marko Miljanić, 29 Mar 2006, T. 2885, 30 Mar 2006, T. 2895-2897; Luka Brkić, 7 Apr 2006, T. 3388.

⁶⁸² Marko Miljanić, 29 Mar 2006, T. 2885, 30 Mar 2006, T. 2890-2891, 2908; Luka Brkić, 5 Apr 2006, T. 3227, 7 Apr 2006, T. 3388-3389; Witness MM-080, 8 Jun 2006, T. 5254-5255. *See also* Zoran Lakić, 26 Oct 2006, T. 10166, 27 Oct 2006, T. 10173.

⁶⁸³ Marko Miljanić, 30 Mar 2006, T. 2895; Luka Brkić, 7 Apr 2006, T. 3411-3412; Nada Pupovac, 30 Oct 2006, T. 10342-10343, 10349, 10368, 31 Oct 2006, T. 10368, 10448-10449; Zoran Lakić, 27 Oct 2006, T. 10173-10174.

⁶⁸⁴ Marko Miljanić, 29 Mar 2006, T. 2868 (testifying that this happened following the signature in The Hague of a truce); Tomislav Šegarić, Ex. 826, p. 2; Neven Šegarić, Ex. 251, p. 2.

⁶⁸⁵ Milan Babić, 20 Feb 2006, T. 1601; Ex. 1036.

the 9th Corps in Knin.⁶⁸⁶ In the autumn of 1991, the commander of the TO in Benkovac was Zoran Lakić.⁶⁸⁷ The Chief of the SJB in Benkovac was Boško Dražić.⁶⁸⁸

(c) Attack on Škabrnja and Nadin on 18 and 19 November 1991

239. Between 0600 and 0700 hours in the morning of 18 November 1991, a JNA mechanised infantry unit of between 80 to 200 men with eight to nine APCs and three tanks advanced from the Serb village of Smilčić towards Škabrnja.⁶⁸⁹ The TO, including members of the Benkovac TO, also participated in this operation and were resubordinated to the JNA.⁶⁹⁰ This JNA force was under the command of Lieutenant-Colonel Momčilo Bogunović of the JNA 180th Motorised Brigade.⁶⁹¹ There is evidence that both the Croatian and the Serb sides had mortars and artillery.⁶⁹² From around 0700 hours, Nadin was shelled from the direction of the Serb villages of Biljane or Lišane, and the shelling continued throughout the day.⁶⁹³ Most of the women and children left Nadin and went to Polaca, Zaton and Zadar, while only men and a few women remained in the village.⁶⁹⁴ At around 0730 hours, Škabrnja was subjected to intensive shelling, also from the direction of Biljane or Lišane, which lasted until 1230 hours.⁶⁹⁵

⁶⁸⁶ Witness MM-080, 8 Jun 2006, T. 5246. *See also* Nada Pupovac, 30 Oct 2006, T. 10339.

⁶⁸⁷ Zoran Lakić, 26 Oct 2006, T. 10128-10130.

⁶⁸⁸ Witness MM-080, 8 Jun 2006, T. 5246. *See also* Ex. 959.

⁶⁸⁹ Luka Brkić, 5 Apr 2006, T. 3225-3227 (testifying that the Škabrnja village guard was deployed during the night between 17 and 18 November 1991, *see also* Luka Brkić, 5 Apr 2006, T. 3256, 7 Apr 2006, T. 3395, 3434-3435; Zoran Lakić, 26 Oct 2006, T. 10155-10156, 10159-10160, 10166 (testifying that about 110 men took part); Nada Pupovac, 30 Oct 2006, T. 10349 (testifying that “some 200 soldiers on the part of the JNA” participated); Neven Šegarić, Ex. 251, p. 4. Command posts were established in Gornji Biljani and in the hamlet of Trljuge, Luka Brkić, 5 Apr 2006, T. 3255). *See also* Ex. 285 (which makes reference to tanks and APCs (called “BOVs”) in the areas of Ambar, west of Škabrnja and in Biljane Donje). There is also evidence that some of the column went through Gornji Zemunik and that before reaching Ambar some of the vehicles turned to the church of St. Luke, Luka Brkić, 7 Apr 2006, T. 3434; Ex. 285; Ex. 107, p. 1. Luka Brkić testified that Captain Dragan’s White Eagles (“Beli Orlovi”) participated in the attack on Škabrnja, however the Trial Chamber notes that it has not been furnished with any evidence that Captain Dragan commanded a unit by this name, Luka Brkić, 7 Apr 2006, T. 3427.

⁶⁹⁰ Nada Pupovac, 30 Oct 2006, T. 10345, 31 Oct 2006, T. 10399, 10425; Ex. 107, pp 1, 3-4 (indicating that the TO was to seal off the area and prevent intervention and that coordination between the TO and the JNA was initially poor but improved). Zoran Lakić testified that the Benkovac TO participated with a unit of 25-30 men, who were deployed in the hamlet Skorić in the Biljani Donji area and that 12 of these TO members relocated civilians and soldiers to Biljani Donji using two minibuses and an ambulance, Zoran Lakić, 26 Oct 2006, T. 10158-10159, 10163, 10168, 27 Oct 2006, T. 10178, 10248, 30 Oct 2006, T. 10278; Nada Pupovac, 30 Oct 2006, T. 10345, 10347, 10356-10358, 31 Oct 2006, T. 10445. Some of the JNA tank crews were manned to full strength by TO members from other locations, Zoran Lakić, 26 Oct 2006, T. 10156 (*see also* Marko Miljanić, 30 Mar 2006, T. 2929, testifying that he was told that some tank crews included volunteers from Serbia; Ex. 616, regarding volunteers from Serbia and BiH who were joined with the Benkovac TO). The Trial Chamber notes that Ex. 116, Ex. 117, Ex. 118, Ex. 411 and Ex. 614 provide that members of TO were present in Škabrnja and Nadin on 18 and 19 November 1991. The Trial Chamber notes Zoran Lakić’s testimony that no other units from the Benkovac TO, than those listed above, participated in the attack, Zoran Lakić, 27 Oct 2006, T. 10190-10192, 30 Oct 2006, T. 10277. On the participation of the TO in the attack *see also* Veljko Džakula, 17 Jan 2006, T. 417-418.

⁶⁹¹ Witness MM-080, 8 Jun 2006, T. 5262; Ex. 107. *See also* Zoran Lakić, 26 Oct 2006, T. 10154.

⁶⁹² Luka Brkić, 5 Apr 2006, T. 3256, Zoran Lakić, 26 Oct 2006, T. 10166, Ex. 285, Nada Pupovac, 30 Oct 2006, T. 10354-10355, 31 Oct 2006, T. 10369.

⁶⁹³ Witness MM-083, 16 Jun 2006, T. 5732, 5735, 5737.

⁶⁹⁴ Witness MM-083, 16 Jun 2006, T. 5734-5735.

⁶⁹⁵ Marko Miljanić, 29 Mar 2006, T. 2869; Neven Šegarić, Ex. 251, p. 4; Tomislav Šegarić, Ex. 826, pp 2-3.

240. When the column reached the junction of the roads leading to Biljani Donji and Zadar, Lieutenant Miodrag Stevanović and a soldier were killed after having left their APC.⁶⁹⁶ The evidence is conflicting as to the reason for their leaving the APC.⁶⁹⁷ Thereafter, intensive fire commenced.⁶⁹⁸ Croatian forces shot at the JNA tanks and soldiers including from some of the houses.⁶⁹⁹ A ZNG unit fired rockets at the JNA column from the elevation Ražovljeva Glavica.⁷⁰⁰ Helicopters were also used by the JNA to deploy ground troops in the vicinity of Škabrnja.⁷⁰¹ Cluster bombs dropped from JNA aircraft were also used in the attack.⁷⁰²

241. The church of the Assumption of the Virgin in the centre of Škabrnja was shot at by a JNA tank.⁷⁰³ At one point, tanks attempted to enter the church of the Assumption of the Virgin but were stopped by Captain Janković, a member of the JNA.⁷⁰⁴ Following this, and without authorisation by Captain Janković, several soldiers entered the church and fired their weapons.⁷⁰⁵ A tank opened fire in the direction of the school in Škabrnja.⁷⁰⁶ There is evidence that fire was opened on private houses by tanks and using hand-held rocket launchers.⁷⁰⁷

⁶⁹⁶ Nada Pupovac, 30 Oct 2006, T. 10345-10346; Zoran Lakić, 26 Oct 2006, T. 1016, 27 Oct 2006, T. 10232-10233.

⁶⁹⁷ Neven Šegarić, 29 Mar 2006, T. 2835, testifying that no warning was given; Nada Pupovac, 30 Oct 2006, T. 10351-10353; Zoran Lakić, 26 Oct 2006, T. 10161, both testifying that a warning was given by Lieutenant Stevanović using a megaphone after they left the APC.

⁶⁹⁸ Marko Miljanić, 29 Mar 2006, T. 2869, testifying that fire was opened first by the JNA column and artillery at around 0730 hours; Luka Brkić, 5 Apr 2006, T. 3229-3231 (testifying that shells hit his brother's house), 3255 (testifying that the map in Ex. 285 accurately describes that fire was first opened on Škabrnja at 0730 hours from the direction of Ambar), 7 Apr 2006, T. 3397, 3417; Zoran Lakić, 26 Oct 2006, T. 10161-10162, 27 Oct 2006, T. 10174, 10233-10234; Nada Pupovac, 30 Oct 2006, T. 10347, 10354; Tomislav Šegarić, Ex. 826, p. 2; Ex. 984, Annex 9.

⁶⁹⁹ Marko Miljanić, 29 Mar 2006, T. 2876 (testifying that around 1400 hours he and Luka Škara were by the church of the Assumption of the Virgin and tried to hit the tanks which had entered the village centre using a hand-held rocket launcher, but they stopped because civilians, including women, children and old men were around the tanks with their hands on their necks); Luka Brkić, 5 Apr 2006, T. 3232-3233, 3246, 3248; Nada Pupovac, 30 Oct 2006, T. 10356, 10358, 31 Oct 2006, T. 10392; Zoran Lakić, 27 Oct 2006, T. 10173-10174 *See also* Ex. 109.

⁷⁰⁰ Nada Pupovac, 30 Oct 2006, T. 10354-10355, 31 Oct 2006, T. 10369. *See also* Marko Miljanić, 30 Mar 2006, T. 2901-2902, confirming that a ZNG unit was present at this elevation.

⁷⁰¹ Marko Miljanić, 29 Mar 2006, T. 2870, 2075 (testifying that helicopters arrived at a meadow called Jabuka three or four times and deployed troops about 30 troops each time, who wore "dark uniforms"). The Trial Chamber notes that Zoran Lakić testified (27 Oct 2006, T. 10239-10240) that he heard neither helicopters nor airplanes during the attack. However, the Trial Chamber does not find this evidence credible in light of the direct evidence, Marko Miljanić, 29 Mar 2006, T. 2870; Luka Brkić, 5 Apr 2006, T. 3230; Neven Šegarić, Ex. 251, p. 4.

⁷⁰² Marko Miljanić, 29 Mar 2006, T. 2870, 30 Mar 2006, T. 2925; Luka Brkić, 5 Apr 2006, T. 3230; 7 Apr 2006, T. 3393-3394.

⁷⁰³ Luka Brkić, 7 Apr 2006, T. 3393, 3417; Ex. 984, Annex 9; Ex. 922, p. 7. Nada Pupovac testified that the bell tower was shot at by the tank because there was a Croatian machine-gun nest there, Nada Pupovac, 30 Oct 2006, T. 10355-10356, 31 Oct 2006, T. 10431-10433, 1 Nov 2006, T. 10458. The Trial Chamber does not find this evidence convincing in light of the contrary evidence.

⁷⁰⁴ Luka Brkić, 5 Apr 2006, T. 3242-3243.

⁷⁰⁵ Luka Brkić, 5 Apr 2006, T. 3242-3243.

⁷⁰⁶ Luka Brkić, 5 Apr 2006, T. 3239.

⁷⁰⁷ Luka Brkić, 5 Apr 2006, T. 3239, 3246 (testifying that sniper fire was opened from a private house which was subsequently targeted by a tank); Zoran Lakić, 27 Oct 2006, T. 10175; Ex. 117, p. 3; Ex. 984, Annex 9, Statement of Svetka Miljanić, Statement of Snježana Ferica.

242. During the fighting, civilians fled south.⁷⁰⁸ Civilians were also taken out of Škabrnja by JNA and TO forces and transported to territory under the control of Croatian forces.⁷⁰⁹ Village guards Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica were taken by bus to Benkovac, where they stayed overnight after which they were taken to Knin.⁷¹⁰ About half of Škabrnja was controlled by the Serb forces by 1400 hours.⁷¹¹ The fighting in Škabrnja lasted until dusk.⁷¹² There were two dead and several wounded on the Serb side, whereas the Croatian side suffered about 15 killed.⁷¹³

243. At 0500 hours in the morning of 19 November 1991, the Croatian forces withdrew from Škabrnja.⁷¹⁴ Around 0700 hours, the JNA convoy left Škabrnja and advanced along the road towards Nadin, which was subsequently shelled.⁷¹⁵ The convoy passed through Nadin around 1400 hours after which it withdrew to the Benkovac barracks.⁷¹⁶ During the night of 19 September 1991, “everything was burning” in Nadin.⁷¹⁷

(d) Evidence of units present in Škabrnja

244. The Trial Chamber has been furnished with evidence describing the units present in Škabrnja on 18 November 1991. The evidence shows that the JNA units were composed of soldiers of different ethnicities.⁷¹⁸ The JNA units were composed of regular soldiers and reservists from

⁷⁰⁸ Marko Miljanić, 29 Mar 2006, T. 2880; Zoran Lakić, 30 Oct 2006, T. 10311, testifying that more than 1,500 civilians of Škabrnja withdrew in the direction of Zadar; Boško Brkić, Ex. 275, p. 2, stating that around 100 villagers fled to a quarry in the forest, a pre-arranged meeting point should the village come under attack, after which they went by foot to Prkos where buses eventually picked them up.

⁷⁰⁹ Luka Brkić, 5 Apr 2006, T. 3251-3252. Nada Pupovac testified that over 150 uninjured civilians were taken by the TO, first to Benkovac and then to a junction near the Croat village of Pristeg and the Serb village of Ceranje Gornje where they crossed over to “Croatian territory”, Nada Pupovac, 31 Oct 2006, T. 10364, 10370. Zoran Lakić testified that when he arrived in Škabrnja at 1700 hours on 18 November 1991, he saw 120 or 130 civilians put up at the primary school, and a nursery school, and that later that evening they were transported to “Croatian forces” using buses of the “transport company of Benkovac”, Zoran Lakić, 26 Oct 2006, T. 10164.

⁷¹⁰ Luka Brkić, 5 Apr 2006, T. 3233 (testifying that these three were members of the village guard but that they had removed their camouflage uniforms by the time they were captured), 3250-3253 (also testifying that Ante “Neno” Gurlica was beaten by a soldier before being transported away and that the three of them were beaten as they entered the bus taking them to Benkovac), 3264-3265. *See infra* paras 278, 281.

⁷¹¹ Marko Miljanić, 29 Mar 2006, T. 2880.

⁷¹² Marko Miljanić, 29 Mar 2006, T. 2869-2870 (also testifying that civilians were killed in the shelling); Luka Brkić, 7 Apr 2006, T. 3417; Zoran Lakić, 26 Oct 2006, T. 10162-10163; Neven Šegarić, Ex. 251, p. 5; Ivica Bilaver, Ex. 821, p. 2; Tomislav Šegarić, Ex. 826, p. 2; Ex. 984, Annex 9. *See also* Nada Pupovac, 30 Oct 2006, T. 10354-10355. At one point, the Croatian side blew up the reserve ammunition of the JNA, Marko Miljanić, 29 Mar 2006, T. 2870-2871, 30 Mar 2006, T. 2902.

⁷¹³ Marko Miljanić, 29 Mar 2006, T. 2878; Zoran Lakić, 26 Oct 2006, T. 10170; Ex. 377.

⁷¹⁴ Marko Miljanić, 30 Mar 2006, T. 2904-2905; Witness MM-083, 16 Jun 2006, T. 5736-5737; Nada Pupovac, 31 Oct 2006, T. 10365. *See also* Zoran Lakić, 26 Oct 2006, T. 10165. After the hostilities had ended, the JNA found automatic rifles, pistols, sniper rifles, mortars, anti-aircraft guns, and handheld rocket launchers, which were brought to the Benkovac barracks, Zoran Lakić, 26 Oct 2006, T. 10166-10167, 27 Oct 2006, T. 10173; Nada Pupovac, 31 Oct 2006, T. 10369. Luka Brkić testified that when he was taken from Škabrnja to Benkovac he saw a large pile of weapons which he believed were confiscated in Škabrnja, Luka Brkić, 7 Apr 2006, T. 3406-3407.

⁷¹⁵ Nada Pupovac, 31 Oct 2006, T. 10366-10367; Witness MM-083, 16 Jun 2006, T. 5738.

⁷¹⁶ Nada Pupovac, 31 Oct 2006, T. 10366-10367; 10369-10370.

⁷¹⁷ Witness MM-083, 16 Jun 2006, T. 5745-5746.

⁷¹⁸ Luka Brkić, 5 Apr 2006, T. 3243-3245, 7 Apr 2006, 3405-3406, 3420, 3441-3442 (stating that he believed Captain Janković was a Serb).

neighbouring Serb villages.⁷¹⁹ In addition to the uniforms ordinarily worn by members of the JNA, officers of the JNA present in Škabrnja wore a mix of camouflage uniforms and ceremonial uniforms.⁷²⁰

245. The TO present in Škabrnja wore the same uniforms, caps and helmets as the JNA.⁷²¹ However, the TO also wore the Serbian flag on their uniforms and some members had a white band on the left shoulder.⁷²² There is evidence that some TO soldiers wore SAO Krajina patches on their uniforms.⁷²³

246. Paramilitary units, in the evidence often referred to simply as “Chetniks”, were present in Škabrnja and wore various kinds of JNA uniforms, some with an insignia with four Cyrillic “S”, and different kinds of hats, including berets, fur hats with cockades and hats.⁷²⁴ Their faces were painted, however the evidence shows that at least some of them appeared to be local.⁷²⁵

247. The evidence is insufficient to conclude whether members of the SAO Krajina MUP participated in the attack on Škabrnja on 18 and 19 November 1991.⁷²⁶ The Prosecution alleges that Goran Opačić was a member of the police and present in Škabrnja at the time of the operation in Škabrnja.⁷²⁷ The Defence denies both allegations.⁷²⁸ The Trial Chamber finds that the evidence establishes beyond reasonable doubt that Goran Opačić was a member of the Benkovac SJB special unit on 18 and 19 November 1991. However, while the evidence establishes beyond reasonable doubt that Goran Opačić was present in Škabrnja at some point on 18 November 1991, it is

⁷¹⁹ Luka Brkić, 7 Apr 2006, T. 3419, 3421 (listing the villages of Zemunik Gornje, Veljane, Biljane, Gornje Biljane, Djevske, Kistanje, Lišane, and Rastević), 3429-3430, 3440-3441.

⁷²⁰ Luka Brkić, 5 Apr 2006, T. 3236-3237; Nada Pupovac, 31 Oct 2006, T. 10452-10453. For a description of the JNA uniforms, *see supra* fn 283.

⁷²¹ Nada Pupovac, 31 Oct 2006, T. 10452-10453. *See also* Ex. 117.

⁷²² Nada Pupovac, 31 Oct 2006, T. 10453; Ex. 117, p. 3.

⁷²³ Luka Brkić, 5 Apr 2006, T. 3237, 7 Apr 2006, T. 3426-3427.

⁷²⁴ Marko Miljanić, 30 Mar 2006, T. 2918-2919; Tomislav Šegarić, Ex. 826, pp 3, 5-6; Ex. 118, p. 1.

⁷²⁵ Tomislav Šegarić, Ex. 826, pp 3-4.

⁷²⁶ Zoran Lakić, 27 Oct 2006, T. 10258; Nada Pupovac, 31 Oct 2006, T. 10396, 10428; Milan Babić, 20 Feb 2006, T. 1607, Ex. 1036, L0092006; Ex. 116; Ex. 614. *See also* Ex. 411.

⁷²⁷ Prosecution Final Trial Brief, paras 189-190. The Prosecution relies upon Witness MM-003, 8 Mar 2006, T. 2024 (testifying that Goran Opačić was a member of the “Benkovac special police” at the time of the operation in Škabrnja); Milan Babić, 20 Feb 2006, T. 1607 (testifying that he had heard “that it wasn’t true that Goran Opačić [...] had been involved in the fighting all the time [but that he] had been there at the outset but later left”; *see also* Ex. 1036); Ex. 411 (identifying Goran Opačić as a member of the Benkovac police special unit and that he gives information that killings were committed in Škabrnja); Ex. 511, p. 18 (an undated typed list which provides that Goran Opačić was a member of the Benkovac police until 31 Oct 1991).

⁷²⁸ Defence Final Trial Brief, para. 19. The Defence relies upon Zoran Lakić, 27 Oct 2006, T. 10258, 10263-10264, 30 Oct 2006, T. 10272 (testifying that Goran Opačić was not a member of the Benkovac SJB and that he did not take part in the fighting, *see also* Nada Pupovac, 31 Oct 2006, T. 10396, 10428); Ex. 116 (providing that “according to unconfirmed data” members of “Opačić’s group” carried out killings in Nadin); Ex. 511, p. 18.

insufficient to establish beyond reasonable doubt that he participated in events or crimes in Škabrnja or Nadin on 18 or 19 November 1991.⁷²⁹

(e) Killings in Škabrnja and Nadin

(i) Killings at Slavko Šegarić's house in Ambar on 18 November 1991

248. In the morning of 18 November 1991, Neven Šegarić, Ivica Bilaver, Lucia Šegarić, Krsto Šegarić, Maja Grgica Šegarić, Željko Šegarić, Josip Miljanić and Stana Vicković were hiding in the cellar of Slavko Šegarić's house in Ambar.⁷³⁰ Shortly after the first shelling, there was banging on the door and they heard a voice outside asking who was in the cellar.⁷³¹ They heard someone outside say "Come out you Ustase, we are going to slaughter you all".⁷³² When the people in the cellar opened the door, about ten JNA soldiers entered.⁷³³ The soldiers' faces were painted, and they wore plain olive green uniforms with a red star on the buttons and on the epaulets.⁷³⁴ After having taken a rifle and a pistol which were elsewhere in the house, some of the soldiers left.⁷³⁵ Shortly thereafter five or six "Serb volunteers, who were from the neighbouring villages" arrived.⁷³⁶ They threatened the people in the cellar and forced them out; everyone left the cellar except Lucia Šegarić.⁷³⁷ Just as the people exited the cellar, Neven Šegarić saw a "Chetnik" fire a burst of gunfire into the cellar.⁷³⁸ About five minutes later, when Neven Šegarić and Željko Šegarić were forced to enter the cellar to look for weapons, Neven Šegarić saw that Lucia Šegarić was lying dead

⁷²⁹ Regarding membership in the Benkovac SJB "special unit", the Trial Chamber notes Ex. 411, Ex. 511 and Milan Babić, 20 Feb 2006, T. 1601, 1607 (*see also* Ex. 1036). The Trial Chamber notes that in this respect Witness MM-003's testimony is corroborated (Witness MM-003, 8 Mar 2006, T. 2024). Regarding his presence in Škabrnja and Nadin, the Trial Chamber notes Milan Babić's hearsay evidence that Goran Opačić was only present at the "outset" in Škabrnja on 18 November 1991, that Nada Pupovac, who was present in Škabrnja 18 November 1991, denies Goran Opačić's presence, and that Ex. 116 only refers to "unconfirmed data" that "Opačić's group" killed members of a family in Nadin and three unidentified captives from Škabrnja. The Trial Chamber considers that the contrary evidence of Witness MM-003 is not sufficiently credible in this respect. The Trial Chamber notes the hearsay evidence (Marko Miljanić, 29 Mar 2006, T. 2879-2880) that Goran Opačić, nicknamed "Klempa", was heard over the radio in Škabrnja on 18 November 1991, but cannot make any finding based on this evidence (*see also* Milan Babić, 20 Feb 2006, T. 1607; Ex. 1036).

⁷³⁰ Neven Šegarić stated that he was in the cellar with his grandmother Lucia Šegarić (age 62), his grandfather Krsto Šegarić (age 60 or 61), his cousin Željko Šegarić (age 14 or 15), his great grandmother Maja Grgica Šegarić (age 94), Ivo Bilaver (age 14 or 15), and Josip/Joso Miljanić. However, right before the attack, Maja Grgica Šegarić was brought back to Neven Šegarić's father Mile Šegarić's house, Neven Šegarić, 29 Mar 2006, T. 2836, 2841-2842, Ex. 251, pp 3, 5; Ivica Bilaver, Ex. 821, p. 2 (also stating that the house was close to St. Mary's church in Ambar); Ex. 270, F-2. Ivica Bilaver was 14 or 15 years old, Neven Šegarić, 29 Mar 2006, T. 2836; Ivica Bilaver, Ex. 821, p. 2. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 32-38.

⁷³¹ Neven Šegarić, Ex. 251, p. 3.

⁷³² Neven Šegarić, Ex. 251, p. 3. There is also evidence that women and children were being called "Ustašas" and were insulted, Ex. 984, Annex 9, Statement of Svočka Miljanić, Statement of Snježana Ferica.

⁷³³ Neven Šegarić, 29 Mar 2006, T. 2855-2856, Ex. 251, p. 3.

⁷³⁴ Neven Šegarić, Ex. 251, p. 3.

⁷³⁵ Ivica Bilaver, Ex. 821, p. 2; Neven Šegarić, 29 Mar 2006, T. 2834-2835, 2855-2856, Ex. 251, p. 3.

⁷³⁶ Neven Šegarić, Ex. 251, p. 3; Neven Šegarić, 29 Mar 2006, T. 2856; Ivica Bilaver, Ex. 821, p. 2.

⁷³⁷ Neven Šegarić, Ex. 251, p. 3.

⁷³⁸ Neven Šegarić, Ex. 251, p. 3.

a few metres from the door.⁷³⁹ As Neven Šegarić again left the cellar he saw Stana Vicković and Josip Miljanić being forced to kneel after which a soldier, wearing a camouflage uniform with a patch on his sleeve reading “SAO Krajina”, shot them in the head.⁷⁴⁰ After this, Krsto Šegarić was beaten by five or six soldiers wearing green camouflage uniforms with SAO Krajina patches on their sleeves and red stars on the buttons, including Đuro Kosović, whom Neven Šegarić recognised.⁷⁴¹ Đuro Kosović then shot Krsto Šegarić in the back of the head.⁷⁴² The soldiers standing around outside at this point in time were a mix of JNA soldiers and soldiers with SAO Krajina patches on their camouflage uniforms.⁷⁴³

249. After this, Đuro Kosović, using a list of inhabitants in the village, questioned Neven Šegarić about where some of the inhabitants lived and if they had weapons.⁷⁴⁴ When Neven Šegarić said that he did not know, Đuro Kosović left.⁷⁴⁵ Subsequently, the soldier who had killed Stana Vicković and Josip Miljanić forced Neven Šegarić and Željko Šegarić against the wall of the house, however a “JNA officer” intervened and prevented their killing.⁷⁴⁶ The soldiers then took Ivica Bilaver, Neven Šegarić and Željko Šegarić to Smilčić.⁷⁴⁷

(ii) Killings at Petar Pavičić’s house in Škabrnja on 18 November 1991⁷⁴⁸

250. When the attack on Škabrnja started, Tomislav Šegarić hid in the cellar of Petar “Pešo” Pavičić’s house in Škabrnja together with about 25 to 30 civilians, including women, children and

⁷³⁹ Neven Šegarić, Ex. 251, p. 3. The Trial Chamber notes that Ex. 305, autopsy report, p. 22, list a Luca Šegarić, born 1920, who was identified by *inter alia* her two sons Slavko Šegarić and Mile Šegarić (see also Ex. 323, p. 10; Ex. 302). The autopsy report indicates that she was shot multiple times but that she died from a shot at close range to the head. Ex. 377, p. 12, lists a Luca Šegarić, born 1922, who was killed by gunshot to the head. The Trial Chamber finds that this evidence refers to Lucia Šegarić. In this context, the Trial Chamber notes Ex. 270, F-14, which lists a Lucka Šegarić, however due to the discrepancies between Ex. 305 and Ex. 270, F-14, the Trial Chamber cannot conclude that Ex. 270, F-14 refers to Lucia Šegarić. Neven Šegarić testified that Ex. 270, F-14 does not show Lucia Šegarić, Neven Šegarić, 29 Mar 2006, T. 2840.

⁷⁴⁰ Neven Šegarić, Ex. 251, p. 3. Regarding Stana Vicković, Ex. 344; Ex. 825, ERN 0469-0704; Ex. 377, p. 13, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Josip Miljanić, Ex. 360; Ex. 825, ERN 0469-0706; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. The Trial Chamber notes that Ivica Bilaver’s statement (Ex. 821, p. 2) is less detailed than that of Neven Šegarić but does not find that the discrepancy between their evidence gives rise to reasonable doubt as to the killing of Stana Vicković and Josip Miljanić. At one point, either when Lucia Šegarić or the group of adults was shot, Ivica Bilaver was wounded in the leg by a ricochet, Ivica Bilaver, Ex. 821, p. 2; Neven Šegarić, Ex. 251, p. 3; Ex. 270, F-2, (Neven Šegarić, 29 Mar 2006, T. 2841-2842, correcting the identities of the bodies in this photo).

⁷⁴¹ Neven Šegarić, 29 Mar 2006, T. 2857; Ex. 251, p. 3 (also stating that Đuro Kosović was from Smoković).

⁷⁴² Neven Šegarić, Ex. 251, p. 3; Ex. 270, F-4 and F-5 (see also Neven Šegarić, 29 Mar 2006, T. 2841-2842); Ex. 350; Ex. 825, ERN 0469-0704; Ex. 377, p. 12, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302.

⁷⁴³ Neven Šegarić, Ex. 251, p. 3. Neven Šegarić testified that a few of them were from a neighbouring village, Neven Šegarić, 29 Mar 2006, T. 2856-2857.

⁷⁴⁴ The list included the names of Mile Šegarić, Slavko Miljanić, see *infra* para. 255. Branko Šegarić, Marko Bilaver, Marko Miljanić, and Stipe Miljanić, Neven Šegarić, Ex. 251, pp 3-4.

⁷⁴⁵ Neven Šegarić, 29 Mar 2006, T. 2834, Ex. 251, p. 4.

⁷⁴⁶ Neven Šegarić, 29 Mar 2006, T. 2832, 2834, Ex. 251, p. 4.

⁷⁴⁷ Neven Šegarić, Ex. 251, p. 4; Ivica Bilaver, Ex. 821, pp 2-3 (also stating that he saw that the house of Stana Vicković was burning). Ivica Bilaver was taken to the hospital in Benkovac, Ivica Bilaver, Ex. 821, p. 3.

⁷⁴⁸ The Trial Chamber notes that Ivan Jelić stated that Pešo was the nickname of Petar Pavičić, Ivan Jelić, Ex. 825, p. 3.

elderly people.⁷⁴⁹ Around 1230 hours the shelling ceased, and there was silence for around 20 minutes whereupon Eva Šegarić went outside the cellar.⁷⁵⁰ Shortly thereafter, Tomislav Šegarić heard men shouting that everyone should come out of the cellar or they would throw in hand grenades.⁷⁵¹ The people in the cellar started to leave with their hands up. Outside near the entrance to the cellar, there was a group of more than ten armed “Chetniks” from the local area who wore camouflage uniforms and a variety of headgear.⁷⁵²

251. As they left the cellar, people were pulled to the side and killed by the “Chetniks”. Some of these people were first beaten with rifle butts and then killed.⁷⁵³ The following persons were killed outside Petar Pavičić’s house:⁷⁵⁴ Jozo Brkić,⁷⁵⁵ Jozo Miljanić,⁷⁵⁶ Slavka Miljanić,⁷⁵⁷ Mile Pavičić,⁷⁵⁸ Petar Pavičić,⁷⁵⁹ Ilija Ražov,⁷⁶⁰ Kata “Soka” Rogić,⁷⁶¹ Ivica Šegarić,⁷⁶² Rade Šegarić⁷⁶³

⁷⁴⁹ Tomislav Šegarić, Ex. 826, p. 3 (at p. 4 explaining that the house was located in the centre of Škabrnja). Ex. 270, Photo F-9 depicts the basement of Petar “Pešo” Pavičić’s house, Neven Šegarić, 29 Mar 2006, T. 2845. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 39-42.

⁷⁵⁰ Tomislav Šegarić, Ex. 826, p. 3.

⁷⁵¹ Tomislav Šegarić, Ex. 826, p. 3.

⁷⁵² Tomislav Šegarić, Ex. 826, pp 3-4, stating that he particularly remembers one called “Kosović” but stated that that was a common surname of people coming from the village of Zemunik.

⁷⁵³ Tomislav Šegarić, Ex. 826, p. 3; Ex. 984, Annex 9, statement of Svetka Miljanić.

⁷⁵⁴ Ex. 984, Annex 9, Statement of Svetka Miljanić. The Trial Chamber notes that Ex. 984, Annex 9, statement of Snježana Ferica, lists an “Iviša Ražov” and concludes that this refers to Ive Ražov. There is no further evidence regarding this person and the Trial Chamber cannot conclude beyond reasonable doubt that Ive Ražov was among those killed outside Petar Pavičić’s house. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* paras section I C.

⁷⁵⁵ Ex. 354, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-6 (Neven Šegarić, 29 Mar 2006, T. 2844); Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 6, listing him as a “Croat civilian”. The Trial Chamber notes that Annex I to the Indictment lists a Joso Brkić as killed in Škabrnja and finds that this refers to the same victim.

⁷⁵⁶ Ex. 984, Annex 9, Statement of Svetka Miljanić. The Trial Chamber notes that Annex I to the Indictment lists a Josip Miljanić and recalls its finding that this person was killed at Slavko Šegarić’s house in Ambar. The Trial Chamber recalls that Petar Pavičić’s house was located in the centre of Škabrnja and not in the hamlet of Ambar (Tomislav Šegarić, Ex. 826, p. 4). The Trial Chamber therefore considers that Jozo Miljanić, who was killed at Petar Pavičić’s house, is a different person from Josip Miljanić who is listed in Annex I to the Indictment.

⁷⁵⁷ Ex. 984, Annex 9, Statement of Svetka Miljanić, stating that her husband Jozo Miljanić and her mother-in-law Slavka Miljanić were killed at this house. The Trial Chamber notes that Annex I to the Indictment lists a Slavko Miljanić but considers in light of the information in this statement that this is a different person. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* section I C.

⁷⁵⁸ Ex. 362, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-10 and F-11 (Neven Šegarić, 29 Mar 2006, T. 2846); Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 3, listing him as a “Croat defender”. *See also* Ex. 377, pp 3-4.

⁷⁵⁹ Tomislav Šegarić, Ex. 826, p. 3, stating that he saw the dead body of Petar “Pešo” Pavičić outside the house; Ex. 365, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 10, listing him as a “Croat civilian”.

⁷⁵⁹ Ex. 362, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 270, F-10 and F-11 (Neven Šegarić, 29 Mar 2006, T. 2846); Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 3, listing him as a “Croat defender”.

⁷⁶⁰ Neven Šegarić, 29 Mar 2006, T. 2844, testifying that the person in Ex. 270, F-5, is Ilija Ražov. In relation to this victim, the Trial Chamber recalls its findings on the interpretation of the Indictment, *see supra* section I C.

⁷⁶¹ Neven Šegarić, 29 Mar 2006, T. 2841-2843; Tomislav Šegarić, Ex. 826, p. 4; Ex. 270, F-3 (Neven Šegarić, 29 Mar 2006, T. 2841-2843); Ex. 338, Autopsy report; Ex. 984, Annex 9, Statement of Svetka Miljanić and statement of Snježana Ferica; Ex. 825, ERN 0469-0702; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 11, listing her as a “Croat civilian”.

⁷⁶² Ex. 363, Autopsy report; Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0708; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 4, listing him as a “Croat defender”. *See also* Ex. 377, pp 3-4.

and Vice Šegarić.⁷⁶⁴ After this, women and children were lined up and insulted and asked where their men were.⁷⁶⁵ Subsequently, they were made to walk towards Ambar while being threatened by the “Chetniks”.⁷⁶⁶ There were many JNA officers and soldiers in the area and the JNA officers prevented the “Chetniks” from further killings.⁷⁶⁷

(iii) Killings at Pere Sopić’s house in Nadin on 19 November 1991

252. On 19 November 1991, soldiers wearing JNA uniforms came to the house of Pere Sopić in Nadin where they found Novica Atelj, Stoja Brkić, Danka Brzoja, Ika Čirjak, Maša Čirjak, Jakov Šestan and Marija Šestan. After having taken Novica Atelj and killed him outside the house, the soldiers returned to the house and killed the remaining civilians.⁷⁶⁸

⁷⁶³ Ex. 358, Autopsy report; Ex. 984, Annex 9, Statement of Svetka Miljanić and statement of Snježana Ferica; Ex. 270, F-8 (Neven Šegarić, 29 Mar 2006, T. 2845); Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 12, listing him as a “Croat civilian”.

⁷⁶⁴ Tomislav Šegarić, Ex. 826, p. 3, stating that he saw the dead body of Vice Šegarić outside the house; Ex. 359, Autopsy report, Ex. 984; Annex 9, Statement of Svetka Miljanić; Ex. 825, ERN 0469-0706; Ex. 323, p. 9; Ex. 302; Ex. 377, p. 12, listing him as a “Croat civilian”.

⁷⁶⁵ Ex. 984, Annex 9, Statement of Svetka Miljanić, Annex 9, Statement of Snježana Ferica.

⁷⁶⁶ Tomislav Šegarić, Ex. 826, p. 4.

⁷⁶⁷ Tomislav Šegarić, Ex. 826, p. 4.

⁷⁶⁸ Witness MM-083, 16 Jun 2006, T. 5736-5745; Ex: 109, p. 3; Ex. 302; Ex. 323, p. 7; Ex. 324 to Ex. 330 (these autopsy reports show that each victim was shot in the head at point-blank range as well as between five and eleven times from a distance of more than one metre); Ex. 825 ERN 0469-0710, 0469-0712, 0469-0714 (indicating that all victims wore civilian clothes). *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 12-20.

(iv) Other killings in Škabrnja and Nadin

253. Grgica “Maja” Šegarić, who was between 80 and 96 years old and infirm as a result of a stroke, was killed in Mile Šegarić’s house in Ambar on 18 November 1991.⁷⁶⁹

254. Ante Ražov was killed on 18 November 1991 in Škabrnja. The evidence shows that Ante Ražov was beaten and had one of his ears cut off before being shot in the head in front of his mother.⁷⁷⁰ Ante Ražov is listed in Annex I to the Indictment as a civilian victim. However, the evidence shows that he was a member of the Croatian defence force in Škabrnja. Nevertheless, it is established beyond reasonable doubt that he was not taking an active part in the hostilities when he was killed. In this respect, the Trial Chamber considers that the Defence has been put on notice of this victim by virtue of Annex I to the Indictment. The evidence is insufficient to conclude who perpetrated this killing.

255. Slavko Miljanić was killed in Škabrnja on 18 November 1991. Slavko Miljanić is listed in Annex I to the Indictment as a civilian victim, however the evidence shows that he was a member of the Croatian defence force in Škabrnja.⁷⁷¹ The Trial Chamber finds that it has not been established beyond reasonable doubt that Slavko Miljanić was taking no active part in the hostilities at the time of his death.

256. On 18 November 1991, several “Chetniks” beat on the road from the centre of Škabrnja towards Ambar. Thereafter, the “Chetniks” put Šime Šegarić and Bude Šegarić in a JNA APC, which drove away in the direction of Biljani. Subsequently, their bodies were handed over to their relatives. The evidence shows that Šime Šegarić and Bude Šegarić were members of the Croatian defence force in Škabrnja.⁷⁷² The evidence further shows that they were taken to Knin where they were killed.⁷⁷³

257. There is also evidence that the following persons were killed in Škabrnja and Nadin on 18 or 19 November 1991: Ivan Babić, Luka Bilaver, Marija Brkić (born 1943), Marko Brkić, Željko

⁷⁶⁹ Marko Miljanić, 30 Mar 2006, T. 2920; Neven Šegarić, Ex. 251, p. 5; Ex. 356, Autopsy report; Ex. 377, p. 12, listing her as a “Croat civilian”; Ex. 825, ERN 0469-0706. *See also* Ex. 323, p. 9; Ex. 302.

⁷⁷⁰ Marko Miljanić, 29 Mar 2006, T. 2871; Ex. 270, F-1 (Neven Šegarić, 29 Mar 2006, T. 2841); Ex. 364, Autopsy report; Ex. 825, ERN 0469-0708; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. *See also* Nada Pupovac, 31 Oct 2006, T. 10414, testifying that she heard that there had been a man without an ear, Ex. 117, p. 4 (a member of the military police battalion stated that a ZNG member had been shot behind a house and that members of the TO had cut off his ear); Ex. 411, Report on the murder of civilians in Škabrnja.

⁷⁷¹ Slavko Miljanić is listed as a civilian in Annex I to the Indictment. Ex. 357, Autopsy report; Ex. 825, ERN 0469-0706; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. *See also* Tomislav Šegarić, Ex. 826, p. 5.

⁷⁷² Tomislav Šegarić, Ex. 826, p. 4. The Trial Chamber notes that each is listed as a “Croat defender” in Ex. 377, p. 4.

⁷⁷³ Ex. 825, ERN 0469-0702, ERN 0469-0722, 0469-0727. Regarding the injuries on Šime Šegarić, Ex. 333, Autopsy report, and Ex. 825, ERN 0469-0702. *See also* Ex. 323, p. 9; Ex. 302. The Trial Chamber notes that Bude Šegarić is not listed in Annex I of the Indictment and refers to the section on the interpretation of the Indictment, *see supra* section I C. The Trial Chamber has not been provided with an autopsy report concerning Bude Šegarić.

Ćurković, Marija Dražina, Ana Jurić, Grgo Jurić, Petar Jurić, Niko Pavičići, Josip Perica, Ljubo Perica, Ivan Ražov, Jela Ražov, Branko Rogić, Nikola Rogić, Kljajo Šegarić, Lucka/Luca Šegarić, Mara Žilić, Pavica Žilić, Roko Žilić, Tadija Žilić and Marko Župan.⁷⁷⁴

258. There is evidence that Petar Rogić and Miljenko Šegarić from Škabrnja were killed in Benkovac on 18 November 1991.⁷⁷⁵ There is also evidence that Milka Žilić from Škabrnja was wounded by a shell and died in Zadar on 18 November 1991.⁷⁷⁶

⁷⁷⁴ The Trial Chamber notes that Kljajo Šegarić, Lucka/Luca Šegarić, Luka Bilaver, and Branko Rogić are not listed as civilian victims in Annex I to the Indictment but recalls its findings regarding the interpretation of the Indictment, para. 13. Regarding Ivan Babić, Ex. 305, Autopsy report, pp 24-25 (killed by shrapnel); Ex. 377, p. 5, listing him as a “Croat civilian”; Ex. 323, p. 10; Ex. 302. Regarding Luka Bilaver, Ex. 270, F-15 (on which photograph the victim is wearing civilian clothes). The Trial Chamber notes that Ex. 377, p. 5, and Ex. 825 ERN 0469-0718 contain a person with the same name who died of hypothermia on 1 December 1991. However, the Trial Chamber cannot conclude that this is the same person as Luka Bilaver in Ex. 270, F-15. Regarding Marija Brkić, Ex. 334, Autopsy report (killed by gunshot to the head inflicted from close range); Ex. 825, ERN 0469-0702; Ex. 377, p. 6, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Marko Brkić, Ex. 361, Autopsy report (killed by gunshots to the head inflicted at point-blank range); Ex. 825, ERN 0469-0708; Ex. 377, p. 7, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Željko Ćurković, Ex. 335, Autopsy report; Ex. 825, ERN 0469-0702 (killed by several gunshots including one inflicted at point-blank range to the head). The Trial Chamber notes that Ex. 270, F-17, contains a “Zoran Ćurković. In light of the details provided in the autopsy report and visible on F-17, the Trial Chamber concludes beyond reasonable doubt that this is Željko Ćurković. The Trial Chamber notes that on the photograph F-17 the victim is dressed in civilian clothes. Regarding Marija Dražina, Ex. 367, Autopsy report (killed by gunshot to the head inflicted at point-blank range); Ex. 825, ERN 0469-0710; Ex. 377, p. 7, listing her as a “Croat civilian”; Ex. 302; Ex. 323, p. 9. Regarding Ana Jurić, Ex. 332, Autopsy report (killed by blunt trauma to the head); Ex. 377, p. 8, listing “Anica Jurić” as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Grgo Jurić, Ex. 355, Autopsy report (killed by multiple gunshot wounds to the head inflicted at a distance of a maximum of one metre); Ex. 825, ERN 0469-0706; Ex. 377, p. 8, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Petar Jurić, Ex. 346, Autopsy report (killed by gunshots to the head inflicted from a point-blank to close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Niko Pavičići, Autopsy report Ex. 343 (killed by gunshots to the head and thorax inflicted from close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 9, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Josip Perica, Ex. 331, Autopsy report (killed by gunshots, including to the head at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 10, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302 (listed as “Joso”). Regarding Ljubo Perica, Ex. 347, Autopsy report (killed by several gunshot wounds, including to the head at point-blank range); Ex. 825, ERN 0469-0704; Ex. 377, p. 10, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Ivan Ražov, Ex. 345, Autopsy report (killed by gunshots, including two shots to the neck inflicted from a relatively close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 11, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Jela Ražov, Ex. 368, Autopsy report (killed by two gunshots to the head inflicted at point-blank range); Ex. 825, ERN 0469-0718; Ex. 377, p. 11, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Branko Rogić, Ex. 270, F-16. There is no further evidence of this victim. Regarding Nikola Rogić, Ex. 339, Autopsy report (killed by several gunshots, including one to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 11, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Kljajo Šegarić, Ex. 270, F-4 (on which photograph the victim is wearing civilian clothes); Neven Šegarić, 29 Mar 2006, T. 2840, 2843. Regarding Lucka/Luca Šegarić, Ex. 270, F- 14 (on which photograph the victim is wearing civilian clothes). There is no further evidence of this victim. Regarding Mara Žilić, Ex. 353, Autopsy report (killed by several gunshots inflicted from a distance of more than one metre); Ex. 825, ERN 0469-0706; Ex. 377, p. 13, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Pavica Žilić, Ex. 352, Autopsy report (killed by blast wounds); Ex. 825, ERN 0469-0706; Ex. 377, p. 13, listing her as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Roko Žilić, Ex. 342, Autopsy report (killed by gunshots, including two inflicted to the head at point-blank range); Ex. 825, ERN 0469-0704; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Tadija Žilić, Ex. 351, Autopsy report (killed by several gunshots, including to the head inflicted at point-blank range); Ex. 825, ERN 0469-0706; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. Regarding Marko Župan, Ex. 366, Autopsy report (killed by two gunshots, including to the head inflicted at point-blank range); Ex. 825, ERN 0469-0710; Ex. 377, p. 14, listing him as a “Croat civilian”; Ex. 323, p. 9; Ex. 302. There is also evidence of killings of unidentified victims in Škabrnja and Nadin on 18 and 19 November 1991, Marko Miljanić, 29 Mar 2006, T. 2877-2878, 30 Mar 2006, T. 2914, 2920; Boško Brkić, Ex. 275, p. 2; Ex. 109; Ex. 116; Ex. 117; Ex. 614. The Trial Chamber is unable to make any further findings on the basis of this evidence, in particular whether it concerns any of the proven killings.

259. Annex I to the Indictment lists the following persons as civilian victims killed in Škabrnja on 18 November 1991, however the evidence shows that they were “Croat defenders”: Vladimir Horvat, Nediljko Jurić, Gašpar Perica, Marko Rogić, Nediljko Škara and Stanko Vicković.⁷⁷⁷

260. Following the attack on Škabrnja, some civilians remained in the village.⁷⁷⁸ In December 1991, there were JNA soldiers in the village and machine-gun nests in the houses along the roads.⁷⁷⁹ The evidence shows that a TO brigade under JNA command was stationed in the village.⁷⁸⁰ Boško Brkić returned numerous times in secret to Škabrnja to visit his parents, Mate Brkić and Josipa Brkić, who had remained in the village.⁷⁸¹ Kata Perica, Marija Bilaver, Anica Pavičić and Eva Pavičić would come to his parents’ house every evening to sleep.⁷⁸² At some point after December 1991, Boško Brkić was unable to see his parents due to the situation in the village.⁷⁸³ His parents told him that every day “Chetniks” would come to them and both threaten and pretend to protect them.⁷⁸⁴ The “Chetniks” had long beards and wore uniforms with “Chetnik insignia”.⁷⁸⁵ By mid-January 1992, there were only a few JNA soldiers in the village, however about 50 to 70 soldiers with “SAO Krajina” and White Eagle insignia on their camouflage uniforms were guarding and patrolling the village.⁷⁸⁶ On 11 March 1992, Anica Pavičić and Eva Pavičić

⁷⁷⁵ Neither of these persons is listed in Annex I to the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment, *see supra* section I C, and that it will consequently consider these victims for a conviction. Regarding Petar Rogić, Ex. 825, ERN 0469-0722 (listed as killed); Ex. 377, p. 12 (listed as tortured and beaten to death on 18 November 1991 in Benkovac). Regarding Miljenko Šegarić, Ex. 377, p. 4 (listed as a “Croat defender” and captured, tortured and beaten to death in Benkovac).

⁷⁷⁶ Milka Žilić is not listed in Annex I to the Indictment. The Trial Chamber recalls its findings regarding the interpretation of the Indictment, para. 13. Ex. 825, ERN 0469-0722; Ex. 377, p. 13, listing her as “Croat civilian”.

⁷⁷⁷ Regarding Vladimir Horvat, Ex. 336, Autopsy report (killed by gunshots, including by a shot to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 2, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 323, p. 9; Ex. 302. Regarding Nediljko Jurić: Ex. 349, Autopsy report (killed by several gunshots from a distance of more than one metre); Ex. 825, ERN 0469-0704; Ex. 377, pp 2-3, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Gašpar Perica: Ex. 348, Autopsy report (killed by several gunshot wounds, including two shots to the head inflicted from a close range); Ex. 825, ERN 0469-0704; Ex. 377, p. 3, listing him as a “Croat defender”; Ex. 302. Regarding Marko Rogić: Ex. 340, Autopsy report (killed by several gunshots, including one to the head inflicted at point-blank range); Ex. 825, ERN 0469-0702; Ex. 377, p. 4, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Nediljko Škara: Ex. 341, Autopsy report (killed by several gunshots from a distance of more than one metre and by blast wounds); Ex. 825, ERN 0469-0704; Ex. 377, p. 5, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302. Regarding Stanko Vicković: Ex. 337, Autopsy report (killed by several gunshot wounds from a distance of more than one metre, including by a shot to the head which was the fatal wound); Ex. 825, ERN 0469-0702; Ex. 377, p. 5, listing him as a “Croat defender”; Ex. 323, p. 9; Ex. 302.

⁷⁷⁸ Marko Miljanić, 29 Mar 2006, T. 2877; Boško Brkić, Ex. 275, p. 2.

⁷⁷⁹ Boško Brkić, Ex. 275, p. 3.

⁷⁸⁰ Zoran Lakić, 30 Oct 2006, T. 10289.

⁷⁸¹ Mate Brkić was confined to a wheelchair as the result of a stroke, Boško Brkić, Ex. 275, pp 2-3.

⁷⁸² Boško Brkić, Ex. 275, p. 3.

⁷⁸³ Boško Brkić, Ex. 275, p. 3.

⁷⁸⁴ Boško Brkić, Ex. 275, p. 3, also stating that his parents told him that the JNA soldiers had told them that they should be careful as “the Chetniks” would kill them.

⁷⁸⁵ Boško Brkić, Ex. 275, p. 3, also stating that his parents recognised two local Serbs among them.

⁷⁸⁶ Boško Brkić, Ex. 275, p. 3.

came to the house and found Marija Bilaver, Mate Brkić, Josipa Brkić and Kata Perica dead on the floor.⁷⁸⁷

261. The evidence shows that killings occurred from 18 November 1991 until 11 March 1992.⁷⁸⁸ In 1996, 26 bodies were exhumed from a mass grave site near the school in Škabrnja.⁷⁸⁹ In addition to the four victims just mentioned, the exhumed bodies were identified as: Grgo Bilaver, Peka Bilaver, Šime Bilaver, Ana Brkić, Kata Brkić (born 1935), Kata Brkić (born 1939), Marija Brkić (born 1906), Mijat Brkić, Luka Čičak, Jure Erlić, Dumica Gospić, Ljubomir Ivković, Nedelko Ivković, Tereza Ivković, Jela Jurić, Simica Jurjević, Mirko Kardum, Grgica Ražov, Marko Ražov, Simo Ražov, Pera Škara, Božo Stura and Draginja Stura.⁷⁹⁰

⁷⁸⁷ Boško Brkić, Ex. 275, pp 2-3, also stating that Anica Pavičić and Eva Pavičić immediately fled to Prkos where they told Boško Brkić what had happened. The Trial Chamber notes that the period listed in the Indictment for the killings in Škabrnja after 18 November 1991 is until and including February 1992, and that these killings took place in March 1992. However, the Trial Chamber finds that the Defence was put on notice through the inclusion of these names in Annex I to the Indictment and the summary of Boško Brkić's evidence in the Prosecution's 65 *ter* submission of 7 May 2004, which specifically describes this incident and connects it with Count 1 (Persecutions), Count 2 (Extermination), and Counts 3 and 4 (Murder). The Trial Chamber notes that Mate Brkić is listed as Mato Brkić in Annex I to the Indictment. The autopsy report of the victims provide that they wore civilian clothes at the time of their death (Mate Brkić, Ex. 373, body no. 6; Josipa Brkić, Ex. 374, body no. 7; Kata Perica, Ex. 374, body no. 9; Marija Bilaver, Ex. 373, body no. 8). Moreover, Ex. 377 also lists all four victims as civilians. *See also* Ex. 302; Ex. 323.

⁷⁸⁸ Ex. 305; Ex. 377. The Trial Chamber also notes that Ex. 107, p. 7, 16 provides for 10 December 1991 "in Škabrnja TO members kill one elderly person each day" and for 15 February 1992 "[a]nother dead body in the village of Škabrnja".

⁷⁸⁹ Ivan Grujić, 10 Apr 2006, T. 3477-3479; Davor Strinović, 12 Apr 2006, T. 3670-3671; Ex. 305; Ex. 373; Ex. 374; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, p. 1.

⁷⁹⁰ Grgo Bilaver, Ex. 305, pp 15-16, killed by a gunshot to the chest. *See also* Ex. 302; Ex. 323, p.10; Ex. 377, p. 5. Peka Bilaver, Ex. 305, pp 19-20, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 6. Ana Brkić, Ex. 305, pp 21-22, killed by an explosion. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 6. Kata Brkić (born 1935), Ex. 374, pp 3-4, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10. Kata Brkić (born 1939), Ex. 374, p. 6, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, p. 10, Ex. 377, p. 6. Marija Brkić, Ex. 373, p. 2, killed by gunshot to the thorax and blunt trauma to the head. *See also* Ex. 302; Ex. 323, p. 10. Mijat Brkić, Ex. 305, pp 6-7, killed by gunshot. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 7. Jure Erlić, Ex. 305, pp 8-9, killed by shrapnel but Ex. 377, p. 7, provides that he was shot. *See also* Ex. 302; Ex. 323, p.10. Dumica Gospić, Ex. 305, pp 18-19, killed by explosion but Ex. 377, p. 7, provides that she was shot. *See also* Ex. 302; Ex. 323, p. 10. Ljubomir Ivković, Ex. 374, pp 12-13, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 8. Nedelko Ivković, Ex. 305, pp 11-12, killed by gunshot wounds to the chest. The Trial Chamber notes that this victim is listed as a "Croat defender" in Ex. 377, p. 2, however his body when exhumed was dressed in civilian clothing. *See also* Ex. 302; Ex. 323, p. 10. Tereza Ivković, Ex. 373, pp 5-6, killed by a blow to the head with a sharp instrument. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 8. Simica Jurjević, Ex. 305, p. 9, compression of the head and thorax. The Trial Chamber notes that Ex. 377, p. 9, provides that this victim was run over by a heavy vehicle. *See also* Ex. 302; Ex. 323, p. 10. Mirko Kardum, Ex. 305, pp 2-3, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10, Ex. 377, p. 9. Simo Ražov, Ex. 305, pp 17-18, killed by gunshot to the head. The Trial Chamber notes that Ex. 377, p. 11, lists a victim called Šime Ražov born 1938, which is the same birth year as listed in Ex. 305 for Simo Ražov. The Trial Chamber notes that Annex I to the Indictment lists a Šime Ražov, born 1938, and concludes that this is the same person as listed in Ex. 305 and Ex. 377. *See also* Ex. 302; Ex. 323, p. 10. Grgica Ražov, Ex. 305, pp 12-14, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 10. Marko Ražov, Ex. 305, pp 14-15, killed by gunshot to the head. *See also* Ex. 302; Ex. 323, pp 10; Ex. 377, p. 11. Pera Škara, Ex. 374, pp 10-11, killed by shrapnel. *See also* Ex. 302; Ex. 323, p. 10; Ex. 377, p. 13. Božo Stura, Ex. 374, pp 6-7, killed by blows to the head with a sharp instrument. *See also* Ex. 302; Ex. 323, p. 10. Draginja Stura, Ex. 373, p. 3, killed by multiple gunshot wounds. *See also* Ex. 302; Ex. 323, p. 10. Regarding Šime Bilaver, Luka Čičak, and Jela Jurić: The Trial Chamber notes that Šime Bilaver and Luka Čičak are recorded as having died of natural causes (Ex. 373, p. 5 and Ex. 305, pp 5-6 respectively). This evidence is therefore not relevant and will not be considered for a conviction. Jela Jurić is recorded as having been killed by shrapnel (Ex. 305, pp 4-5; Ex. 825, ERN 0469-0702). The Trial Chamber notes that this victim is not listed in Annex I to the Indictment, and recalls its findings regarding the interpretation of the Indictment, *see supra* section I C. The Trial Chamber concludes that the Defence has not been on sufficient notice regarding this victim.

(f) Investigations into the events in Škabrnja and Nadin on 18 and 19 November 1991

262. On 20 November 1991, the JNA Naval Military District in Split, on the request of the European Community Monitoring Mission, asked the JNA 9th Corps command to provide a report by the following day on the killings in Škabrnja and Nadin on 18 and 19 November 1991.⁷⁹¹ There is evidence that an on-site investigation was carried out in cooperation with the Benkovac SJB.⁷⁹² The 180th Motorised Brigade conducted interviews, although not pursuant to superior orders.⁷⁹³ Following the interviews, reports were sent to the JNA 9th Corps command.⁷⁹⁴

(g) Destruction in Škabrnja and Nadin

263. As noted above, during the attack on 18 and 19 November 1991 cluster bombs were dropped on Škabrnja with resulting damage to buildings. Moreover, private houses and the school were shot at by tanks and with hand-held rockets, and the church of the Assumption of the Virgin was also shot at by a tank.⁷⁹⁵ Marko Miljanić testified that by 19 November 1991, 30 to 40% of the houses in Škabrnja had been “destroyed” and that also the church of the Assumption of the Virgin and the school had been “destroyed”.⁷⁹⁶ The Trial Chamber notes that the only evidence of destruction of this church on 18 or 19 November 1991 is that a tank fired at the bell tower.⁷⁹⁷ As noted above, “soldiers” entered this church and fired their weapons.⁷⁹⁸ Furthermore, looting was committed by local Serbs and Serb paramilitaries.⁷⁹⁹ There is also evidence that volunteers from Serbia and BiH, who were joined to the Benkovac TO, participated during the attack on Škabrnja and that they looted and robbed.⁸⁰⁰

264. After the attack on Škabrnja and until February 1992, Serb paramilitary forces and local Serbs looted and burnt houses in Škabrnja.⁸⁰¹ The evidence is inconclusive as to when Škabrnja was destroyed.⁸⁰² However, by 1994 about 90 to 95% of Škabrnja was destroyed and the church of St.

⁷⁹¹ Ex. 60. On 23 November 1991, the JNA handed over 35 bodies from Škabrnja to the Civilian Protection of the Zadar, Biograd, Benkovac and Obrovac municipalities. By 5 December 1991, a further 13 bodies from Škabrnja and Nadin had been received from the JNA, Ivan Jelić, Ex. 825, pp 2-3 and attached documents.

⁷⁹² Zoran Lakić, 27 Oct 2006, T. 10254; Marko Miljanić, 29 Mar 2006, T. 2881, 30 Mar 2006, T. 2914, 2927; Ex. 270.

⁷⁹³ Ex. 109; Ex. 116; Ex. 117; Ex. 118; Ex. 411; Ex. 615. The Trial Chamber notes that Ex. 116, Ex. 117, Ex. 118, Ex. 411, Ex. 614, and Ex. 615 contain the names of alleged perpetrators of killings. However, the Trial Chamber finds that the evidence is insufficient to link any of the named persons to the above-mentioned killings in Škabrnja and Nadin on 18 and 19 November 1991.

⁷⁹⁴ Witness MM-080, 8 Jun 2006, T. 5270-5271, 5279-5280.

⁷⁹⁵ See *supra* paras 236, 241.

⁷⁹⁶ Marko Miljanić, 30 Mar 2006, T. 2925; Neven Šegarić, 29 Mar 2006, T. 2848 (describing the school as “blown up” and “torched”). The Trial Chamber recalls that a JNA tank fired in the direction of the school, see *supra* para. 241.

⁷⁹⁷ See *infra* para. 395.

⁷⁹⁸ See *supra* para. 241.

⁷⁹⁹ Ex. 107, p. 3; Ex. 922, p. 7; Boško Brkić, Ex. 275, p. 3.

⁸⁰⁰ Ex. 616, pp 2, 13-14. It is also alleged that these persons committed killings of unidentified individuals, *id* at p. 2.

⁸⁰¹ Boško Brkić, Ex. 275, p. 3; Ex. 107, p. 3; Ex. 984, Annex 9.

⁸⁰² Zoran Lakić, 30 Oct 2006, T. 10294-10295, 10303, testifying that in November 1992 Škabrnja was no more damaged than it had been one year earlier and that the damage was not as shown in Ex. 271 and Ex. 272 but that there

Mary in Ambar and the church of St. Luke near the centre of Škabrnja were badly damaged.⁸⁰³ By October or November 1995, all the houses in Škabrnja and the church of the Assumption of the Virgin had been destroyed.⁸⁰⁴ By 1996, the church as well as the houses in Nadin had been looted, destroyed and burnt down.⁸⁰⁵

5. Bruška

265. Bruška is located about 15 kilometres east of Benkovac.⁸⁰⁶ In 1991, about 400 people lived there, and the village was predominantly Croat.⁸⁰⁷ Marinovići is a hamlet in Bruška comprising of eight houses, which in 1991 was inhabited by Croats.⁸⁰⁸

266. From the spring of 1991, there was a Croatian reserve police force in Bruška, however, they did not have regular shifts, uniforms or weapons.⁸⁰⁹ The “Militia Krajina, Martić’s police” set up barricades which cut off the bus line between Zadar and Benkovac.⁸¹⁰ Armed men identifying themselves as “Martić’s men” or “Martić’s Militia” came to Bruška almost every day to scare the inhabitants.⁸¹¹ The armed men called the villagers Ustašas and said that Bruška would be a part of a Greater Serbia and that the people of Bruška should leave.⁸¹² However, as of December 1991 almost all of the inhabitants of Bruška were still living there.⁸¹³

267. On the evening of 21 December 1991, Ante Marinović was at home playing cards with his brother Dušan Marinović, his father Roko Marinović, his uncle Petar Marinović and Sveto Drača.⁸¹⁴ Ante Marinović’s grandfather and Ljilja Marinović, the wife of Dušan Marinović, were upstairs with two children of theirs, Jure and Donja, and with the children of Sveto Drača and Soka

was damage to roofs of houses from mortar shells and holes in the walls of buildings made by artillery and tank fire, *ibid.* Zoran Lakić testified that the kind of extensive damage to buildings in Škabrnja shown in the photographs may have occurred in 1993 or 1994 following Croatian attacks on the municipalities of Benkovac, Obrovac, Gracac and (partly) Knin, *ibid.* Boško Brkić stated that by December 1992 Škabrnja had been completely destroyed, Boško Brkić, Ex. 275, p. 4.

⁸⁰³ Marko Miljanić 30 Mar 2006, T. 2925 (testifying that houses had been blown up with explosives and razed to the ground, rather than having been hit by shells), 2926.

⁸⁰⁴ Neven Šegarić 29 Mar 2006, T. 2848, 2851; Luka Brkić, 5 Apr 2006, T. 3290.

⁸⁰⁵ Witness MM-083, 16 Jun 2006, T. 5747 (testifying to the taking of a tractor, and furniture and appliances).

⁸⁰⁶ Jasna Denona, 9 Feb 2006, T. 1293; Ex. 23, p. 25. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 22-41; Ex. 1044.

⁸⁰⁷ Ex. 301, p. 6, states that there were 474 inhabitants in Bruška and that 89.54% were Croats, and 10.46% were Serbs; Jasna Denona, 9 Feb 2006, T. 1269; Ante Marinović, 23 Mar 2006. T. 2472.

⁸⁰⁸ Jasna Denona, 9 Feb 2006, T. 1269. The villages surrounding Bruška are Medvida, Zelengrad, Karin, Brgud, Bjeline, and Kalanja Draga. Zelengrad, Karin, Brgud, and Kalanja Draga were Serb; Medvida was half-Serb and half-Croat; and Bjeline was 20% Croat and 80% Serb, Ante Marinović, 23 Mar 2006. T. 2472-2473.

⁸⁰⁹ Ante Marinović, 23 Mar 2006. T. 2471, 2492.

⁸¹⁰ Jasna Denona, 9 Feb 2006, T. 1270, 1305.

⁸¹¹ Ante Marinović, 23 Mar 2006. T. 2493, T. 2479-2480, 2498, also testifying that these men mostly came from Medvida. Ante Marinović further testified that they would say “You have no business here. This is Serb. You can go away,” and would call the people Ustašas, telling them that Bruška would be a part of a Greater Serbia, *ibid.*

⁸¹² Ante Marinović, 23 Mar 2006. T. 2480, testifying that the villagers of Bruška were not armed and thus could not protect themselves.

⁸¹³ Ante Marinović, 23 Mar 2006. T. 2480.

Drača.⁸¹⁵ The men were not armed and were dressed in civilian clothes, except Sveto Drača who was a Serb member of the JNA, and who was wearing an olive-drab uniform.⁸¹⁶ Although Ante Marinović was a reserve police officer at the time, he was not on active duty that night.⁸¹⁷

268. At around 2000 or 2030 hours, three members of the *Milicija Krajine* barged into the house, took the men outside, lined them up against a wall and started shooting.⁸¹⁸ Dušan Marinović and Roko Marinović were killed and Ante Marinović was wounded.⁸¹⁹ Sveto Drača and Petar Marinović ran away but were chased and killed near the gate.⁸²⁰

269. The same evening Jasna Denona was in her family home, which was close to Roko Marinović's house, with her mother and her neighbours, Soka and Dragan Marinović.⁸²¹ Jasna Denona, her mother and Dragan Marinović were Croats, and Soka was a Serb.⁸²² At about the same time as the *Milicija Krajine* came to Roko Marinović's house, men identifying themselves as the *Milicija Krajine* and as "Martić's men" came to the door.⁸²³ Dragan Marinović went to answer the door.⁸²⁴ The women fled out into the garden and across a wall.⁸²⁵ As they were running Jasna Denona heard one of the men shout "they got away", after which the men started shooting at them and Jasna Denona was hit.⁸²⁶ Her mother came back and helped her move behind a wall in the vineyard, where they hid together with Jeka and Soka for about two hours.⁸²⁷ Jeka then went to check what was happening in the house closest to them, which was the house of Roko Marinović.⁸²⁸ They followed her and saw that at the gate of the yard she had found the dead body of her husband,

⁸¹⁴ Ante Marinović, 23 Mar 2006. T. 2481-2483, 2498; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 32-41.

⁸¹⁵ Ante Marinović, 23 Mar 2006. T. 2481; Jasna Denona, 9 Feb 2006, T. 1291.

⁸¹⁶ Ante Marinović, 23 Mar 2006. T. 2481-2482; Jasna Denona, 9 Feb 2006, T. 1290.

⁸¹⁷ Ante Marinović, 23 Mar 2006. T. 2481-2482.

⁸¹⁸ Ante Marinović, 23 Mar 2006. T. 2482-2484, (at T. 2483 testifying that they had "Milicija Krajine" on the sleeves of their uniforms).

⁸¹⁹ Ante Marinović, 23 Mar 2006. T. 2484. Ante Marinović was shot seven times: twice in the left thigh, or above the left thigh, twice in the arm, twice above the right hip, and once in the hand, Ante Marinović, 23 Mar 2006. T. 2484. See also Ex. 370, p. 2; Jasna Denona, 9 Feb 2006, T. 1274-1275. With respect to Dušan Marinović and Roko Marinović, see, Ex. 370, also indicating that they wore civilian clothes; Ex. 323, p. 8, indicating that they were killed by gunshot. See also Ex. 302; Ex. 378.

⁸²⁰ Ante Marinović, 23 Mar 2006. T. 2484.

⁸²¹ Jasna Denona, 9 Feb 2006, T. 1270-1271; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 5, pp 22-31.

⁸²² Jasna Denona, 9 Feb 2006, T. 1271.

⁸²³ Jasna Denona, 9 Feb 2006, T. 1271-1272, 1281.

⁸²⁴ Jasna Denona, 9 Feb 2006, T. 1272, 1286, testifying that he was 23 years old.

⁸²⁵ Jasna Denona, 9 Feb 2006, T. 1272.

⁸²⁶ Jasna Denona, 9 Feb 2006, T. 1272-1273, 1276-1277. Today she has 50% disability, with her right arm being much weaker than her left arm as well as being disfigured, *id.* at T. 1279.

⁸²⁷ Jasna Denona, 9 Feb 2006, T. 1273.

⁸²⁸ Jasna Denona, 9 Feb 2006, T. 1273-1274.

Petar Marinović, and of her neighbour, Sveto Drača.⁸²⁹ In the front yard she had found the dead bodies of Roko Marinović and his son, Dušan Marinović.⁸³⁰

270. Joso Marinović came to the house and told them that both his son, Dragan Marinović, and his wife, Ika Marinović, had been killed.⁸³¹ Later that night Dusan Drača, the father of Sveto Drača, came and told them that there were four more dead bodies in Marinovići.⁸³² The following morning they discovered that the dead bodies belonged to Krsto Marinović, Draginja Marinović, his wife Stana Marinović, and her mother-in-law, Manda Marinović.⁸³³ Jasna Denona's mother and neighbour Kata saw their bodies and told her that they had been shot and that their bodies were "bullet riddled".⁸³⁴

271. The next day at 1800 hours an ambulance arrived with a policewoman from Benkovac who interviewed Jasna Denona about what had happened.⁸³⁵

272. There were investigations into the killings in Bruška. A JNA report from 11 March 1992 and one on 4 April 1992, confirmed that there were killings in Bruška on 21 December 1991 and indicate that the killings may have been motivated by revenge by a named individual.⁸³⁶ There was also an on-site investigation team from Benkovac, an investigative judge and people from the SJB involved in the investigation at Bruška.⁸³⁷

273. By 1995, most of Bruška had been destroyed.⁸³⁸

⁸²⁹ Jasna Denona, 9 Feb 2006, T. 1274. With respect to Petar Marinović, Ex. 369, which also provides that he wore civilian clothes; Ex. 323, p. 8, providing that he was killed by gunshots. *See also* Ex. 302; Ex. 378. As regards Sveto Drača, Ex. 302. The Trial Chamber notes that no autopsy report has been provided concerning Sveto Drača.

⁸³⁰ Jasna Denona, 9 Feb 2006, T. 1274.

⁸³¹ Jasna Denona, 9 Feb 2006, T. 1275; Ex. 372, also stating that they wore civilian clothes; Ex. 323, p. 8, stating that they were killed by gunshot. *See also* Ex. 302; Ex. 378.

⁸³² Jasna Denona, 9 Feb 2006, T. 1275.

⁸³³ Jasna Denona, 9 Feb 2006, T. 1275.

⁸³⁴ Jasna Denona, 9 Feb 2006, T. 1275; Ex. 369 (regarding Krsto Marinović, Draginja Marinović); Ex. 371 (regarding Stana Marinović and Manda Marinović); Ex. 323, p. 8, providing that they were killed by gunshot. Ex. 369 and Ex. 371 also indicate that all the four victims wore civilian clothes. *See also* Ex. 302; Ex. 378.

⁸³⁵ Jasna Denona, 9 Feb 2006, T. 1277-1278.

⁸³⁶ Ex. 403, dated 11 March 1992, pp 2-3, *see also* Imra Agotić, Ex. 398, T. 23277-23278; MM-096, 22 Aug 2006, T. 6901; Ex. 404, p. 2 (in the report, the author states that he believed this information to be true and that it was from a reliable source, *ibid*).

⁸³⁷ MM-080, 8 Jun 2006, T. 5281-5282, 5318. *See also* Ex. 617; Ex. 618. Jasna Denona was interviewed by Benkovac police, Ex. 134; Jasna Denona, 9 Feb 2006, T. 1281-1284. Witness MM-096 testified that there was information that the perpetrators were Serbs, but "Nobody said specifically the SAO Krajina Police.", Witness MM-096, 24 Aug 2006, T. 7092, 7095-7096. *See also* MM-080, 8 Jun 2006, T. 5318. Neither MM-080 nor Jasna Denona ever heard of anyone having been punished for the killings in Bruška on 21 December 1991, Jasna Denona, 9 Feb 2006, T. 1281; MM-080, 8 Jun 2006, T. 5318.

⁸³⁸ Ante Marinović, 23 Mar 2006, T. 2509; Jasna Denona, 9 Feb 2006, T. 1279-1280, 1307.

E. Detention-related crimes

1. SJB in Titova Korenica

274. The SJB in Titova Korenica, which was subordinated to the SUP in Knin, was used as a detention facility.⁸³⁹ The facility consisted of three cells.⁸⁴⁰ At the facility, there were *Milicija Krajine* as well as persons in camouflage uniforms and JNA uniforms.⁸⁴¹

275. Vlado Vuković, a Croatian policeman, was detained at the SJB for approximately ten days together with Ignjac Ivanus, an SJB commander from Zagorje, and Nikola Pemper.⁸⁴² He was never informed why he was arrested and detained, rather his captors “would just say vulgar words and that the Republic of Croatia would cost us dearly”.⁸⁴³ On several occasions while detained at the SJB, Vlado Vuković was beaten by people who referred to themselves as “Martić’s men” and by people wearing camouflage uniforms and by “the JNA in olive-drab uniforms”.⁸⁴⁴ During the beatings, members of the *Milicija Krajine* were present but did nothing to stop the beatings.⁸⁴⁵ On one occasion, Vlado Vuković was cut on the face.⁸⁴⁶

276. The Trial Chamber has also received evidence of the detention of a Croat civilian named Milan Pavlić for about 15 days, and of Perica Bićanić and Ivica Bićanić, both members of the Poljanak civilian protection force, for nine months and one month, respectively. All three were severely mistreated at the SJB.⁸⁴⁷

⁸³⁹ Vlado Vuković, 27 Mar 2006, T. 2669; MM-096, 21 Aug 2006, T. 6829, 6831-6832. The Trial Chamber notes that prior to his detention in Titova Korenica, Vlado Vuković had been detained in the Plaški SJB, where he was mistreated and beaten by men who referred to themselves as “Martić’s men”(see Vlado Vuković, 27 Mar 2006, T. 2665-2667). However, the Trial Chamber notes that as the detention facility in Plaški SJB is not listed in paragraph 39 of the Indictment, it considers that the Defence was not put on notice of this detention. In this regard, the Trial Chamber recalls its finding regarding the interpretation of the Indictment. See *supra* section I C. See also Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 15-16; Ex. 1044, Map of Titova Korenica area.

⁸⁴⁰ Vlado Vuković, 27 Mar 2006, T. 2669-2670. Vlado Vuković was however not able to see whether there were other people detained in the other cells of the SJB, *ibid*.

⁸⁴¹ Vlado Vuković, 27 Mar 2006, T. 2669, 2712.

⁸⁴² Vlado Vuković, 27 Mar 2006, T. 2679, 2674. The Trial Chamber notes that there is no evidence that Nikola Pemper was mistreated at the Titova Korenica SJB.

⁸⁴³ Vlado Vuković, 27 Mar 2006, T. 2669, T. 2672, 2674.

⁸⁴⁴ Vlado Vuković, 27 Mar 2006, T. 2712-2713.

⁸⁴⁵ Vlado Vuković, 27 Mar 2006, T. 2671-2672.

⁸⁴⁶ Vlado Vuković, 27 Mar 2006, T. 2671-2672. Vlado Vuković was subsequently transferred to the Željeva military airport in Bihać where he was beaten by people wearing the uniforms of the Military Police. On 28 October 1991, Vlado Vuković was transferred to a hangar at the military training ground in Manjača, BiH. On 9 November 1991, he was exchanged in Slavonski and Bosanski Samac, Vlado Vuković, 27 Mar 2006, T. 2672-2674.

⁸⁴⁷ Marica Vuković, 22 Mar 2006, T. 2418-2419, 2422-2423, also testifying that Milan Pavlić sustained a broken nose and “a broken head”, and that Perica Bićanić lost approximately half his body weight and was very traumatised. The Trial Chamber notes the evidence of Ivan Grujić that between 1991 and 1995 there were 22 prisoners detained in “Plaški-Korenica” and 5 persons detained at “Korenica”, Ex. 300, p. 10. The Trial Chamber is unable to draw any conclusions based on Ivan Grujić’s evidence in this respect.

2. Detention facilities in Benkovac⁸⁴⁸

277. On 14 October 1991, Ivan Atelj and Šime Čačić were arrested in Zagrad by a member of the “Martić’s police” and taken to the SJB in Benkovac.⁸⁴⁹ While being questioned they were threatened and beaten. After 19 days of detention, Ivan Atelj and Šime Čačić were moved to the old hospital in Knin, in the latter’s case on the order of Milan Martić.⁸⁵⁰

278. Following the attack on Škabrnja on 18 November 1991, around 40 inhabitants, including the village guard Luka Brkić, the three children Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, were taken to a kindergarten in Benkovac across the street from the JNA barracks.⁸⁵¹ During the night, more people were brought there.⁸⁵² They were interrogated by JNA soldiers.⁸⁵³ The next morning, Tomislav Šegarić, Tomislav Gurlica and Marin Jurić were taken to the “communal store” in Biljani, northwest of Benkovac, where they were subjected to insults and threats all day by “Chetniks”.⁸⁵⁴ Toward the evening, they were driven back to the kindergarten; at that time the other detainees were gone.⁸⁵⁵ On 20 November 1991, they were released a short distance from the Croat village of Pristeg.⁸⁵⁶

3. Detention facilities in Knin

279. There were two detention facilities in Knin, one at the barracks of the JNA 9th Corps and one at the old hospital.⁸⁵⁷ The evidence shows that between 1991 and 1995, between 650 and 700 were detained in Knin.⁸⁵⁸

⁸⁴⁸ The Indictment does not refer to detention facilities in Benkovac specifically. However, the Trial Chamber notes that the Prosecution Pre-Trial Brief (para. 50) contains a reference to detention of the non-Serb male population in Benkovac and Knin. Moreover, the Trial Chamber notes that the 65 *ter* summaries of Neven Šegarić, Tomislav Šegarić and Luka Brkić refer to detention in Benkovac. Lastly, the Trial Chamber notes that the Defence called Witness MM-096 who testified, *inter alia*, about detention in the Benkovac SJB.

⁸⁴⁹ Ex. 959, pp 1-4. Witness MM-090 testified that Šime Čačić was “taken prisoner as a prisoner of war”, Witness MM-090, 4 Sep 2006, T. 7667. Immediately after their arrest, Ivan Atelj and Šime Čačić were beaten and a third person was shot in the leg. At the Benkovac SJB, Šime Čačić and Ivan Atelj were tied to a bench. They were questioned by Boško Dražić, the Chief of the Benkovac SJB, about Croatian army positions in Nadin and other places near Zadar, as well as weapons used by the Croatian army. Ivan Atelj was beaten after every question and he was also threatened with a knife to his throat. The detainees were beaten and kicked with boots, fists and wooden sticks in the face and other parts of the body. They were not allowed to wash despite their being covered in blood. Ivan Atelj named several persons as being involved in the beatings and interrogations, including Boško Dražić.

⁸⁵⁰ Ex. 959, p. 4; Ex. 529.

⁸⁵¹ Luka Brkić, 5 Apr 2006, T. 3225-3226, 3252, 7 Apr 2006, T. 3390; Tomislav Šegarić, Ex. 826, p. 4. The Trial Chamber notes that it heard hearsay evidence that a man named Davor Lukić was detained at the barracks in Benkovac or at the Benkovac SJB, Witness MM-096, 25 Aug 2006, T. 7179-7180.

⁸⁵² Tomislav Šegarić, Ex. 826, p. 4.

⁸⁵³ Tomislav Šegarić, Ex. 826, p. 4. Apart from the JNA soldiers, there were Serbs paramilitaries wearing different kinds of uniforms, including some with an insignia with four Cyrillic “S”. Tomislav Šegarić believes that most of them were local Serbs, Tomislav Šegarić, Ex. 826, pp 4-6.

⁸⁵⁴ One person held a knife to Tomislav Šegarić’s neck, Tomislav Šegarić, Ex. 826, pp 4-5.

⁸⁵⁵ Tomislav Šegarić, Ex. 826, p. 5.

⁸⁵⁶ Tomislav Šegarić, Ex. 826, p. 5.

⁸⁵⁷ Milan Babić, 20 Feb 2006, T. 1616; Ex. 8, p. 3; Mladen Lončar, 12 Jun 2006, T. 5435.

(a) Detention at the JNA 9th Corps barracks

280. The barracks of the JNA 9th Corps is a large complex, which includes several buildings, a heliport and some warehouses.⁸⁵⁹

281. On 19 November 1991, Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica were brought by truck to the JNA barracks in Knin by men wearing JNA uniforms.⁸⁶⁰ While they were taken to the barracks, they were beaten and verbally abused.⁸⁶¹

282. Luka Brkić was detained at various locations at the JNA barracks with between 8 and 17 people, ranging from 30 to 80 years old.⁸⁶² The detainees were severely beaten for at least twenty days.⁸⁶³ The detainees did not receive medical treatment,⁸⁶⁴ there was insufficient food and water,⁸⁶⁵ and there were no sanitary facilities.⁸⁶⁶

283. Luka Brkić was also detained at the sports hall of the barracks with between 75 and 200 people, mostly Croats.⁸⁶⁷ The detainees were occasionally severely beaten.⁸⁶⁸ There were limited sanitary facilities and a 200-litre barrel next to the door that was used to urinate in.⁸⁶⁹ Ratko Mladić, the then-Commander of the 9th Corps, twice visited the detainees at the sports hall.⁸⁷⁰ Ratko Mladić taunted them, saying “if you don't do what you are told [...] your fate will be the same as the fate of the inhabitants from Škabrnja.”⁸⁷¹ The detainees were “displayed as Ustashas” and made to “take an oath for the King and the fatherland, the Serbian fatherland”.⁸⁷²

⁸⁵⁸ Ex. 300, p. 10; Ex. 008, p. 3. See also Mladen Lončar, 12 Jun 2006, T. 5435, Ex. 841, pp 92-93; Ex. 922, p. 15.

⁸⁵⁹ Luka Brkić, 5 Apr 2006, T. 3266-3267. See also Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 3-17.

⁸⁶⁰ Luka Brkić, 5 Apr 2006, T. 3264-3266.

⁸⁶¹ Luka Brkić, 5 Apr 2006, T. 3264.

⁸⁶² Luka Brkić, 5 Apr 2006, T. 3251, 3264, 3268-3269, 3289, 7 Apr 2006, T. 3407; Ex. 286; Ex. 287. The Trial Chamber notes among others Ante “Neno” Gurlica, Marin Gurlica, a civilian named Petar Gurlica, and a man named Jero/Jere Misković, who was born 1912.

⁸⁶³ Luka Brkić, 5 Apr 2006, T. 3271-3272: “In those rooms they beat us severely. I couldn't stand up. So somebody could help me stand up. If I was lying down, I couldn't stand up. If I was sitting, I couldn't get up from the chair. There was a vet who was there for 15 days. He couldn't sleep, so he helped me. For 20 days I slept standing up. If I lied down, I couldn't stand up. Everything was wet on the ground. It would freeze. So it was very difficult”. Then they were taken to another location on the premises of the barracks, where they were beaten, Luka Brkić, 5 Apr 2006, T. 3267.

⁸⁶⁴ Luka Brkić, 5 Apr 2006, T. 3269, 3272, testifying also that Jere Misković had a bad leg: “His leg was falling apart. He had thrombosis.”

⁸⁶⁵ Luka Brkić, 5 Apr 2006, T. 3270-3271, testifying that during the first three days, they did not receive any water, that the amount of drinking water they later received was limited, and that they did not have any water to wash themselves.

⁸⁶⁶ Luka Brkić, 5 Apr 2006, T. 3270, testifying that they tore up a coat that belonged to Petar Gurlica and used it as toilet paper, that the detainees used a 30-litre bucket instead of a bathroom, and that some persons who were in a state of delirium defecated next to the door and other detainees had to clean up after them. The detained were provided with one blanket each and had to sleep on the concrete floor, *ibid*.

⁸⁶⁷ Luka Brkić, 5 Apr 2006, T. 3272, 3274, 7 Apr 2006, T. 3430-3431.

⁸⁶⁸ Luka Brkić, 5 Apr 2006, T. 3272, 3274-3275.

⁸⁶⁹ Luka Brkić, 5 Apr 2006, T. 3274-3275.

⁸⁷⁰ Luka Brkić, 5 Apr 2006, T. 3274-3275.

⁸⁷¹ Luka Brkić, 5 Apr 2006, T. 3275.

⁸⁷² Luka Brkić, 5 Apr 2006, T. 3264, 3267-3268.

284. While being detained in the JNA barracks, in addition to JNA soldiers, Luka Brkić saw soldiers wearing SAO Krajina insignia and the White Eagles (“*Beli Orlovi*”) insignia.⁸⁷³

(b) Detention facility at the old hospital in Knin

285. In early 1991, a detention facility was established on the premises of the old hospital in the centre of Knin.⁸⁷⁴ This facility was sometimes referred to as “Martić’s prison” and the “District Prison”.⁸⁷⁵ A section of the hospital was used as a dormitory by “Captain Dragan’s men and members of the JNA reserve force”.⁸⁷⁶ From the summer of 1991, the Ministry of Justice of the SAO Krajina took over control of the old hospital from the TO and hired professional guards.⁸⁷⁷ On 28 September 1992, the Assembly of the RSK formally established the District Prison in Knin.⁸⁷⁸

286. On 2 October 1991, Stanko Erstić was arrested in Medvida near Bruška by the *Milicija Krajine* and brought to the old hospital in Knin.⁸⁷⁹ He was detained with another 120 prisoners, all non-Serbs from Croat or mixed villages in the Krajina region.⁸⁸⁰ Except for 20 members of the ZNG who had been captured during the fighting in Kijevo, all detainees were Croat civilians.⁸⁸¹ He was detained in a room with approximately 12 people.⁸⁸² In his view, “all the guards were paramilitary and part of ‘Martić’s militia’”.⁸⁸³ He testified to having seen Ratko Mladić at the old hospital.⁸⁸⁴ On 2 November, Stanko Erstić and approximately 100 non-Serb prisoners were exchanged for approximately 60 Serb prisoners.⁸⁸⁵ Twenty Croats from Lika remained in the prison.⁸⁸⁶ Members of “Special Military Police Unit”, dressed in JNA uniforms, took them to the

⁸⁷³ Luka Brkić, 5 Apr 2006, T. 3243-3244, 3273, 7 Apr 2006, T. 3407. Later on, Luka Brkić heard that “there were all sorts of people there; Martić’s men and others”, *id.* at T. 3407.

⁸⁷⁴ Witness MM-090, 29 Aug 2006, T. 7382-7383, 30 Aug 2006, T. 7428-7429; Luka Brkić, 5 Apr 2006, T. 3277, 3283. The establishment took several months, Witness MM-090, 29 Aug 2006, T. 7381. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 3, pp 20-67 and DVD 4, pp 1-3.

⁸⁷⁵ Luka Brkić, 5 Apr 2006, T. 3276-3277, 7 Apr 2006, T. 3408; Witness MM-90, 30 Aug 2006, T. 7428; Stevo Plejo, 20 Sep 2006, T. 8724.

⁸⁷⁶ Stanko Erstić, Ex. 392, T. 24972; Stevo Plejo, 22 Sep 2006, T. 8900.

⁸⁷⁷ Stevo Plejo, 20 Sep 2006, T. 8725; Witness MM-090, 4 Sep 2006, T. 7658-7659; Milan Babić, 20 Feb 2006, T. 1612-1613. *See also* Ex. 906. As of 17 August 1991, a total of 15 people were employed at the old hospital, Ex. 906, pp 10-19. By October 1992, approximately 30 people were listed as employees of the prison, Ex. 903. The 15 people who started work on 17 August 1991 were all still employed at that time, Ex. 923, pp 1-2, 7.

⁸⁷⁸ Ex. 906, pp 10-19; Ex. 923, pp 1-2.

⁸⁷⁹ Stanko Erstić, 26 Apr 2006, T. 3873, 3875-3877; Ex. 396, p. 3.

⁸⁸⁰ Stanko Erstić, 26 Apr 2006, T. 3874; Stanko Erstić, Ex. 396, p. 4; Stanko Erstić, Ex. 392, T. 24996-24997.

⁸⁸¹ Stanko Erstić, Ex. 396, p. 4; Stanko Erstić, Ex. 392, T. 24996. After the establishment of the Prisoner Exchange Commission, the JNA would bring prisoners of war to be temporarily held at the old hospital until the time of their exchange, Witness MM-090, 4 Sep 2006, T. 7674-7675. Ivan Atelj shared his cell with Denis Drča, a Serb who was beaten and accused of being a “Serbian traitor”, Ex. 959, p. 5.

⁸⁸² Stanko Erstić, Ex. 392, T. 24980.

⁸⁸³ Stanko Erstić, Ex. 396, p. 3.

⁸⁸⁴ Stanko Erstić, Ex. 396, p. 3; Stanko Erstić, Ex. 392, T. 24972.

⁸⁸⁵ Stanko Erstić, 26 Apr 2006, T. 3874-3875, Ex. 392, T. 24973; Ex. 959, pp 4-5. The Trial Chamber notes that Stevo Plejo has disputed the veracity of this document, Stevo Plejo, 22 Sep 2006, T. 8884. The Trial Chamber notes that this document contains an Official Note which was written on 3 May 1992 and that much of the information therein is corroborated by other evidence.

⁸⁸⁶ Stanko Erstić, Ex. 392, T. 24982.

JNA barracks in Knin, where they were loaded onto buses. Afterwards they were driven to Pakovo Selo where buses from the Croatian side picked them up.⁸⁸⁷

287. Luka Brkić was brought to the old hospital from the JNA barracks in Knin.⁸⁸⁸ In his opinion, “it was the police or the army who operated there.”⁸⁸⁹ He also saw another 30 prisoners brought to the old hospital the day he arrived.⁸⁹⁰ Luka Brkić was detained in a small room together with nine people.⁸⁹¹ After approximately 12 days, he was transferred to the ground floor of another wing of the old hospital, which was under the control of the JNA. There, he joined the people who had initially been detained with him at the JNA 9th Corps barracks.⁸⁹²

288. The detainees were threatened and beaten every day for long periods, often by several guards at a time using rifle butts, truncheons, and wooden staves.⁸⁹³ The detainees were interrogated and also beaten by shift commanders.⁸⁹⁴ The detainees also had cocked revolvers pressed against their temples, were beaten on their kidneys until they were swollen, and were denied the use of toilet facilities.⁸⁹⁵ They were forced to drink urine and to clean toilets with their bare hands.⁸⁹⁶ They had their heads forced into toilets.⁸⁹⁷ They also had their personal belongings stolen.⁸⁹⁸ There is evidence of sexual abuse of some detainees⁸⁹⁹ and that detainees were subjected to sleep deprivation.⁹⁰⁰ There was insufficient food.⁹⁰¹ The detainees were verbally abused by the guards, who said things like “the Croatian nation has to be destroyed”, “all Croats have to be killed; Split and Zadar are burning, Šibenik will burn as well”.⁹⁰² On one occasion, Vojislav Šešelj visited the old hospital and insulted the detainees, asking them “how many Serbian children they slaughtered, how many mothers”.⁹⁰³

⁸⁸⁷ Stanko Erstić, Ex. 392, T. 24972-24973, 26 Apr 2006, T. 3874-3875.

⁸⁸⁸ Luka Brkić, 5 Apr 2006, T. 3252, 3266, 3276-3277, 7 Apr 2006, T. 3390, 3408.

⁸⁸⁹ Luka Brkić, 7 Apr 2006, T. 3439.

⁸⁹⁰ Luka Brkić, 5 Apr 2006, T. 3279-3280, 3285. *See also* Ex. 518, p. 4; Ex. 286.

⁸⁹¹ Luka Brkić, 5 Apr 2006, T. 3279, 7 Apr 2006, T. 3438.

⁸⁹² Luka Brkić, 5 Apr 2006, T. 3282-3283.

⁸⁹³ Stanko Erstić, Ex. 392, T. 24971, 24980, 24983; Ex. 959, p. 5. Luka Brkić, 5 Apr 2006, T. 3280-3281, testifying that he was dragged into the hallway several times, where he was beaten by four or five men and that the beatings became more frequent as it became known that the detainees were going to be exchanged.

⁸⁹⁴ Ex. 959, p. 5. *See also* Ex. 919, under number 209 H; Ex. 286, p. 1; Ex. 287, p. 1.

⁸⁹⁵ Ex. 984, pp 23-24.

⁸⁹⁶ Ex. 984, pp 23-24.

⁸⁹⁷ Ex. 984, pp 23-24.

⁸⁹⁸ Ex. 984, pp 23-24.

⁸⁹⁹ Former detainees reported that detainees were sexually abused through forced mutual oral sex or oral sex with prison guards, and mutual masturbation, Ex. 984, p. 24. *See also* Luka Brkić 5 Apr 2006, T. 3283, testifying that he heard that there had been attempts to rape men in the room next to his.

⁹⁰⁰ Ex. 392, T. 24980, 24983; Ex. 959, p. 5; Ex. 984, pp 23-24.

⁹⁰¹ Stanko Erstić, Ex. 392, T. 24980, 24983; Ex. 959, p. 5; Ex. 984, p. 23-24 (reporting that detainees had inadequate food, being fed only three eggs a day and that one former detainee lost over twenty kilograms during his detention).

⁹⁰² Stanko Erstić, Ex. 396, p. 4.

⁹⁰³ Ex. 959, p. 7.

289. “Martić’s police”, wearing blue uniforms, carried out beatings together with people in camouflage uniforms.⁹⁰⁴ Ivan Atelj, who was also detained and beaten at the old hospital, stated that while Stevo Plejo and Jovica Novaković were in charge of the old hospital prison, they “allowed beatings of prisoners by civilians, Serbian prisoners, ‘Martić’s Special Forces members’ and all others who wanted to beat them.”⁹⁰⁵

290. From his mistreatment in detention, Luka Brkić sustained permanent injuries to his stomach and contracted Hepatitis B. He is still receiving medical treatment.⁹⁰⁶ Stanko Erstić sustained two broken ribs and one cracked rib, while Ivan Atelj sustained three broken ribs and injuries to his spine.⁹⁰⁷

291. On at least one occasion the leadership of the prison was informed that detainees had been mistreated by guards. Disciplinary measures were taken against the responsible guards.⁹⁰⁸ However, the guards were not removed from the prison but were only suspended and reinstated later.⁹⁰⁹

292. The International Committee of the Red Cross (“ICRC”) was allowed to visit the detainees at the old hospital.⁹¹⁰ During the visits, some prisoners did not dare to tell the ICRC representatives that they were being beaten, for fear of being “really beaten up”. The detainees who had been badly beaten and seriously injured were transferred to other rooms where the ICRC representatives could not visit them.⁹¹¹

293. As of August 1991, any detainee held at the old hospital was supposed to be detained on the basis of a decision by a judge.⁹¹² There is no evidence that Luka Brkić or Stanko Erstić were ever charged with any crime or that they were brought before a judge or military panel to assess the legality of their detention. However, Ivan Atelj stated that he was charged and that the indictment

⁹⁰⁴ Luka Brkić, 5 Apr 2006, T. 3280-3283, also testifying that a member of the “Martić’s police” was the most violent during the beatings. Luka Brkić knew some of the members of the “Martić’s police”. He specifically mentions the “Grahovac brothers from Smiljčići”, Djuro from Plavno and Momir Čupač, *ibid.* The Trial Chamber further notes that a Kazimir Graovac from Smiljčići is listed on Ex. 906, Employee list old hospital May 1993, p. 13. The Trial Chamber notes that Momo Čupač and Kazimir Grahovac are mentioned as guards at the prison by Ivan Atelj, Ex. 959, p. 6.

⁹⁰⁵ Ex. 959, p. 5. Although Stevo Plejo testified that as soon as professional guards started working in the old hospital, they were able to prevent anyone entering the prison, Stevo Plejo, 21 Sep 2006, T. 8811. The Trial Chamber does not find this piece of testimony credible in light of the surrounding evidence. *See also* Luka Brkić, 5 Apr 2006, T. 3280-3281, testifying that people came from outside of the old hospital to beat detainees.

⁹⁰⁶ Luka Brkić, 5 Apr 2006, T. 3291.

⁹⁰⁷ Stanko Erstić, Ex. 392, T. 24971; Ex. 959, p. 5.

⁹⁰⁸ Witness MM-090, 29 Aug 2006, T. 7386-7387, 30 Aug 2006, T. 7432; Stevo Plejo, 20 Sep 2006, T. 8735-8737.

⁹⁰⁹ Stevo Plejo, 22 Sep 2006, T. 8849-8850. Stevo Plejo testified that he had asked Risto Matković, the then-Minister of Justice, to replace Jovica Novaković because Novaković had been present when guards were “slapping [prisoners] about in his presence” and had done nothing about that. Jovica Novaković was suspended and later reinstated in a lower position. Stevo Plejo, 20 Sep 2006, T. 8730-8733, 8742; Ex. 905; Ex. 923.

⁹¹⁰ Stanko Erstić, Ex. 392, T. 24981; Stevo Plejo, 20 Sep 2006, T. 8737-8738; Witness MM-090, 29 Aug 2006, T. 7386-7387.

⁹¹¹ Stanko Erstić, Ex. 392, T. 24981, 25000.

⁹¹² Witness MM-090, 4 Sep 2006, T. 7674-7675.

was presented to him verbally, but he was not brought before a judge.⁹¹³ Denis Drča, the Serb cell-mate of Ivan Atelj, was released on 11 February 1992, by a decision of the Knin District Court.⁹¹⁴ Out of approximately 300 detainees at the old hospital between mid-1991 and mid-1992, only 13 people were released upon the decision of a court.⁹¹⁵

294. In October 1991, Milan Martić was seen in the prison wearing a camouflage uniform with the insignia of the *Milicija Krajine*.⁹¹⁶

F. Crimes of deportation and forcible transfer

295. In addition to evidence of displacement of the Croat population in the SAO Krajina and RSK discussed above, the Trial Chamber notes the following evidence concerning deportation and forcible transfer.⁹¹⁷

296. Beginning in 1990, Croat businesses and properties were blown up in Knin and there was constant pressure on the local Croat population.⁹¹⁸ From around April 1991, discriminatory policies were applied against Croats, and Croat houses in the Knin area were searched for weapons.⁹¹⁹ Following the fighting in the Hrvatska Kostajnica, Knin and Glina areas in August 1991, Croat civilians began to leave their homes to go to Zagreb, Sisak and other places.⁹²⁰

297. Due to the situation prevailing in the Knin area, the Croat population began to fear for their safety and began requesting authorisation from the RSK authorities to leave the RSK territory.⁹²¹ The insecurity of the Croats was also aggravated by speeches of Milan Martić on the radio that he could not guarantee their safety, particularly in the area of Knin.⁹²² As a result, in the period between 1992 and 1993 the RSK police directed the Croat population towards Croat settlements

⁹¹³ Ex. 959, p. 7.

⁹¹⁴ Ex. 919, under no. 240 S.

⁹¹⁵ Ex. 919, also providing that one detainee was handed over to the Military Police on orders of the Public Prosecutor, *ibid.*, under nr. 202 S. *See also* Ex. 895, pp 10-11, a Human Rights Watch Report, according to which in August 1991 the Knin prison held 51 prisoners to be exchanged and none of whom had been charged or provided with a defence attorney.

⁹¹⁶ Stanko Erstić, 26 Apr 2006, T. 3869-3870. In this respect, the Trial Chamber recalls the evidence that on 12 December 1991, a meeting was held between Milan Martić and chiefs of SJBs during which it was mentioned that in “Krajina prisons in Korenica, Glina, Vrgin Most, Slunj and Knin” there were 128 persons detained, mostly members of the ZNG and the Croatian MUP, Ex. 518, p. 4 (report signed by Milan Martić).

⁹¹⁷ *See supra* paras 167, 177, 180, 186, 189, 202, 209, 212, 222, 228, 236-237, 239, 242.

⁹¹⁸ Witness MM-078, 24 May 2006, T. 4461-4462.

⁹¹⁹ Milan Babić, 16 Feb 2006, T. 1418; Witness MM-078, 24 May 2006, T. 4461-4462, 25 May 2006, T. 4521; *See also* Witness MM-096, 24 Aug 2006, T. 7067, 7072-7073.

⁹²⁰ Nikola Dobrijević, 13 Nov 2006, T. 10977; Ex. 1017 (providing that in August 1991 there were 650 displaced people in Zagreb who were mostly from Glina and Knin, that most people from Glina had gone to Velica Gorica, that all of Kostajnica had been “evacuated” and some 2,500 had fled to Bosanski Novi and to Zagreb). *See also* Milan Babić, 17 Feb 2006, T. 1572-1574, 20 Feb 2006, T. 1598.

⁹²¹ Witness MM-117, 13 Oct 2006, T. 9399

⁹²² Witness MM-078, 25 May 2006, T. 4518.

near Knin, such as Vrpolje and Kninsko Polje.⁹²³ In Vrpolje, which was five kilometres north of Knin, a cultural centre was used as a gathering point for Croats, who had requested authorisation to leave the RSK.⁹²⁴ The Knin police secured the area at the cultural centre.⁹²⁵ The conditions there were poor and the Croats were not free to leave but had to wait for an agreement to be reached between the RSK Government, international organisations and the Croatian authorities before they could be transferred.⁹²⁶ The police from Knin organised and escorted bus convoys from Vrpolje to Šibenik and across Lika to Karlobag.⁹²⁷

298. A decision on the conditions upon which Croats and other nationalities could return to the RSK was adopted by the RSK government on 21 April 1992.⁹²⁸ However, in September 1992, UNPROFOR reported that “it might be unrealistic to carry out any return [of displaced persons] in the forthcoming future” due to the likelihood of hostile acts being carried out against returning Croats.⁹²⁹

299. There is considerable evidence that similar displacement of the Croat population as a result of harassment and intimidation occurred elsewhere in the SAO Krajina, and subsequently RSK, territory and continued until the end of 1994.⁹³⁰ The evidence shows that harassment and

⁹²³ Milan Babić, 20 Feb 2006, T. 1646-1647; Ex. 897 (providing that “local Milicija” guarded residents of the village of Vrpolje, who had been forced to leave their homes and that the Milicija had three buses to transport the Croats to territories under Croatian control but that this had not been done as confirmation had not been received that the Croatian side was ready to receive them). *See also* Witness MM-096, 25 Aug 2006, T. 7153.

⁹²⁴ Milan Babić, 20 Feb 2006, T. 1647; MM-078, 24 May 2006, T. 4460-4461. Croats would travel to Vrpolje in their own vehicles and were accommodated at the cultural centre for up to three days, Witness MM-078, 24 May 2006, T. 4460-4461, 25 May 2006, T. 4545-4546, 4468; Ex. 729 (providing that Vrpolje was a “safe haven” for the Croats). *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 4, pp 27-31; Ex. 1044.

⁹²⁵ Witness MM-078, 25 May 2006, T. 4465, 4519-4520 (also testifying that the police assisted the Croats in leaving the RSK, *ibid.*, T. 4465). *See also* Witness MM-117, 13 Oct 2006, T. 9399.

⁹²⁶ Witness MM-078, 25 May 2006, T. 4468 (testifying that the Croats were provided with blankets and only small quantities of food).

⁹²⁷ Witness MM-078, 25 May 2006, T. 4468.

⁹²⁸ Ex. 758; Charles Kirudja, 31 May 2006, T. 4872-4873.

⁹²⁹ Ex. 731, p. 3.

⁹³⁰ Witness MM-078, 24 May 2006, T. 4460-4461, 25 May 2006, T. 4466; Witness MM-096, 22 Aug 2006, T. 6914-6917 (testifying that Croats, who were afraid for their lives, were put up in schools and other public buildings in Benkovac by the municipality Crisis Staff which organised a convoy that was escorted by the RSK police until the confrontation line in Zemunik); Milan Babić, 20 Feb 2006, T. 1598; Ex. 551, p. 1 (providing that by April 1992 there were almost no Croats left in Glina); Ex. 726 (listing in summary form 497 crimes committed against the Croat population in Sector South and reporting on five instances of forced evictions of Croats and subsequent transfer to Croatia of one of the victims); Ex. 729, p. 1 (providing that over 100 Croats had left their homes in the Medvida area and were living in caves, fields and forests, that around 50 Croats had filed requests with the civil police in Drniš to leave); Ex. 736 (providing that 10 Croats were transferred from Medvida to the Croat side on 2 October 1992, that 16 Croats were transferred to the Croat side on 16 October 1992 from Medvida Kruševo and Obrovac and that during one month 155 applications to leave the RSK territory had been received in Benkovac); Ex. 761 (reporting on the expulsion of 5 Croats from Ličko Petrovo Selo, dated 16 July 1992, *see also* Charles Kirudja, 31 May 2006, T. 4879-4880); Ex. 762, p. 3 (reporting the expulsion by “a group of uniformed persons” of 12 Croats from the village Korana in the municipality of Korenica, *see also* Charles Kirudja, 31 May 2006, T. 4882-4883); Ex. 865, p. 25 (reporting that before being granted permission to leave Sector South the Croats were forced to sign a statement that their departure was voluntary); Ex. 971, p. 3 (providing that 16 persons from Podlapac had expressed a wish to be transferred to Croatia); Ex. 985, pp 4-5 (reporting that Croat families were gathered from their houses and transported by bus to areas outside the UNPAs). *See also* Ex. 75, p. 5 (reporting that the non-Serb population in Sector North was “very small”).

intimidation of the Croat population was carried out on a large scale by the police and by local Serbs in the territory.⁹³¹ On 14 June 1993, Milan Martić met with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, concerning, *inter alia*, the issue of Croats who wanted to leave the RSK. During the meeting, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave and that these statements bear the signature of either Cedric Thornberry or another United Nations representative. Cedric Thornberry agreed to these requests.⁹³²

300. The RSK authorities cooperated with the authorities in Bosanski Novi, BiH, regarding the displacement of the non-Serb population from that municipality.⁹³³ There is evidence that the RSK MUP was to be involved in providing security for an organised “safe departure” of Muslims and other non-Serbs in the direction of Croatia, Slovenia, Austria, and Germany in July 1992.⁹³⁴

301. In June 1993, the RSK population was 433,595 citizens, the ethnic break-down of which was 92% Serbs, 7% Croats and 2% others.⁹³⁵ The Prosecution expert Ivan Grujić testified that 220,338 persons of non-Serb ethnicity were forcibly expelled “in the aggression against the Republic of Croatia”.⁹³⁶ Ivan Grujić was unable to explain with certainty how many of these persons were expelled from the territories which comprised the SAO Krajina and later the RSK.⁹³⁷ The Trial Chamber therefore finds that it cannot rely on the evidence of Ivan Grujić to determine

⁹³¹ Witness MM-079, 3 Apr 2006, T. 3111 (testifying that “[s]everal people said that Martić’s policemen went door-to-door telling people to leave Knin, that is the SAO Krajina”); John McElligott, 26 May 2006, T. 4581, 4614-4615; Ex. 728, p. 3 (providing also that in the month of October 1992 five Croats were murdered and that houses vacated by Croats have been burned down); Ex. 731 (reporting that “the Serb side” is building up a climate of threat and fear of aggression out of ongoing incidents, that the “[Militia] is expanding ethnic cleansing systematically”, and that the “Serb side” warned against returning Croats without RSK consent because “the recent acts against Croats here can be considered as indication of what would happen on larger scale”); Ex. 732 (listing incidents of murder, destruction and intimidation of Croats in the Benkovac, Borovac, and Knin areas by the local police); Ex. 734 (letter reporting on beating and robbing of elderly and helpless people in the Vrlika area by members of the “Militia”); Ex. 736 (listing a number of incidents of violence, including murders, theft and destruction, aimed at Croats in Korenica, Zaluznica, Knin, Vrlika, Benkovac); Ex. 738 (providing that many Croats wanted to leave the UNPA due to not feeling safe); Ex. 757, p. 3 (providing that in Sector North by July 1992 about 22,000 Croats were listed as “Missing/Displaced”). *See also* Ex. 75; Ex. 866; Ex. 985.

⁹³² Ex. 965, p. 8.

⁹³³ Ex. 752; Ex. 753; Ex. 754; Ex. 755; Ex. 756; Ex. 757, p. 7. Charles Kirudja testified that during the first organised convoy directed to Croatia, up to 8,000 Bosnian Muslims were expelled. He explained that the Muslims were not leaving voluntarily, Charles Kirudja, 31 May 2006, T. 4849, 4857-4863, 4871.

⁹³⁴ Ex. 754.

⁹³⁵ Ex. 178, ERN 0113-2359. This is further broken down by area (Eastern Slavonia, Western Srem and Baranja: 95% Serbs, 4% Croats, 1% others, Banija: 97% Serbs, 2% Croats, 1% others, Kordun: 98% Serbs, 2% Croats, Lika: 93% Serbs, 5% Croats, 2% others, Northern Dalmatia: 90% Serbs, 10% Croats, and Western Slavonia: 73% Serbs, 25% Croats, 2% others), *see* ERN 0113-2360. Witness MM-096 testified that by 1994 “quite a lot of inhabitants had left the territory of the RSK”, 25 Aug 2006, T. 7139. *See also* Witness MM-090, 4 Sep 2006, T. 7703-7704.

⁹³⁶ Ex. 291, pp 18-19.

⁹³⁷ Ivan Grujić, 12 Apr 2006, T. 3597, testifying that he provided the Trial Chamber “with numbers that apply to the existing, current division into counties [in Croatia]” and “basically it covers [the SAO Krajina] municipalities as well. Counties were partly occupied, and the people recorded as expelled were expelled solely from these occupied territories.”

the exact number of persons of Croat and other non-Serb ethnicities who left the territory of the SAO Krajina and RSK during the period of the Indictment.

G. Attacks on Zagreb on 2 and 3 May 1995

1. “Operation Flash”

302. In the early morning hours of 1 May 1995, armed forces of Croatia launched a military offensive known as Operation Flash.⁹³⁸ The Trial Chamber has been provided conflicting evidence as to the purpose of this operation. There is evidence that the purpose was to take control over Western Slavonia (Sector West).⁹³⁹ There is evidence that the operation was Croatia’s response to Milan Martić’s decision to close the Zagreb-Belgrade motorway.⁹⁴⁰ There is also evidence that Croatia planned its attack long before the closure.⁹⁴¹ Two Croatian guard brigades, one regular HV brigade, and special police forces were involved in the operation.⁹⁴² Negotiations to find a peaceful settlement took place during the operation,⁹⁴³ and agreements were reached on 3 May 1995.⁹⁴⁴ Operation Flash ended around 4 May 1995 with the RSK losing control over Western Slavonia.⁹⁴⁵ A large part of the Serb population fled the area of Western Slavonia.⁹⁴⁶

⁹³⁸ Veljko Džakula, 16 Jan 2006, T. 381; Milan Babić, 21 Feb 2006, T. 1659; Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 26 Oct 2006, T. 10082.

⁹³⁹ Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 25 Oct 2006, T. 10058. *See also* Ex. 99, p. 6.

⁹⁴⁰ Milan Babić, 21 Feb 2006, T. 1660-1661; Peter Galbraith, 25 Apr 2006, T. 3805-3806; Ex. 933, p. 5. On 28 April 1995, a Serb was killed at one of the rest areas on the motorway just outside Sector West, and in retaliation local Serbs fired on motorists inside that Sector and Milan Martić decided to close down the motorway. Peter Galbraith, 25 Apr 2006, T. 3805-3806; Mile Dakić, 25 Oct 2006, T. 10058; Ex. 933, p. 2; Ex. 99, p. 4. Milan Babić stated that during negotiations it was already agreed that the motorway would be reopened, but Milan Martić discarded that possibility and said he would not allow that to happen, Milan Babić, 21 Feb 2006, T. 1667. Documentary evidence presented to the Trial Chamber corroborated Milan Martić’s refusal to open the motorway even though it was ready to be reopened, Ex. 789, p. 5; Ex. 233, intercepted telephone conversation, p. 5 (Ex. 789 and Ex. 233 are the same intercepted conversation); Ex. 99, p. 5.

⁹⁴¹ In his book titled “All My Battles”, Janko Bobetko, Chief of the Main Staff of the Croatian Army during Operation Flash, wrote that the initial operation was planned on 5 December 1994 and completed on 4 May 1995 as part of the overall plan of preparations for the final operations by the Croatian Army of what would later become “Operation Storm”, Ex. 931, pp 8, 9-12, 17; Slobodan Perić, 6 Sep 2006, T. 7846-7847, 7849. *See also* Ex. 933, p. 27; Ex. 934, pp 1-3. The Croatian military command warned UNPROFOR in advance about the Operation, during the morning of 1 May 1995, Reynaud Theunens, 3 Feb 2006, T. 1087; Slobodan Perić, 6 Sep 2006, T. 7845; Ex. 930.

⁹⁴² Reynaud Theunens, 3 Feb 2006, T. 1081.

⁹⁴³ Witness MM-117, 13 Oct 2006, T. 9402-9403. The Serb delegation asked for a cessation of hostilities to become effective immediately at midnight on 1 May 1995, but this was rejected by the Croatian side, Witness MM-117, 13 Oct 2006, T. 9406.

⁹⁴⁴ On 3 May 1995, members of the international community met in Knin to agree on the text of the agreement which was accepted by both the Serbs and the Croats that same day, Witness MM-117, 13 Oct 2006, T. 9408-9409. It was agreed that military activities would cease and thereafter UNPROFOR forces would be in a position to act in the area, Witness MM-117, 17 Oct 2006, T. 9596. On 3 May the Serbian delegation in Geneva accepted the entire offer of the international community for the resolution of the crisis in the relations between the Republic of the Serbian Krajina and Croatia, Witness MM-117, 18 Oct 2006, T. 9650-9651. *See also* Ex. 112; Ex. 935.

⁹⁴⁵ Milan Babić, 21 Feb, 2006, T. 1660-1661; Veljko Džakula, 18 Jan 2006, T. 568; Peter Galbraith, 25 Apr 2006, T. 3820; Slobodan Perić, 6 Sep 2006, T. 7848. *See also* Ex. 99, p. 14; Ex. 112.

⁹⁴⁶ Witness MM-117, 13 Oct 2006, T. 9401-9402; Reynaud Theunens, 3 Feb 2006, T. 1097; Ex. 99, p. 14. According to Witness MM-003 the entire Serb population was expelled from Western Slavonia, Witness MM-003, 10 Mar 2006, T. 2170-2171. Slobodan Perić stated that 20,000 people left the area, Slobodan Perić, 6 Sep 2006, T. 7866. *See also* Veljko

2. Shelling of Zagreb

(a) 1 May 1995 – Preparation for attack

303. On 1 May 1995, a meeting was held between, *inter alia*, Milan Martić, the Chief of the SVK Main Staff General Milan Čeleketić, the Prime Minister and ministers of the RSK government. The meeting concerned the proposal of the Supreme Defence Council to deal with the situation which had arisen in Western Slavonia resulting from Operation Flash during the morning that day. The evidence shows that both peaceful solutions, involving negotiations and a surrender of parts of Western Slavonia, and non-peaceful solutions were discussed and that Milan Martić, Milan Čeleketić and the most senior officers of the SVK Main Staff were in favour of the latter.⁹⁴⁷ At 1300 hours on 1 May 1995, Milan Čeleketić, in the presence of *inter alia* Milan Martić, ordered artillery fire on Sisak, south-east of Zagreb.⁹⁴⁸ The evidence shows that the reason for the attack was “to retaliate against the HV who had carried out an aggression on the Western Slavonia.”⁹⁴⁹ Artillery fire was opened at 1700 on 1 May 1995.⁹⁵⁰

304. On 1 May 1995, Milan Čeleketić ordered the M-87 Orkan unit of the SVK to “be alert and ready for engagement on [his] order” and directed them to march from the Knin area to take up positions in Vojnić, 50 kilometres south of Zagreb, by 1400 hours that day.⁹⁵¹

(b) 2 May 1995

305. In the mid-morning on 2 May 1995,⁹⁵² without warning,⁹⁵³ Orkan rockets hit Zagreb.⁹⁵⁴ Rockets struck the centre of the city, including: Strossmayer Square, Matica Hrvatska Street,

Džakula, 18 Jan 2006, T. 571-572 (testifying that there were about 1,250 victims); Ivan Grujić, 12 Apr 2006, T. 3633 (that 168 persons were killed during Operation Flash); Rade Rašeta, 3 May 2006, T. 3970-3971 (testifying that there were about 100 victims); Slobodan Perić, 6 Sep 2006, T. 7866, 7 Sep 2006, T. 7947-7948 (testifying that the number of identified victims was 284, including 77 elderly, 30 women and 10 children but that the total number of killed during Operation Flash was 1,200).

⁹⁴⁷ Rade Rašeta, 2 May 2006, T. 3932-3933, 3940; Ex. 95.

⁹⁴⁸ Rade Rašeta, 2 May 2006, T. 3930-3931; Ex. 93 provides that “members of the Supreme Defence Council” were present when the order was given. However, Rade Rašeta, who was present, testified that it was a meeting of Milan Čeleketić and his closest associates, his “collegium”, Rade Rašeta, 2 May 2006, T. 3930. Milan Čeleketić was appointed Commander of the Main Staff of the SVK by Milan Martić on 22 February 1994, Ex. 80; Ex. 83.

⁹⁴⁹ Ex. 93.

⁹⁵⁰ Ex. 93.

⁹⁵¹ Ex. 92. The M-87 Orkan is a self-propelled long-range multiple rocket launching system, Ex. 7, p. 38; Jožef Poje, 6 Jun 2006, T. 5123. *See infra* section IV B 4 (b). In 1995, the Orkan rocket launchers were subordinated to Commander Lieutenant General Čeleketić, as Chief of the Main Staff of the SVK, Rade Rašeta, 2 May 2006, T. 3935; Jožef Poje, 6 Jun 2006, T. 5110-5111. The evidence also shows that the use of the Orkan was subject to the approval of the commander of the Main Staff of the SVK, Jožef Poje, 6 Jun 2006, T. 5112-5113; Ex. 781, p. 11, p. 25; Ex. 780, p. 13; Ex. 7, pp 62-63.

⁹⁵² Peter Galbraith, 25 Apr 2006, T. 3769; Branko Lazarević, 14 Jun 2006, T. 5624; Aleksandra Szekely, Ex. 824, p. 2.

⁹⁵³ Branko Lazarević, 14 Jun 2006, T. 5623, 15 Jun 2006, T. 5715; Peter Galbraith, 25 Apr 2006, T. 3762; Sanja Risović, 14 Jun 2006, T. 5577; Rašeljka Grmoja, 19 Jun 2006, T. 5784; Mina Žunac, 20 Jun 2006, T. 5810-5811.

⁹⁵⁴ Ex. 95, p. 3, wherein on 2 May 1995, Rade Rašeta informed his counterparts in the VJ that the SVK fired eight rockets from “an *Orkan* multiple rocket launcher on the *Banski Dvori/* Presidential Palace/, the Ministry of Defence and

Petrinjska Street, Boskovićeve Street and Mrazovićeve Street as well as Draškovićeve Street, the intersection of Vlaška and Draškovićeve Streets and a school building in Križanićeve Street, the village of Plešo near Zagreb/Plešo airport,⁹⁵⁵ and the airport itself.⁹⁵⁶

306. Five persons were killed during these rocket attacks. The body of Damir Dračić was found lying on the sidewalk at Vlaška Street.⁹⁵⁷ Ana Mutevelić was killed when a tram was hit at the intersection of Draškovićeve and Vlaška Streets.⁹⁵⁸ The body of Stjepan Krhen was found in the courtyard of No. 41 Vlaška Street.⁹⁵⁹ Ivanka Kovač died at the trauma clinic in Draškovićeve Street from the injuries she sustained some 700 metres from the hospital.⁹⁶⁰ Ivan Brodar was injured on Draškovićeve Street and died as a result of his injuries on 3 May 1995.⁹⁶¹

307. A number of witnesses, who were injured during the shelling of Zagreb on 2 May 1995, testified before the Trial Chamber, many of whom still suffer from the injuries sustained on that day. Sanja Buntić was injured in Strossmayer Square.⁹⁶² She received injuries to her head and legs.⁹⁶³ Aleksandra Szekely was injured while waiting at the intersection of Boškovićeve-

Plešo airport”; Ex. 303; Ex. 94, p. 2, indicating that on 2 May 1995 UNPROFOR heard 5 rockets being fired from Glina and it was assessed that these were the Orkans which impacted in Zagreb.

⁹⁵⁵ Branko Lazarević, 15 Jun 2006, T. 5656-5657, 14 Jun 2006, T. 5629; Ivan Mikulčić, 14 Jun 2006, T. 5598, 5617-5618; Ex. 805; Ex. 1043, T. 3-11. Plešo village is around 500 meters from Zagreb/Plešo Airport, Ivan Mikulčić, 14 Jun 2006, T. 5597, 5608. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 3-11, pp 12-16, pp 18-31.

⁹⁵⁶ Branko Lazarević, 14 Jun 2006, T. 5629. The Trial Chamber heard testimony that while the official name of the airport was “Zagreb” it was locally referred to as “Plešo”, Ivan Mikulčić, 14 Jun 2006, T. 5607. Ex. 810 shows the damage inside the perimeter of Zagreb/Plešo Airport. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 1-2.

⁹⁵⁷ Ex. 805, Plan 2, No. 2. *See also* Ex. 799, p. 46, p. 81; Branko Lazarević, 14 Jun 2006, T. 5634, 15 Jun 2006, T. 5700. His injuries were sustained while he was in his car, Ex. 805, Plan 2, marked with a number 3; Branko Lazarević, 15 Jun 2006, T. 5666-5667. An exhibit shows the body of Damir Dračić, Ex. 386, F-53 and F-54; Branko Lazarević, 15 Jun 2006, T. 5673-5674. *See also* Ex. 383, at 8 min. 8 sec.; Branko Lazarević, 14 Jun 2006, T. 5627.

⁹⁵⁸ Branko Lazarević, 15 Jun 2006, T. 5658. Ana Mutevelić was killed while on a tram, Branko Lazarević, 14 Jun 2006, T. 5634. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. Ex. 805, Plan 2, marked with a number 1, indicates the location where the body of Ana Mutevelić was found, Branko Lazarević, 15 Jun 2006, T. 5666. Ex. 386, F-35 and F-36 show her body, Branko Lazarević, 14 Jun 2006, T. 5626, 15 Jun 2006, T. 5671. *See also* Ex. 383 at 7 min. 41 sec; Ex. 804, at the location marked in the map as number 1, Branko Lazarević, 15 Jun 2006, T. 5658. Ex. 386, F-1 shows Draškovićeve St., Mina Žunac, 20 Jun 2006, T. 5825. Ex. 386, F-30 shows the intersection of Vlaška and Draškovićeve streets, Mina Žunac, 20 Jun 2006, T. 5825.

⁹⁵⁹ Ex. 805, Plan 2, No. 3 marks the site where Stjepan Krhen was found during the on-site investigation, Branko Lazarević, 15 Jun 2006, T. 5667. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. Stjepan Krhen had sustained several injuries on his body, on his chest, and on his legs, and had succumbed to his wounds “immediately”, Branko Lazarević, 14 Jun 2006, T. 5634-5635; Ex. 799, p. 47. Ex. 386, F-98 and F-99 show Stjepan Krhen, Branko Lazarević, 15 Jun 2006, T. 5674.

⁹⁶⁰ Branko Lazarević, 14 Jun 2006, T. 5635. *See also* Ex. 799, p. 81; Branko Lazarević, 15 Jun 2006, T. 5700. The cause of her death is indicated as “[e]xplosive wounds of the head, of the body, and the extremities”, Ex. 800; Branko Lazarević, 14 Jun 2006, T. 5639-5640.

⁹⁶¹ Branko Lazarević, 14 Jun 2006, T. 5638-5639, 5641. He was aged 77 at the time of the shelling, and suffered multiple traumas of the head, chest, and lower extremities, Branko Lazarević, 14 Jun 2006, T. 5638-5639. *See also* Ex. 799, p. 71; Branko Lazarević, 14 Jun 2006, T. 5640-5641; Ex. 801.

⁹⁶² Sanja Buntić, 19 Jun 2006, T. 5761-5763.

⁹⁶³ She received injuries to the upper part of both her legs from shrapnel and pellets, as well as two pellets which lodged in her head, one hitting the bone causing a splinter fracture, Sanja Buntić, 19 Jun 2006, T. 5776-5777. She still has pieces of shrapnel in her liver, which require considerable follow-ups; she also has constant headaches caused by the shrapnel in her head, Sanja Buntić, 19 Jun 2006, T. 5768-5769, 5777.

Petrinjska, and received injuries to the left side of her body and her left leg.⁹⁶⁴ Mina Žunac was injured in Vlačka Street.⁹⁶⁵ She received injuries to her leg, hip, hand and head.⁹⁶⁶ Rašeljka Grmoja was 17 years old at the time of the rocket attack on Zagreb and was in her school in Križanićeva Street⁹⁶⁷ when she was injured in her shoulder and eye.⁹⁶⁸ Ivan Mikulčić was injured at his house in Plešo village near Zagreb on 2 May 1995,⁹⁶⁹ and received injuries in his back.⁹⁷⁰ There is evidence that in total 160 people were injured during the attack on 2 May 1995.⁹⁷¹

308. The Trial Chamber finds that as a result of the shelling on 2 May 1995, Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač and Ivan Brodar were killed, and at least 160 people were injured.

(c) 3 May 1995

309. At midday on 3 May 1995,⁹⁷² Zagreb was again shelled by Orkan rockets⁹⁷³ on the following locations: Mažuranićeva Square, Marshall Tito Square where the Croatian National Theatre was located, and Klaićeva Street Children's Hospital.⁹⁷⁴

⁹⁶⁴ She had received approximately twelve pieces of shrapnel, six of which still remain in her body, Aleksandra Szekely, Ex. 824, p. 3.

⁹⁶⁵ Mina Žunac, 20 Jun 2006, T. 5811-5812, T. 5826; Ex. 819; Ex. 386, F-50, F-52.

⁹⁶⁶ Mina Žunac, 20 Jun 2006, T. 5819. She sustained serious injuries to her right leg, and one part of her foot was amputated, Mina Žunac, 20 Jun 2006, T. 5822. She also sustained injuries to her right hand, hip and head. She spent "all in all" about a year in the hospital, Mina Žunac, 20 Jun 2006, T. 5823-5824. Ex. 818, photographs showing injuries caused to Mina Žunac. She still has over 45 pieces of shrapnel in her leg and had seven surgeries during the first couple of months, and after that three more. Mina Žunac, 20 Jun 2006, T. 5824. She still suffers constant pain and has trouble walking, as well as problems with her hand and with writing, Mina Žunac, 20 Jun 2006, T. 5827-5830.

⁹⁶⁷ Križanićeva St. School is a ten-minute walk from Ban Jelačić square, Rašeljka Grmoja, 19 Jun 2006, T. 5780-5781.

⁹⁶⁸ Rašeljka Grmoja, 19 Jun 2006, T. 5781-5782. She received shrapnel in her left shoulder and glass in her left eye, Rašeljka Grmoja, 19 Jun 2006, T. 5781-5782, T. 5793; Ex. 813, Photograph of Križanićeva Street School marked by Rašeljka Grmoja, showing the window where she was injured. *See also* her explanation of this photo, Rašeljka Grmoja, 19 Jun 2006, T. 5785-5787. It took her a month to go back to school and she suffered psychological trauma for a year or two after the event, Rašeljka Grmoja, 19 Jun 2006, T. 5794-5795.

⁹⁶⁹ Ivan Mikulčić, 14 Jun 2006, T. 5598-5599.

⁹⁷⁰ He was injured in his spine and some of the shrapnel remains to this day, Ivan Mikulčić, 14 Jun 2006, T. 5600. *See also* Ex. 796, medical report; Ex. 797, granting him the status of civilian war invalid of group X with 20% permanent disability; Ivan Mikulčić, 14 Jun 2006, T. 5601. Ex. 798, map on which Ivan Mikulčić indicated his house and where cluster bombs had fallen. Ex. 809, indicates damage caused in Plešo village.

⁹⁷¹ Ex. 799, pp 63-80; Branko Lazarević, 15 Jun 2006, T. 5700. Of the 146 victims listed as injured in the Indictment for 2 May 1995, Ex. 799 contains the names of 144 victims, Ex. 799, pp 63-80. The Trial Chamber does not find any reason to doubt that 160 people were injured. (Two persons listed as injured (Ines Malić and Stipe Miličević) in Annex II to the Indictment are found neither in this exhibit nor in other evidence). *See also* Ex. 303, listing 203 persons wounded and 5 persons killed on 2 and 3 May 1995, of which 7 wounded and 1 killed were "MUP.HV". The document states that all of these "MUP.HV" were "out of service", the Trial Chamber interprets this, in light of the principle of *in dubio pro reo* as meaning that they were off-duty and not that they were no longer enlisted in the army or police.

⁹⁷² Božica Lisak, Ex. 822, p. 2; Sanja Risović, 14 Jun 2006, T. 5580.

⁹⁷³ Ex. 303; Ex. 94, p. 4, indicating that on 3 May 1995, UNMO heard the firing of rockets approximately from 5 kilometres northeast of Vrginmost and afterwards observed the movement of an M-87 "Orkan" rocket launcher during the same time as the attack against Zagreb.

⁹⁷⁴ Branko Lazarević, 15 Jun 2006, T. 5648-5649, 5659-5660; Ex. 805. Rockets also landed in the suburbs, Novi Zagreb (Čehi) and Žitnjak, but caused no damage, Branko Lazarević, 15 Jun 2006, T. 5649; Ex. 811. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 32-36.

310. Two people were killed in this attack. Luka Skračić was injured on 3 May 1995, and died in hospital on 6 June 1995.⁹⁷⁵ Ivan Markulin, a bomb disposal technician and police officer, died when the bomblet he was trying to deactivate exploded outside Klaićeva Street Children's Hospital.⁹⁷⁶

311. The Trial Chamber heard evidence from some of those who were injured on 3 May 1995. Sanja Risović was at Klaićeva Street Children's Hospital with her 4 month-old daughter when she was injured to her shoulders, stomach, right leg, foot and back.⁹⁷⁷ Shortly after midday, 18 people, including Božica Lisak, were injured when bombs fell through the glass roof of the Croatian National Theatre.⁹⁷⁸ Božica Lisak was severely injured by 27 pieces of shrapnel.⁹⁷⁹ Milan Smoljan was injured in his knee by bomblets when he was at Mažuranićeva Square, near the Croatian National Theatre.⁹⁸⁰

312. In total, 54 persons were injured as a result of the shelling on Zagreb on 3 May 1995.⁹⁸¹

313. The Trial Chamber finds that Luka Skračić and Ivan Markulin were killed and that 54 people were injured as a result of the shelling on 3 May 1995.

3. Involvement of the RSK leadership in the shelling of Zagreb

314. There is evidence that Milan Martić had considered shelling of Zagreb prior to 2 May 1995. Already in 1992 and 1993, Milan Martić, as Minister of the Interior, considered attacking Zagreb as

⁹⁷⁵ Branko Lazarević, 15 Jun 2006, T. 5652-5653, 5723. Ex. 803, containing the autopsy report for Ivan Brodar, shows that Luka Skračić had died a violent death as a result of a pneumonia which had developed after having suffered explosive wounds. The Exhibit establishes that there was a cause-effect relation between the injuries which Luka Skračić sustained on 3 May 1995, and his subsequent death, Branko Lazarević, 15 Jun 2006, T. 5653. Ex. 802, p. 53 indicates that Luka Skračić suffered a blast wound to the head with an alien object lodged in his brain and was in a coma on 3 May 1995. *See also* Sanja Risović, 14 Jun 2006, T. 5595.

⁹⁷⁶ Branko Lazarević, 15 Jun 2006, T. 5650-5651; Ex. 802, pp 40-41. Ex. 387, F-26, is the site where the bomblet exploded in the hands of Ivan Markulin, Branko Lazarević, 15 Jun 2006, T. 5687.

⁹⁷⁷ Sanja Risović, 14 Jun 2006, T. 5580-5584. She was wounded in her right shoulder blade, and one part of her back muscle had to be removed as well as her shoulder blade. Her ribs were fractured and her lungs injured. She had shrapnel wedged in her stomach muscle. She was also injured in her right leg and left foot, Sanja Risović, 14 Jun 2006, T. 5585; Ex. 794; Ex. 795. Sanja Risović was in hospital until 16 June 1995 and then at a rehabilitation centre until 10 August 1995. She has had a total of eleven surgical procedures because of her injuries. She still spends three weeks of every year in rehabilitation and suffers from rheumatoid arthritis which is aggravated by stress and shock. Sanja Risović, 14 Jun 2006, T. 5586-5588. Sanja Risović also testified that she saw three other injured persons at Klaićeva Street Hospital: Mirna Kostović, Zvonko Bakula and a pregnant lady, Sanja Risović, 14 Jun 2006, T. 5584, 5594-5595; Ex. 802, pp 57-58.

⁹⁷⁸ Božica Lisak, Ex. 822, pp 2-3, stating that Božica Lisak, Matea Pučko, Dubravko Kolšek, Barbara Novković, and Krištof Pastor were injured.

⁹⁷⁹ Božica Lisak, Ex. 822, p. 3. Božica Lisak was injured by 27 pieces of shrapnel in her body, mostly in her legs and feet and one in her neck. She spent four weeks in Vinogradska Hospital in Zagreb and had the casts removed in July and then spent a month in rehabilitation. As a result of her injuries Božica Lisak has 50% invalidity, *ibid*.

⁹⁸⁰ Milan Smoljan, Ex. 823, 28 Apr 2004, p. 2. He also saw other persons injured and bleeding, Milan Smoljan, Ex. 823, 28 Apr 2004, pp 2-3.

⁹⁸¹ Ex. 802, pp 50-57, contains the names of all 48 victims listed in Annex II to the Indictment. *See also* Ex. 303, *see supra* fn 971.

a response to Croatian attacks on RSK cities.⁹⁸² On 9 June 1993, Milan Martić, as Minister of the Interior, informed Slobodan Milošević that the P-65 LUNA rocket system had been moved to the area of Banija and Kordun in order to prevent aggression or to carry out possible attacks on Zagreb, should RSK towns come under attack.⁹⁸³

315. On 5 September 1994, Ratko Mladić, the Commander of the Main Staff of the VRS, requested Milan Martić to approve the loan of 15 Orkan rockets in order to manufacture such rockets for the VRS.⁹⁸⁴

316. In a meeting on 24 October 1994 with Peter Galbraith, the United States Ambassador to Croatia, Milan Martić threatened to shell Zagreb.⁹⁸⁵ Milan Martić stated “in effect that attacking civilian targets in Zagreb, attacking the city itself was an option, a way in which the RSK could respond to [...] a Croatian attack on the RSK”.⁹⁸⁶ Peter Galbraith warned Milan Martić that a rocket attack on Zagreb would be a crime.⁹⁸⁷

317. On 10 February 1995, Milan Martić, in a speech to the commanding officers of the SVK stated emphatically that “[n]o one can stop us to fire at Zagreb, Osijek, Vinkovci, Zadar, Karlovac, Split”.⁹⁸⁸

318. In a newspaper article published in Serbia on 24 March 1995, Milan Čeleketić is reported as stating:

In the case of the Ustasha aggression, we will certainly not miss the opportunity to hit them where it hurts the most. We know their weak spots and where it hurts the most. Weak points are city squares and we know who goes there – civilians. I have already said this and was criticised a little. Well now, they may ask which squares and in which cities. I shall reply that that’s a military secret. We shall make a decision about it and I think we will be precise. It is hard to say these words because there are, as I said, civilians in the squares, innocent people. However, if we are in war (and we are waging a filthy war for which they are first and foremost to blame), then there will be no mercy. Not only will we be merciless but, as a commander, I shall decided [*sic*] where we will direct our attacks, when and where it hurts the most.⁹⁸⁹

⁹⁸² The Trial Chamber also notes Milan Martić’s statement on 18 July 1992 that “[i]t would be better [...] [for Tudman and his soldiers] not to touch us again because that would compel us to head forcefully for Zagreb and to turn it into Vukovar,” Ex. 119, p. 2.

⁹⁸³ Ex. 12, p. 2. *See also* Reynaud Theunens, 27 Jan 2006, T. 808. Further evidence that shelling of Zagreb was considered in 1993 can be seen from a report from the 51st Infantry Brigade Command, which states “[u]nless [Croatia] withdraws from occupied territories, the following operations will continue: hits on Zagreb with large missiles which have not been used yet and which the world does not know of”, Ex. 89, p. 2.

⁹⁸⁴ Ex. 475.

⁹⁸⁵ Peter Galbraith, 25 Apr 2006, T. 3757-3759.

⁹⁸⁶ Peter Galbraith, 25 Apr 2006, T. 3778. Peter Galbraith also testified that he warned Milan Martić that the RSK would not be able to survive Croatian military action, to which Milan Martić responded that the RSK had the ability to defend itself and to attack Zagreb, Peter Galbraith, 25 Apr 2006, T. 3814-3815.

⁹⁸⁷ Peter Galbraith, 25 Apr 2006, T. 3759.

⁹⁸⁸ Ex. 90, p. 6.

⁹⁸⁹ Ex. 91, p. 6; Reynaud Theunens, 27 Jan 2006, T. 827. In this article, Milan Čeleketić refers to Milan Martić as “my supreme commander”, Ex. 91, p. 4.

319. On 3 May 1995, Milan Martić stated:

As a counter measure to what Tudjman did to you here, we have shelled all their cities: Sisak several times and Karlovac, Zagreb yesterday and today. This was done for you. [...] Today, an ultimatum followed if they continue to attack our besieged forces, we will continue to attack Zagreb and destroy their cities.⁹⁹⁰

In a conversation on 3 May 1995 between Slobodan Milošević and Borisav Mikelić, the Prime Minister of the RSK, Slobodan Milošević said that Milan Martić was “boasting about having shelled Zagreb.”⁹⁹¹

320. In a radio interview on 5 May 1995, Milan Martić stated:

That order was given by me, personally, as a retaliation to Franjo Tudman and his staff for the order he had given to commit aggression against the Western Slavonia [...].⁹⁹²

At a meeting in Knin on 5 May 1995 with UN Special Envoy, Yasushi Akashi, Milan Martić stated in response to Yasushi Akashi’s condemnation of the rocket attacks on Zagreb that “[h]ad I not ordered the rocket attacks [...] they would have continued to bomb our cities”.⁹⁹³ Milan Martić threatened to resume the shelling of Zagreb if their conditions were not met, and spoke of “massive rocket attacks on Zagreb which would leave 100,000 people dead”.⁹⁹⁴ In an interview published on 16 May 1995, Milan Martić is reported as saying that he felt justified in ordering the rocket attacks because he was aiming at military installations.⁹⁹⁵ Milan Martić also appeared on television admitting to having ordered the shelling.⁹⁹⁶

321. The RSK Commission charged with determining responsibility for the fall of Western Slavonia found that:

[t]he course of events in Western Slavonia required of the SVK Main Staff to intervene in order to provide assistance to the 18th Corps [...] however, no opinions were sought from the commanding officers of the SVK Main Staff. Decisions were made by the Commander and the President and stances and orders were given on the telephone (there are no written orders).⁹⁹⁷

⁹⁹⁰ Ex. 388; *See also* Branko Lazarević, 15 Jun 2006, T. 5692-5693.

⁹⁹¹ Ex. 233, p. 6, Transcript of intercepted telephone conversation between Slobodan Milošević and Borisav Mikelić. *See also* Milan Babić, 21 Feb 2006, T. 1666-1668.

⁹⁹² Ex. 389. In an article in Agence France Presse published on 6 May 1995, Milan Martić is reported as saying “I personally gave the order to bombard Zagreb as a response to (Croatian President) Franjo Tudman and the Croatian leadership behind the aggression on Western Slavonia and crimes on civilians”, Ex. 1001. *See also* Ex. 98.

⁹⁹³ Ex. 97, para. 13. As regards the Defence’s argument concerning reprisals, *see infra* section IV B 4 (c).

⁹⁹⁴ Ex. 97, paras 4, 15.

⁹⁹⁵ Ex. 390. *See infra* section IV B 4 (c), concerning the Defence’s argument on reprisals. *See also* Patrick Barriot, 9 Nov 2006, T. 10780-10785; Witness MM-117, 17 Oct 2006, T. 9599-9600. *See however* Peter Galbraith, 25 Apr 2006, T. 3778.

⁹⁹⁶ Branko Lazarević, 15 Jun 2006, T. 5690-5691; Milan Babić, 21 Feb 2006, T. 1661. Peter Galbraith testified that in media statements Milan Martić “took credit” for this first day of attacks, Peter Galbraith, 25 Apr 2006, T. 3774.

⁹⁹⁷ Ex. 100, para. 9.

Rade Rašeta, Chief of Security of the SVK Main Staff, confirmed that members of the Main Staff were not consulted about the decision to shell Zagreb.⁹⁹⁸ The RSK Fact-Finding Commission on the Causes and Manner of the Fall of Western Slavonia found that among those responsible for the fall of Western Slavonia was “President of the RSK, Milan Martić, for exceeding his authority as set by the constitution by blocking and preventing the work of the Supreme Defence Council”.⁹⁹⁹

322. Milan Čeleketić resigned on 15 May 1995, giving as a reason having failed to keep his promise “that not one milimetre of the territory of the [RSK]” would be lost.¹⁰⁰⁰ Peter Galbraith testified that following the shelling, there was a change in the SVK and that Milan Čeleketić was replaced. He believed that this was as a result of Slobodan Milošević’s instructions.¹⁰⁰¹

H. Acts of persecution carried out against non-Serbs in the SAO Krajina and the RSK

323. The Trial Chamber has been presented with considerable evidence that acts of discrimination and intimidation were carried out against the non-Serb population in the SAO Krajina and the RSK during the Indictment period. Count 1 of the Indictment charges Milan Martić with a wide range of acts of persecution. Many of these are also charged as separate counts in the Indictment and have been dealt with above. In addition, however, the Trial Chamber notes below the following additional evidence.

1. 1991

324. There is evidence of Croats being killed in 1991,¹⁰⁰² having their property stolen,¹⁰⁰³ having their houses burned,¹⁰⁰⁴ that Croat villages and towns were destroyed, including churches and religious buildings,¹⁰⁰⁵ and that Croats were arbitrarily dismissed from their jobs.¹⁰⁰⁶

⁹⁹⁸ Rade Rašeta, 2 May 2006, T. 3943-3944, commenting on Ex. 100. General Čeleketić tried to transfer the order over the phone, however the decision “should have been collectively taken. We should all have been familiar with the order. In this case, this went through the closest associates of the commander.” *Ibid.*

⁹⁹⁹ Ex. 99, p. 21.

¹⁰⁰⁰ Ex. 101. The Trial Chamber notes that in his letter of resignation, General Čeleketić specifically refers to “our doctrine of reprisal at the chosen vital targets of the combatant”; Rade Rašeta, 2 May 2006, T. 3944-3945. Rade Rašeta was present at a meeting of the Supreme Defence Council when General Milan Čeleketić informed of his resignation and confirmed the reason for the resignation, Rade Rašeta, 2 May 2006, T. 3930, 3 May 2006, T. 3973.

¹⁰⁰¹ Peter Galbraith, 25 Apr 2006, T. 3757.

¹⁰⁰² Ex. 922, reporting *inter alia* that between 5 and 14 August 1991 “Serbian paramilitary groups” reportedly killed five Croats from the village of Lovinac (Gracac), p. 3, and on 16 August 1991 four Croatian men were reported to have been killed when they returned to the village of Pečki (Vrginmost) to feed their livestock; the village had been occupied by “Serbian forces”. On 13 October 1991, 13 people were reported to have been killed in Široka Kula (Gospić) by a mob led by a “Serbian police officer” and that the “Serbian leader of the local police” ordered the remaining Croats to assemble for evacuation, when they assembled “Serbian paramilitary groups” began looting the homes and shot at the villagers. The bodies of those who were killed were thrown into their homes which had been set on fire, p. 4-5. On 16 and 17 December 1991, five civilians were reportedly killed in the village of Jasenice (Obrovac) pp 10-11. Ex. 922, Helsinki Watch Report sent to Slobodan Milošević and General Blagoje Adžić, dated 21 January 1992; Marica Vuković, 22 Mar 2006, T. 2452-2453 testifying that around a hundred people were killed in the 10 or 15 villages around Vukovići. *See also* Ex. 133, an order from the Glina TO Staff dated 4 October 1991 ordering TO units “when

325. A MUP report of 12 December 1991, signed by Milan Martić, reported on the collection of trucks, passenger vehicles and household items “as war booty from citizens in the war zones and stored in collection centres”.¹⁰⁰⁷

326. Following the fall of Slunj in November 1991, Marinko Mudrić reported seeing many burned houses, particularly in Rakovica and Slunj, including a department store, restaurants, an SJB and a hotel, as well as many private houses. He saw “uniformed men and members of the Krajina police in Slunj” as well as “Peić and [Željko ‘Buba’ Mudrić]” stealing cars.¹⁰⁰⁸ Police as well as Serb civilians were engaged in looting in the villages of Rakovica, Slunj, Saborsko and Poljanak.¹⁰⁰⁹ Attacks on Modruški Sabljaki and Medvedi and Plivelići were led by “Pejić and [Zelko ‘Buba’ Mudrić], accompanied by some 30 of Martić’s men”, who stole tractors and plundered houses before setting them on fire.¹⁰¹⁰ On 21 November 1991, in Dabar a uniformed group led by Predrag Baklajić killed Stipe Brajković, raided Croat houses and stole property.¹⁰¹¹

2. 1992

327. During 1992 on the territory of the RSK, there was a continuation of incidents of killings,¹⁰¹² harassment,¹⁰¹³ robbery, beatings, burning of houses,¹⁰¹⁴ theft,¹⁰¹⁵ and destruction of churches¹⁰¹⁶ carried out against the non-Serb population.¹⁰¹⁷

mopping up the terrain in Glina, to spare Pajo Bubaš and his wife, who is a Serb, and their house: [t]hey have been verified as loyal people.”

¹⁰⁰³ Ex. 984, p. 19 reports that there was widespread looting around Drniš by ‘reservists in JNA uniforms’. Borislav Đukić testified to requesting measures from the 9th Corps command in Knin to be taken against the looters and that seized looted property was sent to the JNA Knin logistics base, Borislav Đukić, 20 Oct 2006, T. 9890. Witness MM-078 testified that both the army and the police were involved in the looting and that the police would let the trucks with looted goods through check-points, Witness MM-078, 25 May 2006, T. 4533.

¹⁰⁰⁴ Marica Vuković, 22 Mar 2006, T. 2411, 2442 (testifying that on 28 August 1991, the village of Rastovaca (Nova Gradiska) was set on fire by “Serbs”). Marko Vuković testified that after the attack on Grabovac some houses and a motel were torched and burnt, as well as the motel, Marko Vuković, 24 Mar 2006, T. 2634.

¹⁰⁰⁵ Witness MM-078, 24 May 2006, T. 4450. During the attack in September 1991 the centre of Drniš was “completely” destroyed, Ex. 984, para. 5.3, p. 16; Borislav Đukić, 20 Oct 2006, T. 9896. Regarding damage to houses and churches and looting in Kijevo, *see* Witness MM-078, 24 May 2006, T. 4434-4435. Borislav Đukić testified that there were no JNA units in Kijevo on 27 August 1991, Borislav Đukić, 20 Oct 2006, T. 9885-9886; Witness MM-078, 24 May 2006, T. 4444, T. 4527-4528; Borislav Đukić, 19 Oct 2006, T. 9768-9769; Ex. 106, Report of Ratko Mladić, JNA 9th Corps, to General Staff of the SFRY concerning the attack on Kijevo, dated 4 October 1991; Milan Babić, 17 Feb 2006, T. 1559-1560.

¹⁰⁰⁶ Ex. 895, pp 22-24.

¹⁰⁰⁷ Ex. 518, p. 4, signed by Milan Martić as Minister of the Interior.

¹⁰⁰⁸ Ex. 507, Official Note on Saborsko Operation, dated 7 April 1992, p. 5. One of the cars they stole was afterwards in use by the Plaški SJB, *ibid*.

¹⁰⁰⁹ Witness MM-037, 29 Mar 2006, T. 2821-2822.

¹⁰¹⁰ Ex. 507, Official Note on Saborsko Operation, dated 7 April 1992, p. 6.

¹⁰¹¹ Ex. 561, Report of MUP concerning the activities of Predrag Baklajić, dated 14 July 1993. *See also* Ex. 43, a request of the commander of the 2nd Lika TO Brigade to Milan Martić to disband the unit of Predrag Baklajić, which had previously been trained in Golubić, because it was engaged in looting in November 1991 in Vrhovine near Dabar.

¹⁰¹² On 18 January 1992, the Čengić family were killed in their house in Ervenik Village, Knin municipality by three members of the TO. The same three perpetrators also set fire to houses, sheds and barns in the village, Ex. 974; *see also* Witness MM-117, 17 Oct 2006, T. 9565, T. 9559-9560. Ex. 732. Ex. 75, dated 28 September 1992. Ex. 737, reporting

3. 1993-1995

328. Throughout 1993, there were further reports of killings,¹⁰¹⁸ intimidation,¹⁰¹⁹ and theft.¹⁰²⁰ By 1995, several Croat villages had been attacked and destroyed, including Rakovica,¹⁰²¹ Poljanak, Kuselj, Saborsko, Korana, Rastovaca, Celiste, Smoljanac, Dreznik, Rakovac, Lipovaca, Vaganac,¹⁰²² Hrvatska Dubica¹⁰²³ and Medvida.¹⁰²⁴

I. The political objective of the Serb leadership

329. The President of Serbia, Slobodan Milošević, publicly supported the preservation of Yugoslavia as a federation of which, *inter alia*, the SAO Krajina would form a part.¹⁰²⁵ However,

that in Slunj a Croat was beaten to death and his father beaten into a coma by three persons in local “*Milicija*” uniforms, John McElligott, 26 May 2006, T. 4606-4607. *See also* Ex. 739; Ex. 732.

¹⁰¹³ Ex. 763, reporting on “a disturbing pattern of abuse, harassment and discriminatory treatment of Croats particularly in 7 villages south of Glina town” as well as murders, destruction of houses and terrorising of residents by “roaming gangsters”. Also reporting on discriminatory distribution of humanitarian aid by the “local red cross” and that buses refused to stop at bus stops. *See also* Charles Kirudja, 31 May 2006, T. 4885-4886; Ex. 739; Ex. 728.

¹⁰¹⁴ Ex. 732, UNCIVPOL situation report for Sector South, dated 29 May 1992; John McElligott, 26 May 2006, T. 4579, T. 4606-4607; Ex. 728; Ex. 736.

¹⁰¹⁵ Ex. 733, reporting that local police officers wearing uniforms with “Serbian Krajina” or “policemen” based in the Vrlika [Sinj] area were consistently stealing from elderly Croatian people. *See also* Ex. 728.

¹⁰¹⁶ Ex. 735, dated 2 October 1992, reporting of the destruction by explosives of St Anna’s Church in Zvjerinac, which is part of the village of Kosovo, south of Knin, on 1 October. *See also* John McElligott, 26 May 2006, T. 4601-4602, 4606-4607. Ex. 737, UNCIVPOL daily situation report for 6 and 7 November 1992, dated 8 November 1992.

¹⁰¹⁷ *See also* Ex. 75, dated 28 September 1992. UNCIVPOL’s Report for October 1992 lists numerous incidents of killings, thefts, destruction and looting, Ex. 736. A United Nations Report on the Human Rights situation in the former Yugoslavia, dated 17 November 1992, reports from Sector South that United Nations staff were collecting evidence of murders, robberies, looting and other forms of criminal violence “often related to ethnic cleansing”, Ex. 865, United Nations report on the situation of Human Rights in the territory of the former Yugoslavia dated 17 November 1992, paras 78-81. *See also* Ex. 728; Witness MM-117, 16 Oct 2006, T. 9472-9473, testifying that according to the Ministry of the Interior in 1992 there were 6,000 criminal reports which included looting and to a great extent that Croats were the victims of these crimes. Ex. 864, Further Report by the Secretary-General of the United Nations to the Security Council pursuant to UN resolution 743, dated 24 November 1992. Ex. 727. Ex. 726, Reporting on 497 crimes against Croats only in Sector South between August 1992 and May 1993. *See also* John McElligott, 26 May 2006, T. 4616-4617, 30 May 2006, T. 4731-4732.

¹⁰¹⁸ *See* Ex. 741. Ex. 726, Reporting on 497 crimes against Croats only in Sector South between August 1992 and May 1993; John McElligott, 26 May 2006, T. 4616-4617, 30 May 2006, T. 4731-4732. UNCIVPOL reported that the Benkovac police had reported between 11 and 17 Croats murdered and one woman raped “in the previous week”, Ex. 729, Daily Situation Report from UNCIVPOL HQ Sector South, dated 22 February 1993. Concerning evidence of rape, *see also* Marica Vuković, 22 Mar 2006, T. 2453-2454. Ex. 743, reporting on the killing of an elderly Croat woman in Luka-Drage. Ex. 744, reporting on robbery and assault of Ivica Begić aged 69 by four men in “military uniforms”, shooting of Kata Begić and murder of Ana Vracar, all being Croats living in Podlapača, Titova Korenica on 12 July 1993, and the shooting of Milka Bilusic on 16 Jun 1993 in Ljubotić by four men “dressed in uniforms of soldiers”, as well as the beating and murder of Marija Sarić from Lukar Drage by “Serbian soldiers” on 7 June 1991. *See also* MM-117, 13 Oct 2006, T. 9358.

¹⁰¹⁹ *See also* Ex. 729, Ex. 743, reporting that “Captain Dragan’s soldiers” harassed an elderly Croat near Bruška.

¹⁰²⁰ Ex. 743, UNCIVPOL Report for Sector South for June and July 1993, dated July 1993.

¹⁰²¹ Vlado Vuković, 27 Mar 2006, T. 2675-2676.

¹⁰²² Marica Vuković, 22 Mar 2006, T. 2451. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, p. 17; Ex. 1044.

¹⁰²³ Josip Josipović, 6 Apr 2006, T. 3325-3326.

¹⁰²⁴ Stanko Erstić, Ex. 392, T. 24974.

¹⁰²⁵ Ex. 200; Ex. 201; Ex. 202; Ex. 979. *See also* Milan Babić, 16 Feb 2006, T. 1415-1416, (testifying that Slobodan Milošević endorsed a “firm type of federation” along with the preservation of the right of self-determination of people who were in majority in an area), T. 1488-1489, 15 Feb 2006, T. 1384-1385, 2 Mar 2006, T. 1781, 3 Mar 2006, T. 1925; Lazar Macura, 14 Sep 2006, T. 8326-8327. In this respect, the Trial Chamber recalls the evidence concerning the referendum held on 12 May 1991, *see supra* para. 134.

Slobodan Milošević covertly intended the creation of a Serb state.¹⁰²⁶ Milan Babić testified that Slobodan Milošević intended the creation of such a Serb state through the establishment of paramilitary forces and the provocation of incidents in order to allow for JNA intervention, initially with the aim to separate the warring parties but subsequently in order to secure territories envisaged to be part of a future Serb state.¹⁰²⁷ In Milan Babić's view, Slobodan Milošević advocated this political objective from the summer of 1990 until the end of 1991.¹⁰²⁸

330. Through the summer of 1991, the objective of the JNA was to protect the Serbs against attacks by Croatian armed formations and prevent occupation of cities under Serb control.¹⁰²⁹ At the end of the summer 1991 and coinciding with the attack on Kijevo, the JNA became an active participant in Croatia on the side of the SAO Krajina. According to the SFRY Federal Secretary for Defence, General Veljko Kadijević, the task of the JNA became one of protecting "the Serb people in Croatia in such a way that all regions with a majority Serb population would be completely freed from the presence of the Croatian army and the Croatian authorities".¹⁰³⁰ Veljko Kadijević also noted that among "the principal ideas" behind the deployment of the JNA during the second phase was "full co-ordination with Serb insurgents in the Serbian Krajina".¹⁰³¹

331. On 3 October 1991, Veljko Kadijević stated that the objective of the JNA in the conflict was "to restore control in crisis areas, to protect the Serbian population from persecution and annihilation".¹⁰³² On 12 October 1991, General Blagoje Adžić, Chief of the General Staff of the JNA, stated that the main task of the JNA was to prevent "the spread of interethnic conflicts and the recurrence of genocide against the Serbian people in Croatia."¹⁰³³ On 25 October 1991, at a meeting of, among others, Slobodan Milošević, Veljko Kadijević and Blagoje Adžić, Slobodan Milošević stated that "we have helped [the Serbs in Croatia] abundantly and [we] will continue to do so until the end".¹⁰³⁴

¹⁰²⁶ Ex. 201; Milan Babić, 16 Feb 2006, T. 1415-1416, 21 Feb 2006, T. 1672; Witness MM-117, 16 Oct 2006, T. 9491-9497; Mile Dakić, 25 Oct 2006, T. 10025-10026; Ex. 1039, Group 13, pp 4-8.

¹⁰²⁷ Milan Babić, 16 Feb 2006, T. 1416, 17 Feb 2006, T. 1572-1574.

¹⁰²⁸ Milan Babić, 2 Mar 2006, T. 1806.

¹⁰²⁹ Milan Babić, 17 Feb 2006, T. 1503-1506; Ex. 476, ERN: 03023105, noting that at a meeting on 4 April 1991, Slobodan Milošević, Veljko Kadijević, Blagoje Adžić and Borisav Jović agreed that "the military will not allow the Croatian police to occupy Knin and other Serb cities which are now under Serb control". Slobodan Perić, a lieutenant colonel in the 5th JNA Military District in Zagreb, testified that at his "operational level" he did not have the impression that the strategic goal of the JNA was to prepare the Serbs for a war against Croatia or that the JNA was "tasked with preparing the Serb people for their own defence", Slobodan Perić, 7 Sep 2006, T. 7913. However, the Trial Chamber is of the view that at his operational level, Slobodan Perić would not have been aware of the specific strategic goal. *See also* Ex. 24, p. 68, ERN: 00362704; Ex. 26.

¹⁰³⁰ Ex. 24, p. 73, ERN: 00362709. *See also* Ex. 27, p. 3.

¹⁰³¹ Ex. 24, pp 73-74, 77, ERN: 00362709-00362710, 00362713. *See also* Ex. 214; Ex. 477; Ex. 973.

¹⁰³² Ex. 25, p. 3.

¹⁰³³ Ex. 26.

¹⁰³⁴ Ex. 476, p. 358, ERN: 03023174.

332. Several witnesses explained that the JNA's role changed because Croatia considered the JNA a hostile army and in September 1991 had ordered the ZNG and police to block and seize JNA facilities across Croatia in order to immobilise the JNA.¹⁰³⁵ According to some witnesses, the JNA therefore intervened only to defend itself.¹⁰³⁶

333. The SAO Krajina, and subsequently the RSK, leadership endorsed Slobodan Milošević's vision to create a Serb-dominated state.¹⁰³⁷ In early July 1991, Milan Martić stated that the *Milicija Krajine* were "defending Serbian land and the Serbs' ethnic area".¹⁰³⁸ Similarly, on 19 August 1991 Milan Martić stated that he would accept no autonomy and that "the territories controlled by the police and the Territorial Defence of the Serbian Autonomous Region of Krajina will forever remain Serbian".¹⁰³⁹ Milan Babić embraced the same view, stating on 5 September 1991 that "the Serbs are recognised in every part of Yugoslav State territory as a nation, which they will continue to be [w]ithin the part of the state that remains as a whole following the secession of the former Socialist Republic of Croatia's real territory and all Slovenia."¹⁰⁴⁰ On 12 December 1991, Milan Martić stated that "nobody [...] has the right to deny the Serbian people the right to live in their own country".¹⁰⁴¹

334. On 14 May 1992, Mile Pašpalj, the President of the RSK Parliament, expressed the need to establish "the state of Serbian Krajina" in order to survive.¹⁰⁴² On 3 July 1992, Milan Martić criticised the presidents of the Banija and Kordun municipal assemblies for their decision to form autonomous districts because the RSK had "paid in blood the corridor we won and [linked] up Serbian territories".¹⁰⁴³ At a meeting on 14 June 1993 with Cedric Thornberry, the UNPROFOR Director of Civil Affairs, Milan Martić stated that the "joint life of Croats and Serbs in one State is

¹⁰³⁵ Milan Babić, 17 Feb 2006, T. 1563, 3 Mar 2006, T. 1887, 1898; Radoslav Maksić, 7 Feb 2006, T. 1222; Slobodan Perić, 6 Sep 2006, T. 7871, 7 Sep 2006, T. 7922; Milan Dragišić, 19 Sep 2006, T. 8657; Borislav Đukić, 18 Oct 2006, T. 9694-9695, 20 Oct 2006, T. 9846-9847, 9850; Imra Agotić, Ex. 398, T. 23266; Ex. 238, p. 110.

¹⁰³⁶ Slobodan Perić, 7 Sep 2006, T. 7923-7924, 7926-7928; Milan Dragišić, 19 Sep 2006, T. 8601.

¹⁰³⁷ Veljko Džakula, 16 Jan 2006, T. 404-405, testifying that during 1991 and 1992, Milan Martić worked for the "recognition and joining the association of Serb lands, Republika Srpska, and Serbia"; Milan Babić, 16 Feb 2006, T. 1476-1477, 2 Mar 2006, T. 1830-1832; Ante Marinović, 23 Mar 2006, T. 2474; Witness MM-078, 25 May 2006, T. 4498; Witness MM-117, 16 Oct 2006, T. 9491-9496; Mile Dakić, 25 Oct 2006, T. 10025; Ex. 201, p. 3; Ex. 213; Ex. 474, p. 4; Ex. 912. According to the Constitutional Law of the SAO Krajina "[the SAO Krajina] shall represent a form of political and territorial autonomy within the Federative Yugoslavia [...]", see Ex. 151, Art. 1. Moreover, the header or the stamp of several official SAO Krajina documents in evidence show that the SAO Krajina was considered to form part of the SFRY, see e.g. Ex. 34; Ex. 35; Ex. 3; Ex. 42; Ex. 188; Ex. 190; Ex. 467. The Law on Defence of the RSK, adopted 23 March 1992, also provided that the RSK armed forces were a "composite part" of the armed forces of the SFRY, Ex. 6, p. 123.

¹⁰³⁸ Ex. 498, p. 4. See also Ex. 205; Ex. 973; Ex. 975; Milan Babić, 17 Feb 2006, T. 1518; Witness MM-117, 17 Oct 2006, T. 9586-9587.

