

a. UN investigations

4182. On the day of the incident, Harland was at the Sarajevo airport, meeting with Krajišnik and Koljević.¹³⁹⁸¹ **(Harland wasn't in a position to meet Krajišnik and Koljević, #he only could have been escorting somebody of high officials#!)** Upon receiving news of the incident, he immediately sent a local doctor to the scene while he returned to UN headquarters to make contact with Rose and debrief him once he heard back from the local doctor and the investigators.¹³⁹⁸² Rose was in Mostar on the day of the incident; on his return to Sarajevo the next day, the BiH government had already accused Bosnian Serbs of firing the shell, which was denied through a statement by the Accused, wherein he accused the Bosnian Muslims of firing on their own people.¹³⁹⁸³

4183. The UN conducted two sets of investigations into the incident.¹³⁹⁸⁴ The first investigation was conducted on the day of the incident and consisted of three separate crater analyses, done by FreBat's Major Cazaux, Sector Sarajevo's Captain Verdy, and Major Russell respectively; the second investigation took place on 11 through 13 February 1994 and was conducted by another UN team, which performed seven different crater analyses.¹³⁹⁸⁵ **(#The first and the most immediate report of the UN# is P1562, issued the same day of 5 Februari 10:53 PM:**

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UPDATE TO DSR UNMC SARAJEVO AT 042359A FEB 94

MOST IMPACTS IN THE PERIOD 041600A TO 042359A FEB 94 SEEMED TO BE IN AREAS CLOSE TO CONFRONTATION LINE NORTH OF AIRPORT(8557)EAST OF CITY,(8460),NOBILJA GLAVA(8662),(8962),(9062),RAILOVAC(8459)BiH IN DURING THIS PERIOD-64 MIXED,14 AAA.NO BiH OUTGOING HEARD OR SEEN.BSA OUTGOING-8 MIXED AND 50 AAA.TWO EXPLOSIONS HEARD BUT COULD NOT BE PLACED ON EITHER BiH OR BSA SIDE OF CFL.

From the very beginning there was #no possibility to "place it on either BiH or BSA side of CFL(confrontation line)"#!)

4184. Cazaux's team excavated the stabiliser fin from the crater and performed the first crater analysis, finding that the bearing of the shell was 620 mils (34.8 degrees).¹³⁹⁸⁶ It also

¹³⁹⁸¹ David Harland, T. 2039 (6 May 2010).

¹³⁹⁸² David Harland, T. 2039 (6 May 2010).

¹³⁹⁸³ P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 37–38.

¹³⁹⁸⁴ P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39; Michael Rose, T. 7340–7342 (6 October 2010); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 16.

¹³⁹⁸⁵ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 15–17; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 1; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 5, 7. See also Adjudicated Fact 331.

¹³⁹⁸⁶ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17–18.

noted that the fin belonged to a 120 mm mortar round and that it was buried approximately eight centimetres below the surface of the asphalt.¹³⁹⁸⁷ **(#None of them explained how come the stabiliser fin was buried so deep and covered by a dust as if there was no any impact? It was played in the courtroom, a plane surface without any traces, nor could it be since the surface was dusty!# #No intact fuse, no superficial traces, it was no possible to determine either direction, or the angle#!)**

4185. Verdy conducted the second analysis for the UN and determined that the bearing of the shell was somewhere between 800 and 1,000 mils (45 to 56.2 degrees), while its angle of descent was 1,400 mils (78.7 degrees) and its maximum range somewhere between 2,000 and 3,500 metres; he further concluded that a 120 mm shell hit Markale market at 12:10 p.m., by first impacting on a market stall and then hitting the ground from short range, low-angle fire.¹³⁹⁸⁸ He informed his command that because of the prior impact on the market stall, the analysis was very difficult.¹³⁹⁸⁹ **(In such a case the fin had been buried earlier, while staging the scene, and covered by the dust, as would never happen in original case!)**

4186. Major John Russell, who—at the relevant time, was deployed as Military Assistant to Sergio de Mello, the representative of the Secretary-General in Sarajevo, and possessed some experience in crater analysis¹³⁹⁹⁰—was asked to go to the scene of the explosion by UNPROFOR Chief of Staff Ramsey.¹³⁹⁹¹ He arrived at the incident site at about 4:30 p.m. on 5 February 1994, after the above two analyses had been completed, and observed blood and human remains, as well as the crater and a thoroughly swept impact site.¹³⁹⁹² Concluding that the round had come in from east-northeast, at a bearing of 450 mils (25.3 degrees) and with an angle of descent between 1,200 and 1,300 mils (67.5 and 73.1 degrees), he was struck by how steep the angle of decent must have been in order to clear the adjacent large building, which led him to believe that it had come in from a location close to the crater.¹³⁹⁹³ At the time, he concluded that it was not possible to determine which side had fired the round as the minimum/maximum range straddled the confrontation line.¹³⁹⁹⁴ That evening, he noted in his diary that he believed that the ABiH had “shot at themselves” given the close distance from which the round must have been fired.¹³⁹⁹⁵ When put to him that firing tables for 120 mm shells indicate that the angle of descent remains the same regardless the distance from which

¹³⁹⁸⁷ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 18. *See also* Adjudicated Fact 330.

¹³⁹⁸⁸ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 2. According to the later UN report on the incident, Verdy did not measure the angle of descent due to the crater being disturbed, but instead found the minimum possible angle of descent in order for the shell to clear the building along the calculated bearing. *See* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 16.

¹³⁹⁸⁹ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 2.

¹³⁹⁹⁰ D2364 (Witness statement of John Russell dated 17 October 2012), paras. 4, 7–9; John Russell, T. 29381 (30 October 2012).

¹³⁹⁹¹ D2364 (Witness statement of John Russell dated 17 October 2012), para. 12. *See also* David Harland, T. 2325–2328 (11 May 2010); KDZ450, T. 10676–10677 (20 January 2011).

¹³⁹⁹² D2364 (Witness statement of John Russell dated 17 October 2012), paras. 12–14 (explaining that he was not aware at the time that the stabilizer had been removed from the crater); John Russell, T. 29382–29383 (30 October 2012); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 41.

¹³⁹⁹³ D2364 (Witness statement of John Russell dated 17 October 2012), paras. 20–23 (explaining also that he did not recall measuring the angle of the descent at the scene but had no reason to doubt the UN report’s references to his measurements). *See also* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 17.

¹³⁹⁹⁴ D2364 (Witness statement of John Russell dated 17 October 2012), paras. 23, 31; D2367 (Handwritten notes of John Russell on UNPROFOR report re shelling of Markale on 5 February 1994) e-court p. 2; John Russell, T. 29406 (30 October 2012); D2365 (UNPROFOR report, 6 February 1994), e-court p. 2.

¹³⁹⁹⁵ D2364 (Witness statement of John Russell dated 17 October 2012), paras. 33–36; D2366 (Excerpt of John Russell’s diary, 5 February 1994); John Russell, T. 29397 (30 October 2012).

the shell is fired on different charges, Russell accepted that, had he known this, he would have likely come to a different conclusion about the distance from which the shell was fired at the time.¹³⁹⁹⁶ **(But since nobody obtained a number of charges, this is not decisive, except to mitigate the “shot at themselves” assertion. #Still doesn’t say which side fired#!)**

4187. On 8 February 1994, Rose met with ABiH representatives Generals Divjak and Hajrulahović, and Colonel Dakić at the ABiH headquarters, where he told them that evidence was emerging which indicated that the incident may have been caused by their side.¹³⁹⁹⁷ Rose conceded in cross-examination that after he told the Bosnian Muslim side of the results of the first UNPROFOR investigation, they decided to accept the cease-fire which they were initially refusing.¹³⁹⁹⁸ **(#A conduct of a guilty side#! Had the UNPROFOR and other internationals been more unbiased and more balanced, the war wouldn’t even occur or would last much shorter! Otherwise, why would the Muslim side refrain from firing, while all was going on account of their Serb adversaries?! Doing so, the internationals caused a horror of pain and damage to the Serb side, but didn’t make any good to the Muslim side either, and for that reason this will be remembered as a model for disaster!)**

4188. Because of the significance of the incident, UNPROFOR headquarters in Zagreb ordered that a second investigation be carried out.¹³⁹⁹⁹ The UNPROFOR team was headed by Colonel Michel Gauthier and began its work on 11 February 1994.¹⁴⁰⁰⁰ The team also included, among others, Lieutenant Colonel Rumyantsev and technical advisers John Hamill and Eric Dubant.¹⁴⁰⁰¹ According to Gauthier, the team was instructed to confine its investigation to crater analysis and related technical aspects of the explosion.¹⁴⁰⁰² The investigation was concluded on 15 February and the team reported that the bearing of what was confirmed to have been a 120 mm mortar shell was somewhere between 330 and 420 mils (18.5 and 23.6 degrees).¹⁴⁰⁰³ The team further concluded that the crater analyses conducted by Cazaux and Verdy were flawed and that all of their associated findings were therefore questionable.¹⁴⁰⁰⁴ The report notes that Hamill measured the angle of descent at between 950 and 1,100 mils, (53.4 and 61.8 degrees), which meant that the shell must have come in from between 950 and 5,450 metres, depending on the charge used.¹⁴⁰⁰⁵ However, in

¹³⁹⁹⁶ John Russell, T. 29397–29400 (30 October 2012); P5921 (Firing tables for M74 120 mm light mortar).

¹³⁹⁹⁷ Michael Rose, T. 7342–7344 (6 October 2010); D2770 (Witness statement of KW570 dated 21 November 2012) (under seal) para. 11; D2772 (Redacted diary of KW570) (under seal) e-court pp. 3–4. KW570 explained that in fact Rose and the UNPROFOR Command were not that interested in who fired on Markale but rather wanted to use this opportunity to achieve something positive, such as a peace deal. See KW570, T. 32232 (18 January 2013).

¹³⁹⁹⁸ Michael Rose, T. 7339–7340 (6 October 2010).

¹³⁹⁹⁹ P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39. See also Yasushi Akashi, T. 37687–37688 (24 April 2013).

¹⁴⁰⁰⁰ D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 5, 7.

¹⁴⁰⁰¹ D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 5; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 13.

¹⁴⁰⁰² D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 7; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 9.

¹⁴⁰⁰³ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 14–18.

¹⁴⁰⁰⁴ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6096–6098; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 8–11; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 10, 16, 19 (stating that Verdy’s analysis was flawed because he made a mathematical error when calculating the bearing and because he estimated the angle of descent using the height of the buildings in the direction of fire he established, while FreBat’s bearing was wrong because they used an unconventional method to determine it). See also Richard Higgs, T. 5928 (18 August 2010).

¹⁴⁰⁰⁵ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17, 19, 25 (stating that the angle of descent was “probably between 950 and 1,100 mils” but that it is not possible to be “more accurate” due to the fact that a several days elapsed between the impact and the analysis); D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 20.

its final conclusion, the team noted that the angle of descent measured by Hamill was not “beyond suspicion” due to the crater having been excavated.¹⁴⁰⁰⁶ Therefore, using the height of the buildings in the area to estimate that the minimum angle of descent necessary to clear those buildings was 870 mils (48.9 degrees), the team concluded that the possible range for the mortar shell was between 300 and 5,551 metres in the established direction of fire.¹⁴⁰⁰⁷

4189. In cross-examination, Gauthier confirmed that there were no known fixed mortar positions on the ABiH held-territory along the direction of fire from which the Markale shell had originated and in which the UNMOs were free to move about as they wished, whereas he could recall that the Bosnian Serb side had one such position in the identified area.¹⁴⁰⁰⁸ However, Gauthier also explained that mortars are mobile weapons that can be moved relatively quickly and leave little trace of their use and that, at the time, his team did not go to Bosnian Serb-held territory to investigate, given the extremely low probability of identifying a possible firing point.¹⁴⁰⁰⁹

4190. As noted above, Hamill was one of the technical advisers on the UNPROFOR team participating in the second investigation and was the person who prepared the UNPROFOR report.¹⁴⁰¹⁰ According to him, the team conducted a detailed technical analysis based on the physical evidence gathered, crater analysis, and interviews with eyewitnesses and the UN personnel who conducted the first investigation.¹⁴⁰¹¹ Hamill personally analysed the crater twice, the first time using a “fuse tunnel method”,¹⁴⁰¹² followed by the central axis method, through which he determined that the shell came from a north-northeasterly direction.¹⁴⁰¹³

4191. Hamill concluded that the explosion took place between 12:10 and 12:15 p.m. and was caused by a “conventional factory-produced 120 mm high explosive mortar bomb” which was launched from a 120 mm heavy mortar tube and which detonated on impact with the ground.¹⁴⁰¹⁴ The team was certain that the crater was formed by the explosion of a mortar shell.¹⁴⁰¹⁵ While it was determined that the shell came from the northeast, it was not possible for the investigators to determine the exact distance from the firing point, other than that it was fired between 300 and 5,551 metres from the point of detonation.¹⁴⁰¹⁶ Since this distance “clearly overlaps each side of the confrontation line” and since “both parties are known to

¹⁴⁰⁰⁶ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 19; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), para. 21.

¹⁴⁰⁰⁷ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20; D2368 (Witness statement of Michel Gauthier dated 6 February 2012), paras. 19, 26. See also P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39.

¹⁴⁰⁰⁸ Michel Gauthier, T. 29417 (30 October 2012).

¹⁴⁰⁰⁹ Michel Gauthier, T. 29414, 29418 (30 October 2012).

¹⁴⁰¹⁰ John Hamill, T. 9680 (13 December 2010); John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6075–6079.

¹⁴⁰¹¹ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6077–6078, T. 6083–6085; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 10; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 1.

¹⁴⁰¹² Hamill placed a stick in the fuse tunnel which then gave him a direction of the shell, the bearing of which he then measured using a compass. See John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6087–6089. See also D2759 (Witness statement of KW571 dated 27 March 2012) (under seal), paras. 5–6.

¹⁴⁰¹³ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6087–6088, 6092, 6095–6096; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 17, 25. To KW571, the shape of the crater indicated that the shell had come in “following a curve” before hitting the ground, whereas a static explosion on the ground would have left different traces. See KW571, T. 32018 (16 January 2013).

¹⁴⁰¹⁴ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6085–6086, 6092–6093; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 11, 18–20, 25; P2066 (UNPROFOR report re shelling of Markale on 5 February 1994), p. 3.

¹⁴⁰¹⁵ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 18, 23–25.

¹⁴⁰¹⁶ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 11, 20, 23, 25, 33. See also P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 39.

have 120 mm mortars” the team concluded that the shell could have been fired by either side.¹⁴⁰¹⁷ The report clarifies that determining the origin of fire was impossible because a number of days had passed since the incident, during which the crater had been tampered with by various personnel making it impossible to determine the angle of descent accurately.¹⁴⁰¹⁸ Hamill testified that these findings were the most comprehensive possible, given the limitations of the methods used and events surrounding the incident, as well as the distance between the explosion and the frontlines of the warring parties.¹⁴⁰¹⁹ The team was certain, however, that the explosion was not caused by a “booby trap” and that the shell could not have been hand-launched from one of the nearby buildings.¹⁴⁰²⁰

4192. Hamill explained that the UNMOs who were interviewed during the investigation indicated that they had been denied freedom of movement by the VRS in the northeast part of Sarajevo since October 1993.¹⁴⁰²¹ **(That was not true, but there was a tense relation since 1993, and had nothing to do with this incident. As a matter of fact, Gen. Milovanovic invited and appealed for a common investigation! However, even the OTP witness Hamil testified that the ABiH would never bring them to their mortars, see P1994, p.6108:**

A. Well, what you've got to remember is that the direction of fire which sector Sarajevo was working on was inaccurate. They were working off false data given to them by the FreBat 4 team and by Colonel -- or Captain Verdy. So firstly, they were looking in the wrong area. Secondly, if it had been fired by BiH troops, there is no possibility whatsoever that anyone from the UN would have been brought to the firing position.

Q. Now, I take it from your answer you are saying that you would not know whether or not there were any BiH mortars along the direction of fire.

A. That is correct.

A. Again, could I remind you that mortars are highly mobile weapons, and were used in that way by Armija troops. They were brought into an area; they fired often from, for example, outside the UN building or from Kosevo Hospital, and then they were moved immediately. So that they are mobile. They can be moved and can be easily moved.

(#So, Mr. Hamil confessed that the UN were helpless before the ABiH trickery#: they had been denied the access, and even if granted an access, there would be no use, since the ABiH fired from a mobile mortars! In such a case there must not be any charge

¹⁴⁰¹⁷ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 11; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6083–6084; John Hamill, T. 9732 (13 December 2010); Francis Roy Thomas, T. 6832 (15 September 2010); Yasushi Akashi, T. 37687–37688 (24 April 2013). The results of this report were then forwarded to the Security Council by the UN Secretary General, while Akashi reported to Kofi Annan. See D179 (Letter from UNSG to the President of UNSC, 16 February 1994); D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994), pp. 1–2.

¹⁴⁰¹⁸ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 23. See also D2759 (Witness statement of KW571 dated 27 March 2012) (under seal), paras. 8–9.

¹⁴⁰¹⁹ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6084–6085.

¹⁴⁰²⁰ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 25, 29; John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6086, T. 6206. See also Michel Gauthier, T. 29416 (30 October 2012).

¹⁴⁰²¹ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6105–6107. See also Michel Gauthier, T. 29417–29418 (30 October 2012).

against the Serb side, let alone this Accused! Let us see what Hamill said about the side responsible for this incident, P1994, p.6110:

round on the ground, we came up with six possible firing locations in a line along 0330 mils grid. Two of those locations were on the Armija side of the line, and four of them were on the BSA side of the line. While it wasn't possible to definitely conclude which firing position had been used of the six because it simply just isn't possible to do that regardless of what technical evidence you have unless you have seen them firing or used sound-ranging or radar, nonetheless, four likely firing positions were on -- four positions from which the round could have been fired were on the BSA side, and two were on the Armija side.

#Even the most favoured by the OTP admitted that there was no conclusion regarding the side responsible#!

Additionally, Hamill testified that he and others from the team personally met with Colonel Cvetković, the Commander of the SRK artillery regiment based in Mrkovići, to the north-northeast of Markale.¹⁴⁰²² According to Hamill, Cvetković confirmed that there were 120 mm mortars in Mrkovići but stated that his unit had not fired the round, while at the same time admitting that in the previous year it had fired 30,000 to 40,000 rounds into the city.¹⁴⁰²³

(#At what targets? This assertion would have some sense if the city didn't have 40,000 troops and thousands of firing places, artillery, mortars and other military facilities. ##But this is not something that Cvetkovic said, this is something that Hamill wrote in his amalgamated statement as if Cvetkovic told him##!. This doesn't fit in a fair trial!)

The Chamber also has in evidence a report on this meeting, sent to the VRS Main Staff and the SRK Command by Cvetković himself, which somewhat contradicts Hamill's evidence.¹⁴⁰²⁴

(Of course contradicts. Whenever the #Prosecution doesn't call a leader of a group or his deputy, but calls the s medium to last by rank, like Harland and others, it is clear who the Prosecution favoured#! See D2378:

¹⁴⁰²² John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109.

¹⁴⁰²³ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109.

¹⁴⁰²⁴ While this report does not name Hamill as one of those present at the meeting, the Chamber notes that it does refer to Gauthier and two other members of the investigation "committee". The Chamber considers that one of these two members was Hamill. See D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), p. 1. **(Certainly, Hamill was not the chief of this delegation, and this should be in a current, contemporaneous report of the chief of the group!) according to Lt. General Gauthier's statement, D2368, Hamill was a "team's technical advisor" and thus not in charge of gathering any oral information:**

France. The team's technical advisers were Commandant Hamill of Ireland, and Sgt.-Chef Dubant of France.

1. The international commission had been establishing facts for three days already.
2. The results of the commission's work (both technical and medical) will be incorporated into a single report.
3. The report will be sent to AKASHI on 15 February 1994 and some details will not be available to either of the warring parties.
4. The commission finished its work on the site.
5. The stabilising fin of a 120 mm shell was found in the crater. On the basis of the crater, the stabilising fin and some fragments of the shell lodged into the surrounding objects, the commission determined that the explosion was unquestionably that of a 120 mm shell launched on 5 February 1994.

As a representative of the VRS, I was asked by members of the commission for technical information proving that the Serbian side did not launch the shell.

1. The commission did not determine with certainty the direction from which the shell was launched.

2. On the basis of the position of the stabilising fin, which was removed on the first day, the angle of descent was not determined with precision, which is why the commission could not establish the exact launching distance.

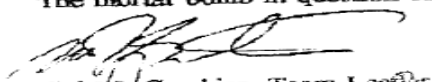
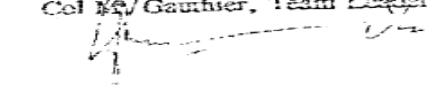
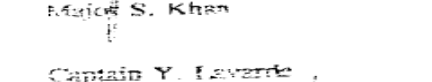
1. I strongly denied the possibility that the shell was launched from the Serbian side and offered the commission to visit the suspected place, asserting that we did not have, nor have we ever had, a 120 mm MB /mortar/ on this part of the frontline.

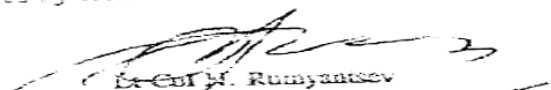
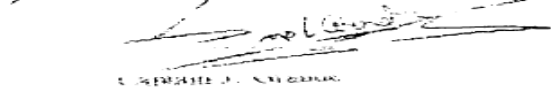
3. I made it possible for all members of the commission to determine the exact launching distance without me (they did not want to tell me what the angle of descent was and I think they did not measure it with precision).

8. I pointed out to the commission that the counters on the market were almost empty, that they were undamaged, that after the dead and the wounded were taken away, they remained aligned and that no goods were on the ground – which indicates that the event was staged in order to present to the public it as a massacre of innocent people.

The report of Cvetkovic #sent to the Main Staff of VRS immediately after the meeting, is full of evidence that contradicted the Hamil's assertions#, and in addition to these numbered bellow in this paragraph, certainly is the most important the one that there was no any mortar 120 mm, offering the UN personnel to visit all the spots suspected. Also there was no a word about "firing 40,000 shells towards the city". By having only mortars of 60 mm and 82 mm, the unit was armed to deter the Muslim attacks on the Mrkovici village, and not to participate in any remote battlefield! The main point is that Cvetkovi} was informed that the integrated finding of the UN team iz going to be delivered to Mr. Akashi till 15 February 94. Let us see what was the conclusion pertaining to the culprit, P1441:

17. **Culpability.** The distance of origin of fire clearly overlaps each side of the confrontation line by 2,000 metres. Both parties are known to have 120 mm mortars, and the bombs to go along with them. The Team has no reason to believe that either party does not have access to the type of ammunition reported in paragraph 12. There is insufficient physical evidence to prove that one party or the other fired the mortar bomb. The mortar bomb in question could have been fired by either side.


Col M. Gauthier, Team Leader

Major S. Khan

Captain Y. Laverde


Lt Col N. Rumyantsev

Lt Col J. Vukobratovic

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#Nobody was more competent to give an assessment, and in a UN court there shouldn't be any other "private and domestic expert" like Ze~evi} to give something different "opinion"! Let us look under what kind of pressure the UN representatives worked, the same, P1441:

GENERAL CONCLUSION
It is to be noticed that during the whole meeting bosnian declarations were aggressive at UNPROFOR general policy, blaming for its incompetence and lack of abilities of its members and accusing at several times that UN or UNPROFOR members often stated on bosnian responsibility in the market shelling.

#The UN personnel was jeopardized if even mentioning that the shelling may be a Muslim felony!# According to this report, Cvetković informed the VRS Main Staff and the SRK Command that he was told by Gauthier that the shell was of 120 mm calibre, that the angle of descent was not established with precision, and that the shell could have been fired by either side.¹⁴⁰²⁵ Cvetković also reported that he "strongly denied" that the shell was launched by the Serbian side, offered that the commission visit the "suspected place", and asserted that the SRK did not have 120 mm mortars on this part of the frontline.¹⁴⁰²⁶ According to Gauthier, however, the team did not go to the SRK-held territory in the established direction of fire because the area to be inspected was vast and the team judged that they would not be able to locate the position from where the mortar was fired.¹⁴⁰²⁷ **(Nothing that comes out of this "lack" of insight can be allocated to the Serb side, let alone to President Karad`i}!)**

4193. While the team was not shown any ABiH mortar positions, the Deputy Chief of Staff of Sector Sarajevo, Colonel Pardon, visited two such positions and an ammunition storage facility on 9 February 1994, which included what appeared to be locally-produced 120 mm mortar bombs.¹⁴⁰²⁸ However, according to Hamill, because Pardon was working off of the

¹⁴⁰²⁵ D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), pp. 1-3.

¹⁴⁰²⁶ D2378 (Report of 4th Mixed Artillery Regiment to SRK, 14 February 1994), p. 3.

¹⁴⁰²⁷ Michel Gauthier, T. 29418 (30 October 2012).

¹⁴⁰²⁸ John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6107; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 44. Russell also testified that around 9 February 1994, he accompanied UNPROFOR personnel to an ABiH ammunition depot where they found 120 mm mortar shells after having been told that there were no such shells in this depot. See D2364 (Witness

results of the first flawed analysis by UNPROFOR, he examined the wrong area.¹⁴⁰²⁹

Mr.

Pardon certainly didn't choose the place, he was mis-led by the Muslim hosts of his!)

4194. Having conducted the investigation outlined above, Hamill and his team concluded that there were six possible firing locations in a line along the established direction of fire, two of which were on the ABiH side of the frontline and four on the SRK side.¹⁴⁰³⁰ **(#The Prosecution-Chamber didn't like number one UN officials to testify, but rather a middle rank officials#! Hamill #didn't have "his team", because he was only a technical consultant of the team led by Lt. General Gauthier#, and if the Chamber wanted to use this findings, #Gauthier was a propped address#! Why he was skipped? Who didn't like his findings? Is it allowed to select the evidence that way?)** He confirmed on cross-examination that because it was impossible to determine the charge with which the mortar was fired, it was also not possible to say which of these locations the round came from.¹⁴⁰³¹ As for the fuse tunnel in Markale, Hamill claimed that, while not "completely intact" it was "intact enough" for him to estimate the angle of descent.¹⁴⁰³² **(This is #contradicted to the official report of the same team, led by Gauthier, which concluded that the angle was not beyond a reasonable doubt#, see P1441, p.19**

had alleged that the crater was thoroughly investigated by the local authorities during that period. Hence the angles measured on 11 Feb are not beyond suspicion. To assure accuracy, the angle must be measured when the tail fin and fuse are in the ground, and this was not done on 5 Feb. Accordingly it is assessed that the results measured on 11 Feb are not sufficiently accurate to be used as a basis for a finding.

In such a cases, #the official finding of the entire team, authorised by the team chief, is the only one accurate and useable#, while this was a kind of "picking up a witness from a menu" according to a degree of aberration of his opinion from the official findings of the team!)

In addition, he explained that the team also used other methods to establish the direction, and that there was a remarkable consistency across the results despite the fact that various investigators in his team did their tests independently and used different methods.¹⁴⁰³³

4195. Hamill also thought that the market hit was a fluke since a 120 mm mortar is not a terribly accurate weapon and no adjusting rounds were fired in this particular case.¹⁴⁰³⁴ He did concede, however, that if the market was indeed the target, the probability of hitting it would have been slightly higher the closer the market was to the weapon.¹⁴⁰³⁵ Having looked

statement of John Russell dated 17 October 2012), paras. 36–37; John Russell, T. 29401, 29403 (30 October 2012); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 48–49.

14029 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6108–6109.

14030 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6109–6110; John Hamill, T. 9726 (13 December 2010).

14031 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6189–6190; John Hamill, T. 9694 (13 December 2010).

14032 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6194; John Hamill, T. 9729, 9732–9733 (13 December 2010). On cross-examination, Hamill and Rose conceded that the best time to investigate an incident such as this would have been immediately after, and that interference with evidence would make such an investigation "less than perfect". See Michael Rose, T. 7340–7342, 7359 (6 October 2010); John Hamill, T. 9692–9693 (13 December 2010). Hamill denied, however, that any forensic evidence had been removed by the Bosnian Muslims as FreBat was on the scene soon after the explosion. See John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6198–6201.

14033 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6194.

14034 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6191, T. 6218; John Hamill, T. 9722–9724, 9729–9732 (13 December 2010).

14035 John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6192–6193; John Hamill, T. 9726–9727 (13 December 2010).

at the report prepared by Sabljica and the others at the CSB Sarajevo, Hamill confirmed that the methodology used was good and the results consistent with the results he and his team produced.¹⁴⁰³⁶

(This was drastically wrong! It was not Hamill's team, bu the Gen. Gautier's team. Let us see #what the official UN reports on investigations said#, D2368, and a statement of Lt. General M. Gauthier, D2368:

8. We learned that the first crater analysis by the UN had been carried out by a team from French Battalion 4 at approximately 1400 hours on the day of the explosion. The Frebat 4 team had found a 120mm mortar tail fin in the crater when they arrived on the scene. In his testimony to the Investigation Team, Capt Segade, who accompanied the Frebat 4 team members, reported that he watched the Frebat 4 analysts scrape away soil from the mouth of the crater, excavate and extract the tail fin. He also reported that that in extracting the tail fin, the analysts had to chip away at the asphalt lip around the mouth of the crater, and enlarge the actual hole formed by the penetration of the tail fin.

9. Concerning their determination of the bearing along which the mortar round may have travelled, the Frebat 4 team used an unconventional method to measure this angle. Instead of fixing two points along a line and shooting the compass bearing, the Frebat 4 team estimated the center of the direction from which the round might have come and took a compass bearing along this estimated line. Therefore, the Frebat 4 team's findings were found to be suspect.

10. In excavating the tail fin from the crater, the Frebat 4 team disturbed the integrity of the crater for any analyses which followed. The Frebat 4 team did not measure the angle of penetration of the tail fin, nor did they calculate the angle of descent.

11. We learned that a second crater analysis was conducted by Captain Verdy, an analyst with UNPROFOR Sector Sarajevo, at approximately 1500 hours on the day of the explosion. We interviewed Captain Verdy and reviewed his report. We determined that he had made a mathematical error and that the figures he had used in his results were flawed. Therefore, we did not rely upon his results.

12. We learned that Canadian Major John Russell, the Military Assistant to the Deputy Special Representative of the Secretary General, had conducted a crater analysis at approximately 1630 hours on the day of the explosion. It was reported that he had calculated the bearing at 450 mils and the angle of descent as between 1200-1300 mils.

13. We interviewed Major Russell during our investigation and also obtained a copy of a memorandum he had written entitled "Amplification of Crater Analysis of 5 February 1994—Sarajevo Market".

21. By the time the team conducted its crater analyses, six days had elapsed since the explosion. In the team's view, it was reasonable to suspect that the crater was thoroughly excavated by the local authorities during that period, and that the angles measured on 11 February 1994 were not beyond suspicion. The team's analysts believed that to assure accuracy, the angle must be measured when the tail fin and fuse are in the ground, and this was not done on 5 February 1994. It was assessed that the results measured on 11 February 1994 were not sufficiently accurate to be used as a basis for a finding, based on accepted crater analysis techniques.

25. As noted in the report, the evidence examined concerning mortar positions on each side of the confrontation line in the area of interest was inconclusive.

Conclusions

26. Our investigative team concluded that the explosion on 5 February 1994 at the Markale market in Sarajevo had been caused by a 120 mm mortar fired from a direction of 330 to 420 mils, and from a distance of between 300 and 5551 meters. Since the distance of origin of fire overlapped each side of the confrontation line, we concluded that there was insufficient physical evidence to prove that one party or another fired the mortar bomb. The mortar bomb in question could have been fired by either side.

27. We stated these conclusions in a report signed by each member of the team, dated 15 February 1994.² I stand by the conclusions of that report in relation to the evidence at hand at the time of the investigation.

Therefore, #all the limitations and inaccuracies described by Lt. General Gauthier had been signed by Hamill and agreed by all the team members#. #There is no more flagrant violation of the “In dubio pro reo” rule#! And this is exactly what UN Secretary General reported to the Security Council on 15 February 1994, see: D.179, depicted above in the 4192 para. Does anyone have an answer to how the Prosecution dared to, in spite of the full insight of the “entirety” of evidence behind were all the highest UN officials, dared to re-tailor this evidence, and replace it by the evidence obtained from a middle o low rank UN p[ersonnel. This must not happen to any court, let alone to a UN one! Once the OTP got insight in the evidence, they were obliged to drop the case!))

4196. Colonel Steven Joudry, a trained artillery officer and instructor in gunnery and field techniques for crater analysis in the Royal Canadian Army who, at the relevant time, served at UNPROFOR headquarters in Croatia, stated that he was informally asked by “an UNPROFOR authority” to review the report of Colonel Gauthier’s team, given his extensive experience in crater analysis.¹⁴⁰³⁷ Having done so, Joudry had serious reservations, although he had never seen the crater himself, about the procedures used in the Markale crater analysis, as it was neither conducted on a fresh, undisturbed crater, nor was crater analysis generally an exact-enough method “to determine culpability”.¹⁴⁰³⁸ Joudry further considered that it would have been “virtually impossible” for a single mortar round to fire at the market and hit it,¹⁴⁰³⁹ and that, alternatively, the mortar shell could have been dropped from one of the surrounding buildings and the stabiliser inserted into the crater in the “first few moments of confusion”.¹⁴⁰⁴⁰ **(#Wasn’t it enough to have a reasonable doubt#?)**

4197. Rose testified that following the incident he stated to the press that, as with the Dobrinja incident of the day before—which had been determined by the UNPROFOR to have

¹⁴⁰³⁷ D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 1–3, 13. Upon cross-examination, Joudry conceded that most of the analyses he had carried out were training exercises. See Stephen Joudry, T. 29329 (30 October 2012).

¹⁴⁰³⁸ D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 10, 14, 16–24; Steven Joudry, T. 29339 (30 October 2012). Joudry stated that the fact that much of the information was gathered hours or even days after the explosion (rather than from a hot undisturbed crater) in a public area, rendered many of the results questionable. He added that in other field situations, such analyses would have been discarded.

¹⁴⁰³⁹ D2363 (Witness statement of Steven Joudry dated 14 August 2012), para. 24(c); Steven Joudry, T. 29354–29355, 29369 (30 October 2012).

¹⁴⁰⁴⁰ D2363 (Witness statement of Steven Joudry dated 14 August 2012), paras. 24(c), 25–28; Steven Joudry, T. 29364–29368 (30 October 2012).

been committed by the Serb side—it was most likely that the shell that landed on Markale market had also come from the Serb side.¹⁴⁰⁴¹ When shown the report prepared by Gauthier’s team, including the statement that the measured angles were not “beyond suspicion” because of the crater disturbance, Rose refused to comment saying that he was not involved in the investigation or the writing of the report.¹⁴⁰⁴² **(It is more than obvious that General Rose shouldn’t have been asked at all, #because there was no any basis for his “most likely” belief#!)**

4198. Harland wrote the portion of the UN’s weekly assessment relating to this incident in which he reported that 68 people were killed and up to 200 injured, almost all of whom were civilians.¹⁴⁰⁴³ While this assessment provided that the mortar bomb was fired from the northeast, from near the confrontation line, it also stated that it was not possible to say with certainty that it came from the Serb positions.¹⁴⁰⁴⁴ However, in Harland’s view, #the circumstantial evidence pointed to the Serbs because# (i) the incident resembled the incident of the day before which was confirmed by UNPROFOR experts as having been perpetrated by the Serbs; **(#Or vice versa: to the same extent it may confirm that neither the bombing in Dobrinja the day before this one hadn’t been done by the Serbs#! #Such a dubious and unestablished incident can not serve as a circumstantial evidence for another, evidently dubious incident to allocate culpability!#)** (ii) public claims made by Krajišnik after the incident that body parts had been flown in by the United States or that mannequins were used as a part of an elaborate hoax were completely bizarre and outlandish; and (iii) the Bosnian Muslims gave access to UNPROFOR to all areas and personnel in the course of the UNPROFOR’s investigation of this incident, whereas the Serbs did not.¹⁴⁰⁴⁵ **(This is #completely false#, it was all the way around, the Serb side offered an access to wherever the UN personnel wanted, while the Muslim side didn’t allow any, nor the Muslim side accepted a mixed military expert’s investigation, as Gen. Milovanovic informed the UN and public, see: D2183:**
 Since the Muslim side is refusing to take part in the work of the mixed expert military commission, the Headquarters of the Army of the Republic of Srpska is convinced that it has planned and instigated this dreadful massacre.
 The UNPROFOR Command refuses that the Chief of Staff of UNPROFOR and the Chief of Staff of the so called Army of BH together with the Chief of Staff of the Army of the Republic of Srpska go to the scene of the crime and uncover the consequences and the circumstances of this tragedy.
Therefore, no obstacles from the Serb side, the Chief of Staff of the VRS offered every opportunity to investigate the case: See 2378, Cvetkovic statement:

¹⁴⁰⁴¹ Michael Rose, T. 7343–7344 (6 October 2010). When shown a UN summary of the media reports from 7 February 1994, where he is quoted as saying only that it was uncertain at that point who fired the shell, he commented that this report was incomplete because he had also said that it was most likely that the Serbs had shelled the market. See Michael Rose, T. 7363–7364 (6 October 2010), T. 7591–7592 (8 October 2010); D682 (UNPROFOR report re local press summary, 7 February 1994), e-court p. 4.
¹⁴⁰⁴² Michael Rose, T. 7350–7354 (6 October 2010); P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 19.
¹⁴⁰⁴³ P820 (Witness statement of David Harland dated 4 September 2009), para. 73; P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), pp. 1–2.
¹⁴⁰⁴⁴ P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), pp. 1–2.
¹⁴⁰⁴⁵ P820 (Witness statement of David Harland dated 4 September 2009), para. 75. See also David Harland, T. 2040–2041 (6 May 2010), T. 2320–2325, T. 2331–2332 (11 May 2010); P826 (UNPROFOR Weekly Political Assessment, 9 February 1994), p. 5; P827 (UNPROFOR Weekly Political Assessment, 17 February 1994), p. 7.

3. I made it possible for all members of the commission to determine the exact launching distance without me (they did not want to tell me what the angle of descent was and I think they did not measure it with precision).

On the other hand, the very same Hamill testified that there was no any possibility to check the Muslim positions had it been suspected they fired the shell, see P1994, p. 6108:

Secondly, if it had been fired by BiH troops, there is no possibility whatsoever that anyone from the UN would have been brought to the firing position.

Q. Now, I take it from your answer you are saying that you would not know whether or not there were any BiH mortars along the direction of fire.

A. That is correct.

The ABiH Commanders ordered to their own units, among other provisions and commendments, to hide all the heavy armament within Sarajevo from any sight of the UN, see D2900:

ORDER:

1. Prepare a VP /firing position/ for a 105-mm H in accordance with the LASTA order IMMEDIATELY, camouflage the artillery piece in the VP sector and protect it against reconnaissance by UN forces.
2. Prepare the position in the immediate vicinity of the current position, with additional primary axes as follows:
 - Krivoglavci axis
 - Blagovac axis
 - Mrković axis
 - Trebević axis
 - Lukavica axis

(This is #the first class evidence that the UNPROFOR (see para. 1.) didn't have an insight in the possession and deployment of the BiH heavy calibre weapons#, and that the ABiH did actively, skilfully and under the orders of thi higher commands disabled the UN in getting such an insight#. Thus, all the testimonies of the UN personnel about responsibility of the sides in Sarajevo are to be considered as insufficient and unfounded on an accurate data. Additionally, those who assisted the Chamber in assembling this Judgment, made a bad service to it! The very same Hamill testified in another case that it was not possible to determine which side was responsible for the Markale 1994 incident, see P1994, p. 6110:

While it wasn't possible to definitely conclude which firing position had been used of the six because it simply just isn't possible to do that regardless of what technical evidence you have unless you have seen them firing or used sound-ranging or radar, nonetheless, four likely firing positions were on -- four positions from which the round could have been fired were on the BSA side, and two were on the Armija side.

#The highest UN authorities reported in accord with all of these reports#, see: D713, p.2, Akashi to Anan, of 6 February 94.

7. I also talked to the international and local media in the Presidency to explain the latest positions clearly, as well as to emphasize that UNPROFOR is not able to blame either party for the 5 February bomb explosion.

Finally, the #final report, contained in a letter of the UN Secretary General to the Security Council members#, of 16 February 1994, D179:

Following the initial investigation of the incident a team was established by my Special Representative for the former Yugoslavia to conduct a comprehensive follow-up investigation. The team was led by the United Nations Protection Force (UNPROFOR) Force Engineer, Colonel Michel Gauthier of Canada, and included officers from France, Pakistan, Russia and Spain. The team also maintained close contact with Liaison Officers from the Government of Bosnia and Herzegovina and the Bosnian Serbs.

The team has now submitted its report to my Special Representative. With regard to the question of the origin of the 120 mm mortar shell, the report's findings are as follows:

"The distance of origin of fire clearly overlaps each side of the confrontation line by 2,000 metres. Both parties are known to have 120 mm mortars and bombs to go along with them. The Team has no reason to believe that either party does not have access to the type of ammunition reported in paragraph 12 of the report. There is insufficient physical evidence to prove that one party or the other fired the mortar bomb. The mortar bomb in question could, therefore, have been fired by either side."

I would appreciate it if you could bring this information to the attention of the members of the Council.

(#For this UN Court there is no any higher authority but these#! How come the #Chamber(s) could have concluded contrary to the official findings of such a responsible instances?# But, the #Prosecution that wishes to win at any cost#, would find a way: if the chiefs of the UN Agencies do not testify in favour of the Prosecution purposes, the Prosecution will take a note-takers to testify!)

a. Firing positions northeast of Markale

4199. The Chamber recalls that the closest confrontation line in the north-northeastern area of Sarajevo was in the area above Sedrenik and around Špicasta Stijena, on the ABiH-held Grdonj Hill.¹⁴⁰⁴⁶ Hogan measured the distance to this point as being some 2,300 metres from Markale.¹⁴⁰⁴⁷ He also measured the distance to the confrontation line on the bearing of 18 degrees plus or minus five degrees, and testified that it was approximately 2,800 metres away.¹⁴⁰⁴⁸ Hogan also testified that Markale market was at an altitude of 556 metres above

¹⁴⁰⁴⁶ See paras. 3852–3857, 4172.

¹⁴⁰⁴⁷ Barry Hogan, T. 11221–11224 (3 February 2011); P2212 (Map of Sarajevo marked by Barry Hogan).

¹⁴⁰⁴⁸ Barry Hogan, T. 11221–11224 (3 February 2011); P2212 (Map of Sarajevo marked by Barry Hogan).

sea level while Špicasta Stijena was at 874 metres.¹⁴⁰⁴⁹ According to Adjudicated Fact 335, the distance between Markale market and the SRK side of the confrontation line to the north-northeast at the time of the incident was approximately 2,600 metres.¹⁴⁰⁵⁰

4200. The Chamber further recalls its findings in Section IV.B.1.b.iii.C: Sedrenik that, with the exception of a few days around mid-1994, Špicasta Stijena was in the zone of responsibility of the SRK, more precisely the 7th Battalion of the 1st Romanija Infantry Brigade and that the two sides were very close to each other.¹⁴⁰⁵¹ According to Gengo, the 7th Battalion was deployed at a higher altitude than the ABiH forces in the sector of Špicasta Stijena, Mala Tvrđava, and Velika Tvrđava, whereas the forces at Boriје, Faletići, and other sectors were mostly at the same level.¹⁴⁰⁵² He further stated that the ABiH forces opposed to his battalion were in possession of a variety of infantry weapons, including 120 mm mortars, which changed positions often.¹⁴⁰⁵³ According to Gengo, the ABiH units fired at his battalion mostly from the area of Koševo and from the Jajce Barracks.¹⁴⁰⁵⁴

4201. As regards SRK mortar positions, Milorad Džida, then-Assistant Commander for Intelligence and Security of the 7th Battalion of the 1st Romanija Infantry Brigade,¹⁴⁰⁵⁵ stated that the SRK had two fixed mortar positions, one at Debelo Brdo and one at Mrkovići, each equipped with two 82 mm and two 120 mm mortars.¹⁴⁰⁵⁶ According to Gengo, there were no 120 mm mortars beyond Mrkovići¹⁴⁰⁵⁷ and Mrkovići mortars were used to respond to incoming fire from the Mala Tvrđava-Velika Tvrđava axis, whereas the Debelo Brdo mortars were used when the Faletići-Zečija Glava sectors were attacked; he asserted that the mortars' positions were not used on any other axes, including towards the city.¹⁴⁰⁵⁸

4202. Galić testified that he never issued an order for the SRK to fire on Markale on that day and also stated that he never received a report from subordinate units that any of them ordered this fire.¹⁴⁰⁵⁹ On the day of the incident, he ordered a strict ban on fire into urban parts of Sarajevo, in which he stated that “[r]ecently, despite explicit orders, certain units, individuals and artillery weapons’ crews have, arbitrarily and without approval, been opening fire on urban parts of Sarajevo, without need”.¹⁴⁰⁶⁰ **(This is rather #EXCULPATORY#, than**

¹⁴⁰⁴⁹ Barry Hogan, T. 11221–11224 (3 February 2011).

¹⁴⁰⁵⁰ See Adjudicated Fact 335.

¹⁴⁰⁵¹ See para. 3855.

¹⁴⁰⁵² D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16. Gengo also testified that the 7th Battalion was bordered by the Koševo Battalion. The border between the two was “spread in the middle between the village of Mrkovići”. See D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 37.

¹⁴⁰⁵³ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 17. *But see* P1058 (ABiH map) (indicating that ABiH had mortars in Breka but not near Špicasta Stijena); P6301 (Reference table of military symbols).

¹⁴⁰⁵⁴ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 18, 23; Slavko Gengo, T. 29772–29773, 29775–29780 (6 November 2012); P2193 (Map of Sarajevo); P5967 (Map of Sarajevo marked by Slavko Gengo). The Chamber notes that Jajce Barracks were located east of Stari Grad while the Koševo Hospital complex is located northwest of Stari Grad.

¹⁴⁰⁵⁵ D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 5.

¹⁴⁰⁵⁶ D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 15, 28; Milorad Džida, T. 29577–29581 (1 November 2012); P5952 (Map of Sarajevo marked by Milorad Džida). See also P1058 (ABiH map) (indicating that SRK had 120 mm mortars in Mrkovići); P6301 (Reference table of military symbols).

¹⁴⁰⁵⁷ Slavko Gengo, T. 29772–29775, (6 November 2012); P5966 (Map of Sarajevo marked by Slavko Gengo); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 38.

¹⁴⁰⁵⁸ Slavko Gengo, T. 29772–29774, (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 38. See also D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 15, 28; Milorad Džida, T. 29589–29591 (1 November 2012).

¹⁴⁰⁵⁹ Stanislav Galić, T. 37443–37445 (18 April 2013).

¹⁴⁰⁶⁰ P5970 (SRK Order, 5 February 1994).

aggravating, and it should have been noticed that the Accused used to press the SRK commanders for unnecessary firing towards the city, mainly on an inaccurate allegations made by the internationals!) As a result, according to the order, the units were to fire into urban parts of Sarajevo only when given a special order of the SRK Commander.¹⁴⁰⁶¹ In the order, Galić also mentioned that Sarajevo was the focus of media attention and that every action would be used for “propaganda purposes” against the Serbs.¹⁴⁰⁶²

4203. Similarly, on 7 February 1994, the Accused issued an order to the VRS Main Staff and the SRK, stating first that “there is evidence that Serbs are not responding in equal measure to Muslim artillery provocations—sometimes twenty to thirty, or even seventy times more” and ordering as a result that the VRS introduce “the strictest possible control of retaliation to provocations”, respond only when threatened and against military targets, and strictly at the commander’s commands.¹⁴⁰⁶³ (#EXCULPATORY#! No matter what Harland said below, it was not for the first time that the Accused banned firing towards the city!) Harland recalled that this order corresponded to his recollection of events after the Markale market incident, namely that an effective cease-fire did occur.¹⁴⁰⁶⁴ (Although the President trusted the internationals too much and criticised the VRS too much, his criticism can not be used as an evidence that the SRK really did a deeds for which the Accused criticised them. Anyway, the Chamber, like the Prosecution, is taking the Serb documents about fighting against any unlawful conduct as an evidence against the Serb side. Even if it was as the Prosecution/Chamber alleged/decided, it would rather be #EXCULPATORY# concerning the President!)

b. Bosnian Serb calls for joint investigation

4204. Milovanović testified that, in the evening of 5 February 1994, Ramsey phoned him and claimed that the Serbs fired an 82 mm mortar shell killing 96 Muslims and wounding 213 civilians in Markale market.¹⁴⁰⁶⁵ Milovanović in turn asked that a joint commission, comprising of UN, ABiH, and SRK representatives, go to the scene the next day together with ballistics experts to ascertain objectively who was to blame.¹⁴⁰⁶⁶ Milovanović followed up on his exchange with Ramsey with an official request for the establishment of a joint commission addressed to Rose.¹⁴⁰⁶⁷ In the follow-up he stated that if this request was refused, the VRS would suspend all co-operation with UNPROFOR and humanitarian organisations and would block any movement of humanitarian organisations and foreign nationals until further

¹⁴⁰⁶¹ P5970 (SRK Order, 5 February 1994).

¹⁴⁰⁶² P5970 (SRK Order, 5 February 1994).

¹⁴⁰⁶³ P846 (Radovan Karadžić’s Order to VRS, 7 February 1994).

¹⁴⁰⁶⁴ P820 (Witness statement of David Harland dated 4 September 2009), paras. 77–78.

¹⁴⁰⁶⁵ Manojlo Milovanović, T. 25731–25732 (5 March 2012).

¹⁴⁰⁶⁶ Manojlo Milovanović, T. 25732 (5 March 2012); D683 (Intercept of conversation between General Ramsey and General Milovanović, 5 February 1994).

¹⁴⁰⁶⁷ Manojlo Milovanović, T. 25732–25733 (5 March 2012); D2182 (Letter from Manojlo Milovanović to General Rose, 5 February 1994). See also P1638 (Witness statement of Michael Rose dated 26 March 2009, para. 38; P1652 (Letter from VRS Main Staff to Michael Rose, 5 February 1994), paras. 1, 5.

notice.¹⁴⁰⁶⁸ Later that evening, Ramsey informed Milovanović that the Muslim side was refusing to participate in the joint commission.¹⁴⁰⁶⁹ At around 2 a.m. on 6 February 1994, Ramsey finally informed him that there would be no such joint investigation.¹⁴⁰⁷⁰ Thus, neither the Serb nor the Muslim side was represented during the UN investigations of this incident, although their liaison officers were “permitted to maintain contact with the investigation team”.¹⁴⁰⁷¹ **(This is not entirely correct, at least as far as this is concerned with this Court. The Muslim side repeatedly made some measurements and investigation, and #Zecevic reported himself “to prove” not to investigate#. If it was as this paragraph said, then the Zecevic’s findings should not have been taken into account, but only those of the UN, at least before the UN court. However, #the Zecevic findings and opinions were decisive against so many official UN reports#!)**

4205. On 6 February 1994, Rose met Milovanović at Lukavica Barracks.¹⁴⁰⁷² During this meeting Milovanović adamantly denied that the shell had been fired from the Serb side and repeated his request for a joint investigative commission; however, Rose was “not interested” in the proposal.¹⁴⁰⁷³ **(It may be so because Gen. Rose knew and already stated publicly, as well as the other UN instances, that no side could be blamed for this incident!)** In the days following this incident, Rose also met with the Accused, who denied Serb responsibility for the Markale incident.¹⁴⁰⁷⁴

4206. According to Milovanović, the Serb side carried out its own investigation into the incident under the leadership of Colonel Ljuban Kosovac, concluding that the explosion was not caused by a shell but rather by an explosive device detonated at ground level.¹⁴⁰⁷⁵ The Chamber has not received any other evidence about this investigation or its results. **(Does it mean that the Chamber didn’t receive even the UN investigative results?)** However, it did hear from Radojčić, who testified that he was appointed on 5 February 1994 to a mixed commission together with Lugonja and Cvetković, but that this commission was not allowed to work, and that he was then ordered by Dragomir Milošević to establish who had fired the

¹⁴⁰⁶⁸ P1652 (Letter from VRS Main Staff to Michael Rose, 5 February 1994), paras. 1, 5; P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 38; Michael Rose, T. 7364–7370 (6 October 2010).

¹⁴⁰⁶⁹ D2183 (Public statement of Manojlo Milovanović, 5 February 1994).

¹⁴⁰⁷⁰ Manojlo Milovanović, T. 25732–25733 (5 March 2012). See also D2774 (Witness statement of Milenko Indić dated 19 January 2013), para. 136; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109; Stanislav Galić, T. 37444 (18 April 2013), T. 37529–37530 (22 April 2013), T. 38065 (9 May 2013) (adding that General Gvero made a similar request to the level of command of the UNPROFOR Sector and that this request was also refused on the basis that the commission’s safety could not be guaranteed); D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570’s witness statement. The one cited in this footnote is the second one.

¹⁴⁰⁷¹ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 9, 55–56; Michael Rose, T. 7592–7593 (8 October 2010); John Hamill, T. 9681–9682 (13 December 2010).

¹⁴⁰⁷² D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570’s witness statement. The one cited in this footnote is the second one.

¹⁴⁰⁷³ D2770 (Witness statement of KW570 dated 21 November 2012) (under seal), para. 10. The Chamber notes that there are two consecutive paragraphs 10 in KW570’s witness statement. The one cited in this footnote is the second one.

¹⁴⁰⁷⁴ P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 41.

¹⁴⁰⁷⁵ Manojlo Milovanović, T. 25735–25736 (5 March 2012). See also Savo Simić, T. 30065 (12 November 2012); Stanislav Galić, T. 37862–37866 (7 May 2013) (testifying that the commission headed by Kosovac was established before Markale for the purposes of investigating every incident).

shell.¹⁴⁰⁷⁶ He was subsequently transferred to the SRK Command in Lukavica in order to go to the scene to establish the trajectory of the shell, but the Muslim side did not allow it.¹⁴⁰⁷⁷

4207. Contrary to Milovanović and Radojčić, who testified about an internal SRK investigation, Džida and Gengo claimed that a mixed commission, including an UNPROFOR delegation, “cleared” the SRK upon inspection of SRK mortar positions on 6 February 1994.¹⁴⁰⁷⁸ According to Gengo and Džida, they were informed on 5 and 6 February 1994, respectively, by the command of the 1st Romanija Motorised Brigade that an inspection team escorted by UNPROFOR would come to visit the battalion.¹⁴⁰⁷⁹ This visit took place in the morning of 6 February 1994 and a report thereon was compiled by Jakovljević for the SRK.¹⁴⁰⁸⁰ Members of UNPROFOR and the VRS Main Staff arrived to inspect the Mrković mortar positions and while doing so spoke to those who were on duty on the day of the incident.¹⁴⁰⁸¹ Gengo could not remember anything about the members of the UN who attended this visit, including their number, nationality, and/or names while Džida remembered that one of the UNPROFOR officers was Russian.¹⁴⁰⁸² When confronted with daily combat reports of the SRK of 5, 6, and 8 February, which made no mention of any UNPROFOR visit, Gengo remained adamant that the visit did take place.¹⁴⁰⁸³ The Chamber notes that the UN report of the second UN investigation specifically states that the Mrković positions had not been visited by the UN in at least four months and that they could not be located with accuracy.¹⁴⁰⁸⁴ **(However, Cvetkovic testified that the delegation visited the area of responsibility on 13 February, when he offered to them to visit whatever they wanted, see: D2378:**

3. I made it possible for all members of the commission to determine the exact launching distance without me (they did not want to tell me what the angle of descent was and I think they did not measure it with precision).
4. I refused any possibility that one shell could have such effects and I explained this on the basis of the number of 5-100 gram fragments. The Muslim side told the commission that a shell can burst into 6,000 fragments. If this were true, each fragment would weigh 2 grams. Fragments of this size are not lethal in a 30 m radius, which proves that the number of victims is not realistic, but rather exaggerated.

¹⁴⁰⁷⁶ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109. See also D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 136-137.

¹⁴⁰⁷⁷ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 109. But see Manojlo Milovanović, T. 25735 (5 March 2012) (testifying that Kosovac managed to visit Sarajevo during his investigation).

¹⁴⁰⁷⁸ D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 16-18, 29; Milorad Džida, T. 29573-29577, 29582, 29585-29590 (1 November 2012); Slavko Gengo, T. 29803-29809 (6 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32.

¹⁴⁰⁷⁹ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32; D2375 (Witness statement of Milorad Džida dated 30 October 2012), paras. 16, 29; Milorad Džida, T. 29573-29575 (1 November 2012); Slavko Gengo, T. 29803-29804 (6 November 2012).

¹⁴⁰⁸⁰ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32; D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 17; Milorad Džida, T. 29574-29576, 29591-29593 (1 November 2012); Slavko Gengo, T. 29805 (6 November 2012).

¹⁴⁰⁸¹ D2375 (Witness statement of Milorad Džida dated 30 October 2012), para. 17; Milorad Džida, T. 29576-29577, 29582, 29585-29590 (1 November 2012); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 32.

¹⁴⁰⁸² Slavko Gengo, T. 29805-29807, 29831 (6 November 2012); Milorad Džida, T. 29585 (1 November 2012).

¹⁴⁰⁸³ Slavko Gengo, T. 29809-29810, 29815-29824, 29826-29827 (6 November 2012); P5969 (SRK combat report, 5 February 1994); P5971 (SRK combat report, 6 February 1994); P5972 (SRK combat report, 6 February 1994); P5973 (SRK combat report, 8 February 1994).

¹⁴⁰⁸⁴ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 44. See also Milorad Džida, T. 29590-29599 (1 November 2012).

7. I proved that with the density of four people per square metre (which is a high density), not more than 300 people could fit in the market. According to this, every single fragment had a victim.

Only a #chamber that wanted to be deceived could be deceived in spite of such a formidable evidence contrary to the Prosecution#!

4208. Gordan Milinić, the Accused's Security Adviser at the time,¹⁴⁰⁸⁵ testified that when the Accused heard about the incident on the day, he expressed astonishment and said that it was "yet another Muslim hoax"; he then immediately called the "military experts" who explained to him that the shell could not have been fired from the SRK positions and that this was a hoax by the Muslim side.¹⁴⁰⁸⁶ On 6 February, the Accused met with Akashi and told him that it was the other side that fired the shell.¹⁴⁰⁸⁷ On 10 February 1994, the Accused gave a press statement calling for a joint commission to investigate the incident, reminding the public that the Muslim side had previously staged shelling incidents and stating that the Serbs had no reason to continue with peace negotiations until a joint commission was established and findings on the incident were made.¹⁴⁰⁸⁸

(a) Post-war investigations

4209. Years later, in January 2003, for the purposes of the *Galić* case,¹⁴⁰⁸⁹ Zečević carried out an additional analysis of the Markale market incident and concluded that the first three of the six possible charges could not have been used to fire the shell because the speed of the shell would have been slower than necessary to embed the stabiliser in the crater.¹⁴⁰⁹⁰ Using the angle of descent and having calculated the speed of impact of the shell,¹⁴⁰⁹¹ Zečević determined that it came from between 4,500¹⁴⁰⁹² and 6,400 metres away, and thus from three

¹⁴⁰⁸⁵ D3682 (Witness statement of Gordan Milinić dated 8 June 2013), para. 9.

¹⁴⁰⁸⁶ D3682 (Witness statement of Gordan Milinić dated 8 June 2013), para. 15. *See also* D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 32–35 (testifying that the Supreme Defence Council in FRY was informed by General Momčilo Perišić that the incident was caused by the Muslim side).

¹⁴⁰⁸⁷ Yasushi Akashi, T. 37688–37689 (24 April 2013); D713 (UNPROFOR report re talks with Radovan Karadžić and Alija Izetbegović, 6 February 1994), e-court p. 1; Michael Rose, T. 7547–7549 (8 October 2010).

¹⁴⁰⁸⁸ P5974 (Video footage of Radovan Karadžić press conference in Geneva, 10 February 1994).

¹⁴⁰⁸⁹ Berko Zečević, T. 12304–12306, 12373–12375 (24 February 2011).

¹⁴⁰⁹⁰ Berko Zečević, T. 12173–12175 (22 February 2011), T. 12303–12308 (24 February 2011).

¹⁴⁰⁹¹ Based on the fact that the stabiliser was embedded in the crater and certain calculations relating to penetration into what he called "soft barriers", Zečević calculated that the minimum speed of the incoming shell would have been over 200 metres per second, with a margin of error of 20 metres. *See* Berko Zečević, T. 12164–12170 (22 February 2011); P2316 (Diagram of impact of stabiliser marked by Berko Zečević). Turkušić testified that the tarmac in the open area of Markale market where the shell landed is softer than the tarmac on the Mula Mustafe Bašeskije street, namely the location of the second Markale incident, as it was not designed for heavy vehicles to pass over it. *See* Emir Turkušić, T. 9075–9076 (4 November 2010). *See also* P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court pp. 28–29 (where Dubant explains that the first layer is asphalt and below it is a mix of soil and pebbles).

¹⁴⁰⁹² The Chamber notes that at first Zečević referred to a distance of 5,400 metres but then was asked and answered a question referring to a distance of 4,500 metres. Later on, he mentioned 4,950 metres. *See* Berko Zečević, T. 12169, 12174 (22 February 2011), T. 12304 (24 February 2011). Given that the distance of a shell fired at charge four would have been between 4,570 and 5,110 metres and that he did not exclude charge four, the Chamber considers that the reference to 5,400 metres was probably a mistake and that he intended to say 4,500 metres.

areas that would correspond to the three highest charges all of which were located in SRK-held territory.¹⁴⁰⁹³

4210. When asked by the Accused why he did not conduct this analysis back in 1994, Zečević explained that there had not been sufficient time.¹⁴⁰⁹⁴ He denied that he changed the original conclusion because he wanted to blame the Serbs for the incident or because he feared for his own safety.¹⁴⁰⁹⁵ When asked how it was possible that he alone was able to establish the origin of fire when all the other teams that worked on this incident could not, Zečević stated that the UNPROFOR investigators were soldiers and not engineers who worked on the design of the ammunition and its effects.¹⁴⁰⁹⁶ **(Does it mean (had the Chamber accepted this Zecevic's assertion) that all other UN findings should be treated the same way? Does it mean that all the engineers who design ammunition do such an investigations better than the soldiers trained to do that? Or, do engineers know ballistics better than an expert for ballistics?)**

4211. Higgs also investigated this incident after the war. He visited the site years later but noted that it offered little evidence due to redevelopment.¹⁴⁰⁹⁷ **(Higs had never "investigated this incident after the war." Higs only analised the other's results of investigations, ("hop[ing] that they are correct!", T.5946!)** Higgs agreed with Sabljica's report, noting that the UNPROFOR analyses corroborate it.¹⁴⁰⁹⁸ Like many others, Higgs also noted that while the calibre of the mortar and the direction of fire could be determined through crater examination, the distance from which the mortar was fired was more difficult to ascertain as a mortar can be fired using different charges.¹⁴⁰⁹⁹ According to Higgs, if the aim was to hit Markale, this would not have been too difficult to achieve as it is easily identified from a distance by other landmarks, especially since parts of the town were "pre-recorded".¹⁴¹⁰⁰ **(This is #contradicted by many other testimonies, saying that even a weather changes would require a new calculations#. So, Higgs simplu changed the standards just like that!)**

4212. Higgs visited all six potential locations from which the shell could have been fired, depending on the charge used, including the area of Mrkovići located northeast of the incident site and in which he found many suitable sites for placing a mortar, as well as routes that could be used to supply it.¹⁴¹⁰¹ In his view, Mrkovići was the area from which the mortar shell was "possibly fired".¹⁴¹⁰² **(But couldn't say "probably" let alone "for sure".)** Elaborating further, Higgs explained that if the shell had been fired using two medium charges this would have placed the mortar in the area right on top of the confrontation line,

¹⁴⁰⁹³ Berko Zečević, T. 12169–12175 (22 February 2011), T. 12303–12305, 12349–12352 (24 February 2011); P2317 (Report by Berko Zečević entitled "Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994"), e-court p. 6.

¹⁴⁰⁹⁴ Berko Zečević, T. 12305–12306 (24 February 2011).

¹⁴⁰⁹⁵ Berko Zečević, T. 12310–12311, 12341–12343, 12375 (24 February 2011).

¹⁴⁰⁹⁶ Berko Zečević, T. 12358–12360 (24 February 2011).

¹⁴⁰⁹⁷ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹⁴⁰⁹⁸ Richard Higgs, T. 5924–5929 (18 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11; P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 20.

¹⁴⁰⁹⁹ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹⁴¹⁰⁰ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹⁴¹⁰¹ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 11–12; Richard Higgs, T. 5955–5957 (18 August 2010), T. 6026–6027 (19 August 2010).

¹⁴¹⁰² Richard Higgs, T. 6026–6028 (19 August 2010).

which was not a good place for tactical reasons.¹⁴¹⁰³ If the two lowest charges had been used, this would have placed the mortar within the confrontation lines and within the built up area of Sarajevo; yet, no shell fire noise was reported.¹⁴¹⁰⁴ Finally, as for the two highest charges, which place the origin of fire farther behind the confrontation line, in Mrkovići, Higgs noted, like Zečević, that the stabiliser of a mortar shell fired on higher charges will usually embed itself into a crater, which is what happened in Markale.¹⁴¹⁰⁵ Furthermore, he had the statement of a witness who heard a mortar being fired in the direction of fire, which indicated that higher charges were used.¹⁴¹⁰⁶ According to Higgs, this witness¹⁴¹⁰⁷ was in a good position to hear mortar fire in the vicinity and “[d]ue to the fact of distance from mortar to target the weapon would probably have been firing on a medium to high charge and therefore making a louder noise”.¹⁴¹⁰⁸ Since the attack consisted of only one round fired into the centre of the town, Higgs was of the view that its purpose was to “harass” the population.¹⁴¹⁰⁹ **(It**

#had never been established that the SRK soldiers “harassed” the population#. Why would they do that? They could have fired shells without the superior’s approval only in defence against a direct attack. No spending shells in vain was allowed! Also, the Serb side had never have any interest for a returning fire, which was expected always when fired out. The Chamber should not take such a kind of# “views” which are out of any realm of expertise#!) He also noted that, while possible to hit the market with a single

“initially sighted round”, it is more likely that the market was “pre-recorded”.¹⁴¹¹⁰ **(Pre-recorded would mean that recently there was a series of shelling from the same spot to the same target. #The multiple shelling wouldn’t pass unnoticed#. Also a pre-recording would mean a calculations to be done for every day, taking into account the meteorology and other facts that change on a daily basis. And why the Defence didn’t have an opportunity to question the witness who heard the shell. It is not enough that Higgs #heard this “testimony” which was given neither in a court, nor under an oath#, nor cross examined! #If it could be acceptable, then Higgs could issue a verdict too#. But, a particular question is: how many investigations would be conducted until the UN and BH would be satisfied? #How come so late-late investigations had been favoured before the contemporaneous investigations of the UN personnel, which is not respected in the UN court#? #The Chamber easily rejected a video footage depicting Markale just before the incident happened. The video depicted the very process of staging the incident, but the Chamber wanted to know who filmed it. That shouldn’t be a crucial, the crucial is**

¹⁴¹⁰³ Richard Higgs, T. 6027 (19 August 2010).

¹⁴¹⁰⁴ Richard Higgs, T. 6027 (19 August 2010).

¹⁴¹⁰⁵ Richard Higgs, T. 6027 (19 August 2010). Higgs explained that the type of terrain, angle of descent, round velocity, calibre, and the weather conditions are all determining factors in whether a crater will be formed by the explosion of a shell and whether the mortar’s stabiliser will be found embedded within such a crater. If a projectile is fired at the lower to medium charges a higher percentage of explosions would cause the stabiliser to be blown away from the impact site, while there would be a higher percentage chance that the stabiliser would embed in the crater if the projectile is fired with charges five and six, as those charges would result in higher velocity of the projectile. See P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 5–6; Richard Higgs, T. 5980–5981, 5983 (19 August 2010). See also John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6075.

¹⁴¹⁰⁶ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹⁴¹⁰⁷ The Chamber notes that Higgs did not identify this “witness” in his evidence. Further, this person did not testify in the present case. While the Prosecution implies in its Final Brief, in footnote 387 of Appendix C, that he is “Witness AF” (referred to in Adjudicated Fact 332), there is nothing in the evidence before the Chamber that allows it to make that connection between Higgs’ evidence and Adjudicated Fact 332.