¹⁰³⁹ Ex. 215.

¹⁰⁴⁰ Ex. 236, p. 5.

¹⁰⁴¹ Ex. 518, p. 3.

¹⁰⁴² Ex. 750, p. 2. See also Slobodan Jarčević, 14 Jul 2006, T. 6292-6293; Ex. 861; Ex. 862.

¹⁰⁴³ Ex. 77, p. 3. See also Slobodan Jarčević, 13 Jul 2006, T. 6192-6194.

impossible because of genocide politic [*sic*] of Croatia. We want to separate in 2 states [...] I am convinced that we will be good neighbors as separate states.”¹⁰⁴⁴

335. Efforts to unify the Croatian Krajina and the Bosnian Krajina continued throughout 1992 until 1995. The evidence shows that the RSK leadership sought an alliance, and eventually unification, with the RS in BiH and that Milan Martić was in favour of such unification.¹⁰⁴⁵ A letter dated 3 April 1993 from, *inter alia*, Milan Martić as Minister of the Interior to the Assembly of the RS, written on behalf of “the Serbs from the RSK”, advocates a joinder of the “two Serbian states as the first stage in the establishment of a state of all Serbs”.¹⁰⁴⁶ Moreover, in this regard, the Trial Chamber recalls the evidence concerning operation *Koridor 92*.¹⁰⁴⁷

336. On 21 January 1994, during the election campaign for the RSK presidential elections, Milan Martić stated that he would “speed up the process of unification” and “pass on the baton to our all Serbian leader Slobodan Milošević.”¹⁰⁴⁸

J. Milan Martić’s knowledge of and reactions to crimes committed

337. Several witnesses testified that in his capacity as Minister of the Interior, Milan Martić was *de jure* and *de facto* in control of the SAO Krajina and RSK police from 1991 through 1993.¹⁰⁴⁹ As Minister of the Interior, Milan Martić was kept informed concerning the activities of the SJBs and maintained “excellent communications” with the units subordinated to the MUP.¹⁰⁵⁰ The evidence shows that information concerning military activities during the autumn of 1991 was sent to Milan Martić.¹⁰⁵¹ Moreover, information regarding crimes committed in the SAO Krajina and the RSK

¹⁰⁴⁴ Ex. 965, p. 5.

¹⁰⁴⁵ Veljko Džakula, 17 Jan 2006, T. 436; Rade Rašeta, 2 May 2006, T. 3925-3926, T. 3961-3962, testifying that in the summer of 1994 Radovan Karadžić met in Knin with the RSK leadership about the ways in which the RSK and the RS could come closer on political and military levels in view of possible future unification; Ex. 6, p. 168 describing the Prijedor Declaration of 31 October 1992; Ex. 110, paras 4-5; Ex. 475; Ex. 656, p. 3; Ex. 660; Ex. 868, p. 3.

¹⁰⁴⁶ Ex. 976. The other signatories of the letter are the RSK General Staff Commander Mile Novaković, the Minister of Defence Stojan Španović, and the Chief of Staff of the RSK General Staff Borislav Đukić.

¹⁰⁴⁷ See *supra* paras 154, 160.

¹⁰⁴⁸ Ex. 14, p. 1; Ex. 660. See also Milan Babić, 16 Feb 2006, T. 1475-1476; Ex. 504; Ex. 868, p. 3, in which, in July 1994, Goran Hadžić, President of the RSK, stated that: “[o]ur aim is well known, and this is a unified Serbian state”.

¹⁰⁴⁹ Veljko Džakula, 16 Jan 2006, T. 400-403, also testifying that Milan Martić was “a person who had authority, who was obeyed, whose orders were complied with” and that “if someone failed to comply with an order of his, he could be quite rough. He could be angry. He could threaten that they would be replaced”; Stevo Plejo, 20 Sep 2006, T. 8702-8703, 21 Sep 2006, T. 8797-8798, see also Aernout van Lynden, 2 Jun 2006, T. 5017-5018; Nikola Medaković, 9 Oct 2006, T. 8965-8966, 8968; Mile Dakić, 25 Oct 2006, T. 10023. See also Milan Babić, 15 Feb 2006, T. 1407, Ex. 1028, ERN: L0079770, p. 24; Stevo Plejo, 20 Sep 2006, T. 8703; Ex. 44. On 23 August 1993, Milan Martić suspended the work of the RSK SDB, pending restructuring of the SDB, because “the political and security situation has deteriorated and the work of certain ministry departments has been blocked”, Ex. 525.

¹⁰⁵⁰ Radoslav Maksić, 6 Feb 2006, T. 1177-1178. See also Witness MM-003, 8 Mar 2006, T. 1979-1981, testifying about meetings with chiefs of SJBs.

¹⁰⁵¹ Ex. 957, dated 1 to 2 September 1991, provides that information had been received from, *inter alia*, Kistanje, Plaški, Gračac, Glina, Kostajnica, and Dubica Štica, concerning fighting and “mopping up” activities. It is unclear in which capacity Milan Martić received this information, Minister of the Interior or Deputy Commander of the TO. See also Radoslav Maksić, 6 Feb 2006, T. 1177, testifying that the TO sent reports to the MUP.

was regularly reported to Milan Martić. In particular, police inspectors, who carried out investigations into crimes on the ground, reported to the MUP and Milan Martić during the time period of 1991 to 1995 pursuant to reporting regulations.¹⁰⁵² Defence witness Slobodan Jarčević, who was the Foreign Minister of the RSK from October 1992 until April 1994, testified that crimes committed in the territory of the RSK, including those charged in the Indictment against Milan Martić, were discussed at government sessions.¹⁰⁵³ The evidence also shows that there were numerous contacts between UNPROFOR and the RSK government, including the SJBs, regarding crimes committed on the ground by members of the MUP.¹⁰⁵⁴

338. There is evidence that Milan Martić stressed that the police should act in accordance with the law and that the police should never differentiate between citizens based on ethnic political, religious, or other affiliation.¹⁰⁵⁵ Moreover, the evidence shows that Milan Martić in some cases took measures to address the criminal behaviour of members of the MUP and of other units.¹⁰⁵⁶ At some point during 1991, there was an incident where Croat prisoners were mistreated by “a

¹⁰⁵² Witness MM-096, 25 Aug 2006, T. 7188-7189. Pursuant to an SFRY Regulation of 1974, the SJBs had a reporting obligation to the SUP and to the MUP, and these obligations were complied with. On 20 May 1992, this regulation was superseded by the “Mandatory Instruction on Implementation and Information in Internal Affairs Organs in the Republic of Serbian Krajina”, which was issued by Milan Martić in his capacity as Minister of the Interior, Ex. 893, Witness MM-096, 23 Aug 2006, T. 6971-6974. Pursuant to this very detailed Instruction (item 9), “[t]he internal affairs organ shall urgently inform the [MUP] about all important incidents and trends, and measures undertaken”. Moreover, the MUP’s “permanent duty service” was under an obligation to “compile daily information about incidents, trends and measures undertaken” (item 11), regarding the permanent duty service, *see also* Witness MM-096, 25 Aug 2006, T. 7172-7173. If a report contained information concerning two or more casualties, the SJB would not only report to the SUP but would immediately inform also the MUP in Knin, Witness MM-096, 25 Aug 2006, T. 7171-7172.

¹⁰⁵³ Slobodan Jarčević, 13 Jul 2006, T. 6209-6210, also testifying that in his capacity as Foreign Minister, he sent a letter to the UN Security Council wherein he attempted to explain the situation attending those crimes. Moreover, Slobodan Jarčević testified that the RSK government “did not take any steps against the members of any other nation or ethnic group”, Slobodan Jarčević, 13 Jul 2006, T. 6212. In his view, it was difficult for the RSK government to protect the Croats who remained in the RSK because many of the crimes were committed out of revenge for losing family members, Slobodan Jarčević, 13 Jul 2006, T. 6209.

¹⁰⁵⁴ Witness MM-096, 25 Aug 2006, T. 7185. On 24 August 1992, Cedric Thornberry, the Director for Civil Affairs of UNPROFOR, sent a letter to the RSK Ilija Prijić concerning crimes in the Vrlika area committed by the police, requesting the policemen who were engaging in such crimes be removed from the force, Ex. 734. *See also* Ex. 733; Ex. 735; Ex. 736; Ex. 737; Ex. 739; Ex. 740. Milan Martić issued instructions regulating in detail the mode of cooperation with UNPROFOR and UNCIVPOL, according to which all organs of the RSK MUP should be at the disposal of UNCIVPOL, which was permitted to observe at the SJBs and to act in response to complaints by RSK citizens, Witness MM-117, 18 Oct 2006, T. 9647-9649. The Trial Chamber notes that in the Secretary-General’s report of 28 September 1992, it was reported that “the overall failure to cooperate with UNPROFOR has undermined UNPROFOR’s ability to fulfil its police monitoring functions, Ex. 75, para. 17 (*see also* para. 18). Charles Kirudja testified about interference by RSK authorities with UNPROFOR’s mission, Charles Kirudja, 31 May 2006, T. 4828 (*see also* T. 4832-4833 regarding arrests of UNPROFOR members). *See also* Ex. 757.

¹⁰⁵⁵ Radoslav Maksić, 7 Feb 2006, T. 1231; Witness MM-096, 21 Aug 2006, T. 6845-6846; Witness MM-117, 13 Oct 2006, T. 9339, 9346, 17 Oct 2006, T. 9580-9582. There is evidence that in August 1991, Milan Martić was aware that prisoners were taken from Kijevo to the Knin SJB. On one occasion he told the police transferring prisoners to “[p]lease make sure that none of the people are harmed or killed”. When asked why, by police officer Bozo Ceko, Milan Martić answered “these people have to be exchanged. They are prisoners”, Dragan Knežević, 3 Nov 2006, T. 10674. The Trial Chamber also notes that some measures were taken by the JNA 9th Corps to prevent crimes, including to carry out investigations by military prosecutors, Borislav Đukić, 23 Oct 2006, T. 9920-9921. *See also* Ex. 27; Ex. 965, p. 5.

¹⁰⁵⁶ Witness MM-003, 8 Mar 2006, T. 2025, testifying that Milan Martić was informed that looting was perpetrated by the police in areas where fighting had occurred and that he disapproved of this and changed the commanders of the police in the villages “where there were major problems and where he had indications of things like that going on”.

commanding officer” at the training camp in Golubić wherefore Captain Dragan Vasiljković requested Milan Martić take measures.¹⁰⁵⁷ Milan Martić expelled the commanding officer, but eventually this person was allowed to stay on at Golubić.¹⁰⁵⁸ In November 1991, an attempt was made by Veljko Radunović and Mile Mišljenović to secede, *inter alia*, Hrvatska Dubica from the Hrvatska Kostajnica municipality and annex it to Bosanska Dubica.¹⁰⁵⁹ The evidence shows that Milan Martić visited the area after the president of the Hrvatska Kostajnica municipality had requested assistance and that Milan Martić disbanded Veljko Radunović’s police unit and replaced it with a military police unit of the JNA Banja Luka Corps.¹⁰⁶⁰ In January 1992, SJBs were set up in Hrvatska Kostajnica and Šaš, after which some of the renegade groups were imprisoned or entered the legal formations of the SAO Krajina.¹⁰⁶¹ However, the Trial Chamber also heard evidence that after a certain period the JNA unit was expelled and the previously disbanded unit was re-installed.¹⁰⁶²

339. On 19 February 1992, Milan Martić ordered the disbandment of an RSK MUP Special Purpose unit commanded by Predrag Baklajić due to information that this unit had been involved in criminal activities, including several murders, and incidents of robbery, theft and destruction.¹⁰⁶³ This disbandment was ultimately not carried through and the unit continued with criminal activities in 1992.¹⁰⁶⁴ On 1 April 1993, Milan Martić requested the MUP of Serbia to provide 20-30 inspectors to deal with homicides and property offences which were “rapidly increasing recently in the RSK”.¹⁰⁶⁵ On 7 September 1993, Milan Martić ordered the arrest of members of certain paramilitary groups, who were suspected of committing organised crimes.¹⁰⁶⁶ There is evidence that the unit Arkan’s Tigers, under the command of Željko “Arkan” Raznjatović, left the territory of the RSK in 1993 after an order had been issued by the SVK commander Mile Novaković and Milan

¹⁰⁵⁷ Stevo Plejo, 20 Sep 2006, T. 8702.

¹⁰⁵⁸ Stevo Plejo, 20 Sep 2006, T. 8702-8703, 21 Sep 2006, T. 8796-8798.

¹⁰⁵⁹ Witness MM-022, 20 Mar 2006, T. 2315-2317, 2352-2353.

¹⁰⁶⁰ Witness MM-022, 20 Mar 2006, T. 2316-2318, 2352-2353; Josip Josipović, 6 Apr 2006, T. 3322; Nikola Dobrijević, 10 Nov 2006, T. 10890-10901, 10895-10896. *See also* Ex. 290, p. 2, stating that the “local Chetniks”, including Momčilo Kovačević and Stevo Radun, controlled the area, and were in conflict with “Martić’s men”; Ex. 600, indicating that in September 1991 Stevan Borojević requested that he and his unit remain under the command of Milan Martić; Ex. 601, indicating that on 13 January 1992 Stevan Borojević was under the command of Milan Martić; Ex. 602. *See further* Nikola Dobrijević, 13 Nov 2006, T. 10983-10985, 10112-10113.

¹⁰⁶¹ Nikola Dobrijević, 10 Nov 2006, T. 10889-10890, 10892-10893, 10896-10897, 13 Nov 2006, T. 10943, 10989.

¹⁰⁶² Josip Josipović, 6 Apr 2006, T. 3322.

¹⁰⁶³ Ex. 43; Ex. 563; Ex. 566, providing that the arrest, in February 1992, of the leaders and several members of this unit only temporarily stopped its activities and that as a result of “inadequate judicial measures” and a “poor political situation in Krajina” this unit could resume its criminal activities. *See further* Ex. 561, which reports on murders in Dabar of seven civilians; Ex. 560, which provides that the “Minister of [the] Interior be informed about the content of this Information, since Baklajić refers to him as his order issuing authority and the only one he is subordinated to.”

¹⁰⁶⁴ Ex. 563.

¹⁰⁶⁵ Ex. 665.

¹⁰⁶⁶ Ex. 541. *See also* Witness MM-096, 22 Aug 2006, T. 6919, 25 Aug 2006, T. 7173-7174, testifying that sometime between 1993 and 1994 Milan Martić ordered that perpetrators of serious crimes, particularly murders, be arrested.

Martić as Minister of the Interior.¹⁰⁶⁷ Lastly, there is some evidence that criminal investigations were carried out and that perpetrators were brought to justice.¹⁰⁶⁸

340. There is no further evidence that measures were taken to address the widespread criminal activities which the evidence shows occurred in the SAO Krajina and the RSK from 1991 through 1995.¹⁰⁶⁹ Rather, there is evidence which shows the contrary. After the attack on Struga, Captain Dragan Vasiljković arrested ten members of the TO in Dvor, who were allegedly responsible for killing several civilians. Subsequently, Milan Martić arrived in Dvor and ordered Captain Dragan Vasiljković to release the ten men, which he did.¹⁰⁷⁰

341. Rade Rašeta testified that on one occasion Milan Martić told him that “he could not make himself hate Croats” and “whoever was saying that [he] was a nationalist and hated Croats was wrong”.¹⁰⁷¹ Witness MM-003 testified that Milan Martić did not express hatred towards the Croat population, but rather that “[h]e hated the chequerboard emblem” and that “[h]e hated Tudjman most of all”.¹⁰⁷² The Trial Chamber heard evidence that during the summer and autumn of 1991 Milan Martić instructed persons involved in humanitarian assistance to treat both Croat and Serb refugees arriving from Drniš equally.¹⁰⁷³ Slobodan Jarčević testified that Milan Martić “demonstrated the nobility of his character” by looking after refugees who arrived from BiH in 1994 despite the difficulties that the RSK was facing due to international sanctions.¹⁰⁷⁴ However, the Trial Chamber notes the evidence concerning the return of Croat refugees, which was a condition of the Vance Plan and which Milan Martić was clearly against and in fact obstructed.¹⁰⁷⁵

¹⁰⁶⁷ Witness MM-096, 22 Aug 2006, T. 6921-6922, 6925, 24 Aug 2006, T. 7038-7039. The Trial Chamber notes that there is no evidence that this unit was suspected of having committed crimes.

¹⁰⁶⁸ Witness MM-117, 13 Oct 2006, T. 9346-9347, 9351, concerning the murder of the Čengić family in 1992 near Knin, T. 9392-9393, concerning incidents in 1993, including murders, which may have been motivated by revenge by Serbs, and that the police identified several perpetrators and filed criminal reports for further judicial proceedings. Further, in relation to Milan Martić’s authority to take measures, *see* Ex. 38, Report to the SAO Krajina TO Staff, dated 6 August 1991, providing that Milan Martić issued a cease-fire order due to the visit of the SFRY Vice-President Branko Kostić; Ex. 40, reporting that Milan Martić issued an order to the Benkovac TO staff on 16 September 1991 re-subordinating TO members of the Benkovac TO to a unit of Lieutenant Colonel Živanović for lifting the blockade of the Zemunik airport; Ex. 521; Ex. 602, order of Milan Martić, dated 26 Nov 1991, that “all persons wearing camouflage uniforms who are not members of the SAO Krajina police [...] have to return the insignia of police members and report to the recruiting office in Kostajnica in order to join [JNA]”. *See also* Nikola Dobrijević, 13 Nov 2006, T. 11013.

¹⁰⁶⁹ *See supra* section III H. In this respect, the Trial Chamber recalls the testimony of Josip Josipović that neither Momčilo Kovačević nor Stevo Radunović were investigated or prosecuted concerning crimes committed in the Hrvatska Dubica area, Josip Josipović, 7 Apr 2006, T. 3373.

¹⁰⁷⁰ Aernout van Lynden, 2 Jun 2006, T. 5017-5019, 5038-5039; Ex. 587; Ex. 588. *See also* Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 2, pp 8-11; Ex. 1044.

¹⁰⁷¹ Rade Rašeta, 2 May 2006, T. 3901. *See also* Charles Kirudja, 1 Jun 2006, T. 4961; Witness MM-096, 21 Aug 2006, T. 6846; Witness MM-090, 31 Aug 2006, T. 7482, 7522; Witness MM-117, 13 Oct 2006, T. 9336, 9339; Witness MM-105, 2 Nov 2006, T. 10623; Ex. 966, p. 1.

¹⁰⁷² Witness MM-003, 9 Mar 2006, T. 2105-2106.

¹⁰⁷³ Ljubica Vujanić, 18 Sep 2006, T. 8499-8501. *See also* Ljubica Vujanić, 18 Sep 2006, T. 8498-8499.

¹⁰⁷⁴ Slobodan Jarčević, 12 Jul 2006, T. 6172-6173.

¹⁰⁷⁵ *See supra* para. 138. Milan Babić, 20 Feb 2006, T. 1645-1647, 1651-53, testifying that Milan Martić never stated that the right conditions existed for the return of refugees. *See also* Veljko Džakula, 16 Jan 2006, T. 405, 407, 17 Jan

342. The evidence shows that Milan Martić actively advocated and pursued the goal of creating an ethnically Serb state in spite of his awareness of the serious and widespread crimes, which were being perpetrated against the Croat and other non-Serb civilian population as a result of this policy. While the Trial Chamber notes the evidence presented above that Milan Martić did not personally express hatred towards Croats or other non-Serbs, and on one occasion instructed that Serb and Croat refugees be treated equally, this evidence does not serve to outweigh the substantial evidence of Milan Martić's conscious disregard for the fate of the Croat and other non-Serb population and persistent pursuance of the goal to create a Serb state.

IV. RESPONSIBILITY OF MILAN MARTIĆ

A. Findings on the crimes charged

1. General requirements of Article 3 of the Statute

343. The Defence submitted that an armed rebellion organised by Croatian authorities existed in the territory of Croatia from 1990 to 1992 "when Yugoslavia *de facto* ceased to exist".¹⁰⁷⁶ It is alleged that this rebellion was aimed at achieving the independence of Croatia. The Defence claims that the federal authorities of the SFRY in Belgrade, including the Presidency, the federal Defence Ministry, the SSNO and the JNA lawfully acted with the aim to suppress this armed rebellion.¹⁰⁷⁷ The Defence further claims that the SAO Krajina leadership, the police and the TO had a duty to comply with the order and instructions of the federal authorities.¹⁰⁷⁸ The Prosecution submits that an armed conflict existed during the Indictment period and that the SAO Krajina leadership, including Milan Martić, directly participated in the armed conflict.¹⁰⁷⁹

2006, T. 410-411; John McElligott, 29 May 2006, T. 4707-4708; Charles Kirudja, 31 May 2006, T. 4881; Ex. 232; Ex. 761, a message concerning the expulsion of 5 Croats from Ličko Petrovo Selo, which was copied to Milan Martić but to which he never replied, Charles Kirudja, 31 May 2006, T. 4879-4881. However, according to Slobodan Jarčević Milan Martić was of the view that both Serbs and Croats should be allowed to return, Slobodan Jarčević, 14 Jul 2006, T. 6331, 6333. *See also* Witness MM-105, 2 Nov 2006, T. 10620-10621. The Trial Chamber notes Milan Martić's reaction to information received in June 1991 that Croat refugees in Šibenik from the Knin area had been beaten and harassed by the SAO Krajina police. As for the injuries, Milan Martić said "Well, they can injure themselves, inflict injuries on themselves and then show this and say that somebody had beaten them" and that Martić's Police beat no one without a reason. Moreover, Milan Martić said that he had "told [the refugees that] if they wanted to stay they could stay, but [they] had to respect the laws of the SAO Krajina", something which they rejected and therefore left, Witness MM-079, 3 Apr 2006, T. 3112-3113. Lastly, the Trial Chamber notes that on 23 November 1994 Charles Kirudja met with Slobodan Milošević and Milan Martić in Belgrade during which meeting Milan Martić was not amenable to letting humanitarian assistance go to the Muslim population in the Bihać pocket in BiH according to a plan devised by Charles Kirudja and Yasushi Akashi. Milan Martić had to be ordered by Slobodan Milošević to let the assistance go through, Charles Kirudja, 1 Jun 2006, T. 4897, 4962, 4965; Ex. 765. *See also* Ex. 85.

¹⁰⁷⁶ Defence Closing Statement, T. 11257-11258; T. 11264-11267

¹⁰⁷⁷ Defence Closing Statement, T. 11262-11268.

¹⁰⁷⁸ Defence Closing Statement, T. 11264-11267. In addition, the Defence submits that during the hostilities a violation of Article 3 of Additional Protocol II was carried out by foreign states, *see ibid.* at T. 11260-11262. The Trial Chamber does not find it necessary to consider this argument.

¹⁰⁷⁹ Prosecution Rebuttal, T. 11375-11378. *See also* Prosecution Final Trial Brief, paras 356-357.

344. Armed clashes erupted between Serbs and Croats from April 1991 in the territory of Croatia. The police and local people from both sides participated in the hostilities. Following these armed clashes, the JNA intervened to separate the sides by establishing buffer zones. From August 1991, the hostilities intensified with the direct involvement of the JNA and the Serb forces of the SAO Krajina. During the summer and autumn of 1991, numerous attacks were carried out on Croat majority villages by the JNA acting in coordination with the TO and the *Milicija Krajine*.¹⁰⁸⁰ The evidence further shows that throughout 1991, the SAO Krajina leadership, including Milan Martić, played an active role in the conflict. During the conduct of the hostilities, the SAO Krajina leadership requested and obtained military assistance from Serbia.¹⁰⁸¹ The leadership participated in the establishment of a training camp, which was predominantly military in character where members of the *Milicija Krajine* were trained. These units subsequently directly participated in the hostilities.¹⁰⁸² Furthermore, evidence shows that the leadership established the armed forces of the SAO Krajina, made up of the TO and the *Milicija Krajine*, and cooperated with the JNA in organising operations on the ground.¹⁰⁸³ During this period, Croatian authorities organised the Croatian army, *inter alia*, by forming a special military unit, the ZNG, which was employed in the hostilities.¹⁰⁸⁴

345. From the end of 1991, several cease-fire agreements and agreements on the withdrawal of the JNA from Croatia were adopted.¹⁰⁸⁵ In particular, the Trial Chamber notes the adoption on 21 February 1992 of the UN Security Council Resolution 743 implementing the Vance Plan and establishing UNPROFOR in the UNPAs.¹⁰⁸⁶ However, the peace plan did not end the conflict, which continued in Croatia and also extended into northern BiH, and which continued through 1995 with several attacks and incursions from both sides.¹⁰⁸⁷

346. The Trial Chamber finds that the crimes which Milan Martić is charged with were closely related to the conflict. In this regard, the Trial Chamber notes that the perpetrators of the crimes included members of the JNA, the TO and the *Milicija Krajine*, who were involved in the conduct of hostilities.

¹⁰⁸⁰ See *supra* section III D.

¹⁰⁸¹ See *supra* section III B 2.

¹⁰⁸² See *supra* section III B 3; section III D.

¹⁰⁸³ The Trial Chamber notes that the SAO Krajina leadership had meetings with JNA commanders in order to plan operations on the ground. See, for example, *supra* para. 174, referring to a meeting between Milan Martić and Colonel Dusan Smiljanić, Chief of Security of the JNA 10th Zagreb Corps in relation to the take-over of the Kostajnica area.

¹⁰⁸⁴ The Trial Chamber notes that ZNG were found in areas such as Kijevo, Hrvatska Dubica, Saborsko and Škabrnja where attacks were carried out by the JNA and the Serb forces.

¹⁰⁸⁵ See *supra* para. 138.

¹⁰⁸⁶ See *supra* para. 150.

¹⁰⁸⁷ See *supra* paras 153-154, 158, 303-313, 327-328.

347. The Trial Chamber finds that a state of armed conflict existed in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment. The Defence's argument concerning an armed rebellion is therefore dismissed. Moreover, the Trial Chamber finds that the crimes charged were committed in the context of the armed conflict. Consequently, the Trial Chamber has jurisdiction over all crimes charged in the Indictment and general requirements of Article 3 of the Statute have been fully satisfied.

2. General requirements under Article 5 of the Statute

348. The Trial Chamber recalls its finding regarding the existence of an armed conflict and finds that crimes with which Milan Martić has been charged were linked geographically and temporally with the armed conflict.

349. From around June 1991 through December 1991, military operations and raids were carried out against predominantly Croat villages in the SAO Krajina, including by the *Milicija Krajine*, the JNA and the TO.¹⁰⁸⁸ The attacked villages included Potkonije, Vrpolje, Glina, Kijevo, Drniš, Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja, Nadin and Bruška. Villagers were left with no choice but to flee. During or immediately after the attacks, villagers who stayed behind were killed and beaten. Private and public property, including churches and schools, were destroyed and looted. Hundreds of Croat and other non-Serb civilians and members of Croatian armed forces and formations were captured during and after the attacks and were detained in Knin and other locations, where they were subjected to severe mistreatment.¹⁰⁸⁹ Moreover, grave discriminatory measures were taken against the Croat population throughout 1991.¹⁰⁹⁰

350. There is evidence that there were unarmed or poorly armed Croatian protection forces in the villages of Lipovača, Poljanak and Bruška.¹⁰⁹¹ The Trial Chamber considers that this does not alter the civilian nature of the attacked population.¹⁰⁹² Croatian armed forces and formations, consisting of several hundred men, were present in Škabrnja and in Saborsko and fought against the JNA, the TO and the police forces of the SAO Krajina.¹⁰⁹³ However, considering the size of the civilian population in these areas, the Trial Chamber finds that the presence of Croatian armed forces and formations in the Škabrnja and Saborsko areas does not affect the civilian character of the attacked population.

¹⁰⁸⁸ See *supra* section III D.

¹⁰⁸⁹ See *supra* section III D; section III E.

¹⁰⁹⁰ See *supra* paras 324-326.

¹⁰⁹¹ See *supra* paras 201, 213, 266. There were ZNG and Croatian police forces in Hrvatska Dubica and the surrounding villages. However, they withdrew from the villages around 13 September 1991, see *supra* para. 177.

351. Acts of violence and intimidation against the Croat and other non-Serb population, including killings, beatings, robbery, theft, harassment and destruction of houses and Catholic churches, were prevalent in the RSK during the period between 1992 and 1995, and resulted in an exodus of the Croat and other non-Serb population from the territory of the RSK.¹⁰⁹⁴ The Trial Chamber also recalls the evidence regarding operation “*Koridor 92*”. As a result of this operation, the Posavina area was devastated, and many civilians, including Croats, were killed.¹⁰⁹⁵ There is also evidence that in July 1992, the RSK authorities cooperated with the authorities of Bosanski Novi, BiH, in the displacement of the non-Serb population from Bosanski Novi to Croatia and other countries.¹⁰⁹⁶

352. The Trial Chamber finds that there was a widespread and systematic attack directed against the Croat and other non-Serb civilian population in the relevant territories of Croatia and BiH during the time relevant to the crimes charged in the Indictment.

353. The evidence presented establishes beyond reasonable doubt that the perpetrators of the crimes charged in the Indictment knew about the attack on the civilian population and that their acts were part thereof.

3. Counts 1, 3 to 4, and 12 to 14 – Persecution, murder, destruction and plunder (Articles 3 and 5)

(a) Hrvatska Dubica¹⁰⁹⁷

354. The Trial Chamber finds that the following 41 persons were detained in the fire station in Hrvatska Dubica on 20 October 1991 and intentionally killed the following day at Krečane near Baćin: Katarina Alavančić, Terezija Alavančić, Josip Antolović, Marija Batinović, Mara Ćorić, Mijo Ćović, Marija Delić, Ana Dikulić, Ruža Dikulić, Sofija Dikulić, Štjepan Dikulić, Antun Đukić, Marija Đukić, Antun Đurinović, Ana Ferić, Juraj Ferić, Kata Ferić, Filip Jukić, Marija Jukić, Jozo Karanović, Antun Krivajić, Reza Krivajić, Barbara Kropf, Pavao Kropf, Ivan Kulišić, Nikola Lončarić, Antun Mucavac, Ivo Pezo, Sofija Pezo, Anka Piktaja, Štjepan Sabljari, Veronika Stanković, Antun Švračić, Marija Švračić, Ana Tepić, Dušan Tepić, Ivan Trninić, Ivo Trninić, Kata Trninić, Terezija Trninić, and Katarina Vladić. The Trial Chamber finds that it has been proven beyond reasonable doubt that all victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. Based on the evidence concerning the organised rounding up, detention and guarding of the civilians at the fire station by the *Milicija Krajine*, and the evidence that the victims were killed only one day subsequent to their detention, the Trial Chamber

¹⁰⁹² Article 50 of Additional Protocol I; *Blaškić* Appeal Judgement, para. 115. *See supra* fn 95.

¹⁰⁹³ *See supra* paras 224 (regarding Saborsko), 236-237 (regarding Škabrnja).

¹⁰⁹⁴ *See supra* section III F; section III H 2-3.

¹⁰⁹⁵ *See supra* para. 154.

¹⁰⁹⁶ *See supra* para. 300.

considers it established beyond reasonable doubt that the *Milicija Krajine* was responsible for these killings. The Trial Chamber finds that all the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

355. The Trial Chamber heard evidence that between mid-September 1991 and mid-October 1991, approximately ten Croat or mixed ethnicity houses were destroyed in Hrvatska Dubica.¹⁰⁹⁸ There is evidence that “reservists” were involved in these acts. The Trial Chamber notes in particular that by mid-September 1991 there were only some 60 mainly elderly people remaining in the village and considers that this destruction was not justified by military necessity. However, the Trial Chamber considers that the destruction of 10 houses in a village of some 400 to 500 households gives rise to doubt as to whether this destruction can be considered as destruction on a large scale. The Trial Chamber therefore finds that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have not been met.

356. In relation to the destruction of the Catholic church in Hrvatska Dubica, the Trial Chamber considers that the evidence does not establish beyond reasonable doubt that it was destroyed before December 1991.¹⁰⁹⁹ For these reasons, the Trial Chamber concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

357. The Trial Chamber heard evidence that the JNA, TO and *Milicija Krajine* took part in looting of Croat houses in Hrvatska Dubica from mid-September 1991 and stole cars, tractors, tools, machinery, furniture and cattle.¹¹⁰⁰ The Trial Chamber finds that this intentional appropriation of property was carried out without lawful basis or legal justification. Furthermore, given the scale of the looting, the Trial Chamber finds that it resulted in grave consequences for the victims, having regard to the overall effect on the civilian population and the multitude of offences committed. The Trial Chamber finds that all the elements of the crime of plunder of public or private property (Count 14) have been established.

358. The Trial Chamber recalls that among the persons rounded up in the fire station in Hrvatska Dubica, the clear majority were Croats. The Trial Chamber notes that there were also Serbs among those rounded up. However, the evidence shows that three Serbs managed to leave the fire station and that seven Croats managed to leave the fire station after their Serb neighbours or friends had contacted the guards. The Trial Chamber finds that the killings of the above-mentioned 41 victims

¹⁰⁹⁷ See *supra* section III D 2 (b).

¹⁰⁹⁸ See *supra* para. 180.

¹⁰⁹⁹ See *supra* para. 194.

¹¹⁰⁰ See *supra* para. 180.

were carried out with intent to discriminate on the basis of Croat ethnicity. The elements of the crime of persecutions (Count 1) have therefore been met in relation to these killings.

(b) Cerovljani¹¹⁰¹

359. The Trial Chamber finds that the following persons from Cerovljani were intentionally killed: Marija Antolović, Ana Blinja, Josip Blinja, Katarina Blinja, Nikola Blinja, Andrija Likić, Ana Lončar, Antun Lončar, and Kata Lončar (born 1906). The Trial Chamber recalls the manner in which the victims from Hrvatska Dubica were rounded up and detained in the fire station on 20 October 1991 and that they were subsequently killed on 21 October 1991 at Krečane near Baćin and buried in the mass grave at that location. Furthermore, the Trial Chamber recalls its finding that the *Milicija Krajine* was responsible for the killing of the victims detained in the fire station. The Trial Chamber considers that the rounding up, detention and killing of the above-named victims from Cerovljani is almost identical to the events in Hrvatska Dubica, including that most of the victims were buried at the mass grave in Krečane. It is therefore established beyond reasonable doubt that the above-mentioned victims from Cerovljani were killed on or around 20 or 21 October 1991 either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them that the Trial Chamber has found were present in the area at this time. The Trial Chamber considers it proven beyond reasonable doubt that these victims were civilians and that they were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber therefore concludes that all the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

360. The Trial Chamber finds that on 13, 21 and 24 September 1991, armed Serbs from Živaja under the command of Nikola Begović burnt 10 houses in Cerovljani.¹¹⁰² The Trial Chamber finds that in a small village of some 500 people, the destruction of 10 houses must be regarded as destruction on a large scale. The Trial Chamber finds that there is evidence that this destruction was not carried out for reasons of military necessity. In this regard, the Trial Chamber notes in particular the evidence that only elderly persons remained in Cerovljani and that the armed Serbs came on three separate occasions. Finally, the intent of the perpetrators may be inferred from the repeated and deliberate nature of the attacks, as well as from the absence of any military necessity. The Trial Chamber therefore finds that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have been met.

¹¹⁰¹ See *supra* section III D 2 (c).

¹¹⁰² See *supra* para. 187.

361. The Trial Chamber finds that on 24 September 1991 the same armed Serbs damaged the Catholic church in Cerovljani.¹¹⁰³ The Trial Chamber finds that it has been proven that the church was not used for military purposes at the time it was damaged. The intent of the perpetrators to cause damage may be inferred from the fact that it occurred without any military necessity and as part of a series of repeated attacks targeting property in Cerovljani. The Trial Chamber therefore concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have been met.

362. The Trial Chamber heard evidence that the car of Antun Blažević was stolen by the same armed Serbs mentioned above.¹¹⁰⁴ Given the circumstances of this appropriation, the Trial Chamber considers that it was done without any lawful basis or legal justification. However, it is required that the property be of “sufficient monetary value” for its appropriation to involve grave consequences for the victim. While the Trial Chamber finds that a personal vehicle is an item of some value, the evidence is insufficient to establish that this particular appropriation resulted in grave consequences for the victim. The elements of the crime of plunder of public or private property under Article 3 (Count 14) have therefore not been met.

363. The Trial Chamber considers the totality of the evidence in relation to the events in Cerovljani in September and October 1991 to establish that the Croat civilian population and Croat property, including the Catholic church, were the objects of attack. In this respect, the Trial Chamber recalls the systematic and repeated incursions into the village by armed Serbs with resulting killings and destruction. Moreover, the Trial Chamber recalls that a Croat civilian, Kata Lončar, survived the occupation because she had connections with the Serbs.¹¹⁰⁵ The Trial Chamber therefore finds it established beyond reasonable doubt that the killings of the ten victims referred to above were carried out with intent to discriminate on the basis of Croat ethnicity. Moreover, the Trial Chamber considers the evidence to establish beyond reasonable doubt that the destruction of private houses and of the Catholic church was carried out with the same discriminatory intent. The elements of the crime of persecutions (Count 1) have therefore been met in relation to the killings and the destruction in Cerovljani.

(c) Baćin and surroundings¹¹⁰⁶

364. The Trial Chamber recalls that Vera Jukić, Terezija Kramarić, Mijo Krnić, Marija Milašinović, Marija Šestić and Soka Volarević were exhumed from the mass grave at Krečane near

¹¹⁰³ *Ibid.*

¹¹⁰⁴ *Ibid.*

¹¹⁰⁵ *See supra* para. 188.

¹¹⁰⁶ *See supra* section III D 2 (d).

Bačín, and that Nikola Barunović was exhumed from the mass grave at Višnjevački Bok, where Ivo Pezo, who had previously been detained at the fire station in Hrvatska Dubica, was also exhumed. On the basis of this evidence, the Trial Chamber considers it established beyond reasonable doubt that these seven victims were killed at or around the same time as the victims from Hrvatska Dubica and Cerovljani were killed. Moreover, the Trial Chamber considers it established beyond reasonable doubt that these victims were intentionally killed either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them which the Trial Chamber has found were present in the area from mid-October 1991. The Trial Chamber finds it established beyond reasonable doubt that the victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

365. The Trial Chamber finds that the following 21 persons from Bačín were intentionally killed around October 1991: Matija Barunović, Antun Bunjevac, Tomo Bunjevac, Antun Čorić, Barica Čorić, Josip Čorić, Josip Čorić, Vera Čorić, Nikola Felbabić, Grga Glavinić, Anka Josipović, Ankica Josipović, Ivan Josipović, Josip Karagić, Kata Lončar (born 1931), Štjepan Lončar, Antun Ordanić, Luka Ordanić, Antun Pavić, Matija Pavić and Nikola Vrpoljac.¹¹⁰⁷ The Trial Chamber finds it established beyond reasonable doubt that the victims were civilians and that they were taking no active part in the hostilities at the time of their deaths. Based on the totality of the evidence, the Trial Chamber finds it established beyond reasonable doubt that the above-mentioned victims from Bačín were killed around October 1991 either by the *Milicija Krajine*, or units of the JNA or the TO, or a combination of some of them which the Trial Chamber has found were present in the area at this time. The Trial Chamber finds that the elements of crimes of murder as a crime against humanity (Count 3) and of murder as a violation of the laws or customs of war (Count 4) have been established.

366. In relation to the destruction of houses and the Catholic church in Bačín, it has not been proven beyond reasonable doubt that the destruction occurred before December 1991.¹¹⁰⁸ For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12) and of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

¹¹⁰⁷ The Trial Chamber recalls that it will not consider the killing of Željko Abaza for a conviction, *see supra* fn 494. *See also supra* section I C.

¹¹⁰⁸ *See supra* para. 195.

367. The Trial Chamber recalls that in 1991 the population in Baćin was 95% Croat and 1.5% Serb. Even making allowance for the possibility that there may have been a few Serbs among the 21 victims referred to above, this does not affect the Trial Chamber's assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. With regard to the six victims exhumed from the mass graves in Krečane near Baćin and in Višnjevački Bok, the Trial Chamber recalls its findings regarding the killing of persons from Cerovljani and Hrvatska Dubica and finds that also these six killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

(d) Lipovača and neighbouring hamlets¹¹⁰⁹

368. The Trial Chamber recalls that Franjo Brozinčević, Marija Brozinčević, Mate Brozinčević, Mira Brozinčević Mirko Brozinčević, Roža Brozinčević and Katarina Cindrić were killed in Lipovača towards the end of October 1991. The evidence shows beyond reasonable doubt that the victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber recalls the warning given by the JNA to the inhabitants of Lipovača to beware of paramilitary forces who followed after the JNA. The Trial Chamber further recalls that after the departure of the JNA, paramilitary forces arrived in Lipovača and Nova Kršlja from mid-October and that after their arrival the dead bodies of the above-mentioned victims were discovered. The Trial Chamber therefore considers it established beyond reasonable doubt that these intentional killings were perpetrated by Serb paramilitary forces. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established.

369. The Trial Chamber heard evidence that at the end of September or early October 1991, the JNA arrived in Lipovača and fired its tanks at and damaged the Catholic church in Drežnik Grad nearby.¹¹¹⁰ The Trial Chamber has not been furnished with evidence that the church was not being used for military purposes at the time it was damaged. In this respect, the Trial Chamber notes that the Croatian police were also present in Drežnik Grad at the time. The Trial Chamber therefore concludes that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

370. The Trial Chamber recalls that in 1991 the population in Lipovača was 83% Croat and 16% Serb. Moreover, the Trial Chamber recalls the warning to the villagers by members of the JNA to

¹¹⁰⁹ See *supra* section III D 3 (b).

¹¹¹⁰ See *supra* para. 202.

beware of Serb paramilitary units who followed after the JNA and that such paramilitary units arrived after the JNA had left.¹¹¹¹ The evidence shows that after their arrival, Mate Brozinčević, Roža Brozinčević, and Mirko Brozinčević, all Croats, were killed.¹¹¹² The Trial Chamber finds the evidence to establish beyond reasonable doubt that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. Moreover, in light of the totality of the evidence, the Trial Chamber also finds that the killings of Franjo Brozinčević, Mira Brozinčević, Marija Brozinčević, and Katarina Cindrić were carried out with the same discriminatory intent. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

(e) Vukovići and Poljanak¹¹¹³

371. The Trial Chamber finds that Tomo Vuković was intentionally killed by unidentified armed Serbs in Vukovići on 8 October 1991. The Trial Chamber considers it proven beyond reasonable doubt that Tomo Vuković was a civilian and that he was not taking an active part in the hostilities at the time of his death.¹¹¹⁴ Moreover, the Trial Chamber finds that Joso Matovina, Nikola Matovina, Dane Vuković (son of Poldin), Dane Vuković (son of Mate), Lucija Vuković, Milka Vuković, Nikola “Šojka” Vuković (born 1926) and Vjekoslav Vuković were intentionally killed on 7 November 1991. The Trial Chamber finds that all victims were civilians and that none of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that on 7 November 1991 there was a mixture of JNA soldiers, including members of a JNA special unit from Niš, as well as local armed men present in Vukovići. The Trial Chamber finds it proven beyond reasonable doubt that these groups of soldiers were responsible for the killings of these victims.

372. In relation to the killings in Poljanak, the Trial Chamber finds that Ivan Vuković and Nikola Vuković (born 1938) were intentionally killed on 7 November 1991. The Trial Chamber finds that these victims were civilians and that neither of them was taking an active part in the hostilities at the time of their deaths. The evidence shows beyond reasonable doubt that the killings were perpetrated by around 20 armed soldiers present in Poljanak on 7 November 1991, who wore camouflage and olive-green uniforms and some of whom had arrived from the direction of Vukovići just before the killing of Ivan Vuković and Nikola Vuković.

¹¹¹¹ *Ibid.*

¹¹¹² *See supra* para. 207.

¹¹¹³ *See supra* section III D 3 (c).

¹¹¹⁴ The Trial Chamber notes in particular Ex. 376, pp 6-7 which provides that Tomo Vuković was killed as he tried to escape from his house which had been set on fire.

373. The Trial Chamber concludes that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings in Vukovići and Poljanak.

374. The Trial Chamber finds that at least three houses were destroyed in Vukovići as a result of the shelling on 8 October 1991 and that one or two further houses were burnt in Vukovići on 7 November 1991.¹¹¹⁵ The Trial Chamber finds beyond doubt that in a village consisting of some six or seven houses, the burning of four or five houses constitutes destruction on a large scale. The evidence is insufficient to identify the perpetrators of the destruction on 8 October 1991. With regard to the destruction on 7 November 1991, the Trial Chamber recalls its finding regarding the presence in Vukovići on this date of a large group of soldiers.¹¹¹⁶ The Trial Chamber concludes that the destruction was perpetrated by members of these units. The circumstances of the destruction on 7 November 1991 show beyond reasonable doubt that the destruction was not justified by military necessity and that the destruction was carried out intentionally. The Trial Chamber concludes that all the elements of the crimes of wanton destruction of villages or devastation of villages not justified by military necessity (Count 12) have been met.

375. With regard to Poljanak, the evidence establishes that several houses, sheds and cars were burnt on 7 November 1991 by the soldiers present in the village.¹¹¹⁷ The Trial Chamber considers that the evidence establishes beyond reasonable doubt that the destruction occurred on a large scale. The Trial Chamber is satisfied that the destruction was not carried out for reasons of military necessity and that it was perpetrated intentionally. The Trial Chamber therefore finds that the elements of destruction of villages or devastation not justified by military necessity (Count 12) have been met.

376. The Trial Chamber also heard evidence that some private property was looted in Poljanak.¹¹¹⁸ However, the Trial Chamber was not presented with evidence which would enable it to conclude that the property appropriated was of sufficient monetary value to involve grave consequences for the relevant victims. The Trial Chamber therefore finds that the elements of plunder of public or private property (Count 14) have not been met.

377. The Trial Chamber recalls that all victims from Vukovići and Poljanak were Croats. The Trial Chamber also recalls that one of the soldiers in Poljanak boasted that he slit the throats of

¹¹¹⁵ See *supra* para. 214.

¹¹¹⁶ *Ibid.*

¹¹¹⁷ See *supra* para. 219.

¹¹¹⁸ *Ibid.*

Ustašas.¹¹¹⁹ The Trial Chamber finds that the above-mentioned killings in Vukovići and Poljanak were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore finds that all the elements of the crime of persecution (Count 1) have been met.

378. The Trial Chamber recalls that all the houses that were destroyed in Vukovići and Poljanak belonged to Croats. Moreover, the evidence shows that while burning houses in Poljanak the soldiers made comments, such as “Milošević built the house and Milošević is going to destroy it” and “what’s Tudman done for you? All you are going to get from him is a bullet in your head”.¹¹²⁰ The Trial Chamber finds it established beyond reasonable doubt that the destruction in Vukovići and Poljanak was carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

(f) Saborsko¹¹²¹

379. The Trial Chamber finds that 20 persons were intentionally killed in Saborsko on 12 November 1991: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Darko Dumenčić, Ivica Dumenčić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina (born 1920), Mate Matovina (born 1895), Milan Matovina, Slavko Sertić, Mate Špehar, Josip Štrk, Jure/Juraj Štrk, Ivan Vuković, Jeka/Jela Vuković, Jure Vuković (born 1929), Jure Vuković (born 1930), and Petar Vuković. With regard to the killings at Petar Bičanić’s house, the evidence establishes that the two perpetrators wore Serbian dark grey uniforms and helmets with a five pointed red star. The Trial Chamber finds that they were members of units present in Saborsko after the attack on 12 November 1991. With regard to the other twelve victims, the Trial Chamber finds it established beyond reasonable doubt that they were killed by members of units present in Saborsko after the attack on 12 November 1991. The evidence proves that the eight persons killed at Petar “Krtan” Bičanić’s house were civilians and that they were not taking an active part in the hostilities at the time of their deaths. Furthermore, the Trial Chamber concludes, based on the totality of the evidence, that Ana Bičanić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina, and Mate Matovina were civilians and that they were not taking an active part in the hostilities at the time of their deaths. With regard to Darko Dumenčić, Ivica Dumenčić, Milan Matovina, Slavko Sertić, Mate Špehar, Josip Štrk, and Petar Vuković, the Trial Chamber finds that the evidence is insufficient to establish beyond reasonable doubt whether they were civilians or taking no active part in the

¹¹¹⁹ See *supra* para. 216.

¹¹²⁰ See *supra* para. 219.

¹¹²¹ See *supra* Section III D 3.

hostilities at the time of their deaths.¹¹²² In conclusion, the Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings of the following 13 victims: Ana Bičanić, Milan Bičanić, Nikola Bičanić, Petar Bičanić, Kata Dumenčić, Nikola Dumenčić, Kata Matovina, Mate Matovina, Jure Štrk, Ivan Vuković, Jela Vuković, Jure Vuković, and his half brother also named Jure Vuković.

380. The Trial Chamber finds that during the shellings of Saborsko from August 1991 until the attack on 12 November 1991, the church of St. John and civilian buildings and homes were damaged. The evidence shows that there was a significant armed presence in and around Saborsko during this time period and that from at least September 1991 until the fall of Saborsko on 12 November 1991 a Croatian MUP reserve force was deployed in the church of St. John, which was used as an observation post, machinegun nest and for ammunition storage.¹¹²³ While the evidence establishes that the shelling of Saborsko was carried out from several directions, including from the direction of the JNA barracks at Lička Jasenica, it is insufficient to conclude which units were responsible for the shelling. The Trial Chamber further finds that both the church of St. John and the church of the Mother of God were hit during the attack on 12 November 1991. With regard to the latter church, the evidence establishes that it was used as a military observation post on 12 November 1991. The Trial Chamber therefore finds prior to the attack on 12 November 1991 the church of St. John was used for a military purpose and that during the attack on 12 November both churches were used for military purposes. The Prosecution has thus failed to meet its burden of proof in this respect. There is further evidence that the two churches were destroyed by mid-December 1991. However, the evidence is insufficient to establish who carried out this destruction. The Trial Chamber therefore finds that the elements of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have not been met.

381. The Trial Chamber finds that after the attack on Saborsko, civilian houses and property were burnt on a large scale by the Serb forces which entered the village.¹¹²⁴ The Trial Chamber finds that this burning was carried out deliberately and was not justified by military necessity, noting in particular the evidence that the attack had ceased at the time this destruction took place. Consequently, the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12) have been met.

¹¹²² In this regard, the Trial Chamber has taken into account the evidence that 20 to 30 villagers were organised into armed patrols from June 1991 (*see supra* para. 221) and the range of the ages of the male victims referred to at the time of their death (between 19 and 59 years old).

¹¹²³ *See supra* para. 224.

¹¹²⁴ *See supra* para. 227.

382. The Trial Chamber heard evidence that Serb soldiers and policemen who participated in the attack looted shops and businesses and took tractors, cars and livestock.¹¹²⁵ The Trial Chamber finds that this looting was done on a large scale, noting in particular the evidence that nearly every household in Saborsko had a tractor stolen.¹¹²⁶ The Trial Chamber finds that this appropriation resulted in grave consequences for the victims, taking into account the overall effect on the civilian population and the multitude of offences committed. Furthermore, the evidence establishes that this appropriation was done intentionally and without lawful basis or legal justification. The elements of the crime of plunder of public or private property under Article 3 (Count 14) have therefore been met.

383. The Trial Chamber recalls that some of the soldiers present in Saborsko abused the inhabitants with profanities such as “Fuck your Ustasha mother” and that all Croat villagers should be slaughtered.¹¹²⁷ The Trial Chamber further recalls that Saborsko was 93.9% Croat and 3.3% Serb.¹¹²⁸ Even making allowance for the possibility that there may have been a few Serbs among the 13 victims referred to above, this does not affect the Trial Chamber’s overall assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

384. The Trial Chamber recalls that the crime of wanton destruction of villages or devastation not justified by military necessity was committed. The evidence shows that houses were burnt in Tuk, Dumenčići, Solaje and Borik.¹¹²⁹ The evidence further shows that Solaje was a Serb hamlet and that in Borik both Serb and Croat houses were burnt. Therefore, the Trial Chamber does not find it established beyond reasonable doubt that these acts of destruction were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been met.

(g) Vaganac

385. The Indictment charges that destruction and looting was committed in Vaganac, however the Trial Chamber has not been furnished with evidence supporting these charges. For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12), of the crime of destruction or

¹¹²⁵ *Ibid.*

¹¹²⁶ *See supra* fn 632.

¹¹²⁷ *See supra* para. 229.

¹¹²⁸ *See supra* fn 592.

¹¹²⁹ *See supra* para. 227.

wilful damage done to institutions dedicated to education or religion (Count 13) and of the crime of plunder of public or private property under Article 3 (Count 14) have not been met.

(h) Škabrnja¹¹³⁰

386. The Trial Chamber recalls that Josip Miljanić, Krsto Šegarić, Lucia Šegarić and Stana Vicković were killed at Slavko Šegarić's house in Ambar on 18 November 1991. The Trial Chamber finds that Krsto Šegarić was intentionally killed by Đuro Kosović, a local paramilitary soldier wearing a camouflage uniform with an SAO Krajina patch and who participated together with other SAO Krajina forces in the attack on Škabrnja. The Trial Chamber further finds that the evidence establishes beyond reasonable doubt that Josip Miljanić, Stana Vicković, and Lucia Šegarić were intentionally killed by other members of such paramilitary soldiers. The Trial Chamber finds that all four victims were civilians and that none of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber concludes that all of the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the above-mentioned killings.

387. The Trial Chamber finds that Jozo Brkić, Jozo Miljanić, Slavka Miljanić, Petar Pavičić, Mile Pavičić, Ilija Ražov, Kata "Soka" Rogić, Ivica Šegarić, Rade Šegarić and Vice Šegarić were intentionally killed outside Petar Pavičić's house in Škabrnja on 18 November 1991. The perpetrators of these killings were members of local paramilitary units, who participated, together with other SAO Krajina forces, in the attack on Škabrnja and who wore camouflage uniforms and different sorts of headgear. Mile Pavičić and Ivica Šegarić are listed in Annex I to the Indictment as civilian victims, however the evidence shows that both were members of the Croatian defence force in Škabrnja. The evidence shows that neither of them were taking an active part in the hostilities at the time of their deaths. The Trial Chamber concludes that the remainder of the victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for the killings of Jozo Brkić, Jozo Miljanić, Slavka Miljanić, Petar Pavičić, Ilija Ražov, Kata "Soka" Rogić, Rade Šegarić, and Vice Šegarić. With regard to Mile Pavičić and Ivica Šegarić, the Trial Chamber finds that the elements of murder, as a violation of the laws or customs of war (Count 4), have been established.

388. The Trial Chamber finds that Novica Atelj, Stoja Brkić, Danka Brzoja, Ika Čirjak, Maša Čirjak, Marija Šestan and Jakov Šestan were intentionally killed at Pere Sopić's house in Nadin on 19 November 1991 by soldiers wearing JNA uniforms. The Trial Chamber finds that these victims

¹¹³⁰ See *supra* section III D 4.

were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these killings.

389. The Trial Chamber finds that the following civilians were killed in Škabrnja, Nadin or Benkovac on 18 and 19 November 1991: Ivan Babić, Luka Bilaver, Marija Brkić (born 1943), Marko Brkić, Željko Ćurković, Marija Dražina, Ana Jurić, Grgo Jurić, Petar Jurić, Niko Pavičići, Josip Perica, Ljubo Perica, Ivan Ražov, Jela Ražov, Branko Rogić, Nikola Rogić, Petar Rogić, Kljajo Šegarić, Lucka/Luca Šegarić, Grgica “Maja” Šegarić, Mara Žilić, Milka Žilić, Pavica Žilić, Roko Žilić, Tadija Žilić and Marko Župan. The Trial Chamber further finds that these victims were taking no active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims, with the exception of Petar Rogić, were intentionally killed by members of the units, including JNA and TO units, which took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991. With regard to Petar Rogić, the Trial Chamber finds that he was intentionally killed in Benkovac by unidentified perpetrators after having been taken from Škabrnja. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these killings, except for the killing of Petar Rogić.

390. The Trial Chamber finds that the following members of the Croatian defence forces present in Škabrnja and Nadin were killed on 18 and 19 November 1991: Vladimir Horvat, Nediljko Jurić, Slavko Miljanić, Gašpar Perica, Ante Ražov, Marko Rogić, Bude Šegarić, Miljenko Šegarić, Šime Šegarić, Nediljko Škara and Stanko Vicković. The evidence as to cause of death establishes beyond doubt that Ante Ražov, Šime Šegarić and Miljenko Šegarić were not taking an active part in the hostilities at the time of their deaths. The evidence further establishes beyond reasonable doubt that Vladimir Horvat, Gašpar Perica, and Marko Rogić were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims, with the exception of Šime Šegarić and Miljenko Šegarić, were intentionally killed by members of the units, including JNA and TO units, which took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991. With regard to Miljenko Šegarić, the Trial Chamber finds that he was intentionally killed in Benkovac by unidentified perpetrators after having been taken from Škabrnja. With regard to Šime Šegarić, the evidence establishes beyond reasonable doubt that he was taking no active part in the hostilities when he was intentionally killed in Knin by unidentified perpetrators after having been put by paramilitary soldiers in a JNA APC in Škabrnja. With regard to Slavko Miljanić, Bude Šegarić, Nediljko Jurić, Nediljko Škara, and Stanko Vicković the evidence is insufficient to establish that at the time of their deaths they were taking no active part in the hostilities.

391. The Trial Chamber finds that the elements of murder as a violation of the laws or customs of war (Count 4) have been established for Ante Ražov, Vladimir Horvat, Gašpar Perica, Marko Rogić and Šime Šegarić, but not for Miljenko Šegarić.

392. The Trial Chamber finds that Marija Bilaver, Josipa Brkić, Mate Brkić and Kata Perica were killed in Škabrnja on 11 March 1992. Moreover, the Trial Chamber finds that the following persons were killed between 18 November 1991 and 11 March 1992: Grgo Bilaver, Peka Bilaver, Ana Brkić, Mijat Brkić, Jure Erlić, Dumica Gospić, Ljubomir Ivković, Nedelko Ivković, Tereza Ivković, Simica Jurjević, Mirko Kardum, Simo Ražov, Grgica Ražov, Marko Ražov, and Pera Škara. The Trial Chamber finds all of these victims, except Nedelko Ivković, were civilians and were taking no active part in the hostilities at the time of their deaths. The Trial Chamber finds that it has been proven beyond reasonable doubt that these victims were intentionally killed by members of the units that took part in the attack on Škabrnja and Nadin on 18 and 19 November 1991, or which were subsequently present in the area of Škabrnja following the attack and until March 1992. These units included JNA units, units from a TO brigade under JNA command, and paramilitary units. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established, except with regard to Nedelko Ivković, who the evidence establishes was a “Croat defender”. However, it has not been established beyond reasonable doubt that he was not taking an active part in the hostilities at the time of his death.

393. With regard to Kata Brkić (born 1935), Kata Brkić (born 1939), Marija Brkić (born 1906), Božo Stura, and Draginja Stura, the evidence is insufficient to conclude whether they were killed between 18 November 1991 and 11 March 1992. With regard to Nedelko Ivković, the evidence shows that he was a member of the Croatian defence forces and that he was killed on 19 November 1991. The evidence is insufficient to conclude that he was not taking active part in the hostilities at the time of his death. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have not been established for these killings.

394. The Trial Chamber recalls the evidence that there was intensive shelling in Škabrnja on the morning of the attack.¹¹³¹ Moreover, there is evidence that fire was opened on private houses by JNA tanks and using hand-held rocket launchers.¹¹³² The Trial Chamber recalls the evidence that members of Croatian forces were in some of the houses in Škabrnja.¹¹³³ In the Trial Chamber’s

¹¹³¹ See *supra* para. 239.

¹¹³² See *supra* para. 241.

¹¹³³ See *supra* para. 240.

opinion, this gives rise to reasonable doubt as to whether the destruction resulting from these actions was carried out for the purposes of military necessity. The elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have therefore not been met.

395. There is evidence that during the attack, the church of the Assumption of the Virgin in the centre of Škabrnja was shot at by a JNA tank. Furthermore, several soldiers entered the church and fired their weapons.¹¹³⁴ The Trial Chamber finds that the church of the Assumption of the Virgin was not used for military purposes at the time of this damage and furthermore that the circumstances surrounding this damage establishes the intent of the perpetrators to cause such damage. The Trial Chamber notes the evidence that on 18 November 1991 a JNA tank opened fire in the direction of the school in Škabrnja and that by 19 November 1991 the school had been destroyed. However, the Trial Chamber considers the evidence to be insufficient to show that the school was not being used for military purposes at the time it was damaged. The Trial Chamber finds that the elements of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) have been met in relation to the church of the Assumption of the Virgin.

396. The Trial Chamber heard evidence that looting was committed in Škabrnja by soldiers under the command of the Benkovac TO, by Serb paramilitaries, and by local Serbs after the attack.¹¹³⁵ However, the Trial Chamber was not presented with sufficient evidence as to the nature or scale of such looting in order to enable it to establish whether the property appropriated was of sufficient monetary value to result in grave consequences for the victims. The Trial Chamber therefore finds that the elements of the crime of plunder of public or private property (Count 14) have not been met.

397. The Indictment charges that destruction and looting was committed in Nadin, however the Trial Chamber has not been furnished with evidence supporting these charges. For these reasons, the Trial Chamber concludes that the elements of the crime of wanton destruction of villages or devastation not justified by military necessity (Count 12), of the crime of destruction or wilful damage done to institutions dedicated to education or religion (Count 13) and of the crime of plunder of public or private property under Article 3 (Count 14) have not been met.

398. The Trial Chamber recalls that the majority of the victims in Škabrnja and Nadin, referred to above, were of Croat ethnicity. The evidence shows that soldiers present in Škabrnja threatened villagers hiding in the basements, saying “Come out you Ustaše, we are going to slaughter you all”

¹¹³⁴ See *supra* para. 241.

¹¹³⁵ See *supra* para. 263.

and that even women and children were being called “Ustašas” and were insulted by soldiers.¹¹³⁶ The Trial Chamber further recalls that Škabrnja and Nadin were almost exclusively Croat villages.¹¹³⁷ Even making allowance for the possibility that there may have been a few Serbs among the victims referred to above, this does not affect the Trial Chamber’s overall assessment that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met.

399. The Trial Chamber recalls that the church of the Assumption of the Virgin was destroyed and that it was not used for military purposes at the time of the destruction. The Trial Chamber recalls the manner in which the church was destroyed and concludes that this destruction was carried out with the same discriminatory intent as referred to above. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have been met.

(i) Bruška¹¹³⁸

400. The Trial Chamber finds that Sveto Drača, Dragan Marinović, Draginja Marinović, Dušan Marinović, Ika Marinović, Krsto Marinović, Manda Marinović, Petar Marinović, Roko Marinović and Stana Marinović were intentionally killed in Bruška on 21 December 1991 by the *Milicija Krajine*. The Trial Chamber considers that the JNA reports which indicate that these killings were carried out in revenge do not disturb this finding.¹¹³⁹ With the exception of Sveto Drača, all victims were civilians and were not taking an active part in the hostilities at the time of their deaths. The Trial Chamber finds that the elements of murder as a crime against humanity (Count 3) and as a violation of the laws or customs of war (Count 4) have been established for these victims.

401. With regard to Sveto Drača, the Trial Chamber concludes that he was a member of the JNA and that he was wearing an olive-drab uniform when he was killed. The Trial Chamber recalls that the JNA fought on the same side as the *Milicija Krajine*. For these reasons, the Trial Chamber concludes that the elements of the crime of murder as a violation of the laws or customs of war (Count 4) have not been met.

402. The evidence presented to the Trial Chamber is insufficient to establish when the destruction occurred in Bruška and who carried out this destruction.¹¹⁴⁰ For these reasons, the Trial Chamber

¹¹³⁶ See *supra* para. 248.

¹¹³⁷ See *supra* para. 235.

¹¹³⁸ See *supra* section III D 5.

¹¹³⁹ See *supra* para. 272.

¹¹⁴⁰ See *supra* para. 273.

concludes that the elements of wanton destruction of villages or devastation not justified by military necessity (Count 12) have not been met.

403. The Trial Chamber recalls that prior to the above-mentioned killings in Bruška, armed men identifying themselves as “Martić’s men” or “Martić’s Militia” would come to Bruška daily to intimidate the inhabitants, calling them “Ustašas”, and telling them that Bruška would be a part of a Greater Serbia and that they should leave.¹¹⁴¹ The Trial Chamber further recalls that the victims, with the exception of Sveto Drača, were Croats. The Trial Chamber therefore finds it established beyond reasonable doubt that these killings were carried out with intent to discriminate on the basis of Croat ethnicity. Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have been met for all victims except Sveto Drača.

4. Count 2 – Extermination

404. The Trial Chamber recalls that the crime of extermination does not require a minimum number of victims and that it may be established by an accumulation of separate and unrelated killings. However, the Trial Chamber stresses that it is nevertheless a requirement that the evidence supports a finding that the killings occurred on a large scale. In the present case, the Trial Chamber has examined the killing incidents charged under Count 2 and has, in particular, considered the evidence that the crimes were committed within a limited period of time and within a limited territory. Having considered these factors, as well as the totality of the evidence surrounding the killing incidents charged as extermination, the Trial Chamber finds that the evidence is insufficient to establish that the crime of extermination was committed on an accumulated basis. Thus, the element that the killings be committed on large scale has not been met.

405. The Prosecution has argued in the alternative that, should the Trial Chamber not find extermination on the basis of an accumulation of all the killings charged, the killings committed “at Baćin” would amount to extermination in and of themselves.¹¹⁴² The Trial Chamber understands this to refer to the killings carried out at Krečane near Baćin. The killings committed at Krečane were without doubt grave, particularly considering the organised and callous manner in which the evidence shows that they were carried out. However, the Trial Chamber cannot agree with the Prosecution. These killings, even taken together, cannot be considered as having been committed on a large scale. In other words, the killings at Krečane near Baćin do not meet the element of massiveness required for extermination.

¹¹⁴¹ See *supra* para. 266.

¹¹⁴² Prosecution Final Trial Brief, para. 397.

406. In conclusion, the Trial Chamber finds that the elements of the crime of extermination as a crime against humanity (Count 2) have not been met.

5. Counts 1 and 5 to 9 – Detention-related crimes and persecution

(a) Detention facility at the JNA 9th Corps barracks in Knin¹¹⁴³

407. The Trial Chamber finds that between 75 and 200 persons were detained at several locations at the premises of the JNA 9th Corps barracks in Knin. Among the detainees were both Croat and other non-Serb civilians, and members of Croatian armed forces and formations. The Trial Chamber finds that the former category of detainees were deprived of their liberty without due process of law.

408. The Trial Chamber heard evidence of many instances of beatings and mistreatment of the detainees at the JNA 9th Corps barracks. The Trial Chamber finds, in light of all the circumstances in which beatings and mistreatment were carried out, that such acts caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that in some instances the mistreatment was carried out intentionally for the prohibited purpose of intimidating the victims.¹¹⁴⁴

409. The Trial Chamber finds that the detainees at the JNA 9th Corps barracks were detained by the JNA. Moreover, while the evidence is insufficient to establish who carried out the beatings and the mistreatment at the premises of the JNA 9th Corps barracks, the Trial Chamber concludes that the beatings and mistreatment were carried out at locations under the control of the JNA.

410. The Trial Chamber finds that the elements of the crimes of imprisonment (Count 5), torture (Counts 6 and 8), other inhumane acts (Count 7), and cruel treatment (Count 9) have been met in relation to the civilian detainees at the JNA 9th Corps barracks, including Petar Gurlica and Jere Misković. With regard to the detainees who were not civilian, including Luka Brkić, Ante “Neno” Gurlica and Marin Gurlica, the Trial Chamber finds that the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been established.

411. The Trial Chamber recalls that most of those imprisoned in the JNA barracks in Knin were not of Serb ethnicity. Moreover, the Trial Chamber recalls the discriminatory remarks of Ratko Mladić when he visited the sports hall at the JNA barracks premises and that he threatened the detainees, saying that their fate would be the same as that of the people from Škabrnja.¹¹⁴⁵ Furthermore, the Trial Chamber recalls that the detainees were forced to take oaths “for the King

¹¹⁴³ See *supra* section III E 3 (a).

¹¹⁴⁴ See *supra* para. 283.

¹¹⁴⁵ *Ibid.*

and the fatherland, the Serbian fatherland".¹¹⁴⁶ The Trial Chamber finds the evidence to establish beyond reasonable doubt that the crimes of imprisonment, torture, inhumane acts, and cruel treatment were carried out with intent to discriminate on the basis of ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met in relation to the civilians who were detained at the JNA barracks.

(b) Detention facility at the old hospital in Knin¹¹⁴⁷

412. The Trial Chamber finds that from mid-1991 to mid-1992 between 120 and 300 persons were detained in the old hospital in Knin. Among the detainees were both Croats and other non-Serb civilians and members of Croatian armed forces and formations. The Trial Chamber finds that the majority of the former category of detainees were deprived of their liberty without due process of law. The Trial Chamber concludes that the elements of the crime of imprisonment under Count 5 have been met.

413. The Trial Chamber heard evidence of many instances of beatings and mistreatment of detainees at the old hospital.¹¹⁴⁸ The Trial Chamber finds, in light of all the circumstances in which beatings and mistreatment were carried out, that such acts caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that in some instances the mistreatment was carried out intentionally for the prohibited purposes of obtaining information and/or to discriminate against them because of their ethnicity.¹¹⁴⁹

414. The Trial Chamber finds that as of the summer of 1991, the detention facility at the old hospital in Knin was run by the Ministry of Justice of the SAO Krajina. The evidence establishes beyond reasonable doubt that the beatings, mistreatment and torture of the detainees was carried out, *inter alia*, by members of the MUP, referred to by witnesses as "Martić's police", wearing blue police uniforms, by the *Milicija Krajine* and by persons wearing camouflage uniforms.¹¹⁵⁰ Moreover, the evidence shows beyond reasonable doubt that the leadership permitted civilians from outside the old hospital and Serb detainees to beat and mistreat the non-Serb detainees.

415. The Trial Chamber finds that the elements of the crimes of torture (Counts 6 and 8), other inhumane acts (Count 7), and cruel treatment (Count 9) have been met in relation to the civilian

¹¹⁴⁶ *Ibid.*

¹¹⁴⁷ *See supra* section III E 3 (b).

¹¹⁴⁸ *See supra* paras 288-289.

¹¹⁴⁹ *See supra* para. 288.

¹¹⁵⁰ In this respect, the Trial Chamber notes in particular the evidence that members of the *Milicija Krajine* brought Stanko Erstić to the old hospital, that members of "Martić's Special Forces" carried out beatings, and that Milan Martić was present on one occasion wearing camouflage uniform with the *Milicija Krajine* patch on the sleeve, *see supra* para. 286.

detainees. With regard to the detainees who were not civilian, the Trial Chamber finds that the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been met.

416. The Trial Chamber recalls that at the old hospital in Knin there were Croat and other non-Serb detainees. The evidence shows that detainees were insulted by the guards, saying that “the Croatian nation has to be destroyed” and that “all Croats have to be killed”.¹¹⁵¹ On one occasion, Vojislav Šešelj, from the Serbian Radical Party, visited the old hospital and asked the detainees “how many Serbian children they slaughtered, how many mothers”.¹¹⁵² The Trial Chamber finds the evidence to establish beyond reasonable doubt that the crimes of imprisonment, torture, inhumane acts, and cruel treatment were carried out with intent to discriminate on the basis of ethnicity. The Trial Chamber therefore concludes that all the elements of the crime of persecution (Count 1) have been met in relation to the civilians who were detained at the old hospital in Knin.

(c) Detention facility at the SJB in Titova Korenica¹¹⁵³

417. The Trial Chamber heard evidence that the following persons were detained in the SJB in Titova Korenica for periods ranging between 10 days and 9 months: Vlado Vuković, Ignjac Ivanus, Nikola Pemper, Milan Pavlić, Perica Bićanić and Ivica Bićanić. The Trial Chamber recalls that they were all Croats. However, the Trial Chamber notes that Vlado Vuković and Ignjac Ivanus were Croatian policemen and that Perica Bićanić and Ivica Bićanić were members of the civilian protection force of Poljanak. Therefore, at the moment of their detention these persons did not hold the status of civilians, as opposed to Milan Pavlić, who the evidence shows was a civilian. The Trial Chamber has not received evidence as to whether Nikola Pemper was a civilian. Furthermore, the Trial Chamber has not received evidence that he was mistreated at the Titova Korenica SJB. With regard to the other the persons detained at the Titova Korenica SJB, the Trial Chamber finds that the evidence is insufficient to establish that they were civilians. With regard to Milan Pavlić, the Trial Chamber cannot establish beyond reasonable doubt he was detained without due process of law, and the Trial Chamber therefore finds that the elements of the crime of imprisonment (Count 5) have not been met.

418. The Trial Chamber heard evidence that while detained, Vlado Vuković was subjected to beatings and mistreatment, *inter alia*, by members of the MUP, who called themselves “Martić’s men”, and by persons in camouflage uniforms. The evidence shows that members of the *Milicija Krajine* were present during the beatings but did nothing to stop the beatings. Moreover, the Trial Chamber notes the evidence that Milan Pavlić and Perica Bićanić were severely mistreated. The

¹¹⁵¹ See *supra* para. 288.

¹¹⁵² *Ibid.*

Trial Chamber finds, in light of all the circumstances in which the beatings and mistreatment were carried out, that they caused serious physical and/or mental suffering to the detainees. The Trial Chamber further finds that the mistreatment of Vlado Vuković was carried out intentionally for the prohibited purpose of intimidating him.¹¹⁵⁴

419. With regard to Milan Pavlić, the Trial Chamber finds that the elements of the crime of inhumane acts (Count 7) have been met. However, the Trial Chamber has not received evidence to establish the elements of torture (Count 6) or persecutions (Count 1). With regard to the other detainees at the SJB, the Trial Chamber finds that the elements of the crimes of cruel treatment (Count 9), and, in relation to Vlado Vuković, also torture (Count 8), have been met.

(d) Detention facilities in Benkovac¹¹⁵⁵

420. The Trial Chamber finds that two Croats, Ivan Atelj and Šime Čačić, were detained in the SJB in Benkovac for 19 days. There is insufficient evidence to conclude that these persons were civilians. However, the evidence establishes that they were taking no active part in the hostilities.

421. During interrogations at the Benkovac SJB, Ivan Atelj and Šime Čačić were threatened and subjected to severe beatings by the policemen. The Trial Chamber finds that the beatings caused serious physical and mental suffering to the detainees. The Trial Chamber also finds that the mistreatment was carried out intentionally in order to obtain information.

422. The Trial Chamber concludes that the elements of the crimes of imprisonment (Count 5), torture (Count 6), inhumane acts (Count 7), and persecutions (Count 1) have not been met. However, the elements of the crimes of torture (Count 8) and cruel treatment (Count 9) have been met.

423. The Trial Chamber finds that at least 40 non-Serb civilians and members of the Croatian armed forces and formations, including Luka Brkić, Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, were detained by the JNA at the kindergarten in Benkovac following the attack on Škabrnja. While the Trial Chamber considers that these persons were detained without due process of law, the Trial Chamber finds that this detention is more appropriately described as part of the crime of deportation to which these persons were later subjected. The Trial Chamber therefore finds that the elements of the crime of imprisonment (Count 5) have not been established .

¹¹⁵³ See *supra* section III E 1.

¹¹⁵⁴ See *supra* para. 275.

¹¹⁵⁵ See *supra* section III E 2.

424. The evidence is insufficient as to whether the detainees at the kindergarten in Benkovac were mistreated. Thus, the Trial Chamber concludes that the elements of the crimes of inhumane acts (Count 7), torture (Counts 6 and 8), and cruel treatment (Count 9) have not been met. The evidence shows that Tomislav Šegarić, Tomislav Gurlica and Marin Jurić were taken from the kindergarten to the communal store in Biljani by the same individuals who detained them at the kindergarten. In Biljani, they were threatened and insulted after which they were brought back to the kindergarten.¹¹⁵⁶ The Trial Chamber concludes, considering in particular the age of the three victims, that they were subjected to inhumane acts and cruel treatment in Biljani. The elements of these crimes (Counts 7 and 9) have therefore been met. However, the elements of torture (Counts 6 and 8) have not been met.

425. With regard to the mistreatment of Tomislav Šegarić, Tomislav Gurlica and Marin Jurić, the Trial Chamber finds that the evidence is insufficient to establish that these acts were carried out with intent to discriminate on the basis of Croat ethnicity. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been met.

6. Counts 1, 10 and 11 – Persecution, deportation and forcible transfer¹¹⁵⁷

426. From 1990 through the spring of 1991, the Croat and non-Serb population in the Knin area was subjected to increasingly severe forms of discriminatory treatment.¹¹⁵⁸ From June 1991, military operations were carried out by the SAO Krajina police, including the *Milicija Krajine*, the JNA and the TO against predominantly Croat villages, including Lovinac, Ljubovo, Glina, and Struga.¹¹⁵⁹ This further raised the tensions. Following Milan Martić's ultimatum to the inhabitants of Kijevo, most of the Croat population was evacuated after which the JNA 9th Corps, the *Milicija Krajine* and the local TO attacked the village.¹¹⁶⁰ The attack resulted in destruction of houses, damage to the church and looting. In August 1991, Croat civilians were displaced from the areas of Knin and Glina to areas under Croatian control.¹¹⁶¹ After the attack on Kijevo, the villages of Vrlika and Drniš were attacked. Destruction and looting were carried out following these attacks.¹¹⁶² There is further evidence that in 1991 Croats were killed by Serb forces in various locations in the SAO Krajina.¹¹⁶³

¹¹⁵⁶ See *supra* para. 278.

¹¹⁵⁷ See *supra* section III F.

¹¹⁵⁸ See *supra* para. 296.

¹¹⁵⁹ See *supra* paras 163-165.

¹¹⁶⁰ See *supra* paras 166-168.

¹¹⁶¹ See *supra* para. 296.

¹¹⁶² See *supra* paras 170-171.

¹¹⁶³ See *supra* para. 324.

427. From August 1991 and into early 1992, forces of the TO and the police of the SAO Krajina and of the JNA attacked Croat-majority villages and areas, including the villages of Hrvatska Kostajnica, Cerovljani, Hrvatska Dubica, Baćin, Saborsko, Poljanak, Lipovača, Škabrnja and Nadin. The displacement of the non-Serb population which followed these attacks was not merely the consequence of military action, but the primary objective of it. This conclusion is supported by the evidence of a generally similar pattern to the attacks. The area or village in question would be shelled, after which ground units would enter. After the fighting had subsided, acts of killing and violence would be committed by the forces against the civilian non-Serb population who had not managed to flee during the attack. Houses, churches and property would be destroyed in order to prevent their return and widespread looting would be carried out. In some instances the police and the TO of the SAO Krajina organised transport for the non-Serb population in order to remove it from SAO Krajina territory to locations under Croatian control. Moreover, members of the non-Serb population would be rounded up and taken away to detention facilities, including in central Knin, and eventually exchanged and transported to areas under Croatian control.¹¹⁶⁴

428. The Trial Chamber considers the evidence to establish beyond reasonable doubt that the systematic acts of violence and intimidation carried out, *inter alia*, by the JNA, the TO and the *Milicija Krajine* against the non-Serb population in the villages created a coercive atmosphere in which the non-Serb population did not have a genuine choice in their displacement. Based on this evidence, the Trial Chamber concludes that the intention behind these acts was to drive out the non-Serb population from the territory of the SAO Krajina. In this respect, the Trial Chamber recalls that the forces in question also undertook direct actions to remove those who had not fled to territories under Croatian control. The Trial Chamber also recalls that in spite of this intention to remove the non-Serb population from the territory of the SAO Krajina, in some instances the non-Serb population left their homes temporarily as a result of the acts of violence and intimidation and subsequently returned.

429. Based on the above, the Trial Chamber concludes that by the end of 1991 large numbers of the non-Serb population had been forcibly removed from the territory of the SAO Krajina to territories under the control of Croatia. The elements of the crime of deportation (Count 10) have therefore been met. Moreover, the Trial Chamber concludes that in some instances, due to the existing coercive atmosphere existing during this time period, members of the non-Serb population

¹¹⁶⁴ In relation to Hrvatska Kostajnica, *see* section III D 2 (a), Hrvatska Dubica, *see* section III D 2 (b), Cerovljani, *see* section III D 2 (c), Baćin, *see* section III D 2 (d) *see also* section III D 2 (e). In relation to Lipovača, *see* section III D 3 (b). Poljanak and Vukovići, *see* section III D 3 (c). Saborsko, *see* section III D 3 (d). Škabrnja, *see* section III D 4.

fled their homes without going to territories under Croatian control.¹¹⁶⁵ In such instances, the elements of the crime of other inhumane acts (forcible transfer) (Count 11) have been met.

430. With regard to the period from 1992 to 1995, the Trial Chamber has been furnished with a substantial amount of evidence of massive and widespread acts of violence and intimidation committed against the non-Serb population, which were pervasive throughout the RSK territory.¹¹⁶⁶ The Trial Chamber notes, in particular, that during this time period there was a continuation of incidents of killings, beatings, robbery and theft, harassment, and extensive destruction of houses and Catholic churches carried out against the non-Serb population.¹¹⁶⁷ These acts created a coercive atmosphere which had the effect of forcing out the non-Serb population from the territory of the RSK. As a consequence, almost the entire non-Serb population left the RSK. Moreover, in some instances the RSK authorities provided transportation and escorts in order to remove the non-Serb population to territories under Croatian control. Furthermore, the Trial Chamber recalls that in July 1992 the RSK authorities cooperated with the authorities in Bosanski Novi, BiH, in the displacement of the non-Serb population from that municipality to Croatia, Slovenia, Austria and Germany.¹¹⁶⁸

431. Based on the substantial evidence referred to above, the Trial Chamber finds that due to the coercive atmosphere in the RSK from 1992 through 1995, almost the entire non-Serb population was forcibly removed to territories under the control of Croatia. The elements of the crime of deportation (Count 10) have therefore been met.

432. In light of the evidence referred to above, which establishes that acts of killing, mistreatment, deportation, forcible transfer, destruction and other acts of intimidation were carried out with the intent to discriminate on the basis of ethnicity, the Trial Chamber finds that all the elements of persecution (Count 1) have been met for the period from August 1991 through 1995.

7. Counts 1 and 15 to 19 – Shelling of Zagreb on 2 and 3 May 1995¹¹⁶⁹

433. The Trial Chamber will consider Counts 15 to 19 in the following section.¹¹⁷⁰

¹¹⁶⁵ See *supra* paras 202, 211, 222.

¹¹⁶⁶ See *supra* paras 327-328.

¹¹⁶⁷ *Ibid.*

¹¹⁶⁸ See *supra* para. 300.

¹¹⁶⁹ See *supra* section III G.

¹¹⁷⁰ See *infra* section IV B 4.

B. Findings on the individual criminal responsibility of Milan Martić

434. Milan Martić is charged with individual criminal responsibility pursuant to Article 7(1) in its entirety in relation to each Count. Article 7(1) of the Statute provides:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

With regard to Counts 3 to 14, and Count 1 insofar as it relates to these counts, the Trial Chamber finds that the individual criminal responsibility of Milan Martić is one of JCE pursuant to Article 7(1) of the Statute. With regard to Counts 15 to 19, and Count 1 insofar as it relates to these counts, the Trial Chamber finds that the individual criminal responsibility of Milan Martić is one of ordering pursuant to Article 7(1) of the Statute. Other modes of liability pursuant to Article 7(1) and 7(3) of the Statute will not be considered.

1. JCE pursuant to Article 7(1) of the Statute

435. JCE is established as a form of liability within the meaning of “commission” under Article 7(1) of the Statute.¹¹⁷¹ The Appeals Chamber found that “whoever contributes to the commission of crimes by [a] group of persons or some members of [a] group, in execution of a common criminal purpose, may be held to be criminally liable, subject to certain conditions”.¹¹⁷² Three categories of JCE have been identified in customary international law.¹¹⁷³ The Prosecution charges Milan Martić pursuant to the “first” and “third” categories of JCE.¹¹⁷⁴ As stated by the Appeals Chamber, regardless of the categories of JCE, a conviction requires a finding that the accused participated in a JCE. There are three requirements for such a finding: a plurality of persons, the existence of a

¹¹⁷¹ *Tadić* Appeal Judgement, para. 190. See also *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003, paras 20, 31; *Stakić* Appeal Judgement, para. 62 and the jurisprudence cited therein.

¹¹⁷² *Tadić* Appeal Judgement, para. 190.

¹¹⁷³ *Tadić* Appeal Judgement, para. 220.

¹¹⁷⁴ Indictment, para. 5. The first form of JCE is described by the Appeals Chamber as follows: “all-co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have, effected the killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result,” *Tadić* Appeal Judgement, para. 196; the third is characterized as follows: “a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect ‘ethnic cleansing’) with the consequence that, in the course of doing so, one or more of the victims is shot and killed,” *Tadić* Appeal Judgement, para. 204.

common purpose (or plan) which amounts to or involves the commission of a crime provided for in the Statute and the participation of the accused in this common purpose.¹¹⁷⁵

436. A JCE exists when a plurality of persons participate in the realisation of a common criminal purpose. However, they need not be organised in a military, political or administrative structure.¹¹⁷⁶

437. The first form of JCE requires the existence of a common purpose, which amounts to, or involves the commission of one or more crimes provided for in the Statute.¹¹⁷⁷ The common purpose need not be previously arranged or formulated and may materialise extemporaneously.¹¹⁷⁸

438. It is not required that the principal perpetrators of the crimes which are part of the common purpose be members of a JCE.¹¹⁷⁹ An accused or another member of a JCE may use the principal perpetrators to carry out the *actus reus* of a crime. However, “an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question *forms part of the common criminal purpose*.”¹¹⁸⁰ This may be inferred, *inter alia*, from the fact that “the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose.”¹¹⁸¹

439. For the first form of JCE, it is also required that the accused must both intend the commission of the crime and intend to participate in a common plan aimed at its commission.¹¹⁸² For the third form of JCE, the accused is held responsible for a crime outside the common purpose if, under the circumstances of the case, (i) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and (ii) the accused *willingly took that risk (dolus eventualis)*. The crime must be shown to have been foreseeable to the accused in particular.¹¹⁸³

440. The requirement of participation for both forms of JCE is satisfied when the accused assisted or contributed to the execution of the common purpose. The accused need not have

¹¹⁷⁵ *Brdanin* Appeal Judgement, para. 364.

¹¹⁷⁶ *Vasiljević* Appeal Judgement, para. 100, referring to *Tadić* Appeal Judgement, para. 227.

¹¹⁷⁷ *Brdanin* Appeal Judgement, para. 418. The Appeals Chamber stated that the Trial Chamber should make a finding that the criminal purpose is not “merely the same, but also common to all of the persons acting together within a joint criminal enterprise”, *Brdanin* Appeal Judgement, para. 430.

¹¹⁷⁸ *Brdanin* Appeal Judgement, para. 418.

¹¹⁷⁹ *Brdanin* Appeal Judgement, para. 410.

¹¹⁸⁰ *Brdanin* Appeal Judgement, para. 418.

¹¹⁸¹ *Brdanin* Appeal Judgement, para. 410. *See also* paras 413, 418, noting that the requirement that the crime be part of a common purpose is a matter of evidence.

¹¹⁸² *Brdanin* Appeal Judgement, para. 365. The Appeals Chamber also noted that “a Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence”, *id.* para. 429.

¹¹⁸³ *Brdanin* Appeal Judgement, para. 365. The Appeals Chamber has clarified that it is not a requirement that the crime which was foreseeable was carried out by a member of the JCE, but that it may be perpetrated also by one or more persons used by a member of the JCE in order to carry out the *actus reus* of the crimes forming part of the common purpose, *id.* para. 411.

performed any part of the *actus reus* of the perpetrated crime.¹¹⁸⁴ It is also not required that his participation be necessary or substantial to the crimes for which the accused is found responsible.¹¹⁸⁵ Nevertheless, it should at least be a significant contribution to the crimes for which the accused is to be found responsible.¹¹⁸⁶

2. Ordering pursuant to Article 7(1) of the Statute

441. Ordering requires that a person in a position of authority instructs another person to commit a crime.¹¹⁸⁷ It is required that the crime in question was actually committed by the principal perpetrators.¹¹⁸⁸ It is sufficient that the person ordering the crime possesses authority, whether *de jure* or *de facto*.¹¹⁸⁹ This authority may be proved expressly or may be reasonably implied from the evidence.¹¹⁹⁰ The mens rea is either direct intent in relation to the perpetrator's own ordering or indirect intent, that is, a person, who orders with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite mens rea for this mode of liability under Article 7(1) of the Statute.¹¹⁹¹

3. Findings on Counts 1 to 14

(a) Common purpose

442. The Prosecution alleges that the common purpose of the JCE was "the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia ["Croatia"] and large parts of the Republic of Bosnia and Herzegovina ["BiH"], in order to make them part of a new Serb-dominated state."¹¹⁹² The evidence establishes the existence, as of early 1991, of a political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish an unified territory.¹¹⁹³ Moreover, the evidence establishes that the SAO Krajina, and subsequently the RSK, government and authorities fully embraced and advocated this objective, and strove to accomplish it in cooperation with the Serb leaderships in Serbia and in the RS in BiH.¹¹⁹⁴ The Trial Chamber considers that such an objective, that is to unite with other ethnically similar areas, in and of itself does not amount to a common purpose within the

¹¹⁸⁴ *Kvočka et al.* Appeal Judgement, para. 99; *Stakić* Appeal Judgement, para. 64.

¹¹⁸⁵ *Brdanin* Appeal Judgement, para. 430; *Kvočka et al.* Appeal Judgement, para. 98.

¹¹⁸⁶ *Brdanin* Appeal Judgement, para. 430.

¹¹⁸⁷ *Kordić and Čerkez* Appeal Judgement, para. 28; *Gacumbitsi* Appeal Judgement, para. 182.

¹¹⁸⁸ *Brdanin* Trial Judgement, para. 267 (with further references).

¹¹⁸⁹ *Brdanin* Trial Judgement, para. 270. See also *Kordić and Čerkez* Appeal Judgement, para. 28, in which it is held that a formal superior-subordinate relationship is not required.

¹¹⁹⁰ *Brdanin* Trial Judgement, para. 270; *Limaj et al.* Trial Judgement, para. 515.

¹¹⁹¹ See *Kordić and Čerkez* Appeal Judgement, paras 29-30; *Blaškić* Appeal Judgement, para. 42.

¹¹⁹² Indictment, para. 4.

¹¹⁹³ See *supra* Section III I.

¹¹⁹⁴ *Ibid.*

meaning of the law on JCE pursuant to Article 7(1) of the Statute. However, where the creation of such territories is intended to be implemented through the commission of crimes within the Statute this may be sufficient to amount to a common criminal purpose.

443. The Trial Chamber recalls that several armed clashes occurred during the spring and early summer of 1991 between SAO Krajina and Croatian armed forces and formations.¹¹⁹⁵ Initially, these clashes were the result of tensions between the Croatian and SAO Krajina police and the climate of fear and mistrust between the Serb and Croat inhabitants. The evidence shows that beginning with the armed attack on the predominantly Croat village of Kijevo in August 1991, the SAO Krajina MUP and TO forces cooperated with the JNA. As of this point in time, the JNA was firmly involved on the side of the SAO Krajina authorities in the struggle to take control of territory in order to unite predominantly Serb areas.¹¹⁹⁶ The Trial Chamber recalls the ultimatum given by Milan Martić on 26 August 1991 in relation to the imminent attack on Kijevo that “[y]ou and your leadership have brought relations between the Serbian and Croatian populations to such a state that further co-existence in our Serbian territories of the SAO Krajina is impossible”.¹¹⁹⁷ From at least this point in time until early 1992, several other predominantly Croatian villages were attacked by forces of the TO and the police forces of the SAO Krajina and of the JNA acting in cooperation.¹¹⁹⁸ The Trial Chamber recalls that these attacks followed a generally similar pattern, which involved the killing and the removal of the Croat population.¹¹⁹⁹ Furthermore, after these attacks, widespread crimes of violence and intimidation and crimes against private and public property were perpetrated against the Croat population, including detention in facilities run by MUP forces of the SAO Krajina and the JNA.¹²⁰⁰ The threat clearly expressed in Milan Martić’s ultimatum was therefore carried out throughout the territory of the SAO Krajina in this period through the commission of widespread and grave crimes which created an atmosphere of fear in which the further presence of Croats and other non-Serbs in these territories was made impossible. In this respect, the Trial Chamber has concluded that the displacement of the non-Serb population was not a mere side-effect but rather a primary objective of the attacks.¹²⁰¹

444. Widespread acts of violence and intimidation intensified against the non-Serb population and became pervasive throughout the RSK territory from 1992 to 1995.¹²⁰² These acts were committed by members of the TO and the police of the RSK, and of the JNA, as well as members

¹¹⁹⁵ See *supra* Section III D 1.

¹¹⁹⁶ See *supra* paras 166-168, 170-171; section III I.

¹¹⁹⁷ See *supra* para. 166.

¹¹⁹⁸ See *supra* section III D 2-5 (see also paras 170-171); section IV A 6.

¹¹⁹⁹ See *supra* section IV A 6.

¹²⁰⁰ *Ibid.*

¹²⁰¹ *Ibid.*

¹²⁰² See *supra* section III H 2-3; section IV A 6.

of the local Serb population, and created such a coercive atmosphere that the Croat and other non-Serb inhabitants of the RSK were left with no option but to flee.¹²⁰³

445. From at least August 1991, the political objective to unite Serb areas in Croatia and in BiH with Serbia in order to establish a unified territory was implemented through widespread and systematic armed attacks on predominantly Croat and other non-Serb areas and through the commission of acts of violence and intimidation. In the Trial Chamber's view, this campaign of violence and intimidation against the Croat and non-Serb population was a consequence of the position taken by the SAO Krajina and subsequently the RSK leadership that co-existence with the Croat and other non-Serb population, in Milan Martić's words, "in our Serbian territories of the SAO Krajina", was impossible.¹²⁰⁴ Thus, the implementation of the political objective to establish a unified Serb territory in these circumstances necessitated the forcible removal of the non-Serb population from the SAO Krajina and RSK territory. The Trial Chamber therefore finds beyond reasonable doubt that the common purpose of the JCE was the establishment of an ethnically Serb territory through the displacement of the Croat and other non-Serb population, as charged in Counts 10 and 11.

(b) Plurality of persons

446. The Trial Chamber has been furnished with a substantial amount of evidence that the objective to unite Serb territories was espoused by the leaderships in Serbia, in the RS in BiH, and in the SAO Krajina and the RSK.¹²⁰⁵ The SAO Krajina, and later the RSK, government which included Milan Babić and Milan Martić, sought and received significant financial, logistical and military support from Serbia, including from the MUP and SDB of Serbia, and from the RS in BiH.¹²⁰⁶ Milan Martić also admitted that he had himself "personally never ceased this cooperation" and that there was "good cooperation with the leadership of Serbia, notably the [MUP]."¹²⁰⁷ In fact, the evidence shows that the police of the SAO Krajina were mainly financed with funds and material from the MUP and the SDB of Serbia.¹²⁰⁸ This support continued from 1991 to 1995 and even included modifications regarding units and personnel within the armed forces of the SAO Krajina and of the RSK.¹²⁰⁹ There is evidence that the cooperation between the armed forces of the SAO Krajina, and later the RSK, and the JNA was extensive and covered such major military actions as those carried out in Kijevo, Hrvatska Kostajnica, Saborsko and in Škabrnja, as well as

¹²⁰³ See *supra* section IV A 6.

¹²⁰⁴ See *supra* para. 166.

¹²⁰⁵ See *supra* section III I

¹²⁰⁶ See *supra* section III B 2; section III C 2.

¹²⁰⁷ See *supra* section III C 2, referring to Ex. 951, p. 1.

¹²⁰⁸ See *supra* section III B 2.

¹²⁰⁹ See *supra* section III B 2; section III C 2. See also para. 142.

operation *Koridor 92*.¹²¹⁰ In this respect, the Trial Chamber recalls the evidence that the SVK and the VJ were in reality one and the same organisation, only located at two separate locations.¹²¹¹ Moreover, the evidence of Milan Martić's arrest in 1991 gives a clear example of joint cooperation between political leaders in the SAO Krajina, in the RS in BiH and in Serbia.¹²¹² The Trial Chamber has been furnished with evidence that this type of cooperation continued until 1995.¹²¹³ The Trial Chamber therefore finds that at least Blagoje Adžić, Milan Babić, Radmilo Bogdanović, Veljko Kadijević, Radovan Karadžić, Slobodan Milošević, Ratko Mladić, Vojislav Šešelj, Franko "Frenki" Simatović, Jovica Stanišić, and Captain Dragan Vasiljković participated in the furtherance of the above-mentioned common criminal purpose.

(c) Milan Martić's participation in the JCE

447. As noted above, the Prosecution alleges that Milan Martić participated in the JCE in a number of ways.¹²¹⁴

448. Milan Martić's contacts with other members of the JCE had already begun during the autumn of 1990 and intensified during 1991 and onwards.¹²¹⁵ The evidence shows that these contacts were close and direct and that as a result, substantive financial, logistical and military support was rendered to the SAO Krajina and the RSK.¹²¹⁶ The evidence is clear that Milan Martić actively worked together with the other JCE participants to fulfil the objective of a united Serb state, something which he expressed publicly on several occasions between 1991 and 1995.¹²¹⁷

449. Milan Martić was considered one of the most important and influential political figures in the SAO Krajina and the RSK governments.¹²¹⁸ During his tenure as Minister of the Interior of the SAO Krajina and RSK, Milan Martić exercised absolute authority over the MUP, including the power to intervene on an individual level by appointing and removing chiefs of the SJBs as well as the authority to disband units within the MUP.¹²¹⁹

450. The evidence shows that the displacement of the non-Serb population had commenced in and around Knin already in 1991. The ultimatum issued by Milan Martić to the Croatian SJB and the inhabitants of Kijevo at the end of August 1991 is indicative of Milan Martić's mindset in

¹²¹⁰ See *supra* section III C 1; section III D 1-5. With regard to Kijevo, the Trial Chamber notes in particular Ex. 45, p. 48, *see supra* fn 397.

¹²¹¹ See *supra* fn 371.

¹²¹² See *supra* section III B 2.

¹²¹³ See *supra* section III C 2.

¹²¹⁴ Indictment, para. 7. See *supra* para. 6.

¹²¹⁵ See *supra* section III B 2.

¹²¹⁶ See *supra* section III B 2; section III C 2.

¹²¹⁷ See *supra* section III B; section III C.

¹²¹⁸ See *supra* section III J.

relation to the Croat population of the SAO Krajina.¹²²⁰ Furthermore, Milan Martić contributed to this displacement by fuelling the atmosphere of insecurity and fear through radio speeches wherein he stated he could not guarantee the safety of the non-Serb population.¹²²¹

451. There is no doubt that Milan Martić was aware that the non-Serb population was being driven out as a result of the coercive atmosphere in the SAO Krajina and the RSK. The sheer scale of the widespread and pervasive crimes against the non-Serb population of the SAO Krajina and the RSK must have made such crimes common knowledge.¹²²² The Trial Chamber recalls that crimes committed within the territory of the RSK were discussed at RSK government sessions.¹²²³ Furthermore, Milan Martić and the MUP were informed by UNCIVPOL of the multitude of crimes which were being committed against the non-Serb population.¹²²⁴ Here, the Trial Chamber recalls that Milan Martić himself issued detailed instructions concerning the cooperation of the MUP with UNPROFOR and UNCIVPOL, and concerning reporting obligations within the MUP. The evidence shows that these instructions were adhered to.¹²²⁵ Moreover, the Trial Chamber recalls that Milan Martić disbanded both Predrag Baklajić's unit and Veljko Radunović's police unit due to criminal activities. However, despite the substantial evidence concerning ongoing crimes committed by the MUP throughout the territory of the SAO Krajina and the RSK, the Trial Chamber has only been presented with evidence of a few examples where Milan Martić intervened to punish members of the MUP who had behaved in a criminal manner.¹²²⁶ The Trial Chamber cannot but conclude that Milan Martić deliberately refrained from intervening against perpetrators who committed crimes against the non-Serb population.

452. The evidence establishes that Milan Martić actively participated in the forcible removal of the non-Serb population both through his own actions and those of the members of the MUP. There is evidence of direct acts of deportation perpetrated by MUP forces, which resulted in the removal from the SAO Krajina and RSK territory of the non-Serb population.¹²²⁷ In this respect, the Trial Chamber recalls in particular the collection centre at Vrpolje, only a few kilometres north of Knin,

¹²¹⁹ *Ibid.*

¹²²⁰ *See supra* para. 166.

¹²²¹ *See supra* section III F.

¹²²² The Trial Chamber recalls the testimony of Slobodan Jarčević, the Foreign Minister of the RSK, that the RSK government "did not take any steps against the members of any other nation or ethnic group" and that it was difficult for the RSK government to protect the Croats who remained in the RSK because many of the crimes were committed out of a revenge for losing family members, *see supra* fn 1053. In view of the pervasive nature of the crimes committed against the non-Serb population, the Trial Chamber does not find this evidence credible. In this respect, the Trial Chamber also recalls the evidence that Milan Martić was aware of the various detention facilities, which existed in the SAO Krajina and the RSK, *see supra* para. 294; Ex. 518; Ex. 919.

¹²²³ *See supra* section III J.

¹²²⁴ *Ibid.*

¹²²⁵ *Ibid.*

¹²²⁶ *Ibid.*

¹²²⁷ *See supra* section III D 2-5; section III F.

which was secured by members of the Knin SJB and to which they directed the non-Serb population, who desired to leave the RSK territory. Members of the Knin SJB organised bus transport of the non-Serb population to areas under Croatian control. During a meeting with Cedric Thornberry on 14 June 1993, Milan Martić requested that Croats who wished to leave the RSK sign statements that no one had put pressure on them to leave.¹²²⁸ Milan Martić was aware of the persecutory and coercive atmosphere which existed and had existed in the SAO Krajina and RSK territory for a long time and that those non-Serbs who expressed a desire to leave the territory did so without having a genuine choice in their displacement. Moreover, there is evidence that Milan Martić repeatedly and publicly opposed the return of refugees.¹²²⁹

453. The Trial Chamber therefore concludes that Milan Martić intended to forcibly displace the non-Serb population from the territory of the SAO Krajina, and subsequently the RSK, and actively participated in the furtherance of the common purpose of the JCE.

454. The Trial Chamber finds that the crimes found to have been perpetrated against the non-Serb population under Counts 3 to 9, Counts 12 to 14, and Count 1 insofar as it relates to these counts, were outside of the common purpose of the JCE. However, the Trial Chamber recalls that Milan Martić was aware that the non-Serb population was being subjected to widespread and systematic crimes, including killings, unlawful detentions, beatings while detained, and crimes against property, as a result of the coercive atmosphere in the SAO Krajina and the RSK. The Trial Chamber considers that this atmosphere was created and sustained by the actions of Milan Martić and other members of the JCE. The Trial Chamber therefore finds that the crimes which have been found to be outside the common purpose were foreseeable to Milan Martić. Furthermore, the evidence includes only scarce reference to Milan Martić acting to take measures to prevent or punish such crimes. Moreover, despite the overwhelming evidence of the scale and gravity of the crimes being committed against the non-Serb population, Milan Martić persisted in pursuing the common purpose of the JCE. Thus, the Trial Chamber considers it proven beyond reasonable doubt that Milan Martić willingly took the risk that the crimes which have been found to be outside the common purpose might be perpetrated against the non-Serb population.

455. The Trial Chamber finds that Milan Martić incurs individual criminal responsibility pursuant to Article 7(1) of the Statute for Counts 3 to 14, and Count 1, insofar as it relates to these counts.

¹²²⁸ See *supra* para. 299.

¹²²⁹ See *supra* para. 341.

4. Findings on Counts 1 and 15 to 19

(a) Milan Martić's ordering of the shelling of Zagreb on 2 and 3 May 1995

456. The Trial Chamber recalls that Milan Martić repeatedly admitted in media statements that he had ordered the shelling of Zagreb on 2 and 3 May 1995. In this Trial Chamber's view, this is persuasive evidence, which is further supported by circumstantial evidence.

457. The evidence shows that already in 1992 and 1993 Milan Martić, as Minister of the Interior, considered attacking Zagreb as a response to Croatian attacks on RSK cities.¹²³⁰ Moreover, as President of the RSK on 24 October 1994, Milan Martić threatened to strike Zagreb with rockets if the situation deteriorated.¹²³¹

458. The Trial Chamber recalls that following the start of Operation Flash in the early morning hours on 1 May 1995, the Chief of the SVK Main Staff General Milan Čeleketić deployed the M-87 Orkan unit to Vojnić 50 kilometres south of Zagreb. The Trial Chamber further recalls that during a meeting which was held on 1 May 1995, Milan Martić and Milan Čeleketić were in favour of a non-peaceful solution. Following this meeting, at 1300 hours and in the presence of Milan Martić, Milan Čeleketić issued an order to several military commanders to shell Sisak.¹²³² The evidence shows that Sisak was shelled at 1700 hours on 1 May 1995. The Trial Chamber finds that the above-mentioned evidence establishes that Milan Martić was involved from the beginning in the RSK's military response to Operation Flash. The Trial Chamber notes the evidence of Patrick Barriot that Milan Martić merely took responsibility for the ordering of the shelling of Zagreb, and that Patrick Barriot came to this conclusion on "an analysis of his personality".¹²³³ In light of the significant evidence to the contrary presented above, the Trial Chamber finds his testimony unconvincing.

459. The Trial Chamber recalls that according to the RSK Constitution, the President led the SVK in times of peace and war in accordance with the Constitution and the decisions of the Supreme Defence Council.¹²³⁴ Accordingly, any decision to shell Zagreb should have been taken by the collegiate body of the Supreme Defence Council. However, the evidence establishes that Milan Martić and Milan Čeleketić circumvented the Supreme Defence Council. The Trial Chamber recalls the evidence of Rade Rašeta, Chief of Security of the SVK Main Staff, that the decisions to shell Zagreb on 2 and 3 May 1995 were not taken by the Supreme Defence Council but by the SVK

¹²³⁰ See *supra* section III G 3.

¹²³¹ *Ibid.*

¹²³² *Ibid.*

¹²³³ Patrick Barriot, 9 Nov 2006, T. 10773-10774, 10777-10778, 10 Nov 2006, T. 10841.

¹²³⁴ See *supra* para. 155.

Commander and the President of the RSK.¹²³⁵ This is further supported by reports of the two RSK commissions referred to above.¹²³⁶

460. In light of the totality of the evidence, the Trial Chamber finds beyond reasonable doubt that Milan Martić ordered the shelling of Zagreb on 2 and 3 May 1995.

(b) Military targets in Zagreb and the nature of the M/87 Orkan

461. The Defence argues that there were military targets in Zagreb at the time of the attacks on 2 and 3 May 1995, including the Ministry of Interior, Ministry of Defence, Zagreb/Plešo airport which had a military purpose, and the Presidential Palace.¹²³⁷ The Trial Chamber notes the report of 2 May 1995 from the SVK Main Staff to the VJ General Staff, which provides that the following targets in Zagreb were fired at by Orkan rockets on that day: the Ministry of Defence, the Presidential Palace and Zagreb/Plešo airport.¹²³⁸ The Trial Chamber notes that of these targets, the only one that was hit was Zagreb/Plešo airport, where one bomblet landed in a parking lot.¹²³⁹ The report also provides that “[a]ccording to our source, the Ministry of Defence in Križanićeva Street was hit.” However, the Trial Chamber notes that the Ministry of Defence is not located in this street but in the nearby Baureova Street.¹²⁴⁰ The Trial Chamber notes that two police buildings in Matica Hrvatska Street also received damage, to the roof and upper floors, on 2 May 1995.¹²⁴¹ However, as will be shown below, the presence or otherwise of military targets in Zagreb is irrelevant in light of the nature of the M-87 Orkan.

462. The M-87 Orkan is a non-guided projectile, the primary military use of which is to target soldiers and armoured vehicles.¹²⁴² Each rocket may contain either a cluster warhead with 288 so-called bomblets or 24 anti-tank shells.¹²⁴³ The evidence shows that rockets with cluster warheads containing bomblets were launched in the attacks on Zagreb on 2 and 3 May 1995.¹²⁴⁴ Each bomblet contains 420 pellets of 3mm in diameter.¹²⁴⁵ The bomblets are ejected from the rocket at a

¹²³⁵ See *supra* para. 321.

¹²³⁶ *Ibid.*

¹²³⁷ Defence Final Trial Brief, paras 90, 147. See also Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 31, 37, 42.

¹²³⁸ Ex. 95, p. 3.

¹²³⁹ Branko Lazarević, 14 Jun 2006, T. 5629; Ex. 810; Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 1-2.

¹²⁴⁰ Branko Lazarević, 15 Jun 2006, T. 5663-5664 (testifying that the Ministry complex is 300 by 400 metres and includes military facilities and institutions); Ex. 1042, Tab 2; Ex. 1043, Tab 2, DVD 1, pp 30-31; Ex. 814; Jožef Poje, 7 Jun 2006, T. 5211.

¹²⁴¹ Ex. 808, F-86 to F-89; Ex. 807, F-34 to F-68; Ex. 806; Branko Lazarević, 14 Jun 2006, T. 5628, 15 Jun 2006, T. 5676, 5678.

¹²⁴² Jožef Poje, 6 Jun 2006, T. 5067-5068, 5136; Ex. 7, p. 38.

¹²⁴³ Ex. 7, pp 23, 44; Jožef Poje, 6 Jun 2006, T. 5068-5069. See also Ex. 94, p. 8; Jožef Poje, 6 Jun 2006, T. 5103, 5129-5130, 5133-5134.

¹²⁴⁴ Jožef Poje, 7 Jun 2006, T. 5159; Reynaud Theunens, 27 Jan 2006, T. 824-825; Ex. 772; Ex. 775; Branko Lazarević, 15 Jun 2006, T. 5689; Ex. 809, F-65, F-66.

¹²⁴⁵ Jožef Poje, 6 Jun 2006, T. 5133; Ex. 7, p. 23; Ex. 94, p. 8.

height of 800-1,000m above the targeted area and explode upon impact, releasing the pellets.¹²⁴⁶ The maximum firing range of the M-87 Orkan is 50 kilometres.¹²⁴⁷ The dispersion error of the rocket at 800-1,000m in the air increases with the firing range. Fired from the maximum range, this error is about 1,000m in any direction.¹²⁴⁸ The area of dispersion of the bomblets on the ground is about two hectares.¹²⁴⁹ Each pellet has a lethal range of ten metres.¹²⁵⁰

463. The evidence shows that the M-87 Orkan was fired on 2 and 3 May 1995 from the Vojnić area, near Slavsko Polje, between 47 and 51 kilometres from Zagreb. However, the Trial Chamber notes in this respect that the weapon was fired from the extreme of its range. Moreover, the Trial Chamber notes the characteristics of the weapon, it being a non-guided high dispersion weapon. The Trial Chamber therefore concludes that the M-87 Orkan, by virtue of its characteristics and the firing range in this specific instance, was incapable of hitting specific targets. For these reasons, the Trial Chamber also finds that the M-87 Orkan is an indiscriminate weapon, the use of which in densely populated civilian areas, such as Zagreb, will result in the infliction of severe casualties. By 2 May 1995, the effects of firing the M-87 Orkan on Zagreb were known to those involved.¹²⁵¹ Furthermore, before the decision was made to once again use this weapon on Zagreb on 3 May 1995, the full impact of using such an indiscriminate weapon was known beyond doubt as a result of the extensive media coverage on 2 May 1995 of the effects of the attack on Zagreb.

(c) Defence argument on reprisals

464. The Defence submits that the shelling of Zagreb may be considered lawful reprisal, carried out with the aim of putting an end to violations of international humanitarian law committed by “the Croatian military and police forces”.¹²⁵² In particular, the Defence submits that the shelling of

¹²⁴⁶ Jožef Poje, 6 Jun 2006, T. 5129-5130, 5133; Ex. 7, pp 23, 44; Ex. 94, p. 8.

¹²⁴⁷ Jožef Poje, 6 Jun 2006, T. 5066-5067; Ex. 7, p. 47.

¹²⁴⁸ Firing a rocket from a distance of 49 kilometres results in an elliptical area of dispersion of 972m by 1032m, Jožef Poje, 6 Jun 2006, T. 5100-5103; Ex. 776; Ex. 778; Ex. 779. *See also* Ex. 777 (showing the area of dispersion for the distance of 40 kilometres). Rade Rašeta, 2 May 2006, T. 3939, testified that “persons who are familiar with these artillery pieces knew that they were intended for targeting wider areas and not points, and that as such they could entail a lot of casualties”. In this respect, Jožef Poje testified that it would have been easy to conclude what the consequences of using the Orkan would be, however allowed for the possibility that not everyone is familiar with the consequences of using this weapon, Jožef Poje, 6 Jun 2006, T. 5113-5114. *See also* Jožef Poje, 6 Jun 2006, T. 5064-5065, 5108, 5118, 7 Jun 2006, T. 5155-5156, 5190-5192, 5233-5234; Ex. 7, pp 19, 38, 61, 66-68.

¹²⁴⁹ Ex. 7, p. 23; Jožef Poje, 6 Jun 2006, T. 5069; Ex. 94, p. 8; Ex. 771. If the warhead opens along the edge of the dispersion ellipse, it is possible that part of the bomblets fall outside of the ellipse, by approximately 100 m (since the surface area on which the bomblets drop is two hectares), Jožef Poje, 6 Jun 2006, T. 5103.

¹²⁵⁰ Ex. 7, pp 23, 44.

¹²⁵¹ *See supra* section III G 2.

¹²⁵² Defence Final Trial Brief, paras 86-93. *See also* paras 114-136. This argument was contested by the Prosecution, *see* Prosecution Closing Argument, 10 Jan 2006, T. 11221-11223.

Zagreb was a reaction to Operation Flash, which was in breach of the cease fire agreement, and “conducted without any respect to the norms of international humanitarian law”.¹²⁵³

465. In the law of armed conflict, belligerent reprisals are acts resorted to by one belligerent which would otherwise be unlawful, but which are rendered lawful by the fact that they are taken in response to a violation of that law committed by the other belligerent.¹²⁵⁴ Reprisals are therefore drastic and exceptional measures employed by one belligerent for the sole purpose of seeking compliance with the law of armed conflict by the opposite party. It follows that reprisals, in order to be considered lawful, are subject to strict conditions. These conditions are well-established in customary law and are set forth below.¹²⁵⁵

466. Reprisals may be used only as a last resort and only when all other means have proven to be ineffective.¹²⁵⁶ This limitation entails that reprisals may be exercised only after a prior and formal warning has been given, which has failed to put an end to the violations committed by the adversary.¹²⁵⁷ In addition, reprisals may only be taken after a decision to this effect has been made at the highest political or military level.¹²⁵⁸

467. A further requirement is that the measures taken must be proportionate to the initial violation of the law of armed conflict of the opposite party.¹²⁵⁹ According to this condition, the reprisals must cease as soon as they have achieved their purpose of putting an end to the breach which provoked them.¹²⁶⁰ Finally, acts of reprisal must respect the “laws of humanity and dictates of public conscience”.¹²⁶¹ The Trial Chamber interprets this condition to mean that reprisals must

¹²⁵³ Defence Final Trial Brief, para. 125.

¹²⁵⁴ Commentary ICRC, para. 3427, citing the definition of reprisal adopted by the Institut de droit international in *Annuaire* 708-11, 1934 and defining reprisal as follows: “compulsory measures, derogating from the ordinary rules of such law, taken by a belligerent following unlawful acts to its detriment committed by another belligerent and which intend to compel the latter, by injuring it, to observe the law”.

¹²⁵⁵ See Commentary ICRC on Additional Protocols, para. 3457, which reports that the discussion about the issue of reprisal at the Diplomatic Conference on the adoption of the Additional Protocols to the Geneva Conventions showed agreement among the States on some minimum restrictions, as spelled out in the main text. *Kupreskić et al.* Trial Judgement, para. 535.

¹²⁵⁶ *Ibid.* For example, the YPA Military Manual of the SFRY (FRY) (1988), para. 29 states that “before they undertake reprisals, the armed forces of the SFRY shall try to force the enemy to respect the laws of war by means of other methods for preventing violations of such laws”. A similar wording is contained in the military manuals of numerous States, including, *inter alia*, Canada, LOAC Manual (1999), p. 15-3, para. 17; United States, Field Manual (1956), para. 497(b); Germany, Military Manual (1992), para. 478; Netherlands, Military Manual (1993), p. IV-5; United Kingdom Military Manual (1958), para. 646; Ecuador’s Naval Manual (1989), para. 6.2.3.1; New Zealand, Military Manual (1992), para. 1606(4)(c) and (d); Spain, LOAC Manual (1996), Vol. I, para.2.3.b. (6). Several of the above references to military manuals were extracted from *Customary International Humanitarian Law*, Volume II, pp 3328-3337.

¹²⁵⁷ Commentary ICRC on Additional Protocols, para. 3457; *Kupreskić et al.* Trial Judgement, para. 535.

¹²⁵⁸ *Ibid.*

¹²⁵⁹ Commentary ICRC on Additional Protocols, para. 3457; *Kupreskić et al.* Trial Judgement, para. 535.

¹²⁶⁰ *Ibid.*

¹²⁶¹ *Ibid.*

be exercised, to the extent possible, in keeping with the principle of the protection of the civilian population in armed conflict and the general prohibition of targeting civilians.¹²⁶²

468. The Trial Chamber finds that the evidence presented to the Trial Chamber regarding the shelling of Zagreb fails to show that the conditions for lawful reprisals have been met. First, even if the Trial Chamber was to assume that the Croatian forces had engaged in serious violations of international humanitarian law during Operation Flash, the evidence shows that the shelling was not carried out as a last resort, after having exhausted all other means. Indeed, the Trial Chamber has been provided with evidence that peace negotiations were ongoing during Operation Flash, until 3 May 1995.¹²⁶³ Furthermore, no formal warning was given prior to the shelling that acts of reprisals would be carried out in reaction to the alleged violations conducted during Operation Flash.¹²⁶⁴ The Trial Chamber cannot therefore find that the shelling of Zagreb constituted a lawful reprisal and does not consider it necessary to analyse the issue of reprisal any further. The Defence argument, in this regard, is consequently dismissed.

(d) General requirements of Article 3 and Article 5 of the Statute

469. The Trial Chamber recalls its findings concerning the existence of an armed conflict in the territories relevant to the crimes charged in the Indictment. The Trial Chamber considers the shelling of Zagreb on 2 and 3 May 1995, and the crimes in relation to this shelling with which Milan Martić has been charged, were related to the armed conflict in such a way as to meet the relevant general requirements of Article 3 and Article 5 of the Statute. Moreover, in particular due to the characteristics of the M-87 Orkan and due to the large-scale nature of the attack, the Trial Chamber finds that the shelling constituted a widespread attack directed against the civilian population of Zagreb. Furthermore, the Trial Chamber considers it proven beyond doubt that Milan Martić was aware of this attack on the civilian population and that his ordering of the shelling formed part of the attack. The Trial Chamber therefore concludes that the general requirements of Article 3 and Article 5 of the Statute have been met.

¹²⁶² See *supra* section II E.

¹²⁶³ See *supra* para. 302.

¹²⁶⁴ See *supra* section III G 1-2. In this regard, the Trial Chamber notes that the threat to shell Zagreb given by Milan Martić to Ambassador Peter Galbraith on 24 October 1994 cannot be considered a warning for the purpose of reprisal for at least three reasons: it was given long before Operation Flash commenced, it was not addressed directly to the Croatian authorities, and it lacked any elements of formality. The same is true for the speech given by Milan Martić on 10 February 1995 to the SVK commanding officers and for the interview of Milan Čeleketić reported in a newspaper article on 24 March 1995. The Trial Chamber notes also that with regard to the interview of Milan Čeleketić, it could not be considered as a warning for the purpose of reprisal since it was not given by the highest political or military authority.

(e) Counts 15 and 16 – Murder

470. The Trial Chamber finds that the deaths of Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač, Ivan Brodar, Luka Skračić and Ivan Markulin were caused as a result of the rocket attacks on Zagreb, which were ordered by Milan Martić. Having regard in particular to the Trial Chamber's findings concerning the nature of the M-87 Orkan and that Milan Martić, who ordered the use of the M-87 Orkan, was aware that death was a probable consequence of this attack, the Trial Chamber finds that the mental element of the crime of murder is established. The Trial Chamber recalls that Ivan Markulin was a member of the Croatian MUP and that he was in the process of deactivating a bomb at the time of his death and was not taking an active part in the hostilities. The Trial Chamber therefore finds that Milan Martić bears individual criminal responsibility under Article 7(1) of the Statute for Counts 15 and 16 for the murder of Ana Mutevelić, Damir Dračić, Stjepan Krhen, Ivanka Kovač, Ivan Brodar, and Luka Skračić. The Trial Chamber further finds that Milan Martić bears individual criminal responsibility under Article 7(1) of the Statute for Count 16 for the murder of Ivan Markulin.

(f) Counts 17 and 18 – Inhumane acts under Article 5(i) and cruel treatment under Article 3

471. The Trial Chamber finds that the evidence from persons injured during the shelling of Zagreb is representative of the injuries and suffering caused to the 214 persons who were injured on 2 and 3 May 1995. The Trial Chamber therefore concludes that the shelling caused serious mental and/or physical suffering to those injured. The Trial Chamber considers that Milan Martić knew that the shelling was likely to cause such suffering, and thus intentionally committed acts which amount to cruel treatment under Article 3 and inhumane acts under Article 5 against these persons. The Trial Chamber recalls that of the persons injured, 7 were not civilians. The Trial Chamber therefore finds Milan Martić incurs individual criminal responsibility under Article 7(1) of the Statute for Count 17, other inhumane acts under Article 5(i), and for Count 18 for cruel treatment under Article 3 in relation to 207 victims and for Count 18, cruel treatment under Article 3, in relation to the other 7 victims.

(g) Count 19 – Attacks on civilians under Article 3

472. In examining the responsibility of Milan Martić for the crime of attacks on civilians under Article 3, the Trial Chamber recalls that a direct attack on civilians may be inferred from the indiscriminate character of the weapon used. The Trial Chamber has previously found that the M-87 Orkan was incapable of hitting specific targets.¹²⁶⁵ The Trial Chamber has also found that these

¹²⁶⁵ See *supra* section IV B 4 (b).

attacks resulted in death and serious injury to the civilian population. Having regard in particular to the nature of the M-87 Orkan and the finding that Milan Martić knew of the effects of this weapon, the Trial Chamber finds that Milan Martić wilfully made the civilian population of Zagreb the object of this attack. Milan Martić therefore incurs individual criminal responsibility under Article 7(1) of the Statute for Count 19, attacks on civilians under Article 3.

(h) Count 1 – Persecution

473. The Trial Chamber recalls the situation prevailing prior to the shelling of Zagreb, including the launch of Operation Flash by Croatian armed forces. Moreover, the Trial Chamber recalls that prior to the shelling of Sisak and Zagreb, Milan Martić considered the shelling of Croatian cities as a response to Croatian attacks on RSK cities. However, the Trial Chamber has not found any evidence which would persuade it beyond reasonable doubt that Milan Martić intended to commit such attacks, including the attacks which were eventually carried out on Zagreb on 2 and 3 May 1995, with discriminatory intent on the basis of ethnicity. Rather, the evidence shows that Milan Martić intended to shell the city of Zagreb in order to retaliate on Croatia and to stop further Croatian attacks on the RSK. While an attack on a city, such as in this case, is without doubt grave, the Trial Chamber cannot find that it establishes in and of itself that it was carried out with the requisite intent. The Trial Chamber therefore concludes that the elements of the crime of persecution (Count 1) have not been established.

C. Cumulative convictions

474. Cumulative convictions, that is multiple convictions entered under different statutory provisions in relation to the same conduct, are permissible only 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 required by the other element. Where this test is not met, the Trial Chamber will enter a conviction only under the more specific provision.¹²⁶⁶

475. Milan Martić has been found criminally responsible for the crime of persecution (Count 1) and for the crimes charged in Counts 3 to 19.¹²⁶⁷ The acts underlying the findings of persecution include the acts underlying the findings of the crimes under Counts 3 to 14. Persecution requires a

¹²⁶⁶ *Čelebići* Appeal Judgement, paras 412-413. This test has been further clarified by the Appeals Chamber in *Kordić and Čerkez* as follows: “[w]hen applying the *Čelebići* test, what must be considered are the legal elements of each offence, not the acts or omissions giving rise to the offence. What each offence requires, as a matter of law, is the pertinent inquiry. The Appeals Chamber will permit multiple convictions for the same act or omission where it clearly violates multiple distinct provisions of the Statute, where each statutory provision contains a materially distinct element not contained in the other(s), and which element requires proof of a fact which the elements of the other statutory provision(s) do not. [...]”, *Kordić and Čerkez* Appeal Judgement, para. 1033 (footnotes omitted). See also *Kunarac et al.* Appeal Judgement, para. 177; *Stakić* Appeal Judgement, paras 355-358.

materially distinct element that is not present as an element in any of the other crimes, that is proof that the act or omission discriminated in fact and that the act or omission was committed with the specific intent to discriminate on the basis of one of the grounds listed in Article 5.¹²⁶⁸ The other crimes under Counts 3 to 14 require proof of materially distinct elements, which are not present in the crime of persecution. As a result, cumulative conviction is permissible for persecution and for the crimes found to have been committed under Counts 3 to 14.

476. Milan Martić has been found criminally responsible for the following crimes, charged under Article 3 and Article 5 of the Statute, which are based on the same conduct: murder as a crime against humanity (Count 3) and murder as a violation of the laws and customs of war (Count 4),¹²⁶⁹ torture as a crime against humanity (Count 6) and torture as a violation of the laws or customs of war (Count 8),¹²⁷⁰ inhumane acts as a crime against humanity (Count 7) and cruel treatment as a violation of the laws or customs of war (Count 9),¹²⁷¹ murder as a crime against humanity (Count 15) and murder as a violation of the laws and customs of war (Count 16),¹²⁷² and inhumane acts as a crime against humanity (Count 17) and cruel treatment as a violation of the laws or customs of war (Count 18).¹²⁷³ Crimes under Article 3 of the Statute require a materially distinct element to be proven which is not required for the crimes under Article 5 of the Statute, that is the nexus between the acts of the accused and the armed conflict. Crimes under Article 5 of the Statute require a materially distinct element that is not required for the crimes under Article 3 of the Statute, a widespread or systematic attack directed against any civilian population. Therefore, cumulative convictions are permissible under Article 3 and Article 5.¹²⁷⁴

477. Milan Martić has been found criminally responsible for the crimes of torture (Count 6) and inhumane acts (Count 7) as crimes against humanity, in relation to the same conduct.¹²⁷⁵ The crime of torture has a materially distinct element, that is, the act or omission must have been carried out for a prohibited purpose. This element is not required for the crime of inhumane acts. However, the crime of inhumane acts does not require proof of a materially distinct element.¹²⁷⁶ Accordingly, a cumulative conviction for the two crimes is not permissible and the Trial Chamber will enter a conviction for the crime of torture only. The same reasoning applies to the crime of torture and the

¹²⁶⁷ See *supra* section IV A, B.

¹²⁶⁸ *Stakić* Appeal Judgement, paras 359-364; *Kordić and Čerkez* Appeal Judgement, para. 1041.

¹²⁶⁹ See *supra* paras 354, 359, 364, 365, 368, 373, 379, 386-389, 392, 400.

¹²⁷⁰ See *supra* paras 410, 415.

¹²⁷¹ See *supra* paras 410, 415, 419, 424.

¹²⁷² See *supra* para. 471.

¹²⁷³ See *supra* para. 472.

¹²⁷⁴ *Jelišić* Appeal Judgement, para. 82.

¹²⁷⁵ See *supra* paras 410, 415.

¹²⁷⁶ *Kunarac et al.* Appeal Judgement, paras 142, 144, confirming *Kunarac et al.* Trial Judgement, para. 497. See also *Brdanin* Trial Judgement, para. 481; *Krnjelac* Trial Judgement, para. 181.

crime of cruel treatment as violations of laws and customs of war, for which Milan Martić has been found criminally responsible in relation to the same conduct.¹²⁷⁷

478. In relation to the shelling of Zagreb, Milan Martić has been found criminally responsible for the crimes of murder (Count 16), cruel treatment (Count 18), and attacks on civilians (Count 19), all violations of laws and customs of war under Article 3.¹²⁷⁸ These crimes are based on the same conduct. The crime of attacks on civilians requires the existence of an attack directed against a civilian population, the killings of, or infliction of serious bodily injury to, civilians as a consequence of the attack, and the intent to make the civilian population the object of attack. As the crime of attacks on civilians requires materially distinct elements not required for murder or cruel treatment, the latter crimes are absorbed by the crime of attacks on civilians. As a result, cumulative conviction for these crimes is not permissible and the Trial Chamber will only enter a conviction for the crime of attacks on civilians.¹²⁷⁹

D. Summary of the Trial Chamber's findings in relation to each count

479. The Trial Chamber finds Milan Martić **NOT GUILTY** of:

Count 2: Extermination, a crime against humanity

480. The Trial Chamber finds Milan Martić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

Count 1: Persecutions, a crime against humanity;¹²⁸⁰

Count 3: Murder, a crime against humanity;¹²⁸¹

Count 4: Murder, a violation of the laws or customs of war;¹²⁸²

Count 5: Imprisonment, a crime against humanity;¹²⁸³

Count 6: Torture, a crime against humanity;¹²⁸⁴

Count 7: Inhumane acts, a crime against humanity;¹²⁸⁵

¹²⁷⁷ See *supra* paras 410, 415, 419, 422.

¹²⁷⁸ See *supra* paras 471, 472, 473.

¹²⁷⁹ *Strugar* Trial Judgement, para. 449.

¹²⁸⁰ See *supra* paras 358, 363, 367, 370, 377-378, 383, 398-399, 403, 411, 416, 432. Hence acquitting Milan Martić as to the rest of the charges under Count 1, see *supra* paras 384, 403, 419, 422, 425, 474.

¹²⁸¹ See *supra* paras 354, 359, 364-365, 368, 373, 379, 386-389, 392, 400. Hence acquitting Milan Martić as to the rest of the charges under Count 3, see *supra* paras 387, 389-393, 401.

¹²⁸² See *supra* paras 354, 359, 364-365, 368, 373, 379, 386-389, 391-392, 400. Hence acquitting Milan Martić as to the rest of the charges under Count 4, see *supra* paras 389-393, 401.

¹²⁸³ See *supra* paras 410, 412. Hence acquitting Milan Martić as to the rest of the charges under Count 5, see *supra* paras 417, 422, 423.

¹²⁸⁴ See *supra* paras 410, 415. Hence acquitting Milan Martić as to the rest of the charges under Count 6, see *supra* paras 419, 422, 424.

¹²⁸⁵ See *supra* paras 410, 415, 419, 424. Hence acquitting Milan Martić as to the rest of the charges under Count 7, see *supra* para. 422, 424.

- Count 8: Torture, a violation of the laws or customs of war;¹²⁸⁶
- Count 9: Cruel treatment, a violation of the laws or customs of war;¹²⁸⁷
- Count 10: Deportation, a crime against humanity;¹²⁸⁸
- Count 11: Forcible transfer, a crime against humanity;¹²⁸⁹
- Count 12: Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war;¹²⁹⁰
- Count 13: Destruction or wilful damage done to institutions dedicated to education or religion, a violation of the laws or customs of war;¹²⁹¹
- Count 14: Plunder of public or private property, a violation of the laws or customs of war;¹²⁹²
- Count 15: Murder, a crime against humanity;¹²⁹³
- Count 16: Murder, a violation of the laws or customs of war;¹²⁹⁴
- Count 17: Inhumane acts, a crime against humanity;¹²⁹⁵
- Count 18: Cruel treatment, a violation of the laws or customs of war;¹²⁹⁶
- Count 19: Attacks on civilians, a violation of the laws or customs of war.¹²⁹⁷

While the Trial Chamber has found that the elements have been established for the crimes charged under Count 16 and Count 18, in view of the fact that these crimes are absorbed by the crime of attacks on civilians under Count 19, the Trial Chamber will only enter a conviction with respect to the crime of attacks on civilians.

V. SENTENCING LAW AND FACTS

A. Applicable law

481. The relevant provisions covering sentencing are set out in Article 24 of the Statute and Rule 101 of the Rules of Procedure and Evidence. Article 24 of the Statute provides:

¹²⁸⁶ See *supra* paras 410, 415, 419, 422. Hence acquitting Milan Martić as to the rest of the charges under Count 8, see *supra* paras 424.

¹²⁸⁷ See *supra* paras 410, 415, 419, 422, 424. Hence acquitting Milan Martić as to the rest of the charges under Count 9, see *supra* para. 424.

¹²⁸⁸ See *supra* para. 431.

¹²⁸⁹ See *supra* para. 429.

¹²⁹⁰ See *supra* paras 360, 374-375, 381. Hence acquitting Milan Martić as to the rest of the charges under Count 12, see *supra* paras 355, 366, 385, 394, 397, 402.

¹²⁹¹ See *supra* paras 361, 395. Hence acquitting Milan Martić as to the rest of the charges under Count 13, see *supra* paras 356, 366, 369, 380, 385, 397.

¹²⁹² See *supra* paras 357, 382. Hence acquitting Milan Martić as to the rest of the charges under Count 14, see *supra* paras 362, 376, 385, 396-397.

¹²⁹³ See *supra* para. 471.

¹²⁹⁴ See *supra* para. 471.

¹²⁹⁵ See *supra* para. 472.

¹²⁹⁶ See *supra* para. 472.

¹²⁹⁷ See *supra* para. 473.

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.

Rule 101 of the Rules of Procedure and Evidence provides:

- (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 the 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.

These provisions set forth factors to be taken into consideration by the Trial Chamber when deciding a sentence.¹²⁹⁸ They do not constitute binding limitations on the Trial Chamber's discretion to impose a sentence,¹²⁹⁹ which must always be decided based on the facts of each particular case.¹³⁰⁰

482. The Appeals Chamber has held that the sentencing practice of the Tribunal in cases involving similar circumstances is but one factor which a Chamber must consider when exercising its discretion in imposing a sentence.¹³⁰¹ The Appeals Chamber has held that comparisons between cases as regards sentencing are not reliable as the sole basis for sentencing.¹³⁰² On the other hand, "[a] previous decision on sentence may indeed provide guidance if it relates to the same offence and was committed in substantially similar circumstances".¹³⁰³ However, this assistance may be limited,¹³⁰⁴ as "when comparing a case to the same offence committed in substantially similar circumstances, the Trial Chamber still has an overriding obligation to tailor a penalty to fit the

¹²⁹⁸ Rule 101(B) of the Rules. *See also* *Krstić* Appeal Judgement, para. 241; *Čelebići* Appeal Judgement, para. 716.

¹²⁹⁹ *Krstić* Appeal Judgement, paras 241-242; *Čelebići* Appeal Judgement, paras, 715, 718, 780. *See also* *Kambanda* Appeal Judgement, para. 124; *Furundžija* Appeal Judgement, para. 238.

¹³⁰⁰ *Krstić* Appeal Judgement, para. 241; *Jelišić* Appeal Judgement, para. 101; *Čelebići* Appeal Judgement, para. 717.

¹³⁰¹ *Krstić* Appeal Judgement, para. 248; *Čelebići* Appeal Judgement, para. 757.

¹³⁰² *Čelebići* Appeal Judgement, para. 719.

¹³⁰³ *Momir Nikolić* Sentencing Appeal Judgement, para. 38, citing *Furundžija* Appeal Judgement, para. 250; *Čelebići* Appeal Judgement, para. 720.

¹³⁰⁴ *Čelebići* Appeal Judgement, para. 721.

gravity of the crime and the individual circumstances of the accused, which include the consideration of both aggravating and mitigating circumstances.”¹³⁰⁵

483. The Prosecution recalls the sentencing judgement of Milan Babić, who was sentenced by the Tribunal to a period of 13 years’ imprisonment for his criminal conduct, to which he pled guilty. The Prosecution submits that the culpability of Milan Martić should be compared with that of Milan Babić, whose conduct occurred within a more limited time (1 August 1991 to 15 February 1992), who cooperated with the Tribunal, and who testified in three trials and therefore received a lower sentence than he otherwise might have.¹³⁰⁶ The Trial Chamber considers that guidance may be had from the *Babić* case, however such guidance will necessarily be limited.

1. Principles and purposes of sentencing

484. The jurisprudence of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are deterrence and retribution.¹³⁰⁷ The penalties imposed by the Tribunal must, in general, have sufficient deterrent value to dissuade those who would consider committing similar crimes from doing so.¹³⁰⁸ However, deterrence “must not be accorded undue prominence in the overall assessment of the sentences to be imposed on persons convicted by the International Tribunal”.¹³⁰⁹ Moreover, “unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more”.¹³¹⁰ However, a sentence imposed “should make plain the condemnation of the international community of the behaviour in question.”¹³¹¹ A third purpose of sentencing is rehabilitation which, while it may be considered a relevant factor, “is not one which should be given undue weight”.¹³¹²

2. Gravity and individual circumstances of the convicted person

485. Article 24(2) of the Statute provides that in imposing sentences Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. The Appeals Chamber has held that the gravity of the offence is a primary

¹³⁰⁵ *Momir Nikolić* Sentencing Appeal Judgement, para. 38, citing *Čelebići* Appeal Judgement, paras 717, 719.

¹³⁰⁶ Prosecution Closing Argument, 10 Jan 2007, T. 11231.

¹³⁰⁷ *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185. See also *Furundžija*, Trial Judgement, para. 288; *Tadić* Sentencing Judgement, paras 7-9; *Kupreškić et al.* Trial Judgement, para. 848. As regards deterrence, see also *Čelebići* Appeal Judgement, para. 800, citing *Tadić* Jurisdiction Decision, para. 72.

¹³⁰⁸ *Kordić and Čerkez* Appeal Judgement, para. 1078.

¹³⁰⁹ *Kordić and Čerkez* Appeal Judgement, para. 1078; *Čelebići* Appeal Judgement, para. 801; *Aleksovski* Appeal Judgement, para. 185; *Tadić* Sentencing Appeal Judgement, para. 48.

¹³¹⁰ *Kordić and Čerkez* Appeal Judgement, para. 1075 (emphasis in original). See also *Aleksovski* Appeal Judgement, para. 185; *Dragan Nikolić* Sentencing Judgement, para. 140.

¹³¹¹ *Aleksovski* Appeal Judgement, para. 185, citing *Erdemović* Sentencing Judgement, paras 64-65.

consideration in imposing a sentence.¹³¹³ There is no hierarchy of crimes within the jurisdiction of the Tribunal.¹³¹⁴ Sentences must reflect the inherent gravity or totality of the criminal conduct of the accused, requiring a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.¹³¹⁵

486. The Appeals Chamber has found that factors to be considered include the discriminatory nature of the crimes where this is not considered as an element of a conviction,¹³¹⁶ and the vulnerability of the victims.¹³¹⁷ The Appeals Chamber has also held that the consequences of the crime upon the victim directly injured is always relevant to sentencing;¹³¹⁸ further factors, such as the effects of the crime on relatives of the immediate victims, may also be considered.¹³¹⁹

487. The Prosecution submits that the crimes with which Milan Martić is charged are of serious gravity and directs the Trial Chamber's attention to persecutions as a crime against humanity and crimes involving the intentional deprivation of life.¹³²⁰ The Prosecution further submits that the targeted group in this case was predominantly civilian and included women, children and the elderly.¹³²¹

488. Milan Martić has been found responsible for, *inter alia*, the crimes of murder, imprisonment, torture, cruel treatment, destruction, including of buildings dedicated to religion as well as plunder, directed against people of Croat ethnicity. Many of these crimes were committed with discriminatory intent. The Trial Chamber agrees with the Prosecution that the fact that the crimes were committed with discriminatory intent is a factor to be taken into consideration when assessing the gravity of the criminal conduct of Milan Martić.

489. Milan Martić has also been found guilty of the crimes of deportation and other inhumane acts (forcible transfer). The Trial Chamber particularly notes that the non-Serb population was subjected to widespread and systematic crimes, including killings, beatings, and crimes against

¹³¹² *Čelebići* Appeal Judgement, para. 806. See also *Deronjić* Sentencing Appeal Judgement, paras 135-137; *Stakić* Appeal Judgement, paras 400-402.

¹³¹³ *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442. See also *Aleksovski* Appeal Judgement, para. 182.

¹³¹⁴ *Stakić* Appeal Judgement, para. 375.

¹³¹⁵ *Blaškić* Appeal Judgement, para. 683, citing *Furundžija* Appeal Judgement, para. 249. See also *Čelebići* Appeal Judgement para. 731, citing *Kupreškić et al.* Trial Judgement, para. 852, cited in the *Aleksovski* Appeal Judgement at para. 182. See also *Čelebići* Appeal Judgement, para. 769; *Stakić* Trial Judgement, para. 903.

¹³¹⁶ *Kvočka et al.* Trial Judgement, para. 702.

¹³¹⁷ *Blaškić* Appeal Judgement, para. 683; *Kunarac et al.* Appeal Judgement, para. 352.

¹³¹⁸ *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Trial Judgement, para. 512.

¹³¹⁹ *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Appeal Judgement, para. 260. The Trial Chamber in *Čelebići* held that: "The gravity of the offences of the kind charged has always been determined by the effect on the victim or, at the most, on persons associated with the crime and nearest relations. Gravity is determined *in personam* and is not one of a universal effect," *Čelebići* Trial Judgement, para. 1226.

¹³²⁰ Prosecution Final Trial Brief, para. 478.

¹³²¹ Prosecution Final Trial Brief, para. 480; Prosecution Closing Argument, 10 Jan 2007, T. 11234.

property, as a result of the coercive atmosphere in the SAO Krajina and the RSK between 1991 and 1995, and that as a result almost all of the Croat and other non-Serb population were forcibly displaced. The scale and systematic nature of these crimes are factors which the Trial Chamber considers to be of particular gravity.

490. The Trial Chamber recalls that the majority of the crimes for which Milan Martić has been found guilty were committed against elderly persons or against people held in detention. Furthermore, the majority of the victims were civilians. The special vulnerability of these groups of victims adds to the gravity of the crimes for which Milan Martić has been found guilty.

491. The Trial Chamber recalls the effects of the crimes committed on victims and their families. Virtually the entire Croat and other non-Serb population was expelled and many had their houses and property burnt and looted. Appalling acts of inhumane treatment, including torture, were committed in detention facilities against Croat and other non-Serb detainees. The Trial Chamber recalls in particular the testimony of some victims of these crimes concerning the suffering they endured and continue to endure as a result of these crimes. Moreover, the Trial Chamber recalls the horrific injuries and the serious suffering inflicted on civilians as a consequence of the indiscriminate attacks on Zagreb ordered by Milan Martić. The impact and long-lasting effects of these crimes, for which Milan Martić is individually criminally responsible, including as a direct perpetrator, render them especially grave.

492. In relation to “the individual circumstances of the convicted person”, the Appeals Chamber has held that while such circumstances can be either mitigating or aggravating, family concerns should, in principle, be a mitigating factor.¹³²² The Trial Chamber will consider this factor in the following section.

3. Aggravating and mitigating factors

493. The Statute and the Rules require the Trial Chamber to take account of both aggravating and mitigating circumstances when imposing a sentence.¹³²³ The Appeals Chamber has held that the weight to be attached to such circumstances is a matter within the Trial Chamber’s discretion.¹³²⁴

¹³²² *Kunarac et al.* Appeal Judgement, para. 362; *Erdemović* Second Sentencing Judgement, para. 16; *Tadić* Sentencing Judgement, para. 26.

¹³²³ See above Article 24 of the Statute and Rule 101 of the Rules; *Čelebići* Appeal Judgement, para. 717.

¹³²⁴ *Čelebići* Appeal Judgement, paras 718, 777, 780; *Blaškić* Appeal Judgement, para. 696.

Factors which a Trial Chamber takes into account as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and *vice versa*.¹³²⁵

494. While mitigating circumstances not directly related to the offence may be considered, with regard to aggravating circumstances only those relating directly to the commission of the offence may be considered.¹³²⁶ Furthermore, the absence of a mitigating factor can never serve as an aggravating factor.¹³²⁷

(a) Aggravating circumstances

495. Aggravating circumstances must be proved by the Prosecution beyond reasonable doubt.¹³²⁸ Such factors include: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia;¹³²⁹ (ii) the discriminatory intent¹³³⁰ or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime;¹³³¹ (iii) the length of time during which the crime continued;¹³³² (iv) active and direct criminal participation, if linked to a high-rank position of command,¹³³³ the accused's role as fellow perpetrator,¹³³⁴ and the active participation of a superior in the criminal acts of subordinates;¹³³⁵ (v) the informed, willing or enthusiastic participation in crime;¹³³⁶ (vi) premeditation and motive;¹³³⁷ (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims;¹³³⁸ (viii) the status of the

¹³²⁵ *Deronjić* Sentencing Appeal Judgement, para. 106, citing *Krnojelac* Trial Judgement, para. 517; *Plavšić* Sentencing Judgement, para. 58; *Banović* Sentencing Judgement, para. 53. See also *Momir Nikolić* Sentencing Appeal Judgement, para. 58; *Obrenović* Sentencing Judgement, para. 101; *Češić* Sentencing Judgement, para. 53.

¹³²⁶ *Kunarac et al.* Trial Judgement, para. 850.

¹³²⁷ *Blaškić* Appeal Judgement, para. 687, citing *Čelebići* Appeal Judgement, paras 763, 783; *Plavšić* Sentencing Judgement, para. 64; *Kunarac et al.* Trial Judgement, para. 847.

¹³²⁸ *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763.

¹³²⁹ *Ibid.*, citing *Jokić* Sentencing Judgement, paras 61-62. See also *Tadić* Sentencing Appeal Judgement, paras 55-56. The Appeals Chamber in *Stakić* noted that "in considering the superior position in connection with Article 7(1), the Appeals Chamber recalls that it is settled in the jurisprudence of the Tribunal that superior position itself does not constitute an aggravating factor. Rather it is the abuse of such position which may be considered an aggravating factor," *Stakić* Appeal Judgement, para. 411, citing *Kayishema and Ruzindana* Appeal Judgement, paras 358-359; *Babić* Sentencing Appeal Judgement, para. 80; *Kamuhanda* Appeal Judgement, para. 347.

¹³³⁰ *Ibid.*, citing *Vasiljević* Appeal Judgement, paras 172-173. See also *Vasiljević* Trial Judgement, para. 277, holding that "the discriminatory purpose of the crimes and the selection of victims based on their ethnicity [...] can only [constitute an aggravating factor] where the crime for which an accused is convicted does not include a discriminatory state of mind as an element. The crime of persecution in Article 5(h) of the Statute already includes such an element. Such a discriminatory state of mind goes to the seriousness of the offence, *but it may not additionally aggravate that offence.*" (Emphasis added). See also *Kunarac et al.* Appeal Judgement, para. 357.

¹³³¹ *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Appeal Judgement, para. 357, citing *Tadić* Appeal Judgement, para. 305. See also *Todorović* Sentencing Judgement, para. 57.

¹³³² *Ibid.*, referring to *Kunarac et al.* Appeal Judgement, para. 356; *Todorović* Sentencing Judgement, para. 65.

¹³³³ *Ibid.*, referring to *Krstić* Trial Judgement, para. 708.

¹³³⁴ *Ibid.*, referring to *Furundžija* Trial Judgement, para. 281.

¹³³⁵ *Ibid.*, referring to *Čelebići* Appeal Judgement, paras 736-737.

¹³³⁶ *Ibid.*, referring to *Jelisić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351.

¹³³⁷ *Ibid.*, referring to *Krstić* Trial Judgement, paras 711-712. See also *Krstić* Appeal Judgement, para. 258.

¹³³⁸ *Ibid.*, referring to *Kunarac et al.* Trial Judgement, para. 867; *Kunarac et al.* Appeal Judgement, para. 352.

victims, their age and number, and the effect of the crimes on them;¹³³⁹ (ix) civilian detainees;¹³⁴⁰ (x) the character of the accused;¹³⁴¹ and (xi) the circumstances of the offences generally.¹³⁴²

496. Furthermore, it has also been held that the refusal of an accused to testify cannot be taken into account in the determination of the sentence.¹³⁴³

497. The Prosecution submits that the fact that the criminal conduct lasted from 1991 to 1995 throughout the Krajina region should be treated as an aggravating factor in sentencing.¹³⁴⁴ Moreover, the Prosecution submits that the following additional factors are relevant as aggravating circumstances: the discriminatory intent with which the crimes were committed (except for the crime of persecution where discriminatory intent is an element of the crime); the scale of the crimes (except for the crime of extermination where scale is an element); premeditation of the crimes; the willing and enthusiastic participation of the accused; and that crimes were committed against civilian detainees.¹³⁴⁵

498. The Trial Chamber recalls that throughout the period relevant for the Indictment, Milan Martić held high positions within the SAO Krajina, and subsequently the RSK, including Minister of Interior and President of the RSK. The evidence shows that Milan Martić was one of the most important and influential political figures in the SAO Krajina and the RSK governments and that as Minister of the Interior he exercised absolute authority over the MUP. As President of the RSK, Milan Martić held the highest political office and controlled the armed forces of the RSK. The Trial Chamber considers that in holding such positions, Milan Martić was obligated to prevent the commission of crimes and to ensure that all inhabitants of the territories under his authority enjoyed respect for human rights. However, the evidence presented to the Trial Chamber proves beyond reasonable doubt that Milan Martić abused his positions and that he, through continuous and systematic efforts to create an ethnically Serb territory, promoted an atmosphere of mistrust and fear between Serbs and non-Serbs, in particular Croats. In doing so, Milan Martić contributed significantly to the furtherance of the common purpose of the JCE, of which he was a key member in the SAO Krajina and the RSK. The Trial Chamber considers that these factors are aggravating circumstances when determining Milan Martić's sentence.

¹³³⁹ *Ibid.*, referring to *Kunarac et al.* Trial Judgement, paras 864, 866; *Kunarac et al.* Appeal Judgement, para. 355.

¹³⁴⁰ *Ibid.*, referring to *Furundžija* Trial Judgement, para. 283.

¹³⁴¹ *Ibid.*, referring to *Čelebići* Appeal Judgement, para. 788.

¹³⁴² *Ibid.*, referring to *Tadić* Sentencing Judgement, para. 19.

¹³⁴³ *Čelebići* Appeal Judgement, para. 783; *Blaškić* Appeal Judgement, para. 687; *Plavšić* Sentencing Judgement, para. 64. See also *Čelebići* Appeal Judgement, para. 763; *Kunarac et al.* Trial Judgement, para. 847, cited in *Blaškić* Appeal Judgement, *ibid.*

¹³⁴⁴ Prosecution Closing Argument, 10 Jan 2007, T. 11231, 11234, 11236.

¹³⁴⁵ Prosecution Closing Argument, 10 Jan 2007, T. 11231; Prosecution Final Trial Brief, para. 482.

499. Furthermore, the Trial Chamber considers that the widespread criminal conduct which covered the entire territory of the SAO Krajina and the RSK during a period of more than four years serves as an aggravating circumstance.

500. The Trial Chamber recalls that the vulnerability and status of the victims, as well as the discriminatory intent associated with the crimes were taken into account in assessing the gravity of the crimes for which Milan Martić has been found guilty. Therefore, these factors cannot be additionally considered as aggravating circumstances.

(b) Mitigating circumstances

501. Mitigating factors have to be proven “on a balance of probabilities”, that is “the circumstance in question must have existed 'more probably than not'.”¹³⁴⁶ Factors to be taken into account may include the following: (i) co-operation with the Prosecution;¹³⁴⁷ (ii) the admission of guilt or a guilty plea;¹³⁴⁸ (iii) an expression of remorse;¹³⁴⁹ (iv) voluntary surrender;¹³⁵⁰ (v) good character with no prior criminal convictions;¹³⁵¹ (vi) comportment in detention;¹³⁵² (vii) personal and family circumstances;¹³⁵³ (viii) the character of the accused subsequent to the conflict;¹³⁵⁴ (ix) duress¹³⁵⁵ and indirect participation;¹³⁵⁶ (x) diminished mental responsibility;¹³⁵⁷ (xi) age;¹³⁵⁸ and (xii) assistance to detainees or victims.¹³⁵⁹ Poor health is to be considered only in exceptional or rare cases.¹³⁶⁰

502. The Prosecution submits that it cannot identify any mitigating circumstances warranting a reduction in sentence. Furthermore, the Prosecution submits that Milan Martić has failed to demonstrate any remorse.¹³⁶¹

¹³⁴⁶ *Babić* Sentencing Appeal Judgement, para. 43.

¹³⁴⁷ *Blaškić* Appeal Judgement, para. 696. See also *Jokić* Sentencing Judgement, paras 95-96; *Todorović* Sentencing Judgement, para. 88; *Kvočka et al.* Appeal Judgement, para. 722.

¹³⁴⁸ *Blaškić* Appeal Judgement, para. 696, referring to *Jelišić* Appeal Judgement, para. 122; *Jokić* Sentencing Judgement, para. 76.

¹³⁴⁹ *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 89; *Erdemović* Second Sentencing Judgement, para. 16(iii).

¹³⁵⁰ *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 73.

¹³⁵¹ *Ibid.*, referring to *Erdemović* Second Sentencing Judgement, para. 16(i); *Kupreškić et al.* Appeal Judgement, para. 459.

¹³⁵² *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 100; *Dragan Nikolić* Sentencing Judgement, para. 268.

¹³⁵³ *Ibid.*, referring to *Kunarac et al.* Appeal Judgement, paras 362, 408.

¹³⁵⁴ *Ibid.*, referring to *Jokić* Sentencing Judgement, paras 90-91, 103.

¹³⁵⁵ *Ibid.*, referring to *Erdemović* Second Sentencing Judgement, para. 17.

¹³⁵⁶ *Ibid.*, referring to *Krstić* Appeal Judgement, para. 273.

¹³⁵⁷ *Ibid.*, referring to *Čelebići* Appeal Judgement, para. 590.

¹³⁵⁸ *Ibid.*, referring to *Jokić* Sentencing Judgement, para. 100.

¹³⁵⁹ *Ibid.*, referring to *Sikirica et al.* Sentencing Judgement, paras 195, 229.

¹³⁶⁰ *Ibid.*, referring to *Krstić* Appeal Judgement, para. 271; *Milan Simić* Sentencing Judgement, para. 98.

¹³⁶¹ Prosecution Final Trial Brief, para. 483.

503. The Defence submits that before the indictment period Milan Martić had a reputation of being a professional and successful police inspector in Knin and that he was considered a person of broad-minded views and moral integrity.¹³⁶² Moreover, the Defence relies on the testimony of MM-078 who stated that “he was not aware of any such case where Mr. Martić ordered someone to do something harmful to someone else”.¹³⁶³

504. The Trial Chamber notes, in this respect, the Prosecution submission that Witness MM-078 also testified that Milan Martić abused his position as a police inspector in Knin by using coercive means on suspects, forcing them to make statements or admissions against their will, beating prisoners and detaining persons without sufficient evidence.¹³⁶⁴ As a consequence, Milan Martić was suspended from his position.¹³⁶⁵

505. The Trial Chamber finds that the direct and specific evidence given by Witness MM-078 concerning examples of Milan Martić’s abuse of position is credible and outweighs the Witness MM-078’s evidence referred to by the Defence, as well as other similarly general statements concerning Milan Martić’s character. The Trial Chamber therefore finds that the conduct of Milan Martić prior to the indictment period cannot serve as a mitigating factor.

506. The Defence argued in its closing arguments that Milan Martić was not driven by “chauvinism, intolerance, ruthlessness in relation to members of a certain religion or ethnic group: Muslims and Croats”. The Defence recalled the testimonies of witnesses who stated that they never observed any traces of hatred or any kind of intolerance in Milan Martić against members of Croat community.¹³⁶⁶ The Defence further referred to the testimony of Charles Kirudja, who testified that during his meetings with Milan Martić he did not get the impression that Milan Martić wanted to expel or destroy any other peoples or to mistreat them in any way.¹³⁶⁷

507. The Trial Chamber recalls that during the summer and autumn of 1991, Milan Martić instructed persons involved in humanitarian assistance to treat both Croat and Serb refugees arriving from Drniš equally.¹³⁶⁸ The Trial Chamber further recalls Slobodan Jarčević’s testimony that Milan Martić “demonstrated the nobility of his character” by looking after refugees who

¹³⁶² Witness MM-096, 21 Aug 2006, T. 6825-6826; Witness MM-116, 28 Aug, T. 7257.

¹³⁶³ Witness MM-078, 25 May 2006, T. 4499. Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 9.

¹³⁶⁴ Witness MM-078, 24 May 2006, T. 4393-4395; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para. 3.

¹³⁶⁵ Witness MM-078, 24 May 2006, T. 4396; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para. 3.

¹³⁶⁶ Defence Closing Argument, 10 Jan 2007, T. 11241. *See also* Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, paras 11-12.

¹³⁶⁷ Charles Kirudja, 1 Jun 2006, T. 4961; Defence’s Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 10.

arrived from BiH in 1994, despite the difficulties which the RSK was facing due to international sanctions.¹³⁶⁹

508. The Trial Chamber considers that even though there is evidence showing positive traits in the character of Milan Martić and that sporadic help was given by him to Croats and other non-Serbs, the effect thereof is diminished by the fact that Milan Martić at all times relevant for the crimes for which he has been found guilty, held positions in which he was able and obliged to take measures to prevent or punish acts of violence.¹³⁷⁰ The Trial Chamber recalls that in such a case, sporadic benevolent acts or ineffective assistance may be disregarded.¹³⁷¹ The Trial Chamber finds that neither the personality of Milan Martić nor any sporadic acts of assistance given to Croats and other non-Serbs can be treated as mitigating circumstances in this case. The Trial Chamber also finds that neither the age of Milan Martić, nor his family situation at the time of the commission of the crimes can be treated as mitigating circumstances in this case.¹³⁷²

509. As to Milan Martić's situation since the commission of the crimes for which he has been found guilty, the Defence submits that Milan Martić and his family were expelled and displaced following "Operation Storm".¹³⁷³ The Trial Chamber considers this to be a mitigating circumstance of limited weight.

510. The Trial Chamber notes that the first Indictment against Milan Martić was confirmed on 25 July 1995 and made public on 23 January 1996.¹³⁷⁴ According to Milan Martić's own admission on the last day of the trial, he was aware of the first Indictment issued against him.¹³⁷⁵ In this respect, the Trial Chamber recalls the decision taken during the pre-trial phase in this case wherein it was considered that Milan Martić's surrender on 15 May 2002 was not necessarily fully voluntary.¹³⁷⁶ The Trial Chamber notes that Milan Martić evaded justice for around seven years in the knowledge that an indictment was issued against him. Rather than surrender in order to respond to the charges brought against him, he chose to publicly make disparaging remarks about the Tribunal.¹³⁷⁷ The

¹³⁶⁸ Ljubica Vujanić, 18 Sep 2006, T. 8498-8501.

¹³⁶⁹ Slobodan Jarčević, 12 Jul 2006, T. 6172-6173.

¹³⁷⁰ See *supra* section III J.

¹³⁷¹ *Čelebići* Appeal Judgement, para. 776; *Češić* Sentencing Judgement, para. 79. See also *Krajišnik* Trial Judgement, para. 1162.

¹³⁷² Ex. 494, L0107131.

¹³⁷³ Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 3.

¹³⁷⁴ Review of the Indictment, 25 Jul 1995; Advertisement of Indictment, 23 Jan 1996.

¹³⁷⁵ Statement of the Accused, 12 Jan 2007, T. 11441.

¹³⁷⁶ The Trial Chamber considered that Milan Martić's surrender to the Tribunal in 2000 was at least partially caused by the enactment of the Law on Co-operation by the FRY, making his further hiding almost impossible, see Decision on the Motion for Provisional Release, 10 Oct 2002, pp 3-4.

¹³⁷⁷ Prosecution's Response to Motion for Provisional Release Filed by the Accused Milan Martić, 18 July 2002, para. 14 and Addendum; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007, para 4.

Trial Chamber finds that the fact that Milan Martić surrendered to the Tribunal in 2002, although constituting a mitigating factor in this case, will be given only minimal weight.

511. The Trial Chamber notes the Defence's submission of the neuropsychiatrist's opinion describing Milan Martić as having "a stable personality structure with a dominating quantum of emotions" and finding him to be "socially integrated, non-conflictive [and] conciliatory".¹³⁷⁸ However, in light of Milan Martić's conduct demonstrated during the trial, especially the fact that he did not express any remorse for any of the crimes for which he has been found guilty, the Trial Chamber rejects this opinion.

4. General practice regarding sentencing in the former Yugoslavia

512. Article 24(1) of the Statute provides that "Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia". The jurisprudence of the Tribunal has consistently held that this does not require the Trial Chambers to conform to the practice regarding prison sentences in the courts of the Former Yugoslavia; it only requires that the Trial Chambers take that practice into account.¹³⁷⁹

513. The Trial Chamber reviews this practice only as an aid in determining the appropriate penalty and may impose a sentence less than or in excess of the punishment that would be applicable under the sentencing law of the former Yugoslavia.¹³⁸⁰

514. The Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY Criminal Code") regulated sentencing law in the territory at issue during the Indictment period.¹³⁸¹ Article 41 of that Code provides the various factors to be taken into account in determining the sentence, including mitigating and aggravating circumstances, the degree of criminal responsibility, the motives of the accused, his personal circumstances, and his conduct after the commission of the crime.

515. In terms of punishment, Article 34 of the SFRY Criminal Code provides that the court could impose capital punishment, imprisonment, a fine, and confiscation of property. Article 38 of the SFRY Criminal Code provides further that prison sentences could not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment could not exceed

¹³⁷⁸ Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007, para. 13.

¹³⁷⁹ *Čelebići* Appeal Judgement, para. 813, citing *Serushago* Sentencing Appeal Judgement, para. 30. See also *Tadić* Sentencing Appeal Judgement, para. 21; *Kunarac et al.* Appeal Judgement, para. 377; *Jelisić* Appeal Judgement, paras 116-117; *Stakić* Appeal Judgement, para. 398.

¹³⁸⁰ *Stakić* Appeal Judgement, para. 398.

20 years.¹³⁸² The Trial Chamber recalls that Article 24 of the Statute limits it to imposing a sentence of imprisonment. In this context, the Appeals Chamber has held that it does not violate the principle of *nulla poena sine lege* to impose sentences in excess of 20 years.¹³⁸³

516. Having considered all of the evidence and the arguments of the Parties, and based upon the factual and legal findings as determined in this judgement, the Trial Chamber decides as follows:

¹³⁸¹ Adopted by the SFRY Assembly at the Session of Federal Council held on 28 September 1976; declared by decree of the President of the Republic on 28 September 1976; published in the Official Gazette SFRY No. 44 of 8 October 1976; took effect on 1 July 1977.

¹³⁸² Due to the gravity of the crimes at issue, the accused would have been aware that such actions constituted serious violations of international humanitarian law, punishable by the harshest of penalties, *see Čelebići Appeal Judgement*, paras 816-817; *Blaškić Appeal Judgement*, para. 681. Furthermore, the Trial Chamber notes that violations of Articles 142 (“War crime against the civilian population”), 148 (“Making use of forbidden means of warfare”) provide for a minimum sentence of five years imprisonment with a maximum sentence of death; Article 151 (“Destruction of cultural and historical monuments”) mandates a sentence of at least one year imprisonment; and Article 154 (“Racial and other discrimination”) allows for a sentencing range of 6 months to five years of imprisonment.

¹³⁸³ *Stakić Appeal Judgement*, para. 398.