¹⁴¹⁰⁸ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 11–12.

¹⁴¹⁰⁹ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹⁴¹¹⁰ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 12.

what could be seen from it! The video could be obtain only by a person from the BiH TV crew, but certainly the source could not be disclosed for a security reasons#!)

4213. Zorica Subotić investigated this incident and based her conclusions on the previous investigation reports, photographs taken by the different investigation teams, a video recording of the incident and its aftermath, and her own site visit in 2010.¹⁴¹¹¹ In her opinion, the events as established by the various investigation teams do not correctly reflect what happened in Markale as the shell was most likely detonated on site through static activation by means of a timer or remote control device.¹⁴¹¹² She believed that the stabiliser could have been dug into the ground prior to the explosion, using a household tool such as a spade, and then compressed into the ground by the explosion.¹⁴¹¹³ In particular, it was Subotić's contention that the shell could not have hit the market from the air without first destroying the stall roofs,¹⁴¹¹⁴ as the area was almost completely covered by stall roofs.¹⁴¹¹⁵ She further put forth that the material she examined suggested that the incident did not in fact occur "all at once" or "in some sort of natural process".¹⁴¹¹⁶

4214. Subotić also questioned whether the incident occurred at 12:15 p.m. as recorded in the UN report, preferring the time recorded by UNMO observers, namely 12:30 p.m..¹⁴¹¹⁷ She concluded that it was possible for the first wounded to have arrived at Koševo Hospital at

¹⁴¹¹¹ Zorica Subotić, T. 38363 (15 May 2013).

¹⁴¹¹² D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 86, 111, 115, 120–121, 170–172; Zorica Subotić, T. 38317, 38319–38320 (15 May 2013), T. 38536, 38538–38539, 38560, 38566 (21 May 2013).

¹⁴¹¹³ Zorica Subotić, T. 38321–38322 (15 May 2013), T. 38558 (21 May 2013); D3548 (Photograph of a stall at Markale Market marked by Zorica Subotić).

¹⁴¹¹⁴ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 105–107, 113, 116, 119, 170. Subotić further argued that a reconstruction of the stall layout based on video-recordings and police footage of the incident indicates that the sketches made at the scene do not correctly reflect the actual lay out at the time of the incident. See Zorica Subotić, T. 38298, 38317 (15 May 2013), T. 38564, 38565 (21 May 2013).

¹⁴¹¹⁵ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 41; Zorica Subotić, T. 38294 (15 May 2013).

¹⁴¹¹⁶ Zorica Subotić, T. 38325–38326 (15 May 2013). Asserting that the incident did not occur naturally, Subotić pointed to the presence of: (i) persons with ID badges whom she asserted to have been officials of some sort; **These weren't officials "of some sort", but officials of MUP, a specialists for explosions, see D03556:**

[Text] Sarajevo, Feb 9 (TANJUG)—A man with glasses, filmed by the British television station SKY NEWS a day after the massacre at the Sarajevo market on Saturday, is an expert for remote control, TANJUG learned on Wednesday. Fahrudin Orucevic, an electronics engineer, is the director of a military institute. He was recognized by a colleague from work who was watching the SKY NEWS program.

But, the most significant was his urgent reaction and escape from the site.

- (ii) a military truck; and (iii) civilian vehicles arriving at the Maršala Tita street entrance of Markale market from the prohibited traffic direction of the one-way street, in what she identified as the immediate aftermath of the explosion. She inferred from the presence of the "officials" around the Markale market area that they "were at the location on assignment". Similarly, from the "well-organised" evacuation of the wounded from both the Dženetića Čikma and Maršala Tita street market entrances she inferred that they "had known in advance that [they] should go in that direction" and that it was "also possible that taxi drivers had a work obligation to be at disposal in situations like that". See D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 51, 52, 54; P1986 (BiHTV Video footage of Markale, 5 February 1994); P6327 (Excerpt from video footage re shelling at Markale Market); Zorica Subotić, T. 38540–38543 (21 May 2013). The Chamber finds all these assertions to be pure speculation and completely groundless. Furthermore, contrary to Subotić's suggestions, the Chamber considers the presence of officials on the scene, and of vehicles arriving from all sides, to be perfectly reasonable in the circumstances.

¹⁴¹¹⁷ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 45–46.

12:35 p.m..¹⁴¹¹⁸ Relying on the CSB Sarajevo report of 5 February 1994 as well as witness testimony from the *Galić* case, Subotić concluded that the evacuation of the dead and the wounded was completed around 12:50 p.m.,¹⁴¹¹⁹ whereas the Stari Grad police station was only informed of the explosion at 12:45 p.m.¹⁴¹²⁰ She thus inferred that the bodies of the dead and the wounded were removed from the site before the police were informed, and within no more than 20 minutes, while photographers and cameramen appeared at the scene almost immediately after the explosion.¹⁴¹²¹ Based on the way in which dead and mutilated bodies were shown to photographers and cameramen on the scene, the repeated showings of severed legs, a prosthetic leg seen in different locations around the market area, the speed at which the evacuations were carried out, and the fact that a military medical vehicle arriving at the scene already contained a dead body, Subotić concluded that the entire incident was planned, staged, and exploited for its impact through media coverage.¹⁴¹²² In her opinion, the staging of the incident required professional preparation, including placing dead bodies at the scene of the explosion to amplify the media impact.¹⁴¹²³ **(Nobody ever explained how possibly so many wounded people, assuming that they had been a priority in evacuation, had been cleared from the scene so fast. How many vehicles had been needed, and how much time, only for the wounded? And how much time and how many vehicles for the dead bodies? So simple questions do not have answers, which compromises the entire staging!)**

4215. As to the point of impact, Subotić referred to video footage which, according to her, shows that the impact site is covered with several objects, which is contrary to a typical explosion of a mortar shell where the detonation blows objects away from the crater.¹⁴¹²⁴ According to Subotić, the surroundings of the crater should have been littered with soil, pebbles, asphalt, and everything else that may have been pushed out by the embedding of the stabiliser, while the stabiliser should have been partially or fully visible.¹⁴¹²⁵ However, when it was later cleared of the rubble, the Markale crater did not have the typical appearance of a crater penetrated by the full length of a stabiliser but rather looked like it had been manually

¹⁴¹¹⁸ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 46.

¹⁴¹¹⁹ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 47, 54 (relying on P1708 and the testimony of Esad Hadžimuratović from the *Galić* Case who did not testify in this case).

¹⁴¹²⁰ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 47 (relying on P1708).

¹⁴¹²¹ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 47, 48; Zorica Subotić, T. 38540–38544 (21 May 2013).

¹⁴¹²² D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 61–77, 114, 165; Zorica Subotić, T. 38550–38552 (21 May 2013). Subotić suggested, *inter alia*, that photo material depicting a prosthetic leg in a number of different locations around the market in the aftermath of the explosion, a woman seen assisting in the loading of dead bodies onto a truck who later on appeared at the Koševo Hospital dispensary giving an account of what she saw at the market to the reporter, and the fact that a woman seen to have been killed in the incident has not been officially recorded as a victim of the incident, lead to the conclusion that the incident and its documentation were staged. In relation to the prosthetic leg, Subotić did not deny that its owner was killed at Markale that day but claimed that the prosthesis differed from the prosthesis shown in the courtroom as belonging to Čamil Begić. See Zorica Subotić, T. 38550 (21 May 2013). Zorica Subotić, T. 38537–38538 (21 May 2013), T. 38644 (22 May 2013).

¹⁴¹²³ Zorica Subotić, T. 38303–38304 (15 May 2013); D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 85–87, 118, 169, Figure 66; P1711 (Video footage re shelling of Markale, 5–6 February 1994). Subotić also found it suspicious that the crater was initially seen in the video footage as fully covered with rubble but later on, after a 20 or 30 minute break in the footage, the recording jumped to Zečević's investigation, showing a fully visible crater together with the re-inserted stabiliser, affixed with a number of small stones. See Zorica Subotić, T. 38309–38314 (15 May 2013).

¹⁴¹²⁴ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 86–87, 118; Zorica Subotić, T. 38304–38307 (15 May 2013).

dug out.¹⁴¹²⁶ **(Or rather imbedded?)** She concluded, therefore, that a hole was dug out, after which the stabiliser was either buried in the ground prior to the explosion or placed there after the explosion.¹⁴¹²⁷ In her opinion, it was during the investigation of 6 February 1994 that a “bigger and wider crater was made in which the stabiliser was later lowered”.¹⁴¹²⁸ The Chamber notes that in her analysis of another, unscheduled incident, Subotić opined that the stabiliser of an 82 mm mortar shell must embed when fired at charges four to six.¹⁴¹²⁹ Furthermore, when providing an opinion on the second Markale incident of 28 August 1995, Subotić explained that it is “well-known” that a stabiliser, in that case a 120 mm stabiliser, would penetrate the ground when it is fired at a charge of three or higher, whereas shallow craters would be created by shells fired at low speed, such as on a charge one.¹⁴¹³⁰

4216. Subotić also argued that Zečević’s method of re-inserting the stabiliser into a disturbed crater to determine the angle of descent is not a recognised method as its accuracy is dependent on a variety of factors, which would make it impossible to determine a margin of error.¹⁴¹³¹ She also criticised the measurements and estimates of the angle of descent calculated by other investigators and argued that the trajectory of the penetration of the stabiliser does not generally follow the trajectory of the mortar shell.¹⁴¹³² However, using another method, namely the density of the lateral beam of the fragment markings or splinter patterns on the asphalt, she calculated the angle of descent at between 64.6 and 70.32 degrees, that is, still within the range estimated by Zečević.¹⁴¹³³

4217. With regard to the incoming trajectory, Subotić recalled that different investigation teams determined a variety of different bearings of the shell.¹⁴¹³⁴ Based on the fragmentation effect on the UPI supermarket building, she established the baseline azimuth as being between 18 and 23, and up to 25 degrees, and thus was more or less consistent with the findings of CSB Sarajevo team, Zečević’s team, and those of the second UN investigation.¹⁴¹³⁵

¹⁴¹²⁶ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 86–87, 96; Zorica Subotić, T. 38304–38309 (15 May 2013); D3546 (Photographs depicting penetration of stabiliser and crater marked by Zorica Subotić). Subotić found further support for this position in the fact that the recovered stabiliser did not show any traces of scratches it should have born from the impact and in the video footage showing two layers of asphalt under which the crater was located. See D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 98, 168–169; Zorica Subotić, T. 38315–38316 (15 May 2013).

¹⁴¹²⁷ Zorica Subotić, T. 38554 (21 May 2013).

¹⁴¹²⁸ Zorica Subotić, T. 38309–38312 (15 May 2013); D3547 (Video clips re Markale). The Chamber notes that this contradicts the evidence of Derek Allsop, an expert also called by the Accused (see below), who testified that the depth of the crater appeared to be similar on both days. See D2372 (Derek Allsop’s expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), para. 7.3; Derek Allsop, T. 29461 (31 October 2012).

¹⁴¹²⁹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 48–49.

¹⁴¹³⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 137; Zorica Subotić, T. 38341–38342 (15 May 2013).

¹⁴¹³¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 93, 96–97 (stating also that Zečević’s method could produce an accurate result but that it would be necessary to show, using another method, that the results are reliable); Zorica Subotić, T. 38313–38315 (15 May 2013).

¹⁴¹³² D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 104.

¹⁴¹³³ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 104, 105.

¹⁴¹³⁴ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 167.

¹⁴¹³⁵ Zorica Subotić, T. 38300, 38302–38303, 38362, 38364 (15 May 2013); D3544 (Photograph depicting crater at Markale Market marked by Zorica Subotić).

4218. Derek Allsop was commissioned by the Accused to review Zečević's method of predicting the impact velocity of the stabiliser of the mortar shell based on its depth of penetration.¹⁴¹³⁶ Allsop testified that, in order to determine where a projectile is fired from, its impact velocity and impact angle¹⁴¹³⁷ must be established and compared with trajectory calculations or range tables.¹⁴¹³⁸ According to Allsop, when a mortar shell hits the ground, the fuse at the tip of the mortar shell is driven into the ground and creates a hole—the so-called “fuse furrow”—with parts of the fuse embedded in it; the stabiliser is then either driven backwards or also gets embedded in the ground depending on whether or not its velocity is less than the forward velocity of the mortar bomb.¹⁴¹³⁹ In addition, if the forward velocity of the stabiliser is greater than its ejection velocity, it may also fragment the fuse and disperse it sideways so that no fuse fragments remain in the furrow.¹⁴¹⁴⁰ In the case of an embedded stabiliser, its impact velocity will consist of the impact velocity of the mortar bomb itself minus the velocity at which the stabiliser was ejected upon impact.¹⁴¹⁴¹ However, according to Allsop, the latter velocity is almost impossible to determine.¹⁴¹⁴² In addition, since the stabiliser will eject upon detonation of the explosive on impact, its final angle would generally be different from the impact angle of the mortar bomb itself so that measuring it would not in fact provide the angle of the impact of the mortar bomb.¹⁴¹⁴³ Like the other experts, Allsop also testified that a high impact velocity would make it more likely for the stabilising fin to get embedded into the ground,¹⁴¹⁴⁴ meaning that an accurate measurement of the stabiliser penetration would still help calculate the impact velocity of the mortar shell, assuming one took into account a number of factors, such as density of the soil and moisture levels, for example.¹⁴¹⁴⁵

4219. With respect to the Markale crater, Allsop concluded that: (i) there was little evidence on which to base a forensic investigation into where the mortar shell was fired from; **(An “In dubio pro reo!” requirement met!)** (ii) Zečević's method of calculating the ejection velocity of the stabiliser was “over simplistic” and incapable of producing reliable results; (iii) similarly, the method of calculating the impact velocity was flawed because no consideration was given to the fuse furrow or the fact that it would not have been possible to insert the

¹⁴¹³⁶ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), para. 1.1; Derek Allsop, T. 29424–29425, 24927–24928, 29463–29464 (31 October 2012); D2369 (Derek Allsop's *curriculum vitae*).

¹⁴¹³⁷ Allsop clarified in court that “impact angle” and “angle of descent” are synonymous terms. See Derek Allsop, T. 29473–28474, 29533 (31 October 2012).

¹⁴¹³⁸ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 3.1–3.2; Derek Allsop, T. 29436–29439 (31 October 2012) (stating further that working out impact velocity from the evidence on the site of impact alone is extremely difficult).

¹⁴¹³⁹ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 5.1–5.3, 9.1; Derek Allsop, T. 29439–29441, 29453–29456, 29471 (31 October 2012); D2370 (Diagram marked by Derek Allsop). See also KW571, T. 32015 (16 January 2013); D2759 (Witness statement of KW571 dated 27 March 2012) (under seal), paras. 8–9. The Chamber notes that there are two paragraphs 9.1 in Allsop's report. The one cited in this footnote is on page 7 of the report.

¹⁴¹⁴⁰ Derek Allsop, T. 29445–29446, 29523 (31 October 2012).

¹⁴¹⁴¹ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), para. 5.3, 9.2; Derek Allsop, T. 29436–29442 (31 October 2012).

¹⁴¹⁴² Furthermore, according to Allsop, predicting velocities at which the stabiliser would be ejected is not sufficiently developed. D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 6.1–6.7, 10.2–10.3; Derek Allsop, T. 29443, 29466–29467 (31 October 2012).

¹⁴¹⁴³ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 5.3–5.7; Derek Allsop, T. 29446–29453, 29460 (31 October 2012).

¹⁴¹⁴⁴ Derek Allsop, T. 29441–29442, 29471–29472 (31 October 2012).

¹⁴¹⁴⁵ D2372 (Derek Allsop's expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 8.1–8.5 (stating also that those factors were not considered during the investigation in Markale); Derek Allsop, T. 29458–29461, 29503–29505 (31 October 2012). The Chamber notes that there are two paragraphs 8.5 in Allsop's report. The one cited in this footnote is on page 6 of the report.

stabiliser at the same depth from which it was removed;¹⁴¹⁴⁶ and (iv) with the information available on the scene of the incident, it would not be possible to accurately calculate the range from which the mortar was fired.¹⁴¹⁴⁷ With respect to (iii) above, he conceded however that he was not aware that investigators at the scene looked for but found no fuse fragments in the crater so that it was possible that the fuse fragmented into several pieces upon impact, rather than ending up in the fuse furrow.¹⁴¹⁴⁸ He also conceded, in line with the evidence of Zečević, Higgs, and Subotić, that in cases where the stabiliser embeds into the ground, it is likely that a higher charge was used, although in practice it may not always be the case for every impact as this will depend on the characteristics of the particular mortar bomb used.¹⁴¹⁴⁹ Similarly, if the launching position was located at a higher altitude than the altitude of the target/impact, the higher launching altitude would increase the acceleration of the bomb.¹⁴¹⁵⁰

4220. Allsop did not think that it was possible to drop the mortar bomb onto Markale from one of the surrounding buildings since a mortar bomb requires set-back forces created through its launch to initiate the fuse.¹⁴¹⁵¹ **(But if it was “armed” i.e. prepared by hands to explode, it could have exploded no matter from what height it was dropped! Anyway, if all was staged, a dropping from the surrounding buildings would also have been managed!)** Dropping it would also have caused it to hit the ground vertically, which was not the case given the appearance of the crater.¹⁴¹⁵² Similarly, Allsop did not consider it possible that a shell could have been activated in a static explosion, since the only way the stabilising fin could have become embedded into the ground was by travelling through the air at a higher velocity than its ejection velocity.¹⁴¹⁵³ To Allsop, the Markale impact site displayed all characteristics of a conventional 120 mm mortar bomb strike.¹⁴¹⁵⁴ Finally, Allsop explained that it would have been extremely difficult to achieve an exact hit of Markale from a very close range given that it would have been very dangerous for the launching crew.¹⁴¹⁵⁵

4221. The Accused also called Poparić, who sought to specifically counter Higgs’s suggestion that it would be possible to hit Markale market with a single round if the target was pre-recorded.¹⁴¹⁵⁶ Based on the dimensions of the market and looking at the different charges and

¹⁴¹⁴⁶ D2372 (Derek Allsop’s expert report entitled “Shelling of Markale Market in Sarajevo 5th February 1994”, 20 January 2012), paras. 7.1–7.5, 8.5, 10.7, 11.1–11.5; Derek Allsop, T. 29456–29459 (31 October 2012); D2371 (Photograph marked by Derek Allsop). The Chamber notes that there are two paragraphs 8.5 in Allsop’s report. The one cited in this footnote is on page 7 of the report. Further, paragraph 10.7 follows after paragraph 11.5 and should have in fact been paragraph 11.6.

¹⁴¹⁴⁷ Derek Allsop, T. 29428 (31 October 2012); D2372 (Report by Derek Allsop on the shelling of Markale Market in Sarajevo on 5 February 1994), paras. 10.7, 11.1–11.5. Allsop conceded, however, that he never visited Markale and had no reason to dispute the observations of the people who were on the scene at the time of the incident. See Derek Allsop, T. 29505–29511 (31 October 2012); P5951 (Three photographs re shelling of Markale on 5 February 1994).

¹⁴¹⁴⁸ Derek Allsop, T. 29491–29499, 29523 (31 October 2012); P5950 (Fuse and shell body fragments from shelling of Markale 5 February 1994). Allsop agreed that firing tests of mortar bombs for research and testing purposes would usually be carried out under controlled conditions on soft surfaces where the crater would be less defined than the crater in Markale was. He also agreed that testing materials for 120 mm mortars suggested high fragmentation of the fuse, with the stabiliser remaining intact. See Derek Allsop, T. 29485–29490, 29522–29523 (31 October 2012); P5947 (Photograph of crater formed by 120 mm mortar projectile); P5948 (Photograph of 120 mm light mortar projectile fragments); P5949 (Results of fragmentation of five 120 mm projectiles).

¹⁴¹⁴⁹ Derek Allsop, T. 29470–29484 (31 October 2012); P5946 (Excerpt from firing tables for 120 mm mortar).

¹⁴¹⁵⁰ Derek Allsop, T. 29479–29480 (31 October 2012).

¹⁴¹⁵¹ Derek Allsop, T. 29465–29466 (31 October 2012). But see D2363 (Witness statement of Steven Joudry dated 14 August 2012), pp. 5, 6

¹⁴¹⁵² Derek Allsop, T. 29465–29466 (31 October 2012).

¹⁴¹⁵³ Derek Allsop, T. 29467 (31 October 2012).

¹⁴¹⁵⁴ Derek Allsop, T. 29467 (31 October 2012).

¹⁴¹⁵⁵ Derek Allsop, T. 29468–29469 (31 October 2012).

¹⁴¹⁵⁶ D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo”, 15 August 2012), p.116. See also Mile Poparić, T. 39073–39080 (31 May 2013), T. 39313 (5 June 2013).

resulting ranges of the 120 mm mortar shell, he calculated the probability of the initial shell striking the market to be between 0.1% and 0.09%, the lowest charge having the highest probability.¹⁴¹⁵⁷ On cross-examination, Poparić was asked to consider the estimated impact area around a set target if a shell were fired at a charge five from a maximum range of 5,782 metres and agreed that the area struck would be within an ellipse of 58 by 24 metres, which would virtually cover the entire area of the market place, assuming the target point was the centre of the market; however, he also explained that these statistics were based on the firing of a group of projectiles, 50% of which would have hit the determined area.¹⁴¹⁵⁸ Thus, according to him, these statistics could not be used to determine the probability in relation to the first and only shell fired, such as happened in Markale.¹⁴¹⁵⁹

(a) Casualties

4222. Sabljica's report notes that 69 persons died in the explosion, while 197 sustained serious or minor injuries.¹⁴¹⁶⁰ Bešić's report refers to 66 dead and 200 wounded.¹⁴¹⁶¹ Bešić also testified that the number of 68 dead was initially registered in the Koševo morgue and that more people died later.¹⁴¹⁶² Rose testified that early reports on the incidents provided that more than 200 people had been injured and at least 50 killed, while the final toll came to 68 casualties.¹⁴¹⁶³

4223. In addition to his own father Ćamil, Almir Begić identified a number of victims who died in the Markale market incident on 5 February 1994, namely Muhamed Borovina, Nura Odžak, and Ruždija Trbić.¹⁴¹⁶⁴ Furthermore, he identified two wounded victims, namely Muradif Ćelik and Kenan Suvalija.¹⁴¹⁶⁵ According to him, 67 people lost their lives in this incident.¹⁴¹⁶⁶

4224. Faris Gavrankapetanović, the general manager of Koševo Hospital,¹⁴¹⁶⁷ authenticated a number of records, including admission records, relating to patients brought to the Hospital on the day of this incident.¹⁴¹⁶⁸ These records show that on 5 February 1994, at 12:35 p.m., Koševo Hospital received around 90 victims from Markale market, including both the dead and the wounded.¹⁴¹⁶⁹ **(#Miraculous lies#! In any variant, the explosion didn't happen before 12:15, or later than 12:30! #That would mean that within period of 5 to 15 minutes all of the casualties had been collected and transported to the Hospital a several kilometres far from Markale??? Is there any limit to these manipulations#?)**

¹⁴¹⁵⁷ D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p.117.

¹⁴¹⁵⁸ Mile Poparić, T. 39073–39080 (31 May 2013).

¹⁴¹⁵⁹ Mile Poparić, T. 39073–39080 (31 May 2013); P6349 (Diagram of stalls at Markale on 5 February 1994 marked by Mile Poparić).

¹⁴¹⁶⁰ P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 1. During his testimony in the *Galić* case, Sabljica stated that there were over 90 wounded. See P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p.47.

¹⁴¹⁶¹ P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5. See also Sead Bešić, T. 9441 (8 December 2010).

¹⁴¹⁶² Sead Bešić, T. 9450–9453 (9 December 2010).

¹⁴¹⁶³ P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 37. See also John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6103–6105.

¹⁴¹⁶⁴ Almir Begić, T. 9968 (15 December 2010); P2047 (List of the dead and injured re shelling of Markale on 5 February 1994).

¹⁴¹⁶⁵ Almir Begić, T. 9968 (15 December 2010); P2047 (List of the dead and injured re shelling of Markale on 5 February 1994).

¹⁴¹⁶⁶ Almir Begić, T. 10000 (16 December 2010).

¹⁴¹⁶⁷ Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12517–12519.

¹⁴¹⁶⁸ Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12525–12527.

¹⁴¹⁶⁹ Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12525–12526, 12616–12617, 12634–12635; P461 (Admission records from Koševo Hospital), pp. 4–44.

GavrRankapetanović also produced a list of persons who had surgery on the day of the incident,¹⁴¹⁷⁰ as well as the records from the Koševo morgue,¹⁴¹⁷¹ both of which show that over 50 people were received by the Koševo morgue in relation to the incident in Markale on 5 February 1994.¹⁴¹⁷² A document with the names of all the victims related to the incident, namely 125 people treated at or registered by the Koševo Hospital,¹⁴¹⁷³ as well as five victims transferred to other hospitals and eight victims transferred to the UNPROFOR hospital, was created shortly after the incident and used to provide information to the relatives of those wounded or killed.¹⁴¹⁷⁴ GavRankapetanović conceded that some victims could have appeared on different records if they were moved from one Hospital department to another.¹⁴¹⁷⁵

4225. In addition to the above evidence, the Chamber also heard evidence on the lethal effect of mortar bombs. In particular, the second UN investigation team concluded that with a single 120 mm mortar shell fired into a dense crowd surrounded by metal-framed stalls, together with the chaotic evacuation that followed, casualties of the magnitude of 275 dead and wounded are conceivable.¹⁴¹⁷⁶ Allsop also explained that the lethal effect of a mortar bomb would vary according to its size and the presence of obstacles in its vicinity.¹⁴¹⁷⁷ While smaller projectiles could be stopped by barriers, larger projectiles could go a long way, pass through a number of soft targets, and even create secondary projectiles, such as splinters.¹⁴¹⁷⁸ He added that tests on the effects of suicide bombs for instance showed that larger projectiles could even pass “through the equivalent of three people”.¹⁴¹⁷⁹

4226. In contrast, Subotić disputed the high number of victims. She noted that the video footage shows traces of blood and destruction of market stalls in a circle of approximately 10 to 11 metres around the point of impact of the mortar shell.¹⁴¹⁸⁰ Having taken into account the lay-out of the market stalls, Subotić calculated that 40 market stalls were in the “lethal radius” of 10.56 metres from the point of impact of the detonation.¹⁴¹⁸¹ Based on these figures, and assuming there was one shopper per square metre and a seller at each stall, Subotić calculated that there were 164 persons within the impact zone—that is, 45 persons

¹⁴¹⁷⁰ Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12529–12530; P462 (Surgery records from Koševo Hospital).

¹⁴¹⁷¹ P463 (Koševo Hospital morgue records), pp. 15–23.

¹⁴¹⁷² Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12603–12604, T. 12630–12632.

¹⁴¹⁷³ While the list contains 127 names, GavRankapetanović testified that two of those names were mistakenly included on the list as they were not victims of the shelling of Markale market. See Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12634–12637.

¹⁴¹⁷⁴ P464 (Admission records from Koševo Hospital, 5 February 1994); Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12611–12613, 12620–12622, 12632. Explaining the discrepancy between the admission records referred to above and the document containing the list of all victims of the Markale market shelling, GavRankapetanović stated that, unlike the former, the latter was based on all the records of the hospital, including those of the morgue. See Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12620–12622.

¹⁴¹⁷⁵ Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12622–12623. He also conceded that the Koševo Hospital staff was unable to perform post mortems except in very rare cases. See Faris GavRankapetanović, P473 (Transcript from *Prosecutor v. Galić*), T. 12625–12626.

¹⁴¹⁷⁶ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 11. See also P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 8; Berko Zečević, T. 12311–12318 (24 February 2011); D1095 (Sketch re shelling of Markale on 5 February 1994).

¹⁴¹⁷⁷ Derek Allsop, T. 29534 (31 October 2012).

¹⁴¹⁷⁸ Derek Allsop, T. 29534–29535 (31 October 2012).

¹⁴¹⁷⁹ Derek Allsop, T. 29535 (31 October 2012).

¹⁴¹⁸⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 81.

¹⁴¹⁸¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 82; Zorica Subotić, T. 38561 (21 May 2013).

less than the number of casualties recorded in the official report on the incident.¹⁴¹⁸² Furthermore, Subotić opined that, given that “only one dead person” and “one trace of blood” could be seen in the video showing the area between Dženetića Čikma and Maršala Tita streets, the number of 164 casualties was unrealistic.¹⁴¹⁸³ **(#Among so many “casualties”, there must have been at least 10 to 15% of the total number of casualties to be the people who were sellers#! None of them had been reported#! There was no any stuff on the tables, there was no any selling and buying, the bodies had been transferred from some military morgues to the Hospital directly, in 5 to 15 minutes after the explosion! One doesn’t have to be Einstein to see it!)**

(b) Adjudicated facts

4227. The Chamber notes that in addition to the evidence and adjudicated facts outlined above, it has also taken judicial notice of the following adjudicated facts that go to the issue of the origin of fire and other challenged issues in this incident: (i) the 120 mm mortar was fired from the direction north-northeast of the market or at a bearing of approximately 18 degrees;¹⁴¹⁸⁴ (ii) the shell could not have been fired from any place on the ABiH side of the confrontation lines in a direction north-northeast of Markale market;¹⁴¹⁸⁵ (iii) the mortar shell which exploded at Markale market on 5 February 1994 was fired from SRK-controlled territory;¹⁴¹⁸⁶ and (iv) there was no reason to consider the market area as a military objective.¹⁴¹⁸⁷ **(#Deadly combination#! This example clearly shows the whole futility of the “Adjudicated Facts” in such a huge case with so many trials, so many different defences, of which many didn’t even try to rebut some facts, being not interested in it, since it didn’t pertain to their defendant. Such an “adjudicated fact” stretches it’s “validity” to all other cases, where it would be rebutted had there been any process about it!)**

a. Staged incident and static explosion theories

4228. As noted earlier, two alternative defences the Accused put forward in relation to this incident is that it was staged or that the local authorities detonated an explosive device in the market either by a remotely controlled device or by dropping a mortar shell from one of the surrounding buildings.¹⁴¹⁸⁸

4229. In support of the staged incident theory, the Accused relied on various factors, including the fact that the video footage of the aftermath of the incident shows (i) a large number of empty stalls which in turn implied that the market could not have been so crowded that day;

¹⁴¹⁸² D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 82; Zorica Subotić, T. 38562 (21 May 2013). *See also* Derek Allsop, T. 29531–29535 (31 October 2012).

¹⁴¹⁸³ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 83; Zorica Subotić, T. 38549 (21 May 2013), T. 38644–38645 (22 May 2013).

¹⁴¹⁸⁴ Adjudicated Fact 339.

¹⁴¹⁸⁵ Adjudicated Fact 340.

¹⁴¹⁸⁶ Adjudicated Fact 341.

¹⁴¹⁸⁷ Adjudicated Fact 342.

¹⁴¹⁸⁸ *See para. 4173.*

(ii) a man carrying a prosthetic leg around the empty, clean market, with no other traces of the explosion, implying therefore that the leg must have been planted there; and (iii) that the stabiliser cannot be seen in the earliest footage of the crater while Bešić can be heard instructing someone to look for it on the roof of one of the surrounding buildings.¹⁴¹⁸⁹ He also argued that there was a gap of about an hour between the time the incident occurred and the time at which Bešić and his colleagues were informed of it.¹⁴¹⁹⁰

4230. However, witnesses testified that Markale market was usually crowded whenever there was no shelling in the city and that the same would have been the case on the day of the incident.¹⁴¹⁹¹

(#Nobody could say something like that and be convincing, because it would be totally irrationale #to be on an empty market at noon of a February day#, which is never pleasant in Sarajevo, so many persons. It must be counted in that not all of the allegedly present persons would be killed or wounded, for a several reasons:

1. #the place of explosion was in a corner, from which the vast majority of the market area was too distant;

2. #the tables had been an obstacle that would sustain and stop so many fragments;

3. #because of the corner where the explosion happened, up to two third of fragments would end in the walls of neighbouring buildings;

4. #therefore, to have a single mortar shell hitting 309 persons (96 dead and 213 wounded #is a primitive trick#, which the Chamber allowed itself to sustain.

5. #If only a half had been hit, that would mean that on an empty market there was more than 600 people, and if only every third was hit, there must have been around thousand persons.

6. #Why the Prosecution didn't summon some of the witnesses that hadn't been hit, or all of them had been dead or wounded?

7. #How come none of the sellers had been killed or injured, nor any of them testified?

6. #Had it been the Defence witness, he would be discredited immediately!

7. # The Chamber is accepting so remote "possibilities" that are so far from any probability, let alone certainty, that it compromises any idea of a fair trial!) Bešić, who was at the scene around an hour after the incident, strongly rejected the idea that the video footage of its aftermath shows that the incident was staged and that a prosthetic leg had been

¹⁴¹⁸⁹ See e.g. Hearing, T. 10001 (16 December 2010) (where the Accused makes a claim that the market was empty); Hearing, T. 9468, 9476 (9 December 2010) (where the Accused makes a claim that the debris and the leg prosthesis were brought to the market); Hearing, T. 2321–2323 (11 May 2010) (where the Accused makes a number of claims about the planting of evidence); Hearing, T. 12352 (24 February 2011) (where the Accused makes a claim that the original video footage indicates that the stabiliser was not embedded but might be on the roof of a nearby building).

¹⁴¹⁹⁰ See e.g. Hearing, T. 9451–9452 (9 December 2010).

¹⁴¹⁹¹ See e.g. Almir Begić, T. 10000–10001 (16 December 2010); Sead Bešić, T. 9447 (8 December 2010); Berko Zečević, T. 12313 (24 February 2011).

planted there.¹⁴¹⁹² In addition, Almir Begić testified that the prosthetic leg visible in the video footage of the aftermath of the incident belonged to his father, Ćamil Begić, who died in the incident and whose body he identified in the Koševo morgue on the day of the incident.¹⁴¹⁹³ The Chamber notes that during his cross-examination of Almir Begić, the Accused attempted to show that the prosthetic leg seen in the Markale market footage could not have belonged to his father Ćamil by using Ćamil’s old photograph to show that the prosthetic leg found at the scene was too big for him.¹⁴¹⁹⁴ The Chamber found this line of questioning completely unconvincing and misplaced and finds, in light of the evidence given by Almir Begić, that the prosthetic leg seen in the video footage belonged to his father Ćamil. The Chamber—having reviewed the video footage of the aftermath—further rejects as unfounded the contention that the prosthetic leg was purposely placed in different locations around the market.¹⁴¹⁹⁵

4231. Concerning the Accused’s claims as to the timing of the incident, Bešić confirmed that one of the reports on this incident states that the CSB Sarajevo investigation team was informed of the shelling only at around 1:20 p.m. and was at the scene by 1:30 p.m.; however, Bešić was adamant that the information about the incident was received much earlier, namely some 10 to 15 minutes after the explosion, and that it took the team around 40 minutes to come to the scene.¹⁴¹⁹⁶ Contrary to the Accused’s position that there was a gap of about one hour before the investigating team was informed of the incident, the Chamber is of the view, based on the timeline given by Bešić and all the other evidence to the effect that the explosion happened some time after 12 p.m., that the time recorded as “1320 hours” in the report as being the time when the CSB Sarajevo investigation team was informed of the shelling incident is in fact a typographical error. **(#This is a way to justify any discrepancy, but it is questionable whether a chamber is supposed to do that unilaterally, and only in favour of the Prosecution? Another question is: #how come the CSB investigators had been informed much later than all the casualties had been removed from the scene#?)**

4232. Harland also denied the suggestion that the incident was staged, calling it “completely bizarre” and noting that he personally sent out a member of his team, who was a doctor, to the scene immediately after the incident and who confirmed that there were many dead and wounded victims at the scene.¹⁴¹⁹⁷ KDZ450 was also there an hour after the incident after all the wounded and injured had been removed but testified that he saw “a staggering number of blood traces” and that he spoke to a physician from Sector Sarajevo who had gone straight to

¹⁴¹⁹² Sead Bešić, T. 9468–9479, 9530–9533 (9 December 2010); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995); D897 (Photograph re shelling of Markale on 5 February 1994 marked by Sead Bešić); D898 (Photograph re shelling of Markale on 5 February 1994); D899 (Photograph re shelling of Markale on 5 February 1994); P1983 (Video footage of Markale, 5 February 1994); P1984 (Video footage of Markale, 5 February 1994); P1985 (Video footage of Markale, 5 February 1994); P1986 (Video footage of Markale, 5 February 1994).

¹⁴¹⁹³ P2050 (Witness statement of Almir Begić dated 15 April 2010), paras. 1–9; P2051 (Supplemental statement of Almir Begić dated 14 December 2010); P2052 (Photograph of Ćamil Begić); P2053 (Death certificate for Ćamil Begić); P2054 (Burial certificate for Ćamil Begić); P2055 (Death certificate for Ćamil Begić); P2056 (Certificate of invalid status for Ćamil Begić); P2057 (Decision granting Sadika Begić status as a civilian war victim family member, 24 December 1996). *See also* Almir Begić, T. 9958–9959, 9961–9974 (15 December 2010), T. 9998–10000 (16 December 2010); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995); P2046 (Video stills of prosthetic leg); P2048 (Photographs of prosthetic leg); P2049 (Photographs of prosthetic leg).

¹⁴¹⁹⁴ Almir Begić, T. 10002–10008 (16 December 2010); P2052 (Photograph of Ćamil Begić); D932 (Video still of prosthetic leg); D933 (Video still of prosthetic leg).

¹⁴¹⁹⁵ P6327 (Excerpt from video footage re shelling at Markale Market).

¹⁴¹⁹⁶ Sead Bešić, T. 9436–9438 (8 December 2010), T. 9457–9458 (9 December 2010); D892 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 4.

¹⁴¹⁹⁷ David Harland, T. 2040–2041 (6 May 2010).

the hospital and seen the injured and the dead.¹⁴¹⁹⁸ The continuing presence of blood and human remains in the market area was further confirmed by Russell, who attended the scene at around 4:30 p.m. on 5 February 1994.¹⁴¹⁹⁹ Thus, relying on the above evidence, and having analysed video footage of the immediate aftermath of the explosion in which substantial amounts of blood, human tissue, body parts and injured or dead persons can be seen, the Chamber finds that a large number of persons were killed and injured during the incident.¹⁴²⁰⁰ Accordingly, the Chamber dismisses the claim that the incident was staged. **(Why all of this “staggering number of blood traces” are not visible on the video footage played in the Courtroom? What we have seen wasn’t “staggering” and didn’t indicate that almost 70 people died by cutting their bodies and losing the blood, there would have to be much more of blood!)**

4233. With respect to his theory that the explosion was caused by a static device placed on the scene by the local authorities or by a shell dropped from a nearby building, the Accused relied primarily on Subotić, as well as on several other witnesses. One such witness was KW554, who worked as an intelligence officer for UNPROFOR in Zagreb and who testified that an American soldier showed him a photograph of a mortar shell being dropped from a window overlooking the market, which he did not examine closely.¹⁴²⁰¹ Similarly, Sergey Moroz, a member of the UKRBAT, testified that Rumyantsev, who was part of Gauthier’s team, told him that “it was definitely proved that it could not be a mortar explosion from [the] Serbian side” but that a special explosive device had been brought in.¹⁴²⁰² The Chamber found this evidence tenuous at best, particularly since KW554 said that he did not examine the alleged photograph closely and given that Rumyantsev was part of the team that unequivocally concluded that a 120 mm mortar bomb struck the market after being fired in a conventional manner. **(But #did not establish from which side it was fired#)**

4234. As noted earlier, the Accused’s expert Subotić was the main proponent of the static detonation theory. However, she based her analysis on secondary material, such as photographs, video footage, previous investigation reports, and a visit to a substantially altered location 16 years after the incident. **(The Defence witness was not obliged to prove anything in terms of what happened, this had been an obligation of the Prosecution and it’s experts. The Defence case didn’t depend of the possibilities explained by the defence witness expert.)** This renders her findings less reliable than the conclusions reached by the investigation teams that investigated the scene immediately or shortly after the incident. **(But, #exactly these teams, on behalf of the UN concluded that there can not be concluded from which side the shell was fired#. This kind of inconsistency of the Chamber is confusing and inappropriate, since completely inconsistently choses a favourable peaces from different findings in order to support the guilt thesis. The Defence points out that the UN conclusion, (see report of Mr. Akashi to UN, 15 February 94) But let us see what had been issued by the UN at the times, see D00715 of 15 February 94:**

¹⁴¹⁹⁸ KDZ450, T. 10677 (20 January 2011).

¹⁴¹⁹⁹ D2364 (Witness statement of John Russell dated 17 October 2012), para. 14.

¹⁴²⁰⁰ P6327 (Excerpt from video re shelling at Markale Market).

¹⁴²⁰¹ D2762 (Witness statement of KW554 dated 14 September 2012), para. 11; KW554, T. 32036 (16 January 2013).

¹⁴²⁰² Sergey Moroz, D2373 (Transcript from *Prosecutor v. Galić*), T. 18145, 18169; D2374 (Notification re the death of Nikolay Rumyantsev, 13 October 2011).

Mr Akashi and Admiral Boorda both emphasised that, if NATO used air power at the request of the UN, it would be done in an impartial manner and would be directed at any party violating the cease-fire. They said that the mandates given to the UN and NATO did not specify a particular party; at the request of the SRSG, NATO was authorized to act against any party that broke the cease-fire.

As we see, “any party that broke the cease-fire” was to be punished, but we know how it went on.

In answer to a question on the tragic incident in **Sarajevo** on 5 February, **Mr Akashi** emphasized that the UNPROFOR investigation team was urgently examining the matter. He called for caution in drawing premature conclusions, saying that judgement should be reserved until the team had submitted its report. **Mr Akashi** added that the team would report by about 15 February.

The UN announced the report on the event of 5 February, we will see how this went out. See below about the violation of the CF, how many times the UN had to repeat that the main problem come from the Muslim side. Does it mean anything to the Chamber##?

General Rose told journalists that many of the cease-fire violations that had taken place on Saturday night had been committed by the Bosnian Presidency Forces and not by the Bosnian Serb army.

##The Ministers of the European Community knew immediately what happened, since Lord Owen reported to them# at the session on 12 February 1994, see: D180:

Former head of British diplomacy, Lord David Owen represents Europe as a co-presiding for the Summit for the Former Yugoslavia together with UN representative Mr Stoltenberg. On the evening of the 12th February, twelve ministers received the report which we made a copy of, specifically paragraph 7, which is related to the Sarajevo assassination on 5th of February. Lord Owen wrote, I quote:

“The position from which this shell was launched is located one and a half kilometer deep into the Muslim held territory measured from the demarcation line which separates the territory from the territory under the control of the Army of Republika Srpska.”

#Therefore, not ambiguous: it was fired out from a position deep into the Muslim territory!# And, finally, there is #the most official finding of the UN, whose is this Tribunal too. Could it be more blatant and from somebody higher than the UN# : see

D00179:

LETTER DATED 15 FEBRUARY 1994 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to my letters of 6 February 1994 (S/1994/131) and 11 February 1994 (S/1994/159) pertaining to the recent developments in Sarajevo following the shelling of a market-place on 5 February 1994.

Following the initial investigation of the incident a team was established by my Special Representative for the former Yugoslavia to conduct a comprehensive follow-up investigation. The team was led by the United Nations Protection Force (UNPROFOR) Force Engineer, Colonel Michel Gauthier of Canada, and included officers from France, Pakistan, Russia and Spain. The team also maintained close contact with Liaison Officers from the Government of Bosnia and Herzegovina and the Bosnian Serbs.

The team has now submitted its report to my Special Representative. With regard to the question of the origin of the 120 mm mortar shell, the report's findings are as follows:

"The distance of origin of fire clearly overlaps each side of the confrontation line by 2,000 metres. Both parties are known to have 120 mm mortars and bombs to go along with them. The Team has no reason to believe that either party does not have access to the type of ammunition reported in paragraph 12 of the report. There is insufficient physical evidence to prove that one party or the other fired the mortar bomb. The mortar bomb in question could, therefore, have been fired by either side."

I would appreciate it if you could bring this information to the attention of the members of the Council.

(Signed) Boutros BOUTROS-GHALI

#Which court can neglect this finding#? #Would Zecevic be more impartial#? Why the #Chamber didn't even mention this important document#? #It would be obliged to explain why this document is so easy to dismiss# as a Subotic's findings? This would be sufficient that the incident never be mentioned as a Serb misdeed! Furthermore, much of her analysis in relation to this incident was based on highly speculative assumptions and conclusions, such as her assumption that there would be only one market vendor per stall in the market.¹⁴²⁰³ **(It was not the point, but the #point was: there had to be at least one vendor per stall, and probably there were more than one. How come none of them had been hit and wounded or killed#?)** The Chamber also found some of her claims and resulting conclusions blatantly unreasonable and/or incorrect. For example, her claim that only one dead person and one trace of blood could be seen in the area between Dženetića Čikma and Maršala Tita streets is obviously inaccurate as can be seen from the video footage available to the Chamber. **(If there is something that is "available to the Chamber" and not available to the Defence, that is another matter, but if we had seen all of it, that would be abnormal and impossible to see a very few traces of blood, after a carnage as claimed!)** In addition, her theory about the appearance and manipulation of the crater clearly illustrates that she went to great lengths to fabricate conspiracy theories while wilfully

ignoring other evidence such as the fact that none of the witnesses, including some of those called by the Accused, thought that the crater was manually created. Indeed, there is simply nothing in the evidence to suggest that the crater was manually created as opposed to simply disturbed during the excavation of the stabiliser. This has been confirmed by Allsop, who thought that the crater, as seen in the footage of 6 February, was very similar to the crater seen on the video footage of 5 February. This type of analysis on the part of Subotić is a serious stain on her credibility and resulted in the Chamber deciding not to accept her evidence in relation to this incident except when it was corroborated by other evidence. **(What the Chamber did not accept from the Subotić's expertise was not something that was denying the Prosecution's allegations about the culprit. The Chamber rejected these parts of the Subotić's expertise in which she attempted to find out what happened, which was not a primary purpose of her expertise. The main purpose of her expertise was that there was no any valid evidence that the Serb side fired the shell, and that exhausted the purpose. And that can not be rejected by any chamber. All other in numbering of possibilities, which the Prosecutor witnesses did too, but the Chamber didn't reject these speculative thoughts!)**

4235. The Chamber further recalls that a number of witnesses, including Zečević, testified that the damage caused to the scene was consistent with the explosion of a 120 mm mortar, that throwing the mortar bomb from one of the surrounding buildings was unrealistic as it would have exposed the person throwing it to the explosion, **(And this is ridiculous! Any person throwing the shell would be behind some parapet, as always when throwing hand grenades etc.!)** and, further, that no one would be strong enough to embed a stabiliser into the asphalt without anyone at the market noticing.¹⁴²⁰⁴ He was supported in this by Allsop's opinion that a stabiliser would embed into the ground only if fired at a higher charge,¹⁴²⁰⁵ as well as Allsop's evidence regarding the lethal effect of the mortar shrapnel.¹⁴²⁰⁶ Finally, neither Sabljica nor Zečević saw anything unusual in Bešić instructing someone to look for the stabiliser on a roof.¹⁴²⁰⁷

4236. For all of these reasons, the Chamber does not accept the Accused's claim that the shell was detonated remotely at ground level or that it was dropped from an adjacent building. **(This is completely irrelevant for the defence case: a numbering of possibilities was not the fundament of the defence! The main point of the Defence is: no evidence that the Serb side fired it! Enough!)**

a. Other defences

4237. The Accused further sought to show during the case that the shell was fired by the ABiH in order for it to be imputed to the Serb side, so as to advance the Bosnian Muslim side's

¹⁴²⁰⁴ See e.g. Berko Zečević, T. 12163–12164 (22 February 2011), T. 12318–12320, 12330–12332, 12352–12353 (24 February 2011); D1096 (Photograph re shelling of Markale on 5 February 1994 marked by Berko Zečević).

¹⁴²⁰⁵ See paras. 4219–4220.

¹⁴²⁰⁶ See para. 4225.

¹⁴²⁰⁷ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 46–47 (noting that Bešić, due to his lack of expertise, would not be able to immediately determine whether the stabiliser was embedded in the ground or not); Berko Zečević, T. 12327–12328 (24 February 2011); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

political agenda.¹⁴²⁰⁸ He also claims that there is not enough evidence to conclude beyond reasonable doubt that the SRK fired the shell that struck Markale on 5 February 1994.¹⁴²⁰⁹

4238. The Accused relied on a number of witnesses in this respect. For example, KW570 stated that the Serb side was blamed for the shelling of Markale even before the investigation had been carried out, whereas the first crater analysis showed that it could not be determined which side had fired the shell.¹⁴²¹⁰ He personally formed the opinion that it was highly unlikely that the Serbs would have fired a single round, given their pattern of trying to hit their targets with multiple mortar rounds.¹⁴²¹¹ **(A #very important element redacted without any necessity#)** [REDACTED].¹⁴²¹² [REDACTED] when Rose confronted the ABiH delegation on 8 February and told them that evidence was emerging which suggested that they had fired the shell on Markale, they reacted with complete silence before “produc[ing] a number of excuses, which included a claim that they had taped a conversation involving the Serbs to the effect that they had confessed to the atrocity”.¹⁴²¹³ [REDACTED] UNPROFOR never received any evidence of such taped conversation.¹⁴²¹⁴ **(Therefore, it was another lie. So more should the Defence position about staging be convincing!)**

4239. The Accused also relies on the evidence of Milovanović and KDZ185. The former testified that incidents such as Markale were a “way of stopping negotiations by way of carrying out combat or turning the whole situation against [...] the Serb delegation” by the Muslim side whenever they did not like the direction in which international negotiations were heading.¹⁴²¹⁵ KDZ185, an UNPROFOR commander at the time, also testified that the Muslim side wished to keep Sarajevo the focus of international attention and tried to make up for their military inferiority by staging a “kind of media war”, an example being the shelling of a courtyard of a residential block near Markale for which the UNPROFOR carried out a crater analysis and determined that the fire had most likely come from the Muslim territory to the north, close to the frontline.¹⁴²¹⁶ **(The witness KDZ185 was a high UN military officer, and #not a Serb#. #How come this testimony had been neglected so easily#? Till this times there were a several staging, beginning with Vase Miskina on 27 May 92, aimed to interrupt the Lisbon Conference session, so that the patern was established, and was successful exclusively because of the international support of the Muslim cause, and an anti-Serb sentiments within the internationals present there. Now, to be cheated this way, it would be a shame for the UN. Not to be cheated, but to participate in this**

¹⁴²⁰⁸ Defence Final Brief, para. 2098.

¹⁴²⁰⁹ Defence Final Brief, para. 2115, fn. 5073.

¹⁴²¹⁰ D2770 (Witness statement of KW570 dated 21 November 2012), para. 10 (under seal); D2772 (Redacted diary of KW570), e-court p. 3 (under seal). The Chamber notes that there are two consecutive paragraphs 10 in KW570’s statement. The one cited in this footnote is the first of the two paragraphs.

¹⁴²¹¹ D2770 (Witness statement of KW570 dated 21 November 2012), para. 6 (under seal). KW570 explained that mortars are indirect fire weapons whereby the person launching them cannot see the target and has to fire them more than once in order to account for factors such as the atmospherics and to bed the mortar tube into the ground, thus increasing its accuracy. He also testified that the Serbs would usually fire a number or rounds in order to hit a target. It was for these reasons that he formed the opinion that it was highly unlikely that the Serb side had fired the mortar round on that day. KW570 did accept, however, that he had no experience commanding mortar units. See KW570, T. 32223–32226 (18 January 2013). **Why it was dismissed?**

¹⁴²¹² [REDACTED].

¹⁴²¹³ [REDACTED].

¹⁴²¹⁴ [REDACTED].

¹⁴²¹⁵ Manojlo Milovanović, T. 25580–25581 (1 March 2012). See also Momčilo Krajišnik, T. 43334 (12 November 2013).

¹⁴²¹⁶ KDZ185, T. 4226–4230 (28 June 2010).

deception, it would be shameless of the UN, and no country should admit them to mediate, after these horrifying examples of their bias!)

4240. The Accused also called KW586, who, at the relevant time, was a member of Izetbegović's security detail and testified that a few days prior to the Markale market incident, he overheard a secret meeting between Izetbegović, Reis-ul-ulema Cerić, Sefer Halilović, Mustafa Hajrulahović, and others as to what "could happen" if the Markale market, being full of people, was hit by a shell.¹⁴²¹⁷ After this meeting, two attempts to shell Markale ensued, the first "failed" attempt occurring only a few days prior to 5 February 1994 during which the roof of a building in its periphery was hit.¹⁴²¹⁸ KW586 further stated that another meeting was held after the failed attempt, during which it was said that the shell had been fired from Špicasta Stijena near the location of the Serb artillery in Mrkovići and very close to the separation line, so as to ensure that the Serbs would be blamed for it; it was then also decided to try and hit Markale again, which happened several days later.¹⁴²¹⁹ According to KW586, also involved in this conspiracy were the members of the Pakistani UNPROFOR team who had agreed not to register any shells fired from the ABiH side.¹⁴²²⁰

4241. Savo Simić, Chief of Artillery of the 1st Motorised Brigade of the SRK at the time,¹⁴²²¹ claimed that the Markale shell could not have been fired from a Bosnian Serb-held position.¹⁴²²² He testified that it was not possible for the first shot to hit that target, and that, in any event, in order to hit such a small area encircled by high buildings it would have had to have been fired from a position close by to achieve the almost vertical angle of 85 degrees.¹⁴²²³ Furthermore, according to Simić, there was also no observation point on the Serb side from which the market could be seen, and therefore, it could not have been accurately targeted.¹⁴²²⁴ **(And what would be a weakness of this testimony?)**

4242. Blaško Rašević, the Commander of the Mrkovići Company at the time of the incident, testified that "there was a firm conviction" in his unit that the SRK forces, particularly the forces from Mrkovići, did not fire the shell that landed in Markale.¹⁴²²⁵ On the day of the incident, Gengo was in Hreša, which is some seven kilometres away from Mrkovići, and

¹⁴²¹⁷ KW586, T. 47192 (17 February 2014); D4375 (KW586's SRBiH SUP ID) (under seal); D4376 (KW586's BiH MUP ID card) (under seal); D4378 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 14 February 2014) (under seal); D4374 (Witness statement of KW586 dated 20 September 2013), paras. 5, 8 (testifying also that he attended many such meetings during which it was said that a military reaction from the international community had to be provoked through drawing attention to the suffering of the Bosnian Muslims, and that incidents were specifically provoked by opening fire from mobile positions so as to "cause the shelling of buildings such as hospitals and the like" and having TV crews ready in the vicinity to record the incidents). **One could hardly imagine how much courage was needed by this witness to get out and say what his leadership was doing to the detriment of their and his people.**

¹⁴²¹⁸ KW586, T. 47221 (17 February 2014); D4374 (Witness statement of KW586 dated 20 September 2013), para. 8.

¹⁴²¹⁹ D4374 (Witness statement of KW586 dated 20 September 2013), paras. 4–5, 8; KW586, T. 47224–47225 (17 February 2014);
¹⁴²²⁰ D4374 (Witness statement of KW586 dated 20 September 2013), para. 8. During cross-examination, KW586 testified that he was referring to only one crew, consisting of two to three Pakistani UNPROFOR members, who were chosen because they were not as attentive as other UNPROFOR crews. See KW586, T. 47222–47224 (17 February 2014).

¹⁴²²¹ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

¹⁴²²² Savo Simić, T. 30121 (12 November 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 30.

¹⁴²²³ Savo Simić, T. 30121–30122 (12 November 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 30. See also D2770 (Witness statement of KW570 dated 21 November 2012), para. 7 (under seal); KW570, T. 32229–32230 (18 January 2013).

¹⁴²²⁴ Savo Simić, T. 30121 (12 November 2012).

¹⁴²²⁵ D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 29.

testified that he did not hear a missile launch nor saw any reports on such use of weapons from his battalion.¹⁴²²⁶ He was adamant that his unit was not involved in this incident.¹⁴²²⁷

b. Final analysis and conclusion

4243. Having considered the evidence presented to the Chamber as well as the adjudicated facts recounted above, and having discounted the staged incident and planted explosive theories, the Chamber finds that a 120 mm mortar shell exploded in Markale market on 5 February 1994. Relying on the hospital records, which the Chamber accepts were not entirely accurate given the chaotic situation at the time they were compiled, **(This is too much of generosity from the Chamber in favour of the Prosecution. First, the evacuation of so many dead and wounded people within five to fifteen minutes is dubious, then this “not entirely accurate hospital records”, together with many other peculiarities – puts the Chamber in a disastrous situation to defend something that can not be defended!)** Adjudicated Fact 338, and the technical evidence regarding the lethal effect of mortar shells, the Chamber also finds that the explosion caused by the shell on 5 February 1994 caused the death of at least 67 people and injured over 140. Given its view of Subotić’s credibility with respect to this incident, and in light of accepted contemporaneous video footage and hospital records, the Chamber rejects her claim that the number of victims is exaggerated and that dead bodies were brought to the scene. **(It is much easier to say than to defend: since the direction from which the shell allegedly came suggests that the vast majority of the fragments would spread back towards this direction, i.e. would hit the two walls, the northern and eastern one. We know from the traces of a mortar shell, that the least number of fragments spread forward in the direction. This is a blasphemy to discredit an expert witness only on the basis that her guesses weren’t believed by the Chamber. But, it is not relevant at all, and the #Defence was not obliged to prove what happened!#)**

4244. With respect to the nature of the area and the status of the victims of this shelling incident, the evidence clearly shows that Markale market was an open-air market frequented by the civilian population to buy and sell food and other goods. In addition, the Chamber recalls that it has taken judicial notice of the fact that there was no reason to consider it a military objective.¹⁴²²⁸ The Chamber therefore concludes that Markale market and the surrounding area was not a legitimate military target and that the casualties caused by the shelling were almost all civilians who were not taking direct part in the hostilities.¹⁴²²⁹ **(#On what basis the Chamber concluded that there was so many people, while we saw no a trace of any merchant stuff#? And how the Chamber accepted that there was so prompt removal of almost three hundred people, both wounded and dead? There should be added the fact that no a merchant was reported to be a victim!)**

4245. In terms of the direction of fire, having regard to the majority of the evidence it received **(Again, “the majority of evidence”! it is very easy to create this “majority”: just**

¹⁴²²⁶ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 36.

¹⁴²²⁷ Slavko Gengo, T. 29805 (6 November 2012).

¹⁴²²⁸ Adjudicated Fact 342.

¹⁴²²⁹ The Chamber heard evidence that one of the victims of this incident wore a uniform. See Sead Bešić, T. 9429–9430 (8 December 2010). While he may have been a soldier, his presence alone does not change the fact that most of those injured in this incident were civilians who were not taking direct part in hostilities but instead came to the market to buy goods. Indeed, many of the victims were women and elderly. See also para. 4330.

disqualify everything in that doesn't fit in the Prosecutor's picture, and then count the "ballots." But, #how the UN final finding wasn't even commented, but simply disqualified in a silence#? Where is an explanation of the basis on which the findings of several UN investigations had been silently dismissed#? It is sufficient to have a single one proof that shades the doubt, to implement the "In dubio pro reo" principle. This is not matter of democracy, but of evidence#!) from expert witnesses and witnesses otherwise familiar with crater analysis, the Chamber is convinced that the shell hit Markale market from above ground level and was fired from a north-northeasterly direction. The Chamber recalls that CSB Sarajevo conducted a forensic examination at the incident site on 5 February 1994, as did a number of UNPROFOR investigators on the same day or shortly afterwards. All of these teams, with the exception of FreBat and Verdy who made errors in their calculations, concluded that the shell originated from a north-northeasterly direction along the confrontation line at the angle of 18 degrees, plus or minus five degrees. Even Subotić's calculations produced an azimuth that is in line with those investigators. Accordingly, the Chamber finds that the shell that struck Markale market had an azimuth of 18 degrees, plus or minus five degrees. (But, this 18 degrees wasn't a Serb courtyard, both sides had their forces along this axis of 18 degrees. If the UN investigations are quoted, why their conclusions hadn't been quoted?)

4246. With respect to the angle of descent, which is relevant to the origin of fire, the Chamber recalls that the second UN investigation established that this angle had to be higher than 49 degrees in order to clear the buildings around Markale. The Chamber also recalls that different experts provided five different estimates as to the angle of descent, most of which were expressed in terms of ranges. All of those experts, with the exception of Subotić, were at the scene either soon after the incident or six or seven days later. Although Verdy was at the scene, the Chamber will not rely on his estimate due to the flaws in his method.¹⁴²³⁰ (An angle "higher than 49 degrees is not enough, because between this angle and the maximum angle of 85 degrees is a huge difference. Second, if the "different experts provided five different estimates as to the angle of descent" this can not and must not be taken against the Accused and Defence, but only as a weakness of the Prosecution's case!)

4247. While the Chamber heard evidence to the effect that measurements and estimates of the angle of descent are unreliable in this incident due to the crater having been disturbed, the Chamber, by majority, Judge Baird dissenting was also struck by the fact that all but one of the estimated angle ranges are relatively close to each other and in fact overlap. The one exception is the angle of descent measured by Russell, which is slightly higher than all the other estimated angles. However, unlike Zečević and Hamill, who were brought into the investigation later and purely on the basis of their extensive technical expertise,¹⁴²³¹ Russell

¹⁴²³⁰ See fn. 14004.

¹⁴²³¹ Hamill was a technical adviser to the investigation team as he had extensive knowledge of artillery weapons and was also an instructor in gunnery in a military school. Zečević is a mechanical engineer with years of experience in the weapons industry, including testing of weapons. Was #Zecevic in any terms interested in the findings? Why Hamill denied him access to the scene of event? Was Zecevic in any terms interested in the findings and the outcome of investigation? Was Zecevic credible anyway, particularly when falsely "establishing" the "aerosol" bombs used in Sarajevo, which the Chamber rejected? Either he was incompetent, or dishonest and politically ready to lie! Zecevic is, first of all, an extreme member of the Muslim army, also

made his estimate quickly on the day of the incident and, when testifying before the Chamber, could not remember having done so or having taken these measurements. At the time, he was a military adviser in Sector Sarajevo and was asked by Ramsey to examine the scene because he had some experience with crater analysis which, according to his own evidence, was not extensive.¹⁴²³² Accordingly, the Chamber, by majority, Judge Baird dissenting, is more persuaded by Zečević's and Hamill's estimates, which—with their margins of error—overlap to a great extent. Even the angle of descent determined by Subotić on the basis of the fragment traces on the scene is in line with the angles provided by Zečević and Hamill. Given that Zečević's estimate contained the largest margin of error, the Chamber, by majority, considers that the angle of descent of the shell that struck Markale was somewhere between 55 and 65 degrees. This also means that the shell could have come from one of the six positions established by Zečević in his report. The Chamber, by majority, Judge Baird dissenting, has no reason to doubt the credibility of Zečević and the reliability of his report in this respect. **(This is all irrelevant, because #this doesn't prove that the Serbs fired the shell, but only that there was a possibility, but no higher than that the Muslims fired it! But, there are many other reasons to doubt Zecevic's credibility:**

a) #Zecevic was a high official of the Muslim military industry;

b) #Zecevic remained persistant in his assertion that the Serbs used fuel air bombs;

c) #Zecevic volunteered "to prove", not to investigate, incidents that happened a few days (Markaale I) or a decade (Hrasnica) prior to his investigation! The Chamber didn't notice Ze~evi}'s confession that he got mad when informed that the UN didn't decide which side fired, and volunteered to prove the Serb responsibility!)

4248. While the Chamber cannot be sure that the speed of the shell as determined by Zečević is absolutely accurate, particularly in light of Allsop's evidence, the Chamber, by majority, Judge Baird dissenting, is satisfied that the margin of error in his calculations was such that it took into account all possible factors Allsop mentioned as having a significant impact on the calculations. Further, in this respect, the Chamber notes a common feature in the evidence of Zečević, Higgs, Allsop, and Subotić, which is that a mortar bomb fired at one of the higher charges would typically result in the stabiliser penetrating the ground and embedding therein.¹⁴²³³ **(#Irrelevant as to the origin of fire, still it could have been fired from both sides of the front line!)** While Higgs referred to two highest charges in this respect, and Zečević to charges four, five, and six, Subotić considered it "well-known" that a stabiliser would embed when fired with charge three or higher.¹⁴²³⁴ The Chamber recalls that, given the

employed in the top of the military industry of this army!) See John Hamill, P1994 (Transcript from *Prosecutor v. Galić*), T. 6077; P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 1; Berko Zečević, T. 12156–12157 (22 February 2011); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 47–48 .

¹⁴²³² D2364 (Witness statement of John Russell dated 17 October 2012), paras. 7–9, 12.

¹⁴²³³ See Berko Zečević, T. 12173–12175 (22 February 2011), T. 12303–12308 (24 February 2011); Richard Higgs, T. 5980–5981, 5983, 6027 (19 August 2010); D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 48–49; Derek Allsop, T. 29470–29484 (31 October 2012). See also para. 3979.

¹⁴²³⁴ See D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

angle of descent of between 55 and 65 degrees, **(Which anyway hadn't been established!)** even if the mortar shell that landed on Markale was fired with charge three, this would have still placed the firing position squarely in the territory of the SRK, namely just below the area of Mrkovići.¹⁴²³⁵ **("Just below the area of Mrkovići" #was possessed by both armies#! The sides were to close along the confrontation line that there would be impossible to decide from which side of the line it was fired by only an angle of descent, even if measured properly, which was not the case!)** As noted above, in this particular case, the stabiliser was found embedded into the ground with its top at a depth of around nine centimetres from the surface, thus leading to the conclusion that the shell was fired on a charge higher than charge one or charge two. While the ABiH forces could have fired the shell on charge three or higher, which then may have resulted in the embedded stabiliser, they would have had to launch it at a much steeper angle in order not to overshoot Markale. As testified by Allsop,¹⁴²³⁶ launching a shell from a closer distance, and thus at a steeper angle, and achieving an accurate hit of Markale would have placed the launching crew at a significant risk. In addition, it would have necessarily resulted in a higher angle of descent than the one measured on the scene. **(This is erroneous consideration, since the #ABiH had it's positions several kilometres along the axis of 18 degrees, from Markale to Spisacsta Stijena.# Who said that the ABiH would have to fire from the vicinity of Markale, in which case this consideration would be valid? What if it was fired just close to the Serb lines? But, this is all irrelevant, since it was not excluded that it was staged, then, it was not excluded that the Muslim side fired, and finally, it was not established beyond a reasonable doubt that the Serb side fired it. This is so dangerous game played by a UN Court, which may and will leave a horrifying consequences for the future of the region. In what of the countries of the UN these arguments would be accepted in a court?)**

4249. The majority notes that other evidence also indicates that the shell was fired from the SRK side of the confrontation line, more particularly, from the SRK positions in Mrkovići. For example, the Chamber heard that the SRK's 7th Battalion of the 1st Romanija Infantry Brigade had 120 mm mortars in the area of Mrkovići, which is north-northeast of Markale, whereas the evidence before the Chamber was consistent that the ABiH had no mortars in the area of Grdonj, which it held in the determined direction of fire.¹⁴²³⁷ In addition, Gengo testified that, rather than firing from Grdonj, the ABiH would open fire mostly from the area of Jajce Barracks and Koševo.¹⁴²³⁸ Similarly, Gauthier could not recall any ABiH mortar positions in the established direction of fire.¹⁴²³⁹ **(#Mobile mortars#! But we already know that the ABiH did fix the mortars on a vehicles, and there was no a place where they couldn't be while firing!)** While Gauthier also suggested that ABiH could have used mobile mortars, the Chamber, by majority, Judge Baird dissenting, is not convinced that it would have been possible for the ABiH to fire at the market area from a mobile mortar, without being seen, given the densely populated area in the direction of fire and given the proximity of the residential area of Sedrenik to the ABiH positions in Grdonj. The majority also recalls the absence of any evidence as to the sighting of mobile mortars on that day or shell fire noise

¹⁴²³⁵ See fn. 13980.

¹⁴²³⁶ See para. 4220.

¹⁴²³⁷ See P1058 (ABiH map) (indicating that ABiH had mortars in Breka but not in Grdonj or near Špicasta Stijena); P6301 (Reference table of military symbols). See also Asim Džambasović, T. 15220–15221, 15239–15240 (22 June 2011).

¹⁴²³⁸ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), paras. 18, 23; Slavko Gengo, T. 29772–29773, 29775–29780 (6 November 2012).

¹⁴²³⁹ Michel Gauthier, T. 29417 (30 October 2012).

coming from within the city. **(We have seen many documents of the ABiH ordering their units to hide even fixed big calibre armaments, let alone a mobile one, see: D2937:**

Provide precise information for each feature.

Try at all costs to prevent detection of your movements.

see: D2900:

1. Prepare a VP /firing position/ for a 105-mm H in accordance with the LASTA order IMMEDIATELY, camouflage the artillery piece in the VP sector and protect it against reconnaissance by UN forces.

.Not only a mortar, but a #howitzer 105 mm and other artillery pieces were operating with the explicate order to hide it from the UN sight#! How possibly was in expected to be seen every single move of the mobile mortars? How regular use of heavy weaponry was in the middle of Sarajevo could be seen from the ABiH document, a report of 102 Brigade, D2415:

We neutralised several firing positions. We are regrouping the forces.
- Artillery support was provided from 60-mm, 82-mm ad 120-mm MB, a 105-mm H and a tank against the requested and observed targets.

All of it was unseen and unregistered by the UN personnel, who by the way were always ready to testify that only the Serbs had a heavy weaponrdjeny!) In the majority's view, achieving an accurate hit of Markale market from a mobile mortar which has been placed on the back of a truck and the base plate of which has not been static for a period of time, by forces which have not pre-recorded this target and who are also trying to remain unseen and undetected, would have been extremely difficult, bordering on impossible.¹⁴²⁴⁰ (Now, the Chamber admitted that a mobile mortar crews were "also trying to remain unseen and undetected", although in this very same paragraph above it was an argument against the possibility of the fire being from a Muslim mobile mortar, "without being seen" had been used to dismiss this possibility. Nothing of that is convincing. Who would report hearing the fire? A Muslim inhabitant. To whom he would report? To the Muslim police. What would the police do with it? Consult the military. What the military would say to the police? Shut up! The Chamber shouldn't forget that all the state institutions on the Muslim side were involved in fights against the Serbs, and Croats when in conflict!)

4250. Further, the Chamber received evidence that the SRK would open fire on the area of Stari Grad from the SRK positions above Sedrenik.¹⁴²⁴¹ Hamill also testified about Cvetković's admission that the SRK fired a large number of mortar rounds into Stari Grad prior to the incident in Markale.¹⁴²⁴² **(But it wasn't fired against the settlements but #against the confrontation lines#. All of those shells and grenades that had been registered over Sarajevo were directed to the lines. Otherwise, if it had been directed towards the civil objects, there wouldn't be any Old City (Stari Grad) at all. And the Chamber must have known this so far, and not exploit such an unprecisness to create an impression which**

¹⁴²⁴⁰ The Chamber recalls that having the base plate of a particular mortar in the same position for a long time increases the accuracy of the mortar and thus allows the mortar crew to engage or strike its target with only one round. See P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 3; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6. See also fn. 13140.

¹⁴²⁴¹ See e.g. P6028 (UNPROFOR Situation Report (Sarajevo), 22 August 1995), e-court p. 6.

¹⁴²⁴² See para. 4192.

was not true. Beside that, the municipality of Stari Grad was in 90% a rural, uninhabited area, of which the Serbs controlled at least a half of it!) Even on the morning of 5 February, just prior to the Markale incident, the UNMOs reported that the city centre was shelled on the night of 4 and 5 February.¹⁴²⁴³ The SRK's use of mortar fire on the urban parts of Sarajevo is indirectly confirmed by Galić's stern ban on fire issued on 5 February 1994, as well as the Accused's order of 7 February that the VRS respond only when threatened and do so against military targets and strictly at the commander's commands.¹⁴²⁴⁴ All of this activity on the Bosnian Serb side around the time of the incident suggests to the Chamber that the upper echelons of power were trying to exert and ensure strict control over the undisciplined firing of the SRK forces into the city. **(In such a case the #“upper eshalons” can not be liable, because even if that happened as the Chamber tightened and stretched like Procrust, it would have happened against the will of this upper eshalon#. The Chamber had seen many documents proving the “upper eshalons” of authorities efforts to suppress any military activity throughout BiH, and in particular in Sarajevo, and hadn't seen any document about encouraging, let alone ordering any illegal or excessive fire towards the city. However, all the warnings on 5 February 1994 and on were caused by the President #naïve trust of the internationals# who alleged many offences of the account of the SRK!)**

4251. The Chamber unanimously rejects Gengo and Džida's denials of SRK's responsibility in relation to this incident and in particular their evidence as to the alleged visit by the UN to the positions in Mrkovići which apparently cleared the SRK side of any wrong-doing. The Chamber finds them not to be credible with respect to this incident as they were clearly contradicted by the UN report compiled following the second investigation, which specifically states that Mrkovići positions were not visited by the UN as it would have been difficult to locate the mortar positions there and that the Mrkovići positions had not been visited in at least four months prior to the incident.¹⁴²⁴⁵ This is in line with Gauthier's evidence, namely that his team chose not to visit the SRK positions in the direction of fire due to the area being vast.¹⁴²⁴⁶ **(Then, why the #Defence was prevented to facilitate a testimony of Jakovljevic, who met the UN crew at the spot#? Also, Cvetkovic reported that he was cooperating with the UN commission, see: D2378:**

Pursuant to order strictly confidential no. 20/15-1413-115 of the SRK Commander

dated 13 February 1994, I was appointed a member of the International Committee.

On 13 February 1994, I met with Colonel GAUTHIER and another two members of the Committee. Colonel GAUTHIER informed me of the following:

¹⁴²⁴³ P1562 (UNMO report, 4–5 February 1994).

¹⁴²⁴⁴ See paras. 4202–4203.

¹⁴²⁴⁵ See para. 4207.

¹⁴²⁴⁶ See para. 4192.

1. The international commission had been establishing facts for three days already.
2. The results of the commission's work (both technical and medical) will be incorporated into a single report.
3. The report will be sent to AKASHI on 15 February 1994 and some details will not be available to either of the warring parties.
4. The commission finished its work on the site.
5. The stabilising fin of a 120 mm shell was found in the crater. On the basis of the crater, the stabilising fin and some fragments of the shell lodged into the surrounding objects, the commission determined that the explosion was unquestionably that of a 120 mm shell launched on 5 February 1994.

Because the information on the explosion site was not available to me (width and depth of the crater, position of the stabilising fin, direction and angle of descent) I

tried to find out about it in informal conversations. This is what I found out:

1. The commission did not determine with certainty the direction from which the shell was launched.
2. On the basis of the position of the stabilising fin, which was removed on the first day, the angle of descent was not determined with precision, which is why the commission could not establish the exact launching distance.
3. The distance of the crater from nearby buildings allows for the possibility that the shell was launched from a distance larger than 3,500 m.
4. The commission does not have information to prove the guilt of the Serbian side with certainty, because the shell could have been launched from the territory controlled by the Muslims.
2. I offered the commission that we construct the possible question together, based on the angle of descent and all charges, which would determine the exact launching distance.
3. I made it possible for all members of the commission to determine the exact launching distance without me (they did not want to tell me what the angle of descent was and I think they did not measure it with precision).

Therefore, the SRK enabled the Commission to see whatever they wanted, and there is a statement of Mr. Jakovljevic that he met the Commission members at Spicasta Stijena!)

Furthermore, even the SRK's own combat reports, issued after the incident, make no mention of any such visit. **(There was a statement of Jakovljevic, #but the Chamber didn't accept**

the President's request to have Jakovljevic to testify! Beside that, after such a meticulous report of Mr. Cvetkovi}, there was no any reason to have it in a Regular combat report,(RBI) because this matter – a meeting of the International Commission for Establishing Factual State about Masakre at Markale” DOES NOT FALL WITHIN THE RCR (RBI)) Similarly, the SRK's and the Accused's calls for the joint commission in the days after 6 February also suggest that such a visit never took place. Finally, while Gengo and Džida are consistent with each other as to a visit by a delegation, neither of them could say much about the UN members within that delegation and neither had the names of those members. Thus, the Chamber is convinced that even if the SRK positions in Mrkovići were indeed visited by a certain delegation on 6 February, that delegation did not include any UN members. (Now the Chamber is doing a risky game: #there is evidence, but the Chamber didn't facilitate the Defence to obtain it#. Also, how possibly the Serb “calls for the joint commission in the days after 6 February” could be a basis for conclusion that there was no any visit? The visit could have happened any time, and only after 14 February and Cvetkovic's report (D2378, quoted above) it is clear, contrary to the Chamber's conclusion, that there was a joint commission!)

4252. While the Chamber accepts the general evidence given by KDZ185, KW570 and Milovanović that the Bosnian Muslim side tried to gain sympathy from the international community and would provoke attacks by the SRK with that goal in mind, it is of general nature and does not, as such, cast doubt on the majority's finding above that the shell came from the SRK positions. (It is #over-ambitious to call it “majority's finding”, because it was #no a finding of any kind, it was only a will to believe in something that hadn't been proven!) Furthermore, the Chamber, by majority, Judge Baird dissenting, does not accept the evidence of KW586 that the Bosnian Muslim side then deliberately targeted Markale so as to achieve international condemnation of the Serbs and thus further its own political agenda. The majority found KW586 to be lacking credibility in relation to this evidence for a number of reasons. The majority found it unlikely that someone in KW586's position would have been privy to such high-level meetings where such sensitive matters were discussed. Furthermore, KW586 exhibited a high degree of animosity towards the current political leadership in BiH, which obviously played a part in his coming forward with his evidence.¹⁴²⁴⁷ (#Employing this element, there would be 90% of the Muslim witnesses to be disqualified#, because all of them had a high degree of animosity towards the Serbs generally and towards the Accused particularly. And with the KW856 it was all the way around: first he dissented with the methods of the Muslim leadership because of their sacrificing own people in vain, and for that reason decided to oppose, and accepted to testify. What would the Chamber have to say about a several “plea guilt” witnesses of the Prosecution? Not a bit of suspicion about their motives and credibility. As far as it is concerned with the Chamber's conclusion that “someone in KW586's position would have been privy to such high-level meeting...” it has to be noted #that KW586 never said that he was at a table when the matter was discussed, but as a close bodyguard he was in the same, narrow space#. It is peculiar that neither the Prosecutor, nor the Chamber asked the KW856 about this circumstance, they would get the first class answer. Also, he explained that, regardless of the fact that Halilovic was already replaced from his post,

¹⁴²⁴⁷

KW586 repeatedly referred to the leadership as “gang” or “bandits” and at times even “scum”. See KW586, T. 47208–47211 (17 February 2014).

he never ceased to be Izetbegovic's close friend, and used to visit him!) There were also inconsistencies between his testimony in court and his witness statement, such as his evidence about the level of involvement of members of the Pakistani UNPROFOR contingent in the Markale incident and the involvement of Halilović, who the witness acknowledged had been removed from his position by Izetbegović at that time. **(The changes of Commanders doesn't mean they became enemies. The Accused changed four Prime Ministers, and all of them remained in a good terms with him. This is a sort of guessing which should never be exercised by a serious chamber!)** Essentially, KW586's evidence implies a conspiracy of a large scale. However, in the majority's view, such conspiracy is not supported by any other evidence on the record. **(Not true!!! There is #more than sufficient and relevant evidence that the Muslim political leadership did many staging with the aim to get the West involved in the conflict on their side#, that it was a very realistic inference! It had been mentioned by the internationals that this very same incident had been committed by the ABiH forces! Remember how the Muslim leadership reacted on such an allegation made by Gen, Rose: they kept silent, and immediately accepted to resume the Conference in Geneva! Beside that, why a testimony of a witness-insider, who didn't testify in favour of the Serb side, but in favour of his own side for an unnecessary sufferings, WAS NOT AN EVIDENCE???)** Finally, if true, it would have meant that the ABiH was able to make a successful hit on Markale market in only its second attempt. Recalling the evidence the Accused led on the low likelihood of such an intentional hit, the Chamber finds this to be impossible. **(So, the Chamber is of the opinion that ABiH couldn't hit the target with the first and the only one shell from a much shorter distance, but the SRK could, from a much more remoted position? If the ABiH is excluded for this reason, so should be the SRK excluded with more rightness!)**

4253. Thus, for all of the above reasons, the Chamber, by majority, Judge Baird dissenting, is persuaded beyond reasonable doubt that the shell that struck Markale market on 5 February 1994 was fired on one of the higher charges and thus came from the SRK-held territory, having been fired by SRK soldiers. While the market itself may not have been deliberately targeted on that specific day, the majority finds that the SRK forces deliberately targeted the area around it in full knowledge that there were no military targets there and in reckless disregard of potential civilian victims that such fire would cause.¹⁴²⁴⁸ **(Even if so, the SRK members should have not been accused and sentences for something they allegedly did, but without a consequences as in this case. Using a fabricated pattern to justify the convicting decision is a strong indication that the Chamber hadn't been "persuaded", nor confident about the SRK culpability. Further, from this kind of distance, there was no area in the city without a military facilities, although the Defence is persistent that this didn't happen, and that the ABiH was in a privileged position to do everything, from planting and activating a device, to shelling, always shielded and protected by the internationals, and even now, by the UN court! And this is going to be remembered as a dark page of the international justice and the UN in particular!)**

¹⁴²⁴⁸

The Chamber recalls that Poparić testified about the very low probability of the first mortar shell striking the market, while Higgs testified that it would not have been very difficult to target the market given that it was visible from the surrounding hills and because the city was pre-recorded. While accepting that the shot would have been a difficult one to make, given the majority's view that it was the general area around the market that was targeted, Poparić's evidence on probabilities of intentionally striking the market itself is ultimately irrelevant. **But, from the alleged fire place it was impossible to see the markale market. So it had to be a completely indirect fire, without observation and correction of fire.**

2. Bašćaršija flea market, 22 December 1994 (Scheduled Incident

G.9)

4254. According to the Indictment, two 76 mm shells hit a flea market in the old commercial quarter of Bašćaršija in Stari Grad in quick succession, killing two persons and injuring seven others. The Indictment further states that the fire originated from Trebević, in SRK-held territory.¹⁴²⁴⁹ In its Final Brief, the Prosecution further explains that the shells were fired from an M48 76mm B-1 artillery cannon which was in the SRK's possession, including at Vidikovac and Hreša, and which the ABiH did not have.¹⁴²⁵⁰ The Accused argues, however, that the incident scene was manipulated and that the two explosions were staged.¹⁴²⁵¹ Further, the Accused notes that the Appeals Chamber in the *Dragomir Milošević* case overturned the Trial Chamber's findings that the SRK fired the shells in question on the basis that it was impossible to determine the source of fire because both armies had positions in the direction from which the shells arrived.¹⁴²⁵² According to the Accused, no additional evidence was led in this case and thus this Chamber has no basis to conclude that the SRK fired the shells in question.¹⁴²⁵³

4255. On the foggy morning of 22 December 1994 at around 9:10 a.m., two shells exploded on the Bašćaršija flea market.¹⁴²⁵⁴ The explosions resulted in civilian casualties; two civilians were killed and seven or eight were injured, three of them seriously.¹⁴²⁵⁵ Investigations into this incident were carried out by the BiH MUP, the FreBat, and two UNMOs, Major Hanga Tsori Hammerton and Major Ilonyosi.¹⁴²⁵⁶

4256. Suljević participated in the investigation of this incident, along with Bešić, Đozo, and others.¹⁴²⁵⁷ According to the official report prepared by CSB Sarajevo on the day of the incident, two shells landed on the Bašćaršija flea market, on Petra Kočića street (now Telali street) and Danila Ilića street (now Oprkanj street) around 9:10 a.m.¹⁴²⁵⁸ The explosions

¹⁴²⁴⁹ Indictment, Scheduled Incident G.9.

¹⁴²⁵⁰ Prosecution Final Brief, Appendix C, para. 61.

¹⁴²⁵¹ Defence Final Brief, paras. 2119–2121.

¹⁴²⁵² Defence Final Brief, para. 2122. The Accused also adds that, similarly, in the *Perišić* case the Trial Chamber was unable to conclude beyond reasonable doubt that the two shells that hit the flea market originated from VRS-held positions. See Defence Final Brief, para. 2123.

¹⁴²⁵³ Defence Final Brief, paras. 2122, 2124.

¹⁴²⁵⁴ See Adjudicated Fact 3029. Hogan visited the site of the incident and recorded the GPS co-ordinates of the location. See Barry Hogan, T. 11204–11207, 11217 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2193 (Map of Sarajevo); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

¹⁴²⁵⁵ Adjudicated Fact 3030.

¹⁴²⁵⁶ See Adjudicated Fact 3031. However, the Chamber does not have before it any UN reports related to this incident. The CSB Sarajevo report before the Chamber notes that members of the FreBat were on the scene, as were UNMOs. See P1317 (BiH MUP Report re shelling of Bašćaršija on 22 December 1994), p. 3; D554 (BiH MUP Report re shelling of Bašćaršija on 22 December 1994), p. 3. P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 44; P1317 (BiH MUP Report re shelling of Bašćaršija on 22 December 1994), p. 2; P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 42–45; Nedžib Đozo, T. 9637 (10 December 2010); P1905 (Witness statement of KDZ485), para. 17; KDZ485, T. 8925 (3 November 2010).

¹⁴²⁵⁸ P1317 (BiH MUP Report re shelling of Bašćaršija on 22 December 1994), p. 3; P1319 (Map of Sarajevo depicting Bašćaršija shelling). See also Ekrem Suljević, T. 6196–6199, 6201–6203 (6 September 2010); D554 (BiH MUP Report re shelling of Bašćaršija on 22 December 1994), e-court pp. 16–17 (of the BCS version); D553 (Photograph of Bašćaršija marked by Ekrem Suljević); KDZ485, T. 8927–8929, 8931–8932, 8944–8945 (3 November 2010); D863 (Photograph of Bašćaršija marked by KDZ485); D865 (Photograph of Bašćaršija marked by KDZ485).

killed two and wounded seven persons.¹⁴²⁵⁹ The report also states that “judging by the incoming descent angle of the shells and the damage they inflicted, it was established that the shells had been fired from the south at Trebević where the aggressor forces are located.”¹⁴²⁶⁰ While noting that the fragments indicate that they were fired from a B-1 76 mm calibre cannon, the report also notes that “after the required evaluation, officials of the [CSB Sarajevo] will forward the final findings on the type and the calibre of the artillery weapon, direction and place from where the shells were fired” to the judge in charge of the investigation.¹⁴²⁶¹ Suljević then prepared a report concluding that the fragments collected at the scene, including a part of the UTI M68 fuse, belonged to two M70 76 mm calibre shells and that they were fired from the direction of the “enemy’s positions in the area of Trebević”, the azimuth angle being 159 degrees from the north, with a margin of error of five degrees.¹⁴²⁶² According to Suljević, the UNPROFOR soldiers, who were also present at the scene, agreed with his assessment as to the direction of fire but disagreed on the calibre of the projectiles, coming to the conclusion that they were most probably mortar shells of 82 mm calibre.¹⁴²⁶³

4257. Suljević explained that the order in which the shells fell could only be established on the basis of witness statements, noting that according to some of the eye-witnesses, the first shell fell on the curb of Danila Ilića street while the second fell near a window of a house located on Petra Kočića street.¹⁴²⁶⁴ KDZ485 testified that the shells fell “in a strictly civilian area, without any military activity”.¹⁴²⁶⁵ He also stated that when the CSB Sarajevo team arrived, all bodies had been removed from the scene and denied that the scene was altered in any other way.¹⁴²⁶⁶ **(The most drastic #disturbance of a crime scene is removal of the dead bodies#. Miraculously, as in many other doubtful cases, the medical evacuation was so “efficient”**

¹⁴²⁵⁹ Mirsad Delić and Hasan Hadžić died in the incident, while Remzija Kihic, Ismeta Pačariz, Saliha Lukšija, Envera Sadović, Samir Mujković, Kasim Krka, and Ramiz Hodžić are recorded as having been wounded. See P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 3–4. In addition to the CSB Sarajevo report referring to the number of victims of this incident, the Chamber has also received medical certificates relating to some of those victims. See P1550 (Medical record for Remzija Kihic); P1556 (Medical referral for Remzija Kihic); P1253 (Medical report for Ramiz Hodžić); P1246 (Medical report for Ramiz Hodžić); P1535 (Medical record for Ismet Pačariz); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 14 (medical report related to Saliha Lukšija).

¹⁴²⁶⁰ The report also contains statements of two eye-witnesses (Bajraktarević and Bećirević) who claimed that they heard the firing of the shells before the explosions and that this firing sound originated in the area of Vidikovac in Trebević. Two other eye-witnesses (Subasić and Ibrulj) stated they heard the shells being fired somewhere in the area of Trebević. See P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3; D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 5–7, 21–22, 25.

¹⁴²⁶¹ P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3.

¹⁴²⁶² P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 45–46; P1318 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 2; P1319 (Map of Sarajevo depicting Baščaršija shelling); P1320 (Photographs relating to Baščaršija shelling); P1905 (Witness statement of KDZ485), para. 18; KDZ485, T. 8930–8931, 8936–8938 (3 November 2010); D864 (Photograph related to incident at Baščaršija flea market marked by KDZ485).

¹⁴²⁶³ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 47; P1317 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), p. 3. The Chamber notes that no UN report on this incident was tendered by either of the parties and thus it is unable to confirm and/or assess the findings of the UN in relation to this incident.

¹⁴²⁶⁴ Ekrem Suljević, T. 6191–6192 (6 September 2010); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), pp. 22–23; KDZ485, T. 8930–8931 (3 November 2010); D862 (Sketch of Baščaršija marked by KDZ485).

¹⁴²⁶⁵ P1905 (Witness statement of KDZ485), para. 18. The Stari Grad police station was located a number of blocks away from the incident site. See Nedžib Dozo, T. 9637–9638 (10 December 2010); D915 (Map of Sarajevo marked by Nedžib Dozo).

¹⁴²⁶⁶ KDZ485 confirmed that the soil around one of the craters was cleared but noted that this was done after the traces were examined and photographed as the same crime scene would be photographed at various stages of the investigation. See KDZ485, T. 8929, 8935–8936, 8938–8943, 8947–8948 (3 November 2010); D554 (BiH MUP Report re shelling of Baščaršija on 22 December 1994), e-court pp. 35–38 of the BCS version. Dozo also confirmed that the bodies were removed by the time the team arrived on the scene, which was some 15 minutes after the shells exploded. See P1978 (Witness statement of Nedžib Dozo dated 7 December 2010), para. 46; Nedžib Dozo, T. 9639–9641 (10 December 2010). **It was a sort of #miracle of efficiency#, to remove so many bodies in such a short time, particularly dead bodies could wait to be photographed.**

that removed all the bodies before the police investigators came!) Another investigator on the team, Dozo, was asked about the possibility that the explosion was a result of a device placed at the scene; he explained that the team found shrapnel, which came from a projectile that was not a mortar shell and thus discounted the theory of an explosive device at the scene.¹⁴²⁶⁷ Suljević also denied that anything other than projectiles exploded at the scene of this incident.¹⁴²⁶⁸

4258. With respect to the 76 mm calibre shells, Suljević testified that CSB Sarajevo had samples of fragments from such projectiles, which were collected after they were fired on the city by the SRK.¹⁴²⁶⁹ **(Wouldn't it be possible to plant those fragments at the site?)** The Chamber has also received a number of VRS and SRK documents, which show that the SRK was in possession of a large number of M48 B1 cannons that fired 76 mm projectiles, including one such cannon in the area of Hreša and Vidikovac.¹⁴²⁷⁰ In contrast, the ABiH appears to have had only a handful of such cannons, all of which were located to the south and southwest of Ilidža and thus outside the control of the ABiH inside the city itself.¹⁴²⁷¹ **(It would be sufficient if the ABiH had only one, to be involved in this incident! But, neither the UN, nor anybody outside the ABiH could have known what and how many pieces of heavy armament the ABiH had in the city of Sarajevo!)**

4259. Zorica Subotić agreed that two explosions occurred at the incident site but disputed the manner in which they happened and argued that the scene was manipulated.¹⁴²⁷² She claimed that the first explosion, the one related to the crater on the curb of Danila Ilića street, did not take place at that location, but at a location nearby, and that the crater near the curb was manually dug out.¹⁴²⁷³ She concluded this using the contemporaneous photographs made by the CSB Sarajevo team arguing that they show, *inter alia*, that (i) the crater was too big for a 76 mm round, (ii) the quantity of the debris expelled from the crater onto the left-hand side of the curb (as seen from the alleged incoming direction of the round) was disproportionately greater than the quantity on the right-hand side of the curb, (iii) some of the items surrounding the crater were still covered by snow even though the impact would have blown that snow away, (iv) the pattern of the soil traces and of a number of metal fragments and other objects seen near the crater indicates that the explosion actually occurred some metres away from the crater, and (v) on the house near the crater, damage was limited to the window shutters and

¹⁴²⁶⁷ P1978 (Witness statement of Nedžib Dozo dated 7 December 2010), para. 47.

¹⁴²⁶⁸ Ekrem Suljević, T. 6204–6206 (6 September 2010); D555 (Photograph of crater at Baščaršija marked by Ekrem Suljević).

¹⁴²⁶⁹ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 29; Ekrem Suljević, T. 5684–5685, 5687–5688 (21 July 2010). In addition, Suljević explained that one could distinguish between a crater created by a mortar shell and the crater created by an artillery projectile. See Ekrem Suljević, T. 5735–5738 (22 July 2010); D525 (Sketch drawn by Ekrem Suljević).

¹⁴²⁷⁰ P5056 (Letter from Manojlo Milanović to General Hayes, 15 August 1993), p. 2; P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); P1593 (SRK map of Sarajevo showing weapon sites); P1594 (SRK map of Sarajevo showing weapon sites); P1595 (SRK map of Sarajevo showing weapon sites); P1279 (SRK request to VRS Main Staff, 10 July 1995), p. 2; P1282 (SRK request to VRS Main Staff, 18 April 1995), p. 1; P1303 (SRK request to VRS Main Staff, 22 June 1995), p. 1; P5940 (SRK Order, 9 May 1995), p. 2; P5941 (Document re artillery fire and tanks), p. 1. See also P1058 (ABiH map); P6301 (Reference table of military symbols).

¹⁴²⁷¹ P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); P1058 (ABiH map); P6301 (Reference table of military symbols); D779 (SRK Order, 27 March 1995), pp. 2, 3. According to Dragomir Milošević, the 104th Motorised Brigade of the ABiH had 76 mm cannons and would use them to target the Famos Factory located near Lukavica. See Dragomir Milošević, T. 32787–32788 (29 January 2013). The Chamber notes that the zone of responsibility of the 104th Motorised Brigade was south of the airport, in the area of Hrasnica and Mt. Igman. See P1058 (ABiH map).

¹⁴²⁷² Zorica Subotić, T. 38277 (14 May 2013).

¹⁴²⁷³ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 145–150.

not the façade surrounding those shutters, which is inconsistent with the laws of physics.¹⁴²⁷⁴ According to Subotić, this crater and its surroundings were manipulated in order to give the impression that a “fragmentation artillery round” exploded at that location, when in fact the actual explosion near the crater was caused by a “quantity of explosive”; the manipulation also intended to make the scene compatible with the direction of fire eventually determined by the investigators.¹⁴²⁷⁵

4260. With respect to the second explosion, Subotić noted that the crater was too big to have been caused by a 76 mm round and also too shallow when compared to the crater related to the first explosion.¹⁴²⁷⁶ She further noted that the shape of the crater was similar to craters caused by rounds exploding at low angles of descent or even rounds lying on the ground.¹⁴²⁷⁷ Recalling that a part of the fuse was found on the scene, Subotić opined that one of the contemporaneous photographs showing the fragments of the projectile also showed an intact fuse without the detonator, which in her view is “absolutely impossible” given that the fuse activates once it impacts the ground.¹⁴²⁷⁸ The only way in which this could happen, according to Subotić, was if the round was detonated while stationary, using an explosive charge.¹⁴²⁷⁹

4261. In addition to the evidence and adjudicated facts outlined above, the Chamber has also taken judicial notice of one additional Adjudicated Fact which goes to the direction of fire and provides that both shells were fired from the southeast.¹⁴²⁸⁰ **(#Favourable Adjudicated Facts skipped# But the Chamber missed to take notice of the Adjudicated Fact in the General Milosevic case, who was acquitted for this incident??? This is the most persuasive adjudicated fact that must have been taken into account. It is particularly significant in the case of this Accused, who was even more remote from a possible perpetrator than Gen. Milosevic!)**

4262. Having considered the evidence and the adjudicated facts outlined above, the Chamber is convinced that two projectiles struck the fleamarket in Bašaršija on 22 December 1994. Relying in particular on the CSB Sarajevo report and the evidence of Suljević and Đozo, the Chamber is of the view that both projectiles were 76 mm calibre shells and that they came from the direction of southeast. While Suljević noted that the UN established that the projectiles in question were 82 mm mortar shells, the Chamber is persuaded by the CSB

¹⁴²⁷⁴ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 145–146, 148–150; Zorica Subotić, T. 38277–38280 (14 May 2013); D3541 (Photograph of crater marked by Zorica Subotić). Subotić also argued that her claim was confirmed by the fact that the contemporaneous photographs show that the scene was “altered substantially for no reason that could be explained to facilitate the collection of physical evidence in the course of the on-site investigation”. Further, she claimed that it was an “incontrovertible fact” that the incoming direction of fire was determined following the alteration of the scene. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 147–148.

¹⁴²⁷⁵ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 148, 153.

¹⁴²⁷⁶ According to Subotić, the difference in sizes between the two craters was strange given that the rounds that caused them were meant to have been fired from the same weapon and from the same location. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 150; Zorica Subotić, T. 38280–38281 (14 May 2013). In cross-examination, Subotić confirmed that her claim that the crater was too big was the result of her comparison of this particular crater to the craters caused by 82 mm mortar shells. She then acknowledged that the 76 mm cannon projectile weighs over 8 kilograms, while an 82 mm mortar shell weighs around 3 kilograms. See Zorica Subotić, T. 38461–38465 (16 May 2013); P6325 (Excerpt from ammunition manual of SFRY Federal Secretariat for National Defence).

¹⁴²⁷⁷ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 150.

¹⁴²⁷⁸ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 150–151; Zorica Subotić, T. 38281 (14 May 2013).

¹⁴²⁷⁹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 151–154; Zorica Subotić, T. 38281 (14 May 2013), T. 38466–38469 (16 May 2013).

¹⁴²⁸⁰ Adjudicated Fact 3032.

Sarajevo team's conclusions on this issue. First, no traces of a mortar shell, such as its fin, appear to have been found at the scene. Second, the CSB Sarajevo ballistic experts, who were experienced with the ammunition and weapons used in the Sarajevo conflict, conducted a thorough ballistics analysis of the fragments collected at the scene, including a part of a fuse, and concluded that these fragments belonged to a 76 mm projectile. Third, the spray pattern of the craters at the scene tends to suggest that mortar shells did not strike the area. Finally, even the Accused's expert witness, Subotić, implicitly agreed that the fragments on the scene came from a 76 mm projectile.¹⁴²⁸¹

4263. The Chamber recalls Subotić's claim that the scene was manipulated and the explosions caused by a device planted at the scene. The Chamber finds her claim plainly unacceptable for a number of reasons. First, Subotić made many of her assumptions solely on the basis of contemporaneous photographs of the scene, which were not of sufficient clarity and thus not particularly reliable. In other words, she was never able to examine the craters in question and yet was able to comment on their size, depth, and even conclude where the actual site of the first explosion was. Second, Subotić claimed that the incoming direction of fire was determined following the alteration of the scene and that the scene was "altered substantially for no reason that could be explained to facilitate the collection of physical evidence in the course of the on-site investigation". The Chamber finds her claim about substantial alteration untenable as the photographs of the scene all seem consistent and merely indicate that the craters were cleaned at some stage of the investigation, something that was done by CSB Sarajevo in many other scheduled incidents discussed in this judgement.¹⁴²⁸² Finally, with respect to Subotić's evidence that the fuse found on the scene was intact, the Chamber notes that she reached that conclusion on the basis of an unclear photograph of the various projectile fragments found on the scene.¹⁴²⁸³ At the same time, she did not explain sufficiently why she thought that one of the fragments depicted was an intact fuse.¹⁴²⁸⁴ Furthermore, the Chamber sees no reason to doubt the CSB Sarajevo report which records that only a part of the fuse was found rather than an intact fuse. **The Chamber should have a #good reason to be cautious about the CSB Sarajevo findings#, since the very same Centre participated in staging incidents, because they belonged to one of the confronting sides, because the Centre opposed any participation of the Serb side in investigations. There couldn't be any deception and war tricks without the CSB participation. In such a cases there should be a presence of the other side, represented by the same kind of experts. The Serb side was always insisting on this, but always rejected. The UN court should have established a rule according to which such a cases in areas with the UN presence must have a participation in investigations by all sides involved!** For all of the reasons above, the Chamber rejects Subotić's theory that this incident was staged.

¹⁴²⁸¹ See D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 151–152.
¹⁴²⁸² See e.g. P1709 (Photographs re shelling of Markale on 5 February 1994); P1926 (Photographs re shelling of Markale on 28 August 1995). In addition, in relation to Scheduled Incident G.6, Sabljica testified about the established procedure of CSB Sarajevo technicians clearing and preparing impact locations, which in turn enables the ballistic experts to determine the direction of fire. See P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), pp. 20–21, 32. See also P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 12, 20, 34; KDZ485, T. 8947–8948 (3 November 2010).

¹⁴²⁸³ The Chamber also notes that the annotation made on the photograph itself makes no mention of the fuse being one of the fragments depicted there.

¹⁴²⁸⁴ While Subotić included a photograph of an unexploded 76 mm round in her report—to illustrate that one of the fragments in the CSB Sarajevo photograph was the fuse—it is not obvious to the Chamber that one of the fragments depicted in the CSB Sarajevo photograph is indeed the intact fuse of a 76 mm round. See D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 151–152.

4264. Relying on the CSB Sarajevo report, the medical evidence before it, and the adjudicated facts, the Chamber is also convinced that the explosions at the fleamarket resulted in two killed and seven wounded persons, all of whom were civilians and were not taking direct part in hostilities. Furthermore, the fleamarket was located in the residential part of Stari Grad and there were no military targets in or near the area at the time of the incident. (#Selectiveness#!

The Chamber is selective in accepting and relying on the findings of the same police service, and sometimes doesn't accept it's findings, while sometimes accepts, and this selectivity is always damaging for the accused President. Another question: since the Chamber generally accepted the allegations that the Serb side shelled the old city with thousands of shells, how come there was no more evidence that would be beyond a reasonable doubt? And how those weak buildings, built up even in past centuries, would survive had these allegations been true?)

4265. In terms of the origin of fire, the Chamber recalls the Accused's contention that in both the *Dragomir Milošević* and *Perišić* cases, the evidence was found not to have been sufficient to conclude that the shells originated from SRK-held territory. However, contrary to his claim that no additional evidence was led in this case on this particular issue, the Chamber recalls that the Prosecution brought additional evidence, namely the fact that SRK had a large number of cannons that fired 76 mm projectiles in its arsenal, including one in the area of Vidikovac, identified by the CSB report as the origin of fire. In addition, the evidence before the Chamber also clearly shows that the ABiH did not possess such cannons in the direction of southeast from which the shells originated, but rather in the outer circle of Sarajevo in the area of Mt. Igman. Accordingly, the Chamber is convinced beyond reasonable doubt that the two 76 mm shells that struck the fleamarket originated in SRK-held territory, in the area of Vidikovac and Trebević. Given that only two shells were fired and that there was no military target nearby, the Chamber is convinced that the SRK forces deliberately targeted the area of Baščaršija, including the fleamarket, and the civilians therein.

(However, the "new evidence" didn't pertain to the very scene of incident, but #only to a possibility#, which wasn't an element in the basis of the deliberation of the two previous cases. So, the #possession or non-possession of the weapon was not a decisive element in deliberation of the two previous chambers. Again, a #possibility is equalised with a probability#, although there is no evidence that the Muslim side couldn't move it's canon, which was, by the way, not too big that couldn't be easily transported. Also, a B1 recoilless canon, which uses the same 76 mm grenades, even easier to move, was not excluded as a weapon used in this incident! The main question is: how come the Chamber didn't take notice of the adjudicated fact in the General Milosevic case – that Gen. Milosevic was acquitted for this incident?)

3. Mula Mustafe Bašeskije street, 28 August 1995 (Scheduled Incident G.19)

4266. According to the Indictment, on 28 August 1995, a 120 mm mortar shell landed on Mula–Mustafe Bašeskije street outside the entrance to the city market, killing 43 and injuring 75 people.¹⁴²⁸⁵ The Indictment also alleges that the shell came from the SRK-held territory of

Trebević.¹⁴²⁸⁶ In its Final Brief, the Prosecution argues that the shell killed “at least 35 people” and injured “at least 78 others”, the vast majority of whom were civilians.¹⁴²⁸⁷

4267. The Accused argues in his Final Brief that the shell could not have come from the SRK positions, thus suggesting, without explicitly saying so, that the shell came from the ABiH.¹⁴²⁸⁸ While the Final Brief does not outline how the ABiH caused the incident, the majority of the evidence led by the Accused throughout his case was that a static explosive device was planted at the scene.¹⁴²⁸⁹ Additionally, as with the first Markale incident, although he makes no mention of it in his Final Brief, the Accused claimed during the case that the incident was staged and bodies brought to the scene.¹⁴²⁹⁰ Given that these two theories were not explicitly abandoned in the Final Brief, the Chamber will consider them below, as it did with the first Markale incident.

a. The incident

4268. The morning of 28 August 1995 was quiet, as a result of which a large number of people went to the Markale market area.¹⁴²⁹¹ Between 10:50 and 11 a.m., four shells landed in succession on a square near Markale market, approximately 200 to 300 metres away from the market.¹⁴²⁹² Just after 11 a.m.,¹⁴²⁹³ a fifth shell landed in front of the main entrance to the

¹⁴²⁸⁶ Indictment, Scheduled Incident G.19.

¹⁴²⁸⁷ Prosecution Final Brief, Appendix C, para. 62. The Prosecution seems to be relying on Adjudicated Fact 3081 for these numbers. However, Appendix H in which the Prosecution list the names of those wounded and killed refers to 43 killed and 73 wounded, thus contradicting Adjudicated Fact 3081, at least as far as the wounded are concerned. See Prosecution Final Brief, Appendix H, pp. 20–27.
¹⁴²⁸⁸ Defence Final Brief, paras. 2125–2162.

¹⁴²⁸⁹ The Chamber notes that in his Final Brief the Accused simply summarises the evidence of his witnesses, but then stops short of recounting their ultimate conclusions as to what happened in Markale on 28 August 1995. For example, after outlining much of Subotić’s evidence he fails to state her ultimate conclusion, namely that a static explosive device was planted at the scene. The same is the case with other witnesses, such as Demurenko and Veljović. While there is no explanation in the Final Brief, the Chamber assumes that the position the Accused took in relation to the first Markale incident, as outlined in footnote 5073 of the Final Brief, is the same in relation to this incident. **(The Accused was not obliged to explain what happened, but to clarify whether the SRK did it or not. #That was the Prosecution’s duty to do a thorough search for the evidence that would, beyond reasonable doubt establish that the SRK did it. And that didn’t happen, as it is comprised in the Defence Final Brief. Ms. Subotic in the both Markale cases brought in a possibility of an on site explosion, but neither she was obliged to prove what happened, but only to present the possibilities and shade a doubt on the Prosecution’s assertion, and she did it. Subotic wasn’t any more partisan than all the Prosecution’s witnesses, and the Chamber didn’t discredit any of them for this reason!)** Nevertheless, as with the first Markale incident, in its analysis, the Chamber will consider the evidence the Accused led in relation to this incident in its totality and will therefore consider the conclusions of his witnesses, both in assessing their credibility and in order to determine what happened in Markale on 28 August 1995. See fn. 13939.

¹⁴²⁹⁰ See e.g. Hearing, T. 6396 (8 September 2010) (closed session) (wherein he put this case to a witness).

¹⁴²⁹¹ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 4, 6.

¹⁴²⁹² Harry Konings, T. 9307–9308 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 65; P1959 (Map of Sarajevo marked by Harry Konings); P1905 (Witness statement of KDZ485), paras. 24–29. But see Emir Turkušić, T. 9061 (4 November 2010) who thought, but was not entirely sure, that these shells hit after the Markale incident.

¹⁴²⁹³ During the trial the Accused pointed out that one of the reports prepared by the authorities following this incident—namely a report prepared by the Sarajevo High Court—refers to the time of incident as being 1:05 p.m., while the CSB Sarajevo report refers to CSB Sarajevo being informed of the incident at 11:30 a.m.. The Accused’s implication was that the incident was therefore staged. See Emir Turkušić, T. 9059–9064 (4 November 2010); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court pp. 1, 6. However, the Chamber notes that not only is all other evidence consistent with the victims’ evidence that the incident happened around 11 a.m., the Sarajevo High Court report itself refers to the investigation commencing at 11:50 a.m.. Accordingly, the Chamber is satisfied that the time of “13:05” mentioned at the beginning of that report is a typographical mistake. See e.g. P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 24; P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 1; P906 (UNPROFOR daily report, 28–29 August 1995), p. 2; P1444 (UNMO report, 30 August 1995), p. 20; P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2; Adjudicated Fact 3078. The Chamber also notes that the

Markale market building, about 100 to 150 metres away from the location that had already been shelled on 5 February 1994.¹⁴²⁹⁴

(Does it mean that those four previous shells didn't warn the people gathered so close, giving them 10 to 15 minutes to find a shelter? How come? What would stop the people to run out of the streets that had been targeted? Also, unlike in the Markale 1 incident, the cameras and investigators, coming some 45 to 50 minutes later, found all the victims at place of incident, almost not moved a bit! In Markale 1 incident (5 February 1994) all the killed and wounded had been removed within 5 to 15 minutes, allegedly! This was probably the only case that the victims, killed and wounded, had been present at the scene of incident so long after the explosion.

Miraculous, isn't it, as in a fairy tale!). Đula Leka, who was standing five to seven metres from the point of impact, was wounded in her left breast and upper left arm, while her brother-in-law was killed.¹⁴²⁹⁵ Ismet Svraka was standing in front of the indoor market building with his two friends, Ramo Hercegija and Ibrahim Hajvaz, both pensioners, no more than three to four metres away from the impact.¹⁴²⁹⁶ Svraka lost his left leg in the blast and also sustained injuries to his right foot and stomach, while his two friends were killed.¹⁴²⁹⁷ He testified that there was no warning before the explosion and that he did not hear the other four shells prior to the Markale shell impacting.¹⁴²⁹⁸ Sulejman Crnčalo's wife, who had gone to the market to look for powdered milk, was also killed in this blast.¹⁴²⁹⁹ When she did not come home at the arranged time, Crnčalo went to the market to look for her and, once he arrived there at around noon, saw great commotion, blood traces everywhere, and pieces of human flesh scattered all over the area.¹⁴³⁰⁰ Crnčalo did not see any investigating organs or officials at the scene.¹⁴³⁰¹ He was told to go to the Koševo Hospital and, when he could not find his wife on the list of the wounded there, he went to the morgue where he finally learned that she was dead and saw her body.¹⁴³⁰²

(As Crnčalo testified (T.1179): *They showed me the wound where she had been hit, and I asked to be given a document straight away, some kind of document stating that in the massacre my wife had been killed. But they didn't want to give me that piece of paper.*) he went to the hospital with an aim to get the death certificate, which strongly indicates that his wife may have died earlier, and he did lend her body for the purpose of staging the incident and enlarging the number of victims! Also, several other peculiarities, such as an absence of blood below a body that was cut off a half of chest, and other, such as inability that the shell could have come through the building – strongly indicate the staging of incident!)

English translation of P1449 refers to the time of incident as being 13:03, which the Chamber considers to have been a typographical error made by the translator as it is clear that the BCS version refers to 13:05. **(Then, it was translated properly!)**

- ¹⁴²⁹⁴ P141 (Đula Leka's statement to BiH authorities, 29 August 1995); P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2; Sead Bešić, T. 9428–9429 (8 December 2010); P1450 (Video footage of Markale, 28 August 1995). For the exact location, see P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2193 (Map of Sarajevo); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo); D617 (Map of Sarajevo). See also discussion on Scheduled Incident G.8.
- ¹⁴²⁹⁵ P141 (Đula Leka's statement to BiH authorities, 29 August 1995); P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2.
- ¹⁴²⁹⁶ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 6; Ismet Svraka, T. 9658, 9661–9664, 9668 (13 December 2010); P1450 (Video footage of Markale, 28 August 1995).
- ¹⁴²⁹⁷ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 8, 11; Ismet Svraka, T. 9655 (10 December 2010).
- ¹⁴²⁹⁸ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 7; Ismet Svraka, T. 9669 (13 December 2010).
- ¹⁴²⁹⁹ P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), paras. 6, 94–96; Sulejman Crnčalo, T. 1167–1168 (14 April 2010).
- ¹⁴³⁰⁰ Sulejman Crnčalo, T. 1167, 1173–1176 (14 April 2010).
- ¹⁴³⁰¹ Sulejman Crnčalo, T. 1173–1174 (14 April 2010).
- ¹⁴³⁰² Sulejman Crnčalo, T. 1167–1168, 1178–1179 (14 April 2010), T. 1279–1280 (15 April 2010); P740 (Autopsy certificates for victims from Markale, 28 August 1995), e-court p. 35.

4269. Following the explosion, Leka was taken to the Koševo Hospital where she spent some four or five days; in 1996, she still suffered from some pain in her shoulder and chest.¹⁴³⁰³ While fading in and out of consciousness after the incident, Svraka was driven to the Koševo Hospital where he saw a lot of injured people; he was operated on several times and released 45 days later.¹⁴³⁰⁴ Following that treatment, he had to undergo extensive reconstructive surgery in order to be able to step on his right foot and is now deemed to have a 90% disability.¹⁴³⁰⁵

b. CSB Sarajevo and UNMO investigations

4270. Soon after the explosion Đozo was instructed to go to the scene with his colleagues and all available vehicles in order to assist in transporting the injured.¹⁴³⁰⁶ Đozo testified that the scene was handled and secured mostly by the Centar police station as the shell had landed in the area between that station and the Stari Grad station.¹⁴³⁰⁷ By the time he and his colleagues arrived at the scene, some of the injured had already been taken away while the dead were still lying around the market.¹⁴³⁰⁸ In addition, the scene was so chaotic that Đozo and his colleagues could not get through to provide assistance so they returned to the police station.¹⁴³⁰⁹ Other than taking a few statements from eyewitnesses later, Đozo did not participate in the investigation of this incident.¹⁴³¹⁰ He did, however, testify that prior to this incident he investigated two other shelling incidents, one on 25 June and another on 1 July 1995, where the shells landed in the immediate vicinity of Markale.¹⁴³¹¹ It was established in the first of these incidents, that the two or three shells that had landed came from the Serb positions in the north, from the settlements of Barice and Mrkovići, while in the later incident four shells came from the direction of Lukavica or Vraca which were also controlled by the SRK.¹⁴³¹² According to Đozo, fire was slowly being adjusted by the SRK until it finally reached Markale market on 28 August 1995.¹⁴³¹³ When put to him that it was unusual that, despite this adjustment of fire, Markale was ultimately only hit twice, once in 1994 and once in 1995, Đozo stated that it was certain that the busiest streets of Sarajevo were targeted and that most people circulated around the Mula Mustafe Bašeskije street.¹⁴³¹⁴ **(However, it was**

¹⁴³⁰³ P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2; P1217 (Witness statement of Milan Mandilović dated 24 February 2010), p. 21; P1229 (Medical certificates for Ajkuna Cocalić, Đula Leka, Razija Čolić, Janja Pašić, and Adisa Duran). *See also* Adjudicated Fact 3083.

¹⁴³⁰⁴ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), paras. 8–10; Ismet Svraka, T. 9655–9656 (10 December 2010), T. 9662–9663, 9669–9671 (13 December 2010); P1225 (Medical certificate for Ismet Svraka); P1217 (Witness statement of Milan Mandilović dated 24 February 2010), p. 20.

¹⁴³⁰⁵ Ismet Svraka, T. 9656–9657 (10 December 2010); P1993 (Medical certificates for Ismet Svraka).

¹⁴³⁰⁶ P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41. Đozo testified that the Stari Grad police station is less than one kilometre away from Markale market. *See* Nedžib Đozo, T. 9542–9544 (9 December 2010); P1979 (Map of Sarajevo marked by Nedžib Đozo).

¹⁴³⁰⁷ Nedžib Đozo, T. 9636 (10 December 2010).

¹⁴³⁰⁸ P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

¹⁴³⁰⁹ Nedžib Đozo, T. 9634–9636 (10 December 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

¹⁴³¹⁰ Nedžib Đozo, T. 9635–9636 (10 December 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 41.

¹⁴³¹¹ P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 24–34; Nedžib Đozo, T. 9548–9552 (9 December 2010), T. 9553–9558, 9562–9564 (10 December 2010); P1990 (BiH MUP Report re shelling incident of 1 July 1995).

¹⁴³¹² P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), paras. 25–34.

¹⁴³¹³ P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 35. *See also* Nedžib Đozo, T. 9548–9552 (9 December 2010), T. 9553–9562, 9564–9565, 9577–9586 (10 December 2010); P1981 (Sketch drawn by Nedžib Đozo); P1982 (Map of Sarajevo marked by Nedžib Đozo); P1988 (Sketch drawn by Nedžib Đozo); P1989 (Map of Sarajevo marked by Nedžib Đozo).

¹⁴³¹⁴ During cross-examination Đozo agreed with the Accused that the Orthodox Church was located near Markale market and the area where the shells landed on 25 June and 1 July 1995. *See* Nedžib Đozo, T. 9577–9586 (10 December 2010); D908 (Sketch re shelling of Markale on 28 August 1995 marked by Nedžib Đozo).

confirmed during the process that any adjustment of fire from Barice, or from Lukavica would mean nothing to a fire that would be fired from the alleged direction in this case. And this didn't indicate to the Chamber any lack of credibility of this witness? The Chamber had heard the experts, bot of the Prosecution and the Defence, that any adjusting of fire would require an observation, a multiple shooting, a counting of conditions for every day apart! Was it established, and how come this witness was credible?)

4271. KDZ304 was at the scene “roughly” 10 minutes after hearing the explosions.¹⁴³¹⁵ He testified that by the time he arrived most of the victims had already been removed.¹⁴³¹⁶

(#Miraculous efficiency#! In ten minutes, most of the victims had been removed? How, for heaven's sake? Ten minutes was not sufficient to realize what happene and to overcome the shock, let alone to have called the medical emergency service, transportation, upload so many bodies and depart! Anyway, this is in a #sharp contrast to the “finding” of the Chamber in paragraph 4268!)

4272. Emir Turkušić, a ballistics expert from CSB Sarajevo,¹⁴³¹⁷ was on his way to Markale market to buy some goods when he saw cars passing by, full of dead bodies and injured persons.¹⁴³¹⁸ He therefore immediately returned to the base where he was instructed by his boss to take the necessary ballistics equipment and go to the incident site with another member of the team, Nedim Bosnić.¹⁴³¹⁹ Turkušić and Bosnić were at the market approximately 10 minutes later, when most bodies had been cleared away and some UNPROFOR members, and personnel from CSB Sarajevo were already there.¹⁴³²⁰ Turkušić described the scene as the “last deepest circle of Dante's hell” with huge pools of blood, severed body parts, and panic and fear among the people present.¹⁴³²¹

4273. Konings, an UNMO from the Sedrenik team, heard about the incident on the radio and soon after received a phone call from the “Bosnian police” asking the UNMOs to come to the scene.¹⁴³²² Konings and two other UNMOs were on location near the market approximately 30 minutes after the incident where they met with the Bosnian police, including ballistics experts and the investigative judge.¹⁴³²³ The whole group was at the scene of the incident approximately 40 minutes after the explosion.¹⁴³²⁴ By that time, all the victims had been

¹⁴³¹⁵ P2407 (Witness statement of KDZ304 undated), p. 16; KDZ304, T. 10528 (19 January 2011).

¹⁴³¹⁶ KDZ304, T. 10528 (19 January 2011); P2407 (Witness statement of KDZ304), p. 16.

¹⁴³¹⁷ P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 3.

¹⁴³¹⁸ Emir Turkušić, T. 9001–9002, 9059–9062 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.

¹⁴³¹⁹ Emir Turkušić, T. 9001–9002, 9009 (4 November 2010) (testifying further that he did not hear the explosion as he was in another building at the time); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.

¹⁴³²⁰ Emir Turkušić, T. 9083–9085 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 13, 14. Bešić testified that whenever there was a large number of casualties, it was normal procedure to take the wounded to a hospital and the dead to the morgue. See Sead Bešić, T. 9423–9425 (8 December 2010); P1969 (Video footage of Markale on 28 August 1995).

¹⁴³²¹ P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 14. See also Emir Turkušić, T. 9002–9004 (4 November 2010); P1450 (Video footage of Markale, 28 August 1995).

¹⁴³²² P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 49–51.

¹⁴³²³ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 52.

¹⁴³²⁴ Harry Konings, T. 9302, 9372 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 53.

taken away but there was still a lot of glass on the street, large pools of blood, and a large number of severed body parts.¹⁴³²⁵

4274. By around noon—at which point the scene was sealed off by the police from the Centar police station and the wounded and the killed had been removed from the site—the CSB Sarajevo team, along with the three UNMOs commenced the onsite investigation.¹⁴³²⁶ Turkušić's role was to collect and analyse all relevant data that would indicate, among other things, the bearing and the type of the projectile.¹⁴³²⁷ Bešić, being a criminal technician, was tasked with taking photographs of the scene, while his colleague was video-recording the scene.¹⁴³²⁸ **(If so, who had recorded the pictures that we had seen with the wounded people depicted in it?? A prepared crew? See: P1711, the video depicting the site just post incident! All worse and worse, the lies that disclosed itself!)** Already present at the scene were FreBat soldiers, who were conducting their own investigation.¹⁴³²⁹ Later in the day Harland came to the scene as well, at which point the blood had been washed away.¹⁴³³⁰

4275. Turkušić very quickly detected the crater on Mula Mustafe Bašeskije street, near the entrance to the market building and relatively close to the pavement, and testified that it would have been impossible to disturb it at that point since it would have required a lot of manual work that would have been noticed by the dozens of people who were present.¹⁴³³¹ Konings and the other UNMOs also spotted and investigated the crater, and Konings did not notice any sign of tampering with the crater; to him it was immediately obvious that it was caused by a mortar rather than an artillery projectile.¹⁴³³² The UNMOs also found the stabiliser, which, according to Konings, was located 10 to 20 metres away from the point of impact, and which had bent fins and writing in Cyrillic on its back.¹⁴³³³ Bešić testified that the stabiliser was located some 25 to 45 metres away from the point of impact.¹⁴³³⁴ Turkušić

¹⁴³²⁵ Harry Konings, T. 9302, 9372–9374 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 53.

¹⁴³²⁶ KDZ485, T. 8882–8883 (3 November 2010); Sead Bešić, T. 9430–9431 (8 December 2010), T. 9481–9484 (9 December 2010); P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1 (under seal); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 23–24; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13; P1450 (Video footage of Markale, 28 August 1995).

¹⁴³²⁷ Emir Turkušić, T. 9009 (4 November 2010).

¹⁴³²⁸ Sead Bešić, T. 9422–9423 (8 December 2010), T. 9481 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 24–25; P1926 (Photographs re shelling of Markale on 28 August 1995); P1968 (Photograph re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995).

¹⁴³²⁹ Emir Turkušić, T. 9007–9008 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13; Harry Konings, T. 9302 (7 December 2010); P2407 (Witness statement of KDZ304), p. 16.

¹⁴³³⁰ David Harland, T. 2042–2043 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 229; P906 (UNPROFOR daily report, 28–29 August 1995).

¹⁴³³¹ P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 14; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 25–26; P1974 (Photograph re shelling of Markale on 28 August 1995 marked by Sead Bešić); Sead Bešić, T. 9423–9425, 9428–9429 (8 December 2010); P1969 (Video footage of Markale on 28 August 1995); P1450 (Video footage of Markale, 28 August 1995).

¹⁴³³² P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 58, 60; P1968 (Photograph re shelling of Markale on 28 August 1995); Harry Konings, T. 9303–9306 (7 December 2010); P1958 (Photograph re shelling of Markale on 28 August 1995 marked by Harry Konings).

¹⁴³³³ Harry Konings, T. 9306 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 56–57. On cross-examination, it transpired that Konings was not entirely certain as to exactly how far the stabiliser was from the crater and admitted to giving different distances on different occasions. See Harry Konings, T. 9378–9379 (7 December 2010).

¹⁴³³⁴ Bešić could not explain why the stabiliser was so far away from the point of impact but speculated that it may have been pushed away by the tires of the automobiles. See P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 28–30; Sead Bešić, T. 9504–9505 (9 December 2010); P1926 (Photographs re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); P1975 (Sketch re shelling of Markale on 28 August 1995); D903 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).

confirmed that he did not personally find the stabiliser, although he did see it, and explained that it was marked with letters “KB” in Cyrillic, signifying that the shell was produced in the Krušik Factory in Valjevo, Serbia.¹⁴³³⁵ According to the CSB Sarajevo report, the stabiliser had “KB 9307” and “MK M74” inscribed on it.¹⁴³³⁶ Konings testified that the stabiliser was taken by the “Bosnian police”.¹⁴³³⁷

4276. According to the CSB Sarajevo report prepared on the basis of the initial information obtained on the day of the incident,¹⁴³³⁸ as well as Turkušić’s ballistics report prepared following his and Bosnić’s investigation, the stabiliser belonged to a 120 mm calibre shell which, based on the measurements of the crater, came from the south, its azimuth being 170 degrees, plus or minus five degrees.¹⁴³³⁹ This azimuth corresponded to “aggressor positions at the Trebević area.”¹⁴³⁴⁰ The CSB Sarajevo report also provides that the fact that the “UN observers in the southern part of the city did not notice any artillery actions from the areas controlled by [ABiH] confirms that the shell was fired from the area temporally controlled by the aggressor.”¹⁴³⁴¹ **#The same observers didn’t hear any mortar shell either. Why it had been #skipped in the Chamber’s consideration?)** According to Turkušić, the shell impacted against the road directly without hitting anything along its trajectory.¹⁴³⁴² **(In such a case, it would have to pass through the building, because a descending angle was found to be about 67 degrees. For that reason there was invented a theory about “ricochet” on the roof, which is #only another of many peculiarities#! In such a case, Turkusic shouldn’t be considered a reliable witness!)**

4277. As for the origin of fire, while the team calculated the angle of descent of the shell to have been 70 degrees,¹⁴³⁴³ Turkušić stated that the team was unable to say exactly from which point the shell was fired, as that determination depended on the number of charges used to fire it.¹⁴³⁴⁴ However, based on the UNMOs’ information that on that particular day the ABiH did not fire any mortar shells from its positions on the northern side of Trebević, the CSB Sarajevo team concluded that the shell had originated from the part of the Trebević slopes held by the Serb forces.¹⁴³⁴⁵ He also noted that many factors indicated that the shell was

¹⁴³³⁵ Emir Turkušić, T. 8994, 9076–9078 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 13.
¹⁴³³⁶ P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal). Sead Bešić testified that the first two digits following “KB” indicated the year and the second two the month of manufacture. See P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 15, 22–23. This means that this shell was produced in Krušik in July 1993.
¹⁴³³⁷ Harry Konings, T. 9379–9380 (7 December 2010).
¹⁴³³⁸ P1905 (Witness statement of KDZ485), para. 26.
¹⁴³³⁹ P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); P1934 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court pp. 2–4. See also Emir Turkušić, T. 9019–9024, 9066–9067 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 13, 16–30, 32–33; P1936 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1929 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1930 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1931 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1935 (Maps re shelling of Markale on 28 August 1995); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 27–28, 30–32; P1976 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).
¹⁴³⁴⁰ P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal).
¹⁴³⁴¹ P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); P1905 (Witness statement of KDZ485), para. 28. See also P1977 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1.
¹⁴³⁴² P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 15.
¹⁴³⁴³ Emir Turkušić, T. 9012–9019, 9072–9075 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 30–32; P1927 (Sketch re shelling of Markale on 28 August 1995); P1928 (Sketch re shelling of Markale on 28 August 1995 marked by Emir Turkušić). See also Richard Higgs, T. 5939–5940 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995).
¹⁴³⁴⁴ P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 19–20 (claiming also that even the most renowned military and artillery experts would be unable to provide the precise origin of fire for this incident).
¹⁴³⁴⁵ Emir Turkušić, T. 9071–9072 (4 November 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 19–20. See also Barry Hogan T. 11283–11284 (3 February 2011).

launched with three charges, which suggests an approximate distance of 2,400 to 2,500 metres from Markale.¹⁴³⁴⁶ When it was put to him that the UNMO's radar did not register any fire coming from the Serb side, Turkušić responded that this depended on the area the radar was adjusted to monitor.¹⁴³⁴⁷

(Was it established that the radar didn't monitor the trajectory area? If it #wasn't established, then this is an empty guessing#, which didn't have any place in such a case. However, if the shell really passed the trajectory that is alleged, it must have passed through the monitored area, because if fired from the Serb positions, it must have been a high ground, and since it landed down the street, in no way could it avoid the radar surveillance. In any of these cases, why it is not #sufficient for the "In dubio pro reo" principle#?)

4278. According to the UNMO report dated 29 August 1995, UNMO team from Sedrenik was tasked with investigating the Markale incident that took place at 11:10 a.m. on 28 August 1995, as well as the other four shells that fell nearby earlier that day, and it did so in conjunction with the local authorities.¹⁴³⁴⁸ As confirmed by Konings during his testimony in this case, this team concluded that all five impacts were 120 mm mortar projectiles, all bearing the same marks, namely "KB 9307" and "MK M74", and that the one that landed on Markale was fired from 170 degrees plus or minus five degrees from the north, with a minimum "angle of impact" of 67 degrees.¹⁴³⁴⁹

(#This is absolutely wrong! Every azimuth higher of 90 degrees excludes any northern direction. The shell had been alleged to come from the south-east direction, which would be directly over the UN MOs OP1. In such a case, with the ascending angle of 67 degrees would go through the building. Since neither radar, nor the UN MOs on OP 1 registered any outgoing fire from the Serb positions, that would be enough before any reasonable chamber to dismiss the case!)

As for the other four rounds, the team found that they were fired from 220-240 degrees from the north and impacted the ground 200 to 300 metres from the shell that landed on Markale.¹⁴³⁵⁰

An accurate origin of fire for all five shells could not be determined because it was not known with which charge they were fired.¹⁴³⁵¹ Following the investigation on the scene, the UNMO team went to the morgue where it confirmed that 31 persons had been killed.¹⁴³⁵²

(Was it so difficult #to collect some bodies in the middle of a civil war#?) In the morgue, Konings could see that the people had been killed by shrapnel and that their bodies were fresh.¹⁴³⁵³ Some hours later, the number of casualties was amended to 34 killed and 84 wounded.¹⁴³⁵⁴

Following a meeting with the Bosnian police at the police station, Konings submitted his

¹⁴³⁴⁶ Emir Turkušić, T. 9019 (4 November 2010).

¹⁴³⁴⁷ Emir Turkušić, T. 9071–9072 (4 November 2010).

¹⁴³⁴⁸ P1446 (UNMO report, 29 August 1995), p. 20. See also P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 17; P1444 (UNMO report, 30 August 1995), p. 20; Harry Konings, T. 9339–9340, 9372 (7 December 2010).

¹⁴³⁴⁹ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 17–19; P1446 (UNMO report, 29 August 1995), pp. 20–22; P1444 (UNMO report, 30 August 1995), pp. 20–21. See Harry Konings, T. 9306–9307, 9373–9375 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010); paras. 61–63, 80; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998–2002; P151 (Map marked by Thomas Knustad).

¹⁴³⁵⁰ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 17–18; P1444 (UNMO report, 30 August 1995), pp. 20–22; Harry Konings, T. 9307–9308 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 64–65.

¹⁴³⁵¹ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 17; P1444 (UNMO report, 30 August 1995), p. 21. See also P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 80–81.

¹⁴³⁵² P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 66; Harry Konings, T. 9333–9337 (7 December 2010).

¹⁴³⁵³ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 66; Harry Konings, T. 9337–9339 (7 December 2010).

¹⁴³⁵⁴ P1446 (UNMO report, 29 August 1995), p. 21.

report to his superiors.¹⁴³⁵⁵ He explained that during the meeting the Bosnian authorities wanted the UNMOs to declare that the Markale shell had been fired by the Bosnian Serbs but that he was unable to do so at that moment as there was a possibility that the shell had been fired from ABiH-held territory.¹⁴³⁵⁶ **(And what, or who spoiled this possibility?)**

4279. Konings testified that the next day, on 29 August 1995, Thomas Knustad and Paul Conway, two UNMOs who had been manning OP-1 on the day of the incident, told him that they did not observe or hear any outgoing shots from the ABiH-held territory or from the part of the VRS-held territory they could see.¹⁴³⁵⁷ OP-1 was located in the south of Sarajevo, on Čolina Kapa Hill, approximately 200 metres north of the ABiH side of the confrontation line and approximately 1,500 metres away from the SRK lines.¹⁴³⁵⁸ Hogan testified that, based on the measurements he made by GPS, the distance between Markale market and the frontline in that area was approximately 1,600 metres.¹⁴³⁵⁹

4280. Knustad confirmed during his testimony that, on the morning of 28 August 1995, which was warm and clear, he was sitting at the UNMO house near OP-1 while Conway was manning the OP.¹⁴³⁶⁰ At around 11 a.m., they saw smoke rising from the area of Markale market and then heard the sound of an impact explosion in the city, which Knustad thought sounded like a mortar impact.¹⁴³⁶¹ Knustad heard only one impact and thought that the mortar did not pass very close to OP-1 otherwise he and Conway would have heard it.¹⁴³⁶² He also explained that the mortar had not been fired from “within the confrontation line” because he would have heard that too.¹⁴³⁶³ Conversely, he testified that, if fired from behind the SRK lines, it is possible that he would not have heard it, as the SRK-held territory was on the other side of the hill.¹⁴³⁶⁴ Accordingly, Knustad excluded the possibility of any mortar being fired from the ABiH-held territory.¹⁴³⁶⁵ **(Knustad could have asserted it only for the ABiH-held territory in the vicinity of the OP1.)**

¹⁴³⁵⁵ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 68; P150 (UNMO report, 28 August 1995). *See also* Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998–2000.

¹⁴³⁵⁶ P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 68–70; Harry Konings, T. 9390–9393 (7 December 2010); P150 (UNMO report, 28 August 1995).

¹⁴³⁵⁷ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 72; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1998, 2004–2008. *See also* Harry Konings, T. 9308–9310 (7 December 2010); P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

¹⁴³⁵⁸ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1987–1988, 1994, 1996, 2001, 2006–2008, 2024–2026; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3; P151 (Map marked by Thomas Knustad); Paul Conway, T. 29000, 29004–29006 (17 October 2012); P5927 (Map of Sarajevo marked by Paul Conway). Konings, on the other hand, placed the location of OP-1 some 500 to 600 metres away from the confrontation line. *See* Harry Konings, T. 9298–9302 (7 December 2010); P1954 (Map of Sarajevo marked by Harry Konings); P1955 (Photograph of Sarajevo marked by Harry Konings); P1956 (Photograph of Sarajevo); P1957 (Photograph of Sarajevo and uniformed men marked by Harry Konings); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 72; P1964 (Map of Sarajevo marked by Harry Konings).

¹⁴³⁵⁹ Barry Hogan, T. 11284–11285 (3 February 2011); D1006 (Aerial satellite image of Sarajevo marked by Barry Hogan).

¹⁴³⁶⁰ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1993–1994; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3. Conway testified, however, that he believed that Knustad was taking a walk with their Bosnian interpreter at the time of the explosion. *See* D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 16.

¹⁴³⁶¹ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1994–1998, 2023–2024; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

¹⁴³⁶² Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2023–2024, 2039; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

¹⁴³⁶³ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2003–2005, 2048–2049; P152 (Witness statement of Thomas Knustad dated 21 May 1996), p. 3.