VI. DISPOSITION

517. The Trial Chamber finds Milan Martić **NOT GUILTY** of:

Count 2: Extermination, a crime against humanity

518. The Trial Chamber finds Milan Martić **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

Count 1: Persecutions, a crime against humanity

Count 3: Murder, a crime against humanity

Count 4: Murder, a violation of the laws or customs of war

Count 5: Imprisonment, a crime against humanity

Count 6: Torture, a crime against humanity

Count 7: Inhumane acts, a crime against humanity

Count 8: Torture, a violation of the laws or customs of war

Count 9: Cruel treatment, a violation of the laws or customs of war

Count 10: Deportation, a crime against humanity

Count 11: Forcible transfer, a crime against humanity

Count 12: Wanton destruction of villages, or devastation not justified by military necessity, a violation of the laws or customs of war

Count 13: Destruction or wilful damage done to institutions dedicated to education or religion, a violation of the laws or customs of war

Count 14: Plunder of public or private property, a violation of the laws or customs of war

Count 15: Murder, a crime against humanity

Count 17: Inhumane acts, a crime against humanity

Count 19: Attacks on civilians, a violation of the laws or customs of war

519. The Trial Chamber sentences Milan Martić to a single sentence of **thirty-five (35) years** of imprisonment.

520. Milan Martić has been detained since 15 May 2002. Pursuant to Rule 101(C) of the Rules, Milan Martić is entitled to credit for time spent in detention, which as of the date of this judgement amounts to 1,855 days, and for such additional time he may serve pending the determination of any appeal. Pursuant to Rule 103(C) of the Rules, Milan Martić shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he shall serve his sentence.

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

Janet Nosworthy
Judge

Bakone Justice Moloto
Presiding Judge

Frank Höpfel
Judge

Dated this twelfth day of June 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

ANNEX A – PROCEDURAL HISTORY

A. Pre-trial proceedings

521. The Initial Indictment against Milan Martić was confirmed on 25 July 1995, with corrected or amended versions subsequently filed on 26 August 2002, 18 December 2002 and 14 July 2003, and the Second Amended Indictment being filed on 9 September 2003.¹³⁸⁴

522. On 8 March 1996, an international arrest warrant was issued for Milan Martić.¹³⁸⁵ On 15 May 2002, Milan Martić surrendered and was transferred to the Tribunal, and ordered to be detained at the UNDU in The Hague.¹³⁸⁶ At the initial appearance on 21 May 2002, Milan Martić pled not guilty to all charges, and on 28 January 2003, Milan Martić pled not guilty to all additional charges and allegations of the Amended Indictment.¹³⁸⁷

523. During his initial appearance, Milan Martić was represented by Strahinja Kastratović, temporarily assigned by the Registrar from 31 May 2002 until 13 June 2002.¹³⁸⁸ On 13 December 2002, in light of Milan Martić's request for the withdrawal of Strahinja Kastratović and of the communication from the latter stating unwillingness to represent Milan Martić, the Registrar assigned Predrag Milovančević as counsel for Milan Martić.¹³⁸⁹

524. On 10 October 2002, the Trial Chamber denied the Defence requests for provisional release of Milan Martić, and on 12 September 2005, the Trial Chamber denied a further motion for provisional release.¹³⁹⁰

¹³⁸⁴ Review of the Indictment, 25 Jul 1995; Motion to Request Leave to File an Amended Indictment, 26 Aug 2002; Decision on the Prosecution; Motion to file a Corrected Amended Indictment, 13 Dec 2002; Prosecution Motion to file Amended Indictment pursuant to Trial Chamber's Decision on Preliminary Motion against the Amended Indictment, 14 Jul 2003. In relation to the Amended Indictment, on 2 Jun 2003 the Trial Chamber granted in part the Defence Preliminary Motion pursuant to Rule 72A (ii) of the Rules on Procedure and Evidence against the Amended Indictment dated 18 Dec 2002, and 17 Mar 2003, and ordered the Prosecution to file a new Amended Indictment clarifying inconsistencies, *see* Decision on Preliminary Motion against the Amended Indictment, 2 Jun 2003. On 5 Sep 2003, the Trial Chamber denied a further preliminary motion filed by the Defence against the Amended Indictment, declaring it as frivolous, and ordered the Prosecution to file the Amended Indictment, to be known as the Second Amended Indictment, which the Prosecution did on 9 Sep 2003. On 9 Dec 2005, the Second Amended Indictment was re-filed due to a numbering mistake.

¹³⁸⁵ Decision of the Registrar, 8 Mar 1996.

¹³⁸⁶ Order for Detention, 15 May 2002.

¹³⁸⁷ Initial Appearance, 21 May 2002, T. 11-13. Further Appearance and Status Conference, 28 Jan 2003, T. 74-80.

¹³⁸⁸ Decision of the Registrar, 31 May 2002. On 14 June 2002, the Registrar assigned Gert-Jan Knoops as counsel for a period of 100 days, Decision of the Registrar, 14 Jun 2002. Following an appeal by Strahinja Kastratović and order by the Trial Chamber, on 16 August 2002, the Registrar withdrew the assignment of Gert-Jan Knoops and assigned Strahinja Kastratović, Defence's Appeal against the Decision of Registry, 18 Jun 2002; Decision on Appeal against Decision of Registry, 2 Aug 2002; Decision of the Registrar, 16 Aug 2002.

¹³⁸⁹ Decision of the Registrar, 13 Dec 2002.

¹³⁹⁰ The Trial Chamber noted several factors which substantially weighed against the Defence's contention that there was no risk of flight: Milan Martić had shown capacity for evading arrest for a prolonged period of time, he had used false names, had the means and know-how to obtain false documents, had publicly and repeatedly displayed disregard

525. The Prosecution disclosed supporting material to the Defence pursuant to Rule 66(A)(i) and (ii) on 21 May 2002, and 26 August 2002.¹³⁹¹ On 7 May 2004, the Prosecution disclosed material previously undisclosed to the Defence pursuant to Rule 65 *ter* (E)(iii). On 22 January 2004, the Prosecution assured the Trial Chamber that it had disclosed all Rule 66 (A) material, except for that which the Trial Chamber had agreed to delay disclosure.¹³⁹² On 5 March 2004, the Prosecution disclosed to the Defence exculpatory material relative to Rule 68. On 2 November 2004, the Prosecution recognised that the “Statement of Matters that are not in Dispute”, which was attached to the Defence’s Pre-Trial Brief, accurately reflected the agreement between the Parties.¹³⁹³

526. Status Conferences were held on 23 September 2002, 28 January 2003, 29 May 2003, 29 September 2003, 22 January 2004, 21 September 2004, 19 May 2005, 15 September 2005, and 22 November 2005.

527. The Prosecution filed its Pre-Trial Brief on 7 May 2004. On 1 November 2004, after having been given an extension of 47 days, the Defence submitted its Pre-Trial Brief.

528. On 10 November 2005, the Trial Chamber denied a Prosecution Motion for Joinder of the cases of Milan Martić, Jovica Stanišić, Franko Simatović and Vojislav Šešelj on the basis that the case against Milan Martić had been ready for trial for some time and that Milan Martić had been in detention for over three years and four months, and therefore the trial should commence with the shortest possible delay.¹³⁹⁴

529. On 15 December 2005, the Trial Chamber granted in part the Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibits List by adding 719 documents and video footage to the Prosecution exhibit list.¹³⁹⁵ The Trial Chamber denied the motion insofar as it sought the addition

for the Tribunal, and had publicly announced his willingness to resort to violence in the case of forcible apprehension. Moreover, the Trial Chamber noted that Milan Martić’s surrender was not necessarily fully voluntary. On 13 October 2002, the Defence applied for leave to appeal the Trial Chamber’s Decision of 10 October 2002. The Appeals Chamber dismissed the application on 18 Dec 2002. *See also* Milan Martić’s Request for Provisional Release until Beginning of Trial, dated 21 June 2002, and filed on 10 July 2002; Motion for Provisional Release, 9 Jul 2002; Second Motion for Provisional Release, 25 Apr 2005.

¹³⁹¹ Initial Appearance, 21 May 2002, T. 13. Prosecution’s Material in Support of the Amended Indictment, 26 Aug 2002. An addendum of supporting materials for the Amended Indictment being submitted on 18 November 2002, Prosecution’s Addendum of Supporting Materials in Support of Amended Indictment.

¹³⁹² Status Conference, 22 January 2004, T. 105-106.

¹³⁹³ Defence Pre-Trial Brief Pursuant to Rule 65 *ter* (F) with a Confidential Annex, 1 Nov 2004. *See* Prosecution Pre-Trial Brief, 7 May 2004. Prosecution’s Submission to Defence’s Pre-Trial Brief, 2 Nov 2004; at the Rule 65*ter* conference on 14 Sep 2005, both the Prosecution and the Defence stated that they could not go further than the already agreed facts, Rule 65 *ter* Conference, 14 Sep 2005.

¹³⁹⁴ Decision on Prosecution Motion for Joinder, 10 Nov 2005. Prosecution Motion for Joinder, 30 May 2005. Response to the Prosecution’s Motion for Joinder, 13 Jun 2005.

¹³⁹⁵ Prosecution’s Motion for Leave to Amend Its Rule 65 *ter* Exhibit List, 17 Aug 2005; Decision on Prosecution’s Motion to Amend Its Rule 65 *ter* Exhibit List, 15 Dec 2005.

of material pertaining to the charges concerning Prnjavor, Šipovo and Bosanska Gradiška, regarding which areas the Prosecution had previously stated that it would not lead evidence.¹³⁹⁶

530. On 18 November 2005, the President of the Tribunal assigned Judge Bakone Justice Moloto (South Africa) to the present case, and on 1 December 2005, the President of the Tribunal ordered that the Bench be composed of Judge Bakone Justice Moloto, presiding, Judge Janet Nosworthy (Jamaica) and Judge Frank Höpfel (Austria).¹³⁹⁷ The Pre-Trial Conference was held on 12 December 2005 and the Pre-Defence Conference was held on 7 July 2006.

B. Trial proceedings

1. Overview

531. Pursuant to Rule 84 *bis* of the Rules, Milan Martić made an opening statement on 13 December 2005 and in-court statements on 13 March 2006 and 12 January 2007.¹³⁹⁸ The Prosecution case started on 13 December 2005 and concluded on 20 June 2006.¹³⁹⁹ Guidelines on the Standards Governing the Admission of Evidence, and Guidelines Governing the Presentation of Evidence and the Conduct of Counsel in Court, were adopted on 19 January 2006, and 13 April 2006, respectively.¹⁴⁰⁰

532. The Prosecution called 45 *viva voce* witnesses, four of whom testified pursuant to Rule 89 (F), and 12 of whom testified pursuant to former Rule 92 *bis* (E).¹⁴⁰¹ 16 witness statements were admitted into evidence pursuant to former Rule 92 *bis* (B), two witness statements were admitted pursuant to former Rule 92 *bis* (C), and transcripts of nine witnesses were admitted pursuant to

¹³⁹⁶ Prosecution Notification Regarding Certain Witnesses on its Rule 65 *ter* List, 24 Nov 2005.

¹³⁹⁷ Order Replacing a Judge in a Case before a Trial Chamber, 18 Nov 2005. Order Assigning Judges to a Case in a Trial Chamber, 1 Dec 2005. During the pre-Trial phase, on 15 May 2002, the President of the Tribunal transferred the case to Trial Chamber I, consisting of Judge Liu Daqun (China), presiding, Judge Amin El Mahdi (Egypt) and Judge Alphonsus Oric (The Netherlands). Order of the President Assigning a Case to a Trial Chamber, 15 May 2002. On 30 May 2003, the President of the Tribunal ordered the composition of the Trial Chamber as Judge Amin El Mahdi, Judge Alphonsus Oric and Judge Joaquín Martín Canivell (Spain). Order Assigning a Case to a Trial Chamber, 30 May 2003. On 2 June 2003, Judge Liu Daqun, as Presiding Judge of Trial Chamber I, designated Judge Alphonsus Oric as Presiding Judge in the case. Order Designating a Presiding Judge for the Case, 2 Jun 2003. On 7 June 2005, the President of the Tribunal assigned the case to Trial Chamber III. Order Reassigning a Case to a Trial Chamber, 7 Jun 2005. The case was reassigned to Trial Chamber I on 4 July 2005. Order Reassigning a Case to a Trial Chamber and Referring the Joinder Motion, 4 Jul 2005.

¹³⁹⁸ Hearing, 13 Dec 2005, T. 296-318. Hearing, 13 March 2006, T. 2222-2224. Hearing, 12 Jan 2007, T. 11441-11442.

¹³⁹⁹ Hearing, 13 Dec 2005, T. 261; Hearing, 20 Jun 2006, T. 5835-5836.

¹⁴⁰⁰ Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 Jan 2006 (with Annex A). Decision Adopting Guidelines on the Standards Governing the Presentation of Evidence and the Conduct of Counsel in Court, 13 Apr 2004 (with Annex A). The Guidelines were revised on 19 May 2006; Revised Version of the Decision Adopting Guidelines on the Standards Governing the Presentation of Evidence and the Conduct of Counsel in Court, 19 May 2006.

¹⁴⁰¹ Decision on Prosecution's Motion for Admission of Statement of Witness Milan Babić Pursuant to Rule 89 (F), 10 Feb 2006; Decision on the Prosecution Motion for the Admission of a Statement of a Witness Pursuant to Rule 89(F), with Confidential Annex A, 28 Apr 2006; Oral Decision on Prosecution's Motion for Admission of Statements of Witnesses MM-016 and MM-018 Pursuant to Rule 89 (F), 9 May 2006, T. 4151-4152.

former Rule 92 *bis* (D).¹⁴⁰² The testimonies of three witnesses of the Prosecution were heard via videoconference link.¹⁴⁰³ On 13 January 2006, the Trial Chamber granted the Defence's request for cross-examination of five Prosecution experts but dismissed the Defence's objections that the individuals could not, based on their qualifications, be considered as experts, and the objections concerning the impartiality of the experts, and the reliability of the reports.¹⁴⁰⁴ One subpoena was issued by the Trial Chamber for one witness at the request of the Prosecution.¹⁴⁰⁵ The Trial Chamber also issued one order for the temporary transfer of a detained witness.¹⁴⁰⁶ The Trial Chamber admitted 901 exhibits tendered into evidence by the Prosecution.

533. On 26 June 2006, the Defence presented oral submissions pursuant to Rule 98 *bis* of the Rules, moving for an acquittal on all counts.¹⁴⁰⁷ The Prosecution responded on the same day and opposed the Defence submissions in their entirety.¹⁴⁰⁸ On 3 July 2006, the Trial Chamber rejected the Defence motion in all respects.¹⁴⁰⁹

534. The Defence case began on 11 July 2006 and ended on 16 November 2006.¹⁴¹⁰ The Trial Chamber heard 22 *viva voce* witnesses, two of whom testified pursuant to Rule 92 *ter*.¹⁴¹¹ The testimony of one Defence witness was heard via video-conference link.¹⁴¹² On 13 January 2006, the Trial Chamber granted a Prosecution motion requesting assignment of pseudonyms to certain witnesses, that certain witnesses would testify in closed session, and that certain confidential material would not be disclosed to the public.¹⁴¹³ On 18 August 2006, the Trial Chamber granted a Defence motion requesting the assignment of a pseudonym to a witness and closed session

¹⁴⁰² Decision on Prosecution's Motions for the Admission of Written Evidence Pursuant to Rule 92 *Bis* of the Rules, 16 Jan 2006; Decision on Prosecution Motions on Admission of Written Statements Pursuant to Rule 92 *Bis* (C), 15 Jun 2006; Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006; Oral Decisions on Prosecution's Second Rule 92 *bis* Motion of 25 January 2006, 15 Feb 2006, T. 1322-1323, and 2 May 2006, T. 3889-3890; Oral Decision to Admit the Statement of Witness MM-038, 23 Mar 2006, T. 2464.

¹⁴⁰³ Hearing, 2 Mar 2006, T. 1751-1752.

¹⁴⁰⁴ Decision on the Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (d) and of Expert Reports Pursuant to Rule 94 *bis*, 13 Jan 2006.

¹⁴⁰⁵ Subpoena to a Witness to Appear for a Meeting with the Prosecution, 16 Sep 2005.

¹⁴⁰⁶ Order for Transfer of a Detained Witness, 13 Jan 2006.

¹⁴⁰⁷ Hearing, 26 Jun 2006, T. 5841-5886.

¹⁴⁰⁸ Hearing, 26 Jun 2006, T. 5886-5925, Hearing, 27 Jun 2006, T. 5927-5939.

¹⁴⁰⁹ Hearing, 3 Jul 2006, T. 5959-5971.

¹⁴¹⁰ Hearing, 11 Jul 2006, T. 6024-6025; Hearing, 16 Nov 2006, T. 11142-11143.

¹⁴¹¹ Rule 92 *ter* was adopted at the Extraordinary Plenary Session on 13 Sep 2006 and codifies the procedure, which had developed pursuant to Rule 89(F), *see Milošević Decision*. According to the Rule 92 *bis* (C), Rule 92 *ter* also applies to witnesses who appear for cross-examination, *i.e.* witnesses who were formerly called pursuant to Rule 92 *bis* (E). Before the introduction of Rule 92 *ter*, Rule 89 (F) was applied in determining the admission of such evidence.

¹⁴¹² Decision on Defence Motion for the Testimony of Professor Simlja Avramov Via Video-Conference Link, 10 Nov 2006.

¹⁴¹³ Decision on Prosecution Second Motion for Protective Measures with Confidential Annexes A, C and E, and Confidential and *Ex-Parte* Annexes B, D, and F, 13 Jan 2006. A previous Prosecution request for protective measures had been granted on 18 December 2003, Order on Prosecution Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66(A)(i) and 68 and for Protective Measures for Witnesses During the Pre-Trial Phase. *See also* Decision on Prosecution's Motion for Variation of Protective Measures, 17 Mar 2006.

testimony.¹⁴¹⁴ Additional protective measures for witnesses were granted orally during the trial.¹⁴¹⁵ The Trial Chamber issued 20 orders for safe conduct at the request of the Defence. In total, the Trial Chamber admitted 90 Defence exhibits into evidence. The Trial Chamber also admitted 24 exhibits as Chambers exhibits.

535. On 28 November 2006, the Trial Chamber denied the Prosecution's motion to admit evidence in rebuttal on the basis that it did not meet the standard for admission as rebuttal evidence pursuant to Rule 85(A)(iii).¹⁴¹⁶

536. On 5 January 2007, the final trial briefs of the Prosecution and the Defence were filed. Closing arguments were heard on 10, 11 and 12 January 2007. On 9 April 2007, the Prosecution sent a letter to the Defence disclosing details of its assistance provided to Witness MM-003 in his asylum case.¹⁴¹⁷ On 24 May 2007, the Trial Chamber ordered the Parties to make written submissions regarding the individual circumstances of Milan Martić because the Trial Chamber considered that the Parties had not adequately addressed this in their final trial briefs or closing arguments as was their duty under the Statute and under the Rules.¹⁴¹⁸

2. Testimony and evidence of Milan Babić

537. On 6 March 2006, the trial was adjourned until 8 March 2006 on account of the death of Milan Babić on 5 March 2006 at the United Nations Detention Unit, where he was being detained for the duration of his testimony as a Prosecution's witness.¹⁴¹⁹ On 8 March 2006, the question of whether Milan Babić's death affected his evidence was raised in court and the Trial Chamber ordered the Parties to address the matter of Milan Babić's evidence "at an appropriate moment", and that the trial proceed in the meantime.¹⁴²⁰ On 9 June 2006, having heard the submissions of the Parties, the Trial Chamber rejected the Defence's arguments, determining that, pursuant to Rule 89

¹⁴¹⁴ Decision on Defence Motion for Protective Measures for Witnesses MM-096, MM-116 and MM-090, 18 Aug 2006.

¹⁴¹⁵ Hearing, 8 Mar 2006, T. 1943; Hearing, 15 Mar 2006, T. 2265-2267; Hearing, 4 Apr 2006, T. 3178-3179; Hearing, 23 Mar 2006, T. 2467; Hearing, 5 May 2006, T. 4073-4075; Hearing, 14 Aug 2006, T. 6430; Hearing, 11 Oct 2006, T. 9129-9130; Hearing, 31 Oct 2006, 10388-10389.

¹⁴¹⁶ Decision on Prosecution Motion to Admit Evidence in Rebuttal Pursuant to Rule 92 *bis*, with Annexes A, B and C, 28 Nov 2006. *See* Prosecution Motion to Admit Evidence in Rebuttal Pursuant to Rule 92 *bis*, with Annexes A, B and C, 16 Nov 2006.

¹⁴¹⁷ Letter from Alex Whiting to Predrag Milovančević, 9 Apr 2007. The Trial Chamber was copied on this letter.

¹⁴¹⁸ Order for submissions, 24 May 2006; Prosecution Submission Regarding Individual Circumstances of the Accused, 30 May 2007; Defence's Submission Concerning Individual Circumstances of the Accused Milan Martić, 30 May 2007. Each Party filed a response on 1 Jun 2007.

¹⁴¹⁹ Hearing, 6 Mar 2006, T. 1935-1936.

¹⁴²⁰ Hearing, 8 Mar 2006, T. 1945-1948.

(D) of the Rules, in spite of the incomplete cross-examination the need to ensure a fair trial did not outweigh the probative value of the evidence of Milan Babić.¹⁴²¹

538. On 20 June 2006, the Trial Chamber granted certification for appeal of the Trial Chamber's decision of 9 June 2006 to the Defence.¹⁴²² On 10 July 2006, after being given an enlargement of time by the Appeals Chamber, the Defence filed its interlocutory appeal.¹⁴²³ The Appeals Chamber dismissed the Defence's appeal on 14 September 2006.¹⁴²⁴ On 30 September 2006, the Trial Chamber denied the Defence's motion for reconsideration and modification of the Trial Chamber's order of 9 June 2006.¹⁴²⁵

539. On 17 November 2006, the Trial Chamber admitted into evidence excerpts of Milan Babić's Prosecution Interviews submitted by the Defence to it pursuant to the Trial Chamber's order of 9 June 2006.¹⁴²⁶

540. On 28 November 2006, the Trial Chamber dismissed the Defence Motion requesting the Trial Chamber to order Judge Kevin Parker, the Vice-President of the Tribunal, to disclose to the Defence the full statements obtained during the inquiry on Milan Babić's death, having found that it

¹⁴²¹ Decision on Defence Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence, 9 June 2006. *See supra* para. 33. Prosecution's Submissions Regarding the Evidence of Witness Milan Babić, 6 April 2006. The Prosecution submitted that Milan Babić's evidence bore numerous indicia of reliability, such as the fact that the testimony was given under oath, in open session, in the presence of the Accused, was subject to three days of cross-examination and was in large part corroborated by other evidence, both documentary and testimonial. Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence, 2 May 2006. In its motion filed on 2 May 2006, the Defence requested the Trial Chamber to exclude the testimony of Milan Babić from the trial record on the basis that it was so lacking in indicia of reliability that it had no probative value, and in any case that it was substantially outweighed by the need to ensure a fair trial. On 8 May 2006, the Prosecution filed its Response to the Defence Motion to Exclude Testimony of Witness Milan Babić, Together with Associated Exhibits, from Evidence. The Defence replied on 15 May 2006.

¹⁴²² Decision on Defence Application for Certification of Appeal Pursuant to Rule 73 (B), 20 June 2006. *See also* Prosecution's Response to Defence Application for Certification of Appeal Pursuant to Rule 73 (B), 19 June 2006. Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 10 July 2006. On 20 July 2006, the Prosecution filed its Response to Defence Interlocutory Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić.

¹⁴²³ Decision on Motion for Enlargement of Time, 23 Jun 2006.

¹⁴²⁴ Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 September 2006. The Appeals Chamber found that the Defence had failed to demonstrate any of the discernible errors allegedly committed by the Trial Chamber that would result in prejudice.

¹⁴²⁵ Decision on Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 30 Sep 2006. The Defence Motion was rejected, *inter alia*, on the basis that it was not shown by the Defence that there had been a change of circumstances, which would require the Trial Chamber to reconsider its decision *See* Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 24 September 2006. Prosecution's Response to the Defence Motion for Reconsideration and Modification of the Trial Chamber's Order of 9 June 2006, 28 September 2006.

¹⁴²⁶ Decision on Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 17 Nov 2006. *see* Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 4 Oct 2006. Prosecution's Response to the Defence's Submission Pursuant to the Trial Chamber's Order of 9 June 2006, 16 October 2006.

was not the proper forum before which a request for review of the decision taken by Judge Parker could be brought.¹⁴²⁷

3. Site visit

541. The Trial Chamber and the Parties carried out a site visit between 25 and 30 September 2006, pursuant to the Trial Chamber's Order of 16 May 2006 on Site visit.¹⁴²⁸ An audiovisual record was made of the site visit. The record was subsequently transcribed and both the record and the transcripts thereof were admitted into evidence by the Trial Chamber.¹⁴²⁹

¹⁴²⁷ Decision on Defence's Motion for Access to Full Statements Obtained in the Inquiry of the Death of Milan Babić, 28 Nov 2006. *See* Defence's Motion for Access to Full Statements Obtained in the Inquiry of the Death of Milan Babić, 13 Nov 2006.

¹⁴²⁸ The locations visited were Zagreb, Hrvatska Dubica, Cerovljani, Baćin, Slunj, Hrvatska Kostajnica, Dvor na Uni, Saborsko, Poljanak (including the hamlet of Vukovići), Lipovača, Vaganac, Hrvatska Korenica, Škabrnja, Nadin, Bruška (including the hamlet of Marinovići), Knin, Vrpolje and Golubić.

¹⁴²⁹ Order On Site Visit, 16 May 2006. Order on Itinerary for the Site Visit, 23 Jun 2006. Decision on Admission into Evidence of Record of Site Visit, 28 Nov 2006. Ex. 1042: video record; Ex. 1043: transcript. *See also* Prosecution's Proposal of Locations to Visit During Proposed Site Visit, filed confidentially on 6 Apr 2006. Defence Submission Regarding sites to be Visited during the Proposed Site Visit, filed confidentially on 9 May 2006. Prosecution Response to Defence Submission Regarding Sites to be Visited During the Proposed Site Visit, 10 May 2006. *See also* Order to Redact Site Visit Record, 6 June 2007.

ANNEX B – LIST OF CASES, SOURCES AND SHORT CITES

C. ICTY

<i>Aleksovski Appeal Judgement</i>	<i>Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement, 24 Mar 2000</i>
<i>Babić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Milan Babić, Case No. IT-03-72, Judgement on Sentencing Appeal, Judgement, 18 Jul 2005</i>
<i>Banović Sentencing Judgement</i>	<i>Prosecutor v. Predrag Banović, Case No. IT-02-65/1-S, Sentencing Judgement, 28 Oct 2003</i>
<i>Blagojević and Jokić Trial Judgement</i>	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-T, Judgement, 17 Jan 2005</i>
<i>Blaškić Appeal Judgement</i>	<i>Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement, 29 Jul 2004</i>
<i>Brdanin Appeal Judgement</i>	<i>Prosecutor v. Radoslav Brdanin, Case No. IT-99-36-A, Judgement, 3 Apr 2007</i>
<i>Brdanin Trial Judgement</i>	<i>Prosecutor v. Radoslav Brdanin, Case No. IT-99-36-T, Judgement, 1 Sep 2004</i>
<i>Čelebići Appeal Judgement</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landžo (a.k.a. “Zenga”), Case No. IT-96-21-A, Judgement, 20 Feb 2001</i>
<i>Čelebići Trial Judgement</i>	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (a.k.a. “Pavo”), Hazim Delić and Esad Landžo (a.k.a. “Zenga”), Case No. IT-96-21-T, Judgement, 16 Nov 1998</i>
<i>Češić Sentencing Judgement</i>	<i>Prosecutor v. Ranko Češić, Case No. IT-95-10-1, Sentencing Judgement, 11 Mar 2004</i>
<i>Deronjić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Miroslav Deronjić, Case No. IT-02-61, Judgement on Sentencing Appeal, 29 Jul 2005</i>
<i>Dragan Nikolić Sentencing Judgement</i>	<i>Prosecutor v. Dragan Nikolić, Case No. IT-94-02, Sentencing Judgement, 18 Dec 2003</i>
<i>Erdemović Sentencing Judgement</i>	<i>Prosecutor v. Drazan Erdemović, Case No. IT-96-22, Sentencing Judgement, 29 Nov 1996</i>
<i>Erdemović Second Sentencing Judgement</i>	<i>Prosecutor v. Dražen Erdemović, Case No. IT-96-22-Tbis, Sentencing Judgement, 5 Mar 1998</i>
<i>Furundžija Appeal Judgement</i>	<i>Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgment, 21 Jul 2000</i>
<i>Furundžija Trial Judgement</i>	<i>Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-T, Judgement, 10 Dec 1998</i>
<i>Galić Appeal Judgement</i>	<i>Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement, 30 Nov 2006</i>
<i>Galić Trial Judgement</i>	<i>Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, Judgement, 14 Dec 2003</i>
<i>Hadžihasanović and Kubura Rule 98 bis Appeal Decision</i>	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura, Case No. IT-01-47-AR 73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98 bis Motions for Acquittal, 11</i>

	<i>Mar 2005</i>
<i>Halilović Trial Judgement</i>	<i>Prosecutor v. Sefer Halilović, Case No. IT-01-48-T, Judgement, 16 Nov 2005</i>
<i>Jelisić Appeal Judgement</i>	<i>Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 Jul 2001</i>
<i>Jokić Sentencing Judgement</i>	<i>Prosecutor v. Miodrag Jokić, Case No. IT-01-42-1-T, Sentencing Judgement, 18 Mar 2004</i>
<i>Kordić and Čerkez Appeal Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A, Judgement, 17 Dec 2004</i>
<i>Kordić and Čerkez Trial Judgement</i>	<i>Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement, 26 Feb 2001</i>
<i>Krajišnik Trial Judgement</i>	<i>Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, 27 Sep 2006</i>
<i>Krnojelac Appeal Judgement</i>	<i>Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement, 17 Sep 2003</i>
<i>Krnojelac Trial Judgement</i>	<i>Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 Mar 2002</i>
<i>Krstić Appeal Judgement</i>	<i>Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Judgement, 19 Apr 2004</i>
<i>Krstić Trial Judgement</i>	<i>Prosecution v. Radislav Krstić, Case No. IT -98-33-T, Judgement, 2 Aug 2001</i>
<i>Kunarac et al. Appeal Judgement</i>	<i>Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-22&23-/1-A, Judgement, 12 Jun 2002</i>
<i>Kunarac et al. Trial Judgement</i>	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vuković, Case No. IT-96-22&23-/1-T, Judgement, 21 February 2001</i>
<i>Kupreškić et al. Appeal Judgement</i>	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović and Vladimir Šantić (aka "Vlado"), Case No. IT-95-16-A, Judgement, 23 Oct 2001</i>
<i>Kupreškić et al. Trial Judgement</i>	<i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić (aka "Vlado"), Case No. IT-95-16-T, Judgement, 14 Jan 2000</i>
<i>Kvočka et al. Appeal Judgement</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-A, Judgement, 28 Feb 2005</i>
<i>Kvočka et al. Trial Judgement</i>	<i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać, Case No. IT-98-30/1-T, Judgement, 2 Nov 2001</i>
<i>Limaj et al. Trial Judgement</i>	<i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu, Case No. IT-03-66-T, Judgement, 30 Nov 2005</i>
<i>Milan Simić Sentencing Judgement</i>	<i>Prosecutor v. Milan Simić, Case No. IT-95-9/2, Sentencing Judgement, 17 Oct 2002</i>
<i>Milošević Decision</i>	<i>Prosecutor v. Slobodan Milošević, Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 30 Sep 2003</i>
<i>Milutinović et al. Decision</i>	<i>Prosecutor v. Milan Milutinović et al., Case No. IT-</i>

	<i>05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report, 30 Aug 2006</i>
<i>Momir Nikolić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Momir Nikolić, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 Mar 2006</i>
<i>Mrkšić et al. Decision</i>	<i>Prosecutor v. Mile Mrkšić et al., Case No. IT-95-13/1-T, Decision on Motion Seeking Clarification with Regard to Count 1 of the Indictment, 19 May 2006</i>
<i>Naletilić and Martinović Appeal Judgement</i>	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Štela"), Case No. IT-98-34-A, Judgement, 3 May 2006</i>
<i>Naletilić and Martinović Trial Judgement</i>	<i>Prosecutor v. Mladen Naletilić (a.k.a. "Tuta") and Vinko Martinović (a.k.a. "Stela"), Case No. IT-98-34-T, Judgement, 31 Mar 2003</i>
<i>Obrenović Sentencing Judgement</i>	<i>Prosecutor v. Dragan Obrenović, Case No. IT-02-60/2, Sentencing Judgement, 10 December 2003</i>
<i>Orić Trial Judgement</i>	<i>Prosecutor v. Naser Orić, Case No. IT-03-68, Judgement, 30 Jun 2006</i>
<i>Plavšić Sentencing Judgement</i>	<i>Prosecutor v. Biljana Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 Feb 2003</i>
<i>Prlić Decision</i>	<i>Prosecutor v. Jadranko Prlić et al., Case No. IT-04-74-PT, Decision on Defence Preliminary Motions Alleging Defect in the Form of the Indictment, 22 Jul 2005</i>
<i>Sikirica et al. Sentencing Judgement</i>	<i>Prosecutor v. Duško Sikirica et al., Case No. IT-95-8, Sentencing Judgement, 13 November 2001</i>
<i>Simić et al. Trial Judgement</i>	<i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić, Case No. IT-95-9, Judgement, 17 Oct 2003</i>
<i>Stakić Appeal Judgement</i>	<i>Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement, 22 Mar 2006</i>
<i>Stakić Trial Judgement</i>	<i>Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 29 Oct 2003</i>
<i>Strugar Trial Judgement</i>	<i>Prosecutor v. Pavle Strugar, Case No. IT- 01-42-T, Judgement, 31 Jan 2005</i>
<i>Tadić Sentencing Appeal Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 Jan 2000</i>
<i>Tadić Appeal Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-A, Judgement, 15 Jul 1999</i>
<i>Tadić Sentencing Judgement</i>	<i>Prosecutor v. Duško Tadić (a.k.a. "Dule"), Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 Nov 1999</i>
<i>Tadić Trial Judgement</i>	<i>Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Judgement, 14 Jul 1997</i>
<i>Tadić Jurisdiction Decision</i>	<i>Prosecutor v. Duško Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct 1995</i>

<i>Todorović Sentencing Judgement</i>	<i>Prosecutor v. Stevan Todorović, Case No. IT-95-9-1, Sentencing Judgement, 31 Jul 2001</i>
<i>Vasiljević Appeal Judgement</i>	<i>Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement, 25 Feb 2004</i>
<i>Vasiljević Trial Judgement</i>	<i>Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-T, Judgement, 29 Nov 2002</i>

D. ICTR

<i>Akayesu Trial Judgement</i>	<i>Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 Sep 1998</i>
<i>Gacumbitsi Appeal Judgement</i>	<i>Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-A, Judgement, 7 Jul 2006</i>
<i>Kambanda Appeal Judgement</i>	<i>Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-A, Judgement, 19 Oct 2000</i>
<i>Kamuhanda Appeal Judgement</i>	<i>Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-99-54A-A, Judgement, 19 Sept 2005</i>
<i>Kayishema and Ruzindana Appeal Judgement</i>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement, 1 Jun 2001</i>
<i>Kayishema and Ruzindana Trial Judgement</i>	<i>Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1991</i>
<i>Musema Trial Judgement</i>	<i>Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement, 27 Jan 2000</i>
<i>Nahimana et al. Trial Judgement</i>	<i>Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement, 3 Dec 2003</i>
<i>Niyitegeka Appeal Judgement</i>	<i>Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-A, Judgement, 9 Jul 2004</i>
<i>Ntakirutimana Appeal Judgement</i>	<i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 Dec 2004</i>
<i>Rutaganda Trial Judgement</i>	<i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement, 6 Dec 1999</i>
<i>Serushago Sentencing Appeal Judgement</i>	<i>Prosecutor v. Omar Serushago, Case No. ICTR-98-39-A, Judgement (Reasons), 6 Apr 2000</i>

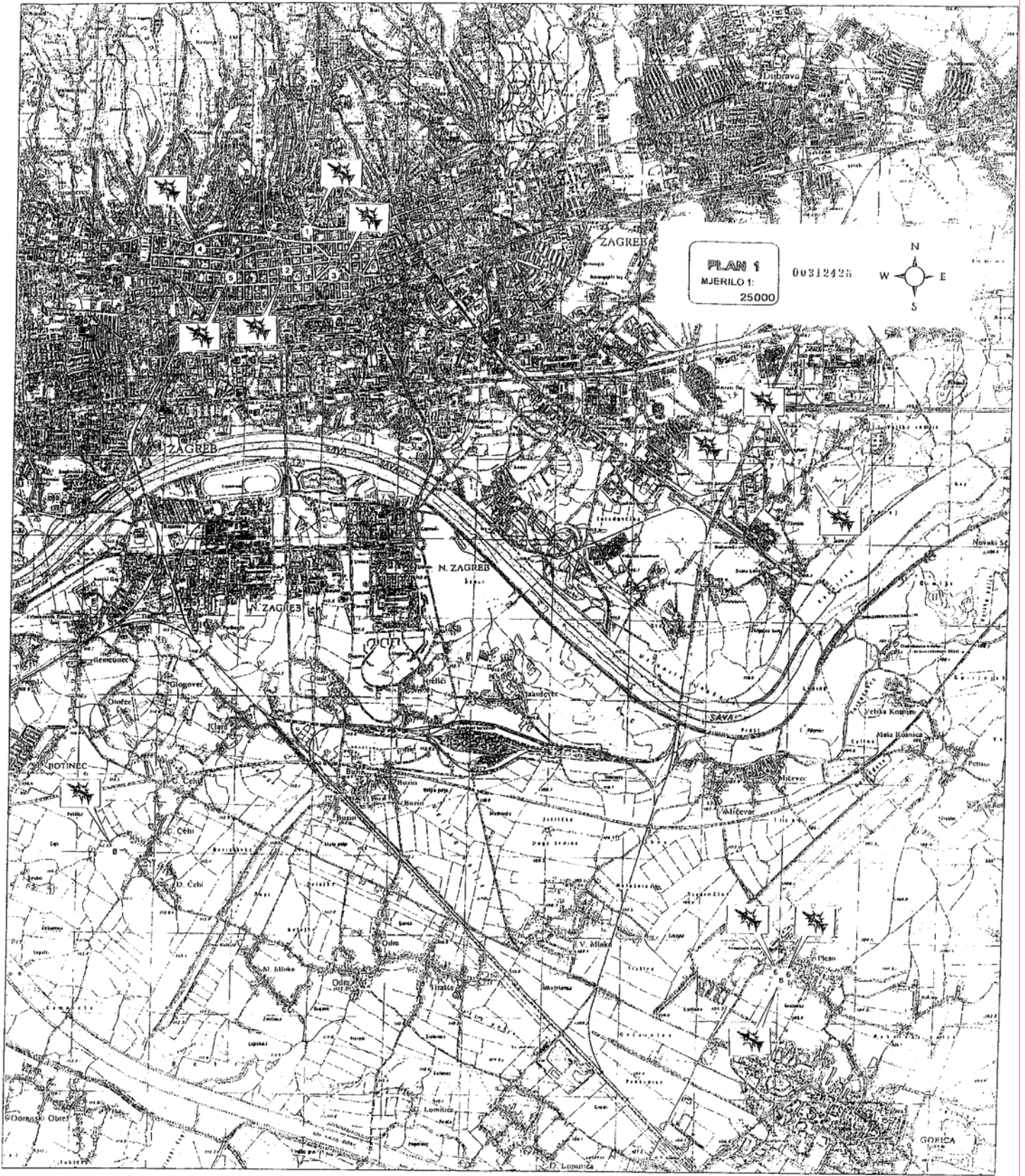
E. ICJ

<i>ICJ Advisory Opinion</i>	<i>Legality of the Threat or Use of Nuclear Weapons, ICJ Advisory Opinion of 8 Jul 1996, I.C.J. Reports 1996</i>
-----------------------------	--

F. Other

<i>ICRC Commentary on Geneva Convention III</i>	<i>Jean S. Pictet, ed., Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War (Geneva: ICRC, 1960)</i>
<i>ICRC Commentary on Geneva Convention IV</i>	<i>Jean S. Pictet, ed., Commentary: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (Geneva: ICRC, 1958)</i>

- ICRC Commentary on Additional Protocols* Yves Sandoz, Christoph Swinarski and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949* (Dordrecht: Martin Nijhoff Publishers, 1987)
- Customary International Humanitarian Law, ICRC* Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *International Committee of the Red Cross: Customary International Humanitarian Law, Volume I: Rules and Volume II: Practice* (Cambridge: Cambridge University Press, 2005)



Annex 466

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-T, Trial Chamber Judgment, p. 291,
para. 881 (12 December 2007)

**UNITED
NATIONS**



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

Case No. IT-98-29/1-T
Date: 12 December 2007
Original: English

IN THE TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Judgement of: 12 December 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty
Mr. Manoj Sachdeva
Ms. Maxine Marcus
Mr. Salvatore Cannata

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

CONTENTS

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

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

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

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

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

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

I. INTRODUCTION

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

2. Before the armed conflict started, the Accused was an officer in the Yugoslav People’s Army (“JNA”). He served as a regimental Chief of Staff and Chief of Staff of the 49th Motorised Brigade at Lukavica, which was part of the 4th Corps, 2nd Military District, based in Sarajevo.¹ Sometime in 1990, the Accused became the Commander of the 216th Mountain Brigade of the JNA.² From 19 May 1992 onwards, he served as Commander of the 1st Romanija Infantry Brigade.³ From February 1993 until approximately April 1993, he was a staff officer in the VRS Drina Corps.⁴ From on or about 6 July 1993, the Accused served as Chief of Staff and Deputy Commander in the SRK under its commander Gen. Stanislav Galić.⁵ The Accused became Commander of the SRK on or about 10 August 1994 and remained in that position until on or about 21 November 1995.⁶ He then held the rank of Major General and was immediately subordinate to the Main Staff of the VRS, and Gen. Ratko Mladić.⁷

3. The Accused was originally indicted with Stanislav Galić.⁸ On 26 March 1999, the Prosecution filed a revised Indictment with Dragomir Milošević as the only Accused. The Accused voluntarily surrendered to the authorities of Serbia and Montenegro and was transferred to the United Nations Detention Unit in The Hague on 3 December 2004.⁹ At his initial appearance on 7 December 2004, the Accused pleaded not guilty to all counts insofar as they pertained to charges against him.¹⁰ Following the decision of the Trial Chamber on a requested amendment of the

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

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

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

⁴ Agreed Fact 6.

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

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

⁷ *See infra*, Section II.F(b)(i) Effective Control

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

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

¹⁰ Initial Appearance Hearing, 7 Dec 2004, T. 1 – 15.

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

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

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

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

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

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

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

¹² Defence Closing Arguments, T. 9525.

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

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

II. EVIDENCE

A. Relevant Factual Background

1. Sarajevo

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

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

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

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

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

¹⁷ Agreed fact 18.

¹⁸ Agreed fact 19.

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

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

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

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

2. Historical Background

(a) The 1990 Elections

12. The first multi-party elections in the Socialist Federal Republic of Yugoslavia (“SFRY”) were held in the republics of Croatia and Slovenia in April and May 1990.²⁸ Elections in the other republics, including Bosnia and Herzegovina, took place in November and December 1990.²⁹ According to Robert Donia, the elections took place in a context of differing views as to whether the republics should have greater autonomy from the SFRY or whether the SFRY should be further strengthened.³⁰

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

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

²³ P472, Expert report Robert Donia, p. 7.

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

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

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

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

²⁸ P472, Expert report Robert Donia, p. 5.

²⁹ P472, Expert report Robert Donia, p. 5.

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

³¹ P472, Expert report Robert Donia, p. 5; Adjudicated Fact 3.

³² P472, Expert report Robert Donia, p. 5.

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

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

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

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

³³ P472, Expert report Robert Donia, p. 8.

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

³⁵ P472, Expert report Robert Donia, p. 9; Adjudicated Fact 3.

³⁶ Adjudicated Fact 4.

³⁷ P472, Expert report Robert Donia, p. 10.

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

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

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

⁴¹ P472, Expert report Robert Donia, pp 12 - 14.

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

⁴³ P472, Expert report Robert Donia, p. 12.

⁴⁴ P472, Expert report Robert Donia, p. 12.

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

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

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

19. On 11 January 1992, the Badinter Commission recommended that Bosnia and Herzegovina hold a referendum on its independence.⁵³ Despite denunciations by the Bosnian Serb Assembly against such a referendum, it was held at the end of February 1992.⁵⁴ Bosnian Muslims and Croats voted overwhelmingly for independence, while a large number of Bosnian Serbs boycotted the referendum.⁵⁵ Following the referendum, the EC declared its intent to recognise Bosnia and Herzegovina as an independent state.⁵⁶

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

⁴⁵ P472, Expert report Robert Donia, p. 12; Adjudicated Fact 7.

⁴⁶ P472, Expert report Robert Donia, p. 12.

⁴⁷ P472, Expert report Robert Donia, p. 13.

⁴⁸ P472, Expert report Robert Donia, p. 13; Adjudicated Fact 8.

⁴⁹ P472, Expert report Robert Donia, p. 13.

⁵⁰ P472, Expert report Robert Donia, pp 20 - 21.

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

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

⁵³ P472, Expert report Robert Donia, p. 21.

⁵⁴ P472, Expert report Robert Donia, p. 21.

⁵⁵ P472, Expert report Robert Donia, p. 21.

⁵⁶ P472, Expert report Robert Donia, p. 21.

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

the SDS barriers.⁵⁸ SDS party leaders said that the erection of the barricades was a spontaneous response to a shooting at a wedding in Sarajevo's Old Orthodox Church, in which the bridegroom's father was killed and an Orthodox priest was injured.⁵⁹ T-48, a SRK soldier during the Indictment period, testified that "after the killing at the wedding in Sarajevo, things escalated".⁶⁰ There was a large protest in Sarajevo on 2 March 1992 demanding the removal of the barricades.⁶¹ The barricades were removed that night, but some were re-erected on 3 March 1992.⁶² Also on 3 March 1992, the Presidency of Bosnia and Herzegovina declared the Republic an independent state.⁶³

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

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

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

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

⁶⁰ T-48, 22 June 2007, T. 7057 – 7058, 7130.

⁶¹ P472, Expert report Robert Donia, p. 22.

⁶² P472, Expert report Robert Donia, p. 22.

⁶³ Adjudicated Fact 15.

⁶⁴ P472, Expert report Robert Donia, p. 22.

⁶⁵ Dražen Maunaga, 11 June 2007, T. 6468 – 6469, 6470 – 6471, 6477.

⁶⁶ P472, Expert report Robert Donia, p. 21.

⁶⁷ P472, Expert report Robert Donia, p. 23; Adjudicated Fact 25.

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

⁶⁹ P472, Expert report Robert Donia, p. 23.

⁷⁰ P472, Expert report Robert Donia, p. 23.

⁷¹ P472, Expert report Robert Donia, p. 23.

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

24. According to Col. Luka Dragičević, Assistant Commander for Morale, Religious and Legal issues in the SRK during the Indictment period, when the JNA were withdrawing from BiH, incidents took place in which JNA soldiers were killed. The “most outstanding example” was the pullout of the command of the “2nd Army” under the auspices of UNPROFOR, during which “a marching column and a convoy of vehicles was cut in two and over 100 men were killed on Dobrovoljačka Street” on 2 May 1992.⁷⁸ On 4 May 1992, the Yugoslav Presidency also ordered the withdrawal of JNA forces from BiH within 15 days, which resulted in the JNA leaving “most heavy weaponry” and the vast majority of troops in the hands of the Bosnian Serb forces.⁷⁹ On 22 May 1992, BiH became a member state of the United Nations.⁸⁰

(b) Military Preparations for War

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

⁷² P472, Expert report Robert Donia, p. 31.

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

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

⁷⁵ Dražen Maunaga, 11 June 2007, T. 6476.

⁷⁶ Radomir Visnjić, 25 June 2007, T. 7228 – 7229, 7236.

⁷⁷ P472, Expert report Robert Donia, p. 32.

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

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

⁸⁰ Agreed Fact 21; Adjudicated Fact 45.

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

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

27. Evidence was also presented concerning Territorial Defence (“TO”) units and paramilitary groups. Robert Donia explained that the locally organised TO constituted an integral component of the SFRY’s system of defence.⁸⁶ TO units were designed to operate even in the absence of the JNA and were, consequently, provided with light weapons.⁸⁷ In May 1990, the JNA ordered the removal of weapons from the control of local TO units to its own armoury, citing concerns about the security of the weapons.⁸⁸ According to Robert Donia, while this order was largely complied with, many TO units in Bosnia and Herzegovina either retained their weapons or acquired new weapons in 1991 and early 1992.⁸⁹

28. Bosnian Muslim leaders of SDA “sponsored the creation of two paramilitary groups”: the Patriotic League and the Green Berets.⁹⁰ The Patriotic League was formally established as a party instrument of the SDA on 10 June 1991 and it was effectively organised by January 1992.⁹¹ Robert Donia noted that the Patriotic League had a large number of volunteers, but that there was a “great paucity of weaponry and ammunition.”⁹² Col. Dragičević, on the other hand, testified that the Patriotic League and the Green Berets came from Croatia and went to Bosnia and Herzegovina

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

⁸² P472, Expert report Robert Donia, p. 18.

⁸³ P472, Expert report Robert Donia, p. 16.

⁸⁴ P472, Expert report Robert Donia, pp 16, 20.

⁸⁵ P472, Expert report Robert Donia, pp 19 - 20.

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

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

⁸⁸ P472, Expert report Robert Donia, p. 17.

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

⁹⁰ Robert Donia, 16 Mar 2007, T. 3951; P472, Expert report Robert Donia, p. 16.

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

⁹² Robert Donia, 16 Mar 2007, T. 3952 – 3953.

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

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

3. United Nations in Sarajevo

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

(a) Structure of United Nations Mission

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

⁹³ Luka Dragičević, 26 Mar 2007, T. 4004.

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

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

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

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

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

⁹⁹ P472, Expert report Robert Donia, p. 33.

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

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

was the UNPROFOR Chief of Staff for Bosnia and Herzegovina from mid-1994 onwards.¹⁰² He was replaced by Maj. Gen. Cornelis Hendrik Nicolai on 28 February 1995.¹⁰³

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

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

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

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

¹⁰³ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 930.

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

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

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

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

¹⁰⁸ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 699 – 700.

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

¹¹⁰ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 700.

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

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

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

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

(b) United Nations Area of Responsibility

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

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

(c) Mandate

37. UNPROFOR was initially mandated to operate as a peacekeeping force in Croatia to monitor compliance with the Vance Plan of January 1992.¹²⁴ This mandate was later expanded to include the territory of BiH.¹²⁵ By 1993, UNPROFOR’s mandate as it applied throughout BiH, including Sarajevo, was expanded to allow it to “deter attacks against the safe areas, monitor the cease-fire, promote the withdrawal of military or paramilitary units other than those of the

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

¹¹⁶ Louis Fortin, 17 Jan 2007, T. 516.

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

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

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

¹²⁰ Asam Butt, 14 Feb 2007, T. 2159 – 2160.

¹²¹ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 712.

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

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

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

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

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

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

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

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

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

¹²⁸ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 954 – 956.

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

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

¹³¹ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 933 – 934.

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

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

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

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

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

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

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

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

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

¹³⁷ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 698, 709.

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

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

¹⁴⁰ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

¹⁴¹ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 935.

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

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

¹⁴⁴ Louis Fortin, 16 Jan 2007, T. 484.

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

¹⁴⁶ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

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

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

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

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

4. Peace Initiatives

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

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

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

¹⁵⁰ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

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

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

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

¹⁵⁴ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 934.

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

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

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

¹⁵⁸ Defence Final Brief, paras 78 – 83.

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

(a) Demilitarised Zone - 14 August 1993

48. A demilitarised zone (“DMZ”), which included Sarajevo Airport and a “large part” of Mount Igman, was established in Sarajevo on 14 August 1993.¹⁶⁴ The area of the DMZ overlapped with the Total Exclusion Zone (“TEZ”), discussed below.¹⁶⁵ In its Final Brief, the Defence argued that the DMZ in the Igman area was under *de facto* control of the ABiH from the time of its creation until the end of the conflict and was, consequently, a “legitimate military objective”.¹⁶⁶ In this regard, the Trial Chamber notes, for example, an UNPROFOR memorandum that describes the use of the DMZ as assembly and refuge areas for ABiH troops.¹⁶⁷ However, the evidence indicates violations of the DMZ by both parties.¹⁶⁸

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

¹⁶⁰ Prosecution Closing Brief, para. 50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁷⁵ Defence Final Brief, para. 72.

¹⁷⁶ Stjepan Đukić, 3 July 2007, T. 7506; Rade Ivanović, 4 July 2007, T. 7642.

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

51. Shortly after the cease-fire came into force, UNPROFOR reported that the agreement was “working well”, being interrupted by only minor violations.¹⁷⁸ However, the Defence argued that by August 1994, the February 1994 cease-fire was “already a dead letter.”¹⁷⁹ David Harland confirmed that the ABiH often violated the cease-fire during the period of 10 February 1994 to 24 April 1994.¹⁸⁰ He commented that ABiH fire drew return fire of the SRK onto the city.¹⁸¹ An order, dated 1 January 1995, from Gen. Rasim Delić, Commander of the ABiH, shows that the ABiH also violated agreed terms relating to WCPs.¹⁸²

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

(c) Anti-sniping Agreement - 14 August 1994

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

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

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

¹⁷⁸ D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

¹⁷⁹ Defence Final Brief, para. 73.

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

¹⁸¹ David Harland, P2, MT. 28675.

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

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

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

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

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

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

of July 1994 until 14 August 1994.¹⁸⁸ On 14 August 1994, the “Agreement on Elimination of Sniping Activities in Sarajevo Region” (“Anti-sniping Agreement”) was signed by Maj. Gen. Vahid Karavelić and the Accused.¹⁸⁹ In its Closing Brief, the Prosecution cite “negotiating, signing and implementing an anti-sniping agreement”, as well as “local cease-fire agreements”, as an indication of the Accused’s effective control.¹⁹⁰

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

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

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

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

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

¹⁹⁰ Prosecution Closing Brief, para. 469.

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

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

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

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

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

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

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

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

57. A comprehensive Cessation of Hostilities Agreement (“COHA”) was signed on 23 December 1994.¹⁹⁸ There is evidence that the SRK command ordered its troops to comply with the COHA.¹⁹⁹ Col. Dragičević testified that the SRK abided by the terms of the COHA.²⁰⁰

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

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

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

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

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

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

²⁰⁰ Luka Dragičević, 26 Mar 2007, T. 4018.

²⁰¹ P836, UNPROFOR daily sitrep, dated 28 December 1994, pp 1, 2.

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

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

²⁰⁴ Rupert Smith, 7 Mar 2007, T. 3310.

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

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

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

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

(e) Collapse of TEZ Arrangements and NATO Attacks

61. Gen. Smith and Lt. Col. Fortin testified that the TEZ arrangements collapsed in May 1995.²¹² An UNPROFOR report, dated 19 May 1995, states that, “[a]s widely predicated, the heavy weapons Total Exclusion Zone around Sarajevo has largely collapsed. Following the decision of UNPROFOR headquarters not to call on NATO air power to enforce the zone, both sides have begun using their heavy weapons with vigour. More than 1,500 detonations were recorded around the city on Tuesday; and more than 1,200 on Wednesday. The daily average until two weeks ago was less than 20.”²¹³

62. On 24 May 1995, the SRK removed weapons from WCPs, following an increase in the fighting, and refused to return them.²¹⁴ Gen. Smith issued an ultimatum to re-establish the TEZ but this was ignored, resulting in NATO air strikes on bunkers in an ammunition depot outside Pale on 25 May 1995.²¹⁵ During the night of 25 May 1995, the shelling of safe areas in BiH, including Sarajevo, by the VRS, continued.²¹⁶ On 25 and 26 May 1995, the SRK again took a number of heavy weapons from WCPs.²¹⁷ NATO again targeted the ammunition depot outside Pale on the 26

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

²⁰⁹ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 976 – 977.

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

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

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

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

²¹⁴ Rupert Smith, P334, p. 13; David Harland, P1, MT. 26957.

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

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

²¹⁷ Luka Dragičević, 26 Mar 2007, T. 4021 – 4022.

May 1995.²¹⁸ Col. Dragičević testified that the SRK removed the weapons from the WCPs because of the threat to the SRK by the ABiH.²¹⁹

63. On 18 June 1995, UNPROFOR withdrew from all WCPs around Sarajevo because UNPROFOR units could no longer be deployed safely in isolated parts of SRK-held territory.²²⁰ After the shelling of the Markale Market on 28 August 1995, new NATO air attacks were ordered.²²¹ During the night of 29 August 1995, air attacks against Bosnian Serb positions began.²²² These attacks lasted until 1 September 1995.²²³ They were stopped until 4 September 1995 to allow meetings between UNPROFOR Commander, Gen. Janvier, and Gen. Mladić regarding, *inter alia*, the withdrawal of all heavy weapons from the TEZs.²²⁴ The NATO attacks, targeting the wider area of Sarajevo, resumed on 5 September 1995 and lasted until 14 September 1995.²²⁵ In these attacks, NATO was supported by a major bombardment of Bosnian Serb positions around Sarajevo by the UNPROFOR Rapid Reaction Force.²²⁶ In response to Defence questions, Gen. Smith and David Harland testified that the targets were chosen “quite precisely” and that they were all of military character.²²⁷ According to Milorad Katić, two barracks at Lukavica were hit by NATO attacks, but no targets in Grbavica were.²²⁸ On 13 September 1995, a 72-hour pause was agreed and extended until 20 September 1995.²²⁹

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

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

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

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

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

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

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

²²⁴ Rupert Smith, 7 Mar 2007, T. 3412 – 3413, P334, p. 23.

²²⁵ Rupert Smith, P334, p. 23.

²²⁶ David Harland, 16 Jan 2007, T. 438.

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

²²⁸ Milorad Katić, 1 June 2007, T. 6050, 6052 – 6053.

²²⁹ Rupert Smith, P334, p. 23.

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

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

65. On 5 October 1995, a 60-day cease-fire was agreed upon; this was to come into force on 10 October 1995, on the condition that the utilities in Sarajevo were reconnected.²³³ On 11 October 1995, the parties agreed to the cease-fire as of 12 October 1995.²³⁴ The fighting subsided by 14 October 1995.²³⁵

B. Military Structures and Confrontation Lines

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

1. Structure of Military Units

(a) VRS and SRK

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

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

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

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

²³³ Rupert Smith, P334, p. 24.

²³⁴ Rupert Smith, P334, p. 24; David Harland, P1, MT T. 26983.

²³⁵ Rupert Smith, P334, p. 24.

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

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

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

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

²⁴⁰ Rupert Smith, 7 Mar 2007, T. 3299, 3300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) ABiH and 1st Corps

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

71. President Alija Izetbegović was Supreme Commander of the ABiH.²⁵⁹ Gen. Delić was the Commander of the General Staff of the ABiH.²⁶⁰ The ABiH had eight corps.²⁶¹ A report by the Chief of Administration of the ABiH on manning levels stated that the ABiH had a total number of 227,256 troops on 1 August 1994.²⁶²

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

73. Maj. Gen. Karavelić was the Commander of the 1st Corps of the ABiH from summer 1993 until September 1995.²⁶⁷ The Commander of the 1st Corps was directly subordinate to the Commander of the General Staff of the ABiH.²⁶⁸ According to Maj. Gen. Karavelić, the 1st Corps was organised along JNA doctrinal lines.²⁶⁹

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

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

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

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

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

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

²⁶³ David Harland, 15 Jan 2007, T. 374.

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

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

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

²⁶⁷ Vahid Karavelić, P492, p. 4.

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

²⁶⁹ Vahid Karavelić, P495, GT. 18084 – 18086, 18088 – 18090.

74. The headquarters of the 1st Corps was in the centre of Sarajevo, in Daniela Ozme Street, number 7.²⁷⁰ It was surrounded by civilian buildings so that “it would be very difficult [...] to engage.”²⁷¹ In fact, the building was never hit.²⁷²

75. The 1st Corps was created from TO units and parts of the Patriotic League on 1 September 1992.²⁷³ It had some 75,000 troops during the conflict, of which approximately 40,000 to 45,000 were stationed in Sarajevo.²⁷⁴

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

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

2. Weaponry

(a) Weaponry Available to the VRS and ABiH

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

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

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

²⁷¹ David Fraser, 8 Feb 2007, T. 1832. *See also* David Fraser, 8 Feb 2007, T. 1835.

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

²⁷³ Vahid Karavelić, P492, p. 5, P494, GT. 11904 – 11905, P495, GT. 17625.

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

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

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

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

²⁷⁸ David Harland, 16 Jan 2007, T. 459.

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

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

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

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

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

²⁸¹ Vlajko Božić, 17 July 2007, T. 8402 – 8403.

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

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

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

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

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

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

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

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

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

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

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

²⁸⁹ Stevan Veljović, 29 May 2007, T. 5807.

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

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

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

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

²⁹⁴ T-53, 11 June 2007, T. 6422 – 6423.

²⁹⁵ Patrick van der Weijden, 29 Mar 2007, T. 4318.

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

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

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

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

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

87. However, there is also evidence that the equipment of the SRK was of mediocre quality and the SRK had difficulties with maintenance and replenishment.³⁰⁴ According to Col. Dragičević, when he became assistant commander on 22 November 1994, there was a shortage of food, fuel and ammunition and weapons, especially large calibre weapons.³⁰⁵ T-53 testified that there were problems with ammunition, but that the VRS Main Staff in most cases approved requests for ammunition for infantry weapons.³⁰⁶ According to T-53, supplies of spare parts, fuel and ammunition were problematic but the principal problem was “how to get fuel to the units” in 1994.³⁰⁷ However, Maj. Eimers did not believe that the Bosnian Serbs encountered any logistical problems.³⁰⁸ Defence witnesses also testified that the Pretis Factory in Vogošća, which was under the control of the SRK, produced ammunition during the war.³⁰⁹

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

²⁹⁸ P805, Order to issue ammunition.

²⁹⁹ *See supra*, paras 50, 52.

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

³⁰¹ P506, Text area cut-out of map.

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

³⁰³ Vahid Karavelić, 29 Mar 2007, T. 4270.

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

³⁰⁵ Luka Dragičević, 26 Mar 2007, T. 4009 – 4010, 4015 – 4016.

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

³⁰⁷ *Ibid.*, T. 6399, 6403.

³⁰⁸ Ronald Eimers, P585, p. 9.

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

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

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

(b) Specific Weapons

(i) Mortars

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

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

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

³¹¹ T-53, 11 June 2007, T. 6412, 6440.

³¹² Ronald Eimers, 20 Apr 2007, T. 4807, P585, p. 9.

³¹³ David Harland, P2, MT. 28702.

³¹⁴ P336, VRS Directive, dated 17 March 1995, p. 4.

³¹⁵ Rupert Smith, 7 Mar 2007, T. 3368 – 3370.

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

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

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

³¹⁹ Richard Higgs, 23 Apr 2007, T. 5001. *See also* Vljako Bozić, 17 July 2007, T. 8470.

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

³²¹ Richard Higgs, 23 Apr 2007, T. 5005.

³²² *Ibid.*, T. 5006.

³²³ *Ibid.*, 24 Apr 2007, T. 5077 – 5078.

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

(ii) Modified Air Bombs

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

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

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

³²⁶ Richard Higgs, 24 Apr 2007, T. 5084.

³²⁷ *Ibid.*, T. 5084.

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

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

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

³³¹ Richard Higgs, 23 Apr 2007, T. 4997, 5004, 24 Apr 2007, T. 5055 – 5056.

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

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

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

93. The explosive charge of the air bombs varied between 100 kilograms and 250 kilograms.³³⁵ Two types of air bombs were used in Sarajevo: the FAB-100 and the FAB-250.³³⁶ The numbers in the name indicate the approximate weight of the bombs.³³⁷ Evidence showed that air bombs were produced in the Pretis Factory, which was used by the SRK during the Indictment period.³³⁸ Berko Zečević, Prosecution expert on modified air bombs, testified that the FAB-100 had TNT as its explosive charge, whereas the typical explosive charge for a FAB-250 was a fuel-air mixture.³³⁹

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

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

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

³³⁶ Berko Zečević, 20 Apr 2007, T. 4820.

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

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

³³⁹ Berko Zečević, 23 Apr 2007, T. 4942 – 4943.

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

³⁴¹ P586, Expert report Berko Zečević, p. 106.

³⁴² P586, Expert report Berko Zečević, p. 106.

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

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

³⁴⁵ Bakir Nakaš, 29 Jan 2007, T. 1107 – 1108.

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

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

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

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

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

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

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

³⁵⁰ Berko Zečević, 23 Apr 2007, T. 4983 – 4984.

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

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

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

³⁵⁴ Thomas Knustad, 13 Feb 2007, T. 1990.

³⁵⁵ Berko Zečević, 20 Apr 2007, T. 4830 – 4832, 4849 – 4850.

³⁵⁶ *Ibid.*, T. 4905. *See also* Stevan Veljović, 31 May 2007, T. 5912.

³⁵⁷ Stevan Veljović, 31 May 2007, T. 5912.

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

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

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

³⁵⁹ Asam Butt, 15 Feb 2007, T. 2194.

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

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

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

³⁶³ D366, Expert report Desimir Garović, p. 16.

³⁶⁴ Desimir Garović, 23 Aug 2007, T. 9152 – 9153.

³⁶⁵ *Ibid.*, T. 9153.

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

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

³⁶⁸ *Ibid.*

³⁶⁹ D366, Expert report Desimir Garović, p. 16.

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

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

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

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

102. When asked about the availability of air bombs and the use of modified air bombs by the SRK, a number of witnesses testified that they had never heard about modified air bombs or that they did not know whether air bombs were launched from the ground.³⁷³ However, there is extensive documentary evidence showing that the SRK requested and received “100/105 kilogram”, 150 kilogram and 250 kilogram air bombs in 1994 and 1995.³⁷⁴ Evidence also shows that the SRK possessed and constructed modified air bombs and air bomb launchers.³⁷⁵ For example, on 10 June

³⁷⁰ Desimir Garovic, 23 Aug 2007, T. 9155.

³⁷¹ *Ibid.*, T. 9151.

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

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

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

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

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

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

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

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

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

³⁷⁶ P716, Report by Ilidža Brigade, 10 June 1995.

³⁷⁷ P907, Order by SRK commander, 11 July 1995.

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

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

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

³⁸¹ David Harland, 16 Jan 2007, T. 440.

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

³⁸³ Vahid Karavelić, 27 Mar 2007, T. 4109 – 4111, P493, p. 7.

³⁸⁴ P506, Text area cut-out of map.

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

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

106. W-137 testified that unexploded modified air bombs were totally unusable and could not be re-launched. Rather, the bombs were disarmed in order to retrieve at least “some crumbs of explosive”.³⁸⁸ This was confirmed by Berko Zečević.³⁸⁹ Out of every kilogram of explosive taken from such a weapon, his unit was able to manufacture ten rifle grenades but not an air bomb.³⁹⁰ The ABiH also had surrogate explosives, but Berko Zečević testified that the supply of explosives to the territory under the control of the ABiH remained problematic in 1994.³⁹¹

Findings

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

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

³⁸⁶ Berko Zečević, 20 Apr 2007, T. 4851 – 4853, 4897 – 4898.

³⁸⁷ *Ibid.*, T. 4897 – 4898.

³⁸⁸ W-137, 19 Feb 2007, T. 2480 – 2481.

³⁸⁹ Berko Zečević, 20 Apr 2007, T. 4895 – 4896, D173, p. 10.

³⁹⁰ *Ibid.*, T. 4895 – 4896, 4900 – 4901, D173, p. 10.

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

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

(iii) Snipers and Sniper Rifles

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

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

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

³⁹² P514, Expert report Patrick van der Weijden, p. 4.

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

³⁹⁴ David Fraser, 8 Feb 2007, T. 1859.

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

³⁹⁶ David Fraser, 8 Feb 2007, T. 1860.

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

³⁹⁸ P514, Expert report Patrick van der Weijden, p. 58.

³⁹⁹ Patrick van der Weijden, 29 Mar 2007, T. 4311 – 4318.

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

⁴⁰¹ P514, Expert report Patrick van der Weijden, p. 58.

⁴⁰² P514, Expert report Patrick van der Weijden, p. 58.

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

3. Areas of Responsibility and Confrontation Lines – SRK and 1st Corps of the ABiH

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

112. Overall, the SRK was responsible for a triangular zone in Central Bosnia around Sarajevo between Višegrad, Kladanj and Igman.⁴⁰⁶ The area of responsibility of the SRK included the following places: the south of Sarajevo, including Lukavica, Vraca, Grbavica, Zlatište, parts of Dobrinja and the area up to Mount Trebević,⁴⁰⁷ the hills south and south-west of Sarajevo,⁴⁰⁸ the Rajlovac area in the north-west of Sarajevo towards Mrkovići, including Špicasta Stijena, also known as Sharpstone,⁴⁰⁹ the north-east of Sarajevo⁴¹⁰ and the area of Pale.⁴¹¹ According to Maj. Gen. Karavelić, the SRK had four main artillery positions in the hills surrounding Sarajevo from which they could reach any part of town.⁴¹²

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

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

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

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

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

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

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

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

⁴¹¹ P788, Military map of Sarajevo; D59, Military map of Sarajevo area.

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

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

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

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

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

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

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

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

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

⁴¹⁶ P194, Military map of Sarajevo; D59, Military map of Sarajevo area.

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

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

⁴¹⁹ Stevan Veljović, 29 May 2007, T. 5734.

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

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

⁴²² David Fraser, 8 Feb 2007, T. 1867; D49, Map marked by David Fraser.

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

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

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

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

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

⁴²⁴ Ghulam Mohammed Mohatarem, 19 Jan 2007, T. 747.

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

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

⁴²⁷ T-7, 18 June 2007, T. 6801 – 6802.

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

⁴²⁹ Bakir Nakaš, 29 Jan 2007, T. 1126.

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

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

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

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

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

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

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

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

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

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

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

⁴³⁷ Dragan Simić, 5 June 2007, T. 6185; D210, Photograph marked by Dragan Simić.

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

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

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

⁴⁴¹ Ismet Hadžić, 6 Mar 2007, T. 3213.

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

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

⁴⁴⁴ Ismet Hadžić, 5 Mar 2007, T. 3191.

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

⁴⁴⁶ Ismet Hadžić, 6 Mar 2007, T. 3219.

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

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

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

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

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

⁴⁴⁸ Ismet Hadžić, 6 Mar 2007, T. 3266 – 3267.

⁴⁴⁹ T-31, 14 June 2007, T. 6674 – 6675.

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

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

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

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

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

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

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

⁴⁵⁷ Predrag Trapara, 27 June 2007, T. 7378.

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

⁴⁵⁹ Milomir Šoja, 25 Apr 2007, T. 5162.

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

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

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

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

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

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

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

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

⁴⁶² Goran Kovačević, 13 June 2007, T. 6605.

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

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

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

⁴⁶⁶ W-138, 1 Feb 2007, T. 1435 – 1436.

⁴⁶⁷ Louis Fortin, 17 Jan 2007, T. 522.

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

⁴⁶⁹ Milomir Šoja, 25 Apr 2007, T. 5173.

⁴⁷⁰ W-57, 17 Apr 2007, T. 4573 – 4574.

⁴⁷¹ Stevan Veljović, 29 May 2007, T. 5738.

⁴⁷² Zoran Trapara, 26 June 2007, T. 7307.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁸⁵ Stevan Veljović, 24 May 2007, T. 5723.

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

⁴⁸⁷ Asam Butt, 14 Feb 2007, T. 2159, 15 Feb 2007, T. 2224.

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

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

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

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

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

⁴⁸⁸ Asam Butt, 15 Feb 2007, T. 2223.

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

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

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

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

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

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

⁴⁹⁵ T-15, 13 July 2007, T. 8333, 8334.

⁴⁹⁶ Prosecution Closing Brief, para. 155.

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

⁴⁹⁸ Stevan Veljović, 30 May 2007, T. 5865 – 5868, 5875, 5891 – 5892.

from the cliff.⁴⁹⁹ Vlajko Božić testified that the SRK positions were at least 50 metres behind the ridge and that the ABiH was some 150 metres away from the ridge.⁵⁰⁰ According to Vlajko Božić and T-15, a police officer with the RS police, it was impossible to set up an observation post or a position on the ridge because the terrain was said to have been mined in 1992 and it was exposed to cross-fire from both sides.⁵⁰¹ T-15 also testified that he and his fellow soldiers never went up on the ridge to fire onto Sedrenik, except during combat activities.⁵⁰² Both T-15 and Anđelko Dragaš, a soldier of the 3rd Sarajevo Brigade during the Indictment period, testified that there were no SRK snipers,⁵⁰³ but Prosecution witnesses, such as Nedžib Đozo, and Tarik Žunić, a civilian who lived in Sedrenik at the time, testified that Špicasta Stijena was a well-known SRK sniper location.⁵⁰⁴ According to Lt. Van der Weijden, traces of the Bosnian Serb-held trenches were still visible on the ridgeline in November 2006.⁵⁰⁵

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

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

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

⁵⁰⁰ Vlajko Božić, 17 July 2007, T. 8415, 8450 – 8454.

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

⁵⁰² T-15, 13 July 2007, T. 8332 – 8333.

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

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

⁵⁰⁵ P514, Expert report Patrick van der Weijden, pp 41 - 43.

⁵⁰⁶ Defence Final Brief, para. 51.

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

⁵⁰⁸ Vahid Karavelić, 28 Mar 2007, T. 4228.

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

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

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

Findings

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

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

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

⁵¹¹ Vahid Karavelić, 27 Mar 2007, T. 4093.

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

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

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

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

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

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

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

⁵¹⁹ Predrag Trapara, 27 June 2007, T. 7397 – 7398.

⁵²⁰ *See supra*, para. 125.

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

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

C. Sarajevo 1992 to August 1994

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

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

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

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

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

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

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

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

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

145. As discussed above, large scale violence broke out in Sarajevo just prior to 7 April 1992.⁵²⁵ According to Robert Donia, the Prosecution expert on the history of Bosnia and Herzegovina, armed fighting took place in Sarajevo on most days of April 1992, although it was "punctuated by internationally-negotiated cease-fires that lasted at most three days."⁵²⁶ Martin Bell, a journalist for the BBC, explained that the first few days of the conflict were very confusing days of street fighting between armies, militias and gangs.⁵²⁷ However, by the end of April 1992, "the contour of

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

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

⁵²⁶ P472, Expert report Robert Donia, p. 31.

⁵²⁷ Martin Bell, 26 Apr 2007, T. 5239.

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

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

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

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

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

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

⁵²⁹ Martin Bell, 26 Apr 2007, T. 5238 – 5240.

⁵³⁰ Martin Bell, 26 April 1997, T. 5240.

⁵³¹ David Harland, P1, MT. 26937.

⁵³² David Harland, P1, MT. 26939.

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

⁵³⁴ P538, W-57, p. 2 (under seal).

⁵³⁵ W-107, 12 Mar 2007, T. 3511.

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

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

⁵³⁸ Martin Bell, 26 Apr 2007, T. 5238 – 5239.

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

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

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

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

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

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

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

⁵⁴¹ Cited in P472, Expert report Robert Donia, p. 35.

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

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

⁵⁴⁴ Milan Mandić, 3 July 2007, T. 7558 – 7559.

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

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

⁵⁴⁷ John Jordan, P267, p. 5.

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

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

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

153. Following his visit to Sarajevo at the end of August 1992, Tadeusz Mazowiecki noted that “Serb forces” had attacked cultural centres, including mosques, the Olympic Museum, the Oriental Institute, and Muslim, Catholic, and Serbian Orthodox religious institutions from May to August 1992.⁵⁵⁴ A day after his departure from Sarajevo, “Serb forces” attacked the National and University Library and the offices of *Oslobodenje*, the daily newspaper.⁵⁵⁵ Other landmark buildings, such as the parliamentary office buildings, and the south face of the Holiday Inn were destroyed by shelling.⁵⁵⁶

2. Effect on the Civilian Population within the Confrontation Lines

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

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

⁵⁵⁰ Bakir Nakaš, 29 Jan 2007, T. 1141.

⁵⁵¹ Bakir Nakaš, 29 Jan 2007, T. 1141.

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

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

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

⁵⁵⁵ P472, Expert report Robert Donia, p. 35.

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

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

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

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

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

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

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

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

⁵⁵⁹ W-57, 17 Apr 2007, T. 4548.

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

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

⁵⁶² Stevan Veljović, 24 May 2007, T. 5713.

⁵⁶³ Ljuban Mrković, 12 July 2007, T. 8134 – 8135.

⁵⁶⁴ Ljuban Mrković, 12 July 2007, T. 8134 – 8135.

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

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

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

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

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

⁵⁶⁶ Milorad Katić, 31 May 2007, T. 5974 – 5975.

⁵⁶⁷ Milan Mandilović, 18 Jan 2007, T. 608 – 610.

⁵⁶⁸ David Harland, 15 Jan 2007, T. 358 – 359, P2, MT. 28635 – 28636.

⁵⁶⁹ Nedeljko Učur, 26 July 2007, T. 8915; David Harland, P2, MT. 28635.

⁵⁷⁰ David Harland, P2, MT. 28634.

⁵⁷¹ Milan Mandilović, 18 Jan 2007, T. 608 – 610; David Harland, P2, MT. 28634.

⁵⁷² David Harland, P2, MT. 28677.

⁵⁷³ W-12, 1 Mar 2007, T. 3035 – 3036, P307, p. 2 (under seal); W-107, 12 Mar 2007, T. 3510 – 3513; Slavica Livnjak, P95, p. 2; Huso Palo, P162, p. 2; Alen Gičević, P164, p. 3; Alma Mulaosmanović, P179, p. 3; Džemaludin Luinović, P298, p. 3; Avdo Vatrić, P647, pp 7, 13; Nedžib Đozo, P363, p. 3; W-95, P520, p. 3 (under seal); Fadila Serdarević, P641, p. 5; Fikreta Pačarić, P643, p. 10.

⁵⁷⁴ See, e.g., Alen Gičević, P164, p. 3; Alija Holjan, P526, p. 3; Slavica Livnjak, P95, p. 3; Džemaludin Luinović, P298, p. 3; Avdo Vatrić, P647, p. 7; Nedžib Đozo, P363, p. 3; Fadila Serdarević, P641, p. 5.

⁵⁷⁵ Bakir Nakaš, 25 Jan 2007, T. 1075 – 1076.

⁵⁷⁶ David Harland, 15 Jan 2007, T. 323.

⁵⁷⁷ David Harland, 15 Jan 2007, T. 323.

very short periods” to collect water from water-dispensing points or food and then “they would scurry back into their homes.”⁵⁷⁸

162. The trams in Sarajevo stopped operating during the battle that took place on 2 May 1992 and did not start again until February or March 1994.⁵⁷⁹ Alternative routes, or “rat runs”, were established by civilians in Sarajevo so as to minimise the amount of time they needed to be outside and to ensure safe movement from one place to another.⁵⁸⁰ Video evidence was presented to the Trial Chamber showing civilians running from one point to another, particularly when they had to cross open spaces.⁵⁸¹

163. Bakir Nakaš explained how in the period of 1992 to 1994 the way of life changed for the people in Sarajevo:

“[w]e managed to get by using only a litre of drinking water every day. We got used to it. We got used to living, getting on without electricity, without drinking water. There was no such thing as lifts or elevators in the city of Sarajevo because there was not enough electricity to run one, to operate one. Every day on your way to work you ran the risk of being killed or injured. Each day’s work meant exposing yourself to the risk of being added to the long list of the killed and wounded.”⁵⁸²

164. The Security Council was concerned about the situation and passed a number of resolutions addressing the matter.⁵⁸³ On 13 August 1992, the Security Council noted in Security Council resolution 771:

“continuing reports of widespread violations of international humanitarian law including [...] deliberate attacks on non-combatants, hospitals, and ambulances, impeding the delivery of food and medical supplies to the civilian population, and wanton devastation of property.”⁵⁸⁴

165. With regard to fuel, an UNPROFOR report noted that in November 1993, notwithstanding an agreement between the Bosnian Muslims and Bosnian Serbs on the distribution of wood and coal in the Sarajevo region, “the Serbs are still blocking the fuel convoys waiting to come into the city.”⁵⁸⁵ UNPROFOR reported in February 1994 that the BiH Government accused the Bosnian Serbs of turning off the gas supply lines; this was denied by the Bosnian Serbs, who said that the

⁵⁷⁸ David Harland, 15 Jan 2007, T. 323.

⁵⁷⁹ Martin Bell, 26 Apr 2007, T. 5249.

⁵⁸⁰ Martin Bell, 26 Apr 2007, T. 5243; P610, Videoclip of events in Sarajevo.

⁵⁸¹ P609, Videoclip of sniping in Sarajevo; P610, Videoclip of events in Sarajevo; P613, Videoclip of sniping on Zmaja od Bosne.

⁵⁸² Bakir Nakaš, 25 Jan 2007, T. 1062 – 1063.

⁵⁸³ P472, Expert report Robert Donia, p. 34, referring, *inter alia*, to Security Council resolution 757 (30 May 1992).

⁵⁸⁴ P472, Expert report Robert Donia, p. 34, omission in the original.

⁵⁸⁵ D2, UNPROFOR weekly BH political assessment, 3 November 1993, p. 3.

problem originated in Serbia.⁵⁸⁶ At this time, night-time temperatures were falling below -20 degrees centigrade.⁵⁸⁷ People died as a result of the lack of heating.⁵⁸⁸

166. David Harland testified that during 1994 the Bosnian Serbs usually let in enough food that the people in Sarajevo did not starve to death.⁵⁸⁹ However, in addition to the evidence that the Bosnian Serbs placed impediments in the way of delivery of humanitarian aid, at the beginning of 1994, UNPROFOR reported that the Bosnian Muslim authorities in Sarajevo appeared to be diverting “even more food than usual away from intended beneficiaries”.⁵⁹⁰ It reported that the civilian population in Sarajevo may have been receiving less than one-third of the aid brought into the city.⁵⁹¹ As for the remainder of the food aid, it was reported that some was sold on the black market and some went to the military; however, most was unaccounted for.⁵⁹²

167. The Trial Chamber heard evidence that fire fighters within the confrontation lines had to work under shell and sniper fire.⁵⁹³ In early 1993, almost 20 per cent of the Bosnian Muslim fire fighters were being killed or wounded while fighting fires.⁵⁹⁴ In September 1993, GOFRS instituted a protection programme for Bosnian Muslim fire fighters, following which no Bosnian Muslim fire fighter was killed.⁵⁹⁵ GOFRS volunteers were also targeted and, as a consequence, they carried arms and shot at snipers.⁵⁹⁶ John Jordan stated that when fighting fires on the SRK side, GOFRS volunteers “seldom” came under fire from snipers or from shelling.⁵⁹⁷

168. A video clip shown during the trial depicted fire fighters, including John Jordan, fighting a fire that was raging in a multi-storey building in December 1993, while at the same time being shot at by snipers.⁵⁹⁸ The same video clip also depicted John Jordan assisting in an attempted rescue of two children from a collapsed building in a residential district.⁵⁹⁹ In this instance, the rescuers came under “lengthy inconsistent artillery” fire.⁶⁰⁰ John Jordan testified that the rescue would not have

⁵⁸⁶ D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

⁵⁸⁷ D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

⁵⁸⁸ David Harland, P1, MT. 26944 – 26945.

⁵⁸⁹ David Harland, 15 Jan 2007, T. 344, 375.

⁵⁹⁰ D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3; David Harland, 15 Jan 2007, T. 382 – 383.

⁵⁹¹ D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3; David Harland, 15 Jan 2007, T. 382 – 383.

⁵⁹² D6, UNPROFOR weekly BH political assessment, 17 February 1994, p. 3.

⁵⁹³ John Jordan, 21 Feb 2007, T. 2647 – 2648; P270, Videoclip of fire fighting.

⁵⁹⁴ John Jordan, 22 Feb 2007, T. 2700 – 2701.

⁵⁹⁵ John Jordan, 22 Feb 2007, T. 2700 – 2701.

⁵⁹⁶ John Jordan, 21 Feb 2007, T. 2658, 22 Feb 2007, T. 2693, P267, p. 6.

⁵⁹⁷ John Jordan, P267, p. 5.

⁵⁹⁸ John Jordan, 21 Feb 2007, T. 2647 – 2648; P269, Video of interview with John Jordan.

⁵⁹⁹ John Jordan, 21 Feb 2007, T. 2647 – 2648; P269, Video of interview with John Jordan.

⁶⁰⁰ John Jordan, 21 Feb 2007, T. 2647; P269, Video of interview with John Jordan. Only one of the children survived.

been possible if UNPROFOR had not brokered a temporary cease-fire with the SRK, enabling the UNPROFOR troops to assist in the rescue with heavy equipment.⁶⁰¹

3. Defence Evidence of ABiH Activities from 1992 to 1994

169. Defence witnesses gave evidence concerning ABiH attacks against units of the SRK during the pre-Indictment period.⁶⁰² There is also evidence regarding shelling of the SRK and Bosnian Serb civilians and civilian areas by the ABiH.⁶⁰³ For example, Zoran Samardžić, a soldier within the SRK, explained that in 1993, “there was lots of fighting and many shells fell on the urban area of Hadžići.”⁶⁰⁴ On 13 April 1993, his friend was injured by shrapnel in the street.⁶⁰⁵ After visiting that friend, Zoran Samardžić returned home to find that his 13-year-old son was dead, as was his son’s 11-year-old friend, Srdjan Zuza.⁶⁰⁶

170. The Defence put to Robert Donia that “several thousand” Bosnian Serbs were killed in Sarajevo in 1992.⁶⁰⁷ He disagreed, saying that one demographer had estimated that 151 Bosnian Serbs were killed in encounters with Croat or Bosnian Muslim “irregulars” within Sarajevo in 1992 although, in his view, the number of Bosnian Serbs killed by artillery fire and sniping and tank fire was much greater than that.⁶⁰⁸ However, he maintained that the figure of 2,511 individuals included in a RS Government report was “unquestionably high.”⁶⁰⁹

171. According to Martin Bell, civilians in SRK-held territory were also targeted.⁶¹⁰ Evidence indicates that the ABiH had and used snipers in the pre-Indictment period.⁶¹¹ Witnesses testified about incidents in which they, family members, friends or civilians generally were shot by the ABiH.⁶¹² In two UNPROFOR reports, dated 15 October 1993 and 16 October 1993, Radovan

⁶⁰¹ John Jordan, 21 Feb 2007, T. 2647 – 2648.

⁶⁰² Milorad Katić, 31 May 2007, T. 5975 – 5976; Vaso Elez, 7 June 2007, T. 6345 – 6346; Zoran Samardžić, 14 June 2007, T. 6651 – 6652; Predrag Čarkić, 19 June 2007, T. 6869 – 6870, 6871 – 6872; Radomir Visnjić, 25 June 2007, T. 7228, 7239 – 7245, 7260, 7261; Rade Ivanović, 4 July 2007, T. 7625 – 7626, 7631, 7633; T-15, 13 July 2007, T. 8291 – 8292; T-9, 16 July 2007, T. 8344 – 8345.

⁶⁰³ Stevan Veljović, 29 May 2007, T. 5747, 5749; Vaso Elez, 7 June 2007, T. 6332 – 6333; T-53, 7 June 2007, T. 6387 – 6388; Goran Kovačević, 12 June 2007, T. 6544 – 6545; T-39, 21 June 2007, T. 6994 – 6995; T-48, 22 June 2007, T. 7133 – 7134; T-37, 10 July 2007, T. 7983; T-20, D496, p. 2 (under seal); Dragan Orlić, D497, p. 3; D185, SRK combat report, dated 13 September 1992 (“SRK combat report, 13 September 1992”).

⁶⁰⁴ Zoran Samardžić, 13 June 2007, T. 6626 – 6627.

⁶⁰⁵ Zoran Samardžić, 13 June 2007, T. 6626 – 6627.

⁶⁰⁶ Zoran Samardžić, 13 June 2007, T. 6626 – 6627, 6628; D229, Death certificate of Stasa Samardžić, dated 18 May 1993.

⁶⁰⁷ Robert Donia, 16 Mar 2007, T. 3962 – 3963.

⁶⁰⁸ Robert Donia, 16 Mar 2007, T. 3963.

⁶⁰⁹ Robert Donia, 16 Mar 2007, T. 3963.

⁶¹⁰ Martin Bell, 26 Apr 2007, T. 5239, 5253 – 5254.

⁶¹¹ Milorad Katić, 31 May 2007, T. 5983 – 5984; T-2, 20 June 2007, T. 6924 – 2926; Kosta Kosović, 10 July 2007, T. 7995; D185, SRK combat report, 13 September 1992; D251, Order, 5 March 1993.

⁶¹² See e.g. Dragan Simić, 5 June 2007, T. 6164; Vaso Elez, 7 June 2007, T. 6332; T-2, 20 June 2007, T. 6920, 6924, 6936 – 6939, 6949; T-61, 9 July 2007, T. 7837 – 7838; Momčilo Gojković, 13 July 2007, T. 8253 – 8254.

Karadžić reportedly said that Bosnian Muslim shelling and sniping was a big problem.⁶¹³ T-5 recalled, “[e]very day I would watch civilians getting killed on the streets, and we were helpless to assist them because we were also exposed to danger. I personally saw when a boy was hit. His mother went up to him to help. The mother was also hit. And they remained there on the street until it got dark. No one was able to help them.”⁶¹⁴

172. Milorad Katić also testified about the death and injury of people in Bosnian Serb-held parts of Sarajevo during the pre-Indictment period.⁶¹⁵ Witnesses also spoke of feeling frightened, threatened and unsafe.⁶¹⁶ Others spoke of civilians living close to the confrontation lines.⁶¹⁷ Radomir Višnjić, testifying for the Defence, recalled that anti-sniping barriers were put up in Bosnian Serb areas in the pre-Indictment period.⁶¹⁸ Defence witness T-5, a civilian from Grbavica, testified that after May 1992, “[w]e spent the whole day in the basement, and at night we would supply ourselves with food and water and we were able to go out during the night. During the day, we didn’t dare to because there was shooting, constant shooting.”⁶¹⁹ Luka Jović, a member of an SRK Armoured Battalion, spoke of the lack of water and electricity in the Bosnian Serb-held areas of Dobrinja.⁶²⁰

173. Defence witness Milan Pejić, a doctor, testified that in 1992 there were no hospitals in Blažuj.⁶²¹ Following an attack in late April 1992 at a hotel in Ilidža, he treated people in a motel, giving them first aid.⁶²² Milorad Katić said that, in 1992, wounded persons were taken to Pale, a journey that took a minimum of three or four hours by road.⁶²³ Later, Zica Hospital was established in Blažuj, approximately six kilometres away from Nedarići.⁶²⁴ According to the Prosecution witness Milomir Šoja, this was the only hospital in the area and civilians and military personnel alike were treated there.⁶²⁵ However, major surgery could not be carried out at Zica Hospital.⁶²⁶

⁶¹³ David Harland, P1, MT. 26950.

⁶¹⁴ T-5, 25 June 2007, T. 7209 – 7210.

⁶¹⁵ Milorad Katić, 31 May 2007, T. 5970 – 5971, 5373 – 5374, 1 June 2007, T. 5993; D198, Article from Srpska Vojska, dated 25 January 1994.

⁶¹⁶ T-7, 19 June 2007, T. 6848 – 6850; Radomir Višnjić, 25 June 2007, T. 7260.

⁶¹⁷ Vaso Elez, 6 June 2007, T. 6308 – 6310; Luka Jović, 14 June 2007, T. 6697 – 6698.

⁶¹⁸ Radomir Višnjić, 25 June 2007, T. 7245; T-44, D498, p. 3 (under seal).

⁶¹⁹ T-5, 25 June 2007, T. 7208. *See also* Luka Jović, 14 June 2007, T. 6716.

⁶²⁰ Luka Jović, 14 June 2007, T. 6697 – 6698.

⁶²¹ Milan Pejić, 21 June 2007, T. 7027.

⁶²² Milan Pejić, 21 June 2007, T. 7027 – 7028. *See also* Milomir Šoja, 25 Apr 2007, T. 5165.

⁶²³ Milorad Katić, 1 June 2007, T. 6023. *See also* Radomir Višnjić, 25 June 2007, T. 7238 – 7239.

⁶²⁴ Milan Pejić, 21 June 2007, T. 7033; Milorad Katić, 1 June 2007, T. 6023. *See also* Milomir Šoja, 25 Apr 2007, T. 5165.

⁶²⁵ Milomir Šoja, 25 Apr 2007, T. 5165. *See also* Milorad Katić, 1 June 2007, T. 6022 – 6023.

⁶²⁶ T-48, 22 June 2007, T. 7136.

Milorad Katić testified that the lack of facilities at all the hospitals, including the hospitals of Kasindol and Pale, meant that the seriously wounded had to be transferred to Belgrade.⁶²⁷

D. Challenge to the Reliability of the Investigation by BiH Police and BiH Police Reports

174. The Defence, in its Final Brief, argued that the reports of the BiH police should be excluded from the evidence pursuant to Rule 95 of the Rules of Procedure and Evidence (“Rules”).⁶²⁸ In particular, it argued that the MUP forces formed part of the ABiH.⁶²⁹ Moreover, the BiH police did not respect the criminal procedure in force at the time by leaving crime scenes unguarded, not registering the statements of possible eyewitnesses or not including the names of eyewitnesses in their investigative reports; crime scenes were cleaned up before investigations were carried out; the investigators were not properly trained and military experts were never part of investigation teams; the methods used to establish a causal link between the killed or injured person and the incident, as well as the civilian status of the victim, were unacceptable because victims were not photographed nor was biological material gathered at the scene, “medical reports were never of interest to the Bosnian police investigators”, and the means of determining the status of victims was unverifiable.⁶³⁰

175. Several BiH police officers testified that the police only investigated cases of shelling and sniping if there were casualties or heavy damage.⁶³¹ Upon being informed that an incident occurred, an investigative team was set up, which was led by an investigative judge.⁶³² The unarmed team, which did not wear uniforms, generally also included a criminal inspector, a forensic technician or a crime scene officer and, if the incident concerned a shelling, a member of a bomb squad.⁶³³ The bomb squad member was part of the KDZ, the members of which were trained in detecting, deactivating and disarming explosive devices.⁶³⁴ Each member of the investigative team was responsible for different aspects of the investigations.⁶³⁵ In response to questions by the Defence,

⁶²⁷ Milorad Katić, 1 June 2007, T. 6023 – 6024.

⁶²⁸ Defence Final Brief, dated 1 October 2007 (“Defence Final Brief”), paras 158 – 168.

⁶²⁹ Defence Final Brief, paras 64, 120, 122, 158.

⁶³⁰ Defence Final Brief, paras 158 – 167.

⁶³¹ Bogdan Vidović, 14 Feb 2007, T. 2110; Sanjin Hasanefendić, 16 Feb 2007, T. 2295 – 2296; Sead Bešić, 21 Feb 2007, T. 2607 – 2608; Zlatko Mededović, P649, p. 11.

⁶³² W-138, 31 Jan 2007, T. 1318 – 1319; Bogdan Vidović, 14 Feb 2007, T. 2116 – 2117; Sanjin Hasanefendić, 16 Feb 2007, T. 2293; W-137, 20 Feb 2007, T. 2521; W-28, 22 Feb 2007, T. 2708 – 2709; Nedžib Đozo, 14 Mar 2007, T. 3706, 3708 – 3709; W-116, 17 Apr 2007, T. 4614 – 4616.

⁶³³ W-138, 30 Jan 2007, T. 1207, 1 Feb 2007, T. 1432, 1436 – 1437; Sanjin Hasanefendić, 16 Feb 2007, T. 2293 – 2295, 2355; W-137, 19 Feb 2007, T. 2478 – 2479; W-28, 22 Feb 2007, T. 2708 – 2709, 2726 – 2727; W-116, 18 Apr 2007, T. 4648 – 4649, P549, p. 2, P551, p. 2; Zlatko Mededović, P649, p. 11.

⁶³⁴ W-137, 19 Feb 2007, T. 2410; Ekrem Suljević, 2 Mar 2007, T. 3094 – 3095, 3111; W-116, 18 Apr 2007, T. 4632.

⁶³⁵ W-138, 30 Jan 2007, T. 1206 – 1207, 1211 – 1214; Sead Bešić, 20 Feb 2007, T. 2576, 2581; W-116, 17 Apr 2007, T. 4616, 18 Apr 2007, T. 4632 – 4633, 4650 – 4651, P548, p. 2, P549, p. 2; Mirza Sabljica, 19 Apr 2007, T. 4694 – 4695, 4709 – 4710, 4737, 4756 – 4757, 4778. *See also*, Kemal Bučo, 2 Feb 2007, T. 1498 – 1504, 1514, P158, p. 2; Bogdan Vidović, 13 Feb 2007, T. 2060; Sanjin Hasanefendić, 16 Feb 2007, T. 2291 – 2295, 2324, 2327; W-137, 19 Feb 2007, T. 2410 – 2412; W-28, 22 Feb 2007, T. 2709 – 2710, 2718 – 2719, 2732 – 2733, 2747; Ekrem Suljević,

Prosecution witnesses testified that it was not always possible for an investigative judge to be present during the investigation; many investigative reports indicate the extent to which the investigative judge was involved.⁶³⁶ These witnesses noted that under law in BiH, it was possible that another member of the investigation team would take charge of the investigation in the absence of the judge.⁶³⁷ The RS police did not assist in the investigations inside the city of Sarajevo, although it would have been allowed.⁶³⁸ Defence witness Simo Tuševljak, chief of security of the RS police, testified in cross-examination that he could only recall two instances in which the RS police offered to assist the BiH police in its investigation.⁶³⁹

176. The Defence argued that military experts ought to have participated in the investigation teams.⁶⁴⁰ BiH police officers testified that the members of investigative teams were trained in investigation techniques, including the determination of direction of fire, through courses and field experience, and were sometimes taught techniques by UN personnel. If officers were inexperienced, they conducted their tasks under the supervision of a more experienced police officer.⁶⁴¹

177. Several BiH police officers testified that until the investigative team arrived, the scene was secured by police officers from the local police stations.⁶⁴² The Defence argued that no reports of police officers from local police stations were tendered into evidence, even though they “were supposed to evacuate the dead and wounded before the arrival of the Security Centre police.”⁶⁴³

178. Witnesses for the Prosecution testified that UNMOs attended the scenes of shelling or sniping incidents on a regular basis.⁶⁴⁴ UNPROFOR was also involved in some investigations.⁶⁴⁵

2 Mar 2007, T. 3094 – 3095, 3101 – 3102, 5 Mar 2007, T. 3184 – 3185; W-91, 14 Mar 2007, T. 3740; Vekaz Turković, 26 Apr 2007, T. 5224. *See e.g.* P582, Criminal investigation file, dated 12 November 1994, p. 1.

⁶³⁶ W-137, 20 Feb 2007, T. 2521 – 2522; W-28, 22 Feb 2007, T. 2708 – 2709; Nedžib Đozo, 14 Mar 2007, T. 3708 – 3709.

⁶³⁷ Nedžib Đozo, 14 Mar 2007, T. 3708 – 3709; W-91, 15 Mar 2007, T. 3792. *See also*, W-28, 22 Feb 2007, T. 2708 – 2709.

⁶³⁸ Sead Bešić, 21 Feb 2007, T. 2605 – 2606.

⁶³⁹ Simo Tuševljak, 11 July 2007, T. 8043 – 8044, 12 July 2007, T. 8104 – 8105.

⁶⁴⁰ Defence Final Brief, para. 161.

⁶⁴¹ W-138, 30 Jan 2007, T. 1204 – 1205 (private session); Bogdan Vidović, 13 Feb 2007, T. 2059, 14 Feb 2007, T. 2109; Sanjin Hasanefendić, 16 Feb 2007, T. 2287; W-137, 19 Feb 2007, T. 2409, 2412 – 2414; Sead Bešić, 20 Feb 2007, T. 2568, 2575, 21 Feb 2007, T. 2607 – 2609; Ekrem Suljević, 2 Mar 2007, T. 3094 – 3095, 3105 – 3106; W-116, 18 Apr 2007, T. 4648 – 4649; Mirza Sabljica, 19 Apr 2007, T. 4694 – 4695, 4698 – 4699; Vekaz Turković, 26 Apr 2007, T. 5217 – 5219. *See also* Kemal Bučo, 2 Feb 2007, T. 1500 – 1501; W-28, 22 Feb 2007, T. 2707 (private session); Nedžib Đozo, 14 Mar 2007, T. 3681. Zlatko Mededović stated he gained sufficient knowledge on ballistic traces of military shells from studying literature before the war started, Zlatko Mededović, P649, pp 2, 11.

⁶⁴² W-28, 22 Feb 2007, T. 2730 – 2731 (private session); W-91, 15 Mar 2007, T. 3769; Vekaz Turković, 25 Apr 2007, T. 5191; W-116, P551, p. 2 (under seal).

⁶⁴³ Defence Final Brief, para. 159.

⁶⁴⁴ Thorbjorn Overgard, 18 Jan 2007, T. 637; Asam Butt, 14 Feb 2007, T. 2160, 2162; Harry Konings, 12 Mar 2007, T. 3555 – 3556; W-57, 17 Apr 2007, T. 4593; W-116, 18 Apr 2007, T. 4649.

⁶⁴⁵ W-156, P625, p. 21 (under seal); W-46, P387, p. 15 (under seal).

However, UN personnel and the BiH police largely conducted separate investigations.⁶⁴⁶ Upon completion of the police investigation, a report would be drawn up containing the results of the investigation and results from the crime laboratory.⁶⁴⁷ If UN personnel were present at the scene, and if they provided relevant information or made comments, this was reflected in the investigative report.⁶⁴⁸ The report was sent to the Prosecutor's office in Sarajevo by the police or the investigative judge.⁶⁴⁹

179. The Defence argued that the evidence shows that UNMOs were sometimes not permitted to attend sites of shelling or sniping, or hospitals and morgues, and that this was one of the factors which, according to the Defence, casts substantial doubt on the credibility of the BiH police reports.⁶⁵⁰ However, Maj. Overgard testified that, in general, there were no restrictions on the movement of UNMOs.⁶⁵¹

180. The Trial Chamber heard evidence from several witnesses of the method by which the direction of fire was established by the BiH police and the UN. When investigating shelling incidents during the Indictment period, the BiH police and UN personnel used the same basic method for determining the origin or direction of fire.⁶⁵² QMS Higgs, the Prosecution expert on mortars, was of the opinion that the BiH police were very competent in crater analysis and used the correct methodology to determine the direction of fire.⁶⁵³ Defence expert Maj. Gen. Garović challenged the investigations by the BiH police, saying that the methods used would not allow for a determination of the origin of fire.⁶⁵⁴ However, the Trial Chamber notes that the BiH police reports

⁶⁴⁶ Thorbjorn Overgard, 19 Jan 2007, T. 662; Harry Konings, 12 Mar 2007, T. 3556; Thomas Hansen, 2 Apr 2007, T. 4388 – 4389; Nedžib Đozo, P364, p. 2; Ronald Eimers, P585, p. 5.

⁶⁴⁷ W-138, 1 Feb 2007, T. 1350; Bogdan Vidović, 13 Feb 2007, T. 2060; Sead Bešić, 21 Feb 2007, T. 2597; W-28, 22 Feb 2007, T. 2709, 2748; Mirza Sabljica, 19 Apr 2007, T. 4709; Vekaz Turković, 25 Apr 2007, T. 5191. *See also* Asam Butt, 14 Feb 2007, T. 2160; Harry Konings, 12 Mar 2007, T. 3555 – 3556; Hussain Ijaz, 27 Apr 2007, T. 5411 – 5412; Nedžib Đozo, P363, p. 2, P364, p. 2.

⁶⁴⁸ Bogdan Vidović, 14 Feb 2007, T. 2144 – 2145; W-28, 22 Feb 2007, T. 2749 – 2750; Ekrem Suljević, 2 Mar 2007, T. 3102. *See also* Thorbjorn Overgard, 19 Jan 2007, T. 662; Harry Konings, 12 Mar 2007, T. 3556; Ronald Eimers, P585, pp 2, 5; P266, Criminal investigation file, dated 29 August 1995.

⁶⁴⁹ Sead Bešić, 21 Feb 2007, T. 2597; W-28, 22 Feb 2007, T. 2719, 2724 – 2725, 2765 (private session); Ekrem Suljević, 2 Mar 2007, T. 3102; Vekaz Turković, 25 Apr 2007, T. 5191 – 5193; W-116, P549, p. 2.

⁶⁵⁰ Defence Final Brief, paras 153 – 157.

⁶⁵¹ Thorbjorn Overgard, 19 Jan 2007, T. 688 – 691. *See also* David Harland, 16 Jan 2007, T. 442; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 712; Thomas Knustad, 13 Feb 2007, T. 2011; Asam Butt, 15 Feb 2007, T. 2233; W-137, 20 Feb 2007, T. 2497 – 2498; Per Anton Brennskag, 8 Mar 2007, T. 3501; W-46, 15 Mar 2007, T. 3817 – 3818 (closed session), 16 Mar 2007, T. 3897, 3904 – 3905 (closed session); Ronald Eimers, 20 Apr 2007, T. 4798 – 4799, 4802, P585, p. 7; W-156, 27 Apr 2007, T. 5359 – 5361 (closed session), P625, pp 17, 23, 31 (under seal); Hussain Ijaz, 27 Apr 2007, T. 5411 – 5412; D7, UNPROFOR daily sitrep, dated 2 December 1994 (“UNPROFOR daily sitrep, 2 December 1994”), p. 3; D73, UNMO HQ daily sitrep, dated 19 June 1995 (“UNMO daily sitrep, 19 June 1995”), p. 12; P9, UNPROFOR daily sitrep, dated 25 November 1994, p. 5; P19, UNPROFOR sitrep, dated 2 July 1995, p. 2.

⁶⁵² Mirza Sabljica, 19 Apr 2007, T. 4696. *See also* Thorbjorn Overgard, 18 Jan 2007, T. 635. Before their deployment to Sarajevo, UNMOs were specifically trained in crater analysis and technical aspects of weaponry, Thorbjorn Overgard, 19 Jan 2007, T. 656 – 657; Thomas Knustad, 13 Feb 2007, T. 1989; Asam Butt, 14 Feb 2007, T. 2151 – 2152; Harry Konings, 12 Mar 2007, T. 3550, 3573 – 3574.

⁶⁵³ Richard Higgs, 23 Apr 2007, T. 5015.

⁶⁵⁴ Desimir Garović, 23 Aug 2007, T. 9130; D366, Expert report Desimir Garović, p. 13.

and the investigation reports by UNMO did not indicate an exact position as the origin of fire of shells. Rather, the reports consistently provided a direction of fire with a margin of error. Sometimes the recorded margin of error was as high as ten degrees. In cases where an exact location was mentioned, this was based on statements of witnesses who saw the launch of the projectile.

181. The BiH police and UNMOs also investigated shelling incidents involving modified air bombs.⁶⁵⁵ W-137 and W-116 gave evidence that it was “slightly” or “much more” difficult to determine direction of fire for modified air bombs because of the sort of crater they produced.⁶⁵⁶ However, if the modified air bomb struck a vertical object, such as a high-rise building, it was easy to determine the direction of fire on the basis of the marks left by the explosion; in case the bomb had first ricocheted, it was possible to determine the direction of fire based on the ricochet marks.⁶⁵⁷ Berko Zečević clarified that if an air bomb, whether modified or not, hits a target at an angle of around 25 degrees or less, it could ricochet rather than explode because the fuse would not be the first part of the bomb to hit an obstacle.⁶⁵⁸ Sanjin Hasanefendić and Berko Zečević said that the direction of fire of these bombs was determined through an analysis of the centre of the explosion and the traces left by the explosion; these traces were used to estimate the angle of descent.⁶⁵⁹ Maj. Gen. Garović testified that on the basis of a crater caused by an air bomb, and using a magnetic compass, nothing could be determined in respect of origin of fire because there is only inaccurate data about the effects of a modified air bomb.⁶⁶⁰

182. As was the case in shelling incidents, due to continuing fire, police officers were often unable to investigate a sniping scene immediately after the incident occurred.⁶⁶¹ Sometimes the investigative team only drove past the location of an incident without stopping to gather forensic evidence at that location.⁶⁶²

183. The Trial Chamber notes that the Defence, specifically with regard to sniping incidents, argued that the methods to establish the origin of fire were not appropriate in the circumstances. In particular, and by way of example, it argued that certain factors do not support BiH police findings

⁶⁵⁵ Thorbjorn Overgard, 18 Jan 2007, T. 634; W-138, 30 Jan 2007, T. 1208 – 1209; W-28, 22 Feb 2007, T. 2708; Per Anton Brennskag, 8 Mar 2007, T. 3467.

⁶⁵⁶ W-137, 19 Feb 2007, T. 2422; W-116, 18 Apr 2007, T. 4670.

⁶⁵⁷ W-138, 30 Jan 2007, T. 1209, 31 Jan 2007, T. 1318 – 1320; W-137, 19 Feb 2007, T. 2422.

⁶⁵⁸ Berko Zečević, 20 Apr 2007, T. 4842; W-137, 19 Feb 2007, T. 2424; P586, Expert report Berko Zečević, p. 179.

⁶⁵⁹ Sanjin Hasanefendić, 16 Feb 2007, T. 2327 – 2329; Berko Zečević, 20 Apr 2007, T. 4850 – 4851. *See also* W-138, 1 Feb 2007, T. 1349 – 1350; W-137, 19 Feb 2007, T. 2471.

⁶⁶⁰ Desimir Garović, 23 Aug 2007, T. 9151.

⁶⁶¹ Kemal Bućo, 2 Feb 2007, T. 1519 – 1520; W-28, 22 Feb 2007, T. 2718; Mirza Sabljica, 19 Apr 2007, T. 4749; Vekaz Turković, 26 Apr 2007, T. 5226; P582, Criminal investigation file, p. 1. *See also*, Section II.E.6.(b)(i) Shelling of Livanjska Street on 8 November 1994.

⁶⁶² Kemal Bućo, 2 Feb 2007, T. 1518 – 1520.

on origin of fire in cases of sniping.⁶⁶³ These factors include: the location of the confrontation lines, which would often cross certain buildings and were very near to each other; that snipers often changed positions; the existence of rumours about certain sniper positions, which would have resulted in the police officers not truly investigating the origin of fire; the possibility of so-called “stray bullets” and ricochets; and that the police officers did not take into account pre-existing damage to buildings when making their findings. Finally, the Defence also drew attention to the fact that witnesses testified that the ABiH shot at individuals in order to create panic.

184. Col. Stamenov, the Defence expert on sniping, was specifically asked about the investigations into sniping conducted by the BiH police and whether he agreed with the findings of the police. In his report, he stated that the process used by the BiH police was “unscientific, based on arbitrary and hypothetical assumptions, making use of arbitrary data and as such cannot lead to a truthful conclusion founded on scientific facts.”⁶⁶⁴ During his testimony, he said that in an urban environment it is “extremely difficult” to establish the origin of fire, because such an environment causes “multiple deflection of the sound” and that this effect can cause a situation where it sounds like the shot comes from one location, when, in actual fact, it was fired from another.⁶⁶⁵

185. Witnesses testified, when asked by the Defence, that there were instances in which the evidence at the scene was tampered with, or even planted.⁶⁶⁶ Media reports by the BiH of targeted civilians inside Sarajevo by the SRK were often regarded by SRK brigade commanders as “false” allegations and “propaganda”.⁶⁶⁷ Lt. Col. Konings, a Dutch UNMO, confirmed that there were rumours that bodies were “dragged around the city” and were planted in locations other than where those people had died, in order to make the number of killed persons appear higher.⁶⁶⁸ He testified that on his arrival in Sarajevo he was briefed by UNPROFOR to “be alert to the possibility of bodies being planted at scenes”, but that he never saw any evidence to support this rumour.⁶⁶⁹ He also testified that he never heard from his superiors that bodies were planted to serve military and political interests of BiH.⁶⁷⁰ Another witness recalled one incident in which UN “investigators” were not allowed to attend a shelling scene for a number of hours and that upon arrival at the scene

⁶⁶³ Defence Final Brief, para 168.

⁶⁶⁴ D360, Expert report Ivan Stamenov, p. 14.

⁶⁶⁵ Ivan Stamenov, 22 Aug 2007, T. 9031, 9033.

⁶⁶⁶ W-138, 1 Feb 2007, T. 1362, 1374, 1379 – 1380; W-137, 20 Feb 2007, T. 2553; Berko Zečević, 23 Apr 2007, T. 4956, 4972.

⁶⁶⁷ Vlajko Bozić, 17 July 2007, T. 8448 – 8449.

⁶⁶⁸ Harry Konings, 12 Mar 2007, T. 3558 – 3559.

⁶⁶⁹ Harry Konings, 12 Mar 2007, T. 3559, 13 Mar 2007, T. 3644.

⁶⁷⁰ Harry Konings, 13 Mar 2007, T. 3643 – 3645. The Trial Chamber notes that the Defence put this proposition to him, quoting Gen. Nicolai’s testimony regarding the Markale Market II shelling, in which he stated that the possibility that people could be used as an instrument for the highest interest of the state was “an option that we did not exclude”, Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1039.

they found debris which “could not have been the result of firing coming from the Serbs.”⁶⁷¹ This witness said that manipulation was something that had to be “reckoned with.”⁶⁷²

186. Several BiH police officers disagreed with the Defence assertions that evidence was tampered with. They explained that often there were no bodies at the scenes of incidents because local people took the victims to hospital or to the morgue.⁶⁷³ According to W-137, “[t]hose collecting the bodies were never entirely certain whether the body was dead or still alive.”⁶⁷⁴ As for the cleaning up of blood marks at the scene, it was said that this was a “perfectly normal, natural human reaction.”⁶⁷⁵ W-116 testified that it would be “naive” and an “exaggeration” to think that people in Sarajevo would be shelling themselves with “over two million shells over four years”.⁶⁷⁶ From early 1994 until the end of the war, W-137 conducted “a couple of hundred” mortar crater analyses.⁶⁷⁷ He believed that it was impossible for anyone to try and tamper with a crater, not only because there would be too many witnesses to such an activity, but also because in order to falsify traces in hard surfaces, such as asphalt, so as to make them appear to have been caused by shrapnel, one would have to hammer hard at the surface.⁶⁷⁸ People walking over the crater could not change the traces left in the surface.⁶⁷⁹

187. The Trial Chamber observes that the evidence from Defence witnesses as to the working methods of the RS police shows that the methods of investigating the incident site by the RS police were almost identical to the methods of the BiH police. The similarities include the following: the RS police teams also had an investigative judge; it was the responsibility of the police to secure the scene; photographs and blood samples would be taken of the bodies of victims at the scene, but the police also came to the morgue to photograph the victims; an on-site investigation was often not conducted immediately, due to continuing fire; and the investigation reports were sent to the relevant prosecutor’s office.⁶⁸⁰ Furthermore, it was not always possible to conduct a full autopsy, for instance, in cases of numerous victims or unavailability of medical experts only an external examination of the body would take place.⁶⁸¹

⁶⁷¹ W-46, 16 Mar 2007, T. 3897 (closed session).

⁶⁷² W-46, 16 Mar 2007, T. 3895 (closed session), P387, p. 15 (under seal).

⁶⁷³ Vekaz Turković, 26 Apr 2007, T. 5225 – 5226; W-28, 22 Feb 2007, T. 2731 – 2734. *See also* Mirza Sabljica, 19 Apr 2007, T. 4757 – 4758.

⁶⁷⁴ W-137, 20 Feb 2007, T. 2501.

⁶⁷⁵ W-137, 20 Feb 2007, T. 2502.

⁶⁷⁶ W-116, 18 Apr 2007, T. 4662 – 4663.

⁶⁷⁷ W-137, 19 Feb 2007, T. 2414.

⁶⁷⁸ W-137, 19 Feb 2007, T. 2418, 2430.

⁶⁷⁹ W-137, 19 Feb 2007, T. 2430.

⁶⁸⁰ Simo Tuševljak, 11 July 2007, T. 8043, 8066, 8069, 8089 – 8090, 8100 – 8102; Ivica Milosavljevic, 24 Aug 2007, T. 9237 – 9240, 27 Aug 2007, T. 9252.

⁶⁸¹ Ivica Milosavljević, 24 Aug 2007, T. 9238 – 9239, 9243 – 9244, 9248 – 9249, 27 Aug 2007, T. 9251 – 9253.

188. The Defence submitted in its Final Brief that the MUP forces formed part of the ABiH.⁶⁸² An intelligence report by the SRK stated that there were between 11,000 and 12,000 members of the BiH MUP in the city of Sarajevo.⁶⁸³ Goran Kovačević testified that BiH MUP units and special police units remained directly involved throughout the conflict, by taking part in “riots and sabotage action”.⁶⁸⁴ However, Maj. Gen. Karavelić testified that the ABiH and the civilian police were two separate entities.⁶⁸⁵ The BiH MUP forces were not under the control of the army, but remained under the control of the BiH Government and the BiH MUP.⁶⁸⁶ He denied that special BiH MUP units were subordinated to his command or that reserve police officers fought as ABiH combatants.⁶⁸⁷ However, he explained that sometimes police units were assigned for certain combat actions and that an agreement was reached between Gen. Delić and BiH MUP that these police forces could be used by brigade commanders in a specific area.⁶⁸⁸ If assistance was requested for a special operation, a BiH MUP unit was temporarily placed under the command of the 1st Corps.⁶⁸⁹ Orders of Gen. Prevljak confirm that special MUP units, among them the *Bosna* and *Lasta* detachments, were engaged in operations with the ABiH.⁶⁹⁰

189. As to the Defence reliance in its Final Brief on Rule 95 it is passing strange that an argument to the effect that Prosecution evidence contravenes that Rule was not presented during the trial. That Rule vests the Trial Chamber with a discretion to exclude evidence obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings. While it is not precluded for a Party to invoke Rule 95 for the first time in its Final Brief, it would seem that a Party who is serious about its reliance on the Rule would have raised this argument during the trial; the reason being that a Trial Chamber, in determining the applicability of Rule 95, would in many cases consider it necessary to hold a trial within a trial - clearly, a procedure that would not ordinarily take place at the stage of the presentation of a final brief. In the circumstances of this case, it is sufficient for the Trial Chamber to say that the Defence adduced no evidence to substantiate its submission as to the application of Rule 95. Although the Trial Chamber acknowledges that there were shortcomings in some of the procedures adopted by the BiH police investigation teams, it is satisfied that the reports produced by the teams are generally reliable and provide a sufficient basis for the Trial Chamber’s

⁶⁸² Defence Final Brief, paras 64, 120, 122, 158.

⁶⁸³ P691, Intelligence information by SRK, dated 2 April 1995.

⁶⁸⁴ Goran Kovačević, 12 June 2007, T. 6542 – 6543, 6601.

⁶⁸⁵ Vahid Karavelić, 27 Mar 2007, T. 4082 – 4083.

⁶⁸⁶ Vahid Karavelić, P492, pp 14 - 15.

⁶⁸⁷ Vahid Karavelić, 28 Mar 2007, T. 4154 – 4155, P494, GT. 11788.

⁶⁸⁸ Vahid Karavelić, 28 Mar 2007, T. 4159.

⁶⁸⁹ Vahid Karavelić, P492, pp 14 - 15. That happened no more than five times in 1994 and 1995, Vahid Karavelić, 27 Mar 2007, T. 4083 – 4084.

⁶⁹⁰ D62, Order by Fikret Prevljak, dated 23 August 1995, p. 1. *See also* D61, Order by Fikret Prevljak, dated 6 July 1995; D143, Order by Fikret Prevljak on use of Sarajevo CSB Police Units, dated 8 May 1995.

findings. The Trial Chamber is in a position to rely on the reports for its findings to the degree required by the law.

190. The Trial Chamber was presented with evidence that special BiH police units occasionally took part in combat activities. However, the Trial Chamber finds that these units did not form part of the ABiH throughout the Indictment period. The evidence shows that the units stayed under separate command of the Bosnian government and the BiH MUP. The evidence does not support a finding that the regular police was an integral part of the ABiH troops, nor does it support a finding that the regular police assisted in combat operations during ABiH offensives.

191. The Trial Chamber, when deciding on sniping incidents, will make its own determination on the direction of fire and, where necessary and possible, on the origin of fire. In doing so, it will be mindful of the arguments presented by the Defence, which are set out in paragraph 183 above.

E. Evidence pertaining to the “Campaign” in the Indictment Period

192. As set out in the Indictment, the Prosecution has charged the Accused with conducting “a campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population which had the primary purpose of spreading terror among the civilian population. Civilians were killed or seriously injured as a result.”⁶⁹¹ The Defence submitted that “[t]here can be no doubt that this conflict caused many deaths and injuries on both sides, that the situation for civilians was grim on both sides and varied depending on military activities” but the situation in Sarajevo, as presented in “the reports”, was one-sided and “[i]nquiries often turned out superficial to facilitate political decisions.”⁶⁹²

193. In its Final Brief, the Defence submitted that the SRK desired peace and that it only undertook military actions in defence of its territory and the civilian population in its territory.⁶⁹³ However, David Harland and others testified that there was an organised campaign implemented in Sarajevo, which was orchestrated at high political and military levels of the VRS, and that the objectives of the campaign were multiple.⁶⁹⁴

1. Patterns of Sniping and Shelling of Sarajevo

194. The Trial Chamber heard extensive evidence regarding sniping and shelling of Sarajevo during the Indictment period, both as part of military activity and as directed against civilians.

⁶⁹¹ Indictment, para. 22. *See also e.g.* Prosecution Closing Brief, para. 4.

⁶⁹² Defence Final Brief, para. 125.

⁶⁹³ Defence Final Brief, paras 75 – 77.

195. The evidence indicates that during the Indictment period, the people living in the area of Sarajevo within the confrontation lines were continuously shelled and sniped, although some witnesses noted that the level of intensity varied, particularly with regard to shelling.⁶⁹⁵ Ewa Tabeau, the Prosecution statistician and demographic expert, testified that her analysis of the number of persons wounded as a result of sniping during the Indictment period indicated that the level of sniping was almost constant, independent of the fluctuations and the intensity of the armed conflict.⁶⁹⁶ Martin Bell recalled that the quieter periods tended to be around mid-winter and that summer was always the worst.⁶⁹⁷ Many witnesses described the summer months of 1995 as the most intensive period of sniping and shelling of the city, paralleling the most intensive fighting between the two warring factions at the frontlines.⁶⁹⁸ Witnesses also described feeling a sense of surprise and disquiet when there was no shelling on a particular day because shelling occurred so regularly.⁶⁹⁹

196. John Jordan recalled that in nice weather, “people came out, made it a target-rich environment and the snipers got busy.”⁷⁰⁰ An increase in sniping on both sides reportedly took place from 25 June 1994.⁷⁰¹ UNPROFOR reported that in the week ending 2 July 1995, sniper activity had spread to the Old Town and areas to the west that were previously considered to be reasonably safe.⁷⁰²

197. Berko Zečević, Prosecution expert on air bombs, testified that artillery and mortar explosions were a daily occurrence in Sarajevo.⁷⁰³ Maj. Overgard testified that in November and December 1994, he investigated incidents of shelling on a nearly daily basis, while Maj. Eimers, a Dutch UNMO, testified that in November 1994 it was relatively quiet from the point of view of shelling.⁷⁰⁴ Maj. Gen. Nicolai testified that the first few months of 1995 were “fairly quiet” and that

⁶⁹⁴ On 10 December 1994, David Harland wrote that Gen. Brinkman no longer found it useful to protest against incidents, as they were dealing with an organised campaign: David Harland, P1, MT. 26955.

⁶⁹⁵ Martin Bell, 26 Apr 2007, T. 5240, 5243 – 5244; Milan Mandilović, 17 Jan 2007, T. 570, 18 Jan 2007, T. 621; Bogdan Vidović, 13 Feb 2007, T. 2061; Sanjin Hasanefendić, 16 Feb 2007, T. 2296; Ziba Šubo, P280, p. 2; W-57, P538, p. 2 (under seal); Nefa Šljivo, P532, p. 2; Ismet Alić, P640, p. 8; Sead Bešić, 20 Feb 2007, T. 2576; Mirza Sabljica, 19 Apr 2007, T. 4695, 4735 – 4736.

⁶⁹⁶ Ewa Tabeau, 1 May 2007, T. 5504 – 5505; P637, Expert report Ewa Tabeau, pp 56 - 57. *See also* Sanjin Hasanefendić, 16 Feb 2007, T. 2296; W-12, 2 Mar 2007, T. 3074 – 3075; Rupert Smith, 7 Mar 2007, T. 3317 – 3318.

⁶⁹⁷ Martin Bell, 26 Apr 2007, T. 5240.

⁶⁹⁸ Bogdan Vidović, 13 Feb 2007, T. 2060 – 2061; Sanjin Hasanefendić, 16 Feb 2007, T. 2296, 2372; W-12, 2 Mar 2007, T. 3075 – 3076; Mirza Sabljica, 19 Apr 2007, T. 4736; Martin Bell, 26 Apr 2007, T. 5243 – 5244, 5246; David Harland, 15 Jan 2007, T. 327 – 330; P15, UNPROFOR sitrep, dated 3 June 1995, pp 2, 3. *See also* Rupert Smith, 7 Mar 2007, T. 3316 – 3318; John Jordan, P267, p. 10.

⁶⁹⁹ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703; Hussain Ijaz, 27 Apr 2007, T. 5416; Ziba Šubo, P280, p. 2.

⁷⁰⁰ John Jordan, 21 Feb 2007, T. 2632. *See also* Sanela Dedović, 29 Jan 2007, T. 1176 – 1177.

⁷⁰¹ David Fraser, 8 Feb 2007, T. 1871; P202, UNPROFOR report on anti-sniping measures, 25 June 1994, pp 1 - 2; P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, 15 September 1994, pp 4 - 5.

⁷⁰² P19, UNPROFOR sitrep, 2 July 1995, p. 3.

⁷⁰³ Berko Zečević, 20 Apr 2007, T. 4818 – 4819.

⁷⁰⁴ Thorbjorn Overgard, 18 Jan 2007, T. 636; Ronald Eimers, 20 Apr 2007, T. 4799; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1007 – 1008.

there was “anything from no firing incidents to a few hundred firing incidents” per day, in comparison to May and June 1995, when there were a few thousand firing incidents in a day.⁷⁰⁵ The level of shelling at the end of June 1995 was so high that the four teams of UNMOs deployed around Sarajevo had to prioritise the incidents they investigated, based on whether or not there were casualties, because they could not investigate them all.⁷⁰⁶ Lt. Com. Knustad recalled that in July and August 1995, there were more than 100 impacts around the city per day.⁷⁰⁷ Gen. Smith stated that during the later part of August 1995, tension around Sarajevo increased and a pattern of random shelling by “the Serbs” of a few rounds a day was established by the end of that month.⁷⁰⁸

2. Sniping and Shelling by the SRK

198. Evidence was led that civilians and civilian areas in Sarajevo were sniped and shelled by the SRK.⁷⁰⁹ According to Brig. Gen. Fraser, the Bosnian Serbs controlled “all the movement and situation inside the city, including the psychological aspects of the city” and they used all means available to them to retain that control through sniping and shelling.⁷¹⁰ Kemal Bućo testified “[w]e were cannon fodder. We were just clay pigeons for them to fire at. And they fired at will.”⁷¹¹ Martin Bell, who has reported from 100 countries and 15 war zones, including the Vietnam War, the Gulf War and Croatia, testified that “of all of the conflicts I have reported, I would say there was the least distinction between soldiers and civilians when it came to targeting.”⁷¹² In response to questions by the Trial Chamber, he testified that he had never previously seen the targeting of civilians on the scale that existed during the conflict in Sarajevo and termed it “the second war”.⁷¹³

199. The Trial Chamber notes the Defence submission that the “combat zones, as well as the confrontation lines and everything in the vicinity of the confrontation line, were legitimate military targets.”⁷¹⁴ A number of witnesses, who were SRK soldiers during the Indictment period, testified

⁷⁰⁵ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 940.

⁷⁰⁶ Thomas Knustad, 13 Feb 2007, T. 1992 – 1993; Asam Butt, 15 Feb 2007, T. 2192 – 2193.

⁷⁰⁷ Thomas Knustad, 13 Feb 2007, T. 1992 – 1993. *See also* Bogdan Vidović, 13 Feb 2007, T. 2066, recalled conducting six to seven on-site investigations into shelling per day in July and August 1995.

⁷⁰⁸ Rupert Smith, P334, p. 22.

⁷⁰⁹ David Harland, 16 Jan 2007, T. 451 – 452; Thorbjorn Overgard, 18 Jan 2007, T. 635 – 636; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 965 – 966; W-118, 6 Feb 2007, T. 1637; David Fraser, 7 Feb 2007, T. 1770 – 1771; Rupert Smith, 7 Mar 2007, T. 3310 – 3311; Vahid Karavelić, 27 Mar 2007, T. 4086; Martin Bell, 27 Apr 2007, T. 5288; Milan Pejic, 21 June 2007, T. 7044 – 7045; Louis Fortin, P27, p. 7; Kemal Bućo, P158, p. 2; Ronald Eimers, P585, pp 5 - 7; P20, UNPROFOR sitrep, 8 Jul 1995, p. 2; P232, Photograph marked by Sanjin Hasanefendić. *See also infra*, Sections II.E.3 Sniping during the Indictment Period, II.E.4. Sniping Incidents Representative of the “Campaign” and II.E.6. Shelling Incidents Representative of the “Campaign”.

⁷¹⁰ David Fraser, 8 Feb 2007, T. 1825.

⁷¹¹ Kemal Bućo, 2 Feb 2007, T. 1509 – 1510.

⁷¹² Martin Bell, 26 Apr 2007, T. 5236, 5238 – 5239.

⁷¹³ Martin Bell, 27 Apr 2007, T. 5286 – 5287, 5288 – 5289.

⁷¹⁴ Defence Final Brief, para. 38.

that they did not fire on civilians and were ordered not to do so.⁷¹⁵ In addition, there is some evidence indicating that when there were casualties caused by sniping or shelling on ABiH-controlled territory, it was assumed that the firing had come from SRK-held territory.⁷¹⁶

200. Throughout the war, the BiH police continued to investigate crimes, such as burglary or homicide that were not necessarily related to the war.⁷¹⁷ However, the police officers who came to testify before the Trial Chamber gave evidence that in 1994 and 1995 their work predominantly concerned investigation of incidents of sniping or shelling.⁷¹⁸ The experience was comparable to that of the police in other parts of Sarajevo, who received calls for assistance from all over Sarajevo, at any time of the day or the night and all year round.⁷¹⁹ A spreadsheet prepared by the Prosecution and presented to the Trial Chamber through a police officer, showed that between 30 August 1994 and 9 November 1995, there were 214 sniping and shelling incidents investigated by the BiH police.⁷²⁰

201. Several witnesses, police officers and UN personnel, testified about their investigations of sniping and shelling during the Indictment period. W-116 stated that from 1993 until the end of the conflict, 99 per cent of his work concerned crimes against civilians and that a large percentage of the cases involving civilian deaths by sniping and shelling were committed by “the military”.⁷²¹ Sanjin Hasanefendić, a forensic officer with the BiH police, attended approximately 200 scenes of shelling and 50 scenes of sniping from August 1994 to November 1995, while several others could not be attended due to ongoing sniper fire.⁷²² Lt. Col. Konings was involved in the investigations of at least 100 sniping and shelling incidents, 40 or 50 of which involved civilian casualties.⁷²³ Maj. Overgard estimated, in relation to the investigations he carried out in Hrasnica, that 30 to 40 civilians were killed as a result of shelling and sniping.⁷²⁴

⁷¹⁵ Stevan Veljović, 30 May 2007, T. 5851; Siniša Krsman, 6 Jun 2007, T. 6296 – 6297; Luka Jović, 14 Jun 2007, T. 6706 – 6708, 18 Jun 2007, T. 6727 – 6728; T-39, 21 Jun 2007, T. 7014; T-48, 22 June 2007, T. 7177, 7179 – 7181; Radomir Visnjić, 26 Jun 2007, T. 7294; T-52, 28 Jun 2007, T. 7472 – 7476; Milan Mandić, 4 Jul 2007, T. 7611; Vljako Bozić, 17 Jul 2007, T. 8483 – 8484, 8477 – 8479; Borislav Kovačević, 10 Jul 2007, T. 7912 – 7913, 7918 – 7919, 7949 – 7950, 7954; T-15, 13 Jul 2007, T. 8332 – 8334; Nedeljko Učur, 26 Jul 2007, T. 8912, 8923 – 8926, 8931; Stjepan Djukic, 3 Jul 2007, T. 7537 – 7538.

⁷¹⁶ David Harland, 16 Jan 2007, T. 406; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 729 – 730.

⁷¹⁷ W-138, 1 Feb 2007, T. 1401 – 1402; Sanjin Hasanefendić, 16 Feb 2007, T. 2291 – 2292.

⁷¹⁸ Bogdan Vidović, 13 Feb 2007, T. 2066; W-116, 17 Apr 2007, T. 4616; Vekaz Turković, 25 Apr 2007, T. 5180.

⁷¹⁹ Vekaz Turković, 25 Apr 2007, T. 5180, 5212 – 5213.

⁷²⁰ P602, Spreadsheet showing law enforcement reports from Sarajevo. The Trial Chamber notes that the spreadsheet lists 215 incidents. One incident is listed twice (no. 28).

⁷²¹ W-116, P549, p. 2 (under seal).

⁷²² Sanjin Hasanefendić, 16 Feb 2007, T. 2292, 2295 – 2296. *See also* Mirza Sabljica, 19 Apr 2007, T. 4696; W-138, 30 Jan 2007, T. 1206.

⁷²³ Harry Konings, 12 Mar 2007, T. 3554 – 3555.

⁷²⁴ Thorbjorn Overgard, 18 Jan 2007, T. 652.

202. Bogdan Vidović, a forensic officer with the BiH police, testified that it was not determined in any of the investigations of sniping and shelling that the origin of fire was the ABiH.⁷²⁵ Sanjin Hasanefendić and W-28 said that they never investigated a case in which it turned out that the victim was killed as a result of being involved in military activity or where the incident took place in the course of a combat operation.⁷²⁶

203. In addition, John Jordan testified that most of the fire against the GOFRS volunteers came from the SRK and usually from high ground or a building.⁷²⁷ In determining the side responsible for firing at them, John Jordan and the GOFRS volunteers took into account their knowledge of who controlled particular buildings and what threat those occupied buildings posed to their operations on a daily basis.⁷²⁸ He also stated that he was told that throughout the war, local fire fighters were informed by former colleagues “on the Serb side” that there would be shooting along certain routes, enabling them to avoid those areas when getting to a fire.⁷²⁹

3. Sniping during the Indictment Period

204. Both armies had snipers.⁷³⁰ According to Brig. Gen. Fraser, the Bosnian Serb snipers were very skilled.⁷³¹ For example, after arriving at their positions, Bosnian Serb snipers fired at a telephone pole to indicate that they were there, fired a couple of shots to check windage and distance and “to set themselves up for the day’s activities”, and, at the end of the day, they sometimes shot at one of the UN vehicles “to announce” that they were leaving.⁷³²

205. There is evidence that not all the sniping of civilians was intentional. For example, while some civilians were intentionally targeted, others were killed by stray bullets during an exchange of fire between the opposing forces, particularly due to the proximity of the confrontation lines to civilian areas.⁷³³ Brig. Gen. Fraser testified that ricochets were very possible.⁷³⁴ However,

⁷²⁵ Bogdan Vidović, 13 Feb 2007, T. 2065 – 2066; *See also* Sanjin Hasanefendić, 16 Feb 2007, T. 2296 – 2297; John Jordan, 21 Feb 2007, T. 2636 – 2637, 2640.

⁷²⁶ Sanjin Hasanefendić, 16 Feb 2007, T. 2296; W-28, 22 Feb 2007, T. 2723.

⁷²⁷ John Jordan, 21 Feb 2007, T. 2636, P267, p. 6.

⁷²⁸ John Jordan, 21 Feb 2007, T. 2640 – 2641.

⁷²⁹ John Jordan, P267, p. 5.

⁷³⁰ David Harland, 16 Jan 2007, T. 407, 459; David Fraser, 7 Feb 2007, T. 1762; Ismet Hadžić, 6 Mar 2007, T. 3228 – 3232, 3284; Martin Bell, 27 Apr 2007, T. 5288; Stevan Veljović, 30 May 2007, T. 5835; T-2, 20 Jun 2007, T. 6920, 6922, 6936; John Jordan, P267, p. 8; Vahid Karavelić, P493, p. 8, P494, GT. 11950 – 11953; P6, UNPROFOR cable on violation of Anti-sniping Agreement, 12 September 1994; P680, Order to prepare for training in 1995, dated 5 January 1995; P684, Order on assigning and dispatching sniper instructors, dated 19 January 1995; P688, Order by the SRK Commander to train SRK units, dated 29 January 1995, p. 1; P763, Request for equipment and snipers for Rajlovac Brigade, 25 June 1992; P206, Anti-Sniping Agreement, 14 August 1994. *Cf.* Siniša Krsman 6 June 2007, T. 6288 – 6291, 6293; Vlajko Božić, 17 July 2007, T. 8404 – 8405, 8446 – 8447; Milan Mandić, 4 July 2007, T. 7594, 7595; Dženana Sokolović, 22 Jan 2007, T. 808 – 809. *See also supra*, paras 69, 77.

⁷³¹ David Fraser, 7 Feb 2007, T. 1789. *See also* W-156, P625, p. 34 (under seal).

⁷³² David Fraser, 7 Feb 2007, T. 1789.

⁷³³ Mirza Sabljica, 19 Apr 2007, T. 4756, 4758; W-138, 1 Feb 2007, T. 1413 – 1414.

Maj. Gen. Nicolai testified that while it was difficult to determine whether the targeting of civilians was deliberate in all cases, “considering the quality of the Bosnian Serb forces, when that happened, it was deliberate.”⁷³⁵

(a) Sniping by the SRK

206. The Trial Chamber heard evidence that civilians inside the confrontation lines were killed or injured as a result of sniping from SRK-held territory.⁷³⁶

207. Lt. Van der Weijden testified that a shooter would be able to distinguish between a combatant and a non-combatant.⁷³⁷ He cited a number of factors that would enable a sniper to make such a distinction: in the case of a child, the comparative height between the adult and the child; the difference in the type of movement of an individual, for example, a combatant would not carry a bundle of wood out in the open but would, instead, move quickly between positions and make use of the cover around him; colour of clothing, hairstyles, accessories; the absence of weapons.⁷³⁸ In sum, he testified that, “[i]t’s just the little things that add up to making conclusions.”⁷³⁹ He further testified that some of the sniping incidents he reported on involved longer distances, for example, between 600 to 800 metres in cloudy conditions, over which it is very difficult to distinguish between a civilian or non-combatant and a combatant.⁷⁴⁰ However, under the rules of engagement, one is only allowed to fire a shot after positive identification of the target and until that has been done, the sniper should withhold his fire.⁷⁴¹

208. Snipers targeted places where civilians gathered, including, for example, markets, trams and where people queued for food and water.⁷⁴² Sometimes snipers would shoot at the water containers people were carrying.⁷⁴³ Witnesses recalled going to collect water late at night or very early in the morning to avoid sniping.⁷⁴⁴

⁷³⁴ David Fraser, 8 Feb 2007, T. 1866, 1875 – 1876.

⁷³⁵ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 962.

⁷³⁶ Bakir Nakaš, 25 Jan 2007, T. 1071; Thorbjorn Overgard, 18 Jan 2007, T. 648 – 649. Ismet Hadžić, 6 Mar 2007, T. 3222; Milan Mandić, 4 Jul 2007, T. 7609; Sanela Dedović, P110, p. 2; W-95, P520, p. 2 (under seal); Nefa Šljivo, P531, p. 2. *See also infra*, Section II.E.3. Sniping during the Indictment Period, II.E.4. Sniping Incidents Representative of the “Campaign”.

⁷³⁷ Patrick van der Weijden, 29 Mar 2007, T. 4278 – 4280.

⁷³⁸ Patrick van der Weijden, 29 Mar 2007, T. 4278 – 4280.

⁷³⁹ Patrick van der Weijden, 29 Mar 2007, T. 4280.

⁷⁴⁰ Patrick van der Weijden, 29 Mar 2007, T. 4286 – 4287.

⁷⁴¹ Patrick van der Weijden, 29 Mar 2007, T. 4286 – 4287.

⁷⁴² Azra Šišić, 27 Feb 2007, T. 2830 – 2832; David Harland, P1, MT. 26956; Rialda Musaeferić, P295, p. 4; Alija Holjan, P526, pp 2 - 3; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

⁷⁴³ Rialda Musaeferić, P295, p. 4.

⁷⁴⁴ Azra Šišić, 27 Feb 2007, T. 2831; Rialda Musaeferić, P295, p. 4.

209. Rialda Musaefendić recalled that two drivers were killed trying to deliver bread.⁷⁴⁵ On one occasion, she saw that the bread had bullets in it as a result of the truck being fired on by Bosnian Serbs.⁷⁴⁶ Shots were fired at work parties and people carrying out repairs on tram tracks or power lines.⁷⁴⁷ In order not to get hit by sniper fire, people drove at high speed, and this sometimes resulted in car accidents.⁷⁴⁸ W-138 testified: “People were being killed by snipers while they were running across streets. I myself had to run away from snipers when I tried to cross the street because people in civilian clothes crossing the streets were particularly targeted by snipers.”⁷⁴⁹

210. The level of sniping meant that it was not possible for emergency vehicles to respond to emergency calls; in general, people were taken to the hospital by others who were at the scene of the sniping or shelling.⁷⁵⁰ John Jordan testified that the GOFRS volunteers would respond to the casualties, particularly if the victim was wounded and in an exposed position, because GOFRS had an armoured ambulance.⁷⁵¹

211. Although Bogdan Vidović testified that it was hard to single out a particular neighbourhood in Sarajevo that was more susceptible to sniping than another, other witnesses identified specific areas that were known to be used by snipers and to be particularly dangerous for civilians.⁷⁵² Dangerous places were marked with warning signs, which read, “Sniper fire: Watch out, don’t go there.”⁷⁵³ Generally, these areas were short distances from the confrontation lines.⁷⁵⁴ According to Ismet Hadžić, year after year, snipers would shoot from one location for a day or two, following which it would be quiet for 15 to 20 days before the spot was “reactivated” for a couple more days.⁷⁵⁵ He explained that all these “hot spots” were on Bosnian Serb-held territory.⁷⁵⁶

212. On the question of SRK snipers, Maj. Veljović said “if we had any snipers, we probably did have, they could only be deployed on our positions to target enemy soldiers and we were not within the range of the city. Our snipers were not within the range of the city. [...]”⁷⁵⁷

⁷⁴⁵ Rialda Musaefendić, P295, p. 4.

⁷⁴⁶ Rialda Musaefendić, P295, p. 5.

⁷⁴⁷ Avdo Vatrić, P647, pp 7, 12.

⁷⁴⁸ John Jordan, P267, pp 5 - 6.

⁷⁴⁹ W-138, 1 Feb 2007, T. 1414.

⁷⁵⁰ W-62, 23 Jan 2007, T. 888; John Jordan, P267, p. 4; P613, Videoclip of sniping on Zmaja od Bosne; P622, Videoclip of events in Sarajevo; P623, Videoclip of events in Sarajevo. *See also infra*, Section II.E.4. Sniping Incidents Representative of the “Campaign”.

⁷⁵¹ John Jordan, 21 Feb 2007, T. 2662.

⁷⁵² Bogdan Vidović, 13 Feb 2007, T. 2063. *See also*, W-62, 24 Jan 2007, T. 925 – 926; W-138, 1 Feb 2007, T. 1405 – 1406; Nefa Šljivo, P531, p. 2; Fikreta Pačarić, P643, p. 9; Avdo Vatrić, P647, p. 7.

⁷⁵³ W-138, 1 Feb 2007, T. 1405 – 1406; W-118, P175, p. 3 (under seal).

⁷⁵⁴ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 965 – 966; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706.

⁷⁵⁵ Ismet Hadžić, 6 Mar 2007, T. 3222.

⁷⁵⁶ Ismet Hadžić, 6 Mar 2007, T. 3220 – 3222.

⁷⁵⁷ Stevan Veljović, 30 May 2007, T. 5835.

213. In light of the evidence outlined in this section, the Trial Chamber does not accept Maj. Veljović's testimony that the SRK did not use snipers to target the city.

(i) Public Transport

214. Trams and people on trams were targeted.⁷⁵⁸ On days that they worked, trams were the primary means of transportation.⁷⁵⁹ Furthermore, trams were hugely symbolic for people in Sarajevo.⁷⁶⁰ According to Brig. Gen. Fraser:

“trams were a favourite target of snipers inside of Sarajevo because of the psychological impact it had on the people of Sarajevo. The people looked to the tram, and if it was running, things were reasonably good; if it was stopped, it meant that the situation was grave and that sent shudders throughout the city. So shooting at a tram had a significant psychological impact on the city.”⁷⁶¹

215. According to Avdo Vatrić, the sniping of trams was a “common occurrence”; the tram company, GRAS, tried to protect the tram drivers by putting steel plate on the area in which they sat.⁷⁶² Slavica Livnjak stated that, as a tram driver, she was exposed to dangerous situations all the time.⁷⁶³

216. In addition to being a target of sniper fire, trams were also targeted by shelling, forcing trams to the depot, which was also shelled “on many occasions”, destroying several trams.⁷⁶⁴ It had to be determined on a daily basis whether it was safe to operate trams that day.⁷⁶⁵ According to witnesses, the Bosnian Muslim authorities decided whether the trams would run.⁷⁶⁶

217. Trams were vulnerable on the street Zmaja od Bosne, the so-called ‘Sniper Alley’, especially in the area between the Museum and the Holiday Inn where the tram tracks bend, making an S-curve.⁷⁶⁷ Slavica Livnjak remembered bending her head every time she drove past Holiday Inn.⁷⁶⁸ Trams were also particularly vulnerable in the areas of the Marshal Tito Barracks, Pofalići

⁷⁵⁸ Milan Mandilović, 18 Jan 2007, T. 600; Mirza Sabljica, 19 Apr 2007, T. 4733 – 4734; Martin Bell, 26 Apr 2007, T. 5249; Slavica Livnjak, P95, p. 2; W-118, P175, p. 2 (under seal); Alija Holjan, P526, p. 2; Avdo Vatrić, P647, pp 8, 13; P10, UNPROFOR weekly sitrep, dated 10 December 1994, p. 7; P614, Videoclip of sniping of tram.

⁷⁵⁹ Slavica Livnjak, 23 Jan 2007, T. 875 – 876; Avdo Vatrić, P647, p. 8; David Fraser, 8 Feb 2007, T. 1879 – 1880.

⁷⁶⁰ Martin Bell, 26 Apr 2007, T. 5249.

⁷⁶¹ David Fraser, 7 Feb 2007, T. 1793.

⁷⁶² Avdo Vatrić, P647, p. 8. *See also* Mirza Sabljica, 19 Apr 2007, T. 4733 – 4734.

⁷⁶³ Slavica Livnjak, P95, p. 2.

⁷⁶⁴ W-54, 6 Feb 2007, T. 1692 – 1693. *See also* Avdo Vatrić, P647, pp 7 - 8, 12.

⁷⁶⁵ W-118, 6 Feb 2007, T. 1635, 1638 – 1639, P175, p. 2 (under seal); Slavica Livnjak, P95, p. 2. *See also* P11, Report on implementation of COHA, 29 March 1995, p. 1.

⁷⁶⁶ David Fraser, 8 Feb 2007, T. 1880; W-118, 6 Feb 2007, T. 1624 – 1625.

⁷⁶⁷ Slavica Livnjak, 23 Jan 2007, T. 870, P94, p. 2, P95, p. 2; W-91, 15 Mar 2007, T. 3800 – 3801; Martin Bell, 26 Apr 2007, T. 5249; Džemaludin Luinović, P298, p. 2; Avdo Vatrić, P647, p. 12; P583, Photograph marked by Mirza Sabljica; *See also infra*, Section II.E.4(b)(i) Sniping of Targets on Zmaja od Bosne.

⁷⁶⁸ Slavica Livnjak, P95, p. 3.

and close to the Bristol Hotel.⁷⁶⁹ Witnesses said that the trams were fired upon by the SRK from Grbavica.⁷⁷⁰ Brig. Gen. Fraser expressed the view that rather than aiming generally at a moving tram, snipers would probably try to pick out a target inside that tram, since a sniper with the skill of a Bosnian Serb sniper looking onto Zmaja od Bosne would be unlikely to hit a tram by a mistake.⁷⁷¹

218. A number of witnesses expressed their view that trams are not military targets. Avdo Vatrić stated that, to the best of his knowledge, the ABiH never allowed the movement of troops or equipment using a GRAS tram or bus.⁷⁷²

219. Lt. Van der Weijden noted in his expert report that a tram is a means of public transport for civilians.⁷⁷³ Lt. Van der Weijden testified that a tram is not well-suited for military use or transportation of military personnel because it is a relatively slow-moving vehicle, it is not able to deviate from the tracks, it is often brightly coloured, has lots of windows and is not armoured.⁷⁷⁴ There was no reason to identify a tram as a threat, or its passengers as combatants.⁷⁷⁵ He also said that it would be “very possible” for a sniper in Grbavica to know that he was shooting at a tram on Zmaja od Bosne, as distinct from a military vehicle.⁷⁷⁶ This was confirmed by Col. Stamenov, who testified that from a distance of 312 metres, it is not possible to mistake a tram for any kind of legitimate military target, “if the tram is clearly visible”.⁷⁷⁷ Lt. Van der Weijden also stated that as previous incidents with civilian victims where trams had been fired upon were widely reported in the media, it must have been known to snipers that only civilians used the trams.⁷⁷⁸

220. In addition to sniping, the operation of trams was impeded by the irregular power supply. According to Avdo Vatrić, turning off the power supply is the simplest and fastest way to disable a tram network.⁷⁷⁹ The Bosnian Serbs controlled Reljevo transformer station and, as such, in 1994 and 1995, they could stop the operation of the trams if they chose to, which, according to Avdo

⁷⁶⁹ Slavica Livnjak, 23 Jan 2007, T. 870 – 871, P95, p. 2; Kemal Bućo, P158, p. 2; D22, Map marked by Slavica Livnjak showing dangerous areas for trams along Sniper alley (“Map marked by Slavica Livnjak”).

⁷⁷⁰ Bogdan Vidović, 13 Feb 2007, T. 2065; Slavica Livnjak, P95, p. 3; Sabina Šabanić, P153, p. 2; Kemal Bućo, P158, p. 2. *See also*, Section II.E.4(b)(i) Sniping of Targets on Zmaja od Bosne.

⁷⁷¹ David Fraser, 7 Feb 2007, T. 1793, 1795.

⁷⁷² Avdo Vatrić, P647, p. 8.

⁷⁷³ P514, Expert report Patrick van der Weijden, p. 38.

⁷⁷⁴ Patrick van der Weijden, 29 Mar 2007, T. 4284 – 4285; P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

⁷⁷⁵ P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

⁷⁷⁶ Patrick van der Weijden, 29 Mar 2007, T. 4285.

⁷⁷⁷ Ivan Stamenov, 22 Aug 2007, T. 9078.

⁷⁷⁸ P514, Expert report Patrick van der Weijden, pp 21, 27, 30, 34, 38.

⁷⁷⁹ Avdo Vatrić, P647, p. 6.

Vatrić, they “often” did.⁷⁸⁰ Avdo Vatrić said that “it seemed as though the Serbs would allow [the trams] to start operating just so that they could shoot at the passengers on the trams.”⁷⁸¹

221. Buses were also subject to sniping as well as shelling.⁷⁸² In 1995, a bus line was established in Dobrinja to “do away with the fear of the siege.”⁷⁸³ Buses operated to take people who were under work obligation, that is, obligatory civilian engagement for the war effort, to their place of work.⁷⁸⁴ Those that remained road-worthy ran throughout cease-fires.⁷⁸⁵ Buses did not drive along the same routes as those taken by the trams.⁷⁸⁶

222. With respect to all incidents of sniping of trams, the Defence argued that the evidence shows that the trams were running just behind the confrontation lines and through an area where there was almost constant fighting going on.⁷⁸⁷ The Defence also submitted that the “Bosnian authorities preferred to have the trams used” despite the existence of a street further away from the confrontation line, along which buses could have operated safely.⁷⁸⁸

223. The Trial Chamber finds that the evidence does not support these submissions. On the contrary, the evidence shows that trams did not run during periods when there was combat activity and that trams were told to return to the depot if combat activity began. The Trial Chamber also notes that the bus line that was established to carry people on an alternative route to ‘Sniper Alley’ also came under fire.

224. Further, on the basis of the evidence, the Trial Chamber is satisfied that the trams targeted in the city of Sarajevo had civilian status. In this regard, the Trial Chamber notes that all evidence shows that a tram is not suitable for military use. Furthermore, it was a well-known fact among people living in Sarajevo that civilians used the trams. This was also made clear from media reports during the relevant time period. The fact that one or two soldiers were travelling on a tram which was targeted by sniper fire does not change its civilian status.

⁷⁸⁰ Avdo Vatrić, P647, pp 6, 7, 12.

⁷⁸¹ Avdo Vatrić, P647, p. 8.

⁷⁸² Slavica Livnjak, 23 Jan 2007, T. 875 – 876; W-35, 23 Jan 2007, T. 840 – 841; W-138, 31 Jan 2007, T. 1325 – 1326; Ismet Hadžić, 6 Mar 2007, T. 3237.

⁷⁸³ Ismet Hadžić, 6 Mar 2007, T. 3237.

⁷⁸⁴ Milomir Šoja, 24 Apr 2007, T. 5113; Slavica Livnjak, 23 Jan 2007, T. 876.

⁷⁸⁵ W-35, 23 Jan 2007, T. 840 – 841.

⁷⁸⁶ Slavica Livnjak, 23 Jan 2007, T. 875.

⁷⁸⁷ Defence Final Brief, para. 179.

⁷⁸⁸ Defence Final Brief, paras 88, 101.

(ii) Marindvor and Zmaja od Bosne

225. Milan Mandilović testified that there was an excellent view of Marindvor from the Jewish Cemetery and that the distance the snipers had to shoot from the Jewish Cemetery and Grbavica to Marindvor was short.⁷⁸⁹ Marindvor was a dangerous place because it was in the open, causing people to run across the street and it was a matter of luck whether they were hit or not.⁷⁹⁰

226. The most infamous place for sniping was the street Zmaja od Bosne, which ran along the city's east-west axis; it was under constant sniper fire.⁷⁹¹ According to an UNPROFOR report, in early July 1995, “[d]espite the reduction in military activity around the city, the harassment [by sniping and shelling] of the civilian population continues almost unabated. [...] Almost no civilians now use the city's main east-west thoroughfare (‘Sniper Alley’) – so much so that snipers who used to work that area now seem to have relocated [...]”⁷⁹²

227. The area of Zmaja od Bosne around the Museum and the Holiday Inn was particularly vulnerable.⁷⁹³ In the experience of Martin Bell, most of the sniping incidents happened in the area in front of the Holiday Inn and about 400 to 500 metres to the East in what became known as “Snipers’ Corner”.⁷⁹⁴ Martin Bell expressed the view that ‘Sniper Alley’ and areas around the Museum and the Holiday Inn were especially vulnerable because people mostly lived on the west side of the city but went to jobs in the centre.⁷⁹⁵

228. There were a number of buildings in the vicinity of Zmaja od Bosne, principally on the south bank of the Miljacka River in SRK-held territory, where snipers could get into good positions.⁷⁹⁶ Witnesses testified that the source of the sniper fire along ‘Sniper Alley’ was Grbavica in SRK-held territory; the Metalka Building and the “sky-scrapers”, high-rise buildings in Grbavica, were well-known SRK sniper positions.⁷⁹⁷ The “sky-scrapers” were located on Lenjinova Street,

⁷⁸⁹ Milan Mandilović, 17 Jan 2007, T. 565 – 566. *See also*, Avdo Vatrić, P647, p. 12.

⁷⁹⁰ W-118, P175, p. 3 (under seal).

⁷⁹¹ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; David Fraser, 8 Feb 2007, T. 1879; Bogdan Vidović, 13 Feb 2007, T. 2063; Sabina Šabanić, 2 Feb 2007, T. 1474 – 1475; Asam Butt, 14 Feb 2007, T. 2161 – 2162; Sanjin Hasanefendić, 16 Feb 2007, T. 2298, 2304; Martin Bell, 26 Apr 2007, T. 5241; Alma Mulaosmanović, P179, p. 2; Džemaludin Luinović, P298, p. 2; Fikreta Pačariz, P643, p. 9; P9, UNPROFOR daily sitrep, 25 November 1994, p. 5; P195, Map marked by David Fraser; P201, Photograph marked by David Fraser; P609, Video sniping in Sarajevo.

⁷⁹² P20, UNPROFOR sitrep, 8 July 1995, p. 2.

⁷⁹³ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; Asam Butt, 14 Feb 2007, T. 2161 – 2162; Martin Bell, 26 Apr 2007, T. 5241; Slavica Livnjak, P95, p. 2; P9, UNPROFOR daily sitrep, 25 November 1994, p. 5; P760, UNPROFOR sitrep, 10 December 1994, p. 3. *See also supra*, II.E.3(a)(i) Public Transport.

⁷⁹⁴ Martin Bell, 27 Apr 2007, T. 5285.

⁷⁹⁵ Martin Bell, 26 Apr 2007, T. 5241; P609, Videoclip sniping in Sarajevo; Sabina Šabanić, 2 Feb 2007, T. 1474 – 1475.

⁷⁹⁶ David Fraser, 7 Feb 2007, T. 1761 – 1762, 1777 – 1778.

⁷⁹⁷ *See, e.g.*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 706 – 707; W-118, 6 Feb 2007, T. 1622 – 1623, 1636, P174, p. 2 (under seal); Alija Holjan, 4 Apr 2007, T. 4473, P525, p. 2, P526, p. 3; Bogdan Vidović, 13 Feb 2007, T. 2063, 14 Feb 2007, T. 2112; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760 – 4761; Vahid Karavelić, 27 Mar 2007,

directly across the Marshal Tito Barracks.⁷⁹⁸ The Metalka Building was located at the end of Franje Račkog Street, across the Miljacka River, about 300 metres from the Holiday Inn and the Museum.⁷⁹⁹ Rooms in the higher floors of this building offered a direct and clear view of the area between the National Museum and the Faculty of Philosophy.⁸⁰⁰ Milorad Katić suggested that, if there were snipers in the Metalka Building, it would have been possible to fire at trams on ‘Sniper Alley’ from there.⁸⁰¹ The SRK was also positioned in the Invest Bank Building and their snipers could fire from the top of this building onto Zmaja od Bosne.⁸⁰²

229. Milorad Katić distinguished between shooting and sniping and rejected the proposition that there were snipers positioned in Grbavica.⁸⁰³ He testified that while he saw men with rifles going in and out of the Metalka Building, the rifles did not have telescopic sights.⁸⁰⁴ However, he also agreed that there were men with rifles positioned on the upper floors of the Metalka Building and the Invest Bank Building, and that the two streets that ran parallel to each other from these buildings, could form a “funnel” through which one could hit targets on Zmaja od Bosne.⁸⁰⁵ He further agreed that “a human being could be effectively engaged from those buildings on the VRS side of the river to Marindvor with or without a telescopic sight.”⁸⁰⁶

T. 4088, 4090; Huso Palo, 5 Feb 2007, T. 1535, 1547, P162, p. 2; W-35, 22 Jan 2007, T. 824; P92, p. 3 (under seal); Dženana Sokolović, 22 Jan 2007, T. 787, 807 – 808; Milorad Katić, 5 June 2007, T. 6157; David Harland, P1, MT, 26962; Kemal Bučo, P158, p. 2; Fikreta Pačarić, P643, p. 9; Avdo Vatrić, P647, p. 12; D20, Photograph marked by W-35; P161, Official note, p. 2; P176, Map marked by W-118; P181, Photograph marked by Alma Mulaosmanović; P201, Photograph marked by David Fraser; D215, Map marked by Vaso Elez; P515, Photograph marked by Patrick van der Weijden; P754, Photograph marked by Milorad Katić; P941, Videoclip of sniping incident (under seal). *See also e.g. Sniping of an UNPROFOR soldier from the Metalka Building, 15 April 1995*, Asam Butt, 14 Feb 2007, T. 2161 – 2165, 15 Feb 2007, T. 2167 – 2171, 2190 – 2192, 2246 – 2253; W-46, 15 Mar 2007, T. 3834 – 3836 (closed session); P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; D68, Photograph marked by Asam Butt. Cf. Alen Gičević, 5 Feb 2007, T. 1569.

⁷⁹⁸ P104, Street map of Sarajevo; P157, Photograph marked by Sabina Šabanić; P181, Photograph marked by Alma Mulaosmanović; D215, Map marked by Vaso Elez.

⁷⁹⁹ *See, e.g.*, W-35, 22 January 2007, T. 831, P92, p. 3 (under seal); John Jordan, 21 Feb 2007, T. 2652; P515, Photograph marked by Patrick van der Weijden; P97, Photograph marked by Slavica Livnjak; P166, Photograph marked by Alen Gičević; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P583, Photograph marked by Mirza Sabljica; P754, Photograph marked by Milorad Katić; C14, Photographs taken during site visit, pp 14 - 18, 24 - 29; C3, Photographs taken during site visit, pp 12 - 20.

⁸⁰⁰ Slavica Livnjak, 23 Jan 2007, T. 862; Patrick van der Weijden, 29 Mar 2007, T. 4279, 4283; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; P97, Photograph marked by Slavica Livnjak; P166, Photograph marked by Alen Gičević; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P514, Expert report Patrick van der Weijden, p. 32; P515, Photograph marked by Patrick van der Weijden; P583, Photograph marked by Mirza Sabljica; P754, Photograph marked by Milorad Katić; C3, Photographs taken during site visit, pp 1, 4 - 5, 7 - 11, 13 - 20; C14, Photographs taken during site visit, pp 24 - 29.

⁸⁰¹ Milorad Katić, 4 June 2007, T. 6093; P754, Photograph marked by Milorad Katić.

⁸⁰² Milorad Katić, 4 June 2007, T. 6092 – 6093, 5 June 2007, T. 6157 – 6158; Vaso Elez, 7 June 2007, T. 6375 – 6376, 6378; Radomir Visnjić, 26 June 2007, T. 7286 – 7287; P754, Photograph marked by Milorad Katić; P764, Photograph marked by Vaso Elez; D217, Interim combat report by Fikret Prevljak, 1 July 1995; D220, Photograph marked by Vaso Elez.

⁸⁰³ Milorad Katić, 4 June 2007, T. 6106.

⁸⁰⁴ Milorad Katić, 4 June 2007, T. 6100 – 6101; 6106 – 6107.

⁸⁰⁵ Milorad Katić, 4 June 2007, T. 6106 – 6107. *See also* Patrick van der Weijden, 29 Mar 2007, T. 4282; P515, Photograph marked by Patrick van der Weijden; Vaso Elez, 7 June 2007, T. 6376.

⁸⁰⁶ Milorad Katić, 4 June 2007, T. 6107.

230. A number of witnesses recounted their visits to Bosnian Serb sniper nests in Grbavica.⁸⁰⁷ For example, Brig. Gen. Fraser recounted how, escorted by Bosnian Serbs, he visited a SRK sniper nest in a three- or four-storey red brick building in Grbavica in the spring or summer of 1995.⁸⁰⁸ He saw “spider holes” punched in the wall of the building, from where one could look towards the Bosnian Muslim side of the Miljacka River, which he concluded were good positions for snipers.⁸⁰⁹ On being confronted with the testimony of witnesses who had visited SRK sniper nests in Grbavica, Milorad Katić testified that at the time of his visit, there were “just rank-and-file soldiers of the Republika Srpska army. They were not specials. They were not snipers.”⁸¹⁰

(iii) Other Sniping Locations

231. Other areas that were particularly exposed to sniping were concentrated around intersections and bridges across the Miljacka River.⁸¹¹ For instance, the Butmir Bridge and civilians using the bridge were targeted.⁸¹² Sokolovići, Skenderija, the railway station and the area near Koševo Stadium were also under “constant” sniper fire, as was Dobrinja.⁸¹³

232. There were SRK sniper positions in the hills around Sarajevo.⁸¹⁴ Witnesses testified that people were killed by fire from Špicasta Stijena,⁸¹⁵ Mount Trebević,⁸¹⁶ Vraca,⁸¹⁷ the Jewish Cemetery, and the curve of the Lukavica-Pale road above Skenderija, precisely above Debelo Brdo.⁸¹⁸ Rijalda Musafendić testified that there were Bosnian Serb snipers in the hills above

⁸⁰⁷ Louis Fortin, 16 Jan 2007, T. 490, P27, p. 8; W-46, 16 Mar 2007, T. 3913 (closed session); David Harland, P1, MT. 26963.