¹⁴³⁶⁴ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2005–2006; Barry Hogan T. 11283–11284 (3 February 2011).

¹⁴³⁶⁵ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2005–2007.

4281. Conway testified that he heard the sound of several muffled explosions at around 11 a.m. on 28 August 1995 from OP-1 and that when he looked towards the city he saw several plumes of smoke; he was unable to say, however, if the muffled sounds were from incoming or outgoing fire.¹⁴³⁶⁶ **(Interesting!!!)** He also testified that he may have missed other explosions from incoming or outgoing fire as he was going in and out of a shed near OP-1.¹⁴³⁶⁷ He noted that the sound of the explosions had been relatively low given that the impacts were only around three kilometres from the OP-1.¹⁴³⁶⁸ **(If the OP was “approximately 200 metres north from the c/l,” and the same OP was 3 km from the site of impact, then the site of impact was at least 3,200 metres from the c/l, and much more from the Serb positions! In a case the Serbs fired it, the shell would be both heard and registered by the UNMOs and by the radar! The radar monitored area could have not be out of scope of the trajectory, at least on some altitude it would be registered!)** Accordingly, he did not agree that if someone at OP-1 did not hear sounds of outgoing mortar fire, then that fire must have come from the SRK side of the confrontation line.¹⁴³⁶⁹ **(Therefore, #he excluded the SRK origin of fire#!)** He conceded, however, that if mortar was fired from a reasonably close distance to the listener, one would hear a “very distinctive ‘vrmp’ and ‘trmp’ sound”.¹⁴³⁷⁰

4282. Following his meeting with Knustad and Conway, Konings attended another meeting with the Bosnian authorities where they discussed the results of their investigations and, based on all the information in his possession, he came to the conclusion that the fire originated in the SRK-held territory.¹⁴³⁷¹ He explained that if the round had been fired from the ABiH-held territory, then in combination with all the other parameters, this could only have been done using either charges zero or one.¹⁴³⁷² Using charge zero would have placed the origin of fire near the OP-1 and the UNMOs manning that post would have heard or seen it being fired.¹⁴³⁷³ As for charge one, Konings testified that in his experience it is not normally used with 120 mm mortars, as doing so can result in the round exploding in the vicinity of the firing troops.¹⁴³⁷⁴ **(This is so #contradictory with everything that is in the investigative materials#. Had it been fired from the Serb territory, that would mean that it had to be fired from at least 3,500 metres, and it could not land with so sharp angle of descent, at least 67 degrees. Further, as can be seen below, in such a case the radars would inevitably register such a shell. Finally, from this distance there would be needed at least**

¹⁴³⁶⁶ D2329 (Witness statement of Paul Conway dated 7 November 2011), paras. 12–15 (explaining that it is sometimes impossible to say whether a blast sound is from an outgoing or incoming fire and that the acoustics in Sarajevo often made that determination unreliable); Paul Conway, T. 29012–29014 (17 October 2012).

¹⁴³⁶⁷ D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 13; Paul Conway, T. 29004–29005 (17 October 2012).

¹⁴³⁶⁸ D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 13; Paul Conway, T. 28999–29000, 29009–29011 (17 October 2012).

¹⁴³⁶⁹ D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 15.

¹⁴³⁷⁰ Paul Conway, T. 29011 (17 October 2012). This was also confirmed by Konings who testified that the firing of a 120 mm mortar shell produces a “very loud bang”. See Harry Konings, T. 9309–9310 (7 December 2010). See also Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2004 (testifying that a 120 mm mortar is louder than a 82 mm mortar); Savo Simić, T. 30065–30066 (12 November 2012) (testifying that it would be impossible to conceal the firing of a round from UN observers located in the vicinity of firing positions); John Wilson, T. 4111 (23 June 2010) (testifying that if it was a quiet day, one could hear the outgoing fire of a mortar at more than one kilometre away); Stanislav Galić, T. 37860 (7 May 2013); Thorbjorn Overgard, T. 10031 (16 December 2010).

¹⁴³⁷¹ P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 68–72; P1960 (UNMO report, 29 August 1995); Harry Konings, T. 9308–9312, 9314–9316 (7 December 2010).

¹⁴³⁷² P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 88–90.

¹⁴³⁷³ P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 89–90, 95; Harry Konings, T. 9308–9310, 9385–9386 (7 December 2010).

¹⁴³⁷⁴ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 88; Harry Konings, T. 9391–9393 (7 December 2010).

three to four charges, and the stabilizer would be deeply embedded in the ground. There are other contradictions too!)

a. UNPROFOR investigation

4283. In addition to the investigation by the UNMOs referred to above, the UN conducted an investigation by its Engineer Cell Sector Sarajevo, after which a follow-up analysis was conducted by Lieutenant Colonel Brian Powers, from the “G2 HQ UNPROFOR”, who considered and analysed both the UNMO and the Engineer Cell Sector Sarajevo reports.¹⁴³⁷⁵ All three reports were then sent to the UNPROFOR Sarajevo HQ Commander by Lieutenant Colonel Baxter who summarised their findings in the final UN official report.¹⁴³⁷⁶

4284. The Engineer Cell Sector Sarajevo came to the conclusion similar to that reached by the Bosnian police and the UNMO teams, finding that the 120 mm mortar shell—of “[S]erb manufacture”—was fired from 2,850 mls, or 160 degrees, from the north.¹⁴³⁷⁷

4285. As for Powers’ analysis, noting that the shell that landed on Markale was found to have a bearing different from the other four shells that fell in the vicinity, he reported on 29 August 1995 that the “analysis of the fuse farrow [*sic*] shows the bearing of [the Markale] round was most likely from 220–240 degrees and would have been fired from the same position as the other four rounds”, namely from somewhere between Lukavica and Miljevići.¹⁴³⁷⁸ Powers also noted that there must have been some kind of an anomaly with the Markale shell, which was later explained by Baxter to have probably been the result of the shell first striking a building on its flight path.¹⁴³⁷⁹ **(#Absurdity#! Any contact of the fuse of shell would result in an immediate activation of explosive. If it contacted the roof by the tale and then “rotated” it would continue flyin far from the building, because of velocity. This kind of gymnastics shouldn’t even be mentioned in a criminal case, because it is so unbelievable. Who can make a model of such a hit and a turbulence afterwards? So, as the Defence expert had shown, the angle of 67 degrees would require that the shell went through the building. Or, if taken for granted thar the shell first hit the roof, which is not**

¹⁴³⁷⁵ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2. *See also* Richard Higgs, T. 5938–5941 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995) (showing the Engineer Cell working on the scene). The Chamber notes that the Engineer Cell Sector Sarajevo report is dated 6 September 1995 even though the Engineer Cell conducted the crater analysis on 28 August and even though Powers ought to have analysed their report by 29 August 1995. The Chamber notes, however, that Demurenko can be seen in his interview of 2 September holding the original French version of the Engineer Cell report in his hand. *See* fn. 14399. Thus, the Chamber considers the date of 6 September to be the date of the English translation of the original Engineer Cell report rather than the date when the report itself was first prepared or submitted.

¹⁴³⁷⁶ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 2–4.

¹⁴³⁷⁷ P2407 (Witness statement of KDZ304), p. 17; P2114 (UNPROFOR report re shelling of Markale on 28 August 1995); P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 6–7. *See also* Richard Higgs, T. 5948–5950 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995).

¹⁴³⁷⁸ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21. *See also* P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 1–2. The Prosecution submits that this analysis of the bearing should be disregarded as unreliable since Powers “applied the fuse-funnel method without a clear fuse funnel”. *See* Prosecution Final Brief, Appendix C, para. 64.

¹⁴³⁷⁹ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 3, 21.

corroborated by anything, it could certainly rotate, and for sure would have fallen far away from the site of the impact. Can anyone assert that the shell with this velocity hits the roof, and lands down only few metres far from the wall? It is well known that a shell flies not only because of inertia, but because of the charges. If the UN takes care of its reputation, #this kind of manipulation should have been forbidden forever#!)

4286. Powers' report also provided that the UN radar was operating at the time but that it did not detect any of the mortars fired and that "[a]t least several of the five rounds would have been detected if fired close to the [confrontation line]." ¹⁴³⁸⁰ According to the report, if the shells were fired from a longer range, the arc of the trajectory would have most likely been below the beam of the radar and therefore not detected. ¹⁴³⁸¹ (#Absurdity#! Had the trajectory been so low, it couldn't fall with such an angle of 67 degrees!) Powers further noted that the height of the buildings at the market was also considered and that, in order for a round to clear the top of the buildings on the south side of the street, it would have required either a high trajectory from close to the confrontation line or a low trajectory mortar shell fired from a middle to a long range. ¹⁴³⁸² (In such a case, there couldn't be any firing place on south or north side, because of buildings on the axis south-north. A low trajectory was possible only on the east-west axis, which is excluded! The staging was a clumsy one, and didn't succeed!) However, none of the staff manning the UN OPs in the area along the confrontation line observed or heard any firing at the time of the Markale incident. ¹⁴³⁸³ Based on all this data, Powers concluded that the firing position of the five shells was in the SRK territory, and probably fired from the Lukavica area at a range of between 3,000 and 5,000 metres. ¹⁴³⁸⁴ Powers' conclusions were presented to Harland and Smith, who from that point on had no doubt that the shell was fired by the Bosnian Serbs. ¹⁴³⁸⁵ (This is #ridiculous#! How possibly the one critical shell could have been fired from Lukavica, which would be 240 degrees from north. Further, how possibly the shell could fly so long with a low trajectory? This is not a direct fire, this is an indirect fire, with an inevitable high trajectory. It would be more advisable to see what Harland said about the General Smith's intention to end the war with a forcefull means, to see that it was his intention to accuse the Serbs and order the NATO bombardment, which led to the end of war. (see T2044-2045: Q. And did UNPROFOR issue any statements as to the origin of fire of these shells? A. The commander, General Smith, made a statement, saying that it was -- I forget the words, but saying that it was perhaps still not clear where -- what was the origin of fire. Q. And do you know, then, why such a statement might have issued when there

¹⁴³⁸⁰ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 1 (noting that the angle of the radar would detect high, but not low, trajectories). But see D2762 (Witness statement of KW554 dated 14 September 2012), para. 12 (where KW554 testified that he "was informed that the round had been recorded" on the UN radar but that "it could not be determined from which side of the confrontation line it had been fired".)

¹⁴³⁸¹ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 1–2.

¹⁴³⁸² P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

¹⁴³⁸³ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21; P1447 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

¹⁴³⁸⁴ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 21.

¹⁴³⁸⁵ P820 (Witness statement of David Harland dated 4 September 2009), para. 231; P821 (Supplemental witness statement of David Harland dated 4 May 2010), para. 15; P828 (UNPROFOR Report re shelling of Markale on 28 August 1995). See also David Harland, T. 2043–2044 (6 May 2010) (testifying further that the report was presented in the "hours and day or two that followed" but not giving the specific time at which that happened). Baxter's report states that Smith was briefed verbally in the evening of 28 August and then received a written report at 8 a.m. on 29 August 1995. See P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 2.

was no doubt, to your knowledge, as to the origin of fire? A. Yes. Q. And why was that? A. It takes a minute or two, if that's okay. There, General Smith had a plan to end the war in Bosnia and Herzegovina, or at least a series of initiatives that would contribute to the end of the war, and central to those initiatives was the need to direct NATO air-strikes against the Bosnian Serbs on a massive scale. In order for him to be able to initiate those air-strikes, he had to resolve two problems. One problem, we called them the Mogadishu problem, which is probably less relevant to this Court, and to his statement about these mortars. The second problem is the hostage problem, which is that he could not trigger the large-scale -- the massive-scale use of NATO air power against the Bosnian Serbs unless he was sure that all UN personnel, particularly UN personnel of NATO nationalities, were off Bosnian Serb territory, because if they were on Bosnian Serb territory, they would be very vulnerable to being taken hostage. And they had -- the Serbs had shown, in May, I think it was, that if they were able to take hostages, they could use them as human shields, and that would stop NATO from escalating its air-strikes. So General Smith had been working for several weeks, very quietly and discreetly, to take as many UNPROFOR personnel as possible, particularly all those from NATO nations, off Bosnian-Serb-held territory.At a first moment, General Smith didn't recognize that this could be the opportunity he was creating as of May 1995, and in this circumstances he communicated to the public that there is no reliable evidence about the origine of fire. Only afther he realised that it was what he needed, he accused the Serb side, and lounched a "massive scale air strikes" against the Serbs, which led to the end of the war, see T. 2045, Harland's words: to see that it was his intention to accuse the Serbs and order the NATO bombardment, which led to the end of war, T2045: Now, nobody could predict, when this Markale atrocity happened, that this would be the incident that would trigger these air attacks... What else is needed to see that the incident had been staged with the aim to facilitate a fierce air strikes. If it happened within the cunning strategy to end the war, why it is brought before the Court, while #this heavily compromises the UN and this Court as well!#)

4287. On 8 September 1995, Baxter reported to the UNPROFOR Zagreb HQ, attaching all the above reports and noting that Powers' report has attempted to clarify the "apparent discrepancy" between the direction of the Markale shell and the direction of the preceding four shells.¹⁴³⁸⁶ (#Discrepancies, but no matter#! As always, all the discrepancies that appeared in this case had been "resolved" on the account of the Serbs and the Accused, by stretching facts so to fit this intention. As if the rule "In dubio pro reo" didn't exist any longer. This amount of "discrepancies" is too much for any as well as for this case, and this Accused can not stand, and it would be unjust and shame for the entire international community. Could something like that happen in the judiciaries of the NATO countries, or any democratic country?) His report also noted that the UN radar would have detected any mortar fired at a range of 950 metres or less so that the "assessment was that the mortars were fired at a lower trajectory which passed under the radar beam"; this in turn meant that the round would have come from a firing position, dependent on the charge, at a range between 1,550 and 3,500 metres, whereas the confrontation line was 1,050 metres from the impact point.¹⁴³⁸⁷ The report concluded "beyond reasonable doubt" that all five

¹⁴³⁸⁶

P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court pp. 2-4.

¹⁴³⁸⁷

P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.

shells were fired from Bosnian Serb territory.¹⁴³⁸⁸ (However, this is #not correct count of the distance#. As we can see from the previous parafraphs, only from the OP1 there was about 3 km. to the site of impact, and from the OP1 to the c/l was additional 200 metres, and if it wasn't heard, it would mean that it was fired from at least 3,500 metres, from a high hills, or even behind the picks. And it couldn't be with any low trajectory, not even with a weaponry with a direct fire! But, since the chief Commander of the UN forces, General R. Smith ...” *had a plan to end the war in Bosnia and Herzegovina, or at least a series of initiatives that would contribute to the end of the war, and central to those initiatives was the need to direct NATO air-strikes against the Bosnian Serbs on a massive scale.* - as Harland testified, how possibly his subordinate would oppose his intentions and plans? See what happened to the Chief of Staff of Sevtor Sarajevo Demurenko, in the next paragraph! A scale of disgrace is very large!)

b. Andrey Demurenko's investigation

4288. Demurenko, Chief of Staff of Sector Sarajevo at the time of the incident,¹⁴³⁸⁹ testified that he heard about the Markale incident within 30 minutes after it happened.¹⁴³⁹⁰ He went to the incident site two hours later and observed both the crater and the experts working at the site, as well as blood on the street and the pavement.¹⁴³⁹¹ Having spent around 30 minutes at the site and having given instructions to the teams working there, Demurenko returned to the headquarters and about an hour later learned that a spokesperson for UNPROFOR, a British Lieutenant-Colonel, had organised a press conference in which he blamed the SRK for the incident.¹⁴³⁹² Demurenko thought that this was completely groundless as the investigation was still ongoing at that time.¹⁴³⁹³ As a result, in the evening of 28 August he proposed to his superior, at the time General Bachelet, to organise an investigation, to which Bachelet agreed.¹⁴³⁹⁴ Demurenko then selected his closest aids and, relying on the ballistic results he had at the time, they went to inspect possible firing locations both on the confrontation line, which was around 2,000 metres from the incident site, and in SRK-held territory, compiling photographs of those locations.¹⁴³⁹⁵ Their investigation lasted from 29 August to 1 September 1995, following which Demurenko prepared a report concluding that there were no suitable firing positions on the SRK side of the confrontation line; however, when he came to present his report to Bachelet, he was told by Bachelet's aide that the report would never be published

¹⁴³⁸⁸ P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.
¹⁴³⁸⁹ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 4.
¹⁴³⁹⁰ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 42.
¹⁴³⁹¹ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 67–68.
¹⁴³⁹² D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 68–71, 74–75 (explaining that he could not remember the names or the battalions of the UN members working at the site and testifying that he did not remember interacting with Konings); D2272 (Supplemental information sheet for Harry Konings, 20 April 2009), para. 25.
¹⁴³⁹³ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 138, 140.
¹⁴³⁹⁴ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 44, 55, 76, 78–79.
¹⁴³⁹⁵ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 43, 51, 63, 76–77, 80–81, 90, 95, 100–103, 110–111, 116, 122–123, 126, 135 (explaining that he had two ballistics reports, one prepared by a Dutch officer who was a ballistics expert and the other by a local expert from BiH, as well as somewhere between ten and 20 different sources of information); D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko); D2274 (Map of Sarajevo marked by Andrey Demurenko); D2273 (Photograph of Andrey Demurenko); D2277 (Photograph of Andrey Demurenko); D2284 (Letter from SRK to VRS Main Staff, 29 August 1995) (indicating that Demurenko sought and the SRK granted permission for him to visit Trebević); Andrey Demurenko, T. 28990–28991 (17 October 2012).

due to its conclusions.¹⁴³⁹⁶ **(#Conspiracy, what else?# And it wasn't a conspiracy, was it? Why the Bachelet's aide didn't like this report? If the conclusion was consistent with the described findings, what was a problem? And how an aide could have known what was favourable, and what could have been published? Because it already had happened!#)**

4289. As a result, Demurenko contacted the Associated Press and, on 2 September 1995, gave them an interview outlining his conclusions.¹⁴³⁹⁷ In the interview, Demurenko explained that he personally went to the positions from which the shell could have been fired had it been fired with charges three to six and found that these locations were unsuitable for firing positions, as were those found on the bearing line of the other four shells that fell on that day.¹⁴³⁹⁸ The Chamber notes that the video footage shows that Demurenko used a bearing of 176 degrees from the north, rather than 160 degrees as determined by UNPROFOR investigators or 170 plus or minus five degrees as determined by CSB Sarajevo and the UNMOs.¹⁴³⁹⁹ Demurenko testified that having given this interview, he was threatened by an ABiH officer and disciplined by his own command in Sector Sarajevo.¹⁴⁴⁰⁰ **(The bearing was close, but #Demurenko explained that he visited a wider area#. 170 plus 5 is 175 degrees. But, the main point is: how come this scandalous development with the threats to Demurenko by the ABiH officer, and "disciplining" of him by his superiors didn't attract any attention of the Chamber? #Now it is clear why the other UN officials, the General Smith subordinates, didn't dare to bring about the truth. Only more and more disgraces#!)**

4290. Demurenko explained that in three of the four possible positions he visited, the ground was made up of stones, while the fourth position was forested, which is why he concluded that not a single one of these positions was suitable for mortar placement.¹⁴⁴⁰¹ He also stated that he and his team did not have GPS but went to the relevant sites using "traditional old fashioned instruments to determine the location".¹⁴⁴⁰² When asked if the margin of error with which the ballistic experts were working meant that the firing positions would have encompassed an area bigger than the specific positions he visited, Demurenko at first testified that the deviation would have been about 15 metres alone; later he conceded that the margin of error in the azimuth (of plus or minus five degrees) meant that each of the locations he

¹⁴³⁹⁶ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 51–55, 81–85 (testifying also that the report was in his personal archive but that he was reluctant to provide it as it was a confidential UN document).

¹⁴³⁹⁷ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 56, 85, 96.

¹⁴³⁹⁸ D1010 (Video footage of Colonel Demurenko's interview, with transcript).

¹⁴³⁹⁹ D1010 (Video footage of Colonel Demurenko's interview, with transcript); D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 99, 104–105, 109, 117–119, 122, 136; D2280 (Map of Sarajevo); D2285 (Satellite photograph of Sarajevo); Andrey Demurenko, T. 28912–28920 (16 October 2012), T. 28986–28990 (17 October 2012) (testifying that when he started his investigation he did not have the UNPROFOR report referring to 170 degrees and that the discrepancy in any event did not matter because ultimately his team looked at a broad area to the right and to the left of the precise location, thus encompassing the margin of error). The Chamber notes, however, that contrary to his evidence, Demurenko can be seen in his interview holding the very UNPROFOR report he claimed he did not have or use during his investigation. Later, in re-examination, Demurenko testified that the team also explored the area starting from 160 degrees. See Andrey Demurenko, T. 28991 (17 October 2012). The Chamber notes that Demurenko had not mentioned a visit to the areas covered by the direction of fire of 160 degrees despite having given detailed evidence about his investigation in the *Dragomir Milošević* case. In addition, he did not mention it in the interview he gave following his investigation. Accordingly, the Chamber does not find his evidence on this matter credible.

¹⁴⁴⁰⁰ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 56, 64, 88; D2311 (Interview with Andrey Demurenko, 6 September 1995).

¹⁴⁴⁰¹ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 57, 90–91, 112–114; D2277 (Photograph of Andrey Demurenko); D2278 (Photograph of Andrey Demurenko); Andrey Demurenko, T. 28991 (17 October 2012) (explaining in court that the majority of the terrain was covered by forest).

¹⁴⁴⁰² D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 90, 107, 116.

visited would have had a radius of between 175 and 315 metres, depending on the charge.¹⁴⁴⁰³ He said that he visited those wider areas and conceded that some of them would have been suitable for placing a mortar, but testified that those showed no traces of mortar placement when he inspected them.¹⁴⁴⁰⁴ On cross-examination, when put to him that this is not what he said previously, in the *Dragomir Milošević* case, Demurenko agreed, explaining that he wanted to focus on the specific four locations in his testimony but that in fact the team went to many more.¹⁴⁴⁰⁵ **At least, Demurenko visited some places, and it was better than nothing, which the other did. It is difficult to prove a negative fact, something that do not exist, but still, nobody dared to try, and the report of Mr. Demurenko can not be discredited so easily. At least, #it is sufficient for a reasonable doubt#!)**

4291. Demurenko further conceded that he used firing tables for an M52 120 mm mortar but denied that this would have resulted in different positions to the positions given in firing tables for an M74 120 mm mortar, which was said to have been used in Markale.¹⁴⁴⁰⁶ During cross-examination in this case, he conceded that he did not know which shell was used in Markale when he conducted his investigation, but that this made no difference to his team because they checked the entire slope.¹⁴⁴⁰⁷ The Chamber notes that according to his Associated Press interview, Demurenko placed charge three at 2,000 metres, rather than at 2,400 to 2,500 metres as done by Turkušić.¹⁴⁴⁰⁸ **(Big deal!)**

4292. Commenting on the UNPROFOR conclusions relating to the UN radar, Demurenko testified that they were “absolutely wrong” because mortars that fired from middle to long range would have had a higher, not lower, trajectory and thus would have been detected by the UN radar.¹⁴⁴⁰⁹ He also noted that, contrary to the report’s conclusion that the confrontation line was 1,050 metres away from the incident site, it was in fact around 2,000 metres away.¹⁴⁴¹⁰ **(Or, according to the UN MOs, around 3,000 metres from the site of impact and the OP!)**

4293. Demurenko thought that the incident was a “terrorist attack” organised within Sarajevo, as the 120 mm mortar shell could not have caused that many casualties and was not heard or registered by anyone.¹⁴⁴¹¹ Conceding that mortars were designed to hit targets behind obstacles, he also thought that the chances of the first shell hitting Markale was “one in a

¹⁴⁴⁰³ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 97–99, 113, 122; Andrey Demurenko, T. 28921–28935 (16 October 2012). While Demurenko testified that his evidence on the deviation of 15 metres or less was misunderstood by the *D. Milošević* Chamber, the Chamber considers this not to be the case. Instead, Demurenko has simply changed his evidence following the *Milošević* judgement.

¹⁴⁴⁰⁴ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 106–109, 115, 124; D2282 (Photograph of a meadow); D2283 (Photograph of a meadow); D2285 (Satellite photograph of Sarajevo); D2279 (Photograph of Andrey Demurenko); Andrey Demurenko, T. 28913–28914, 28936–28939 (16 October 2012), T. 28941–28943 (17 October 2012); P5918 (SRK Order, 23 August 1995) (indicating that SRK was using temporary firing positions at the time).

¹⁴⁴⁰⁵ Andrey Demurenko, T. 28927–28935 (16 October 2012), T. 28952–28953 (17 October 2012).

¹⁴⁴⁰⁶ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 92.

¹⁴⁴⁰⁷ Andrey Demurenko, T. 28946–28961 (17 October 2012); P5919 (Excerpt of Drina Corps inventory sheet); P5920 (Excerpt of mortar firing table); P5921 (Firing tables for M74 120 mm light mortar); P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar).

¹⁴⁴⁰⁸ *Compare* D1010 (Video footage of Colonel Demurenko’s interview, with transcript) *and* D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko) *with* Emir Turkušić, T. 9019 (4 November 2010).

¹⁴⁴⁰⁹ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 125, 133; D2276 (Drawing by Andrey Demurenko).

¹⁴⁴¹⁰ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), para. 133; D2281 (Drawing of angles and distance of mortar shells by Andrey Demurenko).

¹⁴⁴¹¹ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 54, 65, 139; Andrey Demurenko, T. 28926–28927, 28936–28938 (16 October 2012).

million” though the market was struck twice during the war.¹⁴⁴¹² According to Demurenko, it would have been very easy to create a crater by a detonation device placed in an urn, although he acknowledged that he had no evidence for this.¹⁴⁴¹³

4294. Hogan testified that he tested Demurenko’s evidence by going—as close as possible—to the positions visited by him in 1995 and took photographs and GPS readings of them.¹⁴⁴¹⁴ The Chamber notes that a number of these photographs show locations which are not covered by forest and look suitable for the placement of mortars. The Chamber also notes that Zorica Subotić, while criticising Hogan for checking the positions on this trajectory and implying that he did so in order to find a suitable firing position, contradicted Demurenko’s conclusion by testifying that there was in fact a suitable firing position on the trajectory of 176 degrees.¹⁴⁴¹⁵ **(But, in that case, there would be a traces, since a mortar 120 mm would leave traces, as we heard witnesses testify. Also, Demurenko visited the places a couple of days after the incident, and a ground traces would be visible, and vegetation could have changed meanwhile!)**

c. Aftermath and NATO air strikes

4295. After the incident and before he went to the scene that day, Harland spent much of his time discussing with Smith what the next steps would be and the fact that if it were determined that the shell was fired by the Serbs, there would have to be a major military response.¹⁴⁴¹⁶ On the day of the incident itself and the following day, Smith had three conversations with Mladić, during which they discussed the circumstances surrounding the incident.¹⁴⁴¹⁷ In the first conversation, which took place at 2:13 p.m. on 28 August 1995, Smith explained to Mladić the seriousness of the situation and that all facts at that point were indicating that the incident was committed by the VRS.¹⁴⁴¹⁸ Mladić agreed to carry out a comprehensive assessment to ensure that no weapons had been fired without authority but also claimed that this was an attack by the Bosnian Muslims designed to discredit the VRS.¹⁴⁴¹⁹ Mladić also urged Smith to set up a joint investigation team comprising both warring factions and the UNPROFOR.¹⁴⁴²⁰ **(As a matter of fact, #the Serb side had every right not to accept any investigation done behind the VRS back#. An elementary decency would require to enable the other side an insight in a course of investigation.**

¹⁴⁴¹² D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 58, 60, 65; D2286 (Drawing of shell trajectory re shelling of Markale on 28 August 1995); D2328 (Photograph of Sarajevo from Trebević); Andrey Demurenko, T. 28936–28939 (16 October 2012).

¹⁴⁴¹³ D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), paras. 65–66; Andrey Demurenko, T. 28971 (17 October 2012) (conceding that he was not an expert in terrorism and static explosions).

¹⁴⁴¹⁴ Barry Hogan, T. 11225–11230, 11283–11284 (3 February 2011); P2214 (Aerial satellite image of Sarajevo); P2215 (Photographs re shelling of Markale on 28 August 1995).

¹⁴⁴¹⁵ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 139.

¹⁴⁴¹⁶ P820 (Witness statement of David Harland dated 4 September 2009), para. 229.

¹⁴⁴¹⁷ Rupert Smith, T. 11454–11455 (9 February 2011); P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

¹⁴⁴¹⁸ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

¹⁴⁴¹⁹ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3. See also Rupert Smith, T. 11544–11545 (10 February 2011); D1013 (SRK Order, 28 August 1995).

¹⁴⁴²⁰ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

Otherwise, #the side interested in blaming the Serbs and SRK had every possibility to manipulate#. Since the Serb side demanded the joint investigations, the Serbs are entitled to reject all that had conducted without them. It must be kept in mind that the other side was a warring side, and not a state organs that would function independently! As it is already confirmed by the testimonies of several UN officers, and accepted by the Chamber, the Muslim side was eager to have the international armed forces involved in the war on their side, this wa, without a joint investigations, they could have produced as many incidents as they wanted!)

4296. On the same day, at around 1 p.m., Colonel Čedomir Sladoje issued an order on behalf of the SRK Command ordering a ban on use of fire and asking all SRK brigades to inform the Command, by 2 p.m. whether they had opened fire on Sarajevo between 10 a.m. and 12 p.m. that day.¹⁴⁴²¹ Later that day the VRS Main Staff reported to the Accused that the SRK brigades did not open fire on Sarajevo between 10 a.m. and 12 p.m..¹⁴⁴²² (And that is, and only that, what the President could have known about this incident. It was a proper move of Colonel Sladoje, because #it wouldn't be serious to refuse any responsibility before any inquiry#!)

4297. At 6:23 p.m. that day, Mladić reported to Smith that no VRS forces were involved in the incident.¹⁴⁴²³ In return, Smith told Mladić that the UNMO investigation had established that the round was a 120 mm mortar round probably fired from the south.¹⁴⁴²⁴ (“South” meant nothing, because the #Muslim forces were deployed in the ring of 360 degrees too.#) On the evening of 28 August 1995, while Janvier was on leave, Smith decided to initiate the NATO bombing campaign.¹⁴⁴²⁵ He testified that he was confident (#Already, only several hours after the incident???) at that point that the Bosnian Serbs were responsible for this incident based not only the findings on the direction of fire he received from the various UN investigators but, more significantly, on the fact that none of the UN personnel had heard these shells being fired from within the proximity of Sarajevo.¹⁴⁴²⁶ (Neither anyone have heard that the shell came from the out of the ring of the confrontation line, i.e. from the Serb territory! If nobody heard it being fired from within the proximity of Sarajevo, and the radars didn't register anything, so it was more probable that something had been activated “in situ”. That is what happens all the time: when there is no any reliable evidence, then it could be addressed to the Serbs, but it wouldn't be the case in any national judiciary. This is equal as a saying: #“There is some smoke, they must be Indians”#!)

¹⁴⁴²¹ D1013 (SRK Order, 28 August 1995).

¹⁴⁴²² D2313 (VRS Main Staff Report, 28 August 1995).

¹⁴⁴²³ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3. See also Rupert Smith, T. 11565–11571 (10 February 2011); D1015 (Intercept of conversation between Ratko Mladić and Unknown, undated), e-court pp. 3–4.

¹⁴⁴²⁴ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3.

¹⁴⁴²⁵ Rupert Smith, T. 11456 (9 February 2011), 11505–11509 (10 February 2010); D1009 (Excerpt from Rupert Smith's book entitled “The Utility of Force: The Art of War in the Modern World”), pp. 367–368.

¹⁴⁴²⁶ Rupert Smith, T. 11456–11458 (9 February 2011). When it was put to Smith during cross-examination that, in light of the first UNMO report prepared by Konings on 28 August, he could not have known on that day that the Bosnian Serbs were responsible for the Markale incident, Smith explained that he had other sources of reporting in his office. See Rupert Smith, T. 11509–11511 (10 February 2011); P150 (UNMO report, 28 August 1995). See also Rupert Smith, T. 11922–11924 (15 February 2011); D1063 (UNPROFOR daily situation report, 29 August 1995), p. 2.

4298. The next day, 29 August at 10 a.m., Smith informed Mladić that it was now beyond reasonable doubt that the shells had come from the VRS territory and that the investigation had revealed that the origin of fire was approximately 3.5 to 4 kilometres southwest of the impact point.¹⁴⁴²⁷ **(However, that wasn't right#. Had it been "southwest" as it is comprised in this paragraph, than it would be the bearings of more than 180 degrees, and quite more. This clearly indicates that nothing was important except an opportunity that #General Smith orders attacks#, as Harland told us in his statement, and in testimony, in order to facilitate an end of the war!)** Mladić responded that he had checked all SRK firing positions and that the shell had not been fired by his soldiers; he once again urged Smith to set up a joint commission claiming there were a number of indications to suggest that the incident had been "orchestrated by the BiH".¹⁴⁴²⁸ When shown a report Janvier sent to Kofi Annan on 29 August 1995 at 10:36 a.m.—half an hour after Smith's third conversation with Mladić—in which Janvier informed Annan that the origin of fire was still being investigated and was difficult to establish due to the impossibility of determining the charge with which the shell was fired, Smith stated that he could not comment on what was going on in the UN Headquarters.¹⁴⁴²⁹ **(Obviously, #Smith was working on his own and for the NATO, and not for the UN#, and this is a shame that the UN court is sanctioning his misbehaviour on an account of the Serbs, and to the detriment of the relations in the region. General Janvier was Smit's superior and no. one on behalf of the UN: how come his opinion was not dominant over an opinion of his subordinate?)** When asked why he was sure "beyond reasonable doubt" that the Bosnian Serbs were responsible for the incident given the fact that the UN reports were using more careful language, such as "most likely", Smith explained that while his conclusion was not an "absolute positive", it meant that it was "most likely to be positive" and reiterated that it was based on a number of factors, including that no one heard a round being fired from the proximity of Sarajevo.¹⁴⁴³⁰ **(#Ridiculous and absurdous#! Another, more probable inference would be that the shell didn't come from any distance, but had been activated on site, or thrown from a neighbouring building. Otherwise, Smith introduced another, completely new principle: "In dubio pro Prosecutio", and if this court justify that, the original principle should be forgotten!)**

4299. Also on 29 August, at 4:30 p.m., the Accused, Mladić, Plavšić, Krajišnik, Tolimir and Gvero, among others, met with the FRY leadership, including Slobodan Milošević, Momir Bulatović, and Momčilo Perišić, to discuss the upcoming peace conference.¹⁴⁴³¹ During this meeting, Milošević proposed that the Bosnian Serb leadership criticise the shelling and the killing of innocent civilians in Sarajevo "in a more severe way" to which Tolimir reacted saying that by 11 a.m. on that day, no one had precise information on where the shell had

¹⁴⁴²⁷ Rupert Smith, T. 11511–11512 (10 February 2011); P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p.3.

¹⁴⁴²⁸ P2289 (UNPROFOR report re conversations with Ratko Mladić, 25–29 August 1995), e-court p. 3. Smith explained that he was not inclined to accept Mladić's proposal for a joint commission as it would have only prolonged the process but nevertheless wanted to be absolutely sure as to who had fired the shells before ordering the attacks. See Rupert Smith, T. 11456–11457 (9 February 2011).

¹⁴⁴²⁹ Rupert Smith, T. 11512–11514 (10 February 2011); P906 (UNPROFOR daily report, 28–29 August 1995), p. 2. During cross-examination, Smith was shown Demurenko's interview and conceded that he never visited these positions. He testified that he did not take Demurenko into account at the time, as the interview was filmed some days after Smith had already made the decision to initiate the bombing. See Rupert Smith, T. 11520–11526 (10 February 2011). See also P820 (Witness statement of David Harland dated 4 September 2009), para. 232; David Harland, T. 2320 (11 May 2010).

¹⁴⁴³⁰ Rupert Smith, T. 11514–11515 (10 February 1995), T. 11905–11906 (15 February 2011); P1445 (UNPROFOR report re shelling of Markale on 28 August 1995), e-court p. 3.

¹⁴⁴³¹ D3051 (Witness statement of Momir Bulatović dated 25 February 2013), paras. 35A–35C; D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 1.

come from.¹⁴⁴³² Milošević retorted, however, that Akashi had informed him at 2:30 p.m. that the shell came from the Bosnian Serb side to which Mladić said that the shells had come from two different directions (170 and 220 degrees) neither of which could have been from the Serb positions but only from the Muslim mobile launching pads.¹⁴⁴³³ Mladić also voiced his doubt about the number of victims given the size of the crater, which he deemed to be “not bigger than an ashtray”.¹⁴⁴³⁴ **(This is also all the Accused could have known. Also, the meeting was entirely confidential meeting of the Serbs, and nothing had been aimed to any public or court, but still the position was the same!)**

4300. On 30 August 1995 at around 2 a.m., the NATO air strikes began and letters were sent to Mladić, the Accused, and Slobodan Milošević informing them of this fact.¹⁴⁴³⁵ The letter to Mladić was written by Janvier, informing him that a thorough investigation was conducted and found that the fire on Markale came from the VRS positions south-southwest of Sarajevo.¹⁴⁴³⁶ **(In that case, there wouldn't be 165 to 170 degrees, but 190 or more, but anyway, the UN didn't feel any obligation to be meticulous or accurate, and it was clear that the facts didn't matter)** thus resulting in the initiation of the air strikes, that the object of the air strikes was to prevent further shelling of Sarajevo, and that the attacks would cease once Janvier was convinced that the threat of further shelling by the SRK had been eliminated.¹⁴⁴³⁷ **(Meanwhile, while the NATO bombed the Serbs for two weeks, the Bosnian Serb leadership was neiled in Belgrade to accept a joint delegation for Dayton, and a golden voice for President Milosevic,(i.e. in a case of 50:50 vote in the Serb delegation, Milo{evi} was to prevail!) and that was a main purpose of the entire case. No matter what and why happened, the Court should not verify this kind of a cunning conduct)** Letters to Milošević and the Accused were written by Akashi, wherein he informed them what the UN teams concluded with respect to Markale and about the initiation of the air strikes; in the letter to the Accused Akashi also wrote that the “key to stopping the air action” was in the Accused’s and Mladić’s hands and strongly urged him to ensure that the attacks on Sarajevo stopped.^{14438 (14438)}

4301. On 1 September 1995, the air strikes stopped and Janvier and Banbury met with Mladić, Perišić, Gvero, and Tolimir in Mali Zvornik to discuss the current situation; they told Mladić that the investigation results clearly identified the Bosnian Serbs as the perpetrators, to which Mladić responded that Markale was “a pretext to gain a corridor for the Muslims to Sarajevo”.¹⁴⁴³⁹

4302. Smith also conceded that the preparations for military action against the Bosnian Serbs began before the Markale incident, namely following the London Conference, when he started withdrawing UN troops from Goražde, and that he was waiting for an “event to occur”, such

¹⁴⁴³² D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 8.

¹⁴⁴³³ D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), pp. 8–9; D3051 (Witness statement of Momir Bulatović dated 25 February 2013), para. 35C.

¹⁴⁴³⁴ D3058 (Record of meeting between leaderships of FRY and RS, 29 August 1995), p. 9.

¹⁴⁴³⁵ P2826 (UNPROFOR report re NATO air strikes, 30 August 1995); D2815 (SRK report, 30 August 1995); see Adjudicated Fact 2798.

¹⁴⁴³⁶ The Chamber notes that the reference to the south-southwest direction in the letter, indicates that Janvier was relying on the conclusion that the shell came from a bearing of 220 to 240 degrees, rather than the findings made by the CSB Sarajevo and UNMO teams. **OK, I commented it, neglect it, the Chamber was aware of it.**

¹⁴⁴³⁷ P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court p. 2.

¹⁴⁴³⁸ P2826 (UNPROFOR report re NATO air strikes, 30 August 1995), e-court pp. 3–4.

as an attack on a safe area, that would lead to a military action.¹⁴⁴⁴⁰ He testified that in the immediate aftermath of the incident he was under pressure from UNPROFOR Headquarters in Zagreb, BiH authorities, and the NATO itself to make the “decision that was required of him”.¹⁴⁴⁴¹ **(Then, this is a clear confirmation that it had been #premeditated by Smith# and others in the UN – NATO alliance, and was in accord with what Harlad said testifying in this case: Smith came to end the war by a force, and also that kept the changes in the UN mandate clandestine from the Serbs, as we saw in a document in file!)**

4303. On 2 September 1995, Janvier sent a telegram to Annan, wherein he addressed speculation in the media that the shell could not have come from the Bosnian Serbs.¹⁴⁴⁴² According to this telegram, “[t]here is no disagreement about the difficulty of deliberately hitting [that area]” but that it is “most likely that the shot was just fired in the general area” and that it was “blind fire”; the fact that it then landed in the market was a “great misfortune”.¹⁴⁴⁴³ **(In such a case, #there was no any intention, and this would require a completely different qualification and treatment of this incident#, particularly with respect to the President, since the incident wouldn’t be in a framework of any JCE. It must have been a very sensitive and burdening for a person of integrity, as Gen. Janvier was, but this is what the UN makes even to their own people, a big burden of lies!)** It also provides that “[a]fter 40 months of shelling the City, it should not be a cause of surprise that one should eventually find such a tragic target.”¹⁴⁴⁴⁴ Finally, the telegram summarises the findings that point to the VRS being responsible for the incident, namely that (i) all five shells had the same markings on the stabiliser; **(#All the three warring sides had the same armament and ammunition!)** (ii) the radar was observing the area at an elevation of 960 metres 24 hours a day such that anything fired above that height would have been detected; and (iii) had the mortar rounds been fired from the ABiH side, the UNMOs, FreBat 4, EgyBat, would have heard the fire and it would have been picked up by the radar.¹⁴⁴⁴⁵ The telegram also notes that the idea that the shell was fired from few streets away is not supported by the entries in the logs of the neighbouring OPs.¹⁴⁴⁴⁶ **(Still, no elements to accuse the Serbs, because #there are other possible and even more probable inferences. But, That must me Indians!?)**

4304. Harland testified that the principal doubt as to who fired the five mortar shells arose because Smith made a statement to the press, on Harland’s advice, that UNPROFOR’s investigation showed that it was unclear who fired the shell.¹⁴⁴⁴⁷ Harland advised Smith to

¹⁴⁴³⁹ P2451 (Witness statement of Anthony Banbury dated 19 May 2009), paras. 183–192; P2509 (Anthony Banbury’s notes, 1 September 1995), e-court p. 18–19, 22; Adjudicated Fact 2798.

¹⁴⁴⁴⁰ Rupert Smith, T. 11503–11508, 11531–11533 (10 February 2011); D1009 (Excerpt from Rupert Smith’s book entitled “The Utility of Force: The Art of War in the Modern World”), pp. 363, 366–369.

¹⁴⁴⁴¹ Rupert Smith, T. 11528–11531 (10 February 2011); D1011 (Intercept of conversation between Rupert Smith and Ratko Mladić, undated).

¹⁴⁴⁴² D1014 (UNPROFOR report, 2 September 1995). Smith denied ever seeing this telegram. See Rupert Smith, T. 11549–11553 (10 February 2011).

¹⁴⁴⁴³ D1014 (UNPROFOR report, 2 September 1995), p. 2.

¹⁴⁴⁴⁴ D1014 (UNPROFOR report, 2 September 1995), p. 2. Smith also thought that it was not Markale specifically that was being targeted but civilians in general. See Rupert Smith, T. 11547–11553 (10 February 2011); T. 11906–11907 (15 February 2011). Similarly, Konings testified that the shell may have been a “lucky shot” since a 120 mm mortar shell is an “area weapon” and not a specific pinpoint targeting system. See P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 96.

¹⁴⁴⁴⁵ D1014 (UNPROFOR report, 2 September 1995), pp. 2–3.

¹⁴⁴⁴⁶ D1014 (UNPROFOR report, 2 September 1995), p. 2.

¹⁴⁴⁴⁷ P820 (Witness statement of David Harland dated 4 September 2009), para. 233.

make a neutral statement even though both men already knew that the Bosnian Serbs were found to be responsible.¹⁴⁴⁴⁸ **According to Harland, this was a “necessary deception” as they were about to initiate large-scale air strikes against the Bosnian Serbs for which they had been preparing for some time in order to end the war, and therefore did not want to make any public statements that would allow the Bosnian Serbs to prepare by, for example, taking international hostages.**¹⁴⁴⁴⁹ While still convinced that it was the right course of action to take, Harland noted that it has been a cause of distress to him that he may have contributed to an “enduring myth” that there was doubt about who was responsible for this incident.¹⁴⁴⁵⁰

(#So, a deceptions were acceptable conduct of the UN#? So, Harland did have a distressful experience because of that, not because of the suffering that he caused to the Serbs and other citizens of Sarajevo! Finally, they had formed a decision to attack the Serbs, not any side that would violate the ceasefire agreements, but only the Serbs! Sapienti sat! They said all what is needed to an average mind to draw a right conclusion!)

4305. On 4 September 1995, Mladić sent an angry letter to Smith, suggesting again a joint commission of experts for an investigation of the incident, and posing the following questions, among others:

Why do you not inform the public of the role which the Muslim side and a foreign country’s Intelligence experts had in the screenplay ‘Markale-2’? Why the public has never been informed about the scenario of ‘Markale-1’? Are you hiding from the public the truth about ‘Markale-1’ and ‘Markale-2’ in order to justify the aggression against the [RS] made by NATO [...]?¹⁴⁴⁵¹

4306. Prvoslav Davinić, director of the UN Centre for Disarmament Affairs at the time,¹⁴⁴⁵² testified that he heard about the incident on the day it happened in a meeting with Under Secretary Goulding, who told the attendees that there were no clear indications at the time that the shell came from the Serb side and that one could not exclude the possibility that it came from the ABiH.¹⁴⁴⁵³ According to Davinić, Goulding then instructed one of his staff to follow the developments on the ground and the next day the staff member filed a report in which she emphasised that the aim of the investigation on the ground was to show that the Bosnian Serbs fired the shell as it made no sense that the other side would; according to Davinić, once the Bosnian Serb side was blamed, there was talk in the UN corridors that the incident was not investigated properly and that political considerations had prevailed.¹⁴⁴⁵⁴ **(What now? A high UN officials testifying at an open session took responsibility to inform the Chamber about the standpoint of the UN Headquartered in New York, nobody ever opposed it, but no use, the #Chamber didn’t hear it#!)**

¹⁴⁴⁴⁸ David Harland, T. 2044–2046 (6 May 2010); P820 (Witness statement of David Harland dated 4 September 2009), para. 233.

¹⁴⁴⁴⁹ P820 (Witness statement of David Harland dated 4 September 2009), para. 233. See also David Harland, T. 2124–2126 (7 May 2010).

¹⁴⁴⁵⁰ P820 (Witness statement of David Harland dated 4 September 2009), para. 234.

¹⁴⁴⁵¹ D2310 (Letter from Ratko Mladić to UNPROFOR, 4 September 1995), pp. 2, 5. On the same day Mladić also met with SRK commanders to discuss the situation on the ground. See P1489 (Ratko Mladić’s notebook, 28 August 1995–15 January 1996), e-court pp. 11–18. The air strikes resumed on 5 September and lasted until 14 September. See Adjudicated Fact 2799.

¹⁴⁴⁵² D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 1, 5.

¹⁴⁴⁵³ D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 5–6.

¹⁴⁴⁵⁴ D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 6–8; Prvoslav Davinić, T. 45522–45528, 45537–45543 (16 January 2014) (conceding, however, that he was not privy to the various UN reports relating to the investigations conducted by the UN into this incident).

a. Firing positions south and southeast of Markale

4307. The Chamber has already outlined the positions of the SRK units in the area south and southeast of Stari Grad and Markale, and recalls that much of Mt. Trebević was in the zone of responsibility of the 1st Romanija Brigade and later the 1st Sarajevo Mechanised Brigade.¹⁴⁴⁵⁵ In early August 1995, the SRK was re-organised again and the 4th Sarajevo Light Infantry Brigade was created, which incorporated the Trebević and other battalions of the 1st Romanija Brigade, with Stevan Veljović as the Commander of the new brigade.¹⁴⁴⁵⁶ The zone of responsibility of this new brigade included the area of Trebević and Vidikovac, and its weapons arsenal included a 120 mm and 82 mm mortar battery with firing positions in the Brus sector, southeast of Sarajevo on Mt. Trebević.¹⁴⁴⁵⁷ According to Veljović, on 24 August, on the order of the SRK Commander,¹⁴⁴⁵⁸ he sent the whole battery, together with its firing crew, to Trebinje to assist the Herzegovina Corps dealing with attacks from Croatia, and they remained there until mid-September.¹⁴⁴⁵⁹ Veljović was adamant that at the time of the Markale incident there was therefore not a single 120 mm mortar pointed in the direction of Markale.¹⁴⁴⁶⁰

4308. Dušan Škrba, at the time the Chief of Artillery in the 1st Sarajevo Mechanised Brigade,¹⁴⁴⁶¹ testified that no fire was opened on the day of the incident from his zone of responsibility southwest of Markale, particularly not from 120 mm mortars as those were relocated outside of the 20 kilometre circle around Sarajevo; thus, there were no firing positions for 120 mm mortars on the Miljevići axis or on the road towards the tower of Trebević.¹⁴⁴⁶² Contrary to Veljović, however, he did not deny that smaller calibres, such as 82 mm mortars, remained in the area south of Sarajevo.¹⁴⁴⁶³ **(#This is nothing “contrary” to Veljovic, because Veljovic was speaking about the exclusion zone of 20 km, and the**

¹⁴⁴⁵⁵ See para. 4171. See also P1058 (ABiH map); P1052 (VRS map of Sarajevo); P1021 (VRS map of Sarajevo).

¹⁴⁴⁵⁶ D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 28–29; Stevan Veljović, T. 29248–29250 (23 October 2012). While Veljović referred to this brigade as the “4th Serbian Brigade”, the documents indicate that the brigade’s official name was 4th Sarajevo Light Infantry Brigade. See e.g. P5944 (Report of 4th Sarajevo Light Infantry Brigade to SRK, 31 August 1995).

¹⁴⁴⁵⁷ D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 29–30. See P1058 (ABiH map) and P1052 (VRS map of Sarajevo) for the location of Brus.

¹⁴⁴⁵⁸ At this time, the Commander was Čedo Sladoje because Dragomir Milošević had been wounded. See Stevan Veljović, T. 29262 (23 October 2012).

¹⁴⁴⁵⁹ D2351 (Witness statement of Stevan Veljović dated 19 October 2012), paras. 31–33; Stevan Veljović, T. 29265 (23 October 2012).

¹⁴⁴⁶⁰ D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 34; Stevan Veljović, T. 29262–29267 (23 October 2012). When shown his report to the SRK command, dated 31 August 1995, and listing the available weapons including a number of 120 mm mortars, Veljović stated that the mortars were at his disposal even though they were located in Trebinje. See Stevan Veljović, T. 29267–29268 (23 October 2012); P5944 (Report of 4th Sarajevo Light Infantry Brigade to SRK, 31 August 1995).

¹⁴⁴⁶¹ D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 7; Dušan Škrba, T. 29107–29108 (18 October 2012) (testifying that he became the chief of artillery in 1994, having replaced Savo Simić).

¹⁴⁴⁶² D2341 (Witness statement of Dušan Škrba dated 14 October 2012), para. 24; Dušan Škrba, T. 29117 (18 October 2012).

¹⁴⁴⁶³ Dušan Škrba, T. 29117 (18 October 2012). Also contradicting Veljović’s evidence was Miloš Škrba, a member of the 1st Sarajevo Mechanised Brigade, who lived in Petrovići and had relatives in the village of Studenkovići, south of Markale. He testified that while he never saw 120 mm mortars in Studenkovići or in the vicinity of the road connecting Petrovići and Studenkovići, he saw one 82 mm mortar on that road in August 1995. See D2344 (Witness statement of Miloš Škrba dated 14 October 2012), para. 10; D2346 (Map of Sarajevo marked by Miloš Škrba); Miloš Škrba, T. 29195–29198 (22 October 2012) (appearing to then contradict his witness statement by testifying that his evidence about the lack of 120 mm mortars in the area concerned mostly 1992 and 1993 and that he did not in fact know about 1995); P5939 (Map of Trebević marked by Miloš Škrba). Miloš Škrba’s witness statement is also contradicted by the SRK order of 9 May 1995 in which Dragomir Milošević refers to an 82 mm mortar platoon and a 120 mm mortar battery located in Trebević-Palež sector. See P5940 (SRK Order, 9 May 1995), pp. 4–5. **If Škrba was talking about 92 and 93, it doesn’t mean that something is contradictory, but rather unprecise. Also, if something was ordered in May 95, knowing that in the meantime there was both, removal of the heavy weaponry out of the 20 km TEZ, and a transport of the heavy mortars to Trebinje.**

mortars of 120 mm being relocated, not a smaller calibre mortars, which could have been somewhere, since being considered as an infantry weapon. According to all the documents, the shell that landed in Markale in August 1995 was 120mm!)

4309. Prior to becoming Chief of Artillery, Dušan Škrba was the Commander of the Mixed Artillery Battalion of the brigade, which had four firing positions, that included, among other weapons, 120 mm mortars; these mortars were located east of Lukavica, in the Prljevo Brdo and Uzdojnica sectors (that is, southwest of Markale), and were permanently positioned there until they had to be relocated outside of the TEZ in August 1995.¹⁴⁴⁶⁴ Contradicting Dušan Škrba was Blagoje Kovačević, whose unit's zone of responsibility covered the area at 220 degrees from the north, and who testified that there was no SRK artillery on that line, not even 82 mm mortars.¹⁴⁴⁶⁵ **(#Again, nothing contradictory!!! The zones of responsibility were different. And this is a completely wrong line of inquiry: it is looking for a possibility that the Serbs had required weapons, not for an evidence that the Serbs fired it!)**

4310. Dragomir Milošević testified that following the incident he was told by Čedo Sladojević, Lugonja, and other SRK officers that on the day of the incident no fire was opened on Markale by the SRK.¹⁴⁴⁶⁶

4311. As noted earlier,¹⁴⁴⁶⁷ the ABiH held positions on the northern base of Mt. Trebević.¹⁴⁴⁶⁸ Asim Džambasović testified that the 10th Mountain Brigade of the ABiH 1st Corps held the area roughly from Miljacka River to the south up to the northern slopes of Trebević, and all the way up to Zlatište and the Vraca Monument beyond the Jewish cemetery; its zone of responsibility covered the areas of Soukbnar, Skenderija, Bostarići and the neighbourhood of Cicin Han Lipa.¹⁴⁴⁶⁹ Debelo Brdo and Čolina Kapa were also held by the ABiH.¹⁴⁴⁷⁰ Conway recounted that in December 1995, as the UNMO mission was coming to a close, he came across four ABiH mortars “at the bottom of a steep hill in the southern hills of Sarajevo”, an area in which the UNMOs had not been permitted to patrol; the four mortars were pointed north, towards the city, and appeared to have been there for a considerable period of time as they were sandbagged and maintained.¹⁴⁴⁷¹ At first Conway indicated, by placing them just north-east of Mrakuša, that these mortars were positioned south-southeast of

¹⁴⁴⁶⁴ See D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 7, 9; D2342 (Map of Sarajevo marked by Dušan Škrba); D2343 (Map of Sarajevo marked by Dušan Škrba); Dušan Škrba, T. 29104–29108, 2911129113 (18 October 2012); P5933 (Map of Sarajevo marked by Dušan Škrba); P5934 (Map of Sarajevo marked by Dušan Škrba); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 12; D2413 (Map of Sarajevo marked by Savo Simić).

¹⁴⁴⁶⁵ D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 51; D2333 (Topographical map of Sarajevo).

¹⁴⁴⁶⁶ Dragomir Milošević, T. 32756 (28 January 2013).

¹⁴⁴⁶⁷ See para. 4171.

¹⁴⁴⁶⁸ See Adjudicated Fact 104; P1764 (ABiH Map of Sarajevo); P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Alen Gičević, T. 7657–7661 (11 October 2010); D733 (Photograph of Sarajevo marked by Alen Gičević); D734 (Photograph of street sign in Sarajevo).

¹⁴⁴⁶⁹ Asim Džambasović, T. 15223–15225 (22 June 2011) (noting also that the 10th Mountain Brigade later merged with the 1st Mountain Brigade to form the 115th Brigade); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović). See also Stanislav Galić, T. 37184, 37188 (15 April 2013), T. 37417 (18 April 2013), T. 37474 (22 April 2013), T. 37934 (8 May 2013).

¹⁴⁴⁷⁰ See Adjudicated Facts 105 and 2830; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21.

¹⁴⁴⁷¹ D2329 (Witness statement of Paul Conway dated 7 November 2011), paras. 17–23. Conway also testified that during his time as a patrolling UNMO, namely between 19 August and late September 1995, he never observed any mortar fire into the city from the south but did observe rocket, sniper, and rifle fire. See Paul Conway, T. 29001, 29016–29022 (17 October 2012). But see P5929 (UNMO report, 1 September 1995), pp. 3, 17 (indicating that on 30 August 1995 a 120 mm mortar round impacted inside the Maršal Tito Barracks, coming from a bearing of 160 degrees); P5928 (Map of Sarajevo marked by Paul Conway).

Markale market.¹⁴⁴⁷² However, when shown a more detailed map on cross-examination, he placed them north of Mrakuša, and thus south-southwest of Markale.¹⁴⁴⁷³

4312. The Chamber notes that an ABiH working map for the period relevant to the incident does show an ABiH mortar position in the relevant area; however, that position was located immediately northeast of Čolina Kapa, and thus southeast of Markale, rather than north of Mrakuša as testified to by Conway.¹⁴⁴⁷⁴ **(It could have been another, since there is a possibility that the first one wasn't put on the map, as it wasn't allowed. Anyway, the position around Colina Kapa satisfies the condition required for this incident!)**

(g) Post-war investigations

4313. Higgs was asked by the Prosecution to investigate this incident based on many of the reports and investigative materials referred to above, including BiH MUP reports and videos, the statements of Konings and Knustad, and the UNPROFOR and UNMO reports.¹⁴⁴⁷⁵ He confirmed that the stabiliser found at the scene indicated the projectile was a 120 mm shell, the range of which spanned from 300 to 6,200 metres.¹⁴⁴⁷⁶ Higgs thought that Powers' report was incorrect as its conclusion was based on the fuse furrow despite the furrow not being of the best quality due to the nature of the ground and the shell's angle of descent.¹⁴⁴⁷⁷ Since there was no visible or reliable fuse furrow, the correct methodology for determining the bearing was to use the crater shape as the primary source of information, which was done by all the other investigation teams, who all came to the conclusion that the bearing was 170 degrees from the north.¹⁴⁴⁷⁸ Higgs commented on the four other shells that landed near Markale on the day of the incident, noting that the fact that they came from 220 to 240 degrees from north is what may have caused the confusion because the UNPROFOR investigators simply presumed that all five shells must have come from the same firing position.¹⁴⁴⁷⁹ Finally, Higgs conducted his own analysis of the bearing using the data

¹⁴⁴⁷² D2329 (Witness statement of Paul Conway dated 7 November 2011), para. 18; D2330 (Map of Sarajevo marked by Paul Conway); Paul Conway, T. 28999–29000 (17 October 2012).

¹⁴⁴⁷³ Paul Conway, T. 29005–29007, 29015–29016 (17 October 2012); P5927 (Map of Sarajevo marked by Paul Conway).

¹⁴⁴⁷⁴ P1058 (ABiH map); P6301 (Reference table of military symbols).

¹⁴⁴⁷⁵ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 18; Richard Higgs, T. 5929–5930 (18 August 2010).

¹⁴⁴⁷⁶ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 19.

¹⁴⁴⁷⁷ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 19; Richard Higgs, T. 5932 (18 August 2010).

¹⁴⁴⁷⁸ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 19–20, 23. See also Richard Higgs, T. 5936–5938 (18 August 2010); P1448 (BiH MUP Report re shelling of Markale on 28 August 1995); P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 2.

¹⁴⁴⁷⁹ Richard Higgs, T. 5929–5932 (18 August 2010). Based on the traces around the crater, Turkušić also excluded the possibility of the bearing in the case of the Markale shell being between 220 and 240 degrees from the north. See Emir Turkušić, T. 9020–9022 (4 November 2010); P1929 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1930 (Photograph re shelling of Markale on 28 August 1995 marked by Emir Turkušić). Konings conceded that the team had to work very quickly and that

supplied to him and came to the conclusion that the bearing of the Markale shell was one of 175 degrees.¹⁴⁴⁸⁰ **(#Peculiarities#! How it happened that these four shells hadn't been registered by radar? The Chamber is doing a bad service to itself, by searching for a proof that the Serbs had mortars somewhere, but the main issue is: who fired, of activated the device? Even if the both sides had their mortars deployed along the said axis, the main question is not answered: who fired?)**

4314. As for the angle of descent, while difficult to ascertain, Higgs thought it probable that it was between 67 and 75 degrees and probably nearer 70 degrees, as determined by Turkušić.¹⁴⁴⁸¹ Using that angle, Higgs identified several locations as the possible origin of fire, namely 900, 1,600, 2,400, and 3,000 metres away from Markale in the established direction of fire, starting with charge one and ending with charge four respectively.¹⁴⁴⁸² Plotting these locations on the map, and noting the shallow crater and the fact that the UNMOs did not hear the shell being fired and that their radar did not detect it, Higgs concluded, again confirming Turkušić's testimony, that the shell was most likely fired from 2,400 metres away using charge three, as this would have put the firing position out of the ear shot of the UNMOs.¹⁴⁴⁸³ In this position, the mortar was also much higher than the target, giving it a large range and steeper angle of descent.¹⁴⁴⁸⁴

4315. According to Higgs, the firing of one single shell meant that there was only one objective to the fire, namely to "harass the enemy" by preventing free movement, causing casualties—which in urban environment will nearly always be civilian—and "pray[ing] on the minds of the people."¹⁴⁴⁸⁵ Due to the nature of the conflict in Sarajevo, Higgs noted that it was simple to have the targets pre-recorded all over the city and to know where the main meeting points were.¹⁴⁴⁸⁶ Thus, if one wanted to cause maximum effect from a single shell, then Markale would have been a prime target.¹⁴⁴⁸⁷ **(#Speculations#! The same goes to the Muslim side, knowing that they had been expecting Smith to introduce a NATO force on their side. But this kind of #speculation as Higgs made is not correct#, and shouldn't be allowed, because he couldn't know what was the objective of the SRK. No matter it was not established beyond a reasonable doubt that the shell was Serbian, he continues with his speculations as if it was established. But exactly for the reason that it hadn't been established, he needed this speculations to bridge over the gap. Still, none of the investigators explained how come the people didn't escaped from the street hearing for**

there may have been a margin of error in the established bearing of 170 degrees. However, he thought that this was not sufficient to account for the difference between the bearing of the shell that hit Markale and the four earlier shells, concluding that the difference arose simply because the Markale shell was fired from a completely different location. See Harry Konings, T. 9328–9329, 9375–9377 (7 December 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 77–79, 82–87.

¹⁴⁴⁸⁰ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 20–21, 23. See also Richard Higgs, T. 5960–5977 (19 August 2010); D543 (Map of Markale); D544 (Map of Markale marked by Richard Higgs); D545 (Richard Higgs' report re shelling of Markale on 28 August 1995), pp. 10, 12; D546 (Photograph marked by Richard Higgs); D547 (Photograph marked by Richard Higgs).

¹⁴⁴⁸¹ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 21, 23.

¹⁴⁴⁸² P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 23. The Chamber received evidence that a 120 mm mortar shell cannot be fired on charge zero. See P5946 (Excerpt from firing tables for 120 mm mortar).

¹⁴⁴⁸³ Richard Higgs, T. 5932–5936 (18 August 2010), T. 5980–5982 (19 August 2010); P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 23–24.

¹⁴⁴⁸⁴ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 24.

¹⁴⁴⁸⁵ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20.

¹⁴⁴⁸⁶ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20. See also P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 96.

¹⁴⁴⁸⁷ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 20.

previous shells exploding around on a couple of hundred metres distance!) With respect to the other four shells that landed near Markale on the same day, Higgs noted that it is a common ploy to fire a shell that causes casualties in one area and then shortly afterwards fire others nearby where people may be gathering.¹⁴⁴⁸⁸ **(#Speculations#! This is a nature of his speculations: the four weren't fired after, but before the one critical and responsible for the incident. Only a Chamber that accepted to be cheated could be cheated that way! If it was done by an inexperienced interns and assistants, it doesn't change this error a bit!)** While it was not possible to determine that this was the case here, Higgs stated that the circumstances on that day were “similar and suspicious”.¹⁴⁴⁸⁹

4316. Zorica Subotić analysed this incident as well. Observing that it was the last of the nine Sarajevo incidents in which a large group of civilians died, she claimed that they all had in common a projectile of “unbelievable accuracy”, with explosions occurring in places where many people were gathered.¹⁴⁴⁹⁰ According to her, while statistically possible for this to happen in one case, it is “statistically very improbable” and “for practical purposes [...] impossible” in nine separate cases.¹⁴⁴⁹¹

4317. Subotić also thought, having analysed the video footage of the incident, that it was difficult to find a “valid technical explanation” for certain scenes.¹⁴⁴⁹² For example, she claimed that the nature of injuries sustained by some of the wounded persons “cannot be accepted as correct” given their respective proximity to the point of impact, so that it was inexplicable that they even survived the explosion, let alone were conscious, moving, and sitting up straight.¹⁴⁴⁹³ She dismissed Turkšić’s evidence that a man seen hanging over a fence, with a large chest wound, was injured by mortar shell fragments, asserting that his injury could only have been caused by a “dense narrow beam” of fragments, which is not how a mortar shell fragments.¹⁴⁴⁹⁴ She added that his injuries were even less realistic in view of the fact that there was “almost no blood under this body on the pavement.”¹⁴⁴⁹⁵ Another example, according to her, was the presence of glass in front of the market hall building and up to the point of impact, which Subotić claimed was unusual as the glass should have been

¹⁴⁴⁸⁸ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 21.

¹⁴⁴⁸⁹ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 21. Konings testified that the four shells which landed some 10 minutes before the Markale incident could have been adjusting fire for the Markale shell and were fired into a different area in order to mask the intention of firing at the market. However, he thought it equally possible that the four shells were aimed at a completely different target. When asked during cross-examination how it was possible that the four shells landed near Markale without having been heard by the people in Markale, Konings stated that he did not know what the people in Markale market heard or did not hear that day. See Harry Konings, T. 9313–9314, 9387 (7 December 2010). See also P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 65; P1959 (Map of Sarajevo marked by Harry Konings). However, Savo Simić, Dušan Škrba’s predecessor, noted that the four shells that preceded the Markale shell could not have been adjusting fire for the Markale shell as they came from a different position, and that therefore Markale was struck on the first attempt, which he thought virtually impossible. See D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 32; Savo Simić, T. 30120–30122 (12 November 2012).

¹⁴⁴⁹⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 122.

¹⁴⁴⁹¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 123.

¹⁴⁴⁹² D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 123.

¹⁴⁴⁹³ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 123–125, 159; Zorica Subotić, T. 38345 (15 May 2013), T. 38596–38598 (22 May 2013).

¹⁴⁴⁹⁴ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 125; Zorica Subotić, T. 38345–38346 (15 May 2013).