⁸⁰⁸ David Fraser, 7 Feb 2007, T. 1776; P201, Photograph marked by David Fraser.

⁸⁰⁹ David Fraser, 7 Feb 2007, T. 1777 – 1778.

⁸¹⁰ Milorad Katić, 4 June 2007, T. 6105

⁸¹¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2297, 2304; Ismet Hadžić, 6 Mar 2007, T. 3220 – 3222; Harry Konings, 13 Mar 2007, T. 3554 – 3555; Alen Gičević, P164, p. 2; Alma Mulaosmanović, P179, p. 2; Azem Agović, P211, p. 1; Džemaludin Luinović, P298, p. 2; P232, Photograph marked by Sanjin Hasanefendić.

⁸¹² Thorbjorn Overgard, 18 Jan 2007, T. 651 – 652; P203, UNPROFOR report on incidents of 6 and 7 September 1994, dated 14 September 1994 (“UNPROFOR report, 14 September 1994”); Ronald Eimers, P585, p. 9.

⁸¹³ Ismet Alić, P640, p. 8; Avdo Vatrić, P647, p. 12; W-82, P228, p. 2; Harry Konings, 13 Mar 2007, T. 3604; Sanela Dedović, P110, p. 2; Nedžib Đozo, 14 Mar 2007, T. 3695 – 3696; Azra Šišić, 27 Feb 2007, T. 2861; Enes Jašarević, 1 Mar 2007, 3020 – 3021; P304, Map marked by Enes Jašarević.

⁸¹⁴ Patrick van der Weijden, 29 Mar 2007, T. 4295; Stevan Veljović, 30 May 2007, T. 5851–5852; Derviša Selmanović, P170, p. 3; W-95, P520, p. 2 (under seal). *See also* Rijalda Musafendić, 28 Feb 2007, T. 2932 – 2933.

⁸¹⁵ Tarik Zunić, 7 Feb 2007, T. 1728, P185, p. 2; David Fraser, 7 Feb 2007, T. 1773 – 1774; Harry Konings, 13 Mar 2007, T. 3604; Nedžib Đozo, 14 Mar 2007, T. 3694 – 3696, P363, p. 2; Vahid Karavelić, 27 Mar 2007, T. 4088; Derviša Selmanović, P170, p. 3; Siniša Krsman, 6 June 2007, T. 6294 – 6295.

⁸¹⁶ W-12, 1 Mar 2007, T. 3042, 2 Mar 2007, T. 3065, 3068 – 3069, P307, p. 2 (under seal); Stevan Veljović, 24 May 2007, T. 5724 – 5727; Predrag Trapara, 27 June 2007, T. 7373 – 7374; Derviša Selmanović, P170, p.3; Azem Agović, P211, p. 1; Nedžib Đozo, P363, p. 2; P104, Street map of Sarajevo; P910, Video of sniping position in Mount Trebević.

⁸¹⁷ Alma Mulaosmanović, 6 Feb 2007, T. 1673 – 1674.

⁸¹⁸ Vahid Karavelić, 27 Mar 2007, T. 4088 – 4089; Mirza Sabljica, 19 Apr 2007, T. 4744; Milan Mandić, 4 July 2007, T. 7595. The Trial Chamber recalls that evidence indicating that both the Jewish cemetery and Debelo Brdo were held by both the VRS and the ABiH. *See supra* Section II.B.3. Areas of Responsibility and Confrontation Lines -SRK and 1st Corps of the ABiH.

Hrasno and in the Grbavica Stadium.⁸¹⁹ Many witnesses testified that Špicasta Stijena and the Jewish Cemetery were very active sniping positions used by the SRK.⁸²⁰ Nedžib Đozo testified that approximately 100 civilians were wounded and killed in Sedrenik by sniper fire from Špicasta Stijena during the conflict.⁸²¹ Martin Bell testified that he visited a number of sniper positions in Bosnian Serb-held territory, most of which were on the “high road to Pale”, including a position at Trebinje to which, in the words of Martin Bell, “Karadžić liked to take us.”⁸²²

233. Nedarići, which was under the control of the Bosnian Serb forces, was also a source of sniper fire.⁸²³ The Trial Chamber heard evidence that shooting came from the School of the Blind, a centre for blind children and children with impaired vision, a two-storey building located in Nedarići.⁸²⁴ The School of the Blind was close to apartment buildings in Vojničko Polje, Alipašino Polje, and Oslobođenja, which were ABiH-held areas.⁸²⁵

(b) Anti-sniping Measures

234. Anti-sniping barriers, in the form of large screens, improvised walls, blankets, transport containers and old trucks, were set up around the city in order to block the view of the snipers and provide people some cover against sniping.⁸²⁶ Bogdan Vidović said that the containers only offered limited protection; sometimes a bullet would pass through a container and hit a person behind it and sometimes the snipers would fire over a container onto the people behind it.⁸²⁷

⁸¹⁹ Rijalda Musaefendić, 28 Feb 2007, T. 2932 – 2934, P295, p. 4. *See also* Mirza Sabljica, 19 Apr 2007, T. 4741–4743; Predrag Carkić, 19 June 2007, T. 6884; P104, Street map of Sarajevo; D197, Map marked by Milorad Katić. *Cf.* Sanjin Hasanefendić, 16 Feb 2007, T. 2301, 2389 – 2390; Slavica Livnjak, 23 Jan 2007, T. 872;

⁸²⁰ *See infra*, Section II.E.4(B)(ii) Sniping of Targets in Sedrenik and paras 132 – 135, 140. *Cf.* Stevan Veljović, 30 May 2007, T. 5865 – 5868, 5875, 5892; P742, Map marked by Stevan Veljović; P743, Photograph marked by Stevan Veljović.

⁸²¹ Nedžib Đozo, 14 Mar 2007, T. 3694 – 3696, 3705. He testified that he could not guarantee that there were exactly 100, but this information could be found in the register, kept for the purpose, at the Stari Grad police station.

⁸²² Martin Bell, 26 Apr 2007, T. 5256 – 5257; P617, Videoclip of interview with Radovan Karadžić.

⁸²³ W-62, 24 Jan 2007, T. 925 – 926; Azra Šišić, 27 Feb 2007, T. 2861; Enes Jašarević, 1 Mar 2007, T. 3004, 3021; Kosta Kosović, 11 July 2007, T. 8010; Avdo Vatrić, P647, p. 12; P304, Map marked by Enes Jašarević. *Cf.* T-52, 28 June 2007, 7471 – 7476. The Trial Chamber notes that the “nursing home” and the Faculty of Theology in Nedarići were also held by the SRK, T-48, 22 June 2007, T. 7147 – 7148, 7158; T-52, 28 June 2007, T. 7443.

⁸²⁴ W-62, 23 Jan 2007, T. 892 – 893, 899 – 900; T-48, 22 June 2007, T. 7147 – 7148; P784, UNMO daily sitrep, dated 12 July 1994, p. 4 (under seal); P785, UNMO daily sitrep, dated 11 July 1994, p. 5; P941, Videoclip of sniping incident (under seal); D278, Map marked by T-52; D279, Photograph marked by T-52; P783, Map marked by T-48. *Cf.* T-52, 28 June 2007, T. 7468, 7493 – 7494. *See infra*, Section II.E.4(b)(iii)a. Sniping of Adnan Kasapović.

⁸²⁵ W-62, 23 Jan 2007, T. 892 – 893, 900; T-48, 22 June 2007, T. 7147 – 7148, 7158 – 7159, 7169–7170; T-52, 28 June 2007, T. 7430 – 7432, 7443, 7458; T-60, 25 July 2007, T. 8815 – 8817, 8843 – 8844; P100, Photograph marked by W-62; P783, Map marked by T-48; D278, Map marked by T-52; D279, Photograph marked by T-52; D352, Photograph marked by T-60 (under seal).

⁸²⁶ Milan Mandilović, 18 Jan 2007, T. 603; Alen Gičević, 5 Feb 2007, T. 1563; Asam Butt, 14 Feb 2007, T. 2161 – 2162, 2165; Sanjin Hasanefendić, 16 Feb 2007, T. 2299, 2300; Azra Šišić, 27 Feb 2007, T. 2832; Nedžib Đozo, 14 Mar 2007, T. 3695 – 3696; Martin Bell, 26 Apr 2007, T. 5242; T-48, 22 June 2007, T. 7167; Milan Mandić, 4 July 2007, T. 7608 – 7609; Sanela Dedović, P110, p. 2; P616, Videoclip of events in Sarajevo.

⁸²⁷ Bogdan Vidović, 13 Feb 2007, T. 2064.

235. The Trial Chamber admitted into evidence video footage, which depicts a moving UNPROFOR APC with people sheltering behind it.⁸²⁸ When shown to Martin Bell, he said:

“I think it’s one of the iconic images of the war. The French were trying to bring confidence to the people and a degree of security down there [...]. They instituted this idea of the slowly moving armoured vehicle with the people sheltering. And I think it conveys probably more than any single sniping incident the daily perils of the people in the city.”⁸²⁹

236. The UNPROFOR Anti-Sniping Task Force was established in response to the “extreme worry and fear” felt by the population as a result of the sniping.⁸³⁰ Its personnel were deployed permanently in APCs in certain locations, including along Zmaja od Bosne and the “Salvation Route”.⁸³¹ Its positioning was in response to reports received from UNPROFOR battalions that showed that almost all of the sniper fire aimed at UNPROFOR or the population of Sarajevo came from snipers who were in the “Serb sector” on the other side of the Miljacka River.⁸³² However, evidence shows that the ABiH also fired upon UNPROFOR.⁸³³ The Anti-Sniping Task Force and other UNPROFOR troops recorded the sniping incidents that took place and undertook self-defence actions.⁸³⁴

(c) Sniping by the ABiH

237. Throughout the trial, the Defence put questions to witnesses concerning the sniping of civilians, including Bosnian Muslims, in Sarajevo by the ABiH.⁸³⁵ In its Closing Brief, the Prosecution submitted that, “[a]ny theories or suppositions that the ABiH sniped or fired at their own people are entirely unsupported by the evidence and purely speculative.”⁸³⁶

238. David Harland testified that the issue of the ABiH sniping Bosnian Muslims was “a very sensitive subject at the time” and was a “common allegation” of “the Serb side”.⁸³⁷ Witnesses spoke of a gap between rumours of ABiH sniping of civilians and factual events; despite the rumours, they

⁸²⁸ Martin Bell, 26 Apr 2007, T. 5247; P612, Videoclip showing events in Sarajevo.

⁸²⁹ Martin Bell, 26 Apr 2007, T. 5247; P612, Videoclip showing events in Sarajevo.

⁸³⁰ W-46, 15 Mar 2007, T. 3815 (closed session). *See also* John Jordan, 21 Feb 2007, T. 2632, 2661 – 2662.

⁸³¹ Alen Gičević, 5 Feb 2007, T. 1563; David Fraser, 7 Feb 2007, T. 1784 – 1785; W-46, 15 Mar 2007, T. 3811 (closed session); Asam Butt, 14 Feb 2007, T. 2161 – 2162; Slavica Livnjak, 23 Jan 2007, T. 877; P34, Map marked by Louis Fortin; P168, Photograph marked by Alen Gičević; P613, Videoclip of sniping on Zmaja od Bosne (The Trial Chamber notes that this footage could be from pre-Indictment period).

⁸³² David Fraser, 7 Feb 2007, T. 1784 – 1785; W-46, 15 Mar 2007, T. 3811 (closed session).

⁸³³ *See, e.g.*, David Harland, 15 Jan 2007, T. 399 – 400, 16 Jan 2007, T. 413 – 414; Louis Fortin, 16 Jan 2007, T. 485, P27, p. 7; Ismet Hadžić, 8 Mar 2007, T. 3446; Predrag Trapara, 27 June 2007, T. 7384; P34, Map marked by Louis Fortin; D7, UNPROFOR daily sitrep, 2 December 1994, p. 7; D113, Letter by Van Baal, dated 15 August 1994; D147, Letter by Gen. Gobilliard, dated 11 November 1994.

⁸³⁴ David Fraser, 7 Feb 2007, T. 1778; W-46, 15 Mar 2007, T. 3811 (closed session); P202, UNPROFOR report on anti-sniping measures, 25 June 1994, p. 2; P203, UNPROFOR report, 14 September 1994, pp 3 - 5.

⁸³⁵ Milorad Katić, 1 June 2007, T. 6040.

⁸³⁶ Prosecution Closing Brief, para. 161.

⁸³⁷ David Harland, 15 Jan 2007, T. 336 – 337.

did not know of such cases.⁸³⁸ According to David Harland, in less than one per cent of the total cases there was serious reason to believe that people on Bosnian Muslim territory were killed by fire originating from ABiH-held territory and “certainly more than 90 per cent of the victims on the Bosnian side, when we could identify where the shots had come from, appeared to have been shot from the Serb side of the confrontation line.”⁸³⁹ Furthermore, David Harland testified that there were “several dozens” of Bosnian Serbs killed within the confrontation lines but that there was no general policy of the ABiH to snipe Bosnian Serbs in Sarajevo.⁸⁴⁰ According to David Harland, most Bosnian Serbs who were killed in Sarajevo were killed by Bosnian Serb fire from outside the confrontation lines, either through sniping or shelling.⁸⁴¹

239. In response to questions by the Defence, Brig. Gen. Fraser testified that “any building” on the Bosnian Muslim side of ‘Sniper Alley’ could have been a sniper position.⁸⁴² He identified the UNIS Buildings and the Assembly Building as ABiH sniper positions, agreeing that they gave a good view of ‘Sniper Alley’ and that they were “possibly” good positions from which to shoot on civilians and trams.⁸⁴³ However, he clarified his statements in the following terms: “By the same token, [...] I only knew of one case where allegedly the Muslims were firing at their own people, and I didn’t hear of anything else along ‘Sniper’s Alley’, of positions that they would be using against that road.”⁸⁴⁴

240. The strip of land north of the Miljacka River, up to the Marshal Tito Barracks and north of the four high-rise buildings, was under ABiH control.⁸⁴⁵ There were trenches from Marindvor to the technical faculty and the electrical utility company.⁸⁴⁶ The Holiday Inn, the Museum, the Parliament, the School for Technology, the UNIS Buildings, the Energoinvest Building and the Marshal Tito Barracks were all prominent features located in Marindvor, and were held by the

⁸³⁸ Asam Butt, 15 Feb 2007, T. 2187 – 2189; Thomas Knustad, 13 Feb 2007, T. 2043; Martin Bell, 26 Apr 2007, T. 5266 – 5267, 27 Apr 2007, T. 5286 – 5287. *See also*, John Jordan, 21 Feb 2007, T. 2646 – 2647.

⁸³⁹ David Harland, 15 Jan 2007, T. 337, 16 Jan 2007, T. 451 – 452; David Fraser, 8 Feb 2007, T. 1877 – 1878; D179, UN report on investigation into sniping incident of 4 September 1994, dated 6 September 1994; D51, UNPROFOR Compte rendu d’incident on 4 September 1994, dated 5 September 1994.

⁸⁴⁰ David Harland, 15 Jan 2007, T. 331 – 332, 395, P2, MT. 28661 – 28662, 28684. *See also*, Ismet Hadžić, 6 Mar 2007, T. 3250.

⁸⁴¹ David Harland, P2, MT. 28661.

⁸⁴² David Fraser, 8 Feb 2007, T. 1869 – 1870, 1778.

⁸⁴³ David Fraser, 8 Feb 2007, T. 1870, 1778; D50, Photograph marked by David Fraser. He agreed that he could not exclude the possibility that other buildings were ABiH sniping positions. In this respect, John Jordan testified that “it would be correct to assume” that the ABiH had sniper positions in the UNIS Towers but he noted that it was a “lousy” sniper position because it was an isolated building with a lot of glass, John Jordan, 21 Feb 2007, T. 2667 – 2669. *See* D79, Photograph marked by John Jordan.

⁸⁴⁴ David Fraser, 8 Feb 2007, T. 1870; W-46, 15 Mar 2007, T. 3815 (closed session).

⁸⁴⁵ Alma Mulaosmanović, 6 Feb 2007, T. 1664 – 1665, 1679 – 1680.

⁸⁴⁶ Radomir Visnjić, 25 June 2007, T. 7254 – 7255.

ABiH.⁸⁴⁷ Vaso Elez testified about other buildings that the ABiH held, such as the School of Economics, the Wood Processing School, the Faculty of Mechanical Engineering, the Unioninvest Building, the National Museum and the railway station, but no apartment buildings.⁸⁴⁸ The Faculty of Natural Sciences and Mathematics and the Faculty of Philosophy were also held by the ABiH.⁸⁴⁹

241. Milorad Katić noted that the former Marshal Tito Barracks, where members of the ABiH were billeted, were located to the West of the Holiday Inn and that troops could be deployed there as needed.⁸⁵⁰ Brig. Gen. Fraser testified that it was possible but unlikely that a civilian would be caught in cross-fire coming from one of the high-rise buildings in Grbavica and buildings on Bosnian Muslim territory.⁸⁵¹ He said that snipers are skilled marksmen who take time to line up a target and that it is unlikely that they would miss their target.⁸⁵²

242. The Defence argued that the ABiH could also have fired onto Zmaja od Bosne from positions in the so-called “Red Building”, behind the Invest Bank Building, close to the Metalka Building.⁸⁵³ Milorad Katić testified that it was possible for ABiH snipers located in the “Red Building” to fire upon trams travelling along Zmaja od Bosne.⁸⁵⁴ However, on being shown a series of images of the area, Milorad Katić agreed that from the area on Zmaja od Bosne, where trams were most regularly sniped, it was not possible to see the Red Building.⁸⁵⁵ Witnesses testified that the confrontation line ran behind the Red Building.⁸⁵⁶

⁸⁴⁷ Afeza Karačić, 30 Jan 2007, T. 1193 – 1194; Asam Butt, 15 Feb 2007, T. 2251, 2252; Martin Bell, 26 Apr 2007, T. 5275 – 5276; David Fraser, 8 Feb 2007, T. 1869; W-54, 12 Feb, T. 1962, 1970 – 1971; Milorad Katić, 4 June 2007, T. 6092; T-61, 9 July 2007, T. 7838; D49, Map marked by David Fraser; D50, Photograph marked by David Fraser; D68, Photograph marked by Asam Butt; D79, Photograph marked by John Jordan.

⁸⁴⁸ Vaso Elez, 6 June 2007, T. 6310; D218, Photograph marked by Vaso Elez.

⁸⁴⁹ T-41, T. 8498 – 8503; Milorad Katić, 4 June 2007, T. 6092; D324, Photograph of Faculty of Mathematics and Natural Sciences.

⁸⁵⁰ Milorad Katić, 4 June 2007, T. 6092, 6094 – 6095, testified that the Marshal Tito Barracks were about 500 metres behind the Holiday Inn and ABiH troops were physically located near the confrontation line, controlling the area in which the Museum and Faculty of Philosophy were located.

⁸⁵¹ David Fraser, 8 Feb 2007, T. 1865 – 1866. *See also*, D65, Letter by Vahid Karavelić, dated 27 August 1994.

⁸⁵² David Fraser, 8 Feb 2007, T. 1865 – 1866.

⁸⁵³ Asam Butt, 15 Feb 2007, T. 2178, 2249 – 2250; Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; Milorad Katić, 4 June 2007, T. 6092; P223, Photograph marked by Asam Butt; D169, Photograph marked by Mirza Sabljica; P583, Photograph marked by Mirza Sabljica; D220, Photograph marked by Vaso Elez. The Trial Chamber notes that this building was occupied by troops of both the SRK and the ABiH: Asam Butt, 15 Feb 2007, T. 2174; Mirza Sabljica, 19 Apr 2007, T. 4760 – 4761; Vaso Elez, 7 June 2007, T. 6374; P223, Photograph marked by Asam Butt.

⁸⁵⁴ Milorad Katić, 4 June 2007, T. 6108. *See also*, P754, Photograph marked by Milorad Katić.

⁸⁵⁵ Milorad Katić, 1 June 2007, T. 6115.

⁸⁵⁶ Asam Butt, 15 Feb 2007, T. 2178; P223, Photograph marked by Asam Butt. *See also*, Mirza Sabljica, 19 Apr 2007, T. 4732, 4760; D169, Photograph marked by Mirza Sabljica; P583, Photograph marked by Mirza Sabljica; Milorad Katić testified that the King Tvrtko Battalion of the ABiH was there, Milorad Katić, 4 June 2007, T. 6092.

243. Other witnesses dismissed the proposition that the ABiH sniped Bosnian Muslim civilians.⁸⁵⁷ In response to a question about whether he had heard that the ABiH fired at Bosnian Muslims, Gen. Smith testified that “nobody ever produced any evidence of this happening.”⁸⁵⁸

4. Sniping Incidents Representative of the “Campaign”

244. Prosecution expert on sniping, Lt. Van der Weijden, examined the incidents enumerated in the First Schedule to the Indictment in his expert report and drew conclusions about the direction and origin of fire as well as about the weapons used. The Defence ballistic expert, Col. Stamenov, also examined the incidents and emphasised in his report that the type of weapon used and the origin of fire cannot be established without material traces recorded at the site, establishing the nature of the damage to the tram, the entry and exit wounds of the victims, and the type and origin of the wounds. He pointed out that not all of that information was available for all of the incidents.⁸⁵⁹

245. The Trial Chamber will now consider specific incidents of sniping. In determining whether the crimes were committed, it will take into consideration the following factors: (i) whether the person who was killed or seriously wounded was a civilian; (ii) the type of weapon that inflicted the injury; and (iii) whether, as the Prosecution alleges, the shots were fired from Bosnian Serb-held territory. In this regard, the Trial Chamber will pay particular attention to the direction and origin of fire.

(a) Unscheduled Sniping Incidents

246. In addition to the scheduled incidents, the Prosecution also presented evidence of unscheduled sniping incidents, that is, evidence of sniping that was not contained in the schedules to the Indictment.⁸⁶⁰ This evidence included incidents in which civilians were sniped at from Grbavica and other locations in Sarajevo.⁸⁶¹ Some witnesses specified SRK-held territory as the origin of fire.⁸⁶² By way of example, the Trial Chamber discusses one of the unscheduled incidents.

⁸⁵⁷ Harry Konings, 13 Mar 2007, T. 3648; Rijalda Musaefendić, 28 Feb 2007, T. 2928; Bogdan Vidović, 14 Feb 2007, T. 2122 – 2128, 2134; Kemal Bučo, 2 Feb 2007, T. 1497.

⁸⁵⁸ Rupert Smith, 7 Mar 2007, T. 3343.

⁸⁵⁹ D360, Expert report Ivan Stamenov, pp 16, 19, 20.

⁸⁶⁰ See *supra*, para. 6.

⁸⁶¹ Kemal Bučo, P158, p. 2; Alen Gičević, P163, p. 3; John Jordan, P267, pp 5, 6, 9 See e.g. *Sniping of a tram at Marindvor, autumn 1994*: W-54, 12 Feb 2007, T. 1942, 1944 – 1945, 1953; *Sniping of a police officer at the “National Restaurant”, autumn 1994*: Bogdan Vidović, 13 Feb 2007, T. 2067 – 2068, 14 Feb 2007, T. 2079, 2114 – 2115, 2148, D63, Statement by Bogdan Vidović, dated 17 May 2006, p. 2; *Sniping of a girl in apartment building at Marindvor 8 November 1994*: Mirza Sabljica, 19 Apr 2007, T. 4730 – 4735, 4749 – 4758, 4760 – 4763; W-116, 18 Apr 2007, T. 4664 – 4668, P549, p. 2; P582, Criminal investigation file, p. 2; P583, Photograph marked by Mirza Sabljica; D166, Map marked by W-116; *Sniping of a tram on Zmaja od Bosne, 23 November 1994*: Kemal Bučo, P158, p. 2; P461, Medical certificate for Emira Tanović; P462, Death certificate for Kemal Tanović; *Sniping of a tram at the*

247. At around 2345 hours on 14 May 1995, Jasmina Tabaković, a lawyer, was in her bedroom in an apartment in Dobrinja, which faced Bosnian Serb positions in Dobrinja I.⁸⁶³ She was shot in her chest and died.⁸⁶⁴ The bullet passed through the plastic sheet that had replaced the window, passed through her body and eventually lodged in the wall behind a wardrobe.⁸⁶⁵

248. On 15 May 1995, the BiH police investigated the sniping of Jasmina Tabaković.⁸⁶⁶ The BiH police did not have reports of combat activity for the evening of 14 May 1994, but the father of Jasmina Tabaković testified that during the evening, shots had been fired from the Bosnian Serb positions in Dobrinja I.⁸⁶⁷ When asked by the Defence, W-28 agreed that Dobrinja was divided between ABiH and SRK forces.⁸⁶⁸

249. The trajectory of the bullet was determined, using a piece of string to connect the traces in the room.⁸⁶⁹ It was established that the shot had come from SRK positions in Dobrinja I.⁸⁷⁰ W-138 remembered that, at first glance, the bullet appeared to be a 7.62 mm calibre rifle bullet.⁸⁷¹

Finding

250. On the basis of the evidence of witnesses W-28, W-138 and documentary evidence, the Trial Chamber is satisfied that Jasmina Tabaković, a civilian, was killed by a shot while she was in her bedroom in Dobrinja. The shots came from SRK-held territory in Dobrinja I. There is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK. The Trial Chamber concludes that the shots were fired by a member of the SRK.

Elektroprivada Building, 14 February 1995: Bogdan Vidović, 14 Feb 2007, T. 2092 – 2093; P219, Criminal investigation file, dated 15 February 1995; *Sniping of boy on bicycle at the Alipašin Mosque, 25 June 1995*: David Harland, 15 Jan 2007, T. 349 – 350; P19, UNPROFOR sitrep, 2 July 1995.

⁸⁶² Derviša Selmanović, P170, p. 3; Ronald Eimers, P584, p. 4; Alija Holjan, P526, p. 3; Slavica Livnjak, P94, pp 2 – 3. See, e.g., *Sniping of a bus on the logistic route, 18 March 1995*: Ronald Eimers, P584, p. 4, P585, p. 9.

⁸⁶³ W-28, 22 Feb 2007, T. 2722; P796, Criminal investigation file, dated 15 May 1995, p. 2. The Trial Chamber notes that this document has also been admitted as D83. However, the Trial Chamber did not receive an English translation of D83.

⁸⁶⁴ P796, Criminal investigation file, p. 2.

⁸⁶⁵ W-28, 22 Feb 2007, T. 2722; W-138, 31 Jan 2007, T. 1336 – 1337; P769, Criminal investigation file, p. 2. W-28 also mentioned damage to the curtains in the room, W-28, 22 Feb 2007, T. 2722.

⁸⁶⁶ W-28, 22 Feb 2007, T. 2722, 2762 (private session); W-138, 31 Jan 2007, T. 1336 – 1337; P796, Criminal investigation file.

⁸⁶⁷ W-28, 22 Feb 2007, T. 2722; P796, Criminal investigation file, p. 3.

⁸⁶⁸ W-28, 22 Feb 2007, T. 2762 (private session). See also, *supra*, paras 119 – 120.

⁸⁶⁹ W-138, 31 Jan 2007, T. 1338, 1342; W-138, 1 Feb 2007, 1347; P796, Criminal investigation file, p. 2.

⁸⁷⁰ W-138, 31 Jan 2007, T. 1337 – 1338; P796, Criminal investigation file, p. 2.

⁸⁷¹ W-138, 31 Jan 2007, T. 1339.

(b) Scheduled Sniping Incidents

(i) Sniping of Targets on Zmaja od Bosne

251. Five of the scheduled incidents which took place in the area of Zmaja od Bosne, also known as ‘Sniper Alley’, involved trams. In that regard, the Trial Chamber recalls its previous finding regarding the civilian nature of the trams.⁸⁷²

252. The Defence put forward a general argument with regard to all tram incidents that it was “not possible to conclude beyond any reasonable doubt the source of the shots that hit the tramways, particularly since the tramway travelled just behind the combat positions of BH Army units, through a combat zone that was almost always active.”⁸⁷³ The Trial Chamber recalls that the stretch of land between the confrontation line and Zmaja od Bosne was controlled by the ABiH, and that Grbavica on the southern side of the confrontation line and high-rise buildings, such as the Metalka Building, were held by the SRK.⁸⁷⁴ The Trial Chamber will examine the evidence presented with regard to each incident and decide whether it is possible to determine that the trams were fired at from SRK-held positions.

a. Sniping of Alma Čutuna on 8 October 1994

253. The Trial Chamber was presented with evidence of three incidents of sniping on Zmaja od Bosne on 8 October 1994, all of which are connected and happened within a very short time span.⁸⁷⁵ One of these incidents is in the First Schedule to the Indictment.

254. On 8 October 1994, Alma Čutuna was shot while she was travelling on a tram on Zmaja od Bosne.⁸⁷⁶ She got on the tram at the stop “Socijalno”, together with her husband, to go downtown.⁸⁷⁷ She was wearing a red and black blouse and jeans.⁸⁷⁸ No ABiH soldiers were on the tram and there were no military activities or establishments in the area.⁸⁷⁹ A cease-fire was in place that day.⁸⁸⁰

⁸⁷² See *supra*, paras 224.

⁸⁷³ Defence Final Brief, para. 179.

⁸⁷⁴ See *supra*, paras 112, 114 – 116.

⁸⁷⁵ See *infra*, paras 261 *et seq.*

⁸⁷⁶ W-35, 22 Jan 2007, T. 822, 828.

⁸⁷⁷ W-35, 22 Jan 2007, T. 826, 829, P91, p. 2 (under seal), P92, p. 3 (under seal).

⁸⁷⁸ W-35, P92, p. 3 (under seal).

⁸⁷⁹ W-35, 22 Jan 2007, T. 827 – 828; W-35, 23 Jan 2007, 847 – 848; P92, p. 3 (under seal); W-28, 22 February 2007, T. 2752.

⁸⁸⁰ W-35, 22 Jan 2007, T. 824 – 825, P91, p. 2 (under seal), P92, p. 3 (under seal).

255. Shots were fired at and hit the crowded tram around 1200 and 1210 hours, when it was running east, in the direction of the Presidency Building and Baščaršija,⁸⁸¹ between the National Museum and the Faculty of Philosophy, in front of the Holiday Inn.⁸⁸² At this point, the tram tracks made an S-curve.⁸⁸³

256. When the shooting started, people panicked and tried to seek shelter behind the seats.⁸⁸⁴ There were bursts of fire first aimed at the upper section of the tram and then at the lower section of the tram.⁸⁸⁵ Alma Ćutuna was standing next to the middle door of the tram, and was facing Grbavica.⁸⁸⁶ She was wounded on the left side of her head by a piece of shard.⁸⁸⁷ She was also shot in her right upper leg; the shot severed an artery in her leg.⁸⁸⁸ An exit wound was on her right hip.⁸⁸⁹ The tram continued to the Presidency Building, but after that Alma Ćutuna lost consciousness.⁸⁹⁰ When Alma Ćutuna was taken to the State Hospital, she was “clinically dead”.⁸⁹¹ However, following surgery carried out immediately after her arrival, she recovered and was discharged from the hospital 35 days later.⁸⁹² The circulation in her leg is still poor and she needs help with day-to-day activities.⁸⁹³

257. Prosecution expert Lt. Van der Weijden concluded in his report that the likely location of the shooter was the Metalka Building, a high-rise building he visited in Grbavica.⁸⁹⁴ The alleged shooting position was 310 to 320 metres from the place where the incident took place.⁸⁹⁵ W-35 also

⁸⁸¹ W-35, 22 Jan 2007, T. 830 – 831, 835, P93, Photograph marked by W-35; D20, Photograph marked by W-35; D21, Photograph marked by W-35; P941, Videoclip of sniping incident (under seal); P794, Criminal investigation file, pp 1 – 2.

⁸⁸² W-35, 22 Jan 2007, T. 824, 835 – 837, P91, p. 2 (under seal), P92, p. 3 (under seal); P93, Photograph marked by W-35; D20, Photograph marked by W-35; P941, Videoclip of sniping incident (under seal); W-28, 22 February 2007, T. 2721; P278, Photograph marked by W-28.

⁸⁸³ W-35, 22 Jan 2007, T. 825 – 826, 829; P93, Photograph marked by W-35, D20, Photograph marked by W-35; D21, Photograph marked by W-35. *See also*, Ivan Stamenov, 22 Aug 2007, T. 9078; Slavica Livnjak, 23 Jan 2007, T. 858, 866, P94, p. 2.

⁸⁸⁴ W-35, 22 Jan 2007, T. 827 – 828, 831, P91, p. 2 (under seal).

⁸⁸⁵ W-35, P92, p. 3 (under seal).

⁸⁸⁶ W-35, 22 Jan 2007, T. 826, 23 Jan 2007, T. 850 – 851, P91, p. 2 (under seal), P92, p. 3 (under seal); D21, Photograph marked by W-35.

⁸⁸⁷ W-35, 22 Jan 2007, T. 824, P92, p. 3 (under seal).

⁸⁸⁸ W-35, 22 Jan 2007, T. 824 – 825, P91, p. 3 (under seal); P92, p. 3 (under seal); P451, Medical report, p. 3 (under seal); P452, Medical record, p. 1 (under seal); P941, Videoclip of sniping incident (under seal). *See also*, P794, Criminal investigation file, p. 4.

⁸⁸⁹ W-35, P91, p. 2 (under seal).

⁸⁹⁰ W-35, 22 Jan 2007, T. 831, P91, p. 2 (under seal).

⁸⁹¹ W-35, 22 Jan 2007, T. 824, P92, p. 3 (under seal). *See also*, P794, Criminal investigation file, p. 3.

⁸⁹² P451, Medical report, p. 3 (under seal); P452 Medical record, p. 1 (under seal).

⁸⁹³ W-35, P91, p. 3 (under seal), P92, p. 3 (under seal).

⁸⁹⁴ Lt. Van der Weijden also examined the possibility that the shots had come from the Jewish Cemetery, but excluded this possibility, P514, Expert report Patrick van der Weijden, p. 20; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

⁸⁹⁵ P514, Expert report Patrick van der Weijden, pp 18, 20; P104, Street map of Sarajevo; Ivan Stamenov, 22 Aug 2007, T. 9059.

testified that the shots came from the Metalka Building.⁸⁹⁶ In this respect, the Trial Chamber recalls that the Metalka Building was held by the SRK and was known as a sniper location.⁸⁹⁷

258. Lt. Van der Weijden further testified that the location where the tram was hit was directly visible from the Metalka Building.⁸⁹⁸ Expert for the Defence, Col. Stamenov, also testified that one could see parts of Zmaja od Bosne and the Holiday Inn from the Metalka Building.⁸⁹⁹ However, he added that the Metalka Building would not have been visible from a tram located just after the S-curve and travelling east.⁹⁰⁰ Moreover, based on a NATO weather report for Sarajevo, he testified that the weather on 8 October 1994 was “rainy and foggy”. That NATO report stated that there was rain and fog in the early morning in the area of the Sarajevo airport.⁹⁰¹ W-35 testified that it was a nice and sunny day.⁹⁰²

259. Since the tram was not a stationary target, Lt. Van der Weijden recorded the time during which the tram would have been exposed to a shooter at the Metalka Building, and the time was at least eight seconds.⁹⁰³ At the S-curve, trams had to slow down.⁹⁰⁴ Slavica Livnjak, a tram driver, explained that, when negotiating the S-curve, the tram started to bend and the two tram cars were facing two different directions.⁹⁰⁵ Col. Stamenov also testified that, in the S-curve, there would be an angle between the front and the rear part of the tram, depending on the width of the tracks.⁹⁰⁶ He confirmed that a tram has to slow down in order to enter an S-curve, and that after the curve it takes some distance to accelerate so that the area over which the tram is moving slowly is greater than just the S-curve itself.⁹⁰⁷

260. In terms of the type of weapon used, Lt. Van der Weijden concluded that automatic fire, most likely with a M84 or M53 machinegun, was probably used since there were a number of victims and several shots were fired at a rapid rate.⁹⁰⁸ He explained that machineguns are more

⁸⁹⁶ W-35, 22 Jan 2007, T. 824, 832, P92, p. 3 (under seal).

⁸⁹⁷ See *supra*, para. 228.

⁸⁹⁸ P514, Expert report Patrick van der Weijden, p. 20. See also, W-35, 22 Jan 2007, T. 824 – 825, 829, 836, 850 – 851, P92, p. 3 (under seal); P93, Photograph marked by W-35; P97, Photograph marked by Slavica Livnjak.

⁸⁹⁹ Ivan Stamenov, 22 Aug 2007, T. 9055, *commenting on C3*, Photographs taken during site visit, p. 1.

⁹⁰⁰ Ivan Stamenov, 22 Aug 2007, T. 9054, *commenting on C14*, Photographs taken during site visit, p. 22.

⁹⁰¹ Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 2.

⁹⁰² W-35, 22 Jan 2007, T. 827, P92, p. 3 (under seal).

⁹⁰³ P514, Expert report Patrick van der Weijden, p. 20. See also, C14, Photographs taken during site visit, pp 2 – 7.

⁹⁰⁴ W-35, 22 Jan 2007, T. 825 – 826, 829; Slavica Livnjak, P95, p. 2; P93, Photograph marked by W-35, D20, Photograph marked by W-35; D21, Photograph marked by W-35.

⁹⁰⁵ Slavica Livnjak, 23 Jan 2007, T. 858, 865, 866 – 867, P94, p. 2.

⁹⁰⁶ Ivan Stamenov, 22 Aug 2007, T. 9053; D365, Drawing made by Ivan Stamenov.

⁹⁰⁷ Ivan Stamenov, 22 Aug 2007, T. 9078.

⁹⁰⁸ Patrick van der Weijden, 29 Mar 2007, T. 4280, 4324; P514, Expert report Patrick van der Weijden, p. 18, Appendix A.

effective against a moving target like a tram, which is only visible temporarily.⁹⁰⁹ The BiH police commented that the damage to the tram was “probably caused by a ‘death sower’.”⁹¹⁰

261. The Trial Chamber notes that further to the shooting of the tram carrying Alma Čutuna, there is evidence of two other sniping incidents that took place in the same area and within minutes of each other.⁹¹¹ The BiH police investigation file stated that on 8 October 1994, fire was opened on two trams near the Museum, including the tram carrying Alma Čutuna, from the “aggressor’s positions” in Grbavica.⁹¹² The driver of one of the trams told the BiH police that he thought the shots had come from the Metalka Building.⁹¹³ During the on-site investigation, the investigation team found two stationary trams that were damaged and with traces of fire, and blood stains and broken glass on the inside of the tram.⁹¹⁴

262. Moreover, evidence also shows that shortly after the second tram was targeted, four children between 12 and 14 years of age, running in the same area, near the Faculty of Philosophy and the Executive Council, were shot and wounded.⁹¹⁵ W-54 recalled that the children were shot from the Metalka Building.⁹¹⁶ While the trams and the children were being shot at, an UNPROFOR team was taking cover behind one of its vehicles stationed on the sidewalk.⁹¹⁷ It was reported that the sniping of the two trams and the children had resulted in 11 casualties, including Alma Čutuna.⁹¹⁸

263. Evidence suggested that Gen. Rose passed by the incident site at the moment that the children were shot.⁹¹⁹ UNPROFOR reported that on 8 October 1994, a tram was fired at with three bursts of fire in the area of the Holiday Inn, resulting in the death of one civilian and the wounding of 11.⁹²⁰ It reported that “the fire was answered as coming from the [Bosnian Serb Army] in the area of the Jewish Cemet[c]ry. Investigation [is] ongoing”.⁹²¹ A later UNPROFOR report recounted that Gen. Mladić was informed by Gen. Rose about the incident and about the casualties.⁹²² Gen. Mladić denied that Bosnian Serb soldiers were involved and claimed that the shootings came from the “Holiday Inn (i.e. the Bosnian [Muslim] side)” and that it was all “a scenario” engineered by the

⁹⁰⁹ P514, Expert report Patrick van der Weijden, p. 18, Appendix A.

⁹¹⁰ P794, Criminal investigation file, p. 2. In that regard, the Trial Chamber recalls the evidence of Tarik Žunić, who used these words to describe a M84 machine gun, Tarik Žunić, 7 Feb 2007, T. 1740.

⁹¹¹ W-35, 22 Jan 2007, T. 827, P92, p. 3 (under seal); P794, Criminal investigation file, pp 1 – 2.

⁹¹² P794, Criminal investigation file, pp 1 – 2.

⁹¹³ P794, Criminal investigation file, p. 2.

⁹¹⁴ P794, Criminal investigation file, p. 2.

⁹¹⁵ W-54, 12 Feb 2007, T. 1944 – 1946; P794, Criminal investigation file, p. 2.

⁹¹⁶ W-54, 12 Feb 2007, T. 1945.

⁹¹⁷ W-54, 12 Feb 2007, T. 1944; P794, Criminal investigation file, p. 2.

⁹¹⁸ P794, Criminal investigation file, pp 3 – 4; P448, P449, P450, Medical records (all under seal).

⁹¹⁹ W-46, 15 Mar 2007, T. 3824 – 3825 (closed session); P388, UNPROFOR report, dated 13 October 1994.

⁹²⁰ P853, UNPROFOR daily sitrep, dated 8 October 1994, p. 3.

⁹²¹ *Ibid.*

other side.⁹²³ During the meeting, an UNPROFOR technical expert assured Gen. Mladić that the shooting had not come from the “Holiday Inn side”.⁹²⁴

264. The Defence confronted W-28, who was part of the BiH police investigation team, with a letter by Gen. Rose addressed to President Alija Izetbegović protesting against sniping incidents that took place on 8 October 1994 “in the City of Sarajevo from both sides of the line of confrontation”.⁹²⁵ W-28 was not able to comment on the letter, but testified that he was not aware of military activities on that day.⁹²⁶ The Trial Chamber notes that this same letter was sent to Radovan Karadžić.⁹²⁷ However, these letters do not refer to any specific incident or any specific location in or around Sarajevo.

Findings

265. As to the Defence submission of poor visibility on that day, the Trial Chamber notes that the NATO report reflects that on 8 October 1994 at around 1200 or 1210 hours, when the shooting took place, it was neither raining nor foggy and that the visibility was 6,000 metres.⁹²⁸ Therefore, the Trial Chamber is satisfied that the visibility was sufficient to allow a sniper at the Metalka Building to identify and target a tram negotiating the S-curve.⁹²⁹

266. On the basis of the evidence of eyewitnesses, experts for the Prosecution and Defence, the BiH police report and photographic evidence, the Trial Chamber is satisfied that the tram was shot at the S-curve on Zmaja od Bosne with machinegun fire and that Alma Čutuna, a civilian, was hit and seriously injured in her right upper leg. There is no evidence that the shots originated from ABiH-held territory. The Trial Chamber is satisfied that the shots came from the direction of the Metalka Building, which was held by the SRK. In light of the fact that nothing in the evidence suggests that the shots came from anyone other than a member of the SRK, the Trial Chamber finds that the shots were fired by a member of the SRK.

⁹²² P389, UNPROFOR report, dated 10 October 1994, p. 2: seven people were injured and one died; W-46, 15 Mar 2007, T. 3825 – 3826 (closed session).

⁹²³ P389, UNPROFOR report, 10 October 1994, p. 2.

⁹²⁴ *Ibid.*

⁹²⁵ W-28, 22 February 2007, T. 2752; D80, Protest letters from General Rose to Ganić/ Izetbegović/ Karadžić, dated 9 October 1994 (“Protest letter, 9 October 1994”), p. 3.

⁹²⁶ W-28, 22 February 2007, T. 2752.

⁹²⁷ D80, Protest letter, 9 October 1994, p. 4.

⁹²⁸ D362, NATO weather report for Sarajevo, p. 2.

⁹²⁹ C14, Photographs taken during site visit, pp 24 – 26.

b. Sniping of Hajrudin Hamidić on 21 November 1994

267. The twenty-first of November 1994 was a cold day.⁹³⁰ The trams were operating that morning. However, the centre of Sarajevo came under shell-fire and due to the intensity of the shelling, the trams could not reach Baščaršija and were ordered to return to the depot at Alipašin Most.⁹³¹ A tram driver, Hajrudin Hamidić, picked up a group of passengers while driving the empty tram back to the depot.⁹³² The passengers were mainly women and children, as well as some elderly and young people.⁹³³ No military personnel got onto the tram with that group of passengers.⁹³⁴

268. When the tram reached the intersection between the National Museum and the Holiday Inn at about 1100 hours, a projectile fell one or one and a half metres in front of the tram.⁹³⁵ There was a huge impact and detonation, which W-54 attributed to a shell rather than to a rifle grenade.⁹³⁶ The explosion was very loud.⁹³⁷ W-54 saw that the windscreen was shattered, the front section of the tram was damaged, all the windows were broken and there was shrapnel inside the tram.⁹³⁸ Blood was trickling down the face of Hajrudin Hamidić.⁹³⁹ His glasses had been shattered and he was bleeding profusely.⁹⁴⁰

269. The tram tracks were not smashed or bent by the explosion, so W-54 inferred that the projectile had landed either between or to the left of the rails.⁹⁴¹ After the explosion, the tram kept moving.⁹⁴² The tram driver told his passengers: “Lie down. We’re all going to be killed.”⁹⁴³ The passengers were panicking; the women and children were screaming and crying, pleading with the driver to continue, and making comments such as: “We’re going to be killed.”⁹⁴⁴

270. Immediately following the explosion, when the tram had travelled approximately another 50 metres and had gone past the Marshal Tito Barracks, snipers started shooting repeatedly at the left-

⁹³⁰ W-54, 6 Feb 2007, T. 1695.

⁹³¹ W-54, 6 Feb 2007, T. 1639, 1693 – 1694; Avdo Vatrić, P647, p. 5.

⁹³² W-54, 12 Feb 2007, T. 1949.

⁹³³ W-54, 6 Feb 2007, T. 1695.

⁹³⁴ W-54, 6 Feb 2007, T. 1695.

⁹³⁵ W-54, 6 Feb 2007, 1695 – 1696, 12 Feb 2007, 1968; D56, Police file, dated November/December 1994 (“Police file”), p. 2 (under seal).

⁹³⁶ W-54, 6 Feb 2007, T. 1695 – 1696, 12 Feb 2007, T. 1950 – 1951, 1959.

⁹³⁷ W-54, 12 Feb 2007, T. 1959.

⁹³⁸ W-54, 6 Feb 2007, T. 1696 – 1697, 12 Feb 2007, T. 1950 – 1951, 1961.

⁹³⁹ W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1951.

⁹⁴⁰ W-54, 12 Feb 2007, T. 1950 – 1951. In that regard, the Prosecution submitted that Hajrudin Hamidić was not wounded as a result of sniper fire as alleged in the Indictment and that the evidence pertaining to this incident could go to support a finding on Counts 3 and 4 of the Indictment, Trial Hearing, 6 Feb 2007, T. 1681 – 1682.

⁹⁴¹ W-54, 12 Feb 2007, T. 1960.

⁹⁴² W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1955, 1970.

⁹⁴³ W-54, 6 Feb 2007, T. 1696.

⁹⁴⁴ W-54, 6 Feb 2007, T. 1696.

hand side of the tram.⁹⁴⁵ The sniping continued until the tram reached Pofalići and stopped at the stop “Socijalno” or “Elektroprivreda”.⁹⁴⁶ A wounded woman disembarked from the tram and an ambulance was called to assist.⁹⁴⁷ Apart from this woman, W-54 was not aware of any other person being injured by the sniping during the tram journey.⁹⁴⁸

271. W-54 testified that, after the Elektroprivreda stop, the tram continued to Dolac Malta, where it was safe to stop and where the other passengers disembarked.⁹⁴⁹ At that location, in that area of Hrasno, there were no Bosnian Serb soldiers and snipers on the left bank of the Miljacka River, as Hrasno was under the control of ABiH.⁹⁵⁰ The tram driver then drove the tram to the depot.⁹⁵¹

272. According to W-54, the snipers were stationed approximately 400 to 500 metres from the tram.⁹⁵² W-54 testified that all shots, including the shot causing the large explosion, came from the high-rise buildings at Grbavica, that is, Lenjinova Street, numbers 6, 8 and 10.⁹⁵³ W-54 knew that these high-rise buildings were controlled by the SRK because at least one building displayed the Serb flag.⁹⁵⁴ The BiH police, on the basis of an analysis of the remains of the projectile, concluded that the direction of fire was 184 degrees, which corresponded to the direction of a high-rise building in Grbavica.⁹⁵⁵ The Trial Chamber recalls that other evidence also shows that the high-rise buildings in Grbavica were held by the SRK.⁹⁵⁶

273. The BiH police further concluded that the explosion was caused by a M80 hand-held rocket projectile.⁹⁵⁷ This type of projectile was used by the JNA, and had a range of 1,300 metres.⁹⁵⁸ Lt. Van der Weijden came to a different conclusion regarding the nature of the initial explosion. According to him, the explosion was most likely caused by a M84 or M53 machinegun.⁹⁵⁹ In his view, a bullet hit an electrical circuit, since a short circuit could cause a loud bang similar to a small explosion.⁹⁶⁰

⁹⁴⁵ W-54, 12 Feb 2007, T. 1968.

⁹⁴⁶ W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1941, 1955 – 1956.

⁹⁴⁷ W-54, 6 Feb 2007, T. 1698, 12 Feb 2007, T. 1951, 1957.

⁹⁴⁸ W-54, 6 Feb 2007, T. 1951, 1954, 1698; D56, Police file, p. 5 (under seal).

⁹⁴⁹ W-54, 6 Feb 2007, T. 1696 – 1697.

⁹⁵⁰ W-54, 6 Feb 2007, T. 1696 – 1697.

⁹⁵¹ W-54, 12 Feb 2007, T. 1949; D56, Police file, p. 5 (under seal).

⁹⁵² W-54, 6 Feb 2007, T. 1696 – 1697, 1698, 12 Feb 2007, T. 1955 -1956, 1959 – 1960, 1968 – 1969; D55, Statement of W-54, dated 20 May 2006, p. 2 (under seal).

⁹⁵³ W-54, 6 Feb 2007, T. 1696 – 1698, 12 Feb 2007, T. 1955, 1958, 1959; D56, Police file, p. 5 (under seal). The Trial Chamber takes also note of D215, Map marked by Vaso Elez; D218, Photograph marked by Vaso Elez.

⁹⁵⁴ W-54, 6 Feb 2007, T. 1696, 12 Feb 2007, T. 1955.

⁹⁵⁵ D56, Police file, p. 4 (under seal).

⁹⁵⁶ See *supra*, para. 228.

⁹⁵⁷ D56, Police file, p. 4 (under seal).

⁹⁵⁸ D56, Police file, p. 4 (under seal).

⁹⁵⁹ P514, Expert report Patrick van der Weijden, p. 36.

⁹⁶⁰ P514, Expert report Patrick van der Weijden, p. 36.

274. Lt. Van der Weijden's assessment of the location of the incident site and likely shooter location differed from the testimony of W-54. Lt. Van der Weijden visited the incident site as well as the likely location of the shooter on 29 November 2006.⁹⁶¹ Although the trees were leafless and visibility was just over 450 metres at the incident site due to fog, there was still sufficient vision to determine the direction and approximate location of the shooter.⁹⁶² According to Lt. Van der Weijden, the information provided by the victim led him to determine that the Grbavica area was the source of fire. However, this was contradictory to the location identified in the reports provided by the Prosecution, which indicated a location that was not visible from the Grbavica area, but was in clear view of the area west of the Jewish Cemetery that was also known for sniping activity.⁹⁶³ According to Lt. Van der Weijden, the Grbavica area was not the origin of fire in this incident.⁹⁶⁴

Findings

275. The Trial Chamber notes that the evidence of W-54 and Lt. Van der Weijden differed in the following areas: the exact location of the initial explosion; the exact location of the tram when it was hit by subsequent sniper fire; the type of weapon that caused the explosion; and the direction of fire. Lt. Van der Weijden's report did not take into account the high-rise buildings as possible sniper locations and did not take into account that the remains of a M80 rocket projectile had been located at the site of the explosion.⁹⁶⁵ Nor does his report show that he knew of the subsequent sniping of the tram. The Trial Chamber further notes that neither of the Parties put any questions to Lt. Van der Weijden in relation to this specific incident. The Trial Chamber finds that Lt. Van der Weijden based his opinion on incomplete information. He was not asked to provide a new assessment, in which he could have taken into account the fact that traces of a rocket projectile were found.

276. On the basis of the testimony of W-54 and the BiH police report, the Trial Chamber finds that the tram was hit by a M80 hand-held rocket and that Hajrudin Hamidić, a civilian and the driver of the tram, was seriously injured as a result of this explosion. The Trial Chamber is also satisfied that the tram was fired at with sniper fire immediately after being targeted by the rocket projectile. There is no evidence to suggest that these shots originated from ABiH-held territory. The sniper fire and the rocket projectile originated from the high-rise buildings at Grbavica which were

⁹⁶¹ P514, Expert report Patrick van der Weijden, p. 37.

⁹⁶² P514, Expert report Patrick van der Weijden, p. 37.

⁹⁶³ P514, Expert report Patrick van der Weijden, p. 37. The Trial Chamber notes that Lt. Van der Weijden did not indicate which warring party was in these areas.

⁹⁶⁴ P514, Expert report Patrick van der Weijden, p. 37.

⁹⁶⁵ P514, Expert report Patrick van der Weijden, pp 36 – 38. It is possible that Lt. Van der Weijden was not provided with all relevant information prior to investigating this scheduled incident.

held by the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

c. Sniping of Hafiza Karačić and Sabina Šabanić on 23 November 1994

277. On 23 November 1994, Afeza Karačić and her sister went to the market in Baščaršija.⁹⁶⁶ According to Afeza Karačić, there was a cease-fire in place that day, which had been announced on the radio two or three days earlier.⁹⁶⁷ There was no fighting between the warring parties.⁹⁶⁸ In the afternoon, Afeza Karačić and her sister decided to take a tram back to Otoka, where they lived.⁹⁶⁹ On the same day just before 1600 hours, Sabina Šabanić left work to take a tram home.⁹⁷⁰ Sabina Šabanić and Afeza Karačić travelled on the same crowded tram.⁹⁷¹

278. It was a clear day and there was still natural light at that time of the afternoon.⁹⁷² There were no leaves on the trees.⁹⁷³ No soldiers were on the tram, and there were no soldiers or any ABiH vehicles in the area.⁹⁷⁴

279. From Baščaršija, the tram ran towards the West, on Zmaja od Bosne, in the direction of the Technical School and the Marshal Tito Barracks.⁹⁷⁵ Tram drivers were instructed not to stop in the area because trams were very exposed to shooting.⁹⁷⁶ When the tram reached the area of Marindvor, it was shot by a sniper.⁹⁷⁷

280. Huso Palo, the tram driver, heard a shot from his left side, to the South.⁹⁷⁸ Witnesses reported that there was only one shot which came through an open window of the tram.⁹⁷⁹ Most of the passengers threw themselves on the floor, imploring the tram driver to take shelter.⁹⁸⁰

⁹⁶⁶ Afeza Karačić, P115, p. 2.

⁹⁶⁷ Afeza Karačić, P115, p. 2.

⁹⁶⁸ Sabina Šabanić, 2 Feb 2007, T. 1457-1458.

⁹⁶⁹ Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, P115, p. 2; P104, Street map of Sarajevo.

⁹⁷⁰ Sabina Šabanić, 2 Feb 2007, T. 1445, 1447, P153, p. 2.

⁹⁷¹ Afeza Karačić, 29 Jan 2007, T. 1185; Sabina Šabanić, 2 Feb 2007, T. 1457, P153, p. 2; Kemal Bućo, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1.

⁹⁷² Afeza Karačić, 29 Jan 2007, T. 1185, P115, p. 2; Sabina Šabanić, 2 Feb 2007, T. 1457, P154, p. 2.

⁹⁷³ Afeza Karačić, 29 Jan 2007, T. 1185.

⁹⁷⁴ Afeza Karačić, 29 Jan 2007, T. 1185, P115, p. 2; Huso Palo, P162, p. 2; Sabina Šabanić, P154, p. 2.

⁹⁷⁵ Afeza Karačić, P115, p. 2; Huso Palo, P162, p. 2; P941 Videoclip with Afeza Karačić (under seal); P104, Street map of Sarajevo.

⁹⁷⁶ Afeza Karačić, 29 Jan 2007, T. 1185 – 1186, P115, p. 2; Huso Palo, 5 Feb 2007, T. 1541, 1544, P162, p. 2.

⁹⁷⁷ Huso Palo, 5 Feb 2007, T. 1535 – 1536; Sabina Šabanić, 2 Feb 2007, T. 1449; Afeza Karačić, P114, p. 2, P115, p. 2; Kemal Bućo, 2 Feb 2007, T. 1495 – 1496, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P155, Photograph marked by Sabina Šabanić; P157, Photograph marked by Sabina Šabanić; P160, Photograph marked by Kemal Bućo; D36, Photograph marked by Sabina Šabanić; D20, Photograph marked by W-35; P104, Street map of Sarajevo.

⁹⁷⁸ Huso Palo, 5 Feb 2007, T. 1536, 1539, 1547, P162, pp 2 – 3.

281. Afeza Karačić was standing in the middle of the tram, at the connecting platform between the front and the rear cars of the tram, facing east, when she was shot.⁹⁸¹ She was wearing a brown jacket and trousers.⁹⁸² Afeza Karačić did not hear any shots, she just felt a powerful impact against her shoulder and heard other passengers screaming.⁹⁸³ The bullet, which came from her right, entered her upper right shoulder and exited slightly lower on the right arm, severing a nerve.⁹⁸⁴

282. Sabina Šabanić was standing at the back of the front section of the tram, facing Grbavica.⁹⁸⁵ She did not hear the shot either and did not realise that she was wounded until she got off the tram and started to lose consciousness.⁹⁸⁶ She was hit in the front right shoulder and the bullet exited two inches lower at the back of the same shoulder.⁹⁸⁷

283. The tram continued further down the street and stopped in a sheltered area at the Marshal Tito Barracks. The injured people got off the tram.⁹⁸⁸ The two wounded, Afeza Karačić and Sabina Šabanić, were taken to the Koševo Hospital Trauma Clinic.⁹⁸⁹ Afeza Karačić had several operations as a result of which her arm was shortened by six centimetres.⁹⁹⁰ Due to her injuries, she has 80 per cent disability; she cannot drive a car or write properly and has difficulty eating with her right hand.⁹⁹¹ Sabina Šabanić stayed in hospital for four days.⁹⁹² She could not use her arm properly and had difficulty eating and getting dressed, leaving her unable to work until March 1995.⁹⁹³

284. Kemal Bućo, a state security inspector for the BiH police, reported that Afeza Karačić and Sabina Šabanić had been hit by one single bullet which fragmented.⁹⁹⁴ W-91 was also involved in the investigation of the sniping of two trams which occurred on 23 November 1994.⁹⁹⁵ W-91 stated that it was common for the Bosnian Serb Army to fire fragmentation bullets at trams that would

⁹⁷⁹ Huso Palo, 5 Feb 2007, T. 1537 – 1538; Kemal Bućo, 2 Feb 2007, T. 1518, P158, p. 2, P159, Information report, p. 1; P161, Official note, p. 2; P212, Official report, p. 1.

⁹⁸⁰ Afeza Karačić, 30 Jan 2007, T. 1197, P114, p. 2; Huso Palo, 5 Feb 2007, T. 1536, 1539; Sabina Šabanić, 2 Feb 2007, T. 1448, P153, p. 2.

⁹⁸¹ Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, P114, p. 2; P941, Videoclip with Afeza Karačić (under seal).

⁹⁸² Afeza Karačić, 29 Jan 2007, T. 1182 – 1183, 1185, P114, p. 2.

⁹⁸³ Afeza Karačić, 30 Jan 2007, T. 1196, 1201, P114, p. 2.

⁹⁸⁴ Afeza Karačić, 29 Jan 2007, T. 1184, 30 Jan 2007, 1194, P114, p. 2; P941, Videoclip with Afeza Karačić (under seal); P161, Official note, p. 2.

⁹⁸⁵ Sabina Šabanić, P153, p. 2.

⁹⁸⁶ Sabina Šabanić, 2 Feb 2007, T. 1450, 1476, P153, p. 2.

⁹⁸⁷ Sabina Šabanić, 2 Feb 2007, T. 1458, P153, p. 2.

⁹⁸⁸ Afeza Karačić, 30 Jan 2007, T. 1189, P114, p. 2; Huso Palo, 5 Feb 2007, T. 1536, P162, p. 3; Sabina Šabanić, 2 Feb 2007, T. 1450, P153, p. 2; P161, Official note, p. 2; D36, Photograph marked by Sabina Šabanić.

⁹⁸⁹ Sabina Šabanić, 2 Feb 2007, T. 1484, P153, p. 2; Afeza Karačić P114, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P459, Medical certificate (under seal); P460, Medical certificate (under seal).

⁹⁹⁰ Afeza Karačić, P114, p. 2, P115, p. 2.

⁹⁹¹ Afeza Karačić, 30 Jan 2007, T. 1190, P114, p. 2, P115, p. 2.

⁹⁹² Sabina Šabanić, P153, p. 2.

⁹⁹³ Sabina Šabanić, P153, p. 2.

⁹⁹⁴ Kemal Bućo, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1.

⁹⁹⁵ W-91, P371, p. 2 (under seal).

fragment on impact, even through glass.⁹⁹⁶ In W-91's view, the use of fragmentation bullets had two advantages: first, they could hit more than one person.⁹⁹⁷ Second, they avoided leaving behind a single exit hole and this prevented the Bosnian Muslims from using certain methods to determine the origin of fire, such as putting a tube through the holes.⁹⁹⁸

285. However, Col. Stamenov testified that, to his knowledge, there were no fragmentation bullets in the SRK's arsenal, neither for rifles nor for machineguns.⁹⁹⁹ Lt. Van der Weijden also concluded that several shots were fired, most likely from a M84 or M53 machinegun.¹⁰⁰⁰

286. There was conflicting evidence regarding the location where the tram was hit and the origin of fire. Afeza Karačić testified that the tram was hit at the Holiday Inn, just before the National Museum.¹⁰⁰¹ Lt. Van der Weijden also appears to have conducted his analysis of this incident based on the assumption that the tram was hit in front of the Holiday Inn.¹⁰⁰² However, in a statement Afeza Karačić gave in 1995, she indicated that the tram was hit at the Marshal Tito Barracks.¹⁰⁰³ All other evidence indicated that the tram was shot between the School of Engineering and the Marshal Tito Barracks.¹⁰⁰⁴

287. As to the origin of fire, all witnesses gave evidence that the shot came from the direction of Grbavica, but differed as to the exact location. During her testimony in court, Afeza Karačić indicated that the shots came from the Metalka Building.¹⁰⁰⁵ According to Lt. Van der Weijden, the likely location of the shooter was the Metalka Building.¹⁰⁰⁶ The Trial Chamber recalls that the Metalka Building was a known Bosnian Serb sniper position.¹⁰⁰⁷ However, Sabina Šabanić, Kemal

⁹⁹⁶ W-91, P371, p. 2 (under seal).

⁹⁹⁷ W-91, P371, p. 2 (under seal).

⁹⁹⁸ W-91, P371, p. 2 (under seal).

⁹⁹⁹ Ivan Stamenov, 22 Aug 2007, T. 9051, 9085.

¹⁰⁰⁰ Patrick van der Weijden, 29 Mar 2007, T. 4324; P514, Expert report Patrick van der Weijden, pp 25, 27, Appendix A. The Trial Chamber notes that it has not been provided with information as to which statements Lt. Van der Weijden reviewed.

¹⁰⁰¹ Afeza Karačić, 30 Jan 2007, T. 1191; P104, Street map of Sarajevo; P116, Photograph marked by Afeza Karačić; P941, Videoclip with Afeza Karačić (under seal); P119, 360° photograph.

¹⁰⁰² P514, Expert report Patrick van der Weijden, pp 25 – 26.

¹⁰⁰³ Afeza Karačić, P114, p. 2; In her written statement from 2006, she changed this to “The location where the tram was shot was near the Tito Barracks as written, but it should be correctly described as Marindvor area.” P115, p. 2.

¹⁰⁰⁴ Huso Palo, 5 Feb 2007, T. 1535 – 1536; Sabina Šabanić, 2 Feb 2007, T. 1449; Afeza Karačić, P114, p. 2, P115, p. 2; Kemal Bućo, 2 Feb 2007, T. 1495 – 1496, P158, p. 2; P161, Official note, p. 2; P212, Official report, p. 1; P155, Photograph marked by Sabina Šabanić; P157, Photograph marked by Sabina Šabanić; P160, Photograph marked by Kemal Bućo; D36, Photograph marked by Sabina Šabanić; D20, Photograph marked by W-35; P104, Street map of Sarajevo.

¹⁰⁰⁵ Afeza Karačić, 30 Jan 2007, T. 1192 – 1193. During her testimony, Afeza Karačić indicated where the Metalka Building was located, but did not explicitly say that the shots came from there; P941, Videoclip with Afeza Karačić (under seal); P119, 360° photograph.

¹⁰⁰⁶ P514, Expert report Patrick van der Weijden, pp 25 – 26; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

¹⁰⁰⁷ See *supra*, para 228.

Bučo and Huso Palo gave evidence that the shot was fired from one of the high-rise buildings on Lenjinova Street, which offered a direct line of sight onto the area between the two museums, where the tram was shot.¹⁰⁰⁸ The Trial Chamber recalls that these buildings were also known Bosnian Serb sniper positions.¹⁰⁰⁹

Findings

288. On the basis of the evidence of eyewitnesses, including Hafiza Karačić and Sabina Šabanić, and the BiH police report, the Trial Chamber finds that the tram was shot at the intersection in front of the Holiday Inn, or shortly thereafter in front of the Marshal Tito Barracks between the two museums. The origin of fire was either the high-rise buildings on Lenjinova Street or the Metalka Building. The Trial Chamber recalls that both locations were held by the SRK.

289. There is no evidence to suggest that the shots came from ABiH-held territory. In light of the evidence from all witnesses that the shots came from SRK-held territory, it is not necessary for the Trial Chamber to resolve the conflicting evidence as to the precise location of the tram and the origin of fire. Moreover, the evidence shows that weapons were used with a calibre and range sufficient to hit the tram and to cause the serious injuries sustained by Sabina Šabanić and Afeza Karačić. The question whether the two civilians were injured by a fragmentation bullet or by multiple shots has no bearing on the findings of the Trial Chamber. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

d. Sniping of Senad Kešmer, Alma Čehajić and Alija Holjan on 27 February 1995

290. W-118 was driving a tram that was fired upon on 27 February 1995 on Zmaja od Bosne.¹⁰¹⁰ The crowded tram was travelling westwards, from the centre of town toward Ilidža.¹⁰¹¹ According

¹⁰⁰⁸ Kemal Bučo, 2 Feb 2007, T. 1495, P158, p. 2. According to Kemal Bučo, the origin of fire was determined by a CSB ballistic team and also by UNPROFOR; Huso Palo, 5 Feb 2007, T. 1535, 1539, 1547, P162, pp 2 – 3; Sabina Šabanić, 2 Feb 2007, T. 1453 – 1455, P154, p. 2; P157, Photograph marked by Sabina Šabanić; P161, Official note, p. 2; P104, Street map of Sarajevo; D215, Map marked by Vaso Elez.

¹⁰⁰⁹ See *supra*, para. 228.

¹⁰¹⁰ W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1628, P174, p. 2 (under seal).

¹⁰¹¹ W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1624, 1629 – 1630, P175, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1657; Alija Holjan, 4 Apr 2007, T. 4473, P524, p. 1, P525, p. 2, P526, p. 2; D39, Photograph marked by W-118.

to W-118, there was a cease-fire in place and it was a peaceful day.¹⁰¹² The weather conditions allowed for good visibility, with neither fog nor rain.¹⁰¹³

291. Alma Mulaosmanović, maiden name Čehajić, aged 18, was on the tram on her way back home from school.¹⁰¹⁴ She was wearing a light purple jacket, blue jeans, tennis shoes, and a green blouse.¹⁰¹⁵ On the tram, she stood facing the Marshal Tito Barracks.¹⁰¹⁶ Alija Holjan, a foreman of a street cleaning crew, was sitting on the right-side of the tram, next to an exit.¹⁰¹⁷ W-118 recounted how the shooting started around noon, when the tram was about 20 metres west of the tram stop at the Marshal Tito Barracks.¹⁰¹⁸ Alija Holjan and Alma Mulaosmanović also testified that the tram was near the Marshal Tito Barracks when it came under fire.¹⁰¹⁹ W-118 heard a loud noise, and, at first, thought that the wires were breaking.¹⁰²⁰ Alija Holjan and Alma Mulaosmanović both heard shots hitting the left side of the tram.¹⁰²¹ They described how the passengers tried to take cover from the bullets.¹⁰²² Alma Mulaosmanović testified:

“Just as all other passengers, I was just waiting to be hit. In that crouching position I just prayed to God, because shots were heard hitting the tram, that I wouldn’t be hit in the spine or any such part that would leave me paralysed.”¹⁰²³

292. Alma Mulaosmanović sustained what she called a “light injury” in her left arm from a bullet.¹⁰²⁴ It entered on the front at her elbow, passed through the muscle, “slid down” the bone and exited on her lower arm.¹⁰²⁵ Alija Holjan felt a blow to the right shoulder blade area.¹⁰²⁶ He started to bleed.¹⁰²⁷ A bullet had struck him in the back, passing from left to right.¹⁰²⁸ He saw that about

¹⁰¹² W-118, 6 Feb 2007, T. 1624, 1637, 1648, P174, p. 2 (under seal). *See also*, D475, D476, D477, D478, D478, Regular combat reports, 25 – 27 February 1995.

¹⁰¹³ W-118, P175, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1657; Alija Holjan, P526, p. 2.

¹⁰¹⁴ Alma Mulaosmanović, 6 Feb 2007, T. 1649.

¹⁰¹⁵ Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1657, P179, pp 2 – 3.

¹⁰¹⁶ Alma Mulaosmanović, 6 Feb 2007, T. 1652, 1658, 1661 – 1662, P178, p. 2, P179, p. 3.

¹⁰¹⁷ Alija Holjan, 4 Apr 2007, T. 4470, 4472, 4479, P524, p. 1, P525, p. 2.

¹⁰¹⁸ W-118, 5 Feb 2007, T. 1616, 6 Feb 2007, T. 1630, 1633, 1640, P174, p. 2 (under seal); P176, Map marked by W-118; P177, Photograph marked by W-118; D39, Photograph marked by W-118; D40, Map marked by W-118. *See also*, Alija Holjan, P524, p. 1, P525, p. 2; Alma Mulaosmanović, P178, p. 2.

¹⁰¹⁹ Alma Mulaosmanović, 6 Feb 2007, T. 1652 – 1653, 1661, 1663 – 1664; P180, Map marked by Alma Mulaosmanović; P181, Photograph marked by Alma Mulaosmanović; D42, Photograph marked by Alma Mulaosmanović. *See also*, Alma Mulaosmanović, P179, p. 2; Alija Holjan, 4 Apr 2007, T. 4476 – 4477, P524, p. 1, P525, p. 2,

¹⁰²⁰ W-118, 6 Feb 2007, T. 1625.

¹⁰²¹ Alija Holjan, 4 Apr 2007, T. 4479, P524, p. 1, P525, p. 2. Alma Mulaosmanović, 6 Feb 2007, T. 1658, P178, p. 2, P179, pp 2 – 3.

¹⁰²² Alija Holjan, 4 Apr 2007, T. 4479, P524, p. 1; Alma Mulaosmanović, 6 Feb 2007, T. 1658, P178, p. 2, P179, pp 2 – 3.

¹⁰²³ Alma Mulaosmanović, 6 Feb 2007, T. 1658.

¹⁰²⁴ Alma Mulaosmanović, 6 Feb 2007, T. 1653, 1656, 1658, P178 p. 2, P179, p. 3.

¹⁰²⁵ Alma Mulaosmanović, 6 Feb 2007, T. 1656.

¹⁰²⁶ Alija Holjan, P524, p. 1, P525, p. 2, P526, p. 3.

¹⁰²⁷ Alija Holjan, P525, p. 2, P526, p. 3.

¹⁰²⁸ Alija Holjan, P525, p. 2.

four other people were injured during the shooting of the tram.¹⁰²⁹ He saw a woman who was seriously wounded in the leg and he later heard that she died in the hospital.¹⁰³⁰ W-118 did not hear any gunfire and only realised that the tram had been shot at when she heard people screaming.¹⁰³¹ She turned around and saw passengers lying down on the floor and someone bleeding.¹⁰³² Then W-118 thought that the whole length of the tram had been targeted; it felt like a “burst of fire”.¹⁰³³

293. Alma Mulaosmanović recalled that the shooting continued until they reached shelter in front of a police station.¹⁰³⁴ W-118 continued to drive for about 50 metres and stopped the tram at the Faculty of Natural Sciences and Mathematics to seek shelter.¹⁰³⁵ At that point, passengers tried to leave the tram.¹⁰³⁶

294. Alma Mulaosmanović and Alija Holjan were taken to the first-aid station of the State Hospital, and an elderly man and woman were also brought there.¹⁰³⁷ Alija Holjan was sent home from the hospital, but he continued to receive outpatient treatment and was on sick leave for one month.¹⁰³⁸ Since the injury, he cannot use his right hand for extended periods of time and experiences pain when the weather changes.¹⁰³⁹ He has been declared 20 per cent disabled.¹⁰⁴⁰ W-118 said that the incident had a psychological as well as a physical impact on her life.¹⁰⁴¹ Since the incident, W-118 no longer works as a tram driver.¹⁰⁴²

295. UNPROFOR and BiH police who were deployed at the junction of the Faculty of Natural Sciences and Mathematics inspected the tram immediately after the incident.¹⁰⁴³ 30 bullet holes and

¹⁰²⁹ Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2, P526, p. 3.

¹⁰³⁰ Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2.

¹⁰³¹ W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

¹⁰³² W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

¹⁰³³ W-118, 6 Feb 2007, T. 1625, P175, p. 2 (under seal).

¹⁰³⁴ Alma Mulaosmanović, 6 Feb 2007, T. 1653, 1662, P178, p. 2, P179 p. 3.

¹⁰³⁵ W-118, 6 Feb 2007, T. 1620, P174, p. 2 (under seal), P175, p. 2 (under seal); D39, Photograph marked by W-118.

¹⁰³⁶ W-118, 6 Feb 2007, T. 1623. In her written statements, W-118 refers to the faculty of natural sciences as the Faculty of Mathematics. *See also*, Alija Holjan, P524, p. 1, P525, p. 2; Alma Mulaosmanović, 6 Feb 2007, T. 1653; P180, Map marked by Alma Mulaosmanović; Sabina Sabanić, 2 Feb 2007, T. 1473; D36, Photograph marked by Sabina Sabanić. The Trial Chamber will refer to that building as the Faculty of Natural Sciences and Mathematics.

¹⁰³⁷ Alma Mulaosmanović, 6 Feb 2007, T. 1658, 1679, P178, p. 2, P179, p. 3; P453, Medical record (under seal); Alija Holjan, P524, p. 1, P525, p. 2, P526, p. 3.

¹⁰³⁸ Alija Holjan, P524, p. 1, P525, p. 2; P470, Medical record (under seal), pp 1- 2 Alija Holjan, P524, p. 1.

¹⁰³⁹ Alija Holjan, P524, p. 1, P525, p. 2.

¹⁰⁴⁰ Alija Holjan, P526, p. 3.

¹⁰⁴¹ W-118, 6 Feb 2007, T. 1626 – 1627.

¹⁰⁴² W-118, 6 Feb 2007, T. 1626.

¹⁰⁴³ W-118, P174, p. 2 (under seal), P175, p. 2 (under seal). In this regard the Trial Chamber notes that neither of the parties submitted a criminal investigation file of this incident, however, it also notes that Alija Holjan gave a statement to the BiH Police.

marks were found on the left side of the tram just below and on the windows.¹⁰⁴⁴ The tram could not be driven normally anymore because one of the control wires had been hit.¹⁰⁴⁵

296. W-118, Alija Holjan and Alma Mulaosmanović all gave evidence that the shots had come from the high-rise buildings in Grbavica, to the South of the tram. The Trial Chamber recalls that the high-rises were held by the SRK.¹⁰⁴⁶ Alma Mulaosmanović explained that the high-rise buildings and the Vraca Hills were visible and that she was “within their field of vision.”¹⁰⁴⁷ She further noted that “[h]ad [the shots] come from a closer area, it would have been louder.”¹⁰⁴⁸ According to W-118 and Alma Mulaosmanović, the area where the tram came under fire was known to be dangerous since it was “an open space and in good view.”¹⁰⁴⁹ According to Alija Holjan, there was a passage between the buildings toward the Technical School and that was the only place where one could see the tram from Grbavica.¹⁰⁵⁰

297. W-118 testified that she saw one ABiH soldier on the tram, standing next to her.¹⁰⁵¹ However, Alma Mulaosmanović does not remember seeing any ABiH soldiers on the tram.¹⁰⁵² W-118 and Alija Holjan also testified that there were no soldiers or vehicles near the tram on that day and there was nothing else of a military nature in the area.¹⁰⁵³ The Marshal Tito Barracks was the closest military facility to the location where the tram was hit.¹⁰⁵⁴

298. The Defence suggested that there was occasional shooting and fighting, between the two warring factions, something W-118 could not confirm.¹⁰⁵⁵ In fact, W-118, Alma Mulaosmanović and Alija Holjan all testified that there was no combat activity near or around the tram on the day of the incident.¹⁰⁵⁶ Alma Mulaosmanović also testified that there were trees, probably both evergreens and deciduous, between the tram tracks and the Miljacka River that obstructed the view to the river

¹⁰⁴⁴ W-118, P174, p. 2 (under seal), 6 Feb 2007, T. 1626.

¹⁰⁴⁵ W-118, P175, p. 2 (under seal).

¹⁰⁴⁶ See *supra*, para. 228. See also, D41, Report from General Rose’s Headquarters to UNPROFOR Headquarters in Zagreb describing incidents of 27 February 1995, dated 28 February 1995 (“UNPROFOR HQ sitrep, 28 February 1995”), p. 23.

¹⁰⁴⁷ Alma Mulaosmanović, 6 Feb 2007, T. 1657 – 1658, 1672, 1674.

¹⁰⁴⁸ Alma Mulaosmanović, 6 Feb 2007, T. 1654.

¹⁰⁴⁹ W-118, 6 Feb 2007, T. 1624; Alma Mulaosmanović, 6 Feb 2007, T. 1657.

¹⁰⁵⁰ Alija Holjan, P525, p. 2.

¹⁰⁵¹ W-118, 6 Feb 2007, T. 1623, P175, p. 2 (under seal).

¹⁰⁵² Alma Mulaosmanović, 6 Feb 2007, T. 1656.

¹⁰⁵³ W-118, 6 Feb 2007, T. 1623 – 1624, P175, p. 2 (under seal); Alija Holjan, 4 Apr 2007, T. 4471, 4474 – 4475, P526, p. 3.

¹⁰⁵⁴ Alma Mulaosmanović, P179, p. 3; W-118, P175, p. 2 (under seal).

¹⁰⁵⁵ W-118, 6 Feb 2007, T. 1637.

¹⁰⁵⁶ W-118, 6 Feb 2007, T. 1624, 1637, 1648, P174, p. 2 (under seal); Alma Mulaosmanović, 6 Feb 2007, T. 1656; Alija Holjan, 4 Apr 2007, T. 4471.

and “the area between the warring factions.”¹⁰⁵⁷ Alija Holjan testified that the confrontation line may have been about 1,000 metres away on the hills from the place where the tram was shot.¹⁰⁵⁸

299. The Defence raised the possibility that the shots which hit the tram may have been the result of fighting at the Vrbanja Bridge. When asked by the Defence whether the first shots she heard were the shots that hit the tram, Alma Mulaosmanović explained that she thought that she heard shots being fired before the tram was hit, but that she was not certain.¹⁰⁵⁹ In response to the Defence question whether she thought the earlier shots had come from the territory controlled by the ABiH, she testified that:

“It was even the same sort of sound when the bullets were fired. There was no change at all to the sound, not in terms of the distance. This was several moments before the tram was hit; therefore, it is very difficult to determine. The tram was moving and the time lag between the two was very short. There was not much fighting going on or anything.”¹⁰⁶⁰

During cross-examination, Alija Holjan explained that he did not hear any shooting before the incident and he was sure that the shots only came from the left side.¹⁰⁶¹

300. An UNPROFOR report of the same day, tendered by the Defence, stated that eight shots were fired at a tram near the Holiday Inn, resulting in one confirmed civilian casualty and three other possible casualties. The report pointed out that the origin of the shots was assessed from the “Vrbanja Bridge/Red building area” where a “fire fight” between the SRK and the ABiH had occurred at the same time.¹⁰⁶² A few pages later, the report stated that UNMO had investigated the alleged sniper fire and confirmed that the tram was hit by nine shots at the Holiday Inn and that the fire came from the South.¹⁰⁶³

301. W-118 and Alma Mulaosmanović were confronted with this information during cross-examination. W-118 explained that this report probably did not refer to the incident on her tram, as it stated that there was a “fire fight” between the two factions.¹⁰⁶⁴ Alma Mulaosmanović could also not confirm that there had been a “fire fight” between the warring factions at the time of the incident.¹⁰⁶⁵ Further, the report referred to the area “near” the Holiday Inn, which, according to W-118, could have been a reference to the area of Marindvor and Holiday Inn and not to the area further down, near the Marshal Tito Barracks where the tram was hit.¹⁰⁶⁶ The area of the “Vrbanja

¹⁰⁵⁷ Alma Mulaosmanović, 6 Feb 2007, T. 1664 – 1665; D42, Photograph marked by Alma Mulaosmanović.

¹⁰⁵⁸ Alija Holjan, 4 Apr 2007, T. 4473, P526, p. 3.

¹⁰⁵⁹ Alma Mulaosmanović, 6 Feb 2007, T. 1662.

¹⁰⁶⁰ Alma Mulaosmanović, 6 Feb 2007, T. 1666 – 1667; D42, Photograph marked by Alma Mulaosmanović.

¹⁰⁶¹ Alija Holjan, 4 Apr 2007, T. 4479 – 4480.

¹⁰⁶² D41, UNPROFOR HQ sitrep, 28 February 1995, pp 2, 9.

¹⁰⁶³ D41, UNPROFOR HQ sitrep, 28 February 1995, p. 23.

¹⁰⁶⁴ W-118, 6 Feb 2007, T. 1642 – 1645.

¹⁰⁶⁵ Alma Mulaosmanović, 6 Feb 2007, T. 1671 – 1672.

¹⁰⁶⁶ D41, UNPROFOR HQ sitrep, 28 February 1995, p. 2; W-118, 6 Feb 2007, T. 1642 – 1644.

Bridge/Red building”, as indicated as origin of fire in the UNPROFOR report, was, according to W-118, not the same as the Grbavica area she had indicated as the origin of fire.¹⁰⁶⁷ This was confirmed by Alma Mulaosmanović, who marked the two different neighbourhoods on a photograph.¹⁰⁶⁸

302. Brig. Gen. David Fraser was also questioned by the Defence about the UNPROFOR report. He explained that the report comprised information from different levels of command.¹⁰⁶⁹ He testified that discrepancies in the report, such as the number of shots, are not unusual in this kind of report.¹⁰⁷⁰ According to Brig. Gen. Fraser, the report, read as a whole, shows that there were two concurrent occurrences: a fire fight at the Vrbanja Bridge, and sniping against a tram.¹⁰⁷¹ He could not confirm, based on the information in the report, that it was the shooting from the Vrbanja Bridge that hit the tram.¹⁰⁷² Instead he testified, “I am reading the report [as if] the tram was actually specifically targeted, from what the words are saying here, “sniper fire against a tram.” That is a very deliberate, definite action.”¹⁰⁷³

303. Lt. Van der Weijden was not questioned about this incident by either of the parties. In his report, he concluded that automatic fire, most likely from a M84 or M53 machinegun, was used since there were a number of victims and several shots were fired at a rapid rate.¹⁰⁷⁴ It is observed that the UNPROFOR report also makes mention of a machinegun cease-fire violation in relation to the incident on the tram.¹⁰⁷⁵

304. Lt. Van der Weijden further stated in his report that the likely location of the sniper was the Metalka Building.¹⁰⁷⁶ However, the Trial Chamber notes that Lt. Van der Weijden placed the tram at the intersection between the Museum and the Holiday Inn, some distance to the east of the place where the eyewitnesses indicated the tram was hit. W-118, Alma Mulaosmanović and Alija Holjan,

¹⁰⁶⁷ D41, UNPROFOR HQ sitrep, 28 February 1995, p. 2; W-118, 6 Feb 2007, T. 1647 – 1648.

¹⁰⁶⁸ Alma Mulaosmanović, 6 Feb 2007, T. 1676 – 1677; P181, Photograph marked by Alma Mulaosmanović; P182, Photograph marked by Alma Mulaosmanović.

¹⁰⁶⁹ David Fraser, 8 Feb 2007, T. 1881 – 1882.

¹⁰⁷⁰ David Fraser, 8 Feb 2007, T. 1885.

¹⁰⁷¹ David Fraser, 8 Feb 2007, T. 1887 – 1888.

¹⁰⁷² David Fraser, 8 Feb 2007, T. 1887.

¹⁰⁷³ David Fraser, 8 Feb 2007, T. 1887.

¹⁰⁷⁴ P514, Expert report Patrick van der Weijden, p. 28, Appendix A.

¹⁰⁷⁵ D41, UNPROFOR HQ sitrep, 28 February 1995, p. 9; David Fraser, 8 Feb 2007, T. 1884.

¹⁰⁷⁶ P514, Expert report Patrick van der Weijden, p. 29; P515, Photograph marked by Patrick van der Weijden; P104, Street map of Sarajevo; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

all gave evidence that the shot was fired from one of the high-rise buildings located on Lenjinova Street in Grbavica.¹⁰⁷⁷

305. Col. Stamenov stated in his report that it was impossible to identify the location from which the projectile was fired with any certainty, since neither the exact location of the tram when the fire started, nor the direction of fire, nor the type of weapon used was established.¹⁰⁷⁸

Findings

306. The Trial Chamber is in a position to rule out the possibility that the projectile came from the Vrbanja Bridge, where the evidence clearly shows that there was a fire-fight between the two parties, because the maps and photographs discussed in court indicate that there was no line of sight between the Vrbanja Bridge and the tram. There were no high-rise buildings at that bridge and the path of a bullet from that position, shot towards the Marshal Tito Barracks, would have been obstructed by several buildings.¹⁰⁷⁹ This finding is in no way affected by the conflicting evidence as to where the tram was hit, be it at the Holiday Inn or at the Marshal Tito Barracks.

307. In view of the fact that there was no clear line of sight between the Metalka Building and the tram at the Marshal Tito Barracks, the Trial Chamber finds that the projectile was fired from the high-rise buildings in Grbavica, in SRK-held territory. There is no evidence that the shots originated from ABiH territory. The Trial Chamber finds that there was a clear view from the high-rise buildings on Lenjinova Street in Grbavica onto the intersection at the Marshal Tito Barracks. The Trial Chamber's finding is supported by the consistent testimony of eyewitnesses as to the origin of fire and the location of the tram.

308. The Trial Chamber also finds that Alija Holjan and Alma Mulaosmanović, both civilians, were seriously injured in this incident.

309. The only evidence pertaining to Senad Kešmer, who was one of the victims mentioned in the Indictment, was an extract from a medical record from a hospital in Sarajevo, dated 27 February 1995, which stated that Senad Kešmer received treatment at an out-patient clinic and was discharged for home treatment.¹⁰⁸⁰ The Trial Chamber is able to make a finding that Senad Kešmer suffered an injury, but is not in a position to attribute this injury to the SRK because the only

¹⁰⁷⁷ W-118, 6 Feb 2007, T. 1620, 1622 – 1623, 1636, P174, p. 2 (under seal); P176, Map marked by W-118; P177, Photograph marked by W-118; Alma Mulaosmanović, 6 Feb 2007, T. 1653 – 1655, 1657, 1678, P178, p. 2, P179, p. 2; P180, Map marked by Alma Mulaosmanović; P181, Photograph marked by Alma Mulaosmanović; Alija Holjan, 4 Apr 2007, T. 4473, P525, p. 2, P526, p. 3; P104, Street map of Sarajevo; D215, Map marked by Vaso Elez.

¹⁰⁷⁸ D360, Expert report Ivan Stamenov, p. 16.

¹⁰⁷⁹ See P181, Photograph marked by Alma Mulaosmanović; P182, Photograph marked by Alma Mulaosmanović.

evidence is a medical record that is silent with regard to the circumstances under which Senad Kešmer sustained his injury.

310. In addition, the Trial Chamber received medical documentation with regard to two other persons who sustained gunshot wounds on the same day.¹⁰⁸¹ However, it is not clear whether the two persons were victims of the incident on the tram on 27 February 1995. The UNPROFOR report, in different sections, variously referred to three to four injured persons, but only confirmed one casualty, a woman who was injured in her leg and underwent surgery.¹⁰⁸² This information is corroborated by W-118's and Alija Holjan's testimony.¹⁰⁸³ In addition to Alija Holjan and Alma Mulaosmanović being injured on the tram, the evidence shows that one unknown woman was shot in the leg. The Trial Chamber is, therefore, satisfied that at least three persons were seriously injured on the tram on 27 February 1995 by shots originating from SRK-held territory. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

e. Sniping of Azem Agović and Alen Gičević on 3 March 1995

311. The third of March 1995 was the Muslim Bajram holiday.¹⁰⁸⁴ There was no military activity that morning.¹⁰⁸⁵ A cease-fire was in place.¹⁰⁸⁶ At around noon, a tram driven by Slavica Livnjak was travelling along Zmaja od Bosne from west to east, that is, from Čengić Vila toward Baščaršija.¹⁰⁸⁷

312. Alen Gičević, his girlfriend and Azem Agović were among the many passengers on the tram.¹⁰⁸⁸ Alen Gičević was wearing black trousers and was standing just behind the middle part of the tram, next to the third door on the right-hand side, facing the SRK-held positions of Vraca and the Jewish Cemetery.¹⁰⁸⁹ Grbavica and the southern part of town were to his right.¹⁰⁹⁰ He had been a

¹⁰⁸⁰ P468, Medical record (under seal).

¹⁰⁸¹ P465, Medical record (under seal); P469, Medical record (under seal).

¹⁰⁸² D41, UNPROFOR HQ sitrep, 28 February 1995, pp 2, 9, 23.

¹⁰⁸³ W-118, 6 Feb 2007, T. 1626, P174, p. 2; Alija Holjan, 4 Apr 2007, T. 4478, P525, p. 2.

¹⁰⁸⁴ Alen Gičević, P164, p. 3, Azem Agović, P210, p. 2, P211, p. 2.

¹⁰⁸⁵ Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1566, P163, p. 2; Azem Agović, 13 Feb 2007, T. 2052, P210, p. 2, P211, p. 2.

¹⁰⁸⁶ Slavica Livnjak, 23 Jan 2007, T. 859 – 860, 862, P95, p. 2; Alen Gičević, P164, p. 2; Azem Agović, P211, p. 2.

¹⁰⁸⁷ Slavica Livnjak, 23 Jan 2007, T. 857, P94, p. 2, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1556, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 2.; W-118, P174, p. 2 (under seal); Zlatko Mededović, P649, p. 6; P96, Photograph marked by Slavica Livnjak; D23, Criminal investigation file, pp 2, 4, 5, 7.

¹⁰⁸⁸ Alen Gičević, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 2.

¹⁰⁸⁹ Alen Gičević, 5 Feb 2007, T. 1556, P163, p. 2, P164, pp 2 – 3.

¹⁰⁹⁰ Alen Gičević, 5 Feb 2007, T. 1556.

member of the ABiH, but had been demobilised from the army nine months before this incident.¹⁰⁹¹ Azem Agović was seated facing the rear of the tram, with Grbavica to his left.¹⁰⁹² He was wearing a three-piece grey suit.¹⁰⁹³

313. When the tram passed the area between the Parliament and the Faculty of Philosophy, Azem Agović heard firing.¹⁰⁹⁴ Alen Gičević, Azem Agović and Slavica Livnjak testified that the tram was hit in the area of the Holiday Inn, close to the National Museum, just before the S-curve in the tram tracks.¹⁰⁹⁵ There were no military institutions, vehicles or equipment present in the vicinity; the closest military facility was the Marshal Tito Barracks.¹⁰⁹⁶

314. The passengers screamed and threw themselves on the floor in panic. Alen Gičević explained that “we all fell, on the one hand because the tram swerved and on the other hand because bullets started flying.”¹⁰⁹⁷ He immediately felt severe pain just above his right knee and he was bleeding.¹⁰⁹⁸ Azem Agović explained that he suddenly felt severe pain just above his left hip; a bullet had entered just above his left hip and passed through his body and exited on the right side.¹⁰⁹⁹ Azem Agović saw that a young man and a child had been wounded as well.¹¹⁰⁰ Alen Gičević testified that another man, sitting between him and the door was injured and was bleeding.¹¹⁰¹ Slavica Livnjak saw that an old man and a young man, located in the second tram car, were wounded.¹¹⁰² The investigation conducted after the incident confirmed that Alen Gičević, Azem Agović and a third person had been injured during the incident.¹¹⁰³

¹⁰⁹¹ Alen Gičević, 5 Feb 2007, T. 1571 – 1572, P164, p. 3.

¹⁰⁹² Slavica Livnjak, P94, p. 2, P95, p. 3, stating that the tram was carrying about 100 “civilians”; Azem Agović, 13 Feb 2007, T. 2052, P210, p. 2, P211, p. 2.

¹⁰⁹³ Azem Agović, 13 Feb 2007, T. 2052, P211, p. 2.

¹⁰⁹⁴ Azem Agović, P211, p. 2.

¹⁰⁹⁵ Slavica Livnjak, 23 Jan 2007, T. 858, 862, 864, P94, p. 2, P95, p. 3; Alen Gičević, 5 Feb 2007, T. 1557, 1561 – 1562, P163, pp 2, 6; Azem Agović, P210, p. 2; P165, Map marked by Alen Gičević; P166, Photograph marked by Alen Gičević; P167, Photograph marked by Alen Gičević; P96, Photograph marked by Slavica Livnjak; P97, Photograph marked by Slavica Livnjak; D23, Criminal investigation file, pp 2, 4 – 5, 7-8. For S-curve, *see also, supra*, paras 217, 255, 257.

¹⁰⁹⁶ Alen Gičević, P163, p. 2, P164, p. 3; Azem Agović, P211, p. 3. According to Alen Gičević the Marshal Tito Barracks was about 900 metres away; Slavica Livnjak, 23 Jan 2007, T. 863, 877 – 878, P94, p. 2, P95, p. 3, Slavica Livnjak, 23 Jan 2007, T. 877.

¹⁰⁹⁷ Alen Gičević, 5 Feb 2007, T. 1573, P163, p. 2, P164, p. 3; Slavica Livnjak, P95, p. 3.

¹⁰⁹⁸ Alen Gičević, 5 Feb 2007, T. 1557, P163, p. 2, P164, p. 3; D23, Criminal investigation file, pp 4, 8; Zlatko Mededović, P649, p. 7.

¹⁰⁹⁹ Azem Agović, 13 Feb 2007, T. 2053, P210, p. 2, P211, p. 2; D23, Criminal investigation file, pp 4, 8; P454, Medical record (under seal); Zlatko Mededović, P649, p. 7.

¹¹⁰⁰ Azem Agović, P210, p. 2, P211, p. 2.

¹¹⁰¹ Alen Gičević, 5 Feb 2007, T. 1579 – 1580, P163, p. 2.

¹¹⁰² Slavica Livnjak, 23 Jan 2007, T. 869, P95, p. 3.

¹¹⁰³ D23, Criminal investigation file, pp 2, 4 – 5, 8.

315. The tram continued until it reached some containers near an old “tobacco building”, near the Executive Council Building, which offered shelter from sniper fire.¹¹⁰⁴ According to the BiH police report, the tram was hit between the accordion and the first door of the second car, at the level of the seat.¹¹⁰⁵ Alen Gičević left the tram and did not talk to the tram driver or to the police after the incident.¹¹⁰⁶ He walked to the State Hospital with the help of his girlfriend.¹¹⁰⁷ A part of the bullet was lodged in his knee and was extracted seven days later.¹¹⁰⁸ Alen Gičević still suffers from this injury; his blood circulation is poor, he feels pain in his tibia and gets tired quickly.¹¹⁰⁹ Azem Agović was brought by a car to Koševo Hospital where he stayed for a month, 16 days of which were in intensive care.¹¹¹⁰ He required treatment for another three years and initially could not walk far, drive a car or carry heavy things.¹¹¹¹

316. There was evidence that on the same day, just after the incident occurred, W-118 was driving a tram from Remiza towards the centre of the town.¹¹¹² She stopped the tram behind containers where three trams other trams were already taking shelter.¹¹¹³ W-118 further stated that, after a while, Bosnian Serbs started shooting from the direction of Grbavica and that UNPROFOR soldiers fired back in that direction.¹¹¹⁴ One UNPROFOR soldier was injured and taken to hospital.¹¹¹⁵ W-118 explained that the cross-fire lasted for 15 minutes.¹¹¹⁶

317. Azem Agović stated that the bullet that hit him came from a building in Zagrebačka Street, located at the edge of Grbavica.¹¹¹⁷ According to Alen Gičević, there were two or three shots, but he was not sure whether they were fired from one or several different locations.¹¹¹⁸ He stated that he was sure that the shot came from the direction of the Jewish Cemetery, based on the sounds of the shots.¹¹¹⁹ During his testimony in court, he explained that he assumed the shots came from one of the high-rise buildings in Grbavica or from the Metalka Building.¹¹²⁰ Slavica Livnjak also testified

¹¹⁰⁴ Alen Gičević, 5 Feb 2007, T. 1580, P163, p. 2, P164, p. 3; Azem Agović, P210, p. 2, P211, p. 3; Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3.

¹¹⁰⁵ Slavica Livnjak, 23 Jan 2007, T. 868 – 869; D23, Criminal investigation file, pp 2, 5, 7-8.

¹¹⁰⁶ Alen Gičević, 5 Feb 2007, T. 1574; W-118, P174, p. 2 (under seal).

¹¹⁰⁷ Alen Gičević, 5 Feb 2007, T. 1578, P163, p. 2, P164, p. 3; Slavica Livnjak, P95, p. 3; W-118, P174, p. 2 (under seal); D23, Criminal investigation file, pp 2, 5.

¹¹⁰⁸ Alen Gičević, 5 Feb 2007, T. 1580, 1582, P163, p. 2; P454, Medical record (under seal).

¹¹⁰⁹ Alen Gičević, P163, p. 2.

¹¹¹⁰ Azem Agović, P210, p. 2, P211, p. 3; P466, Medical record (under seal); Slavica Livnjak, P95, p. 3; D23, Criminal investigation file, pp 2, 5.

¹¹¹¹ Azem Agović, P210, p. 2, P211, p. 3.

¹¹¹² W-118, P174, p. 2 (under seal).

¹¹¹³ W-118, P174, p. 2 (under seal).

¹¹¹⁴ W-118, P174, p. 2 (under seal); Zlatko Mededović, P649, p. 7.

¹¹¹⁵ W-118, P174, p. 2 (under seal); D23, Criminal investigation file, pp 2, 5, 8.

¹¹¹⁶ W-118, P174, p. 2 (under seal).

¹¹¹⁷ Azem Agović, P210, p. 2, P211, p. 2; D220, Photograph marked by Vaso Elez; P104, Street map of Sarajevo.

¹¹¹⁸ Alen Gičević, 5 Feb 2007, T. 1559 – 1560, 1573, P163, p. 2, P164, p. 3.

¹¹¹⁹ Alen Gičević, P163, p. 2.

¹¹²⁰ P165, Map marked by Alen Gičević; P166, Photograph marked by Alen Gičević; Alen Gičević, 5 Feb 2007, T. 1559, 1561.

that the shots came from the direction of the Metalka Building in Grbavica.¹¹²¹ The BiH police investigation team were not able to determine the origin of fire.¹¹²²

318. Lt. Van der Weijden, in his report, also concluded that the fire originated from the Metalka Building.¹¹²³ He pointed out that the tram took at least eight seconds to pass the S-curve.¹¹²⁴ In this respect, the Trial Chamber recalls the evidence of Lt. Van der Weijden and Col. Stamenov as to the visibility of trams at the S-curve.¹¹²⁵ It also recalls its earlier finding that at the start of the S-curve, where the tracks cross the road, the Metalka Building is visible.¹¹²⁶

319. According to Azem Agović and Alen Gičević, the third of March was a sunny day.¹¹²⁷ However, according to Col. Stamenov, it was raining in the morning of 3 March 1995 and the visibility was poor, and that according to a NATO weather report, it was a bit overcast at noon.¹¹²⁸

320. An on-site investigation conducted on the same day, established that “a single bullet” fired from “aggressor positions” at Grbavica had hit the tram.¹¹²⁹ When Alen Gičević was confronted with this information during cross-examination, he maintained that he knew two to three shots were fired at the tram, because he “heard it” and “felt it”.¹¹³⁰ In response to questions from the Defence, W-91, a police officer who investigated the incident, testified that the BiH police was not able to determine the exact location of the sniper because the tram continued moving after it was shot, in order to take cover in the safe area.¹¹³¹ In general, he testified, trams were shot at from the South, from the Grbavica area.¹¹³² Col. Stamenov’s report does not address the origin of fire in this incident.

321. In terms of the type of weapon used, Lt. Van der Weijden concluded that automatic fire, most likely from a M84 or M53 machinegun, was probably used as there were a number of victims and several shots were fired at a rapid rate.¹¹³³ The criminal investigation file also stated that “automatic” fire had been opened on the tram.¹¹³⁴ In his written statement, W-91 stated that it was

¹¹²¹ Slavica Livnjak, 23 Jan 2007, T. 860, 862, P94, p. 2, P95, p. 3; P97, Photograph marked by Slavica Livnjak.

¹¹²² Zlatko Mededović, P649, p. 3.

¹¹²³ P514, Expert report Patrick van der Weijden, p. 32. Lt. Van der Weijden considered the Jewish Cemetery as a possible location, but dismissed that possibility, *ibid*.

¹¹²⁴ P514, Expert report Patrick van der Weijden, p. 33. *See also*, C14, Photographs taken during site visit, pp 2 – 7.

¹¹²⁵ *See supra*, paras 258 – 259.

¹¹²⁶ *See supra*, paras 265; C14, Photographs taken during site visit, pp 24 – 26.

¹¹²⁷ Slavica Livnjak, 23 Jan 2007, T. 863, P95, p. 3; Azem Agović, 13 Feb 2007, T. 2052, P211, p. 2.

¹¹²⁸ Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 3.

¹¹²⁹ D23, Criminal investigation file, pp 2, 4 – 5, 7; W-91, 15 Mar 2007, T. 3793, 3795; Zlatko Mededović, P649, pp 6 – 7.

¹¹³⁰ Alen Gičević, 5 Feb 2007, T. 1578, P163, p. 2.

¹¹³¹ W-91, 15 Mar 2007, T. 3801.

¹¹³² W-91, 15 Mar 2007, T. 3800. *See also*, D23, Criminal investigation file, p. 2.

¹¹³³ P514, Expert report Patrick van der Weijden, p. 31, Appendix A.

¹¹³⁴ D23, Criminal investigation file, pp 4, 7.

common for the Bosnian Serb Army to fire fragmentation bullets at the trams.¹¹³⁵ However, from the information in the criminal investigation file he could not conclude that the bullet which hit the tram was a fragmentation bullet.¹¹³⁶ Col. Stamenov stated in his report that there were no material traces on the basis of which one could establish with any certainty whether two or three persons were wounded by a single projectile.¹¹³⁷ He also testified that with the sniper weapons likely to have been used in this incident, there is no such bullet that would have a fragmentation effect.¹¹³⁸ In his opinion, the incident could not be classified as a sniper attack.¹¹³⁹

Findings

322. On the basis of the evidence of witnesses, including eyewitnesses and documentary evidence, the Trial Chamber finds that the tram was shot in front of the Holiday Inn, just before the S-curve, and that Azem Agović and Alen Gičević, both civilians, were seriously injured by the shots. In its Final Brief, the Defence drew attention to the fact that the police was unable to establish the direction of fire.¹¹⁴⁰ However, the Trial Chamber finds that, although the exact location of the shooter could not be established by the BiH police, all eyewitnesses and the Prosecution expert Lt. Van der Weijden confirm that the shots came from Grbavica, which, the Trial Chamber recalls, was SRK-held territory.¹¹⁴¹ The Defence further submitted that there is a discrepancy between the number of bullets and the number of victims.¹¹⁴² The Trial Chamber is satisfied that more than one bullet hit the tram and injured Azem Agović and Alen Gičević.

323. As for the Defence arguments relating to the poor visibility on that day, the Trial Chamber notes that the NATO weather report reflects that at around noon, when the incident took place, there was no rain or fog and the visibility was between 7,000 to 8,000 metres.¹¹⁴³ Therefore, the Trial Chamber is satisfied that the visibility was sufficient for a shooter to identify the victims as civilians.

324. In relation to the general argument by the Defence that ABiH troops were positioned between the tram tracks and the SRK-held area of Grbavica - a claim that was also confirmed by W-91 - the Trial Chamber finds that there is no evidence that the shots actually came from the ABiH-held territory; rather, the evidence is that shots came from SRK-held territory. In light of the

¹¹³⁵ W-91, P371, p. 2 (under seal).

¹¹³⁶ W-91, 15 Mar 2007, T. 3795 – 3796, P371, p. 2 (under seal).

¹¹³⁷ D360, Expert report Ivan Stamenov, p. 16.

¹¹³⁸ Ivan Stamenov, 22 Aug 2007, T. 9051.

¹¹³⁹ D360, Expert report Ivan Stamenov, p. 16.

¹¹⁴⁰ Defence Final Brief, para. 180.

¹¹⁴¹ See *supra*, para. 228.

¹¹⁴² Defence Final Brief, para. 180.

fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

f. Sniping of Dženana Sokolović and Nermin Divović on 18 November 1994

325. In the evening of 17 November 1994, Dženana Sokolović, her seven-year-old son Nermin Divović, and her eight-year-old daughter Enida Divović went to Hrasno to collect firewood.¹¹⁴⁴ The day after, around noon, they returned to their home in Bistrik.¹¹⁴⁵ According to Dženana Sokolović, there was a cease-fire in place on 18 November 1994 and the trams were running.¹¹⁴⁶ It was a nice day.¹¹⁴⁷

326. There were no soldiers around and no combat going on in the area at the time of the incident.¹¹⁴⁸ However, John Jordan testified that snipers were active in the area that day and there had been a few instances of people being shot and wounded.¹¹⁴⁹ UNPROFOR soldiers guarded the area on Zmaja od Bosne around the cross-road near the Holiday Inn, and GOFRS volunteers were also present in the area.¹¹⁵⁰

327. While walking down the Zmaja od Bosne, in the area of Holiday Inn and the Faculty of Philosophy, Enida Divović, who was walking in front of her mother and brother, started to cross the Franje Račkog Street, which runs perpendicular to the Zmaja od Bosne.¹¹⁵¹ Dženana Sokolović and her son, Nermin Divović, followed, walking side by side, talking to each other.¹¹⁵² Nermin Divović was to the left of her, holding onto her jacket.¹¹⁵³ As they crossed the Franje Račkog Street, at the zebra-crossing, Dženana Sokolović and Nermin Divović were shot.¹¹⁵⁴ They had walked past the

¹¹⁴³ D362, NATO weather report for Sarajevo, p. 2.

¹¹⁴⁴ Dženana Sokolović, 22 Jan 2007, T. 764 – 765.

¹¹⁴⁵ Dženana Sokolović, 22 Jan 2007, T. 763, 765.

¹¹⁴⁶ Dženana Sokolović, 22 Jan 2007, T. 765 – 766.

¹¹⁴⁷ John Jordan, 21 Feb 2007, T. 2650. *See also*, Dženana Sokolović, 22 Jan 2007, T. 772 – 773.

¹¹⁴⁸ Dženana Sokolović, 22 Jan 2007, T. 810; D19, Criminal investigation file, Dženana Sokolović (“Criminal investigation file”), p. 2.

¹¹⁴⁹ John Jordan, 21 Feb 2007, T. 2650, P267, p. 3. *See also*, P868, UNPROFOR daily sitrep, dated 18 November 1994, p. 8.

¹¹⁵⁰ Dženana Sokolović, 22 Jan 2007, T. 786; John Jordan, 21 Feb 2007, T. 2650, P267, p. 3; D19, Criminal investigation file, p. 2.

¹¹⁵¹ Dženana Sokolović, 22 Jan 2007, T. 766, 769; D19, Criminal investigation file, p. 1, P104, Street map of Sarajevo.

¹¹⁵² Dženana Sokolović, 22 Jan 2007, T. 785; P88, Photograph marked by Dženana Sokolović.

¹¹⁵³ Dženana Sokolović, 22 Jan 2007, T. 773, 784; P941, Videoclip with Dženana Sokolović (under seal).

¹¹⁵⁴ Dženana Sokolović, 22 Jan 2007, T. 773, 784; John Jordan, 21 Feb 2007, T. 2651, 2666, 2671 – 2672, 2677; D19, Criminal investigation file, pp 1, 3; P271, Videoclip of sniping incident; P272, Photo from the “Providence Journal – Bulletin”; D79, Photograph marked by John Jordan; P868, UNPROFOR daily sitrep, 18 November 1994, p. 8.

Museum by that time.¹¹⁵⁵ Dženana Sokolović saw her son fall down, but she did not realise that he had been shot until later.¹¹⁵⁶ She also did not realise until later that she herself had been shot.¹¹⁵⁷

328. After the incident, two APCs of the UNPROFOR French Battalion arrived and parked in the Franje Račkog Street.¹¹⁵⁸ An GOFRS armoured ambulance also arrived and parked as a protection between the source of gun-fire and Nermin Divović, who was lying on the zebra-crossing.¹¹⁵⁹ Nermin Divović died on the way to the hospital and was taken to the mortuary.¹¹⁶⁰ Dženana Sokolović and her daughter were taken to Koševo Hospital by a UN vehicle.¹¹⁶¹ Dženana Sokolović underwent surgery and stayed in hospital for seven or eight days.¹¹⁶² She was unable to attend her son's funeral.¹¹⁶³ Since the incident, she has not been able to hold a full-time job.¹¹⁶⁴

329. Lt. Van der Weijden determined the direction of the shot and the location of the shooter.¹¹⁶⁵ His report and other evidence showed that the shots came from the Metalka Building, which was located at the end of the Franje Račkog Street and across the river.¹¹⁶⁶ According to Lt. Van der Weijden, the shooter was at a distance of 312 metres from the victims.¹¹⁶⁷ Rooms in the Metalka Building offered a direct and clear view of the area between the Museum and the Faculty of Philosophy.¹¹⁶⁸ Lt. Van der Weijden concluded that the possible rifles used were Zastava M76, SVD Dragunov/M91 or Zastava M59/66, or semi-automatic rifles or machine guns, such as M53, M84 or M87.¹¹⁶⁹ From the Metalka Building, it would have been possible to identify Dženana

¹¹⁵⁵ Dženana Sokolović, 22 Jan 2007, T. 785; John Jordan, 21 Feb 2007, T. 2651; P271, Videoclip of sniping incident; P272, Photo from the "Providence Journal – Bulletin".

¹¹⁵⁶ Dženana Sokolović, 22 Jan 2007, T. 766 – 767, 779, 796 – 797.

¹¹⁵⁷ Dženana Sokolović, 22 Jan 2007, T. 799, 800.

¹¹⁵⁸ D19, Criminal investigation file, p. 4; Sead Bešić, 21 Feb 2007, T. 2601 – 2602.

¹¹⁵⁹ P271, Videoclip of sniping incident; P272, Photo from the "Providence Journal – Bulletin"; John Jordan, 21 Feb 2007, T. 2650 – 2651, 2652.

¹¹⁶⁰ Dženana Sokolović, 22 Jan 2007, T. 780; John Jordan, 21 Feb 2007, T. 2650; D19, Criminal investigation file, p. 2, 4; P271, Videoclip of sniping incident.

¹¹⁶¹ Dženana Sokolović, 22 Jan 2007, T. 793; John Jordan, 21 Feb 2007, T. 2650; P271, Videoclip of sniping incident.

¹¹⁶² Dženana Sokolović, 22 Jan 2007, T. 780 – 781; Bakir Nakaš, 25 Jan 2007, 1086 – 1087, 1088; P456, Medical record, pp 2 – 4 (under seal).

¹¹⁶³ Dženana Sokolović, 22 Jan 2007, T. 780.

¹¹⁶⁴ Dženana Sokolović, 22 Jan 2007, T. 780.

¹¹⁶⁵ P514, Expert report Patrick van der Weijden, p. 23.

¹¹⁶⁶ P514, Expert report Patrick van der Weijden, p. 23; P515, Photograph marked by Patrick van der Weijden. *See also*, D19, Criminal investigation file, p. 1; P868, UNPROFOR daily sitrep, 18 November 1994; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20; P88, Photograph marked by Dženana Sokolović; P941, Videoclip with Dženana Sokolović (under seal); D79, Photograph marked by John Jordan.

¹¹⁶⁷ Patrick van der Weijden, 29 Mar 2007, T. 4278, 4283; P514, Expert report Patrick van der Weijden, pp 23, 24; P515, Photograph marked by Patrick van der Weijden; P583, Photograph marked by Mirza Sabljica; P97, Photograph marked by Slavica Livnjak; P222, Photograph marked by Asam Butt; P223, Photograph marked by Asam Butt; P166, Photograph marked by Alen Gičević; P754, Photograph marked by Milorad Katić.

¹¹⁶⁸ Patrick van der Weijden, 29 Mar 2007, T. 4279; P514, Expert report Patrick van der Weijden, pp 23 – 24; P515, Photograph marked by Patrick van der Weijden; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20.

¹¹⁶⁹ P514, Expert report Patrick van der Weijden, p. 22, Appendix A.

Sokolović and her child as an adult and a child, even with the naked eye as the relative size of the child compared to the mother was very obvious at that range.¹¹⁷⁰ According to Lt. Van der Weijden, there was no reason to mistake the victims for combatants.¹¹⁷¹

330. Dženana Sokolović gave conflicting evidence about the exact location of the incident. During examination-in-chief, she indicated that she and her son were shot as they crossed the Franje Račkog Street.¹¹⁷² During cross-examination, she confirmed that they had been shot on the zebra-crossing.¹¹⁷³ Then she explained that she had been confused with regard to the location of the shots and again said that they were at the sidewalk before the zebra-crossing.¹¹⁷⁴ She testified that the precise location of the incident was the one shown in the investigation video, that is, on the sidewalk closer to the Museum.¹¹⁷⁵

331. There was also conflicting evidence about the direction of the shot. She sometimes said that she was hit from the left side.¹¹⁷⁶ However, she consistently indicated with her hands that the bullet entered her abdomen on the right side and exited on the left side.¹¹⁷⁷ She explained that she was a “little confused” about what is left and what is right.¹¹⁷⁸

332. The Defence, during cross-examination and in the presentation of its evidence, drew attention to the entry and exit wounds of both victims. It submitted that the shots could have originated from ABiH-held territory. According to the medical records of Dženana Sokolović, the entry wound was on the *left* side and the exit wound on the *right* side.¹¹⁷⁹ Šefik Bešlić, the doctor who performed the operation on Dženana Sokolović, explained that the information in the medical record that the entry wound was on the “paramedian left” and the exit wound to the “paramedian right” was a mistake made by the doctor who wrote the notes.¹¹⁸⁰ Šefik Bešlić also explained that the hospital had large numbers of patients, and it was mainly the young doctors who noted down the information.¹¹⁸¹ The doctors may have looked at two or three patients at a time and then written down information; it was then that this particular doctor might have “switched” the sides in this

¹¹⁷⁰ Patrick van der Weijden, 29 Mar 2007, T. 4277 – 4278; P514, Expert report Patrick van der Weijden, p. 24.

¹¹⁷¹ P514, Expert report Patrick van der Weijden, p. 24.

¹¹⁷² Dženana Sokolović, 22 Jan 2007, T. 773 – 774.

¹¹⁷³ Dženana Sokolović, 22 Jan 2007, T. 784.

¹¹⁷⁴ Dženana Sokolović, 22 Jan 2007, T. 804 – 805. *See also*, P89, 360° Photograph; P941, Videoclip with Dženana Sokolović (under seal); D18, Photograph marked by Dženana Sokolović.

¹¹⁷⁵ Dženana Sokolović, 22 Jan 2007, T. 804 – 805.

¹¹⁷⁶ Dženana Sokolović, 22 Jan 2007, T. 772. 797.

¹¹⁷⁷ Dženana Sokolović, 22 Jan 2007, T. 797, 812; P941, Videoclip with Dženana Sokolović (under seal).

¹¹⁷⁸ Dženana Sokolović, 22 Jan 2007, T. 795.

¹¹⁷⁹ P456, Medical record, p. 3 (emphasis added) (under seal). Dr. Bakir Nakaš, who was the Director of the Sarajevo State Hospital during the Indictment period, explained during his testimony that “paramedian” means from the central axis of the body to the left or to the right, Bakir Nakaš, 25 Jan 2007, 1087.

¹¹⁸⁰ Šefik Bešlić, 3 Apr 2007, T. 4419 – 4420, 4425.

¹¹⁸¹ Šefik Bešlić, 3 Apr 2007, T. 4426.

report.¹¹⁸² He explained that the correct information was always obtained by looking at the patient.¹¹⁸³

333. The testimony of both Dženana Sokolović and Šefik Bešlić was that the bullet entered from the right side of Dženana Sokolović's body and exited on the left side.¹¹⁸⁴ Šefik Bešlić testified that, based on his experience with gun-shot victims, a review of the medical documentation of her injuries and his own recent physical examination of her, the entry wound was on the right side and the exit wound was on the left side of her body.¹¹⁸⁵ He explained that an entry wound is smaller than an exit wound and that Dženana Sokolović's wound on her left side was larger than the wound on the right side, thus indicating that the projectile exited her body on the left side and that the projectile travelled from her right to her left side.¹¹⁸⁶ The scars of Dženana Sokolović were typical of scars resulting from injuries sustained by a bullet.¹¹⁸⁷ The Defence asked whether it was possible that the scars on her body had been altered. He replied that there would be a possibility that she had surgery on the scars, but he dismissed the possibility that a surgeon would create a scar resembling an exit wound.¹¹⁸⁸

334. The Defence asked Šefik Bešlić whether there was a difference in height between the entry and exit wounds on the body of Dženana Sokolović. He replied that the wounds were practically parallel to each other.¹¹⁸⁹ In this respect, the Defence expert Col. Stamenov testified that up to 500 metres, the ballistic trajectory of a bullet is almost straight.¹¹⁹⁰ He testified that if a person is shot from an elevation, the trajectory would not be parallel to the ground.¹¹⁹¹

335. Witnesses testified that the same bullet that had passed through Dženana Sokolović went through the head of her son and killed him.¹¹⁹² Other evidence, introduced by the Defence, suggests that Nermin Divović was shot first, after which the bullet that killed him passed through his mother's abdomen.¹¹⁹³

¹¹⁸² Šefik Bešlić, 3 Apr 2007, T. 4426, 4427.

¹¹⁸³ Šefik Bešlić, 3 Apr 2007, T. 4429, 4436.

¹¹⁸⁴ Dženana Sokolović, 22 Jan 2007, T. 797, 807, 812; Šefik Bešlić, 3 Apr 2007, T. 4419 – 4420, 4422 – 44323, P521, p. 2, D19, Criminal investigation file, p. 4; P941, Videoclip with Dženana Sokolović (under seal).

¹¹⁸⁵ Šefik Bešlić, 3 Apr 2007, T. 4422 – 4423, 4440 – 4441, P521, p. 2.

¹¹⁸⁶ Šefik Bešlić, 3 Apr 2007, T. 4422, 4429, 4450, P521, p. 2; Bakir Nakaš, 25 Jan 2007, 1088.

¹¹⁸⁷ Šefik Bešlić, 3 Apr 2007, T. 4438.

¹¹⁸⁸ Šefik Bešlić, 3 Apr 2007, T. 4436 – 4438.

¹¹⁸⁹ Šefik Bešlić, 3 Apr 2007, T. 4443; P941, Videoclip with Dženana Sokolović (under seal).

¹¹⁹⁰ Ivan Stamenov, 22 Aug 2007, T. 9037 – 9041.

¹¹⁹¹ Ivan Stamenov, 22 Aug 2007, T. 9042 – 9043.

¹¹⁹² Dženana Sokolović, 22 Jan 2007, T. 772, 779; John Jordan, 22 Feb 2007, T. 2702 – 2703, P267, p. 3.

¹¹⁹³ D19, Criminal investigation file, p. 1.

336. Nermin Divović was killed by a bullet that entered from the right-hand side of his cheek and exited on the left-hand side of his neck.¹¹⁹⁴ He was not very tall; his head reached Dženana Sokolović's waist.¹¹⁹⁵ The Defence tendered a criminal investigation file indicating that the entry wound was at the back of Nermin Divović's head, above the right ear and that the exit wound was on the face, below the left eye.¹¹⁹⁶ However, this evidence is neither supported by the Record of Autopsy on Nermin Divović nor by the video evidence showing the boy shortly after he was shot.¹¹⁹⁷

337. The Defence expert on forensic medicine, Ivica Milosavljević, was asked to review the medical record of Dženana Sokolović and the death certificate of Nermin Divović, both contained in a police investigation file tendered by the Defence.¹¹⁹⁸ Ivica Milosavljević testified that the Autopsy report on Nermin Divović showed that he sustained a gun-shot wound to the head and that the angle of the shot was from below upwards, and from left to right.¹¹⁹⁹ In relation to the injuries of Dženana Sokolović, he testified that the medical record showed that Dženana Sokolović sustained an entry wound on the left-hand side of her body and an exit wound on the right side of her body.¹²⁰⁰ He commented that the surgeon "probably assumed that [the wounds] are located symmetrically", indicating to him that the projectile had moved parallel to the ground.¹²⁰¹ He challenged the notion that scars could be used as an indication of the entry or exit wound.¹²⁰² In his opinion, the horizontal trajectory of the projectile that hit Dženana Sokolović and the bullet trajectory shown by the Autopsy Record on Nermin Divović, "clearly indicated that these two persons were injured by two different projectiles."¹²⁰³ He further testified that a bullet, when passing through a human body, does not retain sufficient kinetic energy to subsequently "pierce the skin on the human body, much less any bones."¹²⁰⁴

338. In cross-examination, the Prosecution confronted Ivica Milosavljević with the opinion he expressed in his report, namely, that the documentation provided to him was insufficient to draw any conclusions, and asked how he could base his conclusions about the two victims on those documents. Ivica Milosavljević reiterated that the documentation was insufficient to draw forensic

¹¹⁹⁴ P457 Record of autopsy, p.1 (under seal); Bakir Nakaš, 25 Jan 2007, T. 1085.

¹¹⁹⁵ Dženana Sokolović, 22 Jan 2007, T. 786.

¹¹⁹⁶ D19, Criminal investigation file, p. 4.

¹¹⁹⁷ P457, Record of autopsy, p.1 (under seal); P271, Videoclip of sniping incident.

¹¹⁹⁸ Ivica Milosavljević, 27 Aug 2007, T. 9280 – 9282, 9283 – 9284; D19, Criminal investigation file.

¹¹⁹⁹ Ivica Milosavljević, 27 Aug 2007, T. 9280 – 9281.

¹²⁰⁰ Ivica Milosavljević, 27 Aug 2007, T. 9281 – 9282.

¹²⁰¹ Ivica Milosavljević, 27 Aug 2007, T. 9282.

¹²⁰² Ivica Milosavljević, 27 Aug 2007, T. 9283 – 9284.

¹²⁰³ Ivica Milosavljević, 27 Aug 2007, T. 9284.

¹²⁰⁴ Ivica Milosavljević, 27 Aug 2007, T. 9283 – 9284.

conclusions and said that the opinion he expressed in court was a “professional supposition.”¹²⁰⁵ He clarified that he could only indicate exactly where the entry and exit wounds were located and what the direction of the projectile had been.¹²⁰⁶ He could not provide more accurate details.¹²⁰⁷ In response to further questions by the Prosecution, he conceded that he only reviewed the medical documentation provided in the police investigation file, and that he had not been provided with a statement by Šefik Bešlić; he had not tried to contact him or the forensic pathologist who conducted the autopsy of Nermin Divović.¹²⁰⁸ The Trial Chamber notes that he did not examine the victims.

Findings

339. There are discrepancies in Dženana Sokolović’s evidence and in the documentary evidence with regard to the exact location where she and her son were shot.¹²⁰⁹ The Trial Chamber finds that in spite of those discrepancies, it is clear from the expert report of Lt. Van der Weijden and from photographic and video evidence in the case that a sniper located in the Metalka Building could have targeted the victims on both possible locations on Zmaja od Bosne.¹²¹⁰

340. Having considered all the evidence concerning the direction of fire, the medical record of Dženana Sokolović, including the circumstances under which the notes on that record were written, the Trial Chamber is satisfied that Dženana Sokolović was shot in the right side of her body and that the bullet went through her abdomen and exited on the left side, continuing through Nermin Divović’s head. The video taken immediately after the incident also shows that the locations of the entry and exit wounds on Nermin Divović were accurately described in Nermin Divović’s autopsy report, and not in the criminal investigation file. Therefore, the opinion of Ivica Milosavljević that the bullet that killed Nermin Divović travelled from left to right was based on incorrect information.

341. There is no evidence indicating that the shots came from ABiH-held territory. The Trial Chamber finds the evidence of Lt. Van der Weijden convincing and concludes that the only reasonable inference to be drawn is that the shot that killed Nermin Divović and wounded Dženana Sokolović, both civilians, originated from the Metalka Building, a known SRK sniper position. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired

¹²⁰⁵ Ivica Milosavljević, 27 Aug 2007, T. 9287 – 9288.

¹²⁰⁶ Ivica Milosavljević, 27 Aug 2007, T. 9288.

¹²⁰⁷ Ivica Milosavljević, 27 Aug 2007, T. 9288.

¹²⁰⁸ Ivica Milosavljević, 27 Aug 2007, T. 9288 – 9290.

¹²⁰⁹ The evidence suggesting they were on the zebra-crossing is: Dženana Sokolović, 22 Jan 2007, T. 773, 784; John Jordan, 21 Feb 2007, T. 2651, 2666, 2671 – 2672, 2677; D19, Criminal investigation file, pp 1, 3; P271, Videoclip of sniping incident; P272, Photo from the “Providence Journal – Bulletin”; D79, Photograph marked by John Jordan. The evidence suggesting they were shot before the zebra-crossing is: Dženana Sokolović, 22 Jan 2007, T. 775, 804 – 805; P89, 360° photograph; P941, Videoclip with Dženana Sokolović; D18, Photograph marked by Dženana Sokolović.

by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

(ii) Sniping of Targets in Sedrenik

342. Three sniping incidents took place in the area of Sedrenik. The Defence submitted in its Final Brief that the sector of Sedrenik was a “military zone throughout the conflict and particularly during the time material to the Indictment.”¹²¹¹ Witnesses described Sedrenik as a “purely” residential neighbourhood during the Indictment period.¹²¹² The Trial Chamber recalls that Špicasta Stijena was held by the SRK and that ABiH forces were positioned in trenches at Grdonj and at the foot of Špicasta Stijena.¹²¹³ Based on the evidence of Derviša Selmanović, Nedžib Đozo, Tarik Žunić and Lt. Col. Konings, the Trial Chamber finds that Sedrenik was a civilian area, with a civilian population. The Trial Chamber’s analysis of the status of Sedrenik is set out elsewhere in this Judgement and is to be read in conjunction with this paragraph.¹²¹⁴

a. Sniping of Sanela Dedović on 22 November 1994

343. On 22 November 1994, Sanela Dedović, 13 years old, was walking to the school on Saburina Street.¹²¹⁵ She did not see any soldiers, military equipment, or possible military targets, nor was there any combat going on at the time.¹²¹⁶ Sanela Dedović testified that it was not raining and that the visibility was good.¹²¹⁷

344. There were two routes by which Sanela Dedović could get to town from her house. The first was via the Rogina, Sedrenik and Redzepa Gorusanovica intersection.¹²¹⁸ The second was between houses and through gardens.¹²¹⁹ She decided to take the first route, knowing that approximately 100 metres of the intersection were dangerous.¹²²⁰ She stated that she would use the intersection on days

¹²¹⁰ P514, Expert report Patrick van der Weijden, p. 23; C14, Photographs taken during site visit, pp 14 – 18, 24 – 29; C3, Photographs taken during site visit, pp 12 – 20.

¹²¹¹ Defence Final Brief, para. 184.

¹²¹² Nedžib Đozo, P363, p. 2; Derviša Selmanović, P169, p. 2; P514, Expert report Patrick van der Weijden, p. 49.

¹²¹³ See *supra*, para. 140.

¹²¹⁴ See *infra*, para. 901.

¹²¹⁵ Sanela Dedović, 29 Jan 2007, T. 1152, 1154, P109, p. 2, P110, p. 2; P117, Official note, 22 November 1994, p. 1; P118, Statement of Sanela Dedović, dated 13 November 1995, p. 1.

¹²¹⁶ Sanela Dedović, 29 Jan 2007, T. 1156, 1176, P109, p. 2.

¹²¹⁷ Sanela Dedović, 29 Jan 2007, T. 1155 – 1156.

¹²¹⁸ Sanela Dedović, 29 Jan 2007, T. 1154 – 1155, P109, p. 2, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

¹²¹⁹ Sanela Dedović, 29 Jan 2007, T. 1155, P109, p. 2.

¹²²⁰ Sanela Dedović, 29 Jan 2007, T. 1154 – 1155, P109, p. 2, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1. She testified that she chose that route because the backyard and gardens would have been muddy, which would have made her new shoes dirty, Sanela Dedović, 29 Jan 2007, T. 1155.

when she did not hear shooting.¹²²¹ As she did not hear any shooting on 22 November 1994, she decided to run across the intersection.¹²²²

345. When Sanela Dedović was running across the intersection at around 1110 hours, in order to reach Rogica Street, she was facing away from Špicasta Stijena.¹²²³ From Rogica Street, she would not have had Špicasta Stijena within her view because the street sloped downward.¹²²⁴ While still on the intersection, she first felt pain and then heard the sound of the shot.¹²²⁵ The bullet came from behind her.¹²²⁶ The bullet first ricocheted against the asphalt ground, splintered and then a bit of shrapnel hit her left ankle.¹²²⁷ Sanela Dedović saw blood and hopped on one foot to a shelter behind a house; people from the house immediately came to help her.¹²²⁸

346. One of those persons informed UNMOs who were stationed in the area.¹²²⁹ After the UNMOs arrived at the shelter, another shot was fired, preventing anyone else from approaching the intersection.¹²³⁰ The UNMOs transported Sanela Dedović immediately to the Koševo Hospital where she was admitted at the Trauma Clinic.¹²³¹

347. At the hospital, a lead “fragment” was surgically removed from her ankle.¹²³² She was in hospital for about 22 days.¹²³³ According to Sanela Dedović, she was hit by a piece of a fragmentation bullet.¹²³⁴ Lt. Van der Weijden stated that if the victim had sustained a direct hit, she would have suffered more serious injuries than she did.¹²³⁵

348. In 1995, Sanela Dedović stated that she still felt pain in her ankle during the night, after walking to school during the day.¹²³⁶ She also sometimes had seizures and cramps, which she never experienced prior to being injured.¹²³⁷

¹²²¹ Sanela Dedović, P110, p. 2, P109, p. 2.

¹²²² Sanela Dedović, 29 Jan 2007, T. 1155.

¹²²³ Sanela Dedović, 29 Jan 2007, T. 1154, 1163, 1168, 1174; P118, Statement of Sanela Dedović, 13 November 1995, p. 1; P117, Official note, p. 1.

¹²²⁴ Sanela Dedović, 29 Jan 2007, T. 1163 – 1164.

¹²²⁵ Sanela Dedović, 29 Jan 2007, T. 1174, P109, p. 2.

¹²²⁶ Sanela Dedović, 29 Jan 2007, T. 1164.

¹²²⁷ Sanela Dedović, 29 Jan 2007, T. 1170, 1174, P109, p. 2; P118, Statement Sanela Dedović, 13 November 1995, p. 1; D360, Expert report Ivan Stamenov, p. 19.

¹²²⁸ Sanela Dedović, 29 Jan 2007, T. 1174; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

¹²²⁹ P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

¹²³⁰ Sanela Dedović, 29 Jan 2007, T. 1174 – 1175; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

¹²³¹ P118, Statement Sanela Dedović, 13 November 1995, p. 1. *See also*, P117, Official note, p. 1.

¹²³² Sanela Dedović, 29 Jan 2007, T. 1170, P109, p. 2; P117, Official note, p. 1; P458, Medical report Sanela Dedović, p. 1 (under seal).

¹²³³ P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

¹²³⁴ Sanela Dedović, 29 Jan 2007, T. 1170.

¹²³⁵ P514, Expert report Patrick van der Weijden, p. 40.

¹²³⁶ Sanela Dedović, P109, p. 2.

¹²³⁷ Sanela Dedović, P110, p. 2; P118, Statement of Sanela Dedović, 13 November 1995, p. 1.

349. Sanela Dedović testified that the bullet that hit her came from Špicasta Stijena.¹²³⁸ According to her, the confrontation line ran along the entire length of Špicasta Stijena, with SRK soldiers on the top of Špicasta Stijena and ABiH soldiers at its foot.¹²³⁹ She testified that it was well-known that there was a SRK sniper's nest on the ridgeline.¹²⁴⁰ In her written statement, Sanela Dedović said that people knew Sedrenik was a dangerous place to live, as it was exposed to sniping from Špicasta Stijena, but that there was no other place to go.¹²⁴¹ A sign warned the residents: "Caution: Sniper".¹²⁴² In the opinion of Sanela Dedović, Špicasta Stijena was the only Bosnian Serb-held position from which it was possible to shoot at people crossing the intersection.¹²⁴³ The Trial Chamber recalls that the confrontation line ran at the foot of Špicasta Stijena and that SRK soldiers controlled the ridge.¹²⁴⁴

350. In cross-examination, Sanela Dedović testified that she did not know whether there was further shooting or not on the day she was injured, as she was in hospital at that stage.¹²⁴⁵ However, she stated that after 22 November 1994, the intersection was guarded by UNMOs with an APC which was aimed in the direction of Špicasta Stijena.¹²⁴⁶

351. Lt. Van der Weijden visited the incident site on 29 November 2006, which, in weather and seasonal conditions, more or less matched the time of year of the incident.¹²⁴⁷ The trees were leafless.¹²⁴⁸ The ridgeline was approximately 850 to 1,100 metres from the incident site, but in clear view.¹²⁴⁹ In his view, it was only possible to have fired from the ridgeline or just below it, where the SRK positions were.¹²⁵⁰ Certain houses and the hillsides, which are now devoid of trees, would have blocked the view from ABiH positions to the incident site at that time.¹²⁵¹

352. According to Lt. Van der Weijden, the sniper weapon used was most likely a M76 or M91 sniper rifle.¹²⁵² However, these weapons would have been at the limit of their capabilities at the

¹²³⁸ Sanela Dedović, 29 Jan 2007, T. 1163; P112, Map marked by Sanela Dedović.

¹²³⁹ Sanela Dedović, 29 Jan 2007, T. 1171, 1172.

¹²⁴⁰ Sanela Dedović, 29 Jan 2007, T. 1164; P113, 360° photograph.

¹²⁴¹ Sanela Dedović, P110, p. 2.

¹²⁴² Sanela Dedović, 29 Jan 2007, T. 1164.

¹²⁴³ Sanela Dedović, P109, p. 2.

¹²⁴⁴ *See supra*, para. 140.

¹²⁴⁵ Sanela Dedović, 29 Jan 2007, T. 1176.

¹²⁴⁶ Sanela Dedović, P109, p. 2.

¹²⁴⁷ P514, Expert report Patrick van der Weijden, p. 41.

¹²⁴⁸ P514, Expert report Patrick van der Weijden, p. 41.

¹²⁴⁹ P514, Expert report Patrick van der Weijden, p. 41; Ivan Stamenov, 22 Aug 2007, T. 9059 – 9060 (900 to 1,200 metres). Sanela Dedović, 29 Jan 2007, T. 1172 – 1173 estimated the distance between herself and the Bosnian Serb forces as being three kilometres, but then stated it to be 200 – 300 metres, Sanela Dedović, 29 Jan 2007, T. 1173 – 1174.

¹²⁵⁰ P514, Expert report Patrick van der Weijden, p. 41.

¹²⁵¹ P514, Expert report Patrick van der Weijden, p. 41.

¹²⁵² P514, Expert report Patrick van der Weijden, p. 40.

distance from which Sanela Dedović was shot.¹²⁵³ Lt. Van der Weijden stated that the weapon was not a machinegun as the victim described hearing one shot only.¹²⁵⁴ As a final possibility, Lt. Van der Weijden stated that the weapon used may have been a hunting rifle, particularly because these rifles were “omnipresent” before and during the war.¹²⁵⁵

353. According to Lt. Van der Weijden, the clothes worn by Sanela Dedović would have enabled the shooter to identify her as a civilian.¹²⁵⁶ The range would have made it difficult to see the colours of the clothing with the naked eye, but the colours would have been visible with optics mounted on the rifle.¹²⁵⁷ As the victim was 13 years old at the time and not of adult height, he concluded that there was no reason to identify the victim as a combatant.¹²⁵⁸

Findings

354. On the basis of the evidence of Sanela Dedović and of Lt. Van der Weijden, the Trial Chamber finds that Sanela Dedović, a civilian, was shot and seriously wounded in the ankle by a fragment of a bullet fired from a sniper weapon. There is no evidence indicating that the shot came from ABiH-held territory. The shot originated from the ridge Špicasta Stijena, which was controlled by the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

b. Sniping of Derviša Selmanović on 10 December 1994

355. In the morning of 10 December 1994, there was constant sniper fire into Sedrenik from Špicasta Stijena.¹²⁵⁹ It was a dry, partly overcast day.¹²⁶⁰ According to Derviša Selmanović, there were no military institutions or vehicles present in the vicinity of Sedrenik and there were no soldiers in the area at the time.¹²⁶¹ No fighting was going on between the warring parties.¹²⁶²

¹²⁵³ P514, Expert report Patrick van der Weijden, p. 40.

¹²⁵⁴ P514, Expert report Patrick van der Weijden, p. 40.

¹²⁵⁵ P514, Expert report Patrick van der Weijden, p. 40.

¹²⁵⁶ P514, Expert report Patrick van der Weijden, p. 43.

¹²⁵⁷ P514, Expert report Patrick van der Weijden, p. 43.

¹²⁵⁸ P514, Expert report Patrick van der Weijden, p. 43.

¹²⁵⁹ P368, Official note, dated 12 March 1995, p. 1.

¹²⁶⁰ Derviša Selmanović, 5 Feb 2007, T. 1586, 1607, P170, p. 3.

¹²⁶¹ Derviša Selmanović, 5 Feb 2007, T. 1586, P170, p. 3.

¹²⁶² Derviša Selmanović, 5 Feb 2007, T. 1586; Nedžib Đozo, 14 Mar 2007, T. 3703, P363, p. 2.

356. At around 1100 hours, Derviša Selmanović went out into a friend's garden to get firewood, which had been stacked between the house and a garage.¹²⁶³ She suddenly felt a sharp pain in her knee and a burning sensation in her leg.¹²⁶⁴ A bullet had struck her knee on the inside of her leg and had exited on the outside of the leg.¹²⁶⁵ Derviša Selmanović sought shelter behind the house. Immediately afterwards, "another 20 to 30 bullets" were fired at the house.¹²⁶⁶

357. Derviša Selmanović's neighbour helped her to call an ambulance.¹²⁶⁷ Due to the constant sniper fire from Špicasta Stijena, the ambulance could not come to where she was; instead she was taken by an UNPROFOR patrol to the place where the ambulance was.¹²⁶⁸ She was then taken to the Koševo Hospital, where it was established that she had received a light wound and she was sent home on the same day.¹²⁶⁹ In 2006, Derviša Selmanović stated that she still felt pain in her knee when she stood or walked for a long time or when the weather changed.¹²⁷⁰

358. The same day, Nedžib Đozo, a BiH police officer, was notified that "there was shooting in the area of Sedrenik from Špicasta Stijena and that a female had been wounded by sniper shot."¹²⁷¹ According to Nedžib Đozo, the investigation team that was set up was unable to visit the exact location in Sedrenik where the victim was wounded because "single shots aiming at specific places where people were milling or moving around" were constantly fired from Špicasta Stijena.¹²⁷² He rejected the Defence suggestion that there was ongoing fighting and firing between the two sides or that there were stray bullets coming from both sides without specifically targeting anyone.¹²⁷³

359. According to Derviša Selmanović and Nedžib Đozo, the shooting came from the direction of Špicasta Stijena.¹²⁷⁴ This was confirmed by Lt. Van der Weijden.¹²⁷⁵ When she was shot, Derviša Selmanović was approximately 900 to 1,050 metres from the Bosnian Serb positions on Špicasta

¹²⁶³ Derviša Selmanović, 5 Feb 2007, T. 1589 – 1590, P170, p. 3; Nedžib Đozo, 14 Mar 2007, T. 3699; P367, Investigation report, dated 14 December 1994, p. 1; P368, Official note, p. 1; P171, 360° photograph; P365, Map marked by Nedžib Đozo; P366, Photograph marked by Nedžib Đozo.

¹²⁶⁴ Derviša Selmanović, P170, p. 3; P368, Official note, p. 1.

¹²⁶⁵ Derviša Selmanović, 5 Feb 2007, T. 1590, P169, p. 2; P171, 360° photograph; Nedžib Đozo, 14 Mar 2007, T. 3691; P463, Medical record (under seal).

¹²⁶⁶ P368, Official note, p. 1.

¹²⁶⁷ Derviša Selmanović, P170, p. 3; P368, Official note, p. 1.

¹²⁶⁸ Derviša Selmanović, 5 Feb 2007, T. 1604, P170, p. 3; P368, Official note, p. 1.

¹²⁶⁹ Derviša Selmanović, P170, p. 3; P367, Investigation report, p. 1; Nedžib Đozo, 14 Mar 2007, T. 3686, 3692; P368, Official note, p. 1; P463, Medical record (under seal).

¹²⁷⁰ Derviša Selmanović, P169, p. 2; P368, Official note, p. 2.

¹²⁷¹ Nedžib Đozo, 14 Mar 2007, T. 3685.

¹²⁷² Nedžib Đozo, 14 Mar 2007, T. 3704. *See also*, P363, p. 2; P367, Investigation report, p. 1.

¹²⁷³ Nedžib Đozo, 14 Mar 2007, T. 3703.

¹²⁷⁴ Derviša Selmanović, 5 Feb 2007, T. 1592 – 1593, 1606, P169, p. 2; Nedžib Đozo, 14 Mar 2007, T. 3685 – 3686; P172, Videoclip of sniping incident; P365, Map marked by Nedžib Đozo.

¹²⁷⁵ P514, Expert report Patrick van der Weijden, pp 45 – 46.

Stijena.¹²⁷⁶ Col. Stamenov agreed that a sniper with the proper weapon would have no difficulty hitting a target at ranges of between 900 and 1,200 metres.¹²⁷⁷ However, he cited a witness statement indicating that at the time of the incident it was foggy and the visibility was poor.¹²⁷⁸

360. Derviša Selmanović and Nedžib Đozo testified that the shot that hit Derviša Selmanović could not have come from the ABiH positions which were blocked from sight.¹²⁷⁹ Lt. Van der Weijden noted in his report that the line of sight was blocked by a wooden shack and a tree trunk, and that, during the conflict, trees on the hillsides obstructed the view of the Bosnian Muslim forces even more.¹²⁸⁰ According to Lt. Van der Weijden and Nedžib Đozo, the only possible shooting position from which the location of the incident could be seen was Špicasta Stijena.¹²⁸¹

361. On the basis of the evidence of Derviša Selmanović that around 20 shots were fired, Lt. Van der Weijden concluded that either a M53 or a M84 machinegun was used.¹²⁸² In his view, the distance from which Derviša Selmanović was shot made it difficult, but not impossible, to identify her as a civilian.¹²⁸³ However, the fact that Derviša Selmanović was collecting firewood at the time she was shot “should have been enough to identify her as a civilian”.¹²⁸⁴ In addition, she was 49 years-old at the time, and, according to Lt. Van der Weijden, her movements would have been slower than those of a younger person.¹²⁸⁵ He believes there was no reason to identify Derviša Selmanović as a combatant.¹²⁸⁶ Finally, he explained that if civilians were in the vicinity, a sniper had to take every precaution to prevent firing at civilians and if the sniper could not identify a person, he should have refrained from firing.¹²⁸⁷

362. There was evidence about Derviša Selmanović’s status as a civilian. Since 1994, Derviša Selmanović was employed as a cook assistant in the ABiH.¹²⁸⁸ She explained that her place of work

¹²⁷⁶ P514, Expert report Patrick van der Weijden, p. 45; Ivan Stamenov, 22 Aug 2007, T. 9060 (900 to 1,200 metres); Cf. Derviša Selmanović, P170, p. 3 (200 metres).

¹²⁷⁷ Ivan Stamenov, 22 Aug 2007, T. 9060.

¹²⁷⁸ Ivan Stamenov, 22 Aug 2007, T. 9030.

¹²⁷⁹ Nedžib Đozo, 14 Mar 2007, T. 3690, 3699, P363, p. 2; P366, Photograph marked by Nedžib Đozo; D123, Photograph marked by Nedžib Đozo; P514, Expert report Patrick van der Weijden, p. 45. Nedžib Đozo testified that ABiH forces would not shoot at Sedrenik, as the ABiH units there were made up of residents of Sedrenik. Shooting at Sedrenik would mean shooting at their relatives and their neighbours. In addition, the ABiH troops would have had to turn their backs to the “Serbian forces.” Nedžib Đozo, 14 Mar 2007, T. 3690. During cross-examination, Derviša Selmanović explained that the bullet must have come from Špicasta Stijena because it was closer to Sedrenik, Derviša Selmanović, 5 Feb 2007, T. 1603, 1607; P171, 360° photograph.

¹²⁸⁰ P514, Expert report Patrick van der Weijden, p. 45.

¹²⁸¹ P514, Expert report Patrick van der Weijden, pp 44 – 46; Nedžib Đozo, P363, p. 2.

¹²⁸² P514, Expert report Patrick van der Weijden, p. 44; Ivan Stamenov, 22 Aug 2007, T. 9060.

¹²⁸³ P514, Expert report Patrick van der Weijden, p. 47.

¹²⁸⁴ P514, Expert report Patrick van der Weijden, p. 47.

¹²⁸⁵ P514, Expert report Patrick van der Weijden, p. 47.

¹²⁸⁶ P514, Expert report Patrick van der Weijden, p. 47.

¹²⁸⁷ P514, Expert report Patrick van der Weijden, p. 47.

¹²⁸⁸ Derviša Selmanović, P170, p. 2.

was located near the Koševo Hospital and that she walked to and from her work every day.¹²⁸⁹ She was given “some form of a uniform” as a cook assistant, but she had been advised by army officials not to wear this uniform while coming to or returning home after work.¹²⁹⁰ She explained in cross-examination that she did not wear the uniform.¹²⁹¹ Hence, she was always dressed in civilian clothes on her way to and from work.¹²⁹² She explained, in response to further Defence questions, that on the way to and from her place of work, she did not often see people with weapons who did not wear a uniform.¹²⁹³ Derviša Selmanović testified that, at the time of the incident, she was wearing civilian clothing.¹²⁹⁴ Nedžib Đozo testified that she was not “a member of the BH army”.¹²⁹⁵

363. The Trial Chamber received conflicting evidence with regard to Derviša Selmanović’s injury. According to the police report, she was wounded in her left leg.¹²⁹⁶ Nedžib Đozo testified that it was only when Derviša Selmanović was interviewed in March 1995 that it was established that she was in fact wounded in her right leg.¹²⁹⁷ The Trial Chamber saw a video recorded by the Prosecution, in which Derviša Selmanović said that the shooting came from her right side and that she was hit on the outside of her right leg.¹²⁹⁸ However, during her testimony, she said that this was wrong and that the shooting actually came from her left side and that the bullet entered on the inner side of her right leg.¹²⁹⁹ Derviša Selmanović explained that she had been confused during the recording of the video when using the right hand to show where the shooting came from.¹³⁰⁰

Findings

364. On the basis of the evidence of Derviša Selmanović and Nedžib Đozo, the experts and documentary evidence, the Trial Chamber finds that Derviša Selmanović was shot with a machinegun and seriously wounded in her leg when she was in the backyard of a house in Sedrenik, and that the shots came from the SRK-controlled ridge Špicasta Stijena. The Trial Chamber accepts that Derviša Selmanović was confused during the recording of the video, but it is satisfied that her evidence that she was wounded in her right leg is correct. As regards the origin of fire, the Trial Chamber takes into consideration the evidence as to the location of the SRK and ABiH troops and

¹²⁸⁹ Derviša Selmanović, P170, p. 2.

¹²⁹⁰ Derviša Selmanović, P170, p. 2.

¹²⁹¹ Derviša Selmanović, 5 Feb 2007, T. 1603 – 1604.

¹²⁹² Derviša Selmanović, P170, p. 2.

¹²⁹³ Derviša Selmanović, 5 Feb 2007, T. 1603 – 1604.

¹²⁹⁴ Derviša Selmanović, P170, p. 3.

¹²⁹⁵ Nedžib Đozo, 14 Mar 2007, T. 3703.

¹²⁹⁶ P367, Investigation report, p. 1. *See also*, Nedžib Đozo, 14 Mar 2007, T. 3691 – 3692.

¹²⁹⁷ Nedžib Đozo, 14 Mar 2007, T. 3691, 3694, P363, p. 2; P368, Official note, p. 1.

¹²⁹⁸ P172, Videoclip of sniping incident.

¹²⁹⁹ Derviša Selmanović, 5 Feb 2007, T. 1590, 1592 – 1593.

¹³⁰⁰ Derviša Selmanović, 5 Feb 2007, T. 1592 – 1593, 1606. She explained that she was hit when she started to walk with her right foot, Derviša Selmanović, 5 Feb 2007, T. 1593.

the evidence that the line of sight of ABiH troops toward Derviša Selmanović was blocked. The latter evidence convinces the Trial Chamber that the shots did not come from ABiH-held territory but from SRK-held Špicasta Stijena. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

365. On the question of Derviša Selmanović's status as a civilian, the Defence, during its closing arguments, argued that she was a member of the ABiH and that she had been told at work not to wear a uniform because she would be safer if she was wearing civilian clothes.¹³⁰¹ The Trial Chamber accepts her evidence that she was not wearing a uniform and that she was always dressed in civilian clothing. This distinction in dress is clear and it would have been obvious to an SRK shooter who had optical sights. Moreover, at the time of the shooting, Derviša Selmanović was gathering fire wood in a private garden and did not carry any weapon.

366. The status of a "civilian" is defined negatively in Article 50 of Additional Protocol I. The Trial Chamber's analysis of the definition of a civilian is carried out elsewhere in this Judgement and is to be read in conjunction with this paragraph.¹³⁰² The Trial Chamber finds that Derviša Selmanović, as an unarmed cook, would fall under Article 4A(4) of the Third Geneva Convention, and thus is to be considered a civilian, according to Article 50 of Additional Protocol I.¹³⁰³

c. Sniping of Tarik Žunić on 6 March 1995

367. On 6 March 1995, Tarik Žunić, aged 14 years, was walking home from his school in the Pofalići area to Sedrenik.¹³⁰⁴ He was wearing jeans and a green jacket and was carrying a blue rucksack.¹³⁰⁵ It was a cloudy day, but there was no fog.¹³⁰⁶ On the route to and from school, there was no weaponry, and there were no trenches, military installations or barracks in the part of the

¹³⁰¹ Defence Closing Arguments, 10 October 2007, T. 9531 – 9532.

¹³⁰² See *infra*, paras 945 – 947.

¹³⁰³ Article 4 A (4) of Geneva Convention III states:

"Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model."

¹³⁰⁴ Tarik Žunić, 7 Feb 2007, T. 1707 – 1708, 1730, P185, p. 2; P186, Map marked by Tarik Žunić.

¹³⁰⁵ Tarik Žunić, 7 Feb 2007, T. 1724 – 1725, P184, p. 2.

¹³⁰⁶ Tarik Žunić, P184, p. 2.

town where he lived.¹³⁰⁷ If there was shooting or shelling in the morning, Tarik Žunić usually did not go to school. However, on the morning of 6 March 1995, there had been no shooting.¹³⁰⁸

368. At around 1300 hours, Tarik Žunić was walking on Sedrenik Street about 100 metres from his home.¹³⁰⁹ He stated that, in the middle of Sedrenik Street, there was a sheet of canvas, fixed to wooden sticks, to hide the people from the sight of the snipers at Špicasta Stijena.¹³¹⁰ After passing the canvas, Tarik Žunić heard two shots.¹³¹¹ At that moment, he was close to a little shop; a fence and a family house were on his right-hand side.¹³¹² He was carrying the rucksack on his right shoulder, holding it with his right hand.¹³¹³ Upon hearing the shots, Tarik Žunić took shelter and did not realise immediately that he had been hit.¹³¹⁴

369. Tarik Žunić testified that he was hit in his right hand by a single bullet.¹³¹⁵ The bullet entered the palm of his hand and exited at the wrist.¹³¹⁶ He testified that, “I was lucky to have walked not so fast; otherwise, I would have been dead.”¹³¹⁷ The Defence pointed out that the medical record stated “entry wound in distal part of right underarm from the radial side, and exit point in the thenar area”, but Tarik Žunić maintained that he was shot in his hand.¹³¹⁸ This was confirmed in the police report on the incident that was tendered by the Defence.¹³¹⁹ Tarik Žunić recalled that the bullet went through his jacket from left to right, before hitting his hand.¹³²⁰

370. Lying under cover for 30 minutes, during which time the sniping continued, he waited for help to arrive.¹³²¹ He testified that, “I could hear the bullets and the shots being fired.”¹³²² He heard both single shots and bursts of fire and he immediately recognised that the shots were fired from the M84 machinegun as the sound is distinct from the sound of ordinary guns.¹³²³ In cross-examination,

¹³⁰⁷ Tarik Žunić, 7 Feb 2007, T. 1746 – 1747, P185, p. 2; P186, Map marked by Tarik Žunić.

¹³⁰⁸ Tarik Žunić, P184, p. 2. The Defence tendered daily combat reports dated 5 and 7 March 1995. These reports show that it was a quiet period in the area of responsibility of the 101st Motorized Brigade of the ABiH, D482, Daily combat report, dated 5 March 1995; D483, Daily combat report, dated 7 March 1995.

¹³⁰⁹ Tarik Žunić, 7 Feb 2007, T. 1708, 1718, 1719, 1748 – 1749, P184, p. 2; P187, Photograph marked by Tarik Žunić; P188, Photograph marked by Tarik Žunić; P191, Photograph marked by Tarik Žunić; P193, Photograph marked by Tarik Žunić.

¹³¹⁰ Tarik Žunić, P184, p. 2.

¹³¹¹ Tarik Žunić, P184, p. 2.

¹³¹² Tarik Žunić, 7 Feb 2007, T. 1719, 1751; P190, 360° photograph; P191, Photograph marked by Tarik Žunić; P192, Photograph marked by Tarik Žunić; P193, Photograph marked by Tarik Žunić; D43, Official note, dated 10 and 11 March 1995 (“Official note”), p. 1.

¹³¹³ Tarik Žunić, 7 Feb 2007, T. 1725.

¹³¹⁴ Tarik Žunić, P184, p. 2.

¹³¹⁵ Tarik Žunić, 7 Feb 2007, T. 1725, 1734, 1741, P184, p. 2. *See also*, D43, Official note, p. 1.

¹³¹⁶ Tarik Žunić, 7 Feb 2007, T. 1725, 1741.

¹³¹⁷ Tarik Žunić, 7 Feb 2007, T. 1725.

¹³¹⁸ Tarik Žunić, 7 Feb 2007, T. 1737 – 1738; P189, Medical record, dated 10 November 1995.

¹³¹⁹ D43, Official note, pp 2 – 3.

¹³²⁰ Tarik Žunić, 7 Feb 2007, T. 1725, 1741, P184, p. 2; P189, Medical record.

¹³²¹ Tarik Žunić, 7 Feb 2007, T. 1727, P185, p. 2.

¹³²² Tarik Žunić, 7 Feb 2007, T. 1727.

¹³²³ Tarik Žunić, 7 Feb 2007, T. 1740, P184, p. 2.

he testified that he had never seen a M84 machinegun, but that he learned to distinguish the sound because he had heard many shots, and as he put it, “I lived there. I survived. [...] I listened to people older than me all the time.”¹³²⁴

371. Tarik Žunić said a civilian vehicle stopped, but the ongoing shooting prevented the driver from helping him; he believed the vehicle may have been shot.¹³²⁵ He also said that some people tried to help him and that one man was hit.¹³²⁶ Soon after, a UN APC stopped and transported him to the Koševo Hospital.¹³²⁷ Only after the APC had picked him up, did the shooting stop.¹³²⁸ After his wound had been dressed at the hospital, he was sent home.¹³²⁹ In 1995, he stated that he sometimes suffered pain when the weather changed.¹³³⁰

372. The official note of the BiH police on the incident stated that due to firing from “the aggressor’s positions” at the place where Tarik Žunić was wounded, an on-site investigation could not be conducted.¹³³¹ It also reported that Tarik Žunić was wounded by a bullet fired from “aggressor’s positions at Špicasta Stijena.”¹³³²

373. Similarly, Tarik Žunić testified that the shots came from the direction of Špicasta Stijena.¹³³³ He also testified that the confrontation line and the Bosnian Serb positions at Špicasta Stijena were visible from the place where he was shot, but that the Bosnian Muslim positions were not, as they were at the foot of the hill.¹³³⁴ He explained that the SRK was on the top of Špicasta Stijena and on a higher ground than the ABiH positions and that the ABiH positions were closer than the Bosnian Serb positions.¹³³⁵ In that regard, the Trial Chamber recalls the location of the confrontation line at the foot of Špicasta Stijena.¹³³⁶ Tarik Žunić explained that he was sure the shots were fired from Špicasta Stijena because of the entry and exit points of his wound and because snipers fired from Špicasta Stijena all the time.¹³³⁷ Tarik Žunić stated that many civilians had been hit by snipers in this area, especially in Sedrenik Street.¹³³⁸ During cross-examination, he confirmed that it was

¹³²⁴ Tarik Žunić, 7 Feb 2007, T. 1740, P185, p. 2.

¹³²⁵ Tarik Žunić, P184, p. 2, P185, p. 2.

¹³²⁶ Tarik Žunić, 7 Feb 2007, T. 1745, P185, p. 2.

¹³²⁷ Tarik Žunić, P184, p. 2.

¹³²⁸ Tarik Žunić, 7 Feb 2007, T. 1746.

¹³²⁹ Tarik Žunić, P184, p. 2; D43, Official note, p. 3.

¹³³⁰ Tarik Žunić, P184, p. 2.

¹³³¹ D43, Official note, p. 1.

¹³³² *Ibid.*

¹³³³ Tarik Žunić, 7 Feb 2007, T. 1722, 1725, 1753, P184, p. 2; P188, Photograph marked by Tarik Žunić; P190, 360° photograph; P200, Photograph marked by Tarik Žunić.

¹³³⁴ Tarik Žunić, 7 Feb 2007, T. 1708, 1722 – 1723.

¹³³⁵ Tarik Žunić, 7 Feb 2007, T. 1723, 1726 – 1727, 1742.

¹³³⁶ *See supra*, para 140.

¹³³⁷ Tarik Žunić, 7 Feb 2007, T. 1738 – 1739, 1753 – 1754, P184, p. 2; P192, Photograph marked by Tarik Žunić.

¹³³⁸ Tarik Žunić, P184, p. 2.

possible to fire at targets in the street from Trebević, “an area held by the Serbs”, but not with small-calibre weapons.¹³³⁹

374. Lt. Van der Weijden, who visited the incident site, stated that there was a clear view of the incident site from the ridgeline.¹³⁴⁰ He stated in his report that the road where the victim was walking had a wall measuring one metre high at the side facing Špicasta Stijena.¹³⁴¹ He also stated that the street was partly shielded from view of Špicasta Stijena by screens.¹³⁴² The fence at which Tarik Žunić was shot had several bullet holes; this strengthened Lt. Van der Weijden’s opinion that shooting came from the direction of Špicasta Stijena.¹³⁴³

375. Tarik Žunić estimated that the distance to the confrontation lines was 700 to 900 metres.¹³⁴⁴ He explained that he knew where the confrontation lines were because he later walked up to the line previously held by the SRK.¹³⁴⁵ Lt. Van der Weijden confirmed in his report that the distance from the ridgeline to the incident site was approximately 650 to 900 metres.¹³⁴⁶ Col. Stamenov agreed that a sniper with the proper equipment would have no difficulty hitting a target at ranges of between 900 and 1,200 metres.¹³⁴⁷

376. Lt. Van der Weijden stated in his report that it was likely that the M84 machinegun had been used during this incident since it was a “burst at a longer range”.¹³⁴⁸ Other possible weapons were M87 or M53 machineguns. However, he added that if the M87 had been used, the victim most likely would have had no hand left because of the power of the ammunition.¹³⁴⁹ He confirmed that it is possible for people to tell the difference between the rate of fire of a M53 and a M84, especially after living in war-like conditions for a long time.¹³⁵⁰

377. Evidence was led as to whether Tarik Žunić could have been identified as a combatant. Tarik Žunić testified that there were no houses or other obstacles between him and the frontline, nor were there ABiH positions in the vicinity of his home.¹³⁵¹ Tarik Žunić sometimes heard ABiH troops moving past his house and to the confrontation lines. However, he testified that that

¹³³⁹ Tarik Žunić, 7 Feb 2007, T. 1739, P184, p. 2.

¹³⁴⁰ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁴¹ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁴² P514, Expert report Patrick van der Weijden, p. 49.

¹³⁴³ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁴⁴ Tarik Žunić, 7 Feb 2007, T. 1709, 1713, P184, p. 2.

¹³⁴⁵ Tarik Žunić, 7 Feb 2007, T. 1714, 1723 – 1724, 1744.

¹³⁴⁶ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁴⁷ Ivan Stamenov, 22 Aug 2007, T. 9060.

¹³⁴⁸ P514, Expert report Patrick van der Weijden, p. 48.

¹³⁴⁹ P514, Expert report Patrick van der Weijden, p. 48.

¹³⁵⁰ P514, Expert report Patrick van der Weijden, p. 48.

¹³⁵¹ Tarik Žunić, 7 Feb 2007, T. 1712; P187, Photograph marked by Tarik Žunić

happened during night time so that civilians were not put at risk.¹³⁵² During cross-examination, Tarik Žunić explained that he was too young to be involved in the army.¹³⁵³ Lt. Van der Weijden stated in his report that a boy of 14 years of age can, if he reached adult height, sometimes be mistaken for an adult.¹³⁵⁴ He concluded that since the street was partly shielded, and there was some growth preventing the victim from being viewed from Špicasta Stijena, and, since the boy was moving, the shooter could not have seen the victim completely.¹³⁵⁵ This would have made it “impossible” to determine if the victim was a combatant or not.¹³⁵⁶ However, according to Lt. Van der Weijden, the village and the area were inhabited by civilians at that time. As the Bosnian Serbs had a good view of the village from their positions at Špicasta Stijena, they would have had ample opportunity to observe the village and its inhabitants, and thereby identify the majority of the inhabitants as non-combatants.¹³⁵⁷ Lt. Van der Weijden concluded that there was no reason to identify the boy as a combatant.¹³⁵⁸

Findings

378. There is no evidence indicating that the shot that wounded Tarik Žunić came from ABiH-held territory. The Trial Chamber is satisfied that Tarik Žunić, a civilian, was shot and seriously wounded by a machine gun from SRK-held positions at Špicasta Stijena when he was walking on Sedrenik Street and appeared from behind a sheet of canvas. On the basis of the evidence of Lt. Van der Weijden and evidence as to the clothes worn by Tarik Žunić on that day, the Trial Chamber is satisfied that there was no reason for the sniper to mistake him for a combatant.