¹⁴⁴⁹⁵ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 125, 159; Zorica Subotić, T. 38598–38603 (22 May 2013).

pushed into the market hall due to the detonation wave created in the street.¹⁴⁴⁹⁶ She also pointed out the presence of persons wearing camouflage uniforms, arguing that these were most likely members of the ABiH who were not there by accident but were organised, with one person issuing orders.¹⁴⁴⁹⁷

4318. With respect to the other four other mortar shells that fell on that day, Subotić noted that they struck the area of the National Theatre, some 235 metres from Markale market, and yet were not heard by any of the 71 witnesses interviewed by the police or by the UNMOs at Sedrenik's OP-1, including Knustad.¹⁴⁴⁹⁸ Thus, Subotić claimed that the four explosions did not precede the Markale explosion.¹⁴⁴⁹⁹ **(#At that distance, one could hear even an outgoing fire, let alone the incoming one with the explosion that must have been heard in the whole city!)**

4319. Noting that the video footage of the impact site shows that the crater and the traces of shrapnel can hardly be seen, Subotić thought that this was because the traces in the asphalt were shallow, which is typical of cases where the mortar shell has very low speed or when it is activated in static conditions.¹⁴⁵⁰⁰ She thus concluded that if the crater was caused by a mortar shell, that shell impacted at very low speed and thus could not have been fired with a charge larger than charge one.¹⁴⁵⁰¹ According to her, the fact that the stabiliser was not found near the crater supported this conclusion, since the stabiliser of a shell fired at a charge higher than three is usually embedded in the ground.¹⁴⁵⁰² On the other hand, a shell fired at charges one or two will usually propel the stabiliser into the immediate vicinity of the crater or is propelled back along the approximate trajectory of the shell.¹⁴⁵⁰³

4320. In Subotić's opinion, the conclusion of the final UNPROFOR report that all five shells were fired from the same weapon as part of the same salvo has no technical merit as it is inconceivable that the Markale shell could have travelled more than 200 metres farther than the other shells.¹⁴⁵⁰⁴ She further rejected the conclusion that the projectile hit a building first

¹⁴⁴⁹⁶ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 127, 159; Zorica Subotić, T. 38346–38347 (15 May 2013).

¹⁴⁴⁹⁷ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 128.

¹⁴⁴⁹⁸ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 134–136; Zorica Subotić, T. 38331 (15 May 2013).

¹⁴⁴⁹⁹ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 136.

¹⁴⁵⁰⁰ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; Zorica Subotić, T. 38332–38333 (15 May 2013).

¹⁴⁵⁰¹ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

¹⁴⁵⁰² D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137; Zorica Subotić, T. 38341–38342 (15 May 2013). Turkušić, however, denied that one could tell from the location of the stabiliser, some metres away from the point of impact, that the speed of the shell was low. See Emir Turkušić, T. 9078–9079 (4 November 2010) Higgs testified that the stabiliser could have landed any distance away from the crater and also could have bounced back off buildings to end up where it did. See Richard Higgs, T. 5982 (19 August 2010).

¹⁴⁵⁰³ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 137.

¹⁴⁵⁰⁴ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 139; Zorica Subotić, T. 38337–38338 (15 May 2013).

because the shell would have been activated upon the first impact and would have left a visible trace on the building; however, such trace was not registered.¹⁴⁵⁰⁵

4321. Subotić submitted that, while his method was acceptable, Higgs made a deliberate error when calculating the angle of the trajectory of the shell, as he took into account the wrong azimuth of the kerb on Maršala Tita street.¹⁴⁵⁰⁶ Correcting this mistake, she found that the trajectory of the shell was 155 degrees rather than 175 degrees, the former being within the margin of error of the azimuth determined by the Engineer Cell, namely 160 degrees plus or minus five degrees.¹⁴⁵⁰⁷

4322. Recalling that the minimum angle of descent had to be 67 degrees for the shell to clear the buildings, Subotić disputed the angle of descent determined by CSB Sarajevo and, using the specifications of an M62 120 mm mortar shell, calculated that the angle of descent was in fact 64 degrees.¹⁴⁵⁰⁸ Thus, the shell could not have landed in the location where the crater was but must have been statically activated or “reached the pavement in front of the Market Hall in some other way”.¹⁴⁵⁰⁹

4323. With respect to the stabiliser, Subotić claimed that because it was found 29 metres away from the crater, “laterally to the incoming trajectory”, the explosion could not have occurred in a “regular” way, in which case the stabiliser would have been either embedded or located at the point of impact, or it would have been propelled back in the approximate direction from which it came.¹⁴⁵¹⁰ Subotić also noted that the stabiliser fins were deformed in an unusual way and showed signs of erosion in some of the video footage, whereas the stabiliser in evidence, namely P1454, does not bear such traces.¹⁴⁵¹¹ Further, she thought that the holes on the cap of the stabiliser¹⁴⁵¹² which is in evidence, namely P1454, were differently aligned when compared to the video footage of the stabiliser at the scene, thus confirming that P1454

¹⁴⁵⁰⁵ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 139; Zorica Subotić, T. 38337–38338 (15 May 2013).

¹⁴⁵⁰⁶ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 139–141, fn. 388 (Subotić believed that Higgs did not commit this error accidentally, because “there [were] indications that he also manipulated photos in other cases in order to prove the guilt of the accused, such as in the case of the mortar shell crater in Livanjska street [in the *Milošević* case.]”); Zorica Subotić, T. 38330, 38334–38337 (15 May 2013); D3549 (Map of Sarajevo marked by Zorica Subotić).

¹⁴⁵⁰⁷ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 141–142 (relying also on photographs and video footage depicting the damage to the kerb in front of the Market Hall to confirm that the azimuth of the incoming trajectory was smaller than 160 degrees); Zorica Subotić, T. 38330, 38339–38341 (15 May 2013). See also D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo”, 15 August 2012), pp. 113–114; Mile Poparić, T. 39055–39057 (30 May 2013), T. 39061–39064 (31 May 2013).

¹⁴⁵⁰⁸ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 143–145; Zorica Subotić, T. 38332 (15 May 2013).

¹⁴⁵⁰⁹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 145.

¹⁴⁵¹⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 147; Zorica Subotić, T. 38333–38334 (15 May 2013). When put to her in cross-examination that the stabiliser could have hit a building after it ejected and then landed in the location seen on the photograph, Subotić thought that this was not very likely given the distance from the crater. See Zorica Subotić, T. 38571–38572 (21 May 2013).

¹⁴⁵¹¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 146–149; Zorica Subotić, T. 38348–38351 (15 May 2013); D3550 (Photograph of stabiliser marked by Zorica Subotić).

¹⁴⁵¹² The cap of the stabiliser is the casing for the standard charge of the shell. See Zorica Subotić, T. 38612–38613 (22 May 2013).

was not the stabiliser that hit Markale.¹⁴⁵¹³ Looking at the video footage of the scene, Subotić saw an object marked by the police and thought that it was another stabiliser, which was purposefully not reported on by the police and the UN investigators; she also asserted that this stabiliser could not have been in that place as a result of an explosion.¹⁴⁵¹⁴

4324. In order to support its case that P1454 is the stabiliser that was found in Markale on 28 August 1995, the Prosecution used it during Subotić's cross-examination to show that its cap was loose so that screwing it in or out would change the alignment of the holes; having confirmed this to be the case, Subotić claimed that when she had earlier looked at the stabiliser, in preparation for her report, the cap was either not loose or she did not notice that it was.¹⁴⁵¹⁵ The Prosecution also tendered a document indicating that the "KB 9307" series of shells was tested in Serbia in March 1994.¹⁴⁵¹⁶ **(But the traces of erosion weren't found. It is interesting that #Zecevic wasn't employed in this case#!)**

4325. Subotić challenged UNPROFOR's conclusion that the shell came from between 1,550 to 3,500 metres away, arguing that had that been the case, it would not have attained the minimum angle of descent necessary to clear the buildings.¹⁴⁵¹⁷ Looking at the ranges used by the UNPROFOR in its analysis in relation to the UN radar, Subotić guessed which firing tables they used and then used the same tables to determine the height at which the radar beam would detect a shell, namely 550 metres or higher.¹⁴⁵¹⁸ Analysing the possible trajectories, based on the angles of descent of 67 and 70 degrees, she found that the UN radar would have detected every shell fired from the SRK positions.¹⁴⁵¹⁹ Arguing further that the shell would have been heard if fired from the ABiH positions, that is, with charges one and two, she concluded that the explosion at Markale market must have been static, the mortar

¹⁴⁵¹³ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 148–150; Zorica Subotić, T. 38351–38352 (15 May 2013) (testifying that the position of the holes could not be changed once fixed).

¹⁴⁵¹⁴ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 150–152 (Subotić also calculated the azimuth of the second stabiliser, basing her calculations on the assumption that it was some 20 metres away from the point of impact; the azimuth she determined was around 250 degrees, which was similar to the azimuth of the other four shells that no one heard); Zorica Subotić, T. 38330, 38352–38353 (15 May 2013).

¹⁴⁵¹⁵ Zorica Subotić, T. 38572–38580, 38586–38587, 38592–38593 (21 May 2013), T. 38612–38614 (22 May 2103); P6329 (Screenshot of a stabiliser); P6330 (Screenshot of a stabiliser). Later in re-examination, Subotić noted another difference between the photographs of the stabiliser found on the scene and P1454, namely the positioning of the imprint made by the firing pin, which to her indicated that the two stabilisers were fired from different assets. See Zorica Subotić, T. 38612–38621 (22 May 2013); D3553 (Photograph of a stabiliser marked by Zorica Subotić); D3554 (Photographs comparing two stabilisers marked by Zorica Subotić); D3555 (Photographs of stabilisers).

¹⁴⁵¹⁶ Zorica Subotić, T. 38580–38581 (21 May 2013); P6328 (Technical Test Centre note of weapon performance test, 28 March 1994). See also D3560 (Report of Nikinci Technical Testing Centre, 3 January 1994).

¹⁴⁵¹⁷ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 153–157, 163; Zorica Subotić, T. 38331 (15 May 2013).

¹⁴⁵¹⁸ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), pp. 153–154; Zorica Subotić, T. 38342–38345 (15 May 2013), T. 38568–38571 (21 May 2013). The Chamber notes that while Subotić claimed that the firing tables she used were those for M49P1 120 mm mortar shell fired by the M75 light 120 mm mortar, the table she attached to her report refers to M74 mortar. See D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 154, Figure 112. See also Mile Poparić, T.39065–39073 (31 May 2013) (also claiming that he and Subotić had looked at M49 shell).

¹⁴⁵¹⁹ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 156. See also D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 114–115.

shell having been activated in “one of the known ways” or thrown from a roof.¹⁴⁵²⁰ Nevertheless, she visited sites that corresponded to charges three and four for all the trajectories relevant to this incident and found no suitable firing positions due to hilly and forested terrain, except in one location, at the trajectory of 175 degrees and a distance of 3,800 metres.¹⁴⁵²¹ In cross-examination, she conceded that she did not “comb every step of the area” as that was considered unnecessary due to her opinion that the shell could not have originated from any of these directions.¹⁴⁵²²

b. Casualties

4326. In terms of casualties, both Milan Mandilović and Bakir Nakaš, doctors at the Sarajevo State Hospital at the time, testified that following the explosion at Markale market, which was about a kilometre away from the hospital, cars started “flowing in” bringing in large numbers of seriously wounded persons.¹⁴⁵²³ Mandilović could immediately see that their injuries were caused by shell shrapnel.¹⁴⁵²⁴ He testified that in total approximately 40 persons arrived at the hospital, most of whom were civilians; he did see a “military person here and there” but testified that their number was “negligible”.¹⁴⁵²⁵ Nakaš also confirmed that most of the victims were wearing civilian clothes.¹⁴⁵²⁶ Mandilović authenticated a number of medical records from both the State and Koševo Hospitals relating to the victims of this incident, including autopsy reports.¹⁴⁵²⁷ These autopsy reports refer to 43 dead victims, one of whom is Crnčalo’s wife.¹⁴⁵²⁸ Nakaš also authenticated a number of State Hospital’s medical records relating to the victims of the Markale incident.¹⁴⁵²⁹ **(And if the autopsies were done by Dr. Dobraca, it can not be trusted, since he was a well known criminal, a member of the Seve, as testified by Garaplija, a secret police group tasked to commit a criminal acts such as killing people on the both sides, and the UN personnel too, and in these crimes Dr. Dobraca secured the fake autopsy certificates!)**

¹⁴⁵²⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 156–157, 179; Zorica Subotić, T. 38342–38344, 38353–38354 (15 May 2013), T. 38588–38591, (21 May 2013), T. 38607 (22 May 2013).

¹⁴⁵²¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 158; Zorica Subotić, T. 38338–38340 (15 May 2013).

¹⁴⁵²² Zorica Subotić, T. 38582–38585 (21 May 2013), T. 38594–38595 (22 May 2013).

¹⁴⁵²³ P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 4–5, 87–89; P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 4–10, 65.

¹⁴⁵²⁴ P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 87.

¹⁴⁵²⁵ P1217 (Witness statement of Milan Mandilović dated 24 February 2010), para. 89.

¹⁴⁵²⁶ P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), para. 66.

¹⁴⁵²⁷ P1217 (Witness statement of Milan Mandilović dated 24 February 2010), paras. 117–118; P1225 (Medical certificate for Ismet Svraka); P1226 (Medical report for Ruža Galić); P1227 (Medical report for Samir Marevac); P1228 (Medical reports for Rasim Koso, Ferid Kanlić, Mensuda Klarić, and Ferid Bajrić); P1229 (Medical certificates for Ajkuna Cocalić, Đula Leko, Razija Čolić, Janja Pašić, and Adisa Duran); P1230 (Admission records for Osman Levent, Mehmed Ahmetović, Fatima Čulesker, Mumo Kadrić, Mirza Hodžić, Bilal Habibović, Muhidin Begić, and Mustafa Karkelja); P1231 (Medical certificates for Dževad Hodžić and Edhem Husović); P1232 (Medical report for Zijad Bejić and Hasib Bjelak); P1233 (Sarajevo State Hospital documentation re patients admitted between 28 August and 1 September 1995); P1234 (Medical reports for patients admitted to the Sarajevo State Hospital on 28 August 1995); P740 (Autopsy certificates for victims from Markale, 28 August 1995).

¹⁴⁵²⁸ P740 (Autopsy certificates for victims from Markale, 28 August 1995). While the English translation of this document contains 47 certificates, four of those are duplicates (relating to Zeno Bašević and Salko Duraković, Najla Duraković, and Husein Duraković), thus leaving 43 autopsy certificates. In addition, two of those certificates, namely those related to Najla Duraković and Husein Duraković are in fact certificates for Najla Fazlić and Husein Bektašević. The Chamber considers this to have been a typographical error during translation.

¹⁴⁵²⁹ P1525 (Witness statement of Bakir Nakaš dated 8 September 2010), paras. 94–95; P1531 (Medical records from Sarajevo State Hospital).

4327. The CSB Sarajevo report notes that on the day of the incident 35 persons were confirmed dead and 78 wounded, which was verified by KDZ485 who went to the hospitals and the morgue and identified the individuals in question.¹⁴⁵³⁰ **(#How KDZ485 differentiated those allegedly killed in Markale from some that had been brought from the frontline? If the incident was staged, the most probable accessory action would be to obtain a number of recently killed from the front line!)** Turkušić's ballistics report differs slightly as it notes that 34 persons were killed and 84 wounded in the explosion.¹⁴⁵³¹ Both Bešić and KDZ485 testified that more people died later, with Bešić estimating that 30 other individuals later died from their injuries.¹⁴⁵³² While in the morgue, Crnčalo saw, in addition to his wife, another eight bodies, most of whom were female.¹⁴⁵³³ He testified that around 40 people died in this incident and noted that they were brought to another part of the same morgue.¹⁴⁵³⁴

4328. With respect to casualties, Subotić argued that the final list of 118 casualties does not match what the findings of the police and the investigating judge during the on-site investigation, as the latter registered 35 dead and 78 wounded persons on 28 August 1995, which is a total of 113 casualties.¹⁴⁵³⁵ According to Subotić, the final total of 118 victims was eventually determined, albeit without explanation, by the CSB Sarajevo in a report under the codename "Action Truth" sent to the SDB that same day, whereby it was specified that 33 persons were killed, eight of whom could not be identified, and 85 wounded.¹⁴⁵³⁶ Thus, according to her, the final number of victims was in fact not determined by the teams investigating the incident.¹⁴⁵³⁷ Based on her own calculations of the parameters of the affected area,¹⁴⁵³⁸ she asserted that the final number of victims was exaggerated and that the number reported by the UNMOs, namely 90 casualties in total, is more likely to be

¹⁴⁵³⁰ P1908 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 2 (under seal); KDZ485, T. 8884–8885 (3 November 2010).

¹⁴⁵³¹ P1934 (BiH MUP Report re shelling of Markale on 28 August 1995), e-court p. 1.

¹⁴⁵³² P1905 (Witness statement of KDZ485), para. 27; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 33; P1977 (BiH MUP Report re shelling of Markale on 28 August 1995). See also KDZ485, T. 8884–8885 (3 November 2010).

¹⁴⁵³³ Sulejman Crnčalo, T. 1179–1180 (14 April 2010).

¹⁴⁵³⁴ Sulejman Crnčalo, T. 1175, 1180 (14 April 2010); P733 (Witness statement of Sulejman Crnčalo dated 1 November 2009), para. 6.

¹⁴⁵³⁵ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129.

¹⁴⁵³⁶ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129; P1449 (Criminal investigation file re shelling of Markale on 28 August 1995), e-court p. 10 (BCS version). The Chamber notes that the BCS version of this document does not fully correspond to the translation, however, the Chamber was able to discern the lists of victims from the BCS version as well as the reference to the "Action Truth" and thus was able to follow Subotić's reasoning. The Chamber notes that Subotić's claim that there is no explanation as to the discrepancy in numbers is plainly incorrect as the report in question clearly states that CSB Sarajevo was in constant contact with medical staff in different hospitals who are still working on identifying patients. Thus, it is clear that at that point the information was still being updated.

¹⁴⁵³⁷ D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 129.

¹⁴⁵³⁸ In making this calculation, Subotić assumed that the main street on which the trams were running must have been empty at the time and not crowded, which then meant that the remaining area was too small to contain all the people who were wounded or killed. D3551 (Zorica Subotić's expert report entitled "Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995", 15 August 2012), p. 130. The Chamber finds this calculation extremely speculative. **(It is much less**

speculative than the Higgs's and other UN speculations, or the same of the CSB Sarajevo personnel. How anyone could explain how come those people were gathered so densely in front of the Market building. It has to be taken into account that many of those exposed to the effects would shield the next one, and thus save them. It could be counted how many could have been on this space, taking into account that on a public meetings three persons occupy a square metre, and a people in moving probably maximum one person on one square metre. No person inside the Hall could be killed or wounded. Presuming that there should be at least the same number of those who were not killed or wounded, how to explain that on a small space in front of the Markale Market building there was up to 300 people!)

correct.¹⁴⁵³⁹ Relying on the evidence of a doctor who testified in the *Dragomir Milošević* case, but not in this case, Subotić then asserted that based on the photo documentation of the 35 persons killed in the incident, two of these persons were not killed by shrapnel but by a bullet from a small firearm.¹⁴⁵⁴⁰ In addition, she claimed that in the video footage, the appearance of two wounds on the body of another victim cast doubt on whether he was killed by shrapnel from the explosion.¹⁴⁵⁴¹

4329. According to the Adjudicated Fact 3081, at least 35 persons died and at least 78 persons were wounded, many of them seriously, in Markale market. The great majority of those wounded were civilians, while one of the deceased was a soldier of the ABiH.¹⁴⁵⁴²

c. Markale area as a potential military target

4330. Addressing whether there was a military target at or nearby the market, Konings testified that the area was a civilian area, noting that he had passed by the location that morning at around 9 or 10 a.m. and that it was crowded with mostly civilians.¹⁴⁵⁴³ Leka testified that the shell landed in a “strictly civilian area” and that there was no military activity in the neighbourhood.¹⁴⁵⁴⁴ Svraka also testified that he had never seen any military installations or activities in the Markale area.¹⁴⁵⁴⁵ He was never personally in the ABiH but was under a work obligation and would dig trenches at the frontlines, including at Mt. Igman and Žuč Hill.¹⁴⁵⁴⁶ Dozo also testified that there were no army facilities in that part of town but that he did not know whether ABiH used any civilian facilities there.¹⁴⁵⁴⁷ Turkušić explained that, while there may have been some soldiers passing through Markale, the highest concentration of people there were civilians, usually people selling or buying goods.¹⁴⁵⁴⁸ He was of the view that the shell was fired for its psychological impact, namely in order to cause terror and put pressure on the authorities.¹⁴⁵⁴⁹ Bešić stated that Markale was frequented by a large number of people—both civilians and those wearing military uniforms—and noted that he was not aware of any ABiH military facilities nearby but that there may have been some in the former military hall which was 400 to 500 metres away from Markale, separated by a park.¹⁴⁵⁵⁰ Bešić denied that a nearby building called Semberija was used by the ABiH as a

¹⁴⁵³⁹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), p. 130.

¹⁴⁵⁴⁰ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 130–131.

¹⁴⁵⁴¹ D3551 (Zorica Subotić’s expert report entitled “Mortar Attacks on the Sarajevo Area: Incidents at the Markale Market 5 February 1994 and 28 August 1995”, 15 August 2012), pp. 131–132.

¹⁴⁵⁴² Adjudicated Fact 3081.

¹⁴⁵⁴³ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 74.

¹⁴⁵⁴⁴ P117 (Witness statement of Đula Leka dated 25 February 1996), e-court p. 2.

¹⁴⁵⁴⁵ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 6.

¹⁴⁵⁴⁶ P1992 (Witness statement of Ismet Svraka dated 5 November 2008), para. 3. *See also* Ismet Svraka, T. 9665–9666 (13 December 2010).

¹⁴⁵⁴⁷ P1978 (Witness statement of Nedžib Dozo dated 7 December 2010), paras. 39–40.

¹⁴⁵⁴⁸ Emir Turkušić, T. 9006–9007 (4 November 2010).

¹⁴⁵⁴⁹ Emir Turkušić, T. 9001–9003, 9025–9026 (4 November 2010).

¹⁴⁵⁵⁰ Sead Bešić, T. 9425–9426, 9429–9430 (8 December 2010), T. 9500–9502, 9506–9507 (9 December 2010); P1969 (Video footage of Markale on 28 August 1995); P1450 (Video footage of Markale, 28 August 1995); D902 (Photograph re shelling of Markale on 28 August 1995 marked by Sead Bešić).

storage area, stating that it was in fact used as a bakery where bread was made for the ABiH.¹⁴⁵⁵¹

d. Accused's defence theories

4331. As with the first Markale incident, while not referring to this theory in his Final Brief, the Accused attempted to show throughout the trial that this incident was staged such that the bodies were brought from elsewhere in order to provoke NATO into bombing the Bosnian Serbs.¹⁴⁵⁵² However, as with the first Markale incident, most witnesses rejected this theory.¹⁴⁵⁵³ **(From when and how a witnesses could have rejected a theory? The witnesses of facts could only have seen a pieces of event, an that was up to the Chamber to assemble the entirety of evidence. And it is not true that a majority of witnesses rejected the theory, neither this was a matter of democratic voting. If the most the Prosecutor's witnesses, not all of them, and none of the Defence witnesses, that was not a majority, but the Chamber used to discount the Defence witnesses as if they were not a people!)** For example, Konings was adamant that the incident could not have been staged because he had passed Markale earlier that morning, at around 9 or 10 a.m., and did not see a crater there, noting that making a crater artificially would have taken a long time, longer than one or two hours.¹⁴⁵⁵⁴ **(But, if he passed by at 9 or 10 a.m. there would be enough time for that. However, there is another possibility, which is more probable, namely, that something exploded on site, and this device could have left the traces. It is not probable that somebody was creating the crater in a presence of so many people. Also, it could have been created and filled with water or other materials, so Konings couldn't notice or indentify it!)** Furthermore, he stated that he saw fresh bodies in the morgue and noted that there were no reports that morning that such a large number of people had been killed somewhere else.¹⁴⁵⁵⁵ **(Nobody claimed that some of them didn't die at the site, but at least the one with a huge wound on the chest certainly didn't die at the site, and was posted so to be visible as a drastic example!).** Bell testified that his cameraman filmed some of the very graphic footage at the scene, which BBC would not broadcast due to viewer discretion concerns.¹⁴⁵⁵⁶ Bell stated that this was one of the scenes that could not be replicated in a movie and that it was real.¹⁴⁵⁵⁷

4332. One of the bases for the Accused's contention was the type of injuries sustained by the victims and, in particular, those of one man who can be seen in the footage of the aftermath of the incident lying over the rail near the point of impact without much blood around him. In addition, Subotić mentioned a number of victims who, according to her, had small arms wounds on their bodies. However, Turkušić convincingly testified that the damage to the

¹⁴⁵⁵¹ Sead Bešić, T. 9507–9508 (9 December 2010); D904 (Photograph re shelling of Markale on 28 August 1995).

¹⁴⁵⁵² See e.g. Emir Turkušić, T. 9082, 9094–9095 (4 November 2010) (where the Accused put forward his theory to Turkušić and confirmed this position to the Chamber). But see Martin Bell, T. 9921 (15 December 2010) (where the Accused stated to the witness that the Bosnian Muslims did not dare stage such an event again after the first Markale incident).

¹⁴⁵⁵³ See e.g. Emir Turkušić, T. 9082 (4 November 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 92; Martin Bell, T. 9920–9921 (15 December 2010). But see KDZ088, T. 6394–6398 (8 September 2010) (closed session) (conceding, however, that everything he knew about Markale came from the media and rumours).

¹⁴⁵⁵⁴ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 92.

¹⁴⁵⁵⁵ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 94.

¹⁴⁵⁵⁶ P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 104–107; P2013 (BBC news report re shelling of Markale on 28 August 1995, with transcript).

¹⁴⁵⁵⁷ P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 107.

area, as well as the injuries sustained by the victims, were consistent with what one would expect from an impact of a 120 mm mortar shell at that particular place, in particular that those closest to the impact would have serious blast and shrapnel injuries to their lower limbs while those further away would suffer upper body injuries from shrapnel.¹⁴⁵⁵⁸ He also pointed out that the bodies were taken to the Koševo Hospital where anyone, including journalists, was able to see them and check how fresh they were.¹⁴⁵⁵⁹ Bešić too confirmed that the footage of the scene as well as the diversity of injuries that can be seen on people is consistent with what one would expect following such an explosion.¹⁴⁵⁶⁰ Furthermore, noting that he had experience with exchanges of dead bodies, Bešić stated that the bodies visible on the photos taken at the morgue and in the video footage were all fresh, with no soil on them or puckered up skin.¹⁴⁵⁶¹ Konings testified that a single mortar shell could cause all these casualties given the area in which it happened, namely between two buildings.¹⁴⁵⁶² **(#How big must have been a shrapnel which cut off a half of his chest? This can not survive even with a tone of salt, let alone “cum grano salis”! And since this body had been brought from somewhere else, as it is obvious, it is clear to everyone that it was entirely staged in!)**

4333. Another reason put forward by the Accused for claiming that the scene was staged is that the stabiliser can be seen in one place in Bešić’s photographs of the scene and yet is seen in a different place in the footage of the aftermath of the incident at the point when it is being photographed by the UNPROFOR soldiers.¹⁴⁵⁶³ Bešić could not explain this discrepancy, stating that in all his photographs the stabiliser can be seen in the same place and that he had no knowledge of what the UNPROFOR soldiers did with it when photographing it.¹⁴⁵⁶⁴ The Accused then showed additional footage of the investigation in which the stabiliser is shown located in one place first, the same place in which it was photographed by Bešić and, five minutes later, the stabiliser can be seen in another location, close to the location where the UNPROFOR soldiers photographed it.¹⁴⁵⁶⁵ However, Bešić stated that the stabiliser was a “mobile artefact” which was moved around in the commotion of the investigation.¹⁴⁵⁶⁶ **(What kind of investigation was this, when the #investigators disturbed the scene#? There is no a dubious situation that will not be justified, just to save the Prosecutor’s case!)**

4334. The Accused also claimed that the condition of the stabiliser provided to the court and admitted as exhibit P1454 indicated that it was not damaged due to the explosion but was instead modified manually. However, Konings, Higgs, Turkušić, and Bešić all testified that

¹⁴⁵⁵⁸ Emir Turkušić, T. 9004–9006, 9010–9012, 9018–9019, 9080–9082, 9086–9101 (4 November 2010); P1450 (Video footage of Markale, 28 August 1995); P1926 (Photographs re shelling of Markale on 28 August 1995); P1928 (Sketch re shelling of Markale on 28 August 1995 marked by Emir Turkušić); P1971 (Photographs re shelling of Markale on 28 August 1995); D874 (Video still re shelling of Markale on 28 August 1995); D875 (Video still re shelling of Markale on 28 August 1995); D876 (Video still re shelling of Markale on 28 August 1995). See also Richard Higgs, T. 5938–5939, 5947–5948 (18 August 2010), T. 5983–5984, 6031–6032 (19 August 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 67.

¹⁴⁵⁵⁹ Emir Turkušić, T. 9094–9096 (4 November 2010).

¹⁴⁵⁶⁰ P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 26, 34–35.

¹⁴⁵⁶¹ Sead Bešić, T. 9427–9428 (8 December 2010); P1450 (Video footage of Markale, 28 August 1995).

¹⁴⁵⁶² P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 67, 93.

¹⁴⁵⁶³ Compare P1926 (Photographs re shelling of Markale on 28 August 1995), photograph 1 with P1450 (Video footage of Markale, 28 August 1995).

¹⁴⁵⁶⁴ Sead Bešić, T. 9511–9512 (9 December 2010).

¹⁴⁵⁶⁵ See D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

¹⁴⁵⁶⁶ Sead Bešić, T. 9519–9525 (9 December 2010); D907 (Sketch re shelling of Markale on 28 August 1995 marked by Sead Bešić).

the stabiliser that was found on the scene looked exactly as a stabiliser of an exploded shell should look like, and explained that its fins could have been deformed due to a car running over it.¹⁴⁵⁶⁷

(#To justify irregularities at any cost#! How a car could have run over the stabilizer? After the explosion? Over almost 150 dead and wounded bodies? This is an offence of a common sense!)

When shown P1454 in the courtroom, both Turkušić and Bešić testified that it seemed to be the stabiliser shown on the video footage of the incident and described in the reports.¹⁴⁵⁶⁸ Bešić, who personally photographed the stabiliser on the scene on the day of the incident, was in fact adamant that P1454 was identical to the stabiliser on the scene despite agreeing with the Accused that the holes on its cap looked to be in a slightly different position from the holes on the pictures of the stabiliser at the scene.¹⁴⁵⁶⁹ He theorised, however, that it was possible that the stabiliser cap was unscrewed in the lab following its removal from the scene, thus shifting the position of the holes on the cap.¹⁴⁵⁷⁰

4335. The Accused's alternative defence was that the ABiH was responsible for the incident by either firing the shell or planting an explosive device at the scene in order to garner sympathy from the international community and provoke NATO air strikes.¹⁴⁵⁷¹ As noted above, the main proponent of the planted explosive device theory was Subotić. In addition, Veljović testified that it was impossible for a 120 mm mortar shell to hit Markale, which is why the SRK thought that the Muslims had planted an explosive device and activated it by remote control in order to gain sympathy and to ensure that the Bosnian Serbs were bombed.¹⁴⁵⁷²

e. Final analysis and conclusions

4336. Looking first at the Accused's suggestion that the incident of 28 August 1995 in Markale was staged, the Chamber is convinced, as with the first Markale incident, that this was not the case. In this respect, the Chamber accepts the evidence of the witnesses who were at the scene at the time of the incident or in its immediate aftermath and who were adamant that what they saw could not have been staged. Any suggestion to the contrary by the Accused and/or his witnesses is simply preposterous.

4337. The Chamber, relying on Konings, Higgs, Turkušić, and Bešić and having examined the stabiliser in its possession, is also convinced that it is the stabiliser that was found in Markale on 28 August 1995. As eventually accepted by Subotić, it is clear that the cap of the stabiliser is loose and that it can be screwed in and out, thus resulting in a different alignment of the holes to the one seen in the photographs taken by the CSB Sarajevo. The Chamber therefore

¹⁴⁵⁶⁷ Emir Turkušić, T. 9155 (5 November 2010); Sead Bešić, T. 9482–9483, 9511–9512 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 29–30; P1926 (Photographs re shelling of Markale on 28 August 1995); P1971 (Photographs re shelling of Markale on 28 August 1995); D905 (Photograph of mortar stabiliser from Markale II). See also Richard Higgs, T. 5951–5952 (18 August 2010); P1450 (Video footage of Markale, 28 August 1995); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 57; Harry Konings, T. 9380–9381, 9383–9385 (7 December 2010).

¹⁴⁵⁶⁸ Emir Turkušić, T. 9153–9155 (5 November 2010); Sead Bešić, T. 9512–9517 (9 December 2010). See also Richard Higgs, T. 6033–6034 (19 August 2010); P1454 (Stabiliser tail fin from 120 mm mortar re shelling of Markale on 28 August 1995).

¹⁴⁵⁶⁹ Sead Bešić, T. 9512–9517 (9 December 2010); P1454 (Stabiliser tail fin from 120 mm mortar re shelling of Markale on 28 August 1995); D906 (Photographs of mortar stabiliser from Markale II).

¹⁴⁵⁷⁰ Sead Bešić, T. 9517 (9 December 2010).

¹⁴⁵⁷¹ Defence Final Brief, paras. 2158–2162. See e.g. D79 (US Senate Report re smuggling of Iranian arms into BiH, 16 January 1997), p. 11; D4217 (Witness statement of Prvoslav Davinić dated 14 January 2014), paras. 5–8; Prvoslav Davinić, T. 45522–45526, 45537 (16 January 2014) (suggesting that the investigation into the incident was not done properly in order to justify NATO air strikes).

¹⁴⁵⁷² Stevan Veljović, T. 2926229265 (23 October 2012). See also Nikola Mijatović, T. 30702–30706 (30 November 2012); D2514 (Video clip of Nikola Mijatović's speech, with transcript); Momčilo Krajišnik, T. 43330–43332, 43334 (12 November 2013).

rejects Subotić's evidence, reliant as it was on these photographs and video footage, that this was a different stabiliser than the one seen in those secondary materials. Further, the Chamber does not accept her evidence that there was one more stabiliser at the scene as the photograph she based this conclusion on is so unclear that it is impossible to determine what the object seen therein is. The Chamber, therefore, finds Subotić's conclusion that this was a second stabiliser arbitrary and bordering on dishonest. Given that she was quick to resort to conspiracy theories based on photographs and video footage, to the point of seeing another stabiliser in them, the Chamber has decided not to accept any of her evidence relating to this incident unless corroborated by other credible evidence. The Chamber also rejects her theories about what she thought were inexplicable scenes and injuries seen in the video footage and photographs of the incident, as well as her conclusion that having nine incidents involving such mass casualties was impossible.¹⁴⁵⁷³

4338. Finally, the Chamber rejects her evidence, as well as the evidence of Veljović, Demurenko, and others, that the explosion was a result of an explosive device planted at the scene. The Chamber found this proposition untenable given the weight of the evidence to the contrary, including the fact that the 120 mm stabiliser was found on the scene. **(#Could have been planted#! If it was staged, it would be a well prepared and planned action, with all the required elements!)** In addition, a number of witnesses who were on the scene immediately after the incident, such as Turkušić, Bešić, and Konings, testified that the damage to the people and the buildings could have been the result of the explosion of a 120 mm mortar bomb, given the enclosed space in question and the large number of people present. The Chamber found their evidence particularly convincing because they had by that point dealt with countless shelling incidents in the city.¹⁴⁵⁷⁴ Accordingly, the Chamber is satisfied that the explosion on 28 August 1995 in the Markale area was caused by the 120 mm mortar bomb that struck the Mula Mustafe Bašeskije street.

4339. Relying on the autopsy reports in evidence, the Chamber finds that 43 people died in this explosion. Relying further on CSB Sarajevo reports and various lists of wounded provided therein, the Chamber also finds that this explosion resulted in at least 70 wounded. The Chamber is satisfied that the great majority of those casualties were civilians who were not taking active part in hostilities at the time of the incident. Only one of those killed in the incident was a soldier.¹⁴⁵⁷⁵

4340. As found above in relation to the first Markale incident, the Chamber is also satisfied that there were no military facilities or targets in the area of Markale market. **(#Absurdity#! It was not a "buying" site with inevitable gathering of the people and staying longer, it was only a passing by place, because there were only indoor shops, not a free market as the Marcale open market. Still, no explanation how come more than 150 people were in front of the Hall, on the strees, which was not equipped with any facilities? Counting**

¹⁴⁵⁷³ The Chamber found this particular suggestion, namely that having nine incidents with mass casualties would have been impossible, simply unreasonable, particularly when one takes into account the fact that the conflict lasted from 1992 to 1995 and considers the number of shells that fell on the city in that period.

¹⁴⁵⁷⁴ The Chamber notes that the only witness who was at the scene in the aftermath of the incident and yet testified that the explosion was caused by an explosive device was Demurenko. However, as will be seen below, the Chamber has found him to be unreliable in relation to this incident and thus does not accept his evidence that it was a "terrorist" attack. The other witnesses who thought it was a planted explosive device were neither on the scene at the time nor had the sufficient grounds, other than rumour and self-serving motives, to make that conclusion.

¹⁴⁵⁷⁵ See Adjudicated Fact 3081; P1450 (Video footage of Markale, 28 August 1995) (showing a victim in camouflage uniform).

that at least one third to one half of the hadn't been hit and injured, there is no rational explanation why would so many people be staying on the street/ when taken into account that in the vicinity there were allegedly four explosions prior to the one connected with the incident, the entire construct is more than doubtful and unconvincing!) It was a market frequented by the civilian population in order to buy and sell food and other goods. (Not true! All the selling and buying business had been conducted at the shops and boutiques indoors, and the street was only a passage with no need to gather on it!) In addition, the Chamber recalls that it has taken judicial notice of the fact that there was no reason to consider it a military objective on the day in question.¹⁴⁵⁷⁶ While there may have been some soldiers passing through Markale at any given time, the majority of people gathering there were civilians.

4341. In terms of the direction of fire, the Chamber recalls that the CSB Sarajevo team, the UNMOs, the UNPROFOR team that conducted the crater analysis, and Subotić, all came to the conclusion that the 120 mm shell came from the general south-southeasterly direction. According to the various calculations, it had an azimuth of between 155 and 175 degrees and a minimum angle of descent of 67 degrees, with the most likely angle of descent being 70 degrees.¹⁴⁵⁷⁷ The Chamber accepts this evidence and therefore rejects the final conclusion made by UNPROFOR's Powers and Baxter that the Markale shell probably came from the same direction as the other four shells that hit an area near Markale on that day, namely from 220 to 240 degrees from the north. The Chamber agrees with both Higgs and Subotić that Powers and Baxter's analysis was speculative and ultimately wrong, particularly given Turkušić's evidence that the shell that struck Markale area was a direct hit and not a ricochet. Accordingly, the Chamber considers that the four shells came from a different direction and thus were fired by a different mortar.¹⁴⁵⁷⁸ That being the case, they cannot be considered to have been adjusting fire for the shell that hit Markale.

4342. Turning back to the Markale shell, as noted above, both the ABiH and SRK had positions in the established direction of fire, with the confrontation line located approximately 1,600 metres from Markale. (Not correct. On this trajectory it was much more, much longer. The UNMOs said that from their OP1 to Markale there was 3,000 metres, and further 200 metres to the c/l, and to the Serb positions even more!) Given the vastness of the area covered by the established direction of fire and the margin of error involved, the Chamber is

¹⁴⁵⁷⁶ Adjudicated Fact 342.

¹⁴⁵⁷⁷ The Chamber rejects the angle of descent determined by Subotić, both due to her weak credibility and because it considers that the local investigators would have been better able to establish the angle of descent having observed the scene and the crater first hand in the immediate aftermath of the incident. (A imali su I više motiva I razloga, a mo`da I naredjenja, da "namjeste" ugao kako njima odgovara! Ta inscenacija se nije mogla napraviti bez u~e{a te iste policije!)

¹⁴⁵⁷⁸ As a result of this finding, the Chamber will not rely on the UN analysis relating to the UN radar as that analysis was based on the direction of fire of 220 to 240 degrees from the north and on the distance to the confrontation line in that direction. Furthermore, the evidence does not indicate where the radar was located, how high or low it was emitting radio-waves, or whether it covered only the area in the direction of 220 to 240 degrees or also the area of the direction of fire established in relation to the Markale shell. (Ovo je cjepidla-enje, io nije na Vije}u da sada zapa`a nedostatke istrage UN, kad ve} nije pitalo svjedoke iz UN. Radari su pokrivali cijelu dolinu Sarajeva, a re~eno je tokom procesa da je snop na bilo kom mjestu pokrivaio raspon od 500 do 900 metara visine, I da ni{ta nije moglo proletjeti sa polo`aja Srba a da ne bude registrovano!) Similarly, the Chamber does not accept Subotić's analysis relating to the radar as it is based on pure speculation as to its location and effectiveness. Unlike Subotić, the Chamber does not exclude the possibility of the radar failing to record a shell fired from far away (as outlined by the UN), particularly given the configuration of the terrain and the elevation from which it would have been fired.

convinced that there were many positions on the SRK side of the confrontation line suitable for placing a 120 mm mortar. Indeed, Veljović testified that he had a mortar battery in the Brus sector, which is in the established direction of fire. **(But Veljovic didn't say that he had the mortar at Brus at the time of the incident, because his mortars had been sent to Trebinje, and anyway couldn't be deployed at open and within the 20 km "Total exclusion zone"! And Brus wouldn't be at this trajectory, but rather more easterly, certainly closer to 120 than to 170 degrees! But, the most important is the distance of Brus, which is far above six km, and therefore beyond the range of mortar 120 mm.)**

Thus, the Chamber did not find Demurenko credible when he testified that no suitable positions existed on the SRK side of the confrontation line nor did it believe him when he testified that he in fact examined an area much larger than the one he discussed in his interview of 2 September 1995 and in his evidence in the *Dragomir Milošević* case. The Chamber considers that examining an area covering all of the directions of fire established at the time, together with the margin of error, would have been impossible in the limited amount of time Demurenko had. In addition, the Chamber finds it telling that he only mentioned this broader inspection after the Trial Chamber in the *Dragomir Milošević* case had dismissed his investigation as having been too narrow. **(But the area that was searched was limited by the azimuth range.)** The Chamber is, therefore, convinced that Demurenko simply changed his testimony in order to counteract the findings of that Trial Chamber. Thus, the Chamber considers that Demurenko's investigation was based solely on the azimuth of 176 degrees from north as he had indicated in his interview at the time, which was ultimately the wrong azimuth. **(But he examined a wider territory, not strictly the line of this azimuth.)** As such, his investigation was somewhat irrelevant to this incident. In addition, even if 176 degrees was the direction from which the Markale shell originated, the Accused's own expert witness, Subotić, contradicted Demurenko's evidence by testifying that there was one suitable mortar position in that direction of fire. For all these reasons, the Chamber does not accept Demurenko's evidence as credible and finds that there were a number of suitable positions for placing a mortar, both in the area of the established direction of fire, namely between 155 and 175 degrees, and in the area actually examined by Demurenko.

4343. As also noted above, the ABiH too had positions in the established direction of fire, including mortar positions near Čolina Kapa.¹⁴⁵⁷⁹ Nevertheless, the Chamber is convinced beyond reasonable doubt that the Markale shell was fired from the SRK side of the confrontation line.¹⁴⁵⁸⁰ First, the Chamber notes that the markings on the shell indicate that it came from Krušik Factory in Valjevo, Serbia, while its serial number indicates that it was tested in Serbia towards the end of the conflict, namely in 1994. **(#Planted, why not#?How the Chamber excluded a possibility that the parts of the shell hadn't been planted, brought from elsewhere and "found" by those who planted it? There is a reasonable**

¹⁴⁵⁷⁹

While Conway testified that in December 1995 he saw ABiH mortars positioned north of Mrakuša and facing the city, this does not necessarily mean that these mortars had also been there in August 1995 or that they had been turned towards the city at that time. Even if this were the case, the Chamber notes that those positions were not in the established direction of fire but were located southwest of Markale. **For a many less "ifs" the Serb claims had been discarded. But, this is a possibility, and influences a possible inference process, since everything is based on the inferences and believes.**

¹⁴⁵⁸⁰

The Chamber notes that part of the Accused's case was that ABiH fired the shell (or staged the incident) in order to provoke NATO air strikes, which indeed took place following the incident. He outlined this theory mostly during his cross-examination of Smith and Harland. While the evidence of these two witnesses does show that the NATO attacks were initiated by Smith before the higher echelons of power within the UN were absolutely convinced that the SRK was responsible, this does not, contrary to the Accused's position, lead to the conclusion that the ABiH was responsible for the attack.

suspicion that this may have happened!) The same is true for the other four shells that landed near Markale market on that day, all of which bear the same markings. This in turn means that the five shells were not part of the JNA arsenal in 1991 and thus could not have been part of the ABiH weapons arsenal at the time of the incident. All five therefore must have been fired by the SRK.

4344. Second, focusing on the Markale shell alone, the Chamber is persuaded by the evidence of Knustad and Konings that no firing sound—which would have been loud and distinctive in the case of a 120 mm mortar—was heard near OP-1 on the day of the incident, thus indicating that the shell was not fired from ABiH mortar positions near Čolina Kapa, or anywhere near the confrontation line. While Conway challenged the idea that one could draw such conclusion from the sounds of the explosions he had heard, he also conceded, in line with other witnesses,¹⁴⁵⁸¹ that the sound of a mortar firing nearby would have been distinct whereas he had only heard muffled sounds on the morning of the incident. Given that the morning was quiet, it is clear from Conway's evidence and the description of the events he provided that the muffled sounds he heard were the sounds of the explosions in the centre of the city rather than the sound of a 120 mm mortar firing near OP-1.¹⁴⁵⁸² Even the Accused's expert witness Subotić thought that the firing noise would have been heard had the ABiH fired the shell in question, which in turn led her to conclude that the explosion was caused by a planted explosive device.¹⁴⁵⁸³ **(This is wrong, since #Conway did see the smoke and heard the explosion sound apart of the muffled sound#.)**

4345. Finally, while the SRK soldiers and officers called by the Accused testified that no 120 mm mortars were located in the established direction of fire, the Chamber found their evidence unpersuasive and insincere as they were inconsistent when explaining why the 120 mm mortars were not there in August, despite their presence earlier in the year when the 4th Sarajevo Light Infantry Brigade was formed. For example, Veljović testified that he sent all his mortars from the Brus sector to another frontline, while Dušan Škrba testified that 120 mm mortars were simply moved outside of the 20 kilometre heavy weapons exclusion zone. They were also inconsistent as to the calibres that did remain in the area. In general, the Chamber found the evidence of these witnesses, as well as the evidence of Dragomir Milošević, to have been largely self-serving—their credibility was affected by their desire to minimise the responsibility of the SRK for the incident.

4346. While Mula Mustafe Bašeskije street and the Markale market may not have been deliberately targeted on the day of the incident, the Chamber is convinced on the basis of the evidence above, including Đozo's evidence about earlier incidents in the area and the fact that

¹⁴⁵⁸¹ See para. 4281.

¹⁴⁵⁸² The Chamber also notes that at that time of the incident Conway had only been in Sarajevo for nine days and thus was not as familiar as Knustad was with the sounds in and around the city.

¹⁴⁵⁸³ Subotić reached this conclusion arguing that a shell fired on a charge three or higher would have resulted in an embedded stabiliser at the scene. As discussed in the section dealing with the first Markale shelling incident, the other experts, who were found by the Chamber to be more credible than Subotić, thought that a stabiliser will embed if a shell is fired on charges higher than charge three. See para. 4248. Thus, Subotić's analysis that the lack of embedding in this particular case necessarily excludes the possibility that the shell was fired on charge three is not persuasive. The Chamber finds it perfectly plausible that the SRK fired the shell using charge three as testified by Higgs and Turkušić, resulting in the stabiliser being ejected at the moment of impact and landing near the impact site. The Chamber also notes that the location of the stabiliser as photographed by the CSB Sarajevo some 40 minutes after the incident is not necessarily the location at which the stabiliser first landed, as it could have been pushed around in the chaos of the evacuation of the wounded.

another four shells landed near Markale on the day of this incident, that the SRK deliberately targeted the general area of the market, in full knowledge that there were no military targets there and with reckless disregard as to potential civilian victims such fire would create.

(#Mockery of justice#! There are a #several missing elements#: if it wasn't targeted deliberately and intentionally, how this could be qualified as it is, and how could the President be charged with it? Further, the Chamber didn't even comment the #fact that this trajectory would go strait through the building#? There is no any attention to an inevitable question: #how the shell landed so close to the wall of the building#? This couldn't be achieved regardless of the distance. The Chamber to easily passed over this question, jus mentioning a possible ricochet of the shell on the roof of building, which is out of any possibility!)

ii. Scheduled modified air bomb incidents

4347. Throughout this case, the Chamber heard evidence about the nature and the use of so-called “modified air bombs” in Sarajevo during the conflict as six of the 16 shelling incidents charged in the Indictment, namely Scheduled Shelling Incidents G.10, G.11, G.12, G.13, G.14, and G.15, are alleged to involve such bombs.¹⁴⁵⁸⁴

4348. The Prosecution argues that the evidence establishes that modified air bombs were (i) possessed solely by the SRK; (ii) used by the SRK in the above mentioned incidents; and (iii) inherently incapable of targeting anything more specific than a general neighbourhood in a densely-populated Sarajevo.¹⁴⁵⁸⁵ The Prosecution also claims that because of their great destructive power and because of their imprecision, these bombs were a “quintessential urban weapon of terror, used deliberately to that end in Sarajevo”.¹⁴⁵⁸⁶ In addition, according to the Prosecution, the SRK also used these bombs in retaliation against the population in response to ABiH or NATO actions, often on areas where there was no combat activity.¹⁴⁵⁸⁷

4349. The Accused argues that the VRS used modified air bombs against military targets on the ground as a defensive measure due mainly to a shortage of artillery and mortar ammunition in 1994 and 1995 and because the ABiH grew in manpower and equipment at that point.¹⁴⁵⁸⁸ The Accused further claims that the modified air bombs were tested by expert engineers and were perfected such that they could be considered precise.¹⁴⁵⁸⁹ Finally, he claims that the ABiH also used modified air bombs in Sarajevo.¹⁴⁵⁹⁰

(1)Expert evidence

4350. The parties called a number of expert witnesses to testify about the nature of modified air bombs and to give their opinions as to the above-mentioned shelling incidents. Zečević was

¹⁴⁵⁸⁴ Indictment, Schedule G.

¹⁴⁵⁸⁵ Prosecution Final Brief, Appendix C, paras. 68–69.

¹⁴⁵⁸⁶ Prosecution Final Brief, Appendix C, para. 69.

¹⁴⁵⁸⁷ Prosecution Final Brief, Appendix C, para. 71 (referring to Scheduled Incidents G.10, G.13, and G.15).

¹⁴⁵⁸⁸ Defence Final Brief, para. 2348.

¹⁴⁵⁸⁹ Defence Final Brief, paras. 2349–2354, 2356.

¹⁴⁵⁹⁰ Defence Final Brief, paras. 2357–2358.

called by the Prosecution, while Subotić, Poparić, and Mirjana Anđelković-Lukić were called by the Accused.

4351. Earlier in the Judgement, the Chamber discussed the professional qualifications of both Subotić and Poparić and provided its assessments of these witnesses' credibility and of the reliability of their evidence.¹⁴⁵⁹¹ These general assessments are equally applicable in relation to this section of the Judgement and will not be repeated here.¹⁴⁵⁹²

4352. Zečević is an expert in rocket motors and warheads who also worked in the Pretis Factory in Vogošća until April 1992.¹⁴⁵⁹³ This factory produced artillery and rocket ammunition, rocket projectiles, and aircraft bombs, and was under VRS control during the conflict.¹⁴⁵⁹⁴ Zečević prepared a report and gave evidence on (i) the nature of modified air bombs, (ii) his involvement in investigating their mechanics during and after the conflict in Sarajevo, and (iii) his analysis of the above-mentioned scheduled incidents.¹⁴⁵⁹⁵ All three experts called by the Accused challenged Zečević's evidence and produced a joint report pointing out inconsistencies in his report.¹⁴⁵⁹⁶ Because of his expertise in rocket motors and warheads and given that he had an opportunity to examine the remnants of modified air bombs in Sarajevo, the Chamber has found Zečević to be a knowledgeable and trustworthy witness, particularly in relation to the process of modification of air bombs and their operation. **(First of all, Zecevic couldn't be trustworthy, because he tried to dupe the Chamber with his construction about the fuel-air explosive in the bombs, although such a drastic distortion of the facts was denied. Further, Zecevic was a high official of the Muslim military industry and as such, he was interested in the outcome of the investigations. The UN officials, Hamill for instance, didn't accept him in their teams. It is rather peculiar why such an "expert" hadn't been engaged in the Markale II investigation!)** The Chamber also found that many of the challenges outlined in the joint report prepared by Defence experts bordered on trivial and were at times completely irrelevant to the issues in this case.¹⁴⁵⁹⁷ On the other hand, some of the more relevant aspects of Zečević's evidence

¹⁴⁵⁹¹ See paras. 3642, 4015.

¹⁴⁵⁹² However, the Chamber will provide further credibility assessments below, where relevant specifically to modified air bombs.

¹⁴⁵⁹³ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 1; Berko Zečević, T. 12155–12157 (22 February 2011).

¹⁴⁵⁹⁴ Berko Zečević, T. 12149, 12154–12158 (22 February 2011); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 41; Dragomir Milošević, T. 32762 (28 January 2013); Miladin Trifunović, T. 30378 (15 November 2012), T. 30443, 30459–30461 (27 November 2012) (testifying that Pretis Factory was in the zone of responsibility of the Vogošća Brigade, which later became 3rd Sarajevo Infantry Brigade); D2447 (Satellite image of Sarajevo marked by Miladin Trifunović).

¹⁴⁵⁹⁵ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"). Zečević prepared this report for the purposes of the *Dragomir Milošević* case. See Berko Zečević, T. 12175 (22 February 2011).

¹⁴⁵⁹⁶ D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012). The Chamber notes that it ordered the redaction of a large part of this report. See Decision on Prosecution's Request to Exclude Portions of Reports of Mile Poparić, 12 March 2013, paras. 26–29. The Chamber also notes that the remaining analysis in D3644 contains more or less identical challenges to those outlined in Anđelković-Lukić's report (D2662).

¹⁴⁵⁹⁷ For example, in their report, at page 67, Poparić *et al* point out inconsistencies in Zečević's report regarding the weights of aircraft bombs discussed therein. In the Chamber's view, those inconsistencies are minor and ultimately irrelevant to the major issues in this case. Poparić *et al* also argue on pages 66, 67, and 70 that many of the weapons and technical concepts discussed in Zečević's report are irrelevant to this case. The Chamber notes that in his report Zečević clearly acknowledges that such weapons and concepts are used simply as examples and therefore does not mislead the Chamber in any way. **But, this indicated the competence of the witness! And the Defence witnesses were discredited for a much smaller inconsistencies. In our country this kind of bragging with a general knowledge is called "to impress simple and naïve" and means throwing ashes in someone's eyes!** Accordingly, being able to discern for itself the most relevant parts of Zečević's report,

remained unchallenged, including his findings that modified air bombs were used in Scheduled Incidents G.10 to G.15.¹⁴⁵⁹⁸ Accordingly, the Chamber accepted much of Zečević's evidence as credible and reliable. On occasion, the Chamber rejected some of his conclusions as they were either contradicted by other accepted evidence or not sufficiently persuasive in light of other, more convincing, evidence.¹⁴⁵⁹⁹ This, however, did not affect the Chamber's assessment of Zečević's credibility in other aspects of his testimony. **(For a much insignificant reasons the Chamber discredited many Defence witnesses. If Zecevic stated and remained convinced, that the Serb side used a fuel-air modified air bombs, it meant that either he was not competente, or he was so biased and keen to damage the Serb side, and in any of these cases he could not be trustworthy!)**

4353. Anđelković-Lukić is an expert on explosives who participated in the testing of various explosive weapons for the JNA.¹⁴⁶⁰⁰ The Prosecution asserts that her arguments regarding the weight and in some cases the explosive composition of the bombs were not credible and were ultimately irrelevant, given the overall destructiveness of all the types of modified air bombs used in Sarajevo.¹⁴⁶⁰¹ The Chamber found Anđelković-Lukić evasive at times. In addition, some of her evidence was contradicted by other evidence on the record, including on one occasion by her own report, prepared jointly with Poparić and Subotić.¹⁴⁶⁰² Nevertheless, the Chamber analysed her evidence on modified air bombs and each related scheduled incident separately and, as will be seen below, at times accepted certain parts thereof. **(All the possible objections on the Andjelkovic-Lukic findings are minor in comparison to the #Zecevic's distortion of facts#!)**

1103. Modified air bombs in Sarajevo

4354. Modified air bombs were first used in Sarajevo in early 1994 and then again at the end of 1994 and throughout 1995.¹⁴⁶⁰³ A modified air bomb is an aircraft bomb to which rocket motors have been attached so that it does not have to be dropped from an aircraft, as originally intended, but can instead be delivered from a launching pad.¹⁴⁶⁰⁴ It is comprised of

the Chamber does not consider that his analysis of additional weapons and ballistics concepts undermines his credibility in relation to the issues relevant to this case.

14598 The major challenge raised by the Accused regarding the Scheduled Shelling Incidents relates to Zečević's conclusions as to the type of modified air bomb used and the Chamber has dealt with this challenge in relation to each specific incident.

14599 See e.g. the Chamber's discussion of Scheduled Incidents G.10 to G.15 where the Chamber rejected Zečević's evidence that the bomb used was a fuel-air bomb.

14600 D2661 (Mirjana Anđelković-Lukić's curriculum vitae); Mirjana Anđelković-Lukić, T. 31467–31470 (14 December 2012). The Chamber notes that Mile Poparić worked at the Technical Testing Centre around the same time as Anđelković-Lukić and that he also worked in Pretis, like Berko Zečević. See Mile Poparić, T. 38850–38551 (28 May 2013), T. 39029 (30 May 2013); D4884 (Mile Poparić's expert report entitled "Small Arms Fire on the Sarajevo Area 1992–1995", 15 August 2012), pp. 2–3.

14601 Prosecution Final Brief, Appendix C, para. 72.

14602 See e.g. paras. 4360–4361, 4413, fn. 14612.

14603 P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 2–3, 65, 180–181, 186–195; Berko Zečević, T. 12150–12151, 12206–12210 (22 February 2011); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 39; Ekrem Suljević, T. 5723–5724, 5732–5733 (22 July 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 63; P1996 (Witness statement of Martin Bell dated 8 March 2010), paras. 55, 100; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 36; Per Anton Brennskag, T. 8656–8657 (29 October 2010). See also Adjudicated Fact 2816.

14604 P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 37; Ekrem Suljević, T. 5683 (21 July 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1989, 1991; P1762 (Witness statement of David Fraser dated 17 October 2010), p. 63; David Fraser, T. 8010–8011 (18 October 2010), T. 8133 (19 October 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; KDZ477, T. 10952 (31 January 2011); P2407 (Witness statement of KDZ304), pp. 18–19; Zorica Subotić, T. 38479 (16 May 2013); P2318 (Report by Berko

three primary components: (i) a bomb intended for aircraft use; (ii) a rocket system made of rockets from a multiple rocket launcher; and (iii) the “adapting plate” joining the two.¹⁴⁶⁰⁵

4355. Several different weight categories of general purpose aircraft bombs, or “FABs” as they were referred to in the SFRY, were modified during the Sarajevo conflict. “FAB” is a Russian term to which a number is added to indicate the nominal value of the bomb mass; thus, a FAB-250 refers to an aircraft bomb with a nominal weight of 250 kilograms.¹⁴⁶⁰⁶ The explosive charge, which makes up around 40% of the aircraft bomb’s nominal mass and usually consists of solid TNT or a mixture of TNT and other ingredients, is located within the casing of the FAB.¹⁴⁶⁰⁷ According to Zečević, Pretis produced FAB-100 and FAB-250 general purpose aircraft bombs.¹⁴⁶⁰⁸

4356. The aircraft bombs can also contain fuel-air explosive instead of TNT, which is a gaseous, liquid, or powder fuel dispersed into the air by a small explosion and then oxidised; the oxidation initialises the second explosion—a massive detonation wave.¹⁴⁶⁰⁹ According to Zečević, these types of modified air-bombs produce a longer lasting but less intense blast than bombs with solid explosive charges.¹⁴⁶¹⁰ Zečević also explained that the best-known Russian fuel-air bomb is ODAB-500 aircraft bomb, which has a nominal mass of 520 kilograms and a fuel-air charge of 193 kilograms.¹⁴⁶¹¹ Prior to the war, Pretis was developing a fuel-air bomb called FAB-275, but the development was transferred to Belgrade in 1991.¹⁴⁶¹²

¹⁴⁶⁰⁵ Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 183; Dragomir Milošević, T. 32769 (28 January 2013); Savo Simić, T. 30091–30092 (12 November 2012). *See also* Adjudicated Facts 2815, 2816.

¹⁴⁶⁰⁶ Ekrem Suljević, T. 5684 (21 July 2010); P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 39; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; P2407 (Witness statement of KDZ304), p. 18; KDZ304, T. 10444–10445 (18 January 2011); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 183; Savo Simić, T. 30092–30095 (12 November 2012).

¹⁴⁶⁰⁷ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 5–6, 24; Berko Zečević, T. 12210 (22 February 2011). *See also* Adjudicated Fact 2817.

¹⁴⁶⁰⁸ D2662 (Mirjana Anđelković-Lukić’s expert report entitled “Expert Analysis of Documents”, 26 July 2012), pp. 3, 5, Mirjana Anđelković-Lukić, T. 31479, 31500 (14 December 2012); Vladimir Radojčić, T. 31248–31249 (11 December 2012); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 4–5; Ekrem Suljević, T. 5724, 5747 (22 July 2010), T. 6175 (6 September 2010) (explaining that the weight of the bomb does not denote the quantity of the explosives but rather the actual weight of the bomb, without taking into account the propelling rocket; thus, a 250-kilogram air bomb would contain around 100 kilograms of explosives).

¹⁴⁶⁰⁹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 8, 93; D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 41–42; Dragomir Milošević, T. 33150 (4 February 2013); D797 (Sketch of air bomb). *See also* Adjudicated Fact 2818.

¹⁴⁶¹⁰ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 58–59, 101; Berko Zečević, T. 12183, 12200–12201 (22 February 2011); Mirjana Anđelković-Lukić, T. 31477–31481, 31484–31485 (14 December 2012) (explaining that these bombs were made primarily for destruction of personnel and that it is impossible to survive the blast if enveloped by a cloud created by the first explosion).

¹⁴⁶¹¹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 58, 60–64, 103; Berko Zečević, T. 12199–12200 (22 February 2011). *See also* Adjudicated Fact 2820.

¹⁴⁶¹² P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 59.

¹⁴⁶¹² P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 65, 93 (explaining that the first 50 of those bombs were produced in 1990); Berko Zečević, T. 12151–12152, 12211, 12213–12214 (22 February 2011); D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 43; Zorica Subotić, T. 38476–38477 (16 May 2013) (testifying that only 60 FAB-275 bombs were produced by Pretis, of which 58 were destroyed after the war, thus suggesting that only two were used but that it is not known where). **(This is not true! None of the fuel-air explosive bombs was used in the BiH.)** *But see* D2662 (Mirjana Anđelković-Lukić’s expert report entitled “Expert Analysis of Documents”, 26 July 2012), pp. 6, 10, 13 (arguing that there was no evidence that Pretis was developing this bomb and that neither the JNA nor the VRS had a fuel-air bomb in its arsenal); Mirjana Anđelković-Lukić, T. 31481–31482, 31515–31517, 31527 (14 December 2012) (basing this claim on the fact that testing of such a bomb never reached her desk at the testing centre, and was therefore never tested for the JNA); D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of

4357. Based on the fragments found around the city and the photographs of the bombs obtained from the Dutch team tasked with the disposal of various weapons systems after the war, Zečević determined that FAB-100 and FAB-250 aircraft bombs, as well as a fuel-air bomb based on ODAB-500, which was given a code-name KREMA, were all modified by the Bosnian Serbs in order to be launched from the ground and used in Sarajevo.¹⁴⁶¹³ In addition, according to Zečević, the damage to some of the sites in Sarajevo indicated that a fuel-air explosive was often used with FAB-250 modified air bombs.¹⁴⁶¹⁴ **(#This is a disgrace# to accept such a flagrant lie. It had been proven during the process that the fuel-air explosive leaves a very specific injuries, and that nobody in a closed space could survive, and therefore that there was no any evidence that it had ever been used in Sarajevo!)** Based on the recovered fragments he determined that various types of rockets were used to assist the flight of the air bombs, including 122 mm GRAD rockets.¹⁴⁶¹⁵ Thus, the modified FAB-100 had either one or three rocket motors, the FAB-250 had three rocket motors, and the bomb based on ODAB-500 had four rocket motors attached to it.¹⁴⁶¹⁶ According to Zečević, the three-rocket motor system was extremely primitive and inferior to the four-rocket system because it would deviate from the direction of flight due to the slightly non-parallel alignment of the rocket motors.¹⁴⁶¹⁷ Zečević testified that he examined the fragments of the first modified air bomb ever launched into Sarajevo and that it was a fuel-air bomb with four 122 mm GRAD rocket motors.¹⁴⁶¹⁸ **(And did the Chamber buy this story? What are evidences? Why this evidence hadn't been presented? Had it been so, the UN wouldn't miss to register it and to report to the seat in New York. This is ridiculous!)**

4358. According to Poparić, attaching rockets to aircraft bombs essentially turned those bombs into rocketised projectiles from a ballistics point of view, meaning that the dispersion of

Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 72, 75–76. Anđelković-Lukić therefore seems to contradict Subotić's evidence on the issue of Pretis' work on a fuel-air bomb, as well as Subotić's report to which she contributed. **In what terms?**

- ¹⁴⁶¹³ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 65–74, 101–102; Mirjana Anđelković-Lukić, T. 31502 (14 December 2012); Ekrem Suljević, T. 5722–5723, 5746 (22 July 2010) (explaining that he also knew about the existence of the 500-kilogram modified air bomb); P2407 (Witness statement of KDZ304), pp. 18–19 (explaining that the SRK referred to some of the modified air bombs as KREMA rockets); P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995). *See also* Adjudicated Fact 2817 (stating that there were two types of air bombs used in Sarajevo, namely the FAB-100 and the FAB-250, and making no mention of a 500-kilogram bomb).
- ¹⁴⁶¹⁴ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 77, 102; Berko Zečević, T. 12184–12186, 12210 (22 February 2011) (explaining that he reached this conclusion because in a large number of cases where the FAB-250 modified air-bomb was used, the significant fragmentation effect one would encounter with bombs using solid TNT was absent). *See also* Adjudicated Fact 2819 (which provides that the typical explosive charge for FAB-250 was a fuel-air mixture).
- ¹⁴⁶¹⁵ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 91–93, 103 (explaining that 122 mm GRAD rockets were not produced at Pretis but were imported and then modified); Berko Zečević, T. 12177 (22 February 2011); Ekrem Suljević, T. 5685–5686 (21 July 2010); P1277 (Request from Pretis Factory to VRS Main Staff, 10 May 1994); Zorica Subotić, T. 38479–38480 (16 May 2013), T. 38640 (22 May 2013); Vladimir Radojčić, T. 31251–31252 (11 December 2012). *But see* D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 42, 212 (stating that Pretis did produce 122 mm GRAD rockets for the Iraqi armed forces). *See also* Mile Poparić, T. 39029–39030 (30 May 2013) (testifying that he participated in the development of GRAD 122 mm rockets when he worked for Pretis).
- ¹⁴⁶¹⁶ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 83–85, 101–102; Berko Zečević, T. 12194–12196 (22 February 2011); Ekrem Suljević, T. 5688–5689 (21 July 2010); P1280 (VRS Main Staff Order, 18 June 1995); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43; Zorica Subotić, T. 38479–38487 (16 May 2013); P6348 (Excerpt from Mile Poparić's expert report entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012); Mirjana Anđelković-Lukić, T. 31502–31503 (14 December 2012); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18.
- ¹⁴⁶¹⁷ *See* Berko Zečević, T. 12175–12178 (22 February 2011).
- ¹⁴⁶¹⁸ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 65, 180.

fragments was larger at a shorter range than when fired at a longer range.¹⁴⁶¹⁹ Poparić also testified that 122 mm GRAD rockets had a long range of up to 21 kilometres, were not recommended for use in ranges under five kilometres, and would usually be used from the rear and over friendly troops to target a larger area and provide fire support.¹⁴⁶²⁰

4359. While accepting that FAB-100 and FAB-250 aircraft bombs were modified and used in Sarajevo, Subotić testified that there is no evidence, in the form of material traces, that a single fuel-air bomb was used in Sarajevo.¹⁴⁶²¹ Anđelković-Lukić also challenged Zečević's evidence on this issue, arguing that removing the solid explosive charge from the FAB-250 and filling its casing with fuel-air explosives would have been arduous, pointless, and dangerous work, and almost impossible to perform in war-time conditions.¹⁴⁶²² She also stated that in case of the explosion of a fuel-air bomb, large parts of the bomb's metal casing should be found at the incident site, but that, according to materials available to her, no such pieces were found anywhere in Sarajevo.¹⁴⁶²³ Finally, she claimed that the SRK had no launchers for bombs based on ODAB-500 due to their heavy weight and thus discounted the existence of 500-kilogram bombs.¹⁴⁶²⁴ In addition, she challenged Zečević's evidence about the existence of KREMA bombs as baseless.¹⁴⁶²⁵

4360. On cross-examination, however, Anđelković-Lukić was confronted with a number of documents contradicting her evidence. For example, when confronted with an SRK document referring to a launcher for bombs weighing 500 kilograms, she observed that the document also noted that the testing had yet to be done.¹⁴⁶²⁶ When shown an article and a photograph describing and depicting the disposal of 58 modified and regular FAB-275 fuel-air bombs in Glamoč after the war, she concluded that this meant that all the FAB-275 that were produced prior to the war were disposed of after the war and thus had not been used in

¹⁴⁶¹⁹ Mile Poparić, T. 39024, 39036–39037 (30 May 2013); P6347 (Excerpt from firing tables for M-21-OF 122mm and Vulkan 122mm).