(iii) Sniping of Targets Elsewhere in Sarajevo

379. Three scheduled sniping incidents took place in Vojničko Polje, Gazin Han and Dobrinja. The Defence submitted in its Final Brief that Vojničko Polje was a “military zone full of military targets” and that Dobrinja was a “military zone with constant military activity”.¹³⁵⁹ T-60 testified that there was firing from artillery weapons and light machine guns from behind the high-rise buildings in Alipašino Polje, which was ABiH-held territory, and that there was shooting from Vojničko Polje with light weapons; the SRK would respond to these attacks with artillery and gun

¹³⁵² Tarik Žunić, 7 Feb 2007, T. 1712, 1747.

¹³⁵³ Tarik Žunić, 7 Feb 2007, T. 1741, 1746, 1750.

¹³⁵⁴ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁵⁵ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁵⁶ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁵⁷ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁵⁸ P514, Expert report Patrick van der Weijden, p. 49.

¹³⁵⁹ Defence Final Brief, paras 181 and 186.

fire.¹³⁶⁰ The Trial Chamber recalls its previous findings regarding the confrontation lines in Vojničko Polje and in Dobrinja.¹³⁶¹ It finds that Vojničko Polje and Dobrinja were civilian areas.¹³⁶² The Trial Chamber's analysis of the status of Sedrenik is set out elsewhere in the Judgement and is to be read in conjunction with this paragraph.¹³⁶³

a. Sniping of Adnan Kasapović on 24 October 1994

380. W-62 testified that in the early morning of 24 October 1994, Adnan Kasapović and two of his friends, all fourteen years of age, went to the so-called Vemeks department store in Vojničko Polje.¹³⁶⁴ It was Adnan Kasapović's fourteenth birthday.¹³⁶⁵ Adnan Kasapović was dressed in a black or grey tracksuit, the other two were wearing a blue tracksuit and jeans and a black T-shirt, respectively.¹³⁶⁶ There was no military activity in the area that day, nor were ABiH soldiers in the area.¹³⁶⁷

381. Just outside and to one side of the Vemeks department store there was a passageway running through the building.¹³⁶⁸ The passageway was to the right of Adnan Kasapović and his friends as they walked towards the department store.¹³⁶⁹ The passageway was about 10 metres long, and became about half a metre narrower in the middle, although a car could pass through the passageway.¹³⁷⁰ The ceiling of the passageway was about three to three and a half metres high.¹³⁷¹ This location was known to be very dangerous because of sniping through the passageway.¹³⁷²

382. About 50 metres from the passageway, there was an ABiH dormitory, also described as "some kind of an ABiH army command post" or "the staff".¹³⁷³ The dormitory was a privately-owned flat where ABiH soldiers were billeted during the war.¹³⁷⁴ Soldiers could be seen there at times, both in uniform and plain clothes.¹³⁷⁵ The passageway was not used by the soldiers.¹³⁷⁶

¹³⁶⁰ T-60, 25 July 2007, T. 8818 – 8821.

¹³⁶¹ See *supra*, paras 119 - 120 and *infra*, para. 902.

¹³⁶² See *supra*, paras 119 - 120 and *infra*, para. 903.

¹³⁶³ See *infra*, para. 901.

¹³⁶⁴ W-62, 23 Jan 2007, T. 880, 882 – 885. See also, Ermin Krečo, P646, pp 5, 8.

¹³⁶⁵ W-62, 23 Jan 2007, T. 888 – 889.

¹³⁶⁶ W-62, 23 Jan 2007, T. 889; P514, Expert report Patrick van der Weijden, p. 13.

¹³⁶⁷ W-62, 23 Jan 2007, T. 889, 890, 24 Jan 2007, T. 924.

¹³⁶⁸ W-62, 23 Jan 2007, T. 885; P99, 360° photograph; P100, Photograph marked by W-62; Ermin Krečo, P646, pp 5, 8.

¹³⁶⁹ W-62, 23 Jan 2007, T. 902, 909; P100, Photograph marked by W-62; Ivan Stamenov, 22 Aug 2007, T. 9045 – 1946.

¹³⁷⁰ W-62, 23 Jan 2007, T. 907, 908; Patrick van der Weijden, 29 Mar 2007, T. 4299; T-52, 28 June 2007, T. 7433; C10, Photograph taken during site visit, p. 1.

¹³⁷¹ W-62, 23 Jan 2007, T. 906.

¹³⁷² W-62, 23 Jan 2007, T. 890, 24 Jan 2007, T. 924.

¹³⁷³ W-62, 24 Jan 2007, T. 924; Ermin Krečo, P646, pp 5, 8.

¹³⁷⁴ W-62, 23 Jan 2007, T. 889, 917, 24 Jan 2007, T. 922 – 923; Ermin Krečo, P646, p. 8.

¹³⁷⁵ W-62, 24 Jan 2007, T. 922 – 923.

383. W-62 and Ermin Krečo gave evidence that there was a low wall running adjacent to and out from the department store.¹³⁷⁷ It joined the side of the passageway closest to the department store.¹³⁷⁸ Ermin Krečo stepped onto the wall, and Adnan Kasapović was just about to do the same, when W-62 and Ermin Krečo heard a shot.¹³⁷⁹ W-62 grabbed hold of Adnan Kasapović and only then realised that Adnan Kasapović had been shot.¹³⁸⁰ W-62 started to pull Adnan Kasapović towards the department store.¹³⁸¹ They called out to people in the dormitory.¹³⁸² While W-62 was pulling Adnan Kasapović toward the department store he heard another shot.¹³⁸³ Some soldiers came with a bandage and a stretcher to help them.¹³⁸⁴

384. The bullet had entered from the front right shoulder of Adnan Kasapović's body, passed to the left of his lungs and exited near his back left shoulder.¹³⁸⁵ The soldiers placed the bandage on Adnan Kasapović and put him in a civilian vehicle, but Adnan Kasapović died on the way to the Dobrinja Hospital.¹³⁸⁶

385. On the other side of the department store building and visible through the passageway was the School of the Blind.¹³⁸⁷ The School consisted of two larger buildings with two smaller ones between them.¹³⁸⁸ It had three floors and was 20 to 25 metres high.¹³⁸⁹ Witnesses gave different estimates of the distance to the School of the Blind from the passageway, ranging from 150 metres to 300 metres.¹³⁹⁰ According to W-62, the shot that killed Adnan Kasapović came from the School of the Blind, through the passageway.¹³⁹¹ He testified that he knew that shooting had come from the School of the Blind because there were holes between the third floor and the roof.¹³⁹² Defence witness T-52 testified that the whole facade of the School of the Blind was damaged by bullet holes,

¹³⁷⁶ W-62, 23 Jan 2007, T. 889, 24 Jan 2007, T. 924.

¹³⁷⁷ W-62, 23 Jan 2007, T. 885; Ermin Krečo, P646, p. 5. *See also*, P941, Videoclip of sniping incident (under seal); C10, Photograph taken during site visit, p. 1.

¹³⁷⁸ P941, Videoclip of sniping incident (under seal); C10, Photograph taken during site visit, p. 1.

¹³⁷⁹ W-62, 23 Jan 2007, T. 885; Ermin Krečo, P646, pp 5, 8; P941, Videoclip of sniping incident (under seal).

¹³⁸⁰ W-62, 23 Jan 2007, T. 886.

¹³⁸¹ W-62, 23 Jan 2007, T. 886; Ermin Krečo, P646, pp 5, 8.

¹³⁸² Ermin Krečo, P646, p. 8.

¹³⁸³ W-62, 23 Jan 2007, T. 886.

¹³⁸⁴ W-62, 23 Jan 2007, T. 886, 918, 920; Ermin Krečo, P646, p. 5.

¹³⁸⁵ W-62, 23 Jan 2007, T. 886 – 887; T. 909; Ermin Krečo, P646, pp 5, 8; P514 Expert report Patrick van der Weijden, p. 11.

¹³⁸⁶ W-62, 23 Jan 2007, T. 887 – 888; Ermin Krečo, P646, pp 5, 8 – 9.

¹³⁸⁷ W-62, 23 Jan 2007, T. 892, 899 – 900; T-48, 22 June 2007, T. 7147 – 7148; P941, Videoclip of sniping incident (under seal); D278, Map marked by T-52; D279, Photograph marked by T-52; P783, Map marked by T-48.

¹³⁸⁸ W-62, 23 Jan 2007, T. 892 – 894; T-48, 22 June 2007, T. 7147 – 7148; T-41, 18 July 2007, T. 8562; P99, 360° photograph; P100, Photograph marked by W-62.

¹³⁸⁹ W-62, 23 Jan 2007, T. 900; T-52, 28 June 2007, T. 7429; Patrick van der Weijden, 29 Mar 2007, T. 4301, 4306.

¹³⁹⁰ W-62, 24 Jan 2007, T. 924 (150 metres); P514 Expert report Patrick van der Weijden, p. 13 (250 – 300 metres); Patrick van der Weijden, 29 Mar 2007, T. 4297, 4301; Ivan Stamenov, 22 Aug 2007, T. 9059 (250-300 metres); T-52, 28 June 2007, T. 7434 – 7435 (200-300 metres).

¹³⁹¹ W-62, 23 Jan 2007, T. 894, 902; P99, 360° photograph; P100, Photograph marked by W-62; P941, Videoclip of sniping incident (under seal).

¹³⁹² W-62, 23 Jan 2007, T. 899 – 900, 912 – 913, 914 – 915; P909, Photograph of the School of the Blind.

but he could not recall any bigger holes.¹³⁹³ The Trial Chamber recalls that the School of the Blind was held by the SRK and was known as a sniper location.¹³⁹⁴

386. There was conflicting evidence about whether the line of sight could have been obstructed. According to W-62, on that day nothing obstructed the view from the School of the Blind to the place where Adnan Kasapović was shot.¹³⁹⁵ Garages under the control of the ABiH were located between the School of the Blind and the passageway, but those were not high enough to obstruct the view.¹³⁹⁶ When shown a photograph taken during the Trial Chamber's on-site visit, Defence witnesses T-48 and T-52 confirmed that there was a line of sight from the School of the Blind into the passageway.¹³⁹⁷ However, T-48 denied that there was a direct line of sight from the School of the Blind to the passageway at the time of the incident because both warring parties had set up screens and barricades to make it possible for the people to move safely.¹³⁹⁸ T-52 confirmed that, in general, screens were present from the beginning of the conflict in 1992 until the end of the war, thus obstructing the view between the School of the Blind and the passageway.¹³⁹⁹ T-52 could not remember if there were any screens at that location on 24 October 1994.¹⁴⁰⁰

387. After Adnan Kasapović died, the residents put a blanket at the passageway as protection against shooting.¹⁴⁰¹ However, after only a few days the blanket was "torn in ribbons" as a result of shooting.¹⁴⁰²

388. T-52 further testified that the SRK positions in the School of the Blind during the conflict were on the ground floor where the soldiers slept and held position.¹⁴⁰³ During attacks, the soldiers opened fire from trenches in that position.¹⁴⁰⁴ T-52 testified that the soldiers would only go up to the first floor to observe the enemy positions, but almost never to the second floor because they could be seen from the outside.¹⁴⁰⁵ T-52 denied that the SRK would use the second floor for shooting.¹⁴⁰⁶ He testified that soldiers who were on duty in the School of the Blind had infantry

¹³⁹³ T-52, 28 June 2007, T. 7430, 7488 – 7489. *See also*, T-41, 19 July 2007, T. 8600 – 8601, P909, Photograph of the School of the Blind.

¹³⁹⁴ *See supra*, para. 233.

¹³⁹⁵ W-62, 23 Jan 2007, T. 893, 24 Jan 2007, T. 925.

¹³⁹⁶ W-62, 23 Jan 2007, T. 899; T-48, 22 June 2007, T. 7164, T-52, 28 June 2007, T. 7432; P100, Photograph marked by W-62; D24, Photograph marked by W-62; D279, Photograph marked by T-52.

¹³⁹⁷ T-48, 22 June 2007, T. 7184; T-52, 28 June 2007, T. 7433 – 7434, 7462; C10, Photographs taken during site visit, pp 1 – 2.

¹³⁹⁸ T-48, 22 June 2007, T. 7165 – 7167; P100, Photograph marked by W-62.

¹³⁹⁹ T-52, 28 June 2007, T. 7432, 7434 – 7435, 7441 – 7442, 7460, 7464; D279, Photograph marked by T-52.

¹⁴⁰⁰ T-52, 28 June 2007, T. 7462 – 7463.

¹⁴⁰¹ W-62, 23 Jan 2007, T. 890, 892.

¹⁴⁰² W-62, 23 Jan 2007, T. 890. *See also*, T-52, 28 June 2007, T. 7487, 7490.

¹⁴⁰³ T-52, 28 June 2007, T. 7429.

¹⁴⁰⁴ T-52, 28 June 2007, T. 7429, 7447 – 7448.

¹⁴⁰⁵ T-52, 28 June 2007, T. 7448 – 7449, 7450 – 7451, 7453 – 7456, 7489.

¹⁴⁰⁶ T-52, 28 June 2007, T. 7455.

weapons and hand-grenades and that there was an order from the brigade command not to shoot at civilians.¹⁴⁰⁷ T-60 testified that people did not want to go to the area between the School of the Blind and the high buildings in Vojničko Polje, because of fear of “provocative actions” from the ABiH.¹⁴⁰⁸

389. In his report and during his testimony, Lt. Van der Weijden expressed the opinion that the only possible points of origin of fire were within the complex of the School of the Blind.¹⁴⁰⁹ The passageway acted as a funnel that pointed back to the general location of the shooter and the darkness of the passageway highlighted the location of the victim.¹⁴¹⁰ If one looked through the passageway from the place where Adnan Kasapović was shot, the location of the shooter would be visible.¹⁴¹¹ When Col. Stamenov was shown a photograph taken during the site visit, he confirmed this.¹⁴¹² However, he testified that the victim could have been shot from any building situated in that direction or from a different direction.¹⁴¹³ Moreover, Col. Stamenov testified that the visibility was poor on 24 October 1994, based on a NATO weather report for Sarajevo that the weather was a bit foggy in the morning.¹⁴¹⁴ According to W-62, however, the weather was nice on 24 October 1994.¹⁴¹⁵ The Defence, in its Final Brief, submitted that a shooter, “on this misty morning” could have reasonably taken the boys for combatants.¹⁴¹⁶

390. Lt. Van der Weijden testified that Adnan Kasapović was killed by a shot from a M76 or M91 rifle.¹⁴¹⁷ According to Lt. Van der Weijden, it would have been possible, from the range at which Adnan Kasapović was shot, to determine if he was carrying weapons or if he was a combatant.¹⁴¹⁸ Finally, Lt. Van der Weijden concluded that the shot was not fired either from the South, North or East, because, in his view, had it been fired from those directions, the boys would have been able to escape through the passageway.¹⁴¹⁹ In this respect, the Trial Chamber notes that the boys were walking towards the South and would have remained visible to any sniper shooting at them from the South, North or East when taking shelter at the department store.¹⁴²⁰ However,

¹⁴⁰⁷ T-52, 28 June 2007, T. 7465, 7470.

¹⁴⁰⁸ T-60, 25 July 2007, T. 8819 – 8820; D352, Photograph marked by T-60 (under seal).

¹⁴⁰⁹ Patrick van der Weijden, 29 Mar 2007, T. 4296, 4302, 4304 – 4306; P514, Expert report Patrick van der Weijden, pp 11 – 12.

¹⁴¹⁰ Patrick van der Weijden, 29 Mar 2007, T. 4305; P514, Expert report Patrick van der Weijden, pp 12 – 13.

¹⁴¹¹ Patrick van der Weijden, 29 Mar 2007, T. 4305 – 4306.

¹⁴¹² Ivan Stamenov, 22 Aug 2007, T. 9044; C10, Photographs taken during site visit, p. 1.

¹⁴¹³ Ivan Stamenov, 22 Aug 2007, T. 9049 – 9050; C10, Photographs taken during site visit, p. 1.

¹⁴¹⁴ Ivan Stamenov, 22 Aug 2007, T. 9030; D362, NATO weather report for Sarajevo, p. 3.

¹⁴¹⁵ W-62, 23 Jan 2007, T. 889 – 890.

¹⁴¹⁶ Defence Final Brief, para. 181.

¹⁴¹⁷ P514, Expert report Patrick van der Weijden, p. 11 (7,62x54R ammunition).

¹⁴¹⁸ P514, Expert report Patrick van der Weijden, p. 13.

¹⁴¹⁹ Patrick van der Weijden, 29 Mar 2007, T. 4304 – 4305.

¹⁴²⁰ Patrick van der Weijden, 29 Mar 2007, T. 4304 – 4305.

neither W-62 nor Ermin Krečo gave evidence of being shot at while taking shelter at the department store after having passed the passageway.

391. The Defence questioned Lt. Van der Weijden about how a shooter could see a target from the School of the Blind, considering the difference in elevation between the School and the passageway. Lt. Van der Weijden explained that the bullet's trajectory is such that over longer distances between the point of origin and the target, the bullet travels above the line of sight of the shooter and only meets up with the target at a certain distance.¹⁴²¹ Col. Stamenov confirmed this.¹⁴²² The further away the target, the bigger the curve, but the line is almost straight for the first 500 metres.¹⁴²³ Col. Stamenov testified that a M76 rifle was a "very successful" sniper rifle for distances up to 500 metres.¹⁴²⁴ Over a distance of approximately 300 metres, a bullet, when at its highest point above the line of vision, travels at approximately 20 centimetres above that line.¹⁴²⁵ Lt. Van der Weijden concluded that from 300 to 320 metres distance at a height of 20 metres, there is no difficulty in seeing the target and being able to shoot at it without the bullet striking the roof of the passageway.¹⁴²⁶

392. Further, the Defence expert witness Col. Stamenov emphasised that no information about the entry and exit wound of the victim, or the angle at which the projectile or a fragment entered the victim's chest was available, although this information was crucial when determining the origin of fire.¹⁴²⁷ However, during cross-examination, he confirmed that the trajectory of a bullet in a body can change and that it may be difficult in those cases to establish the direction of fire based on that information.¹⁴²⁸

Findings

393. On the basis of the evidence of eyewitnesses W-62 and Ermin Krečo, the Trial Chamber is satisfied that on 24 October 1994, Adnan Kasapović, a 14-year-old boy and a civilian, was shot and killed when walking by a passageway in Vojničko Polje.¹⁴²⁹ There is no evidence suggesting that the shot originated from ABiH-held territory. The evidence from eyewitnesses and the Prosecution

¹⁴²¹ Patrick van der Weijden, 29 Mar 2007, T. 4297; P516, Sketch by Patrick van der Weijden.

¹⁴²² Ivan Stamenov, 22 Aug 2007, T. 9039; D363, Drawing made by Ivan Stamenov.

¹⁴²³ Ivan Stamenov, 22 Aug 2007, T. 9039, 9040; D363, Drawing made by Ivan Stamenov.

¹⁴²⁴ Ivan Stamenov, 22 Aug 2007, T. 9040 – 9041.

¹⁴²⁵ Patrick van der Weijden, 29 Mar 2007, T. 4297, 4299; Ivan Stamenov, 22 Aug 2007, T. 9040; D363, Drawing made by Ivan Stamenov.

¹⁴²⁶ Patrick van der Weijden, 29 Mar 2007, T. 4297 – 4299, 4300, 4301, 4305 – 4306; P516, Sketch by Patrick van der Weijden.

¹⁴²⁷ Ivan Stamenov, 22 Aug 2007, T. 9035 – 9038, 9048, 9049, 9050; D360, Expert report Ivan Stamenov, p. 19.

¹⁴²⁸ Ivan Stamenov, 22 Aug 2007, T. 9070 – 9071, 9084.

¹⁴²⁹ The Trial Chamber notes that the Indictment specifies the location as "alley adjoining Đorde Andrijevića Kuna Street".

expert Lt. Van der Weijden shows that the shots came from the School of the Blind, a known sniper location of the SRK. In light of the fact that there is nothing in the evidence suggesting that the shot could have been fired by anyone other than a member of the SRK, the Trial Chamber concludes that the shots were fired by a member of the SRK.

394. With regard to the issue of presence of screens that would have obstructed the view of the shooter from the School of the Blind, the Trial Chamber takes into account the testimony of three witnesses. First, T-48 said that there was no direct line of sight at the time the incident because of the presence of screens. Second, T-48's evidence was confirmed by T-52. However, T-52 could not say whether there were any screens on the particular day of the incident. He testified to the presence of screens generally as a protective measure until the end of the war. Third, W-62 said that on that day, nothing obstructed the view from the School of the Blind to the place of shooting and that the blankets were hung up in the passageway only after the incident as a protective measure. It is important to note that neither T-48 nor T-52 was present at the location when the incident took place. The Trial Chamber accepts the evidence of W-62, who was an eyewitness to the incident, and, therefore, finds that nothing obstructed the view from the School of the Blind.

395. Based on the evidence of W-62 and Lt. Van der Weijden, the Trial Chamber is also satisfied that there was a direct line of sight from the School of the Blind to the passageway. Significantly, when Defence expert witness Col. Stamenov was shown the photograph of the passageway, he confirmed that there was a direct line of sight from the School of the Blind to the passageway. The Trial Chamber also notes that T-52, who was positioned in the School of the Blind, did not deny that the SRK soldiers at times went to upper floors of the School of the Blind. It is not convinced by his testimony that they never shot from that position. The Trial Chamber finds that the sniper in the School of the Blind, particularly with the benefit of telescopic sights and from the upper floors of the School of the Blind, had a clear view of Adnan Kasapović.

396. Col. Stamenov raised two other points: first, he was shown a NATO weather report for that particular day which stated that it was foggy and overcast, and he concluded that the visibility was poor on that day. On the other hand, W-62 testified that it was a nice day. The Trial Chamber is convinced that there was sufficient visibility in the early morning of that day for a shooter with telescopic sight to see Adnan Kasapović. This finding is buttressed by the NATO weather report tendered into evidence by the Defence which shows that in the early morning hours, the visibility was between 900 to 2,000 metres compared to the distance between the School of the Blind and Adnan Kasapović, which was established to be approximately 300 to 320 metres and, therefore, well within the optical range of the shooter.

397. Second, Col. Stamenov argued that the lack of any medical report as to the entry and exit wound was crucial for the determination of origin of the fire. However, the Trial Chamber notes that in cross-examination, he confirmed that the trajectory of a bullet in a body can change and that it may be difficult in those cases to establish the direction of fire with the help of that information. The Trial Chamber, therefore, attaches no weight to that argument.

b. Sniping of Fata Guta on 8 November 1994

398. In the morning of 8 November 1994, Fata Guta and W-50 left the house of W-50 in Gazin Han, Stari Grad municipality, in the eastern part of Sarajevo, to fetch some water from the Mošćanica spring.¹⁴³⁰ W-50 and Fata Guta were dressed in “civilian clothing”.¹⁴³¹ W-50 carried jerry cans with a rope over her shoulders.¹⁴³²

399. They walked down a pathway from the house towards the main road.¹⁴³³ About three to five metres before they had reached the main road, Fata Guta was hit by a bullet in her left hand.¹⁴³⁴ W-50 heard Fata Guta crying that she had been hit as she fell to the ground.¹⁴³⁵ There were two shots at the time Fata Guta was wounded.¹⁴³⁶ W-50 testified that there were no military targets or any military activity in the neighbourhood where Fata Guta was shot.¹⁴³⁷ W-50 testified that the pathway she and Fata Guta were walking on was in a civilian area but known to be dangerous because of sniping.¹⁴³⁸

400. Fata Guta was bleeding profusely and W-50 helped her to move behind a holiday cottage where she administered first aid.¹⁴³⁹ Since the sniping continued, they stayed behind the cottage for about 20 minutes.¹⁴⁴⁰ After that W-50 took Fata Guta to the nearest doctor in Gazin Han to get medical care.¹⁴⁴¹ On their way to and from the doctor, W-50 could hear the sound of gunshots from the direction of Zečija Glava, which is located in the East.¹⁴⁴² W-50 and Fata Guta had to take a

¹⁴³⁰ W-50, 28 Feb 2007, T. 2867 – 2868 (redacted), 2888 (redacted), 2900 (redacted); D90, Map of Sarajevo marked by W-50 (under seal).

¹⁴³¹ P514, Expert report Patrick van der Weijden, p. 53.

¹⁴³² W-50, 28 Feb 2007, T. 2868, P514, Expert report Patrick van der Weijden, p. 53.

¹⁴³³ W-50, 28 Feb 2007, T. 2871 – 2872; P290, p. 2 (under seal); P292, Photograph marked by W-50.

¹⁴³⁴ W-50, 28 Feb 2007, T. 2868, 2870, 2871 – 2872, 2891 – 2893, P290, p. 2 (under seal); P291, Videoclip of W-50 (under seal); P293, Photograph marked by W-50; P294, Criminal investigation file, dated 8 November 1994, p. 4; P455, Medical record Fata Guta (under seal); P514, Expert report Patrick van der Weijden, p. 51; D89, Photograph marked by W-50.

¹⁴³⁵ W-50, P290, p. 2 (under seal); P514, Expert report Patrick van der Weijden, p. 51.

¹⁴³⁶ W-50, 28 Feb 2007, T. 2869.

¹⁴³⁷ W-50, 28 Feb 2007, T. 2869, P290, p. 2 (under seal).

¹⁴³⁸ W-50, P290, p. 2 (under seal).

¹⁴³⁹ W-50, 28 Feb 2007, T. 2868, 2872 – 2873, P290, p. 2 (under seal); P293, Photograph marked by W-50.

¹⁴⁴⁰ W-50, 28 Feb 2007, T. 2873, P290, p. 2 (under seal).

¹⁴⁴¹ W-50, 28 Feb 2007, T. 2873, P290, p. 2 (under seal); P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁴² W-50, 28 Feb 2007, T. 2875, 2888; D90, Map of Sarajevo marked by W-50 (under seal).

different route on their return from the doctor.¹⁴⁴³ They passed by what W-50 called an ABiH “headquarters”, but there were no soldiers.¹⁴⁴⁴ The ABiH “headquarters” was located close to the Bosnian Serb positions, by the roadside, not far from the place where Fata Guta was wounded.¹⁴⁴⁵ According to W-50, the headquarters was staffed by civilians, some of whom were protecting the neighbourhood from the Bosnian Serbs, but there were no weapons at that location.¹⁴⁴⁶

401. Later that same day Fata Guta received further treatment for her injuries at the Koševo Hospital.¹⁴⁴⁷ Fata Guta went to an outpatient’s clinic daily for ten days to dress the wound.¹⁴⁴⁸

402. According to W-50, Fata Guta was hit by a shot that came from the direction of Zečija Glava, which was a Bosnian Serb-held position.¹⁴⁴⁹ W-50 was sure the shots came from the direction of Zečija Glava because she clearly heard the whistling sound of the bullet from that location.¹⁴⁵⁰ She was also certain that the shots were directed at Fata Guta and herself.¹⁴⁵¹ It seemed that the sniper was intent on killing them because more shots tracked their movements behind cover and there was no one else around.¹⁴⁵²

403. Lt. Van der Weijden concluded that the weapon used was either a M76 or M91 semi-automatic sniper rifle.¹⁴⁵³ This rifle would have enabled the shooter to rapidly fire consecutive shots, which would not have been possible with a bolt-action rifle.¹⁴⁵⁴ Lt. Van der Weijden explained that Zečija Glava is located at least 1,200 metres away from the incident site and that such a distance is beyond the shooting range of M76 or M91 sniper rifles.¹⁴⁵⁵ Shots against moving targets using such kind of weapons are extremely difficult at a range of 1,200 metres.¹⁴⁵⁶ W-50 and Fata Guta were moving when they were shot at, indicating that the shooter was able to follow them visually.¹⁴⁵⁷ Considering the available optics for M76 or M91 sniper rifles, the shooter would not have been able to follow the targets from the location of Zečija Glava.¹⁴⁵⁸ Even if the shooter had

¹⁴⁴³ W-50, 28 Feb 2007, T. 2887, 2901.

¹⁴⁴⁴ W-50, 28 Feb 2007, T. 2886 – 2887. The Trial Chamber notes that Enes Jašarević testified that the word “headquarters” is used not exclusively used for “military headquarters”, but can also denote a regular work place, Enes Jašarević, 1 Mar 2007, T. 3023.

¹⁴⁴⁵ W-50, 28 Feb 2007, T. 2887 – 2888.

¹⁴⁴⁶ W-50, 28 Feb 2007, T. 2888.

¹⁴⁴⁷ P294, Criminal investigation file, pp 3, 4; P455, Medical record Fata Guta (under seal).

¹⁴⁴⁸ W-50, 28 Feb 2007, T. 2901, P290, p. 2 (under seal); P455, Medical record Fata Guta (under seal).

¹⁴⁴⁹ W-50, 28 Feb 2007, T. 2866 – 2867, 2868, 2873, 2882 – 2883, 2884 – 2885, P290, p. 2 (under seal); P293, Photograph marked by W-50; P294, Criminal investigation file, pp 1, 3-4.

¹⁴⁵⁰ W-50, 28 Feb 2007, T. 2875.

¹⁴⁵¹ W-50, 28 Feb 2007, T. 2869.

¹⁴⁵² P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵³ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵⁴ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵⁵ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵⁶ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵⁷ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁵⁸ P514, Expert report Patrick van der Weijden, p. 51.

access to better optics, the flight time of the bullet would have prevented the shooter from reacting to the movements of the targets.¹⁴⁵⁹ According to Lt. Van der Weijden, the shooter who fired at W-50 and Fata Guta must have been in a different position, but in the same line as that of Zečija Glava.¹⁴⁶⁰

404. South-east of the incident site was a Bosnian Muslim position, which, however, did not offer a good view of the site.¹⁴⁶¹ According to Lt. Van der Weijden, the shots were, therefore, not fired from that location.¹⁴⁶² Between Zečija Glava and the location of the incident, there was an abandoned area, a so-called “no man’s land”.¹⁴⁶³ According to Lt. Van der Weijden, this area could have been easily infiltrated from Zečija Glava.¹⁴⁶⁴ He believed that snipers had indeed infiltrated the no man’s land and taken up positions in one of the abandoned houses, which were located 300 to 475 metres away from the incident site.¹⁴⁶⁵ He explained that, when a sniper fired from a room in a house, the room would muffle the sound and it would be very difficult to pinpoint the location due to the echoes of the shots between the walls of the surrounding houses.¹⁴⁶⁶

405. Lt. Van der Weijden stated that since the incident took place in the morning, a shooter facing towards the West, had the sun in his back and W-50 and Fata Guta had the sun in their faces.¹⁴⁶⁷ This, together with the optics on the rifle, gave the shooter an optimal opportunity to identify the targets.¹⁴⁶⁸

Findings

406. The Trial Chamber finds that Fata Guta was shot and seriously wounded in her hand while she was on her way to fetch water from the Moščanica spring in Gazin Han. Although W-50 testified that the shots came from Zečija Glava, the evidence adduced by expert witness Lt. Van der Weijden indicates that Zečija Glava could not have been the shooter's position because of the insufficient range of the weapons, and that the shots must have come from the abandoned area closer to the incident site. The Trial Chamber notes that the evidence does not clearly indicate who had access to and could have infiltrated the abandoned area. The Trial Chamber, therefore, finds

¹⁴⁵⁹ P514, Expert report Patrick van der Weijden, p. 51.

¹⁴⁶⁰ P514, Expert report Patrick van der Weijden, p. 51. *See also*, D360, Expert report Ivan Stamenov, p. 19.

¹⁴⁶¹ P514, Expert report Patrick van der Weijden, pp 52-53.

¹⁴⁶² P514, Expert report Patrick van der Weijden, pp 52-53.

¹⁴⁶³ P514, Expert report Patrick van der Weijden, pp 52-53.

¹⁴⁶⁴ P514, Expert report Patrick van der Weijden, pp 52-53.

¹⁴⁶⁵ P514, Expert report Patrick van der Weijden, p. 53.

¹⁴⁶⁶ P514, Expert report Patrick van der Weijden, p. 53.

¹⁴⁶⁷ P514, Expert report Patrick van der Weijden, p. 53.

¹⁴⁶⁸ P514, Expert report Patrick van der Weijden, pp 53 – 54.

that the evidence presented is insufficient to conclude that it was an SRK sniper who shot at Fata Guta from a position in the abandoned area.

c. Sniping of Šemsa Čovrk on 3 May 1995

407. The third of May 1995 was a sunny and warm day.¹⁴⁶⁹ In the area of Dobrinja, there was usually a lot of military activity.¹⁴⁷⁰ However, it was peaceful on that day and a cease-fire was in place.¹⁴⁷¹

408. The ground floors of the apartment buildings in Dobrinja C5, which is located close to Sarajevo Airport, were often shot at, owing to the proximity of the area to the confrontation line.¹⁴⁷² For this reason, residents normally used the cellar to enter the buildings.¹⁴⁷³ Every building had its own entrance to a cellar, located at the backside.¹⁴⁷⁴ Šemsa Čovrk, a woman aged 27 years old, was walking towards the main entrance of building number 4, on Josipa Kraša Street, holding the hand of her five-year-old son.¹⁴⁷⁵

409. Šemsa Čovrk was close to the entrance when a guard, who was a civilian, called her loudly.¹⁴⁷⁶ She stopped and turned towards the direction of the houses at the confrontation line.¹⁴⁷⁷ At this moment, Šemsa Čovrk was hit by a bullet on the right side of her abdomen and fell to the ground.¹⁴⁷⁸ She was moved by a neighbour and another man to a house about five or six metres across the street from the building.¹⁴⁷⁹ Shortly afterwards, she was transferred to the Dobrinja Hospital where she underwent surgery and stayed for seven days.¹⁴⁸⁰

410. Lt. Van der Weijden concluded that the shooting position was 200 to 300 metres from the place where Šemsa Čovrk was hit, in the direction of the airport on SRK-held territory.¹⁴⁸¹ W-32 said that the shots came from an area that was between some houses, and originated from the

¹⁴⁶⁹ W-32, 4 Apr 2007, T. 4485.

¹⁴⁷⁰ W-32, 4 Apr 2007, T. 4502 – 4503.

¹⁴⁷¹ W-32, 4 Apr 2007, T. 4485, 4502.

¹⁴⁷² W-32, 4 Apr 2007, T. 4484, P528, p. 1 (under seal); P104, Street map of Sarajevo.

¹⁴⁷³ W-32, 4 Apr 2007, T. 4484 – 4486, 4500.

¹⁴⁷⁴ W-32, 4 Apr 2007, T. 4485 – 4486.

¹⁴⁷⁵ W-32, 4 Apr 2007, T. 4486, P528, p. 1 (under seal), P529, p. 2 (under seal).

¹⁴⁷⁶ W-32, 4 Apr 2007, T. 4494, 4498, 4500, P528, p. 1 (under seal). The Defence tried to ascertain in cross-examination the exact position of Šemsa Čovrk when she was hit. According to the testimony of W-32, Šemsa Čovrk passed a garage at her left in order to reach the hallway of the house, W-32, 4 Apr 2007, T. 4494 – 4495.

¹⁴⁷⁷ W-32, 4 Apr 2007, T. 4486 – 4487, 4494, 4499, 4501, P529, p. 2 (under seal); P530, Videoclip of sniping incidents (under seal).

¹⁴⁷⁸ W-32, 4 Apr 2007, T. 4487, 4494, P528, p. 1 (under seal), P529, p. 2 (under seal); P530, Videoclip of sniping incidents (under seal).

¹⁴⁷⁹ W-32, P528, p. 1 (under seal), P529, p. 2 (under seal).

¹⁴⁸⁰ P471, Medical report, p. 2 (under seal); W-32, P528, p. 1 (under seal).

¹⁴⁸¹ P514, Expert report Patrick Patrick van der Weijden, p. 14. W-32 estimated the distance as approximately 100 metres, W-32, 4 Apr 2007, T. 4493; P530, Videoclip of sniping incidents (under seal).

houses near the airport.¹⁴⁸² These houses were also in the direction of the confrontation line.¹⁴⁸³ In response to a question by the Defence, W-32 said that the shot came “probably from the front line.”¹⁴⁸⁴ In her view, the shots did not come from the airport because one could not see the airport directly from the place where Šemsa Čovrk was hit.¹⁴⁸⁵ Rather, the shots came from the airport settlements.¹⁴⁸⁶ W-32 did not know who was firing in this area or where the shots into Dobrinja C5 generally came from.¹⁴⁸⁷ According to W-32, the territory where the buildings of the airport settlement were located was controlled by “the aggressor”.¹⁴⁸⁸

411. Lt. Van der Weijden did not regard the airport as a possible origin of fire, because between the buildings of Dobrinja C5 and the airport there are open fields with shrubs, blocking the view from a low or ground position.¹⁴⁸⁹ Furthermore, the airport was under the control of UNPROFOR which was patrolling the area with very strict rules of engagement towards combatants.¹⁴⁹⁰ Instead, he found that the houses to the West of the place where Šemsa Čovrk was hit were suitable positions for sniping, giving a shooter the height and the means to shoot from a concealed position.¹⁴⁹¹ Lt. Van der Weijden concluded that the shooter was at a long range because of the difference in time between the sound of the shot and the impact.¹⁴⁹² He also explained that, from a distance of 200 to 300 metres, a person with a five-year-old child could easily have been identified as civilian, even with the naked eye.¹⁴⁹³

412. In cross-examination, the Defence suggested that there were several streets and rows of buildings between the confrontation line and the place where Šemsa Čovrk was shot.¹⁴⁹⁴ W-32 responded that there was only one other building between Josipa Kraša Street, number 4, and the confrontation line.¹⁴⁹⁵ On a map tendered by the Defence, the confrontation line as of September 1995 is depicted as running through the middle of the airport settlement.¹⁴⁹⁶ Thus the houses marked in Lt. Van der Weijden’s report as possible sniping positions would not have been located in territory controlled by the SRK.¹⁴⁹⁷ However, another map, tendered by the Prosecution,

¹⁴⁸² W-32, 4 Apr 2007, T. 4493; P530, Videoclip of sniping incidents (under seal).

¹⁴⁸³ W-32, 4 Apr 2007, T. 4495, 4501 – 4502, 4503.

¹⁴⁸⁴ W-32, 4 Apr 2007, T. 4503.

¹⁴⁸⁵ W-32, 4 Apr 2007, T. 4501 – 4502.

¹⁴⁸⁶ W-32, P528, p. 1 (under seal).

¹⁴⁸⁷ W-32, 4 Apr 2007, T. 4503.

¹⁴⁸⁸ W-32, 4 Apr 2007, T. 4492, P528, p. 1 (under seal). *See also*, Azra Šišić, 27 Feb 2007, T. 2851 – 2852; P288, Map marked by Azra Šišić.

¹⁴⁸⁹ P514, Expert report Patrick van der Weijden, p. 15.

¹⁴⁹⁰ P514, Expert report Patrick van der Weijden, p. 15.

¹⁴⁹¹ P514, Expert report Patrick van der Weijden, p. 15.

¹⁴⁹² P514, Expert report Patrick van der Weijden, p. 14.

¹⁴⁹³ P514, Expert report Patrick van der Weijden, p. 16.

¹⁴⁹⁴ W-32, 4 Apr 2007, T. 4501.

¹⁴⁹⁵ W-32, 4 Apr 2007, T. 4501.

¹⁴⁹⁶ D164, Map of Dobrinja marked by W-32; P328, Map marked by Ismet Hadžić; Ismet Hadžić, 5 Mar 2007, T. 3201.

¹⁴⁹⁷ D164, Map of Dobrinja marked by W-32; P514, Expert report Patrick van der Weijden, p. 16.

indicates that the confrontation line was just behind the first buildings on the eastern side of the airport settlement, so that some of the possible sniper positions were indeed in SRK-controlled territory.¹⁴⁹⁸ Further, the confrontation line, as drawn by Ismet Hadžić, ran through a building.¹⁴⁹⁹ There is no indication that this part of the confrontation line differed between 1994 and 1995. Ismet Hadžić, the Commander of 1st Dobrinja Brigade/155th Mountain Brigade, explained that from the beginning until the end of the war the separation line remained unchanged.¹⁵⁰⁰ The confrontation line ran along the road through the settlement of Dobrinja 5, the river, and the village towards the airport settlement.¹⁵⁰¹ Ismet Hadžić further testified that the separation line between ABiH and VRS forces was only a road “five wide”.¹⁵⁰² According to him, there were Bosnian Muslim forces in one part of the settlement and across the road in other buildings, there were Bosnian Serb forces.¹⁵⁰³

413. Based on the information that the victim was hit with a single shot and that the closest buildings from where the shot could have been fired was at least 200 metres, Lt. Van der Weijden believed that it was unlikely that a machine gun was used to shoot Šemsa Čovrk.¹⁵⁰⁴ He concluded that the shot was most likely fired with a M76 or M91 sniper rifle.¹⁵⁰⁵

Findings

414. The Trial Chamber finds that Šemsa Čovrk, a civilian, was shot and seriously wounded while she was walking on Josipa Kraša Street in Dobrinja C5. However, it is not in a position to conclude that the victim was shot from a sniping position located in SRK-controlled territory. The evidence as to the exact location of the confrontation line in the airport settlement is very conflicting and inconclusive. A map tendered by the Defence shows that the confrontation line ran through the middle of the airport settlement, with the result that the house marked in Lt. Van der Weijden’s report as possible sniping position would not be located in SRK-controlled territory. On another map, tendered by the Prosecution, the confrontation line is shown as running behind the first building of the eastern side of the airport settlement, thereby possibly placing the sniping position in areas controlled by the SRK. The Trial Chamber also notes that one of the buildings from which Šemsa Čovrk could have been shot was shared by the two armies. In light of all the

¹⁴⁹⁸ P330, Map marked by Ismet Hadžić. *See also*, D360, Expert report Ivan Stamenov, p. 31.

¹⁴⁹⁹ P330, Map marked by Ismet Hadžić.

¹⁵⁰⁰ Ismet Hadžić, 5 Mar 2007, T. 3198.

¹⁵⁰¹ Ismet Hadžić, 6 Mar 2007, T. 3204 – 3205; Enes Jašarević, 1 Mar 2007, T. 3020 – 3021.

¹⁵⁰² Ismet Hadžić, 6 Mar 2007, T. 3213.

¹⁵⁰³ Ismet Hadžić, 6 Mar 2007, T. 3213. *See also*, W-28, 22 Feb 2007, T. 2762; W-46, 15 Mar 2007, T. 3835 (closed session), P387, p. 28 (under seal).

¹⁵⁰⁴ P514, Expert report Patrick van der Weijden, p. 14.

¹⁵⁰⁵ P514, Expert report Patrick van der Weijden, p. 14.

evidence, the Trial Chamber is not satisfied that the victim was shot from a position on the territory controlled by SRK.

5. Shelling during the Indictment Period

415. David Harland estimated that during the course of the war about half a million shells were fired at Sarajevo: “Sometimes we were able to determine very exactly where they came from and sometimes [we] weren’t. In nearly a hundred per cent of the cases, that is, with the exception of two or three, when we could confirm, we confirmed that they came from the Serb side.”¹⁵⁰⁶ He also stated that during the period of 1993 to 1995, roughly 1,000 shells per day landed on Sarajevo, with a lull in 1994 due to the cease-fire of that year.¹⁵⁰⁷

416. The Trial Chamber recalls its finding that the SRK had modified air bombs and launched them from the ground.¹⁵⁰⁸ There is also evidence that air bombs, phosphorous bombs and other improvised weapons were used by the SRK.¹⁵⁰⁹ Nedžib Đožo explained that the “Serb forces” located on the slopes of Mount Trebević filled natural gas containers with explosives, put rubber tires around the containers and rolled them down the slope from Osmice.¹⁵¹⁰ An UNPROFOR report noted that in the evening of 27 August 1995, “the BSA rolled a barrel full of fuel and explosive material from the Sharpstone Hill to explode at the bottom, they did so two times, although it did not cause casualties, [i]t caused a lot of fear among the people there.”¹⁵¹¹

(a) Shelling by the SRK

417. Evidence was led that the civilian population in the city of Sarajevo was regularly the target of shelling by the SRK,¹⁵¹² including heavy shelling with modified air bombs in the city of Sarajevo, and other parts of the front.¹⁵¹³ The Trial Chamber heard that the location of Sarajevo in a valley and the positions of the SRK on the hills around Sarajevo meant that the SRK could shell

¹⁵⁰⁶ David Harland, P2, MT. 28668 – 28669.

¹⁵⁰⁷ David Harland, P1, MT. 26937. *See also*, W-137, 20 Feb 2007, T. 2559; W-12, 2 Mar 2007, T. 3073.

¹⁵⁰⁸ *See supra*, para 107.

¹⁵⁰⁹ *See also*, Milomir Šoja, 25 Apr 2007, T. 5121 – 5126; Martin Bell, 26 Apr 2007, T. 5240 – 5241, 5263 – 5264; Stevan Veljović, 29 May 2007, T. 5801; Ljuban Mrković, 13 July 2007, T. 8223 – 8224.

¹⁵¹⁰ Nedžib Đožo, 14 Mar 2007, T. 3711 – 3713. *See also, supra*, Section II.B.2.(b)(ii) Modified Air Bombs.

¹⁵¹¹ P21, UNPROFOR sitrep, dated 28 August 1995, p. 5.

¹⁵¹² Cornelis Hendrik Nicolai, 24 Jan 2007, T. 962 – 963; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703; Thorbjorn Overgard, 18 Jan 2007, T. 639, 651 – 652; W-12, 2 Mar 2007, T. 3074 – 3075; Ismet Hadžić, 6 Mar 2007, T. 3211; Rijalda Musafendić, 28 Feb 2007, T. 2936; Huso Palo, P 162, p. 2; Tarik Zunić, P185, p.3; W-57, P538, p. 2 (under seal); Ronald Eimers, P584, pp 2, 4, P585, pp 4, 5, 6, 7; P10, UNPROFOR weekly sitrep, 10 December 1994, pp 5 - 6; P19, UNPROFOR sitrep, 2 July 1995, p. 2; P343, Protest letter from Rupert Smith to Gen. Mladić, dated 26 June 1995. *See also* P777, 1st Iliđza Infantry Brigade command daily report, dated 21 June 1995, p. 2; T-2, 20 June 2007, T. 6959).

¹⁵¹³ *See, e.g.*, P586, Expert report of Berko Zečević, p. 75; Berko Zečević, 20 Apr 2007, T. 4918 – 4919; W-137, 19 Feb 2007, T. 2471; Ekrem Suljević, P310, p. 2.

Sarajevo without restriction.¹⁵¹⁴ As described by Martin Bell, the “burden of the bombardment fell on the civilians trapped in the city.”¹⁵¹⁵

418. Maj. Eimers noted that the Bosnian Serb Liaison Officers usually acknowledged that the firing had come from their side but “if we thought it was a civilian target they would often call it a military target.”¹⁵¹⁶ Similarly, Brig. Mohatarem testified that when UNPROFOR confronted the “Serb commanders” with information about sniping or shelling, they would accept that they had been firing at their military counterparts, but they would not accept that they had been shooting at civilians.¹⁵¹⁷ In Brig. Mohatarem’s view, “[t]hey didn’t care about it, actually.”¹⁵¹⁸ Lt. Col. Konings explained that, in his view, there were very few military targets inside the city of Sarajevo, and that in most incidents of shelling he investigated, there were no military targets involved.¹⁵¹⁹

419. Maj. Veljović, who testified for the Defence, rejected the proposition that the SRK intentionally targeted the civilian population and areas inside the confrontation lines by shelling, maintaining that “[t]here was never any order issued to fire any heavy weaponry on Baščaršija, Čengić Vila, or any part of the town, except on the separation line and military positions. Mortars were used to target military positions, but there was a strict ban referring to all other parts.”¹⁵²⁰ He further explained that “there was no mistake-free firing”; a projectile might miss a target by 50 to 100 metres and fall “into a built-up inhabited area of town” if, for example, the sufficient charge was not used, the gunpowder was damp or a soldier who was “upset, psychologically” forgot to measure the right angle.¹⁵²¹

420. A number of witnesses expressed the view that the shelling was carried out in an indiscriminate manner.¹⁵²² David Harland explained that in 1993 and 1994, but probably more in the latter half of 1994, the shelling was not concentrated against military targets. Instead, shells were dropped apparently randomly across densely-populated civilian areas in a way that would cause a small number of casualties in a large number of places.¹⁵²³ Lt. Col. Konings testified that

¹⁵¹⁴ W-116, 18 Apr 2007, T. 4687. *See also*, P617, Videoclip of interview with Radovan Karadžić.

¹⁵¹⁵ Martin Bell, 27 Apr 2007, T. 5279. *See also*, John Jordan, P267, p. 6.

¹⁵¹⁶ Ronald Eimers, P585, p. 4, 20 Apr 2007, T. 4786. *See supra*, Section II.B.1(a) VRS and SRK.

¹⁵¹⁷ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710.

¹⁵¹⁸ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710.

¹⁵¹⁹ Harry Konings, 12 Mar 2007, T. 3560.

¹⁵²⁰ Stevan Veljović, 29 May 2007, T. 5754, 5806. *See also*, Simo Tuševljak, 11 July 2007, T. 8085, 12 July 2007, T. 8109, 8112; Ljuban Mrković, 12 July 2007, T. 8158.

¹⁵²¹ Stevan Veljović, 30 May 2007, T. 5854 – 5855, 5856.

¹⁵²² Ismet Hadžić, 6 Mar 2007, T. 3211, 3236; W-12, 2 Mar 2007, T. 3074 – 3075; Thomas Knustad, 13 Feb 2007, T. 1993; W-137, 20 Feb 2007, T. 2553; Tarik Žunić, P185, p. 3; W-156, P625, p. 11 (under seal); John Jordan, P267, p. 6. *See also*, P619, Videoclip of shelling in Sarajevo.

¹⁵²³ David Harland, 15 Jan 2007, T. 330 – 331; David Harland, P1, MT. 26951. *See also*, John Jordan, P267, p. 7.

one of the consequences of using mortars as “harassing fire”, as it was used in Sarajevo, is the infliction of a lot of harm, especially against civilians.¹⁵²⁴

421. Milan Mandilović recalled that on 16, 17, and 18 June 1995, the start of an ABiH offensive, Sarajevo was intensively shelled: “Terrible detonations were heard in town; a large number of shells landed in the town.”¹⁵²⁵ The “attempt to lift the blockade” and the Markale Market II incident that took place on 28 August 1995 were “firmly etched” in Milan Mandilović’s mind “because they marked the onset of terrible, complete destruction.”¹⁵²⁶

422. UNPROFOR reports recorded numerous incidents of shelling of Bosnian Muslim-held areas of Sarajevo, many of which resulted in casualties.¹⁵²⁷ In approximately half of the shelling investigations Bogdan Vidović attended, from August 1994 until November 1995, there were civilian casualties.¹⁵²⁸

423. Witnesses described civilian areas that were regularly targeted by shelling. Such areas included parks, cemeteries, market places and places where people collected water.¹⁵²⁹ Azra Šišić recalled that it was “a risky business” to leave one’s apartment building to collect food from 100 to 200 metres away because of the shelling.¹⁵³⁰

424. Sanjin Hasanefendić testified that the entire Novo Sarajevo municipality was exposed to artillery fire, but added that the residential areas of Heroes’ Square, Pofalići and Velešići were the most exposed.¹⁵³¹ Nefa Šljivo stated that there was shelling in Hrasnica and W-82 stated that there was a lot of shelling in Sokolovići.¹⁵³² Evidence also indicates that civilian buildings were regularly shelled and that shells regularly landed very near to peoples’ houses.¹⁵³³ A number of witnesses testified about the shelling of their homes and surrounding areas from Špicasta Stijena and other Bosnian Serb-held areas.¹⁵³⁴ W-12 said that there was nothing which could be done about the

¹⁵²⁴ Harry Konings, 12 Mar 2007, T. 3560.

¹⁵²⁵ Milan Mandilović, 18 Jan 2007, T. 617 – 618. *See also supra*, paras 784 - 785.

¹⁵²⁶ Milan Mandilović, 17 Jan 2007, T. 570 – 571.

¹⁵²⁷ *See infra*, Section IIE.7.b Physical Impact. For an example, *see* P12, UNPROFOR daily sitrep, dated 14 April 1995, p. 2; Nedžib Dozo, 14 Mar 2007, T. 3705 – 3706.

¹⁵²⁸ Bogdan Vidović, 13 Feb 2007, T. 2066 – 2067.

¹⁵²⁹ David Harland, 15 Jan 2007, T. 345; Thomas Knustad, 13 Feb 2007, T. 1993; P16, UNPROFOR sitrep, 24 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

¹⁵³⁰ Azra Šišić, 27 Feb 2007, T. 2830. *See also*, Rialda Musacendić, P295, p. 4.

¹⁵³¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2303, 2391; P232, Photograph marked by Sanjin Hasanefendić. *See also*, Predrag Carkić, 19 June 2007, T. 6870 – 6871; D70, Photograph marked by Sanjin Hasanefendić; P850, UNMO sitrep, 9 July 1995, pp 2, 11.

¹⁵³² Nefa Šljivo, P531, p. 2, P532, p. 2; W-82, P228, p. 2 (under seal).

¹⁵³³ Harry Konings, 13 Mar 2007, T. 3603; W-57, P538, p. 2 (under seal); Nefa Šljivo, P531, p. 2, P532, p. 2; UNPROFOR protest letter, 2 December 1994, p. 3.

¹⁵³⁴ Bogdan Vidović, 13 Feb 2007, T. 2062; Harry Konings, 13 Mar 2007, T. 3603; Kemal Bućo, 2 Feb 2007, T. 1510; Sanela Dedović, P110, p.2; W-12, P307, p. 2 (under seal); Tarik Žunić, P185, pp 2 – 3.

shelling except putting sandbags against the windows of the house and covering the windows with blankets.¹⁵³⁵

425. As was the case before the Indictment period, the hospitals within the confrontation lines were shelled and sniped.¹⁵³⁶ The Trial Chamber heard evidence that during the Indictment period, the State Hospital was hit about a dozen times and shells landed in its compound.¹⁵³⁷ The southern part of the hospital, facing the frontline, was affected much more than other parts.¹⁵³⁸ Witnesses stated that the fire came from the Jewish Cemetery, Grbavica, Mount Trebević and Vraca.¹⁵³⁹ Milan Mandilović stated that all the floors in the hospital were affected by the destructive impact of artillery weapons and that there was not a single window of the hospital that was not broken.¹⁵⁴⁰

426. According to witnesses, there were no military facilities in the immediate vicinity of the State Hospital in 1994 and 1995.¹⁵⁴¹ Milan Mandilović, a doctor at the State Hospital, testified that, during the Indictment period, he never saw the ABiH firing mortars from the grounds of the hospital nor did he see ABiH tanks or heavy weaponry in or around the hospital complex.¹⁵⁴² He noted that the hospital's location between two streets would have required weapons with a manoeuvrability that such weapons did not have.¹⁵⁴³ Maj. Gen. Karavelić noted that his command post was 200 to 300 metres from the hospital, and testified that he immediately dispatched police to investigate reports of firing from the State Hospital and the Koševo Hospital and that they "never found anything" to indicate the presence of mobile mortars near the hospitals.¹⁵⁴⁴ However, T-60 stated that on a weekly basis from mid-1994 until November 1995, he saw a cannon perhaps 20 metres away from the gate of the hospital and within the perimeter of the hospital, being fired mostly on the neighbourhood of Vraca.¹⁵⁴⁵ According to T-60, the Bosnian Serbs responded to this only when heavy artillery was fired upon their positions.¹⁵⁴⁶

427. The Koševo Hospital and the area around it were also shelled.¹⁵⁴⁷ Maj. Gen. Nicolai testified that the Koševo Hospital was shelled by the SRK on 16 May 1995.¹⁵⁴⁸ He stated that the

¹⁵³⁵ W-12, P307, p. 2 (under seal).

¹⁵³⁶ See *supra*, Section II.C.a. Sniping and Shelling of Areas within the Confrontation Lines.

¹⁵³⁷ Bakir Nakaš, 25 Jan 2007, T. 1071.

¹⁵³⁸ Milan Mandilović, 17 Jan 2007, T. 563 – 564, 18 Jan 2007, 604; P47, Photograph of State Hospital.

¹⁵³⁹ Milan Mandilović, 17 Jan 2007, T. 564; Bakir Nakaš, 25 Jan 2007, T. 1070 – 1071, 29 Jan 2007, T. 1143. See also *supra*, Section II.B.3 Areas of Responsibility and Confrontation Lines - SRK and 1st Corps of the ABiH.

¹⁵⁴⁰ Milan Mandilović, 17 Jan 2007, T. 563 – 564, 584; P47, Photograph of State Hospital.

¹⁵⁴¹ Bakir Nakaš, 25 Jan 2007, T. 1068 – 1069, 29 Jan 2007, T. 1121 – 1122; Milan Mandilović, 17 Jan 2007, T. 562.

¹⁵⁴² Milan Mandilović, 17 Jan 2007, T. 562.

¹⁵⁴³ Milan Mandilović, 17 Jan 2007, T. 562.

¹⁵⁴⁴ Vahid Karavelić, P494, GT. 12030.

¹⁵⁴⁵ T-60, 25 July 2007, T. 8796, 8799 – 8801, 8846 – 8850, 8853 – 8857; P916, Map marked by T-60 (under seal).

¹⁵⁴⁶ T-60, 25 July 2007, T. 8796, 8799 – 8800.

¹⁵⁴⁷ Thomas Knustad, 13 Feb 2007, T. 1993; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995; T-61, 9 July 2007, T. 7870 – 7873; Fadila Serdarević, P641, p. 6.

¹⁵⁴⁸ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992.

headquarters of a unit of the ABiH was situated near the Zetra Stadium, which was about one kilometre away from the Koševo Hospital.¹⁵⁴⁹ Maj. Gen. Karavelić stated that it could not be confirmed that the 1st Corps had fired from its grounds.¹⁵⁵⁰ However, there is evidence of ABiH firing from the area around the hospital. An UNMO report dated 17 June 1995 recorded that while the Koševo Hospital was hit, “outgoing rounds” had been observed in the area.¹⁵⁵¹ T-61, a Bosnian Serb doctor who worked at the Koševo Hospital until January 1994, testified that throughout the whole war, soldiers were present in the area around the hospital.¹⁵⁵² However, Maj. Gen. Nicolai testified that the SRK’s aim would have had to be “awfully inaccurate” to miss the ABiH headquarters by one kilometre and instead hit the hospital.¹⁵⁵³

428. The evidence of witness T-60 pertaining to the presence of a cannon in the vicinity of the State Hospital is not supported by other evidence. Bakir Nakaš, the Director of the State Hospital, did not confirm that the ABiH was present inside the compound of the State Hospital, or in its immediate vicinity.¹⁵⁵⁴ This was confirmed by Milan Mandilović, but he was not asked in cross-examination about the presence of ABiH in and around the hospital. The evidence pertaining to Koševo Hospital does not show that the ABiH was located in the compound of the hospital itself. There is no evidence that the civilian status of the hospitals changed during the Indictment period. In light of all the evidence relating to this matter, including that of the skill of the mortar crews, the Trial Chamber is satisfied that both hospitals were intentionally targeted by the SRK. As a matter of international humanitarian law, hospitals are not legitimate military targets.

429. The “Blue Routes”, which were established in early 1994, were land routes over which basic necessities, such as food and medical supplies, could be brought into Sarajevo and which allowed civilians to move between different areas.¹⁵⁵⁵ One of the Blue Routes, referred to by some witnesses as the “convoy road”, ran over Mount Igman into Hrasnica. Witnesses testified that the ABiH controlled the convoy road and that it was used by the ABiH, civilians and humanitarian aid workers.¹⁵⁵⁶ However, Lt. Col. Louis Fortin only saw UNHCR and Bosnian Muslim humanitarian aid convoys on the convoy road and he never saw any ABiH military convoys or any ABiH arms being transported there.¹⁵⁵⁷ According to other witnesses, it was not possible to be sure whether at a

¹⁵⁴⁹ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995. *See also*, P391, UNPROFOR report, 17 November 1994, p. 2.

¹⁵⁵⁰ Vahid Karavelić, P494, GT. 11884.

¹⁵⁵¹ P891, UNMO daily sitrep, dated 17 June 1995, pp 13-14.

¹⁵⁵² T-61, 9 July 2007, T. 7832 – 7833, 7855-7856, 7860.

¹⁵⁵³ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 992 – 995.

¹⁵⁵⁴ Bakir Nakaš, 25 Jan 2007, T. 1068 – 1069, 29 Jan 2007, T. 1121 – 1122.

¹⁵⁵⁵ David Harland, 16 Jan 2007, T. 461, P2, MT. 28638; Ismet Hadžić, 6 Mar 2007, T. 3237; Milan Mandilović, 17 Jan 2007, T. 569.

¹⁵⁵⁶ David Fraser, 8 Feb 2007, T. 1842; Thorbjorn Overgard, 19 Jan 2007, T. 687; Hussain Ijaz, 27 Apr 2007, T. 5405; Ronald Eimers, P585, p. 7. *See also supra*, para. 125, regarding Mount Igman.

¹⁵⁵⁷ Louis Fortin, 17 Jan 2007, T. 547. *See also*, Ronald Eimers, 20 Apr 2007, T. 4812–4813.

particular time the road was being used by civilians or the ABiH. Maj. Eimers stated that the same vehicle was sometimes used for both military and civilian purposes, and the road was most frequently used when it was dark.¹⁵⁵⁸

430. There is evidence that no distinction was made as to who was on the convoy road; the UN, civilians, military personnel, humanitarian aid convoys and NGO personnel were all fired at by the SRK.¹⁵⁵⁹ Col. Hussain Ijaz, a Pakistani UNMO, testified that if there was a vehicle moving on the convoy road, “rest assured that it will be fired upon” from Ilidža.¹⁵⁶⁰ In the view of David Harland, the SRK would shoot at convoys to try and stop them at times of greater political tension.¹⁵⁶¹ Gen. Smith stated that he expected the Bosnian Serbs to try and close the convoy road as part of their strategy to “maintain the siege as tightly as they could”, as this was one of the only routes by which supplies could be brought into Sarajevo.¹⁵⁶² During cross-examination, Brig. Gen. Fraser conceded that the road could be considered a “legitimate military target”, but only so long as “you don’t kill civilians”.¹⁵⁶³

431. In its Final Brief, the Defence submitted that the convoy road was a “legitimate military objective”, stating that the road “was also used by UNPROFOR convoys, but its true masters were the BiH Government and the ABiH.”¹⁵⁶⁴ The Prosecution argued that the convoy road was used by civilians, the UN and ABiH, and that it was “impossible for the SRK to be sure that the target was military. The SRK fire onto the Igman Road was indiscriminate” and another example of “the Accused’s failure to follow the principle of distinction.”¹⁵⁶⁵

432. During the period of May, June and July 1995, the SRK also targeted UNPROFOR with shelling.¹⁵⁶⁶ According to David Harland, the reason behind the shelling was an attempt to limit the UN’s observation activities.¹⁵⁶⁷ On 29 June 1995, the PTT Building was shelled with three mortar

¹⁵⁵⁸ Ronald Eimers, 20 Apr 2007, T. 4811 – 4812.

¹⁵⁵⁹ David Harland, 15 Jan 2007, T. 344; Thorbjorn Overgard, 18 Jan 2007, T. 651 – 652; Ronald Eimers, 20 Apr 2007, T. 4811 – 4812, P584, p. 3, P585, p. 7; Ismet Hadžić, 6 Mar 2007, T. 3237; Hussain Ijaz, 27 Apr 2007, T. 5406 – 5409; P203, UNPROFOR report, 14 September 1994, pp 4, 7; P20, UNPROFOR sitrep, 8 July 1995, p. 3.

¹⁵⁶⁰ Hussain Ijaz, 27 Apr 2007, T. 5406 – 5409; P634, Map of Sarajevo marked by Hussain Ijaz. *See also*, Thorbjorn Overgard, 18 Jan 2007, T. 650 – 651; Ronald Eimers, 20 Apr 2007, T. 4808, 4812 – 4813, P585, P. 6.

¹⁵⁶¹ David Harland, 15 Jan 2007, T. 345.

¹⁵⁶² Rupert Smith, 7 Mar 2007, T. 3310, P334, pp 9 – 10. *See also*, David Harland, 16 Jan 2007, T. 461, 464 – 465; P24, UNPROFOR report, 12 March 1995, pp 1 – 2; P25, UNPROFOR cable, 14 March 1995, p. 2; P11, Report on implementation of COHA, 29 March 1995, p. 4; P16, UNPROFOR sitrep, 24 June 1995, p. 4.

¹⁵⁶³ David Fraser, 8 Feb 2007, T. 1842.

¹⁵⁶⁴ Defence Final Brief, paras 59 – 60.

¹⁵⁶⁵ Prosecution Closing Brief, para. 375.

¹⁵⁶⁶ David Harland, 15 Jan 2007, T. 345 – 346; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 716 – 717; P17, UNPROFOR report, dated 30 June 1995; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 2; P843, UNMO daily sitrep, dated 23 July 1995, pp 2 - 3; P893, UNPROFOR daily sitrep, dated 22 June 1995, p. 3; P898, UNMO daily sitrep, dated 3 July 1995, p. 2; D140, Order by the SRK Commander banning fire at UN forces, 25 July 1995; P745, UNPROFOR Military Police report, dated 27 August 1995. *Cf.* Stevan Veljović, 30 May 2007, T. 5875 – 5876.

¹⁵⁶⁷ David Harland, 15 Jan 2007, T. 346. *See also*, P17, UNPROFOR report, 30 June 1995.

rounds.¹⁵⁶⁸ Two of the mortar shells hit the PTT Building and one fell next to it.¹⁵⁶⁹ Lt. Col. Fortin believed that the PTT Building was directly targeted by the SRK:

“Col. Meille phoned Indić who did not deny it was their doing, however he said it was not intended to hit us, but rather the Bosnian mortar positions situated near the PTT. This situation had occurred in the past, but the Serbs had been more accurate in their targeting. We took it to be a warning about the use of our own mortars against them.”¹⁵⁷⁰

(b) Shelling by the ABiH

433. The Defence questioned witnesses on the possibility of the ABiH firing at their own people within the confrontation lines. Evidence was presented that the ABiH fired at areas within the city of Sarajevo.¹⁵⁷¹ Brig. Gen. Fraser recalled that on 18 and 19 September 1995, there were two mortar attacks onto the city within approximately 40 minutes of each other.¹⁵⁷² Both shelling incidents had the same point of impact, resulting in twice the number of casualties.¹⁵⁷³ The crater analysis, part of the investigation into the incidents that was carried out jointly with the BiH police and UNPROFOR, indicated that the shells had come from two different directions; the first rounds came from SRK-held territory, the second rounds came from Bosnian Muslim-held territory.¹⁵⁷⁴ Brig. Gen. Fraser characterised this incident as one “that was precipitated by the Serbs but finished off by the Bosnians, the Muslims.”¹⁵⁷⁵

434. According to T-60, the ABiH fired from Alipašino Polje over Vojničko Polje, which was 100 metres from Alipašino Polje, and that many buildings in Vojničko Polje “were damaged more from the side where BH army had its positions than from the side where the Serb army had its positions.”¹⁵⁷⁶ The Trial Chamber recalls that Alipašino Polje and Vojničko Polje were located in ABiH-held territory.¹⁵⁷⁷

435. However, Lt. Com. Knustad testified that, in the investigations in which they were involved, it was not determined that the ABiH shelled the Bosnian Muslim population.¹⁵⁷⁸ He further noted

¹⁵⁶⁸ Louis Fortin, P27, p. 15; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

¹⁵⁶⁹ Louis Fortin, P27, p. 15.

¹⁵⁷⁰ Louis Fortin, P27, p. 15. *See also*, P19, UNPROFOR sitrep, 2 July 1995, p. 3. An UNPROFOR report addressing the shelling stated “The Serbs seem to have no qualms about using counter-battery fire against Bosnian weapons close to UN facilities. They may also be using the proximity of Bosnian weapons as a convenient excuse for targeting UNPROFOR – as appears to have been the case with last night’s shelling of the PTT building”, D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2.

¹⁵⁷¹ John Jordan, 21 Feb 2007, T. 2639, P267, p. 6; T-7, 19 Jun 2007, T. 6843 – 6844; Siniša Krsman, 6 Jun 2007, T. 6254 – 6255.

¹⁵⁷² David Fraser, 7 Feb 2007, T. 1779.

¹⁵⁷³ David Fraser, 7 Feb 2007, T. 1779.

¹⁵⁷⁴ David Fraser, 7 Feb 2007, T. 1779 – 1780.

¹⁵⁷⁵ David Fraser, 7 Feb 2007, T. 1778.

¹⁵⁷⁶ T-60, 25 July 2007, T. 8795 – 8796.

¹⁵⁷⁷ *See supra*, para. 121, and *infra*, para. 902. *See also*, T-52, 28 June 2007, T. 7432, 7458; D279, Photograph marked by T-52; T-60, 25 July 2007, T. 8815 – 8817, 8843 – 8844; D352, Photograph marked by T-60 (under seal).

¹⁵⁷⁸ Thomas Knustad, 13 Feb 2007, T. 2006 – 2007, 2030, 2042 – 2043.

that, “we were very well aware of the fact that the government army did not have very much heavy weapons at all.”¹⁵⁷⁹

436. In addition, according to John Jordan, rumours that the ABiH fired at the Bosnian Muslim population circulated among the various groups of people in and around Sarajevo, “particularly among the folks on the BSA side.”¹⁵⁸⁰ Neither John Jordan nor Gen. Smith believed these rumours.¹⁵⁸¹ John Jordan testified that he “didn’t think that the [ABiH] had the ability to pull that off without everyone knowing it.”¹⁵⁸²

437. Witnesses also testified that they had heard that the ABiH staged incidents for propaganda purposes or to gain sympathy, but they did not see such incidents themselves. Brig. Gen. Fraser recalled that he was told by French UNPROFOR soldiers that they had seen ABiH soldiers filming a staged attack on children, in which no one was actually hurt, for broadcast on television.¹⁵⁸³ According to David Harland, the UN in Sarajevo felt that the Bosnian Muslims wanted the media to see the Bosnian Serbs attacking, so the Bosnian Muslims sometimes had to create the conditions for that to happen.¹⁵⁸⁴ Martin Bell testified that the ABiH and the Bosnian Muslim Government were facing a very critical situation, especially with regard to their relative lack of heavy weapons, that is, that they would only be able to break the siege by making “sacrificial attacks”, which they attempted.¹⁵⁸⁵ However, he also expressed his view that while the “Government forces” had an interest in trying to break the siege and attracting the sympathy and intervention of the outside world, he had “no evidence whatever that they would fire on their own people to do that” and did not give credence to such stories.¹⁵⁸⁶

438. In cross-examination, Gen. Smith stated that he heard that the ABiH and the Bosnian Muslim Government used the civilian population in order to “attain certain military and political goals” but that he never saw any evidence to support the assertions that “always came from the other side.”¹⁵⁸⁷ In addition, Ismet Hadžić rejected the Defence proposition that the ABiH was “causing incidents in Sarajevo” as a “smoke-screen” to divert attention away from the use of the

¹⁵⁷⁹ Thomas Knustad, 13 Feb 2007, T. 2006 – 2007, 2034. Cf. Stevan Veljović, 31 May 2007, T. 5857, 5916 – 5917.

¹⁵⁸⁰ John Jordan, 21 Feb 2007, T. 2640.

¹⁵⁸¹ John Jordan, 21 Feb 2007, T. 2640; Rupert Smith, 7 Mar 2007, T. 3338, 3340.

¹⁵⁸² John Jordan, 21 Feb 2007, T. 2640.

¹⁵⁸³ David Fraser, 7 Feb 2007, T. 1781.

¹⁵⁸⁴ David Harland, P2, MT. 28699. *See also*, W-46, 15 Mar 2007, T. 3817 – 3818, 3895, 16 Mar 2007, T. 3908 – 3909 (closed session), P387, p. 15 (under seal); T-48, 22 June 2007, T. 7180 – 7181; Vljako Božić, 17 July 2007, T. 8484.

¹⁵⁸⁵ Martin Bell, 27 Apr 2007, T. 5286 – 5287.

¹⁵⁸⁶ Martin Bell, 26 Apr 2007, T. 5266 – 5267.

¹⁵⁸⁷ Rupert Smith, 7 Mar 2007, T. 3342, 3343.

tunnel.¹⁵⁸⁸ He stated: “[w]e went through the tunnel trying to breakthrough the siege and to try and drive [“the aggressor”] away, so that we could live in Sarajevo.”¹⁵⁸⁹

6. Shelling Incidents Representative of the “Campaign”

439. In addition to the scheduled shelling incidents, the Prosecution presented evidence of specific unscheduled shelling incidents, that is, incidents which are not enumerated in the Second Schedule to the Indictment. This evidence includes incidents in which shelling from SRK-held positions and from other locations caused civilian casualties.¹⁵⁹⁰ The Trial Chamber will not address all of them. However, it has taken them into account in its deliberations. By way of example, the Trial Chamber presents one of the incidents below.

(a) Unscheduled Shelling Incidents

440. On 28 June 1995, at about 1030 hours, a modified air bomb hit an apartment building on Geteova Street, number 5.¹⁵⁹¹ Three people died in the explosion and seven people were injured.¹⁵⁹² The explosion destroyed apartments on five floors, some apartments being completely destroyed,

¹⁵⁸⁸ Ismet Hadžić, 6 Mar 2007, T. 3288 – 3289.

¹⁵⁸⁹ Ismet Hadžić, 6 Mar 2007, T. 3289.

¹⁵⁹⁰ See e.g. *Shelling in Hrasnica, Sokolovići and Butmir from Ilidža, 17 November 1994*: Ronald Eimers, P584, p. 3; *Shelling in the Centar Municipality from Mrkovići, 22 May 1995*: P798, Official report, pp 1 – 2 (under seal); *Shelling in the Centar Municipality from Grbavica, 11 June 1995*: P220, Criminal investigation file; Bogdan Vidović, 14 Feb 2007, T. 2094, 2100 – 2101; *Shelling in Alipašino Polje from Ilidža, 22 June 1995*: W-138, 30 Jan 2007, T. 1212, 1217, 1224, 1230, 1233, 1235 – 1238, 1240 – 1241, 31 Jan 2007, T. 1264 – 1265, 1 Feb 2007, T. 1350 – 1351, 1379 – 1381, 1384 – 1393; W-137, 20 Feb 2007, T. 2534 – 2537; Per Anton Brennskag, 8 Mar 2007, T. 3495 – 3496, 3499 – 3500; P121, Set of reports regarding shelling Geteova Street, number 12 (under seal); P122, Sketch of shelling site; P125, Set of photographs regarding shelling Geteova Street, number 12; P130, Forensic report by KDZ, dated 18 July 1995; *Shelling in Dobrinja from Lukavica, 25 June 1995*: P800, Official report, dated 26 June 1995 (under seal); P801, Report by KDZ, dated 26 September 1995; *Shelling on Koševo Street from Žlatište, 26 June 1995*: P325, Official report, dated 26 June 1995; *Shelling on the TV Building from Rajlovac, 29 June 1995*: W-116, P550, pp 2 – 3 (under seal); *Shelling in Novo Sarajevo from Mrkovići and Biosko, 30 June 1995*: P233, Criminal investigation file, dated 30 June 1995, p. 2; P234, Set of photographs regarding shelling Paromlinska Street, p. 2; P235, Forensic report by KDZ, dated 16 July 1995; Sanjin Hasanefendić, 16 Feb 2007, T. 2307 – 2311; *Shelling in Novo Sarajevo from Vraca, 18 July 1995*: Sanjin Hasanefendić, 16 Feb 2007, T. 2311 – 2314, 2361 – 2367, 2369 – 6370; P236, Official note, dated 19 July 1995; P238, Forensic report by KDZ, dated 22 September 1995; P237, Forensic report, dated 18 July 1995; P849, UNMO daily sitrep, dated 19 July 1995, p. 19; *Shelling of apartment block in the old town from Špicasta Stijena, 28/29 August 1995*: Harry Konings, 13 Mar 2007, T. 3603. For evidence pertaining to shelling from other, unspecified locations, See e.g. *Shelling of the State Hospital, late summer 1994*: Milan Mandilović, 17 Jan 2007, T. 564, 566 – 567, 18 Jan 2007, T. 595; *Shelling of an apartment building in Hrasno, 5 July 1995*: Sanjin Hasanefendić, 16 Feb 2007, T. 2376 – 2377; *Shelling of a bus in Dobrinja, 18 August 1995*: W-138, 31 Jan 2007, T. 1325 – 1333, 1335, 1 Feb 2007, T. 1349 – 1351, 1418 – 1421; P148, Forensic investigation file, dated 18 August 1995 (under seal).

¹⁵⁹¹ W-138, 30 Jan 2007, T. 1241, 31 Jan 2007, T. 1286 – 1287, 1 Feb 2007, T. 1350 – 1351; W-28, P276, p. 2; P138, Forensic report, dated 28 June 1995 (“Forensic report”), p. 1.

¹⁵⁹² W-28, P276, p. 2; P140, Official note, dated 27 July 1995, p. 1; P141, Official note, dated 28 June 1995, p. 2; The Trial Chamber notes that P138 reports that two people were killed and six people suffered injuries, P138, Forensic report, p. 1. W-138 testified that later information indicated that there were additional casualties, W-138, 31 Jan 2007, T. 1293 – 1294.

while others were partially destroyed.¹⁵⁹³ The three persons who were killed and the seven who were injured all lived in the apartment building.¹⁵⁹⁴

441. Remnants of the projectile were retrieved from one of the apartments.¹⁵⁹⁵ Those traces were sent for analysis.¹⁵⁹⁶ The traces were determined to be rocket motors and a plate, which “most probably c[a]me from the propellant assembly of a modified FAB-250 aircraft bomb, calibre 325 mm.”¹⁵⁹⁷ Based on the trace evidence and the “state of the site”, the azimuth was determined to have been 261 degrees, with a margin of error of 25 degrees, indicating that the projectile was fired from the direction of Ilidža, SRK-held territory.¹⁵⁹⁸

442. Berko Zečević, the expert for the Prosecution on modified air bombs, analysed the evidence regarding this shelling incident. In his report, he states that the azimuth was 285 degrees, with a distance from the launch site of 6,000 metres, “that is, the wider area of Butila.”¹⁵⁹⁹ Ilidža is located to the south-west of Alipašino Polje, whereas Butila is located to the north-west of Alipašino Polje.¹⁶⁰⁰ The Trial Chamber notes that the finding of the BiH police on the azimuth includes a large margin of error and that 281 degrees falls within that margin of error. The Trial Chamber further notes that the effective range of a FAB-250 air bomb is between 5,780 and 7,680 metres.¹⁶⁰¹

Finding

443. The Trial Chamber recalls its earlier finding that the ABiH was not in possession of modified air bombs.¹⁶⁰² The Trial Chamber is satisfied that the modified air bomb originated from SRK-held territory, either Ilidža or Butila, and that it was launched by a member of the SRK. The Trial Chamber is also satisfied that three people died and seven people were injured in the explosion, all of them civilians living in the residential apartment building at Geteova Street, number 5.

¹⁵⁹³ P139, Set of photographs regarding shelling Geteova Street, number 5, pp 3 – 4; P141, Official note, p. 2; W-138 testified that three floors were destroyed, W-138, 31 Jan 2007, T. 1289 – 1292. *See also*, P586, Expert report of Berko Zečević, p. 151. The Trial Chamber notes that the photographs show that the apartments on three floors were completely destroyed and that apartments below those show significant damage. In addition, the Trial Chamber notes that W-138 confirmed that he took the photographs, W-138, 31 Jan 2007, T. 1289, 1294.

¹⁵⁹⁴ P141, Official note, p. 2

¹⁵⁹⁵ W-28, P276, p. 2; P141, Official note, pp 1 – 2.

¹⁵⁹⁶ P142, Official note, dated 25 July 1995, p. 1.

¹⁵⁹⁷ *Ibid*, p. 3.

¹⁵⁹⁸ P141, Official note, p. 2; P138, Forensic report, p. 1; W-138, D32, p. 2 (under seal).

¹⁵⁹⁹ P586, Expert report Berko Zečević, p. 151.

¹⁶⁰⁰ D59, Military map of Sarajevo area.

¹⁶⁰¹ P586, Expert report Berko Zečević, p. 88.

¹⁶⁰² *See supra*, para. 107.

(b) Scheduled Shelling Incidents

(i) Shelling of Livanjska Street on 8 November 1994

444. During the war, Ismet Alić lived in Koševsko Brdo and Fikret Mujezinović lived on Livanjska Street, Centar Municipality, despite the danger posed by random sniping and shelling.¹⁶⁰³ They stated that this was a purely residential area, with houses, a school and a police station at the end of Livanjska Street, and there were no military establishments in the vicinity.¹⁶⁰⁴ However, there was a Red Cross kitchen and an ABiH military kitchen on another nearby street.¹⁶⁰⁵ Fikret Mujezinović testified that the military kitchen was used to prepare meals for the ABiH soldiers deployed on the confrontation lines around Sarajevo. It remained closed through the day, shutting down at 0500 hours, and opening again only at 1700 hours in order to enable delivery of food to the soldiers between 2000 hours and 2400 hours, or until 0500 hours, when the street would ordinarily be deserted. Everybody working at the kitchen wore civilian clothes and nobody in uniform was allowed near the kitchen, not even soldiers returning from the front.¹⁶⁰⁶ Men delivered the food to soldiers at positions approximately two to two and a half kilometres away.¹⁶⁰⁷ The confrontation line was an estimated one kilometre away from this area.¹⁶⁰⁸ There was a cease-fire in force on 8 November 1994 and there had been no shelling for some time.¹⁶⁰⁹

445. On 8 November 1995, three shells impacted on Livanjska Street, between 1515 hours and 1800 hours.¹⁶¹⁰ Ismet Alić, who was a boy at the time, was readying to play football with friends in a playground on Livanjska Street, approximately 300 metres from the school playground. There were 10 to 15 people in the area, including children returning from school.¹⁶¹¹ Fikret Mujezinović, a cook at the Red Cross kitchen, was at the Veteran Union office, from where he distributed parcels to the families of the dead and wounded.¹⁶¹² At about 1500 hours, Lejla Hodžić, a girl around 12 to 14 years of age, came to his office and asked for a parcel. Given that parcels were only distributed

¹⁶⁰³ Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2792.

¹⁶⁰⁴ Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2794.

¹⁶⁰⁵ Fikret Mujezinović, 27 Feb 2007, T. 2793; D87, Map marked by Fikret Mujezinović, 27 Feb 2007. This street is now called Antuna Hangija, previously known as Mitra Trifunovica.

¹⁶⁰⁶ Fikret Mujezinović, 27 Feb 2007, T. 2793 – 2794.

¹⁶⁰⁷ Fikret Mujezinović, 27 Feb 2007, T. 2806.

¹⁶⁰⁸ Ismet Alić, P640, p. 9; Fikret Mujezinović, 27 Feb 2007, T. 2806.

¹⁶⁰⁹ Ismet Alić, P640, p. 5. A number of other witnesses described a “lull” in fighting in the latter months of 1994, *see infra*, para. 782.

¹⁶¹⁰ The Trial Chamber notes that Livanjska Street is now called Braće Begić, Fikret Mujezinović, 27 Feb 2007, T. 2825.

¹⁶¹¹ Ismet Alić, P640, p. 5.

¹⁶¹² Fikret Mujezinović, 27 Feb 2007, T. 2793.

after 1800 hours, Fikret Mujezinović asked her to come back later. Lejla Hodžić walked back to the house at number 26, which was about 25 to 30 metres from the office.¹⁶¹³

446. Suddenly, there was the sound of something fast-moving followed by a loud explosion (“the first shell”).¹⁶¹⁴ The explosion threw Ismet Alić over the fence at which he was standing and, fearing more shelling, he took shelter in an apartment.¹⁶¹⁵ Fikret Mujezinović, who was in the Veteran Union office, fell to the floor, later opening the door to find “shrapnel falling all over the ground”.¹⁶¹⁶ He ran over to where the shell had exploded, which was not far away.¹⁶¹⁷

447. According to Ismet Alić, shrapnel from the blast wounded his cheek, and two of his friends, Adis Tinjak and Ceha Cehajić, were wounded in the stomach and rushed to the hospital.¹⁶¹⁸ Ismet Alić was taken to hospital half an hour later. The piece of shrapnel is still lodged in his cheek.¹⁶¹⁹ Dino Blekić, a young boy, sustained life-threatening injuries to his abdomen and died at the hospital.¹⁶²⁰ A woman named Nena Deljanin was seriously injured inside the building at number 26 and was declared dead on arrival at the hospital.¹⁶²¹ Fikret Mujezinović testified that he lifted Lejla Hodžić to put her in a car when he realised that she had received an injury to her head and had died. He also said that he put the remains of her brains in his jacket pocket and zipped it up.¹⁶²² W-91 testified that in the course of BiH police investigation, pieces of brain were found in a pool of blood, although the team did not find any victim at the scene, and that it later transpired that Lejla Hodžić had suffered a serious head wound and was missing a piece of her brain.¹⁶²³ The criminal investigation file showed that six persons were seriously injured, and Lejla Hodžić and Nena Deljanin were killed as a result of the first shell.¹⁶²⁴

448. The Defence presented a death certificate for the victim Lejla Hodžić, arguing that it indicated that her brains remained intact and within her head.¹⁶²⁵ It submitted that if her brain was intact, it could not have been on the street as depicted in the video of the incident that was admitted

¹⁶¹³ Fikret Mujezinović, 27 Feb 2007, T. 2795.

¹⁶¹⁴ Ismet Alić, P640, p. 8; Fikret Mujezinović, 27 Feb 2007, T. 2795.

¹⁶¹⁵ Ismet Alić, P640, p. 8.

¹⁶¹⁶ Fikret Mujezinović, 27 Feb 2007, T. 2795.

¹⁶¹⁷ Fikret Mujezinović, 27 Feb 2007, T. 2795.

¹⁶¹⁸ Ismet Alić, P640, p. 5; Fikret Mujezinović, 27 Feb 2007, T. 2797.

¹⁶¹⁹ Ismet Alić, P640, p. 8.

¹⁶²⁰ Fikret Mujezinović, 27 Feb 2007, T. 2796; W-91, 14 Mar 1994, T. 3738; P284, Official report, dated 8 November 1994 (“Official report”), p. 2 (under seal). The Trial Chamber notes that the victim Dino Blekić was first referred to as female and then as male, but in P284, Official report, p. 2 (under seal), the victim is referred to as male.

¹⁶²¹ Fikret Mujezinović, 27 Feb 2007, T. 2799, 2804, 2815; P284, Official report, p. 2 (under seal).

¹⁶²² Fikret Mujezinović, 27 Feb 2007, T. 2798; P283, Photograph marked by Fikret Mujezinović.

¹⁶²³ W-91, 15 Mar 2007, T. 3776, 3777 (private session); P377, Video of first shell in Livanjska Street, dated 8 November 1994.

¹⁶²⁴ P284, Official report, pp 1, 2 (under seal). Cf. At the hospital, Ismet Alić saw the bloody clothes of two wounded persons and later learnt of three children who had died in the same incident, Ismet Alić, P640, p. 9.

¹⁶²⁵ See W-91, 15 Mar 2007, T. 3778 – 3779 (private session), 3782 – 3783 (private session); D127, Death certificate of victim Lejla Hodžić, 8 Nov 1994.

into evidence.¹⁶²⁶ It further argued that the incident site was “reconstructed” by the BiH police under order of the investigative judge. Both of these arguments were made in support of the Defence submission that the first shelling incident had been staged.¹⁶²⁷

449. The impact of the first shell on Livanjska Street was investigated both by the French Battalion of UNPROFOR and the BiH police. Local police arrived within 20 to 45 minutes of the explosion; Fikret Mujezinović recalled that they secured the scene and requested children be kept inside the school building since “people were expecting another shell [to be] fired”.¹⁶²⁸ The BiH police investigative team found the tail-fin embedded in the crater, in the asphalt, as occurs most commonly in softer grounds.¹⁶²⁹ The lodging of the tail-fin in the crater, along with other accompanying circumstances, indicated to QMS Richard Higgs that “the mortar was probably fired on a higher charge”.¹⁶³⁰ The criminal investigation took about “one and a half hours, maybe two” by which time it was dusk.¹⁶³¹ As will be discussed later in this section, around that time, two more shells struck Livanjska Street.

450. After the UNPROFOR investigators arrived, a member of that battalion was prevented by the BiH police from removing the tail-fin of the first shell from the ground.¹⁶³² The UNPROFOR investigators left soon after, stating they would return in about 20 minutes.¹⁶³³ However, the UNPROFOR investigators only returned to the site of the impact of the first shell on Livanjska Street the following day, having made a media statement that their investigation team had been denied access to the site.¹⁶³⁴

451. The investigation of the BiH police determined that the first shell had come from the “aggressor’s position” “from the north, five degrees west”, exploding in front of the house at number 26 at 1525 hours.¹⁶³⁵ The subsequent and more detailed investigation report by the KDZ determined that the shell was fired from the north-west, “in the direction of Poljine” and the angle of descent was determined as 62 degrees.¹⁶³⁶ The KDZ also found that the 82 mm mortar shell was

¹⁶²⁶ W-91, 14 Mar 2007, T. 3734, 15 Mar 2007, T. 3782 – 3783.

¹⁶²⁷ W-91, 15 Mar 2007, 3782 – 3783; P377, Video of first shell in Livanjska Street.

¹⁶²⁸ Fikret Mujezinović, 27 Feb 2007, T. 2799 – 2800, 2809. *See also*, P284, Official report (under seal).

¹⁶²⁹ W-91, 14 Mar 2007, T. 3750; Mirza Sabljica, 19 Apr 2007, T. 4711, 4717; P578, UNPROFOR report, dated 9 November 1994, p. 2; D85, Official report on shelling incident of 8 November 1994 (“Official report”), p. 6. *See also*, Richard Higgs, 24 Apr 2007, T. 5034.

¹⁶³⁰ Richard Higgs, 24 Apr 2007, T. 5034.

¹⁶³¹ Fikret Mujezinović, 27 Feb 2007, T. 2800, 2810.

¹⁶³² Fikret Mujezinović, 27 Feb 2007, T. 2799 – 2800.

¹⁶³³ Fikret Mujezinović, 27 Feb 2007, T. 2809; W-91, 14 Mar 2007, T. 3747.

¹⁶³⁴ Fikret Mujezinović, 27 Feb 2007, T. 2815 – 2816; W-91, 15 Mar 2007, T. 3754.

¹⁶³⁵ P284, Official report, pp 1, 2 (under seal).

¹⁶³⁶ D85, Official report, p. 6.

of model M74, a type formerly used by the JNA.¹⁶³⁷ The UNPROFOR report corresponded with the BiH police findings and identified the most “suspected area” as between Brijeg and Izlaze “on the Serbian side”, slightly north-west of Livanjska Street.¹⁶³⁸

452. QMS Higgs testified that, on the basis of the angle of descent and the position of the tail-fin found embedded at the site, it was possible that the shell originated in Poljine, about 500 to 600 metres north of the confrontation line.¹⁶³⁹ The Trial Chamber notes that the distance from Livanjska Street to the confrontation line was approximately 700 metres to 1,000 metres, taking the origin of fire well beyond the confrontation line and to Poljine, the area north-west of Sarajevo that was under the control of the 1st Battalion of the SRK 3rd Sarajevo Brigade.¹⁶⁴⁰

453. The Defence suggested the BiH police investigation into the first shelling continued on 9 November 1994.¹⁶⁴¹ Fikret Mujezinović professed no knowledge of this, and testified that the investigators made their findings on 8 November 1994, at the end of the on-site investigation.¹⁶⁴² W-91 testified that although the BiH police did return to Livanjska Street the following day, it was to investigate the second and third shelling incidents that took place later on the same day, as well as to “reconstruct” the site of the first shelling for the purposes of the UNPROFOR investigation, as they were required to do by the investigative judge.¹⁶⁴³

454. While evidence of investigations into the first shelling incident was presented by the Prosecution, the Defence tendered evidence of two shells following at 1725 hours and 1730 hours, respectively.¹⁶⁴⁴ The BiH police report tendered by the Defence makes reference to the UNPROFOR investigation of the first shelling incident in front of house number 26, while the local police was investigating the two later incidents around house number 36.¹⁶⁴⁵ The BiH police report also stated in conclusion that “all three mines were undoubtedly fired from the enemy positions.”¹⁶⁴⁶ Viewed collectively, the UNPROFOR reports on the shelling of Livanjska Street address three incidents in all, as do the reports of the BiH police.

¹⁶³⁷ W-91, 14 Mar 2007, T. 3738; Mirza Sabljica, 19 Apr 2007, T. 4710; D85, Official report, p. 6; P578, UNPROFOR report, p. 1.

¹⁶³⁸ W-91, 14 Mar 2007, T. 3755; Mirza Sabljica, 19 Apr 2007, T. 4722; D85, Official report, p. 4; P578, UNPROFOR report, pp 2 – 3.

¹⁶³⁹ Richard Higgs, 24 Apr 2007, T. 5035.

¹⁶⁴⁰ Ismet Alić, P640, p. 9; Fikret Mujezinović, 27 Feb 2007, T. 2806 – 2807; P595, Map marked by Richard Higgs. For evidence pertaining to SRK control over area of Poljine, *see infra* Section II.B.3(d). *See also*, Anđelko Dragaš, 22 Jun 2007, T. 7076 – 7077; T-48, 22 Jun 2007, T. 7135 – 7136; Vljako Božić, 17 Jul 2007, T. 8404, 8409.

¹⁶⁴¹ Fikret Mujezinović, 27 Feb 2007, T. 2810; W-91, 15 Mar 2007, T. 3788 – 3789.

¹⁶⁴² Fikret Mujezinović, 27 Feb 2007, T. 2810, 2812.

¹⁶⁴³ W-91, 14 Mar 2007, T. 3734, 3754 – 3755, 15 Mar 2007, T. 3788 – 3789.

¹⁶⁴⁴ P578, UNPROFOR report; P284, Official report (under seal); D84, UNPROFOR report; D85, Official report.

¹⁶⁴⁵ Mirza Sabljica, 19 Apr 2007, T. 4705; D85, Official report, p. 3.

¹⁶⁴⁶ D85, Official report, p. 7.

455. As noted above, Livanjska Street was shelled two more times on 8 November 1994, at 1725 hours and at 1730 hours. The second shell impacted at 1725 hours and exploded on the asphalt surface across the road from house number 36, about 30 to 40 metres behind where people were assembled, near the entrance of the school building and on the right-hand side pavement, if viewed from east to west.¹⁶⁴⁷ “Several minutes later” a third shell landed in the yard of house number 36, seven to ten metres away from the impact site of the second shell.¹⁶⁴⁸ A woman, Razija Šteta, was found injured in the street and Muharem Aladjuz sustained a minor shrapnel wound while arranging for Razija Šteta to be driven to the hospital.¹⁶⁴⁹ Razija Šteta died as a result of the wounds she sustained.¹⁶⁵⁰

456. The investigations by the KDZ and UNPROFOR into the second and third shells were conducted simultaneously, but independently of one another, on 9 November 1994.¹⁶⁵¹ While coinciding in several aspects, the investigative teams reached differing conclusions regarding the possible direction of fire. In its Final Brief, the Defence highlighted this inconsistency.¹⁶⁵² The KDZ report ascertained the angle of descent of the second and third shells, an 82 mm M68 mortar shell, also formally used by the JNA, was 67 degrees.¹⁶⁵³ The report concluded that the shells had been fired “20 degrees from the east, probably from the wider area of Špicasta Stijena occupied by the aggressors,” although later in the report, it states that the direction of fire was north-east.¹⁶⁵⁴ On being asked about this description of the probable direction of fire in the KDZ report, QMS Higgs testified that it was a terminological error in the presentation of direction, and not an error in the ballistics calculations; he said that “the pattern of this crater is a good one.”¹⁶⁵⁵ Mirza Sabljica attributed the error to the fact that Dragan Mioković, the inspector who compiled the report, was a homicide investigator.¹⁶⁵⁶ Later in the KDZ report, it is stated that the shells came from the north-east.¹⁶⁵⁷ Both Mirza Sabljica and QMS Higgs interpreted “20 degrees from the east” as “from the north to the east”, that is, north-east.¹⁶⁵⁸ They both concurred in the finding.¹⁶⁵⁹

¹⁶⁴⁷ Fikret Mujezinović, 27 Feb 2007, T. 2801, 2810; D84, UNPROFOR report, p. 1; D85, Official report, p. 2; Ismet Alić, P640, p. 8.

¹⁶⁴⁸ Fikret Mujezinović, 27 Feb 2007, T. 2801; W-91, 14 Mar 2007, T. 3748; D84, UNPROFOR report, p. 1; D85, Official report p. 3.

¹⁶⁴⁹ Fikret Mujezinović, 27 Feb 2007, T. 2801; D85, Official report pp 3, 9 – 12.

¹⁶⁵⁰ D85, Official report pp 3, 11, 14.

¹⁶⁵¹ W-91, 15 Mar 2007, T. 3790.

¹⁶⁵² Defence Final Brief, para. 190.

¹⁶⁵³ D85, Official report p. 6.

¹⁶⁵⁴ D85, Official report, p. 3.

¹⁶⁵⁵ Richard Higgs, 24 Apr 2007, T. 5038.

¹⁶⁵⁶ Mirza Sabljica, 19 Apr 2007, T. 4726.

¹⁶⁵⁷ D85, Official report, p. 6.

¹⁶⁵⁸ Mirza Sabljica, 19 Apr 2007, T. 4726, 4764 – 4766; Richard Higgs, 24 Apr 2007, T. 5038 – 5039.

¹⁶⁵⁹ Mirza Sabljica, 19 Apr 2007, T. 4766 – 4767; Richard Higgs, 24 Apr 2007, T. 5039.

457. The UNPROFOR investigation found that it was “obvious” that the same mortar had fired the two shells, and concluded that the angle of descent of the two shells was between 70 to 75 degrees.¹⁶⁶⁰ It found that to fire the 82 mm shells from SRK-held territory, the angle had to be below 60 degrees.¹⁶⁶¹ As a result, UNPROFOR found that “it is possible to conclude that the most suspected areas are under the control of BiH.”¹⁶⁶²

458. The inconsistency between the directions of fire was attributed to the fact that the UNPROFOR team employed Finnish mortar tables for an 82 mm calibre shell, and these were different from the tables for JNA-produced mortars that were used by the BiH police investigative team.¹⁶⁶³ Mirza Sabljica testified that the two teams relied on “different charges and different ranges” and he noticed that the “maximum charge zero plus six in the Finnish tables had the range twice the shorter one than applicable to those manufactured in the former Yugoslavia.”¹⁶⁶⁴ In response to questions put to him by the Defence, Mirza Sabljica reiterated that north-east was definitely the direction of fire and declined to comment on the origin of fire, be it Špicasta Stijena, Grdonj, Orlovac or other locations to the north-east, as it was not an issue he had considered.¹⁶⁶⁵ Mirza Sabljica also disagreed with the suggestion of the Defence that the shell could have come from the north-west, as the shrapnel traces on the surface were too clear to allow for such errors.¹⁶⁶⁶

459. QMS Higgs testified that the spray pattern indicated the angle of descent was closer to 60 to 65 degrees as determined by the BiH investigation.¹⁶⁶⁷ The estimate of 60 to 65 degrees “gives the mortar a lot longer range”, making it possible for the shells to have been “fired from a distance in excess of four kilometres away” and “well beyond the confrontation line”.¹⁶⁶⁸ QMS Higgs also took account of the fact that nobody heard the second and third shells being fired, even though the shells passed along very built-up residential areas. He also considered the lack of witnesses to the “tremendous muzzle flash” that the mortar gives off upon being fired, which would have been visible at 1725 hours in winter from miles away.¹⁶⁶⁹ He testified that the shells could have been fired from the other side of the confrontation line, over and behind the steep escarpment, and that this would have muffled the sound.¹⁶⁷⁰ QMS Higgs testified that based on his experience the “most logical position” from which the second and third shells were fired was in territory held by the

¹⁶⁶⁰ D84, UNPROFOR report, p. 2.

¹⁶⁶¹ D84, UNPROFOR report, p. 3.

¹⁶⁶² D84, UNPROFOR report, p. 3.

¹⁶⁶³ W-91, 14 Mar 2007, T. 3757. Regarding the reason for the different mortar tables, *see* Per Anton Brennskag, P345, p. 2.

¹⁶⁶⁴ Mirza Sabljica, 19 Apr 2007, T. 4729.

¹⁶⁶⁵ Mirza Sabljica, 19 Apr 2007, T. 4775 – 4776.

¹⁶⁶⁶ Mirza Sabljica, 19 Apr 2007, T. 4775 – 4776.

¹⁶⁶⁷ Richard Higgs, 24 Apr 2007, T. 5042; P590, Supplement to information report Richard Higgs, p. 3.

¹⁶⁶⁸ Richard Higgs, 24 Apr 2007, T. 5047.

¹⁶⁶⁹ Richard Higgs, 24 Apr 2007, T. 5043.

¹⁶⁷⁰ Richard Higgs, 24 Apr 2007, T. 5042 – 5043.

SRK, although in response to a question by the Defence, he could not categorically rule out the possibility that the shell came from ABiH-held territory.¹⁶⁷¹

460. The Trial Chamber notes that the direction of fire of the second and third shell was determined to be the north-east by both BiH police and UNPROFOR. This was confirmed by QMS Higgs, Mirza Sabljica and W-91, all of whom testified that the origin of fire was SRK-held territory.¹⁶⁷² The Defence, relying on one of the UNPROFOR reports on the incident, suggested that the second and third shells were fired from ABiH-held territory.¹⁶⁷³

461. On the issue of the possible purpose of such mortar attacks, QMS Higgs said that “a single round fired into the centre of a populated area” does not present the prospect of obtaining any military objective.¹⁶⁷⁴ The only possible purpose would have been “to cause civilian casualties and to put basically terror into the minds of the people in that area”.¹⁶⁷⁵ In his opinion, the delay of several minutes between the second and third shell at Livanjska Street was not intended to achieve any military objective.¹⁶⁷⁶ Given that 82 mm mortars are capable of firing 20 rounds a minute, the delay was aimed at allowing time for people from the area to gather around and treat casualties, thereby “catch[ing] more people in the area than [were] there in the first place” – “a tactic used by terrorist organisations with bombs”.¹⁶⁷⁷

Findings

462. On the afternoon of 8 November 1994, three shells exploded on Livanjska Street. On the basis of the evidence of a number of witnesses, as well as the documentary evidence, the Trial Chamber is satisfied that the first shell exploded on Livanjska Street in the afternoon of 8 November 1994. The Trial Chamber rejects the Defence argument that the first shelling was staged since there is no evidence to support such an assertion, and it is contrary to eyewitness evidence from Fikret Mujezinović and Ismet Alić, and the evidence of W-91.

463. The Trial Chamber accepts the consistent evidence regarding the direction and origin of fire of the first shell, that is, that it came from a north-westerly direction, and more precisely, Poljine, which was under the control of the SRK. The Trial Chamber is satisfied that this shell was fired by members of the SRK.

¹⁶⁷¹ Richard Higgs, 24 Apr 2007, T. 5044, 5100 – 5103.

¹⁶⁷² W-91, 14 Mar 2007, T. 3734, 3748; D84, UNPROFOR report, p. 4; Mirza Sabljica, 19 Apr 2007, T. 4765.

¹⁶⁷³ D84, UNPROFOR report, p. 3.

¹⁶⁷⁴ Richard Higgs, 24 Apr 2007, T. 5030.

¹⁶⁷⁵ Richard Higgs, 24 Apr 2007, T. 5036.

¹⁶⁷⁶ Richard Higgs, 24 Apr 2007, T. 5045.

¹⁶⁷⁷ Richard Higgs, 24 Apr 2007, T. 5045.

464. Although the evidence regarding the direction of fire of the second and third shells that hit Livanjska Street is conflicting, the Trial Chamber is satisfied that, on the basis of the Mirza Sabliječa's evidence, this inconsistency resulted from the UNPROFOR investigators' erroneous reliance upon Finnish mortar tables. The BiH police and QMS Higgs concluded that the direction of fire was north-east, and from SRK-held territory. Furthermore, according to QMS Higgs, the range of the 82 mm mortar and the angle of descent, together with his other observations, indicated that the origin of fire was beyond the confrontation line, and thus SRK-held territory. In the circumstances, the Trial Chamber finds that the second and third shells were fired from SRK-held territory in the north-east and that the shells were fired by members of the SRK.

465. The evidence establishes that three civilians, Lejla Hodžić, Dino Blekić and Nena Deljanin, were killed and six civilians were seriously injured as a result of the explosion of the first shell. Evidence also shows that two civilians were injured by the explosions of the second and third shells; Muharem Aladžuz was lightly injured and Razija Šteta later died of her injuries. The Trial Chamber finds that at least four civilians were killed and six civilians were seriously injured as a result of the three shells that impacted on Livanjska Street on 8 November 1994.

(ii) Shelling of Baščaršija Flea Market on 22 December 1994

466. On the foggy morning of 22 December 1994, at around 0910 hours, two shells exploded on the Baščaršija flea market.¹⁶⁷⁸ Baščaršija was a part of town that W-12 knew well, since he lived in Bistrik, a neighbouring suburb also in the old part of the city.¹⁶⁷⁹ Baščaršija is a neighbourhood in the old town of Sarajevo, in a north-easterly direction from Vrbanja Bridge. It was the most important historical cultural part of the town of Sarajevo.¹⁶⁸⁰ The area was under the control of the ABiH, which also held Bistrik.¹⁶⁸¹ According to Maj. Stevan Veljović, a SRK operations officer, the houses and buildings in Baščaršija were protected and remained intact throughout the war.¹⁶⁸² Baščaršija, including the flea market, was a civilian area.¹⁶⁸³ While W-28 stated that there was no military activity on 22 December 1994, W-12 recalled that, with the exception of this incident, there was only sporadic shooting that day.¹⁶⁸⁴ There were ABiH trenches at Brajkovac, at the foot of

¹⁶⁷⁸ W-12, 1 Mar T. 3041, 2 Mar 2007, T. 3061, 3067 – 3068; D124, Criminal investigation file, dated 22 December 1994, p. 7; D101, Statement of Hanga Tsori Hammerton, p. 2; W-28, P275, p. 2; Nedžib Đozo, 14 Mar 2007, T. 3715.

¹⁶⁷⁹ W-12, 1 Mar 2007, T. 3039, 2 Mar 2007, T. 3071.

¹⁶⁸⁰ Stevan Veljović, 29 May 2007, T. 5751 – 5752.

¹⁶⁸¹ W-54, 12 Feb 2007, T. 1967–1968; W-12, 1 Mar 2007, T. 3042; Milorad Katić, 31 May 2007, T. 5980; Predrag Trapara, 27 June 2007, T. 7373 – 7374; P308, Map marked by W-12; D197, Map marked by Milorad Katić. "Stari Grad" was ABiH-held territory: David Harland, P2, MT. 28631.

¹⁶⁸² Stevan Veljović, 29 May 2007, T. 5751 – 5752. *See also*, D186, Order by the SRK commander about full combat readiness, dated 12 August 1994, p. 2.

¹⁶⁸³ W-28, P275, p. 2.

¹⁶⁸⁴ W-28, P275, p. 2; W-12, 2 Mar 2007, T. 3064.

Mount Trebević, and about 50 metres diagonally south of the location where W-12 was walking at the time of the incident.¹⁶⁸⁵

467. W-12 was walking southwards, with Baščaršija to the West and Mount Trebević to the East.¹⁶⁸⁶ He heard a loud sound like a round being fired from a powerful, heavy weapon, such as a cannon or gun.¹⁶⁸⁷ “Several seconds” later, he heard a detonation, which led W-12 to conclude that the shell had landed in Baščaršija although, due to the fog, W-12 did not see where the shell impacted.¹⁶⁸⁸ W-12 heard the sound of one shell being fired, but had no clear recollection of a second round being fired.¹⁶⁸⁹ However, from the sound, W-12 concluded that the shell was fired from Vidikovac, a part of Mount Trebević, which was Bosnian Serb-held territory.¹⁶⁹⁰ W-12 did not see the shell being fired or in flight.¹⁶⁹¹ The Defence submitted, in its Final Brief, that, while eyewitnesses heard the sound of an explosion, they heard neither the sound of the projectile being fired nor its flight.¹⁶⁹²

468. According to W-12, the fact that two shells exploded in the Baščaršija flea market was confirmed on the radio and by his neighbours later in the day.¹⁶⁹³ The explosions resulted in civilian casualties; two civilians were killed and seven or eight were injured, three of them seriously.¹⁶⁹⁴

469. Independent investigations were carried out by the KDZ, the UNPROFOR French Battalion, and two UNMOs, Maj. Hanga Tsori Hammerton, a Kenyan UNMO, and Maj. Ilonyosi, an UNMO from Nigeria.¹⁶⁹⁵ Based on the crater analysis and fragments found on the scene, the BiH police concluded that two 76 mm shells were fired from a gun or cannon.¹⁶⁹⁶ No stabilising fin was found embedded in the crater to suggest that the projectile was a mortar shell.¹⁶⁹⁷ On the basis of the shrapnel fragments shown to him, Maj. Hammerton concluded that two 82 mm mortar shells had been fired, although he could not establish the range.¹⁶⁹⁸ The UNMO’s conclusion regarding the calibre of shells was put to Ekrem Suljević by the Defence. Ekrem Suljević ruled out the possibility

¹⁶⁸⁵ W-12, 2 Mar 2007, T. 3065.

¹⁶⁸⁶ W-12, 2 Mar 2007, T. 3047.

¹⁶⁸⁷ W-12, 1 Mar 2007, T. 3037.

¹⁶⁸⁸ W-12, 1 Mar 2007, T. 3038, 3043, 2 Mar 2007, T. 3048, 3070.

¹⁶⁸⁹ W-12, 2 Mar 2007, T. 3076 – 3078, P307, p. 2; P308, Map marked by W-12.

¹⁶⁹⁰ W-12, 1 Mar 2007, T. 3039 – 3041, 2 Mar 2007, T. 3062, P306, p. 2; P308, Map marked by W-12. *See also*, W-28, P275, p. 2. *See also supra*, para. 118.

¹⁶⁹¹ W-12, 1 Mar 2007, T. 3038 – 3039, 3043.

¹⁶⁹² Defence Final Brief, para. 191.

¹⁶⁹³ W-12, 2 Mar 2007, T. 3077.

¹⁶⁹⁴ D124, Criminal investigation file, pp 2, 3, 4; P833, UNMO daily sitrep, dated 23 December 1994, p. 6; P317, Witness statements; P315, Investigation report, dated 22 December 1994, p. 1; W-12, 2 Mar 2007, T. 3077; D101, Statement of Hanga Tsori Hammerton, p. 3.

¹⁶⁹⁵ Ekrem Suljević, 2 Mar 2007, T. 3114; D101, Statement of Hanga Tsori Hammerton, p. 2.

¹⁶⁹⁶ Ekrem Suljević, P310, p. 3; P315, Investigation report, p. 1.

¹⁶⁹⁷ Ekrem Suljević, 2 Mar 2007, T. 3116 – 3117. *See also*, D101, Statement of Hanga Tsori Hammerton, p. 2.

¹⁶⁹⁸ D101, Statement of Hanga Tsori Hammerton, p. 2.

that the projectile was a 82 mm shell due to the evidence gathered on-site, including the crater and the fragments collected.¹⁶⁹⁹ He also testified that the munition was familiar to the investigative team, based on characteristic markings on the fragments; the munition was one that the JNA had possessed.¹⁷⁰⁰ Ekrem Suljević further testified that no member of the investigative team differed on the assessment regarding the calibre.¹⁷⁰¹

470. The KDZ calculated the azimuth as 159 degrees, a south-easterly direction, that is, from Mount Trebević “where the enemy positions are located.”¹⁷⁰² During cross-examination, Ekrem Suljević clarified that the investigative team did not calculate the distance from which the shell was fired or the angle of descent.¹⁷⁰³ The UNMO report concurred with the KDZ on the direction of fire, determining that the direction of fire was 160 degrees, which was south, south-east of the impact site.¹⁷⁰⁴

471. The Defence submitted, in its Final Brief, that the alleged victims of the incident were not found at the scene of the shelling, even though the BiH police arrived within 15 minutes of the shelling.¹⁷⁰⁵ In this regard, during cross-examination, Nedžib Đozo, who investigated the incident, confirmed that the dead and wounded were not found at the scene and testified that it was normal for investigators not to see bodies at the scene, since “you cannot leave wounded or killed lying about.”¹⁷⁰⁶ Ekrem Suljević disagreed with the Defence suggestion that the nature of wounds could be helpful indicators of the type of weapon employed.¹⁷⁰⁷

472. The Defence argued that the explosions at the Baščaršija flea market were the result of a bomb that had been previously planted there. However, it did not present any evidence in support of this assertion. Nor did it suggest this possibility to the KDZ member, Ekrem Suljević. Nedžib Đozo testified that none of the fragments found on-site indicated that they were part of a “manufactured device”.¹⁷⁰⁸

¹⁶⁹⁹ Ekrem Suljević, 2 Mar 2007, T. 3116, 5 Mar 2007, T. 3130 – 3132.

¹⁷⁰⁰ Ekrem Suljević, 5 Mar 2007, T. 3132 – 3133, P310, p. 3.

¹⁷⁰¹ Ekrem Suljević, 5 Mar 2007, T. 3184.

¹⁷⁰² P315, Investigation report, p. 1; Ekrem Suljević, 5 Mar 2007, T. 3128 – 3129, P310, p. 3; D102, Map marked by Ekrem Suljević; W-28, P275, p. 2.

¹⁷⁰³ Ekrem Suljević, 2 Mar 2007, T. 3116.

¹⁷⁰⁴ Ekrem Suljević, 2 Mar 2007, T. 3114; D101, Statement of Hanga Tsori Hammerton, p. 2.

¹⁷⁰⁵ Defence Final Brief, para. 191.

¹⁷⁰⁶ Nedžib Đozo, 14 Mar 2007, T. 3716.

¹⁷⁰⁷ Ekrem Suljević, 2 Mar 2007, T. 3120.

¹⁷⁰⁸ Nedžib Đozo, 14 Mar 2007, T. 3728.

Findings

473. On 22 December 1994, two shells exploded at the Baščaršija flea market. While recognising the discrepancy in the evidence regarding the calibre of the shell that exploded at the flea market, the Trial Chamber is satisfied, on the basis of the investigations carried out by both the BiH police and the UNMOs, that the direction of fire was south-east, that is, from Mount Trebević. Furthermore, the Trial Chamber notes that the BiH police identified “the enemy positions” as the origin of fire, as did W-12, who heard the shell being fired and determined it was fired from Vidikovac, a part of Mount Trebević, which was Bosnian Serb-held territory. On the basis of this evidence, the Trial Chamber finds that the shell was fired from SRK-held territory and that it was fired by members of the SRK.

474. With regard to the Defence submission that the alleged victims were not found by the BiH police on the scene, the Trial Chamber recalls that evidence was presented in respect of this incident, as well as others, that after a shelling the wounded and bodies of the dead were removed from the scene as quickly as possible. On the basis of evidence from witnesses and the BiH police report, the Trial Chamber is satisfied that at least seven civilians were injured, three of whom were seriously injured, and two civilians were killed as a result of the shelling of the Baščaršija flea market.

(iii) Shelling of a Residential Area in Hrasnica on 7 April 1995

475. In April 1995, Ziba Šubo, a homemaker, was living with her husband Zemir, her twin sons Elmir and Elvir, her daughter Emira Brajlović, and grandson Elvis Brajilović in a two-storey house at Alekse Šantića Street, number 1, Hrasnica, Ilidža Municipality.¹⁷⁰⁹ Ziba Šubo’s cousin, Ziba Čustović, lived with her daughter, Aldijana, who was twelve or thirteen years old in 1995, in a smaller house two metres away but in the same yard.¹⁷¹⁰

476. On 7 April 1995, it was sunny and there was good visibility.¹⁷¹¹ In the morning of that day W-57, a police investigator, was having coffee with his colleagues when, at about 0850 hours, they heard a sound like a landing plane.¹⁷¹² The sound stopped and was followed by a different sound, something like a whoosh.¹⁷¹³ W-57 “could feel” that the projectile flew slowly in comparison to artillery projectiles.¹⁷¹⁴ One or two seconds later, W-57 and his colleagues heard a very strong

¹⁷⁰⁹ Ziba Šubo, P279, p. 1, P280, p. 2; P544, Photograph of homes marked by W-57.

¹⁷¹⁰ Ziba Šubo, P280, p. 2.

¹⁷¹¹ W-57, P539, p. 2 (under seal).

¹⁷¹² W-57, P538, p. 4 (under seal), P539, p. 2 (under seal).

¹⁷¹³ W-57, P539, p. 2 (under seal).

¹⁷¹⁴ W-57, P538, p. 4 (under seal).

explosion from the centre of Hrasnica.¹⁷¹⁵ They felt the detonation, pressure and compression from the explosion, and this prompted them to lie on the floor, in anticipation of a second explosion.¹⁷¹⁶ The investigators heard a sound, “like everything was breaking in the neighbourhood.”¹⁷¹⁷ Maj. Thorbjorn Overgard also recalled hearing a noise like an aeroplane before the explosion.¹⁷¹⁸

477. At that time, Ziba Šubo’s daughter and husband had gone off to work.¹⁷¹⁹ Ziba Šubo was alone in the house with her sons and grandson, who were asleep in rooms on the first floor.¹⁷²⁰ Ziba Šubo had invited Ziba Čustović over for coffee.¹⁷²¹ However, she never made it to Ziba Šubo’s house.¹⁷²²

478. At about 0850 hours, a shell fell and destroyed Ziba Šubo’s house.¹⁷²³ When the shell exploded, the windows suddenly went dark.¹⁷²⁴ Objects started falling on Ziba Šubo.¹⁷²⁵ She did not hear any sound but she immediately realised that a shell had exploded because the house was “caving in and falling apart.”¹⁷²⁶ Ziba Šubo felt pain from objects hitting her and she was effectively buried in rubble.¹⁷²⁷ The roof and first floor of the house were destroyed and the top of the house collapsed to the ground floor.¹⁷²⁸ She then heard her children calling for her and crying.¹⁷²⁹ She shouted to them to run away and get to safety.¹⁷³⁰ Ziba Šubo crawled through the rubble and once she reached the top, she saw her children running across the street in their underwear. She noticed that her grandson was wounded.¹⁷³¹

479. According to W-57, there was no military activity that morning; it was very quiet.¹⁷³² However, there is evidence that at about this time there was an increase in military activity.¹⁷³³ Maj. Overgard did not think that the house on which the bomb landed could have been a military target; “there were no signs of military flags [...]. It was not different from all the other houses in

¹⁷¹⁵ W-57, P538, p. 4, P539, p. 2 (under seal).

¹⁷¹⁶ W-57, P539, p. 2 (under seal).

¹⁷¹⁷ W-57, P538, p. 4 (under seal), P539, p. 2 (under seal).

¹⁷¹⁸ Thorbjorn Overgard, 19 Jan 2007, T. 676.

¹⁷¹⁹ Ziba Šubo, P279, p. 1, P280, p. 2.

¹⁷²⁰ Ziba Šubo, P280, p. 2.

¹⁷²¹ Ziba Šubo, P279, p. 1, P280, p. 2.

¹⁷²² Ziba Šubo, P280, p. 2.

¹⁷²³ Ziba Šubo, P279, p. 1.

¹⁷²⁴ Ziba Šubo, P279, p. 1, P280, p. 2.

¹⁷²⁵ Ziba Šubo, P280, p. 2.

¹⁷²⁶ Ziba Šubo, P280, pp 2, 3.

¹⁷²⁷ Ziba Šubo, P280, p. 3.

¹⁷²⁸ W-57, P539, p. 3 (under seal); Ziba Šubo, P279, p. 1, P280, p. 3.

¹⁷²⁹ Ziba Šubo, P280, p. 3.

¹⁷³⁰ Ziba Šubo, P279, p. 1, P280, p. 3.

¹⁷³¹ Ziba Šubo, P279, p. 1, P280, p. 3.

¹⁷³² W-57, 17 Apr 2007, T. 4588.

¹⁷³³ Martin Bell, 27 Apr 2007, T. 5311; W-57, 17 Apr 2007, T. 4565; P825, UNMO sitrep, dated 7 April 1995, p. 2. *See also infra*, Section II.E.9(d) ABiH Offensives.

Hrasnica.”¹⁷³⁴ In its Final Brief, the Defence submits that there were military activities between the Famos Factory and the Igman Road.¹⁷³⁵ The Trial Chamber notes that, on the basis of the map marked by W-57, the Famos Factory was approximately one to one and half kilometres from the incident site.¹⁷³⁶ W-57 also estimated that the Igman Road was about 300 to 400 metres above the settlement where the incident happened.¹⁷³⁷ He thought the point of impact of the air bomb was very far from the ABiH Brigade and the Company headquarters located in Hrasnica, but closer to the UNMOs’ accommodation, which he estimated to be about 800 to 900 metres from the Battalion Headquarters and one kilometre from the Company Headquarters.¹⁷³⁸ Maj. Overgard testified that the Igman Road, on which there was civilian and military traffic, was more than a kilometre from the site of the incident.¹⁷³⁹

480. In that regard, the Defence made a more general submission that Hrasnica was a military area.¹⁷⁴⁰ The Trial Chamber’s analysis of the civilian status of Hrasnica is carried out elsewhere in this Judgement, and is to be read in conjunction with this paragraph.¹⁷⁴¹ The Trial Chamber finds that Hrasnica was a civilian area.

481. Ziba Čustović was killed by the shell explosion.¹⁷⁴² Ziba Šubo fainted when she saw Ziba Čustović; half of her head was missing and she was covered in blood.¹⁷⁴³ She does not recall what happened after; she only remembers that she later found herself sitting at the bottom of the rubble, where she regained consciousness. However, she lost consciousness again after telling a neighbour, Zijo Mujanović, to look for Ziba Čustović.¹⁷⁴⁴ When Ziba Šubo woke up, she was in a hospital.¹⁷⁴⁵ There were a number of injured people who were taken to hospital as well as people with minor injuries, such as cuts and bruises.¹⁷⁴⁶

¹⁷³⁴ Thorbjorn Overgard, 19 Jan 2007, T. 676.

¹⁷³⁵ Defence Final Brief, para. 202.

¹⁷³⁶ P540, Map marked by W-57.

¹⁷³⁷ W-57, 17 Apr 2007, T. 4566.

¹⁷³⁸ Thorbjorn Overgard, 18 Jan 2007, T. 648; D17, Map marked by Thorbjorn Overgard.

¹⁷³⁹ Thorbjorn Overgard, 19 Jan 2007, T. 687, 693 – 694. *See also, supra*, paras 429 – 431.

¹⁷⁴⁰ Defence Final Brief, para. 202.

¹⁷⁴¹ *See infra*, paras 899 – 900.

¹⁷⁴² Ziba Šubo, P280, p. 3; W-57, 17 Apr 2007, T. 4578, P539, p. 3 (under seal); P420, Death certificate of Ziba Čustović, dated 7 April 1995 (under seal); P542, Official report on shelling of Hrasnica on 7 April 1995, dated 7 April 1995, p. 2; P825, UNMO sitrep, also reports the death of Ziba Čustović.

¹⁷⁴³ Ziba Šubo, P280, p. 3, P279, p. 1; P281, P282, Photographs of Ziba Šubo’s house.

¹⁷⁴⁴ Ziba Šubo, P279, p. 1, P280, p. 3.

¹⁷⁴⁵ Ziba Šubo, P279, p. 1, P280, p. 3.

¹⁷⁴⁶ W-57, P539, p. 3 (under seal). According to W-57, one civilian was killed and three civilians were wounded, W-57, P538, p. 4 (under seal).

482. Ziba Šubo still has back and arm pain from the injuries she suffered; her hearing is impaired and, since the day of the shelling, she suffers from high blood pressure.¹⁷⁴⁷ One of her sons also has problems hearing.¹⁷⁴⁸

483. On leaving the police station, W-57 saw a lot of smoke and dust about 150 metres from the office in the south-easterly direction.¹⁷⁴⁹ W-57 went to the site immediately and saw that the brick house on which the bomb impacted was totally destroyed.¹⁷⁵⁰ Another small house next door was also destroyed and about twenty other nearby houses suffered damage. Some were severely damaged.¹⁷⁵¹ The BiH police report lists ten houses that suffered “extensive damage”.¹⁷⁵² Similarly, the KDZ report states that eleven damaged houses were photographed and sketched.¹⁷⁵³ All windows of the buildings in a semi-circle from the impact location were broken.¹⁷⁵⁴ However, many houses had already suffered damage from previous explosions in the past four years, making it difficult to distinguish between damage caused by this explosion and pre-existing damage.¹⁷⁵⁵ W-57 secured the site.¹⁷⁵⁶

484. An investigation team, of which W-57 and W-116 were members, returned to the scene at about 1500 hours to conduct the investigation.¹⁷⁵⁷ The investigation was concluded by 1600 hours that day.¹⁷⁵⁸ Trace evidence, including fragments of an air bomb and rockets were discovered at the site and sent for analysis.¹⁷⁵⁹ According to W-116, the day after the incident, two more engines and the container with rocket fuel were found.¹⁷⁶⁰

485. An investigation was also carried out by UNMOs on 8 April 1995.¹⁷⁶¹ Maj. Overgard recounted that, after the explosion occurred, the UNMOs stationed in Hrasnica first tried unsuccessfully to contact the BiH police. They then went to the site of the explosion, where Maj. Overgard testified he saw the damage caused by the explosion and the feet of a person wearing a

¹⁷⁴⁷ Ziba Šubo, P280, p. 3.

¹⁷⁴⁸ Ziba Šubo, P280, p. 3.

¹⁷⁴⁹ W-57, P539, p. 2 (under seal), P538, p. 4 (under seal).

¹⁷⁵⁰ W-57, P538, p. 4 (under seal), P539, p. 3 (under seal); P84, Set of photographs.

¹⁷⁵¹ Thorbjorn Overgard, 18 Jan 2007, T. 646; W-116, 18 Apr 2007, T. 4622; W-57, P539, p. 3 (under seal).

¹⁷⁵² P542, Official report, p. 2.

¹⁷⁵³ P553, Forensic report, dated 7 April 1995, p. 1 (under seal).

¹⁷⁵⁴ W-57, P538, p. 4 (under seal).

¹⁷⁵⁵ W-116, 18 Apr 2007, T. 4653 – 4654; W-57, 17 Apr 2007, T. 4565.

¹⁷⁵⁶ W-57, P539, p. 3 (under seal).

¹⁷⁵⁷ W-57, 17 Apr 2007, T. 4551, P539, p. 3 (under seal); P542, Official report, p. 1; For evidence pertaining to the membership of the investigative team and its activities, *see* W-116, 17 Apr 2007, T. 4616 – 4617, 18 Apr 2007, T. 4622 – 4623, 4656, P548, pp 2 – 3; W-57, 17 Apr 2007, T. 4582 – 4583, P539, p. 3 (under seal); P552, Sketches from criminal report (under seal); P553, Forensic report (under seal); P554, Set of photographs.

¹⁷⁵⁸ W-57, 17 Apr 2007, T. 4583; P542, Official report, p. 2.

¹⁷⁵⁹ W-116, P548, p. 3; W-57, P538, p. 4 (under seal); P542, Official report, p. 2; P553, Forensic report (under seal).

¹⁷⁶⁰ W-116, P548, p. 3.

¹⁷⁶¹ Thorbjorn Overgard, 19 Jan 2007, T. 662; P224, UNMO report, dated 10 April 1995, p. 1. *Cf.* P542, Official report, p. 1.

camouflage uniform under the bricks.¹⁷⁶² The Commander of ABiH's 4th Motorised Brigade was at the site and sent the UNMOs home, where they were kept under the guard of three ABiH soldiers, posted outside their house, until approximately 1900 hours.¹⁷⁶³ At around 1900 hours, Maj. Overgard and another UNMO, Calum Gunn, went to the site but it was too dark to investigate.¹⁷⁶⁴ The next morning, the ABiH guards were back.¹⁷⁶⁵

486. Maj. Overgard thought the ABiH did not trust them to do a proper investigation into such an important incident and that it did not want the UNMOs to disturb the investigation of the BiH police.¹⁷⁶⁶ However, according to W-57, the UNMOs performed the investigation together with the ABiH on 7 April 1995 and the ABiH tried to be as co-operative as possible.¹⁷⁶⁷ He also stated that the UNMOs were merely advised to stay indoors until things got quieter and confirmed that there were armed men around the UNMO residence. He claimed that they were not there to prevent the UNMOs from leaving but rather to ensure their safety. He stated that "things were getting very tense" and that he was afraid that something might happen to them.¹⁷⁶⁸ According to W-57, the UNMOs could move freely after the BiH investigation was completed.¹⁷⁶⁹

487. At approximately 1300 hours on 8 November 1994, the UNMOs were able to investigate the scene.¹⁷⁷⁰ The person, wearing camouflage, whose feet Maj. Overgard had seen coming out from under the bricks was not there anymore, but Maj. Overgard thought the person could have been a soldier on leave or just a civilian wearing these clothes.¹⁷⁷¹ It was only later that Maj. Overgard saw, at the morgue, the body of the woman killed in the explosion.¹⁷⁷²

488. The BiH police and UNMO investigations concluded that the SRK had used a modified air bomb to target Hrasnica.¹⁷⁷³ The UNMO team relied on traces found on the scene, witnesses' statements and the noise the UNMOs heard before the bomb landed.¹⁷⁷⁴ Maj. Overgard dismissed the possibility that the damage could have been caused by ammunition placed inside the house

¹⁷⁶² Thorbjorn Overgard, 18 Jan 2007, T. 641, 19 Jan 2007, T. 665 – 667.

¹⁷⁶³ Thorbjorn Overgard, 18 Jan 2007, T. 641, 19 Jan 2007, T. 669, 671.

¹⁷⁶⁴ Thorbjorn Overgard, 19 Jan 2007, T. 672.

¹⁷⁶⁵ Thorbjorn Overgard, 19 Jan 2007, T. 672.

¹⁷⁶⁶ Thorbjorn Overgard, 18 Jan 2007, T. 642, 19 Jan 2007, T. 673.

¹⁷⁶⁷ W-57, 17 Apr 2007, T. 4584; P542, Official report, p. 2. *See also*, W-116, 17 Apr 2007, T. 4617, 18 Apr 2007, T. 4658 – 4659, 4660.

¹⁷⁶⁸ W-57, 17 Apr 2007, T. 4590 – 4592.

¹⁷⁶⁹ W-57, 17 Apr 2007, T. 4593.

¹⁷⁷⁰ Thorbjorn Overgard, 18 Jan 2007, T. 641 – 642, 19 Jan 2007, T. 673 – 674.

¹⁷⁷¹ Thorbjorn Overgard, 19 Jan 2007, T. 674 – 675.

¹⁷⁷² Thorbjorn Overgard, 19 Jan 2007, T. 666.

¹⁷⁷³ W-57, 17 Apr 2007, T. 4558, P538, p. 4 (under seal); P541, Protest letter from the ABiH to UNPROFOR, 7 April 1995; P224, UNMO report; Thorbjorn Overgard, 18 Jan 2007, T. 639 – 642; P83, Map marked by Thorbjorn Overgard; D15, Map showing location of Sierra Sierra 2. *See also* Berko Zečević, 23 Apr 2007, T. 4974 – 4976.

¹⁷⁷⁴ Thorbjorn Overgard, 19 Jan 2007, T. 676, 693.

because the bricks were drawn into the house.¹⁷⁷⁵ Martin Bell reported the incident for the BBC and recalled that it was, to his knowledge, the first use of a “propelled aircraft bomb” in Sarajevo.¹⁷⁷⁶

489. W-57 interviewed a number of people from the settlement of Sokolović Kolonija, which lies between Ilidža and Hrasnica, who had seen the bomb in flight, leaving a trail of smoke that indicated it had come from the north-west.¹⁷⁷⁷ An eyewitness told W-57 that he saw the bomb in flight.¹⁷⁷⁸ Another witness had seen the bomb being fired.¹⁷⁷⁹ ABiH reconnaissance observers posted at Mount Igman had seen what appeared to be a rocket launcher truck near the water supply building in Ilidža by.¹⁷⁸⁰ However, they did not see the projectile being launched.¹⁷⁸¹ Eyewitnesses told W-116 that the bomb was launched from the yard of a factory in Ilidža, from a truck that had come out of the factory.¹⁷⁸² The Trial Chamber notes the Defence submission that the witnesses were all members of the ABiH. The Defence further suggested that the incident had been staged.¹⁷⁸³

490. The investigations by both the BiH police and UNMOs concluded that the modified air bomb was launched from an area near a factory in Ilidža, a Bosnian Serb controlled area, at a distance of approximately four kilometres from the point of impact.¹⁷⁸⁴ The place eyewitnesses identified as the origin of fire was a position held by the VRS.¹⁷⁸⁵ Berko Zečević, an expert on modified air bombs, concluded that the area between Rimski Most and Plandište, west of Ilidža, was a possible launch area, which was consistent with the conclusions of the ABiH and UNMO investigators.¹⁷⁸⁶

491. Furthermore, an order from the SRK, dated 6 April 1995 and signed by the Accused, stated “[t]he Ilidža Brigade will immediately prepare a launcher with an aerial bomb and transport the bomb for launching. [...] The most profitable target must be selected in Hrasnica or Sokolović Kolonija, where the greatest casualties and material damage would be inflicted.”¹⁷⁸⁷ According to a

¹⁷⁷⁵ Thorbjorn Overgard, 19 Jan 2007, T. 675.

¹⁷⁷⁶ Martin Bell, 26 Apr 2007, T. 5261 – 5162, 27 Apr 2007, T. 5304, D178, p. 14; P621, BBC report on 7 April 1995 incident in Hrasnica.

¹⁷⁷⁷ W-57, 17 Apr 2007, T. 4547, P538, p. 4 (under seal), P539, pp 2, 4 (under seal); P540, map marked by W-57.

¹⁷⁷⁸ W-57, P538, p. 4 (under seal).

¹⁷⁷⁹ W-57, P538, p. 4 (under seal); P586, Expert report Berko Zečević, p. 116.

¹⁷⁸⁰ W-57, 17 Apr 2007, T. 4552.

¹⁷⁸¹ W-57, P539, p. 4 (under seal).

¹⁷⁸² W-116, P548, p. 3.

¹⁷⁸³ See, e.g., Defence Final Brief, para. 202.

¹⁷⁸⁴ Thorbjorn Overgard, 18 Jan 2007, T. 640; W-57, 17 Apr 2007, T. 4558, P539, pp 3, 4 (under seal); W-116, P548, p. 3.

¹⁷⁸⁵ W-57, 17 Apr 2007, T. 4552, P538, p. 5 (under seal); W-116, P548, p. 3.

¹⁷⁸⁶ P586, Expert report Berko Zečević, p. 118.

¹⁷⁸⁷ P226, Order by SRK commander to prepare air bomb launcher, dated 6 April 1995 (“Order by SRK commander, 6 April 1995”).

SRK combat report from the SRK, dated 7 April 1995, a 250 kilogram aerial bomb was launched at the centre of Hrasnica on 7 April 1995.¹⁷⁸⁸ W-116 stated that the attack was aimed at civilians.¹⁷⁸⁹

Findings

492. On the basis of witness testimony, including from W-57 and Maj. Overgard, and the BiH police and UNMO investigation reports, and Berko Zečević's evidence, the Trial Chamber is satisfied that the projectile that exploded in Hrasnica on 7 April 1995 was a modified air bomb. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

493. The Trial Chamber is also satisfied, on the basis of the evidence of Ziba Šubo, W-57, Ziba Čustović's death certificate, and the BiH police and UNMO reports, that one civilian was killed and three civilians were injured, one of them seriously, as a result of the explosion of the modified air bomb.

494. In addition to the death and injuries suffered, there is witness, photographic and documentary evidence of extensive damage caused to houses around the area where the modified air bomb exploded, including the complete destruction of Ziba Šubo's house and the house next door. The Trial Chamber finds that the explosion of the modified air bomb caused substantial damage to houses in the vicinity of the explosion; the explosion completely destroyed two houses and damaged at least ten other houses nearby.

495. The evidence from the BiH and UNMO investigations, eyewitnesses, and Berko Zečević is consistent as to the direction from which the modified air bomb was fired. While some of the eyewitnesses were members of the ABiH, others were not. The Trial Chamber rejects the Defence submission that it should find the evidence of the ABiH observer eyewitnesses not credible because they were members of the ABiH. The Trial Chamber does not view this as having any bearing on the determination of the direction of fire made by the BiH police, UNMOs and Berko Zečević. Moreover, on 6 April 1995, the Accused ordered the Ilidža Brigade to target an area of Hrasnica or Sokolović Kolonija where "the greatest casualties and material damage would be inflicted." This was followed by an SRK combat report dated 7 April 1995, that reported there was a launching of an aerial bomb at Hrasnica that day. The Trial Chamber finds that the modified air bomb that exploded in Hrasnica on 7 April 1995 was fired from the area north-west of the impact site, in the area of

¹⁷⁸⁸ P225, SRK combat report, dated 7 April 1995. *See also* Asam Butt, 15 Feb 2007, T. 2210 – 2211, who also testified that a "strong connection" existed between the two orders.

¹⁷⁸⁹ W-116, P548, p. 3. *See also* P541, Protest letter from the ABiH to UNPROFOR, 7 April 1995.

Ilidža, an area that was controlled by the SRK and that the modified air bomb was launched by members of the SRK.

(iv) Shelling of Safeta Zajke Street on 24 May 1995

496. In May 1995, Anda Gotovac lived in Safeta Zajke Street, number 43, near the railway technical school, across the tracks behind the Television Building, in the Novi Grad Municipality.¹⁷⁹⁰ At about 1000 hours on 24 May 1995, she was sitting outside, at a table in front of her garage.¹⁷⁹¹ Enes Jašarević was working in an electric transformer station in the vicinity.¹⁷⁹²

497. It was a quiet day with no ABiH troops present and there had been no shooting between 0930 and 1000 hours.¹⁷⁹³ The Trial Chamber notes the Defence submission that in May 1995 there was fighting “in the normal combat zones, namely Butmir/Ilidža, Grbavica/Debelo Brdo” and, at the end of May, the most intense fighting was in Sedrenik and Zetra.¹⁷⁹⁴ When shown a report by the Defence, pertaining to ABiH operations conducted 24 May 1995, Enes Jašarević testified that he did not notice any military activity “coming from Sarajevo” on that day.¹⁷⁹⁵ The Defence submits, in its Final Brief, that the presence of tyres in a photograph could indicate that there was a military facility nearby.¹⁷⁹⁶ However, when W-116 was questioned by the Defence during cross-examination about their presence, he testified that a car repair workshop was there and that Safeta Zajke Street was a residential area with only civilian houses.¹⁷⁹⁷ Anda Gotovac testified that she never saw any ABiH positions or equipment in her street or neighbourhood.¹⁷⁹⁸ However, she confirmed, when asked by the Defence, that soldiers would pass through her street in order to go to the ABiH-held Žuč Hill. She explained that because she lived downhill, they were “not exactly” passing through her neighbourhood.¹⁷⁹⁹ Berko Zečević noted in his report that apart from civilian settlements, the area showed an abundance of civilian objects in the vicinity, such as the Bosnia Radio and Television Building (“TV Building”), the Žica factory, the transformer station in Majdanska Street, which was hit later that day, the Novi Grad Municipal Assembly, all of which were very close to the point of impact.¹⁸⁰⁰

¹⁷⁹⁰ Anda Gotovac, P522, p. 2; P556, Map marked by W-116.

¹⁷⁹¹ Anda Gotovac, P523, p. 2.

¹⁷⁹² Enes Jašarević, 1 Mar 2007, T. 2987; D96, Witness Statement by Enes Jašarević, dated 10 March 1997 (“Statement by Enes Jašarević”), p. 2.

¹⁷⁹³ Andja Gotovac, 3 Apr 2007, T. 4463; Enes Jašarević, 1 Mar 2007, T. 2991 – 2992.

¹⁷⁹⁴ Defence Final Brief, para. 117. *See supra*, Section II.E.9.(d) ABiH Offensives.

¹⁷⁹⁵ Enes Jašarević, 1 Mar 2007, T. 3011 – 3013; D95, Report by Vahid Karavelić, dated 24 May 1995, p. 2.

¹⁷⁹⁶ P562, Photographs, p. 7 (under seal).

¹⁷⁹⁷ W-116, 18 Apr 2007, T. 4682 – 4683.

¹⁷⁹⁸ Anda Gotovac, 3 Apr 2007, T. 4455, 4457 – 4458, 4459, 4462, P522, p. 2. *See also* W-116, 18 Apr 2007, T. 4682 – 4684.

¹⁷⁹⁹ Anda Gotovac, 3 Apr 2007, T. 4458.

¹⁸⁰⁰ P586, Expert report Berko Zečević, p. 125.

498. That day, around 0945 hours, a projectile fell on the asphalt surface in the centre of Safeta Zajke Street, opposite Anda Gotovac's house.¹⁸⁰¹ Anda Gotovac testified that she heard something that sounded like a plane. Before she could raise her head, there was an explosion.¹⁸⁰² She grabbed the table but it was pulled out of her hands by the force of the blast, which then blew her away.¹⁸⁰³ Anda Gotovac heard a lot of screaming.¹⁸⁰⁴ The roof of her house was destroyed.¹⁸⁰⁵

499. A piece of shrapnel was lodged deep into Anda Gotovac's left shoulder, and this injury required surgery.¹⁸⁰⁶ She was later discharged from hospital but needed after-care for two months.¹⁸⁰⁷ She still has breathing problems and cannot lean back on her left side.¹⁸⁰⁸ Also, she is "permanently affected by the constant fear that [she] felt during that three and a half years."¹⁸⁰⁹ She takes medication "to calm [her] nerves" and cannot sleep more than three or four hours a night.¹⁸¹⁰

500. Anda Gotovac's neighbour was wounded and another person lost his legs.¹⁸¹¹ They were taken to the hospital.¹⁸¹² Investigators found that Aiša Hrustan and Ivo Miletić were killed in the explosion and five civilians, including Anda Gotovac, were seriously wounded and six houses were damaged.¹⁸¹³

501. Anda Gotovac did not know which direction the projectile came from. She was told by different people that it came from Hreša and Trebević.¹⁸¹⁴ Enes Jašarević was indoors when he heard a bomb fly over. He had the impression that it went towards or behind the TV Building.¹⁸¹⁵ Everyone in his building got scared; some people ran for shelter. Enes Jašarević heard a dull

¹⁸⁰¹ W-116, P550, p. 3 (under seal); P557, Sketch of the point of impact made by W-116 (under seal); P586, Expert report Berko Zečević, p. 121.

¹⁸⁰² Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

¹⁸⁰³ Anda Gotovac, P523, p. 2.

¹⁸⁰⁴ Anda Gotovac, P523, p. 2.

¹⁸⁰⁵ Anda Gotovac, 3 Apr 2007, T. 4454, P523, p. 2.

¹⁸⁰⁶ Anda Gotovac, 3 Apr 2007, T. 4454, P523, p. 2.

¹⁸⁰⁷ Anda Gotovac, P523, p. 2.

¹⁸⁰⁸ Anda Gotovac, P523, p. 2.

¹⁸⁰⁹ Anda Gotovac, P522, p. 2.

¹⁸¹⁰ Anda Gotovac, P522, p. 2.

¹⁸¹¹ Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

¹⁸¹² Anda Gotovac, P523, p. 2.

¹⁸¹³ W-116, P550, p. 3 (under seal); W-116, 18 Apr 2007, T. 4626; P562, Photographs (under seal); P586, Expert report Berko Zečević, p. 121; P560, P566, Official report, dated 24 May 1995, p. 2 (under seal). The Trial Chamber notes P560 and P566 refer to the same report; P559, KDZ forensic report, dated 24 May 1995, p. 1 (under seal); P421, P422, P424, P426, P427 (under seal), Medical records respectively for Fanjo Tolić, Aiša Hrustan, Džemal Kukuljac, Igor Vučićević and Anda Gotovac.

¹⁸¹⁴ Anda Gotovac, 3 Apr 2007, T. 4463, P523, p. 2.

¹⁸¹⁵ Enes Jašarević, 1 Mar 2007, T. 2994 – 2995; D96, Statement by Enes Jašarević, p. 2; D97, Statement by Enes Jašarević, dated 19 May 2007, p. 2.

impact, but he could not see where the bomb landed.¹⁸¹⁶ However, when asked by the Defence, Enes Jašarević testified that he did not see where the bomb came from.¹⁸¹⁷

502. The BiH police was informed of the incident at about 1400 hours that day and an investigative team was established and sent to the site.¹⁸¹⁸ The explosion caused a crater 250 centimetres long by 130 centimetres wide and 30 centimetres deep.¹⁸¹⁹ During cross-examination, W-116, a forensic technician for the BiH police, explained that the bodies of the victims who were killed in this incident were transported to a mortuary situated on the other side of the town, and this explained why someone else from his department took the photos of the bodies of the victims.¹⁸²⁰

503. Based on the evidence gathered at the scene and sent to them by the BiH police, W-137 and other KDZ experts concluded that the projectile was a FAB-250 air bomb, propelled by five 122 mm GRAD rockets.¹⁸²¹ Berko Zečević, in his report, wrote that rocket motors were found in the crater, along with several metal parts, stabilisers and parts of the fuse.¹⁸²² He concluded that it was “undeniable” that the modified air bomb had three 122 mm GRAD rocket motors, despite the conflicting opinions in the reports on the incident regarding both the number and calibre of rocket motors that were found.¹⁸²³ Berko Zečević noted that in light of the multiple explosions, the features of the crater, the effect on the house and surrounding buildings, witnesses’ statements that they felt burning and strong pressure, the smoking house described by a witness and that doors and windows were knocked out, he could only conclude that the projectile was a “classic case of fuel-air aircraft bomb.”¹⁸²⁴

504. The Defence submitted, in its Final Brief, that there was conflicting evidence regarding the direction from which the modified air bomb was fired.¹⁸²⁵ The Defence identified a translation error in the BiH police report; in the original version of the report it is said that the “length of the crater was turned towards the south”, while the translation states that the crater stretches south-east.¹⁸²⁶ The Trial Chamber notes that, notwithstanding the error in translation, the report states that the

¹⁸¹⁶ Enes Jašarević, 1 Mar 2007, T. 2994 – 2995.

¹⁸¹⁷ Enes Jašarević, 1 Mar 2007, T. 2987, 2994, 3030 – 3031.

¹⁸¹⁸ P560, P566, Official report, pp 1 – 3 (under seal). *See also supra*, Section II.D Challenge to the Reliability of the Investigations by BiH Police and BiH Police Reports.

¹⁸¹⁹ W-116, P550, p. 3 (under seal); P144, Photographs, pp 6 – 7; P559, KDZ forensic report, p. 1 (under seal).

¹⁸²⁰ W-116, 17 Apr 2007, T. 4615, 18 Apr 2007, T. 4634; P562, Photographs (under seal).

¹⁸²¹ W-137, 19 Feb 2007, T. 2472 – 2473; P260, P561, KDZ report, dated 5 June 1994 (under seal); P559, KDZ forensic report, p. 2 (under seal).

¹⁸²² P586, Expert report Berko Zečević, p. 121.

¹⁸²³ P586, Expert report Berko Zečević, p. 122.

¹⁸²⁴ P586, Expert report Berko Zečević, pp 122 – 125.

¹⁸²⁵ Defence Final Brief, para. 203.

¹⁸²⁶ Defence Final Brief, para. 203. *See also* W-116, 18 Apr 2007, T. 4685; P560, P566, Official report, p. 1 (under seal). In P560 the translation error has been corrected.

projectile came from the “aggressor positions in the Lukavica area.”¹⁸²⁷ W-116 established that the projectile had come from the south-east, which could be determined from the angle of the funnel-shaped crater.¹⁸²⁸ He also observed fragments of the projectile embedded in the asphalt that indicated this direction. Usually, W-116’s team had ballistic experts to help them determine the direction of fire but in this specific instance, it was W-116 who did it.¹⁸²⁹ He was not entirely certain that the direction of fire he determined was precise because he was not a ballistic expert.¹⁸³⁰ The KDZ report identifies the direction of fire as south-east, which is the Lukavica area, and the BiH police report mentions Lukavica as the probable origin of the projectile.¹⁸³¹

505. Based on the findings of the investigators, Berko Zečević determined that the azimuth was 155 degrees, with a margin of error of plus or minus five degrees.¹⁸³² Berko Zečević found an angle of descent of 20 degrees and he estimated the launching point to be at a distance of 5,800 metres or more from the point of impact.¹⁸³³ His findings are consistent with those of the BiH police.¹⁸³⁴

506. W-116 testified, during cross-examination, that the investigators did not look into any activity or fire coming from Žuč Hill that could have been the cause of damage because the damage was too extensive to be from mortar or tank shells, which would have given them a reason to investigate that possibility.¹⁸³⁵

Findings

507. The Trial Chamber accepts the conclusions of the KDZ, including those of W-137, and of Berko Zečević, and finds that a FAB-250 air bomb with fuel-air explosive, propelled by at least three rockets, hit Safeta Zajke Street on the morning of 24 May 1995. The Trial Chamber is, therefore, satisfied that the modified air bomb was fired from the SRK-controlled area of Lukavica. The Trial Chamber further recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. On the basis of evidence of Anda Gotovac, the BiH police reports, and medical records, the Trial Chamber is satisfied that two civilians were killed and five civilians were seriously injured as a result of the explosion of the modified air bomb.

¹⁸²⁷ P560, P566, Official report, p. 2 (under seal).

¹⁸²⁸ W-116, 18 Apr 2007, T. 4629, P550 (under seal), p. 4; P558, Map marked by W-116; P564, Map marked by W-116; P559, KDZ forensic report, p. 1 (under seal).

¹⁸²⁹ W-116, 18 Apr 2007, T. 4629, 4669 – 4670.

¹⁸³⁰ W-116, 18 Apr 2007, T. 4630.

¹⁸³¹ P560, P566, Official report, p. 1 (under seal). Cf. W-116 took a photograph of the crime scene in which one can see the fragments of the projectile embedded in the ground and showing a south-westerly direction: W-116, 18 Apr 2007, T. 4686 – 4687; P562, Photographs (under seal).

¹⁸³² P586, Expert report Berko Zečević, p. 123.

¹⁸³³ Berko Zečević, 20 Apr 2007, T. 4856; P586, Expert report Berko Zečević, p. 124.

¹⁸³⁴ P586, Expert report Berko Zečević, p. 125.

¹⁸³⁵ W-116, 18 Apr 2007, T. 4683 – 4684.

508. The Trial Chamber received conflicting evidence about the direction from which the modified air bomb came. W-116, a police officer but not a ballistic expert, testified that he determined the direction was south-east. The BiH police report identified the direction of fire as south, but Lukavica as the probable origin of fire. Berko Zečević concluded that the launching point was 5,800 metres from the impact point, in a south-easterly direction, in the Lukavica area. Although there is some inconsistency as to the direction of fire, the evidence of the investigative reports, including the KDZ report, and Berko Zečević, points to the Lukavica area as the origin of fire. Furthermore, given both the possible range of the FAB-250 and the likely range of the bomb in this incident, whether the modified air bomb was fired from south or south-east, the origin of fire would have been within SRK-held territory in any case.¹⁸³⁶ The Trial Chamber is, therefore, satisfied that the modified air bomb was fired from the SRK-controlled area of Lukavica and that it was launched by members of the SRK.

(v) Shelling of Majdanska Street on 24 May 1995

509. On 24 May 1995, Enes Jašarević was working as an electrician at the transformer station near the TV Building, proximate to Novi Grad municipality.¹⁸³⁷ That day he was supposed to go to Vogošća but, as a result of heavy shelling in the Sarajevo area and particularly the Novi Grad municipality, he did not go.¹⁸³⁸

510. At around 1000 hours an air bomb flew over Enes Jašarević and fell somewhere behind the TV Building.¹⁸³⁹ After that “nothing happened and we continued our duty and we were sitting around our work place.”¹⁸⁴⁰ Sometime after 1300 hours, there was no work left to do and Enes Jašarević decided to leave. He left the building with Sulejman Prasko, the foreman, who began to weed the small vegetable patch adjacent to the entrance of the transformer station.¹⁸⁴¹ Enes Jašarević waited for a colleague, Salko Slato, with whom he intended to cover part of the journey home.¹⁸⁴²

511. At approximately 1400 hours, Salko Slato arrived and the two men exited through the gates of the transformer station. Enes Jašarević testified that he heard a sound which he believed to be an aeroplane, coming from the direction of Mojmiilo Hill.¹⁸⁴³ He looked around but no aeroplane was

¹⁸³⁶ See D59, Military map of Sarajevo area.

¹⁸³⁷ Enes Jašarević, 1 Mar 2007, T. 2987; W-116, 18 Apr 2007, T. 4635; P560, P566, Official report (under seal); P300, Map marked by Enes Jašarević.

¹⁸³⁸ D96, Statement by Enes Jašarević, p. 2; W-116, 18 Apr 2007, T. 4635.

¹⁸³⁹ D96, Statement by Enes Jašarević, p. 2; Enes Jašarević, 1 Mar 2007, T. 3030 – 3031.

¹⁸⁴⁰ Enes Jašarević, 1 Mar 2007, T. 2995.

¹⁸⁴¹ Enes Jašarević, 1 Mar 2007, T. 2995 – 2996.

¹⁸⁴² Enes Jašarević, 1 Mar 2007, T. 2995.

¹⁸⁴³ Enes Jašarević, 1 Mar 2007, T. 2995 – 2996, 3026, 3028.

visible, even though “the sound was coming closer and closer and becoming stronger and stronger.”¹⁸⁴⁴

512. Enes Jašarević explained that he saw a dark object hit a pylon inside the compound of the transformer station and “there was a strong flash”; he fell on his stomach.¹⁸⁴⁵ The pylon that had been hit by the bomb started to collapse and he thought it was going to collapse on him. However, an overhead power line prevented this.¹⁸⁴⁶

513. Enes Jašarević testified that, after the pylon collapsed, he turned over and there was something on his right and left leg and “a kind of contraction in his right arm.”¹⁸⁴⁷ He tried to remove his leather jacket but he was unable to do so as a piece of shrapnel had attached the sleeve to his elbow.¹⁸⁴⁸ The entrance gate to the transformer station had been jammed shut and Salko Slato, who was only slightly injured, tried to jump over the fence in order to see what had happened to Suljeman Prasko, who was still inside.¹⁸⁴⁹ Enes Jašarević approached the fence and saw the foreman lying there, his mouth still moving.¹⁸⁵⁰ However, someone told him that Suljeman Prasko was already dead.¹⁸⁵¹

514. The Defence presented an ABiH combat report indicating that on that day there was intense fire by the ABiH resulting in “significant consumption of all types of ammunition.”¹⁸⁵² Enes Jašarević disagreed with the Defence proposition that the transformer station was a military headquarters and that it was a legitimate target; he did not agree either that his profession, as an electrician, implied an obligation to provide for the needs of the ABiH.¹⁸⁵³ He testified that he was not in the ABiH and that “it was just a transformer station with people working there, not wearing uniforms or anything. We just had our kit, our tools, on us and that was that.”¹⁸⁵⁴ The report of the BiH police pertaining to the incident noted that the modified air bomb exploded in a populated area where there were no combat positions of the ABiH nor were there any combat activities being conducted against the SRK in that area.¹⁸⁵⁵

¹⁸⁴⁴ Enes Jašarević, 1 Mar 2007, T. 2996.

¹⁸⁴⁵ Enes Jašarević, 1 Mar 2007, T. 2996; P303, Photograph marked by Enes Jašarević.

¹⁸⁴⁶ Enes Jašarević, 1 Mar 2007, T. 2996.

¹⁸⁴⁷ Enes Jašarević, 1 Mar 2007, T. 2997.

¹⁸⁴⁸ Enes Jašarević, 1 Mar 2007, T. 2997.

¹⁸⁴⁹ Enes Jašarević, 1 Mar 2007, T. 2997.

¹⁸⁵⁰ Enes Jašarević, 1 Mar 2007, T. 2997 – 2998.

¹⁸⁵¹ Enes Jašarević, 1 Mar 2007, T. 2998; P429, Death certificate of victim Suljeman Prasko, dated 25 May 1995.

¹⁸⁵² D95, Report by Vahid Karavelić, 24 May 1995, p. 2.

¹⁸⁵³ Enes Jašarević, 1 Mar 2007, T. 3018 – 3019.

¹⁸⁵⁴ Enes Jašarević, 1 Mar 2007, T. 3022 – 3023.

¹⁸⁵⁵ P566, Official report, p. 3 (under seal).

515. Enes Jašarević testified that somebody came from the direction of the TV Building and then a car came along and asked whether there were any casualties.¹⁸⁵⁶ He was put in the car and was taken to the State Hospital. The criminal investigation file showed that, in total, six civilians, including Enes Jašarević and Salko Slatko were wounded, five of them seriously, and that Sulejman Prasko and Nezir Huseinović were killed.¹⁸⁵⁷

516. The incident was investigated by the BiH police, with members of UNPROFOR being present.¹⁸⁵⁸ Members of the Novi Grad Police Station had secured the site. W-116 stated the shell exploded, damaging a high-tension electric tower, a 110-kilowatt transformer and several buildings within a radius of about 200 metres.¹⁸⁵⁹ The BiH police found a large crater measuring five metres long by one and a half metres wide and one and a half metres deep.¹⁸⁶⁰ A number of parts of a VBR rocket were found in and around the crater as well as shrapnel and parts of an aerial bomb.¹⁸⁶¹ Forensic analysis concluded that the pieces of the projectile collected by the BiH police from the incident site, “probably belonged to a device made of an FAB-250 M72 contact fuse aircraft bomb and five 122 mm GRAD type rockets which were used as a power unit.”¹⁸⁶² Evidence was presented to the Trial Chamber that the effective range of a FAB-250 is 5,820 metres to 7,680 metres.¹⁸⁶³

517. The KDZ on-site forensic investigation concluded that the modified air bomb was fired from the Pavlovac area in the south-east.¹⁸⁶⁴ However, the investigation of the BiH police determined that the crater made by the modified air bomb faced “south”, indicating that the modified air bomb and the VBR rockets had been fired from the same place as the earlier bomb that day at Safeta Zajke Street, namely, Lukavica, where the “aggressor’s firing line is situated”.¹⁸⁶⁵

518. In his report, Berko Zečević commented that “the incoming angle was determined from the sketch of the place of the incident.” However, “the incident shows the general picture of the situation at the place of impact, but it does not allow for precise assessment of the incoming angle of the bomb.”¹⁸⁶⁶ In court, Berko Zečević testified that it was not possible to establish the incoming

¹⁸⁵⁶ Enes Jašarević, 1 Mar 2007, T. 2997 – 2998.

¹⁸⁵⁷ P566, Official report, p. 3 (under seal); P424, Medical report of Džemal Kukuljac (under seal).

¹⁸⁵⁸ P566, Official report, p. 2 (under seal); P302, Colour photographs.

¹⁸⁵⁹ W-116, P550, 11 Mar 1997, p. 4.

¹⁸⁶⁰ P566, Official report, p. 2 (under seal).

¹⁸⁶¹ P566, Official report, p. 2 (under seal); W-116, P550, p. 4.

¹⁸⁶² P313, KDZ investigation file, dated 24 May 1995, p. 3 (under seal); W-116 testified that “it was probably a modified air bomb, because not a single projectile of smaller calibre could have produced such huge devastation”, W-116, 18 Apr 2007, T. 4638. *See also* P586, Expert report Berko Zečević, pp 126 – 128.

¹⁸⁶³ *See infra*, para. 95.

¹⁸⁶⁴ P313, KDZ investigation file, p. 1 (under seal); P563, Criminal investigation file, p. 2 (under seal); W-116, 18 Apr 2007, T. 4637, 4689, P550, p. 4; P564, Map marked by W-116.

¹⁸⁶⁵ P566, Official report, pp 1 – 3 (under seal); Enes Jašarević, 1 Mar 2007, T. 3026 – 3028.

¹⁸⁶⁶ P586, Expert report Berko Zečević, p. 123.

angle of the projectile. Nevertheless, taking the shelling of Safeta Zajke Street and Majdanska Street as incidents that occurred on the same day, within approximately four hours of one another and bearing in mind the fact that Mojmiilo Hill was behind the incident sites, he found it “only logical” that the launching sites in both cases were similar; consequently the incoming angle was, in his view, at a minimum of 20 degrees in order to have been able to hit the transformer station. From this analysis, he concluded that “the location for the launcher has to be at a minimum range of 4,800 metres” and that the launch site would be “within the broader area of Lukavica”.¹⁸⁶⁷

Findings

519. Evidence shows that a bomb exploded on Majdanska Street in the afternoon of 24 May 1995. Enes Jašarević testified to hearing the sound of an aeroplane before a projectile impacted inside the transformer station and exploded. The BiH investigation file records that the BiH police found parts of a rocket, shrapnel and parts of an aerial bomb. Similarly, as evidence shows, the KDZ investigation concluded that the projectile was probably a FAB-250 modified air bomb. The Trial Chamber is satisfied that the projectile that exploded on Majdanska Street was a FAB-250 modified air bomb.

520. The Trial Chamber heard evidence from Enes Jašarević that he was seriously injured and that Suljeman Prasko was killed by the explosion. The BiH police report indicated that, along with Enes Jašarević, five others were injured, including his colleague Salko Slato, and that Nezir Husinović was also killed. Two civilians were killed, and six civilians were injured, five of them seriously, as a result of the explosion on Majdanska Street.

521. While the KDZ investigation concluded that the direction of fire was south-east and that the origin of fire was the Pavlovac region, the BiH police and Berko Zečević concluded that the direction of fire was south, and that the origin of fire was the same as for the shelling incident on Safeta Zajke Street that took place the same day, that is, Lukavica. Berko Zečević estimated that the modified air bomb was launched from a minimum distance of 4,800 metres from the incident site. The Trial Chamber recalls that the areas of Lukavica and Palovac were both controlled by the SRK and, given both the possible range of the FAB-250 and the likely range of the bomb in this incident, the origin of fire would have been within SRK-held territory in any case.¹⁸⁶⁸ The Trial Chamber further recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that the modified air bomb that exploded

¹⁸⁶⁷ Berko Zečević, 20 Apr 2007, T. 4858.

¹⁸⁶⁸ See *supra*, para. 95.

in Majdanska Street originated from SRK-held territory and that it was launched by members of the SRK.

(vi) Shelling of Safeta Hadžića Street on 26 May 1995

522. The weather was good on 26 May 1995, in Safeta Hadžića Street, Novi Grad Municipality.¹⁸⁶⁹ Safeta Hadžića Street was a residential area with apartment buildings and offices, close to the Majdanska Street.¹⁸⁷⁰ W-13 was sitting on the road in front of his apartment building.¹⁸⁷¹ There were some 40 to 50 other persons also sitting in front of their apartment buildings.¹⁸⁷² Džemaludin Luinović was standing at the municipal building, about 250 metres from his home.¹⁸⁷³

523. It was a quiet day with no military operation going on in the area.¹⁸⁷⁴ Some offices were intermittently used by uniformed soldiers.¹⁸⁷⁵ According to Džemaludin Luinović, there was no military unit in this area, but there were people who had been mobilised, some for the army, some for the police.¹⁸⁷⁶ He, himself, was a reserve policeman, wore a camouflage uniform and carried a semi-automatic rifle, a pistol and a truncheon.¹⁸⁷⁷ However, Džemaludin Luinović denied ever having used the weapons or having taken part in military activities.¹⁸⁷⁸ In its Final Brief, the Defence submitted that this incident took place “on the same day as NATO dropped aerial bombs on Sarajevo.”¹⁸⁷⁹

524. At about 1100 hours, Džemaludin Luinović saw “something big”, like a “low-flying aeroplane”, coming slowly from the direction of Ilidža.¹⁸⁸⁰ W-13 described a sound that was different to the usual sound of shells; the sound of “a helicopter flying some 15 metres above the

¹⁸⁶⁹ W-13, 5 Apr 2007, T. 4535.

¹⁸⁷⁰ W-138, 31 Jan 2007, T. 1323. Džemaludin Luinović testified that there were no mortars or any heavy weapons in the area and that the nearest ABiH soldiers were around three kilometres away and the nearest frontline was in Nedarići, at around 4.5 kilometres distance. Having consulted a map, the Trial Chamber doubts the latter distance and rather considers it closer. Džemaludin Luinović also testified that the closest military establishment was the Ramiz Salčin barracks, which was approximately one kilometre away: Džemaludin Luinović, 28 Feb 2007, T. 2951, 2952 – 2953, 2957 – 2958, 1 Mar 2007, T. 2963, P298, p. 3. The Trial Chamber notes that W-138 also referred to Majdanska Street, but that at the time of the incident the entire area was called Safeta Hadžića Street, W-138, 31 Jan 2007, T. 1307, 1322.

¹⁸⁷¹ W-13, 5 Apr 2007, T. 4535.

¹⁸⁷² W-13, 5 Apr 2007, T. 4535, P535, p. 3 (under seal).

¹⁸⁷³ Džemaludin Luinović, 28 Feb 2007, T. 2946, 1 Mar 2007, T. 2962, P297, p. 2, P298, p. 2.

¹⁸⁷⁴ W-138, 1 Feb 2007, T. 1359 – 1360; W-13, 5 Apr 2007, T. 4535.

¹⁸⁷⁵ W-138, 31 Jan 2007, T. 1323; P146, Map marked by W-138.

¹⁸⁷⁶ Džemaludin Luinović, 28 Feb 2007, T. 2950 – 2951.

¹⁸⁷⁷ Džemaludin Luinović, 28 Feb 2007, T. 2944, 2946, 2955 – 2956, P297, p. 2.

¹⁸⁷⁸ Džemaludin Luinović, 28 Feb 2007, T. 2956, 1 Mar 2007, T. 2962; Džemaludin Luinović further denied the Defence suggestion that his private workshop was used to camouflage mortars during the war, Džemaludin Luinović, 1 Mar 2007, T. 2975. However, the workshop was used by the ABiH during the war, Džemaludin Luinović, P297, p. 2.

¹⁸⁷⁹ Defence Final Brief, fn. 446.

¹⁸⁸⁰ Džemaludin Luinović, 28 Feb 2007, T. 2944, 2946 – 2947, 2950, 1 Mar 2007, T. 2965, 2970 – 2971, P297, p. 2, P298, p. 2; P299, Photograph marked by Džemaludin Luinović. *See also* W-13, P535, p. 3 (under seal); P799, Official

buildings very low.”¹⁸⁸¹ According to W-138, seconds later, the area was hit by ten shells and a modified air bomb.¹⁸⁸² The modified air bomb hit the roof of Safeta Hadžića Street, number 52, destroying four apartments on the fifth floor and two on the fourth floor, while seriously damaging two apartments on the third floor.¹⁸⁸³

525. Not all of the multiple shells fired at Safeta Hadžića Street on 26 May 1995 exploded.¹⁸⁸⁴ One shell hit the tarmac without exploding, ricocheted and then hit the house at Majdanska Street 8-b, causing a hole of two metres by two metres.¹⁸⁸⁵ Another unexploded shell landed in front of the north-west wall in the yard of Safeta Hadžića Street, number 70, causing a 200 centimetre by 80 centimetre by 35 centimetre crater.¹⁸⁸⁶ Another shell hit the south-west wall of Safeta Hadžića Street, number 102.¹⁸⁸⁷ Compared to the considerable damage caused by the modified projectile, the damage here was much less.¹⁸⁸⁸ Another crater caused by an artillery explosion, was found in the yard between building numbers 110 and 102.¹⁸⁸⁹ The next shell hit and destroyed a car, parked behind building number 110.¹⁸⁹⁰ Further, one crater was found in the yard of the Džemaludin Mušović elementary school, another crater on the asphalt playground of the school and a third crater was found between the school and Safeta Hadžića Street, number 102.¹⁸⁹¹ Other buildings hit by shells were buildings number 110, where the projectile tore through the flat concrete roof and damaged one apartment on the fifth floor, and number 143, where the projectile caused material damage when it hit the roof.¹⁸⁹² Furthermore, the window panes of buildings numbered 100, 102,

report and note, p. 2 (under seal); P586, Expert report Berko Zečević, p. 129. Cf. P143, Report of on-site investigation, dated 26 May 1995, p. 1 (under seal).

¹⁸⁸¹ W-13, 5 Apr 2007, T. 4537, P535, p. 3 (under seal); D33, Statement of W-138, dated 24 April 2006, p. 2 (under seal).

¹⁸⁸² W-138, 31 Jan 2007, T. 1307, 1 Feb 2007, T. 1359; P146, Map marked by W-138. *See also* P143, Investigation report, p. 1 (under seal); P299, Photograph marked by Džemaludin Luinović; P799, Official report and note, pp 1, 11 (under seal); Džemaludin Luinović, 28 Feb 2007, T. 2944, 2947, 2948 – 2949, 2972, 1 Mar 2007, T. 2965, P297, p. 2, P298, p. 3.

¹⁸⁸³ W-138, 31 Jan 2007, T. 1310 – 1311, 1314 – 1315; P144, Photographs of shelling, pp 14 – 15; Džemaludin Luinović, 1 Mar 2007, T. 2969; Berko Zečević, 23 Apr 2007, T. 4952; P586, Expert report Berko Zečević, p. 129; P143, Investigation report, p. 1 (under seal); P145, Analyses of projectile traces, dated 19 June 1995, p. 1, confirmed by Ekrem Suljević in P311, dated 10 March 1997, p. 2; P799, Official report and note, pp 2, 11 (under seal); W-13, P535, p. 3 (under seal).

¹⁸⁸⁴ P143, Investigation report, p. 1 (under seal). Cf. Džemaludin Luinović testified that all shells exploded, Džemaludin Luinović, 1 Mar 2007, T. 2983.

¹⁸⁸⁵ Džemaludin Luinović, 28 Feb 2007, T. 2949, 1 Mar 2007, T. 2973, 2983, P297, p. 2, P298, p. 3; W-138, 31 Jan 2007, T. 1307 – 1308, 1314, 1 Feb 2007, T. 1360; P143, Investigation report, p. 1 (under seal). *See also*, P144, Photographs, p. 12; P799, Official report and note, pp 2, 12 (under seal). The Trial Chamber notes that according to the official report of the KDZ the projectile exploded when it hit the house, P799, Official report and note, p. 2 (under seal).

¹⁸⁸⁶ W-138, 31 Jan 2007, T. 1314, P144, p. 9; P799, Official report and note, pp 2, 11 (under seal).

¹⁸⁸⁷ W-138, 31 Jan 2007, T. 1310, P144, p. 5; P799, Official report and note, p. 1 (under seal).

¹⁸⁸⁸ W-138, 31 Jan 2007, T. 1311; P799, Official report and note, p. 1 (under seal).

¹⁸⁸⁹ P799, Official report and note, pp 1, 11 (under seal).

¹⁸⁹⁰ W-138, 31 Jan 2007, T. 1312, P144, pp 3 – 4. The Trial Chamber notes that the car was, according to the official report and the official note of the KDZ, parked behind building number 102, Safeta Hadžića Street: P799, Official report and note, pp 1, 11 (under seal).

¹⁸⁹¹ W-138, 31 Jan 2007, T. 1312 – 1313, P144, pp 6 – 8; P799, Official report and note, pp 1 – 2, 11 (under seal).

¹⁸⁹² P799, Official report and note, pp 2, 12 (under seal).

108 and 110 broke.¹⁸⁹³ In cross-examination, Džemaludin Luinović confirmed a report that there were no civilian casualties resulting from the attack with smaller shells that followed the big one.¹⁸⁹⁴

526. After the powerful explosion, the persons on the road took cover in nearby buildings.¹⁸⁹⁵ Džemaludin Luinović described the moments after the impact as “there was so much dust in the air and bits of concrete flying all over the place; mortar off the walls; doors and windows smashed; bits flying through the air. There was rubble strewn all across the road”, and it was difficult to see.¹⁸⁹⁶ W-13 and his daughter were injured; W-13 was taken to Koševo Hospital in a private car.¹⁸⁹⁷

527. Džemaludin Luinović ran back to his house, which was opposite the building hit by the modified air bomb, and watched the site from his front yard with his father.¹⁸⁹⁸ He saw injured persons but, in cross-examination said he did not see a body being carried out of the building.¹⁸⁹⁹ Among the injured persons, several had been injured in the neighbouring building, number 46, and some in the entrance hall of number 48.¹⁹⁰⁰

528. There is some contradictory evidence as to the number of people injured in this incident. The Prosecution alleged that two persons were seriously injured and 15 were slightly injured.¹⁹⁰¹ Medical records confirm four injured persons, one of them seriously.¹⁹⁰² An official note by the KDZ, dated 26 May 1995, mentions two persons as seriously wounded.¹⁹⁰³ This note also lists fourteen slightly injured persons.¹⁹⁰⁴ A report by the KDZ, dated 1 June 1995, lists two seriously wounded, the same as in the official note, and 15 slightly injured persons.¹⁹⁰⁵ There is one person in the official note listed as injured who does not appear in the KDZ report and there are two persons

¹⁸⁹³ P799, Official report and note, p. 1 (under seal).

¹⁸⁹⁴ Džemaludin Luinović, 1 Mar 2007, T. 2970. *See also* P799, Official report and note, p. 7 (under seal).

¹⁸⁹⁵ W-13, 5 Apr 2007, T. 4534; Džemaludin Luinović, 1 Mar 2007, T. 2965, 2971, P298, p. 2.

¹⁸⁹⁶ Džemaludin Luinović, 28 Feb 2007, T. 2948, 1 Mar 2007, T. 2965. *See also* W-13, P535, p. 3 (under seal).

¹⁸⁹⁷ W-13, 5 Apr 2007, T. 4533, 4538, P535, p. 3 (under seal).

¹⁸⁹⁸ Džemaludin Luinović, 28 Feb 2007, T. 2948.

¹⁸⁹⁹ Džemaludin Luinović, 1 Mar 2007, 2969 – 2970. Two men were injured when they fell in a hole because they did not notice that the metal cover had been blown off: W-13, P535, p. 3 (under seal). *See also*, W-138, 31 Jan 2007, T. 1308; W-13, 5 Apr 2007, T. 4536 – 4537; P799, Official report and note, p. 1 (under seal).

¹⁹⁰⁰ P799, Official report and note, pp 3, 11 (under seal).

¹⁹⁰¹ Indictment, Second Schedule.

¹⁹⁰² P430, P431, P433, Medical records (under seal).

¹⁹⁰³ P799, Official report and note, p. 11 (under seal). One of the two seriously injured victims stayed 18 days in Sarajevo State Hospital, P431, Medical record (under seal). *See also*, P586, Expert report Berko Zečević, p. 129.

¹⁹⁰⁴ P799, Official report and note, p. 11 (under seal).

¹⁹⁰⁵ P799, Official report and note, p. 3 (under seal). *See also*, P586, Expert report Berko Zečević, p. 129; P433, Medical record (under seal). According to the medical record, two victims sustained severe injuries and were released for treatment at home. Another victim stayed 14 days in hospital.

in the report who are not listed in the official note.¹⁹⁰⁶ However, one of the latter two is also mentioned in Berko Zečević's expert report as "bleeding from the lungs."¹⁹⁰⁷

529. According to a KDZ report, the smaller projectiles were 90 mm armour-piercing explosive artillery projectiles.¹⁹⁰⁸ The investigation conducted by the KDZ into the incident concluded that the projectile was "probably a [...] contact fuse high explosive shell in 88 mm calibre" and that "this type of projectile is rather old and was a part of the former JNA weaponry."¹⁹⁰⁹ In an analysis of projectile traces by the KDZ, the large bomb was described as "the remains of a modified aircraft bomb made of several GRAD-type 122 mm rocket projectiles."¹⁹¹⁰

530. With regard to the direction from which the modified air bomb had come, a number of witnesses referred to the West and, in particular, the Ilidža-Rajlovac area.¹⁹¹¹ One KDZ report refers to positions in the west as the direction of fire of the shells and to Lukavica in the south as the launching point for the modified air bomb.¹⁹¹² Prosecution expert Berko Zečević stated that the shells had come from the direction of Lukavica, but that the modified air bomb had come from the Ilidža-Rajlovac direction.¹⁹¹³ He emphasised the "good synchronisation of [SRK] units in Ilidža and Lukavica."¹⁹¹⁴ In calculating the angle of descent, Berko Zečević came to the conclusion that the modified air bomb was launched from a minimum distance of around 5,800 metres, which corresponds to the wider area of Butila, located between Rajlovac and Ilidža.¹⁹¹⁵

Findings

531. The Trial Chamber accepts the testimony of witnesses that they had heard a sound like an aeroplane, that there was a very large explosion and extensive damage. The Trial Chamber also had investigative reports and the report of Berko Zečević. The Trial Chamber is satisfied that after the explosion of the modified air bomb, a number of shells landed on Safeta Hadžića Street; some of

¹⁹⁰⁶ P799, Official report and note, pp 3, 11 (under seal).

¹⁹⁰⁷ P586, Expert report Berko Zečević, p. 129.

¹⁹⁰⁸ P799, Official report and note, p. 2 (under seal). W-138 noticed on this shell some "Nazi symbols" like the swastika, a symbol with wings and a serial number engraved by a machine, W-138, 31 Jan 2007, T. 1308, 1 Feb 2007, T. 1359, 1360, 1362 – 1363; P143, Investigation report, p. 1 (under seal). Confronted by the Defence, W-138 denied that he brought the unexploded projectile with the "Nazi symbols" to the site to use it for propaganda purposes against the Serbs, W-138, 1 Feb 2007, T. 1362.

¹⁹⁰⁹ P799, Official report and note, p. 8 (under seal).

¹⁹¹⁰ P145, Analyses of projectile traces, 19 June 1995, p. 3. *See also*, P586, Expert report Berko Zečević, pp 129 – 130; P799, Official report and note, p. 2 (under seal).

¹⁹¹¹ Džemaludin Luinović, 28 Feb 2007, T. 2944, 2949 – 2950, 1 Mar 2007, T. 2971, P297, p. 2, P298, p. 2; P299, Photograph marked by Džemaludin Luinović; P143, Investigation report, p. 1 (under seal); D32, Statement of W-138, p. 2 (under seal); P145, Analyses of projectile traces, p. 1. *See also*, P586, Expert report Berko Zečević, p. 129.

¹⁹¹² P799, Official report and note, p. 3 (under seal).

¹⁹¹³ P586, Expert report Berko Zečević, pp 129 – 130.

¹⁹¹⁴ P586, Expert report Berko Zečević, p. 129. *See also*, Thorbjorn Overgard, 18 Jan 2007, T. 640.

¹⁹¹⁵ P586, Expert report Berko Zečević, pp 131 – 132.

them exploded. The Trial Chamber finds that it was a modified air bomb that hit Safeta Hadžića Street on 26 May 1995. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

532. The Trial Chamber is satisfied that, on the basis of the investigative reports and the conclusions of Berko Zečević, at least 14 persons were slightly injured and two persons were seriously injured as a result of this shelling. These persons were all civilians.

533. Most of the evidence pertaining to the direction from which the modified air bomb came indicates that the direction was the Ilidža-Rajlovac area, that is, north-west of Safeta Hadžića Street. The Trial Chamber notes that a single KDZ report states the direction was south. Even if the direction of fire was south, that would still be within an area under the control of the SRK. The Trial Chamber is satisfied that the modified air bomb was fired from the area of Ilidža-Rajlovac, which was SRK-held territory and that it was launched by members of the SRK.

(vii) Shelling of the UMC and Oncology Department, Dositejeva, on 16 June 1995

534. No witness evidence was led in respect of this shelling incident. However, the incident is the subject of police reports, which were authenticated by Ekrem Suljević, a member of the KDZ.¹⁹¹⁶ Berko Zečević also discussed this incident in his report.

535. On the morning of 16 June 1995, an explosion occurred at the University Medical Centre (“UMC”), Department of Radiology and Oncology, at Dositejeva Street, number 4a.¹⁹¹⁷ As a result of the explosion, three people were slightly injured; the buildings of five companies and some apartments situated in the vicinity of the UMC were destroyed.¹⁹¹⁸

536. An investigation into the explosion was conducted by the BiH police, the next day, on 17 June 1995, during which multiple fragments of rockets were found in the UMC building.¹⁹¹⁹ The investigation concluded that a modified air bomb had hit the roof of the UMC; it had exploded on the window frame of a toilet on the first floor of the building.¹⁹²⁰ Berko Zečević agreed with the

¹⁹¹⁶ Ekrem Suljević, 2 Mar 2007, T. 3099 – 3101.

¹⁹¹⁷ P321, Forensic report, dated 17 June 1995; P324, Report by KDZ, dated 19 June 1995, stating that the explosion occurred at around 1105 hours; P217, Official report, dated 17 June 1995.

¹⁹¹⁸ P321, Forensic report, p. 1; P217, Official report, p. 1; P323, Photographs; P586, Expert report Berko Zečević, p. 134. The Trial Chamber notes that in P324, Report by KDZ, it is reported that four people were injured. However, that report, unlike the other two reports, P321 and P217, does not list the names of the people who were injured.

¹⁹¹⁹ P321, Forensic report, p. 2; P323, Photographs; P324, Report by KDZ, pp 1, 4 – 5; P217, Official report, p. 1.

¹⁹²⁰ P321, Forensic report, p. 1; P324, Report by KDZ, p. 5.

BiH investigators that the explosive device was a modified air bomb.¹⁹²¹ He also agreed that the bomb exploded “inside the first floor”.¹⁹²²

537. The investigation also concluded that the azimuth was north-west, at 348 degrees, plus or minus ten degrees.¹⁹²³ The KDZ later determined, as a result of its investigation, that the modified air bomb had been fired from “enemy positions” in the surrounding area of Pionirska Dolina.¹⁹²⁴ Berko Zečević disagreed with their determination on the azimuth, saying that it was “unacceptable, because the investigators did not define the method they used to determine the incoming angle with such precision.”¹⁹²⁵ He noted that if the azimuth of the BiH police were to be accepted, this would place the possible launch site “deep in the canyon within the Pretis Factory in Vogošća.”¹⁹²⁶ Based on his analysis of the shelling incident on Čobanija Street, which showed that another modified air bomb came from the direction of the Pretis Factory and struck that street, as well as based on an analysis of the surrounding terrain, he determined that the direction of fire was 315 degrees, plus or minus ten degrees, placing the launch site at a distance of 5,820 metres from the impact site and inside the compound of the Pretis Factory.¹⁹²⁷

Findings

538. On 16 June 1995, a projectile exploded at the UMC. On the basis of the BiH police reports and Berko Zečević’s report, the Trial Chamber is satisfied that the projectile was a modified air bomb. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. On the basis of the police reports and photographs, the Trial Chamber finds that three or four civilians were injured as a result of the explosion, and that some surrounding buildings were destroyed.

539. The evidence regarding the direction and origin of fire is inconsistent. While the BiH police put the direction of fire at almost north, Berko Zečević, after dismissing this determination, concluded that the direction of fire was closer to north-west. Although the direction from where the bomb came was not established with any certainty, in light of Berko Zečević’s evidence that it was fired almost six kilometres from the impact site, the Trial Chamber is satisfied that the modified air

¹⁹²¹ P586, Expert report Berko Zečević, p. 134.

¹⁹²² P586, Expert report Berko Zečević, p. 134.

¹⁹²³ P321, Forensic report, p. 1; P322, Investigation file, dated 17 June 1995 (“Investigation file”), p. 1; P324, Report by KDZ, pp 1, 4.

¹⁹²⁴ P324, Report by KDZ, p. 5.

¹⁹²⁵ P586, Expert report Berko Zečević, p. 134.

¹⁹²⁶ P586, Expert report Berko Zečević, p. 135.

¹⁹²⁷ P586, Expert report Berko Zečević, p. 135.

bomb was fired from outside the confrontation lines and within SRK-held territory and that it was launched by members of the SRK.

540. The Trial Chamber notes the submission in the Defence Final Brief that there was an ABiH offensive at the time of the incident and that all along the confrontation lines it was “very intense”. It understands this submission to mean that the intensity of the offensive somehow absolves the SRK of criminal liability for the use of modified air bombs on this day. The Trial Chamber rejects this submission and stresses that there was nothing in the circumstances in which the modified air bomb was launched that would absolve the Accused of liability, should the Trial Chamber determine that the SRK forces responsible for the launch were under his control and command.

(viii) Shelling of Trg Medunarodnog Prijateljstva on 16 June 1995

541. On 16 June 1995, there was fine weather and good visibility.¹⁹²⁸ That day, W-107, a homemaker, was in the local commune centre in Alipašino Polje, along with four men.¹⁹²⁹

542. Trg Medunarodnog Prijateljstva, number 10, was located in a residential area, in Alipašino Polje, and across the street from the PTT Building, where UNPROFOR Sector Sarajevo Headquarters was based.¹⁹³⁰ The headquarters of the civil defence was located in Trg Medunarodnog Prijateljstva, number 10.¹⁹³¹ According to W-107, the civil defence was a civilian institution.¹⁹³² Humanitarian aid was delivered to the headquarters and civil defence personnel distributed medicines, firewood and food to the civilian population.¹⁹³³ Humanitarian organisations, including the Red Cross, came there. No soldiers assisted the civil defence, nor were they present in its facilities.¹⁹³⁴ There was no military installation or facility in the vicinity.¹⁹³⁵ In response to questions by the Defence, W-107 testified she had worked for the Territorial Defence (“TO”).¹⁹³⁶ However, W-107 testified that she was not employed by the TO nor did she have a salary or medical insurance.¹⁹³⁷ She understood the TO to be the same as civil protection.¹⁹³⁸ W-107 further

¹⁹²⁸ D116, Statement by W-107, p. 2 (under seal).

¹⁹²⁹ D116, Statement by W-107, p. 2 (under seal).

¹⁹³⁰ W-116, P550, p. 3 (under seal); W-107, 12 Mar 2007, T. 3508, 3545. *See also supra*, para. 32.

¹⁹³¹ W-107, 12 Mar 2007, T. 3509.

¹⁹³² W-107, 12 Mar 2007, T. 3509, 3513 – 3514, 3545, 3546.

¹⁹³³ W-107, 12 Mar 2007, T. 3509, 3515, 3523 – 3524.

¹⁹³⁴ W-107, 12 Mar 2007, T. 3514 – 3515.

¹⁹³⁵ W-107, 12 Mar 2007, T. 3515.

¹⁹³⁶ W-107, 12 Mar 2007, T. 3522; D115, Statement by W-107, dated 12 March 1997 (“Statement by W-107”), p. 2 (under seal).

¹⁹³⁷ W-107, 12 Mar 2007, T. 3522 – 3523.

¹⁹³⁸ W-107, 12 Mar 2007, T. 3522.

testified that it was the TO which was attached to the municipal centre, where she sometimes went to deliver letters.¹⁹³⁹

543. During the day of 16 June 1995, there was sporadic shooting and sniping in Alipašino Polje.¹⁹⁴⁰ The Defence submitted that the incident took place on the day the ABiH launched “an offensive on all fronts against the SRK.”¹⁹⁴¹

544. Between 1520 and 1530 hours, W-107 heard a sound “like an aeroplane flying through the room.”¹⁹⁴² The sound was “loud and strong.”¹⁹⁴³ Moments later, an explosion occurred approximately 10 to 15 metres from the local community centre.¹⁹⁴⁴ According to W-107, the bomb fell in the meadow on the edge of an asphalt path next to one of the entrances to the local commune centre.¹⁹⁴⁵ The entrance was at the backside of the lower of two high-rise buildings.¹⁹⁴⁶

545. As a result of the explosion, everyone in the room was thrown into the air and to different corners of the room.¹⁹⁴⁷ There was debris everywhere.¹⁹⁴⁸ W-107 fell onto a large table and then against the wall, a distance of approximately ten metres.¹⁹⁴⁹ She had scratches on the right side of her body and was “all swollen.”¹⁹⁵⁰ Afterwards, she felt “some pain” in her liver and lungs and a buzzing noise in her ears for about one month.¹⁹⁵¹ She could not hear properly for about one year and suffered from headaches after the incident.¹⁹⁵² In total, seven people were slightly injured.¹⁹⁵³

546. Immediately after the blast, the injured people were taken by civil defence workers to a shelter, which was located approximately ten metres around the corner from the local commune centre.¹⁹⁵⁴ W-107 stayed in the shelter for three to five days.¹⁹⁵⁵ W-107 testified that all she recalled

¹⁹³⁹ W-107, 12 Mar 2007, T. 3522, 3524. The Trial Chamber notes that the municipal centre of the TO was not identical to the local commune centre.

¹⁹⁴⁰ D116, Statement by W-107, p. 2 (under seal).

¹⁹⁴¹ Defence Final Brief, para. 206.

¹⁹⁴² W-107, 12 Mar 2007, T. 3513, 3516; D116, Statement by W-107, p. 2 (under seal).

¹⁹⁴³ D116, Statement by W-107, p. 2 (under seal).

¹⁹⁴⁴ W-116, 18 Apr 2007, T. 4645, P550, p. 3 (under seal); W-107, 12 Mar 2007, T. 3513, 3514; Berko Zečević, 23 Apr 2007, T. 4960 – 4961.

¹⁹⁴⁵ W-107, 12 Mar 2007, T. 3519, 3535; P354, Photograph marked by W-107.

¹⁹⁴⁶ W-107, 12 Mar 2007, T. 3538, 3543; P354, Photograph marked by W-107.

¹⁹⁴⁷ W-107, 12 Mar 2007, T. 3513, 3516.

¹⁹⁴⁸ W-107, 12 Mar 2007, T. 3517.

¹⁹⁴⁹ D116, Statement by W-107, p. 2 (under seal).

¹⁹⁵⁰ W-107, 12 Mar 2007, T. 3516.

¹⁹⁵¹ D115, Statement by W-107, p. 2 (under seal).

¹⁹⁵² D116, Statement by W-107, p. 2 (under seal).

¹⁹⁵³ W-116, 18 Apr 2007, T. 4645; P567, Official note, dated 16 June 1995, p. 1 (under seal); P568, On-site investigation report, dated 26 June 1995, p. 1 (under seal).

¹⁹⁵⁴ W-107, 12 Mar 2007, T. 3517.

¹⁹⁵⁵ W-107, 12 Mar 2007, T. 3516.

was the screaming and moaning of many people around her in the shelter, among them children and small babies.¹⁹⁵⁶

547. The blast destroyed the room of the local commune centre completely and only the exterior walls remained.¹⁹⁵⁷ “Substantial material damage” was inflicted on the surrounding buildings.¹⁹⁵⁸ Windows and balconies were damaged.¹⁹⁵⁹ According to a witness, if a projectile of such a devastating and destructive power had hit the building directly, it would have demolished it completely.¹⁹⁶⁰

548. Due to the heavy shelling, BiH police were only able to investigate the incident ten days later, on 26 June 1995.¹⁹⁶¹ According to the investigative team’s report, the scene of the incident had been altered.¹⁹⁶² In its Final Brief, the Defence submitted that this delay in carrying out the investigation “is why everything in the Bosnian police report stems from the policeman’s imagination.”¹⁹⁶³

549. The official note states that the explosion caused a crater 1100 centimetres long, 780 centimetres wide and approximately 250 centimetres deep.¹⁹⁶⁴ W-116 testified that the “huge funnel-shaped crater” pointed in the direction of Lukavica, which is situated south-east from Alipašino Polje.¹⁹⁶⁵ The official note on the incident stated that the modified air bomb was “fired probably from the aggressor’s positions in or near Lukavica.”¹⁹⁶⁶ In response to questions by the Defence, W-107 said that the area of Mojmiro Hill is located between Alipašino Polje and Lukavica.¹⁹⁶⁷ That area was occupied primarily by the ABiH.¹⁹⁶⁸

550. However, the KDZ report on the on-site investigation stated that the projectile, “probably a modified air bomb with four inbuilt rocket engines”, “came from the direction of the aggressor’s positions in the west.”¹⁹⁶⁹ In an earlier statement, W-116 identified the direction from which the bomb had come as the west, although, as noted above, W-116 testified that the direction was south-

¹⁹⁵⁶ W-107, 12 Mar 2007, T. 3516 – 3517.

¹⁹⁵⁷ W-107, 12 Mar 2007, T. 3517; D116, Statement by W-107, p. 2 (under seal).

¹⁹⁵⁸ W-116, 18 Apr 2007, T. 4645; W-116, P550, p. 3 (under seal).

¹⁹⁵⁹ D116, Statement by W-107, p. 3 (under seal).

¹⁹⁶⁰ W-116, 18 Apr 2007, T. 4647.

¹⁹⁶¹ W-116, 18 Apr 2007, T. 4674 – 4675; P567, Official note, p. 1 (under seal), also tendered as P353.

¹⁹⁶² P567, Official note, p. 1 (under seal).

¹⁹⁶³ Defence Final Brief, para. 206.

¹⁹⁶⁴ P567, Official note, p. 1 (under seal); P568, On-site investigation report, p. 1 (under seal); W-116, P550, p. 3 (under seal); The Trial Chamber notes that the date on the first page of the report says 16 June 1995. However the content of the report indicates that it was written on or after 26 June 1995.

¹⁹⁶⁵ W-116, 18 Apr 2007, T. 4678; D167, Map marked by W-116.

¹⁹⁶⁶ W-116, 18 Apr 2007, T. 4678; P567, Official note, p. 1 (under seal).

¹⁹⁶⁷ W-107, 12 Mar 2007, T. 3540.

¹⁹⁶⁸ See *supra*, paras 121 - 122.

¹⁹⁶⁹ P568, On-site investigation report, p. 1 (under seal).

east. In his statement, W-116 noted that ballistics experts had also concluded that the projectile came from the west.¹⁹⁷⁰ Berko Zečević agreed with this conclusion, on the basis of his analysis of the incident.¹⁹⁷¹ He determined that the approximate range from where the projectile came was 5,000 metres, the broader area of Butila.¹⁹⁷²

Findings

551. The Trial Chamber notes W-107's testimony that she heard the sound of an aeroplane before the explosion and the evidence of the extensive damage caused to the area around the impact site. Furthermore, the BiH police and Berko Zečević determined that the projectile was a modified air bomb. W-116's testimony and the BiH police on-site investigation report show that the explosion of the projectile injured seven civilians, including W-107. W-107 suffered serious injuries. On the basis of the evidence, the Trial Chamber finds that the projectile that exploded was a modified air bomb and that the explosion injured seven people. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

552. With regard to the direction of fire, the Trial Chamber notes that both areas identified by the BiH police and Berko Zečević, to the south-east and to the west of the incident site, were, in any event, occupied by the SRK. The Defence elicited evidence in cross-examination that the area of Mojmiro Hill, which was occupied primarily by the ABiH, lies between the point of impact and the south-easterly direction, which one witness testified was the origin of fire. No evidence was led by the Defence that the modified air bomb came from a position under the control of the ABiH. On the basis of the evidence in its totality, in particular, Berko Zečević's evidence that the projectile was launched from an approximate range of 5,000 metres, and that, in any event, the areas identified by the BiH police and Berko Zečević were both occupied by the SRK, the Trial Chamber is satisfied that this modified air bomb was fired from a position under the control of the SRK and that it was launched by members of the SRK.

553. The Trial Chamber recalls that it already rejected the Defence submission relating to the intensity of the conflict on 16 June 1995.

¹⁹⁷⁰ W-116, P550, p. 3 (under seal); P569, dated 26 June 1995 ("On-site sketch"), p. 2 (under seal).

¹⁹⁷¹ Berko Zečević, 20 Apr 2007, T. 4858 – 4859. In establishing the minimum angle at which the modified air bomb was fired, Berko Zečević considered the conditions of the surroundings and of the immediate neighbourhood, in particular the height of the buildings next to the impact site, *ibid.*

¹⁹⁷² Berko Zečević, 20 Apr 2007, T. 4859; P586, Expert report Berko Zečević, pp 137, 149 – 150. Additionally, Berko Zečević emphasised that modified air bomb launchers were mounted on trucks. Therefore, the launching site also

(ix) Shelling of Čobanija Street on 16 June 1995

554. At around 1710 hours on 16 June 1995, in the Centar Municipality, a projectile struck a boiler room on Čobanija Street, number 7, causing damage to the building in which the boiler was located and wounding a number of persons.¹⁹⁷³

555. According to Bogdan Vidović, a member of the KDZ, Čobanija Street was residential and the nearest military target was in Bistrik where UNPROFOR was stationed.¹⁹⁷⁴ He did not hear of the presence of any soldiers at Čobanija Street at the time the projectile struck.¹⁹⁷⁵

556. Bogdan Vidović testified that three people were injured in the explosion.¹⁹⁷⁶ Similarly, the BiH police investigation file named three people who were injured.¹⁹⁷⁷ The KDZ report on the incident stated that five people were injured, although the names of these people are not provided.¹⁹⁷⁸ Furthermore, the Trial Chamber received the medical records of only two persons, who lived at Čobanija Street, number 9a; one person was wounded in the right eye, while the other sustained an injury to her left ear, a broken arm and suffered from a headache and vomiting.¹⁹⁷⁹ The Trial Chamber notes that according to the photograph file it is not clear where the victims were when they were wounded.¹⁹⁸⁰ However, these two people were mentioned in the BiH police investigation file.

557. Bogdan Vidović recalled that witnesses reported that they had heard a sound “like a lorry flying through the air.”¹⁹⁸¹ During the investigation, the scene was photographed and pieces of the projectile were collected for analysis. The BiH police investigators and the KDZ investigators determined that a FAB-250 air bomb had been used.¹⁹⁸² Berko Zečević confirmed in his report that the projectile had been a modified air bomb, filled with a fuel-air mixture.¹⁹⁸³

depends on the availability and accessibility of roads in the area. He took these factors into consideration in determining the possible position of firing, Berko Zečević, 20 Apr 2007, T. 4859.

¹⁹⁷³ P213, Investigation file, dated 17 June 1995, p. 1; P215, KDZ investigation file, dated 17 June 1995, p. 1; P216, Photographs; P217, Official report, 17 June 1995, p. 2.

¹⁹⁷⁴ P214, Map marked by Bogdan Vidović; Bogdan Vidović, 14 Feb 2007, T. 2087.

¹⁹⁷⁵ Bogdan Vidović, 14 Feb 2007, T. 2087.

¹⁹⁷⁶ Bogdan Vidović, 14 Feb 2007, T. 2085. In cross-examination, he confirmed this number of wounded, Bogdan Vidović, 14 Feb 2007, T. 2108.

¹⁹⁷⁷ P217, Official report, 17 June 1995, p. 1.

¹⁹⁷⁸ P215, KDZ investigation file. *See also*, P586, Expert report Berko Zečević, p. 139.

¹⁹⁷⁹ P218, Medical records, pp 2 – 3, 7 – 8.

¹⁹⁸⁰ P216, Photographs, p. 1.

¹⁹⁸¹ Bogdan Vidović, 14 Feb 2007, T. 2084.

¹⁹⁸² Bogdan Vidović, 14 Feb 2007, T. 2083; P213, Investigation file, p. 1; P215, KDZ investigation file, p. 2.

¹⁹⁸³ P586, Expert report Berko Zečević, p. 141.

558. The BiH police investigators concluded, based on the point of impact in the boiler room, that the modified air bomb came from a north-easterly direction.¹⁹⁸⁴ However, in a police report summarising all the investigations conducted on 16 June 1995 and the KDZ report, the direction indicated was north-west.¹⁹⁸⁵ According to Bogdan Vidović, this aggregate police report was drafted for police purposes and should reflect the content of the investigative reports for that day.¹⁹⁸⁶ He testified that if the modified air bomb had come from the north-west, it would have struck a different building.¹⁹⁸⁷ However, he acknowledged that the member of the bomb squad made a determination on the direction of fire.¹⁹⁸⁸

559. Based on his finding that the boiler room was the point of impact and the height of the building opposite that point, Berko Zečević determined a minimum angle of descent of approximately 25 degrees.¹⁹⁸⁹ This enabled him to look at the surrounding areas, at a distance that would allow for the calculated angle of descent. He found that the only broader area from which the modified air bomb could have been fired was the area around the compound of the Pretis Factory, to the north-west of Čobanija Street.¹⁹⁹⁰ In his report, he noted that this finding is further supported by the findings on the shelling of the UMC Oncology Department in Dositejeva Street, number 4, which was shelled on the same day.¹⁹⁹¹

Findings

560. On the basis of the evidence presented, the Trial Chamber finds that the projectile that exploded on Čobanija Street in the evening of 16 June 1995 was a modified air bomb. The Trial Chamber is also satisfied, on the basis of witness testimony, the BiH police and KDZ reports, and the medical records presented to it, that at least three civilians were injured, two of whom seriously, as a result of the explosion of the modified air bomb.

561. There is conflicting evidence regarding the direction of fire. The BiH police report and the testimony of Bogdan Vidović point to north-east as the direction from which the modified air bomb came. However, the KDZ and Berko Zečević concluded that it came from the north-west. The Trial

¹⁹⁸⁴ Bogdan Vidović, 14 Feb 2007, T. 2080, 2083, 2099; P213, Investigation file, p. 1; P221, Map marked by Bogdan Vidović. The Trial Chamber notes that the English translation of P213 lists north-west as the direction of fire. Bogdan Vidović, the interpreters in the courtroom and the Defence confirmed that this was a mistake in translation, Bogdan Vidović, 14 Feb 2007, T. 2080 – 2081, 2082.

¹⁹⁸⁵ P217, Official report, p. 2; P215, KDZ investigation file, p. 2.

¹⁹⁸⁶ Bogdan Vidović, 14 Feb 2007, T. 2097 – 2099, 2102.

¹⁹⁸⁷ Bogdan Vidović, 14 Feb 2007, T. 2098.

¹⁹⁸⁸ Bogdan Vidović, 14 Feb 2007, T. 2098. The Trial Chamber notes that the bomb squad member was a member of the KDZ, *see supra*, para. 175 and 180.

¹⁹⁸⁹ Berko Zečević, 20 Apr 2007, T. 4860 – 4861; P586, Expert report Berko Zečević, p. 141.

¹⁹⁹⁰ Berko Zečević, 20 Apr 2007, T. 4861; P586, Expert report Berko Zečević, pp 141 – 142.

Chamber recalls the range of a FAB-250 as 5,820 metres to 7,680 metres. With regard to this incident, and with reference to the 16 June 1995 shelling incident at the UMC Oncology Department in Dositejeva Street, number 4, Berko Zečević concluded that a modified air bomb fired from the Pretis Factory at a range of 5,800 metres could have hit Čobanija Street. The Trial Chamber is satisfied that at that range, and taking account of the possible range of a FAB-250, the origin of fire would have been outside the confrontation lines and within SRK-held territory, whether the modified air bomb was fired from an area north-east or north-west of Čobanija Street. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that the modified air bomb was launched by members of the SRK.

562. The Trial Chamber recalls that it already rejected the Defence submission about the intensity of the conflict on 16 June 1995.

(x) Shelling of a Water Distribution Point in Dobrinja on 18 June 1995

563. Some time during the armed conflict in Sarajevo, the Simon Bolivar School in Dobrinja burned down and was destroyed.¹⁹⁹² During the Indictment period, this previously destroyed building was used as a shelter for people gathering water from a concealed pump in an inner courtyard of the school.¹⁹⁹³ The location of the pump prevented anyone outside the school seeing the people waiting in line.¹⁹⁹⁴ A member of the civilian protection, an elderly man named Muharem, operated the pump when it was decided it was safe to do so.¹⁹⁹⁵

564. W-137, a police officer, testified that there were “no military facilities around or any military strongholds built near the school.”¹⁹⁹⁶ According to Luka Jović, the Simon Bolivar School in Dobrinja was “well-sheltered from all sides”.¹⁹⁹⁷ In cross-examination, W-137 agreed with the Defence that the Simon Bolivar School was approximately 400 to 500 metres from the confrontation lines between the ABiH and the VRS in Dobrinja.¹⁹⁹⁸ He testified that the school was not a particularly interesting target, because it was much lower than the surrounding buildings.¹⁹⁹⁹

¹⁹⁹¹ P586, Expert report Berko Zečević, pp 142 – 143. *See also supra*, Section II.E.6(b)(vii), Shelling of the UMC and Oncology Department, Dositejeva, on 16 June 1995.

¹⁹⁹² W-137, 19 Feb 2007, T. 2460, 20 Feb 2007, T. 2501; Azra Šišić, 27 Feb 2007, T. 2836, 2837.

¹⁹⁹³ W-137, 19 Feb 2007, T. 2459, 2464, 2482; Azra Šišić, 27 Feb 2007, T. 2837; P258, Photographs, p. 1.

¹⁹⁹⁴ W-137, 19 Feb 2007, T. 2482; Azra Šišić, 27 Feb 2007, T. 2855.

¹⁹⁹⁵ Azra Šišić, 27 Feb 2007, T. 2836, 2849 – 2850.

¹⁹⁹⁶ W-137, 19 Feb 2007, T. 2460. *See also* P259, Criminal investigation file, dated 19 June 1995, p. 3 (under seal).

¹⁹⁹⁷ Luka Jović, 14 June 2007, T. 6703, D235, Map marked by Luka Jović. He testified that there were bunkers in that school and a family house near that school where the ABiH entered, and there were some containers used by construction workers from Slovenia, and used to construct a bunker full of bags of soil, *ibid.* *See also* P333, Photograph marked by Ismet Hadžić.

¹⁹⁹⁸ W-137, 19 Feb 2007, T. 2483.

¹⁹⁹⁹ W-137, 19 Feb 2007, T. 2490.

Ismet Hadžić, Commander of the ABiH 155th Mountain Brigade, testified that there was no ABiH weapon or firing position on a roof of the building near the school.²⁰⁰⁰ However, he indicated the location where the command of the Brigade was based on a photograph, which shows that this building is approximately 200 metres away from the school.²⁰⁰¹ Ismet Hadžić further testified that on 18 June 1995, the focus of the military activity was at Treskavica and Igman, rather than at Dobrinja.²⁰⁰² Azra Šišić, resident of Dobrinja at the time of the shelling, testified that the morning itself had been quite peaceful.²⁰⁰³

565. In its Final Brief, the Defence submitted that the school was “on the first frontline in the middle of an ABiH offensive” and that on that day the police were present on the location of the explosion, which “was not common.”²⁰⁰⁴

566. In order to get to the pump inside the school, one had to cross the playground of the school and this area was covered by snipers.²⁰⁰⁵ Policemen warned people not to go to the water distribution point in groups, but, rather, go there one by one.²⁰⁰⁶ On 17 June 1995, there had been shelling in Dobrinja.²⁰⁰⁷ Until 18 June 1995, no one had been killed or injured at the pump.²⁰⁰⁸

567. On 18 June 1995, the residents of the neighbourhood were again warned not to go to the school as a group.²⁰⁰⁹ When Azra Šišić went there, approximately 50 persons were waiting to get water.²⁰¹⁰ This group consisted of mostly women and children, but also included some men; some lived in the same building as Azra Šišić.²⁰¹¹ About six persons were standing around the pump; others were waiting behind a wall.²⁰¹² Azra Šišić was waiting in line, talking to two people she knew, when a shell exploded near the pump.²⁰¹³ She testified that immediately after the explosion, “everything went black before my eyes.”²⁰¹⁴ One of the persons Azra Šišić had been speaking to was dead; Azra Šišić and the other person next to her were wounded.²⁰¹⁵ Azra Šišić was taken to the Dobrinja Hospital, which was near the school.²⁰¹⁶ According to W-137, the shell exploded ten

²⁰⁰⁰ Ismet Hadžić, 6 Mar 2007, T. 3268. The Trial Chamber notes that it was not provided with Ismet Hadžić’s rank.

²⁰⁰¹ P333, Photograph marked by Ismet Hadžić.

²⁰⁰² Ismet Hadžić, 6 Mar 2007, T. 3227.

²⁰⁰³ Azra Šišić, 27 Feb 2007, T. 2840.

²⁰⁰⁴ Defence Final Brief, para. 192.

²⁰⁰⁵ Azra Šišić, 27 Feb 2007, T. 2861.

²⁰⁰⁶ Azra Šišić, 27 Feb 2007, T. 2835 – 2836.

²⁰⁰⁷ Azra Šišić, 27 Feb 2007, T. 2834.

²⁰⁰⁸ Azra Šišić, 27 Feb 2007, T. 2840.

²⁰⁰⁹ Azra Šišić, 27 Feb 2007, T. 2835 – 2836, 2854.

²⁰¹⁰ Azra Šišić, 27 Feb 2007, T. 2835.

²⁰¹¹ Azra Šišić, 27 Feb 2007, T. 2835.

²⁰¹² Azra Šišić, 27 Feb 2007, T. 2838.

²⁰¹³ Azra Šišić, 27 Feb 2007, T. 2836, 2856.

²⁰¹⁴ Azra Šišić, 27 Feb 2007, T. 2856.

²⁰¹⁵ Azra Šišić, 27 Feb 2007, T. 2856.

²⁰¹⁶ Azra Šišić, 27 Feb 2007, T. 2842.

centimetres above the heads of several people.²⁰¹⁷ He recalled that the upper part of the bodies was injured because “the shrapnel rain virtually fell on the people there.”²⁰¹⁸

568. A BiH police report shows that the shell exploded at about 1140 hours.²⁰¹⁹ An investigative team arrived at the scene approximately one hour later; in the meantime, the scene was secured by two members of the local police station.²⁰²⁰ The investigative team found a crater on the left wall, at a height of around 3.2 metres to four metres, and shrapnel marks on the wall.²⁰²¹ A tail-fin of a 120 mm mortar shell was found in the gym on the other side of the wall.²⁰²² Based on the traces on the wall and their calculations, the BiH police determined that the shell originated from the north-west “where the aggressor barracks in Nedžarići are located.”²⁰²³

569. In response to questions by the Defence, W-137 explained that the tail fin had not, as suggested by the Defence, bounced back on impact, but had continued as a result of the shell exploding on the edge of the wall, ending up in the gym.²⁰²⁴ The BiH police were thus unable to use the tail fin in determining the direction of fire; this determination was, therefore, made on the basis of the marks left on the wall.²⁰²⁵ W-137 confirmed that the media reported an incorrect direction of fire, saying that the media “often portray distorted pictures.”²⁰²⁶

570. An UNMO team arrived at the scene after the investigation of the BiH police had concluded.²⁰²⁷ In cross-examination, W-137 was confronted with a statement of Capt. Thomas Hansen, a Danish UNMO who had investigated this incident.²⁰²⁸ The statement showed that Capt. Hansen determined, on the basis of marks on the wall, that the shell had come from a westerly to north-westerly direction.²⁰²⁹ Capt. Hansen continued, “[w]hen you see the confrontation line, West to North-West, from the point of impact, it is almost impossible to determine whether the shell was fired by a BiH mortar or a BSA mortar. With the possible ranges for a 120 mm shell, it could have been fired from either side.”²⁰³⁰ W-137 commented that the statement of Capt. Hansen was

²⁰¹⁷ W-137, 19 Feb 2007, T. 2459.

²⁰¹⁸ W-137, 19 Feb 2007, T. 2459, 2465.

²⁰¹⁹ P259, Criminal investigation file, p. 2 (under seal).

²⁰²⁰ P259, Criminal investigation file, p. 1 (under seal); W-137, 20 Feb 2007, T. 2502.

²⁰²¹ W-137, 19 Feb 2007, T. 2464 – 2465; P259, Criminal investigation file, p. 2 (under seal); P257, Photographs marked by W-137; P589, Expert report by Richard Higgs, dated 21 December 2006 (“Second expert report Richard Higgs”), p. 17.

²⁰²² W-137, 19 Feb 2007, T. 2461, 2464; P259, Criminal investigation file, p. 2 (under seal). *See also* D72, Statement of Thomas Hansen, dated 8, 9 September 1992 (“Statement of Thomas Hansen”), p. 2.

²⁰²³ W-137, 19 Feb 2007, T. 2461; P259, Criminal investigation file, p. 2 (under seal).

²⁰²⁴ W-137, 19 Feb 2007, T. 2487, 2488.

²⁰²⁵ W-137, 19 Feb 2007, T. 2487.

²⁰²⁶ W-137, 20 Feb 2007, T. 2505 – 2506, 2509 – 2510.

²⁰²⁷ W-137, 20 Feb 2007, T. 2502; D72, Statement of Thomas Hansen, p. 2; D74, UNMO daily sitrep, dated 18 June 1995 (“UNMO daily sitrep, 18 June 1995”), pp 6 – 7.

²⁰²⁸ W-137, 19 Feb 2007, T. 2491 – 2493.

²⁰²⁹ D72, Statement of Thomas Hansen, p. 2.

²⁰³⁰ D72, Statement of Thomas Hansen, p. 3.

inaccurate and incompetent, because the specified direction was far too unspecific.²⁰³¹ When shown an UNMO report referring to the incident, W-137 repeated his opinion that what was claimed in the report was too unspecific to warrant attention.²⁰³² The Trial Chamber notes that the basis for the UNMO report would have been Capt. Hansen's investigation.

571. QMS Richard Higgs, the Prosecution expert on mortars, evaluated the evidence on this incident and commented that the BiH police had used a sound methodology during their investigation and agreed with the finding of the police on the direction of fire.²⁰³³ In his report, he emphasised that the bearing as determined by the BiH police could only be seen as an approximation of the direction of fire, but he testified that the identified location "was the most likely firing position."²⁰³⁴ In cross-examination, he reiterated that in view of the location of the school in relation to other buildings around it, the shell could have come from only one direction.²⁰³⁵ QMS Higgs testified that a calculation of the angle of descent was not possible, because there was no clear crater pattern as a result of the shell hitting the wall.²⁰³⁶

572. As a result of the shelling, seven people were killed and 11 or 12 were wounded, at least four of them seriously.²⁰³⁷ The bodies of the deceased were photographed in the morgue.²⁰³⁸ Capt. Hansen stated that on 18 June 1995, he saw seven bodies in the morgue, all with "fragment impacts" to the head.²⁰³⁹ W-137 testified that he believed that all victims were civilians.²⁰⁴⁰

573. The Defence challenged the allegation that seven people died in this explosion, arguing that the bodies of people had been removed from the scene and that the Bosnian Muslim media reported this as a shelling by the Bosnian Serbs, which was used by the BiH Government to request a lift of the weapons embargo.²⁰⁴¹ It also argued that the UNMO report showed that trace evidence had already been removed from the scene by the time the UNMO team arrived.²⁰⁴²

²⁰³¹ W-137, 19 Feb 2007, T. 2491.

²⁰³² W-137, 19 Feb 2007, T. 2496; D73, UNMO daily sitrep, 19 June 1995, p. 12.

²⁰³³ Richard Higgs, 24 Apr 2007, T. 5048; P589, Second expert report Richard Higgs, pp 16 – 17.

²⁰³⁴ Richard Higgs, 24 Apr 2007, T. 5048; P589, Second expert report Richard Higgs, pp 18 – 19.

²⁰³⁵ Richard Higgs, 24 Apr 2007, T. 5062, 5063 – 5064. *See also* Richard Higgs, 24 Apr 2007, T. 5047 – 5048.

²⁰³⁶ Richard Higgs, 24 Apr 2007, T. 5064.

²⁰³⁷ Azra Šišić, 27 Feb 2007, T. 2838 – 2840, 2841; P654, Death certificate for Bahrija Sijerčić; P655, Death certificate for Kenan Čizmić; P656, Death certificate for Izet Kadić; P657, Death certificate for Rešad Imamović; P658, Death certificate for Sulejman Mehmedović; P659, Death certificate for Safet Loncar; P660, Death certificate for Nura Loncar; P259, Criminal investigation file, pp 1, 2 – 3 (under seal); P258, Photographs, pp 5 – 10. W-137 authenticated the photographs, W-137, 19 Feb 2007, T. 2468; P651, P652, P653, Medical records. *See also* P16, UNPROFOR sitrep, dated 24 June 1995, p. 3; D74, UNMO daily sitrep, 18 June 1995, p. 6; D73, UNMO daily sitrep, 19 June 1995, p. 12.

²⁰³⁸ W-137, 20 Feb 2007, T. 2503; P258, Photographs, pp 5 – 10.

²⁰³⁹ D72, Statement of Thomas Hansen, p. 2.

²⁰⁴⁰ W-137, 19 Feb 2007, T. 2460.

²⁰⁴¹ W-137, 20 Feb 2007, T. 2500 – 2502, 2503 – 2506, 2509 – 2512.

²⁰⁴² W-137, 19 Feb 2007, T. 2495 – 2496; D73, UNMO daily sitrep, 19 June 1995, p. 12.

574. Ekrem Suljević, a member of the KDZ, testified that he took part in the investigation and confirmed the authenticity of the police report which was tendered into evidence by the Prosecution.²⁰⁴³ As to the removal of trace evidence, W-137 testified that blood marks and other material were usually removed once an investigation was over.²⁰⁴⁴ He testified that the removal of blood marks was done because “there was a huge shock” and that not removing those traces would have been “a huge offence to the honour of the victims themselves.”²⁰⁴⁵ He did not know who removed the traces of blood.²⁰⁴⁶ However, while on the scene, W-137 found “a lot of blood and body parts.”²⁰⁴⁷ The Trial Chamber notes that the photographs that were tendered into evidence show the presence of blood and body parts at the scene.²⁰⁴⁸ In addition, Capt. Hansen stated that when he arrived at the scene, blood and human parts were still there.²⁰⁴⁹ W-137 also disagreed that evidence had been removed from the scene, saying that the traces of the impact on the wall remained intact, thus allowing for a determination of the direction of fire to be made.²⁰⁵⁰ In response to the Defence suggestion that the shelling was used to request a lifting of the arms embargo, W-137 testified that the government official, Haris Silajdžić, often called for such a lifting so that the Bosnian Muslims would be able to defend themselves.²⁰⁵¹

575. Defence expert on mortars, Maj. Gen. Garović, concluded on the basis of the absence of shrapnel marks in the photographs of the scene, that there was no evidence of a mortar explosion at the school.²⁰⁵² The Defence questioned QMS Higgs about the absence of shrapnel marks in the photographs he used to determine the direction of fire.²⁰⁵³ QMS Higgs confirmed that the photographs did not show shrapnel marks on the ground.²⁰⁵⁴ He explained that this was possible because of the place of impact of the shell; since it hit the edge of a wall at an angle, “the blast would have gone beyond the surface of the wall” and “if there was going to be any shrapnel marks, they would probably have been on the ground around where the people were. But that’s a number of metres away from the point of burst, so their markings would have been obviously not as prominent as they are when a mortar round strikes the ground.”²⁰⁵⁵

²⁰⁴³ Ekrem Suljević, 5 Mar 2007, T. 3150, 3169, 3176 – 3177.

²⁰⁴⁴ W-137, 20 Feb 2007, T. 2500 – 2501.

²⁰⁴⁵ W-137, 20 Feb 2007, T. 2503.

²⁰⁴⁶ W-137, 20 Feb 2007, T. 2502.

²⁰⁴⁷ W-137, 20 Feb 2007, T. 2500.

²⁰⁴⁸ P258, Photographs, pp 4 – 5.

²⁰⁴⁹ D72, Statement by Thomas Hansen, p. 2.

²⁰⁵⁰ W-137, 20 Feb 2007, T. 2504.

²⁰⁵¹ W-137, 20 Feb 2007, T. 2509 – 2510.

²⁰⁵² Desimir Garović, 23 Aug 2007, T. 9151.

²⁰⁵³ Richard Higgs, 24 Apr 2007, T. 5096 – 5098.

²⁰⁵⁴ Richard Higgs, 24 Apr 2007, T. 5096.

²⁰⁵⁵ Richard Higgs, 24 Apr 2007, T. 5097 – 5098.

576. Azra Šišić testified that she thought this had been a deliberate attack against civilians.²⁰⁵⁶ In cross-examination, QMS Higgs testified that one would have to see the school in order to accurately fire onto the target.²⁰⁵⁷ He did not visit all possible firing positions in order to determine whether the school was visible from all of them.²⁰⁵⁸ Luka Jović, testifying for the Defence, said that the school was not visible from Dobrinja I or Dobrinja IV.²⁰⁵⁹ However, QMS Higgs testified that, irrespective of where the shell was fired from, “firing a single round onto a location where civilians are present is obviously being down [*sic*] to kill civilians, to either form terror in the minds of those people, or to achieve some other wish of a commander, which I really could only guess at what that could be.”²⁰⁶⁰ In response to further questions from the Defence, QMS Higgs testified that he had no evidence to support a finding that the shell came from ABiH-held territory.²⁰⁶¹ He also noted that he was aware that the confrontation lines were close to the school, but that he had no information indicating that there was heavy fighting going on at the time of the incident. Furthermore, if heavy fighting was going on, the sound of one mortar being fired would not have been easily distinguishable from it.²⁰⁶²

Findings

577. The Defence response to the Prosecution case on this incident is an allegation that the shelling was staged; in fact, the Defence, through Maj. Gen. Garović, argued that far from the explosion being the result of a mortar shell fired from some distance, the explosion was in fact static. The main, if not the only, point made by Maj. Gen. Garović in support of the Defence case is that in the photos there was an absence of shrapnel marks on the wall indicating that a mortar shell had not exploded. The Defence put its allegation that the shelling was staged to a number of witnesses, who all unequivocally rejected the possibility. The Trial Chamber finds credible the explanation for the absence of shrapnel offered by QMS Higgs. He explained that the absence was due to the fact that the shell hit the edge of a wall at an angle and that “the blast would have gone beyond the surface of the wall”. The Trial Chamber also finds credible the evidence of Azra Šišić, QMS Higgs and Capt. Hansen that the shell that exploded was a mortar shell. The Trial Chamber is satisfied, on the basis of the evidence, that on 18 June 1995, a mortar shell exploded on a wall near a water pump located in the Simon Bolivar School in Dobrinja.

²⁰⁵⁶ Azra Šišić, 27 Feb 2007, T. 2840.

²⁰⁵⁷ Richard Higgs, 24 Apr 2007, T. 5067.

²⁰⁵⁸ Richard Higgs, 24 Apr 2007, T. 5067. He did not know whether the civilians would have been visible to the person firing the shell, Richard Higgs, 24 Apr 2007, T. 5096.

²⁰⁵⁹ Luka Jović, 14 June 2007, T. 6703, 18 June 2007, T. 6735.

²⁰⁶⁰ Richard Higgs, 24 Apr 2007, T. 5072.

²⁰⁶¹ Richard Higgs, 24 Apr 2007, T. 5072.

²⁰⁶² Richard Higgs, 24 Apr 2007, T. 5095 – 5096, 5103.

578. The Trial Chamber finds, on the basis of the evidence, including witness testimony, death certificates and medical records and the BiH criminal investigation file, that seven civilians were killed and 11 or 12 civilians were injured, four seriously, by the explosion of the mortar shell.

579. On the basis of the evidence in its totality, the Trial Chamber is unable to conclude that this mortar shell was fired from the territory under the control of the SRK. The BiH police determined that the direction of fire to be north-west of the incident site, locating the origin of fire in the Nedarići barracks of the SRK, and this was confirmed by QMS Higgs. On the other hand, Capt. Hansen concluded that the shell came from a west to north-west direction. Capt. Hansen's point was that it was not possible to determine that the shell was fired by the ABiH or the SRK because the possible range of a 120 mm shell could place the origin in either ABiH or SRK-held territory. In the circumstances, therefore, the Trial Chamber is not satisfied that the mortar was launched from SRK-held territory.

(xi) Shelling of TV Building on 28 June 1995

580. The World Wide Television Company had its offices in the TV Building on Šeste Proleterske Brigade Street, number 4.²⁰⁶³ The TV Building has ten floors.²⁰⁶⁴ The second floor has its own roof and it is separated from another part of the building by a large atrium.²⁰⁶⁵ In the morning of 28 June 1995, Rialda Musaefendić, who was an assistant to the producer of the World Wide Television Company at the time, was in the office on the second floor of the TV Building.²⁰⁶⁶ Fadila Serdarević and Mehmed Kamber were also in the TV Building with about seven other people.²⁰⁶⁷ The UNMOs Lt. Col. Louis Fortin and Capt. Thomas Hansen were in the PTT Building.²⁰⁶⁸ John Jordan was in Čengiće Vila.²⁰⁶⁹

581. Lt. Col. Fortin stated that on 28 June 1995 there was heavy fire around the city.²⁰⁷⁰ The Trial Chamber received evidence that the ABiH was engaged in an attack against the Bosnian Serbs in Stup and Nedarići that day, which started at 0830 hours.²⁰⁷¹ John Jordan stated that, up until the

²⁰⁶³ Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić to the ABiH police, dated 19 July 1995 (“Statement of Rialda Musaefendić”), p. 1; P135, Forensic report on the TV Building shelling, dated 17 July 1995 (“Forensic report”), p. 1; W-138, 1 Feb 27, T. 1440. The Trial Chamber notes that Šeste Proleterske Brigade Street is now known as Bulevar Meše Selimovića.

²⁰⁶⁴ Rialda Musaefendić, P295, p. 2.

²⁰⁶⁵ Rialda Musaefendić, P295, p. 2.

²⁰⁶⁶ Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1.

²⁰⁶⁷ Fadila Serdarević, P641, pp 5, 9; Mehmed Kamber, P645, p. 5.

²⁰⁶⁸ Thomas Hansen, 2 Apr 2007, T. 4334; Louis Fortin, P27, p. 14.

²⁰⁶⁹ John Jordan, P267, p. 8.

²⁰⁷⁰ Louis Fortin, P27, p. 14.

²⁰⁷¹ D183, UNPROFOR HQ sitrep, 1 July 1995; P45, UNPROFOR interoffice memo, dated 28 June 1995; Louis Fortin, P27, p. 14. *See also infra*, para. 787.

explosion at the TV Building, it had been relatively quiet that day, “with a mortar here and there”.²⁰⁷²

582. Evidence was led regarding the status of the TV Building and the area around it. John Jordan did not hear any outgoing fire from the area.²⁰⁷³ Several witnesses testified that there was no military target or activity, nor any ABiH mortars, tanks or military hardware, inside or around the TV Building.²⁰⁷⁴ Fadila Serdarević, who was in the TV Building, stated that she was not a soldier, that she never wore a uniform and that she did not see any soldiers around the TV Building.²⁰⁷⁵

583. However, Lt. Col. Fortin testified that there were ABiH mortars in the vicinity, in a field 500 metres north of and behind the TV Building.²⁰⁷⁶ He thought that the ABiH mortars could not be seen.²⁰⁷⁷ During cross-examination, he agreed that the ABiH placed heavy weapons close to UNPROFOR positions.²⁰⁷⁸ He also agreed with the Defence that there were densely-populated areas around mortar positions and that, by placing mortars there, one would “run into the problem of collateral damage”.²⁰⁷⁹ However, Lt. Col. Fortin also believed that the ABiH moved its weapons a lot in the course of their June offensive, and that the Bosnian Serb retaliations were usually accurate.²⁰⁸⁰

584. At around 0900 hours on 28 June 1995, witnesses stated that they heard the sound of a very strong impact.²⁰⁸¹ Rialda Musaefendić stated that this was followed by a sound similar to “a thousand tiny feet walking on pebbles.”²⁰⁸² After they heard the sound of the impact, Rialda Musaefendić and Fadila Serdarević took cover but since there was no immediate explosion they got to their feet again.²⁰⁸³ Then there was “a huge detonation and flash”.²⁰⁸⁴ During cross examination, Rialda Musaefendić testified that, although it seemed to be a long time, she did not know how much time elapsed between the first impact sound and the detonation.²⁰⁸⁵

²⁰⁷² John Jordan, P267, p. 8.

²⁰⁷³ John Jordan, P267, p. 8.

²⁰⁷⁴ W-138, 31 Jan 2007, T. 1282; Rialda Musaefendić, 28 Feb 2007, T. 2911; W-28, P275, p. 2 (under seal); John Jordan, P267, p. 8. *See also* W-156, 27 Apr 2007, T. 5376, 5377 (closed session).

²⁰⁷⁵ Fadila Serdarević, P641, p. 9.

²⁰⁷⁶ Louis Fortin, 17 Jan 2007, T. 541, P27, p. 14.

²⁰⁷⁷ Louis Fortin, 17 Jan 2007, T. 551 – 552, 554 – 555.

²⁰⁷⁸ Louis Fortin, 17 Jan 2007, T. 535; P19, UNPROFOR sitrep, 2 July 1995, pp 3, 4.

²⁰⁷⁹ Louis Fortin, 17 Jan 2007, T. 541.

²⁰⁸⁰ Louis Fortin, 17 Jan 2007, T. 537, 552.

²⁰⁸¹ Rialda Musaefendić, 28 Feb 2007, T. 2910 – 2911, 2915 – 2916, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1; Mehmed Kamber, P645, p. 5; Fadila Serdarević, P641, p. 5; W-138, 30 Jan 2007, T. 1242.

²⁰⁸² Rialda Musaefendić, 28 Feb 2007, T. 2916, P295, p. 2.

²⁰⁸³ Rialda Musaefendić, P295, p. 2; Fadila Serdarević, P641, p. 5.

²⁰⁸⁴ Rialda Musaefendić, 28 Feb 2007, T. 2916, P295, p. 2; Fadila Serdarević, P641, p. 5.

²⁰⁸⁵ Rialda Musaefendić, 28 Feb 2007, T. 2918, 2923.

585. Fadila Serdarević felt a strong hit on her face and she fell on her back.²⁰⁸⁶ She felt an intense heat on her face and was temporarily blinded.²⁰⁸⁷ Rialda Musaefendić stated that when she looked at the windows, they, and everything that had been on the window sills, were flying towards her.²⁰⁸⁸ She recalled lying at the end of the office near the door, covered by debris and items of furniture.²⁰⁸⁹ She had hit her head and lost consciousness.²⁰⁹⁰ Another employee helped Rialda Musaefendić walk down the stairs.²⁰⁹¹ She saw a lot of damage and “quite an amount of blood everywhere” and heard the sound of people screaming.²⁰⁹² When Fadila Serdarević was able to see again with one eye, she saw people around her covered in blood, who were screaming and shouting and “looked like they had no faces”.²⁰⁹³ Fadila Serdarević started to walk to leave the building.²⁰⁹⁴ However, she panicked and could not walk anymore.²⁰⁹⁵ Fadila Serdarević lay down on the floor until a colleague carried her out.²⁰⁹⁶

586. W-138, a crime technician with the BiH police, testified that there were two other explosions that morning, at roughly the same time.²⁰⁹⁷ The TV Building was heavily damaged, all windows were broken and the ceiling collapsed.²⁰⁹⁸ Rialda Musaefendić stated that the office was “completely destroyed; “there were broken pieces of furniture lying everywhere”.²⁰⁹⁹ She saw a body lying on the floor, to her right, as she was exiting the building.²¹⁰⁰ She provided the Prosecution with a DVD showing footage of the incident, shot by Mladen Pehar, a cameraman for a German TV station, who was on the second floor of the TV Building, in the same corridor as Rialda Musaefendić, when the bomb hit.²¹⁰¹ The footage recorded the sound of the explosion and captured the first moments after the explosion and the immediate effects, and showed extensive damage to the interior and exterior of the TV Building, as well as injured persons.²¹⁰²

²⁰⁸⁶ Fadila Serdarević, P641, p. 5.

²⁰⁸⁷ Fadila Serdarević, P641, p. 5.

²⁰⁸⁸ Rialda Musaefendić, P295, p. 2.

²⁰⁸⁹ Rialda Musaefendić, P295, p. 2.

²⁰⁹⁰ Rialda Musaefendić, P295, p. 2.

²⁰⁹¹ Rialda Musaefendić, 28 Feb 2007, T. 2906.

²⁰⁹² Rialda Musaefendić, P295, p. 3.

²⁰⁹³ Fadila Serdarević, P641, p. 5.

²⁰⁹⁴ Fadila Serdarević, P641, p. 5.

²⁰⁹⁵ Fadila Serdarević, P641, p. 5.

²⁰⁹⁶ Fadila Serdarević, P641, p. 5.

²⁰⁹⁷ W-138, 30 Jan 2007, T. 1243.

²⁰⁹⁸ Mehmed Kamber, P645, p. 5; W-138, 30 Jan 2007, T. 1244; P133, Photograph file.

²⁰⁹⁹ Rialda Musaefendić, P295, p. 2; D92, Statement of Rialda Musaefendić, p. 1.

²¹⁰⁰ Rialda Musaefendić, 28 Feb 2007, T. 2911 – 2912.

²¹⁰¹ Rialda Musaefendić, 28 Feb 2007, T. 2914; D91, Video footage of the TV Building shelling.

²¹⁰² Rialda Musaefendić, 28 Feb 2007, T. 2915; D91, Video footage of the TV Building shelling.

587. As a result of the explosion, about 30 persons were wounded.²¹⁰³ Rialda Musaefendić and Fadila Serdarević were taken to Koševo hospital, along with all the other injured persons.²¹⁰⁴ Fadila Serdarević had cuts all over her face and neck and stayed in hospital for seven days.²¹⁰⁵ Rialda Musaefendić had a cut above her eye and her eyes were damaged by the dust and debris.²¹⁰⁶ A piece of shrapnel was embedded in her right cheek.²¹⁰⁷ Other material was also embedded in her head and body and she stated: “it was as if my whole body had been peppered by this material”.²¹⁰⁸ Rialda Musaefendić regularly returned to the hospital for treatment.²¹⁰⁹ During cross-examination, the Defence asked her why only one medical record attested to her injuries. Rialda Musaefendić replied that nobody worried about paperwork during the war and she had thus not collected medical certificates about her condition.²¹¹⁰

588. Rialda Musaefendić now has difficulty with her eyes; from time to time they get very sore, they are very sensitive and she always has to wear glasses.²¹¹¹ She still has material embedded in her body but she can “function relatively normally”.²¹¹² Mehmed Kamber received cuts and suffered a 40 per cent loss of hearing “during” the blast.²¹¹³

589. One person, a security officer named Ibrahim Šalaka, was killed.²¹¹⁴ W-138 testified that the investigative team found the body of Ibrahim Šalaka inside the TV Building. However, he testified that the evidence showed that Ibrahim Šalaka had died on the staircase and had then been brought inside from there.²¹¹⁵ W-138 testified that Ibrahim Šalaka had a multitude of wounds on the backside of his body. The autopsy later showed that the wounds were caused by concrete fragments, which had hit him in his back.²¹¹⁶

²¹⁰³ Louis Fortin, P27, p. 14; Rialda Musaefendić, P295, p. 3; P586, Expert report Berko Zečević, p. 144; P134, Police investigation file, p. 1; P135, Forensic report, p. 1; P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P60, P61, P62, P63, P65, P66, P67, P68, P69, P70, P126 (under seal), Medical records, respectively for Rialda Musaefendić, Mehmed Kamber, Fadila Serdarević, Ahmet Kulender, Zijad Jusufbegović, *ibid.*, Nadira Kulender, *ibid.*, Marija Bajramović, Mirko Lisov, Rajko Joksimović, Umihana Prguda, Alija Imamović, Džemal Terović, Sanela Bajramović, Asja Resavac, Feridoun Hemani, Hamed Elzayegh, Alica Čurtović, Jasmina Abaz.

²¹⁰⁴ Rialda Musaefendić, 28 Feb 2007, T. 2908 – 2909, P295, p. 3.

²¹⁰⁵ Fadila Serdarević, P641, p. 6.

²¹⁰⁶ Rialda Musaefendić, 28 Feb 2007, T. 2909, P295, pp 2 – 3; P49, Medical records, dated 17 July 1995.

²¹⁰⁷ Rialda Musaefendić, 28 Feb 2007, T. 2906 – 2907, P295, p. 3.

²¹⁰⁸ Rialda Musaefendić, 28 Feb 2007, T. 2925, P295, p. 3. Over the following few weeks this material began to come out of her body, *ibid.*

²¹⁰⁹ Rialda Musaefendić, P295, p. 3.

²¹¹⁰ Rialda Musaefendić, 28 Feb 2007, T. 2926; P49, Medical records, 17 July 1995.

²¹¹¹ Rialda Musaefendić, P295, p. 3.

²¹¹² Rialda Musaefendić, P295, p. 3.

²¹¹³ Mehmed Kamber, P645, p. 5.

²¹¹⁴ W-138, 31 Jan 2007, T. 1274, 1275; Rialda Musaefendić, P295, p. 3; D33, Statement of W-138, p. 2 (under seal); P586, Expert report Berko Zečević, p. 144; P134, BiH police investigation file on the TV Building shelling, dated 28 June 1995 (“Police investigation file”), pp 1, 3; P135, Forensic report, p. 1; P126, Autopsy report of Ibrahim Šalaka, dated 29 June 1995.

²¹¹⁵ W-138, 31 Jan 2007, T. 1274 – 1275; P132, Blueprint sketch marked by W-138.

²¹¹⁶ W-138, 31 Jan 2007, T. 1276; P133, Photograph file, pp 8, 10.

590. The Defence questioned W-138 extensively on his investigation into the death of Ibrahim Šakala. During cross examination, the Defence put to W-138 that he had planted the body inside the building and that he had smeared the blood on the staircase, all of which the witness denied.²¹¹⁷ The Defence also confronted W-138 with a prior statement, in which Ibrahim Šakala is said to have been at the northern side of the atrium and to have run across it, to the staircase, immediately after the projectile ricocheted.²¹¹⁸ W-138 stated that he had given this statement eleven years after the incident and that he had added details, which he had heard from witnesses later; he denied the allegation of the Defence that he was lying.²¹¹⁹ W-138 also denied the Defence allegations that he had staged the incident and the death of Ibrahim Šakala and that he had thereby committed a war crime and was obstructing justice and misleading the court.²¹²⁰

591. The Defence also questioned Rialda Musafendić on the possibility of the body of Ibrahim Šakala being planted. In response, she testified that there were about 12 persons in her office before the bomb hit the building and that it would have been impossible to bring a body into the room without being noticed and stopped because of the presence of numerous local and foreign journalists and the security monitoring of the building.²¹²¹

592. After the explosion, word reached the Novi Grad BiH police station that an explosion had occurred and a team headed by an investigative judge, and including KDZ experts, was set up.²¹²² In addition, Berko Zečević, together with a ballistics and an explosives expert, carried out an independent investigation upon the request of the investigative judge.²¹²³ Berko Zečević and his colleagues arrived on site about one hour to one hour and a half after the explosion.²¹²⁴ Berko Zečević went to the TV Building first and then was called to a nearby site where another projectile had just landed; he stayed there for about 15 to 20 minutes and returned to the TV Building, where he stayed until 1700 hours.²¹²⁵ Berko Zečević did not see any UNMOs at the TV Building but he thought they could have come when he was at the other explosion site.²¹²⁶

593. Capt. Hansen, who was summoned by the Trial Chamber as a court witness, testified that he and another UNMO went to the TV Building. Efforts by the Trial Chamber to contact the other

²¹¹⁷ W-138, 1 Feb 2007, T. 1373 – 1374, 1378.

²¹¹⁸ W-138, 1 Feb 2007, T. 1375 – 1376; D33, Statement of W-138, p. 2 (under seal).

²¹¹⁹ W-138, 1 Feb 2007, T. 1376 – 1377.

²¹²⁰ W-138, 1 Feb 2007, T. 1377.

²¹²¹ Rialda Musafendić, 28 Feb 2007, T. 2912 – 2913.

²¹²² W-138, 30 Jan 2007, T. 1206 – 1207, 1242, 31 Jan 2007, T. 1269; W-28, P275, p. 2 (under seal); P134, Police investigation file, p. 1.

²¹²³ Berko Zečević, 20 Apr 2007, T. 4861 – 4862. They were assisted by police officers who took pictures for reporting purposes, *ibid.*

²¹²⁴ Berko Zečević, 20 Apr 2007, T. 4862.

²¹²⁵ Berko Zečević, 20 Apr 2007, T. 4869.

²¹²⁶ Berko Zečević, 20 Apr 2007, T. 4869.

UNMO in order to have him testify were unsuccessful. Capt. Hansen denied having been present during the police investigation, although his presence is reflected in the police report.²¹²⁷ Capt. Hansen and the other UNMO did not participate in the investigations because the BiH police and military did not allow them to do so. Shelling was still ongoing and they were taken to a room “for their safety”, from which they were free to leave if they wished.²¹²⁸ They waited there for about two hours before leaving.

594. The projectile landed in an inner courtyard of the TV Building and, initially, the investigators did not understand how the projectile had come to land at that location so they climbed on the roof to investigate.²¹²⁹ They found a ricochet mark on the roof, which led them to the second point of impact against the eastern wall of the courtyard.²¹³⁰ According to W-138, Ekrem Suljević and Berko Zečević, the projectile ricocheted from the roof of the TV Building, continuing its trajectory flying over Studio C. It hit a wall opposite Studio C, between the first and the second floor, from which it ricocheted again to finally land and explode right next to the eastern wall of Studio C.²¹³¹ W-138 stated that the second point of impact, where the projectile ricocheted for the second time, was identified because it caused burn marks on the wall, which were not present on other areas that were simply damaged by objects and debris flying.²¹³² W-138 added that the TV Building had not been targeted before.²¹³³ However, Martin Bell testified that the TV Building had been targeted throughout the war.²¹³⁴

595. Berko Zečević and the investigative team found that the projectile left a large mark on the roof of one metre by 1.5 metres by 0.2 metre deep, a larger opening on the exterior wall and interior wall of Studio C and a crater in the ground, up to 1.5 metres deep, 1.5 metres wide and three metres long.²¹³⁵ When he saw the damage on the TV Building, W-138 thought it could not have been caused by weapons with which he was experienced, such as mortar or artillery shells.²¹³⁶ In his report, Berko Zečević wrote that there was extensive damage where the projectile exploded, which showed no traces of a fragmentation effect, and looked like damage caused by a blast wave

²¹²⁷ Thomas Hansen, 2 Apr 2007, T. 4342; P134, Police investigation file, p. 1.

²¹²⁸ Thomas Hansen, 2 Apr 2007, T. 4339 – 4344.

²¹²⁹ W-138, 31 Jan 2007, T. 1269 – 1270.

²¹³⁰ W-138, 31 Jan 2007, T. 1269 – 1270.

²¹³¹ W-138, 30 Jan 2007, T. 1242, 1245 – 1246, 1252 – 1253, 1256 – 1257, 31 Jan 2007, T. 1269; Ekrem Suljević, P310, p. 2; P586, Expert report Berko Zečević, pp 144, 147, 148; Rialda Musacafendić, 28 Feb 2007, T. 2905, 2928; P136, Photograph marked by W-138.

²¹³² W-138, 31 Jan 2007, T. 1268 – 1269.

²¹³³ W-138, 31 Jan 2007, T. 1271.

²¹³⁴ Martin Bell, 27 Apr 2007, T. 5302.

²¹³⁵ P586, Expert report Berko Zečević, p. 144; P134, Police investigation file, p. 2; P135, Forensic report, p. 2; W-138, 30 Jan 2007, T. 1255 – 1256, 1267; P133, Photograph file, pp 4, 6.

²¹³⁶ W-138, 30 Jan 2007, T. 1245.

explosion.²¹³⁷ In his view, his conclusion that a type of air bomb with fuel-air explosive and two explosive charges detonated within a few seconds of each other was corroborated by witness statements that spoke of two explosions.²¹³⁸ The conclusions of the BiH police investigation also pointed to the use of this kind of explosive device.²¹³⁹

596. A total of 41 fragments were analysed by the KDZ, which determined that 38 of the fragments came from the air bomb; one fragment was found to have been part of “the carrier of the aerial bomb” and the last two fragments were found to have been part of a fuse, but one of those fragments “probably [did] not belong to the device which exploded.”²¹⁴⁰ Both Berko Zečević and the investigative team concluded that the projectile was most probably a high-impact 250 kilogram modified air bomb with fuel-air explosive, although its motors were not found.²¹⁴¹

597. A few days before handing his report to the investigative judge, Berko Zečević was invited to a meeting with someone from the Defence Ministry and two officers from the Security Service of the ABiH Main Staff.²¹⁴² They asked Berko Zečević to change his conclusion so as to state that the projectile was a TNT bomb because, according to Berko Zečević, these men were under the impression that a TNT bomb could cause more damage than a fuel-air bomb.²¹⁴³ He refused to change his report. He testified that the fact that he was asked to change his report did not cast any doubt on the quality of the police reports on this incident.²¹⁴⁴

598. Ekrem Suljević stated that, on the basis of information and experience he accumulated since the shelling, he could say that an air bomb, most probably a 250 kilogram bomb, was definitely used.²¹⁴⁵ On being asked by the Defence, Ekrem Suljević maintained his conclusion that the projectile was a modified air bomb despite not finding any rocket motors on the scene.²¹⁴⁶ He added later that he thought the projectile probably lost the engines in flight, and to him, this was an indication of the unreliable nature of the weapon.²¹⁴⁷ Also during cross-examination, the Defence presented Ekrem Suljević with a sketch of the projectile made by the UNMO who observed the

²¹³⁷ P586, Expert report Berko Zečević, pp 145, 148.

²¹³⁸ P586, Expert report Berko Zečević, pp 148, 149.

²¹³⁹ P134, Police investigation file, p. 3; P135, Forensic report, p. 3.

²¹⁴⁰ P135, Forensic report, pp 2 – 4. *See also* Rialda Musafendić, P295, p. 2.

²¹⁴¹ W-138, 30 Jan 2007, T. 1242, 1 Feb 2007, T. 1354; Ekrem Suljević, P310, p. 2; W-28, P275, p. 2 (under seal); P586, Expert report Berko Zečević, pp 145, 147; P135, Forensic report, pp 3, 4; W-46, 16 Mar 2007, T. 3846 (closed session).

²¹⁴² Berko Zečević, 20 Apr 2007, T. 4870 – 4871.

²¹⁴³ Berko Zečević, 20 Apr 2007, T. 4870 – 4871.

²¹⁴⁴ Berko Zečević, 20 Apr 2007, T. 4871 – 4872.

²¹⁴⁵ Ekrem Suljević, P310, p. 2.

²¹⁴⁶ Ekrem Suljević, 2 Mar 2007, T. 3123 – 3124.

²¹⁴⁷ Ekrem Suljević, 5 Mar 2007, T. 3175 – 3176.

incident from the PTT Building.²¹⁴⁸ The sketch depicts an air bomb, 20 centimetres in diameter and 60 centimetres in length, which Ekrem Suljević thought it was impossible given the extent of the damage he observed at the scene. He estimated that the diameter of the projectile had to be at least 40 centimetres.²¹⁴⁹ He also observed that the report mentioned a short, wide projectile, and this constitutes a discrepancy with the measurements given on the sketch.²¹⁵⁰

599. The Defence asked W-138 whether he was an expert in modified air bombs to which he replied that he had received training in ballistics that was sufficient to enable him to determine the type of projectile.²¹⁵¹ The Defence also put to W-138 that the investigators did not find any traces of rockets and that there was a possibility that the projectile dropped its motors during the flight.²¹⁵² W-138 replied that the investigation carried on for several days pursuant to a decision by the investigating judge but that he was only there on the day of the incident.²¹⁵³ On that day, he did not find the rockets, as is stated in the report, but he testified that it is possible that the rockets were found later by the investigators who continued to work on this incident.²¹⁵⁴ The Defence asked W-138 whether he or someone from his team had fired this rocket, in order to stage the incident and to mock justice, thereby misusing their power. W-138 answered that neither he, nor anyone from his team, had done that.²¹⁵⁵

600. Further evidence to support the finding of Berko Zečević on the type of warhead that exploded on the TV Building was provided by Bakir Nakaš, the Director of the State Hospital, where many of the victims were treated that day. The latter testified that some of the injuries treated were from shrapnel and debris from the building but most were from blast-shock.²¹⁵⁶ John Jordan and Martin Bell also recalled that the TV Building was hit by a modified air bomb.²¹⁵⁷ Rialda Musaefendić stated that she later learnt that the explosion was caused by a 250 kilogram air bomb that had an engine mounted on it.²¹⁵⁸

601. On the basis of the evidence at the scene, including the ricochet marks on the roof and the explosion site, the investigative team determined the direction of fire.²¹⁵⁹ The BiH police investigation file noted the azimuth as 288 degrees, that is, north-west of the incident site, in the

²¹⁴⁸ Ekrem Suljević, 5 Mar 2007, T. 3170; D103, UNMO report on shelling of TV building with sketch, dated 29 June 1995 (“UNMO report with sketch”).

²¹⁴⁹ Ekrem Suljević, 5 Mar 2007, T. 3170 – 3172; D103, UNMO report with sketch.

²¹⁵⁰ Ekrem Suljević, 5 Mar 2007, T. 3175.

²¹⁵¹ W-138, 1 Feb 2007, T. 1354 – 1355.

²¹⁵² W-138, 1 Feb 2007, T. 1367.

²¹⁵³ W-138, 1 Feb 2007, T. 1367.

²¹⁵⁴ W-138, 1 Feb 2007, T. 1367.

²¹⁵⁵ W-138, 1 Feb 2007, T. 1367 – 1368, 1371 – 1372, 1372 – 1373.

²¹⁵⁶ Bakir Nakaš, 29 Jan 2007, T. 1107.

²¹⁵⁷ Martin Bell, 26 Apr 2007, T. 5263; John Jordan, P267, p. 8.

²¹⁵⁸ Rialda Musaefendić, P295, p. 3.

area of Rajlovac, “where the aggressor was located.”²¹⁶⁰ According to W-28, the on-site ballistics expert, the bomb came from 288 degrees west.²¹⁶¹ The KDZ forensic report noted the azimuth was 280 degrees, plus or minus ten degrees.²¹⁶²

602. Berko Zečević also concluded that the modified air bomb had come from a direction of 280 degrees, plus or minus ten degrees, at an angle of descent of 25 degrees and from a minimum distance of 5,800 metres. He placed the launch point in the wider area between Doglodi and, the more distant, Butila, which, the Trial Chamber notes, is north-west of the TV Building.²¹⁶³ He stated that the most important factor in establishing these figures was the impact traces on the roof.²¹⁶⁴ According to Berko Zečević, these traces would have been very different had the bomb been launched from a distance of one kilometre.²¹⁶⁵

603. W-28 stated that he was sure the bomb came from enemy positions because there was another report from the Stup police station, a subdivision of the BiH Ilidža police station, which recorded that the rockets fired on and around 28 June 1995 were fired from “enemy positions.”²¹⁶⁶ W-28 did not see the report, but he knew it had been sent to the BiH Department of Genocide.²¹⁶⁷

604. Ekrem Suljević stated that the direction of fire was confirmed by eyewitnesses.²¹⁶⁸ Rialda Musaefendić testified that she was told that others had seen the bomb before it hit the TV Building and that it appeared to come from the direction of Ilidža, which she stated, lay to the west of the TV Building and was held by the SRK throughout the war.²¹⁶⁹

605. Ekrem Suljević thought that the TV Building had been deliberately targeted, despite the known inaccuracy of the aircraft bombs, because a day later another aircraft bomb was fired and it landed about 100 metres away from the same building, an event confirmed by Mehmed Kamber.²¹⁷⁰

606. Lt. Col. Per Anton Brennskag, at the time an UNMO in the Pofalići UNMO team, saw the incident from OP-4, in Vitkovac.²¹⁷¹ He testified to seeing the bomb being launched from the area

²¹⁵⁹ W-138, 30 Jan 2007, T. 1245, 31 Jan 2007, T. 1282 – 1283, 1321; Ekrem Suljević, P310, p. 2.

²¹⁶⁰ P134, Police investigation file, p. 3.

²¹⁶¹ W-28, P275, p. 2 (under seal).

²¹⁶² P135, Forensic report, p. 3.

²¹⁶³ Berko Zečević, 20 Apr 2007, T. 4872, 23 Apr 2007, T. 4969; P586, Expert report Berko Zečević, pp 145, 147, 149, 150.

²¹⁶⁴ Berko Zečević, 20 Apr 2007, T. 4872.

²¹⁶⁵ Berko Zečević, 20 Apr 2007, T. 4873 – 4876.

²¹⁶⁶ W-28, P275, p. 2 (under seal). The Trial Chamber notes that it did not receive this Ilidža police station report.

²¹⁶⁷ W-28, P275, p. 2 (under seal).

²¹⁶⁸ Ekrem Suljević, P310, p. 2.

²¹⁶⁹ Rialda Musaefendić, 28 Feb 2007, T. 2928 – 2929, P295, p. 3.

²¹⁷⁰ Ekrem Suljević, P310, p. 3; Mehmed Kamber, P645, p. 5.

²¹⁷¹ Per Anton Brennskag, 8 Mar 2007, T. 3452, 3458 – 3459; P348, Map marked by Per Anton Brennskag.

of Ilidža, a SRK-held area, a straight smoke trail and, finally, an impact on the TV Building.²¹⁷² He specified that the smoke trail did not go all the way to the TV Building.²¹⁷³ During his testimony, Lt. Col Brennskag was shown a report on the incident written by Capt. Hansen, which stated that the UNMOs at OP-4 were taking cover at the time of the incident and therefore could not provide information about it.²¹⁷⁴ Lt. Col. Brennskag denied having taken cover during the incident and testified that he never saw Capt. Hansen at OP-4.²¹⁷⁵ He testified that he reported his sighting orally, although he did not remember to whom.²¹⁷⁶

607. The Defence submission was that the origin of fire was ABiH-held territory.²¹⁷⁷ The Defence presented several witnesses with a report and a statement of UNMO Capt. Hansen, according to which another UNMO said that he saw the projectile being fired from ABiH-held territory. The other UNMO reported that the launch site was about 1,800 metres from the nearest confrontation line, and that the projectile flew over the parking lot of the PTT Building.²¹⁷⁸ During his testimony before the Trial Chamber, Capt. Hansen confirmed he had not seen the incident himself; rather, the other UNMO came to the PTT Building and reported to him what he had seen, and indicated to Capt. Hansen the exact position from the place where the bomb was launched, and he included this location in his report.²¹⁷⁹ Lt. Col. Brennskag testified that if the modified air bomb had been launched from the location indicated by Capt. Hansen, it would have been launched nearly horizontally; Lt. Col. Brennskag witnessed the flight of four or five air bombs during the war and he never saw one being launched horizontally.²¹⁸⁰ He added that the projectile he witnessed coming from Ilidža could not have passed over the point identified by Capt. Hansen as being the origin of fire.²¹⁸¹

608. Capt. Hansen estimated that about 300 to 500 people were working in the PTT Building at the time, but the blinds were drawn on most of the building's windows.²¹⁸² He did not consider it unusual that no one else saw the projectile because people were sheltering from the ongoing

²¹⁷² Per Anton Brennskag, 8 Mar 2007, T. 3452, 3455, 3464, 3465, 3475; D114, P347, P348, Maps marked by Per Anton Brennskag.

²¹⁷³ Per Anton Brennskag, 8 Mar 2007, T. 3456, 3476.

²¹⁷⁴ Per Anton Brennskag, 8 Mar 2007, T. 3458 – 3459; P894, UNMO report by Capt. Hansen on shelling of TV Building, dated 29 June 1995 (“UNMO Capt. Hansen’s report”). The Trial Chamber notes that this report was also given an MFI number, D31 and placed under seal. The Trial Chamber will refer to the exhibit number P894.

²¹⁷⁵ Per Anton Brennskag, 8 Mar 2007, T. 3458 – 3459.

²¹⁷⁶ Per Anton Brennskag, 8 Mar 2007, T. 3481 – 3482.

²¹⁷⁷ See, e.g., Defence Final Brief, para. 207.

²¹⁷⁸ P894, UNMO Capt. Hansen’s report; D72, Statement of Thomas Hansen, p. 3. See, e.g., Thomas Knustad, 13 Feb 2007, T. 2031 – 2033.

²¹⁷⁹ Thomas Hansen, 2 Apr 2007, T. 4334 – 4335; P894, UNMO Capt. Hansen’s report.

²¹⁸⁰ Per Anton Brennskag, 8 Mar 2007, T. 3466.

²¹⁸¹ Per Anton Brennskag, 8 Mar 2007, T. 3464 – 3465.

²¹⁸² Thomas Hansen, 2 Apr 2007, T. 4339.

shelling.²¹⁸³ Capt. Hansen agreed that it was possible that the UNMO he spoke to made a mistake.²¹⁸⁴ However, he also testified that, at the time he wrote his report, he was aware of the implications it may have. He believed his conclusions to be correct and the UNMO's report to be credible.²¹⁸⁵ The same day, he went to the ABiH Liaison Officer in the PTT Building and had a conversation with him, which, according to Capt. Hansen, was misinterpreted and led to a conflict between him and the ABiH.²¹⁸⁶

609. Capt. Hansen did not encounter anyone else who saw the launching from ABiH-held territory or saw a launcher truck.²¹⁸⁷ Lt. Col. Butt did not remember that this report or the events described in it were ever discussed in any of his team-leader meetings, although they were supposed to be.²¹⁸⁸ W-137 disagreed with the description of the events recounted in Capt. Hansen's statement and testified that the language of the report and its content carried little weight because it was based on hearsay and did not "resemble any proper military report of expertise."²¹⁸⁹ Gen. Smith did not remember the TV Building incident specifically but stated that, had the ABiH fired at the TV Building, it would have been brought to his attention and he would have been surprised to hear it.²¹⁹⁰

610. Wg. Cdr. Andrew Knowles was summoned by the Trial Chamber as a court witness because the Trial Chamber, after reviewing documents, concluded that he could provide information relevant to the case. He testified that he worked in the PTT Building as Deputy Operations Officer, with Capt. Hansen, the Chief Operations Officer and ABiH liaison officers.²¹⁹¹ He recalled that on the morning of 28 June 1995, he was in the PTT car park with Capt. Hansen.²¹⁹² The Trial Chamber notes that Capt. Hansen testified that he was in the PTT Building at the time the incident occurred.²¹⁹³

611. Wg. Cdr. Knowles testified that he and Capt. Hansen heard the sound of a launch and then "caught sight of a low, flat, almost direct-fire type trajectory, slow moving that flew straight across to a front horizontally and hit the TV Building and a couple of buildings up."²¹⁹⁴ After that, Wg.

²¹⁸³ Thomas Hansen, 2 Apr 2007, T. 4361.

²¹⁸⁴ Thomas Hansen, 2 Apr 2007, T. 4348 – 4349.

²¹⁸⁵ Thomas Hansen, 2 Apr 2007, T. 4375 – 4376.

²¹⁸⁶ See P519, UNMO report, dated 5 July 1995.

²¹⁸⁷ Thomas Hansen, 2 Apr 2007, T. 4376.

²¹⁸⁸ Asam Butt, 15 Feb 2007, T. 2218 – 2219.

²¹⁸⁹ W-137, 20 Feb 2007, T. 2515 – 2516.

²¹⁹⁰ Rupert Smith, 7 Mar 2007, T. 3402 – 3404. See also, Rialda Musacfenđić, 28 Feb 2007, T. 2938 – 2939; Martin Bell, 27 Apr 2007, T. 5303, 5304 – 5305, 5306; W-156, 27 Apr 2007, T. 5344 – 5345 (closed session).

²¹⁹¹ Andrew Knowles, 25 Sept 2007, T. 9325.

²¹⁹² Andrew Knowles, 25 Sept 2007, T. 9326 – 9327, 9334, 9335, 9376, 9392; P517, Map of the area of the TV Building in Sarajevo; P518, Colour photo from upper parking lot of PTT Building.

²¹⁹³ Thomas Hansen, 2 Apr 2007, T. 4334.

²¹⁹⁴ Andrew Knowles, 25 Sept 2007, T. 9334 – 9335.

Cdr. Knowles testified, there was a detonation within seconds.²¹⁹⁵ However, he conceded the projectile could have, in fact, crossed over and landed behind the TV Building.²¹⁹⁶ He also accepted the possibility, suggested to him by the Prosecutor, that at the time he caught sight of the projectile, it was already in flight and therefore could have come from further away than he thought it had.²¹⁹⁷ Wg. Cdr. Knowles confirmed that he saw a launch signature consisting of a point of smoke on the ground, which would have corresponded to the launch point unless, by a coincidence, there was something else happening at that spot.²¹⁹⁸ According to Wg. Cdr. Knowles, a patrol was sent out to investigate the suspected launch site. However, no evidence of a launch was found at that location.²¹⁹⁹ He also accepted that, given that shelling was abundant in Sarajevo at that time, the smoke signature could have been “something else happening.”²²⁰⁰

612. When asked to assess what kind of projectile he saw, Wg. Cdr. Knowles testified that the projectile he saw was too big to be any kind of mortar or artillery shell.²²⁰¹ He stated:

“This projectile whatever it was some [*sic*], I would suggest [an] improvised type device, obviously being used in a method that it was not designed from. And wherever it was launched from, the initial launch would have provided it with its energy and then it seemed in a direct mode to be travelling horizontally under its own momentum until it impacted where it impacted. I do not recall a rocket motor being attached to this or if it had, it would have burnt out initially in the early phase of its flight and the rest was ballistic.”²²⁰²

613. When he saw the projectile in flight, it did not have a smoke trail. Wg. Cdr. Knowles testified that the projectile came from the north-west; he and Capt. Hansen tracked it all the way into the TV Building.²²⁰³ Wg. Cdr. Knowles testified that, in order to have come from the Ilidža area, the projectile would have had to fly over the PTT Building and therefore, unless it was in its terminal ballistic phase, dropping down, it could not have hit the TV Building without hitting something else in its path.²²⁰⁴

614. When confronted with the conclusions of the investigations and evidence pointing to the SRK launching the projectile on that day, Wg. Cdr. Knowles stated it was possible that what he had witnessed was a “secondary event”, a coincidental and simultaneous round coming from a different direction that may not have been the one which struck the TV Building.²²⁰⁵ However, he did not remember seeing any report of any other impact on the TV Building on that day or on the following

²¹⁹⁵ Andrew Knowles, 25 Sept 2007, T. 9376.

²¹⁹⁶ Andrew Knowles, 25 Sept 2007, T. 9376.

²¹⁹⁷ Andrew Knowles, 25 Sept 2007, T. 9389 – 9390.

²¹⁹⁸ Andrew Knowles, 25 Sept 2007, T. 9341 – 9342.

²¹⁹⁹ Andrew Knowles, 25 Sept 2007, T. 9339.

²²⁰⁰ Andrew Knowles, 25 Sept 2007, T. 9342.

²²⁰¹ Andrew Knowles, 25 Sept 2007, T. 9400.

²²⁰² Andrew Knowles, 25 Sept 2007, T. 9400 – 9401.

²²⁰³ Andrew Knowles, 25 Sept 2007, T. 9346 – 9347.

²²⁰⁴ Andrew Knowles, 25 Sept 2007, T. 9347 – 9348.

day.²²⁰⁶ He accepted that he could have been mistaken about the fact that he was with Capt. Hansen in the car park, but stood firm on his statements about the flight path which he witnessed.²²⁰⁷

615. The Trial Chamber also received evidence pertaining to this incident originating from the SRK. An SRK report on the situation at the front, signed by the Accused and dated 30 June 1995, stated:

“Our artillery forces are responding with precision to the Muslim artillery attacks. In one such response on 28 June they hit the BHRT[V], radio and television centre, the centre of media lies against the just struggle of the Serb people.”²²⁰⁸

Maj. Veljović was asked to comment on this document. He testified that it referred to artillery and not to modified air bombs.²²⁰⁹ Wg. Cdr. Knowles also accepted the proposition of the Defence that it was possible that the warring factions would have boasted about things that they never did in order to boost the morale of troops.²²¹⁰

616. The Trial Chamber also received evidence in the form of minutes of a meeting between liaison officers of UNPROFOR and SRK Ilidža Brigade. The document stated that the SRK officer:

“acknowledged that *Krema* rockets had been fired on the city of Sarajevo (about a dozen). This was psychological warfare, aimed at upsetting the Bosnian soldiers engaged on the Treskavica front who would be worried about the safety of their families in Sarajevo. He said that the Bosnian authorities tried to conceal the efficiency of these shots by keeping the press in the Television Building. In fact, two *Krema* rockets were launched on the Television Building. One of them hit it and consequently, according to Captain Novak, the journalists were able to report on the incident and the Bosnian soldiers were informed about the existence of these weapons called Terror.”²²¹¹

617. The Trial Chamber was presented with a protest letter sent by Col. Meille to the Accused, concerning, *inter alia*, the TV Building incident, which stated that the origin of fire was SRK-held territory and in which the Accused was urged to stop “these violations of humanitarian law”.²²¹² This letter was forwarded by Maj. Gen. Nicolai, who, in a cover letter, stated, “I write to you to protest most strongly about the recent and still continued indiscriminate and deliberate shelling of the residential places of the city of Sarajevo, which unfortunately results in casualties amongst innocent civilian population.”²²¹³ The Defence argued, in its Final Brief, that this shelling incident

²²⁰⁵ Andrew Knowles, 25 Sept 2007, T. 9363, 9397.

²²⁰⁶ Andrew Knowles, 25 Sept 2007, T. 9397 – 9398.

²²⁰⁷ Andrew Knowles, 25 Sept 2007, T. 9392, 9393, 9398.

²²⁰⁸ P42, P152, Report by the SRK commander, dated 30 June 1995.

²²⁰⁹ Stevan Veljović, 31 May 2007, T. 5920.

²²¹⁰ Andrew Knowles, 25 Sept 2007, T. 9395.

²²¹¹ P629, UNPROFOR meeting minutes, dated 9 July 1995. *See also*, W-156, 27 Apr 2007, T. 5329 – 5330 (closed session).

²²¹² P633, Protest letter to the SRK Commander, dated 30 June 1995 (under seal). The Trial Chamber notes that this letter is also P18. *See also* W-156, 27 Apr 2007, T. 5344 (closed session).

²²¹³ P103, Protest letter, dated 1 July 1995. *See also*, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 951.

was “instructive” with regard to the means at the Accused’s disposal to carry out investigations following the letters of protest sent to him by UNPROFOR.²²¹⁴

Findings

618. On the basis of the evidence, the Trial Chamber is satisfied that on 28 August 1995, a modified air bomb hit the TV Building and exploded. There was no real challenge by the Defence that it was a modified air bomb that hit the TV Building. In any event, the Trial Chamber is supported in its finding by testimony of several witnesses, and the reports of Berko Zečević and the BiH police.

619. The evidence shows that approximately 30 civilians were wounded, some seriously. The Defence challenged a number of Prosecution witnesses regarding the death of Ibrahim Šalaka, suggesting to them that his death was staged. All the witnesses rejected that suggestion. While Ibrahim Šalaka may have been moved inside the TV Building from the staircase on which he was killed, the Trial Chamber is satisfied on the basis of the evidence, including the BiH police reports and the autopsy report, that Ibrahim Šalaka, a civilian, was killed in the explosion.

620. The Defence challenged the Prosecution evidence on the origin of fire, focusing mainly on the report of Capt. Hansen. The latter testified that the modified air bomb was fired from ABiH-held territory. The Trial Chamber notes that the evidence recorded in the report is hearsay. Lt. Col. Brennskag, an eyewitness to the incident, was shown Capt. Hansen’s report and dismissed the possibility that the modified air bomb was fired from ABiH-held territory because he saw it being fired from Ilidža. W-137 also dismissed Capt. Hansen’s report, saying that its language and content carried little weight because it was based on hearsay and did not “resemble any proper military report of expertise.”

621. The Trial Chamber must also assess the evidence of Wg. Cdr. Knowles, who testified that he saw a projectile flying from ABiH-held territory. However, in the view of the Trial Chamber, he displayed considerable uncertainty as to whether this was the projectile that hit the TV Building. The Trial Chamber is bound to say that it found Wg. Cdr. Knowles’ evidence vague and full of caveats. In assessing the weight to be attached to Capt. Hansen’s evidence, as against the rest of the evidence, the Trial Chamber cannot ignore its hearsay character and that it stands alone as the evidence which positively seeks to identify ABiH territory as the origin of fire. On the other hand, the Trial Chamber has before it evidence of the SRK origin of the bomb that is first-hand from several witnesses, including Lt. Col. Brennskag and the reports of the BiH police, including the

²²¹⁴ Defence Final Brief, para. 207.

KDZ, and Berko Zečević. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

622. The most cogent evidence supporting the Prosecution case that the modified air bomb came from SRK-held territory is the report from the Accused, referred to in paragraph 615 above, which includes what is tantamount to an acknowledgement on his part that the SRK launched a bomb at the TV Building on 28 June 1995. The Trial Chamber attaches no weight to Wg. Cdr. Knowles' acceptance of the Defence proposition that warring factions would have boasted about things they never did in order to boost the morale of their troops.

623. In sum, the Trial Chamber is satisfied that the modified air bomb that hit the TV Building on 28 June 1995 was fired from the area around Ilidža, which, the evidence shows, was SRK-held territory and that it was launched by members of the SRK.

(xii) Shelling of Bunički Potok Street on 1 July 1995

624. Zejna Šljivo lived on Bunički Potok Street, number 233, in Hrasnica, at the foot of Mount Igman. In the evening of 1 July 1995, she was at home, in the kitchen, with her two daughters, Nefa and Jasmina, Jasmina's husband, Nedžad, and their four year old daughter Emira.²²¹⁵ At the same time, W-95 was in the garden of another house on Bunički Potok Street with about nine other persons.²²¹⁶ Fikreta Pačariz was in the basement or the ground floor of her home on Bunički Potok Street, with her husband, Hamo Pačariz, and their children.²²¹⁷

625. Col. Hussain Ijaz, an UNMO from Pakistan, was posted in Hrasnica at the time.²²¹⁸ He stated that he was sitting in the kitchen, on the second floor of the house where his team was stationed, while the rest of his team was sitting in the office, in an adjacent room.²²¹⁹

626. At around 2100 hours, the inhabitants of Bunički Potok Street in Hrasnica heard a noise, which, according to W-95, Col. Ijaz and Fikreta Pačariz, was similar to that of an aeroplane.²²²⁰ W-95, Col. Ijaz, Zejna Šljivo and Fikreta Pačariz then all heard a big explosion.²²²¹

²²¹⁵ Zejna Šljivo, P642, p. 5.

²²¹⁶ W-95, P520, p. 2 (under seal).

²²¹⁷ Fikreta Pačariz, P643, p. 9.

²²¹⁸ Hussain Ijaz, 27 Apr 2007, T. 5400. The Trial Chamber notes that this witness was a Major in the Pakistani Army at the time of the incident. For the purposes of this Judgement, the Trial Chamber will refer to this witness by his current rank.

²²¹⁹ Hussain Ijaz, 27 Apr 2007, T. 5413.

²²²⁰ Hussain Ijaz, 1 May 2007, T. 5430; Nefa Šljivo, 5 Apr 2007, T. 4512, P531, p. 2, P532, p. 2; W-95, P520, p. 2 (under seal); Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 9.

²²²¹ Hussain Ijaz, 27 Apr 2007, T. 5414; W-95, P520, p. 2 (under seal); Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 6.

627. A projectile hit Zejna Šljivo's garage, which was connected to her house, exploded, and the house collapsed around her.²²²² Her family was screaming and there was dust everywhere.²²²³ The family managed to get outside but Zejna Šljivo fell down and injured her forehead.²²²⁴ Nefa Šljivo received cuts on her back. While most of her family members received cuts to the face, her brother-in-law's wrist was broken.²²²⁵ Zejna Šljivo's other daughter, Jasmina, ran to get help and, when she came back, she said that "UNPROFOR soldiers" had been wounded in the blast.²²²⁶ Zejna Šljivo and her family went to the outpatients' clinic, and then to the Ćamil Marić War Hospital in Hrasnica, to receive treatment for their injuries.²²²⁷ At the hospital, Nefa Šljivo saw a number of her neighbours who had also been injured: one man with a severe head injury, one woman with "many scars" on her face and another with an injury to her shoulder.²²²⁸ According to Zejna Šljivo, during the time she was at the hospital, the shelling continued.²²²⁹

628. The window of the kitchen where Col. Ijaz was sitting came away from the wall and fell on him; he received injuries to his right shoulder and left leg.²²³⁰ A Bangladeshi UNMO was also injured.²²³¹ Col. Ijaz was later evacuated to the hospital in Hrasnica and then to a French hospital in Sarajevo.²²³²

629. W-95 saw roofing tiles and bricks being blasted away by the force of the explosion and she was thrown against the wall of the garage.²²³³ She received injuries to her left shoulder as a result of being hit by shrapnel, which doctors at the Ćamil Marić War Hospital in Hrasnica were unable to remove.²²³⁴ She recalled that a man named Kadić and a woman named Naza Pamuk were also injured and that many of the wounded were brought to that same hospital.²²³⁵

630. Fikreta Pačariz's home was heavily damaged and was no longer habitable.²²³⁶ Five or six surrounding houses were also damaged.²²³⁷ Fikreta Pačariz suffered cuts to her face, head and

²²²² Nefa Šljivo, 5 Apr 2007, T. 4508, T. 4511, P531, p. 2, P532, p. 2; Zejna Šljivo, P642, p. 5; Fikreta Pačariz, P643, p. 6. *See also* P603, Official report, dated 4 July 1995, pp 1, 3, which states that the bomb landed on Bunički Potok Street, 233. The Trial Chamber notes, however, that in P604, Forensic report by KDZ, dated 13 July 1995 ("Forensic report"), p. 1, and P586, Expert report Berko Zečević, p. 159, the impact site is said to be Bunički Potok Street, number 231.

²²²³ Nefa Šljivo, P532, p. 2.

²²²⁴ Zejna Šljivo, P642, p. 5.

²²²⁵ Nefa Šljivo, 5 Apr 2007, T. 4508, P532, p. 2; Zejna Šljivo, P642, p. 5.

²²²⁶ Zejna Šljivo, P642, p. 5.

²²²⁷ Zejna Šljivo, P642, p. 5; Nefa Šljivo, 5 Apr 2007, T. 4508, P532, p. 2.

²²²⁸ Nefa Šljivo, P532, p. 2.

²²²⁹ Zejna Šljivo, P642, p. 5.

²²³⁰ Hussain Ijaz, 27 Apr 2007, T. 5414 – 5415.

²²³¹ Hussain Ijaz, 27 Apr 2007, T. 5415.

²²³² Hussain Ijaz, 27 Apr 2007, T. 5416, 5418.

²²³³ W-95, P520, pp 2 – 3 (under seal).

²²³⁴ W-95, 2 Apr 2007, T. 4410 – 4411, P520, p. 3 (under seal).

²²³⁵ W-95, 2 Apr 2007, T. 4410, P520, p. 3 (under seal). According to W-95, there was not enough room for everyone to be treated indoors.

²²³⁶ Fikreta Pačariz, P643, pp 6, 10.

neck.²²³⁸ Her husband, Hamo Pačariž, and children were not hurt, although her husband and mother-in-law were in shock.²²³⁹ Her father-in-law, Duran Pačariž, was seriously injured.²²⁴⁰ Fikreta Pačariž and her father-in-law were taken to the Hrasnica Hospital, where they received treatment.²²⁴¹ Duran Pačariž died from a heart attack on 18 July 1995.²²⁴² According to Fikreta Pačariž, the injuries and the shock of the bombing accounted for his death.²²⁴³ Fikreta Pačariž continues to live with “psychological traumas”.²²⁴⁴ She also stated that many neighbours were injured in the explosion.²²⁴⁵ According to reports by the BiH police, two persons were seriously wounded and eleven others were slightly wounded in the explosion.²²⁴⁶

631. The BiH police was informed at approximately 2215 hours that an explosion had occurred at Bunički Potok Street, number 233, and that, at the same time, damage had been found on Alekse Šantića Street, number 50.²²⁴⁷ The latter house was located around 150 metres away from the site of the explosion on Bunički Potok Street.²²⁴⁸ On 2 July 1995, the investigative team went to Bunički Potok Street to investigate the explosion; a crater measuring 3.5 by 2.8 metres in diameter and 1.10 metres deep was found in front of the house.²²⁴⁹ Afterwards, the investigative team went to the house on Alekse Šantića Street, where it found fragments in a large crater, measuring 6.10 by 2.40 metres, in the garden.²²⁵⁰ One of the fragments found carried Cyrillic letters and numbers.²²⁵¹

632. The BiH police investigators determined that one projectile, with a concussion warhead, that is, a modified air bomb, impacted on Alekse Šantića Street, number 50, and ricocheted to hit Bunički Potok Street, number 233.²²⁵² The conclusion was that “the concussion warhead projectile

²²³⁷ Fikreta Pačariž, P643, pp 6, 9.

²²³⁸ Fikreta Pačariž, P643, pp 6, 9.

²²³⁹ Fikreta Pačariž, P643, pp 6, 9.

²²⁴⁰ Fikreta Pačariž, P643, pp 6, 9.

²²⁴¹ Fikreta Pačariž, P643, pp 6, 10.

²²⁴² Fikreta Pačariž, P643, p. 6.

²²⁴³ Fikreta Pačariž, P643, pp 6, 10.

²²⁴⁴ Fikreta Pačariž, P643, p 6, 10.

²²⁴⁵ Fikreta Pačariž, P643, pp 6, 9.

²²⁴⁶ P603, Official report, pp 1 – 3; P604, Forensic report, p. 1. Enes Kadić and Nedžad Bostandžić were seriously wounded, Kemal Mortuza, Husein Ijaz, Fikreta Pačariž, Duran Pačariž, Naza Pamuk, Hata Mulaosmanović, Emira Kadić, Zeina Šljivo, Nefa Šljivo, Emir Bostandžić and Jasmina Bostandžić were lightly injured. The BiH police also received reports from the hospital in Hrasnica regarding injuries sustained by certain individuals, *see* Vekaz Turković, 26 Apr 2007, T. 5208, 5227 – 5228; P603, Official report, p. 1.

²²⁴⁷ P603, Official report, p. 1.

²²⁴⁸ P603, Official report, p. 1.

²²⁴⁹ P603, Official report, pp 1 – 3.

²²⁵⁰ P603, Official report, p. 4.

²²⁵¹ P603, Official report, p. 4.

²²⁵² P603, Official report, p. 4; P604, Forensic report, p. 1. The Trial Chamber notes that this type of projectile belongs to the category of air bombs, *see supra*, Section II.B.2(b)(ii) Modified Air Bombs.

was most probably [...]. unfastened from the rest of the projectile there, that is, it got loose and landed and exploded about 150 metres away from the said house in Bunički Potok.”²²⁵³

633. Berko Zečević also concluded that the projectile that exploded on Bunički Potok Street was a modified air bomb.²²⁵⁴ In his report, Berko Zečević stated that, “[t]he damage and the direction of the blast wave effect point to the fact that the aircraft bomb had probably been charged with some kind of fuel-air explosive.”²²⁵⁵ However, Berko Zečević arrived at a different conclusion from the BiH police investigators; he concluded that two modified air bombs hit two locations that were close to one another in a relatively short space of time.²²⁵⁶ In court, Berko Zečević testified that he was able to calculate the direction and the angle of descent and concluded that “the[r]e were two separate cases and that the report saying that the rocket, after hitting the ground, deviated by 90 degrees and hit [the roof of a house] on Bunički Potok Street [was] absolutely not authentic” because it was impossible to manipulate the flight of an unguided projectile, and because the deviation of 90 degrees was too high to be considered a ricochet.²²⁵⁷ Furthermore, according to Berko Zečević, a warhead had a larger mass than rocket motors do and thus “[i]t isn’t logical that rocket motors are grounded and the warhead which has a larger mass should be found ahead of it.”²²⁵⁸ The Trial Chamber notes that during cross-examination, Vekaz Turković testified that while he had taken part in the investigation and worked on the report of the forensic on-site investigation, he had not signed it himself, and could not, therefore, attest to the accuracy of all the information it contained.²²⁵⁹ At the time of his appearance before the Trial Chamber, Vekaz Turković was aware of the conclusions reached by Berko Zečević and believed it possible that they were correct.²²⁶⁰

634. Fikreta Pačariz also stated that there were two bombs, the first of which did not explode, and the second of which exploded 15 minutes later on the garage near her house.²²⁶¹ Fikreta Pačariz explained that whilst other shells splintered into shrapnel when they exploded, this bomb did not.²²⁶² She was later told that the bomb contained 250 kilograms of explosives.²²⁶³

²²⁵³ P603, Official report, p. 4. *See also*, Vekaz Turković, P600, p. 3.

²²⁵⁴ P586, Expert report Berko Zečević, p. 158. *See also*, Hussain Ijaz, 27 Apr 2007, T. 5416; Nefa Šljivo, 5 Apr 2007, T. 4515; W-95, P520, p. 3 (under seal).

²²⁵⁵ P586, Expert report Berko Zečević, p. 159.

²²⁵⁶ Berko Zečević, 20 Apr 2007, T. 4877 – 4878. *See also*, P586, Expert report Berko Zečević, p. 159.

²²⁵⁷ Berko Zečević, 20 Apr 2007, T. 4878.

²²⁵⁸ Berko Zečević, 20 Apr 2007, T. 4878.

²²⁵⁹ Vekaz Turković, 26 Apr 2007, T. 5227 – 5228, *referring to* P604, Forensic report.

²²⁶⁰ Vekaz Turković, 26 Apr 2007, T. 5207 – 5208.

²²⁶¹ Fikreta Pačariz, P643, p. 6.

²²⁶² Fikreta Pačariz, P643, p. 6.

²²⁶³ Fikreta Pačariz, P643, p. 6.

635. In its Final Brief, the Defence submitted that the BiH police did not find any shrapnel at the impact sites.²²⁶⁴ The BiH police report, cited by the Defence in support of its submission, stated that the BiH police found “several shell fragments of different shapes and dimensions” in and around the crater in Bunički Potok Street and two rocket motors and “several fragments of the rocket motor body were found in the garden” on Alekse Šantića Street.²²⁶⁵ The forensic report, also cited by the Defence, noted that “pieces of projectile” were found, but there is no information in the report concerning “other traces” or “items found at the scene”.²²⁶⁶ When confronted with the fact that the BiH police report did not mention pieces of shrapnel being found on the locations that sustained heavy damage, Vekaz Turković explained that the standard procedure at the time was to try and collect a sufficient amount of trace evidence that could serve to establish the type of weapon; it was impossible to collect all pieces of shrapnel due to the vast amount of shrapnel found at shelling sites and gathering all this trace evidence was considered unnecessary.²²⁶⁷ The Trial Chamber further recalls the evidence of Berko Zečević that a bomb with fuel-air explosive leaves remnants of the bomb’s body after the explosion but little to no shrapnel around the point of detonation.²²⁶⁸

636. The BiH police investigators concluded that the modified air bomb was fired “from the aggressor’s positions in the north, the surrounding area of Ilidža.”²²⁶⁹ Vekaz Turković stated that this conclusion was reached by examining the first place of impact of the bomb and how it had ricocheted thereafter and hit the second house; the bomb “had to have been launched from the direction of Ilidža and nowhere else.”²²⁷⁰ The forensic report stated that the projectile was launched from the north.²²⁷¹

637. Berko Zečević determined the direction of fire as north-west of the impact site but he could not precisely establish the angle of descent.²²⁷² However, when testifying before the Trial Chamber, he stated that the direction of fire was, in principle, similar to that determined by the BiH police, which was that it came from the direction of Ilidža. The angle of descent and distance it travelled were around 25 degrees and 5,000 metres respectively.²²⁷³ In order to arrive at these conclusions, he relied on the topography of Sarajevo, photographs of the scene and the information about the damage.²²⁷⁴ Berko Zečević wrote in his report that “[t]he incoming direction of this projectile could

²²⁶⁴ Defence Final Brief, para. 208.

²²⁶⁵ P603, Official report, pp 3 – 4.

²²⁶⁶ P604, Forensic report, pp 1 – 2.

²²⁶⁷ Vekaz Turković, 26 Apr 2007, T. 5232 – 5233, P600, p. 3.

²²⁶⁸ See *supra* para. 94.

²²⁶⁹ P603, Official report, pp 3 – 4; Vekaz Turković, P600, p. 3.

²²⁷⁰ Vekaz Turković, P601, p. 3.

²²⁷¹ P604, Forensic report, p. 1.

²²⁷² P586, Expert report Berko Zečević, p. 159.

²²⁷³ Berko Zečević, 20 Apr 2007, T. 4879 – 4880.

²²⁷⁴ Berko Zečević, 20 Apr 2007, T. 4880.

not be determined on the basis of the effects on the ground, but it was possible to determine the location of the place where the modified bomb hit the ground, in view of the incidents in Alekse Šantića Street, which are very close to the place of this incident. On the basis of those facts, it can be concluded that the probable incoming angle is similar and that the launch site should also be in the area of Plandište.”²²⁷⁵ The Trial Chamber notes that the area of Plandište is slightly north-west of Ilidža.²²⁷⁶

638. The Defence submitted that this incident took place after “menaces” from the mayor of Sarajevo.²²⁷⁷ The UNPROFOR report cited by the Defence referred to a breakdown in the relationship between UNPROFOR and that, on 30 June 1995, the mayor of Sarajevo hinted at retaliation against UNPROFOR “if it did nothing to help the city.”²²⁷⁸ However, no evidence was presented during trial indicating that the ABiH may have fired the modified air bombs that impacted in Hrasnica on 1 July 1995, or, moreover, that it targeted UNPROFOR with the modified air bombs on that date. The UNPROFOR report further stated that in the week preceding 1 July 1995 the SRK “counter-attacked” the eastern slopes of Mount Igman to the south of Sarajevo and pushed the ABiH back from “vital roads.”²²⁷⁹ According to the report, the SRK told the UN that it would “launch punitive counter-attacks against the urban area” and that the SRK “responded to the Bosnian offensive by resuming a fairly indiscriminate bombardment of the downtown area.”²²⁸⁰

Findings

639. The Trial Chamber is satisfied, on the basis of the evidence as a whole and, particularly the evidence of Berko Zečević, that two modified air bombs fell on the evening of 1 July 1995, one on Bunički Potok Street and the other on Alekse Šantića Street. It is established on the basis of the testimony of Zejna Šljivo, W-95 and Fikreta Pačariz, and the BiH police report, that the explosion on Bunički Potok Street caused injuries to 13 civilians, two of whom were seriously injured.

640. The BiH police report identified Ilidža as the origin of fire. Berko Zečević concluded that the modified air bomb on Bunički Potok Street had been fired from the north-west, and testified that the direction was, in principle, the same as that determined by the BiH police. The KDZ report stated that the direction of fire was north. The Trial Chamber notes that the area of Ilidža is north, north-west of the impact site and recalls that evidence was presented indicating that the area around

²²⁷⁵ P586, Expert report Berko Zečević, p. 160.

²²⁷⁶ See, e.g., D59, Military map of Sarajevo area.

²²⁷⁷ Defence Final Brief, para. 208.

²²⁷⁸ P19, UNPROFOR sitrep, pp 4 – 5.

²²⁷⁹ P19, UNPROFOR sitrep, p. 2.

²²⁸⁰ P19, UNPROFOR sitrep, p. 2.

Ilidža was SRK-held territory.²²⁸¹ The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber is satisfied that the modified air bombs were fired from the Ilidža area, which was controlled by the SRK and that it was launched by members of the SRK.

(xiii) Shelling of Bjelašnička Street in Sokolovići on 23 July 1995

641. In the afternoon of 23 July 1995, two bombs landed in Sokolović Kolonija, otherwise called Sokolovići, but did not explode.²²⁸² According to Edisa Kršo, the shelling then stopped and people came out onto the street.²²⁸³ W-82 went to see the unexploded bombs and then returned home where she did some housework until 1800 hours, when she invited “some ladies” for coffee.²²⁸⁴

642. W-82 stated that she was sitting outside a house on Bjelašnička Street, at 1830 hours, with four friends, when she saw a blinding flash.²²⁸⁵ Simultaneously, she felt something hit her right shoulder and felt blood on her shoulder and chest, near her neck.²²⁸⁶ She said that there had been no warning.²²⁸⁷ Edisa Kršo stated that at about 1915 hours, she came out of her house, located at Bjelašnička Street, number 24 and stood in front of it, talking with her mother, a neighbour and her little daughter.²²⁸⁸ She heard a strange noise, similar to an aircraft engine and saw a dark object flying in the air with a trail of black smoke in a spiral shape.²²⁸⁹ She also stated she saw “something like a burning ball” in the air, which hit the tallest building in the neighbourhood, a three-story apartment building, and exploded with a loud noise.²²⁹⁰ Edisa Kršo’s mother lay down on the ground immediately, while the neighbour ran to an air-raid shelter with her daughter. Edisa Kršo became frightened and ran into the house, up the stairs, where a piece of broken brick hit her on the head; she fell unconscious.²²⁹¹ Edisa Kršo regained consciousness and realised she was bleeding; she got up and was hit on the head again, this time by a piece of gutter. She lost consciousness

²²⁸¹ See *supra*, para. 123.

²²⁸² W-82, 16 Feb 2007, T. 2273, 2280 – 2281, P228 (under seal), p. 2; Edisa Kršo, P644, p. 5.

²²⁸³ Edisa Kršo, P644, p. 5.

²²⁸⁴ W-82, 16 Feb 2007, T. 2281.

²²⁸⁵ W-82, 16 Feb 2007, T. 2265, P229 (under seal). The Trial Chamber notes that the time estimate given by this witness was 45 minutes earlier than the time which was consistently confirmed by the other evidence pertaining to this incident: *see for example* P608, Forensic report by KDZ, dated 24 July 1995, p. 1; Edisa Kršo, P644, p. 5; P586, Expert report Berko Zečević, p. 162.

²²⁸⁶ W-82, 16 Feb 2007, T. 2263 – 2264, P229, p. 2 (under seal).

²²⁸⁷ W-82, P229, p. 3 (under seal).

²²⁸⁸ Edisa Kršo, P644, p. 5.

²²⁸⁹ Edisa Kršo, P644, p. 5.

²²⁹⁰ Edisa Kršo, P644, p. 5. The Trial Chamber notes that it is stated in P586, Expert report Berko Zečević, p. 162, that the building hit by the projectile, Bjelašnička Street 54, was two storeys high.

²²⁹¹ Edisa Kršo, P644, p. 5.

again and was taken to the Čamil Marić Hospital in Hransica by car and admitted to the intensive care unit.²²⁹²

643. After the explosion, W-82 heard people crying and shouting.²²⁹³ She had trouble standing, but managed to stand on the second attempt and tried to run.²²⁹⁴ W-82 heard her son saying that others were also injured.²²⁹⁵ As she was trying to run, her neighbours grabbed her and took her to Sokolović Kolonija, where she received first aid, and then brought her to the Čamil Marić Hospital where she stayed for three days.²²⁹⁶ In her first statement, dated 8 March 1997, W-82 stated that she had been lightly injured and, in her second statement, on 22 May 2006, she said that she received severe lacerations to her right shoulder and top of her chest.²²⁹⁷ Her skin had “peeled off and was hanging down.”²²⁹⁸ There were two pieces of shrapnel embedded deep in her body, which still remain.²²⁹⁹ W-82 still feels pain in her right shoulder and from the pieces of shrapnel inside.²³⁰⁰ Two of the women with whom W-82 was sitting were killed.²³⁰¹ The two other women received superficial lacerations and bruising.²³⁰²

644. Edisa Kršo recalled that the hospital was very crowded.²³⁰³ As her injury was not very serious, Edisa Kršo was permitted to go home and continue her treatment there.²³⁰⁴ As a result of her injury, however, Edisa Kršo could not continue her studies or travel to Sarajevo, she had nightmares for a month and suffered from a stomach problem and headaches up until 1997.²³⁰⁵ In total, eleven people were injured and two were killed in this incident.²³⁰⁶

645. The house in which W-82 was staying in Bjelašnička Street was “almost completely destroyed”;²³⁰⁷ the top and ground floors were “badly damaged”, the framework of the doors and

²²⁹² Edisa Kršo, P644, pp 5, 6.

²²⁹³ W-82, P228, p. 2 (under seal).

²²⁹⁴ W-82, 16 Feb 2007, T. 2273, 2282, P229, p. 2 (under seal).

²²⁹⁵ W-82, P229, p. 2 (under seal).

²²⁹⁶ W-82, 16 Feb 2007, T. 2273, 2282, P229, p. 2 (under seal).

²²⁹⁷ W-82, P228, p. 2 (under seal), P229, p. 2 (under seal).

²²⁹⁸ W-82, P229, p. 2 (under seal).

²²⁹⁹ W-82, P229, p. 2 (under seal).

²³⁰⁰ W-82, P228, p. 2 (under seal). W-82's medical certificate was admitted as item 42 of P106 (under seal).

²³⁰¹ W-82, P229, p. 2 (under seal); Vekaz Turković, 26 Apr 2007, T. 5212, P600, p. 3; P608, Forensic report, p. 1.

²³⁰² W-82, P229, p. 2 (under seal).

²³⁰³ Edisa Kršo, P644, p. 6.

²³⁰⁴ Edisa Kršo, P644, p. 6.

²³⁰⁵ Edisa Kršo, P644, p. 6.

²³⁰⁶ W-82, P229, p. 3 (under seal); P606, Criminal investigation file, dated 23 July 1995, p. 3; P586, Expert report Berko Zečević, p. 162; P436, P437, P438, P439, P440, P441, P442, P443, P444, P445, P446, P447, Medical records from the Čamil Marić hospital for Hajrija Tabaković, Admir Baručija, Arnes Čerkez, Adis Kršo, Alija Mraković, Mejra Lindov, Elvedin Rahić, Hašija Mraković, Admir Baručija, Izet Bijelonja, Hasan Čerkez, Adnan Bijelonja (all under seal). The Trial Chamber notes that in her 8 March 1997 statement, W-82 recalled that 17 people were wounded, six of them children: W-82, P228 (under seal), p. 2.

²³⁰⁷ W-82, P229, p. 3 (under seal); Vekaz Turković, P600, p. 3; P608, Forensic report, p. 1.

windows were damaged and the roof tiles were blown away.²³⁰⁸ She stated that the bomb had landed on a house 15 metres away from where she was.²³⁰⁹ That house was completely destroyed.²³¹⁰ Five or six nearby houses were heavily damaged as were a lot of vehicles.²³¹¹ Edisa Kršo saw a large hole in the house opposite hers, “as if a draft had blown through it”.²³¹² She stated that “about 200 houses in the settlement”, including her house, had been damaged due to the blast that day.²³¹³

646. The BiH police carried out the investigation on the same day.²³¹⁴ Vekaz Turković, a crime-scene technician with the BiH police, found parts of rocket motors on the first floor and in the kitchen of Bjelašnička Street, number 44.²³¹⁵ In his forensic report, he noted significant damage to houses and vehicles in the neighbourhood, as well as injuries to people.²³¹⁶ He conclude that a rocket missile with a concussion warhead, that is, a modified air bomb, had landed on Bjelašnička Street, number 54.²³¹⁷ He stated he was “satisfied that the deaths, injuries and damage was caused by a device similar to the other air bombs that [he] had examined.”²³¹⁸ During cross-examination, Vekaz Turković testified that the bodies of the two women who died had been removed when he carried out his investigation, and this is why they do not appear in the photographs he took of the scene.²³¹⁹

647. In its Final Brief, the Defence submitted that the BiH police did not find any shrapnel on the incident site.²³²⁰ During cross-examination, Vekaz Turković conceded that there was no mention in the BiH police report of shrapnel that could have been taken for analysis in order to determine what kind of projectile exploded.²³²¹

648. In his expert report, Berko Zečević noted the absence of traces on the interior walls of Bjelašnička Street, number 54 and surrounding buildings, and concluded that the projectile could not have been a FAB-250 bomb filled with conventional TNT explosives, which has “a minimum

²³⁰⁸ W-82, P229, p. 3 (under seal).

²³⁰⁹ W-82, P229, p. 3 (under seal).

²³¹⁰ W-82, P229, p. 3 (under seal), P228, p. 3 (under seal); P608, Forensic report, p. 1.

²³¹¹ W-82, P228, p. 3 (under seal); P608, Forensic report, p. 1.

²³¹² Edisa Kršo, P644, p. 5.

²³¹³ Edisa Kršo, P644, p. 6.

²³¹⁴ Vekaz Turković, P600, p. 3.

²³¹⁵ Vekaz Turković, 26 April 2007, T. 5233 – 5234, P600, p. 3; P608, Forensic report, pp 1, 3.

²³¹⁶ P608, Forensic report, pp 1, 2.

²³¹⁷ P608, Forensic report, pp 1, 2; The Trial Chamber notes that this type of projectile belongs to the category of air bombs, *see supra*, Section II.B.2(b)(ii) Modified Air Bombs.

²³¹⁸ Vekaz Turković, P600, p.3.

²³¹⁹ Vekaz Turković, 26 Apr 2007, T. 5225; P607, Photographs.

²³²⁰ Defence Final Brief, para. 209.

²³²¹ Vekaz Turković, 26 April 2007, T. 5234, P600, p.3.

of 11,000 fragments”.²³²² Consistent with the BiH police finding, Berko Zečević determined that the projectile was a modified air bomb with fuel-air explosive.²³²³

649. W-82 did not know the direction from which the bomb came.²³²⁴ Berko Zečević noted that the Bosnian Muslim investigators determined that the incoming direction of the projectile was north-west.²³²⁵ Based on the photographs taken at the scene, Berko Zečević estimated the angle of descent of the projectile to be 25 degrees. He estimated the direction that the projectile came from to be about 320 degrees, that is, from a north-westerly direction, which avoided a trajectory over the heavily-populated parts of Ilidža.²³²⁶ Berko Zečević concluded that the probable launch site of this air bomb was in the wider area of the settlement of Osijek, over five kilometres away from the place where the bomb landed.²³²⁷

Findings

650. On 23 July 1995, a modified air bomb exploded on Bjelašnička Street. In its Final Brief, the Defence made the argument that the BiH police report did not mention the presence of shrapnel. It is not clear to what end this argument was made, but if it is to suggest that the absence of shrapnel was not consistent with the use of a modified air bomb, it is sufficient for the Trial Chamber to recall the testimony of Verkaz Turković that (i) it was impossible to collect all the pieces of shrapnel and it was standard procedure to collect an amount of evidence sufficient to establish the type of weapon, and (ii) the BiH police collected parts of rocket motors. Evidence in this case is that the presence of rocket motors indicates the explosion was caused by modified air bombs.

651. On the basis of the evidence, including witness testimony, medical records, and the investigative and expert reports, the Trial Chamber is satisfied that two civilians were killed and 11 civilians were injured, some seriously, as a result of the explosion of the modified air bomb.

²³²² P586, Expert report Berko Zečević, p. 164.

²³²³ P586, Expert report Berko Zečević, pp 162, 164. *See also supra*, para. 93.

²³²⁴ W-82, P229, p. 3 (under seal). The Trial Chamber notes that the statement of Edisa Kršo was admitted in redacted form pursuant to Rule 92 *bis* of the Rules. The Trial Chamber, in deciding on the admission of this statement, applied the law, as set in *Prosecutor v. Stanislav Galić*, where the Appeals Chamber held that “a written statement containing conclusions by a witness “as to the direction from which the particular shell had been fired, could [...] be of substantial importance to the Prosecution case if it is the vital link in demonstrating that the shell [...] was fired from a gun emplacement manned by immediately proximate subordinates of the accused.” The Trial Chamber, therefore, ordered the redaction of the section of the statement of Edisa Kršo detailing the direction of fire, *see* Decision on Prosecution Motion for Admission of Written Statements pursuant to Rule 92 *bis* and *ter* of the Rules of Procedure and Evidence, with Confidential Annex A, dated 27 February 2007.

²³²⁵ P586, Expert report Berko Zečević, p. 162. *See also* P606, Criminal investigation file, p. 4.

²³²⁶ P586, Expert report Berko Zečević, p. 164. *See also supra*, para. 123.

²³²⁷ P586, Expert report Berko Zečević, p. 164.

652. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them. The Trial Chamber finds that it has been established that the modified air bomb was fired from a north-westerly direction, from SRK-controlled territory and that it was launched by members of the SRK.

(xiv) Shelling of the BITAS Building on 22 August 1995

653. On 22 August 1995, the BITAS Building on Zmaja od Bosne, number 64 was shelled.²³²⁸ Sanjin Hasanefendić did not recall any ABiH military activity in the area on 22 August 1995, nor did he see any active ABiH forces in the area.²³²⁹ The BITAS Building was located approximately 100 metres from the Novo Sarajevo Police Station.²³³⁰ Other buildings in the immediate vicinity of the BITAS Building and the police station included residential buildings, a post office, a Catholic church, office buildings, the Socijalno Building and the Elektroprivreda Building.²³³¹

654. Sanjin Hasanefendić testified that he was at the Novo Sarajevo Police Station when the BITAS Building was shelled.²³³² There was a loud droning sound he had never heard before followed by a powerful explosion.²³³³

655. At the moment of the explosion, Irhad Lukavac was in a Golf car parked outside the building that was next to the Gol Restaurant at Zmaja od Bosne, number 66, just west of the BITAS Building.²³³⁴ The Golf car was heavily damaged by the explosion.²³³⁵ Irhad Lukavac sustained injuries to his chest, got out of his car and fell on the ground next to the restaurant, where citizens gathered to help him.²³³⁶ He was put in an unidentified car and taken to hospital.²³³⁷ However, he succumbed to his injuries on the way there and died.²³³⁸ Another car was also heavily damaged.²³³⁹

656. The Defence argued that the lack of photographs showing blood marks on the location where Irhad Lukavac had collapsed, indicated that he was not killed at the location identified by Sanjin Hasanefendić.²³⁴⁰ However, Sanjin Hasanefendić testified that he photographed the blood

²³²⁸ Sanjin Hasanefendić, 16 Feb 2007, T. 2315 – 2316; P244, Official note shelling BITAS Building, dated 25 August 1995, p. 1; P230, Map marked by Sanjin Hasanefendić; P231, Map marked by Sanjin Hasanefendić; P232, P239, Photograph marked by Sanjin Hasanefendić.

²³²⁹ Sanjin Hasanefendić, 16 Feb 2007, T. 2336, 2355.

²³³⁰ Sanjin Hasanefendić, 16 Feb 2007, T. 2316; P239, Photograph marked by Sanjin Hasanefendić.

²³³¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2316 – 2317; P239, Photograph marked by Sanjin Hasanefendić.

²³³² Sanjin Hasanefendić, 16 Feb 2007, T. 2317.

²³³³ Sanjin Hasanefendić, 16 Feb 2007, T. 2317.

²³³⁴ Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

²³³⁵ P244, Official note, p. 3.

²³³⁶ Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2; P435, Medical record (under seal).

²³³⁷ Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

²³³⁸ Sanjin Hasanefendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

²³³⁹ P244, Official note, p. 3.

²³⁴⁰ Defence Final Brief, para. 210; Sanjin Hasanefendić, 16 Feb 2007, T. 2356, 2357, 2358.

marks inside the vehicle as evidence of the place where the victim was injured.²³⁴¹ Sanjin Hasaneferendić also testified that the victim was taken away quickly in a car.²³⁴² Finally, he said that the type of damage to the car clearly indicated that it had been caught in the explosion.²³⁴³

657. Another person was slightly injured; Sanjin Hasaneferendić confirmed the police report that Alija Muharemović was walking down Zmaja od Bosne when the explosion occurred and he sustained light injuries to his right lower leg.²³⁴⁴ He was taken to Omer Maslić Medical Centre, where he received medical treatment and was sent home.²³⁴⁵ The police investigation file did not contain medical records for this victim. In response to questions of the Defence about this, Sanjin Hasaneferendić stated that as a forensic technician, he was not responsible for collecting medical documentation.²³⁴⁶

658. Sanjin Hasaneferendić left the police station shortly after the explosion, but returned there due to the severity of the shelling in the Novo Sarajevo municipality.²³⁴⁷ As a result of the shelling, Sanjin Hasaneferendić and his colleagues could not carry out an on-site investigation at the BITAS Building until the next day.²³⁴⁸ The scene of the incident was secured by two police officers of the Novo Sarajevo Police Station during the night of 22 August 1995.²³⁴⁹

659. The Trial Chamber heard evidence that the explosion created considerable damage to the BITAS Building, in particular on the west side of the building.²³⁵⁰ Over twelve rooms on four floors on the side the projectile impacted were completely destroyed, and doors, windows and walls in all offices on both sides of the building were damaged.²³⁵¹ The staircase running between the second, third and fourth floors collapsed, and the elevator was destroyed.²³⁵² Photographic evidence shows that a large part of the outer wall on the west side of the building was blasted away.²³⁵³ The police report on the incident notes that the exact number of rooms damaged by the explosion could not be determined because the police found it impossible to enter the building.²³⁵⁴

²³⁴¹ Sanjin Hasaneferendić, 16 Feb 2007, T. 2359.

²³⁴² Sanjin Hasaneferendić, 16 Feb 2007, T. 2360.

²³⁴³ Sanjin Hasaneferendić, 16 Feb 2007, T. 2359 – 2360.

²³⁴⁴ Sanjin Hasaneferendić, 16 Feb 2007, T. 2356; P244, Official note, p. 2.

²³⁴⁵ P244, Official note, p. 2.

²³⁴⁶ Sanjin Hasaneferendić, 16 Feb 2007, T. 2352, 2353.

²³⁴⁷ Sanjin Hasaneferendić, 16 Feb 2007, T. 2317 – 2318.

²³⁴⁸ Sanjin Hasaneferendić, 16 Feb 2007, T. 2318.

²³⁴⁹ Sanjin Hasaneferendić, 16 Feb 2007, T. 2318, 2360; P244, Official note, p. 1.

²³⁵⁰ Sanjin Hasaneferendić, 16 Feb 2007, T. 2321, 2328; P244, Official note, p. 2; P241, Photograph of BITAS Building.

²³⁵¹ Sanjin Hasaneferendić, 16 Feb 2007, T. 2328; P240, Photograph marked by Sanjin Hasaneferendić; P244, Official note, p. 2.

²³⁵² P244, Official note, p. 3; P586, Expert report Berko Zečević, pp 167 – 169.

²³⁵³ P240, Photograph marked by Sanjin Hasaneferendić. *See also*, P586, Expert report Berko Zečević, pp 167 – 169.

²³⁵⁴ P244, Official note, p. 3.

660. The police report shows that the BITAS Building was not the only building that was damaged; surrounding buildings to the North, South and West of the BITAS Building were all damaged to some degree.²³⁵⁵ The apartment of Šaćira Jugović, on the fourth floor of Zmaja od Bosne, number 66, was seriously damaged when a fragment came through the window causing a fire in the apartment.²³⁵⁶ Many of the rooms burned down completely before the fire could be extinguished.²³⁵⁷

661. A number of metal fragments, measuring between 30 and 120 centimetres, were determined by the BiH Police to be parts of an explosive device which probably had been modified.²³⁵⁸ To the knowledge of Sanjin Hasanefendić, the ABiH did not possess the size or calibre of the device which exploded on 22 August 1995.²³⁵⁹ The Defence put to Sanjin Hasanefendić that it was possible that the BITAS Building had been hit by many different projectiles around the same time. In response, Sanjin Hasanefendić said that this assertion was not supported by evidence, and that evidence of one modified air bomb had been found at the scene.²³⁶⁰ He also rejected the Defence suggestion that the modified air bomb could have torn through the building, causing the damage, rather than explode inside the building.²³⁶¹

662. According to the investigative team report, the first point of impact for the projectile was the glass of the staircase in the south-west side of the BITAS Building, between the second and third floors.²³⁶² The subsequent explosion occurred within the building, on the staircase itself.²³⁶³ Berko Zečević, stated that the severe damage to the horizontal concrete beam above the second floor marks the exact place where the projectile “probably entered” the building.²³⁶⁴ Based on the evidence of damage to the exterior walls of the two highest floors on the north-east side of the building, he concluded that the projectile “probably” ricocheted off the staircase, towards the third floor before exploding.²³⁶⁵ According to Berko Zečević, the effects of the projectile inside the staircase bore the hallmarks of a “volumetric weapon”.²³⁶⁶ The effects of the projectile inside the

²³⁵⁵ P244, Official note, p. 3.

²³⁵⁶ *Ibid.*

²³⁵⁷ *Ibid.*

²³⁵⁸ Sanjin Hasanefendić, 16 Feb 2007, T. 2322, 2354; P242, Photograph; P243, Forensic report on shelling of BITAS Building, dated 23 August 1995, p. 2.

²³⁵⁹ Sanjin Hasanefendić, 16 Feb 2007, T. 2336.

²³⁶⁰ Sanjin Hasanefendić, 16 Feb 2007, T. 2354.

²³⁶¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2354.

²³⁶² P244, Official note, p. 2; P243, Forensic report, p. 2; Sanjin Hasanefendić, 16 Feb 2007, T. 2318 – 2319, 2324; P240, Photograph marked by Sanjin Hasanefendić.

²³⁶³ P244, Official note, p. 2; P243, Forensic report, p. 2; Sanjin Hasanefendić, 16 Feb 2007, T. 2318 – 2319, 2354; P240, Photograph marked by Sanjin Hasanefendić.

²³⁶⁴ P586, Expert report Berko Zečević, p. 167.

²³⁶⁵ P586, Expert report Berko Zečević, p. 168.

²³⁶⁶ P586, Expert report Berko Zečević, p. 169.

staircase were more pronounced on structures of low resistance, while there were no “pronounced fragmentation effects”.²³⁶⁷

663. Sanjin Hasanefendić stated in a document dated 10 March 1997 that the direction of fire was “south”.²³⁶⁸ When confronted with this prior statement in cross-examination, Sanjin Hasanefendić stated that bomb squad technicians and other investigators “may always take a broader area to describe the direction of fire.”²³⁶⁹

664. The BiH police determined the direction of fire with reference to the centre of the explosion in relation to the location of air bomb fragments.²³⁷⁰ The forensic investigation team, including the bomb squad technician, determined that the direction of fire of the projectile that struck the BITAS Building was the “aggressor’s positions at Rajlovac,” to the “south-west” of the BITAS Building.²³⁷¹ Based on the police reports and the findings in other shelling incidents near the BITAS Building, Berko Zečević also concluded that the projectile came from the wider area of Rajlovac.²³⁷² In reaching this conclusion, he estimated the direction of fire as 275 degrees.²³⁷³ The incoming trajectory did not run above populated areas controlled by the SRK.²³⁷⁴ The Trial Chamber notes in this respect that the wider area of Rajlovac is to the west to north-west of the BITAS Building.

665. The Trial Chamber recalls that in his report, Berko Zečević indicated the effective range of a FAB-250 was 5,820 metres to 7,680 metres.²³⁷⁵ Berko Zečević placed the probable launch site at approximately 6,700 metres from the point of impact.²³⁷⁶ He estimated that the angle of descent was approximately 25 to 30 degrees.²³⁷⁷ The Trial Chamber notes that a table provided in the report of Berko Zečević shows that a modified air bomb, fired at an angle of 30 degrees, would be close to the ground or would hit the ground at approximately 6,500 metres from the firing point and a modified air bomb, fired at an angle of 35 degrees would be close to the ground or would hit the ground at approximately 7, 200 metres and at relatively low angles.²³⁷⁸

²³⁶⁷ P586, Expert report Berko Zečević, p. 169.

²³⁶⁸ Sanjin Hasanefendić, 16 Feb 2007, T. 2349, 2350.

²³⁶⁹ Sanjin Hasanefendić, 16 Feb 2007, T. 2350.

²³⁷⁰ Sanjin Hasanefendić, 16 Feb 2007, T. 2324, 2327, 2328, 2330; P243, Forensic report, pp 1 – 2.

²³⁷¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2324, 2356; P243, Forensic report, p. 1; P244, Official note, p. 2; P241, P245, P247, P248, Photographs; P246, Photograph marked by Sanjin Hasanefendić.

²³⁷² P586, Expert report Berko Zečević, pp 167 – 170. Berko Zečević took into account the findings related to the shelling of Trg Medunarodnog, Prijateljstva Square, Geteova Street and Safeta Hadžića Street.

²³⁷³ P586, Expert report Berko Zečević, p. 169.

²³⁷⁴ P586, Expert report Berko Zečević, p. 169.

²³⁷⁵ See *supra*, para. 95 and P586, Expert report of Berko Zečević, pp 87 – 88.

²³⁷⁶ P586, Expert report Berko Zečević, p. 170.

²³⁷⁷ P586, Expert report Berko Zečević, p. 170.

²³⁷⁸ P586, Expert report Berko Zečević, p. 88.

666. The south-west direction of fire was corroborated by two eyewitnesses who saw the projectile flying above Čengiće Vila, west of the BITAS Building.²³⁷⁹ Sanjin Hasanefendić did not know whether official statements were taken from these eyewitnesses, but knew that they spoke to the crime police inspector.²³⁸⁰ However, the Trial Chamber notes that it is unclear who these witnesses were. While witnesses Abdulah Čančar and Zada Borovina were identified in the forensic report as being in the BITAS Building at the time of the explosion, Sanjin Hasanefendić testified that the eyewitnesses said that “they were at the time in Čengiće Vila neighbourhood.”²³⁸¹

667. The Defence did not present evidence specifically challenging this shelling incident during its case, either in cross-examination or in the presentation of its case. However, the Defence expert, Maj. Gen. Garović, generally challenged the existence of modified air bombs and the existence of fuel-air explosives.²³⁸²

Findings

668. On 22 August 1995 a modified air bomb exploded on the BITAS Building. As a result of the explosion, it has been established that one person, a civilian, was killed and another person was slightly injured. In this regard, the Trial Chamber recalls witness testimony and a BiH police report. The Trial Chamber also recalls its earlier finding that the ABiH did not have or use modified air bombs; only the SRK possessed and used them.

669. While the evidence from the witnesses as to the direction from which the modified air bomb came was conflicting, all the areas identified as the possible origin of fire were under the control of the SRK. The Trial Chamber is satisfied on the basis of the evidence as a whole, particularly the consistent conclusions of the BiH police and the KDZ, as set out in their reports, and Berko Zečević, that the modified air bomb was fired from the area of Rajlovac, an area under the control of the SRK and that it was launched by members of the SRK.

(xv) Shelling of the Markale Market on 28 August 1995

670. The weather on 28 August 1995 was clear, with a light breeze and few clouds.²³⁸³ There were two markets on Mula Mustafe Bašeskije Street, which according to W-137, “constituted the

²³⁷⁹ Sanjin Hasanefendić, 16 Feb 2007, T. 2326, 2329 – 2330, 2334, 2347 – 2348.

²³⁸⁰ Sanjin Hasanefendić, 16 Feb 2007, T. 2334, 2347 – 2348.

²³⁸¹ Sanjin Hasanefendić, 16 Feb 2007, T. 2347; P244, Official note, p. 3, reads that Abdullah Čančar was at his doorman post in the BITAS building at the moment of the explosion. Zada Borovina, employee of DP BITAS, was on the fifth floor at the moment of the explosion and was brought down by firemen.

²³⁸² See *supra*, paras 99 – 101.

greatest concentration of shops selling food in Sarajevo at the time.”²³⁸⁴ One of the markets was the indoor market at Markale, which was about 200 metres from the other, outdoor, market. Sead Bešić explained that vendors sold cigarettes and various goods at the exit of Markale Market.²³⁸⁵ Lt. Col. Konings, a Dutch UNMO, testified that he passed by the Markale Market early on 28 August 1995 and recalled seeing a lot of civilians gathered there, engaging in trading activities on the sidewalk and everywhere on the street and that he “did not trust the situation”.²³⁸⁶ At 1110 hours that day, a shell exploded on the street, just in front of the indoor market.²³⁸⁷

671. The Defence challenged the evidence regarding this incident on multiple grounds. It argued that the incident was a staged event. In this regard it argued that an explosive device had been planted at the Markale Market. Moreover, it challenged the total number of victims, suggesting that bodies could have been planted in the area so as to make it appear as though many people had died there. It also challenged the direction of fire and the angle of descent that were calculated by the BiH police, UNPROFOR and UNMO. In doing so, it focused, *inter alia*, on the fact that the radar systems around Sarajevo did not register the firing of the shell that struck the street in front the Markale Market.

a. Number of dead and wounded

672. When he arrived at the scene, W-137 saw that all the victims of the shelling were being rushed to hospital in the trunks of many cars, without distinction as to whether the victims were wounded or dead. The persons collecting the bodies could not be certain that the victims were alive and thus, he said, picked everyone up in order to get them to the hospital as fast as possible.²³⁸⁸ When asked by the Defence why it was permitted that the dead bodies be removed from the scene, W-137 explained that he saw this happening right after the incident, but that the police or UN members had not yet arrived at the scene and that it was just civilians who were evacuating the casualties as fast as possible.²³⁸⁹

673. Djula Leka, a homemaker and mother of five children, was a long term resident of Sarajevo.²³⁹⁰ When the shell exploded, she was just outside the Markale Market and in front of the

²³⁸³ D58, ICTY information report, dated 2 October 2003 (“ICTY information report”), p. 1; D121, ICTY information report, dated 3 September 2003 (“ICTY information report”), p. 3; P255, Criminal investigation file, dated 29 August 1995, p. 1.

²³⁸⁴ W-137, 20 Feb 2007, T. 2544; D75, Photograph marked by W-137.

²³⁸⁵ Sead Bešić, 20 Feb 2007, T. 2577.

²³⁸⁶ Harry Konings, 12 Mar 2007, T. 3587 – 3590, 13 Mar 2007, T. 3677 – 3678; D121, ICTY information report, p. 1.

²³⁸⁷ Sead Bešić, 20 Feb 2007, T. 2570; Djula Leka, P650, p. 2; P21, UNPROFOR sitrep, 28 August 1995, p. 5.

²³⁸⁸ W-137, 20 Feb 2007, T. 2501, 2556; P255, Criminal investigation file, p. 2.

²³⁸⁹ W-137, 20 Feb 2007, T. 2557.

²³⁹⁰ Djula Leka, P650, p. 2.

indoor market, about five to seven metres from the place of impact.²³⁹¹ She was injured in the explosion.²³⁹² Djula Leka's brother-in-law was killed in the explosion and was lying about ten metres away from her.²³⁹³ She asked a policeman she knew to help her. He stopped a car to transport her to the hospital but the car was "full of dead bodies" so she refused to get in it.²³⁹⁴ The policeman then stopped a taxi, which transported her to the hospital.²³⁹⁵ Djula Leka stayed in the hospital for four to five days.²³⁹⁶ She still feels some pain in her shoulder and chest as a result of the injuries she received from the explosion.²³⁹⁷

674. The shell landed four or five metres behind Mesuda Klarić and Ismet Klarić.²³⁹⁸ Immediately after the explosion Mesuda Klarić felt like she was not fully conscious or able to see properly what was going on.²³⁹⁹ When she came to, she found herself sitting on the ground with her husband next to her.²⁴⁰⁰ He told her, "I lost my arm".²⁴⁰¹ She was bleeding heavily from her leg.²⁴⁰² She saw a lot of people lying on the street toward the cathedral.²⁴⁰³ Medusa Klarić was put in a car and her husband was put in the trunk of another car.²⁴⁰⁴ As her husband was being placed in the car, she saw that his foot was missing and that he was also wounded in the groin.²⁴⁰⁵ In the car that took Medusa Klarić to the hospital, there were also a young girl and a young man; she saw that the foot of the young girl had been severed.²⁴⁰⁶ At the hospital, Medusa Klarić and Ismet Klarić were both taken immediately to surgery. Ismet Klarić did not survive.²⁴⁰⁷ Medusa Klarić still has pieces of shrapnel in her body, one in her back, one near the kidney area and one below her right knee.²⁴⁰⁸

675. Milan Mandilović, at the time a surgeon at the State Hospital, and Bakir Nakaš, who is now the Director of the same hospital, were at the hospital on the day of the incident and recalled receiving a large number of seriously wounded civilians. Bakir Nakaš saw about 80 victims from the Markale Market at the hospital that day.²⁴⁰⁹ The medical staff had to resort to conducting triage

²³⁹¹ Djula Leka, P650, p. 2.

²³⁹² Djula Leka, P650, p. 2.

²³⁹³ Djula Leka, P650, p. 2.

²³⁹⁴ Djula Leka, P650, p. 2.

²³⁹⁵ Djula Leka, P650, p. 2.

²³⁹⁶ Djula Leka, P650, p. 2.

²³⁹⁷ Djula Leka, P650, p. 2.

²³⁹⁸ Mesuda Klarić, P648, p. 2.

²³⁹⁹ Mesuda Klarić, P648, p. 2.

²⁴⁰⁰ Mesuda Klarić, P648, p. 2.

²⁴⁰¹ Mesuda Klarić, P648, p. 2.

²⁴⁰² Mesuda Klarić, P648, p. 2.

²⁴⁰³ Mesuda Klarić, P648, p. 2.

²⁴⁰⁴ Mesuda Klarić, P648, pp 2 – 3.

²⁴⁰⁵ Mesuda Klarić, P648, p. 3.

²⁴⁰⁶ Mesuda Klarić, P648, p. 3. The Trial Chamber notes that Sead Bešić was shown photos of the site of the explosion and identified body parts of victims, Sead Bešić, 21 Feb 2007, T. 2615 – 2616; P264, Photographs of impact site, dated 28 August 1995, pp 2, 3, 4, 5 and 6.

²⁴⁰⁷ Mesuda Klarić, P648, p. 3.

²⁴⁰⁸ Mesuda Klarić, P648, p. 3.

²⁴⁰⁹ Bakir Nakaš, 29 Jan 2007, T. 1115.

of the victims.²⁴¹⁰ Milan Mandilović and Bakir Nakaš testified that a great majority of the victims they saw were civilians and, given the place where the incident occurred, even the few persons wearing military clothes were probably there buying groceries.²⁴¹¹

676. W-28, a Bosnian Muslim police investigator, went to the morgue and hospitals with “UN observers” and a judge to verify how many people were killed or wounded.²⁴¹² He recorded that 35 persons were killed and 78 were wounded, although some of the wounded later died.²⁴¹³ Sead Bešić testified that about 30 more persons died as a consequence of this incident and that his team found body parts of victims, lower extremities such as feet and legs on the scene of the incident.²⁴¹⁴ The findings of W-28’s investigation were that 40 people were killed.²⁴¹⁵ The Trial Chamber received death certificates for twelve victims, including one anonymous person.²⁴¹⁶ In addition, it received a list containing the names of 35 deceased and 85 wounded.²⁴¹⁷ Finally, the Defence tendered a report of an ABiH Brigade, which stated that one of its members was killed in this incident. The report shows that this soldier was off-duty at the time.²⁴¹⁸

677. Lt. Col. Konings recalled that, when he arrived at the scene with his team, the bodies of the victims had been evacuated but there were still body parts and blood everywhere.²⁴¹⁹ The Defence asked him whether he thought a single 120 mm mortar shell could do this type of damage. He said that he believed it could, given the particularities of the case, such as the amount of people gathered at the impact site, the building surrounding the site, which prevented the pressure from the blast from getting away and the presence of a lot of glass from the windows of the buildings.²⁴²⁰ According to Nedžib Đozo, Markale Market was the only place where the aggressor could kill a great number of people with only one shell.²⁴²¹

²⁴¹⁰ Milan Mandilović, 17 Jan 2007, T. 573; Bakir Nakaš, 29 Jan 2007, T. 1106; Sead Bešić, 20 Feb 2007, T. 2569.

²⁴¹¹ Milan Mandilović, 17 Jan 2007, T. 573; Bakir Nakaš, 29 Jan 2007, T. 1106.

²⁴¹² W-28, P275, p. 3; Rupert Smith, P334, p. 22.

²⁴¹³ W-28, P275, p. 3; D10, UNPROFOR HQ daily sitrep, dated 29 August 1995 (“UNPROFOR daily sitrep, 29 August 1995”), p. 3; Lt. Col. Konings went to the morgue between 1200 and 1300 hours and recorded 38 dead, Harry Konings, 12 Mar 2007, T. 3581 – 3582; P252, Criminal investigation file by KDZ, dated 29 August 1995, p. 1; P255, Criminal investigation file, pp 3 – 5.

²⁴¹⁴ Sead Bešić, 20 Feb 2007, T. 2573 – 2574, 21 Feb 2007, T. 2592 – 2593; Harry Konings, 12 Mar 2007, T. 3581; P262, Criminal investigation sketch.

²⁴¹⁵ W-28, P275, p. 3.

²⁴¹⁶ P71, P72, P73, P74, P75, P76, P77, P78, P79, P80, P81, P82, Medical records respectively for an anonymous person, Andrija Svoboda, Ruža Galić, Samir Marevac, Rasim Koso, Ajkuna Cokalić, Osman Levent, Dževad Hodžić, Zijad Bejtić, Merdžana Obralić, Amira Guberović, Samir Tupuzović, dated 28 and 29 August 1995.

²⁴¹⁷ P266, Criminal investigation file, dated 29 August 1995, containing a list of names of 35 killed victims and mention of 85 wounded.

²⁴¹⁸ D461, Interim report on death of unit member, 112th Viteška Brigade, dated 28 August 1995, p. 1.

²⁴¹⁹ D119, Statement of Harry Konings, dated 26 April 1996 (“Statement of Harry Konings”), p. 3; D120, ICTY information report, dated 6 October 2003 (“ICTY information report”), p. 3.

²⁴²⁰ Harry Konings, 13 Mar 2007, T. 3639 – 3640.

²⁴²¹ Nedžib Đozo, P363, p. 3.

678. One investigation was carried out by the BiH police and a team of UNMOs, including Lt. Col. Konings.²⁴²² Sead Bešić was part of the BiH police team.²⁴²³ Lt. Col. Konings also participated in a meeting to discuss the investigation with the BiH police the next day.²⁴²⁴ UNPROFOR also led an investigation with a team of French UNPROFOR members.²⁴²⁵

b. Investigation of the Incident; Type of Shell

679. The first BiH police officers arrived within minutes after the explosion at the Markale Market. W-137, a KDZ technician, testified that he was in the area with a colleague when he heard a lot of cars sounding their horns. He saw “human arms and legs sticking out of the cars.” He arrived about seven minutes after seeing the cars as he and his colleague went back to the police station to gather their equipment.²⁴²⁶ He described the scene he found there as “the last, deepest circle of Dante’s hell”.²⁴²⁷

680. The BiH investigators, the UNMOs and UNPROFOR all concluded that the shell that exploded outside Markale Market was a 120 mm mortar shell.²⁴²⁸ Lt. Col. Konings identified the crater as “very clear”, showing that the projectile was a mortar shell.²⁴²⁹ The UNPROFOR investigations concluded that the 120 mm mortar shell was of Bosnian Serb manufacture.²⁴³⁰ Its tail- fin was found between 20 and 50 metres from the place of impact, damaged and bent. There were Cyrillic signs on it.²⁴³¹ Lt. Col. Konings testified that it was expected that a tail-fin of such mortar shells would be found at a distance from the point of impact.²⁴³² Sead Bešić explained that the tail-fin could have been moved by anyone at the scene trying to help evacuate the dead and wounded.²⁴³³

²⁴²² Harry Konings, 12 Mar 2007, T. 3565 – 3567; D117, UNMO Patrol Report, dated 29 August 1995; D119, Statement of Harry Konings, p. 2; D121, ICTY information report, p. 2; Sead Bešić, 20 Feb 2007, T. 2568; P255, Criminal investigation file, p. 1.

²⁴²³ Sead Bešić, 20 Feb 2007, T. 2568. W-137 testified that, given the gravity of the incident, the BiH investigation lasted longer than usual, that is, for one or two hours, while the UNPROFOR French artillery experts only stayed on-site for about 5 to 10 minutes, W-137, 19 Feb 2007, T. 2429 – 2430.

²⁴²⁴ Harry Konings, 12 Mar 2007, T. 3593; P266, Criminal investigation file, dated 29 August 1995, p. 1.

²⁴²⁵ Rupert Smith, 7 Mar 2007, T. 3336; Harry Konings, 12 Mar 2007, T. 3565 – 3567; P355, Video footage.

²⁴²⁶ W-137, 20 Feb 2007, T. 2549 – 2550.

²⁴²⁷ W-137, 19 Feb 2007, T. 2417 – 2418.