¹⁴⁶²⁰ Mile Poparić, T. 39034–39038, 39048 (30 May 2013). When put to Poparić that attaching a 122 mm GRAD rocket to an aircraft bomb and then firing the resulting modified air bomb at targets less than five kilometres away was highly irresponsible, he responded that aircraft bombs have a much smaller range than GRAD rockets, meaning that modified air bombs could not be compared to the rockets when looking at the appropriate range. See Mile Poparić, T. 39047–39048 (30 May 2013). See also Savo Simić, T. 30107–30112 (12 November 2012).

¹⁴⁶²¹ Zorica Subotić, T. 38230 (14 May 2013); D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 43; Zorica Subotić, T. 38476–38477 (16 May 2013); D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 6; D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), p. 72. See also D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 47; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 57; D2667 (Witness statement of Ratimir Maksimović dated 14 December 2012), para. 54; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 21.

¹⁴⁶²² D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 9–11; D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 71–72; Mirjana Anđelković-Lukić, T. 31471–31472, 31476–31477, 31481, 31488–31490 (14 December 2012) (also arguing that Zečević did not attempt to disassemble the unexploded modified air bombs found in Sarajevo to show that they in fact contained fuel-air explosive). When asked if Pretis would have had empty casings which it could then fill with fuel-air explosives, Anđelković-Lukić responded that there was no need to stock empty casings due to the longevity of TNT. See Mirjana Anđelković-Lukić, T. 31520–31522 (14 December 2012).

¹⁴⁶²³ Mirjana Anđelković-Lukić, T. 31485–31486, 31489–31491 (14 December 2012) (adding also that the injuries sustained by the victims did not correspond to injuries caused by fuel-air bombs). Anđelković-Lukić also denied that one could easily confuse the remains of FAB-250 modified air bombs with those of FAB-275 modified air bombs, as the former has thicker walls. See Mirjana Anđelković-Lukić, T. 31512–31513 (14 December 2012).

¹⁴⁶²⁴ D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 8–9; Mirjana Anđelković-Lukić, T. 31491–31492 (14 December 2012).

¹⁴⁶²⁵ D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 7–8; Mirjana Anđelković-Lukić, T. 31489–31490 (14 December 2012); D3644 (Expert report by Mile Poparić *et al* entitled "Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo", 15 August 2012), pp. 71, 73–74.

¹⁴⁶²⁶ Mirjana Anđelković-Lukić, T. 31506–31508 (14 December 2012); P1313 (SRK request for launcher testing, 23 July 1995).

the conflict.¹⁴⁶²⁷ When further shown two SRK documents referencing preparation for the use of FAB-275 modified air bombs, she remained adamant that she never encountered any evidence about the use of this bomb.¹⁴⁶²⁸ She conceded, however, that she did not go to Sarajevo, including to the sites struck by modified air bombs, and did not inspect any of the recovered fragments of modified air bombs.¹⁴⁶²⁹

(Why should Ms. Andjelkovic-Lukic as an expert visit Sarajevo and make her investigations, while she was engaged to study the existing evidence and results of investigations? It was not a Defence duty to investigate, but to accept or rebut the Prosecutor's arguments and findings. So, Ms. Andjelkovic-Lukic worked with the available materials and successfully rebutted the Zecevic's constructions about the fuel-air explosives in the modified air bombs!) And none of us ever saw any document and investigating material and evidence that a fuel-air bombs had been used ever#!)

4361. As for the issue of KREMA rockets, the Chamber notes that Anđelković-Lukić is also contradicted by an UNPROFOR report, in which Captain Guegan reported to Sector Sarajevo that on 9 July 1995 the Liaison Officer of the Ilidža Brigade, Captain Novak Prodanović, acknowledged that around 12 “KREMA rockets” had been fired on Sarajevo, including on the TV building, as part of the “psychological warfare aimed at upsetting the Bosnian soldiers on the Treskavica front who would be worried about the safety of their families in Sarajevo”.¹⁴⁶³⁰ According to this report, Prodanović referred to the weapon as “Terror”.¹⁴⁶³¹

(First of all, Capt. was Prodanovic a liaison officer on a battalion level, to small unit to be quoted on such an issue? #And how to challenge it#? He was a Liaison Officer, with a very limited authorisations to convey and receive messages, not to interpret the VRS strategy. If the two were chatting, it shouldn't be considered as an evidence on an official position of the VRS. To see below this document, P2108 in which this conversation was forged and wrongfully interpreted as if Prodanovi} said word “terror”, while it was his UN interlocutor. Second, Ms. Andjelkovic-Lukic was right, because such a rocket didn't exist, but somebody named some of the modified air bombs (mainly of 500 kg) by a name “KRMACA” phonetically “Krmacha”, which means old female pork, and had it been presented to her, she still may be not familiar with a local slang name of it. But the Chamber is so quick and ready to disqualify a Defence witness!)

4362. Having considered the evidence above, the Chamber is convinced that modified FAB-100 and FAB-250 general purpose air bombs were used on targets in Sarajevo. The Chamber also finds, relying in particular on the documentary evidence outlined above and Zečević's evidence, that Pretis produced FAB-275 fuel-air bomb before the war, that such bombs also featured in the Sarajevo theatre of war. However, as indicated by the article shown to Anđelković-Lukić, a large number of FAB-275 bombs seem to have been disposed of—unused—after the war. In addition, the Chamber saw only two SRK documents referring

¹⁴⁶²⁷ Mirjana Anđelković-Lukić, T. 31509–31512 (14 December 2012); P6052 (Photograph of bombs); P6053 (Article from UXB International entitled “UXB Balkans Disposes of Hazardous Ammunition in BiH”, 24 January 2011).

¹⁴⁶²⁸ Mirjana Anđelković-Lukić, T. 31517–31519 (14 December 2012); P1296 (VRS Main Staff Order, 19 April 1995); P2652 (Letter from VRS Main Staff to Igman Infantry Brigade, 17 November 1994).

¹⁴⁶²⁹ Mirjana Anđelković-Lukić, T. 31522–31524 (14 December 2012).

¹⁴⁶³⁰ P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995), pp. 3–4; KDZ304, T. 10446–10447 (18 January 2011) (private session); P2407 (Witness statement of KDZ304), pp. 26–27.

¹⁴⁶³¹ P2108 (UNPROFOR Memo re meeting with SRK, 9 July 1995), pp. 3–4.

to the use of these bombs in Sarajevo.¹⁴⁶³² Finally, as will be seen below, the Chamber is not convinced that a fuel-air bomb was in fact used in any of the scheduled shelling incidents, either because the evidence was clear that another type of bomb was used or because it was insufficient to conclude beyond reasonable doubt that a fuel-air bomb was used. Accordingly, the Chamber finds that while these fuel-air bombs may have been used in Sarajevo, their use was not prevalent during the war.¹⁴⁶³³

4363. As for the reasons behind the SRK's use of modified air bombs, while the Chamber accepts that the lack of ammunition may have prompted their creation and usage, the Chamber is also convinced that the SRK found them to be a valuable means of psychological warfare, knowing full-well that they had a devastating effect on the civilian population as well as the ABiH forces. (#If so, then why it wasn't used many times and in the densely inhabited areas? How many FABs was used? How many casualties, particularly civilian? The answers on these questions are completely against any such a conclusion#!) It also used them in retaliation against the civilian population in response to ABiH actions, often on areas where there was no combat activity. (#Absurdity, it was not aimed against soldiers, but against fortifications#! There is no a single example of such a use of FABs! Out of several explosions, all of them had been aimed at the military industry, such as Zica Factory, a workshop of shells and grenades in the "Aleksa Santic" school in Hrasnica, the TV building in the part occupied by the ABiH, and several other locations of a military nature! There was no more than 5 civilian and four military, all together nine casualties!) This is shown not only by the witnesses who testified about the devastating psychological effect these bombs had but also by (i) documentary evidence, such as the UNPROFOR report of 9 July 1995 referred to above; (This is the UN document about a chat of the Serb and the UN liaison officers, P2108

The BATINF2 liaison officer raised the following issues:

- Relations will no longer be the same as before.
- The acts that the Serbs have committed are unacceptable and will not be forgiven.
- If the shooting at the logistics run on Igman continues, UNPROFOR will react with one warning shot and then with a destructive shot.
- UNPROFOR wishes to favour on the following three axes:

SWAN	HADŽIĆI-DUPOVCI	KRUPAC-IGMAN
- The terms are firm and indisputable:		
o Notification 24 hours in advance (no clearance)		
o No checking or escorting UNPROFOR		

This is not serious! This degree of arrogance towards the Serbs was constant, and in such an arrogance the UN officer dictated something he couldn't, because the power

¹⁴⁶³²
¹⁴⁶³³

See P1296 (VRS Main Staff Order, 19 April 1995); P2652 (Letter from VRS Main Staff to Igman Infantry Brigade, 17 November 1994). The Chamber also does not accept Zečević's evidence that FAB-250 bombs were modified such that the solid explosive charge was removed and fuel-air explosive inserted. The Chamber finds the evidence of Anđelković-Lukić more persuasive on this matter. It is likely that Zečević simply confused the fragments of FAB-275 with the fragments of FAB-250 and thus came to the conclusion that a FAB-250 was filled with fuel-air explosive.

that is approving passage of humanitarian aid is entitled to control what is transported. Further:

Captain Novak pointed out the following facts:

The corridor between Sierra 1 and Sierra 4 is open, in conformity with a recent proposition by the Serbian Government. UNPROFOR must use it and must no longer use the Igman logistics run. The terms are as follows:

- Announce the passage of convoys.
- UNPROFOR and UNHCR convoys (all nationalities) are authorised.
- A single visual check at Sierra 1 by the border police.
- If the border police estimate that the goods are not intended for UNPROFOR (e.g. 82mm shells, although UNPROFOR has no 82mm mortars), the convoy will be sent back.

The Igman logistics run must no longer be used. However, in order to avoid shooting at our vehicles, Captain Novak proposes that we announce in advance the arrival of our convoys. He said that white vehicles had been used by the BH Army and that, for instance, two white vehicles that the Serbs shot at and destroyed on the logistics run a few months ago did not provoke a strong protest.

He specified that he would receive a BATINF2 liaison officer only once or twice again. The interlocutor should be the Romania Corps, namely Lieutenant Colonel INDIĆ. The BATINF2 liaison officer asked, due to Lieutenant Colonel INDIĆ's media impact, to maintain contacts with the Sarajevo Romania Corps through another officer. The answer was negative. It will be Lieutenant Colonel INDIĆ or nobody.

As regards the answer given by UNPROFOR on the evening of 3 July, he said that no Serbian soldiers had been killed or wounded. If a Serbian soldier had been killed, an armoured personnel carrier would immediately have been destroyed (a shoot from a missile or T55). In the end, in the event that the shooting continues, a *Krema* rocket will be launched at the airport.

He 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 might have

reported on the incident and the Bosnian soldiers were informed about the existence of these weapons called Terror.

#This “terror”, as well as the reminiscence about a “psychological war warfare, was added by the UN interlocutor, and it was not a quotation of Prodanovic’s words#!)

Although respectful, the reception was firm. The Ilidža Brigade seems to be with its back to the wall, resolute to fight. Captain Novak is worried about the possible arrival of the RRF. However, it is very clear that they wish to re-establish contact with UNPROFOR. It has been agreed to hold a meeting on 10 July at 0900 hours in the Srbija Hotel in order to determine the modalities of a meeting between Colonel THONIER and Commander of the Ilidža Brigade. The proposal

(ii) the intercepted conversation between Momčilo Krajišnik and Milorad Motika of 17 June 1995; **Here is this conversation of Motika and Krajisnik, P:5653:**

Momčilo KRAJIŠNIK	Well, I’m interested in these “Oganj”, “Orkan” and the rest.
Milorad MOTIKA	There’s nothing with the “Orkan and we adjusted the entire “Oganj” to 250.
Momčilo KRAJIŠNIK	Go on, prepare it. I’ve said about that, that if there’s anything, if it’s possible ... do you have an idea for us to use this opportunity because it’s very important to retaliate.
Milorad MOTIKA	I propose that it be done in the town.
Momčilo KRAJIŠNIK	Go ahead. Can you arrange for us to set that up? We can try ... down there ..
Momčilo KRAJIŠNIK	Visoko ... some retaliation should be done. Yes, yes, but it’s necessary down there.
Milorad MOTIKA	Both down there and here.
Momčilo KRAJIŠNIK	Yes, yes. Just go ahead, we’ll agree about everything but it’s very important down there, where there was a big attack.

So, Mr. Krajisnik is asking whether there are ammunition for a regular multiple rocket launchers like “Oganj” and “Orkan” to be used to retaliate towards Visoko, on the outer ring around Sarajevo. Motika, as a general manager of the factory proposed a retaliation to be done “in the town”, but Krajisnik rectified it, saying that it should be “down there, whete there was a big attack.” Not a word about using the modified air bombs, nor was mentioned any impact on the civilian population, but towards the area “where there was a big attack”! anyway, both of the interlocutors were civilian officials, not military one, and obviously they both helped the military people in obtaining the ammunition, while none of them would be able to decide where it was to be fired at.)

and (iii) evidence outlined below in relation to several Scheduled Incidents.¹⁴⁶³⁴

(3)Who possessed modified air bombs?

¹⁴⁶³⁴ See paras. 4417, 4468–4469.

4364. It is clear from the evidence before the Chamber that the SRK had and used modified air bombs in Sarajevo. Many of the witnesses called by the Accused, including the SRK Commander Dragomir Milošević, confirmed this fact.¹⁴⁶³⁵ **(It was not contested by the Accused too, and it was not the main question. The main question was whether it was used illegally, of negligeably, or caused it a disproportionate collateral casualties. The answer derived from all of this testimonies was: NO! nothing illegal, and nothing was negligeable. The engines (motors) that had been attached to the MAB had it's old tables of firing, but since a warhead had been different, the motors had been tested both on the terrain, on the hill Zuc, as Soja, a Prosecution witness testified, and also in Nikinci, the official scientific polygon for that purpose. All of it was presented to the Chamber!)** In addition, UNMOs Knustad and Per Anton Brennskag personally observed SRK forces launching modified air bombs into Sarajevo from Špicasta Stijena **(#Spicasta Stijena was out of question#, it had never been fired from there, and in this same paragraph it is numbered which units did have it. The Mrkovici unit didn't have it!)** and Ilidža, respectively.¹⁴⁶³⁶ Milomir Šoja also observed one such launch by the Ilidža Brigade of the SRK from the area of Kasindolska street across Energoinvest.¹⁴⁶³⁷ A number of witnesses called by the Accused observed similar launches.¹⁴⁶³⁸ Not all SRK Brigades had modified air bombs in their arsenal; only the Ilidža, Ilijaš, and Vogošća Brigades did, as well as the brigades that had facilities near Pretis.¹⁴⁶³⁹ **(This was the same, the Vogosca Brigade. But, this hadn't been denied by the Defence at all. This was considered by the VRS as a rocket with another head!)**

4365. In addition, a large number of documents issued by the VRS Main Staff and the SRK also indicate that modified air bombs were assembled by Pretis and that their use was directed by the SRK Commander and strictly controlled by the VRS Main Staff.¹⁴⁶⁴⁰ Pretis would

¹⁴⁶³⁵ Dragomir Milošević, T. 32768–32769 (28 January 2013); Stanislav Galić, T. 37960 (8 May 2013); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 46; D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 54; Vladimir Radojčić, T. 31236 (11 December 2012); D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30118–30120 (12 November 2012); D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 14; Zoran Kovačević, T. 30613 (28 November 2012); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 17. *See also* Adjudicated Fact 2862.

¹⁴⁶³⁶ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 2037; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 36; Per Anton Brennskag, T. 8656–8657 (29 October 2010).

¹⁴⁶³⁷ Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5121–5125, 5134–5146, 5152–5154, 5157–5158 (explaining that he also saw a modified air bomb in Osjek, which was under the SRK control); Milomir Šoja, T. 7211–7228 (30 September 2010); D674 (Map of Sarajevo marked by Milomir Šoja); D675 (Photograph of Sarajevo marked by Milomir Šoja); D676 (Map of Sarajevo marked by Milomir Šoja); D677 (Order of ABiH 102nd Motorised Brigade, 9 November 1993); D634 (Order of ABiH 102nd Motorised Brigade, 1 February 1994); D679 (Order of ABiH 102nd Motorised Brigade, 1 December 1993).

¹⁴⁶³⁸ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30090–30091 (12 November 2012); D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; Mihajlo Vujasin, T. 31793–31794 (20 December 2012); Stevan Veljović, T. 29291 (23 October 2012); Nikola Mijatović, T. 30746 (30 November 2012).

¹⁴⁶³⁹ Stevan Veljović, T. 29290 (23 October 2012); Nikola Mijatović, T. 30746–30747 (30 November 2012).

¹⁴⁶⁴⁰ P1199 (VRS Main Staff Order, 16 June 1994); D782 (SRK Order, 4 April 1995); P1201 (SRK Order, 6 April 1995); P1782 (SRK combat report, 7 April 1995); P1316 (VRS Main Staff Order to Pretis Factory, 12 April 1994); D322 (SRK Order, 19 April 1995); P1309 (SRK Order, 21 April 1995), p. 2; P1299 (VRS Main Staff request for information from SRK, 26 April 1995); P1292 (SRK Order, 4 June 1995); P1198 (SRK Order, 16 May 1995); P1311 (Request from 1st Ilidža Infantry Brigade to SRK, 10 June 1995); P1301 (SRK request for approval of use of aerial bombs, 18 June 1995); P1280 (VRS Main Staff Order, 18 June 1995); P1302 (VRS Main Staff Order, 20 June 1995); P1284 (VRS Main Staff Order, 21 June 1995); P1303 (SRK request to VRS Main Staff, 22 June 1995); P1287 (VRS Main Staff Order, 4 June 1995); P1294 (VRS Main Staff Order, 12 June 1994); P1295 (VRS Main Staff request for information, 7 June 1995); P1298 (VRS Main Staff Order, 16 May 1995); P1312 (SRK combat report, 27 June 1995), p. 2; P1626 (Request from 1st Ilidža Infantry Brigade to SRK Command, 28 June 1995); P1300 (SRK Order, 11 July 1995); P1286 (SRK request to VJ Main Staff, 15 July 1995); P1308 (VRS Main Staff order to Pretis Factory, 20 July 1995); P1307 (VRS Main Staff order to Pretis Factory, 23 July 1995); P1314 (Request from 3rd Sarajevo Infantry Brigade to SRK, 25 July 1995); P1306 (SRK request to VRS Main Staff, 27 July 1995); P1305 (Report of 1st Sarajevo Mechanised

assemble the aircraft bombs and rockets, some of which were obtained from the FRY.¹⁴⁶⁴¹ Lieutenant-Colonel Milan Ugrešić, the Chief of Anti-Aircraft Defence in the SRK,¹⁴⁶⁴² was in charge of dealing with weapons experts who were working on the assembly of the bombs and on modifying launchers for their use.¹⁴⁶⁴³ **(Certainly, the experts dealt with it, and there was no any improvisation!)**

4366. In addition to the modified air bombs themselves, the SRK also had a number of launchers produced for the specific purpose of launching such bombs.¹⁴⁶⁴⁴ In spring of 1995, Milomir Šoja, an electrical engineer and a former Ilidža Brigade member,¹⁴⁶⁴⁵ was asked by members of the Ilidža Brigade to go to Pretis and make certain modifications to the modified air bomb launchers.¹⁴⁶⁴⁶ The modifications were ordered and made—despite the protest from Major Krsmanović who headed the aircraft bombs department at Pretis¹⁴⁶⁴⁷—in order to solve ignition problems experienced up until that point.¹⁴⁶⁴⁸ **(However, before this time there was no firing of the FABs in the urban area of Sarajevo, taking into account that Hrasnica was a peripheral part, and the school “Aleksa Santić” was a military object.)** However, Šoja’s modifications were unsuccessful and Krsmanović demanded the removal of electrical components placed on the launchers.¹⁴⁶⁴⁹ Thus, it is also clear that the SRK faced problems with modified air bomb launchers. These events also confirm Zečević’s opinion, based on the photographs he inspected, that launchers used by the SRK were simple, with no capacity for precise adjustment of angles of elevation and azimuth, which in turn meant that their precision was not on par with standard rocket launchers.¹⁴⁶⁵⁰ **(Why the Chamber “forgot” the Nikinci testing of the rocket engines?)**

Brigade to SRK re weapons, 5 August 1995); P1203 (SRK Order, 24 August 1995); P1315 (SRK Order, 27 August 1995); P1202 (SRK Forward Command Post 2 reports to SRK, 3 August and 3 September 1995); P1304 (SRK request to VRS Main Staff, 11 September 1995); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 94; Radovan Radinović, T. 41516 (18 July 2013); Stevan Veljović, T. 29271 (23 October 2012); David Fraser, T. 8014–8015 (18 October 2010); P5048 (Letter from Pretis Vogošća to Manojlo Milanović, 19 February 1994). *See also* Adjudicated Facts 2863 to 2871 (stating that Dragomir Milošević was directly involved in the deployment of modified air bombs and outlining a number of his orders to that effect).

¹⁴⁶⁴¹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 93–94, 181; Berko Zečević, T. 12193–12199, 12211–12213 (22 February 2011); P2320 (VRS Main Staff letter to Pretis Factory, 18 January 1995); P2321 (VRS Main Staff Order, 3 June 1995); P1277 (Request from Pretis Factory to VRS Main Staff, 10 May 1994); P1280 (VRS Main Staff Order, 18 June 1995); Ekrem Suljević, T. 5685–5686, 5692 (21 July 2010); P1286 (SRK request to VJ Main Staff, 15 July 1995); P1295 (VRS Main Staff request for information, 7 June 1995); P5064 (Decision of the VJ General Staff issued by Momčilo Perišić, 16 February 1994).

¹⁴⁶⁴² Stevan Veljović, T. 29238 (23 October 2012).

¹⁴⁶⁴³ Dragomir Milošević, T. 32770–32771 (28 January 2013).

¹⁴⁶⁴⁴ P1283 (SRK report to VRS Main Staff, 15 June 1995); P1285 (SRK request for information, 8 June 1995); P1288 (Report of 3rd Sarajevo Infantry Brigade to SRK, 14 June 1995); P1290 (Report of Igman Infantry Brigade to SRK re weapons, 9 June 1995); P1293 (1st Ilidža Infantry Brigade report to SRK re weapons, 12 June 1995); P1295 (VRS Main Staff request for information, 7 June 1995); P1297 (Report of 1st Romanija Infantry Brigade to SRK, 10 June 1995); P6051 (SRK Order, 2 September 1995); Vladimir Radojčić, T. 31236 (11 December 2012) (testifying that Ilidža Brigade had a launcher for modified air bombs); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5125–5126 (testifying that the SRK had modified air bomb launchers in Ilidža, Ilijaš, Vogošća, and Blažuj); Zoran Kovačević, T. 30613–30614 (28 November 2012). *See also* Adjudicated Fact 2868.

¹⁴⁶⁴⁵ Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5112, 5160–5162.

¹⁴⁶⁴⁶ Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5115–5120, 5149–5151.

¹⁴⁶⁴⁷ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 1.

¹⁴⁶⁴⁸ Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5116, 5120–5121 (explaining that Krsmanović did not want the modifications to be made because he thought that bringing electrical components would make the whole system unreliable).

¹⁴⁶⁴⁹ Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5134–5144.

¹⁴⁶⁵⁰ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 95, 97–100; Emir Turkušić, T. 5689–5691 (21 July 2010); P1281 (Request from Technical Overhaul and Repairs Institution to Ilijaš Ironworks, 26 May 1994); P1289 (SRK request for launcher testing, 23 July 1995); P1291 (SRK Order, 10 August 1995); P1313 (SRK request for launcher testing, 23 July 1995).

4367. The Chamber also heard that the SRK decided to use modified air bombs due to the shortage of ammunition within its units and because the ABiH forces were getting stronger and better-equipped towards the end of the conflict.¹⁴⁶⁵¹ In addition, Milošević explained that the SRK considered these bombs to be useful in situations which could not be resolved with smaller caliber weapons.¹⁴⁶⁵² **(Not to forget the illegal sanctions imposed by FR Yugoslavia, and selective sancions imposed by the international community, pertaining only to the Serbs, while the Muslim side benefitted from the well known operation “Equip and train” and other illegal supplies of the military materials!)**

4368. As far as the ABiH is concerned, most of the witnesses, including some of those called by the Accused, consistently testified that ABiH did not have modified air bombs because it had no means to modify or launch aircraft bombs in Sarajevo, particularly fuel-air bombs.¹⁴⁶⁵³ **(Neither the Serb side launched these fuel-air bombs, ever, nor anyone submitted any evidence, except Zecevic’s empty allegation!)** Milošević claimed that ABiH had air bombs at its disposal because in mid-April 1992 the special forces of the BiH MUP led by Dragan Vikić entered Pretis and took away ammunition, including a stock of general purpose aircraft bombs.¹⁴⁶⁵⁴ In addition, according to Milošević, three air bombs landed on Vraca but did not explode, although he did not know what method was used to launch them.¹⁴⁶⁵⁵ The Accused also put forward an audio recording of the 291st session of the BiH Presidency, held in August 1995, in which mention was made of 800 aerial bombs which were yet to arrive.¹⁴⁶⁵⁶ Nikola Mijatović, Chief of Security and later Chief of Staff in the Ilidža Brigade,¹⁴⁶⁵⁷ was the only

¹⁴⁶⁵¹ Dragomir Milošević, T. 32769 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 54; D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 22; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53; D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 14; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 17.

¹⁴⁶⁵² Dragomir Milošević, T. 32768–32769 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 93–94; P1311 (Request from 1st Ilidža Infantry Brigade to SRK, 10 June 1995); P1626 (Request from 1st Ilidža Infantry Brigade to SRK Command, 28 June 1995).

¹⁴⁶⁵³ P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 38; Per Anton Brennskag, T. 8730–8732 (1 November 2010); Ekrem Suljević, T. 6174–6175 (6 September 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 63–64; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*, T. 647; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; Harry Konings, T. 9350 (7 December 2010); P2407 (Witness statement of KDZ304), pp. 19, 24; P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 183–184; Berko Zečević, T. 12181–12182, 12185–12186 (22 February 2011); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*, T. 5125–5126; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 54; Mihajlo Vujasin, T. 31793 (20 December 2012); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 101.

¹⁴⁶⁵⁴ Dragomir Milošević, T. 32762–32764 (28 January 2013); D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 42. *See also* Emir Turkušić, T. 9045–9046 (4 November 2010) (accepting that these forces attacked Pretis in April 1992 but testifying that they took a number of hand-held rocket launchers); KDZ020, T. 12613–12614, 12621 (1 March 2011); D2678 (Witness statement of Svetozar Stanić dated 16 December 2012), paras. 7, 22 (testifying that a lorry full of artillery shells was taken); Svetozar Stanić, T. 31708, 31714 (18 December 2012); D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 10 (providing the list of the ammunition taken, which did not include air bombs); D3065 (Witness statement of Aleksandar Vasiljević dated 26 February 2013), para. 187 (testifying that “rocket systems” were taken); D2681 (Report of Vogošća Municipal Secretariat for National Defence, 18 April 1992); D3069 (JNA 2nd Military District report, 20 April 1992).

¹⁴⁶⁵⁵ Dragomir Milošević, T. 32763–32766 (28 January 2013) (adding also that he heard at the time that the person responsible for creating those three bombs was Berko Zečević). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 59, 129 (stating that the ABiH had modified projectiles, such as modified naval bombs); D2602 (Report of 1st Ilidža Infantry Brigade, 1 April 1994).

¹⁴⁶⁵⁶ D2816 (Extract from transcript of 291st session of RBiH Presidency, 10 August 1995).

¹⁴⁶⁵⁷ D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 11.

witness who testified that the ABiH had modified air bombs and stated that his knowledge on this came from a documentary he saw after the war.¹⁴⁶⁵⁸

4369. Based on the evidence above, the Chamber is convinced that only the SRK possessed modified air bombs of the type discussed in this part of the judgement. The evidence is clear that only the SRK had the means to modify and then launch the air bombs in their possession, while the ABiH simply lacked such means. The Chamber does not accept Milošević's evidence that Vikić and his forces took air bombs from Pretis, as none of the witnesses, including those called by the Accused, confirm this. Instead, the evidence shows that Vikić and his forces removed artillery projectiles from Pretis. Similarly, the Chamber does not believe Milošević's evidence about three air bombs that landed in Vraca, particularly since he could not explain how they were launched by the ABiH and finds Mijatović's evidence equally unpersuasive. Thus, although there is some evidence that suggests that ABiH may have had (or was waiting to obtain) air bombs in its arsenal, there is no credible evidence that it modified them in the way described above or that it used them against targets in Sarajevo.

1104. Accuracy and range of modified air bombs

4370. As noted above, the Accused argues that modified air bombs were an accurate weapon properly tested by expert engineers. In addition, according to a number of SRK soldiers and officers, modified air bombs were used exclusively against military targets and with no intention to target or terrorise civilians.¹⁴⁶⁵⁹ Milošević suggested that the fact that only five people were killed in all the modified air bomb incidents alleged in the Indictment meant that these bombs were used selectively on non-residential targets.¹⁴⁶⁶⁰

4371. However, the Chamber heard a plethora of evidence indicating that modified air bombs were highly inaccurate because of the way in which they were constructed and because they were propelled by unguided rockets.¹⁴⁶⁶¹ The trajectory of such bombs did not follow the classic ballistic arc of an artillery round; rather, the bomb would travel until the rocket motors stopped and then it would fall down to the ground.¹⁴⁶⁶² **(In such a case the bomb would fall in a perpendicular manner, and we do not have any evidence in that sense. Also, there is no a way that these motors stop immediately and that the bomb does not follow the**

¹⁴⁶⁵⁸ D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 20.

¹⁴⁶⁵⁹ Dragomir Milošević, T. 32773–32775, 32781–32782 (28 January 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 58; D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 53; D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), paras. 53, 55; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 19.

¹⁴⁶⁶⁰ Dragomir Milošević, T. 32781–32782 (28 January 2013).

¹⁴⁶⁶¹ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 23, 86–89; P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 40; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; Emir Turkušić, T. 8998–9000, 9053–9054 (4 November 2010); David Fraser, T. 8133 (19 October 2010); P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 42–44; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34–35; KDZ304, T. 10444–10445 (18 January 2011); Per Anton Brennskag, T. 8705–8706 (1 November 2010) (stating that mortars were more precise than modified air bombs); P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), p. 2 (referring to these weapons as "highly inaccurate, indiscriminate, highly destructive weapons of terror"); Zorica Subotić, T. 38477, 38480 (16 May 2013).

¹⁴⁶⁶² P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 34; Per Anton Brennskag, T. 8716–8723 (1 November 2010) (stating also that the trajectory of the modified air bomb was slightly more horizontal than that of an artillery projectile); Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990 (stating that modified air bombs could travel for a maximum of 7,000 metres); Nikola Mijatović, T. 30749–30750 (30 November 2012); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 695.

inercia. All of these guessing are unacceptable and irrelevant. The Prosecutor didn't proof that the collateral casualties were above any average fire!) Furthermore, the precision of modified air bombs was affected by their multiple rockets, which would not always ignite simultaneously and by the fact that the rocket motors would fire for different durations; these factors also affected the direction of the bomb.¹⁴⁶⁶³ Accordingly, while the forces firing such bombs would have some idea of the direction in which the bombs would be propelled, they could not be sure of the exact location where it would eventually land.¹⁴⁶⁶⁴ **(These are statements of the Muslim investigators who never operated with this kind of motors-engines, and therefore their opinion was no relevant!)** Veljović also confirmed that modified air bombs were not precise and could be off target by two kilometres, which is why the SRK forces were authorised to use them only outside of the urban areas.¹⁴⁶⁶⁵ **(So what? They did use several bombs on the periphery of Sarajevo, in the industrial zones where the other side produced weaponry and ammunition!)** In fact, according to Veljović, because these bombs were “completely inaccurate”, they caused panic even among the SRK troops.¹⁴⁶⁶⁶ In his interview with the Prosecution, Neđeljko Prstojević, the Commander of the Ilidža Crisis Staff,¹⁴⁶⁶⁷ stated that one of the SRK unit commanders told him that another name for modified air bombs was “wherever it lands” because it was so imprecise.¹⁴⁶⁶⁸

4372. According to Zečević, the inaccuracy was to be expected because modified air bombs did not pass through any of the normal phases for the adoption of new weapon systems (which normally take five to seven years) and thus no stable production process was established.¹⁴⁶⁶⁹ Zečević conceded that he had no proof that this was the case, but explained that based on his knowledge of procedures for testing weapons, such testing could not have been done in the BiH at the time due to wartime conditions.¹⁴⁶⁷⁰ This was indeed confirmed by Veljović, who testified that modified air bombs were not tested, resulting in a few deaths among the firing crews.¹⁴⁶⁷¹ **(#Zecevic lied#! But the motors had been tested both in the BiH, i.e. RS and in the Nikinci polygon, as the evidence shows, see D03560 (mines and**

¹⁴⁶⁶³ Emir Turkušić, T. 8998–9000 (4 November 2010); Berko Zečević, T. 12177–12178 (22 February 2011). *But see* Zorica Subotić, T. 38492–38495 (16 May 2013) (accepting that non-simultaneous ignition and/or different duration of work of the engines would affect the direction of the bomb but denying that it would result in the projectile being unstable); Mile Poparić, T. 39038–39040 (30 May 2013) (testifying that absolutely synchronous ignition was impossible but that the difference in ignition would be in milliseconds and thus would have no impact on the trajectory of the bomb); Nikola Mijatović, T. 30750 (30 November 2012).

¹⁴⁶⁶⁴ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 40; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; Emir Turkušić, T. 8998–9000 (4 November 2010); P1978 (Witness statement of Nedžib Đozo dated 7 December 2010), para. 49; Thorbjorn Overgard, P2058 (Transcript from Prosecutor v. D. Milošević), T. 643–644; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 42. Turkušić also added that it is “absolutely impossible” given the combination of an air bomb and the rocket motors to achieve “sufficient precision in the parallel nature [...] of the rocket motors with the axis of the air bomb” so that every deviation in the angle would lead to imprecision in the direction. Emir Turkušić, T. 8999 (4 November 2010). *See also* Berko Zečević, T. 12178–12179 (22 February 2011); Adjudicated Fact 2821.

¹⁴⁶⁶⁵ Stevan Veljović, T. 29269–29270 (23 October 2012). *See also* Nikola Mijatović, T. 30750 (30 November 2012).

¹⁴⁶⁶⁶ Stevan Veljović, T. 29270–29271 (23 October 2012).

¹⁴⁶⁶⁷ Neđeljko Prstojević, T. 12961 (8 March 2011), 13658–13660 (18 March 2011).

¹⁴⁶⁶⁸ P2516 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio); P2517 (Excerpt from transcript of Neđeljko Prstojević's interview, with audio). Later, during his testimony in this case, Prstojević rejected the interview, arguing that his words were not interpreted correctly. Having reviewed the relevant audio portions of those interviews, the Chamber found that they were accurately interpreted and transcribed. Accordingly, the Chamber finds Prstojević's statements in the interviews to have been accurately recorded and reliable. *See* Neđeljko Prstojević, T. 13570–13577 (17 March 2011). *See also* fn. 15005.

¹⁴⁶⁶⁹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 91, 96; Berko Zečević, T. 12180–12181 (22 February 2011). *See also* Mirjana Anđelković-Lukić, T. 31493–31498, 31504–31506 (14 December 2012) *and* D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo”, 15 August 2012), p. 76, which both confirm that testing usually takes five to seven years.

¹⁴⁶⁷⁰ Berko Zečević, T. 12220–12229 (23 February 2011).

¹⁴⁶⁷¹ Stevan Veljović, T. 29270–29271, 29286 (23 October 2012).

other) showing that even regular mines and ammunition was tested in the best institution in former Yugoslavia! A mere calculation, on a basis of performances of the motors, and the weight of the newly added head, gave some preciseness similar to any indirect weapons, such as mortar, which has a range of preciseness of some two to three hundred metres!)

4373. On the other hand, all three Defence experts argued in their joint report that Zečević could not be sure that modified air bombs were not tested.¹⁴⁶⁷² When asked how long it would have taken the VRS to develop a modified air bomb, Poparić speculated that three years would have been enough because it was an integration of two properly tested weapons.¹⁴⁶⁷³ (Certainly! Nothing there was entirely new. The engines did have their tables adjusted to one war head, and it wasn't too difficult to count out what power required a new head.) Further, Šoja testified that he heard of a testing exercise in an area where there were no residential buildings.¹⁴⁶⁷⁴ Sometime in 1994, Mihajlo Vujasin, Chief of Engineers in the SRK,¹⁴⁶⁷⁵ also observed a testing exercise of a modified air bomb in Nišići Plateau, which was unsuccessful as the bomb failed to launch due to rocket motors failing to ignite.¹⁴⁶⁷⁶ Radojčić testified that both “the missile engines and the whole aerial bomb kit were tested” in Kalinovik, following which his brigade received “temporary firing tables”.¹⁴⁶⁷⁷ Zečević himself acknowledged that there probably existed some “basic firing tables” for firing conditions of the rocket motors.¹⁴⁶⁷⁸ (#Therefore, the Defence standpoint is confirmed!#)

4374. Whether tested or not, Zečević claimed that none of the three types of modified air bombs was designed for firing at individual targets as they could only be used for firing at “area targets with lengths and widths of hundreds of meters”.¹⁴⁶⁷⁹ Additionally, these bombs were

¹⁴⁶⁷² D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo”, 15 August 2012), pp. 74–75 (the exception being 122 mm GRAD rockets which were produced in Russia).

¹⁴⁶⁷³ Mile Poparić, T. 39041–39044, 39051–39052 (30 May 2013).

¹⁴⁶⁷⁴ Milomir Šoja, T. 7217–7218 (30 September 2010).

¹⁴⁶⁷⁵ D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), paras. 11–13.

¹⁴⁶⁷⁶ D2686 (Witness statement of Mihajlo Vujasin dated 16 December 2012), para. 51; Mihajlo Vujasin, T. 31793–31794 (20 December 2012). See also D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21 (explaining that he saw modified air bombs for the first time in the latter part of 1994 at the Nišići plateau); Savo Simić, T. 30090 (12 November 2012).

¹⁴⁶⁷⁷ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; Vladimir Radojčić, T. 31249–31250, 31252–31253 (11 December 2012) (explaining that he did not know what kind of testing was done and/or how many times the modified air bombs were fired during that testing), T. 31262–31266 (12 December 2012); P6040 (Excerpt from M-63 Plamen fire tables). When asked if he had the temporary firing tables in his possession, Radojčić responded that only the chief of artillery of Ilidža Brigade had them. Vladimir Radojčić, T. 31250–31251 (11 December 2012). See also Savo Simić, T. 30096–30100 (12 November 2012) (who also testified that he saw such firing tables for the modified air bombs); Stevan Veljović, T. 29285 (23 October 2012).

¹⁴⁶⁷⁸ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 95.

¹⁴⁶⁷⁹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 77–80, 86; Berko Zečević, T. 12179–12180 (22 February 2011), T. 12220 (23 February 2011). According to Zečević, the modified FAB-100 could only target an area measuring 500 metres by 200 metres, on the condition that no changes were made to the rocket motors and that firing was done in salvos. As for the FAB-250, it was only possible to target an area measuring 600 metres by 250 metres, so long as the same conditions mentioned above applied. See P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 79–80. See also P1309 (SRK Order, 21 April 1995), p. 2 (showing that the SRK Commander at the time, Dragomir Milošević, recognised that salvos of fire would be needed to hit the target using a modified air bomb); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995) (indicating that the SRK refrained from launching a modified air bomb at a certain target because UN soldiers were some 200 metres from the target and SRK troops were 500 metres from that target); Emir Turkušić, T. 5712–5713 (22 July 2010); Dušan Škrba, T. 29160–29161 (22 October 2012). But see D3644 (Expert report by Mile Poparić *et al* entitled “Inconsistencies of Experts Berko Zečević and Richard Higgs in Cases of the Shelling of Sarajevo”, 15 August 2012), pp. 72–73 (challenging the area measurements on the ground that they were taken out of context and do not represent the characteristics of a rocket artillery system). See also Dragomir Milošević, T. 33165–33166 (4 February 2013), T. 33185–33186 (5 February 2013) (explaining that his order in P1309 was a question of terminology and that it was impossible to carry out given that only one modified air bomb could be launched at a time, after which two hours were needed to prepare for the next launch).

very sensitive to cross-winds, changes in the impulse of the rocket engines, and air temperature changes.¹⁴⁶⁸⁰ Finally, all three types of modified air bombs would ricochet if the impact angle was less than 25 degrees.¹⁴⁶⁸¹ Thus, according to Zečević, the use of these bombs in urban areas would inevitably lead to civilian casualties.¹⁴⁶⁸² Similarly, a number of UN witnesses thought that modified air bombs had no military value as they were an indiscriminate weapon that had more detrimental effects on civilians and infrastructure,¹⁴⁶⁸³ and that its use in Sarajevo was inappropriate, particularly given that the city was populated by civilians and that civilian houses were everywhere.¹⁴⁶⁸⁴ **(#Never in residential areas#! Then, why there was no any evidence on these “imprecise” hits in the residential areas#! It was not sufficient to hear some opinions of the people belonging to the other warring side, who didn’t test any of these devices!)**

4375. Dragomir Milošević, on the other hand, claimed that the weapon experts working on modified air bombs perfected their design such that the bombs were precise and could pinpoint and hit a target.¹⁴⁶⁸⁵ He also argued that making these bombs precise was essential because they were fired from behind the SRK lines and over Serb residential areas.¹⁴⁶⁸⁶ Radojčić also testified that the precision of the modified air bombs was “satisfactory” as shown by the testing done in Kalinovik and that the deviation range in these bombs was, on average, 10 metres per 1,000 metres.¹⁴⁶⁸⁷ According to Savo Simić, Chief of Artillery of the 1st Sarajevo Mechanised Brigade of the SRK,¹⁴⁶⁸⁸ there was almost no deviation in the trajectory of the modified air bombs.¹⁴⁶⁸⁹ Zečević claimed, however, that modifications made on the FAB-100 and FAB-250 at the Pretis Factory, as shown by documents found there in early 1996, fell well below the professional standards of Pretis and were inferior in

¹⁴⁶⁸⁰ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 77–80; Zorica Subotić, T. 38470–38473 (16 May 2013).

¹⁴⁶⁸¹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 81–84, 87.

¹⁴⁶⁸² P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 88. *See also* Mirjana Anđelković-Lukić, T. 31500–31502 (14 December 2012) (testifying that modified air bombs are to be used on lightly fortified targets, such as bunkers and other fortified enemy facilities).

¹⁴⁶⁸³ David Fraser, T. 8010–8011 (18 October 2010); P1762 (Witness statement of David Fraser dated 17 October 2010), pp. 63–64; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 643–644; P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 35; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990, 1992. *But compare* KDZ477’s evidence to the effect that, being an anti-personnel weapon, mortar shells would cause more casualties due to the fragmentation of the shell. On the other hand, modified air bombs would cause more damage to physical structures. P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 31–33; KDZ477, T. 10949–10950 (31 January 2011).

¹⁴⁶⁸⁴ Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1992.

¹⁴⁶⁸⁵ Dragomir Milošević, T. 32773 (28 January 2013) (stating that the testing was done in Kalinovik), T. 33185–33186 (5 February 2013) (stating that modified air bombs were more accurate than air bombs dropped from the planes). *See also* D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 54.

¹⁴⁶⁸⁶ Dragomir Milošević, T. 32773–32774 (28 January 2013), 33150–33151 (4 February 2013). *See also* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18.

¹⁴⁶⁸⁷ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 55; Vladimir Radojčić, T. 31249–31250, 31252–31253 (11 December 2012) (explaining that he did not know what kind of testing was done or how many times the modified air bombs were fired during that testing), T. 31262–31266 (12 December 2012); P6040 (Excerpt from M-63 Plamen fire tables). When asked if he had the temporary firing tables in his possession, Radojčić responded that only the chief of artillery of Ilidža Brigade had them. Vladimir Radojčić, T. 31250–31251 (11 December 2012). *See also* Savo Simić, T. 30096–30100 (12 November 2012) (who also testified that he saw such firing tables for the modified air bombs).

¹⁴⁶⁸⁸ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

¹⁴⁶⁸⁹ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 21; Savo Simić, T. 30090–30091, 30096–30099, 30106–30112 (12 November 2012) (explaining that he based his opinion on the accuracy of modified air bombs on the fact that he observed them being used twice). *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 18, Nikola Mijatović, T. 30750 (30 November 2012) (testifying that if the rocket motors were checked and working properly, which they were, there was a chance of only a minimal deviation in the trajectory due to meteorological conditions).

comparison to the modifications made to the bomb based on ODAB-500.¹⁴⁶⁹⁰ This meant that it was in fact impossible to fire FAB-100 and FAB-250 modified air bombs in accordance with any firing tables.¹⁴⁶⁹¹ **(This is not an accurate assertion of Mr. Zecevic, who by the way didn't do anything practical in respect to these bombs! Nevertheless, the incidents scheduled in the Indictment do not show such a deviation, and was not larger than in any indirect weapons, such as mortar!)**

4376. Subotić also claimed that modified air bombs were accurate and based this claim on her analysis of 16 modified air bomb incidents in Sarajevo, whereby she compared the locations at which the bombs landed with what she thought were the most likely targets, assuming that each bomb had an average range of 6,000 metres.¹⁴⁶⁹² She concluded that in all incidents but one, the projectiles met the “general exterior ballistics demands for unguided rockets”.¹⁴⁶⁹³ She conceded, however, that for any rocket-assisted projectile firing tables are necessary to hit the target.¹⁴⁶⁹⁴ In terms of the rockets themselves, she agreed that they were not designed for a simultaneous launch but thought that rocket motors on a modified air bomb launched “almost” simultaneously.¹⁴⁶⁹⁵ She also conceded that general purpose aircraft bombs were designed and tested for air-to-surface delivery, rather than surface-to-surface delivery, but then argued that there was not much difference between those bombs and mortar bombs in terms of their design.¹⁴⁶⁹⁶ She also agreed that for the modified air bomb to be accurate it was vital that each rocket was parallel to the longitudinal axis of the air bomb.¹⁴⁶⁹⁷

4377. Finally, she agreed that modified air bombs, including their rocket motors and the launchers, would have to be thoroughly tested before they were approved for use and conceded that she never participated in any such testing or saw any such test data for modified air bombs.¹⁴⁶⁹⁸ She denied that in her analysis of the incidents she simply combined the available testing data for aircraft bombs with the data for rockets and attempted to fuse those into one set of data for modified air bombs.¹⁴⁶⁹⁹

¹⁴⁶⁹⁰ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 74–75, 86–87, 91–92, 94 (explaining, among other things, that for FAB-250 the stabilising fins were fixed to rocket engines in an unstable way and the fins themselves were substandard).

¹⁴⁶⁹¹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 76–77.

¹⁴⁶⁹² D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 187–189; Zorica Subotić, T. 38533–38535 (21 May 2013). On cross-examination, Mile Poparić, who co-authored Subotić’s report, conceded that these calculations were made based on the assumption that the modified air bombs were fired six kilometres away from the target. He also explained that this was close to the maximum range for those bombs. Mile Poparić, T. 39022–39033 (30 May 2103); P6346 (Excerpt from Military Lexicon, 1981).

¹⁴⁶⁹³ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 189; Zorica Subotić, T. 38229–38230 (14 May 2013) (testifying that according to her analysis 44% of the bombs hit what she thought was the intended target).

¹⁴⁶⁹⁴ Zorica Subotić, T. 38472–38473 (16 May 2013), T. 38523 (21 May 2013).

¹⁴⁶⁹⁵ Zorica Subotić, T. 38480–38484 (16 May 2013), T. 38639–38642 (22 May 2013) (explaining that ignition of multiple rocket motors will differ only in milliseconds).

¹⁴⁶⁹⁶ Zorica Subotić, T. 38478–38479 (16 May 2013). In this regard, Subotić contradicted Poparić who thought that rocket motors on the air bomb essentially turned it into a rocket projectile rather than a mortar. See para. 4358. See also Mirjana Anđelković-Lukić, T. 31499, 31514–31515 (14 December 2012) (confirming that aircraft bombs were designed to be launched from an aircraft).

¹⁴⁶⁹⁷ Zorica Subotić, T. 38521–38522 (21 May 2013); P6326 (Photograph of four rockets attached together).

¹⁴⁶⁹⁸ Zorica Subotić, T. 38522–38525, 38527–38532 (21 May 2013) (testifying also that she did see some documents which indicated that launchers were sent for testing). Subotić also confirmed that Pretis was testing rocket motors on behalf of the SRK. Zorica Subotić, T. 38634–38637 (22 May 2013); D3559 (Notification of VRS Main Staff Technical Department, 26 July 1995). See also Mile Poparić, T. 39052–39054 (30 May 2013).

¹⁴⁶⁹⁹ Zorica Subotić, T. 38526–38528 (21 May 2013).

4378. As for the range of modified air bombs, Zečević determined¹⁴⁷⁰⁰ that if launched at 45 degrees, the maximum range of the FAB-100 and FAB-250 is 5,560 and 7,680 metres respectively.¹⁴⁷⁰¹ As noted above, Subotić assumed that the average range of modified air bombs was 6,000 metres.¹⁴⁷⁰² Ratomir Maksimović, the Chief for Morale in the SRK Command,¹⁴⁷⁰³ testified that modified air bombs had a range of one to two kilometres.¹⁴⁷⁰⁴

(However, Maksimovic was not of the artillery specialty and could have only guessed. Radojcic and Milosevic were the commanding officers and they knew it better!)

4379. Having considered the evidence above, the Chamber is convinced that modified air bombs which were used in Sarajevo by the SRK were an inherently inaccurate weapon system and, as such, were not capable of targeting specific targets but only large areas. This is shown not only by witnesses who testified to that effect but also by the SRK's own documents indicating that the SRK was fully aware of the weapon's inaccuracy.¹⁴⁷⁰⁵ Indeed, even Veljović spoke of the panic the use of this weapon would produce among the SRK forces located in its flight path. The witnesses who testified to the contrary were SRK soldiers and officers, including Milošević, all of whom had a personal interest in minimising the danger these bombs posed to both the civilian population and their own troops. The Chamber therefore rejects their evidence on the accuracy of modified air bombs as unconvincing and marked by bias.

4380. While some test launches of modified air bombs were conducted by the SRK and its ballistics experts, the Chamber is of the view that they were inadequate as far as ensuring the necessary precision and optimal performance of the weapon was concerned. Given that all expert witnesses agreed that adequate testing of a new weapon system would take around five to seven years, any testing that was performed was obviously rushed and therefore deficient.

(It is rather unusual to have a chamber jumping to a conclusion in an expertise. The testing of already known and far before developed weapons didn't require so long time to be tested and adjusted. There is also a contradiction: if the SRK objective was to harras the population, why would be any attempt to test it and to improve the accuracy, which would be totally unnecessary? There is no a case of an effort towards a good direction that wasn't used against the Serbs!)

The Chamber also rejects Poparić's evidence that three years of testing would have been sufficient to ensure the accuracy of this weapon system. Furthermore, even if correct, there is no evidence that the SRK did in fact spend three years doing so. Instead, the Chamber received evidence of only a few occasions on which modified air bombs were tested, sometimes unsuccessfully. **(Wrong as it could be!!! First of all, it was not up to the SRK to test anything, since #there was an active and sophisticated military industry and several well known polygons for testing**

¹⁴⁷⁰⁰ Zečević made this determination on the basis of the "nominal parameters of the rocket and the rocket motors, and a standard atmosphere with no wind". See P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 81.

¹⁴⁷⁰¹ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 81–85 (stating also that the range would depend on the type of rocket motors used on the modified air bomb).

¹⁴⁷⁰² D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 55, 67, 187; Zorica Subotić, T. 38488–38489 (16 May 2013).

¹⁴⁷⁰³ Ratomir Maksimović, T. 31569–31571 (17 December 2012).

¹⁴⁷⁰⁴ D2667 (Witness statement of Ratomir Maksimović dated 14 December 2012), para. 53.

¹⁴⁷⁰⁵ See P1309 (SRK Order, 21 April 1995), p. 2 (showing that the SRK Commander at the time, Dragomir Milošević, recognised that salvos of fire would be needed to hit the target using a modified air bomb); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995) (indicating that the SRK refrained from launching a modified air bomb at a certain target because UN soldiers were located 200 metres from the target while the SRK troops were 500 metres from that target).

ammunition#, such as Kalinovik, Glamoc and the most sophisticated institute and polygon in Nikinci, Serbia. The SRK participated in the testing in a vast areas when required by the producer. Did the Prosecution prove that the SRK didn't test it sufficiently long? Why the SRK would have to prove anything? Simply, we have an evidence that the SRK was dealing with the testing as an additional testing to this one made by the industry, but the Prosecution didn't prove anything!) The Chamber further notes that these few testing occasions took place in wartime conditions, which would not have been an ideal environment for adequate testing, in turn raising doubt as to the reliability of the testing results. Finally, while some firing tables may have been produced to aid the SRK troops in launching modified air bombs, the Chamber does not consider that their existence made modified air bombs precise. (#Restrictive use of FABs#! However, the FABs hadn't been widely used in the city as such, but only against the objects that had been fortified, such as the TV building and A. Santica school that wasn't a school at the time. However, the Accused had never received any information on an inaccuracy of the FABs, and without that he wasn't supposed to interfere in any sense. Nor the Prosecution submitted any evidence about a wide use in the city, and about inaccuracy resulting in an unacceptable range of a collateral victims!)

1105. Damage caused by modified air bombs

4381. The quantity of explosive in modified air bombs was much higher than in mortar shells and thus its purpose was to be destructive, in contrast to the mortar shells the purpose of which is to kill personnel with shrapnel.¹⁴⁷⁰⁶ Zečević explained that standard 250 kilogram aircraft bombs with solid TNT explosive will produce a crater that is between 1.8 and 3 metres deep, with a radius of anywhere between seven and 12 metres, depending on the fuse and the weight of the bomb used.¹⁴⁷⁰⁷ When they detonate, the primary effects will be caused by the blast wave and the kinetic energy of fragments.¹⁴⁷⁰⁸ On the other hand, when fuel-air bombs detonate, they do not create a crater and their primary effect is a lower intensity but longer lasting blast wave, with less fragmentation.¹⁴⁷⁰⁹ Accordingly, if human targets are in

¹⁴⁷⁰⁶ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 37; Ekrem Suljević, T. 5728 (22 July 2010), T. 5727–5728 (22 July 2010) (explaining that sometimes, a big aerial bomb would be referred to as “krmača” (meaning a “female pig”), exactly because it was intended for destruction); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5147–5148; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 6; P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42; P2407 (Witness statement of KDZ304), p. 18; KDZ304, T. 10444–10447 (18 January 2011); Dragomir Milošević, T. 33149–33150 (4 February 2013); Vladimir Radojčić, T. 31249 (11 December 2012); Stevan Veljović, T. 29270 (23 October 2012); Nikola Mijatović, T. 30745 (30 November 2012); P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 102. See also P1762 (Witness statement of David Fraser dated 17 October 2010), p. 64 (stating that modified air bombs were much larger than mortars and that they were psychologically devastating for the people in Sarajevo).

¹⁴⁷⁰⁷ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 41; Berko Zečević, T. 12201–12202 (22 February 2011).

¹⁴⁷⁰⁸ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 48, 103–105; Berko Zečević, T. 12182–12186 (22 February 2011) (explaining that the explosion of a FAB-250 bomb will produce over 7,000 fragments with a mass greater than five grams and a range greater than 150 metres). But see D2662 (Mirjana Anđelković-Lukić's expert report entitled “Expert Analysis of Documents”, 26 July 2012), pp. 6, 16 (challenging Zečević's evidence here on the basis that he did not indicate where the analysis of the fragments came from). However, the Chamber notes that Zečević clearly indicates in his report, at page 49, that he made this calculation on the basis of the Mott method.

¹⁴⁷⁰⁹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 103–105; Berko Zečević, T. 12183, 12201–12202 (22 February 2011), T. 12230–12232 (23 February 2011); Mirjana Anđelković-Lukić, T. 31484 (14 December 2012).

the open without any barriers shielding them, the bombs with solid TNT explosive charges would be more efficient at “destroying” them, while the fuel-air bombs would be better at “destroying” human targets hidden in the bunkers or tunnels.¹⁴⁷¹⁰ Anđelković-Lukić explained that in case of solid TNT charges, the wounds inflicted on the human body come from shrapnel and thus resemble those inflicted by bullets, whereas fuel-air bomb injuries happen due to the blast effect of the cloud; this latter blast can cause the heart to stop or force the eyes from their sockets, in addition to causing burns and injuries to the internal organs as a result of the pressure of the blast.¹⁴⁷¹¹ **(And how many such injuries had been reported? None! Had there been a single case, it would be on the front pages of all the world media! Therefore, the fuel-air bomb was never used, and Zecevic was not a credible witness!)**

4382. Fraser testified that an air bomb of 250 kilograms landing on a concrete or brick apartment building might punch a hole in the building but would do little to no damage to an apartment block; however, it would probably have a much greater effect on a brick and mortar house, and if it landed on the ground, it would have a great impact because it would send up shrapnel and fragments, and would create a large crater.¹⁴⁷¹² According to Konings, modified air bombs had a 50-60 metre radius of destruction and could destroy a complete block of offices.¹⁴⁷¹³ **(Every single peasant in the Republic of Srpska knew very well how destructive were air bombe, because they #sustained so many NATO bombs without any reason and responsibility#! There had been many times more civilian casualties caused by the NATO bombs than by the SRK’s FABs.!)**

4383. Given the large quantity of explosive the modified air bombs contained, the Chamber finds that they were extremely destructive and as such capable of causing large craters and great damage to the surrounding buildings. Given that they were not an anti-personnel weapon, the Chamber also does not consider that they would necessarily result in a high number of casualties, unless a fuel-air bomb was used. **(#The bombs anyway hadn’t been used against the manpower, but against the fortified military sites#! But, the most important question should be: was this weaponry forbidden and by what provisions? What would happen if it was fired from an aircraft? Would it be forbidden? Would it be less or more precise if thrown from an aircraft? No, absolutely less precise. The main issue is: was it a war? Who was responsible for the war? Have the Serb side proposed and accepted every single possibility for the demilitarisation of Sarajevo? Taking into account the damage inflicted by these FABs, instead of demonstrating how this weapon could have been dangerous, it wasn’t used on a dangerous manner, and wasn’t used either for a terrifying the civilians, or damaging any civilian facilities. Again, there was no protests received by the Accused about this weaponry, either by the internationals, or by the VRS!)**

(6)Investigations of modified air bomb incidents

¹⁴⁷¹⁰ Berko Zečević, T. 12183–12184, 12202–12203 (22 February 2011). See also Adjudicated Fact 2820.

¹⁴⁷¹¹ Mirjana Anđelković-Lukić, T. 31483–31484 (14 December 2012).

¹⁴⁷¹² David Fraser, T. 8132 (19 October 2010).

¹⁴⁷¹³ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 42.

4384. BiH MUP and UN investigators investigated incidents involving modified air bombs to determine the type of bomb used and the trajectory.¹⁴⁷¹⁴ Whether or not a modified air bomb was used could be determined by examining the crater, which would often contain parts of the rocket engines.¹⁴⁷¹⁵ An adapting plate connecting the aircraft bomb to the rocket motors was also often found at the site of the explosion.¹⁴⁷¹⁶ Other factors that would assist investigators in determining whether an explosion was caused by a modified air bomb was the scale of destruction, the type of fuse used (if located), and the presence of shrapnel.¹⁴⁷¹⁷
4385. During their investigations, Suljević and his colleagues did not calculate the impact velocity of these bombs and instead arrived to their conclusions on the basis of fragments found at the incident sites and the damage caused there.¹⁴⁷¹⁸ They did not calculate the angle of descent as they did not have the necessary resources and there would be no point given that the bombs were propelled by rocket motors.¹⁴⁷¹⁹ However, it was possible to determine the direction from which the modified air bomb came by analysing the crater using the central axis method and by analysing the pattern of the fragments in the crater.¹⁴⁷²⁰ In addition to the central axis method, which for modified air bombs had a margin of error of plus or minus ten degrees,¹⁴⁷²¹ in some cases it was possible to determine the direction of fire on the basis of the position of embedded rocket motors, as they would face the from which they came.¹⁴⁷²² On occasion, direction of fire was also determined through the statements of witnesses who saw the modified air bomb flying low or heard the distinct sound of its rocket motors.¹⁴⁷²³
4386. As noted earlier, the Chamber generally gave considerable weight to the CSB Sarajevo and UN reports when analysing the scheduled shelling incidents.¹⁴⁷²⁴ In doing so, the Chamber was constantly cognisant of the shortcomings of investigations conducted during the war. Whenever issues arose with respect to particular reports, they were considered by the

¹⁴⁷¹⁴ Ekrem Suljević, T. 5737 (22 July 2010); P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 37; Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634. See also Adjudicated Fact 2895. Because there was a period where a large number of incidents involved modified air bombs, CSB Sarajevo conscientiously collected, documented, and recorded the fragments of those bombs and deposited them in a room which with time became overloaded. See Emir Turkušić, T. 8998 (4 November 2010); KDZ477, T. 10950 (31 January 2011). See also P1978 (Witness statement of Nedžib Dozo dated 7 December 2010), para. 48.

¹⁴⁷¹⁵ P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), para. 34; Per Anton Brennskag, T. 8657 (29 October 2010); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 175. In most cases involving air-bombs investigated by Suljević, there were four rocket motors attached to the bomb to carry it to the point of impact. See P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 38; KDZ477, T. 10952–10953 (31 January 2011).

¹⁴⁷¹⁶ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 38. Suljević used literature about the 250-kilogram aerial bomb to find the diameter of that bomb and then compared this to the diameter of the adapter plate which was often found at the scene of an incident. This in turn enabled him to identify the type of the aerial bomb used. See Ekrem Suljević, T. 5725–5727 (22 July 2010).

¹⁴⁷¹⁷ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 50.

¹⁴⁷¹⁸ Ekrem Suljević, T. 5722–5723, 5725 (22 July 2010) (explaining that he had an occasion to see an unexploded 250-kilogram modified air bomb during one of the investigations and that, following the war, he saw photographs of such 250-kilogram bombs).

¹⁴⁷¹⁹ Ekrem Suljević, T. 6171–6172 (6 September 2010).

¹⁴⁷²⁰ P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34, 45.

¹⁴⁷²¹ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 25.

¹⁴⁷²² P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; Ekrem Suljević, T. 6170–6171 (6 September 2010); P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), p. 1; P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 175, 178–179.

¹⁴⁷²³ P1925 (Witness statement of Emir Turkušić dated 16 February 2010), pp. 6–7; Thomas Knustad, P123 (Transcript from *Prosecutor v. D. Milošević*), T. 1990; P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp 170–173. See also P1851 (Witness statement of Per Anton Brennskag dated 26 October 2010), paras. 34, 52; Per Anton Brennskag, T. 8656–8657 (29 October 2010), T. 8714, 8716 (1 November 2010) (stating that modified air bombs also had a smoke trail coming out of the rocket engines); Milomir Šoja, P1633 (Transcript from *Prosecutor v. D. Milošević*), T. 5171–5174 (explaining that he heard the sound of modified air bombs coming from the SRK controlled area of Poljane at Mt. Igman).

¹⁴⁷²⁴ See paras. 3632, 4009.

Chamber in relation to each particular incident. Accordingly, as stated earlier, while finding this type of evidence to be generally reliable and credible, the Chamber approached it as one piece of the puzzle assessed against the totality of evidence tendered in relation to each incident.

(7) Bosnian Serb leadership and modified air bombs

4387. As addressed earlier in Section IV.B.1.a, during the ABiH offensives, the Accused indicated to Smith that a decision had been made to start a counter-offensive and that the Bosnian Serbs would employ weapons they had not used before.¹⁴⁷²⁵

4388. On 17 June 1995, Momčilo Krajišnik called Milorad Motika, the Director of Pretis at the time, to inquire about the availability of modified air bombs and whether Motika could arrange their purchase from the Krušik factory,¹⁴⁷²⁶ located in Valjevo, Serbia.¹⁴⁷²⁷ **(Although it is irrelevant, this assertion, not to say finding, is not correct: as could be seen from the document P5653 pasted above, Krajsnik was asking for a regular Oganj and Orkan rockets for a retaliation out of the Sarajevo ring! Obviously, Mr. Krajsnik was asked by some of the commanders to assist in obtaining the rockets for a multiple launcher, a well known and not forbidden!)**

4389. On 20 June 1995, the Accused issued a decision establishing a team within the state committee for the procurement for armed forces, which included Mirko Krajišnik and Momčilo Mandić, whose task was to transfer the “relevant means” from the FRY and place them in a number of previously agreed upon locations.¹⁴⁷²⁸ **(So what? Since the RS was under the double sanctions, and there had to be a special team to procure a military means on the market. What does it mean to the subject of the MABs?)** Dragomir Milošević testified, however, that he and the Accused never discussed modified air bombs nor was the issue discussed in any meeting attended by the Accused.¹⁴⁷²⁹ **(Certainly, it was never discussed before the President, and why would be anyway, this was a technical question. But, since there was a shortage of the rockets for Oganj and Orkan, a multiple rocket launchers, because their engines had been montaged on the MABs, it is clear that the RS wanted to purchase what was short of, i.e. the rocket for a long distances, for a multiple rocket launchers!)**

¹⁴⁷²⁵ Rupert Smith, T. 11344–11346 (8 February 2011); P2260 (UNPROFOR report re meeting with Radovan Karadžić, 5 April 1995), paras. 9–10, 14.

¹⁴⁷²⁶ Krušik Factory in Valjevo was a special purpose factory that produced artillery ammunition. D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 43.

¹⁴⁷²⁷ P5653 (Intercept of conversation between Milorad Motika and Momčilo Krajišnik, 17 June 1995). While Momčilo Krajišnik denied that the conversation was about modified air bombs specifically and stated that he was simply asking for a bigger weapon to be used in retaliation in Visoko, the Chamber finds his denials in this respect false and is convinced that the conversation concerned modified air bombs, as illustrated by Motika’s reference to all rocket motors having been attached to a “250”. Momčilo Krajišnik, T. 43905–43911 (20 November 2013), T. 43951–43953 (21 November 2013). **On the contrary: Krajsnik was asking for a rockets for multiple rocker launchers, called Oganj, Orkan and so on, but Motika told him that they have spent the engines for those rockets on 250. Since Krajsnik asked for a fire to retaliate to Visoko, which is much futhrer than 6 km, it is obvious that he asked for those rockets. Just read it! That is how the Chamber dismisses so easily the Defence witnesses. No ambiguity, he needed Oganj or Orkan rockets!**

¹⁴⁷²⁸ P2322 (Radovan Karadžić Decision, 20 June 1995). **The same pertaines the P2322, the Accused’s order for a provision of the Oganj/Orkan rockets, which were legitimate means.**

¹⁴⁷²⁹ Dragomir Milošević, T. 33300 (6 February 2013). See also Stevan Veljović, T. 29284 (23 October 2012).