²⁴²⁸ P252, KDZ investigation file, p. 4; P255, Criminal investigation file, p. 1; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 732.

²⁴²⁹ Harry Konings, 12 Mar 2007, T. 3570; P265, Photo composition of street with impact crater.

²⁴³⁰ P631, UNPROFOR Sector Sarajevo final report, dated 6 September 1995 (“UNPROFOR final report”), p. 1; P357, UNPROFOR investigation report, dated 8 September 1995 (“UNPROFOR investigation report”), P. 3; Berko Zečević confirmed that the ABiH did not have these weapons, D171, Interview of Berko Zečević, dated 21, 27 June 2001, p. 2.

²⁴³¹ Harry Konings, 12 Mar 2007, T. 3571; D119, Statement of Harry Konings, p. 3; Sead Bešić, 20 Feb 2007, T. 2582; P255, Criminal investigation file, p. 2; D120, ICTY information report, p. 3.

²⁴³² Harry Konings, 13 Mar 2007, T. 3673.

²⁴³³ Sead Bešić, 20 Feb 2007, T. 2584.

c. Direction of Fire

681. The explosion created a crater in the road, close to the pavement; there was a lot of blood around it.²⁴³⁴ Sead Bešić testified that the shrapnel damage to both the lower part of the wall of the Markale Market on the south side of the street and the building on the north side of the street at a greater height; that damage along with the fact that people sustained injuries to their lower limbs on the south side of the street, indicated that the projectile came from the south.²⁴³⁵ He also testified that the fact that much less shrapnel damage appeared on the wall of the Markale Market than on the north side could be explained by the circumstance that most victims were standing south of the point of impact and that most of the shrapnel hit them instead of the Markale Market wall.²⁴³⁶

682. The ballistic expert of the BiH police, the UNMO team and the French UNPROFOR team that conducted the initial investigation of the crater all found that the shell came from a direction of 170 degrees, that is, the direction of Trebević, which was SRK-held territory.²⁴³⁷ QMS Richard Higgs, the Prosecution expert on mortars, upon reviewing the traces left by the mortar shell that impacted in front of Markale Market, also concluded that the direction of fire for this round was 170 degrees.²⁴³⁸

683. Immediately before the shelling of the Markale Market, four other shells fell in the same neighbourhood.²⁴³⁹ The investigation of these other shelling incidents was done by BiH police. As far as W-28 could recall, all five shells came from the same direction.²⁴⁴⁰ UNPROFOR included all five shells in its investigation. As noted above, it initially found that the direction of fire of the fifth shell, which landed in front of the Markale Market, was 170 degrees. However, because the direction of fire for the four other shells was determined to be between 220 and 240 degrees, the crater was again investigated. UNPROFOR then reached the conclusion that there “was an anomaly” with the shell that landed in front of Markale Market and that the round was fired “most likely from 220 - 240 degrees”.²⁴⁴¹

684. The possibility of a ricochet was discussed with several witnesses. Maj. Gen. Nicolai recalled that the fifth shell struck the roof of a building in the vicinity of the Markale Market,

²⁴³⁴ W-137, 19 Feb 2007, T. 2418.

²⁴³⁵ Sead Bešić, 20 Feb 2007, T. 2578 – 2580; P261, Photograph marked by Sead Bešić; W-137, 20 Feb 2007, T. 2555 – 2556.

²⁴³⁶ Sead Bešić, 21 Feb 2007, T. 2612 – 2615, D78, Photograph marked by Sead Bešić.

²⁴³⁷ Thomas Knustad, 13 Feb 2007, T. 1999 – 2000; Harry Konings, 12 Mar 2007, T. 3572 – 3573; 3575 – 3576; D119, Statement of Harry Konings, p. 3; W-28, P275, p. 3; P252, KDZ investigation file, p. 4; P255, Criminal investigation file, p. 2; P357, UNPROFOR investigation report, pp 3, 21; P209, Map marked by Thomas Knustad.

²⁴³⁸ Richard Higgs, 23 Apr 2007, T. 5018.

²⁴³⁹ P21, UNPROFOR sitrep, 28 August 1995, p. 5.

²⁴⁴⁰ W-28, P275, p. 3; Nedžib Đozo, P363, pp 2 -3; P255, Criminal investigation file, p. 2.

²⁴⁴¹ P357, UNPROFOR investigation report, pp 3, 21.

ricocheted off the roof and exploded in the air, causing a lot of casualties.²⁴⁴² However, as to the possibility of the fifth shell ricocheting off the roof, W-137 testified that the shell fell directly on the street. He clarified that if the shell had hit a roof or another obstacle it would have immediately exploded, thus leaving traces of the explosion at that location, rather than on the street.²⁴⁴³ He also ruled out the possibility that the shell hit the roof, because people went up to the roof to look down onto the scene.²⁴⁴⁴ Lt. Col. Konings also excluded the possibility that the projectile could have ricocheted before impacting.²⁴⁴⁵ While a ricochet was theoretically possible, the projectile would have, most likely, landed without exploding.²⁴⁴⁶

685. Lt. Col. Konings did not reach a conclusion as to the origin of fire on the day he investigated the incident.²⁴⁴⁷ The firing point of the four other shells and the last one seemed to be different, since it was 220 to 240 degrees, as opposed to 170 degrees, or “2.850 mils”, for the shell which landed at the Markale Market.²⁴⁴⁸ The final conclusion of the UNPROFOR, however, was that all five shells had been fired from the same weapon and from the Lukavica area.²⁴⁴⁹ Lt. Col. Konings thought it was “completely possible” that the fifth mortar shell and the other four came from two different locations, and he testified that he still believed this to be the case.²⁴⁵⁰

686. The BiH police investigators, the French UNPROFOR team and the UNMO team calculated that the minimum angle of descent was 67 to 70 degrees.²⁴⁵¹ QMS Higgs also concluded, on the basis of the characteristics of the crater, that the angle of descent must have been between 67 and 70 degrees.²⁴⁵² He testified that on the basis of the photographs of the scene and the conclusions of the investigating teams, with the exception of the final UNPROFOR conclusion, the crater of the Markale Market impact was too shallow to be able to determine the angle of descent based on the fuse furrow.²⁴⁵³ The evidence of QMS Higgs showed that fuse furrows generally appear when a mortar shell impacts on soft ground. The fuse of the shell causes a hole in the ground, typically up to 50 centimetres deep. QMS Higgs clarified that the fuse furrow should not be used for a determination of the direction of fire, but could be accurately used for a determination of the angle

²⁴⁴² Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1024 – 1025, 1028.

²⁴⁴³ W-137, 19 Feb 2007, T. 2420 – 2421, 20 Feb 2007, T. 2554.

²⁴⁴⁴ W-137, 20 Feb 2007, T. 2554.

²⁴⁴⁵ D120, ICTY information report, p. 3.

²⁴⁴⁶ Harry Konings, 13 Mar 2007, T. 3597 – 3599; P357, UNPROFOR investigation report, p. 3.

²⁴⁴⁷ Harry Konings, 12 Mar 2007, T. 3591 – 3593.

²⁴⁴⁸ Harry Konings, 13 Mar 2007, T. 3596.

²⁴⁴⁹ P357, UNPROFOR investigation report, p. 3.

²⁴⁵⁰ Harry Konings, 13 Mar 2007, T. 3599 – 3601, 3634 – 3635; P357, UNPROFOR investigation report.

²⁴⁵¹ W-137, 19 Feb 2007, T. 2453; Harry Konings, 12 Mar 2007, T. 3575 – 3576; P631, UNPROFOR final report, p. 8; P253, Sketch of the scene and minimum angle of descent, dated 29 August 1995; D119, Statement of Harry Konings, p. 3.

²⁴⁵² Richard Higgs, 23 Apr 2007, T. 5019 – 5020.

²⁴⁵³ Richard Higgs, 23 Apr 2007, T. 5015 – 5017; P357, UNPROFOR investigation report, pp 6, 9.

of descent.²⁴⁵⁴ However, the fuse furrow was the basis for the renewed calculation of the direction of fire by UNPROFOR.²⁴⁵⁵

687. The Defence tendered an article on the incident by Bosnian Serb scientist, Miroljub Vukašinić, who wrote that, after an analysis of television footage, it was obvious that the measurements for the calculation of angle of descent of the shell “had been altered” in order to obtain an angle of descent at which the shell would not hit the roof of the building.²⁴⁵⁶ In the article, he concluded that the shell explosion was most probably carried out in static conditions, at an angle between 50 and 60 degrees. He wrote that if a shell had been fired from a VRS position at an angle of descent of between 50 and 60 degrees, it would have exploded on the building’s roof.²⁴⁵⁷ Berko Zečević, Prosecution expert on modified air bombs, commented that, although excellent in theory, the conclusions of this Miloljub Vukašinić were erroneous because they were based on inaccurate data. He also concluded that the angle of descent was a minimum of 70 degrees and agreed with Miroljub Vukašinić’s position that if a shell had arrived at an angle of 50 to 60 degrees, the projectile would have struck the roof of the building.²⁴⁵⁸

d. Origin of Fire

688. W-137’s conclusion was that the shell came from the slopes of Mount Trebević, which were controlled by the SRK.²⁴⁵⁹ UNPROFOR initially also arrived at this conclusion from their investigation.²⁴⁶⁰ However, the UNPROFOR investigations concluded that the shell had come from “2850 mils”, an area located a few kilometres east of Lukavica.²⁴⁶¹ Gen. Smith stated that, after the investigation, he decided that “the rounds came from the Serb side.”²⁴⁶² None of the reports, either from the BiH police or from UNPROFOR, concluded that the shell had been launched from ABiH-held territory.²⁴⁶³ The Defence put to David Harland that the first investigative report was that there was doubt about the origin of fire because it was impossible to determine the level of charge used to fire the projectiles. However, he testified that Gen. Smith had asked for a review of the report and

²⁴⁵⁴ Richard Higgs, 23 Apr 2007, T. 5010 – 5011.

²⁴⁵⁵ P357, UNPROFOR investigation report, p. 3.

²⁴⁵⁶ D175, Article on ballistic analysis of the Markale Market II incident by Miroljub Vukašinić (“Article by Miroljub Vukašinić”), p. 3.

²⁴⁵⁷ D175, Article by Miroljub Vukašinić, p. 16.

²⁴⁵⁸ Berko Zečević, 23 Apr 2007, T. 4936 – 4937.

²⁴⁵⁹ W-137, 19 Feb 2007, T. 2433 – 2434.

²⁴⁶⁰ P21, UNPROFOR sitrep, 28 August 1995, p. 5.

²⁴⁶¹ P631, UNPROFOR final report, pp 1, 9.

²⁴⁶² Rupert Smith, P334, p. 22.

²⁴⁶³ Rupert Smith, 7 Mar 2007, T. 3336.

David Harland was there when the technical team found, “beyond reasonable doubt”, that the shell had been fired from Bosnian Serb positions.²⁴⁶⁴

689. Lt. Col. Konings considered the possibility that the round had been fired from ABiH-held territory with one charge attached to the shell but rejected this as not being “normal military behaviour”.²⁴⁶⁵ In his report, he noted that the BiH police team “worked very hard” to convince the UNMOs that the round came from Bosnian Serb-held territory before he had decided on the most probable firing position.²⁴⁶⁶ Lt. Col. Konings later based his conclusion that the shell had come from Bosnian Serb-held territory on the fact that no UNMO had recorded any shell coming from within the frontline, that no radar had recorded the launching which indicated that the trajectory was below the beam of the radar and that it was a long range shot. With regard to the latter, the acoustic system did not pick up any firing and, therefore, the launching point must have been far away.²⁴⁶⁷ Further, Lt. Col. Konings explained that had this projectile been fired with the lowest charge of zero, the origin of fire would have been near OP-1.²⁴⁶⁸ The Trial Chamber notes that OP-1 was located at Čolina Kapa overlooking the central downtown area of Sarajevo.²⁴⁶⁹

690. The UNMOs Lt. Com. Thomas Knustad and Maj. Paul Conway were posted at OP-1 and they heard an impact and explosion after which they observed smoke coming from the area of Markale, about 2,000 metres from where they were. Lt. Com. Knustad was confident that the round, which resulted in the explosion that he heard and observed from his post, was not fired from within his area of responsibility.²⁴⁷⁰ Lt. Com. Knustad estimated that the maximum distance at which a 120 mm mortar shell can be heard is at least four to five kilometres.²⁴⁷¹ He therefore excluded the possibility that the shell was fired from within ABiH-held territory because he would have heard it.²⁴⁷² In this respect, Defence expert Maj. Gen. Garović conceded that mountains or hills would muffle or deflect the sound, if the mountains or hills were along the shell’s trajectory.²⁴⁷³

691. QMS Higgs testified that, depending on the type of charge used, there were four ranges that the mortar shell could have been fired from: 900, 1,600, 2,400 or 3,000 metres. The first possibility placed the launch close to an urban area, where many people would have heard the launching, the

²⁴⁶⁴ David Harland, 16 Jan 2007, T. 433, 436.

²⁴⁶⁵ D119, Statement of Harry Konings, p. 4.

²⁴⁶⁶ Harry Konings, 13 Mar 2007, T. 3616 – 3617; P85, Handwritten UNMO report, dated 28 August 1995, p 2.

²⁴⁶⁷ Harry Konings, 13 Mar 2007, T. 3602 – 3603, 3622, D119, Statement of Harry Konings, p. 4; D121, ICTY information report, p. 2; Rupert Smith, 7 Mar 2007, T. 3336 – 3337; Richard Higgs, 24 Apr 2007, T. 5092; W-156, 27 Apr 2007, T. 5393 (closed session); P255, Criminal investigation file, p. 2.

²⁴⁶⁸ Harry Konings, 12 Mar 2007, T. 3585 – 3586.

²⁴⁶⁹ D120, ICTY information report, p. 2.

²⁴⁷⁰ Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1025 – 1026; Thomas Knustad, 13 Feb 2007, T. 1993 – 1995, 1996 – 1997; D58, ICTY information report, p. 1.

²⁴⁷¹ Thomas Knustad, 13 Feb 2007, T. 2003 – 2004.

²⁴⁷² Thomas Knustad, 13 Feb 2007, T. 2004 – 2006; 2023, 2039, 2048 – 2049.

second one placed it between frontlines, which, in the view of the witness, was tactically unsound, and the third one, at 2,400 metres, placed it on higher ground in SRK-held territory, which was, according to QMS Higgs, the most probable location.²⁴⁷⁴ He also testified that, although the downtown area was visible from that distance, the exact location of the Markale Market was hidden by the buildings surrounding it but he believed it was still possible to target that area because at the time both warring parties most likely had pre-recorded targets.²⁴⁷⁵ W-137 testified that mortars were very accurate weapons, which allowed targeting precise enough to hit a particular street and that the Bosnian Serbs were very good at targeting with them.²⁴⁷⁶

692. The inner-city neighbourhood where the five shells fell on 28 August 1995 was a civilian area without any military activity.²⁴⁷⁷ Lt. Com. Knustad stated that he could not imagine what could actually have been the target of these rounds.²⁴⁷⁸ QMS Higgs testified that there was no military advantage to firing a single round into a built-up area and that the goal was probably to terrorise the civilian population.²⁴⁷⁹ Lt. Col. Konings testified that, after spending five months in Sarajevo and observing the use of mortars shells, this incident fitted perfectly the pattern of mortar rounds fired anywhere on the city, not aimed at military targets and in the form of a “harassing fire against the civilians.”²⁴⁸⁰

693. The Defence emphasised that the radars around Sarajevo did not register the shell that struck the street outside the Markale Market. In his article that was tendered by the Defence, Mirosljub Vukašinić noted that the shell was neither heard by the UNMOs, nor detected by the radars monitoring artillery fire.²⁴⁸¹ W-137 testified that the French UNPROFOR contingent had provided a radar system to Sarajevo at the beginning of the war, which broke down shortly thereafter.²⁴⁸² According to him, without the radar, no one could locate precisely the origin of fire but it was established that the ABiH had not been firing any mortars on that day.²⁴⁸³ The Defence put to him that the Dutch and the British also had radar systems and that these did not register a single shell that fell in the area that day; W-137 would not comment on that.²⁴⁸⁴ Lt. Col. Konings testified that he knew of a British Cymbeline radar system as well as one operated by the French but that they

²⁴⁷³ Desimir Garović, 24 Aug 2007, T. 9188 – 9189.

²⁴⁷⁴ Richard Higgs, 24 Apr 2007, T. 5024 – 5028, 5055 – 5056; 5105.

²⁴⁷⁵ Richard Higgs, 24 Apr 2007, T. 5028 – 5030.

²⁴⁷⁶ W-137, 20 Feb 2007, T. 2547 – 2548, 2550 – 2551.

²⁴⁷⁷ W-28, P275, p. 3; D119, Statement of Harry Konings, p. 4; P255, Criminal investigation file, p. 2.

²⁴⁷⁸ Thomas Knustad, 13 Feb 2007, T. 1998.

²⁴⁷⁹ Richard Higgs, 24 Apr 2007, T. 5030.

²⁴⁸⁰ Harry Konings, 13 Mar 2007, T. 3623 – 3624, 3636 – 3637.

²⁴⁸¹ D175, Article by Mirosljub Vukašinić, p. 1.

²⁴⁸² W-137, 19 Feb 2007, T. 2432.

²⁴⁸³ W-137, 19 Feb 2007, T. 2433.

²⁴⁸⁴ W-137, 20 Feb 2007, T. 2552 – 2553.

were in the UNPROFOR chain of command with which they had no contact.²⁴⁸⁵ Maj. Gen. Nicolai commented that normally the radar would have registered the shell, but he immediately noted that the coverage of the radar “might not have been 100 per cent.”²⁴⁸⁶ The UNPROFOR report on this incident, however, clarified why the launch of the mortar was not recorded: it read that the radar was set to detect the trajectory of a mortar fired at a distance of 950 metres or less. Any round fired from a distance between 1,500 and 3,000 metres would have had a trajectory that would have passed under the radar beam.²⁴⁸⁷ The report noted that the distance to the confrontation line from the impact point was 1,050 metres.²⁴⁸⁸

e. Military Activities on 28 August 1995

694. According to Bakir Nakaš, 28 August 1995 was a peaceful day.²⁴⁸⁹ However, an UNPROFOR report shows that on 28 August 1995 there was ongoing military activity in several places in and around Sarajevo, and a total of 1,746 firing incidents were recorded, as well as a high number of explosions. At approximately 1230 hours, a church in Ilidža was hit, killing members of a wedding party. More shelling between the ABiH and VRS ensued, that lasted the entire day, with the VRS reportedly doing most of the shelling. By 2000 hours, another five “rockets” had been fired “toward downtown again.”²⁴⁹⁰

f. Defence Submission of Tampering

695. Between the shelling of the Markale Market and the start of the NATO bombing in the night of 29 August 1995, Gen. Smith had three conversations with Gen. Mladić, during which Gen. Mladić denied responsibility for the shelling and requested an inquiry.²⁴⁹¹ In these three conversations, Gen. Mladić denied that the VRS had shelled the market and said that it was a Bosnian Muslim attack designed to discredit the VRS.²⁴⁹² In the first conversation, Gen. Mladić urged Gen. Smith to set up a joint investigation team, comprising UNPROFOR, BiH and Bosnian Serb representatives.²⁴⁹³ Gen. Smith agreed to consider doing so but told Gen. Mladić that all the information he had indicated that it was a Bosnian Serb attack.²⁴⁹⁴ In the second conversation, Gen.

²⁴⁸⁵ Harry Konings, 13 Mar 2007, T. 3666.

²⁴⁸⁶ Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1024 – 1026, 1027.

²⁴⁸⁷ P357, UNPROFOR investigation report, p. 3.

²⁴⁸⁸ P357, UNPROFOR investigation report, p. 3.

²⁴⁸⁹ Bakir Nakaš, 29 Jan 2007, T. 1106.

²⁴⁹⁰ P21, UNPROFOR sitrep, 28 August 1995, pp 1, 5.

²⁴⁹¹ Rupert Smith, P334, p. 22; P733, SRK order dated 28 August 1995, requesting troops to report firing at Sarajevo between 1000 and 1200 hours with weapons of 80 mm calibre and more, p. 1.

²⁴⁹² Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1015 – 1016; Rupert Smith, P334, p. 22.

²⁴⁹³ Rupert Smith, P334, p. 22.

²⁴⁹⁴ Rupert Smith, P334, p. 22.

Mladić reported to Gen. Smith that his investigations had concluded that no VRS forces were involved in the attack.²⁴⁹⁵ Gen. Smith told Gen. Mladić that the UNMO investigation had established that the round responsible for killing the victims was a 120 mm mortar round, probably fired from the south.²⁴⁹⁶ Gen. Mladić again requested that a joint commission be established to investigate the attack which he believed would “vindicate” his forces.²⁴⁹⁷ In the third conversation, Gen. Smith informed Gen. Mladić that it was beyond reasonable doubt that the shells had come from the SRK territory and that the firing point was between 3.5 and 4 kilometres south-west of the impact point.²⁴⁹⁸ Gen. Mladić again denied that the shell had originated from SRK firing positions. Gen. Smith did not believe him.²⁴⁹⁹ Gen. Mladić again stated that there were a number of indications to suggest that the shelling had been orchestrated by the BiH.²⁵⁰⁰ There is no evidence that a joint investigation was ever undertaken.

696. W-137 was asked by the Defence if it was possible that the crater outside the Markale Market could have been tampered with. He rejected this possibility because he thought it was impossible for anyone to have tampered with the crater given the number of people present at the scene and trying to help the victims.²⁵⁰¹ Furthermore, he testified that the crime scene was secured by police officers who did not allow anyone near the crime-scene until the BiH police investigation team arrived.²⁵⁰² Sead Bešić was asked why no vehicle was hit when the shell exploded and he answered that one motorcyclist was hit and that it was not a very busy street at the time. He was also asked whether a vehicle could flatten the tail-fin of the shell in the manner the tail-fin found at the scene was flattened. Sead Bešić testified that while it was possible, it was absolutely not true that the shell was planted and exploded there.²⁵⁰³ The Defence also questioned the presence of bicycles against the wall of the building of the south side of the street which did not seem to have been damaged at all. W-137 explained that they were probably not there when the shell landed but had been put against this wall later, in order to make way for the vehicles which were evacuating the victims.²⁵⁰⁴ The Trial Chamber notes that video footage taken immediately after the incident shows that one bicycle was already standing against the wall of the Markale Market and that a

²⁴⁹⁵ Rupert Smith, P334, p. 22.

²⁴⁹⁶ Rupert Smith, P334, p. 22.

²⁴⁹⁷ Rupert Smith, P334, p. 22.

²⁴⁹⁸ Rupert Smith, P334, p. 23.

²⁴⁹⁹ Rupert Smith, 7 Mar 2007, T. 3337 – 3338, P334, p. 23; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1021.

²⁵⁰⁰ Rupert Smith, P334, p. 23.

²⁵⁰¹ W-137, 19 Feb 2007, T. 2418 – 2419.

²⁵⁰² Sead Bešić, 20 Feb 2007, T. 2569.

²⁵⁰³ Sead Bešić, 21 Feb 2007, T. 2619 – 2621.

²⁵⁰⁴ W-137, 20 Feb 2007, T. 2554 – 2555; P250 Photograph of impact site marked by W-137.

person later moved another bicycle from the street and placed it against the wall of the Markale Market.²⁵⁰⁵

697. Defence expert Maj. Gen. Garović testified that it was impossible for a 120 mm mortar shell to kill approximately 43 persons. He disagreed with the Prosecution that people located beyond 50 to 70 metres from a 120 mm explosion site would sustain injuries.²⁵⁰⁶ It would normally kill about ten persons and the others would not even be wounded.²⁵⁰⁷ Ivica Milosavljević, Defence expert on forensic medicine, testified that he could not be certain that the victims were killed at the spot where it is alleged that they lost their lives.²⁵⁰⁸ Based on photographs of the victims, Ivica Milosavljević identified wounds caused by gunshots at a range of less than one metre, rather than shrapnel wounds.²⁵⁰⁹ However, he also testified that some of the photographs showed wounds inflicted by shrapnel.²⁵¹⁰

698. Ivica Milosavljević also reviewed video footage shot at the scene right after the incident and concluded that a victim seen on the footage was probably not killed at the scene because a victim appeared in a location where previously only a cardboard box was visible.²⁵¹¹ He further testified that the basis of his assumption that the victims' bodies had been placed at the scene was that, on the video footage, victims seemed to be moved and, in some instances, there was a lack of blood marks.²⁵¹² Ivica Milosavljević accepted that, when asked by the Prosecution, that he did not see any autopsy report, but he explained that no such reports were included in the material provided to him by the Defence for review. He was concerned about this because "a forensic medical examination in the absence of this type of documentation is simply impossible."²⁵¹³ He agreed with the Prosecution that shrapnel comes in different sizes and shapes and it is not the only thing that can kill a person at an explosion scene.²⁵¹⁴

699. The Defence suggested to W-137 that the victims were not killed at the location of the incident. W-137 said this was "absolutely untrue" and said that "pieces of brain, of skulls, of fingers were found", that shrapnel "severed off people's feet completely" and that there were so much body parts on the crime scene that, "had this been planted, it would have been noticed by hundreds of

²⁵⁰⁵ P622, Videoclip of events in Sarajevo; P623, Videoclip of events in Sarajevo.

²⁵⁰⁶ Desimir Garović, 24 Aug 2007, T. 9186.

²⁵⁰⁷ Desimir Garović, 24 Aug 2007, T. 9227, D368, Sketch of mortar kill radius made by Desimir Garović.

²⁵⁰⁸ Ivica Milosavljević, 27 Aug 2007, T. 9256; P623, Videoclip of events in Sarajevo.

²⁵⁰⁹ Ivica Milosavljević, 27 Aug 2007, T. 9258, 9259 – 9261, 9266, 9269, 9271; D370, Photograph marked by Ivica Milosavljević; D371 Photograph marked by Ivica Milosavljević.

²⁵¹⁰ Ivica Milosavljević, 27 Aug 2007, T. 9262 – 9263.

²⁵¹¹ Ivica Milosavljević, 27 Aug 2007, T. 9275 – 9279, 9316 – 9317.

²⁵¹² Ivica Milosavljević, 27 Aug 2007, T. 9306 – 9309.

²⁵¹³ Ivica Milosavljević, 27 Aug 2007, T. 9290 – 9291, 9297 – 9298, 9300; 9313 – 9314.

²⁵¹⁴ Ivica Milosavljević, 27 Aug 2007, T. 9302 – 9304.

witnesses. So both theoretically and practically it was impossible.”²⁵¹⁵ Lt. Col. Konings also testified that, in his view, it was not possible to stage this shelling incident by bringing and unloading dead bodies from elsewhere, given the many people he saw gathered at Markale that morning and the fact that no other similar incident had been previously reported in which so many persons were killed.²⁵¹⁶ However, he did confirm that there were rumours at the time that bodies were occasionally planted but he did not comment on the veracity of these rumours.²⁵¹⁷

700. Maj. Gen. Garović testified that, on the basis of photographs, the crater appeared to be two centimetres deep; in his view, that could indicate that the shell came in at a low velocity, or that it was set off in static conditions.²⁵¹⁸ He agreed with the determination of the direction of fire of about 175 degrees and thought it impossible to make a mistake regarding this direction.²⁵¹⁹ He also assessed two sketches of the incident made by the investigators, which he deemed to be inaccurate. Maj. Gen. Garović used the “photogrametric method” in order to assess the measurements made at the scene by the investigators.²⁵²⁰ He established measurements of the scene on the basis of the panoramic photographs and applied them to the two sketches and concluded that, according to his calculations, it was impossible for the shell to land on the street without hitting the roof of the Markale Market.²⁵²¹ However, Maj. Gen. Garović agreed that it was possible that the shell did not hit the building.²⁵²² He further accepted the Prosecution’s proposition that he was never present at the site of the explosion and, therefore, did not take his measurements at the scene, unlike the investigators whose results he disagreed with.²⁵²³ He also said that he was “acquainted with photogrametrics”, but was not an expert in the field.²⁵²⁴

701. The Prosecution suggested that Maj. Gen. Garović used firing tables for a different kind of projectile from the one that exploded at the Markale Market.²⁵²⁵ Maj. Gen. Garović testified that, although the difference between the two different projectiles warranted different firing tables and the ranges may vary, it did not make a difference with regard to ballistics.²⁵²⁶ He also accepted the Prosecutor’s proposition that he had not reviewed any evidence suggesting that this was a static explosion, or encountered any person who suggested that he or she planted an explosive device at

²⁵¹⁵ W-137, 20 Feb 2007, T. 2557.

²⁵¹⁶ Harry Konings, 12 Mar 2007, T. 3588 – 3590; D121, ICTY information report, p. 2.

²⁵¹⁷ Harry Konings, 13 Mar 2007, T. 3643.

²⁵¹⁸ Desimir Garović, 23 Aug 2007, T. 9135.

²⁵¹⁹ Desimir Garović, 23 Aug 2007, T. 9136.

²⁵²⁰ Desimir Garović, 23 Aug 2007, T. 9144; D175, Article by Miroljub Vukašinić, p. 1; D367, Photograph of Markale Market marked by Desimir Garović.

²⁵²¹ Desimir Garović, 23 Aug 2007, T. 9136 – 9138, 24 Aug, T. 9209 – 9212; P253, Sketch of the scene and minimum angle of descent, 29 August 1995; P254, Sketch marked by W-137.

²⁵²² Desimir Garović, 23 Aug 2007, T. 9141.

²⁵²³ Desimir Garović, 24 Aug 2007, T. 9203 – 9204.

²⁵²⁴ Desimir Garović, 24 Aug 2007, T. 9204.

²⁵²⁵ Desimir Garović, 24 Aug 2007, T. 9180 – 9183.

the scene; this possibility was a guess on his part.²⁵²⁷ However, Maj. Gen. Garović testified that, based on the visible traces and the documentation, he believed preparations for a static explosion were carried out.²⁵²⁸ In these circumstances, he testified that there would be no important distinction between the projectile flying in at low velocity or exploding in static conditions.²⁵²⁹

702. The Defence put to W-137 that the five shells that fell in the area of Markale Market on 28 August 1995 “were in fact explosions that were planted and activated by telecommand, [...] and there were no victims at all when these explosions occurred.” W-137 vehemently denied this submission.²⁵³⁰ QMS Higgs also testified that it was very unlikely the mortar shell had been planted and fired in a static position at the location because there were no traces of elements which would have been necessary to accomplish this: a frame would have been needed to hold the shell in position and there was no trace of secondary debris; the shell would have needed to be fired, either by a secondary charge or by removing the fuse and placing a charge in it, which would have affected the pattern of the crater.²⁵³¹ He disagreed with the Defence proposition that the logical conclusion to draw from the evidence that no one had heard the shell and no radar system had recorded it, was that the shell had been planted at the location.²⁵³²

g. Evidence of Col. Andrey Demurenko

703. Defence witness Col. Andrey Demurenko, Chief of Staff of UNPROFOR Sector Sarajevo in 1995, testified that he was at the UNPROFOR headquarters in the PTT Building when the explosion occurred and that he went to the site of the incident to observe the crater and give instructions to the UNPROFOR members working at the site, following which he went back to the headquarters.²⁵³³ Upon his return to the headquarters, he learned that the spokesperson for UNPROFOR in BiH had declared in a press conference that the SRK was responsible for the incident at the Markale Market.²⁵³⁴

704. Col. Demurenko presented to the Trial Chamber an order from Gen. Bachelet, in which it is said that the shelling of Sarajevo would be used for appropriate NATO air strikes. In Col. Demurenko’s opinion, this meant that the shelling could be used as a pretext for NATO air

²⁵²⁶ Desimir Garović, 24 Aug 2007, T. 9180 – 9183.

²⁵²⁷ Desimir Garović, 24 Aug 2007, T. 9212 – 9214, 9215 – 9217.

²⁵²⁸ Desimir Garović, 24 Aug 2007, T. 9212 – 9215.

²⁵²⁹ Desimir Garović, 24 Aug 2007, T. 9214 – 9215.

²⁵³⁰ W-137, 20 Feb 2007, T. 2553 – 2554.

²⁵³¹ Richard Higgs, 24 Apr 2007, T. 5031 – 5032, 5109 – 5110.

²⁵³² Richard Higgs, 24 Apr 2007, T. 5094.

²⁵³³ Andrey Demurenko, 5 July 2007, T. 7679, 6 July 2007, T. 7739.

²⁵³⁴ Andrey Demurenko, 5 July 2007, T.7679 – 7680.

strikes.²⁵³⁵ In this regard, he testified that the press conference given by the UN spokesman shortly after the incident, in which it was alleged the SRK was responsible, was “another signal” to the same effect, “saying that NATO air strikes had been pre-planned and the only thing they were waiting for was a reason, was a justification.”²⁵³⁶ It prompted him to undertake his own investigation, in order not to “let the Serbs be blamed for everything, without trying to be impartial.”²⁵³⁷ The group of people he worked with in his investigation were all Russian nationals.²⁵³⁸ They worked for three days, from 29 to 31 August 1995, and reached conclusions on 1 September 1995.²⁵³⁹

705. The investigation concluded that the SRK could not have fired the shell.²⁵⁴⁰ Col. Demurenko testified that he tried to communicate the result of his investigation to Gen. Bachelet but that he was discouraged by his Aide de Camp, a Canadian officer, who told him that there was no chance his conclusions would be made public.²⁵⁴¹ No one witnessed the conversation between Col. Demurenko and the Aide de Camp.²⁵⁴² Col. Demurenko testified that he did not look for a possibility to approach Gen. Bachelet.²⁵⁴³ However, he decided to publicise the results of his investigation and, on 2 September 1995, gave an interview with Associated Press.²⁵⁴⁴ Col. Demurenko testified that, he received death threats the following day from Capt. Salajdžić, an ABiH liaison officer.²⁵⁴⁵ However, he testified that he did not report this to anyone.²⁵⁴⁶

706. Lt. Col. Konings stated that he had heard about a senior UN official claiming publicly that the shell came from within the confrontation lines and he remembered being annoyed because that person had not participated in the investigation and could therefore, in his view, not comment on it.²⁵⁴⁷ When confronted with the results of Col. Demurenko’s investigation that there was “one chance in one million that this shell came from Bosnian Serb held territory”, David Harland testified that Col. Demurenko’s assessment was deemed factually incorrect by a team of experts of the UN.²⁵⁴⁸

²⁵³⁵ Andrey Demurenko, 21 Aug 2007, T. 8981.

²⁵³⁶ Andrey Demurenko, 21 Aug 2007, T. 8984.

²⁵³⁷ Andrey Demurenko, 5 July 2007, T. 7681, 21 Aug 2007, T. 8984. He first obtained authorisation to proceed with the investigation with his superior, Gen. Bachelet: Andrey Demurenko, 5 July 2007, T. 7697.

²⁵³⁸ Andrey Demurenko, 6 July 2007, T. 7758 – 7759.

²⁵³⁹ Andrey Demurenko, 5 July 2007, T. 7692.

²⁵⁴⁰ Andrey Demurenko, 5 July 2007, T. 7693.

²⁵⁴¹ Andrey Demurenko, 5 July 2007, T. 7697, 6 July 2007, T. 7768.

²⁵⁴² Andrey Demurenko, 6 July 2007, T. 7769.

²⁵⁴³ Andrey Demurenko, 6 July 2007, T. 7773 – 7774.

²⁵⁴⁴ Andrey Demurenko, 5 July 2007, T. 7697 – 7698, 6 July 2007, T. 7750; D356, UNPROFOR memo, dated 29 Aug 1995, p. 1.

²⁵⁴⁵ Andrey Demurenko, 5 July 2007, T. 7714 – 7715.

²⁵⁴⁶ Andrey Demurenko, 5 July 2007, T. 7716 – 7717.

²⁵⁴⁷ D121, ICTY information report, p. 3.

²⁵⁴⁸ David Harland, 16 Jan 2007, T. 434.

707. David Harland testified that Gen. Smith, upon his advice, gave a press statement that his investigation showed that it was not clear who had fired the shell. He knew at the time that the shots came from SRK-held territory but, because he was planning to call for NATO air strikes, he chose to make that statement so as not to alert the Bosnian Serbs and allow for some time to evacuate UN personnel from Bosnian Serb-held territory.²⁵⁴⁹ Brig. Mohatarem testified that the air strikes were requested but they were called off within 24 hours, on 30 August 1995, because of Col. Demurenko's public declaration about the origin of the shots. A verification of all agencies' initial investigations was called for and it reached the same conclusions as initially, except for a discrepancy with regard to the angle of the shot that made many casualties.²⁵⁵⁰

708. Col. Demurenko did not dispute the technical findings of the BiH police or other investigators as to the direction of fire or the angle of descent. He did, however, disagree with the conclusion of the "UN experts" regarding the origin of fire. After visiting the locations of the possible firing positions, he questioned whether they were suitable for mortar launching.²⁵⁵¹

709. Col. Demurenko's team, using firing tables, first established all the possible firing locations.²⁵⁵² In response to the Prosecution, who put to him that the tables that were used were for M52 mortar shells while the evidence pointed to the use of a M74 shell, he testified that the firing tables were identical for these two types of shells.²⁵⁵³ Col. Demurenko's team then went to the possible firing locations, which were in the direction of fire established by all the investigations and on Bosnian Serb-held territory, and took photographs at these locations. His team concluded that it was not possible to fire from any of them.²⁵⁵⁴ Col. Demurenko was unable to find all of the photographs he had taken at the time.²⁵⁵⁵ He testified that there were stones in three of these firing positions, making it impossible to secure a plate at these locations, while the fourth location was in a wooded area through which the shell could not have passed.²⁵⁵⁶ Col. Demurenko also pointed to locations on a map showing very steep slopes, on which it was impossible to place a mortar.²⁵⁵⁷

²⁵⁴⁹ David Harland, 16 Jan 2007, T. 434 – 435.

²⁵⁵⁰ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 718 – 719, 730 – 732, 734 – 735.

²⁵⁵¹ Andrey Demurenko, 5 July 2007, T.7699 – 7703, 21 Aug 2007, T. 8943, 8947 – 8948.

²⁵⁵² Andrey Demurenko, 6 July 2007, T. 7759.

²⁵⁵³ Andrey Demurenko, 21 Aug 2007, T. 8944 – 8945; P252, KDZ investigation file, p. 2; P925, Still from the video interview of Andrey Demurenko.

²⁵⁵⁴ Andrey Demurenko, 5 July 2007, T. 7699 – 7703; D357, D358, Colour photographs of Andrey Demurenko pointing to wooded area; D359, Colour photograph of Andrey Demurenko pointing to open field; P927, Colour photograph with Andrey Demurenko pointing towards vantage point; P922, Sketch from Andrey Demurenko with handwritten notes showing mortar trajectories.

²⁵⁵⁵ Andrey Demurenko, 21 Aug 2007, T. 8959.

²⁵⁵⁶ Andrey Demurenko, 5 July 2007, T. 7704 – 7705, 21 Aug 2007, T. 8991.

²⁵⁵⁷ P807 Military map of Sarajevo area marked by Andrey Demurenko; Andrey Demurenko, 6 July 2007, T. 7789 – 7790.

710. The Prosecution questioned Col. Demurenko extensively about the locations he visited with his team and repeatedly asked at where, in relation to the Markale Market, the locations were found. Col. Demurenko explained during cross-examination that he could no longer recall exactly which line was established as the direction of fire; he refused to say whether it was 170 or 176 degrees. However, he said that “based on the material [...], [they] made theoretical calculations as to the line that had to be verified and that was related to the initial investigation by the Bosnian authorities and UNPROFOR.”²⁵⁵⁸ A diagram that was drawn by Col. Demurenko shows that he visited locations that were along one line, with a bearing of 2850 mils. The diagram also contains lines to show a margin of error, but does not show that Col. Demurenko visited any points between the line at 2850 mils and the margins of error.

711. The Prosecution showed Col. Demurenko a series of photographs taken recently at the possible firing positions at a bearing of 176 degrees from the Markale Market but he could not confirm that these were the places he had visited twelve years earlier.²⁵⁵⁹ One of the photographs showed a meadow.²⁵⁶⁰ Col. Demurenko testified that although he visited a meadow during his investigation, he did not find any traces of a mortar launcher, such as marks in the ground or traces of gunpowder.²⁵⁶¹ Col. Demurenko explained during examination-in-chief and re-examination that he could calculate possible firing locations with a margin of error of ten to 15 metres, and this enabled him to visit the locations and look in their immediate vicinity for signs of mortars.²⁵⁶² The Prosecution showed Col. Demurenko one of the photographs he himself had taken at one of the locations he and his team visited. Col. Demurenko agreed that, from this location, there was a view of the city of Sarajevo and it was possible to fire a mortar or even a tank directly at the city.²⁵⁶³

712. Finally, with regard to his investigation, Col. Demurenko testified in cross-examination that he had kept the results of his investigation in his personal archives but there was no final report because the conclusion of the team’s work “boiled down to one sentence. The statement made by the Spokesperson is false. This could not have been a shell from the Serb side.”²⁵⁶⁴

713. Col. Demurenko also explained his view of what had taken place at the Markale Market. He testified that the chances that “the first shell” of a round of shells aimed at a narrow street would hit that street are “one in a million”.²⁵⁶⁵ According to him, there were indications that this was not a

²⁵⁵⁸ Andrey Demurenko, 21 Aug 2007, T. 8999.

²⁵⁵⁹ P923, P926, Photographs taken in the area of Mount Trebević; Andrey Demurenko, 21 Aug 2007, T. 8956 – 8957, 8962.

²⁵⁶⁰ P923, Photograph taken in the area of Mount Trebević.

²⁵⁶¹ Andrey Demurenko, 21 Aug 2007, T. 8956 – 8957, 8964 – 8965.

²⁵⁶² Andrey Demurenko, 5 July 2007, T. 7706, 21 Aug 2007, T. 8992.

²⁵⁶³ Andrey Demurenko, 21 Aug 2007, T. 8969.

²⁵⁶⁴ Andrey Demurenko, 6 July 2007, T. 7760, 7765 – 7766.

²⁵⁶⁵ Andrey Demurenko, 5 July 2007, T. 7708.

shelling incident but, rather, an explosion caused by “terrorists”; one shell had caused many casualties while four others on that same day had not, and that was the second occurrence of such an incident causing many casualties in the vicinity of the Markale Market between 1994 and 1995. He also deemed it improbable that a mortar shell and its fragments would kill over 100 people. Furthermore, he noted that there were no traces of the shell recorded by the radar systems in Sarajevo.²⁵⁶⁶ Consequently, while a mortar shell dropped from a rooftop would not explode, he explained that an explosion could be simulated by using a different explosive device to fire the shell and that the crater would look similar to that of an actual mortar shell launched from far away.²⁵⁶⁷

Findings

714. There are many areas of controversy surrounding this incident. However, the Trial Chamber begins with one area which is non-controversial. On 28 August 1995, at 1110 hours, there was an explosion on Mula Mustafe Bašeskije Street, just outside the Markale Market.

715. The following areas are hotly contested by the Parties: (i) the calibre of the mortar; (ii) whether the mortar was fired from another location, as argued by the Prosecution, or planted at the scene, as argued by the Defence; (iii) if fired from another location, whether the mortar was fired from SRK-held territory.

716. The Prosecution led evidence from W-28, W-137, Sead Bešić, Lt. Col. Konings, Maj. Gen. Nicolai and QMS Higgs, and presented documentary evidence, that a 120 mm mortar shell that struck the street in the vicinity of Markale Market, killing 35 persons and wounding 78, was fired from SRK-held territory.

717. Defence witness, Maj. Gen. Garović put the general Defence case of tampering by testifying that it was impossible for a 120 mm mortar to kill 43 persons. He also testified that, on the basis of the photographs, which showed the crater to be about two centimetres deep, the shell came in at a low velocity or it was set off in static conditions. In cross-examination, he agreed he was never present at the scene and did not take measurements at the scene, unlike the investigators, with whose results he disagreed. The Trial Chamber observes that Maj. Gen. Garović’s conclusions were based on his use of the photogrametric method to assess the measurements made at the scene by the investigators. In cross-examination, he said he was “acquainted” with the method but was not an expert in the field.

²⁵⁶⁶ Andrey Demurenko, 5 July 2007, T. 7718.

²⁵⁶⁷ Andrey Demurenko, 5 July 2007, T. 7719.

718. The Trial Chamber does not find Maj. Gen. Garović's evidence to be reliable. He did not convince the Trial Chamber of his grasp of the photogrametric method and its reliability for the purpose of establishing the angle of descent of a projectile in this particular incident. The Trial Chamber does not discount Maj. Gen. Garović's testimony that, based on the visible traces and documentation, he believed preparations for a static explosion were carried out. However, in the Trial Chamber's view, this does not take the matter any further because he did not visit the site and he derived his conclusion from photographs on the basis of a method that the Trial Chamber has found unreliable. The Trial Chamber finds persuasive QMS Higgs' testimony that it was unlikely that the shell had been planted, because a frame would have been needed to hold the shell in position, but there were no traces of secondary debris. Moreover, in his view, the shell would have had to be activated by a secondary charge or by removing the fuse and placing a charge in it, and that would have affected the pattern of the crater. Furthermore, the Trial Chamber finds the possibility that the mortar ricocheted is not supported by the evidence.

719. The Trial Chamber also takes note of the article on the incident by Miroljub Vukašinić, published as part of the Military Technical Institute of the Army of Yugoslavia 97 Symposium in Belgrade. His conclusions, that it was obvious that the measurements for the calculation of the angle of descent of the shell were altered and that the shell exploded in static conditions, were based on an analysis of television footage. These conclusions were dismissed by Berko Zečević, who said that they were erroneous because they were based on inaccurate data. The Trial Chamber is not convinced by Miroljub Vukašinić's conclusions and notes that the calculations of the angle of descent of the BiH police, the UNMOs and UNPROFOR were based on measurements taken at the scene. The Trial Chamber sees no reason to question those measurements. Furthermore, the Trial Chamber is persuaded by the evidence of the BiH police, the UNMOs and the first UNPROFOR investigation, which concluded that the direction of fire was 170 degrees, that is, Mount Trebević, which was SRK-held territory.

720. Ivica Milosavljević, the Defence expert on forensic medicine, made essentially two points. He was not certain that the victims were killed at the spot where it is alleged by the Prosecution that they lost their lives and, in his view, the victims' wounds were not caused by shrapnel, but by gunshots. However, the Trial Chamber observes that he agreed that: (i) some of the photographs showed wounds inflicted by shrapnel; (ii) shrapnel wounds come in all shapes and sizes and that shrapnel was not the only thing that could kill a person at an explosion scene; (iii) he did not see any autopsy reports. With regard to the latter, the Trial Chamber notes, therefore, that the data relied upon by Ivica Milosavljević was incomplete and his views are based entirely on his interpretation of the photographs.

721. The Defence and Ivica Milosavljević made a lot of the video footage, which at one point in time showed no body at a particular location and at the same location some time thereafter showed the presence of a victim's body. The evidence indicates that bodies were being moved in the interests of the health and security of the victims and to clear the street. The evidence also indicates that the scene immediately after the explosion was characterised by a general confusion and panic. In such a situation, the Trial Chamber does not find the movement of bodies remarkable. In the circumstances, it attaches no weight to this evidence pertaining to the video footage. The Trial Chamber also notes the evidence of Lt. Col. Konings and W-137, both of whom rejected the Defence proposition that the victims were not killed at the scene of the explosion. Lt. Col. Konings testified that it was not possible to stage this shelling incident by bringing dead bodies from elsewhere, given the many people he saw gathered at the Markale Market that morning and the fact that no other similar incident, killing that many people was reported in Sarajevo before this one. W-137 testified that there were so many body parts at the scene that if they had been brought in from elsewhere, this would have been noticed by hundreds of people. The Trial Chamber finds that at least 35 persons died and at least 78 persons were wounded, many of them seriously. The great majority of wounded were civilians. Only one of the deceased was a soldier of the ABiH. The Trial Chamber is satisfied that the other 34 deceased were civilians.

722. Col. Demurenko testified that a mortar had exploded in front of Markale Market but that it was not fired from SRK positions. He went to the possible firing locations in SRK-held territory that he identified and concluded for each of the locations that either it was not possible to fire a mortar from the location or there were no visible traces which would have indicated a mortar was fired from the location. Col. Demurenko could not testify as to exactly which bearing he used when he visited the possible firing locations identified by his team. The Prosecution showed Col. Demurenko a satellite photograph indicating the difference in the bearing identified by UNPROFOR and the bearing he had identified while testifying in examination-in-chief. However, he also said he used the bearing that was calculated by UNPROFOR. Col. Demurenko testified he could calculate the possible firing locations with a margin of deviation of ten to 15 metres and that enabled him to search the location within those points. The Trial Chamber recalls the evidence that any bearing calculated by UNPROFOR or the BiH police had a margin of error of approximately ten degrees, confirmed by QMS Higgs. It is clear that this margin of error covered a wider area than was covered by the locations visited by Col. Demurenko on the basis of a margin of deviation of no more than ten to 15 metres. The Trial Chamber, therefore, has a difficulty accepting Col. Demurenko's conclusions dismissing any possibility that the shell was fired from SRK-held territory. This determination is consistent with the Prosecution's line of cross-examination that Col. Demurenko confined himself to too narrow an area in seeking to identify the possible launching

sites. It is significant that Col. Demurenko never answered the Prosecution's questions on this point with any clarity, in fact the Trial Chamber characterises his responses as vague and evasive.

723. Col. Demurenko also testified that the Markale explosion was not a result of shelling but rather was one caused by terrorists. He further made the point that no traces of the shell were recorded by the Cymbeline radar system. This point was also made by the Defence in cross-examination. The short answer to this is given by an UNPROFOR report which explained that the launch of the mortar was not recorded because the radar was set to detect the trajectory of a mortar shell fired at a distance of 950 metres or less and, consequently, the trajectory of any round fired from a distance of between 1,500 and 3,000 metres would have passed under the radar beam. The Trial Chamber accepts this explanation.

724. In the circumstances, the Trial Chamber is satisfied that the mortar shell that struck the street in the vicinity of the Markale Market was fired from the territory under the control of the SRK and that it was fired by members of the SRK.

7. Effects of Shelling and Sniping on Civilians

725. In its Final Brief, the Defence submitted that the period covered by the Indictment “differed in many ways from the preceding period of the conflict.”²⁵⁶⁸ However, witnesses said that during the Indictment period the day-to-day life of civilians in Sarajevo did not differ in many ways from what it had been like in 1992 and 1993.²⁵⁶⁹ Milan Mandilović testified that while 1994 and 1995 were “somewhat easier” in comparison to the previous years, “the population was exhausted, both psychologically and physically.”²⁵⁷⁰ Col. Demurenko, Chief of Staff of UNPROFOR Sector Sarajevo from January 1995 to December 1995, testified that “if one looks at the human suffering, then it was a case of a full siege, just like in Leningrad during Second World War.”²⁵⁷¹ He expressed his surprise at the “ambivalent attitude, blunted attitude toward life” and the prevalent atmosphere of “lethargy” in Sarajevo.²⁵⁷² He agreed with the Prosecution that one possible explanation for the lethargy was that as a result of having been under siege for three years, “people had lost their will to lead a normal life.”²⁵⁷³ Martin Bell explained that:

²⁵⁶⁸ Defence Final Brief, para. 129.

²⁵⁶⁹ Bakir Nakaš, 25 Jan 2007, T. 1062; Milan Mandilović, 18 Jan 2007, T. 617. *See supra*, Section II.C.2 Effect on the Civilian Population within the Confrontation Lines.

²⁵⁷⁰ Milan Mandilović, 17 Jan 2007, T. 569 – 570, 18 Jan 2007, T. 605 – 606.

²⁵⁷¹ Andrey Demurenko, 21 Aug 2007, T. 9007. *See also*, Milorad Katić, 1 June 2007, T. 6039.

²⁵⁷² Andrey Demurenko, 5 July 2007, T. 7667, 7731 – 7732.

²⁵⁷³ Andrey Demurenko, 5 July 2007, T. 7732.

“[the civilians inside the confrontation lines] looked haggard, they looked hunted. Their only business of the day was to get through the day, to survive. Survival was what it was about. They were truly desperate times.”²⁵⁷⁴

(a) Daily Life

726. Civilians in the ABiH-held territory suffered from many privations, such as shortages of food, water, power, gas and electricity, for much of the war.²⁵⁷⁵ According to Bakir Nakaš, the day-to-day life of those residing in Sarajevo during the Indictment period was not very different from the lives of people in 1992 and 1993:

“The city was still under siege, no electricity, no regular water supply, no regular energy supply; under shelling and sniping continually. Life was not normal in any way for the residents of Sarajevo, nor was our work, the work of health workers in the city’s health institutions. Likewise, we lacked all energy supplies, electricity, and our supplies were reduced, limited, in terms of medical supplies, food and such like.”²⁵⁷⁶

727. Evidence indicates that the availability of food, water and power fluctuated.²⁵⁷⁷ According to witnesses, the SRK largely controlled the utilities in Sarajevo.²⁵⁷⁸ According to David Harland, the “Bosnian Serbs” said that Radovan Karadžić, in particular, wanted to cut off the Sarajevo water supply “and other things”, but that there was “influence” from Serbia not to do so.²⁵⁷⁹ UNPROFOR reported that at the end of June 1995 efforts to restore gas, water and electricity were blocked by the “Serb military”, despite agreements to restore the utilities between Bosnian Muslim and Bosnian Serb civil leaders. Zdravko Tolimir stated that there would be no restoration of utilities until the fighting around Sarajevo was over.²⁵⁸⁰

728. As of May or June 1992, Sarajevo did not, in general, have electricity.²⁵⁸¹ Martin Bell stated that there were periods during winter lulls in fighting when gas and electricity were intermittently restored.²⁵⁸² People used wood for fuel, including the doors of a school in Novo Sarajevo.²⁵⁸³

²⁵⁷⁴ Martin Bell, 26 Apr 2007, T. 5264.

²⁵⁷⁵ Martin Bell, 26 Apr 2007, T. 5258, 5259; David Harland, 16 Jan 2007, T. 454.; P618, Videoclip showing aspects of humanitarian situation in Sarajevo; Azra Šišić, 27 Feb 2007, T. 2830 – 2831; Alma Mulaosmanović, P179, p. 3; Anda Gotovac, P522, p. 2; Rialda Musaefendić, P295, p. 4; W-156, P625, p. 11 (under seal). Cf. Goran Kovacevic, 13 June 2007, T. 6602.

²⁵⁷⁶ Bakir Nakaš, 25 Jan 2007, T. 1062.

²⁵⁷⁷ Martin Bell, 26 Apr 2007, T. 5258; Milan Mandilovic, 18 Jan 2007, T. 621 – 622; P12, UNPROFOR daily sitrep, 14 April 1995, p. 3; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 4.

²⁵⁷⁸ David Harland, 15 Jan 2007, T. 352 – 353; Azra Šišić, 27 Feb 2007, T. 2848 – 2849; David Harland, P1, MT. 26955; W-156, P625, pp 39 – 40 (under seal); John Jordan, P267, p. 7. See also P15, UNPROFOR sitrep, 3 June 1995, pp 3 – 4; P10, UNPROFOR weekly sitrep, 10 December 1994, pp 5, 6; P16, UNPROFOR sitrep, 24 June 1995, pp 4 – 5; P19, UNPROFOR sitrep, 2 July 1995, p. 6; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 4; P23, Minutes of meeting on implementation of ceasefire agreement, dated 6 October 1995, pp 1, 3. See also *supra*, Section II.E.8 “Campaign” Strategy.

²⁵⁷⁹ David Harland, P1, MT. 26972.

²⁵⁸⁰ P16, UNPROFOR sitrep, 24 June 1995, pp 4 – 5.

²⁵⁸¹ Milan Mandilović, 17 Jan 2007, T. 569 – 570; Azra Šišić, 27 Feb 2007, T. 2830 – 2831.

²⁵⁸² Martin Bell, 26 Apr 2007, T. 5258, 27 Apr 2007, 5283 – 5284.

Dzenana Sokolovic, 22 Jan 2007, T. 764; Martin Bell, 26 Apr 2007, T. 5258; Dzermaludin Luinovic, 28 Feb 2007, T. 2953; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

Witnesses testified that, in 1994 and 1995, there were transformer stations functioning in Sarajevo; but there was no regularity in the distribution of electricity during that time because, for example, overhead power lines were brought down as a result of the fighting or the power pylons were destroyed “for a more permanent interruption of supply.”²⁵⁸⁴ Milorad Katić recalled that, in such a situation, repairmen from both sides went together with UNPROFOR, “so that no one would get hurt during the intervention.”²⁵⁸⁵ Further, he agreed with the Prosecution, that this would involve arranging a temporary cease-fire. With “representatives of UNPROFOR and the electric company on both sides and also with representatives of the gas or water works companies, it was agreed to have this repair work done by jointly formed work details, and this practice was pursued in 1994 and 1995, all the way up to the time of the Dayton Accords.”²⁵⁸⁶ Goran Kovačević stated that with the exception of when power lines were brought down by the fighting, the electricity supply “never ceased.”²⁵⁸⁷ He also noted that “they” could cut-off supply from “Sarajevo gas station”, which “normally didn’t happen because those were all under UNPROFOR control.”²⁵⁸⁸ No other evidence was presented that the gas stations were under UNPROFOR control.

729. Inhabitants of Sarajevo were “constantly hungry and short of food.”²⁵⁸⁹ The Sarajevo bakery did not always operate during the war due to shortages of flour and electricity, and also because it was a “favourite target for being shelled.”²⁵⁹⁰ The evidence indicates that food shortages meant that civilians living inside the confrontation lines were substantially dependent on humanitarian food aid.²⁵⁹¹ Rialda Musafendić stated that after the Bosnian Serbs closed “the line” in the direction of Stup, it was no longer possible to buy food and they became largely reliant on humanitarian aid.²⁵⁹²

730. According to witnesses, the Blue Routes were opened intermittently during the Indictment period.²⁵⁹³ At such times, and when airplanes carrying humanitarian aid were able to land at Sarajevo Airport, the food situation improved.²⁵⁹⁴ However, the Blue Routes were subject to SRK

²⁵⁸⁴ Enes Jašarević, 1 Mar 2007, T. 2988 – 2990; Avdo Vatrić, P647, p. 6. *See also*, Milan Mandilović, 17 Jan 2007, T. 569 – 570; Milorad Katić, 1 June 2007, T. 6031.

²⁵⁸⁵ Milorad Katić, 1 June 2007, T. 6031.

²⁵⁸⁶ Milorad Katić, 4 June 2007, T. 6129 – 6130. *See also*, Goran Kovačević, 12 June 2007, T. 6556.

²⁵⁸⁷ Goran Kovačević, 12 June 2007, T. 6556.

²⁵⁸⁸ Goran Kovačević, 12 June 2007, T. 6556.

²⁵⁸⁹ Rialda Musafendić, P295, p. 4; Džemaludin Luinović, 28 Feb 2007, T. 2956 – 2957; W-57, P539, p. 4 (under seal).

²⁵⁹⁰ Rialda Musafendić, P295, p. 5; D116, Statement by W-107, p. 3 (under seal). *See, e.g.*, P15, UNPROFOR sitrep, 3 June 1995, p. 3 which stated that the “Sarajevo Bakery, which depends on UNHCR for approximately 48 tons of flour per day and is the sole producer of bread in the city, used up its flour stocks yesterday.”

²⁵⁹¹ W-62, 23 Jan 2007, T. 881 – 882; Azra Šišić, 27 Feb 2007, T. 2830 – 2831; Martin Bell, 26 Apr 2007, T. 5258; P618, Videoclip showing aspects of humanitarian situation in Sarajevo; P15, UNPROFOR sitrep, 3 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 6.

²⁵⁹² Rialda Musafendić, P295, p. 4.

²⁵⁹³ Milan Mandilović, 17 Jan 2007, T. 569, 18 Jan 2007, 617; David Harland, 16 Jan 2007, T. 461, P2, MT. 28638.

²⁵⁹⁴ Martin Bell, 26 Apr 2007, T. 5258, 27 Apr 2007, 5283 – 5284; Milan Mandilović, 18 Jan 2007, T. 617.

fire and closure.²⁵⁹⁵ Martin Bell stated that from April 1995 “the plight of the civilians inside Sarajevo was as desperate as it had been at any time.”²⁵⁹⁶ At the end of May and early June 1995, the food situation in Sarajevo was rapidly deteriorating due to the closure of the land routes and the ongoing suspension of the humanitarian airlift as a result of the closure of Sarajevo Airport on 8 April 1995.²⁵⁹⁷ An UNPROFOR report dated 19 May 1995 stated that UNHCR was only able to bring in 50 per cent of the city’s food needs by land.²⁵⁹⁸ Food convoys that reached Sarajevo on 22 June 1995 after a period of four weeks without any transport provided for only 20 per cent of the total need for food.²⁵⁹⁹

731. Rialda Musaefendić stated that there was a pervading fear that the water would run out and the inhabitants of Sarajevo would not be able to get new supplies.²⁶⁰⁰ Water came in water tankers.²⁶⁰¹ There were also water pumps and wells in the city, and Martin Bell stated that people also took water from the river.²⁶⁰² Rialda Musaefendić collected water on a daily basis from the Hrasno reservoir.²⁶⁰³ An UNPROFOR report noted that in May and early June 1995, all sources of water, producing about 15 per cent of the pre-cut off level, were located in the eastern part of Sarajevo.²⁶⁰⁴ As such, water assistance was to be focused on the western part of the city.²⁶⁰⁵ The report noted that Grbavica was relatively better off for water because its water supply came from a gravity-fed source and that Ilidža “may be facing problems”; but it was difficult to verify due to lack of communication.²⁶⁰⁶

732. Evidence indicates that the provision of medical services was severely affected as a result of the ongoing conflict. There was not enough electricity to run the machines or elevators and the State Hospital even rationed the use of generators.²⁶⁰⁷ Food preparation, laundry and sterilisation were all done using firewood, or gas, if available.²⁶⁰⁸ Small tanks were built to preserve water, which was occasionally provided by tankers, for a few days.²⁶⁰⁹ However, “[o]nly the most vital part[s] of the hospital were provided with electricity and the minimal quantities of water.”²⁶¹⁰ There was no

²⁵⁹⁵ See *supra*, Section II.E.5(a) Shelling by the SRK.

²⁵⁹⁶ Martin Bell, 26 Apr 2007, T. 5258.

²⁵⁹⁷ P15, UNPROFOR sitrep, 3 June 1995, p. 3; P19, UNPROFOR sitrep, 2 July 1995, p. 6.

²⁵⁹⁸ D12, UNPROFOR weekly sitrep, 19 May 1995, p. 3.

²⁵⁹⁹ David Harland, 15 Jan 2007, T. 344. See also Rialda Musaefendić, P295, p. 4; P16, UNPROFOR sitrep, 24 June 1995, p. 4.

²⁶⁰⁰ Rialda Musaefendić, P295, p. 4.

²⁶⁰¹ W-62, 23 Jan 2007, T. 882; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

²⁶⁰² Martin Bell, 26 Apr 2007, T. 5258; P618, Videoclip showing aspects of humanitarian situation in Sarajevo.

²⁶⁰³ Rialda Musaefendić, P295, p. 4.

²⁶⁰⁴ P15, UNPROFOR sitrep, 3 June 1995, p. 4.

²⁶⁰⁵ *Ibid.*

²⁶⁰⁶ *Ibid.*

²⁶⁰⁷ Bakir Nakaš, 25 Jan 2007, T. 1074; Milan Mandilović, 17 Jan 2007, T. 569 – 570.

²⁶⁰⁸ Bakir Nakaš, 25 Jan 2007, T. 1074.

²⁶⁰⁹ Bakir Nakaš, 25 Jan 2007, T. 1074 – 1075.

²⁶¹⁰ Bakir Nakaš, 25 Jan 2007, T. 1075.

regular heating in the hospital, with the exception of one heater that was installed by using gas as an open source of energy.²⁶¹¹ Bakir Nakaš stated that it “was so risky that I really don’t understand how part of this hospital didn’t blow up, because the gas was often cut off. There were leakages and things like that.”²⁶¹²

733. There were not enough medical supplies. Medicines and medical supplies were distributed between the State Hospital and the Medical Clinical Centre based on an estimate of the number of surgeries and patients to be treated.²⁶¹³ The outpatient and emergency wards were supplied 100 per cent by the World Health Organisation.²⁶¹⁴ In addition, the UN made provisions to evacuate “humanitarian cases”, that is, people who were sick or wounded.²⁶¹⁵ Bosnian Serbs would often raise concerns with UNPROFOR about the time it took persons on SRK-held territory to get to a hospital or about the inadequate facilities at the hospitals.²⁶¹⁶ T-61 testified that on the Bosnian Serb side, the situation regarding medical equipment was “much worse” since it had no stocks.²⁶¹⁷ However, according to David Harland, the conditions in the hospitals on the Bosnian Muslim side were “vastly worse” than those on the Bosnian Serb side.²⁶¹⁸

(b) Physical Impact

734. The Trial Chamber heard testimony from several witnesses and received evidence in form of documents that throughout 1994 and 1995, civilians inside the confrontation lines suffered death and injury as a result of the SRK shelling and sniping.²⁶¹⁹

735. The Trial Chamber heard evidence that at the State Hospital “not a week passed without there having been persons brought in, either due to sniping or shelling [...] we would constantly admit persons.”²⁶²⁰ The number of civilian casualties fluctuated during this period due to increased

²⁶¹¹ Bakir Nakaš, 25 Jan 2007, T. 1075.

²⁶¹² Bakir Nakaš, 25 Jan 2007, T. 1075.

²⁶¹³ Bakir Nakaš, 25 Jan 2007, T. 1075.

²⁶¹⁴ Bakir Nakaš, 25 Jan 2007, T. 1075.

²⁶¹⁵ David Harland, P2, MT. 28638.

²⁶¹⁶ David Harland, 16 Jan 2007, T. 456.

²⁶¹⁷ T-61, 9 July 2007, T. 7883.

²⁶¹⁸ David Harland, 16 Jan 2007, T. 456 – 457.

²⁶¹⁹ Bakir Nakaš, 29 Jan 2007, T. 1099 – 1100; W-137, 20 Feb 2007, T. 2498 – 2499; Milan Mandilović, 18 Jan 2007, T. 596; Andrey Demurenko, 5 July 2007, T. 7676; W-95, P520, p. 3 (under seal); Rupert Smith, P334, p. 12; P6, UNPROFOR cable, 12 September 1994; P10, UNPROFOR weekly sitrep, 10 December 1994, p. 5; P16, UNPROFOR sitrep, 24 June 1995, pp 1, 3; P12, UNPROFOR daily sitrep, 14 April 1995, p. 2; P19, UNPROFOR sitrep, 2 July 1995, p. 2; P20, UNPROFOR sitrep, 8 July 1995, p. 2; P391, UNPROFOR report, 17 November 1994, p. 2; P760, UNPROFOR sitrep, 10 December 1994, p. 2; P793, UNPROFOR report on violations of Anti-sniping Agreement, pp 1 – 2; D10, UNPROFOR daily sitrep, 28 Aug 1995, pp 2 – 3. *See also supra*, Section II.E.1-6.

²⁶²⁰ Milan Mandilović, 17 Jan 2007, T. 571.

movement of civilians across Sarajevo or increased shelling.²⁶²¹ John Jordan testified that the majority of victims from shelling and sniping were women and children.²⁶²²

736. Between August 1994 and October 1995, about ten per cent of the total number of civilian patients Bakir Nakaš treated were sniping casualties and about 90 per cent were shelling casualties.²⁶²³ Milan Mandilović testified that approximately 80 per cent of the casualties brought to the State Hospital were civilians, and 20 per cent were military personnel.²⁶²⁴

737. A spreadsheet prepared by the Prosecution and presented to the Trial Chamber through a police officer, showed 329 persons were wounded and 95 persons were killed in 214 shelling and sniping incidents investigated by the Bosnian Muslim police between 30 August 1994 and 9 November 1995.²⁶²⁵ Brig. Mohatarem testified that in the month of May 1995 more than 70 civilians were killed and about 250 were injured.²⁶²⁶ Based upon records maintained after 1992, and information from others, W-57 estimated that from late 1992 until the end of the war, between 1,800 and 2,000 residents were killed in Hrasnica as a result of sniping and shelling, while 5,000 to 10,000 inhabitants were wounded either once or more.²⁶²⁷

738. The Trial Chamber does not consider the spreadsheet an exhaustive account of the number of persons killed during the conflict. The evidence clearly showed that more than 95 persons were killed in sniping and shelling incidents.

739. In addition, the Trial Chamber notes that Ewa Tabeau presented evidence of the number of dead and wounded as a result of shelling and sniping during the Indictment period. During trial and in its Final Brief, the Defence challenged the evidence of Ewa Tabeau on a number of grounds, including that the six municipalities to which her findings related were divided between the warring parties during the conflict and, as a result, her report could not assist the Trial Chamber with “knowing the number of dead and injured in the part of Sarajevo exposed to the military activity of

²⁶²¹ Milan Mandilović, 17 Jan 2007, T. 571; Bakir Nakaš, 29 Jan 2007, T. 1105.

²⁶²² John Jordan, P267, pp 5, 9.

²⁶²³ Bakir Nakaš, 25 Jan 2007, T. 1082, 1085 – 1086, 29 Jan 2007, T. 1104 – 1105. He further testified that he treated 115 people injured by sniping of which 74 were civilians, including eight children. *See also*, P107, Spreadsheet showing victims of sniping (under seal).

²⁶²⁴ Milan Mandilović, 17 Jan 2007, T. 571 – 572. He stated that the following was taken into account to determine whether someone was a civilian or military: “One of the significant elements involved in the admission of patients was their personal background and their personal data, names, age, place of birth, and so on, and it was on the basis of this that we would admit them. Also what was taken into account was the way the patients were brought into the hospital, whether it was by way of a vehicle belonging to an organisation or institution or whether they were brought in by people, passers-by, their friends or members of their family. In addition to that, military personnel would have military IDs on them, they would be in uniform; and on the basis of that, we could easily establish whether a person was a civilian or military personnel”, Milan Mandilović, 17 Jan 2007, T. 572 – 573.

²⁶²⁵ P602, Spreadsheet showing law enforcement reports from Sarajevo. The Trial Chamber notes that the spreadsheet lists 215 incidents. One incident is listed twice (no. 28).

²⁶²⁶ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 713.

²⁶²⁷ W-57, 17 Apr 2007, T. 4548 – 4549, P538, p. 2 (under seal).

units under the control of the Accused.”²⁶²⁸ Ewa Tabeau acknowledged that she “didn’t pay attention to what army controlled what areas” as this was beyond her “interest” in this report.²⁶²⁹ The Prosecution argued that Ewa Tabeau “was not attributing deaths to anyone” but simply presenting evidence of war-related deaths, on which the Parties could make submissions.²⁶³⁰

(c) Psychological Impact

740. Evidence shows that the conflict impacted psychologically on people of all ethnicities in Sarajevo. Witnesses described the immense psychological impact that the conflict had on the civilians, adults and children alike, who lived within the confrontation lines.²⁶³¹ Bakir Nakaš testified that very often the number of patients who would come to the hospital with “mental disturbances” was greater than those who came in with various physical wounds and injuries.²⁶³² People were affected by the knowledge that one might be killed or wounded any day and by living in a city under siege for such a long time without basic necessities.²⁶³³

741. The Trial Chamber also heard that John Jordan responded to a number of incidents over the years in Sarajevo where one member, often the youngest member, of a family was shot.²⁶³⁴ It was his view that “[w]hen you’re targeting civilians like this, particularly families who may or may not be Muslim, shooting the child has the effect of literally disembowelling the whole family.”²⁶³⁵

742. Witnesses testified that they felt constantly afraid in Sarajevo as a result of the sniping and shelling.²⁶³⁶ People risked their lives every time they ventured out.²⁶³⁷ It was dangerous to collect food and water.²⁶³⁸ W-107 stated that her daughters often returned from collecting water or

²⁶²⁸ Defence Final Brief, paras 139 – 140.

²⁶²⁹ Ewa Tabeau, 2 May 2007, T. 5552.

²⁶³⁰ Ewa Tabeau, 2 May 2007, T. 5549.

²⁶³¹ Bakir Nakaš, 29 Jan 2007, T. 1108, 1147; Milan Mandilović, 17 Jan 2007, T. 569; Fadila Serdarević, P641, pp 5, 6, 9, P643, p. 10; P539, W-57, p. 4 (under seal); Nefa Šljivo, P531, p. 2. Cf. T-61, 9 July 2007, T. 7879 – 7880.

²⁶³² Bakir Nakaš, 29 Jan 2007, T. 1101 – 1102.

²⁶³³ Bakir Nakaš, 29 Jan 2007, T. 1108; Milan Mandilović, 17 Jan 2007, T. 569 – 570; Ismet Hadžić, 6 Mar 2007, T. 3234.

²⁶³⁴ John Jordan, 22 Feb 2007, T. 2697 – 2698.

²⁶³⁵ John Jordan, 22 Feb 2007, T. 2697 – 2698.

²⁶³⁶ Afeza Karačić, 29 Jan 2007, T. 1186; Alma Mulaosmanović, 6 Feb 2007, T. 1658 – 1659, 1672, 1674; Azra Šišić, 27 Feb 2007, T. 2832 – 2833; Sanjin Hasanefendić, 16 Feb 2007, T. 2302; P232, Photograph marked by Sanjin Hasanefendić. See also, Enes Jašarević, 1 Mar 2007, T. 3003; Slavica Livnjak, 23 Jan 2007, T. 872; T-61, 9 July 2007, T. 7880, 7881; W-62, 24 Jan 2007, T. 925 – 926; Sanela Dedović, P110, pp 2, 3; Ismet Alić, P640, p. 3; W-32, P529, p. 2; Anda Gotovac, P522, p. 2; Derviša Selmanović, 5 Feb 2007, T. 1596, P170, p.3; Fikreta Pačarić, P643, p. 9; Sabina Šabanić, P154, p. 2; W-57, P539, p. 4 (under seal); D116, Statement by W-107, p. 4 (under seal).

²⁶³⁷ W-118, 6 Feb 2007, T. 1637 – 1638; Enes Jašarević, 1 Mar 2007, T. 3003 – 3004; Azem Agović, P211, p. 2; Alma Mulaosmanović, P179, p. 3; Derviša Selmanović, P170, p. 3; Slavica Livnjak, P95, p. 2. See T-61, 9 July 2007, T. 7880 – 7881; P304, Map marked by Enes Jašarević; P539, W-57, p. 4 (under seal).

²⁶³⁸ See, e.g., *supra*, Section II.E.4.(b)(i)f and II.E.4.(b)(ii)b. See also, W-62, 23 Jan 2007, T. 881 – 882; Alija Holjan, P526, p. 3; D116, Statement by W-107, p. 4 (under seal).

firewood and “I would find that they had soiled their clothes because of the fear that they had.”²⁶³⁹
As described by W-57, they lived under “the constant threat of death.”²⁶⁴⁰

743. Witnesses also testified that it made no difference whether one was inside one’s apartment or on the street or in a tram; people in Sarajevo knew that they could be shot at any moment and that shells could land anywhere.²⁶⁴¹ People felt safer during lulls in the shelling and sniping but even then one was not safe and there was no way of knowing when the shelling and sniping would resume.²⁶⁴² Alma Mulaosmanović stated:

“Wherever you were, moving out or sitting in your home, we could hear the shots passing by throughout the war, including the shells. You could never know where they were going to land. They just whizzed by, and as soon as it passed it was a kind of relief. [...]

But it wasn’t safe inside the flat either. You had to go out eventually to fetch things. [...] It was dangerous all over the place. One of my friends died on her balcony which had a concrete wall just in front. [...] Nowhere was safe.”²⁶⁴³

744. According to witnesses, there were very few places where one could be entirely safe from shelling, except underground, under fortified cover or in the cave down by the Miljacka River.²⁶⁴⁴ As was the case during the first two years of the war, people would vary the routes that they took according to the areas of the city that were known to be particularly dangerous in order to ensure they were concealed from the view of snipers as much as possible, including by finding alternative ways to enter their homes.²⁶⁴⁵ Video evidence was presented showing civilians running between one point and another, particularly when they had to cross open spaces.²⁶⁴⁶ Similarly, it was dangerous to travel from Dobrinja into the city and vice versa and, consequently, there was little communication between the two areas.²⁶⁴⁷ Witnesses spoke of it being a matter of “luck” that day-to-day, and throughout the war, they were not injured or killed.²⁶⁴⁸ W-35 testified that “most of our lives during the four years were spent in cellars.”²⁶⁴⁹

²⁶³⁹ D116, Statement by W-107, p. 5 (under seal).

²⁶⁴⁰ W-57, P539, p. 4 (under seal).

²⁶⁴¹ W-46, 15 Mar 2007, T. 3815 (closed session); Alma Mulaosmanović, 6 Feb 2007, T. 1674; Enes Jašarević, 1 Mar 2007, T. 3003; Azra Šišić, 27 Feb 2007, T. 2832 – 2833; Sabina Šabanić, P154, p. 2; Nefa Šljivo, P531, p. 2; Tarik Zunić, P185, p. 3; Derviša Selmanović, P170, p. 3.

²⁶⁴² Sanela Dedović, P110, p. 2; W-95, P520, p. 2 (under seal); Ismet Alić, P640, p. 8.

²⁶⁴³ Alma Mulaosmanović, 6 Feb 2007, T. 1659, 1666, 1674. *See also*, Afeza Karačić, 29 Jan 2007, T. 1186.

²⁶⁴⁴ Martin Bell, 26 Apr 2007, T. 5242; John Jordan, P267, p. 6; D116, Statement by W-107, p. 4 (under seal).

²⁶⁴⁵ Asam Butt, 15 Feb 2007, T. 2178 – 2179; Ismet Hadžić, 6 Mar 2007, T. 3212; Alma Mulaosmanović, P178, p. 2; Sanela Dedović, P110, p. 3; Nedžib Đozo, P363, p. 2. *See also, supra*, Section II.E.3(b) Anti-sniping Measures

²⁶⁴⁶ P612, Videoclip of events in Sarajevo.

²⁶⁴⁷ Martin Bell, 26 Apr 2007, T. 5242; Enes Jašarević, 1 Mar 2007, T. 3003.

²⁶⁴⁸ W-118, P175, p. 3 (under seal); Džemaludin Luinović, P298, p. 2.

²⁶⁴⁹ W-35, 23 January 2007, T. 849.

745. Azem Agović said he got used to living with the dangers.²⁶⁵⁰ For other witnesses, it was a struggle just to survive.²⁶⁵¹ Referring to a modified air bomb exploding in Sokolovići, W-82 stated that “they could have coped” with the sniping and shelling of the neighbourhood “until the air bomb landed on 23 July 1995.”²⁶⁵² As recounted by Ismet Hadžić:

“At the beginning of the war, it was a disaster, psychologically speaking. It affected not only the people who were killed and their families but the entire neighbourhood around the area where someone had been killed. In 1994 and 1995, it became the normal thing, although to say it was normal is horrific. Only the families who had their family members killed were affected. But as for the others, they just saw one person less. That was the mental state of the population. Death was the most common thing in 1994 and 1995, although the psychological burden was somewhat less than in the initial two years.”²⁶⁵³

746. For Ismet Alić, the time during the war was “like a vacuum, where life was just empty.”²⁶⁵⁴ It took a long time for life to return to normalcy.²⁶⁵⁵ Some witnesses continue to suffer the psychological effects of the war by, for example, needing medication to remain calm, being unable to work, experiencing anxiety, difficulty sleeping, waking during the night because of thunder and believing it is an attack by the Bosnian Serbs, and being frightened by loud noise.²⁶⁵⁶ Elderly people were not able to get on with life and many still suffer psychologically from the effects of the war.²⁶⁵⁷

(d) Ability to Leave Sarajevo

747. The Trial Chamber heard evidence that, while some civilians managed to get out of Sarajevo early in the war, others were mostly trapped inside the confrontation lines encircling Sarajevo.²⁶⁵⁸ Bosnian Serbs, primarily those in the neighbourhoods under the control of the ABiH, expressed to David Harland their desire to leave Sarajevo because the city was “under siege” and they were at great risk of being killed, but were unable to do so mainly because Bosnian Muslim authorities would not allow it.²⁶⁵⁹

748. Martin Bell testified that the civilians behind the Bosnian Serb lines were able to get out to safer territory, if they wished.²⁶⁶⁰ Milorad Katić testified that people were able to leave the Bosnian

²⁶⁵⁰ Azem Agović, P211, p. 3.

²⁶⁵¹ W-57, P539, p. 4 (under seal); Nefa Šljivo, P531, p. 2; D116, Statement by W-107, p. 5 (under seal).

²⁶⁵² W-82, P228, p. 2. *See supra*, Section II.E.6(b)(xiii) Shelling of Bjelašnička Street in Sokolovići on 23 July 1995.

²⁶⁵³ Ismet Hadžić, 6 Mar 2007, T. 3234.

²⁶⁵⁴ Ismet Alić, P640, p. 9.

²⁶⁵⁵ Ismet Alić, P640, p. 9.

²⁶⁵⁶ Ismet Alić, P640, p. 9; Alma Mulaosmanović, 6 Feb 2007, T. 1658 – 1659, 1660, P179, p. 3; Anda Gotovac, P522, p. 2; Derviša Selmanović, P170, p. 3; Fikreta Pačariz, P643, p. 10; Sabina Šabanić, P154, p. 2; W-95, P520, p. 3 (under seal); D116, Statement by W-107, p. 5 (under seal).

²⁶⁵⁷ Ismet Alić, P640, p. 9. *See also*, D116, Statement by W-107, p. 5 (under seal).

²⁶⁵⁸ Martin Bell, 26 Apr 2007, T. 5264, 27 Apr 2007, T. 5279; W-54, 6 Feb 2007, T. 1692.

²⁶⁵⁹ David Harland, 15 Jan 2007, T. 358-359, 16 Jan 2007, T. 449.

²⁶⁶⁰ Martin Bell, 27 Apr 2007, T. 5279.

Serb-held areas for Bosnian Muslim-held areas, and vice versa, by walking over the Brotherhood and Unity Bridge.²⁶⁶¹

749. The Trial Chamber also heard that so long as they had permission, people could leave and return to Sarajevo through the tunnel.²⁶⁶² Witnesses rejected the Defence submissions that only Bosnian Muslim citizens were able to leave and any Bosnian Serbs who used the tunnel would be killed on the other side.²⁶⁶³ Several witnesses testified that they had passed through the tunnel on multiple occasions.²⁶⁶⁴ However, Martin Bell testified that civilians were not able to evacuate the city on any significant scale.²⁶⁶⁵

750. Evidence was presented in respect of the use of the tunnel for both humanitarian and military purposes. Witnesses confirmed that the tunnel was used for purposes which included passage of soldiers and wounded, and food supplies and various types of ammunition and weapons.²⁶⁶⁶ According to Defence witness T-52, the SRK did not fire at the tunnel because civilians were always together with the soldiers and the ABiH made use of that to safely take up positions on the surrounding hills.²⁶⁶⁷ According to Milan Mandić, the SRK command knew of the ABiH tactic of mixing with civilians and expressly forbade opening any fire.²⁶⁶⁸ However, Maj. Gen. Karavelić testified that there was shelling, regardless of who or what was going through the tunnel.²⁶⁶⁹ Col. Dragičević concluded that the tunnel eliminated the concept of any kind of siege, since ABiH units would go through the tunnel and take up positions in Ilijaš, Ilidža and the Nisići plateau.²⁶⁷⁰ However, Maj. Gen. Karavelić disagreed that the tunnel changed the status of the siege.²⁶⁷¹ Ismet Hadžić, commander of the ABiH 155th Brigade, explained that the ABiH went through the tunnel to break through the siege in order to liberate Sarajevo.²⁶⁷²

751. The Trial Chamber finds that in the period covered by this Indictment, Sarajevo was effectively besieged by the SRK. If, by virtue of the limited possibilities offered by the tunnel, this

²⁶⁶¹ Milorad Katić, 1 June 2007, T. 6039. *See also supra*, Section II.C.2 Effect on the Civilian Population within the Confrontation Lines.

²⁶⁶² David Harland, 15 Jan 2007, T. 379; W-138, 1 Feb 2007, T. 1425 – 1427.

²⁶⁶³ David Harland, 15 Jan 2007, T. 380; W-138, 1 Feb 2007, T. 1425 – 1429.

²⁶⁶⁴ Bakir Nakaš, 29 Jan 2007, T. 1144 – 1145; W-137, 19 Feb 2007, T. 2480; John Jordan, 21 Feb 2007, T. 2646; Nefa Šljivo, 5 Apr 2007, T. 4513 – 4514, 4516, 4517; W-57 P539, p. 4 (under seal).

²⁶⁶⁵ Martin Bell, 27 Apr 2007, T. 5280.

²⁶⁶⁶ Vahid Karavelić, 27 Mar 2007, T. 4143 – 4144, P492, p. 13. *See also*, Rupert Smith, 7 Mar 2007, T. 3358; David Harland, 15 Jan 2007, T. 377 – 378; David Fraser, 8 Feb 2007, T. 1840; Luka Dragičević, 26 Mar 2007, T. 4011; Martin Bell, 27 Apr 2007, T. 5279 – 5280; Zoran Trapara, 26 June 2007, T. 7307 – 7308; Ljuban Mrković, 12 July 2007, T. 8149 – 8151, 8190 – 8191; D152, Order by Fikret Prevljak, dated 13 April 1995.

²⁶⁶⁷ T-52, 28 June 2007, T. 7437, 7461.

²⁶⁶⁸ Milan Mandić, 3 July 2007, T. 7561.

²⁶⁶⁹ Vahid Karavelić, 28 Mar 2007, T. 4225; Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 714; Rupert Smith, 7 Mar 2007, T. 3351 – 3352, P334, p. 12; Thorbjorn Overgard, 19 Jan 2007, T. 687; Nefa Šljivo, 5 Apr 2007, T. 4517.

²⁶⁷⁰ Luka Dragičević, 26 Mar 2007, T. 4042 – 4043.

²⁶⁷¹ Vahid Karavelić, 28 Mar 2007, T. 4223.

²⁶⁷² Ismet Hadžić, 6 Mar 2007, T. 3288 – 3289.

was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace. The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate.

8. “Campaign” Strategy

752. In the Prosecutions submissions, the Accused conducted a campaign of shelling and sniping upon civilian areas of Sarajevo and upon the civilian population “which had the primary purpose of spreading terror among the civilian population.”²⁶⁷³ The Prosecution further submitted that the SRK intended to terrorise the civilians of Sarajevo with its campaign, “and they did so”.²⁶⁷⁴

753. David Harland testified that the campaign was part of a strategy to force the Bosnian Muslims, through the application of “pressure”, to capitulate on terms favourable to the Bosnian Serbs.²⁶⁷⁵ As such, 1992 and 1993 were largely devoted to the Bosnian Serbs gaining territory and then removing the non-Bosnian Serb populations from BiH.²⁶⁷⁶ In 1994, according to David Harland, the Bosnian Serbs thought that they were achieving their objectives.²⁶⁷⁷ Radovan Karadžić and Momčilo Krajišnik had explained that their tactic was to hold onto the land that they had gained and to make the Bosnian Muslim Government understand that it did not have any military options available and that the suffering of the Bosnian Muslim people would only increase if the Government did not agree to a political settlement.²⁶⁷⁸ The political settlement “would lead to Bosnian Serb independence within defined borders, no reversal of ethnic cleansing and a substantial acceptance of the territory” the Bosnian Serbs held.²⁶⁷⁹ At this time, the Bosnian Serbs also agreed to a number of measures to stabilise the situation in Sarajevo, such as cease-fires and measures to reduce the sniping of civilians, the opening of the Blue Routes, the turning on of some electricity

²⁶⁷³ Indictment, para. 22. *See also*, Prosecution Final Brief, para. 4: “the SRK, under the Accused’s command, conducted a politically motivated campaign of terror against the civilian population of Sarajevo. The campaign involved sniping, shelling and air bombing a city under siege. It ran from the beginning to end of the Amended Indictment period, in all areas of Sarajevo, at all times of day, and in all months of the year. Its targets were civilians. Not only did the Accused inherit this campaign, he intensified it.”

²⁶⁷⁴ Prosecution Closing Arguments, 9 Oct 2007, T. 9473.

²⁶⁷⁵ David Harland, 15 Jan 2007, T. 324 – 330, P1, MT. 26933, 26935, 26954, 26996, P2, MT. 28654. *See also*, Rupert Smith, 7 Mar 2007, T. 3310.

²⁶⁷⁶ David Harland, 15 Jan 2007, T. 327 – 330, P1, MT. 26936 – 26937, 26953.

²⁶⁷⁷ David Harland, 15 Jan 2007, T. 328.

²⁶⁷⁸ David Harland, 15 Jan 2007, T. 328.

²⁶⁷⁹ David Harland, 15 Jan 2007, T. 328.

and water and the re-starting of the trams.²⁶⁸⁰ Consequently, 1994 was a relatively quiet and stable year in terms of military activity.²⁶⁸¹ David Harland explained:

“They thought that time was on their side. They said, you know, we hold all the land, we dominate all the high ground, we can apply pressure - as they called it - the shelling and the sniping and the cutting off of the water and gas and electricity and food to the Muslim population.”²⁶⁸²

754. Towards the end of 1994 and in 1995, there was a “sharp deterioration” in the situation, which continued up until the end of the conflict.²⁶⁸³ David Harland recalled Momčilo Krajišnik explaining that “the Serbs” felt that they had perhaps miscalculated and that the Bosnian Muslims were not going to capitulate.²⁶⁸⁴ As a result, they had decided to “apply pressure more directly.”²⁶⁸⁵ The Bosnian Serbs returned to a pattern of more intense use of both military and non-military means against Sarajevo so as to force the Bosnian Muslim Government to enter into a peace agreement.²⁶⁸⁶

755. Witnesses who worked with UNPROFOR at the time believed that the purpose of the campaign of shelling and sniping was to exert pressure on the Bosnian Muslims by terrorising the civilian population.²⁶⁸⁷ Gen. Smith testified that, with the exception of countering a specific attack, it was his understanding that shelling and sniping of civilian areas in Sarajevo was “essentially to terrorise, to wear down the resolve of the defender, to hold the presence of the Serb pressure evidently in the minds of people on a daily basis.”²⁶⁸⁸ David Harland found it “particularly alarming” that Radovan Karadžić and his associates directly said “we will use this Serbian-supported war machine to make life impossible for the civilians”, to “terrorise” the civilians in order to reach a particular political goal.²⁶⁸⁹ Similarly, Lt. Col. Fortin said that it was his assessment that in Sarajevo sniping was used by the SRK “as a terrorist tactic” more than anything else “since the Bosnian Serbs had nothing to gain militarily and a lot to lose politically.”²⁶⁹⁰

756. The deprivation of the civilian population in Sarajevo of food, water and power was also “a common theme” of the Bosnian Serb strategy to force the Bosnian Muslim Government to accept a

²⁶⁸⁰ David Harland, 15 Jan 2007, T. 329, 331, 384 – 385.

²⁶⁸¹ David Harland, 15 Jan 2007, T. 327 – 330, T. 384 – 385, P1, MT. 26937.

²⁶⁸² David Harland, 15 Jan 2007, T. 328.

²⁶⁸³ David Harland, 15 Jan 2007, T. 327 – 330, P1, MT. 26937.

²⁶⁸⁴ David Harland, 15 Jan 2007, T. 329, 331.

²⁶⁸⁵ David Harland, 15 Jan 2007, T. 324 – 325, 327 – 331.

²⁶⁸⁶ David Harland, 15 Jan 2007, T. 327 – 331.

²⁶⁸⁷ Harry Konings, 12 Mar 2007, T. 3560; W-46, 15 Mar 2007, T. 3815 (closed session), P387, pp 14 – 15 (under seal); W-156, 27 Apr 2007, T. 5329 (closed session), P625, pp 18, 21 (under seal); Ronald Eimers, P585, p. 5.

²⁶⁸⁸ Rupert Smith, 7 Mar 2007, T. 3311. *See also*, W-46, 15 Mar 2007, T. 3815 (closed session); David Harland, 15 Jan 2007, T. 325 – 327, P1, MT. 26936.

²⁶⁸⁹ David Harland, P1, MT. 27004.

²⁶⁹⁰ Louis Fortin, P27, p. 7.

peace agreement.²⁶⁹¹ David Harland testified that “whenever the Bosnians would try any sort of military activity, the Serbs would retaliate against the city as a whole and the civilian population by cutting off the electricity or limiting the amount of water or, in particular, stopping convoys of food or increasing their bombardment of civilian areas.”²⁶⁹²

757. The Trial Chamber heard evidence that in some instances the shelling and sniping of civilian areas by the SRK was in response to ABiH attacks, but that this “retaliatory” shelling and sniping was not directed at the ABiH forces; rather, it “consisted of arbitrary firing at the city.”²⁶⁹³ David Harland commented that “the retaliation was principally against civilians.”²⁶⁹⁴ Maj. Eimers also testified that retaliation was twice as hard from the SRK side and that “there was a couple of times that we got word that there were Serb civilians killed on one day, and then we could predict the next day we would get mortars incoming in the area where I lived, yes. And that actually happened.”²⁶⁹⁵

758. UNPROFOR requested the SRK not to respond to an ABiH attack launched on 18 September 1994 by shooting into the city.²⁶⁹⁶ A witness described an ABiH attack on a Bosnian Serb checkpoint on 6 October 1994, following which the Bosnian Serbs retaliated by firing into the city and on civilians.²⁶⁹⁷ Gen. Smith recalled that at the end of May 1995, the VRS shelled all safe areas in BiH, including Sarajevo, in response to the NATO bombing of the Pale ammunition depot on 25 May 1995, which itself was a consequence of “flared up” fighting between the warring factions on 24 May 1995.²⁶⁹⁸ Similarly, UNPROFOR reported that at the end of June and early July 1995, the “[Bosnian] Serbs have responded to the Bosnian [Muslim] offensive by resuming a fairly indiscriminate bombardment of the downtown area, and by increasing sniper activity.”²⁶⁹⁹ Brig. Gen. Fraser, in recalling an incident where the Bosnian Muslims had fired at the SRK headquarters in Lukavica, said that “the barrage of fire” that came back from the Bosnian Serbs was not aimed at the source of the Bosnian Muslim fire but “[i]t was just fired at the city. In fact, it was firing all around Debelo Brdo and the area just around Miljacka River, on the Muslim side.”²⁷⁰⁰ The SRK

²⁶⁹¹ David Harland, 15 Jan 2007, T. 324 – 325; David Harland, P1, MT. 26953, 27004. Cf. Ljuban Mrković, 12 July 2007, T. 8185 – 8186.

²⁶⁹² David Harland, 16 Jan 2007, T. 454.

²⁶⁹³ Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1049, 1051 – 1052, 1055 – 1056; Asam Butt, 15 Feb 2007, T. 2229 – 2231; Rupert Smith, 7 Mar 2007, T. 3349, 3392 – 3393, P334, p. 13; P20, UNPROFOR sitrep, 2 July 1995, p. 2; P103, Protest letter, 1 July 1995, pp 1 – 2.

²⁶⁹⁴ David Harland, 16 Jan 2007, T. 455.

²⁶⁹⁵ Ronald Eimers, 20 Apr 2007, T. 4792 – 4793.

²⁶⁹⁶ David Harland, 15 Jan 2007, T. 387 – 388; D3, UNPROFOR Memo on 18 September 1994 ABiH attack, pp 2 – 3.

²⁶⁹⁷ W-46, 15 Mar 2007, T. 3821 – 3822, 3823 (closed session).

²⁶⁹⁸ Rupert Smith, 7 Mar 2007, T. 3322, P334, pp 13 – 14.

²⁶⁹⁹ P19, UNPROFOR sitrep, 2 July 1995, p. 2.

²⁷⁰⁰ David Fraser, 7 Feb 2007, T. 1796.

could have defended their positions just as effectively by using less fire and causing fewer civilian victims.²⁷⁰¹

759. Civilians and civilian areas were sniped and shelled when the SRK had not achieved particular military objectives. Following a failed attack by the SRK to take Debelo Brdo on 16 to 17 May 1995, “[t]hey rained Sarajevo town with artillery, with mortars; snipers were active all along the confrontation line. [...] In those two days, I think, they were very heavy on civilians.”²⁷⁰² Bakir Nakaš recalled that shelling or sniping was more intense, and the number of casualties higher, after failed negotiations or if some territories were lost elsewhere in BiH.²⁷⁰³

760. A further objective of the campaign was to maintain a psychological upper hand over UNPROFOR in order to prevent the UN from taking action.²⁷⁰⁴ David Harland testified that Momčilo Krajišnik threatened the international community and the Bosnian Muslims in a similar manner.²⁷⁰⁵ In his view, the Bosnian Serbs saw UNPROFOR as working contrary to their war effort by facilitating humanitarian support and started to actively obstruct the effort of UNPROFOR to bring humanitarian relief in Sarajevo.²⁷⁰⁶ He recalled that, in response to the threat of retaliatory measures by the Security Council, Radovan Karadžić threatened that the Bosnian Serbs would attack the UN and that they would impose restrictions on utilities, like gas and water, to make life more miserable for the Bosnian Muslims in Sarajevo unless the Security Council stopped threatening the “essential lifeline” with Serbia.²⁷⁰⁷ Moreover, according to David Harland, the nature of the campaign – causing small numbers of casualties in a large number of places – kept the level of “terror” high but also forestalled any dramatic events around which an international response would coalesce.²⁷⁰⁸

9. The Defence Challenge to the Prosecution Allegation of a “Campaign”

761. Throughout the trial, the Defence adduced evidence of shelling, sniping and other activities by the ABiH. The Trial Chamber will analyse this evidence in the section containing the Considerations on the Counts and determine its relevance to the Indictment, and where a finding of relevance is made, the weight to be attached to that evidence. The evidence is set out here as part of the case presented by the Defence.

²⁷⁰¹ W-156, P625, p. 24 (under seal).

²⁷⁰² Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 713.

²⁷⁰³ Bakir Nakaš, 25 Jan 2007, T. 1076 – 1077. *See also*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 703, 740.

²⁷⁰⁴ W-156, 27 Apr 2007, T. 5331 (closed session), P625, pp 18, 21 (under seal); David Harland, P1, MT. 26936. W-46, P387, p. 14 (under seal).

²⁷⁰⁵ David Harland, P1, MT. 27005.

²⁷⁰⁶ David Harland, P1, MT. 26955 – 26956.

²⁷⁰⁷ David Harland, P1, MT. 26979; P14, Notes of meeting between Smith and Karadžić, dated 21 May 1995, p. 3.

²⁷⁰⁸ David Harland, 15 Jan 2007, T. 330 – 331.

762. The Prosecution argued that the conduct of the ABiH and the suffering of the Bosnian Serb population, although regrettable, are not relevant to this case as the evidence pertaining to these matters does not affect the criminal liability of the Accused.

(a) Shelling of SRK-held Territories

763. Evidence was presented regarding shelling by the ABiH.²⁷⁰⁹ Prosecution and Defence witnesses testified that the ABiH fired, for example, mortars, from inside the confrontation lines, including from Mount Igman,²⁷¹⁰ Hrasnica and Mojmiilo Hill,²⁷¹¹ Hum Hill,²⁷¹² Debelo Brdo,²⁷¹³ Čolina Kapa²⁷¹⁴ and Alipašino Polje.²⁷¹⁵

764. Slobodan Bjelica, a journalist with the Bosnian Serbian newspaper in Grbavica (*Sarajevske Srske Novine*) during the Indictment period, testified that many buildings in Grbavica were damaged by the ABiH with heavy weaponry in 1994 and 1995.²⁷¹⁶ He testified that “mostly” the destruction of these buildings happened during exchanges of fire, but on “quite a few occasions” it happened during cease-fires.²⁷¹⁷

765. Brig. Ghulam Muhammed Mohatarem, Chief UNMO for BiH from February 1995 to January 1996, recalled two instances of ABiH shelling.²⁷¹⁸ Lt. Col. Konings, UNMO in Sarajevo, testified that although he never saw it personally, he heard from other UNMOs that the ABiH fired mortars from inside the confrontation line but never had any proof of it.²⁷¹⁹

766. Witnesses testified that certain roads in and around Sarajevo were shelled by the ABiH. The Lukavica-Pale road, which was used by civilians for many purposes, including the transportation of

²⁷⁰⁹ Luka Jović, 14 June 2007, T. 6711; Milorad Katić, 1 June 2007, T. 6018; D236, Analysis of consumption of ammunition, dated 20 July 1995; D12, UNPROFOR weekly sitrep, 19 May 1995, p. 2.

²⁷¹⁰ Branislav Dukić, 18 June 2007, T. 6788; Zoran Trapara, 26 June 2007, T. 7311; T-39, 21 June 2007, T. 6994 – 6995; T-41, 18 July 2007, T. 8525 – 8526; T-48, 25 Jun 2007, T. 7202; Sinisa Krsman, 6 June 2007, T. 6254 – 6255; Drazen Maunaga, 12 Jun 2007, T. 6486 – 6487; D333, Photograph marked by T-41; D334, Photograph of Nedzarici.

²⁷¹¹ T-39, 21 June 2007, T. 6994 – 6995; T-48, 22 June 2007, T. 7149; Drazen Maunaga, 12 June 2007, T. 6486 – 6487. *See also*, T-41, 18 July 2007, T. 8521; Milan Pejić, 21 June 2007, T. 7053; D330, Photograph marked by T-41; D332, Photograph marked by T-41.

²⁷¹² T-41, 18 July 2007, T. 8524; D332, Photograph marked by T-41.

²⁷¹³ Momčilo Gojković, 13 July 2007, T. 8255. *See also*, Stevan Veljović, 30 May 2007, T. 5860–5861; Dragan Simić, 5 June 2007, T. 6186, 6218–6219; D208, Photograph marked by Dragan Simić.

²⁷¹⁴ Slobodan Bjelica, 24 July 2007, T. 8758 – 8759. Momčilo Gojković, 13 July 2007, T. 8255, 8264; T-41, 18 July 2007, T. 8553–8554.

²⁷¹⁵ T-60, 25 July 2007, T. 8793 – 8795 (private session), 8821; T-48, 22 June 2007, T. 7170 – 7171; D262, Photograph marked by T-48; D352, Photograph marked by T-60 (under seal). *See also*, Sections II.E.3(c), II.E.5(b) and II.E.9(c) and (d).

²⁷¹⁶ Slobodan Bjelica, 24 July 2007, T. 8766 – 8768; D347, Photograph; D348, Photograph.

²⁷¹⁷ Slobodan Bjelica, 24 July 2007, T. 8768 – 8769.

²⁷¹⁸ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 701, 737 – 738; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 990 – 991, 25 Jan 2007, T. 1014.

²⁷¹⁹ Harry Konings, 12 Mar 2007, T. 3559 – 3560, 13 Mar 2007, T. 3624 – 3625

people to hospitals, and by the military, was under “constant” targeting by the ABiH.²⁷²⁰ During cross-examination, T-41 said that he was certain that the ABiH opened fire on the road because of the location of their positions and agreed that it was “common knowledge” that the ABiH attacked the road.²⁷²¹ Milomir Šoja, employee at *Energoinvest Automatika* from December 1994, heard that on the road between Ilidža and Pale, from Ilidža to Rajlovac and towards Vogošća, persons and vehicles were often fired upon, although he did not say who was responsible for this firing.²⁷²² The Trial Chamber notes that the Defence stressed, on a number of occasions, the military importance of the Lukavica-Pale road to the SRK. For example, in its Final Brief, the Defence submits, “[h]ad the ABiH forces taken control of this route it could have caused the total defeat of the SRK.”²⁷²³

767. Evidence was presented regarding the deaths of civilians as a result of the shelling.²⁷²⁴ Vlastimir Glavaš, a police officer in Ilidža during the Indictment period, testified that on 28 August 1995, he got married at Vrelo Bosne, in the Ilidža municipality.²⁷²⁵ As the wedding ceremony drew to a close and guests started leaving the church, “shells started falling from the direction of Igman, all around the church and my wedding guests.”²⁷²⁶ A total of 12 shells fell; 47 people were wounded and a cousin of the bride was killed.²⁷²⁷ During cross-examination, Vlastimir Glavaš testified that the shells had come from Mount Igman, which he knew was held by the ABiH.²⁷²⁸ He agreed with the Prosecution suggestion that it was “logical” to assume that “if shells land in your area, it [*sic*] comes from the people surrounding you.”²⁷²⁹ An UNPROFOR sitrep recorded that the Bosnian Serb Army had reported three mortar rounds had fallen on a church in Ilidža.²⁷³⁰ In the

²⁷²⁰ Milorad Katić, 1 June 2007, T. 6018, 6019, 6047 – 6048; Zoran Trapara, 26 June 2007, T. 7310, 7322 – 7323; Momcilo Gojković, 13 July 2007, T. 8253 – 8254; T-9, 16 July 2007, T. 8350 – 8351; Predrag Trapara, 27 June 2007, T. 7377–7378, 7383; T-41, 18 July 2007, T. 8517 – 8520, 8545 – 8548; Slobodan Bjelica, 24 July 2007, T. 8761; T-15, 13 July 2007, T. 8301. *See also*, Vlajko Božić, 17 July 2007, T. 8432 – 8433, 8435 – 8436; Milomir Šoja, 25 Apr 2007, T. 5168; D200, Map of Sarajevo marked by Milorad Katić; D310, Map marked by Momcilo Gojković; D328, Photograph marked by T-41; D329, Photograph marked by T-41; P908, Photograph marked by T-41.

²⁷²¹ T-41, 18 July 2007, T. 8547 – 8548. *See also*, Ljuban Mrković, 12 July 2007, T. 8141–8142.

²⁷²² Milomir Šoja, 25 Apr 2007, T. 5168. *See also*, Vlajko Božić, 17 July 2007, T. 8419 – 8420; D318, Photograph marked by Vlajko Božić.

²⁷²³ Defence Final Brief, para. 57.

²⁷²⁴ T-48, 22 June 2007, T. 7133 – 7134; Siniša Krsman, 6 June 2007, T. 6258, 6260; Vlajko Božić, 17 Jul 2007, T. 8433 – 8435; Zoran Samardžić, 13 June 2007, T. 6636 – 6637; Andrey Demurenko, 5 July 2007, T. 7677; T-61, 9 Jul 2007, T. 7851 – 7852, 7863 – 7864; T-9, 16 July 2007, T. 8345, 8358 – 8359. *See also, supra* Section II.E.9(d) ABiH Offensives; T-2, 20 June 2007, T. 6934 – 6935; Milorad Košorac, 26 July 2007, T. 8882; T-53, 11 June 2007, T. 6412; Predrag Trapara, 27 June 2007, T. 7388; Stjepan Djukić, 3 July 2007, T. 7527 – 7528; Stevan Veljović, 29 May 2007, T. 5787 – 5788; D300, Official report of the RS Crime Police Department, dated 2 May 1995.

²⁷²⁵ Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740.

²⁷²⁶ Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740.

²⁷²⁷ Vlastimir Glavaš, 24 July 2007, T. 8739 – 8740, 8745; D343, Official report of RS Police, dated 7 September 1995. *See also*, T-39, 21 June 2007, T. 7000; Milan Pejić, 21 June 2007, T. 7044.

²⁷²⁸ Vlastimir Glavaš, 24 July 2007, T. 8747 – 8748.

²⁷²⁹ Vlastimir Glavaš, 24 July 2007, T. 8747 – 8748.

²⁷³⁰ P21, UNPROFOR sitrep, 28 August 1995, p. 1.

report, it was stated that the ABiH was responsible for the shelling, although this information was unconfirmed.²⁷³¹

(b) Sniping into SRK-held Territories

768. There is evidence that the ABiH undertook sniping.²⁷³² In a report to the UN Secretary-General, David Harland testified that sniping was a way for the Bosnian Muslims to strike back when “the Serbs” held most of the heavy weapons, controlled the high ground and most of the gas, water and electricity.²⁷³³

769. There was evidence of the death or injury of Bosnian Serb civilians as a result of ABiH sniping.²⁷³⁴ Milan Pejić recalled that during cease-fires, both civilians and military personnel were injured by sniping, although there was not the large numbers of wounded that resulted from shelling.²⁷³⁵ He testified: “It was very hard because there were children who were wounded in front of the school, while riding bicycles, in the streets. There was civilians who were wounded, women, children.”²⁷³⁶

770. As in Bosnian Muslim-held areas, tarpaulins and sheets were put up on lines across the roads, and other barriers were constructed, in Bosnian Serb-held areas to block the view of the snipers.²⁷³⁷ Passages were constructed so that civilians and soldiers could move from place to place

²⁷³¹ P21, UNPROFOR sitrep, 28 August 1995, pp 4, 5.

²⁷³² David Harland, 15 Jan 2007, T. 332, P2, MT. 28696, 28697. *See also*, W-46, 15 Mar 2007, T. 3816 (closed session), P387, pp 14 – 15 (under seal); Vahid Karavelić, P492, p. 11, P493, p. 8, P494, GT. 11949 – 11953, 11957; Ismet Hadžić, 6 Mar 2007, T. 3257 – 3258, 6 Mar 2007, T. 3228 – 3231, 3284; David Harland, 16 Jan 2007, T. 459; W-156, P625, p. 34 (under seal); John Jordan, P267, p. 8; D99, Order by Nedžad Ajnadžić, 14 Feb 1994, p. 1; D107, Order by Fikret Prevljak, 26 June 1995, p. 1; D251, Order, 5 March 1993. *See also supra*, para. 77.

²⁷³³ David Harland, P2, MT. 28696.

²⁷³⁴ Vaso Elez, 7 June 2007, T. 6345 – 6346, 6379; T-41, 18 Jul 2007, T. 8494, 8495, 8497 – 8501, 8511, 8559 – 8560; T-2, 20 June 2007, T. 6947; Martin Bell, 26 Apr 2007, T. 5253; D104, Report by FRY Committee for Compiling Data on Crimes against Humanity and International Law, dated January 1998, p. 11; D220, Photograph marked by Vaso Elez, 7 June 2007; D324, Photograph of Faculty of Mathematics and Natural Sciences; P207, UNPROFOR proposal of assessment of Anti-sniping Agreement, 15 September 1994, p. 4; P391, UNPROFOR report, 17 November 1994, p. 2. *See also*, Vlajko Božić, 17 July 2007, T. 8419 – 8420; Milorad Košorac, 26 July 2007, T. 8882; Simo Tuševljak, 11 July 2007, T. 8068 – 8069, 12 July 2007, T. 8105, 8117 – 8119; D300, Official report of RS Crime Police Department, 2 May 1995. *Cf.* Luka Jović, 18 June 2007, T. 6729 – 6730.

²⁷³⁵ Milan Pejić, 21 June 2007, T. 7038 – 7039.

²⁷³⁶ Milan Pejić, 21 June 2007, T. 7038 – 7039.

²⁷³⁷ Martin Bell, 27 Apr 2007, T. 5288 – 5289; T-48, 22 June 2007, T. 7170 – 7171; T-41, 18 July 2007, T. 8511 – 8512, 8537 – 8538; D325, Photograph; D327, Photograph of Nedzarici; D355, Photograph; D338, Video. Note that in cross-examination, the Prosecution stated that on the video, the drive appeared relaxed, contrary to the witness’s testimony that there was constant danger: *see* T-41, 18 July 2007, T. 8540 – 8544; Slobodan Bjelica, 24 July 2007, T. 8761, 8771 – 8872; Vlastimir Glavaš, 24 July 2007, T. 8746; T-48, 22 June 2007, T. 7167; Milan Mandić, 4 July 2007, T. 7608 – 7609; T-7, 19 June 2007, T. 6851; Milorad Katić, 1 June 2007, T. 5992, 6033, 6034.

concealed.²⁷³⁸ Slobodan Bjelica testified that there were “at least” 50 sign posts in Grbavica warning people of the presence of snipers.²⁷³⁹

771. Witnesses testified that there were military targets, as well as civilians, in Grbavica.²⁷⁴⁰ According to David Harland, the sniper fire from the “Bosnian Government” “tended to be concentrated from a relatively small number of buildings overlooking Grbavica.”²⁷⁴¹ Several witnesses testified that Grbavica was exposed to fire from numerous locations under the control of the ABiH, for example, Mojmiilo Hill, Debelo Brdo, the Loris Building, Hum Hill and Pofalići.²⁷⁴²

772. Luka Jović testified that the ABiH was “constantly exerting pressure” on people living in Dobrinja IV by firing shots from Dobrinja II and III.²⁷⁴³ T-60 testified that “prolonged bouts of rifle fire” came from Alipašino Polje and that Vojničko Polje, an ABiH-held area between Nedarići and Alipašino Polje, was known as the “lair of snipers.”²⁷⁴⁴

(i) Specific Sniping Incidents against Bosnian Serbs

773. On 11 March 1995 at approximately 1630 hours, the daughter of Nedeljko Učur and another young girl, were killed by ABiH sniper fire while in front of the building, Rave Janković Street, number 59, in Grbavica.²⁷⁴⁵ Nedeljko Učur, soldier of the SRK 1st Sarajevo Brigade at the time, said that three men in uniform, including himself, were also there and that the men in uniform were not shot at.²⁷⁴⁶ The Prosecution submitted that the perpetrators of this sniping had been punished by the Bosnian Muslim authorities.²⁷⁴⁷ Nedeljko Učur and Simo Tuševljak could not confirm that the

²⁷³⁸ Radomir Visnjić, 25 June 2007, T. 7246 – 7247; T-41, 18 July 2007, T. 8497 – 8498; T-7, 19 June 2007, T. 6851; D323, Photograph of apartment building in Dobrinja; D327, Photograph of Nedzarici; D350, Photograph of Grbavica; T-7, 19 June 2007, T. 6851.

²⁷³⁹ Slobodan Bjelica, 24 July 2007, T. 8770 – 8771; Nedeljko Učur, 26 July 2007, T. 8917 – 8918; D349, Photograph; D355, Photograph.

²⁷⁴⁰ Zoran Trapara, 26 June 2007, T. 7321; Vaso Elez, 7 June 2007, T. 6340 – 6341; David Fraser, 7 Feb 2007, T. 1792 – 1793. *See also*, Slobodan Bjelica, 24 July 2007, T. 8764 – 8765.

²⁷⁴¹ David Harland, 15 Jan 2007, T. 331 – 332.

²⁷⁴² T-5, 25 June 2007, T. 7222; Radomir Visnjić, 25 June 2007, T. 7254–7255; Sinisa Krsman, 6 June 2007, T. 6254; Vaso Elez, 6 June 2007, T. 6307, 6310, 6312 – 6313, 7 June 2007, T. 6324 – 6325, 6333 – 6334; Stevan Veljović, 24 May 2007, T. 5719–5721, 29 May 2007, T. 5744–5745; Milorad Katić, 31 May 2007, T. 5981, 1 June 2007, T. 6036, 5 June 2007, T. 6157–6158; T-41, 18 July 2007, T. 8515–8516, 8521; Mirza Sabljica, 19 Apr 2007, T. 4742–4746; Stevan Veljović, 29 May 2007, T. 5744; Slobodan Bjelica, 24 July 2007, T. 8777–8779; D218, Photograph marked by Vaso Elez; D331, Photograph marked by T-41.

²⁷⁴³ Luka Jović, 14 Jun 2007, T. 6697 – 6698, 6714. *See also*, D238, Report on consumption of ammunition, dated 20 June 1995.

²⁷⁴⁴ T-60, 25 July 2007, T. 8821, 8857.

²⁷⁴⁵ Nedeljko Učur, 26 July 2007, T. 8909 – 8910; Predrag Carkic, 19 June 2007, T. 6887 – 6888; Simo Tuševljak, 11 July 2007, T. 8071, 8077 (private session); David Harland, 16 Jan 2007, T. 461, 464; Rupert Smith, P334, pp 9 – 10; P24, UNPROFOR report, 12 March 1995, pp 1 – 2; D301, UNPROFOR report on sniping in Grbavica, dated 13 March 1995 (under seal). *See also*, Slobodan Bjelica, 24 July 2007, T. 8763; Milorad Katić, 1 June 2007, T. 6037.

²⁷⁴⁶ Nedeljko Učur, 26 July 2007, T. 8911, 8918.

²⁷⁴⁷ *See* P24, UNPROFOR report, 12 March 1995, pp 1 – 2; P25, UNPROFOR cable, 14 March 1995, p. 2.

perpetrators had been punished when confronted with this information during cross-examination.²⁷⁴⁸

774. Vaso Elez, a soldier in the SRK 1st Sarajevo Brigade, testified that he had heard about Bosnian Serbs who tried to cross the Miljacka River “and these attempts ended in the Miljacka.”²⁷⁴⁹ He also heard about attempts to cross sides, over a street near the Grbavica stadium.²⁷⁵⁰ An ABiH combat report noted that on 15 October 1994, “[a]t 2015 hours, our guard, who is at Palma, noticed an escapee who tried to escape to the aggressor’s side. He opened fire and on that occasion he wounded him.”²⁷⁵¹ According to another ABiH combat report dated 7 April 1995, a woman was similarly shot while attempting to cross into Novo Sarajevo around 1930 hours.²⁷⁵² Milorad Katić acknowledged that the ABiH report on the incident only stated the facts of the incidents and did not mention that the incident took place in the dark along the confrontation line.²⁷⁵³ During cross-examination, Vaso Elez agreed with the Prosecution that this incident concerned an individual who was trying to cross the lines between two opposing forces in the dark.²⁷⁵⁴ Vaso Elez went on to state that there were “several cases” like the one described in the ABiH combat report; “I don’t know the actual names involved but quite a few things like that happened.”²⁷⁵⁵

(c) Defence Allegations of Provocation by the ABiH

775. The Defence submitted that “[u]nits of the BH Army sometimes opened fire in order to draw fire from SRK units so as to portray the latter to the international community as the side that violated the cease-fire.”²⁷⁵⁶ Some witnesses testified that the SRK only fired in response to ABiH firing.²⁷⁵⁷ In cross-examination, Martin Bell maintained his earlier statement that:

“If there was a general pattern to the fighting in the Sarajevo during the whole of the siege, it was that the Muslims would attack outwards with small arms and infantry, and the Serbs would respond with artillery because that was their strength. The world therefore got an impression that Sarajevo was under constant and unprovoked bombardment. However, the war was being waged by both sides. I would even say that the Muslims had a political interest in provoking the Serbs to use their heavy artillery.”²⁷⁵⁸

776. According to Maj. Gen. Nicolai, UNPROFOR Chief of Staff from 28 February 1995 to 2 September 1995, the ABiH “regularly” fired from various locations around the city that were “very

²⁷⁴⁸ Nedeljko Učur, 26 July 2007, T. 8929 – 8930; Simo Tuševljak, 12 July 2007, T. 8120 – 8122.

²⁷⁴⁹ Vaso Elez, 7 June 2007, T. 6327.

²⁷⁵⁰ Vaso Elez, 7 June 2007, T. 6327.

²⁷⁵¹ D216, Daily combat report by Enis Srna, dated 15 October 1994; Vaso Elez, 7 June 2007, T. 6329, 6331 – 6332.

²⁷⁵² Milorad Katić, 1 June 2007, T. 6040 – 6041; D205, ABiH daily combat report by Sifat Podžić, dated 7 April 1995.

²⁷⁵³ Milorad Katić, 4 June 2007, T. 6133, 6134 – 6135; D205, ABiH daily combat report by Sifat Podžić, 7 April 1995.

²⁷⁵⁴ Vaso Elez, 7 June 2007, T. 6358, 6359 – 6360.

²⁷⁵⁵ Vaso Elez, 7 June 2007, T. 6332 – 6333.

²⁷⁵⁶ See Defence Final Brief, para. 84.

²⁷⁵⁷ See e.g. Borislav Kovačević, 10 July 2007, T. 7938 – 7939; T-60, 25 July 2007, T. 8800.

²⁷⁵⁸ Martin Bell, 26 Apr 2007, T. 5272, D178, p. 14.

often” “very close” to UN positions, namely the PTT Building, the Zetra ice stadium and the Marshal Tito Barracks, and that it used “mobile mortars”.²⁷⁵⁹ He testified that he was informed about such incidents by UNMOs and UNPROFOR personnel, from whom he had heard of “definitely more” than ten other incidents of ABiH provocation.²⁷⁶⁰ In this regard, Maj. Gen. Karavelić, Commander of the 1st Corps of the ABiH, denied knowledge of the existence of “mobile mortars” within the ABiH and said that the term was fabricated by the SRK and promoted through UNPROFOR, in order to conceal actions by the SRK.²⁷⁶¹

777. There is evidence that there were varying opinions within UNPROFOR as to the reason the ABiH shot from positions near to UNPROFOR’s location. While some assumed or believed that the shooting was intended to draw SRK fire onto UNPROFOR, others noted UNPROFOR was used as a shield for ABiH actions or that the proximity of the weapons near UNPROFOR positions was due to an increase in weaponry in the city at that time.²⁷⁶² An UNPROFOR report, dated 2 July 1995, stated: “Either way, there has been an increase in the number of Serb shells hitting UNPROFOR targets. The Sector does not consider this to be wayward counter-battery fire from the Serbs, but direct targeting.”²⁷⁶³

778. Maj. Gen. Nicolai confirmed as “an example of the Bosnian attitude” an instance when Hasan Muratović, a Minister in the Bosnian Muslim Government, complained about sniping at a water distribution point in Hrasno and asked for UN protection.²⁷⁶⁴ Maj. Gen. Nicolai told Hasan Muratović that placing the water distribution point on Heroes’ Square, near the confrontation line and in full sight of the SRK, was a way of provoking the sniping and he suggested that the water distribution point be moved to a safer location.²⁷⁶⁵

779. Some witnesses recalled specific instances of provocation.²⁷⁶⁶ Other witnesses rejected the notion that the ABiH engaged in provocation. For example, Ismet Hadžić dismissed the suggestion, as put to him by the Defence, that the ABiH provoked the SRK in Sarajevo in order to “attract the

²⁷⁵⁹ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 964, 996 – 997, 25 Jan 2007, T. 1048 – 1049; P898, UNMO daily sitrep, 3 July 1995. *See also*, Rupert Smith, 7 Mar 2007, T. 3355 – 3556; W-156, 27 Apr 2007, T. 5372 – 5374 (closed session); Luka Dragičević, 26 Mar 2007, T. 4035; David Harland, 16 Jan 2007, T. 430.

²⁷⁶⁰ Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1048. *See also*, Stevan Veljović, 29 May 2007, T. 5807.

²⁷⁶¹ Vahid Karavelic, 27 Mar 2007, T. 4144 – 4145, P493, p. 5, P494, GT. 11884, 12030.

²⁷⁶² Cornelis Hendrik Nicolai, 24 Jan 2007, T. 997 – 998; Rupert Smith, 7 Mar 2007, T. 3355 – 3556; W-156, 27 Apr 2007, T. 5356 – 5357 (closed session); D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2; P19, UNPROFOR sitrep, 2 July 1995, p. 3.

²⁷⁶³ P19, UNPROFOR sitrep, 2 July 1995, p. 4.

²⁷⁶⁴ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1004.

²⁷⁶⁵ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 1004.

²⁷⁶⁶ Martin Bell, 27 Apr 2007, T. 5287; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 984 – 988; Momcilo Gojković, 13 July 2007, T. 8254; Miroslav Pejić, 16 July 2007, T. 8368 – 8369; Radomir Visnjić, 25 June 2007, T. 7265; T-60, 25 July 2007, T. 8819 – 8820; D217, Interim combat report by Fikret Prevljak, 1 July 1995, pp 1 – 2; D237, Diagram marked by Luka Jović.

attention of the Serbian forces” and then focus ABiH operations outside Sarajevo.²⁷⁶⁷ W-137 rejected as “an insane idea” the Defence proposition that the ABiH fired from civilian areas, such as water collection points, to provoke the SRK.²⁷⁶⁸

(d) ABiH Offensives

780. The Trial Chamber received a considerable amount of evidence, mainly presented by the Defence, pertaining to offensives carried out by ABiH in and around Sarajevo during the Indictment period, and particularly during the summer months of 1995.

781. There is evidence that ABiH offensive action increased in August and September 1994.²⁷⁶⁹ On 18 September 1994, the ABiH launched an attack on SRK positions in eastern Sarajevo,²⁷⁷⁰ including around Špicasta Stijena, leading to SRK retaliatory action to retake territories.²⁷⁷¹ According to Maj. Eimers, the ABiH also attacked western Sarajevo, attempting to break the siege of Sarajevo from the “Igman Olympic Road area to get into the direction of Goradže” by firing 200 mortar shells an hour.²⁷⁷² In addition, Zoran Trapara recalled that from August 1994, the ABiH were regrouping outside Sarajevo, using the tunnel and via Mount Igman.²⁷⁷³ According to him, this regrouping continued through May 1995 “and onwards”; the ABiH “were preparing for a frontal attack on all Serb positions.”²⁷⁷⁴ The Trial Chamber notes that the 14th Division of the 1st Corps of the ABiH had its command post in Tarčin and its area of responsibility was the Igman area.²⁷⁷⁵

782. Following this period of military action, there was, according to a number of witnesses, a “lull” in the fighting from the latter months of 1994 and until the summer months of 1995.²⁷⁷⁶ Other evidence shows combat activity in and around Sarajevo during that time.²⁷⁷⁷

²⁷⁶⁷ Ismet Hadžić, 6 Mar 2007, T. 3289.

²⁷⁶⁸ W-137, 20 Feb 2007, T. 2514.

²⁷⁶⁹ D158, Order by Rasim Delić, dated 2 November 1994; Vahid Karavelić, 28 Mar 2007, T. 4240, P493, p. 3.

²⁷⁷⁰ David Harland, 15 Jan 2007, T. 387 – 389, P2, MT. 28687; D3, UNPROFOR Memo on 18 Sep 1994 ABiH attack; D4, Memo of Pale and Sarajevo Meetings, 20 September 1994.

²⁷⁷¹ Anđelko Dragaš, 22 June 2007, T. 7065 – 7066; Vljako Božić, 17 July 2007, T. 8429, 8467 – 8468; T-15, 13 July 2007, T. 8311; D156, Daily combat report by Vahid Karavelić, dated 19 September 1994; Vahid Karavelić, 28 Mar 2007, T. 4237.

²⁷⁷² Ronald Eimers, 20 Apr 2007, T. 4807, P585, p. 5. *See also*, T-39, 21 June 2007, T. 6997; D187, Report on 1st Corps combat achievements, 1 November 1994.

²⁷⁷³ Zoran Trapara, 26 June 2007, T. 7311. *See also*, T-2, 20 June 2007, T. 6934 – 6935; Borislav Kovačević, 9 July 2007, T. 7892; D275, Order by Fikret Prevljak, dated 6 August 1995; Ismet Hadžić, 6 Mar 2007, T. 3287, 3289.

²⁷⁷⁴ Zoran Trapara, 26 June 2007, T. 7311 – 7312. *See also*, Stevan Veljović, 29 May 2007, T. 5759.

²⁷⁷⁵ Ismet Hadžić, 6 Mar 2007, T. 3273.

²⁷⁷⁶ T-2, 20 June 2007, T. 6934 – 6935; T-5, 25 June 2007, T. 7214 – 7215; T-9, 16 July 2007, T. 8355 – 8356; T-39, 21 June 2007, T. 6998; T-52, 28 June 2007, T. 7436 – 7437; Zoran Trapara, 26 June 2007, T. 7304, 7311; Borislav Kovačević, 9 July 2007, T. 7891; Stjepan Djukić, 3 July 2007, T. 7513, 7514; Vljako Božić, 17 July 2007, T. 8431 – 8432; Ljuban Mrković, 12 July 2007, T. 8144, 8164; Simo Tuševljak, 11 July 2007, T. 8045 – 8046; Vlastimir Glavaš, 24 July 2007, T. 8739; Dragan Simić, 5 June 2007, T. 6175; Milorad Katić, 1 June 2007, T. 6037; Martin Bell, 27 Apr 2007, T. 5280 – 5281; Andrey Demurenko, 5 July 2007, T. 7671, 12 July 2007, T. 8183 – 8184; P836, UNPROFOR

783. According to Gen. Smith, UNPROFOR had observed from March 1995 “the general opening up” of an ABiH offensive that began in June 1995.²⁷⁷⁸ Radovan Karadžić informed Gen. Smith, at a meeting on 5 April 1995, that the VRS had decided to launch a counter-attack, although it was likely to bring the Bosnian Serbs into confrontation with the UN and NATO.²⁷⁷⁹ In addition, Radovan Karadžić told Gen. Smith that if the Bosnians launched an offensive to open up a land corridor to Sarajevo, as his intelligence told him would happen, “we will take Sarajevo.”²⁷⁸⁰

784. The ABiH mounted a series of attacks against SRK positions in May 1995.²⁷⁸¹ On 8 June 1995, Maj. Gen. Karavelić ordered the 1st Corps to carry out a co-ordinated “simultaneous” attack.²⁷⁸² According to Maj. Veljović, this operation, which began at 0310 hours on 15 June 1995, was code-named “Operation T-95” and 61.5 per cent of the “total potential army of Bosnia and Herzegovina” was involved, that is, between 130,000 to 135,000 men, against “a corps” of 18,000 men.²⁷⁸³ The evidence of the total number of ABiH soldiers as presented by Maj. Veljović is not supported by other evidence, although his evidence regarding the number of soldiers in the SRK is supported by other evidence, as discussed elsewhere in this Judgement.²⁷⁸⁴ The Trial Chamber notes that, according to Stevan Veljović, the attack affected, for example, the areas of Viseko and Kaluk towards Vogošća, Žuč, Semizovac, the Nišići river valley from the direction of Debelo Brdo, Žlatiste, Hreša and the Lukavica Barracks.²⁷⁸⁵

785. There is detailed evidence before the Trial Chamber regarding this major ABiH offensive, in which the “Bosnians attacked Serb positions all along the confrontation line, attacking out of the

sitreps, 28 December 1994; P873, UNMO daily sitrep, dated 26 January 1995; P874, UNMO daily sitrep, dated 14 February 1995.

²⁷⁷⁷ Milan Mandić, 3 July 2007, T. 7561; Vljako Božić, 17 July 2007, T. 8413 – 8414; T-2, 20 June 2007, T. 6933, 6934; Borislav Kovačević, 9 July 2007, T. 7891; Simo Tuševljak, 12 July 2007, T. 8111 – 8112; Siniša Krsman, 6 June 2007, T. 6251; Zoran Trapara, 26 June 2007, T. 7307, 7311 – 7312; P866, UNPROFOR daily sitrep, dated 18 November 1994, p. 6; P867, UNPROFOR daily sitrep, 14 December 1994, p. 4; P877, UNMO daily sitrep, 28 February 1995, p. 8. *See also*, Louis Fortin, P27, p. 10; Ronald Eimers, P584, p. 4. *See also*, P765, Report on expenditure of ammunition, 11 January 1995 (under seal), which records the use of ammunition by the SRK during November and December 1994, including 136,080 7.62 mm bullets for automatic rifles and tracers, 900 sniper bullets and three aerial bombs.

²⁷⁷⁸ Rupert Smith, 7 Mar 2007, T. 3379, 3392, P334, p. 7. *See also*, W-156, 27 Apr 2007, T. 5351 (closed session); Ljuban Mrković, 12 July 2007, T. 8144.

²⁷⁷⁹ Rupert Smith, P334, p. 10.

²⁷⁸⁰ Rupert Smith, P334, p. 11. *See also*, Ronald Eimers, P585, p. 9.

²⁷⁸¹ Harry Konings, 13 Mar 2007, T. 3651 – 3652; Momčilo Gojković, 13 Jul 2007, T. 8259 – 8260D308, Combat report, dated 24 May 1995; Louis Fortin, P27, p. 10. *See also*, Stevan Veljović, 29 May 2007, T. 5773, 5775 – 5776; D188, Interim combat report by Vahid Karavelić, dated 5 May 1995; D189, Combat report by Vahid Karavelić, dated 5 May 1995.

²⁷⁸² D190, Order of Vahid Karavelić for attack, dated 8 June 1995, p. 4. *See also*, Stevan Veljović, 29 May 2007, T. 5785.

²⁷⁸³ Stevan Veljović, 29 May 2007, T. 5784. *See also*, Martin Bell, 27 Apr 2007, T. 5287; Zoran Trapara, 26 June 2007, T. 7315; D191, Daily combat report, dated 16 June 1995; D192, Combat report, dated 16 June 1995.

²⁷⁸⁴ *See supra*, Section II.B.1(b) ABiH and 1st Corps, and para. 69.

²⁷⁸⁵ Stevan Veljović, 29 May 2007, T. 5787.

city, and into it, from the South, West and North”.²⁷⁸⁶ The offensive was intended to “break the siege of Sarajevo”.²⁷⁸⁷ Maj. Veljović testified that, from 15 June 1995 until 21 June 1995, there were “intensive” attacks on the northern and southern fronts.²⁷⁸⁸

786. T-53 stated that as a result of the ABiH attacks, the civilians on the territory held by the SRK were “concerned about their lives” and the lives of their families.²⁷⁸⁹ He testified:

“[e]veryone rose to defend the Serb positions, from those aged 18 to senior citizens who were still strong enough to carry a weapon. Rest assured that this was the only reason that the area was actually defended. The BH army operations were incredible, mind-boggling, the fiercest since the beginning of the war. Only those determined to defend their homes could remain.”²⁷⁹⁰

787. Evidence shows that the attacks were “fierce” in the last week of June 1995 and the first week of July 1995, with attacks along several parts of the confrontation lines, including Grbavica,²⁷⁹¹ Dobrinja I and IV, Hrasno, the Lukavica-Trebević-Pale road and Špicasta Stijena.²⁷⁹² Furthermore, UNPROFOR reported that on 28 June 1995, “the BiH launched an infantry attack against Serb-populated settlement of Nedarići, supported by mortar and artillery fire. The attack was repelled.”²⁷⁹³ Another witness testified that Nedarići was inhabited by civilians, as were other areas, but there were also Bosnian Serb trenches and military facilities.²⁷⁹⁴ Still further witness and documentary evidence concerns ongoing combat actions throughout July²⁷⁹⁵ and August 1995.²⁷⁹⁶

²⁷⁸⁶ W-156, 27 Apr 2007, T. 5350 – 5351, 5362 – 5363 (closed session); P16, UNPROFOR sitrep, 24 June 1995, pp 1-2; D159, Report by Fikret Prevljak on active combat actions, dated 4 July 1995; T-53, 11 Jun 2007, T. 6409; D139, SRK report on 15 June 1995 ABiH offensive, dated 16 June 1995, p. 1; D118, Report by Fikret Prevljak, dated 4 July 1995. Evidence was also presented regarding attacks that took place on 20 and 21 June 1995: T-2, 20 Jun 2007, T. 6977; D217, Interim combat report by Fikret Prevljak, 1 July 1995, p. 1; D313, Combat report, dated 20 June 1995; P777, 1st Iliđža Infantry Brigade command daily report, 21 June 1995, p. 1. *See also*, Zoran Samardžić, 13 Jun 2007, T. 6636; Rupert Smith, P334, p. 15; P891, UNMO daily sitrep, 17 June 1995; P892, UNMO daily sitrep, dated 18 June 1995.

²⁷⁸⁷ Differing views as to the purpose of this offensive were presented before the Trial Chamber. D282, Report by Vahid Karavelić, dated 15 June 1995, p. 1, stated the objective of the offensive was “to break the siege of Sarajevo”; W-156, 27 Apr 2007, T. 5372 – 5374 (closed session). D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2, reported that the “Bosnian objectives seem to be to tie down Serb forces around the city, while they chip away at the Serb defenses in areas of their choosing”; D107, Report by Fikret Prevljak, 26 June 1995. *Cf.* T-53, 11 Jun 2007, T. 6410.

²⁷⁸⁸ Stevan Veljović, 29 May 2007, T. 5787, 5793 – 5794. *See also*, T-9, 16 July 2007, T. 8355 – 8358; Asam Butt, 15 Feb 2007, T. 2237; Vaso Elez, 7 June 2007, T. 6333 – 6334; Luka Dragičević, 26 Mar 2007, T. 4025.

²⁷⁸⁹ T-53, 11 June 2007, T. 6411. *See also*, Simo Tuševljak, 11 July 2007, T. 8045 – 8046.

²⁷⁹⁰ T-53, 11 June 2007, T. 6411. *See also*, T-2, 20 June 2007, T. 6934 – 6935.

²⁷⁹¹ Vaso Elez, 7 June 2007, T. 6340 – 6341, 6342; D220, Photograph marked by Vaso Elez.

²⁷⁹² Siniša Krsman, 6 Jun 2007, T. 6257 – 6258; D273, Combat report by Fikret Prevljak, dated 25 June 1995; Radomir Visnjić, 25 Jun 2007, T. 7262 – 7263; D107, Report by Fikret Prevljak, 26 June 1995; Siniša Krsman, 6 Jun 2007, T. 6257 – 6258. *See also*, Zoran Trapara, 26 Jun 2007, T. 7315 – 7317, 7320 – 7321; Predrag Trapara, 27 Jun 2007, T. 7385 – 7387; P19, UNPROFOR sitrep, 2 Jul 1995, p. 2; Vaso Elez, 7 Jun 2007, T. 6335, 6341, 6342; D217, Interim combat report by Fikret Prevljak, 1 July 1995, p. 1; D220, Photograph marked by Vaso Elez; D313, Combat report, 26 June 1995; P847, UNMO daily sitrep, dated 22 June 1995; Radomir Visnjić, 25 Jun 2007, T. 7262 – 7263.

²⁷⁹³ D183, UNPROFOR HQ sitrep, 1 July 1995, p. 2. *See also*, Louis Fortin, 16 Jan 2007, T. 476; W-156, 27 Apr 2007, T. 5354 – 5355 (closed session), P19, UNPROFOR sitrep, 2 July 1995; P767, Request for ammunition, 22 June 1995.

²⁷⁹⁴ W-156, 27 Apr 2007, T. 5377 (closed session). *See also*, T-48, 22 June 2007, T. 7147–7148, 7158; T-52, 28 June 2007, T. 7426, 7436, 7443.

²⁷⁹⁵ Goran Kovačević, 13 June 2007, T. 6563; T-48, 22 June 2007, T. 7145; T-52, 28 June 2007, T. 7438; T-52, 28 June 2007, T. 7439. *See also*, Vahid Karavelić, 29 Mar 2007, T. 4251; D61, Order by Fikret Prevljak, 6 July 1995; D219,

788. A number of Defence witnesses also gave evidence regarding combat activity in areas of BiH that may be considered to be outside the geographical scope of the Indictment, including, Semizovac-Srednje, the Vareš municipality and the Nišići Plateau²⁷⁹⁷ and the Treskavica and Trnovo area.²⁷⁹⁸ Borislav Kovačević explained that during the ABiH attack on SRK positions at the Nišići Plateau on the morning of 15 June 1995, there was a lot of shelling and that while shells landed on the frontlines, shells also “overshot, landing in the rear on civilians.”²⁷⁹⁹ Milan Pejić, a doctor during the war, testified that in 1995 there were “intense attacks”, particularly in the Blažuj area by the ABiH.²⁸⁰⁰ He said that this was a “well-known offensive in which we had a large number of wounded” and that it was “just shelling, indiscriminate shelling.”²⁸⁰¹

(e) Effect of Conflict on Bosnian Serbs

789. The Trial Chamber heard evidence that the Bosnian Serb civilians who lived in and around Sarajevo suffered hardships during the conflict.²⁸⁰² Martin Bell testified that while there were fewer civilians in SRK-held areas, because those who were not men of military age could get out, there was anger and anxiety about the sniper activity and, in that regard, “there was no monopoly of suffering and that certainly [...] applied to the Serbs.”²⁸⁰³ T-60 testified that the conflict was very hard for “all citizens” but that the Bosnian Serb population living in the ABiH-held territory “had

Order by Enver Hadzihasanović for Rasim Delić, dated 11 July 1995; Vaso Elez, 7 June 2007, T. 6344, 6368 – 6370; D272, Report by Fikret Prevljak, dated 21 July 1995. *See also*, P764, Photograph marked by Vaso Elez; Radomir Visnjić, 25 June 2007, T. 7260 – 7261; P898, UNMO daily sitrep, 3 July 1995; P901, UNMO daily sitrep, dated 6 July 1995; P850, UNMO daily sitrep, 9 July 1995; P849, UNMO daily sitrep, 20 July 1995; P903, UNMO daily sitrep, dated 21 July 1995; P843, UNMO daily sitrep, 23 July 1995; P848, UNMO daily sitrep, dated 26 July 1995; P19, UNPROFOR sitrep, 2 July 1995, p. 1; W-156, 27 Apr 2007, T. 5354 – 5355 (closed session); *Cf.* Luka Dragičević, 26 Mar 2007, T. 4051; Stevan Veljović, 29 May 2007, T. 5784 – 5785; Ronald Eimers, P585, p. 9.

²⁷⁹⁶ T-53, 11 Jun 2007, T. 6412 – 6413; D62, Order by Fikret Prevljak, 23 Aug 1995; P840, UNMO daily sitrep, dated 15 August 1995, p. 2; P841, UNMO daily sitrep, 19 August 1995; P842, UNMO daily sitrep, 21 August 1995; P845, UNMO daily sitrep, 24 August 1995; P851, UNMO daily sitrep, dated 30 August 1995; P768, Order issuing SRK units with air bombs, 24 August 1995.

²⁷⁹⁷ Stevan Veljović, 29 May 2007, T. 5799; Vlastimir Glavaš, 24 July 2007, T. 8732; Dragan Simić, 5 June 2007, T. 6173, 6175; Vlajko Božić, 17 July 2007, T. 8430 – 8436; Stjepan Djukić, 3 July 2007, T. 7526 – 7528; Borislav Kovačević, 9 July 2007, T. 7890 – 7893; T-9, 16 July 2007, T. 8350 – 8351, 8354 – 8356; Drazen Maunaga, 12 June 2007, T. 6507; Miroslav Pejić, 16 July 2007, T. 8373 – 8374; D282, Report by Vahid Karavelić, 15 June 1995; D290, Report from Kakanj Command Post, dated 7 November 1994; D474, Regular combat report by Izet Berkovac, dated 18 June 1995; P766, Request for ammunition, 16 June 1995.

²⁷⁹⁸ Stevan Veljović, 29 May 2007, T. 5771 – 5773; Rade Ivanović, 4 July 2007, T. 7642 – 7643; T-53, 11 June 2007, T. 6400; T-61, 9 July 2007, T. 7852 – 7853; Drazen Maunaga, 12 June 2007, T. 6497 – 6498, 6507; Radomir Visnjić, 25 June 2007, T. 7260; D188, Interim combat report by Vahid Karavelić, 5 May 1995.

²⁷⁹⁹ Borislav Kovačević, 9 July 2007, T. 7893 – 7894.

²⁸⁰⁰ Milan Pejić, 21 June 2007, T. 7039.

²⁸⁰¹ Milan Pejić, 21 June 2007, T. 7039.

²⁸⁰² Vaso Elez, 7 June 2007, T. 6346 – 6347; *Cf.* Stevan Veljović, 31 May 2007, T. 5929.

²⁸⁰³ Martin Bell, 26 Apr 2007, T. 5253.

particular difficulties taking this in.”²⁸⁰⁴ The Trial Chamber also heard evidence that the effects of the siege were especially acute for the civilians living inside the confrontation lines.²⁸⁰⁵

790. In Bosnian Serb territory, the population faced difficulties getting food, water and electricity.²⁸⁰⁶ Vaso Elez testified that the sanctions imposed on RS by Serbia and Montenegro exacerbated the food shortage and Bosnian Serb civilians and soldiers outside the confrontation lines relied upon humanitarian aid.²⁸⁰⁷ Zoran Trapara testified that the Bosnian Serb population was in a “worse” situation than the population within the confrontation lines: “They were being financed by the whole world. They brought food to Sarajevo by plane. 90 per cent of the food that came to Sarajevo was sent to the town. Nothing reached the Serb parts.”²⁸⁰⁸ However, T-61 testified that, as far as he was aware, food supplies were “somewhat better” on the Bosnian Serb side, than on the Bosnian Muslim side, although he testified that humanitarian aid was distributed “very unevenly, to the detriment of the Serb side.”²⁸⁰⁹

791. People were very fearful.²⁸¹⁰ Zoran Trapara recalled, “[m]y house, where I lived, where I slept, was 2 or 300 metres away from the front line, and it was exposed to sniper fire and barrage fire on a daily basis and shelling as well from the Muslim side.”²⁸¹¹ Luka Jović testified that he and his family rarely went outside and, when they did, they left through a window in a neighbouring apartment.²⁸¹² It was too dangerous to leave Dobrinja IV during the day because one might be shot, so they left to get food only at night.²⁸¹³

792. With regard to the period of the ABiH offensive, Col. Dragičević testified that it was not possible to conduct investigations into the deaths of civilians on SRK-held territory, “[w]e were not even able to bury them peacefully.”²⁸¹⁴ Simo Tuševljak confirmed that the Bosnian Serb police sent 217 official reports of its investigations into “war crimes” committed against Bosnian Serb civilians

²⁸⁰⁴ T-60, 25 Jul 2007, T. 8799. *See also*, Slobodan Bjelica, 24 Jul 2007, T. 8772 – 8773; Ljuban Mrković, 12 Jul 2007, T. 8184 – 8185.

²⁸⁰⁵ Martin Bell, 26 Apr 2007, T. 5264; David Harland, 15 Jan 2007, T. 372. *Cf.* Rupert Smith, 7 Mar 2007, T. 3380.

²⁸⁰⁶ Ljuban Mrković, 12 July 2007, T. 8184 – 8185; T-61, 9 July 2007, T. 7883. *See also*, Zoran Samardžić, 13 June 2007, T. 6635; Milorad Katić, 1 June 2007, T. 6031 – 6032; Luka Jović, 14 June 2007, T. 6700; D354, Photograph.

²⁸⁰⁷ Vaso Elez, 7 June 2007, T. 6323, 6346. Trial Chamber notes that according to David Harland, on 4 August 1994, the FRY imposed sanctions on the VRS, which remained in force when the Accused became SRK Commander: David Harland, 15 Jan 2007, T. 391 – 392. *See also*, Zoran Samardžić, 13 June 2007, T. 6629 – 6630; Goran Kovačević, 12 June 2007, T. 6556; Zoran Trapara, 26 June 2007, T. 7351 – 7352.

²⁸⁰⁸ Zoran Trapara, 26 June 2007, T. 7351 – 7352.

²⁸⁰⁹ T-61, 9 July 2007, T. 7883.

²⁸¹⁰ Ljuban Mrković, 12 July 2007, T. 8184 – 8185; T-61, 9 July 2007, T. 7883; T-48, 22 June 2007, T. 7133 – 7134; Simo Tuševljak, 11 July 2007, T. 8045; Milorad Katić, 1 June 2007, T. 6014 – 6015; Drazen Maunaga, 12 June 2007, T. 6506 – 6507; Miroslav Pejić, 16 July 2007, T. 8390.

²⁸¹¹ Zoran Trapara, 26 June 2007, T. 7350.

²⁸¹² Luka Jović, 14 June 2007, T. 6700.

²⁸¹³ Luka Jović, 14 June 2007, T. 6705 – 6706. *See* D235, Map marked by Luka Jović.

²⁸¹⁴ Luka Dragičević, 26 Mar 2007, T. 4040 – 4041.

to the Office of the Prosecutor of the Tribunal.²⁸¹⁵ According to Ivica Milosavljević, between 1991 and 1995, autopsies were performed on 4,000 people killed in “war-affected areas” and he carried out 1,000 external examinations in order to establish the cause of death of persons killed in the “war-affected areas.”²⁸¹⁶ Furthermore, there are Bosnian Serbs whose fate remains unknown.²⁸¹⁷

793. Defence witnesses expressed their views that the death of Bosnian Serbs was never publicised. Slobodan Bjelica testified that “we” received reports every day about civilian casualties in Bosnian Serb territory, but that despite trying to disseminate information about the suffering of the Bosnian Serbs to the international press, nothing was published.²⁸¹⁸ T-5, who lived in Grbavica during the conflict, testified that “we listened to Muslim media non-stop”, which referred to the killing of “scores” of “Serbian soldiers” but never mentioned the deaths of civilians, while describing the situation on the Bosnian Muslim side in opposite terms: “We felt this was adding insult to injury.”²⁸¹⁹

General Findings on Sniping and Shelling

794. There is abundant evidence from specific incidents as well as from other witness and documentary evidence about general sniping locations and targets, that sniper fire against civilians within the confrontation lines primarily came from SRK-held territory.²⁸²⁰ As a result of the sniping, civilians were seriously injured or killed. The Trial Chamber finds that the only reasonable inference to be drawn from this evidence is that the shots, originating from SRK-held territory, were fired by members of the SRK.

795. In relation to the Defence allegation that the ABiH shelled Bosnian Muslims living within the confrontation lines, the Trial Chamber notes that it heard no such evidence. Instead, the Trial Chamber heard evidence from a number of witnesses, including UN officials, that the ABiH did not shell their own population. The Trial Chamber further notes that allegations about the ABiH staging incidents for propaganda purposes or to gain sympathy, was not supported by evidence showing that such cases actually occurred. The Trial Chamber finds that the most that can be made of the evidence presented is that there were rumours, primarily from the SRK-side, that the ABiH shelled civilians living within the confrontation lines and staged incidents in order to gain sympathy from the outside world.

²⁸¹⁵ Simo Tuševljak, 11 July 2007, T. 8063, 8081 – 8083.

²⁸¹⁶ Ivica Milosavljević, 24 Aug 2007, T. 9237

²⁸¹⁷ David Harland, P1, MT. 27012 – 27013.

²⁸¹⁸ Slobodan Bjelica, 24 July 2007, T. 8761 – 8764.

²⁸¹⁹ T-5, 25 June 2007, T. 7215.

²⁸²⁰ See *supra*, Section II.B.3 Areas of Responsibility and Confrontation Lines - SRK and 1st Corps of the ABiH; Section II.E.1 - II.E.4, II.E.8.

796. The Trial Chamber heard voluminous evidence that shelling against civilians within the confrontation lines primarily came from SRK-held territory and that, as a result of the shelling, civilians were seriously injured or killed. This evidence includes witness testimony from military officials, UN personnel, local residents and victims. The Trial Chamber finds that the only reasonable inference to be drawn from this evidence is that the shells, originating from SRK-held territory, were launched by SRK troops.

797. The Defence argued that an armed conflict between the ABiH and the VRS existed prior to the Indictment period and that this conflict was fought at a very high level of intensity. In particular, the Defence argued that the terror that existed, and with which the Accused is charged, was a result of this armed conflict. The Trial Chamber rejects the argument that the terror with which the Accused is charged resulted from the intensity of the armed conflict. No evidence was brought to support that submission.

798. In relation to the submission that the ABiH launched offensives resulting in the death of Bosnian Serbs, the Trial Chamber finds that although evidence has been presented of such offences and deaths, no submission was made linking those ABiH activities with the criminal liability of the Accused. To put it more bluntly, in the circumstances of this case, the Trial Chamber does not see how this could exonerate the Accused.

799. The Trial Chamber takes this opportunity to express its sympathy for all victims of the conflict, both Bosnian Muslims and Bosnian Serbs.

F. Evidence Relating to Role Accused

(a) Leadership of the Accused

800. David Harland testified that the Accused was a forceful and commanding personality with a “rather more commanding presence” than his predecessor Gen. Galić.²⁸²¹ He appeared “competent as a commander”, but at the same time seemed to be “somewhat troubled by what he was doing.”²⁸²² Col. Dragičević and Maj. Veljović testified that the Accused was a “man of high moral values”, an “altruist”, “a professional of the highest ranking”, “an extraordinary personality” and that his personality was “commendable”.²⁸²³

²⁸²¹ David Harland, 15 Jan 2007, T. 353.

²⁸²² David Fraser, 7 Feb 2007, T. 1782.

²⁸²³ Luka Dragičević, 26 Mar 2007, T. 3989 – 3990; Stevan Veljović, 31 May 2007, T. 5925.

801. The SRK headquarters in Lukavica functioned well.²⁸²⁴ According to Col. Dragičević, the Accused made decisions on the basis of proposals by his officers, such as his assistant commanders or the Chief of Staff.²⁸²⁵ The Accused held regular meetings with his subordinate staff, once or twice a month, and held briefings after visiting the confrontation lines.²⁸²⁶

802. Maj. Eimers, Maj. Veljović and Col. Dragičević testified that the Accused held a “tight chain of command” and that the command structure under the Accused was “rather rigid”.²⁸²⁷ There is evidence that the Accused, while being Deputy Commander and Chief of Staff of the SRK, tried to improve the level of command and control within the SRK.²⁸²⁸ After he had become SRK Commander, the Accused also issued orders aimed at improving command and control within the corps.²⁸²⁹ For example, on 16 September 1994, the Accused ordered that regular combat reports accounting for the situation at 1500 hours each day be delivered on a daily basis to the SRK command by 1600 hours.²⁸³⁰

803. There is also evidence that the Accused, in his capacity as SRK Commander, controlled the use of ammunition.²⁸³¹ For example, on 23 April 1995, he ordered all unit commands to submit information on the daily use of all types of ammunition. He also ordered that the quantities of ammunition issued and consumed be monitored and registered.²⁸³² On several occasions, he warned subordinate officers not to allow unnecessary use of ammunition.²⁸³³

²⁸²⁴ Rupert Smith, 7 Mar 2007, T. 3360; John Jordan, P267, p. 9. *See also supra*, Section II.B.1(a) VRS and SRK.

²⁸²⁵ Luka Dragičević, 27 Mar 2007, T. 4067. *See also*, Luka Dragičević, 27 Mar 2007, T. 4062 – 4063; Stevan Veljović, 31 May 2007, T. 5911. *See e.g.* P679, Order about meeting with brigade and individual unit commanders, dated 2 January 1995.

²⁸²⁶ Luka Dragičević, 27 Mar 2007, T. 4062 – 4063; Stevan Veljović, 30 May 2007, T. 5832, 5840. *See also*, P735, Order on meeting between the corps commander and unit commanders, dated 14 September 1995.

²⁸²⁷ Ronald Eimers, 20 Apr 2007, T. 4789 – 4790; Stevan Veljović, 29 May 2007, T. 5764; W-156, P625, p. 9, 32 (under seal). *See also*, Luka Dragičević, 26 Mar 2007, T. 3999 – 4000.

²⁸²⁸ David Fraser, 8 Feb 2007, T. 1824; P208, Order by SRK Deputy Commander, dated 29 July 1994.

²⁸²⁹ P671, Clarification order by the SRK Commander, dated 16 September 1994; P676, Warning by the SRK Commander, dated 22 November 1994; P678, Order by the SRK Commander, dated 26 November 1994; P686, Order by the SRK Commander on daily reporting, dated 22 January 1995; P730, Order by the SRK Commander, dated 30 July 1995.

²⁸³⁰ P671, Clarification order by the SRK Commander, 16 September 1994 *See also*, P686, Order by the SRK Commander on daily reporting, 22 January 1995.

²⁸³¹ P702, Order by SRK Commander re ammunition, dated 23 April 1995; P710, Order by the SRK Commander re unnecessary use of ammunition, dated 22 May 1995; P723, Warning by the SRK Commander re ammunition, dated 19 July 1995; P728, Order by the SRK Commander re ammunition, dated 26 July 1995.

²⁸³² P702, Order by SRK Commander re ammunition, 23 April 1995.

²⁸³³ P710, Order by the SRK Commander, 22 May 1995; P723, Warning by the SRK Commander re ammunition, 19 July 1995; P728, Order by the SRK Commander re ammunition, 26 July 1995.

804. The Accused regularly toured the confrontation lines and visited the different SRK units at their positions.²⁸³⁴ Col. Dragičević testified that he spent 90 per cent of his time in the field with subordinate units.²⁸³⁵ The Accused also visited the Bosnian Serb civilian population.²⁸³⁶

805. Maj. Veljović testified that the Accused was highly respected by the officers and soldiers because “he was always there where the fighting was at its worst. He was not always just sitting in his office or where the civilians were.”²⁸³⁷ Other Defence witnesses confirmed that the Accused was highly esteemed by the soldiers because he visited them at the confrontation lines and because he took good care of their needs.²⁸³⁸

806. Maj. Veljović said that the Accused was “the only corps commander who visited virtually every trench. This was supposed to be done by an operations officer, but, no, he was the one always in the field.”²⁸³⁹ The Accused himself highlighted this aspect in a letter to Gen. Mladić dated 19 May 1996, in which he presents a review of his work as SRK Commander. In the letter, the Accused claimed that:

“I never stayed away from my troops for a single day, nor did I ever work in any commands. Nevertheless, I was always a commander, both up to company level and above, only in part serving as Chief of Staff. Had it not been for my success and the huge effort that I put in, I would never have lasted in these respective roles for this long.”²⁸⁴⁰

He continued:

“During my further involvement with the SRK, my commitment never wavered. There was no task that I found difficult, and key features were liberated that were of strategic significance to the defence of the SRK’s zone of responsibility in the June offensive back in 1995. The two-month large-scale enemy offensive was stopped and crushed without any panic in 1995.

My control of the situation was fully consolidated.”²⁸⁴¹

807. When the Accused became commander, the military situation stabilised and the SRK strengthened their positions.²⁸⁴² Maj. Veljović testified that the Accused’s position was that the

²⁸³⁴ Stevan Veljović, 29 May 2007, T. 5770, 20 May 2007, T. 5837; Zoran Trapara, 26 June 2007, T. 7348 – 7349; Anđelko Dragaš, 22 June 2007, T. 7067; Vaso Elez, 7 June 2007, T. 6326, 6360 – 6361; Stjepan Djukić, 3 July 2007, T. 7513 – 7514; Milorad Košorac, 26 July 2007, T. 8871 – 8872, 8873; Milorad Katić, 1 June 2007, T. 6058 – 6059; Sinisa Krsman, 6 June 2007, T. 6266 – 6267; Goran Kovačević, 13 June 2007, T. 6582 – 6583; Luka Dragičević, 26 Mar 2007, T. 3999 – 4000; Dragan Simić, 5 June 2007, T. 6172 – 6173, 6177.

²⁸³⁵ Luka Dragičević, 26 Mar 2007, T. 3989. *See also*, Sinisa Krsman, 6 June 2007, T. 6267.

²⁸³⁶ T-39, 21 June 2007, T. 6998; Anđelko Dragaš, 22 June 2007, T. 7067; Milorad Katić, 1 June 2007, T. 6032 – 6033.

²⁸³⁷ Stevan Veljović, 30 May 2007, T. 5837.

²⁸³⁸ Anđelko Dragaš, 22 June 2007, T. 7067, 7122; Sinisa Krsman, 6 June 2007, T. 6266 – 6267; Radomir Visnjić, 25 June 2007, T. 7259 – 7260; Dragan Simić, 5 June 2007, T. 6215; Milorad Katić, 1 June 2007, T. 6032 – 6033, 6058, 6005 – 6006; Milorad Košorac, 26 July 2007, T. 8874 – 8875.

²⁸³⁹ Stevan Veljović, 31 May 2007, T. 5926 – 5927; Stevan Veljović, 30 May 2007, T. 5840; Anđelko Dragaš, 22 June 2007, T. 7122.

²⁸⁴⁰ P738, Letter by SRK Commander to Gen. Ratko Mladić, dated 19 May 1996, p. 2.

²⁸⁴¹ *Ibid.*, p. 3.

²⁸⁴² Borislav Kovačević, 9 July 2007, T. 7891; Stjepan Djukić, 3 July 2007, T. 7534 – 7535.

corps should take defensive positions because the SRK expected attacks by the ABiH “any minute” and because the corps had “suffered enormous losses in the preceding period of the war”.²⁸⁴³

(b) Involvement in and Awareness of Shelling and Sniping

808. The Trial Chamber was presented with evidence relating to the involvement of the Accused in crimes committed by SRK forces in Sarajevo, in particular, in the sniping and shelling of civilians. The Prosecution argues in its Closing Brief that evidence in this case shows the Accused had effective control over the SRK as a whole.²⁸⁴⁴

(i) Effective Control

809. Prosecution and Defence witnesses testified that the Accused exercised “effective command” over the SRK and over operations around the city of Sarajevo and that the chain of command functioned well.²⁸⁴⁵ In the view of Maj. Eimers, the Bosnian Serbs had excellent command and control by phone and by radio.²⁸⁴⁶ Orders were often communicated to the lower levels orally, again by phone or radio.²⁸⁴⁷ The operation centres of the brigades received daily reports and prepared reports which were sent to the corps command.²⁸⁴⁸ The corps operations centre could also enquire from brigade operations officers whether certain orders were carried out.²⁸⁴⁹

810. There is evidence about the relationship between the Main Staff of the VRS and the SRK command. Col. Dragičević testified that the responsibilities and duties of the corps commander were clearly set.²⁸⁵⁰ Maj. Veljović testified that the Accused could order assault actions in relation to smaller features, but he had to seek approval from a superior command for wider scale action.²⁸⁵¹ Col. Dragičević testified that the Accused always abided by the decisions of the Main Staff of the VRS.²⁸⁵² Brig. Gen. Fraser affirmed the superior-subordinate relationship between Gen. Mladić and the Accused.²⁸⁵³ Another witness stated that, in his opinion, all the incidents in Sarajevo were “orchestrated, guided, and designed” by Gen. Mladić and that liaison officer Col. Indić was

²⁸⁴³ Stevan Veljović, 29 May 2007, T. 5770 – 5771.

²⁸⁴⁴ Prosecution Closing Brief, pp 128 – 135, 138 – 140.

²⁸⁴⁵ David Fraser, 7 Feb 2007, T. 1784, 8 Feb 2007, T. 1810 – 1811; Ronald Eimers, 20 Apr 2007, T. 4790; Cornelis Hendrik Nicolai, 25 Jan 2007, T. 1046; Predrag Trapara, 27 June 2007, T. 7389; Milorad Katić, 1 June 2007, T. 6059 – 6060; P1, MT. 26951, 25691; W-156, P625, p. 9 (under seal).

²⁸⁴⁶ Ronald Eimers, 20 Apr 2007, T. 4788 – 4790, P585, p. 8.

²⁸⁴⁷ Milorad Katić, 1 June 2007, T. 6059 – 6060; T-2, 20 June 2007, T. 6931; T-48, 22 June 2007, T. 7153; Stevan Veljović, 30 May 2007, T. 5837.

²⁸⁴⁸ Stevan Veljović, 30 May 2007, T. 5824 – 5825.

²⁸⁴⁹ Stevan Veljović, 30 May 2007, T. 5832.

²⁸⁵⁰ Luka Dragičević, 27 Mar 2007, T. 4065.

²⁸⁵¹ Stevan Veljović, 31 May 2007, T. 5953 – 5955.

²⁸⁵² Luka Dragičević, 26 Mar 2007, T. 3991.

²⁸⁵³ David Fraser, 8 Feb 2007, T. 1818 – 1819.

“Mladić’s eyes” and had more power than the Accused.²⁸⁵⁴ He described the Accused as “a man of straw”.²⁸⁵⁵ In court, during examination-in-chief, the witness clarified that what he meant to express was that, in the overall military structure and organisation, Gen. Mladić decided on the strategic conception and design of the operations while the Accused was the one who carried them out and had operational and tactical command and control.²⁸⁵⁶ Gen. Mladić had a “particular eye on Sarajevo” and the Accused, therefore, only had limited freedom of action on a strategic level but the Accused “kept total mastery of the means needed to implement locally a certain number of actions”.²⁸⁵⁷

811. Ismet Hadžić, commander of an ABiH brigade, had the impression that the Accused exercised more freedom than his predecessor Gen. Galić.²⁸⁵⁸ Near the end of the war, Ismet Hadžić had the feeling that the Accused could make decisions without approval from the Main Staff of the VRS.²⁸⁵⁹ In his view, the SRK under the command of the Accused used a more “systematic approach”, and the SRK activities were “more subtle”, “more precise” and “more dangerous” than during the time of Gen. Galić.²⁸⁶⁰

a. Effective Control over Sniping

812. Gen. Smith testified that day-to-day activities of snipers would normally be controlled at “around battalion level”.²⁸⁶¹ However, he noted that sniping could also be controlled at a higher level.²⁸⁶² Brig. Gen. Fraser gave evidence that the deployment of snipers is generally decided at a “higher level within the army” because snipers are “a highly specialised skill set” and it was important to apply them to very precise targets.²⁸⁶³

813. Witnesses gave evidence about who commanded and controlled sniping activity by the SRK in Sarajevo. Maj. Veljović testified that the Accused would issue general orders as to how to engage

²⁸⁵⁴ W-46, P387, p. 11 (under seal).