(8) Scheduled incidents involving modified air bombs

a. Alekse Šantića street, Hrasnica, 7 April 1995 (Scheduled Incident G.10)

4390. The Indictment alleges that on 7 April 1995, a modified air bomb fired from the SRK-held territory in Ilidža hit a residential area in Hrasnica at the foot of Mt. Igman, killing one person and injuring three others, as well as destroying one dwelling while severely damaging 11 others.¹⁴⁷³⁰ The Accused argues that the modified air bomb, a FAB-100 filled with solid explosive, was fired by the SRK in response to the violation of the truce then in force by the ABiH and that the intended target was the Alekse Šantića School located approximately 20 metres from the dwelling that was destroyed.¹⁴⁷³¹ **(The Chamber #skipped the fact that it was no longer a school#, but a manufacture of the grenades and shells, and a command post of a special unit of the Muslim forces?)**

4391. Hrasnica is a civilian settlement located south of the Butmir airport at the foot of Mt. Igman.¹⁴⁷³² It was in the ABiH zone of responsibility during the war, under the control of the 4th (later the 104th) Motorised Brigade of the ABiH, commanded by Fikret Prevaljak.¹⁴⁷³³

(#Militarised settlement@! It is not enough to say that it was “a civilian settlement... in the zone of responsibility of the 104th brigade. It was it’s seat, and because of that, it was completely militarised. From this “civilian settlement” there were constant attacks on the Serbian civilian settlements of Pilica, Vojkovici, the Serb part of Hrasnica, the Famos factory. All the headquarters of this brigade, of all of it’s battalions and companies where in this “civilian settlement” including a big mortar batteries, 120 and 82 mm. it was a permanent danger and jeopardy for the surrounding Serb settlements!)

Slightly north of Hrasnica, but south of Butmir, is Sokolović Kolonija, also in the zone of responsibility of the 4th Motorised Brigade.¹⁴⁷³⁴ This ABiH brigade was also deployed on Mt. Igman.¹⁴⁷³⁵

¹⁴⁷³⁰ Indictment, Scheduled Incident G.10. See also Prosecution Final Brief, para. 73.

¹⁴⁷³¹ Defence Final Brief, paras. 2359–2362.

¹⁴⁷³² See Adjudicated Fact 3035; P1792 (Map of Hrasnica).

¹⁴⁷³³ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 16; Vladimir Radojčić, T.31257 (11 December 2012); D2591 (Map of Sarajevo marked by Vladimir Radojčić); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 15; D2649 (Map of Sarajevo marked by Milorad Šehovac); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634, 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10030 (16 December 2010); David Fraser, T. 8011 (18 October 2010); Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32784 (28 January 2013), T. 32786–32787, 32790 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2765 (Witness statement of Ilija Mišević dated 26 April 2012), para. 3; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25; Stanislav Galić, T. 37164, 37174–37175 (15 April 2013); D3381 (Map of Sarajevo marked by Stanislav Galić); Asim Džambasović, T. 15236 (22 June 2011) (testifying that the 4th Motorised Brigade later merged with the 10th Mountain Brigade and the Pazarići Brigade, forming the 14th Division based outside of the city but still within the 1st Corps). See Adjudicated Fact 2825.

¹⁴⁷³⁴ Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32792 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 16; Vladimir Radojčić, T.31257 (11 December 2012); D2591 (Map of Sarajevo marked by Vladimir Radojčić).

¹⁴⁷³⁵ Dragomir Milošević, T. 32509–32512 (23 January 2013), T. 32791–32792 (29 January 2013); D2788 (Map of Sarajevo marked by Dragomir Milošević); D2789 (Map of Sarajevo marked by Dragomir Milošević); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 17; P5981 (SRK Order, 26 June 1993); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 17.

4392. To the northwest of Hrasnica is Ilidža, which was under the control of the SRK during the war, more precisely the Ilidža Brigade.¹⁴⁷³⁶ Famos Factory is located to the east of Hrasnica, and was on the confrontation line, but under the control of the 2nd Sarajevo Light Infantry Brigade commanded by Milorad Šehovac.¹⁴⁷³⁷ **(A SRK brigade!)**

4393. Thorbjorn Overgard, an UNMO stationed in Hrasnica between October 1994 and May 1995,¹⁴⁷³⁸ testified that Hrasnica was essentially surrounded by the SRK forces and was exposed to shelling and sniping incidents on a daily basis.¹⁴⁷³⁹ According to him, the UNMOs in the area investigated a number of such incidents and established in all instances that the fire had come from SRK-held territory.¹⁴⁷⁴⁰ **(Knowing already that the Serbs didn't intend to capture Hrasnica, #all the Serbian actions were defensive#. It was known that the 104th Brigade wanted to connect it's territory with the city core. Fikret Prevljak was a very famous among the UN personnel as a rude and aggressive man! The strength of the 104 mbr. Of the ABiH was up to 4,500 men#!)**

4394. Overgard further testified that the 4th Motorised Brigade of the ABiH had (i) one company headquarters in Hrasnica, close to the confrontation lines with Ilidža; (ii) the brigade command further east, in the centre of Hrasnica; and (iii) four mortars positioned in Kovači, not far from the company headquarters.¹⁴⁷⁴¹ While Radojčić also testified that the 4th Motorised Brigade's command was in the centre of Hrasnica, he stated that it was located in the post office building, which he identified as being in a different location to the location marked on the map by Overgard.¹⁴⁷⁴² Ilija Mišćević, a resident of Hrasnica during the war, confirmed that the command of the 4th Motorised Brigade was located in the post office, but placed the post office building in a location further west of the location marked by Radojčić.¹⁴⁷⁴³ In addition, the Accused also tendered, through Radojčić, an official note from

¹⁴⁷³⁶ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 14; D2589 (Map of Sarajevo marked by Vladimir Radojčić). See also para. 3787.

¹⁴⁷³⁷ Ekrem Suljević, T. 6151 (6 September 2010); Dragomir Milošević, T. 32787–32789 (29 January 2013), T. 33179–33180 (5 February 2013); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 2, 11, 15; D2648 (Map of Sarajevo marked by Milorad Šehovac); D2649 (Map of Sarajevo marked by Milorad Šehovac); D2903 (SRK combat report, 25 May 1995); Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 657–661; P2061 (Map of Sarajevo marked by Thorbjorn Overgard).

¹⁴⁷³⁸ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 631–634, 667–669; P2062 (Map of Hrasnica marked by Thorbjorn Overgard).

¹⁴⁷³⁹ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634–636, 638–639. Mišćević also confirmed that Serbs opened fire on Hrasnica on a daily basis. See Ilija Mišćević, T. 32088–32089 (17 January 2013).

¹⁴⁷⁴⁰ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634–636, 638–639, 648–650; Thorbjorn Overgard, T. 10027–10029, 10043–10056, 10063 (16 December 2010) (conceding that the team was not able to determine the precise origin of fire, only the direction and the general area from which the fire came).

¹⁴⁷⁴¹ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 634, 641–642, 681–683, 689; P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10030–10031 (16 December 2010). See also Ekrem Suljević, T. 6151–6152 (6 September 2010); D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25; Nikola Mijatović, T. 30747–30749 (30 November 2012). According to Šehovac, there was no exclusively civilian zone in Hrasnica. D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 23.

¹⁴⁷⁴² D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 20; D2590 (Map of Hrasnica marked by Vladimir Radojčić); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994). See also D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 21; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 25.

¹⁴⁷⁴³ D2765 (Witness statement of Ilija Mišćević dated 26 April 2012), para. 3; D2766 (Map of Hrasnica marked by Ilija Mišćević); Ilija Mišćević, T. 32078–32082 (17 January 2013). Mišćević testified that the location marked by Radojčić as the post office was in fact the community centre in Hrasnica, where food was served for both the residents of Hrasnica and the troops. See Ilija Mišćević, T. 32085–32086, 32090–32091 (17 January 2013).

Ilidža Brigade dated 16 March 1995, which seemed to suggest that the brigade's headquarters had moved to Sokolović Kolonija by that time.¹⁴⁷⁴⁴

4395. The Chamber further heard that the ABiH was digging a tunnel under Butmir with the exit in Sokolović Kolonija, which was often targeted by the SRK forces, and that both civilians and the ABiH used the road between Mt. Igman and Hrasnica, referred to as the “Blue” or “Convoy” road.¹⁴⁷⁴⁵ **(However, that was not an agreed route, and therefore not a “blue” road. The use of this road without the SRK consent was a combat action, and the SRK was entitled to shell the unauthorised convoys. See@ Anan asking Akashi whether he whether he introduce a new practice to use this road without the Serb consent!....)** Furthermore, according to the evidence, ABiH soldiers going to their positions on Mt. Igman would have to pass through Hrasnica.¹⁴⁷⁴⁶

4396. In April 1995, Ziba Šubo was living with her husband Zemir, twin sons Elmir and Elvir, daughter Emira Brajlović, and grandson Elvis Brajlović in a two-storey house at Alekse Šantića street, number 1, in Hrasnica.¹⁴⁷⁴⁷ On 7 April 1995, around 8:50 a.m., a projectile exploded at the house.¹⁴⁷⁴⁸ The projectile injured her and killed her cousin, Ziba Čustović, who was sitting in front of the house in Šubo's courtyard in which she lived.¹⁴⁷⁴⁹ Present in the house at the moment of the explosion were Šubo's two teenage sons and her grandson, all of whom survived the incident.¹⁴⁷⁵⁰ Following the explosion, Šubo saw that her 11 year old grandson was bleeding.¹⁴⁷⁵¹ Šubo's husband, who was involved with “Civilian Protection”, was not at home at the time of the explosion, neither was her daughter, who was a “member” of an ABiH brigade.¹⁴⁷⁵²

4397. Following the explosion, Šubo was taken to hospital, treated for her injuries, and released on the same day.¹⁴⁷⁵³ Six months after the incident, she still suffered back and arm pain as a result of this incident, as well as high blood pressure, and one of her sons continued to have problems with hearing.¹⁴⁷⁵⁴ Because their house was completely demolished, the family

¹⁴⁷⁴⁴ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 141; D2614 (1st Ilidža Infantry Brigade official note, 16 March 1995).

¹⁴⁷⁴⁵ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 650–651, 687 (explaining that the road was used for bringing supplies to Hrasnica and Sarajevo, but also to transport ABiH forces); Thorbjorn Overgard, T. 10060–10063 (16 December 2010); David Fraser, T. 8011–8012 (18 October 2010); P1782 (SRK combat report, 7 April 1995), p. 3; Dragomir Milošević, T. 32791, 32797–32801 (29 January 2013); D2818 (Order of ABiH Supreme Command Staff, 7 November 1992); D4620 (SRK Report, 24 July 1993).

¹⁴⁷⁴⁶ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 685–687; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2774, 2776; Dragomir Milošević, T. 32783–32784 (28 January 2013), T. 32786–32787, 32791, 32797–32798 (29 January 2013).

¹⁴⁷⁴⁷ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7; P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). See also Adjudicated Fact 3033.

¹⁴⁷⁴⁸ KDZ166, T. 8266–8267 (20 October 2010); P1792 (Map of Hrasnica); P1796 (Sketch re shelling of Hrasnica on 7 April 1995). See also Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 664–665; P1996 (Witness statement of Martin Bell dated 8 March 2010), para. 100; Martin Bell, T. 9906 (15 December 2010); D2765 (Witness statement of Ilija Mišević dated 26 April 2012), para. 10; Ilija Mišević, T. 32076–32077 (17 January 2013).

¹⁴⁷⁴⁹ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 7; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2772–2773, 2775–2776; P1536 (Death certificate of Ziba Čustović). See also Adjudicated Facts 3034, 3038.

¹⁴⁷⁵⁰ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 7–8.

¹⁴⁷⁵¹ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8.

¹⁴⁷⁵² P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court pp. 3, 8.

¹⁴⁷⁵³ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8. See also Adjudicated Fact 3036.

¹⁴⁷⁵⁴ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8. See also Adjudicated Fact 3036.

stayed in a field near their house for seven days after the explosion, following which they were given an apartment by her daughter's brigade.¹⁴⁷⁵⁵

4398. She also explained that, in the year and a half prior to the incident, there had been a lot of shelling in Hrasnica, often preventing her and her family from leaving their house and that about four shells had impacted within 100 metres of her garden.¹⁴⁷⁵⁶

4399. KDZ166, a criminal technician in CSB Sarajevo, was a member of the team that investigated this incident on the day it happened.¹⁴⁷⁵⁷ He prepared a sketch of the scene, took photographs, and prepared an on-site investigation report.¹⁴⁷⁵⁸ He testified that Šubo's house was completely demolished by the explosion while 11 surrounding houses were "rendered roofless",¹⁴⁷⁵⁹ and that the projectile was a modified air bomb fired from the northwest, where Ilidža is located.¹⁴⁷⁶⁰ He explained that the team came to this conclusion based on the statement provided by an eye-witness who saw "where the projectile was fired from" and "saw it flying and dropping".¹⁴⁷⁶¹ The report itself notes that "according to the witnesses", the projectile was fired from "a truck located in the area of the rug weaving factory in Ilidža" and that the "truck left the factory area, fired a projectile and returned to the factory."¹⁴⁷⁶² KDZ166 also explained that the air bomb struck the house and then detonated inside the house, which caused it to collapse "like a pile of cards".¹⁴⁷⁶³

4400. According to KDZ166's report, one person, Ziba Čustović, was killed in the incident while three people, Ziba Šubo, Šerif Brajlović, and Gara Sarajkić, were wounded.¹⁴⁷⁶⁴

4401. Overgard and another UNMO who, by virtue of being stationed near the incident site, heard the explosion went to the scene immediately.¹⁴⁷⁶⁵ Once there, they observed a totally demolished house and human legs in a camouflage uniform, protruding under the rubble, as well as a number of other damaged houses.¹⁴⁷⁶⁶ At that point, the Commander of the 4th Motorised Brigade came to the scene and instructed the UNMOs to go to their base where

¹⁴⁷⁵⁵ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 8; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2772–2774; P465 (Photograph of a collapsed house); P466 (Photograph of a collapsed house). *See also* Adjudicated Fact 3034.

¹⁴⁷⁵⁶ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7.

¹⁴⁷⁵⁷ KDZ166, T. 8267 (20 October 2010), T. 8370 (26 October 2010); P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 3.

¹⁴⁷⁵⁸ P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 3–5; KDZ166, T. 8375–8376 (26 October 2010); P1796 (Sketch re shelling of Hrasnica on 7 April 1995); P1794 (Photographs re shelling of Hrasnica on 7 April 1995); P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995); D817 (Sketch re shelling of Hrasnica on 7 April 1995).

¹⁴⁷⁵⁹ P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 5–6; P1794 (Photographs re shelling of Hrasnica on 7 April 1995); P1810 (Video footage of shelling incident site in Hrasnica); KDZ166, T. 8268 (20 October 2010). *See also* Adjudicated Fact 3039.

¹⁴⁷⁶⁰ KDZ166 explained that he made a mistake in his report when he referred to the direction of fire as being "southwest" but observed that in the report he also refers to fire coming from Ilidža, meaning that it came from northwest rather than southwest. He confirmed on cross-examination that the projectile flew over the secondary school in Hrasnica. KDZ166, T. 8269–8272 (20 October 2010); P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 1.

¹⁴⁷⁶¹ KDZ166, T. 8271 (20 October 2010).

¹⁴⁷⁶² P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 2.

¹⁴⁷⁶³ KDZ166, T. 8372–8373 (26 October 2010).

¹⁴⁷⁶⁴ P1798 (BiH MUP Report re shelling of Hrasnica on 7 April 1995), e-court p. 1. *See* Adjudicated Fact 3038. While the report refers to a "Šerif Brajlović" as one of the injured victims in this incident, the Chamber recalls Šubo's evidence that her 11 year old grandson, Elvis Brajlović, was bleeding following the explosion. She made no mention of "Šerif" being present. Accordingly, the Chamber considers this reference to a "Šerif" in the report to be a mistake.

¹⁴⁷⁶⁵ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 632–633, 641, 664–669; P2062 (Map of Hrasnica marked by Thorbjorn Overgard); Thorbjorn Overgard, T. 10033 (16 December 2010).

¹⁴⁷⁶⁶ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 641, 644–647, 666–667, 674–676; P2060 (Photographs re shelling of Hrasnica on 7 April 1995); P2059 (UNMO report, 10 April 1995), Annex A; Thorbjorn Overgard, T. 10034 (16 December 2010).

they were guarded by ABiH soldiers; they were eventually allowed to return to the scene the next day when they conducted their own investigation and consulted with the local ballistics experts.¹⁴⁷⁶⁷ The next day they went to the morgue and confirmed that one woman died in the incident.¹⁴⁷⁶⁸ Overgard was told by the local authorities that the legs he saw belonged to a soldier who was wounded but did not die in the incident, which he found difficult to believe.¹⁴⁷⁶⁹ **(Another word, the #UNMOs had been detained by the ABiH at their base and prevented in observing and investigating the site of incident#. Obviously, the Muslim commander had a reason to hide the scene! In which court it would be accepted? A man legs in a camouflage uniform protruding from a trash clearly indicate that it was a military object! Showing a body in morgue is another matter, and is not believable!)**

4402. Following their investigation, the UNMOs reported that the projectile that fell on Šubo's house was a modified air bomb fired from a truck in Ilidža on the Serb-held side of the confrontation line.¹⁴⁷⁷⁰ They determined the direction and the origin of fire on the basis of eye-witnesses they spoke to who were on Mt. Igman and who saw and heard the bomb being launched, as well as through traces on the scene, particularly the fact that all the windows in the direction from which the bomb came were broken.¹⁴⁷⁷¹ Being near the incident site just prior to the explosion, the UNMOs themselves also heard a noise, similar to an airplane flying low, and coming from the direction of Ilidža.¹⁴⁷⁷² As for the type of the projectile, they concluded it was a modified air bomb on the basis of shrapnel they found on the scene and through having observed one of the rocket motors on the day of the incident.¹⁴⁷⁷³

4403. In an order issued on 6 April 1995, Dragomir Milošević states that “for the past three days, Muslim forces have been attacking” the positions of the 2nd Sarajevo Infantry Brigade, in particular in the area of the Famos Factory, resulting in the wounding of several soldiers and a number of civilians.¹⁴⁷⁷⁴ **So, we see that a basis for a legitimate reprisal existed. However, Milosevic issued another order, prior to this one, on 4 April, and Fraser admitted that with this previous order, the final order looks OK, see D00782, which said:**

¹⁴⁷⁶⁷ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 641–642, 662–663, 667–674 (explaining that after he and his colleague went back to the UNMO base, three ABiH soldiers guarded the house and prevented them from leaving); Thorbjorn Overgard, T. 10033–10035 (16 December 2010).

¹⁴⁷⁶⁸ Thorbjorn Overgard, T. 10036 (16 December 2010) (conceding that he did not see the dead woman's body on the day of the incident but noting also that the scene was chaotic); P2059 (UNMO report, 10 April 1995), para. 1; D934 (Excerpt from Thorbjorn Overgard's testimony in *Prosecutor v. Perišić*), T. 2977.

¹⁴⁷⁶⁹ Thorbjorn Overgard, T. 10039. *But see* D3540 (Zorica Subotić's expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 45–46, Figure 3 (which includes a video still of a wounded man at the scene of the incident who was given help and, who according to Subotić, “in all probability” wore a camouflage jacket). *See also* P1810 (Video footage of shelling incident site in Hrasnica). The Chamber notes that it is unclear from the video footage whether the jacket the man is wearing is a camouflage jacket.

¹⁴⁷⁷⁰ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 640; Thorbjorn Overgard, T. 10019–10020 (16 December 2010); P2059 (UNMO report, 10 April 1995), para. 2, Annex B, Annex C.

¹⁴⁷⁷¹ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 640, 676, 678–679, 691–693; P2059 (UNMO report, 10 April 1995), Annexes A, B, and C; Thorbjorn Overgard, T. 10020–10021, 10042–10044 (16 December 2010).

¹⁴⁷⁷² Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 676–677, 693; P2059 (UNMO report, 10 April 1995), para. 4; Thorbjorn Overgard, T. 10021 (16 December 2010).

¹⁴⁷⁷³ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 676–678; P2059 (UNMO report, 10 April 1995), para. 3, Annex B; Thorbjorn Overgard, T. 10020, 10037–10039 (16 December 2010); D934 (Excerpt from Thorbjorn Overgard's testimony in *Prosecutor v. Perišić*).

¹⁴⁷⁷⁴ P1201 (SRK Order, 6 April 1995). *See also* D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; D782 (SRK Order, 4 April 1995); Milorad Šehovac, T. 31368 (13 December 2012). *See also* Adjudicated Fact 2878.

2) Elements of the forces of SRK, HK /Herzegovina Corps/ and Drina Corps will organise the defence in the area of Mounts Igman and Treskavica, namely, in the areas of Krupac, Đokin Toranj, Rudice Village, Oštra Glava TT /trig. point/ 1616, their mission being to stop the enemy at their current positions and to then launch a counter-attack along the following axis: Lupoč - Tunov Stan - Borilovac - Rakitnica, and the Kozja Luka - Ogoreli Kuk axis.

and further:

3. KAG-1 /Corps Artillery Group/, comprising: 122 mm D-30 /towed howitzer/ howitzer battery, 122 mm SO *Gvozdika* /self-propelled howitzer/ howitzer battery, 130 mm cannon, 128 mm *Plamen* VBR /multi-barrelled rocket launcher/, 128 mm *Oganj* VBR, two aerial bomb launchers, will provide support to the forces at the point of the main defence effort.

and further

- Neutralise the activity of enemy artillery and mortars.

- Immediately upon taking up VP /firing position/, proceed to make fire adjustment with the battery's main artillery pieces and direct fire artillery pieces upon the first detected target.

from which it was completely clear that it was an operation of preparations for the defence. While this order was sent to the artillery on the outskirts of Sarajevo, the same day the same Commander of the SRK sent another order to the subordinated units, as follows: D02417

Through monitoring and reviewing the situation in the SRK units and the reports sent by the units we can conclude that despite all orders and warnings the fire is being opened on some positions without control or influence of the basic units (platoon – company), to say nothing of the control being done and orders being issued by the commands of the brigades or regiments.

and also:

1. Establish a system and regime of opening fire in all units of the SRK, which is to be under permanent control of the commands of brigades – regiments and which is to enable efficient use of weapons at the positions in order to inflict losses on the enemy.

2. I forbid arbitrary and uncontrolled opening of fire. Fire is to be opened only at useful targets – live targets, i.e. such targets which serve to inflict real losses on the enemy and does not represent “attempts of intimidation”.

3. Fire is not to be opened unless authorised by the SRK Command, except in cases of a direct attack on our positions and lives of the combatants or if the very holding of the positions is jeopardised.

5. Apply a more efficient control to ensure that the fire is not opened arbitrarily and to prevent shooting of combatants and civilians in the area of the positions as a consequence of uncontrolled use of weapons.

In order to thwart “the enemy” and give them “a warning so they are forced to accept this truce”, Milošević ordered the Ilidža Brigade to immediately prepare a “launcher with an aerial

bomb and transport the bomb for launching”, and to select “the highest yielding target in Hrasnica or Sokolović Kolonija, where there will be greatest human and material losses”.¹⁴⁷⁷⁵

4404. Milošević explained this order by saying that the units of the Ilidža Brigade and the 2nd Light Infantry Brigade, as well as the Serb villages east of Famos, were constantly under fire, including artillery fire, from Hrasnica and Sokolović Kolonija, an area through which weapons arrived and ABiH units were passing.¹⁴⁷⁷⁶ Further, the slopes of Mt. Igman controlled by the ABiH towered over those Serb villages and over parts of Lukavica and Dobrinja, thus exposing them to direct fire.¹⁴⁷⁷⁷ When informed by his subordinates that the ABiH fire was becoming unbearable and advised that the modified air bomb should be used, he decided to follow that advice but asked them to identify a specific target that would ensure that the ABiH attacks ceased.¹⁴⁷⁷⁸ Milošević also explained that the reference to the “greatest human and material losses” was not a reference to civilians and that he had in mind only military targets, noting that the language he used was military parlance and that it would have been superfluous for him to provide further instruction on the nature of the targets.¹⁴⁷⁷⁹ He also thought that the recipient of the order would not have interpreted it in any other way.¹⁴⁷⁸⁰ This was confirmed by Radojčić who received and implemented this order.¹⁴⁷⁸¹ However, during his testimony, Fraser interpreted the order as an order to shoot at the civilian population; even if there were ABiH units in Hrasnica at the time, he considered the use of modified air bomb in this densely populated area completely inappropriate.¹⁴⁷⁸² (#Fraser corrected himself, the Chamber didn’t notice#! Asked what was wrong with this document, Fraser said that there was no sufficient military justification and preciseness in determining the targets. However, after asked by the Accused, and confronted with the document of 4 April 95, Fraser admitted that it was now a complete and clear military order. Why the Chamber neglected this fact, which completely rebutted the Fraser’s previous statement? Qualifying the Milošević’s order from 4 April as a part of the one from 6 April, as a complete and accurate, the Chamber was obliged to dismiss

¹⁴⁷⁷⁵ P1201 (SRK Order, 6 April 1995).

¹⁴⁷⁷⁶ Dragomir Milošević, T. 32783–32784 (28 January 2013), T. 32786–32787, 32791, 32802–32814 (29 January 2013), T. 33179–33180 (5 February 2013); D2819 (SRK combat report, 10 July 1993); D2820 (SRK combat report, 16 July 1993); D2821 (SRK combat report, 3 August 1993); D2822 (SRK combat report, 10 August 1993); D2823 (SRK combat report, 6 November 1994). See also D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 108; Vladimir Radojčić, T. 31274–31276 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; Milorad Šehovac, T. 31384–31385 (13 December 2012); D2765 (Witness statement of Ilija Mišević dated 26 April 2012), para. 9; Ilija Mišević, T. 32087–32088 (17 January 2013).

¹⁴⁷⁷⁷ Dragomir Milošević, T. 32791–32792 (29 January 2013).

¹⁴⁷⁷⁸ Dragomir Milošević, T. 32784–32785 (28 January 2013), T. 33163–33165 (4 February 2013), 33171–33174 (5 February 2013) (explaining that the target assessment was made by estimating the possible collateral damage and comparing it to the option of halting the ABiH assets that endangered the SRK).

¹⁴⁷⁷⁹ Dragomir Milošević, T. 32793–32794 (29 January 2013), T. 33178–33183 (5 February 2013), T. 33278–33280 (6 February 2013).

¹⁴⁷⁸⁰ Dragomir Milošević, T. 32794 (29 January 2013). See also D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 89 (explaining that there was no need for Milošević to specify in each of his orders the military targets on which fire was to be opened because the brigades already had that information). Šehovac testified that he suggested the school as one of the potential targets some eight months before the incident. Milorad Šehovac, T. 31369–31370 (13 December 2012); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994). (Why this is in a footnote? And why it was neglected by the Chamber, while Overgard’s “not hear, not see” got so much attention? All of those people were a great and experienced professionals, knowing every single step of their troops on territory, as well as the enemy’s.)

¹⁴⁷⁸¹ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 108; Vladimir Radojčić, T. 31254–31257 (11 December 2012) (explaining that the order left it to him to determine where to launch the modified air bomb). See also D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63.

¹⁴⁷⁸² David Fraser, T. 8013–8014 (18 October 2010). While Subotić also made comments on this order during her testimony, given that she does not have any military background and is not a military expert, the Chamber shall not consider her evidence on this issue. See D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 56.

the first statement, and the Court was obliged to reverse the Milosevic Judgment at least in this segment!)

4405. Later on the day of the incident, the SRK Command reported to the VRS Main Staff that in the morning the ABiH opened “fierce fire” on Famos from the area of Gradina-Igman and Lasica with, *inter alia*, infantry weapons and an 82 mm mortar, in response to which the Ilidža Brigade fired one air bomb weighing 250 kilograms “at the centre of Hrasnica”.¹⁴⁷⁸³ The VRS Main Staff then sent a combat report to the Accused, informing him of these events, including the attack on Famos, as well as the fact that “[t]he enemy was adequately responded to whereby an A/B /air bomb/ (250kg) was launched on the centre of Hrasnica.”¹⁴⁷⁸⁴ **(Was there in this report to the President anything alarming?)**

4406. Contradicting Milošević’s order of 6 April and the SRK combat report of 7 April, Overgard testified that he could not remember any unusual military activity in the days prior to the incident, except for some small arms fire in the area of the Famos factory, which was a common occurrence.¹⁴⁷⁸⁵ **(#What does it mean, he could not remember#? Or, “he did not hear...” does it mean that he was able to see and hear everything, and that if he didn’t see or hear, this didn’t happen? Let us be serious! And why the Serb side would stand this constant firing as a common occurrence? In the SRK report, quoted above in para 4403 of the Judgement, quote “for the past three days, Muslim forces have been attacking” taking into account that it was sent to the VRS Headquarter, and not to public, must be considered as authentic, more that Overgard’s “not hear, not seen!”** He could not recall any unusual military activity the morning of the incident, describing it as a quiet morning with only some shooting.¹⁴⁷⁸⁶ He also did not hear any outgoing fire from the centre of Hrasnica.¹⁴⁷⁸⁷ However, on 8 April 1995, the UN reported on the incident, stating that the “rocket which impacted in Hrasnica was most likely retaliation for the mortar round fired from Hrasnica some minutes before.”¹⁴⁷⁸⁸

4407. Šubo testified that there was “some kind of military structure” on her street but that it was not close to her house and that she did not see any mortars in the vicinity of her house.¹⁴⁷⁸⁹ **(#Deadly combination#! Rule 92bis, not heard, not cross examined by the President! Anyway, if she didn’t see a mortar, it didn’t mean that there was not any!)** KDZ166 testified that there was nothing but “family houses” at the incident site, which was in the centre of Hrasnica.¹⁴⁷⁹⁰ He confirmed on cross-examination that the projectile flew over the secondary school in Hrasnica but denied any knowledge about the school being used to house members of the 4th Brigade of the ABiH.¹⁴⁷⁹¹ **(By denying any “knowledge” about it, #he**

¹⁴⁷⁸³ P1782 (SRK combat report, 7 April 1995), pp. 1–2.

¹⁴⁷⁸⁴ P5943 (VRS Main Staff Report, 7 April 1995), pp. 4–5.

¹⁴⁷⁸⁵ Thorbjorn Overgard, T. 10021–10023 (16 December 2010).

¹⁴⁷⁸⁶ Thorbjorn Overgard, T. 10024–10025 (16 December 2010).

¹⁴⁷⁸⁷ Thorbjorn Overgard, T. 10025, 10031–10032 (16 December 2010) (conceding also that the UNMO base was less than a kilometre away from the Famos Factory while the outgoing fire can be heard 200 to 300 metres from the origin of fire).

¹⁴⁷⁸⁸ D2817 (UNPROFOR report, 8 April 1995), p. 2. See also Dragomir Milošević, T. 32796–32797 (29 January 2013), T. 33290–33291 (6 February 2013).

¹⁴⁷⁸⁹ P488 (Witness statements of Ziba Šubo dated 8 April 1995 and 21 November 1995), e-court p. 7; Ziba Šubo, P487 (Transcript from *Prosecutor v. D. Milošević*), T. 2773–2774.

¹⁴⁷⁹⁰ KDZ166, T. 8267–8268 (20 October 2010).

¹⁴⁷⁹¹ KDZ166, T. 8371–8379 (26 October 2010) D815 (Map of Hrasnica marked by KDZ166); D816 (Photograph of damaged house marked by KDZ166); D817 (Sketch re shelling of Hrasnica on 7 April 1995); D818 (Aerial photograph of Hrasnica and sketch re shelling of Hrasnica on 7 April 1995).

admitted his own ignorance about the area he was monitoring, and this can not be used as an aggravating element for the Accused#!) Overgard explained that the two headquarters of the 4th Motorised Brigade in Hrasnica¹⁴⁷⁹² were somewhere between 800 and 1,000 metres away from the incident site.¹⁴⁷⁹³ Similarly, the road between Mt. Igman and Hrasnica was over a kilometre away from the incident site.¹⁴⁷⁹⁴ **(Nobody from the Defence ever used these locations as a justification for this incident, but only the school where the special unit was residing, and manufacturing the grenades! So, it is pointless to bring these data!)**

4408. In contrast, Milošević testified that four ABiH 120 mm mortars were in the “immediate vicinity” of the incident site.¹⁴⁷⁹⁵ When confronted with the VRS Main Staff report to the Accused referred to above—in which the ABiH fire on Famos was said to have come from areas outside of Hrasnica—Milošević explained that the modified air bomb was not fired to respond to the forces firing on Famos but to neutralise the four mortars in Hrasnica because those were a long-standing problem for the SRK.¹⁴⁷⁹⁶ He could not recall, however, if following the incident, the subordinate units confirmed that the mortars had been neutralised; he assumed this to be the case as there was no more fire on the SRK from that area.¹⁴⁷⁹⁷

4409. The Chamber also heard from witnesses called by the Accused that the Alekse Šantića School in Hrasnica was used by the ABiH to anneal shells and train members of the 4th Motorised Brigade.¹⁴⁷⁹⁸ Radojčić testified that this is why he chose the school as the target after receiving Milošević’s order of 6 April.¹⁴⁷⁹⁹ He stated that he used the temporary firing tables the brigade had received to launch the modified air bomb and missed the school by only 20 to 30 metres, striking instead a house in which ABiH guards were billeted.¹⁴⁸⁰⁰ He further testified that he was told by Overgard that only one soldier was killed, and that

¹⁴⁷⁹² See para. 4394.

¹⁴⁷⁹³ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 648, 684–685; P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard). The Chamber notes that, according to the scale on the maps marked by Overgard, the company headquarters was located almost two kilometres to the northwest of the incident site, while the brigade headquarters was some 750 metres to the northeast of the incident site. The four mortars were located almost two kilometres away from the incident site.

¹⁴⁷⁹⁴ Thorbjorn Overgard, P2058 (Transcript from *Prosecutor v. D. Milošević*), T. 694–695.

¹⁴⁷⁹⁵ Dragomir Milošević, T. 32795 (29 January 2013), T. 33155–33159, 33162 (4 February 2013); D779 (SRK Order, 27 March 1995). When confronted with D779 showing the locations of ABiH weapons none of which was in the immediate vicinity of the incident site, Milošević claimed that this order was unrelated to the issue of the mortars in Hrasnica.

¹⁴⁷⁹⁶ Dragomir Milošević, T. 33159–33162 (4 February 2013), T. 33168–33171 (5 February 2013) (explaining that he personally observed those four mortars in a park in Hrasnica); P5943 (VRS Main Staff Report, 7 April 1995), pp. 4–5.

¹⁴⁷⁹⁷ Dragomir Milošević, T. 33174–33179 (5 February 2013).

¹⁴⁷⁹⁸ D2765 (Witness statement of Ilija Mišćević dated 26 April 2012), paras. 3, 8; Ilija Mišćević, T. 32086–32087, 32090 (17 January 2013) (explaining that he personally observed shells being annealed in the school). While the other Defence witnesses argued that ABiH in fact produced or manufactured shells in the school, the Chamber does not consider this possible given that this was a school building and, as such, would not have had the equipment necessary for the production of shells. See Dragomir Milošević, T. 32796 (29 January 2013), T. 33162–33163 (4 February 2013); D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 20, 108; D2590 (Map of Hrasnica marked by Vladimir Radojčić); D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994); Vladimir Radojčić, T. 31257–31259 (11 December 2012), T. 31261–31263 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), paras. 21, 63. Instead, the Chamber is more persuaded by Mišćević’s evidence that the school’s furnace was used to anneal the shells.

¹⁴⁷⁹⁹ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 20, 108; Vladimir Radojčić, T. 31257–31259 (11 December 2012), T. 31261–31263 (12 December 2012); D2633 (Witness statement of Milorad Šehovac dated 8 December 2012), para. 63; D2353 (Report of 2nd Sarajevo Light Infantry Brigade to SRK, 5 August 1994); Milorad Šehovac, T. 31365–31367, 31371 (13 December 2012) (explaining that even though the school was identified as a target some eight months prior to the incident, it was still used by the ABiH at the time of the incident).

¹⁴⁸⁰⁰ Vladimir Radojčić, T. 31251–31252, 31258–31259 (11 December 2012), T. 31261–31266 (12 December 2012) (explaining that he used Plamen rockets without the explosive charge to propel the air bombs); P6040 (Excerpt from M-63 Plamen fire tables).

Overgard had seen the legs of this soldier.¹⁴⁸⁰¹ When a map was shown to him to illustrate that the school was in fact some 150 metres away from the incident site, Radojčić seemed to accept that this was so but disputed that the location marked as the incident site was accurately marked.¹⁴⁸⁰² **(Again, the height of the School was neglected, and since the Chamber accepted the Subotic and Zecevic assertion about the trajectory crossing over the roof of the school, it is very important to point out that this missing could have been in centimetres rather than in metres!)**

4410. Zečević reviewed the material compiled by the CSB Sarajevo investigators on the day of the incident **(Let us be precise: the CSB investigators “compiled” the material on that day, but Zecevic reviewed it some 12 or 13 years later. As he presented himself to be an omnipotent “expert” able to prove the Serb’s liability in every case, he had been called for a help)** and concluded, based on the damage to Šubo’s house, namely the undamaged interior wall with the destroyed exterior wall, as well as the damage to the surrounding houses, that the modified air bomb used in this incident must have been filled with fuel-air explosive.¹⁴⁸⁰³ **(In the absence of a huge destruction there should be trusted the Defence witnesses claiming that it was a 100 kg air bomb. There was no single indication that it was a fuel-air bomb. There would be a huge fragments of a very tin casing, but none reported this evidence!)** He testified that the azimuth of the modified air bomb was around 320 degrees from the north, as opposed to 305 degrees estimated by KDZ166 in his sketch, because 320 degrees would have placed the launcher in an area that avoided inhabited parts of Ilidža municipality, while KDZ166’s azimuth would have placed it in an open area, exposed to fire.¹⁴⁸⁰⁴ He also established, on the basis of the probable point of impact (the top of one of the windows of the house) and the place where the rocket motors were found, that the angle of descent was around 25 degrees; this in turn enabled him to estimate that the origin of fire was somewhere between 5,820 and 4,800 metres from the incident site, in the area between Rimski Most and Plandište, in Ilidža municipality.¹⁴⁸⁰⁵ **(Anyway, taking into account the angle, there is no basis for a conclusion that the rockets flew until it had a fuel. The impact was with a descending trajectory, crossing over the school roof!)**

4411. Contrary to Zečević, both Subotić and Anđelković-Lukić argued that the modified air bomb fired in this incident was a FAB-100 with a solid explosive charge, as indicated by (i) the type of damage caused to the destroyed house and the neighbouring houses; (ii) the fact that two persons inside the house remained uninjured while two were wounded;¹⁴⁸⁰⁶ (iii) the fact that only two rocket motors were found on the scene of the incident whereas a FAB-250 would have required three; and (iv) the fact that no fragments of an air fuel container were

¹⁴⁸⁰¹ Vladimir Radojčić, T. 31258–31259 (11 December 2012), T. 31268–31269, 31272–31273 (12 December 2012).

¹⁴⁸⁰² Vladimir Radojčić, T. 31267–31268 (12 December 2012). The Chamber notes that the map of Hrasnica used with Radojčić was not admitted into evidence but that an almost identical map has been admitted into evidence through KDZ166, Overgard, and Mišćević. See P1792 (Map of Hrasnica); P2063 (Map of Hrasnica marked by Thorbjorn Overgard); P2064 (Map of Hrasnica marked by Thorbjorn Overgard); D2766 (Map of Hrasnica marked by Ilija Mišćević). Using the scale on these maps, the distance between the school and the incident site, which has been correctly marked, does appear to be over 100 metres. This was confirmed by Ilija Mišćević, T. 32081–32082 (17 January 2013). See also Milorad Šehovac, T. 31370 (13 December 2012).

¹⁴⁸⁰³ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 114.

¹⁴⁸⁰⁴ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 114.

¹⁴⁸⁰⁵ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 112–115.

¹⁴⁸⁰⁶ Anđelković-Lukić added, relying on Zečević’s own description of the effects of a fuel-air bomb explosion, that had the house been struck by a fuel-air bomb, there would have been no survivors in the radius of about 20 metres. See D2662 (Mirjana Anđelković-Lukić’s expert report entitled “Expert Analysis of Documents”, 26 July 2012), p. 18.

found on the scene.¹⁴⁸⁰⁷ As for the direction of fire, Subotić agreed with Zečević and the CSB Sarajevo investigators, noting further that the azimuth determined by Zečević meant that the bomb flew over the Aleksa Šantića school, the schoolyard of which was 20 metres away from the incident site and which housed members of the 4th Motorised Brigade of the ABiH.¹⁴⁸⁰⁸ Finally, Subotić argued that Zečević's estimates as to the distance from which the modified air bomb was fired was highly questionable and made without taking into account the specifications of the modified bomb used.¹⁴⁸⁰⁹ **(All of it is so solid and persuasive, and Zecevic looks like an amateur with his own improvisations!)**

4412. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts that go to the origin and the nature of fire in this incident: (i) the projectile that exploded in Hrasnica on 7 April 1995 was a modified air bomb;¹⁴⁸¹⁰ (ii) one civilian was killed and three civilians were injured, one of them seriously, in the explosion;¹⁴⁸¹¹ (iii) the modified air bomb was fired from the area northwest of the impact site, in the area of Ilidža, an area that was controlled by the SRK;¹⁴⁸¹² and (iv) the modified air bomb was launched by members of the SRK.¹⁴⁸¹³ **(And (v) not even mentioning Overgard's assertion that he had seen a soldier's legs, before he was chasen off the site and prevented to access the entire day, and accessing only the next day, with a changed view of the crime scene! And (vi) What happened with the Zecevic's assertion that it was a fuel-air explosive? Is Zecevic still credible witness?)**

4413. Having considered the evidence and the adjudicated facts outlined above, and in particular the SRK combat report of 7 April, the Chamber is satisfied that the projectile that landed at Alekse Šantića street in Hrasnica on 6 April 1995 was a FAB-250 modified air bomb. **(What is evidence that it was 250 kg? how only two engines could have been used in such a case?)** The Chamber is also satisfied that it was launched by the members of the Ilidža Brigade, in direct application of the order issued by Dragomir Milošević on 6 April 1995.¹⁴⁸¹⁴ Given that the SRK's own report states that the bomb used in this attack was a modified FAB-250, the Chamber does not accept the evidence of Subotić and Anđelković-Lukić that it was in fact a FAB-100. Similarly, it is also not persuaded by Zečević's evidence that the bomb in question was a fuel-air bomb. **(Then, why Zecevic was not discredited?)**

4414. The Chamber is further satisfied that one person, Ziba Čustović, died in this incident, while three others, Ziba Šubo, Elvis Brajlović,¹⁴⁸¹⁵ and Gara Sarajkić, were wounded. All four were civilians who were in their houses and not taking direct part in the hostilities at the time the incident took place. **(There is no a reliable evidence in regard to this finding. The**

¹⁴⁸⁰⁷ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 47–51; Zorica Subotić, T. 38183–38186 (13 May 2013); D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 18–20.

¹⁴⁸⁰⁸ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 44–46, 51–54, 182, 188–189 (also arguing that the wounded man treated on the scene as seen in a local TV footage was wearing a camouflage uniform); Zorica Subotić, T. 38186–38187 (13 May 2013).

¹⁴⁸⁰⁹ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 54–56.

¹⁴⁸¹⁰ See Adjudicated Fact 3037.

¹⁴⁸¹¹ See Adjudicated Fact 3038.

¹⁴⁸¹² See Adjudicated Fact 3040.

¹⁴⁸¹³ Adjudicated Fact 3041.

¹⁴⁸¹⁴ See P1782 (SRK combat report, 7 April 1995), pp. 1–2; P1201 (SRK Order, 6 April 1995).

¹⁴⁸¹⁵ See fn. 14764.

UNMOs were prevented to participate in the investigation, and the Muslim investigators could have added on a list of casualties whom ever they wanted, and remove from the same list a soldier as they did!)

4415. The Chamber recalls the Accused's argument that the intended target of the modified air bomb was the Alekse Šantića school, which according to him was some 20 metres away from the incident site and which was used by the ABiH's 4th Brigade. The Chamber further recalls that it was Subotić who measured the distance between the school's backyard and the incident site as being some 20 metres away from the incident site. While the Chamber is satisfied that the school was used by the ABiH, as confirmed by various SRK documents and by both Ilija Mišćević and Ziba Šubo, it does not accept Subotić's evidence that the school was 20 metres from the incident site. Instead, as noted above, the evidence shows that the school building itself was over 100 metres away from the incident site.¹⁴⁸¹⁶ In addition, all the other ABiH-related locations in Hrasnica, including the four ABiH mortars, were far from the incident site.¹⁴⁸¹⁷ **(Since the Chamber accepted that the bomb came over the school's roof, as the accepted trajectory demonstrates, and thus could miss the target for only a few cms. The Chamber considers, therefore, that there were no legitimate military targets in the immediate vicinity of the incident site.¹⁴⁸¹⁸ (Wrong! The Chamber neglected the obvious fact that the trajectory passed over the school, and that the "school" as a military facility was a legitimate target. What else was needed to show that the missing should be counted on the axis of altitude of the trajectory, not on the horizontal axis on the ground! But as in all the incidents, the Prosecution didn't depict what was the Accused's liability, and the Chamber hadn't even commented what all of it does have to do with the Accused? The Accused issued all the necessary orders forbidding any criminal conduct, and although this incident was not a criminal, even if it was an omission, there is no the Accused's contribution! As known, the Accused handed his authorisation for the operational and tactical command to the Army Headquarter, since it was a matter for professionals!)**

4416. The Chamber recalls that Radojčić testified that he was the one who selected the Alekse Šantića School as the target following Milošević's order of 6 April, thus contradicting the argument that the SRK was targeting civilians in this incident. However, as noted above, the modified air bomb overshot the school by over 100 metres. **(This is #wrong calculation#. Even if it was "over" 100 metres on the ground, it wasn't over 100 metres higher than the school! Another chamber of the same court accepted the range of 200 to 300 metres of a range for a mortars and other high calibres#!)** Given the inherent inaccuracy of modified air bombs and their destructive power, as found by the Chamber above, and the fact that the target selected was located in the central, mainly residential, part of Hrasnica, Radojčić and the other SRK soldiers involved in this launch should have been aware that such an attack would cause casualties among the civilian population and extensive destruction of civilian property. **(This kind of responsibility belongs to the Muslim side at the first place. They had decided to have Hrasnica extremely militarised, to initiate the attacks**

¹⁴⁸¹⁶ See fn. 14802.

¹⁴⁸¹⁷ In this respect, the Chamber accepts Mišćević's evidence as to the location of the post office in Hrasnica which housed the 4th Brigade headquarters.

¹⁴⁸¹⁸ While there is a possibility that a soldier may have been injured in this incident, given Overgard's testimony, the Chamber does not consider that his presence in the area turned the incident site into a legitimate military target.

from Hrasnica, to fire permanently, inflicting many mainly civilian and some military casualties on a daily basis! The Muslim soldiers had hidden behind their civilians!)

4417. The Chamber also recalls here the Accused's argument that the launch was made in response to ABiH violation of a truce and its constant attacks on the SRK in the area. However, noting the combat report of 7 April, it is clear that while there was ABiH fire on the Famos Factory in the morning of 7 April, it came from infantry weapons and from an 82 mm mortar, which were fired from the area of Gradina-Igman and Lasica. The SRK response of launching the FAB-250, a highly destructive modified air bomb, was therefore disproportionate. **(What does it mean – disproportionate? If the SRK wanted to destroy a fortified object, it wasn't disproportionate. Who invented this understanding of proportionality? That would be as if a doctor attacks some bacteria with a mild medicine, so to ensure a long lasting "balance". This wasn't a fire to warn them, but to force them to stop attacking, as it was said in one of the Milosevic's orders of 4 and 6 April. He said "not to scare them, but to silence them" Finally, what does it have to do with the Accused, this is a matter of profession and of operational-tactical nature, which the Accused didn't exercise!)** In addition, it was directed at a location different to the one from which the fire was opened. **(So, if a patient has a pain in throat, he must not get an injection in his low-back? #An army is an organism, and this is childish to conclude that an opposing side it forbidden to retaliate anywhere but to the firing point#. There is no such a provision in any law, forbidding a retaliation elsewhere, wher an enemy is sensitive!)** The SRK response thus appears to have been an attempt to exact revenge rather than to neutralise incoming fire or defend the SRK positions at the moment of the attacks. In the Chamber's view the report of 7 April is also indicative of the general mind-set of the SRK units, including its command, according to which no distinction could be or was made between the civilian population and legitimate military targets. This meant that large areas of Sarajevo, such as the centre of Hrasnica, were considered to be legitimate military targets no matter how many civilians lived there.¹⁴⁸¹⁹ **(This is wrong and unacceptable standpoint. What if the SRK couldn't see the weapons that fired, if it was hidden or mobile? Who said, in which document and provision of any law that an attacked side can retaliate only towards a firing place? Wasn't it provided for a reprisal to be done elsewhere, if one side is doing something illegal, and the violation of the ceasefire agreement is such an illegal action?.**

- b. Safeta Zajke street (formerly 21. Maja street) and Majdanska street, 24 May 1995 (Scheduled Incidents G.11 and G.12)

¹⁴⁸¹⁹

See D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 11; Mile Sladoje, T. 30570–30571 (28 November 2012) (testifying that all ABiH positions were in civilian areas where people lived in apartment buildings and that there was not a single "entirely civilian settlement" that did not have a military target in it); Savo Simić, T. 30058 (12 November 2012) (testifying that it was the ABiH's responsibility to take into account whether a location was inhabited when placing their firing positions).

4418. According to the Indictment, on 24 May 1995, a missile projectile landed on Safeta Zajke street, killing two people and wounding five others.¹⁴⁸²⁰ The alleged origin of fire was the SRK-held territory southeast of the incident site.¹⁴⁸²¹ In its Final Brief, the Prosecution claims that the projectile was a modified air bomb and that it came from the direction of Lukavica.¹⁴⁸²² According to the Indictment, also on 24 May 1995, a modified air bomb landed on Majdanska street “bb”, killing two and wounding five civilians.¹⁴⁸²³ As with scheduled incident G.11, the alleged origin of fire was the SRK-held territory southeast of the incident site.¹⁴⁸²⁴

4419. The Accused argues that there was fierce combat in Sarajevo on the day of these incidents and that the modified air bomb used in both was a FAB-100, filled with solid explosive charge.¹⁴⁸²⁵ With respect to the Safeta Zajke incident he claims that the “most likely target” was the Žica factory, which was a part of an industrial complex and housed a command post of the 102nd Motorised Brigade.¹⁴⁸²⁶ He also argues that the SRK used the bomb to neutralise six ABiH mortars near Stupsko Brdo.¹⁴⁸²⁷ As for the Majdanska street incident, the Accused argues that the intended target was the transformer station, located within an industrial zone and surrounded by military objects, such as the forward command post of the 102nd Motorised Brigade; the point of impact was, according to the Accused, within the expected error range for unguided rocket projectiles.¹⁴⁸²⁸

4420. In May 1995, Anđa Gotovac lived at 43 Safeta Zajke street, in Alipašino Polje, approximately 100 to 150 metres behind the TV building.¹⁴⁸²⁹ Her house was also close to the power transformer station, the Žica Factory, and the Novi Grad municipality building.¹⁴⁸³⁰ This area was far from the frontlines, so there was no sniper fire, although there was constant shelling.¹⁴⁸³¹ She could recall two other occasions on which the shells passed over her house, targeting the TV building.¹⁴⁸³² **(In these 1,400 days of war, the TV building, which was a mean of the war propaganda and a seat of some special units of the ABiH, the witness Gotovac remembered two occasions when it was shelled. Certainly, she never registered an outgoing fire of the Muslim mortars deployed in this area, as it could be seen from:**

¹⁴⁸²⁰ Indictment, Scheduled Incident G.11.

¹⁴⁸²¹ Indictment Scheduled Incident G.11.

¹⁴⁸²² Prosecution Final Brief, Appendix C, para. 74, fn. 470.

¹⁴⁸²³ Indictment, Scheduled Incident G.12. *See also* Prosecution Final Brief, Appendix C, para. 75.

¹⁴⁸²⁴ Indictment, Scheduled Incident G.12. *See also* Prosecution Final Brief, Appendix C, para. 75.

¹⁴⁸²⁵ Defence Final Brief, paras. 2364, 2367.

¹⁴⁸²⁶ Defence Final Brief, paras. 2363–2364.

¹⁴⁸²⁷ Defence Final Brief, para. 2365.

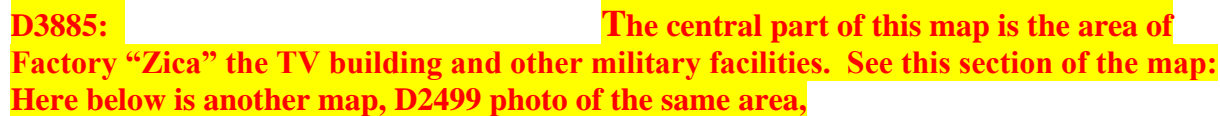
¹⁴⁸²⁸ Defence Final Brief, para. 2367.

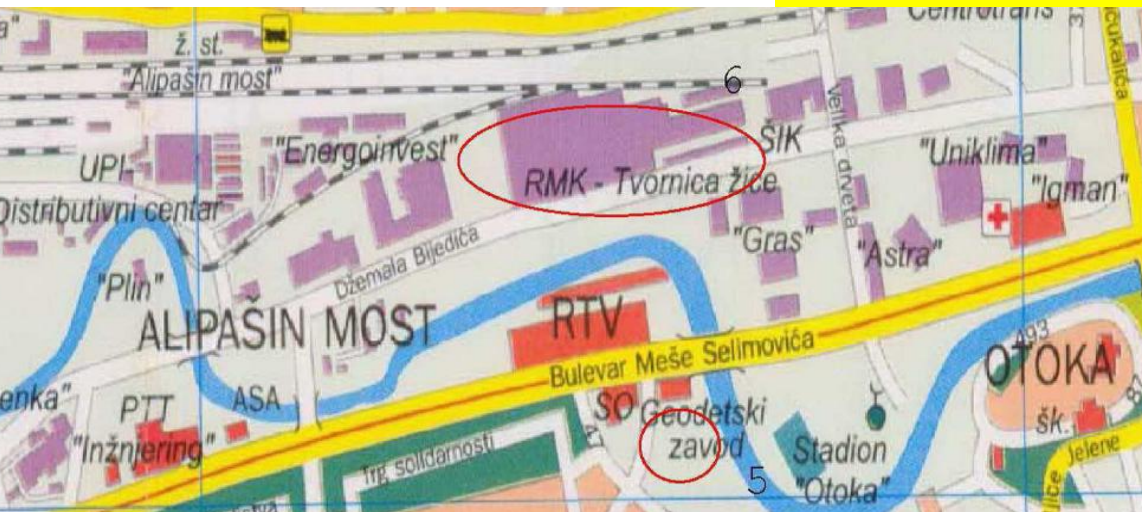
¹⁴⁸²⁹ P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T.4465; D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), para. 1; P1807 (Map of Sarajevo marked by KDZ166); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). *See also* Adjudicated Fact 3042.

¹⁴⁸³⁰ Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 786–787; D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), para. 3.

¹⁴⁸³¹ P490 (Witness statement of Anđa Gotovac dated 17 May 2006), paras. 3, 5; Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 785.

¹⁴⁸³² D1271 (Witness statement of Anđa Gotovac dated 21 February 2011), paras. 2, 4–5. *See also* P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 5.





There was no a single residential object! A several most famous military factories and other military facilities were the only objects. See



P1897:

how this area looke like on the photo,)

4421. On 24 May 1995, it was a quiet morning and just after 10 a.m., Gotovac was outside her house when she heard something that sounded like a plane.¹⁴⁸³³ Before she could raise her head to see what the sound was, there was an explosion and she was blown over by the blast.¹⁴⁸³⁴ The roof of her house was also blown away and her house was destroyed.¹⁴⁸³⁵ According to Gotovac, as a result of this explosion, two people were killed and at least three,

¹⁴⁸³³ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. See also Adjudicated Fact 3043 .

¹⁴⁸³⁴ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 784.

¹⁴⁸³⁵ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4454.

including Gotovac, were injured.¹⁴⁸³⁶ Gotovac sustained a deep wound in her shoulder and ribs from shrapnel, and had to have surgery; after she was discharged from hospital several days later but she had to be visited by a nurse on a daily basis for the next two months.¹⁴⁸³⁷ Two years after the incident, she still had breathing problems and could not lean on her left side.¹⁴⁸³⁸

4422. Gotovac testified that the explosion was caused by an air bomb and noted that, as she was being taken to hospital, she saw a “barrel” on the ground.¹⁴⁸³⁹ She admitted, however, that she did not know what a modified air bomb looked like.¹⁴⁸⁴⁰ Gotovac also testified that she never saw any ABiH weapons, positions, or military facilities in her street and that on the day of the explosion she did not see any ABiH soldiers nearby.¹⁴⁸⁴¹ She confirmed, however, that ABiH troops were located on Žuč hill, which was to the north of her house, some distance away, and that they had to pass through her street in order to get to the hill.¹⁴⁸⁴² Gotovac was told that the projectile came either from Hresa or from Trebević but noted that she did not know if that was really the case.¹⁴⁸⁴³ **(In a statement given to the Defence Ms. Gotovac admitted that in same line of fire was her home and the TV Station, that had been targeted earlier too, see D1271)**

1. The BH RTV Station was located about 100 to 150 metres from my house, more or less, this is what everyone says the distance could be.
2. I remember two occasions when shells passed over ~~my~~ the area where my house was located, which were aimed at the BH RTV Station.
5. The area where my house is located ~~was~~ in the ~~the~~ same line of fire as the TV station.

Therefore, the civili object was not targeted! This Gotovac's statement is not taken into account, but just mentioned in the footnote!)

4423. On the same day, at around 2 p.m., another projectile exploded, this time on the nearby Majdanska street in Alipašino Polje.¹⁴⁸⁴⁴

4424. A team from CSB Sarajevo, which included Kučanin and KDZ166, investigated both incidents.¹⁴⁸⁴⁵ They first went to Safeta Zajke street and arrived at the incident site at 2:30

¹⁴⁸³⁶ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4463; P1541 (Medical record for Anđa Gotovac).

¹⁴⁸³⁷ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2; P490 (Witness statements of Anđa Gotovac dated 17 May 2006), para. 2; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4454–4455. See also Adjudicated Fact 3045.

¹⁴⁸³⁸ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. See also Adjudicated Fact 3046. Gotovac has also been permanently affected by the effects of war and has trouble sleeping. P490 (Witness statements of Anđa Gotovac dated 17 May 2006), para. 7. See also Adjudicated Fact 3046.

¹⁴⁸³⁹ Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 781.

¹⁴⁸⁴⁰ Anđa Gotovac, P489 (Transcript from *Prosecutor v. Perišić*), T. 781–782.

¹⁴⁸⁴¹ P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 4; Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4455. See also Adjudicated Fact 3043.

¹⁴⁸⁴² P490 (Witness statement of Anđa Gotovac dated 17 May 2006), para. 3. See also Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4457–4459; P489 (Transcript from *Prosecutor v. Perišić*), T. 786.

¹⁴⁸⁴³ P490 (Witness statement of Anđa Gotovac dated 12 March 1997), p. 2. See also Anđa Gotovac, P489 (Transcript from *Prosecutor v. D. Milošević*), T. 4463.

¹⁴⁸⁴⁴ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), p. 3; P1323 (BiH MUP Report re shelling of Majdanska street on 24 May 1995), p. 1.

p.m.; no ballistics experts were on the scene but they were consulted later.¹⁴⁸⁴⁶ At Safeta Zajke street, KDZ166 took photographs, sketched the incident site, and marked all the physical evidence.¹⁴⁸⁴⁷ He concluded, based on the bomb fragments found embedded into the crater in the southeasterly direction, that the projectile came from the southeast.¹⁴⁸⁴⁸ He also noted that the crater was 250 centimetres long, 110 centimetres wide, and 30 centimetres deep.¹⁴⁸⁴⁹ In his report dated 26 May 1995, Kućanin stated that the crater made by the projectile was about two metres long and one metre wide, and that it stretched toward the south,¹⁴⁸⁵⁰ “that is the aggressor’s positions in the Lukavica area”.¹⁴⁸⁵¹ Based on the connecting plate, parts of the fuse of the aircraft bomb, and two rocket tail fins found in the crater, it was determined that the projectile was a modified air bomb with four 128 mm multiple rocket launcher rockets and that it weighed between 400 and 450 kilograms.¹⁴⁸⁵² According to the report, two people were killed and five, including Gotovac, were wounded as a result of this explosion.¹⁴⁸⁵³ KDZ166 testified that they were all civilians.¹⁴⁸⁵⁴

4425. Having completed the investigation on Safeta Zajke street, the CSB Sarajevo team then moved to Majdanska street and investigated this incident as well.¹⁴⁸⁵⁵ As with the previous incident, KDZ166 took photographs, marked the evidence, and prepared a sketch of the scene

¹⁴⁸⁴⁵ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995); P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995). *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 49, 52; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8; P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 6.

¹⁴⁸⁴⁶ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1 (stating that CSB Sarajevo was informed about the incident at 2 p.m.); P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 8; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8.

¹⁴⁸⁴⁷ P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 7, 10–11; KDZ166, T. 82748275 (20 October 2010), T. 83408341 (26 October 2010); P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); P1800 (Photographs re shelling of Safeta Zajke street on 24 May 1995). On cross-examination, KDZ166 conceded that he made a slight mistake, by some 20 degrees, when marking the direction of north on the sketch. *See* KDZ166, T. 8339–8340 (26 October 2010); D809 (Sketch re shelling of Safeta Zajke street on 24 May 1995 marked by KDZ166).

¹⁴⁸⁴⁸ P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 8; P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); KDZ166, T. 8275–8277 (20 October 2010), 8346–8349 (26 October 2010); P1801 (Photograph of Safeta Zajke street marked by KDZ166); D811 (Photograph re shelling of Safeta Zajke street on 24 May 1995 marked by KDZ166). The tail fins were facing south when found, which also led Kućanin to conclude that the modified air bomb was launched from the Lukavica area. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995).

¹⁴⁸⁴⁹ P1808 (Sketch re shelling of Safeta Zajke street on 24 May 1995) (under seal); P1812 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995).

¹⁴⁸⁵⁰ The Chamber notes that while the English translation of this report refers to the direction of “south east”, the BCS version refers only to the direction of “south”. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1. *See also* KDZ166, 8356 (26 October 2010).

¹⁴⁸⁵¹ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 1. KDZ166 explained that the conclusion on the origin of fire was based on the assumption that the ABiH would not fire on its own positions. He also testified that he did not know why Kućanin’s report recorded slightly different measurements for the size of the crater and had a slightly different direction of fire. KDZ166, T. 8344–8345, 8354 (26 October 2010); D810 (BiH MUP report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995) (under seal). The Chamber notes, however, that Lukavica is in fact in the southeasterly direction in relation to the incident site. *See* P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

¹⁴⁸⁵² P1812 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995); P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court pp. 1–2.

¹⁴⁸⁵³ Aiša Hrustan and Ivo Miletić are listed in the report as having been killed, while Dražen Gelo, Anđa Gotovac, Igor Vučićević, Džemal Kukuljac, and Franjo Tolić are listed as having been wounded. *See* P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 2. *See also* P1538 (Autopsy reports for Aisa Hrustan and Ivan Miletić); P1537 (Letter of discharge for Franjo Tolić); P1539 (Letter of discharge for Džemal Kukuljac); P1540 (Medical record for Igor Vučićević); P1541 (Medical record for Anđa Gotovac); Adjudicated Fact 3048.

¹⁴⁸⁵⁴ P1791 (Witness statement of KDZ166 dated 13 February 2010), p. 7.

¹⁴⁸⁵⁵ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995); P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995). *See also* P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 49, 51.

noting that the incident site overlooked the transformer station.¹⁴⁸⁵⁶ He observed that the crater was five metres in diameter, two metres wide, and one metre deep, while the surface was soil.¹⁴⁸⁵⁷ On the basis of the positioning of the crater, he determined that the bomb came from the southeast, that is, from the area of Pavlovac.¹⁴⁸⁵⁸ Later, during his cross-examination, KDZ166 appeared to agree with the Accused's incorrect assertion that the location he noted in his report was Prljevo Brdo, which is a location northeast of Pavlovac and further east of Lukavica.¹⁴⁸⁵⁹

4426. Kučanin also prepared a report, dated 26 May 1995, and noted, based on the fragments found and the damage caused, including a crater that was five metres long, 1.5 metres wide, and about 1.5 metres deep, that the projectile was a modified air bomb with four 128 mm rockets.¹⁴⁸⁶⁰ According to the report, the crater stretched towards the south, indicating that the modified air bomb came from the same location as the bomb that struck Safeta Zajke street earlier in the day.¹⁴⁸⁶¹ The report also notes that two people were killed in the explosion and six were seriously wounded; in addition, serious damage was caused to the Novi Grad power transformer station and one electricity pylon was destroyed.¹⁴⁸⁶²

4427. The fragments found on both sites were then sent to ballistics experts for analysis. The experts established that both projectiles were modified air bombs made of a destructive FAB-250 aircraft bomb and five 122 mm GRAD type rockets which served as a power unit.¹⁴⁸⁶³

4428. With respect to the facilities surrounding the incident sites, the Chamber heard that both sites were close to the TV building, the Novi Grad's Municipal Assembly building, Geodesic Institute, Žica Factory,¹⁴⁸⁶⁴ ŠIK Factory, and Energoinvest.¹⁴⁸⁶⁵ While the command post of

¹⁴⁸⁵⁶ P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 11–12; KDZ166, T. 8360–8364 (26 October 2010) (correcting the direction of north marked on the sketch slightly); P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); D813 (Sketch re shelling of Majdanska street on 24 May 1995 marked by KDZ166); P1817 (Photographs re shelling of Majdanska street on 24 May 1995).

¹⁴⁸⁵⁷ P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); KDZ166, T. 8359–8360 (26 October 2010).

¹⁴⁸⁵⁸ P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); KDZ166, T. 8361 (26 October 2010). The Chamber notes that Pavlovac is located just below Lukavica. See P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

¹⁴⁸⁵⁹ KDZ166, T. 8367–8369 (26 October 2010); D814 (Map of Sarajevo marked by KDZ166).

¹⁴⁸⁶⁰ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. See also KDZ166, T. 8366 (26 October 2010) When asked why Kučanin's measurements of the crater did not correspond to what he had noted in his report, KDZ166 stated that he did not know but that he stood by his report. KDZ166, T. 8365–8366 (26 October 2010).

¹⁴⁸⁶¹ P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. KDZ166 did not know why his conclusion about the direction of southeast was different to the direction noted by Kučanin in the report of 26 May 1995. See KDZ166, T. 8365–8366 (26 October 2010). The Chamber notes, however, that Lukavica is in fact in the southeasterly direction in relation to the incident site. See P2191 (Map of Sarajevo with scheduled sniping and shelling incidents)

¹⁴⁸⁶² Those listed as killed are Sulejman Prasko and Nezir Huseinović, while those listed as wounded are Fatima Konaković, Goran Jeličić, Enes Jašarević, Salko Slatko, Lucija Jurišić, and Mira Lovrić. See P1322 (BiH MUP Report re shelling of Safeta Zajke and Majdanska streets on 24 May 1995), e-court p. 3. See also P1813 (Sketch re shelling of Majdanska street on 24 May 1995) (under seal); P1542 (Autopsy report for Sulejman Prasko); P1817 (Photographs re shelling of Majdanska street on 24 May 1995), e-court pp. 1–3, 9–10; Adjudicated Fact 3050.

¹⁴⁸⁶³ P1324 (BiH MUP Report re shelling of Safeta Zajke street on 24 May 1995), e-court p. 2; P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 8; Emir Turkušić, T. 9103–9110 (4 November 2010); P1323 (BiH MUP Report re shelling of Majdanska street on 24 May 1995), p. 1. See also P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 51–52.