²⁸⁵⁵ W-46, P387, p. 11 (under seal).

²⁸⁵⁶ W-46, 15 Mar 2007, T. 3806 – 3808, 16 Mar 2007, T. 3851 – 3852 (closed session).

²⁸⁵⁷ W-46, 15 Mar 2007, T. 3808 (closed session).

²⁸⁵⁸ Ismet Hadžić, 6 Mar 2007, T. 3236.

²⁸⁵⁹ Ismet Hadžić, 6 Mar 2007, T. 3236.

²⁸⁶⁰ Ismet Hadžić mentioned the targeting of infrastructures, such as local heating facilities and intersections in order to “achieve maximum effect”, Ismet Hadžić, 6 Mar 2007, T. 3236; he referred to the shelling of the Simon Bolivar School and the TV building and incidents where a sniper killed two or three people with one shot, Ismet Hadžić, 6 Mar 2007, T. 3260. For these incidents, *see supra*, Section II.E.6(b)(x) Shelling of a Water Distribution Point in Dobrinja on 18 June 1995; Section II.E.6(b)(xi) Shelling of TV Building; Section II.E.4(b)(i)f Sniping of Dženana Sokolović and Nermin Divović on 18 November 1994. He also referred to a change in the shelling methods leading to levelling the target.

²⁸⁶¹ Rupert Smith, 7 Mar 2007, T. 3318 – 3320; *See also*, P514, Expert report Patrick van der Weijden, p. 3.

²⁸⁶² Rupert Smith, 7 Mar 2007, T. 3320 – 3321.

²⁸⁶³ David Fraser, 7 Feb 2007, T. 1784 – 1785. *See also*, P514, Expert report Patrick van der Weijden, p. 3; P387, p. 15 (under seal).

a target and the lower level commander would then organise the firing position.²⁸⁶⁴ The organisation of firing systems at the positions was done by the squad, regiment, battalion or platoon commanders.²⁸⁶⁵

814. Several other witnesses testified that the snipers of the SRK did not operate in a random manner, but that their operation was co-ordinated by the SRK command.²⁸⁶⁶ Documentary evidence further shows that the Accused issued several orders relating to snipers, sniper training and sniper ammunition.²⁸⁶⁷

815. The Accused was involved in anti-sniping agreements with UNPROFOR. For example, on 14 August, in the first days of his command, he signed the Anti-sniping Agreement.²⁸⁶⁸ Witnesses testified that, after the signing of the Anti-sniping Agreement, the number of sniper casualties immediately and sharply declined, although this did not last more than two or three months.²⁸⁶⁹

816. The Accused's control over sniping activity in Sarajevo is also confirmed by one of his assistant commanders. Col. Lugonja wrote in a memorandum pertaining to the implementation of an anti-sniping agreement, dated 15 August 1994, that "sniping is to be stopped only by orders and the inner organisation and accordingly by taking adequate measures." He further noted, regarding his proposals for the implementation of the agreement, that "the final decision will be taken by commander General Milošević."²⁸⁷⁰

²⁸⁶⁴ Stevan Veljović, 31 May 2007, T. 5955 – 5956.

²⁸⁶⁵ Stevan Veljović, 31 May 2007, T. 5955 – 5956.

²⁸⁶⁶ David Fraser, 7 Feb 2007, T. 1784 - 1785, "As a battalion commander, I would control the snipers; as a brigade commander, I would control how we would employ snipers because of the paucity of numbers; but more importantly is the effect that you're looking for in the application of this skill set." *See also*, P514, Expert Report Van der Weijden, p. 3; David Harland, 16 Jan 2007, T. 459; W-46, 15 Mar 2007, T. 3812 – 3813 (closed session), 16 Mar 2007, T. 3853 (closed session); P387, p. 11 (under seal); W-156, P625, pp 17, 18, 24 (under seal).

²⁸⁶⁷ Vljako Božić, 17 July 2007, T. 8405 – 8406, 8442 – 8443, 8445 – 8447; T-53, 11 June 2007, T. 6459 – 6461, 6464 – 6466; P683, Order by the SRK Commander on detachment and transfer of sniper instructors, dated 19 January 1995. *See also*, Ivan Stamenov, 22 Aug 2007, T. 9034 – 9035; Stevan Veljović, 29 May 2007, T. 5769; P664, Request for inspection of weapons, dated 6 July 1994; P680, Order to prepare for training in 1995, 5 January 1995; P681, Report to Sarajevo command on training, dated 13 January 1995; P682, Report to SRK command on implementation of training in 1994 and recommendation for sniper course, dated 15 January 1995; P684, Order on assigning and dispatching sniper instructors, 19 January 1995; P685, Report to SRK Command on training of officers for sniping squads, 21 January 1995; P688, Order by the SRK Commander to train SRK units in 1995, 29 January 1995, p. 6; P690, Analysis prepared by Maj. Stevan Veljović on training, dated 6 February 1995; P729, Request by the SRK Commander for replenishment of ammunition, dated 27 July 199; P766, Request for ammunition, 16 June 1995.

²⁸⁶⁸ *See supra*, Section II.A.4(c) Anti-sniping Agreement - 14 August 1994.

²⁸⁶⁹ David Harland, 15 Jan 2007, T. 337, 16 Jan 2007, 459; W-46, 15 Mar 2007, T. 3812 – 3813 (closed session), 16 Mar 2007, T. 3850, 3851 (closed session). *See also*, W-46, P387, p. 14 (under seal); David Fraser, 7 Feb 2007, T. 1784, 8 Feb 2007, T. 1820 – 1821; P666, Memorandum to SRK command, 15 August 1994, p. 2

²⁸⁷⁰ P666, Memorandum to SRK command, 15 August 1994, p. 2.

b. Effective Control over Shelling

817. Witnesses also gave evidence about who commanded and controlled the shelling by the SRK. Gen. Smith stated that normal military procedure prescribes that artillery fire is controlled “at the highest practical point” because it might influence events across the whole area. In his view, within the SRK, the artillery fire was “probably” controlled at the corps level.²⁸⁷¹ QMS Higgs testified that heavy and medium mortars are controlled at command level in order to prevent “lower rank local commander[s] from just firing at something and wasting such a valuable asset.”²⁸⁷²

818. Other witnesses also testified that the Accused controlled the shelling activities of the SRK.²⁸⁷³ Maj. Eimers, stated that at times requests for temporary cease-fires were sent to the Lukavica Barracks from checkpoints and within seconds the SRK command stopped “their guns”.²⁸⁷⁴ Maj. Veljović testified that the Main Staff would issue orders relating to cease-fires and that the orders were then carried out by the subordinate commanders.²⁸⁷⁵ Defence witnesses confirmed that there were orders issued not to shoot during cease-fire. Zoran Trapara testified that there was an express order to his unit not to shoot during a cease-fire with any kind of weapon.²⁸⁷⁶ Milan Mandić testified that after the Accused became commander, in August 1994, until mid-October 1994, the soldiers were under orders not to fire infantry or artillery.²⁸⁷⁷

819. Evidence further shows that the Accused issued orders pertaining to positions of artillery pieces and to artillery ammunition.²⁸⁷⁸ During the case, evidence was led that the SRK sometimes used heavy weapons from WCPs.²⁸⁷⁹ One witness believed that the orders to use heavy weapons, which were excluded under the TEZ agreement, were given by the SRK Commander.²⁸⁸⁰

820. There is also evidence suggesting that the Accused planned to withhold heavy weaponry that fell under the TEZ. At the time when he was still Deputy SRK Commander, the Accused submitted a proposal to Gen. Galić to set aside artillery pieces and camouflage them. This involved:

²⁸⁷¹ Rupert Smith, 7 Mar 2007, T. 3318 – 3320.

²⁸⁷² Richard Higgs, 23 Apr 2007, T. 5005 – 5006.

²⁸⁷³ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 704; W-46, 15 Mar 2007, T. 3816 – 3817, 3830 – 3831 (closed session), 16 Mar 2007, T. 3853 (closed session); Borislav Kovačević, 9 July 2007, T. 7906.

²⁸⁷⁴ Ronald Eimers, P585, p. 8.

²⁸⁷⁵ Stevan Veljović, 29 May 2007, T. 5764.

²⁸⁷⁶ Zoran Trapara, 26 June 2007, T. 7349.

²⁸⁷⁷ Milan Mandić, 3 July 2007, T. 7560. *See also*, D214, Order on cease-fire, 25 December 1994.

²⁸⁷⁸ P667, Order by the SRK Commander to camouflage weapons, dated 21 August 1994. *See also* T-53, 11 June 2007, T. 6460 – 6461, 6464 – 6465; Predrag Trapara, 27 June 2007, T. 7414; P687, Request for ammunition, dated 23 January 1995; P697, Order by the SRK Commander on inspection, dated 9 April 1995; P710, Order by the SRK Commander, 22 May 1995; P729, Request by the SRK Commander for replenishment of ammunition, dated 27 July 1995.

²⁸⁷⁹ *See supra*, Section IIA.4(b) Total Exclusion Zone (TEZ) - 9 February 1994.

²⁸⁸⁰ W-46, 15 Mar 2007, T. 3829 – 3830 (closed session).

“a diversionary tactic to set aside the equipment that is out of order and for which we do not have sufficient quantities of ammunition [...] Remaining artillery pieces were previously moved from firing positions and camouflaged and the artillery pieces from the HK were placed in their positions. The UN monitors have been informed about the current VP. [...] we believe that by fulfilling the requirements in the above-mentioned manner, we would not reduce b/g combat readiness of the SRK and at the same time we would not create an image of being uncooperative with the UN.”²⁸⁸¹

821. The Accused was involved in negotiations with UNPROFOR about the withdrawal of heavy weapons.²⁸⁸² As discussed in paragraph 52 of this Judgement, the plan to camouflage heavy weaponry was put into effect when the Accused was commander of the SRK.

c. Effective Control over the Use of Modified Air Bombs

822. Evidence shows that the SRK used modified air bombs, and air bomb launchers and that the Accused was directly involved in the deployment of these weapons.²⁸⁸³ For example, on 15 July 1995, the Accused requested the Main Staff of the VRS to approve the issuance of 100 FAB-100s and 100 FAB-250s.²⁸⁸⁴ The Trial Chamber also received evidence that the Accused ordered the use of air bomb launchers from as early as August 1994. On 10 August 1994, on one of the first days as Commander of the SRK, the Accused ordered that air bomb launchers be “ready for firing at Moševićko Brdo structure and 2 launchers for firing at Gradina, Konjsko Brdo and Velika Bukva.”²⁸⁸⁵

823. Maj. Veljović believed that the Accused would have had to seek approval regarding air bombs from the Main Staff, “because this ammunition and some refurbishing probably was under the jurisdiction of the Ministry of Defence.”²⁸⁸⁶ Further, in June 1994 the VRS Main Staff issued an order to the SRK. Maj. Gen. Milovanović stressed that it was the Main Staff of the VRS that was to decide on the use of air bombs: if the Main Staff of the VRS approved, “possibly a Corps”, and “not a brigade according to its own plan.”²⁸⁸⁷ This order was issued before the Accused became commander of the SRK.²⁸⁸⁸

²⁸⁸¹ P802, Proposal by SRK Commander, 10 February 1994.

²⁸⁸² P8, UNPROFOR memo, 23 November 1994; P625, pp 6, 7 (under seal), W-156, 27 Apr 2007, T. 5332 – 5334 (closed session); P630, Report of meeting between Sector Sarajevo and SRK, 18 September 1995. *See also supra*, Section II.A.4(b) Total Exclusion Zone (TEZ) - 9 February 1994.

²⁸⁸³ *See supra*, Section II.B.2(b)(ii)a Modified Air Bombs. *See also*, P891, UNMO daily sitrep, 17 June 1995, p. 13; P892, UNMO daily sitrep, 18 June 1995, pp 1 – 2.

²⁸⁸⁴ P722, Request by the SRK Commander, 17 July 1995. *See also*, P767, Request for ammunition, dated 22 June 1995; T-53, 11 June 2007, T. 6456 – 6457; P714, Requisition of 50 air bombs, 4 June 1995; P768, Order issuing SRK units with air bombs, dated 24 August 1995.

²⁸⁸⁵ P665, Order by the SRK Commander for further operation, dated 10 August 1994, p. 3. *See also*, P696, Order by SRK Commander, dated 4 April 1995, p. 1.

²⁸⁸⁶ Stevan Veljović, 31 May 2007, T. 5955.

²⁸⁸⁷ P739, Order by the VRS to SRK command about requisition of aerial bombs, dated 12 June 1994.

²⁸⁸⁸ The VRS order was dated 12 June 1994.

824. In an order to the Accused, dated 26 April 1995, Gen. Mladić stated that “we are in possession of information that you are planning to use two air bombs against enemy targets and settlements in the area of Sarajevo, in the evening or during the night of 26.04.1995” and he reminded the Accused that it was his duty to inform him about the planned use of air bombs.²⁸⁸⁹ According to one witness, the document confirms that the SRK commander had freedom of action regarding the modus operandi “within a larger aggression strategy” and that the SRK commander was the person who had tactical coordination of the action on the field.²⁸⁹⁰

825. In a report to the VRS Main Staff dated 15 June 1995, the Accused wrote that air bomb launchers “are grouped in the brigades in the north western part of the front and are used throughout the SRK zone of responsibility as required and as decided by the SRK commander.”²⁸⁹¹

826. There is further evidence that the air bomb launchers were used to fire several rounds of air bombs. On 21 April 1995, the Accused ordered the preparation of launchers for air bombs and to ensure that “four to six aerial bombs can be launched simultaneously against the designated target, the condition being that they must hit the target, which means that provisions have to be made for more bombs so that, in the event of a miss, the next projectile lands on the target.”²⁸⁹²

(ii) Evidence Relating to the Defence of ‘Alibi’

827. The Defence argued that for the period of 6 August to 10 September 1995, the Accused is entitled to the defence of alibi since he was absent from the area where the crimes with which he is charged in the Indictment were committed and since Čedo Sladoje took up all the command responsibilities in the SRK over that period.²⁸⁹³ The Defence submitted that the Accused was *de facto* unable to carry out his command duties at the time and, therefore, cannot be held responsible for what took place in his absence, or, in particular, for not conducting an investigation into the Markale Market II incident.²⁸⁹⁴

828. In its Closing Brief, the Prosecution dismisses “the claim by the Defence” that the Accused was not responsible for the Markale Market II incident. It also submitted that there is no evidence that the Accused disciplined or prosecuted anyone for the Markale Market II incident.²⁸⁹⁵

²⁸⁸⁹ P394, Order from Gen. Ratko Mladić to the SRK Commander, dated 26 April 1995.

²⁸⁹⁰ W-46, 15 Mar 2007, T. 3816 – 3817, 3837 – 3838 (closed session).

²⁸⁹¹ P663, Report from SRK command, 15 June 1995.

²⁸⁹² P701, Order by the SRK Commander on preparations for action “Talas-I”, dated 21 April 1995, p. 2.

²⁸⁹³ Defence Pre-Trial Brief, 27 February 2006, para. 10.

²⁸⁹⁴ Defence closing arguments, 10 October 2007, T. 9565.

²⁸⁹⁵ Prosecution closing arguments, 9 October 2007, T. 9434, 9436.

829. Evidence was presented indicating that at the beginning of August 1995, the Accused left Sarajevo for Belgrade, where he received treatment for an injury to his right eye that he had sustained on 17 May 1995.²⁸⁹⁶ The Accused was wounded when a tank round, which was fired from Mount Žuč, about two or three kilometres away, hit an observation post, situated above Zlatište and the Lukavica-Trbevisa-Pale road, where he was.²⁸⁹⁷ He received medical attention immediately at the medical station next to the observation post.²⁸⁹⁸

830. From mid-June 1995, and until he left for Belgrade, the Accused was in the field during the offensives against the Nišići Plateau and Trnovo.²⁸⁹⁹ Authorisation for the Accused to travel to Belgrade was given by the Main Staff of the SRK.²⁹⁰⁰ Dragan Simić drove the Accused to Belgrade via Lukavica, Han Pijesak and Zvornik.²⁹⁰¹ When they reached Belgrade, Dragan Simić took the Accused to the Slavija Hotel.²⁹⁰² Dragan Simić then left Belgrade for his village, where he remained until early September.²⁹⁰³ According to his medical file, the Accused was admitted to the VMA Eye Clinic in Belgrade on 8 or 9 August 1995 and discharged on 21 August 1995.²⁹⁰⁴ Two reports from the Belgrade Military Medical Academy dated 4 September 1995 and 25 September 1995, indicate that the Accused had regular check-ups every two to three weeks and ongoing treatment.²⁹⁰⁵ In early September 1995, Dragan Simić picked up the Accused from the barracks in Han Pijesak and drove him back to the forward command post via the Lukavica Barracks.²⁹⁰⁶

831. Witnesses testified that the Accused was absent from combat positions around Sarajevo for approximately one month while he was receiving treatment for his eye injury.²⁹⁰⁷ During the time he was in Belgrade, Col. Sladoje, the SRK Chief of Staff, assumed the command responsibilities of the SRK.²⁹⁰⁸

²⁸⁹⁶ D340, Medical file for Dragomir Milošević, dated 28 August 1996, pp 1, 2; Luka Dragičević, 26 Mar 2007, T. 3999; Dragan Simić, 5 June 2007, T. 6192, 6196, 6224 – 6225; T. 41, 18 July 2007, T. 8521, 8534, 8535 – 8536; Stevan Veljović, 30 May 2007, T. 5842, 5847 – 5848.

²⁸⁹⁷ Dragan Simić, 5 June 2007, T. 6190, 6192, 6196; Stevan Veljović, 30 May 2007, T. 5841, 5852; D209, Sketch made by Dragan Simić, dated 5 June 2007; D210, Photograph marked by Dragan Simić; P741, Map marked by Stevan Veljović, 30 May 2007.

²⁸⁹⁸ Dragan Simić, 5 June 2007, T. 6196.

²⁸⁹⁹ Dragan Simić, 5 June 2007, T. 6205 – 6206.

²⁹⁰⁰ Dragan Simić, 5 June 2007, T. 6225.

²⁹⁰¹ Dragan Simić, 5 June 2007, T. 6206, 6225.

²⁹⁰² Dragan Simić, 5 June 2007, T. 6225.

²⁹⁰³ Dragan Simić, 5 June 2007, T. 6206, 6225.

²⁹⁰⁴ D340, Medical file for Dragomir Milošević, 28 August 1996, p. 3. *See also*, P344, UN Documents relating to meetings with Mladić, dated 14 August 1995, p. 6.

²⁹⁰⁵ D340, Medical file for Dragomir Milošević, p. 5. *See also*, pp 6 -7.

²⁹⁰⁶ Dragan Simić, 5 June 2007, T. 6206, 6226.

²⁹⁰⁷ Dragan Simić, 5 June 2007, T. 6206; Stevan Veljović, 31 May 2007, T. 5943; T.41, 18 July 2007 T. 8534 – 8536.

²⁹⁰⁸ Luka Dragičević, 26 Mar 2007, T. 4050; Stevan Veljović, 30 May 2007, T. 5843; *See, e.g.*, P732, Order by the SRK command, 27 August 1995; P733, Order signed by Čedo Sladoje, “in lieu of the Commander,” 28 August 1995; P734, SRK order, “Commander represented by”, 7 September 1995.

832. According to Col. Dragičević, the Accused returned to Sarajevo on 10 September 1995, and resumed command of the SRK.²⁹⁰⁹ Similarly, Dragan Simić testified that when he returned the Accused to the forward command post, the Lukavica Barracks had been damaged during the NATO air strikes and evacuated.²⁹¹⁰ Col. Dragičević assumed that the Accused was informed of the events leading to the NATO airstrikes because, “[i]t is a matter of course as far as the military is concerned that the commander has to be aware of what was going on in the previous period.”²⁹¹¹ Maj. Veljović testified that “it was his duty to fully brief him.”²⁹¹² The Trial Chamber rejects the defence of alibi and sets out the reasons in paragraphs 972 to 977 of this Judgement.

(iii) Orders of the Accused

833. The Trial Chamber received evidence pertaining to the Accused personally ordered the shelling of Hrasnica on 7 April 1995 with a modified air bomb.²⁹¹³

834. On 19 April 1995, the Accused in response to information indicating that “the enemy is preparing for actions”, ordered all units to have “launching pads and aerial bombs ready for firing on the town.”²⁹¹⁴

835. On 16 May 1995, the Accused ordered the Ilidža Brigade to “immediately prepare an aerial bomb launcher with at least five aerial bombs” to be ready to fire at his command, with the launchers being “roughly aimed at the airport”.²⁹¹⁵ The Accused further ordered the SRK 3rd Sarajevo Brigade to “immediately transfer their aerial bomb launcher to the Trebević sector (near what used to be *Jugobanka*) with five aerial bombs” and to “inform the SRK Command of their readiness for movement and arrival at destination.”²⁹¹⁶

836. With regard to the shelling of the TV Building on 28 June 1995, the Trial Chamber notes that the Accused highlighted this incident in a report on the situation at the front. He wrote:

“The Serbian soldiers are displaying unprecedented heroism, not letting the enemy get closer to their homes and families. The VRS Main Staff commander, Gen. Ratko Mladić, commended the heroism of units in the north-western part of the front, and numerous congratulations also arrived from unit commands and civilian government institutions. Our artillery forces are responding with

²⁹⁰⁹ Luka Dragičević, 26 Mar 2007, T. 3999, 4049.

²⁹¹⁰ Dragan Simić, 5 June 2007, T. 6206.

²⁹¹¹ Luka Dragičević, 26 Mar 2007, T. 4050.

²⁹¹² Stevan Veljović, 30 May 2007, T. 5843 – 5844.

²⁹¹³ See *supra*, Section II.E.6(b)(iii) Shelling of a Residential Area in Hrasnica on 7 April 1995; P225, SRK combat report, 7 April 1995, p. 2. See also, Stevan Veljović, 31 May 2007, T. 5913 – 5915.

²⁹¹⁴ D141, Order by the SRK Commander on full combat readiness, dated 19 April 1995, p. 1.

²⁹¹⁵ P395, Order by the SRK Commander to prepare air bomb launcher, dated 16 May 1995.

²⁹¹⁶ *Ibid.*

precision to the Muslim artillery attacks. In one such response on 28 June they hit the BH Radio and Television Centre, the centre of media lies against the just struggle of the Serbian people.”²⁹¹⁷

(iv) Orders by the Accused to Prevent the Shooting of Civilians

837. Several Defence witnesses testified that the Accused issued orders not to shoot at civilians, and to abide by the Geneva Conventions. According to T-48, the soldiers were “under constant orders not to open fire unnecessarily, not to target civilians.”²⁹¹⁸ Dragan Simić, the Accused’s driver, testified that the Accused constantly reiterated that the soldiers should only return fire if attacked directly in their trenches, and to fire only at the military targets which fired at them. He further testified that the Accused insisted that “they must under no circumstances fire at civilians.”²⁹¹⁹ Lastly, Dragan Simić testified that the Accused constantly told the soldiers to take care and not to fire without any need.²⁹²⁰ Siniša Krsman also testified that the Accused told the soldiers to be careful, not to shoot when unnecessary, to spare the ammunition and to guard their lives and the territory in which they lived.²⁹²¹

838. According to Milorad Košorac, the Accused requested, during a visit of his unit, that the notice board in the command centre, where medical certificates, travel orders, and also a copy of an excerpt from the Geneva Conventions on the rules of waging the war were posted, be put in a more visible place. After the Accused had left, the soldiers, according to Milorad Košorac, made the following comments: “Is this guy normal or what? These other guys are violating the cease-fire. One of our guys was just shot, and this commander is asking the battalion to comply with all this.”²⁹²² During cross-examination, he was asked whether he could give the names of other persons present at the scene who could confirm this and he gave the name of Ranko Blagovčanin but said he was not able to locate this person at the time of the hearing.²⁹²³

839. According to Maj. Veljović, wherever he went, the Accused told the soldiers and officers that “fire should only be opened at enemy soldiers and no one else”.²⁹²⁴ He testified that the Accused also specifically demanded that the soldiers did not target populated areas.²⁹²⁵

²⁹¹⁷ P42, P152 Report by the SRK Commander, 30 June 1995.

²⁹¹⁸ T-48, 22 June 2007, T. 7177. *See also, ibid.*, T. 7180 – 7181; Stevan Veljović, 30 May 2007, T. 5854; Luka Jović, 18 June 2007, T. 6728; Vlajko Božić, 17 July 2007, T. 8477 – 8479. Witnesses testified that the Accused issued strict directives, in accordance with the Geneva Conventions, and warned his troops for disciplinary measures; he did not entrust individual officers to carry the message to the troops so he went from one position to the next to ensure that his orders were passed on, Radomir Visnjić, 25 June 2007, T. 7259 – 7260. *See also, ibid.*, 26 June 2007, T. 7294.

²⁹¹⁹ Dragan Simić, 5 June 2007, T. 6176.

²⁹²⁰ *Ibid.*, T. 6174, 6214 – 6215. *See also*, Milorad Košorac, 26 July 2007, T. 8874 – 8876.

²⁹²¹ Siniša Krsman, 6 June 2007, T. 6266 – 6267.

²⁹²² Milorad Košorac, 26 July 2007, T. 8871 – 8872.

²⁹²³ *Ibid.*, T. 8897.

²⁹²⁴ Stevan Veljović, 29 May 2007, T. 5748, 5770 – 5771, 30 May 2007, T. 5827, 5839 – 5840, 31 May 2007, T. 5926 – 5927.

²⁹²⁵ *Ibid.*, 31 May 2007, T. 5925.

Furthermore, he testified that, at every position he visited, the Accused constantly reminded his troops to strictly observe the Geneva Conventions and even warned them of their accountability.²⁹²⁶

840. There is one written order in evidence in which the Accused prohibited sniping. Close to the end of the war, on 1 October 1995, the Accused issued an order to all units of the SRK “pursuant to the order of the VRS Main Staff [...], the demonstrated need to stop any firing on the town of Sarajevo, and in order to continue preventing sniper fire on the town”, in which he prohibited, until further notice, “any sniper fire on the town of Sarajevo and all commanders and commanders of units shall inform every single soldier of this order.”²⁹²⁷ The order further read: “In the event that the Muslims fire from the town of Sarajevo on our units, immediately inform the Corps Command, who shall form a commission through the UNPROFOR Command of Sector Sarajevo to go to the firing position to establish the weapon used and the consequences of the fire.”²⁹²⁸

(v) Involvement in Attacks on UNPROFOR

841. Witnesses gave evidence about the Accused’s involvement in attacks on members of UNPROFOR.²⁹²⁹ One witness stated that the incidents directed at UNPROFOR soldiers were planned and carried out by “Bosnian Serbs at the highest level”.²⁹³⁰ He did not believe that “a local leader” would have made such a decision.²⁹³¹ Col. Dragičević was asked for some clarifications by the Trial Chamber and testified that orders relating to UNPROFOR were issued by the Main Staff of the VRS and were handed down by the Accused and his subordinates.²⁹³² However, he stressed during cross-examination, that neither the Accused nor anyone else from the VRS ever issued any order to act against UNPROFOR soldiers.²⁹³³

842. Documentary evidence shows that the Accused, at times, prohibited attacks on UNPROFOR,²⁹³⁴ but other documentary evidence suggests that attacks on UNPROFOR were also carried out following orders of the Accused.²⁹³⁵ For instance, an order to all Brigade commands,

²⁹²⁶ *Ibid.*, 29 May 2007, T. 5770 – 5771, 31 May 2007, T. 5926 – 5927.

²⁹²⁷ P737, Order by the SRK Commander on sniper fire, dated 1 October 1995.

²⁹²⁸ *Ibid.*

²⁹²⁹ *See*, for evidence pertaining to attacks on UNPROFOR, *e.g.*, paras 236, 432.

²⁹³⁰ W-46, P387, p. 10 (under seal).

²⁹³¹ *Ibid.*

²⁹³² Luka Dragičević, 26 Mar 2007, T. 4057.

²⁹³³ *Ibid.*, T. 4034 – 4035.

²⁹³⁴ P661, Order by the SRK deputy commander, 16 July 1993; P662, Order by the SRK deputy commander, 17 January 1994; P677, Order by the SRK Commander, dated 24 November 1994; D140, Order by Luka Dragičević, banning fire at the UN forces and equipment, acting for the SRK Commander, dated 25 July 1995 (“Order by Luka Dragičević, acting for the SRK Commander, 25 July 1995”).

²⁹³⁵ P751, Order by SRK Commander, dated 26 November 1994; P396, Order by the SRK Commander, dated 27 May 1995; D140, Order by Luka Dragičević, acting for the SRK Commander, 25 July 1995. *See also*, P341, Order of SRK Commander, dated 27 May 1995; Rupert Smith, 7 Mar 2007, T. 3325 – 3526; W-46, 16 Mar 2007, T. 3843 – 3844 (closed session), P387, p. 16 (under seal); Luka Dragičević, 26 Mar 2007, T. 4022, 4055 – 4056.

signed by the Accused on 17 January 1994, asks SRK troops to “prevent any incidents with the forces of UNPROFOR and other international organisations”,²⁹³⁶ while an order to the Commander of the Ilijaš Brigade, signed by the Accused on 26 November 1994, reads “You are to fire at the centre of deployed UNPROFOR forces.”²⁹³⁷

(vi) Intent and Awareness of Crimes

843. Evidence shows that the Accused was well-informed about the situation of the troops under his command.²⁹³⁸ Lower level units regularly sent reports to the higher commands, as he himself had ordered.²⁹³⁹ The reports also included information about civilian casualties.²⁹⁴⁰

844. Maj. Veljović agreed with an assessment of Col. Lugonja that the SRK had good information about ABiH positions, command posts, and movement.²⁹⁴¹

a. Awareness of Crimes

845. In its Closing Brief, the Prosecution submits that there is uncontradicted testimony which shows that the Accused knew of his troops behaviour.²⁹⁴² Evidence shows that the Accused knew about allegations that SRK forces had targeted civilians. As described above, the Accused regularly visited SRK units at the confrontations lines in order to get an impression of the situation in the field.²⁹⁴³ These visits included SRK-held areas from which civilians were targeted.²⁹⁴⁴ Dragan Simić testified that, in the period from end December 1994 to May 1995, the Accused mostly went to Grbavica and Nedarići.²⁹⁴⁵ As evidence presented in this case shows, there were a lot of sniping incidents in Grbavica and Nedarići.²⁹⁴⁶ It is reasonable to infer that the Accused, who was the commander of the SRK and who regularly visited SRK units in these areas, was aware of the crimes that were committed.

846. Evidence shows that the Accused received numerous protest letters from UNPROFOR about crimes committed by SRK troops. UNPROFOR Gen. Gobilliard, Col. Meille and Maj. Gen. Nicolai

²⁹³⁶ P662, Order by the SRK deputy commander, 17 January 1994.

²⁹³⁷ P751, Order by SRK Commander, 26 November 1994.

²⁹³⁸ Anđelko Dragaš, 22 June 2007, T. 7123.

²⁹³⁹ Zoran Trapara, 26 June 2007, T. 7332 – 7333.

²⁹⁴⁰ Stevan Veljović, 30 May 2007, T. 5856.

²⁹⁴¹ *Ibid.*, T. 5837 – 5838, 5850 – 5851.

²⁹⁴² Prosecution Closing Brief, pp 140 – 144.

²⁹⁴³ *See supra*, paras. 804 – 806.

²⁹⁴⁴ *See supra*, Sections II.E.3.(a)(ii), II.E.4.b(i) and II.E.4(b)(iii)(a).

²⁹⁴⁵ Dragan Simić, 5 June 2007, T. 6175 – 6176. *See also*, T-48, 22 June 2007, T. 7157.

²⁹⁴⁶ *See supra*, Sections II.E.3.(a)(ii), II.E.4.b(i) and II.E.4(b)(iii)(a).

sent many protest letters to the Accused.²⁹⁴⁷ Lt. Col. Fortin testified that protest letters to the Bosnian Serb side were addressed to the SRK Commander.²⁹⁴⁸ According to Brig. Mohatarem, UNMOs also lodged protests.²⁹⁴⁹ However, they would normally not file protests with the SRK, but “with Pale.”²⁹⁵⁰

847. UNPROFOR Sector Sarajevo would often protest against Bosnian Serbs shooting at the Igman road.²⁹⁵¹ In case of a shooting incident on ‘Sniper Alley’, protests were issued by the UNPROFOR battalion and by Gen. Gobilliard; verbal protests were conveyed by the liaison officers, whereas written protests were sent to the Accused.²⁹⁵² One witness testified that the UNPROFOR Sector Commander never received any answer to his protest letters.²⁹⁵³ However, according to the witness, it was “certain that the information was always received” by the Accused.²⁹⁵⁴ However, Maj. Gen. Nicolai testified that he normally received responses to protest letters from the SRK, either in written form or by telephone. Usually, the response consisted of a denial of involvement in the actions in relation to which the protest letter had been sent.²⁹⁵⁵ At other times, it was said that the actions were a response to provocation “by the other side”, either by fire or by preparing an offensive.²⁹⁵⁶ In general, David Harland and Maj. Eimers said, the protest letters did not lead to any change in the behaviour of the Bosnian Serbs.²⁹⁵⁷

848. One witness stated that the Accused was almost always willing to meet with Gen. Gobilliard.²⁹⁵⁸ However, the Bosnian Serb commanders were rather dismissive about sniping or other violations. According to Brig. Mohatarem, they would not accept that they had been shooting at civilians. He added: “They didn't care about it, actually.”²⁹⁵⁹

849. A protest letter dated 2 December 1994 was sent to the Accused regarding the shooting of AT3 missiles from a place near the Jewish Cemetery on the Presidency Building, on a cinema and on the Ministry of Interior in Sarajevo. After the plane in which Yasushi Akashi arrived in Sarajevo

²⁹⁴⁷ Louis Fortin, P27, p. 7; P28, Protest letter, dated 2 June 1995; P29, Protest letter, dated 3 June 1995; P31, Protest letter, dated 3 June 1995; P32, Protest letter, 3 June 1995. *See also*, Cornelis Hendrik Nicolai, 24 Jan 2007, T. 937, 947 – 949.

²⁹⁴⁸ Louis Fortin, 16 Jan 2007, T. 479, P27, p. 7.

²⁹⁴⁹ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 708 – 709.

²⁹⁵⁰ *Ibid.*

²⁹⁵¹ W-46, P387, p. 11 (under seal).

²⁹⁵² *Ibid.*, p. 13 (under seal).

²⁹⁵³ W-46, 16 Mar 2007, T. 3850 (closed session). *See also*, Louis Fortin, 16 Jan 2007, T. 484; W-156, 27 Apr 2007, T. 5347 (closed session).

²⁹⁵⁴ W-46, P387, p. 13 (under seal).

²⁹⁵⁵ Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

²⁹⁵⁶ David Harland, 15 Jan 2007, T. 347 – 349; Cornelis Hendrik Nicolai, 24 Jan 2007, T. 950.

²⁹⁵⁷ David Harland, 15 Jan 2007, T. 347 – 349; Ronald Eimers, P585, pp 6, 10.

²⁹⁵⁸ W-46, P387, p. 13 (under seal).

²⁹⁵⁹ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 709 – 710; P392, Protest letter, 2 December 1994; W-46, P387, p. 25 (under seal).

in February 1995 was hit, a protest was conveyed to the Accused, to the SRK headquarters and to the VRS headquarters in Pale.²⁹⁶⁰

850. Around the twentieth of May 1995, when the SRK started using weapons from the WCPs, several protest letters were written.²⁹⁶¹ Brig. Mohatarem testified that in May 1995 alone, eight or nine protest letters were sent.²⁹⁶² Lt. Col. Fortin issued an ultimatum that if the Bosnian Serbs did not return the weapons to the WCPs, then “we would bomb. They did not and we bombed.”²⁹⁶³

851. On 8 June 1995, Gen. Gobilliard protested against the launching of “violent attacks with artillery and tanks all along the southern side of the confrontation line, particularly in the area of Debelo Brdo, Staro Brdo, Zlatište road, Jewish Cemetery and Bosut Barracks. One tank even fired from inside Grbavica and incendiary rounds were also observed.”²⁹⁶⁴ He requested the Accused, “once more, [...] to issue orders to prevent the situation from deteriorating to the point where a diplomatic solution is no longer possible” and he reminded the Accused that he was “responsible for the acts of the troops who implement your orders.”²⁹⁶⁵

852. There are also protest letters in evidence which relate to the scheduled incidents in this case. In a letter dated 30 June 1995, Col. Meille lodged a protest with the Accused regarding several shelling attacks on civilian targets in the city of Sarajevo on 28 and 29 June 1995, in particular, the shelling of the TV Building on 28 June 1995, the shelling of a residential area in Alipašino Polje, the firing at residential buildings in the city centre and the shelling of the PTT Building on 29 June 1995.²⁹⁶⁶ A copy of that letter was sent by Maj. Gen. Nicolai to Gen. Delić and to Gen. Mladić on 1 July 1995.²⁹⁶⁷

b. Intent of the Accused

853. Brig. Gen. Fraser testified that it appeared to him that there was “a commander’s intent in play around the city of Sarajevo with respect to sniping incidents”.²⁹⁶⁸ He testified that there was sniping in different areas of Sarajevo, along ‘Sniper Alley’, around the airport, and around the area

²⁹⁶⁰ Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 728.

²⁹⁶¹ Louis Fortin, P27, p. 7.

²⁹⁶² Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 722 – 723. *See, e.g.*, W-46, P387, p. 29 (under seal).

²⁹⁶³ Louis Fortin, P27, p. 7. *See also*, para. 62.

²⁹⁶⁴ P33, Protest letter, dated 8 June 1995.

²⁹⁶⁵ *Ibid.*

²⁹⁶⁶ P18, Protest letter, dated 30 June 1995.

²⁹⁶⁷ P87, Protest letter, dated 1 July 1995; P103, Protest letter, 1 July 1995. *See also*, Ghulam Muhammad Mohatarem, 19 Jan 2007, T. 722 – 723; Louis Fortin, P27, p. 15.

²⁹⁶⁸ David Fraser, 7 Feb 2007, T. 1772 – 1773.

of Špicasta Stijena, these areas were all under the control of different SRK brigades, and sniping on these areas indicated a “higher commander’s intent.”²⁹⁶⁹

854. On 6 April 1995, the Accused issued an order to the Ilidža Brigade to “immediately prepare a launcher with an aerial bomb and transport the bomb for launching.” Further, the order stated that “[t]he most profitable target must be selected in Hrasnica or Sokolović [K]olon[ija] where the greatest casualties and material damage would be inflicted.”²⁹⁷⁰

855. There is also evidence that on 5 November 1994, the Accused attended a meeting in Vogošća at which allegedly the decision was taken to shell civilian targets. In an order dated 7 November 1994, Gen. Mladić stated:

“I have an information that on 5 November 1994 a meeting took place between local Serb leaders of Serbian Sarajevo in Vogošća, at which the Sarajevo-Romanija Corps Commander was also present, and at which a decision was made to block the UNPROFOR, to confiscate heavy technical equipment under the UNPROFOR’s control, and to shell civilian targets in Sarajevo with heavy weaponry.”²⁹⁷¹

856. Milorad Katić confirmed that the leadership of “Serb Sarajevo” met from time to time in Vogošća.²⁹⁷² With regard to Gen. Mladić’s order of 7 November 1994, Milorad Katić testified that Gen. Mladić was probably misinformed about the meeting on 5 November 1994.²⁹⁷³ In that order, Gen. Mladić further stated that he “forbid[s] all use of weapons of bigger calibre on civilian targets in Sarajevo without my approval.”²⁹⁷⁴ Milorad Katić agreed that this sentence could be interpreted to mean that fire from all other smaller calibre weapons was allowed, as was put to him by the Prosecution, but testified that he did not believe that this was a fair reading.²⁹⁷⁵

857. On 12 or 16 August 1994, during his first days as SRK commander, the Accused issued an order to bring the SRK units to full combat readiness. He ordered the 4th Mixed Artillery Regiment to “draw up a fire plan in the region of Bašćaršija and Vrbanja. Fire is to be open in compliance with the order of the SRK commander.”²⁹⁷⁶ Maj. Veljović explained that the SRK could not respond to ABiH mortar attacks, which originated from Čolina Kapa, and other features because this might have destroyed the cultural and historical area of Bašćaršija and brought about the “condemnation by the international community and the United Nations”.²⁹⁷⁷ Moreover, he testified that the order

²⁹⁶⁹ David Fraser, 7 Feb 2007, T. 1772 – 1773.

²⁹⁷⁰ P226, Order by SRK Commander, 6 April 1995.

²⁹⁷¹ P496, Order by Gen. Mladić on combat activities, dated 7 November 1994 (“Order by Gen. Mladić, 7 November 1994”).

²⁹⁷² Milorad Katić, 1 June 2007, T. 6061. *See also*, P675, Order by SRK Commander, dated 16 November 1994.

²⁹⁷³ Milorad Katić, 1 June 2007, T. 6004 – 6005; P496, Order by Gen. Mladić, 7 November 1994.

²⁹⁷⁴ P496, Order by Gen. Mladić, 7 November 1994.

²⁹⁷⁵ Milorad Katić, 4 June 2007, T. 6066 – 6067; P496, Order by Gen. Mladić, 7 November 1994.

²⁹⁷⁶ D186, Order by the SRK Commander about full combat readiness, 12, 16 August 1994, p. 2.

²⁹⁷⁷ Stevan Veljović, 29 May 2007, T. 5752.

was that the buildings, roads, the civilian population and movements of people “shall not be targeted at any cost, except on specific orders”.²⁹⁷⁸ The Accused strictly required, according to Maj. Veljović, that it be made clear to subordinate units that targets in Baščaršija could be engaged only and solely on his orders.²⁹⁷⁹ According to Maj. Veljović, the Accused never issued such an order.²⁹⁸⁰

(c) Investigations and Disciplinary Measures

858. The Prosecution submits that the Accused “had the SRK’s properly functioning military investigation and justice system available to him, and could have used that system to prevent and/or punish the criminal acts of his troops.”²⁹⁸¹

859. Evidence was led relating to whether the Accused initiated investigations or criminal or disciplinary proceedings against SRK soldiers who had committed crimes.

860. The VRS regulations, setting out the application of international humanitarian law since June 1992, were based on JNA regulations and provided, in relevant parts:

“Commanders and commanding officers and each member of the army or other armed formation taking part in combat activities shall be responsible for the application of the rules of international laws of war.

The competent superior officer shall initiate proceedings for sanctions as provided by the law against individuals who violate the international laws of war.”²⁹⁸²

861. On 19 June 1995, the Accused informed all SRK officers and unit members that the law on military courts and the law on the military prosecutor’s office during a state of war applied.²⁹⁸³ Col. Dragičević confirmed that these regulations were in place during the Indictment period.²⁹⁸⁴ He explained that if a commander in the SRK became aware of a violation of the international laws of war, he had a duty to report that up the chain of command. If a violation was reported to the corps commander, the commander was obliged to initiate proceedings and send an appropriate document to the military prosecutor.²⁹⁸⁵ Information on such violations was also included in regular reports.²⁹⁸⁶ There were two or three military prosecutors within the VRS.²⁹⁸⁷

²⁹⁷⁸ Stevan Veljović, 29 May 2007, T. 5752.

²⁹⁷⁹ *Ibid.*, T. 5753 – 5754.

²⁹⁸⁰ *Ibid.*, T. 5752 – 5754.

²⁹⁸¹ Prosecution Closing Brief, p. 148.

²⁹⁸² P475, Order on the application of the rules of international law of war in the VRS, dated 13 June 1992. *See also*, Luka Dragičević, 26 Mar 2007, T. 3972 – 3973; P474, SFRY Army Regulations, dated 1988, pp 14 - 15.

²⁹⁸³ P718, Order by SRK Commander, dated 19 June 1995.

²⁹⁸⁴ Luka Dragičević, 26 Mar 2007, T. 3973.

²⁹⁸⁵ *Ibid.*, T. 3973 – 3976, 3996 – 3997, 27 Mar 2007, T. 4064. *See also*, Simo Tuševljak, 11 July 2007, T. 8097.

²⁹⁸⁶ Luka Dragičević, 26 Mar 2007, T. 3973 – 3974.

²⁹⁸⁷ Simo Tuševljak, 11 July 2007, T. 8097 – 8098.

862. Evidence shows that the office of the military prosecutor received reports from the SRK and its subordinate units.²⁹⁸⁸ Col. Dragičević, the SRK Assistant Commander for Morale, Religious and Legal Affairs, testified that he never learned or heard of any instances where the Accused reported a violation of international humanitarian law to the military prosecutor. He testified that he would have been informed about such a report.²⁹⁸⁹

863. The legal department of the SRK, in turn, received monthly reports from the military prosecutor's office for Sarajevo of criminal proceedings against members of the SRK and the outcome of any such proceeding.²⁹⁹⁰ During regular briefing sessions, the legal department informed members of the SRK corps command of the content of the reports.²⁹⁹¹ However, the reports did not contain any information about criminal proceedings against SRK members on war crime charges.

864. The civilian Crime Prevention Department of Sarajevo would hand over a case file to the military prosecutor's office, if it was established that the alleged perpetrator of a particular crime was a member of the VRS.²⁹⁹² Simo Tuševljak could not say how many times this happened or whether this happened often.²⁹⁹³ He testified that the communication between this department and the military prosecutor was very rare.²⁹⁹⁴ However, he did not recall one single instance between 1993 and 1995 in which he undertook an investigation of war crimes against a member of the SRK that he had to refer to the military prosecutor.²⁹⁹⁵

865. The military police of the SRK also conducted investigations.²⁹⁹⁶ The intelligence and security organ as well as the corps commander would be informed about the outcome of these

²⁹⁸⁸ P480, Report by Col. Dragičević, 22 March 1995; P481, Report by Col. Dragičević to SRK command on crimes in March 1995, dated 19 April 1995 ("Report by Col. Dragičević, 19 April 1995"); P482, Information on Crime Levels in March 1995, dated 19 April 1995; P478, Report by Col. Dragičević to SRK command on crimes in May 1995, dated 8 June 1995 ("Report by Col. Dragičević, 8 June 1995"); P485, Information on Crime Statistics for June 1995, dated 26 July 1995.

²⁹⁸⁹ Luka Dragičević, 26 Mar 2007, T. 3983 – 3984, 4036 – 4037.

²⁹⁹⁰ Luka Dragičević, 26 Mar 2007, T. 3974 – 3975; P479, Report of the military prosecutor on crime trends in December 1994, dated 17 January 1995; P483, Report of the military prosecutor on crime trends in April 1995, dated 1 May 1995; P476, Report of the military prosecutor about crimes committed in May 1995, dated 2 June 1995; P477, Report of the military prosecutor on crime trends in May 1995, dated 6 June 1995; P484, Report of the military prosecutor on crime trends in June 1995, dated 11 July 1995; P486, Report of the military prosecutor on crime trends in July 1995, dated 2 August 1995; P487, Report of the military prosecutor on crime trends in August 1995, dated 5 September 1995; P488, Report of the military prosecutor on crime trends in October 1995, dated 13 November 1995.

²⁹⁹¹ Luka Dragičević, 26 Mar 2007, T. 3976; P480, Report by Col. Dragičević to SRK command on crimes in February 1995, dated 22 March 1995 ("Report by Col. Dragičević, 22 March 1995"). *See also*, P481, Report by Col. Dragičević, 19 April 1995; P482, Information on crime levels in March 1995, 19 April 1995; P478, Report by Col. Dragičević, 8 June 1995; P485, Information on crime statistics for June 1995, 26 July 1995.

²⁹⁹² Simo Tuševljak, 11 July 2007, T. 8096 – 8099.

²⁹⁹³ *Ibid.*, T. 8098 – 8100.

²⁹⁹⁴ *Ibid.*, T. 8097 – 8098.

²⁹⁹⁵ *Ibid.*, 12 July 2007, T. 8113.

²⁹⁹⁶ D185, SRK combat report, 13 September 1992; P670, Report on the work of the 4th Military Police Battalion, dated 4 September 1994.

investigations.²⁹⁹⁷ However, there is no evidence that the military police investigated war crimes committed by the SRK forces. Witnesses testified that they were not aware of any investigations or proceedings relating to war crimes committed by SRK members. Predrag Trapara testified that he had no information from any source on any military prosecutions, administrative discipline, inquiries, or investigations into allegations that troops of SRK had committed war crimes and atrocities in the Indictment period.²⁹⁹⁸

866. Evidence shows that disciplinary proceedings against SRK soldiers were conducted and disciplinary measures taken. However, these proceedings and measures did not concern violations of international humanitarian law.²⁹⁹⁹ On 18 March 1995, the Accused pronounced a disciplinary prison sentence against a SRK soldier for desertion.³⁰⁰⁰ On 22 April 1995, the Accused ordered the commander of the Pračanski Battalion to pronounce disciplinary measures or sentences for members of his battalion who violated military discipline and to report to him if members committed major disciplinary offences.³⁰⁰¹ Furthermore, Col. Dragičević testified that the Accused was successful in implementing a prohibition on the use of alcohol in the field and in controlling the use of alcohol.³⁰⁰² According to Col. Dragičević, short prison sentences for people found to be intoxicated were pronounced, either by the Accused directly or by an appropriate order to the superior officer of the intoxicated soldier.³⁰⁰³

867. On 25 May 1995, the Accused responded to an order by the Main Staff of the VRS to bring “charges of criminal and disciplinary responsibility [...] against SRK soldiers, officers and commands because of the loss of territory and MTS and deaths, wounding and disappearance of combatants in the area of the Nišić plateau and Trnovo axis during 1994.”³⁰⁰⁴ The Accused requested more time for investigation and suggested that a commission be formed.³⁰⁰⁵ Whether a commission was eventually established, was not clarified during trial.

²⁹⁹⁷ Stevan Veljović, 30 May 2007, T. 5825; P715, Clarification on disciplinary responsibility, dated 4 June 1995.

²⁹⁹⁸ Predrag Trapara, 27 June 2007, T. 7404; Vlajko Božić, 17 July 2007, T. 8449.

²⁹⁹⁹ P668, Report on investigation of Capt. 1st class Milidrag, dated 26 August 1994; P695, Order on disciplinary measures, dated 2 April 1995.

³⁰⁰⁰ P693, Pronouncement of disciplinary sentence, dated 18 March 1995; P699, Decision on reduction of disciplinary sentence, dated 16 April 1995.

³⁰⁰¹ P490, Order by SRK Commander, dated 22 April 1995. The Trial Chamber notes that Pračanski Battalion was within the Sarajevo-Romanija Corps, Luka Dragičević, 26 Mar 2007, T. 3987.

³⁰⁰² Luka Dragičević, 26 Mar 2007, T. 3990.

³⁰⁰³ *Ibid.*

³⁰⁰⁴ P711, Request by SRK Commander to Main Staff, dated 25 May 1995, p. 1.

³⁰⁰⁵ *Ibid.*

III. FINDINGS ON THE COUNTS AND CRIMINAL LIABILITY OF THE ACCUSED

868. As a general rule, in its findings the Trial Chamber will not repeat the evidence that has already been set out *in extenso*. The Trial Chamber will, instead, refer to the relevant areas of the Judgement that provide the foundation for its decisions.

A. Count 1: Terror

869. Under this count, the Prosecution charged the Accused with criminal responsibility under Articles 7(1) and 7(3) for the crime of terror as a violation of the laws or customs of war. It must first be established whether violations of the laws or customs of war were committed. This gives rise to a discussion of the requirements under Article 3 of the Statute as well as a discussion of the legal elements of the crime of terror.

1. General Requirements of Article 3 of the Statute

870. Article 3 of the Statute is a residual clause which covers all serious violations of humanitarian law not covered by Articles 2, 4 or 5 of the Statute.³⁰⁰⁶ There are two preliminary jurisdictional requirements for the application of Article 3 of the Statute: there must be an armed conflict, whether international or internal, at the time material to the Indictment, and the alleged crime must be closely related to this armed conflict (“nexus requirement”).³⁰⁰⁷ Furthermore, four additional conditions, known as the *Tadić* conditions, must be fulfilled for a crime to fall within the jurisdiction of the Tribunal.³⁰⁰⁸ The Trial Chamber finds that the *Tadić* conditions are met in respect of the relevant crimes.

³⁰⁰⁶ *Prosecution v. Tadić*, Case No. IT-94-1-AR72, Appeals Chamber Decision on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 91. *Galić*, Appeal Judgement, para. 118; *Kunarac et al.* Appeal Judgement, para. 68; *Čelebići* Appeal Judgement, para.125; *Prosecution v. Milan Martić*, Trial Judgement, para. 40 (“*Martić* Trial Judgement”).

³⁰⁰⁷ *Tadić* Jurisdiction Decision, paras 67 – 70, 137; *Stakić* Appeal Judgement, para. 342; *Kunarac* Appeal Judgement, para 55; *Galić* Appeal Judgement, para. 120; *Čelebići* Appeal Judgement, paras 140, 147 – 150 and 420; Two criteria have been established in the case-law of the Tribunal in order to exclude mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts. The intensity of the conflict and the organisation of the parties should be assessed in light of the evidence relating to the case, *see Kordić and Čerkez* Appeal Judgement, para. 341; *Tadić* Trial Judgement, para. 562; *Aleksovski* Trial Judgement, para. 43; *Čelebići* Trial Judgement, para. 184.

³⁰⁰⁸ *Tadić* Jurisdiction Decision, para. 94. *See also, e.g. Kunarac* Appeal Judgement, para. 66; *Martić* Trial Judgement, para. 40; *Prosecution v. Mile Mrkšić*, Trial Judgement, para. 405. For an offence to fall under the scope of Article 3 of the Statute, four conditions must be met:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;
- (iii) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.

871. The test to determine the existence of an armed conflict was set out in the *Tadić* Jurisdiction Decision and has been applied consistently by the Tribunal thereafter:

“An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.”³⁰⁰⁹

Crimes committed anywhere in the territory under the control of a party to the conflict, until a peaceful settlement of the conflict is achieved, fall within the jurisdiction of the Tribunal.³⁰¹⁰ A sufficient link between the alleged acts of the accused and the armed conflict as a whole must be established in order to meet the jurisdictional requirements of Article 3 of the Statute.³⁰¹¹

872. In the Indictment, the Prosecution alleged that an armed conflict existed in BiH at all material times relevant to the Indictment.³⁰¹² The Trial Chamber notes that the Defence did not dispute that an armed conflict took place in BiH during the Indictment period.³⁰¹³ Indeed, the existence of an armed conflict was central to the Defence case; the Defence argued that the intensity of the conflict showed that the activities of the SRK were a necessary and legitimate response to ABiH activities, rather than being directed at the civilian population.³⁰¹⁴ In addition, the Trial Chamber heard evidence from several witnesses who confirmed the existence of an armed conflict between the SRK and the ABiH during the Indictment period.³⁰¹⁵ There is abundant evidence of a linkage between the acts of the Accused and the armed conflict. One need only refer to the evidence of the orders given by the Accused to various brigades and other units, for example, the report of the Accused regarding the TV Building.

2. The Crime of Terror

873. Count 1 of the Indictment is charged pursuant to Article 3 of the Statute and Article 51 of Additional Protocol I and Article 13 of Additional Protocol II. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II are similarly worded as follows:

³⁰⁰⁹ *Tadić* Jurisdiction Decision, para. 70. See also, *Kordić and Čerkez* Appeal Judgement, para. 341; *Tadić* Trial Judgement, paras 561 – 571.

³⁰¹⁰ *Tadić* Jurisdiction Decision, para. 70; *Kunarac* Appeal Judgement, para. 57; *Prosecution v. Milan Martić*, Trial Judgement, para. 41; *Prosecution v. Mile Mrkšić et al.*, Trial Judgement, para. 406 (“*Mrksić et al.* Trial Judgement”).

³⁰¹¹ *Tadić* Trial Judgement, paras 572 – 573.

³⁰¹² Indictment, para. 26.

³⁰¹³ Defence Opening Statement, 24 May 2007, T. 5686 – 5688; Defence Pre-Trial Brief, para. 17; Defence Closing Brief, para. 211 *et seq.* Adjudicated Facts 16, 25 to 35, which refer to the existence of an armed conflict in Bosnia and Herzegovina in the time between 1992 and 1994.

³⁰¹⁴ Defence Opening Statement, 24 May 2007, T. 5686 – 5688, 5697; Trial Hearing, 27 June 2007, T. 7380, 3 July 2007, T. 7518 – 7519, 4 July 2007, T. 7622 – 7623; Defence Closing Arguments, T. 9498.

³⁰¹⁵ See e.g. Milorad Katić, 1 June 2007, T. 6049 – 6050; Nedeljko Učur, 26 July 2007, T. 8930; Asam Butt, 15 Feb 2007, T. 2240 – 2242, 2244; Martin Bell, 26 Apr 2007, T. 5271, 5273, 27 Apr 2007, T. 5280 – 5282, D178, p. 7; T-39, 21 June 2007, T. 6998 – 6999; D1, UNPROFOR report on meeting with Karadžić and others, dated 7 October 1994; D2, UNPROFOR weekly BH Political Assessment, 3 November 1993, p. 1; D155, Letter by Enver Hadžihasanović, dated 15 September 1994; P42, P152, Report by the SRK Commander, 30 June 1995.

“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

The first sentence incorporates a general prohibition of attacks on civilians, while the second sentence prohibits a specific form of attacks on civilians.³⁰¹⁶

874. The crime alleged in the Indictment is that of acts or threats of violence, the primary purpose of which is to spread terror among the civilian population (“crime of terror”). This crime was considered for the first time by this Tribunal in the *Galić* case.³⁰¹⁷ The Appeals Chamber held that the crime of terror was both prohibited and criminalised under customary international law. The crime falls under Article 3 of the Statute as a violation of the laws or customs of war and the Tribunal has jurisdiction over the crime.³⁰¹⁸

875. In addition to the elements common to offences under Article 3 of the Statute, the Trial Chamber and the Appeals Chamber in the *Galić* case found that for the crime of terror the following specific elements need to be met:

1. Acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population;
2. The offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence;
3. The above offence was committed with the primary purpose of spreading terror among the civilian population.³⁰¹⁹

(a) Actus Reus

876. The Appeals Chamber in the *Galić* case held that the *actus reus* of the crime of terror is constituted by acts or threats of violence directed against the civilian population or individual civilians causing death or serious injury to body or health within the civilian population or to individual civilians.³⁰²⁰

877. Like the crime of unlawful attacks against civilians, the crime of terror is not limited to direct attacks against civilians, but may also include indiscriminate or disproportionate attacks or threats thereof.³⁰²¹ Similarly, acts and threats of violence do not include legitimate attacks against

³⁰¹⁶ *Galić* Appeal Judgement, para. 87; *Galić* Trial Judgement, para. 98.

³⁰¹⁷ *Galić* Trial Judgement and Appeal Judgement.

³⁰¹⁸ *Galić* Appeal Judgement, paras 86 – 87, 90, 98; *Galić* Trial Judgement, paras 86 – 138.

³⁰¹⁹ *Galić* Trial Judgement, para. 133; *Galić* Appeal Judgement, paras 100, 101.

³⁰²⁰ *Galić* Appeal Judgement, paras 100, 101.

³⁰²¹ *Galić* Appeal Judgement, para. 102. *See infra*, para. 944.

combatants but only unlawful attacks against civilians.³⁰²² While the nature of the acts or threats of violence may vary, the important element, as outlined below, is that the acts or threats of violence are committed with the specific intent to spread terror among the civilian population.³⁰²³

(b) *Mens Rea*

878. As the Trial Chamber in the *Galić* case held, the crime of terror is a “specific intent crime.”³⁰²⁴ The *mens rea* of the crime of terror consists of a general intent and a specific intent. The general intent is that the offender must have wilfully made the civilian population or an individual civilian the object of acts or threats of violence.³⁰²⁵ The specific intent is “spreading terror among the civilian population.”³⁰²⁶

879. The Trial Chamber in the *Galić* case defined the crime of terror as “wilfully” making the civilian population or individual civilians not taking direct part in hostilities the object of acts of violence with “the primary purpose of spreading terror among the civilian population.”³⁰²⁷ “Primary” does not mean that the infliction of terror is the only objective of the acts or threats of violence. Other purposes may exist simultaneously with the purpose of spreading terror among the civilian population, provided that the intent to spread terror is principal among the aims of the acts of violence.³⁰²⁸ Perpetrators committing the crime of terror may have military, political or other goals. Consequently, the war crime of terror does not require proof of ultimate military or political goals.³⁰²⁹

880. While the actual infliction of death or serious harm to body or health is a required element of the crime of terror, both the Trial Chamber and the Appeals Chamber in the *Galić* case held that actual infliction of ‘terror’ on the civilian population is not an element of the crime.³⁰³⁰ The fact that the civilian population suffered and experienced terror during an armed conflict may, however, serve as corroboration of the intent to terrorise.

881. As the Appeals Chamber held, the specific intent of the crime of terror can be inferred from the circumstances of the acts or threats of violence, that is, from their nature, manner, timing and

³⁰²² *Galić* Trial Judgement, para. 135; *Galić* Appeals Judgement, para. 102.

³⁰²³ *Galić* Appeal Judgement, para. 102.

³⁰²⁴ *Galić* Trial Judgement, para. 137.

³⁰²⁵ The requirement of wilfulness is laid down in Article 85 (3) of Additional Protocol I.

³⁰²⁶ *Galić* Appeal Judgement, para. 104; *Galić* Trial Judgement, para. 133.

³⁰²⁷ *Galić* Trial Judgement, para. 133.

³⁰²⁸ *Galić* Appeal Judgement, para.104.

³⁰²⁹ The Trial Chamber notes that an element of political pressure is expressed in a number of international conventions dealing with ‘terror’/ ‘terrorism’ outside the scope of international humanitarian law.

³⁰³⁰ *Galić* Appeal Judgement, para. 104; *Galić* Trial Judgement, paras 65, 134.

duration.³⁰³¹ In that regard, this Trial Chamber notes, attacks during cease-fires and truces or long-term and persistent attacks against civilians, as well as indiscriminate attacks, may be taken as indicia of the intent to spread terror. The Trial Chamber considers that the specific intent may also be inferred from the site of the attack. The fact that, during the siege, civilians were targeted and attacked at sites, well-known to be frequented by them during their daily activities, such as market places, water distribution points, on public transport, and so on, may provide strong indicia of the intent to spread terror.

882. In sum, the crime of terror requires the same legal elements as the crime of unlawful attacks against civilians. However, it is different from the crime of unlawful attacks against civilians in that it requires the additional mental element of the “primary purpose of spreading terror.”³⁰³² The crime of terror, therefore, constitutes an “aggravated”, more serious form of, unlawful attack on civilians. The law on unlawful attacks against civilians is set out in Section III.A.6 below.

(c) The Concept of “Terror”

883. ‘Terror’ is the key term in the formulation of the crime of terror. The Trial Chamber in the *Galić* case noted that the Prosecution did not provide a definition of ‘terror’ in its preliminary submissions, but that, in the course of the trial, it adopted a definition given by an expert which equated ‘terror’ with “extreme fear”.³⁰³³ That Trial Chamber also cited the Defence submission that “[terror] has to be of the highest intensity. It has to be long-term. It has to be direct. And it has to be capable of causing long-term-consequences”.³⁰³⁴ The Trial Chamber in the *Galić* case ultimately accepted the Prosecution’s rendering of terror as “extreme fear”.³⁰³⁵ Like the Trial Chamber, the Appeals Chamber in the *Galić* case did not define the term ‘terror’. In a footnote, the Appeals Chamber merely noted that “terror could be defined, as the Trial Chamber did, as ‘extreme fear’”.³⁰³⁶ As such, neither the Trial Chamber nor the Appeals Chamber in the *Galić* case carried out an examination of the term ‘terror’.³⁰³⁷

³⁰³¹ *Galić* Appeal Judgement, para. 104.

³⁰³² See also, *Galić* Trial Judgment, para. 162.

³⁰³³ *Galić* Trial Judgment, para. 75 referring to the Prosecution Response to Acquittal Motion, para. 16.

³⁰³⁴ *Galić* Trial Judgment, para. 83 referring to Defence Closing Arguments, T. 21810.

³⁰³⁵ *Galić* Trial Judgment, para. 137.

³⁰³⁶ *Galić* Appeals Judgement, fn 320.

³⁰³⁷ The Trial Chamber in the *Galić* case did not consider it necessary to enter into a discussion of what it called “‘žpolitical’ terrorist violence” and its regulation in various international instruments; *Galić* Trial Judgment, fn 222 and fn 150. Unlike the Statute of this Tribunal, the Statutes of the International Criminal Tribunal for Rwanda (“ICTR”) and of the Special Court for Sierra Leone (“SCSL”) enumerate ‘acts of terrorism’ in their respective articles dealing with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. In its first judgement issued on 20 June 2007, the SCSL found that the accused were criminally responsible for, *inter alia*, the crime “acts of terrorism” pursuant to Article 3(d) of the SCSL Statute. In dealing with the elements of the crime “acts of terrorism”, the SCSL, however, simply reproduced the elements set out by the Trial Chamber in the *Galić* case. The

884. ‘Terror’, in its ordinary meaning, denotes “the state of being terrified or greatly frightened; intense fear, fright or dread” or the “action or quality of causing dread; terrific quality or terribleness.”³⁰³⁸

885. When asked by the Trial Chamber to define ‘terror’ during its Closing Arguments, the Prosecution gave the following definition:

“No one knew whether they might be the next victim. It affected every waking moment of their lives. People for 15 months over the period of this indictment knew absolutely no sense of safety anywhere in the city. Terror is [...] the intentional deprivation of a sense of security. It’s been [*sic*] the primal fear that people feel when they see someone in front of them gunned down and that moment of panic when they try and run to help the victim, waiting for the next shots to come, and you’ve had ample evidence about that.”³⁰³⁹

“And it’s not just [...] the fear that comes from being nearby the combat. This is a fear calculated to demoralise, to disrupt, to take away any sense of security from a body of people who have nothing [...] to do with the combat.”³⁰⁴⁰

During its closing arguments, the Defence stated the following when addressing the issue of terror:

“The terror that my learned friend spoke about, the primordial fear which the primal fear, this fear was there for everyone, it was felt by everyone, civilians and soldiers alike. If someone had a strategy of terrorising and killing civilians, it would not have been possible for several thousand of their soldiers to be killed. [...] This shows that that area was a theatre of heavy fighting, of serious conflicts, and one cannot characterise this as a civilian area and speak of civilians as the sole targets at the time of the events in this indictment.”³⁰⁴¹

The Defence thereby appeared to challenge the terror charge on the basis that there was heavy fighting in all of Sarajevo which caused terror among everyone.

886. The Trial Chamber finds that the response of the Prosecution captures the essence of what the term terror denotes.

887. The Trial Chamber emphasises that the existence of an armed conflict constitutes a general requirement of Article 3 of the Statute and also of the crime of terror pursuant to Article 51 of Additional Protocol I and Article 13 of Additional Protocol II. In that regard, the Trial Chamber notes a growing tendency in international law to distinguish between terror in times of peace and terror in a situation of armed conflict as understood in international humanitarian law.³⁰⁴² However,

ICTR thus far has not dealt with a case involving “acts of terrorism”: *Prosecutor v. Alex Tamba Brima, Brima Bazzy Tamara, Santigie Borbor Kanu*, Case No. SCSL-04-16-T, Judgement, 20 June 2007.

³⁰³⁸ Oxford English Dictionary, Second Edition 1989, ‘terror’; ‘terror-bombing’ denotes “intensive and indiscriminate bombing designed to frighten a country into surrender”. ‘Reign of terror’ denotes “a state of things in which the general community live in dread of death or outrage”.

³⁰³⁹ Prosecution Closing arguments, 9 Oct 2007, T. 9468.

³⁰⁴⁰ Prosecution Closing arguments, 9 Oct 2007, T. 9472.

³⁰⁴¹ Defence Closing arguments, 10 Oct 2007, T. 9525.

³⁰⁴² Most international conventions are confined to terror not governed by international humanitarian law. The International Convention against the Taking of Hostages of 1979, Art. 12; International Convention for the Suppression of Terrorist Bombings 1997 (A/Res/52/164 or UNTS 284), Art. 19(2); Nuclear Terrorism Convention of 2005

the Trial Chamber observes that attacks directed against the civilian population are equally prohibited in the international instruments dealing with the crime of terror in peace time.

888. The Trial Chamber also notes that the crime of terror only covers acts or threats of violence which are specifically intended to spread terror among the civilian population. It must be established that the terror goes beyond the fear that is only the accompanying effect of the activities of armed forces in armed conflict. The prohibition of spreading terror among a civilian population must therefore always be distinguished from the effects that acts of legitimate warfare can have on a civilian population.³⁰⁴³ The Trial Chamber notes that a certain degree of fear and intimidation among the civilian population is present in nearly every armed conflict.³⁰⁴⁴ The closer the theatre of war is to the civilian population, the more it will suffer from fear and intimidation. This is particularly the case in an armed conflict conducted in an urban environment, where even legitimate attacks against combatants may result in intense fear and intimidation among the civilian population, but to constitute terror, an intent to instil fear beyond this level is required. Therefore, the circumstances of a particular armed conflict must be taken into account in determining whether the crime of terror has been committed, or whether the perpetrators intended to “spread terror among a civilian population.”

3. Evaluation of the Evidence

(a) Civilian Status of the Population

889. The status of the population in Sarajevo during the conflict is of critical significance to the Indictment as a whole. The Prosecution’s case is that the population of Sarajevo had a civilian status. However, the Defence challenged this with regard to Sarajevo as a whole and for a number of particular areas within the confrontation lines. A determination as to whether the population was civilian or not is necessary in respect of every count. For that reason, it is convenient to consider and determine that question at this stage.

(A/Res/59/290). The scope of the Draft Comprehensive Convention on Terrorism was, and still is, a very contentious issue and was considered a “key central focus”. Currently, the Draft Comprehensive Convention against International Terrorism contains an exemption for the activities of armed forces during an armed conflict. Article 20(2) (A/61/37, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Tenth Session (27 February – 3 March 2006), p. 4; A/62/37, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Eleventh Session (5, 6 and 15 February 2007), p. 6. *See also*, for a distinction of terrorism “in times of peace” and in times of armed conflict: *Antonio Cassese*, *The Multifaceted Criminal Notion of Terrorism in International Law*, 4 JICJ 2006, 933 ff. argues that a customary rule on the crime of terrorism in peace time has already evolved.

³⁰⁴³ *Galić* Trial Judgement, para. 101.

³⁰⁴⁴ *See also*, French delegation, Official Records, vol. XIV, p. 65: “in traditional war attacks could not fail to spread terror among the civilian population: what should be prohibited [...] was the intention to do so.”

890. In its Final Brief, the Defence argued that the Prosecution did not show beyond reasonable doubt that acts of violence “were directed against the civilian population as such or against civilian persons and facilities and were indiscriminate, given that combat between the warring parties in the city of Sarajevo took place in military zones that were either completely free of civilians or deprived of their civilian status owing to the high number of military targets present among the civilians and civilian property.”³⁰⁴⁵ This argument has two parts. First, the Defence challenges the allegation that the underlying crimes were committed as part of a widespread or systematic attack directed against any civilian population and thus challenges the applicability of Article 5 of the Statute. Second, the Defence challenges the Prosecution allegation that the acts of violence were directed against individual civilians or a civilian population and thus the further allegation that the crimes of terror and unlawful attacks against civilians under Article 3 of the Statute were committed.

891. During its closing arguments, the Defence expanded on this challenge, saying that “it must be established beyond reasonable doubt that it was, indeed, a civilian area and that it was, indeed, a civilian population and that this man sitting today before you in the dock had no other intention than to use his powerful army against that civilian population.”³⁰⁴⁶ The argument of the Defence is particularly focused on the summer months of 1995, the period during which the ABiH launched an offensive.³⁰⁴⁷

892. The Defence also argued that the ABiH intentionally mixed military targets with civilian targets, by “setting up ABiH headquarters in civilian-looking buildings,” “mixing uniformed fighters with non-combatants” and by having members of the ABiH move between trenches without uniform.³⁰⁴⁸ The Defence concludes that, “as several brigades of the BH Army 1st Corps had their combat positions, headquarters, and weapons depots in the city of Sarajevo on territory under BH Army control, one can reasonably conclude that military targets were common on that territory.”³⁰⁴⁹

893. During its closing arguments, the Prosecution responded to the Defence argument. It submitted that “[a]ny Defence argument that the reason civilians were killed and injured was due to the deliberate intermingling by the ABiH of military targets with civilians and civilian objects is an attempt to draw attention away from the charges at hand. If the Defence is saying that the Accused had information that civilians were mixed among military targets, the Accused was under an obligation to gather sufficient information to ensure that [in] any attacks against such a target, the

³⁰⁴⁵ Defence Final Brief, p. 80.

³⁰⁴⁶ Defence Closing Arguments, T. 9498.

³⁰⁴⁷ For evidence pertaining to this offensive, see Section II.E.9(d) ABiH Offensives.

³⁰⁴⁸ Defence Final Brief, paras 100 – 102.

³⁰⁴⁹ Defence Final Brief, para. 102.

anticipated military advantage outweighed the anticipated loss to civilian life.”³⁰⁵⁰ It further submitted that even if “certain civilian objects become legitimate objects of attack, any such attack must still be conducted with respect for the principles of distinction and proportionality.”³⁰⁵¹

894. The status of a population may change due to the flow of civilians and combatants.³⁰⁵² The evidence showed that the ABiH 1st Corps had between 60,000 and 78,000 troops during the conflict, of which approximately 40,000 to 45,000 were stationed in Sarajevo.³⁰⁵³ The establishment of the 12th Division of the ABiH did not change this number significantly.³⁰⁵⁴

895. The evidence of Prosecution expert Ewa Tabeau and Defence witness Maj. Veljović showed that at the start of the conflict there were approximately 500,000 persons in the ten municipalities of Sarajevo.³⁰⁵⁵ After the start of the conflict, approximately 40,000 to 60,000, out of 150,000, Bosnian Serbs remained inside the confrontation lines and many of the approximately 100,000 Bosnian Muslims moved to the Bosnian Muslim-dominated areas inside the confrontation lines.³⁰⁵⁶ In Hrasnica alone, the population increased from approximately 30,000 to 50,000 persons, due to an influx of Bosnian Muslims from areas such as Trnovo and Eastern Bosnia.³⁰⁵⁷ The evidence showed that at the very start of the conflict, people were evacuated from the area of Sarajevo, but there is no evidence that large population movements occurred as the conflict continued.³⁰⁵⁸

896. Taking into account all the population fluctuations at the start of the war, the Trial Chamber finds that the populated urban areas within the confrontation lines were civilian in status. For example, the evidence showed that in the Bosnian Muslim-held territory of Dobrinja alone, the population numbered 27,000 persons, with the presence of approximately 2,200 troops of the Dobrinja Brigade, and that the Old Town, located well within the confrontation lines, was a densely-populated area.³⁰⁵⁹ The Trial Chamber further notes that the 40,000 to 45,000 troops of the 1st Corps were not all stationed in densely-populated areas. Rather, many soldiers were deployed in trenches or positions along the confrontation lines.³⁰⁶⁰ While acknowledging that in the normal run of military activities, some soldiers would visit their homes, in the view of the Trial Chamber, the overall effect of that movement would not have altered the civilian status of those urban areas.

³⁰⁵⁰ Prosecution Closing Arguments, T. 9418.

³⁰⁵¹ Prosecution Closing Arguments, T. 9419.

³⁰⁵² See *infra*, Section III.A.6 Counts 4 and 7: Unlawful Attacks against Civilians.

³⁰⁵³ See *supra* Section II.B.1(b) ABiH Structure.

³⁰⁵⁴ See *supra* Section II.B.1(b) ABiH Structure

³⁰⁵⁵ P637, Expert report Ewa Tabeau, p. 67; Stevan Veljović, 31 May 2007, T. 5930, 5959, 5975.

³⁰⁵⁶ See *supra*, Section II.C. Sarajevo 1992 - 1994.

³⁰⁵⁷ W-57, 17 Apr 2007, T. 4548.

³⁰⁵⁸ See *supra*, Section II.C. Sarajevo 1992 - 1994.

³⁰⁵⁹ See *supra*, paras. 119 - 120, 466.

³⁰⁶⁰ See, e.g., Sections II.B.3(c); II.E.9(d) ABiH Offensives.

897. There is evidence that the troops of the 1st Corps were supported by troops of other ABiH corps during the summer offensive. However, there is no evidence to suggest a massive influx of ABiH troops into the urban areas within the confrontation lines in Sarajevo which could have altered the civilian status of that area.

898. It is clear that military targets existed inside the confrontation lines. For example, an ABiH military map showed around 30 command posts of ABiH units throughout the entire area inside the confrontation lines.³⁰⁶¹ However, these military targets, too, cannot be said to be of such great numbers that they would deprive the entire urban area within the confrontation lines of its civilian status. In the circumstances, therefore, the Defence submission that the entire area inside the confrontation lines of Sarajevo was a military area is rejected, and the Trial Chamber finds that the area had civilian status.

899. The Defence also submitted that certain areas within the confrontation lines were “military zones”, namely Hrasnica, Sedrenik and Vojničko Polje. The shelling incidents in Hrasnica took place on 7 April 1995, 1 July 1995 and 23 July 1995. The evidence pertaining to the period of the end of March and early April 1995 shows that there was fighting in the general area around Mount Igman and Treskavića.³⁰⁶² The evidence also shows that fighting occurred along the confrontation lines, including at the lines at the Famos Factory. However, most of the fighting took place many kilometres away from Hrasnica.³⁰⁶³ Furthermore, the evidence does not show troop movement through Hrasnica on their way from Sarajevo to the Mount Igman and Treškavica areas, or vice versa, on a scale that would alter the civilian status of Hrasnica in April 1995.

900. With particular regard to the time period in which the scheduled shelling incident of 1 July 1995 took place in Hrasnica, an ABiH combat report, dated 1 July 1995, shows that troops of the 12th Division, stationed inside the confrontation lines, attacked the Nedarići barracks, located several kilometres from Hrasnica.³⁰⁶⁴ However, there is no indication in the evidence that ABiH troops moved through Hrasnica on a scale that would alter the civilian status of the area. On the basis of the evidence discussed above, the civilian status of Hrasnica remained unchanged in April 1995 and during the summer offensive in 1995.

901. It is significant that the Defence offered absolutely nothing to substantiate its submission that Sedrenik was a military zone. On the contrary, Nedžib Đozo, a BiH police officer who

³⁰⁶¹ P194, Military map of Sarajevo.

³⁰⁶² P696, Order by SRK Commander, 4 April 1995; D509, ABiH combat report, dated 3 April 1995; D59, Military map.

³⁰⁶³ P696, Order by SRK Commander, 4 April 1995; P883, UNMO daily sitrep, dated 4 April 1995; P226, Order by SRK Commander, 6 April 1995. *See also supra*, Section II.E.9(d) ABiH Offensives.

³⁰⁶⁴ D425, ABiH combat report, dated 1 July 1995.

investigated many sniping incidents in Sedrenik, testified that “there was no military activity in that neighbourhood; it was a purely residential area.”³⁰⁶⁵ Derviša Selmanović stated that Sedrenik was a “strictly civilian neighbourhood.”³⁰⁶⁶ On the basis of her evidence as to the time she lived in Sedrenik, the Trial Chamber is satisfied that Derviša Selmanović was sufficiently familiar with the settlement to speak to its civilian nature. Similarly, Tarik Žunić said, in cross-examination, that ABiH troops did move through the area on their way to the trenches, but did so only at night in order not to endanger the civilians living in Sedrenik. Finally, Lt. Col. Harry Konings, team leader of the UNMO team that was deployed in Sedrenik, testified that, as was common for UNMO teams, their team base in Sedrenik was located “in the middle of the civilian population.”³⁰⁶⁷ The Trial Chamber finds that the neighbourhood of Sedrenik was located close to confrontation lines. However, its proximity to the confrontation lines does not alter Sedrenik’s civilian status, nor does the military activity that took place at the confrontation lines. Moreover, the Trial Chamber finds that there was no military asset in Sedrenik that could alter its civilian status. In light of the evidence, the Trial Chamber finds that Sedrenik was, contrary to the Defence submission, a civilian area with a civilian population.

902. In respect of Vojničko Polje, the evidence shows that the confrontation line ran just in front of the School of the Blind. Defence witness T-60, a civilian who lived in an apartment building in Vojničko Polje, testified that, in 1994 and 1995, most of the buildings in his area were inhabited by the ABiH.³⁰⁶⁸ He stated that he did not see any civilians and that “one could only observe troops there, either in camouflage military uniforms or in civilian clothes but with weapons.”³⁰⁶⁹ When asked about the building with the passageway where Adnan Kasapović was shot on 24 October 1994, T-52 testified that he never went there, but that he could see the ABiH soldiers there.³⁰⁷⁰

903. Prosecution witnesses W-62 and Ermin Krečo testified that during the war there was an ABiH dormitory in the vicinity of the passageway where Adnan Kasapović was shot. They also spoke about going to visit friends who lived in the same neighbourhood; this shows that civilians were present in the area. While, as stated above, T-60 said that “most” of the buildings were inhabited by the ABiH and that he did not see any civilians, he also gave evidence of the presence of civilians in the area; T-60 testified that he lived in one of the apartment buildings in Vojničko Polje and other civilians lived in his building. His testimony that civilians were only living in his building is not supported by the evidence of W-62 and Ermin Krečo, who lived in another

³⁰⁶⁵ Nedžib Dozo, P363, p. 2.

³⁰⁶⁶ Derviša Selmanović, P169, p. 2.

³⁰⁶⁷ Harry Konings, 12 Mar 2007, T. 3553 – 3554.

³⁰⁶⁸ T-60, 25 July 2007, T. 8815- 8816; D352, Photograph marked by T-60 (under seal).

³⁰⁶⁹ T-60, 25 July 2007, T. 8817, 8843 - 8844; D352, Photograph marked by T-60 (under seal)

³⁰⁷⁰ T-52, 28 June 2007, T7458; D279, Photograph marked by T-52.

apartment building. Furthermore, Defence witness T-52 testified that the ABiH held positions in the high-rise buildings in Vojničko Polje and Alipašino Polje.³⁰⁷¹ However, in cross-examination, he confirmed that the high-rise buildings in Vojničko Polje, in front of the School of the Blind, were probably inhabited by civilians in 1994 – 1995, but said that he did not see them.³⁰⁷² Similarly, T-48 thought that civilians lived in the apartment buildings, although he also did not see them. On the basis of the evidence of these witnesses, the Trial Chamber is satisfied that Vojničko Polje was a civilian area and finds that the presence of an ABiH dormitory does not alter the civilian status of this area.

904. In sum, the Trial Chamber rejects the Defence submission that the entire area of Sarajevo was a military zone and that the areas of Hrasnica, Sedrenik and Vojničko Polje were also military zones. Instead, the Trial Chamber reiterates its earlier findings that these areas had civilian status.

(b) Terror

905. As to the evidence pertaining to the crime of terror, the Trial Chamber recalls its earlier finding that the SRK was responsible for the sniping and shelling of the area within the confrontation lines. It also found that as a result, civilians were seriously injured or killed.³⁰⁷³ The evidence adduced in relation to sniping amply supports the charge of terror. In addition to the evidence pertaining to the scheduled incidents, the Trial Chamber heard other evidence of shelling and sniping of the civilians and the civilian population inside the confrontation lines in Sarajevo. The evidence shows that civilians were continuously exposed to shelling and sniping and that numerous civilians were wounded or killed, although some witnesses noted that the level of intensity varied, particularly with regard to shelling.³⁰⁷⁴ The varying intensity notwithstanding, the evidence of Berko Zečević and several UNMOs shows that artillery and mortar explosions were a daily occurrence in Sarajevo.

906. The Defence challenged the terror charge by leading evidence designed to show that the SRK troops acted only in response to provocation or in order to protect their families.³⁰⁷⁵ It argued that the SRK desired peace.³⁰⁷⁶ The Trial Chamber understands this argument to be a challenge to the intent element for the crime of unlawful attacks against civilians. In this respect, the Trial Chamber recalls that in prohibiting attacks against civilians and civilian objects, Article 49 of

³⁰⁷¹ T-52, 28 June 2007, T. 7432; D279, Photograph marked by T-52.

³⁰⁷² T-52, 28 June 2007, T. 7458.

³⁰⁷³ See *supra*, paras 794, 796.

³⁰⁷⁴ See *supra*, Sections II.E.5 Shelling during Indictment Period; II.E.1 Patterns of Sniping and Shelling of Sarajevo.

³⁰⁷⁵ Defence Final Brief, paras 75 – 77. See also *supra*, Sections II.E.9.(c) Defence Allegations of Provocations; II.E.9(d) ABiH Offensives.

³⁰⁷⁶ Defence Final Brief, paras 75 – 77.

Additional Protocol I defines “attacks” as meaning “acts of violence against the adversary, *whether in offence or defence*”.³⁰⁷⁷ There is an unconditional and absolute prohibition on the targeting of civilians in customary international law:³⁰⁷⁸ *Any attack directed at the civilian population is prohibited, regardless of the military motive.*

907. A number of Prosecution witnesses, including Ismet Hadžić, John Jordan, Lt. Com. Thomas Knustad and W-137, testified that the shelling was carried out in an indiscriminate manner.³⁰⁷⁹ Lt. Col. Konings stated that one of the consequences of using mortars as “harassment fire”, as it was used in Sarajevo, is the infliction of a lot of harm, especially against civilians.³⁰⁸⁰ No area in Sarajevo was safe from the shells; the Trial Chamber heard of shells striking in Hrasnica, Sokolović Kolonija, Marindvor, Alipašino Polje, Dobrinja, Baščaršija, Koševo Polje, Alipašin Most, Hrasno and many other locations throughout Sarajevo. The shelling was aimed at civilian areas, such as parks, cemeteries, market places and water collection points. Azra Šišić recalled that it was “very risky” to leave one’s apartment building to collect food from 100 to 200 metres away because of the shelling.³⁰⁸¹

908. Sniping was also pervasive throughout the city. Witnesses testified that civilians were killed by fire from Špicasta Stijena, Grbavica, Mount Trebević, Vraca, the Jewish Cemetery, and the curve of the Lukavica-Pale road above Skenderija, and above Debelo Brdo.³⁰⁸² John Jordan recalled that in nice weather the snipers were particularly active, “people came out, made it a target-rich environment and the snipers got busy.”³⁰⁸³ Snipers targeted places where civilians gathered, including, for example, where people queued for and collected water. Sometimes snipers would shoot at the water containers people were carrying. Witnesses recalled going to collect water late at night or very early in the morning, when there was no sniping.³⁰⁸⁴ Bogdan Vidović testified that it was hard to single out a particular neighbourhood in Sarajevo that was more susceptible to sniping than another.³⁰⁸⁵ However, there were areas around Sarajevo that were known to be used by snipers and to be particularly dangerous for civilians.³⁰⁸⁶ Trams and buses, and people on them, were targeted.³⁰⁸⁷ In the general area of the Marindvor, people had to run across the street and it was a matter of luck whether they were hit or not.³⁰⁸⁸ The Holiday Inn area of the main thoroughfare,

³⁰⁷⁷ Emphasis added.

³⁰⁷⁸ *Blaškić* Appeal Judgement, para. 109; *Kordić and Čerkez* Appeal Judgement, para. 54.

³⁰⁷⁹ See, e.g., *supra*, paras 420, 758.

³⁰⁸⁰ See *supra*, para. 420.

³⁰⁸¹ See *supra*, para. 423, and, generally, Section II.E.5 Shelling during the Indictment Period.

³⁰⁸² See *supra* para. 323, and, generally, Section II.E.3 Sniping during the Indictment Period.

³⁰⁸³ See *supra*, para. 198.

³⁰⁸⁴ See *supra* para. 208.

³⁰⁸⁵ Bogdan Vidović, 13 Feb 2007, T. 2063. See also, W-62, 24 Jan 2007, T. 925 – 926. Cf. Nefa Šljivo, P531, p. 2.

³⁰⁸⁶ See *supra* paras 211, and Sections II.E.3(ii) Marindvor and Zmaja od Bosne.

³⁰⁸⁷ See *supra*, Section II.E.3(a)(i) Public Transport.

³⁰⁸⁸ W-118, P175, p. 3 (under seal).

Zmaja od Bosne, was dubbed ‘Sniper Alley’ in a direct reference to the numerous incidents involving sniper fire in that area.

909. The evidence shows that the very role of snipers requires that any shot they take is deliberate, intended to kill or seriously injure the target. Some witnesses testified that the SRK snipers were very skilled.³⁰⁸⁹ The Trial Chamber heard evidence of a number of trams being shot at and several passengers being killed or seriously injured. The evidence shows that these incidents took place during cease-fires. There are passages in the evidence that clearly demonstrate the sheer fear and horror experienced by those passengers. Nothing illustrates more graphically the intent of the perpetrators and the victimisation of the passengers than the evidence that was repeated time and again of a tram slowing down to pass the S-curve and being deliberately targeted while it was so doing. Slavica Livnjak described how she would bend her head every time she negotiated the S-curve with her tram. The tram and its passengers were virtually sitting ducks or, to use another avian metaphor, in the words of a witness, “clay pigeons.”³⁰⁹⁰

910. Not only was the civilian population starved and deprived of its opportunity to leave the city for fourteen months, it was also subjected during that period to conditions which would inevitably instil extreme fear and create insecurity by virtue of the incessant sniping and shelling of the city. The inability to escape from this trap of horror for any extended period of time unavoidably weakened the besieged population’s will to resist, and worse, it left deep and irremovable mental scars on that population as a whole.

911. The Trial Chamber finds that every incident of sniping resulting in death or serious injury that has been referred to earlier in the Judgement, and in respect of which it found that the sniping originated from Bosnian Serb-held territory and was carried out by members of the SRK, is an example of terror within the meaning of Count 1.

912. Furthermore, in light of the evidence referred to earlier in the Judgement on the basis of which the Trial Chamber found that the SRK was responsible for shelling civilians and civilian areas by modified air bombs, and particularly in light of the evidence of the indiscriminate nature of the modified air bomb, the knowledge of the SRK of that indiscriminate character, the gravity of the injuries and the number of deaths caused by the use of these highly inaccurate bombs, the Trial Chamber finds that terror within the meaning of Count 1 was committed by the SRK forces. In this respect, the Trial Chamber also recalls its earlier finding that only the SRK possessed and used modified air bombs to target the civilian areas in Sarajevo. It is perfectly reasonable for the Trial

³⁰⁸⁹ See *supra*, paras 109, 204, 241.

³⁰⁹⁰ See *supra*, para. 198.

Chamber to infer an intent to terrorise from the very use by the SRK of this highly inaccurate and indiscriminate weapon, the modified air bomb.

913. In light of the evidence referred to earlier in the Judgement on the basis of which the Trial Chamber found that the SRK was responsible for shelling civilians and civilian areas, and particularly in light of the evidence as to the accuracy of mortars and the skill of the SRK mortar crews, the firing of numerous shells into the city, the gravity of the injuries and the number of deaths caused by mortar fire, the Trial Chamber finds that the deliberate targeting of civilians in the city, with these accurate weapons, fired in such high numbers, constitutes terror within the meaning of Count 1. Since it is acknowledged that a mortar is an accurate weapon and that the crew thereof were highly trained, the Trial Chamber is entitled to infer from the use of that weapon an intent to terrorise.

4. Counts 2 and 5: Murder

914. Under Counts 2 and 5, the Prosecution charged the Accused with criminal responsibility under Articles 7(1) and 7(3) of the Statute for the crime of murder, a crime against humanity. In order to substantiate these charges, the Prosecution must establish that murder as a crime against humanity was committed by SRK troops. The Trial Chamber must, therefore, consider what constitutes a crime against humanity and what constitutes the crime of murder.

915. In order for the Tribunal to have jurisdiction under Article 5, the crime must have been committed in armed conflict.³⁰⁹¹ The phrase “committed in armed conflict” requires only “the existence of an armed conflict at the relevant time and place.”³⁰⁹² The underlying crimes need not be closely related to the armed conflict; it suffices that they be linked geographically and temporally with it.³⁰⁹³ This requirement is purely jurisdictional and does not constitute a substantive element of a crime against humanity.³⁰⁹⁴

916. In order to constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against a civilian population. As interpreted by the Appeals Chamber, this phrase encompasses five elements.³⁰⁹⁵

³⁰⁹¹ *Kunarac* Appeal Judgement, para. 82; *Tadić* Appeal Judgement, para. 249; *Galić* Trial Judgement, para. 139; *Mrksic et al.* Trial Judgement, para. 429.

³⁰⁹² *Tadić* Appeal Judgement, para. 249; *Mrksic et al.* Trial Judgement, para. 430.

³⁰⁹³ *Kunarac* Appeal Judgement, paras 83, 86; *Tadić* Appeal Judgement, paras 249, 251; *Galić* Trial Judgement, para. 139; *Kupreškić* Trial Judgement, para. 546; *Mrksic et al.* Trial Judgement, para. 432.

³⁰⁹⁴ *Kunarac* Appeal Judgement, para. 83; *Tadić* Appeal Judgement, para. 249.

³⁰⁹⁵ The five elements are (i) there must be an attack; (ii) the acts of the perpetrator must be part of the attack; (iii) the attack must be directed at any civilian population; (iv) the attack must be widespread or systematic; (v) the perpetrator knows that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population

(a) Attack

917. When assessing whether an attack against a particular civilian population occurred, it is not relevant whether the other side also committed atrocities against its opponent's civilian population.³⁰⁹⁶ Evidence of this nature is not relevant unless it tends to prove or disprove any of the allegations made in the Indictment, particularly to refute the allegation that there was a widespread or systematic attack against a civilian population.³⁰⁹⁷ Such an allegation cannot be disproved by a submission that the other side is responsible for starting the hostilities.³⁰⁹⁸ The Trial Chamber finds that there is an abundance of evidence of attacks by SRK troops.

(b) Nexus between the Acts of the Perpetrator and the Attack

918. The required nexus between the acts of the perpetrator and the attack consists of two elements: (i) the commission of an act which, by its nature and consequences, is objectively part of the attack; together with (ii) knowledge on the part of the perpetrator that there is an attack on the civilian population and that his act is part thereof.³⁰⁹⁹

919. While the acts of the perpetrator must be "part of" the attack against the civilian population, they need not be committed *in the midst of* that attack.³¹⁰⁰ As the Appeals Chamber in *Kunarac* stated, a crime:

"which is committed before or after the main attack against the civilian population or away from it could still, if sufficiently connected, be part of that attack. The crime must not, however, be an isolated act. A crime would be regarded as an 'isolated act' when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack."³¹⁰¹

920. The Trial Chamber finds on the basis of the evidence that the required nexus exists.

and knows that his acts fit into such a pattern. *Kunarac* Appeal Judgement, para. 85, *endorsing Kunarac* Trial Judgement, para. 410; *Martić* Trial Judgement, para. 49; *Mrksić et al.* Trial Judgement, para. 435.

³⁰⁹⁶ *Kunarac* Appeal Judgement, para. 87. The Appeals Chamber continues: "The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such," citing *Kupreškić* Trial Judgement.

³⁰⁹⁷ *Kunarac* Appeal Judgement; para. 88; *Galić* Trial Judgement, para. 145.

³⁰⁹⁸ *Kunarac* Appeal Judgement, para. 88; *Galić* Trial Judgement, para. 145.

³⁰⁹⁹ *Kunarac* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, paras 248, 251, 271.

³¹⁰⁰ *Tadić* Appeals Judgement, para. 248; *Naletilić* Trial Judgement, para. 234; *Kordić* Trial Judgement, para. 178; *Mrksić et al.* Trial Judgement, para. 438.

³¹⁰¹ *Kunarac* Appeal Judgement, para. 100; *Kupreškić* Trial Judgement, para. 550; *Tadić* Trial Judgement, para. 119.

(c) Directed against any Civilian Population

921. As held by the Appeals Chamber in *Kunarac*, the term “directed against any civilian population” signifies that “the civilian population is the primary object of attack.”³¹⁰² In assessing whether the civilian population was the primary object of attack, the following factors, *inter alia*, are to be considered: the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in the course of the attack, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.³¹⁰³

922. The term “civilian population”, broadly interpreted, refers to a population that is predominantly civilian.³¹⁰⁴ The civilian population comprises all persons who are civilians.³¹⁰⁵ It is important to recall that the presence of soldiers does not necessarily deprive a civilian population of its civilian character.³¹⁰⁶ As the Appeals Chamber ruled in *Kordić and Čerkez*:

“[t]he civilian population comprises all persons who are civilians and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”³¹⁰⁷

923. In *Galić*, the Appeals Chamber clarified that when the status of a population has yet to be determined, or the status may be changing due to the flow of civilians and military personnel, the conclusion is somewhat different.³¹⁰⁸ In *Blaškić*, the Appeals Chamber found that the number of soldiers present within a civilian population, along with the purpose of their presence, must both be examined to ascertain whether they deprive the population of its civilian nature.³¹⁰⁹ The Appeals Chamber quoted from the ICRC Commentary on the issue:

“[...] in wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population.”³¹¹⁰

³¹⁰² *Kunarac* Appeal Judgement, para. 91. See also, *Kordić and Čerkez* Appeal Judgement, para. 96; *Blaškić* Appeal Judgement, para. 106; *Galić* Trial Judgement, para. 142; *Martić* Trial Judgement, para. 49(2); *Mrksic et al.* Trial Judgement, para. 440.

³¹⁰³ *Ibid.*

³¹⁰⁴ *Jelišić* Trial Judgement, para. 54; *Kupreškić* Trial Judgement, paras 547 – 549; *Naletilić* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Blagojević and Jokić* Trial Judgement, para. 544; *Mrksic et al.* Trial Judgement, paras 442, 458.

³¹⁰⁵ Article 50(2), Additional Protocol I.

³¹⁰⁶ *Galić* Appeal Judgement, para. 144, citing *Blaškić* Appeal Judgement, para. 115 (also paras 110, 113); *Galić* Trial Judgement, para. 143.

³¹⁰⁷ *Kordić and Čerkez* Appeal Judgement, para. 50. See also, *Galić* Appeal Judgement, para. 144.

³¹⁰⁸ *Galić* Appeal Judgement, para. 137.

³¹⁰⁹ *Blaškić* Appeal Judgement, para. 110 – 116. See also, *Kordić and Čerkez* Appeal Judgement, para. 97.

³¹¹⁰ ICRC Commentary, para. 1922.

924. It is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was, in fact, directed against a civilian “population” and not against a limited and randomly-selected number of individuals.³¹¹¹ The Trial Chamber has already found, in relation to Count 1, that the attacks of the SRK troops were directed against the civilian population.³¹¹²

(d) Widespread or Systematic

925. In the context of a crime against humanity, an attack must be “widespread” *or* “systematic” but need not be both.³¹¹³ The Trial Chamber recalls the case-law of the Tribunal, according to which the phrase “widespread” denotes the large-scale nature of the attack and the number of targeted persons, while the phrase “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.³¹¹⁴

926. The assessment of whether an attack is widespread or systematic is relative to the civilian population under attack and a Trial Chamber must, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.³¹¹⁵

927. As to the widespread nature of the attack, there is evidence of a very large number of attacks by way of mortars, modified air bombs and sniping, spread out over the entire city of Sarajevo over a prolonged period of time. There is evidence of a very large number of persons targeted on trams and in other locations. Although the Prosecution has based the Indictment on a campaign of shelling and sniping carried out by the SRK, the Trial Chamber does not consider it necessary to examine whether there was in fact a campaign. A campaign is a military strategy; it is not an ingredient of any of the charges in the Indictment, be that terror, murder or inhumane acts. In the particular context of a crime against humanity, the Trial Chamber needs to be satisfied that there was a widespread or systematic attack and not that a campaign was carried out. It may be that proof of the existence of a campaign would also be proof of a widespread or systematic attack, but the Trial Chamber considers it important to distinguish between the term “campaign”, which is merely descriptive or illustrative of the Prosecution’s case and the legal ingredients of the charges. In the instant case, the Trial Chamber is satisfied that the evidence substantiates the widespread character

³¹¹¹ ICRC Commentary, para. 1922. *See also, Mrksic et al.* Trial Judgement, para. 458.

³¹¹² *See infra*, paras. 905 - 907, 910, 913.

³¹¹³ *See e.g. Stakić* Appeal Judgement, para. 246; *Kordić and Čerkez* Appeal Judgement, para. 93.

³¹¹⁴ *See e.g. Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac* Appeal Judgement, para. 94.

³¹¹⁵ *Kunarac* Appeal Judgement, para. 95, *endorsing Kunarac* Trial Judgement, para. 430. *See also, Galić* Trial Judgement, para. 146.

of the attack. As to the systematic nature of the attacks, the Trial Chamber refers to the evidence of the organised manner in which trams were sniped during the negotiation of the S-curve on Zmaja od Bosne and the use of shelling and sniping by the SRK as both a means of retaliation and to achieve political objectives.

928. In short, the features of the campaign - the 24 proven scheduled incidents of sniping and shelling, the unscheduled incidents of sniping and shelling, the other evidence pertaining to shelling and sniping, the large number of persons targeted by the shelling and sniping, the structure and pattern evident in the shelling and sniping, the clear correlation between conflict in BiH as a whole and the shelling of Sarajevo by the SRK - provide a classical illustration of a large-scale and organised attack, that is, a widespread and systematic attack.

(e) Mens Rea

929. The *mens rea* element of a crime against humanity is fulfilled when the perpetrator has the requisite intent to commit the underlying offence(s) charged and when he knows both that there is an attack on the civilian population and that his acts form part of that attack.³¹¹⁶ The perpetrator need not know the details of the attack nor need he share the purpose or goal behind the attack.³¹¹⁷ Factors such as the perpetrator's proximity to the area of criminal activity can be applied to infer knowledge of the crimes.³¹¹⁸ Knowledge of certain events, not necessarily every individual attack, is sufficient to warrant the conclusion that the perpetrator had notice of the wider context and nature of the crimes.³¹¹⁹

930. Clearly, in the circumstances of this case, it is proper to infer that the SRK troops, who were the instruments of the attacks on the civilian population, had the requisite intent to commit the various offences charged in the Indictment, and that they knew of the attacks on the civilian population and their acts formed part of those attacks. The circumstances were such that it must have been obvious to the SRK troops that they were targeting a civilian population.

931. For the crime of murder to be established, it must be shown that a victim died and that the victim's death was caused by an act or omission.³¹²⁰ To satisfy the *mens rea* for murder it is further

³¹¹⁶ *Kordić and Čerkez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124; *Kunarac* Appeal Judgement, paras 99, 102; *Tadić* Appeal Judgement, para. 248; *Galić* Trial Judgement, para. 140.

³¹¹⁷ *Kunarac* Appeal Judgement, paras 102, 103; *Blaškić* Appeal Judgement, para. 122; *Galić* Trial Judgement, para. 148.

³¹¹⁸ *Limaj et al.* Appeal Judgement, para. 218; *Blagojević and Jokić* Appeal Judgement, paras 66, 75-76.

³¹¹⁹ *Blagojević and Jokić* Appeal Judgement, para 102.

³¹²⁰ *Galić* Appeal Judgement, paras 147 – 149; *Kvočka et al.* Appeal Judgement, para. 261.

required that there was an act or omission, with the intention to kill (*animus necandi*) or to inflict grievous bodily harm, in the reasonable knowledge that it might lead to death.³¹²¹

932. The Trial Chamber received a great deal of evidence of incidents resulting in death which qualify as murder. This evidence includes (i) sniping by SRK troops of civilians resulting in death,³¹²² and (ii) shelling by SRK troops, resulting in death.³¹²³ An examination of this vast body of evidence satisfies the Trial Chamber that these were acts carried out by the SRK troops, resulting in death of civilians, and done with the intent to kill or cause grievous bodily harm.

5. Counts 3 and 6: Inhumane Acts

933. Under Counts 3 and 6 of the Indictment, the Accused is charged with inhumane acts, a crime against humanity, pursuant to Articles 5(i), 7(1) and 7(3) of the Statute as a consequence of conducting, as the Commander of the SRK, a co-ordinated and protracted campaign of sniping and shelling attacks upon the civilian population in Sarajevo and onto civilian areas of Sarajevo, which killed and wounded a large number of civilians of all ages and both sexes.

934. “Other inhumane acts”, as provided for in Article 5(i) of the Statute, functions as a residual category for serious crimes that are not otherwise enumerated in Article 5, but which require proof of the same chapeau elements.³¹²⁴ The particular elements of the crime of inhumane acts are: (i) there was an act or omission of similar seriousness to the other acts enumerated in Article 5; (ii) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (iii) the act or omission was performed intentionally.³¹²⁵ The Appeals Chamber in *Galić* noted that the Trial Chamber in that case pointed to “numerous acts” that qualify as “other inhumane acts”, namely, the deliberate sniping and shelling by members of the SRK forces that inflicted serious injuries on civilians.³¹²⁶

935. The *mens rea* for the crime of inhumane acts is satisfied if, at the time of the act or omission, the perpetrator had the intention to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victim, or the perpetrator knew that his or

³¹²¹ *Kvočka et al.* Appeal Judgement, para. 261.

³¹²² See *supra*, Section II.E.3. Sniping during the Indictment Period.

³¹²³ See *supra*, Section II.E.6. Shelling during the Indictment Period

³¹²⁴ *Kordić and Čerkez* Appeals Judgement, para. 117; *Martić* Trial Judgement, para. 82; *Kayishema and Ruzindana* Trial Judgement, paras 149 – 150.

³¹²⁵ *Vasiljević* Trial Judgement, para. 234, affirmed in *Vasiljević* Appeals Judgement, para. 165; *Galić* Trial Judgement, para. 152. See also, *Kordić and Čerkez* Appeals Judgement, para. 117; *Martić* Trial Judgement, para. 83; *Blagojević and Jokić* Trial Judgement, para. 626; *Krnojelac* Trial Judgement, para. 130; *Kajelijeli* Trial Judgement, paras 932 – 933; *Kayishema and Ruzindana* Trial Judgement, para. 151.

³¹²⁶ *Galić* Appeal Judgement, para. 158.

her act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity.³¹²⁷

936. The extensive evidence presented of the numerous acts of sniping and shelling of civilians and civilian areas within the confrontation lines by the SRK includes evidence from witnesses, BiH police reports, UNPROFOR and UNMO reports, such as daily situation reports, and SRK orders and reports.³¹²⁸ That evidence shows that, although there were areas that were understood to be more dangerous than others, civilians in all areas of Sarajevo were susceptible to being shot or falling victim to an attack by mortars, other artillery weapons and modified air bombs.³¹²⁹ The location of the city within hills and mountains enabled the SRK to shell it without restriction.³¹³⁰ And, in the words of Martin Bell, the “burden of the bombardment fell on the civilians trapped in the city.”³¹³¹

937. For a period of almost 15 months, civilians, including women, and boys and girls, of varying ages, were targeted by SRK snipers while at home, while gathering food, water or firewood necessary for survival, while going to work and while driving trams.³¹³² Witnesses also described being at home, involved in daily activities such as talking with neighbours or drinking coffee, at the moment a shell or bomb exploded on, or in the vicinity of, their houses.³¹³³ Market places, tram lines and water collection points were targeted with shells.³¹³⁴ As described in the findings on Count 1, the victims sustained serious injuries, which had serious physical and psychological impacts on them.³¹³⁵

938. On the basis of the evidence it has examined, the Trial Chamber is satisfied that the acts of sniping and shelling of civilians by the SRK troops caused serious mental or physical suffering to civilians within the confrontation lines and that they were acts of similar gravity to the other acts enumerated in Article 5 of the Statute. The Trial Chamber finds that, on the basis of the above factors, at the time of the acts of sniping and shelling, the members of the SRK who carried out those acts had the intent to inflict serious physical or mental suffering or to commit a serious attack upon the human dignity of the victims, or they knew that their acts were likely to cause serious physical or mental suffering or a serious attack upon human dignity.

³¹²⁷ *Galić* Trial Judgement, para. 154; *Blagojević and Jokić* Trial Judgement, para. 628. See also, *Kordić and Čerkez* Appeals Judgement, para. 117.

³¹²⁸ See *supra* Section II.E. Evidence Pertaining to Alleged “Campaign” in the Indictment Period.

³¹²⁹ See, e.g., *supra*, paras. 196 - 498, 211, 217, 227.

³¹³⁰ See *supra* paras 417, 138 - 140.

³¹³¹ See *supra*, paras 417, 420, 422; Martin Bell, 27 Apr 2007, T. 5279.

³¹³² See *supra*, Section II.E.4 in general, and in particular, paras 208 -211, 214 - 217, 225 - 228, 247 - 250.

³¹³³ See *supra*, e.g., Sections. II.E.6(b)(iii), (iv), (vi) and (xii)

³¹³⁴ See *supra*, Sections II.E.6(b)(ii), (xv) and para 423.

³¹³⁵ See *supra* paras 905, 907, 910, 913; Section II.E.7(b), (c).

6. Counts 4 and 7: Unlawful Attacks against Civilians

939. Counts 4 and 7 of the Indictment read:

“Unlawful Attacks on Civilians, a Violation of the Laws or Customs of War, punishable under Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949, and Articles 3, 7(1) and 7(3) of the Statute of the Tribunal.”

The counts allege that the Accused conducted a campaign of sniping and shelling against the civilian population and civilian areas of Sarajevo, which involved deliberate and/or indiscriminate targeting of civilians and resulted in over a thousand civilians being killed or injured. Specifically in relation to shelling, it is alleged that the shelling was excessive and disproportionate to the concrete and military advantage anticipated.³¹³⁶

(a) Attack on Civilians

940. Counts 4 and 7 of the Indictment refer to Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949, which read, in their relevant parts: “The civilian population as such, as well as individual civilians, shall not be the object of attack.”

941. This general prohibition is well-established in customary international law and is based on the principles of distinction, precaution and protection.³¹³⁷ The principle of distinction obliges warring parties to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives and ensure that operations will only be directed against military objectives.³¹³⁸ Article 57(2)(a)(ii) of Additional Protocol I requires those who plan or decide upon an attack to take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects. The principle of protection ensures that the civilian population and individual civilians enjoy general protection against dangers arising from military

³¹³⁶ Indictment, paras 24 – 25.

³¹³⁷ *Galić* Appeal Judgement para. 119, *Kordić and Čerkez* Appeal Judgement, paras 40 – 42; *Blaškić* Appeal Judgement, para. 109; *Prosecutor v. Pavle Strugar et al.*, IT-02-42-AR72, Decision on Interlocutory Appeal, 22 November 2002, para. 9; *Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 & 3, 2 March 1999, para. 31. *See also*, *Prosecutor v. Enver Hadžihasanović et al.*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005, para. 28.

³¹³⁸ *See* Article 48 of Additional Protocol I, which describes the principle of distinction as a basic rule. Additional Protocol II does not contain a similar provision.

operations.³¹³⁹ Together, these three principles form the foundation of international humanitarian law.

(b) *Actus Reus*

942. The *actus reus* of the crime of unlawful attacks on civilians is acts of violence directed against the civilian population or individual civilians causing death or serious injury to body or health within the civilian population.³¹⁴⁰

943. Article 49 of Additional Protocol I defines “attacks” as “acts of violence against the adversary, whether in offence or defence.” An “attack” is a technical term relating to a specific military operation limited in time and place, and covers attacks carried out both in offence and defence.³¹⁴¹ The case-law of the Tribunal, in relation to crimes charged under Article 5 of the Statute, has defined “attack” as a course of conduct involving the commission of acts of violence.³¹⁴² In *Galić*, the Trial Chamber held that the prohibited conduct set out in Article 51(2) of Additional Protocol I is to direct an attack, as defined in Article 49 of Additional Protocol I, against the civilian population and against individual civilians not taking part in hostilities.³¹⁴³

944. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II clearly state that civilians and the civilian population should not be the object of attacks. There is an unconditional and absolute prohibition on the targeting of civilians in customary international law.³¹⁴⁴ Therefore, *any* attack directed at the civilian population is prohibited, regardless of the military motive.

945. The meaning of “civilian” is defined in Article 50(1) of Additional Protocol I, which reads:

“A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention³¹⁴⁵ and in Article 43 of this Protocol.³¹⁴⁶
In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”

³¹³⁹ See Article 51(1) of Additional Protocol I and Article 13(1) of Additional Protocol II.

³¹⁴⁰ *Galić* Trial Judgement, para. 56.

³¹⁴¹ ICRC Commentary, para. 4783, as quoted in *Galić* Trial Judgement, para. 52.

³¹⁴² *Kunarac et al.* Trial Judgement, para. 415; *Krnjelac* Trial Judgement, para. 54. See also, *Galić* Trial Judgement, para. 52.

³¹⁴³ *Galić* Trial Judgement, paras 53 and 56. See also, *Galić* Appeal Judgement, paras 129-138.

³¹⁴⁴ *Blaškić* Appeal Judgement, para. 109; *Kordić and Čerkez* Appeal Judgement, para. 54.

³¹⁴⁵ Article 4 of Geneva Convention III states: A. Prisoners of war, in the sense of the present Convention, are persons belonging to the one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly;

That is, the term “civilian” is defined negatively, to include any person who is not a member of the armed forces or an organised military group belonging to a party to the conflict.³¹⁴⁷ In some circumstances it may be difficult to ascertain whether a person is a civilian.

946. The generally accepted practice is that combatants distinguish themselves by wearing uniforms, or, at the least, a distinctive sign, and by carrying their weapons openly.³¹⁴⁸ Other factors that may help determine whether a person is a civilian include his or her clothing, activity, age or sex.³¹⁴⁹ In cases of doubt whether a person is a civilian, that person shall be considered to be a civilian.³¹⁵⁰ As stated in the Commentary on Additional Protocol I, the presumption of civilian status applies to:

“[p]ersons who have not committed hostile acts, but whose status seems doubtful because of the circumstances. They should be considered to be civilians until further information is available, and should therefore not be attacked.”³¹⁵¹

947. The protection afforded to individual civilians by Article 51 of Additional Protocol I continues until such time as civilians take a direct part in hostilities.³¹⁵² There is a need to distinguish between direct participation in hostilities and participation in the war effort.³¹⁵³ To take direct part in hostilities means to engage in acts of war which, by their nature or purpose, are likely to cause actual harm to the personnel or matériel of the enemy armed forces.³¹⁵⁴ A civilian who takes part in armed combat loses his or her immunity and becomes a legitimate target.³¹⁵⁵

948. To constitute a violation of the prohibition of attacks against civilians, the attack must be directed at individual civilians or the civilian population.³¹⁵⁶ In this regard, the Appeals Chamber has held that whether an attack is so directed can be inferred from many factors, including the

(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.

³¹⁴⁶ Article 43 (1) of Additional Protocol I states:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

³¹⁴⁷ *Galić* Trial Judgement, para. 47.

³¹⁴⁸ See Article 44 (7) Additional Protocol I; *Galić* Trial Judgement, para. 50.

³¹⁴⁹ *Galić* Trial Judgement, para. 50.

³¹⁵⁰ Article 50(1) of Additional Protocol I.

³¹⁵¹ ICRC Commentary, para. 1920.

³¹⁵² Article 51(3) of Additional Protocol I. See also, Article 13(3) of Additional Protocol II.

³¹⁵³ ICRC Commentary, para. 1945.

³¹⁵⁴ ICRC Commentary, para. 1944.

³¹⁵⁵ ICRC Commentary, para. 1944.

³¹⁵⁶ *Galić* Appeal Judgement, paras 132, 133; *Galić* Trial Judgement, paras 57, 60.

means and method used in the course of the attack, the status and number of the victims, the nature of the crimes committed, the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war and the indiscriminate nature of the weapon used.³¹⁵⁷

949. The parties to a conflict are under an obligation to remove civilians, to the maximum extent feasible, from the vicinity of military objectives and to avoid locating military objectives within or near densely-populated areas.³¹⁵⁸ 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.³¹⁵⁹

950. The unlawful attack must have resulted in death or serious injury to body or health within the civilian population.³¹⁶⁰

(c) *Mens Rea*

951. The Prosecution must establish that the Accused wilfully made the civilian population or individual civilians the object of acts of violence.³¹⁶¹ Article 85 of Additional Protocol I describes the intent required for the application of the first part of Article 51(2). It qualifies as a grave breach the act of wilfully “making the civilian population or individual civilians the object of attack”.³¹⁶² According to the Commentary on Article 85 of Additional Protocol I, the term “wilfully”:

“*wilfully*: the accused must have acted consciously and with the intent, i.e., with his mind on the act and its consequences, and willing them (“criminal intent” or “malice aforethought”); this encompasses the concepts of “wrongful intent” or “recklessness”, viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., where a man acts without having his mind on the act or its consequences.”³¹⁶³

As confirmed by the *Galić* Appeals Chamber, the notion of “wilfully” incorporates the concept of recklessness, whilst mere negligence is excluded.³¹⁶⁴

952. In order to establish the *mens rea* for the offence, it must be shown that the perpetrator was aware or should have been aware of the civilian status of the persons attacked. In cases of doubt, the

³¹⁵⁷ *Galić* Appeal Judgement, para. 132. See also, *Kunarac et al.* Appeal Judgement, para. 91; *Blaškić* Appeal Judgement, para. 106.

³¹⁵⁸ See Article 58 of Additional Protocol I.

³¹⁵⁹ *Galić* Appeal Judgement, para. 133, confirming *Galić* Trial Judgement, para. 60.

³¹⁶⁰ *Blaškić* Trial Judgement, para. 180; *Kordić and Čerkez* Trial Judgement, para. 328, confirmed in *Kordić* Appeal Judgement, paras 57, 67; *Galić* Trial Judgement, para. 43.

³¹⁶¹ *Galić* Trial Judgement, para. 56, approved in *Galić* Appeal Judgement, para. 140.

³¹⁶² Article 85 (3) of Additional Protocol I.

³¹⁶³ ICRC Commentary, para. 3474, *Galić* Appeal Judgement para. 140, confirming *Galić* Trial Judgement, para. 54.

³¹⁶⁴ *Galić* Appeal Judgement para. 140, confirming *Galić* Trial Judgement, para. 54.

Prosecution must show that, in the given circumstances, a reasonable person could not have believed that the individual he or she attacked was a combatant.³¹⁶⁵

953. The Trial Chamber recalls its finding that the crime of terror shares the same elements with the crime of unlawful attacks against civilians, except for the additional requirement that to constitute terror it must be established that the acts were committed with the primary purpose of spreading terror among the civilian population. It follows, therefore, that the acts which the Trial Chamber found to have constituted terror must *a fortiori* also constitute unlawful attacks against civilians and civilian population, and the Trial Chamber so finds.

B. Individual Criminal Liability of the Accused

954. All the counts charge the Accused with responsibility under Article 7(1) and 7(3) of the Statute. Article 7(1) of the Statute provides:

“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.”

The Accused is charged with planning, ordering, or in the alternative, aiding and abetting the crimes.

955. In order to establish individual criminal responsibility for planning, ordering or aiding and abetting of a crime, proof is required that the crime in question has actually been committed by the principal perpetrator(s) (“the underlying crime”).³¹⁶⁶ If the underlying crime has been established, the Trial Chamber will assess the individual criminal responsibility of the Accused for that crime.

956. Planning is established when it is proven that one or more persons contemplated the commission of one or more crimes provided for in the Statute, which were later perpetrated.³¹⁶⁷ If a person is convicted of having committed a crime, his involvement in the planning of the crime can only be considered as an aggravating factor.³¹⁶⁸

957. Ordering requires that a person in a position of authority, whether *de jure* or *de facto*, instructs another person to commit a crime.³¹⁶⁹ This authority may be proved expressly or may be reasonably implied from the evidence.³¹⁷⁰

³¹⁶⁵ *Galić* Trial Judgement, para. 55.

³¹⁶⁶ *See Brdanin* Trial Judgement, para. 267, with further references.

³¹⁶⁷ *Kordić and Čerkez* Appeal Judgement, para. 26.

³¹⁶⁸ *Kordić and Čerkez* Trial Judgement, para. 386; *Stakić* Trial Judgement, para. 443.

³¹⁶⁹ *Kordić and Čerkez* Appeal Judgement, para. 28; *Gacumbitsi* Appeal Judgement, para. 182; *Brdanin* Trial Judgement, para. 270.

958. The *mens rea* for the modes of liability of planning and ordering requires that the perpetrator must have acted or omitted to act with direct intent or indirect intent in relation to their own planning or ordering.³¹⁷¹ In the latter instance of indirect intent, a perpetrator who orders or plans an act or omission with an awareness of the substantial likelihood that a crime will be committed in the execution of the order or plan has the requisite *mens rea* for establishing responsibility under Article 7(1) in relation to ordering or planning. Planning or ordering with such awareness has to be regarded as accepting that crime.³¹⁷²

1. Findings on Planning and Ordering

959. It was not in dispute that the Accused was the *de jure* commander of the SRK during the Indictment period. The evidence showed that, at least as far as the theatre of Sarajevo was concerned, the Accused was in command over the SRK troops. The evidence further showed that he held a “tight chain of command” within the SRK. According to Maj. Stevan Veljović, testifying for the Defence, the SRK operations centre verified whether orders were carried out. There was a strong reporting chain in place. Evidence in the form of orders and requests showed that the Accused was actively engaged in a number of matters, including the levels of ammunition and the selection of individual members of the SRK for sniper training. In addition, several Defence witnesses confirmed that the Accused was highly respected by his subordinates, who were very disciplined and followed his orders.³¹⁷³

960. There is evidence that the Accused did not devise a strategy for Sarajevo on his own. Clearly, the Main Staff of the VRS and Gen. Mladić were also involved in decisions as to the military strategy of the VRS and the SRK. However, the evidence shows that the Accused was able to implement the greater strategy in a manner he saw fit. The evidence also shows that the Accused decided on the deployment of weapons, for example, on the placement of artillery batteries and movement of modified air bomb launchers.

961. There is an abundance of evidence that the Accused acted in furtherance of orders by the VRS Main Staff, for example, with respect to orders pertaining to UNPROFOR. Within his authority as Commander of the SRK, the Accused issued orders that prohibited attacks against UNPROFOR, but also ordered attacks on UNPROFOR. Whether those orders to attack UNPROFOR were the result of a revised strategy by the Main Staff is immaterial. The Accused relayed those orders to his own troops.

³¹⁷⁰ *Brdanin* Trial Judgement, para. 270; *Limaj et al.* Trial Judgement, para. 515.

³¹⁷¹ *Kordić and Čerkez* Appeal Judgement, paras 29 – 32.

962. The evidence indicated quite clearly that the Accused was in charge of sniping activities and the only reasonable inference to be drawn is that he planned and ordered those activities. For example, one of the first actions taken by the Accused, when he became Commander of the SRK, was to sign the Anti-sniping Agreement of 14 August 1994. He had been involved in the negotiations of this agreement prior to being appointed SRK Commander. The evidence demonstrated that this agreement was implemented to some extent. The fact that sniping occurred over an extended period of time in different areas of Sarajevo on territory under the control of different SRK brigades, shows, in the Trial Chamber's view, that the operation of snipers was coordinated at the SRK command level, that is, by the Accused. In addition, the Trial Chamber recalls the evidence that the Accused issued numerous orders relating to training, equipment and the deployment of snipers. Although the Trial Chamber was not presented with any written order of the Accused unequivocally ordering the sniping of civilians, the evidence shows that SRK snipers did not operate in a random manner, and the Trial Chamber is satisfied that the entire sniping campaign was under the control of the Accused. Other examples of planning and ordering by the Accused are an order to stop sniping, and an order for combat readiness and to draw up a firing plan onto the Old Town.

963. Many orders of the Accused, in which he decided on the placement of mortars and in which he specified the areas these mortars were to engage, show that within the SRK, it was the Accused who decided on the use of mortars and the methods of shelling.

964. There are several orders in evidence, in which the Accused requested air bombs, sometimes in large numbers, or in which he ordered that precise quantities of air bombs be issued to various SRK brigades. He also ordered the construction of launchers of modified air bombs.³¹⁷⁴ The Accused stated in a report that air bomb launchers "are used throughout the SRK zone of responsibility as required and as decided by the SRK commander."³¹⁷⁵ There is abundant evidence of the Accused planning and ordering the shelling of civilian areas, including, in particular, the TV Building and the shelling of Hrasnica on 7 April 1995.³¹⁷⁶

965. There is also evidence of ordering and planning by the Accused that calls for special attention. On the one hand, there is an abundance of evidence of a campaign of sniping and shelling

³¹⁷² *Kordić and Čerkez* Appeal Judgement, paras 29 – 32. The Trial Chamber notes that the Appeals Chamber has not identified this element for the mode of liability of "committing".

³¹⁷³ *See supra*, paras 801 - 804 and Section II.F(a).

³¹⁷⁴ P722, Request by the SRK Commander, 17 July 1995. *See also*, P767, Request for ammunition, dated 22 June 1995; P768, Order issuing SRK units with air bombs, 24 August 1995; P714, Requisition of 50 air bombs, 4 June 1995: FAB-105 and FAB-250 were to be issued to the Rajlovac Infantry Brigade, to the Ilijaš Infantry Brigade, to the Ilidža Infantry Brigade, the Igman Infantry Brigade and to the 3rd Sarajevo Infantry Brigade and to the SRK reserve.

³¹⁷⁵ P663, Report from SRK command, 15 June 1995.

³¹⁷⁶ *See supra*, Section II.E.6(b) (iii) and (xi).

carried out consistently throughout the Indictment period by the SRK forces of which the Accused was the commander. On the other hand, some evidence has been presented that on a number of occasions during his visits to the troops, the Accused instructed his men on the confrontation line to abide by the Geneva Conventions and not to shoot at civilians. On one particular occasion, on 1 October 1995, he issued an order not to shoot at civilians. In addition, there is also evidence that there were instructions to adhere to the COHA.³¹⁷⁷ The issue is the impact of the latter three pieces of evidence on a finding by the Trial Chamber that the Accused ordered and planned the crimes charged; in particular, does that evidence contradict a finding of having ordered and planned? In approaching this question, the Trial Chamber must have regard to the burden that is placed on the Prosecution to establish the charges beyond reasonable doubt.

966. The Trial Chamber considers that it must examine the evidence of the two sets of circumstances as a whole and ask itself whether, at the end of the day, it is satisfied beyond reasonable doubt that the Accused planned and ordered the campaign. In doing so, the Trial Chamber must determine what weight is to be attached to the various items of evidence. It disregards the evidence that, in October 1995, the Accused issued an order prohibiting sniping, because that order was issued virtually at the end of the conflict. It is observed that the last incident charged in the Indictment occurred on 28 August 1995 and the Dayton Accords were signed a month later. The Trial Chamber does not disregard the evidence that the Accused, on certain occasions, instructed his soldiers to abide by the Geneva Conventions and not to shoot civilians or that there were instructions to adhere to the COHA. However, an examination of the evidence in its totality obliges the Trial Chamber to look at the vast body of evidence as to the campaign of shelling and sniping. When the Trial Chamber does that, it sees a design, a consistency and a pattern that is only explicable on the basis of a system characterised by a tight command and control. The evidence shows that the Accused was in command and control of his troops, who carried out this campaign of sniping and shelling. The Trial Chamber need only mention the order to shell Hrasnica with a modified air bomb and his acknowledgement of success of the SRK troops in shelling the TV Building.³¹⁷⁸ The Trial Chamber is convinced that, notwithstanding the evidence of the above-mentioned instructions and orders, the campaign was such that not only must it have had the consent of the Accused, but it must also have been carried out on his instructions and orders.

967. As far as the crime of terror is concerned, the Trial Chamber recalls that the Prosecution must prove that the Accused had a specific intent to spread terror among a civilian population.³¹⁷⁹

³¹⁷⁷ See *supra*, paras 837 - 840.

³¹⁷⁸ See *supra*, Sections II.E.6(b)(iii) and (xi)

³¹⁷⁹ See *supra*, Section III.A.2(b) The Crime of Terror.

The Trial Chamber recalls its finding that the members of the SRK acted with the specific intent to spread terror. With regard to the intent of the Accused, the Trial Chamber notes the prolonged period over which the civilian population of Sarajevo was under attack. The evidence led in this case shows that the civilian population of Sarajevo had been subjected to shelling and sniping under the command of Gen. Galić for about 24 months. The widespread nature of these crimes must have put the Accused on notice about the involvement of SRK troops in these crimes and the effects of these crimes on the civilians inside the confrontation lines. When he became SRK Commander, the Accused knew that the continuation of sniping and shelling under his command would further increase the suffering and despair of the civilian population. Nevertheless, he continued the sniping and shelling of civilians and civilian area over a period of another 15 months.

968. In Gen. Rupert Smith's view, the shelling and sniping of civilian areas and civilians in Sarajevo was "essentially to terrorise, to wear down the resolve of the defender, to hold the presence of the Serb pressure evidently in the minds of people on a daily basis." His evidence was supported by other witnesses who were deployed with UNPROFOR in Sarajevo during the Indictment period. One witness described the SRK activities under the command of the Accused as "more subtle", "more precise" and "more dangerous" than during the time of Gen. Galić.³¹⁸⁰

969. As the evidence showed, trams and buses were a particular focus of the sniping activity during the Indictment period. Trams and buses only ran during cease-fires. The Accused must have known that the resumption of public transport was an encouraging sign for the civilian population in Sarajevo, and he also knew that targeting of trams and buses would have a particularly devastating psychological effect.

970. The use of the modified air bombs is another clear indication of the Accused's intent to spread terror. The highly destructive force and the psychological effects these bombs had on the civilian population were obvious to anyone. The decision by the Accused to use modified air bombs against civilian targets can, therefore, only be interpreted as demonstrating the intent to spread terror.

971. The evidence shows that the shelling was indiscriminate, and aimed at causing the maximum amount of casualties.³¹⁸¹ In addition, there was sometimes a delay between the first and later shells, which, according to witnesses, was to terrorise the civilian population, because they could never be sure when the shelling would stop.

³¹⁸⁰ Ismet Hadžić, 6 Mar 2007, T. 3236, 3260.

³¹⁸¹ See *supra*, paras 905, 907.

(a) Defence of “Alibi”

972. Evidence was presented to the Trial Chamber indicating that at the beginning of August 1995, the Accused left Sarajevo for Belgrade, where he received treatment for an injury to his right eye. He was discharged from hospital on 21 August 1995 and he returned to Sarajevo in early September 1995.³¹⁸² At the time when the shelling of the Markale Market took place, on 28 August 1995, the Accused was, therefore, not present in the area of Sarajevo.

973. The Defence, for the period from 6 August to 10 September 1995, “enters the defence of alibi since in the relevant period he was not on the sites where the crimes he is charged with in the Indictment were committed and since all the command responsibilities in the Sarajevo Romanija Corps were taken over by Mr Čedo Sladoje.”³¹⁸³ In its closing arguments, the Defence submitted that, as the Accused “was unable to carry out that duty de facto at the time, he cannot be held responsible [...]”³¹⁸⁴

974. The Prosecution, in its Final Brief, dismissed “the claim by the Defence” that the Accused was not responsible for the Markale Market II incident, arguing:

“The massacre of 28 August 1995 was the result of the continued operation of a campaign that the Accused commanded for a long time before he left for Belgrade. That this terror campaign continued in the absence of the Accused is not exculpatory of the Accused; to the contrary it is inculpatory, as it shows what a thorough job the Accused had done of integrating the terror campaign into the SRK’s operations.”³¹⁸⁵

975. The Indictment against the Accused is typical of the indictments laid by the Prosecution in leadership cases in this Tribunal. The essence of those cases is that the accused, who is in a position of leadership, planned and ordered the commission of the crime. Those cases do not proceed on the basis that, to employ the phrase used by the Appeals Chamber in *Galić*, the Accused “personally, physically” committed the crimes.³¹⁸⁶ There is an abundance of evidence in this case showing that the Accused not only planned and ordered the campaign of sniping and shelling, but also that this campaign was characterised by a degree of consistency and pattern which was only achievable under the leadership of a person who was in full control of the SRK troops. The Trial Chamber has already examined evidence that shows that the Accused held a tight chain of command. In such a situation, therefore, the mere absence of the Accused from the site of the execution of the crimes and the fact that his responsibilities had been taken over by the SRK Chief of Staff Čedomir Sladoje

³¹⁸² See *supra* para. 830.

³¹⁸³ Defence Pre-Trial Brief, 27 February 2006, para. 10.

³¹⁸⁴ Defence Closing Arguments, 10 Oct 2007, T. 9546, 9564 – 9565.

³¹⁸⁵ Prosecution Closing Brief, para. 470. See also, Prosecution Closing Arguments, 9 Oct 2007, T. 9434, 9436 – 9437; Defence Closing Arguments, 10 Oct 2007, T. 9559.

³¹⁸⁶ *Prosecutor v Stanislav Galić*, Case No. IT-98-29-AR-73.2, “Appeals Chamber Decision on Interlocutory Appeal concerning Rule 92 bis (C)”, dated 7 June 2002, para. 10(a).

would not relieve him of responsibility, if the Trial Chamber is otherwise satisfied that the crimes that took place in his absence formed part of the campaign of sniping and shelling that he had planned and ordered.

976. The Trial Chamber observes that his period of absence from Sarajevo was not very long. It was not three months or six months; it was, in fact, only five weeks. When that factor is placed alongside the finding that the shelling and sniping that took place in that period fell squarely within the overall pattern of the campaign, the Trial Chamber is in a position to infer that those activities were planned and ordered by the Accused.

977. The Trial Chamber also notes that the short period of the Accused's absence falls in the latter part of his tenure as SRK Commander. By the summer of 1995, the shelling and sniping was already being conducted on the orders of the Accused for approximately one year. The evidence further shows that there was an increase in the level of fighting in March and April 1995 and from June 1995 onwards, as a result of ABiH offensives. The response of the Accused to those offensives was to shell civilian areas within the confrontation lines. During the Accused's absence in August and at the beginning of September 1995, the shelling and sniping of civilian areas continued in the same manner as before. The Trial Chamber finds that the ongoing shelling of civilian areas in August and early September 1995 falls squarely within the overall plan and general orders of the Accused and, accordingly, dismisses the defence of alibi.

(b) Conclusions

978. The Trial Chamber has no doubt that the orders by the Accused to target civilians in Sarajevo formed part of a strategy, a plan, to continue the shelling and sniping of civilians in Sarajevo which commenced under the Accused's predecessor Gen. Galić. The scheduled and unscheduled incidents are not single incidents or sporadic occurrences; rather, they fit in a pattern of shelling and sniping contemplated and implemented by the Accused during his tenure as Commander of the SRK. The Trial Chamber cannot but conclude that the Accused intended to plan and order the shelling and sniping of civilians and civilian areas of Sarajevo. The Trial Chamber is also satisfied that the Accused ordered and planned the shelling and sniping of the civilian population and individual civilians in Sarajevo with the intent to spread terror among that population.

979. On the basis of the analysis of the evidence, the Trial Chamber finds that the Accused ordered and planned terror, as charged under Count 1, ordered and planned murder as charged under Counts 2 and 5, ordered and planned inhumane acts, as charged under Counts 3 and 6, and

unlawful attacks against civilians, as charged under Counts 4 and 7. This finding makes it unnecessary to consider aiding and abetting.

980. The incidents that the Trial Chamber has found not to be proven do not in any way affect its findings on the responsibility of the Accused for the crimes charged in the Indictment.

981. In light of the finding that the Accused ordered and planned terror, the Trial Chamber will not enter a conviction for the crime of unlawful attacks against civilians, as charged under Counts 4 and 7 of the Indictment.

2. Has the Prosecution Charged the Individual Criminal Responsibility of the Accused under Article 7(3) of the Statute as an Alternative to his Liability under Article 7(1) of the Statute?

982. Paragraph 21 of the Indictment provides that pursuant to Article 7(3) of the Statute, “Dragomir Milošević is also criminally responsible for the crimes in this Indictment [...]” This would seem to indicate that the charge under Article 7(3) is not an alternative to liability under Article 7(1), but is in addition to that liability. Counts 1 to 7 all charge the Accused with responsibility for the crimes, punishable under, *inter alia*, Articles 7(1) and 7(3) of the Statute, indicating that the Accused is charged under both Article 7(1) and 7(3).

983. However, paragraph 448 of the Prosecution’s Closing Brief states that the Accused is criminally responsible under Article 7(1) “and, also in the alternative, even though Gen. Milošević was in effective control of the SRK and knew of the crimes being committed, he did not take reasonable and necessary steps either to prevent the crimes or punish those who committed them, which makes him guilty under Article 7(3) of the Statute.” Paragraph 537 of the Prosecution’s Closing Brief also states that, “in the alternative, Gen. Milošević is criminally responsible under 7(3) of the Statute.” The Closing Brief would, therefore, seem to make clear that the Accused is charged under Article 7(1), and alternatively under Article 7(3). The Prosecution’s Closing Arguments also refer to Article 7(3) in the alternative to Article 7(1).³¹⁸⁷

984. There is a conflict between the Indictment, on the one hand, and the Prosecution’s Closing Brief and Closing Arguments on the other, as to whether the Accused is charged under Article 7(3) alternatively to, or in addition to, Article 7(1). However, in light of the finding of guilt under Article

³¹⁸⁷ Prosecution Closing Arguments, 9 Oct 2007, T. 9424.

7(1), it is not necessary to consider the Accused's responsibility under Article 7(3) of the Statute.³¹⁸⁸

IV. SENTENCING

985. The Trial Chamber found the Accused guilty of planning and ordering the crimes of terror, under Count 1, murder, under Counts 2 and 4 and inhumane acts, under Count 3 and 5. For a determination of a sentence, the Trial Chamber must examine the applicable law on this matter.

986. The relevant provisions concerning sentencing are set out in Article 24 of the Statute and Rule 101 of the Rules. These provisions set forth factors to be taken into consideration by a Trial Chamber when it is determining a sentence.³¹⁸⁹

987. The case-law of the Tribunal has consistently held that the main purposes of sentencing for crimes within the jurisdiction of the Tribunal are deterrence and retribution.³¹⁹⁰ In addition, a third purpose of sentencing is rehabilitation which, while it may be considered a relevant factor, "is not one which should be given undue weight".³¹⁹¹

988. The Trial Chamber observes that in *Galić*, the Appeals Chamber overturned Gen. Galić's sentence of 20 years and increased it to a term of life imprisonment. This Trial Chamber does not construe that decision as restricting the exercise of its discretion in the sentence to be imposed in this case; that decision relates to a different accused in a different set of circumstances, and the paramount consideration in sentencing is that the sentence must fit the individual circumstances of the convicted person.

1. Gravity and Individual Circumstances of the Convicted Person

989. Article 24(2) of the Statute provides that in imposing sentences, Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person. The Appeals Chamber has held that the gravity of the offence is a primary consideration in imposing a sentence.³¹⁹² There is no hierarchy of crimes within the jurisdiction of

³¹⁸⁸ *Blaškić* Appeal Judgement, para. 91; *Krštić* Trial Judgement, paras 605, 652, endorsed by Appeals Chamber in *Krštić* Appeal Judgement, fn. 250; *Kordić and Čerkez* Appeal Judgement, para. 34; *Kvočka et al.* Appeal Judgement, para. 104; *Kajelijeli* Appeal Judgement, paras 81, 82; *Naletilić and Martinović* Appeal Judgement, para. 368.

³¹⁸⁹ *Krštić* Appeal Judgement, paras 241 – 242; *Jelisić* Appeal Judgement, para. 101; *Čelebići* Appeal Judgement, paras 715, 717, 718, 780. See also, *Kambanda* Appeal Judgement, para. 124; *Furundžija* Appeal Judgement, para. 238; *Martić* Trial Judgement, para. 481.

³¹⁹⁰ *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185. See also, *Furundžija*, Trial Judgement, para. 288; *Tadić* Sentencing Trial Judgement, paras 7 – 9; *Zelenović* Sentencing Trial Judgement, para. 31.

³¹⁹¹ *Čelebići* Appeal Judgement, para. 806. See also, *Deronjić* Sentencing Appeal Judgement, paras 135 – 137; *Stakić* Appeal Judgement, para. 402.

³¹⁹² *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731; *Kupreškić et al.* Appeal Judgement, para. 442. See also, *Aleksovski* Appeal Judgement, para. 182; *Martić* Trial Judgement, para. 485.

the Tribunal.³¹⁹³ Sentences must reflect the inherent gravity or totality of the criminal conduct of the accused, requiring a consideration of the particular circumstances of the case, as well as the form and degree of the participation of the accused in the crime.³¹⁹⁴

990. The Appeals Chamber has also held that the consequences of the crime upon the victims directly injured, namely the extent of the long-term physical, psychological and emotional suffering of the victim, is always relevant to sentencing.³¹⁹⁵ Further factors, such as the effects of the crime on relatives of the immediate victims, may also be considered.³¹⁹⁶

991. The Accused is convicted of planning and ordering the crimes of terror, murder and inhumane acts. All of these crimes are very serious and were committed during a campaign of sniping and shelling over a period of 14 months. The civilian population in Sarajevo was virtually completely encircled and had only limited possibilities of leaving the city, so as to remove themselves from the hazardous and threatening circumstances. In effect, the civilian population was trapped inside the confrontation lines and the Trial Chamber has, in fact, found that Sarajevo was besieged. The behaviour of the SRK troops was characterised by indiscriminate shelling of civilian areas and sniping of civilians and civilian objects in the besieged city. As a result of the sniping and shelling, many civilians in Sarajevo were killed or seriously injured.

992. The crime of terror is a specific crime, with an intent that is particularly indicative of a disregard for human life and integrity. The acts of the SRK troops were geared to striking persons at the very core of their being, by instilling a sense of insecurity and fear that affected every aspect of their lives. The civilians in Sarajevo were subjected to acts of violence that were aimed at depriving them of any sense of security. The evidence shows that they suffered immensely as a result of the campaign of sniping and shelling.

993. The evidence also shows that the SRK succeeded in spreading the terror it intended to cause. The resulting suffering of the civilian population is an element of the crime of inhumane acts and is relevant for an assessment of the gravity of the crimes. As described by many witnesses, there was no safe place to be found in Sarajevo; one could be killed or injured anywhere and anytime. W-107 stated that her daughters often returned from collecting water or firewood and “I would find that they had soiled their clothes because of the fear that they had.”³¹⁹⁷ Another witness described how

³¹⁹³ *Stakić* Appeal Judgement, para. 375.

³¹⁹⁴ *Galić* Appeal Judgement, para. 409; *Blaškić* Appeal Judgement, para. 683, citing *Furundžija* Appeal Judgement, para. 249. See also, *Čelebići* Appeal Judgement paras 731, 769; *Stakić* Trial Judgement, para. 903.

³¹⁹⁵ *Blaškić* Appeal Judgement, para. 683; *Krnojelac* Trial Judgement, para. 512. See also, *Zelenović* Sentencing Trial Judgement, para. 38; *Češić* Sentencing Trial Judgement, para. 32; *Babić* Sentencing Trial Judgement, para. 47.

³¹⁹⁶ *Blaškić* Appeal Judgement, para. 683; *Krnojelac* Appeal Judgement, para. 260. See also, *Čelebići* Trial Judgement, para. 1226.

³¹⁹⁷ D116, Statement by W-107, p. 5 (under seal).

the civilians in Sarajevo lived under “the constant threat of death.”³¹⁹⁸ The terror and suffering that was caused in this case left the victims with physical and mental scars that even twelve years later have not disappeared; it is very likely that these scars will never disappear.

994. By planning and ordering the crimes of terror, murder and inhumane acts, the Accused made the entire civilian population of Sarajevo the direct target of countless acts of violence, and acted in direct breach of the basic principles of international humanitarian law.

2. Aggravating and Mitigating Factors

995. The Statute and the Rules require the Trial Chamber to take into account both aggravating and mitigating circumstances when imposing a sentence.³¹⁹⁹ Factors which a Trial Chamber takes into account as aspects of the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances, and vice versa.³²⁰⁰

(a) Aggravating Circumstances

996. Aggravating circumstances must be proved by the Prosecution beyond reasonable doubt.³²⁰¹ Such factors include: (i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict of the former Yugoslavia;³²⁰² (ii) the length of time during which the crime continued;³²⁰³ (iii) active and direct criminal participation, if linked to a high-rank position of command,³²⁰⁴ and the active participation of a superior in the criminal acts of subordinates;³²⁰⁵ (iv) premeditation and motive;³²⁰⁶ (v) the violent, and humiliating nature of the acts and the vulnerability of the victims;³²⁰⁷ (vi) the status of

³¹⁹⁸ W-57, P539, p. 4 (under seal).

³¹⁹⁹ See *supra*, Article 24 of the Statute and Rule 101 of the Rules; *Čelebići* Appeal Judgement, para. 717.

³²⁰⁰ *Deronjić* Sentencing Appeal Judgement, para. 106, citing *Krnojelac* Trial Judgement, para. 517; *Plavšić* Sentencing Trial Judgement, para. 58; *Banović* Sentencing Trial Judgement, para. 53. See also, *Momir Nikolić* Sentencing Appeal Judgement, para. 58.

³²⁰¹ *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763.

³²⁰² *Blagojević and Jokić* Appeal Judgement, para. 324; *Galić* Appeal Judgement, para. 412; *Blaškić* Appeal Judgement, para. 686, citing *Jokić* Sentencing Trial Judgement, paras 61 – 62. The Appeals Chamber in *Stakić* noted that “in considering the superior position in connection with Article 7(1), the Appeals Chamber recalls that it is settled in the jurisprudence of the Tribunal that superior position itself does not constitute an aggravating factor. Rather it is the abuse of such position which may be considered an aggravating factor,” *Stakić* Appeal Judgement, para. 411, citing *Kayishema and Ruzindana* Appeal Judgement, paras 358 – 359.

³²⁰³ *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Appeal Judgement, para. 356; *Todorović* Sentencing Trial Judgement, para. 65.

³²⁰⁴ *Blaškić* Appeal Judgement, para. 686, referring to *Krstić* Trial Judgement, para. 708.

³²⁰⁵ *Blaškić* Appeal Judgement, para. 686, referring to *Čelebići* Appeal Judgement, paras 736 – 737.

³²⁰⁶ *Blaškić* Appeal Judgement, para. 686, referring to *Krstić* Trial Judgement, paras 711 – 712. See also, *Krstić* Appeal Judgement, para. 258.

³²⁰⁷ *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Trial Judgement, para. 867; *Kunarac et al.* Appeal Judgement, para. 352. See also, *Zelenović* Sentencing Trial Judgement, para. 39.

the victims, their age and number, and the effect of the crimes on them;³²⁰⁸ (vii) the character of the accused;³²⁰⁹ and (viii) the circumstances of the offences generally.³²¹⁰

997. The Prosecution submitted that the physical and psychological suffering of the victims and the Accused's position of authority should be taken into consideration as aggravating circumstances. The Defence did not respond to the Prosecution's submissions.

998. On the basis of the evidence the Trial Chamber takes into consideration the following circumstances as aggravating the culpability of the Accused.

999. First, the Accused was the Commander of the SRK, the corps that conducted a protracted campaign of sniping and shelling of civilians, civilian areas and the civilian population of Sarajevo. The Accused was a career officer and served as the Chief of Staff of the SRK before becoming its commander. As corps commander, he held one of the highest positions within the VRS, and was directly subordinated to the highest organ of the VRS, the Main Staff. The evidence showed that the Accused was highly respected by the officers and soldiers of the SRK. The Accused had a special responsibility to uphold the standards of international humanitarian law. The Trial Chamber considers that the Accused's position as commander of the SRK obligated him to prevent the commission of crimes and to ensure that the troops under his command conducted themselves with respect for international humanitarian law. However, the evidence presented to the Trial Chamber shows that the Accused abused his position and that he, through his orders, planned and ordered gross and systematic violations of international humanitarian law.

1000. Second, the Accused willingly continued the campaign for over a year. By his planning and ordering the continuation of the sniping and shelling of civilians and civilian areas, he played a very active role in the commission of the crimes.

1001. Moreover, the Accused introduced to the Sarajevo theatre, and made regular use of, a highly inaccurate weapon with great explosive power: the modified air bomb. It is plain from the evidence that the indiscriminate nature of these weapons was known within the SRK. The modified air bombs could only be directed at a general area, making it impossible to predict where they would strike. Each time a modified air bomb was launched, the Accused was playing with the lives of the civilians in Sarajevo. The psychological effect of these bombs was tremendous. As one witness testified, referring to the modified air bombing in Sokolovići, the inhabitants of that settlement "could have coped" with the sniping and shelling of the neighbourhood "until the air bomb landed

³²⁰⁸ *Blaškić* Appeal Judgement, para. 686, referring to *Kunarac et al.* Trial Judgement, paras 864, 866; *Kunarac et al.* Appeal Judgement, para. 355. *See also, Zelenović* Sentencing Trial Judgement, para. 40.

³²⁰⁹ *Blaškić* Appeal Judgement, para. 686, referring to *Čelebići* Appeal Judgement, para. 788.

on 23 July 1995.”³²¹¹ The repeated use of the blatantly inaccurate modified air bombs is an aggravating factor.

(b) Mitigating Circumstances

1002. Mitigating factors have to be proven “on a balance of probabilities”, that is, “the circumstance in question must have existed ‘more probably than not’.”³²¹² Factors to be taken into account may include the following: (i) an expression of remorse;³²¹³ (ii) voluntary surrender;³²¹⁴ (iii) good character with no prior criminal convictions;³²¹⁵ (iv) comportment in detention;³²¹⁶ (v) personal and family circumstances;³²¹⁷ (vi) the character of the accused subsequent to the conflict;³²¹⁸ and (vii) age.³²¹⁹ With regard to the method for calculating the impact on a sentence of mitigating circumstances, the Appeals Chamber has held that, “any modification of sentence needs to be assessed in light of all the circumstances of the case and cannot be limited to a simple mathematical diminution of sentence otherwise to be imposed.”³²²⁰

1003. The Prosecution submitted that there were no circumstances “that mitigate the culpability of the Accused.” The Defence did not put forward any submissions as to mitigating circumstances that the Trial Chamber should consider. The Trial Chamber will take into account the following factors in mitigation of the sentence that is to be imposed: the Accused voluntarily surrendered to the authorities of Serbia and Montenegro before being transferred to The Hague; David Fraser’s evidence that the Accused appeared to be “somewhat troubled by what he was doing”; Col. Dragičević’s evidence that the Accused was an “altruist” and Maj. Veljović’s testimony that the Accused was a “man of high moral values”; the negotiation and signing of the Anti-sniping Agreement by the Accused; and the orders issued by the Accused not to shoot civilians and to abide by the Geneva Conventions.

³²¹⁰ *Blaškić* Appeal Judgement, para. 686, referring to *Tadić* Sentencing Trial Judgement, para. 19.

³²¹¹ See *supra*, Section II.E.6(b)(xiii).

³²¹² *Babić* Sentencing Appeal Judgement, para. 43. See also, *Galić* Appeal Judgement, para. 414; *Bralo* Appeal Sentencing Trial Judgement, paras 56, 62 – 63.

³²¹³ *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 89; *Erdemović* Second Sentencing Trial Judgement, para. 16(iii).

³²¹⁴ *Galić* Appeal Judgement, para. 426. See also, *Blaškić* Appeal Judgement, para. 686, referring to *Jokić* Sentencing Trial Judgement, para. 73.

³²¹⁵ *Blaškić* Appeal Judgement, para. 696, referring to *Erdemović* Second Sentencing Trial Judgement, para. 16(i); *Kupreškić et al.* Appeal Judgement, para. 459.

³²¹⁶ *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 100; *Dragan Nikolić* Sentencing Trial Judgement, para. 268.

³²¹⁷ *Blaškić* Appeal Judgement, para. 696, referring to *Kunarac et al.* Appeal Judgement, paras 362, 408; *Tadić* Sentencing Trial Judgement, para. 26.

³²¹⁸ *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, paras 90 – 91, 103.

³²¹⁹ *Blaškić* Appeal Judgement, para. 696, referring to *Jokić* Sentencing Trial Judgement, para. 100.

³²²⁰ *Bralo* Appeal Sentencing Trial Judgement, para. 85.

3. General Practice Regarding Sentencing in the Former Yugoslavia

1004. Article 24(1) of the Statute provides that “Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia”.³²²¹ The case-law of the Tribunal has consistently held that this does not require Trial Chambers to conform to the practice regarding prison sentences in the courts of the former Yugoslavia; it only requires that Trial Chambers take that practice into account.³²²²

1005. During the Indictment period, the sentencing law as it pertains to international crimes in BiH was regulated by the Criminal Code of the SFRY (“SFRY Criminal Code”).³²²³ Article 142 of the SFRY Criminal Code punishes war crimes against civilians, including killings, inhumane treatment, and application of measures of intimidation and terror, with a minimum sentence of five years’ imprisonment or the death penalty, or by a maximum 20 years in prison, extendible to 40 years in certain circumstances.³²²⁴ The Trial Chamber recalls that under Article 24 of the Statute the maximum penalty is life imprisonment.

³²²¹ See also, *Dragan Nikolić* Appeal Sentencing Trial Judgement, para. 85.

³²²² See e.g. *Čelebići* Appeal Judgement, paras 813, 816, 820; *Tadić* Sentencing Appeal Judgement, para. 21; *Kunarac et al.* Appeal Judgement, para. 377; *Jelisić* Appeal Judgement, paras 116 – 117; *Stakić* Appeal Judgement, para. 398; *Galić* Appeal Judgement, para. 443.

³²²³ The Code was adopted by the Federal Assembly on 28 September 1976, and has been in force since 1 July 1977.

³²²⁴ SFRY Criminal Code, art. 38(2), 142. Article 38 provides that a prison sentence may not exceed 15 years unless the crime was eligible for the death penalty, in which case the term of imprisonment could not exceed 20 years.

V. DISPOSITION

1006. The Trial Chamber finds the Accused, Dragomir Milošević, **GUILTY** pursuant to Article 7(1) of the Statute on the following counts:

Count 1, terror, a violation of the laws or customs of war;

Count 2, murder, a crime against humanity;

Count 3, inhumane acts, a crime against humanity;

Count 5, murder, a crime against humanity;

Count 6, inhumane acts, a crime against humanity;

1007. The finding of guilt on Count 1 has the consequence that Counts 4 and 7, unlawful attacks against civilians, a violation of the laws or customs of war are **DISMISSED**.

1008. The Trial Chamber sentences Dragomir Milošević to a single sentence of **thirty-three (33)** years of imprisonment.

1009. Dragomir Milošević has been detained since 3 December 2004. Pursuant to Rule 101(C) of the Rules, Dragomir Milošević is entitled to credit for time spent in detention so far. Pursuant to Rule 103(C) of the Rules, Dragomir Milošević shall remain in the custody of the Tribunal pending finalisation of arrangements for his transfer to the State where he will serve his sentence.

Done on this twelfth day of December 2007,
in The Hague, the Netherlands,
in English and French, the English text being authoritative.

Judge Patrick Robinson

Presiding

Judge Antoine Kesia-

Mbe Mindua

Judge Frederik Harhoff

[Seal of the Tribunal]

VI. ANNEX

A. Glossary

General Abbreviations

ABiH	Armed Forces of the Republic of Bosnia and Herzegovina
APC	Armoured Personnel Carrier
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), 8 June 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), 8 June 1977
Adjudicated Facts	Adjudicated Facts admitted into evidence by decisions of the Trial Chamber on 10 April 2007 and 18 July 2007.
Agreed Facts	Facts agreed to by the Parties, admitted by decision of the Trial Chamber on 10 April 2007.
Anti-sniping Agreement	Agreement on Elimination of Sniping Activities in Sarajevo Region of 14 August 1994
Badinter Commission	European Community's Arbitration Commission, under the chairmanship of Robert Badinter
BiH	Bosnia and Herzegovina
Brig.	Brigadier
Brig. Gen.	Brigadier General
C	Chamber exhibit
Capt.	Captain
COHA	Cessation of Hostilities Agreement of 23 December 1994
Col.	Colonel
D	Defence exhibit admitted into evidence
Defence Final Brief	Defence Final Brief (Rule 86 (b)), with public annex A, filed on 1 October 2007
DMZ	Demilitarised zone
EC	European Community
Gen.	General
Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War, 12 August, 1949
GOFRS	Global Operation Fire Rescue Services
HDZ	Croatian Democratic Party
HVO	Croatian Defence Council
ICRC	International Committee of the Red Cross
ICRC Commentary	Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, 1987.
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
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
GT.	Transcript page from hearings in the case <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T.
Indictment	Amended Indictment in the case of <i>Prosecutor v. Dragomir Milošević</i> , Case No IT-98-29/1-PT, filed 18 December 2006
Indictment period	From August 1994 to November 1995
JNA	Yugoslav People's Army
KDZ	Counter Sabotage Protection Department of Bosnian Muslim Ministry of Interior
Lt.	Lieutenant
Lt. Col.	Lieutenant Colonel
Lt. Com.	Lieutenant Commander
Maj.	Major
Maj. Gen.	Major General
Markale Market I	Shelling of Markale Market on 5 February 1994
MT.	Transcript page from hearings in the case <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T.
MUP	Ministry of Interior
OP	UNPROFOR Observation Post
P	Prosecution exhibit admitted into evidence
p.	Page
pp	Pages
para.	Paragraph
paras	Paragraphs
Prosecution Closing Brief	Closing Brief of the Prosecution, filed on 1 October 2007
QMS	Quartermaster Sergeant
Republika Srpska	Serbian Republic of Bosnia and Herzegovina
RS	Republika Srpska
Rules	The Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia
SAO	Serb Autonomous Region
Scheduled incidents	Incidents contained in the schedules to the Indictment
SDA	Party of Democratic Action
SDS	Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
SRK	Sarajevo Romanija Corps
Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia
T.	Transcript page from hearings at trial in the present case. All transcript page numbers referred to are from the unofficial, uncorrected version of the transcript, unless specified otherwise. Minor differences may

therefore exist between the pagination therein and that of the final transcripts released to the public. The Trial Chamber accepts no responsibility for the corrections to or mistakes in these transcripts. In case of doubt, the video-tape of a hearing is to be revisited.

TEZ

Total Exclusion Zone

TO

Territorial Defence

UN

United Nations

UNHCR

UN High Commissioner for Refugees

UNMO

United Nations Military Observers

UNPROFOR

United Nations Protection Force

VRS

Republika Srpska Army

WCP

Weapons Collection Point

List of Cases

ICTY

<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgement, 25 June 1999
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgement, 24 March 2000
<i>Babić</i> Sentencing Trial Judgement	<i>Prosecutor v. Milan Babić</i> , Case No. IT-03-72-S, Sentencing Judgement, 29 June 2004
<i>Banović</i> Sentencing Trial Judgement	<i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003
<i>Blagojević and Jokić</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgement, 17 January 2005
<i>Blagojević and Jokić</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgement, 9 May 2007
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgement, 29 July 2004
<i>Bralo</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgement on Sentencing Appeal, 2 April 2007
<i>Brđanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić et al.</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Češić</i> Sentencing Trial Judgement	<i>Prosecutor v. Ranko Češić</i> , Case No. IT-95-10-S, Sentencing Judgement, 11 March 2004
<i>Deronjić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 29 July 2005
<i>Dragan Nikolić</i> Sentencing Trial Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-02-S, Sentencing Judgement, 18 December 2003
<i>Erdemović</i> Second Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgement, 10 December 1998
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A,

<i>Galić</i> Trial Judgement	Judgement, 21 July 2000 <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgement 5 December 2003
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Hadžihasanović and Kubura</i>, Interlocutory Appeal Decision	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005
<i>Halilović</i> Appeal Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Judgement, 16 October 2007
<i>Jelisić</i> Trial Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001
<i>Jokić</i> Sentencing Trial Judgement	<i>Prosecutor v. Miodrag Jokić</i> , Case No. IT-01-42-1-T, Sentencing Judgement, 18 March 2004
<i>Kordić and Čerkez</i> Jurisdiction Decision	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-PT, Decision on the Joint Defence Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999
<i>Kordić and Čerkez</i> Trial Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgement, 26 February 2001
<i>Kordić and Čerkez</i> Appeal Judgement	<i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004
<i>Krstić</i> Trial Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-T, Judgement, 2 August 2001
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v. Radislav Krstić</i> , Case No. IT-98-33-A, Judgement, 19 April 2004
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgement, 15 March 2002
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003
<i>Kunarac et al.</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac, et al.</i> , IT-96-23 and IT-96-23/1-T, Judgement, 22 February 2001
<i>Kunarac et al.</i> Appeal Judgement	<i>Prosecutor v. Dragoljub Kunarac et al.</i> , Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002
<i>Kupreškić et al.</i> Trial Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-T, Judgement, 14 January 2000
<i>Kupreškić et al.</i> Appeal Judgement	<i>Prosecutor v. Zoran Kupreškić et al.</i> , Case No. IT-95-16-A, Judgement, 23 October 2001
<i>Kvočka et al.</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka et al.</i> , Case No. IT-98-30/1-A, Judgement, 28 February 2005
<i>Limaj et al.</i> Trial Judgement	<i>Prosecutor v. Limaj et al.</i> , Case No. IT-03-66-T, Judgement, 30 November 2005
<i>Limaj et al.</i> Appeal Judgement	<i>Prosecutor v. Limaj et al.</i> , Case No. IT-03-66-A, Judgement, 27 September 2007
<i>Martić</i> Trial Judgement	<i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgement, 12 June 2007
<i>Momir Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006

<i>Mrkšić et al.</i> Order for Review of the Indictment	<i>Prosecutor v Mrkšić et al.</i> , Case No. IT-95-13-R61, Order for Review in Open Court of the Indictment by Trial Chamber I (Rule 61 of the Rules of Procedure and Evidence), 6 March 1996
<i>Mrkšić et al.</i> Trial Judgement	<i>Prosecutor v. Mile Mrkšić et al.</i> , Case No. IT-95-13/1-T, Judgement, 27 September 2007
<i>Naletilić and Martinović</i> Trial Judgement	<i>Prosecutor v. Naletilić and Martinović (a.k.a “Tuta and Stela”)</i> , Case No.IT-98-34-T, Judgement, 31 March 2003
<i>Naletilić and Martinović</i> Appeal Judgement	<i>Prosecutor v. Naletilić and Martinović (a.k.a “Tuta and Stela”)</i> , Case No.IT-98-34-A, Judgement, 3 May 2006
<i>Plavšić</i> Sentencing Trial Judgement	<i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003
<i>Stakić</i> Appeal Judgement	<i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006
<i>Strugar et al.</i> Decision on Interlocutory Appeal	<i>Prosecutor v. Pavle Strugar et al.</i> , Case No. IT-02-42-R72, Decision on Interlocutory Appeal, 22 November 2002
<i>Tadić</i> Jurisdiction Decision	<i>Prosecutor v. Dusko Tadić a.k.a “Dule”</i> , Case No. IT-94-1-A Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
<i>Tadić</i> Trial Judgement	<i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-T, Judgement, 7 May 1997
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Tadić</i> Sentencing Trial Judgement	<i>Prosecutor v. Duško Tadić (a.k.a. “Dule”)</i> , Case No. IT-94-1-Tbis-R117, Sentencing Judgement, 11 November 1999
<i>Tadić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dusko Tadić</i> , Case No. IT-94-1-Abis, Sentencing Judgement, 26 January 2000
<i>Todorović</i> Sentencing Trial Judgement	<i>Prosecutor v. Stevan Todorović</i> , Case No. IT-95-9-1, 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
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
<i>Zelenović</i> Sentencing Trial Judgement	<i>Prosecutor v. Dragan Zelenović</i> , Case No. IT-96-23/2-S, Sentencing Judgement, 4 April 2007

ICTR

<i>Gacumbitsi</i> Appeal Judgement	<i>Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-A, Judgement, 7 July 2006
<i>Kajelijeli</i> Trial Judgement	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003
<i>Kajelijeli</i> Appeal Judgement	<i>Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-98-44A-A, Judgement, 23 May 2005
<i>Kambanda</i> Appeal Judgement	<i>Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-A, Judgement, 19 October 2000

Kayishema and Ruzindana Trial Judgement *Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1999*

Kayishema and Ruzindana Appeal Judgement *Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement, 1 June 2001*

SCSL

The AFRC Accused Trial Judgement *Prosecutor v. Alex Tamba Brima, Brima Bazzy Tamara, Santigie Borbor Kanu, Case No. SCSL-04-16-T, Judgement, 20 June 2007*