¹⁴⁸⁶⁴ At first, KDZ166 stated that Žica Factory was about 300 to 500 metres away from the incident site on Safeta Zajke street but when asked to measure that distance on a map agreed that it was just under 100 metres away. See KDZ166, T. 8336–8338 (26 October 2010). See also D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 58, 188. According to the scale on the map used by the Chamber, the distance between the Žica Factory and the Safeta Zajke incident site is approximately slightly over 100 metres. See P1803 (Map of Alipašino Polje and surrounding areas).

Again, the height of Žica is neglected, since it could have shown that a missing was even in a few centimetres.

the 102nd Motorised Brigade of the ABiH was located in Žica factory,¹⁴⁸⁶⁶ Safeta Zajke street itself was lined with residential houses, with ABiH positions approximately two kilometres behind it.¹⁴⁸⁶⁷ The Novi Grad police station is located on Prvomajska street.¹⁴⁸⁶⁸ A number of residential buildings are located some 100 metres away from the incident site on Majdanska street.¹⁴⁸⁶⁹

4429. Zečević, Subotić and Anđelković-Lukić all analysed the reports and various witness statements in relation to the two incidents. With respect to the Safeta Zajke incident, Zečević thought that the projectile used was a modified fuel-air bomb with three 122 mm GRAD rocket motors.¹⁴⁸⁷⁰ He based this conclusion on (i) a “three pointed star” or “three pointed centering system” found on the scene, which was used to centre the three rocket motors; (ii) Gotovac’s statement that after detonation she had a burning sensation; (iii) the absence of a large number of fragments on the facades of the surrounding buildings; and (iv) the fact that rocket motors were found in the crater.¹⁴⁸⁷¹ Zečević determined, based on the sketch of the incident, that the azimuth of the modified air bomb was 155 degrees, plus or minus five degrees.¹⁴⁸⁷² According to him, the modified air bomb was launched from a distance greater than 4,800 metres from the incident site as the angle of launch would otherwise have to have been 20 degrees; this would have resulted in the bomb ricocheting.¹⁴⁸⁷³ He testified that it probably came from a distance of about 5,800 metres or more.¹⁴⁸⁷⁴

4430. Both Subotić and Anđelković-Lukić argued that the modified air bomb that landed on Safeta Zajke street was most probably a FAB-100 with three rocket motors¹⁴⁸⁷⁵ because the crater was smaller than craters created by FAB-250 bombs and because a three-pointed star was found among the fragments.¹⁴⁸⁷⁶ Both also thought that the bomb contained conventional explosive rather than fuel-air explosive because, *inter alia*, (i) no large fragments of projectile

¹⁴⁸⁶⁵ Ekrem Suljević, T. 5767–5777 (22 July 2010); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial photograph of Sarajevo marked by Ekrem Suljević); KDZ166, T. 8330–8336 (26 October 2010); D808 (Aerial photograph of Sarajevo marked by KDZ166); P1803 (Map of Alipašino Polje and surrounding areas); D986 (Aerial photograph of Sarajevo marked by KDZ477). See also Emir Turkušić, T. 9111–9112 (4 November 2010); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 119.

¹⁴⁸⁶⁶ Asim Džambasović, T. 15200–15201, 15214–15215, 15222, 15245–15246 (22 June 2011); D1377 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1379 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1383 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D1385 (Locations of ABiH 1st Corps units in Sarajevo, 13 April 1993).

¹⁴⁸⁶⁷ KDZ166, T. 8274 (20 October 2010); P1925 (Witness statement of Emir Turkušić dated 16 February 2010), p. 9.

¹⁴⁸⁶⁸ Ekrem Suljević, T. 5767–5777 (22 July 2010); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial image of Sarajevo marked by Ekrem Suljević). See also KDZ166, T. 8330–8336 (26 October 2010); D808 (Aerial photograph of Sarajevo marked by KDZ166); P1803 (Map of Alipašino Polje and surrounding areas); P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 123–124. The Chamber notes that according to the scale on map P1803, the police station was located some 800 metres away from the Safeta Zajke incident site.

¹⁴⁸⁶⁹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 123–124; D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 68.

¹⁴⁸⁷⁰ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 118, 121.

¹⁴⁸⁷¹ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), pp. 117–119.

¹⁴⁸⁷² P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 119.

¹⁴⁸⁷³ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 120.

¹⁴⁸⁷⁴ P2318 (Report by Berko Zečević entitled “The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995”), p. 120.

¹⁴⁸⁷⁵ Subotić explained that local ballistics experts concluded that the bomb contained five rocket motors because they overlooked the fact that 122 mm GRAD rockets have two chambers each, meaning that the five tubes found on the scene indicated that the projectile had at least three motors. See D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), p. 62.

¹⁴⁸⁷⁶ D2662 (Mirjana Anđelković-Lukić’s expert report entitled “Expert Analysis of Documents”, 26 July 2012), p. 20; D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 62–64 (testifying also that the small number of fragment traces noted by Zečević can be explained by the FAB-100’s smaller size); Zorica Subotić, T. 38188–38189 (13 May 2013).

casing were found, indicating that the casing fragmented from the effects of a solid explosive charge; (ii) traces from the blast, such as blown-off rooftops and broken windows and doors, point to the conclusion that solid explosive was used; and (iii) had it been a fuel-air bomb more people would have been killed as they were near the explosion.¹⁴⁸⁷⁷

4431. Noting that the direction of north was marked incorrectly in KDZ166's sketch, Subotić corrected the mistake and determined that the azimuth of the bomb was 146 degrees, rather than 155 degrees as established by Zečević.¹⁴⁸⁷⁸ She argued that both directions cross over the Žica Factory, which was most likely the intended target.¹⁴⁸⁷⁹ Finally, Subotić criticised Zečević's analysis in relation to the distance from which the modified air bomb came and argued that it would have been more than 6,200 metres, and probably even farther than 7,000 metres.¹⁴⁸⁸⁰

4432. As for the Majdanska street incident, Zečević noted that on the basis of KDZ166's sketch, the azimuth was around 135 degrees from the north, but speculated that the actual azimuth was "probably identical" to the azimuth of the bomb that struck Safeta Zajke street, particularly given the proximity of the two locations.¹⁴⁸⁸¹ Subotić disagreed and—having once again corrected the direction of north on KDZ166's sketch—found that the azimuth of the bomb was around 137 degrees.¹⁴⁸⁸² Noting that the alleged origin of fire, namely Pavlovac, was on a trajectory that had an azimuth of 152 degrees, she concluded that it was impossible to establish with certainty which direction was correct but thought that it was definitely southeast and that it was between 120 and 150 degrees.¹⁴⁸⁸³ According to her, the analysis of the possible trajectories indicates that the launching site was chosen so that the trajectory of the bomb passed over the least populated part of the city.¹⁴⁸⁸⁴

4433. To Subotić and Anđelković-Lukić, the size of the crater in Majdanska street, as measured by KDZ166, indicated that the projectile that landed there was a FAB-100 modified air bomb filled with solid charge.¹⁴⁸⁸⁵ Noting the discrepancy between KDZ166's report and Kučanin's report on the size of the crater, Subotić thought that Kučanin purposefully enlarged the crater so that it would fit with the damage caused by a FAB-250 bomb.¹⁴⁸⁸⁶ Further, she recalled

¹⁴⁸⁷⁷ D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 21; D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 64–65.

¹⁴⁸⁷⁸ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 59–61; Zorica Subotić, T. 38189 (13 May 2013). See also KDZ166, T. 8354–8355 (26 October 2010); D812 (Map of Alipašino Polje and sketch re shelling incident on 24 May 1995).

¹⁴⁸⁷⁹ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 59, 61, 180–181, 188–189; Zorica Subotić, T. 38189–38190 (13 May 2013).

¹⁴⁸⁸⁰ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 66–67.

¹⁴⁸⁸¹ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 123.

¹⁴⁸⁸² D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 71–72.

¹⁴⁸⁸³ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 72.

¹⁴⁸⁸⁴ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 73.

¹⁴⁸⁸⁵ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 70–71. See also D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), p. 23.

¹⁴⁸⁸⁶ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 70.

that an electricity pylon was destroyed and thought that the most likely target in this incident was the transformer station.¹⁴⁸⁸⁷

4434. A number of SRK witnesses called by the Accused testified about these two incidents. According to Radojčić, there was a “fierce” ABiH offensive on 24 May 1995; further, the area surrounding Majdanska street was an industrial zone, packed with military installations, including the forward command post of the 1st Battalion of the 102nd Motorised Brigade of the ABiH located on Prvomajska street.¹⁴⁸⁸⁸ Dragomir Milošević confirmed that there was an ABiH offensive on 24 May and testified that the ABiH had six 120 mm mortars on Safeta Zajke street with which they opened fire on Ilidža and Nedžarići but which were neutralised with the air bomb.¹⁴⁸⁸⁹ As part of that offensive, the ABiH forces were also trying to break through from Majdanska street onto Ozrenska street and were thus firing mortars on the SRK positions from there.¹⁴⁸⁹⁰ Milošević also claimed that the modified air bomb that struck Majdanska street caused no casualties according to “their [ABiH] reports” and that the distance between Majdanska street incident site and the closest residential area, namely over 100 metres, was safe.¹⁴⁸⁹¹

4435. Savo Simić, who had been Chief of Artillery in the 1st Sarajevo Mechanised Brigade positioned in Lukavica prior to the incident,¹⁴⁸⁹² testified that not a single modified air bomb was launched from the brigade’s zone of responsibility.¹⁴⁸⁹³ Similarly, Dušan Škrba, Simić’s subordinate, testified that Prljevo Brdo was in his zone of fire and immediately in front of his command post and was adamant that no air bomb was ever fired from there or from Lukavica.¹⁴⁸⁹⁴ He did concede, however, that his brigade had air bombs in its arsenal.¹⁴⁸⁹⁵

4436. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of two adjudicated facts concerning the origin and nature of the fire in the incident on Safeta Zajke street: (i) on the morning of 24 May 1995, a FAB-250 air bomb with fuel-air explosive, propelled by at least three rockets, hit Safeta Zajke street¹⁴⁸⁹⁶ and (ii) it was fired from the SRK-controlled area of Lukavica by members of the SRK.¹⁴⁸⁹⁷ Similarly, it also took judicial notice of two adjudicated facts going to the incident on Majdanska street, stating that: (i) in the afternoon of 24 May 1995 a FAB-250 modified air bomb exploded on Majdanska street;¹⁴⁸⁹⁸ (ii) two civilians were killed, and six civilians were injured, five of

¹⁴⁸⁸⁷ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 70, 74, 188.

¹⁴⁸⁸⁸ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 112; D185 (12th Division ABiH combat report, 24 May 1995); D927 (12th Division ABiH combat report, 24 May 1995); D1052 (ABiH 1st Krajina Corps combat report, 31 May 1995). *See also* para. 3609. According to Radojčić this forward command post was located in the Pavle Goranina school building. However, the Chamber heard no other evidence relating to this building, including its exact distance to the incident site.

¹⁴⁸⁸⁹ Dragomir Milošević, T. 32776–32777 (28 January 2013).

¹⁴⁸⁹⁰ Dragomir Milošević, T. 32777–32778 (28 January 2013); D2903 (SRK combat report, 25 May 1995).

¹⁴⁸⁹¹ Dragomir Milošević, T. 32778–32779 (28 January 2013). When confronted with an SRK document showing that in April 1995 the launch of a modified air bomb was abandoned because UN positions were 200 metres away from the intended target, while SRK positions were 500 metres away, Milošević remained adamant that a person located 100 metres from the explosion of a modified air bomb would not be hurt. *See* Dragomir Milošević, T. 33151–33154 (4 February 2013); P1299 (VRS Main Staff request for information from SRK, 26 April 1995); P1310 (SRK report to VRS Main Staff re weapons, 26 April 1995).

¹⁴⁸⁹² D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

¹⁴⁸⁹³ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 28.

¹⁴⁸⁹⁴ D2341 (Witness statement of Dušan Škrba dated 14 October 2012) paras. 17, 22–23; Dušan Škrba, T. 29156–29157 (22 October 2012).

¹⁴⁸⁹⁵ Dušan Škrba, T. 29156 (22 October 2012).

¹⁴⁸⁹⁶ *See* Adjudicated Fact 3044.

¹⁴⁸⁹⁷ *See* Adjudicated Fact 3047.

¹⁴⁸⁹⁸ *See* Adjudicated Fact 3049.

them seriously, as a result of this explosion;¹⁴⁸⁹⁹ and (iii) the modified air bomb originated from the SRK-held territory and was launched by members of the SRK.¹⁴⁹⁰⁰ **(#Deadly combination#! If those AFs are so firm, then why to organize any other trial? In spite of so many persuasive evidence, the Chamber still keeps something that had been “adjudicated” in another trial, where probably many elements hadn’t been opposed at all, if these defences didn’t have any direct interest in challenging and rebutting the charges!)**

4437. Having considered the evidence and the adjudicated facts outlined above, particularly the fragments found at both incident sites, the Chamber is satisfied that the projectiles that landed on those sites were modified air bombs. The Chamber does not accept the evidence of Subotić and Anđelković-Lukić that in both incidents the bombs in question were FAB-100 bombs. Instead, it is more persuaded by the analysis of the local ballistics experts who had the opportunity to examine the fragments found at the two incident sites and who reached the conclusion that FAB-250 bombs were used on both occasions.¹⁴⁹⁰¹ **(Regardless of the fact that the “local ballistics experts had been interested in aggravating the finding on the account of the Serb side by stating that it was FAB-250)** Subotić showed yet again that she was prone to jumping to conspiracy theories when she speculated that Kučanin purposefully enlarged the description of the size of the crater in Majdanska street in order to implicate a larger modified air bomb. The Chamber does not accept her evidence on this point.¹⁴⁹⁰² **(Then, how the Chamber explained the difference in measuring by the two Muslim experts? Subotic wouldn’t meditate any “conspiracy” possibility, hadn’t there been two different measures!)** The Chamber is also not persuaded beyond reasonable doubt by Zečević’s evidence that the bomb that landed on Safeta Zajke street was a fuel-air bomb. **(In this case the Chamber was right, but it wasn’t right in considering Zecevic as a reliable witness! For much less the Chamber discredited the Defence witnesses!)** In fact, the Chamber considers that the damage he mentions in support of that conclusion could have equally been the result of an explosion of a modified air bomb with solid charge, as explained by Anđelković-Lukić and Subotić. Accordingly, the Chamber cannot accept as accurate that part of Adjudicated Fact 3044 which refers to the fuel-air explosive. Ultimately, however, the Chamber considers that the type of the charge used in the bombs here is irrelevant given their size and highly destructive nature. **(And for that reason Kucanin enlarged his finding!!!)**

4438. Given the proximity of the two incident sites, and the fact that they are on the same firing line, the Chamber is further of the view that both modified air bombs were launched from the same location and by the same launching crew.¹⁴⁹⁰³ Given the long range from which the two modified air bombs were fired, as testified to by Zečević and Subotić in relation to the Safeta Zajke incident, the Chamber is also satisfied that they were fired by the SRK. Additionally,

¹⁴⁸⁹⁹ See Adjudicated Fact 3050.

¹⁴⁹⁰⁰ See Adjudicated Fact 3051.

¹⁴⁹⁰¹ In addition, the Chamber recalls that both Subotić and Anđelković-Lukić came to the same conclusion in relation to Scheduled Incident G.10, despite the fact that the SRK itself reported that the bomb launched on that occasion was a FAB-250. Accordingly, the Chamber considers that their reliability has been compromised in relation to their assessments of the type of the modified air bomb used in the scheduled incidents.

¹⁴⁹⁰² The Chamber notes that in relation to the Safeta Zajke street incident, Kučanin described a crater that was in fact smaller than the crater measured by KDZ166. Thus, the Chamber considers that the differences between Kučanin and KDZ166 in their descriptions of the incident site were most likely the result of imprecision when describing and/or measuring the crater.

¹⁴⁹⁰³ The passage of time between the two modified air bomb launches on 24 May 1995 is in line with Milošević’s evidence that launching crews needed at least two hours between launches. See fn. 14679.

the fact that the ABiH did not possess such bombs also indicates that they were launched by the SRK. The Chamber is also satisfied, that they were launched from the SRK positions southeast of the incident sites as determined by the CSB Sarajevo. While Dušan Škrba claimed that they were not launched from his zone of fire, namely from Prljevo Brdo, this location was never said to have been the origin of fire; instead, KDZ166 referred to the area of Pavlovac in his report, which is located south of Lukavica and is southeast of the incident sites. Ultimately, however, the Chamber does not consider it necessary to determine the exact origin of fire, given its findings above.¹⁴⁹⁰⁴

4439. With respect to the casualties, based on the evidence and adjudicated facts outlined above, and particularly the medical records and photographs of those killed, the Chamber is satisfied that four people died in these two incidents, while 11 were wounded.¹⁴⁹⁰⁵ The Chamber is also satisfied that they were civilians and were not taking direct part in hostilities at the time the bombs landed. Accordingly, Milošević's evidence that there were no casualties on Majdanska street is clearly incorrect and rather indicates that he was trying to minimise the damage caused by the SRK's actions on that day.

4440. Finally, with respect to the Accused's argument that both incident sites were located in an industrial zone, close to military facilities, the Chamber accepts that a number of industrial facilities were indeed in the vicinity of the two incident sites. However, this industrial zone was also interspersed with residential areas and many civilians lived and worked there. While the command post of the 102nd Motorised Brigade of the ABiH was located in the Žica Factory, some 100 metres away from the incident site on Safeta Zajke street, the street itself was lined with residential houses and was a purely residential area. Even if, as speculated by Subotić, the Žica Factory had been the intended target of the modified air bomb that eventually struck Safeta Zajke street, the SRK missed it by around 100 metres. **(First of all, it was the #ABiH responsibility to place the command posts and military industry close to residential area#. No rule or norms provided by the international law would exculp them and make them untouchable. Again, this calculation about 100 metres is not correct, since the height of the Zica factory building is more important, than a plane ground distance, and the bomb missed the Zica roof in some centimetres!)**

4441. With respect to the Majdanska street incident, the Chamber recalls the Accused's claim that the target was the transformer station, while the forward command post of the 1st Battalion of the 102nd Motorised Brigade was nearby. Assuming that the transformer station was indeed the target, the Chamber does not accept that it was a legitimate military target; rather it was a civilian object, the purpose of which was to provide electricity for the city and its population. **(#Military industry zone#! This is #not correct assumption#! The Chamber itself accepted that there was an industrial zone. Knowing that there was produced almost everything that was thrown to the SRK zone, it must be admitted that this transformer station served to this industry! And thus it was a legitimate target! Anyway, even if it was miscalculated, which wasn't, why the Accused would be liable for**

¹⁴⁹⁰⁴ Thus, even if one were to accept Simić's evidence that no modified air bomb was ever launched from the zone of responsibility of the 1st Sarajevo Mechanised Brigade, this does not exclude the possibility that it was launched from behind the lines of the 1st Sarajevo Mechanised Brigade but still from the SRK-held territory, particularly given Subotić's evidence that the distance from which the Safeta Zajke modified air bomb was launched was over 6,000 metres.

¹⁴⁹⁰⁵ See fns. 14853, 14862.

every single assumption of the officers of his Army? Are other presidents are charged for such a mis-calculations? Particularly since there is no any evidence that the officer who calculated did intend to hit an illegal target!) The same can be said for the electricity pylon that was destroyed in this incident. As for the presence of the forward command post of the 1st Battalion of the 102nd Motorised Brigade near Majdanska street, the Chamber received no evidence about its precise location or its distance from the incident site. Radojčić only testified that it was in a school building on Prvomajska street. The Chamber notes that this street is some 150 metres away from the incident site.¹⁴⁹⁰⁶ Once again, assuming that this school was indeed the target of this attack, the SRK missed it by over 100 metres.

4442. Accordingly, while the two modified air bombs were indeed launched on 24 May 1995 into an area with a number of industrial facilities and at least one military target, the Chamber is not convinced that they were launched with the aim of neutralising any military targets. **(Why not? What else would be more lucrative for an army than to damage the adversary's military facilities?)** Had the SRK sought to destroy the command post located in the Žica Factory, it would have tried to do so with the second modified air bomb it launched later in the afternoon. However, the second bomb landed in the area that was about 600 metres from the Žica Factory. This happened either because the SRK was not in fact intent on destroying the command post in Žica or, if it was, then the second bomb deviated from its target by a large margin, indicating yet again the inherent inaccuracy of this weapon. Either way, given this inaccuracy and noting the destructive power of modified air bombs and the fact that there were residential areas around the above-mentioned industrial facilities, the SRK soldiers and officers who ordered and executed the launch of the two modified air bombs should have been aware that such an attack would cause casualties among the civilian population, as well as the extensive destruction of civilian property. **(#Military facilities targeted#! This is wrong inference! Why? Because if the said military facilities weren't the target, but the civilian area, there was many, many more lucrative areas, purely civilian, and any aiming to those areas would result in a much higher degree of destruction and casualties. For that reason, the Chamber's inference could not stand. Also, the second bomb was aimed at the transformer station supplying this industry of ammunition. The wording "would cause casualties" should be altered to "may have cause casualties", but such a collateral damages exist in any case!)**

c. Safeta Hadžića street, 26 May 1995 (Scheduled Incident G.13)

4443. According to the Indictment, on 26 May 1995, a modified air bomb struck a building near apartment blocks in Safeta Hadžića street (currently Prvomajska street)¹⁴⁹⁰⁷ destroying the top three floors of an apartment building and was followed by several artillery rounds.¹⁴⁹⁰⁸ The Indictment alleges that 17 persons were injured, two seriously, and that the fire came from the

¹⁴⁹⁰⁶ P1803 (Map of Alipašino Polje). See also P6009 (Map of Sarajevo marked by Mile Sladoje) (showing location of Prvomajska street).
¹⁴⁹⁰⁷ The address of this building changed several times. It was first Prvomajska street number 52, then it became Safeta Hadžića street 52, and then, in November 1995, it became Prvomajska street 4. See P5061 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 10 April 2012).
¹⁴⁹⁰⁸ Indictment, Scheduled Incident G.13.

SRK-held territory in the west-southwest.¹⁴⁹⁰⁹ The Accused argues that the modified air bomb used in this incident was a FAB-100 and that it ricocheted off of its intended target, namely the TV building, and then struck the building on Safeta Hadžića street.¹⁴⁹¹⁰ The Accused also argues that there is no evidence to support the police reports that ten artillery rounds were fired in the area after the modified air bomb; these projectiles, he claims, either did not land in the area or were staged.¹⁴⁹¹¹

4444. On 26 May 1995, at about 11 a.m., KDZ036 was in the square outside an apartment building on Prvomajska street, in Švrakino Selo.¹⁴⁹¹² There were between 40 and 50 people in the square at the time as the weather was fine and there was a lull in the shelling, with no military operations in the area.¹⁴⁹¹³ **(#The fierce Muslim offensive#! This is incorrect, as it is well known that the ABiH was conducting the most fierce offensive. Therefore, there was no any lull particularly for the Serb population which sustained a wild bombing these days. Se D2903, of 25 May 1995:**

In the z/o /area of responsibility/ of the 1st Smbr /Sarajevo Mechanized Brigade/, the enemy carried out attacks with artillery weapons, mortars, and infantry weapons on the SVČ barracks, Lukavica road, Grbavica, Ozrenska and Zagorska Streets. Especially the communication and the intersection in the area of Lukavica are endangered – they are under constant Browning fire. There is occasional infantry fire opened towards our parts of Dobrinja and Kaponiri. In the 3rd Spbr /Sarajevo Infantry Brigade/ area of responsibility, there was 82mm mortar and infantry fire on the entire line of contact, and especially in the area of Solaković, Ugorsko, Rajlovac barracks and Lemezove kuće.

In the 1st Rpbr /Romanija Infantry Brigade/ area of responsibility there was 120mm mortar and 105 mm Howitzer fire /15 mines and 10 grenades/, with occasional fire from infantry weapons – especially on the settlement Jelik, where there are also damaged buildings and facilities.

Such a situation was in all the areas of the SRK responsibility, but also NATO got involved in conflict on the Muslim side, with the aerial bombs, missing more than the SRK soldiers:

NATO aviation bombed with aerial bombs /AB/ the area of Jahorina potok /brook/ – over the Storage of the 27th PoB /Logistics Base/, at a distance of around 500 m – 1 aerial bomb exploded, and 1 didn't. One aerial bomb was thrown at the area of the village of Datelji (near the school), south of the village of Prača, at about 1,5 km – on Muslim territory.

¹⁴⁹⁰⁹ Indictment, Scheduled Incident G.13. See also Prosecution Final Brief, Appendix C, para. 76.

¹⁴⁹¹⁰ Defence Final Brief, para. 2371.

¹⁴⁹¹¹ Defence Final Brief, paras. 2371–2372.

¹⁴⁹¹² KDZ036, P475 (Transcript from *Prosecutor v. D. Milošević*), T. 4523–4527 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); P456 (Aerial photograph of Sarajevo).

¹⁴⁹¹³ P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*), T. 4538. See Adjudicated Fact 3054. See also Adjudicated Fact 3053.

8. CONCLUSION, ANTICIPATION AND DECISION:

The enemy activities were intensified in the entire area of responsibility of the SRK, from all the available weapons with the support of the UN units and NATO forces, which is also to be expected in the forthcoming period.

What kind of lull was it? It was a moment of the most dramatic crisis in the zone of Sarajevo, and the incidents with the FABs were within this crisis and a huge offensive on the Serb parts of city!)

KDZ036 heard a noise resembling that of a fast moving plane or a helicopter and a couple of seconds later there was a large blast, which knocked him to the ground.¹⁴⁹¹⁴ When he looked around, he saw bricks falling down from one of the buildings and people screaming.¹⁴⁹¹⁵ He was taken to the Koševo Hospital as he had a deep cut on the right side of his back.¹⁴⁹¹⁶ Later KDZ036 learned that the explosion occurred on the roof of a five storey building nearby and destroyed the three top floors; he saw a large crater in the roof of that building.¹⁴⁹¹⁷ In addition, all the surrounding buildings had their windows blown out.¹⁴⁹¹⁸ No one died as a result of this explosion,¹⁴⁹¹⁹ but at least two persons were seriously injured and 14 others were slightly injured.¹⁴⁹²⁰ KDZ036 did not hear any other explosions that day.¹⁴⁹²¹ He testified that this explosion was the loudest one he ever heard and that it was different from any other type of mortar or shell he had heard previously.¹⁴⁹²²

4445. The incident was investigated by a team from CSB Sarajevo, which included KDZ485 and KDZ477.¹⁴⁹²³ Having arrived at the scene at 1:15 p.m., the team examined the incident site and KDZ477 took photographs of the damage.¹⁴⁹²⁴ According to the official report of 1 June 1995, prepared by KDZ485, the investigation established that around ten artillery projectiles and one “highly destructive explosive device” landed on a part of the Švrakino Selo housing development near apartment buildings on Safeta Hadžića and Majdanska streets.¹⁴⁹²⁵ Safeta Hadžića street was a residential area with apartment buildings and offices, close to the Majdanska street.¹⁴⁹²⁶ Pieces of artillery projectiles, some of which were marked

¹⁴⁹¹⁴ KDZ036, P475 (Transcript from *Prosecutor v. D. Milošević*, T. 4523–4527 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal). KDZ477 also heard the noise and saw the bomb fly over the Novi Grad police station before it hit the street. According to him, the bomb resembled a small aircraft and came from the west. See P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 85–86; D533 (Photographs relating to shelling of Safeta Hadžića street on 26 May 1995), e-court p. 1; KDZ477, T. 10913–10914, 10923–10924 (31 January 2011), T. 11027–11032 (1 February 2011) (testifying in court that he could not be sure now that the bomb he saw was related to this incident as opposed to an incident that happened one month later, but stating that his original statement given in 2006, where he stated that the noise was related to this incident, was the most accurate); D980 (Map of Sarajevo marked by KDZ477).

¹⁴⁹¹⁵ P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

¹⁴⁹¹⁶ KDZ036, P475 (Transcript from *Prosecutor v. D. Milošević*, T. 4533–4534 (under seal); P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

¹⁴⁹¹⁷ P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal); P456 (Aerial photograph of Sarajevo marked by KDZ036).

¹⁴⁹¹⁸ P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

¹⁴⁹¹⁹ KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*, T. 4536–4537).

¹⁴⁹²⁰ See Adjudicated Fact 3056.

¹⁴⁹²¹ P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

¹⁴⁹²² KDZ036, P476 (Transcript from *Prosecutor v. D. Milošević*, T. 4537; P477 (Witness statement of KDZ036 dated 10 March 1997), p. 3 (under seal).

¹⁴⁹²³ P1905 (Witness statement of KDZ485), para. 20; KDZ485, T. 8950–8951 (3 November 2010); P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 84, 87; P2167 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995); D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

¹⁴⁹²⁴ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 1; P2167 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995); P2164 (Witness statement of KDZ477 dated 13 February 2010), paras. 87–88; KDZ477, T. 10928–10930 (31 January 2011); D533 (Photographs relating to shelling of Safeta Hadžića street on 26 May 1995).

¹⁴⁹²⁵ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), pp. 1–2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

¹⁴⁹²⁶ Adjudicated Fact 3052.

with a swastika, were examined—the team concluded that they were all 90 mm armour piercing artillery projectiles produced in Nazi Germany and that all were fired from an unspecified weapon located west of the incident site, in the direction of Ilidža.¹⁴⁹²⁷ As for the highly destructive explosive device, the report notes that it hit the roof of the apartment building at 52 Safeta Hadžića street (formerly Prvomajska street),¹⁴⁹²⁸ completely destroyed an apartment on the top floor, and damaged a number of others down to the third floor.¹⁴⁹²⁹ Three GRAD rocket motors were also found on the scene, as well as pieces of the connecting plate.¹⁴⁹³⁰ Upon inspection of its traces, it was determined that the projectile came from the south-southwest, corresponding to the positions of the Serbs in Lukavica.¹⁴⁹³¹ According to the report, two persons were seriously injured while 16 others, including a two-month old baby, sustained light injuries.¹⁴⁹³²

4446. KDZ477 testified that the artillery shells and the modified air bomb that landed in the area on 26 May 1995 did not appear to be targeting anything in particular and that the area was a purely civilian neighbourhood with civilian buildings and the police station; there were no ABiH weapons there.¹⁴⁹³³

4447. Following the investigation at the scene, the CSB Sarajevo asked for an expert opinion on the projectile that was said to have come from the west-southwest and hit an apartment building at 52 Safeta Hadžića street.¹⁴⁹³⁴ As a result, Suljević prepared a report analysing the fragments found and concluded that it was a modified air bomb, consisting of an aircraft bomb, the type of which could not be established, and “many 122 mm calibre GRAD type rocket projectiles used as engines”.¹⁴⁹³⁵ When asked about the projectile with a swastika, he

¹⁴⁹²⁷ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995).

¹⁴⁹²⁸ As noted earlier, the address of this building changed several times, going from Prvomajska street number 52, to Safeta Hadžića street 52, and then, in November 1995, becoming Prvomajska street 4. See P5061 (Letter from the BiH Office of the Bosniak Liaison Officer to ICTY, 10 April 2012).

¹⁴⁹²⁹ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2; D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995); KDZ485, T. 8952–8957 (3 November 2010); D866 (Aerial photograph of Sarajevo marked by KDZ485); D867 (Aerial photograph of Sarajevo marked by KDZ485). See also P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo). While P1913 refers to number 152 and not 52 of Safeta Hadžića street, the Chamber is satisfied in light of all the evidence showing the actual location of the impact that, as explained by KDZ485, he simply made a typographical mistake when typing up the report.

¹⁴⁹³⁰ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 2.

¹⁴⁹³¹ P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 3. But see D532 (SJB Novi Grad Report re shelling of Safeta Hadžića street on 26 May 1995) (a report of an on-site investigation which states that a “highly destructive projectile was fired from the aggressor positions in the west”).

¹⁴⁹³² The two seriously injured persons were Albina Adrijata and Nura Osmanagić, while the other 15 listed in the report were Zaim Hatić, Ramiz Hevešlija, Alma Hevešlija, Zijada Redžepović, Haris Bešić, Ismet Osmanagić, Muharem Begović, Slavica Gavrilović, Adnan Abaza, Šefik Salčin, Nedžib Perović, Šaban Huremović, Emira Zahiragić, Štefica Kudra, and Hida Bengir. In one of the official notes in the report, an additional person, namely Lejla Redžepović, is also listed as lightly wounded. See P1913 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), pp. 3, 14; P1251 (Sarajevo State Hospital discharge certificate for Nura Osmanagić); P1252 (Medical report for Nura Osmanagić); P1250 (Sarajevo State Hospital discharge certificate for Zijada Redžepović).

¹⁴⁹³³ KDZ477, T. 10924–10928 (31 January 2011); P2168 (Map of Sarajevo marked by KDZ477). When asked if the police station was about 150 metres away from the incident site, KDZ477 responded that he did not know. See KDZ477, T. 11024–11026, 11053–11056 (1 February 2011); D979 (Map of Sarajevo marked by KDZ477); D986 (Map of Sarajevo marked by KDZ477).

¹⁴⁹³⁴ P1325 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), e-court p. 1. The Chamber notes that while the English version of this document refers to “south-south-west”, the original document written in BCS refers to the direction of “west-southwest”.

¹⁴⁹³⁵ P1325 (BiH MUP Report re shelling of Safeta Hadžića street on 26 May 1995), p. 8. See also P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 53; Ekrem Suljević, T. 5782–5784 (22 July 2010). On cross-examination, Suljević conceded that the type of air bomb could not be established but remained adamant that, when taking into account the fragments found on the scene, there was no doubt that this device was a modified air bomb. See Ekrem Suljević, T. 5783–5785 (22 July 2010). When asked

observed that it was not part of the material he inspected, but noted that he did encounter such a shell in another incident, where it was established that it was an 88 mm calibre artillery shell.¹⁴⁹³⁶

4448. Zečević analysed the incident and concluded that the projectile was a modified air bomb, filled with fuel-air explosive.¹⁴⁹³⁷ **(Still a credible witness??? There was no a single report on Zecevic's expertise without a scandalous mistakes!)** Noting that the reports of local investigators provided two different directions of fire, namely west (Ilidža) and south-southwest (Lukavica), Zečević thought, relying on eye-witness accounts which are not in evidence in this case, that the bomb in fact came from the direction of Ilidža-Rajlovac.¹⁴⁹³⁸ He speculated that the azimuth was most likely 285 degrees, as that would have avoided the inhabited parts of Ilidža.¹⁴⁹³⁹ Reasoning that the angle of descent had to have been higher than 25 degrees, he determined that the distance the modified air bomb travelled was around 5,800 metres, placing the origin of fire somewhere in Butile.¹⁴⁹⁴⁰

4449. Anđelković-Lukić disputed Zečević's analysis and thought, based on the damage caused, that the modified air bomb that exploded in this incident was a FAB-250 with three rocket motors filled with solid explosive charge.¹⁴⁹⁴¹ While Subotić agreed that this was not a fuel-air bomb, she thought, based on the type of damage caused to the fifth floor of the apartment building and the survival of one of the victims who was located there, that it was in fact a FAB-100.¹⁴⁹⁴² Subotić also challenged the azimuth that Zečević determined, noting that it was speculative and contrary to all local investigators' reports.¹⁴⁹⁴³ Further, based on the image of the damage caused to the fifth floor of the building, she challenged the directions of fire identified by the local investigators and argued that the modified air bomb in fact came from the direction of the TV building, the possible target of the attack, having ricocheted off of that building first.¹⁴⁹⁴⁴ As for the ten artillery projectiles that also landed in the area on 26

how the CSB Sarajevo managed to determine the trajectory of the projectile, Suljević did not know and reiterated that he was asked only to determine the type of projectile. See Ekrem Suljević, T. 5779–5781 (22 July 2010). See also KDZ485, T. 8955–8956, 8958 (3 November 2010) (also testifying that he did not know how the direction of fire was determined and that no member of the team on the scene was a ballistics expert); KDZ477, T. 10923–10924 (31 January 2011). **And this lack of accuracy is going to be accounted on the Accused's account?**

¹⁴⁹³⁶ Suljević also said that it was probably fired from a 90 mm cannon as there were no 88 mm launching pads. See Ekrem Suljević, T. 5786–5788 (22 July 2010).

¹⁴⁹³⁷ Zečević based this conclusion on the damage to the building and the eye-witness accounts as to the explosion they experienced.
¹⁴⁹³⁸ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 125–126.
P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 126. The Chamber notes that Rajlovac is located northwest of the incident site and that, prior to 1992, was part of the Novi Grad municipality. See Section IV.A.1.c.iii: Novi Grad.

¹⁴⁹³⁹ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 126.

¹⁴⁹⁴⁰ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 126–127.

¹⁴⁹⁴¹ D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 23–26.

¹⁴⁹⁴² D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 75–79; Zorica Subotić, T. 38202–38203 (14 May 2013).

¹⁴⁹⁴³ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 79–81.

¹⁴⁹⁴⁴ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 81–87, 181, 184 (also stating that the distance between the TV building and the building at 52 Safeta Hadžića street is approximately 620 metres, while the difference in height is 45 metres). See Zorica Subotić, T. 38194–38199 (13 May 2013). As part of his case that the modified air bomb ricocheted off of the TV building before exploding at 52 Safeta Hadžića street, the Accused challenged Suljević on the trajectory of the modified air bomb established by CSB Sarajevo in the TV building incident, which occurred one month later and which was withdrawn from the Indictment (Scheduled Incident G.17). **(Even withdrawn, it is important for the overall picture, a possible manipulation, a corroboration of some similar defence assertions, and so on!)** However, Suljević explained that he only knew the sequence in which the modified air bomb hit the TV building on 28 June,

May 1995, Subotić argued that not a single one could be considered “proven” and opined that some of the damage seen in the photographs of the impact points indicated that some craters were dug out manually, while other damage was caused by planted explosive or by fire opened close to the incident site.¹⁴⁹⁴⁵ She also claimed that the traces on the projectiles with Nazi insignia indicated that they were fired during World War II.¹⁴⁹⁴⁶

4450. As with the incidents that took place on 24 May 1995, Radojčić recalled that there was a “fierce” ABiH offensive at the time of the incident¹⁴⁹⁴⁷ and that the incident site was “in the immediate vicinity of the television building and an industrial complex, which was packed with military installations”, including the forward command post of the 1st Battalion of the 102nd Motorised Brigade of the ABiH located on Prvomajska street.¹⁴⁹⁴⁸ He testified that he never issued an order to open fire on the incident site or received information about this incident; he did allow, however, for the possibility that a military target may have been missed.¹⁴⁹⁴⁹ Milošević testified that the SRK would not have fired had it not been attacked and that at the time of this incident the ABiH forces were attempting a break-through in order to link up with the other ABiH forces through Nedžarići.¹⁴⁹⁵⁰

4451. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following facts which go to the origin of fire in this incident and the status of the victims: (i) a modified air bomb hit Safeta Hadžića street on 26 May 1995;¹⁴⁹⁵¹ (ii) the victims were all civilians;¹⁴⁹⁵² (iii) the modified air bomb was fired from the area of Ilidža–Rajlovac, which was in SRK-held territory, having been launched by members of the SRK.¹⁴⁹⁵³

4452. Having considered the evidence and the adjudicated facts outlined above, the Chamber is satisfied that the projectile that landed on Safeta Hadžića street on 26 May 1995 was a modified air bomb. While CSB Sarajevo did not determine the type of bomb used, the Chamber is convinced, based on the extent of the damage caused to the three floors of a five-storey apartment building, that the bomb in question was larger than FAB-100. Relying on

not the precise trajectory in which it travelled before doing so. Ekrem Suljević, T. 5740–5778 (22 July 2010); D526 (BiH MUP report re shelling of RTV Centre on 28 June 1995); D527 (Sketch drawn by Radovan Karadžić’s defence team); D528 (D527 marked by Ekrem Suljević); D529 (Photograph 5 from D526 marked by Ekrem Suljević); P1341 (BiH MUP Report re shelling of RTV Centre on 28 June 1995); D530 (Photograph of RTV BiH building marked by Ekrem Suljević); D531 (Aerial satellite image of Sarajevo marked by Ekrem Suljević). *See also* Berko Zečević, T. 12254–12272 (23 February 2011).

¹⁴⁹⁴⁵ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 87–102, 104–106; Zorica Subotić, T. 38208–38211 (14 May 2013); D3539 (Photograph of shelled building marked by Zorica Subotić).

¹⁴⁹⁴⁶ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 95–99.

¹⁴⁹⁴⁷ The Chamber notes that Radojčić’s statement refers to 26 June instead of 26 May 1995. However, given his evidence on Scheduled Incident G.12, the Chamber considers this to be a typographical error and will proceed on the assumption that the witness was referring to the period of 24 to 26 May 1995. The same is the case with respect to Nikola Mijatović’s statement. *See* D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 112–113; D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 26.

¹⁴⁹⁴⁸ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 112–113. According to Radojčić this forward command post was located in the Pavle Goranina school building. However, the Chamber heard no other evidence relating to this building, including its exact distance to the incident site. *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 26.

¹⁴⁹⁴⁹ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 113.

¹⁴⁹⁵⁰ Dragomir Milošević, T. 32779 (28 January 2013).

¹⁴⁹⁵¹ *See* Adjudicated Fact 3055.

¹⁴⁹⁵² *See* Adjudicated Fact 3056.

¹⁴⁹⁵³ *See* Adjudicated Fact 3057.

Andelković-Lukić's evidence, the Chamber considers that this was most likely a FAB-250 modified air bomb with three rocket motors and thus is not convinced that this was a fuel-air bomb, as claimed by Zečević. Ultimately, however, the Chamber considers that the type of the charge used in the bomb is irrelevant given the size and the highly destructive nature of the bomb.

4453. The Chamber is also satisfied, relying on the CSB Sarajevo reports on the incident and the adjudicated facts, that the explosion of this modified air bomb resulted in significant damage to the five-storey residential building as well as the buildings around it. In addition, two persons were seriously wounded, while at least 14 others—including KDZ036 and a two month-old baby—were lightly wounded. All of them were civilians, who were in their apartments and were not taking direct part in hostilities at the time of the explosion.

4454. The Chamber recalls that the reports of local investigators provided two different directions of fire, namely west-southwest and south-southwest, while Zečević and Subotić thought that the bomb came from west-northwest and north-northwest, respectively. Adjudicated Fact 3057 refers to the direction of Ilidža–Rajlovac, which is the direction established by Zečević. **(Zecevic was not competent even for his own field, namely the explosive devices, let alone the ballistics!)** Accordingly, there does not appear to be any agreement on the direction of fire in this incident. Ultimately, however, the Chamber considers this to be irrelevant as it is convinced, beyond reasonable doubt, that it was the SRK that launched the modified air bomb. This conclusion is based on the fact that (i) the SRK positions were located in all those directions of fire;¹⁴⁹⁵⁴ (ii) the range at which these bombs have to be fired to be effective is long, usually somewhere between 4,000 and 6,000 metres, thus placing the origin of fire within the SRK-held territory;¹⁴⁹⁵⁵ and (iii) only the SRK had modified air bombs in Sarajevo.¹⁴⁹⁵⁶

4455. As noted earlier, Subotić argued that the most probable target in this incident was the TV building, which she measured as being some 620 metres away from the incident site, and that the modified air bomb first ricocheted off of the roof of the TV building and then landed on Safeta Hadžića street. According to Subotić, the traces left by the ricochet were then wrongly assumed to have been part of a modified air bomb incident that took place on 28 June 1995, that is, over a month later. The Chamber rejects that evidence as it was based on secondary materials, such as photographs of the scene, and site visits that took place years later. **(However, the Chamber accepted many “findings” of Zecevic analyses that took place 12 or 13 years later!)** It also finds it extremely speculative and tenuous. The Chamber is more persuaded by the reports of the local investigators who considered that the relevant traces on the roof of the TV building occurred on 28 June 1995, that is, one month after the incident in Safeta Hadžića street. However, even if Subotić's analysis is correct **(But the Chamber accepted, in the para 4374 of this Judgment, that these bombs ricochet if the angle of descent is lower, see the sentence from para 4374: (“Finally, all three types of modified air bombs would ricochet if the impact angle was less than 25 degrees”))** and the modified air bomb did indeed ricochet off of the roof of the TV building on 26 May 1995, the Chamber considers that the TV building was not a legitimate military target but a civilian

¹⁴⁹⁵⁴ See paras. 3782, 3787, 4470.

¹⁴⁹⁵⁵ See paras. 4358, 4378.

¹⁴⁹⁵⁶ See para. 4369.

object.¹⁴⁹⁵⁷ **(Could the Chamber tell it to the NATO after bombing the Serbian TV in Belgrade, or so many relies and transmitters in the Republic of Srpska? Also, the Chamber was familiar with the facts that not only the TV was a participants in the combats, but the same building had been a seat of some commanding posts of the ABiH!)**

4456. Furthermore, the Chamber finds that following the explosion of the modified air bomb a number of artillery projectiles were fired by the SRK and landed in the area. The Chamber rejects Subotić's evidence that those projectiles were either planted or fired from nearby, that is, by the ABiH. Once again, she based her conclusion on secondary materials, such as photographs of the damage, while at the same time discounting all of the findings of the local investigators. **(Even the Chamber admitted that these finding of the local investigators differed, sometimes drastically, which lef the Chamber an opportunity to chose!)** In addition, if true, her claim would mean that there was a large conspiracy whereby a number of people would have had to plant exploded and unexploded pieces of artillery projectiles in the area, while ABiH was firing other projectiles from its positions nearby, and do all that while remaining unseen. This claim is simply unreasonable and once again indicates that Subotić was not an impartial expert witness and that her evidence was marked with bias in favour of the Accused. **(The President never knew anything about Ms. Subotic, who was an expert with a high reputation, but why the Chamber didn't apply the same criterion to the biase of the local Muslim investigators?)**

4457. While the witnesses called by the Accused claimed that this incident happened during an ABiH offensive, the Chamber recalls KDZ036's evidence that the area where the incident took place was peaceful on that day and that a number of people were outside in the square before the modified air bomb struck. Thus, even if there had been fighting that day somewhere in Sarajevo, the Chamber does not consider that it was anywhere near the incident site. **(There is no any doubt that it was #an overall Muslim offensive# aimed to breake through and to occupy the Serb parts of Sarajevo, and it was done by the ammunition produced in those factories. The Sarajevo area, particularly the city proper, was too small, and any fight influenced the entire city. But, contrary to a female witness that hadn't been cross examined, all the world have learnt that it was a climax of the crisis, the day before the NATO started bombardment of the Serb military and civilian targets, resulting in the so called Hostage crisis" – and the ABiH exploited this event to advance, see D:2903, already partially pasted in the para@ above:**

¹⁴⁹⁵⁷

The Chamber notes that it heard no credible evidence that ABiH units were located in the TV building. While Demurenko mentioned in his witness statement that ABiH had units "in and around" the TV building, he did so in the context of an UNPROFOR report of 16 June 1995 which notes the movement of ABiH weapons to a "TV tower" and records ABiH mortar fire coming from a "TV2 building" at 1:45 p.m. on that day. **(Why it was not enough? And why it is onoly in a footnote, instead in the main text, particularly in the paragraph in which the Chamber disputed the legitimacy of the TV building as a military target in para 4455 above? This can not be a fair trial!)** See D2270 (Witness statement of Andrey Demurenko dated 13 October 2012), p. 80; D2299 (UNPROFOR daily report, 16 June 1995), p. 19. It is unclear, however, where this "TV2 building" was located and if it is the TV building referred to in Subotić's analysis. Demurenko was not asked to clarify this. The Chamber also recalls that KDZ477 testified that he never heard of an ABiH presence in the TV building. See KDZ477, T. 11054 (1 February 2011).

In the 3rd Spbr /Sarajevo Infantry Brigade/ area of responsibility, there was 82mm mortar and infantry fire on the entire line of contact, and especially in the area of Solaković, Ugorsko, Rajlovac barracks and Lemezove kuće.

There were no consequences of the enemy actions and the NATO aviation, except for one soldier killed last night at 20:30 hours, in the area of Zlatište, and one wounded soldier in Ozrenska Street.

How possibly the Chamber accepted this standpoint?) As for the suggestion that this was an industrial area and that the forward command post of the 102nd Brigade was on Prvomajska street, the Chamber has heard no other evidence about this command post, including its distance to the incident site. **(Because the Chamber didn't admit the Defence Google presentation, based on the documents, which would depict clearly how militarized was the entire area.)** Further, while some industrial buildings were in the neighbourhood, the incident site itself was part of a residential complex, strewn with residential buildings and civilians living therein. Accordingly, the Chamber does not consider that the modified air bomb and the artillery projectiles that followed it were aimed at neutralising a specific military target. Rather, the Chamber is convinced beyond reasonable doubt that the SRK soldiers fired this modified air bomb into a generally residential area, and that, given the inaccuracy of modified air bombs and their destructive power, these soldiers should have been aware that such an attack would cause great damage to civilian objects and result in civilian casualties. **(For what purpose would those soldiers fire an expensive device in a residential area? There should not be further inference, based on an unfounded "inference" such as this. Had the Serb soldiers wanted to inflict a civilian casualties, or to terrify the civilians, this area wouldn't be even on a long list of such a places. Beside that, the very inference is a kind of contradictory: either the soldiers wanted to hit a residential area, or they didn't want it, but had been negligable concerning the accuracy of the device? It can not be both!)**

d. UMC/Oncology Department at Dositejeva street, 16 June 1995 (Scheduled Incident G.14)

4458. The Indictment alleges that on 16 June 1995 at about 10 a.m., a modified air bomb was fired from SRK-held territory in the northwest and struck the building of the "UMC and Oncology Department at Dositejeva street 4-a", resulting in substantial damage and in three persons being wounded.¹⁴⁹⁵⁸ In its Final Brief, the Prosecution alleges that the explosion injured "three or four civilians" and that the bomb came from SRK-held territory, without specifying the direction of fire.¹⁴⁹⁵⁹ The Accused argues that the bomb that struck Dositejeva street was a FAB-100 filled with solid explosive charge, and that the damaged building housed the offices of the Ministry of Defence and was near the command of the 1st Corps of the ABiH, as well as other military targets, including the BiH Presidency.¹⁴⁹⁶⁰

¹⁴⁹⁵⁸ Indictment, Scheduled Incident G.14.

¹⁴⁹⁵⁹ Prosecution Final Brief, Appendix C, para. 77.

¹⁴⁹⁶⁰ Defence Final Brief, paras. 2375–2376.

4459. On 16 June 1995, a projectile exploded at the University Medical Centre, Institute of Radiology and Oncology (“UMC”) at Dositejeva street, number 4a.¹⁴⁹⁶¹ CSB Sarajevo conducted an on-site investigation of this incident on 17 June 1995.¹⁴⁹⁶² Two UNMOs were also present, including Konings.¹⁴⁹⁶³ The report prepared by the CSB Sarajevo noted that a “modified device with rocket projectiles was fired from the northwest direction” and exploded when it hit the window frame of the toilet on the first floor of the Sarajevo UMC/Oncology Department at around 11:03 a.m., wounding three persons and causing great material damage to that and the surrounding buildings.¹⁴⁹⁶⁴

4460. Suljević prepared an additional report, upon request from CSB Sarajevo, determining the type of projectile used in this incident as well as the direction from which it came.¹⁴⁹⁶⁵ He went to the incident site, together with the CSB Sarajevo team, to collect the fragments and examine the traces of the explosion.¹⁴⁹⁶⁶ His report recounts that a projectile fell at Dositejeva street following the shelling of the Centar municipality; it injured four people and caused great material damage.¹⁴⁹⁶⁷ Having examined the fragments found at the scene of the incident, including remains of rocket motors and a three-forked metal part, Suljević concluded that they were “remains of a device with three 122 mm calibre GRAD type rocket projectiles, most likely adapted with an aerial bomb.”¹⁴⁹⁶⁸ A fragment of an irregular shape from the exhaust duct of a 128 mm Plamen rocket was also found, which “most probably was not a part of the device that exploded.”¹⁴⁹⁶⁹ **(How come it was there? If it wasn't any military facility, how come? It didn't walk and came alone by itself! Either it was a Muslim military object, or it was planted by the ABiH, there is no any third possibility. Such kind of abnormality would dismiss the case in any country! Another question is: what all of does have to do with the Accused? Even if it was the Serb FAB, even if it missed the helicopter basis in the vicinity of the impact, what does it have to do with the accused?)** As for the type of air bomb used, Suljević thought it was either a 100- or a 250-kilogram air bomb.¹⁴⁹⁷⁰

¹⁴⁹⁶¹ See Adjudicated Fact 3058; P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); P2213 (Image re scheduled sniping and shelling incidents in Sarajevo).

¹⁴⁹⁶² P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995); P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995).

¹⁴⁹⁶³ P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 45–46; P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1.

¹⁴⁹⁶⁴ According to the report, the following persons were injured: Ivanka Skalj, Armin Skalj, and Marija Maljić. After they received medical attention they were sent home for further treatment. See P1328 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1; P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1; P1963 (Photographs re shelling of Dositejeva street on 16 June 1995).

¹⁴⁹⁶⁵ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), paras. 56–57.

¹⁴⁹⁶⁶ Ekrem Suljević, T. 6161–6164, 6166–6167 (6 September 2010).

¹⁴⁹⁶⁷ P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 1.

¹⁴⁹⁶⁸ P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 5; Ekrem Suljević, T. 6177–6178 (6 September 2010).

¹⁴⁹⁶⁹ P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 5; Ekrem Suljević, T. 6178–6180 (6 September 2010). When asked about this fragment during cross-examination, Suljević explained that people would often collect parts of projectiles so this fragment could have come from somewhere else but denied that it could have come from some ABiH military facility in the street as the building in question was a medical department. See Ekrem Suljević, T. 6163, 6180 (6 September 2010). **(Who in a medical institute would be collecting such a fragments?)**

¹⁴⁹⁷⁰ Ekrem Suljević, T. 6172, 6176–6177 (6 September 2010).

4461. Suljević determined the direction from which the projectile came, on the basis of the fragments found and the position of the rocket motor parts.¹⁴⁹⁷¹ The impact was on the north side of the building so he thought that the azimuth was 348 degrees from the north, plus or minus ten degrees, which coincides with the direction of “enemy positions in the general sector of Pionirska Dolina.”¹⁴⁹⁷² Suljević confirmed that the separation line between ABiH and VRS in that direction was somewhere in Pionirska Dolina.¹⁴⁹⁷³ However, he was adamant that the projectile was a modified air bomb launched by the VRS, as ABiH had no such weapon.¹⁴⁹⁷⁴

4462. Konings was also at the scene and testified that it was not possible to use the crater analysis so that the direction of fire, which was a “general northerly” direction, was established from the traces of damage.¹⁴⁹⁷⁵ Like Suljević, Konings thought that the bomb was fired by the Bosnian Serb side as he had never seen such a bomb on the ABiH side of the confrontation line and because, had it been fired by the ABiH, the sound of firing would have been heard.¹⁴⁹⁷⁶

4463. Suljević testified that the BiH Railway Company was in the vicinity of the incident site, as was the Ministry of Foreign Affairs, the CSB Sarajevo, and the BiH Presidency.¹⁴⁹⁷⁷ He did not know if there were any residential buildings in the area immediately surrounding the incident site but noted that to the south, towards Mis Irbina street, there was a series of residential buildings.¹⁴⁹⁷⁸ KDZ485 testified that the Presidency housed the kitchen of the Ministry of Defence.¹⁴⁹⁷⁹ According to the letter sent by Alija Izetbegović to Haris Silajdžić, UNPROFOR viewed the building as a military target because of this.¹⁴⁹⁸⁰ **(Neither Izetbegovic, nor the UNPROFOR said that this was because of a kitchen of the Ministry of Defence, nor it was believable that the Presidency bulding would host a kitchen!)**

4464. The official CSB Sarajevo report also provides that later that day, at around 5 p.m., another modified air bomb landed, this time on Čobanija street.¹⁴⁹⁸¹ It was also investigated by the CSB Sarajevo team, as well as by Konings and another UNMO.¹⁴⁹⁸² According to

¹⁴⁹⁷¹ P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; Ekrem Suljević, T. 6170–6171 (6 September 2010). Suljević did not calculate the angle of descent as his department did not have the necessary resources and there would be no point given that modified air bombs were propelled by rockets. See Ekrem Suljević, T. 6171 (6 September 2010).

¹⁴⁹⁷² P1276 (Witness statement of Ekrem Suljević dated 9 February 2010), para. 57; P1327 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), pp. 4–5; Ekrem Suljević, T. 6170–6174 (6 September 2010).

¹⁴⁹⁷³ Ekrem Suljević, T. 6172–6174 (6 September 2010).

¹⁴⁹⁷⁴ Ekrem Suljević, T. 6180, 6183–6186 (6 September 2010).

¹⁴⁹⁷⁵ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 47.

¹⁴⁹⁷⁶ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 48.

¹⁴⁹⁷⁷ Ekrem Suljević, T. 6164–6170 (6 September 2010); D552 (Map of Sarajevo marked by Ekrem Suljević). According to the scale on the map of the area in which the incident took place, the Presidency building was around 100 metres away from the incident site. See D617 (Map of Sarajevo).

¹⁴⁹⁷⁸ Ekrem Suljević, T. 6169 (6 September 2010).

¹⁴⁹⁷⁹ KDZ485, T. 8913–8916 (3 November 2010); D860 (Letter from Alija Izetbegović to Haris Silajdžić, 17 April 1995).

¹⁴⁹⁸⁰ D860 (Letter from Alija Izetbegović to Haris Silajdžić, 17 April 1995).

¹⁴⁹⁸¹ P1746 (BiH MUP Report re shelling of Dositejeva street on 16 June 1995), p. 2. See also P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 36–43.

¹⁴⁹⁸² P1953 (Witness statement of Harry Konings dated 11 November 2010), paras. 45–46.

Konings, this bomb came from the same direction in the north as the bomb that struck at Dositejeva street, namely the general northerly direction.¹⁴⁹⁸³

4465. Having analysed the materials relating to this incident, Zečević concluded that the projectile in question was a modified air bomb with three rocket motors and that it was filled with fuel-air explosive as indicated by the damage caused to the scene.¹⁴⁹⁸⁴ He disagreed with Suljević's azimuth, as it meant that the launching site was "deep in the canyon within the Pretis [F]actory" where the terrain would not allow for the launch.¹⁴⁹⁸⁵ He thought that the bomb "most probably" came from the direction of Kobilja Glava, that is, with the azimuth of 315 degrees plus or minus ten degrees (northwest); **(Kobilja Glava was in the Muslim control all the period of war!)** Zečević based this conclusion on the azimuth he had determined for the incident on Čobanija street because—in his view—both bombs were fired from the same position.¹⁴⁹⁸⁶ He then determined the distance to the launch site "on the basis of the ballistic analysis" as being around 5,820 metres, placing it inside the Pretis Factory compound.¹⁴⁹⁸⁷

4466. Anđelković-Lukić thought, based on the destructive effects at the scene and the fact that the UMC was an old brick building, that the bomb in question was a modified FAB-100, with three rocket motors, filled with solid explosive.¹⁴⁹⁸⁸ Subotić agreed, arguing that, contrary to Zečević's opinion, the effects on the scene were not typical of damage caused by fuel-air explosive; in addition no large pieces of the metal casing housing the fuel-air explosive were found on the scene.¹⁴⁹⁸⁹ Subotić also disputed Zečević's azimuth arguing that he failed to explain how he determined it and that he incorrectly dismissed Suljević's azimuth, ignoring the fact that there were other suitable areas for the launch in that direction of fire.¹⁴⁹⁹⁰ She also challenged the distance to the origin of fire determined by Zečević on the basis that it was pure speculation and that it meant that the launch took place right on the confrontation line, which would not have been wise from a security point of view.¹⁴⁹⁹¹ Ultimately, Subotić agreed with the azimuth determined by Suljević, basing her conclusion on the position of the rockets found on the scene.¹⁴⁹⁹²

4467. While accepting that the area where the bomb struck was in the centre of Sarajevo, Subotić argued that the building itself was not in a residential zone, as the BiH Presidency, CSB Sarajevo, the command of the 1st Corps of the ABiH and the command of the 105th

¹⁴⁹⁸³ P1953 (Witness statement of Harry Konings dated 11 November 2010), para. 47. *But see* P1742 (Witness statement of Bogdan Vidović dated 28 September 2010), pp. 36–43 (indicating that there was confusion as to whether the bomb arrived at Čobanija street from northeast or northwest).

¹⁴⁹⁸⁴ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 130.

¹⁴⁹⁸⁵ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 130–131.

¹⁴⁹⁸⁶ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), pp. 131, 135–139 (noting that the distance between Dositejeva and Čobanija streets was some 600 metres).

¹⁴⁹⁸⁷ P2318 (Report by Berko Zečević entitled "The use of modified aircraft bombs during the siege of Sarajevo, 1994–1995"), p. 131.

¹⁴⁹⁸⁸ D2662 (Mirjana Anđelković-Lukić's expert report entitled "Expert Analysis of Documents", 26 July 2012), pp. 26–27.

¹⁴⁹⁸⁹ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 109–110.

¹⁴⁹⁹⁰ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), pp. 112–114 (noting further that Suljević's azimuth means that the trajectory was of the bomb was such that it passed over the "narrowest residential zone in Sarajevo"). *See also* Zorica Subotić, T. 38207 (14 May 2013).

¹⁴⁹⁹¹ D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 114.

¹⁴⁹⁹² D3540 (Zorica Subotić's expert report entitled "The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995", 15 March 2012), p. 114; Zorica Subotić, T. 38204–38205 (14 May 2013).

Mountain Brigade were all in the immediate vicinity of the building.¹⁴⁹⁹³ In addition, she claims that the command of helicopter units of the ABiH was located “where this modified bomb landed”.¹⁴⁹⁹⁴ Thus, according to her, the modified air bomb that struck the UMC was “practically directly at the target”.¹⁴⁹⁹⁵ As for the fragments of the 128 mm Plamen rocket found on the scene, Subotić opined that the “only logical explanation” was that it was in one of the rooms in the UMC, which to her was further confirmation that ABiH officers were in the building at the time of the incident.¹⁴⁹⁹⁶

4468. The Chamber also heard that the ABiH mounted an offensive in mid-June, directed primarily at the SRK positions.¹⁴⁹⁹⁷ When giving evidence about this incident, Dragomir Milošević testified that, on the night between 15 and 16 June, the ABiH forces moved against the SRK from both the inner and outer circles of Sarajevo as part of the beginning of the offensive to “lift the blockade of Sarajevo”.¹⁴⁹⁹⁸ Thus, on 16 June, he reported to Mladić on the situation, including that the SRK had inflicted heavy losses on the enemy.¹⁴⁹⁹⁹ During this conversation, Mladić instructed Milošević to “attack the Turks until the last one is gone” and said “they’re fighting tooth and nail and they should be made to pay for it”.¹⁵⁰⁰⁰ Mladić also ordered Milošević to “one by one, destroy, attack, only military targets” which, according to Milošević, was the way the war in Sarajevo was waged throughout.¹⁵⁰⁰¹ Milošević then vehemently denied that the SRK fired the bombs that landed on Dositejeva and Čobanija

¹⁴⁹⁹³ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 107, 177–178, 183 (stating that the Presidency was 80 metres away from the incident site); Zorica Subotić, T. 38203–38204 (14 May 2013). Asim Džambasović confirmed that the command post of the 1st Corps was located in Danijela Ozme street, at number 7. See Asim Džambasović, T. 15192–15193 (22 June 2011). See D617 (Map of Sarajevo). As for the command of the 105th Brigade, he confirmed that it was located in the Šipad building in Trampina street. See Asim Džambasović, T. 15207, 15210 (22 June 2011); D1377 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.9. According to the scale on the map of the area where the incident occurred, both these locations were around 200 metres away from the incident site.

¹⁴⁹⁹⁴ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 107–108, 183, 188. Relying on the letter from Alija Izetbegović to Haris Silajdžić, namely D860, Subotić also claimed that the Ministry of Defence was “later transferred” to the UMC. The Chamber sees no basis for her claim in the letter cited. Even if true, there is no evidence as to when the transfer happened and whether it was before or after this incident. This, however, did not prevent Subotić from claiming later in her report (on pages 183 and 188) that the Ministry of Defence was located in the UMC building, which was misleading on her part.

¹⁴⁹⁹⁵ Zorica Subotić, T. 38206–38207 (14 May 2013).

¹⁴⁹⁹⁶ D3540 (Zorica Subotić’s expert report entitled “The Use of Modified Aircraft Bombs in the Sarajevo Area in 1994–1995”, 15 March 2012), pp. 108–109.

¹⁴⁹⁹⁷ See para. 3611.

¹⁴⁹⁹⁸ Dragomir Milošević, 32532–32533 (23 January 2013), T. 32737–32740, 32779, 32782 (28 January 2013); D2792 (Order of ABiH 12th Division, 11 June 1995). See also D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 17. *But see* Harry Konings, T. 9363–9369 (7 December 2010) (conceding that there was a lot of fighting in those days but that it took place on the confrontation lines and that it was not a “massive offensive operation”); Savo Simić, T. 30137–30139 (12 November 2012) (testifying that the ABiH launched an attack “on all the defence lines”); KDZ304, T. 10506–10508 (18 January 2011) (private session) (testifying that the offensive was conducted on the confrontation line); D958 (UNPROFOR Weekly Situation Report, 17 June 1995); P2507 (Anthony Banbury’s briefing notes, 1 July 1995), para. 2 (indicating that the attacks were launched along confrontation lines); P1860 (UNMO report, 19 June 1995), p. 2; D890 (ABiH 105th Brigade report on consumption of ammunition, 18 June 1995); P820 (Witness statement of David Harland dated 4 September 2009), paras. 203, 213–214; P896 (UNPROFOR Weekly Situation Report (Sarajevo), 2 July 1995), pp. 1–3. The combat reports before the Chamber confirm Konings’ evidence that the fighting on 15 and 16 June 1995 took place on the confrontation lines. See D2690 (SRK combat report, 15 June 1995); D2691 (SRK combat report, 15 June 1995); D2692 (SRK combat report, 15 June 1995); D2693 (SRK combat report, 25 June 1995); D2415 (102nd Mountain Brigade ABiH combat report, 16 June 1995); D2416 (12th Army Division ABiH combat report, 16 June 1995); D186 (111th Brigade ABiH combat report, 16 June 1995); D187 (115th Mountain Brigade ABiH combat report, 16 June 1995).

¹⁴⁹⁹⁹ P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995); Dragomir Milošević, T. 32737–32740 (28 January 2013).

¹⁵⁰⁰⁰ P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995).

¹⁵⁰⁰¹ P5642 (Intercept of conversation between Dragomir Milošević, unidentified male, and Ratko Mladić, 16 June 1995); Dragomir Milošević, T. 32737–32740 (28 January 2013).

streets.¹⁵⁰⁰² He also testified that the command of the 1st Corps of the ABiH was in the vicinity of the incident site, while a helicopter squadron crew had residence at the incident site.¹⁵⁰⁰³

4469. In another intercepted conversation of 16 June 1995, Prstojević told Rade Ristić, another member of the Ilidža Crisis Staff,¹⁵⁰⁰⁴ that there was an attack by the Muslim side in Nedžarići but that it was successfully deflected, and that his side “pounded” the “Turks” and sent a “krmača” or two to them, to which Ristić responded: “we need to shake them up a bit by all means”.¹⁵⁰⁰⁵ **(Big deal! It was some ten km far from Dositejeva site. Neither of the interlocutors commanded any unit, it was just a civilian chatting!)**

4470. The 3rd Sarajevo Infantry Brigade of the SRK, which was created by merging the Vogošća, Rajlovac, and Koševo Brigades,¹⁵⁰⁰⁶ was located in the northwestern part of the Sarajevo front.¹⁵⁰⁰⁷ Zoran Kovačević, the Commander of the Mixed Artillery Battalion of the 3rd Sarajevo Brigade at the time of the incident,¹⁵⁰⁰⁸ testified that the brigade’s command post was in Vogošća while its firing positions were located in Blagovac and Krivoglavci and orientated towards the city and Žuč.¹⁵⁰⁰⁹ Kovačević testified that no one from Pretis or from his brigade launched the bomb that struck the UMC, explaining that he would have heard the launch had it happened.¹⁵⁰¹⁰ Kovačević did confirm, however, that his brigade probably had an air bomb launcher.¹⁵⁰¹¹ This is corroborated by an SRK document which shows that Milošević reported to the VRS Main Staff on 15 June 1995 that four aerial bomb launchers were with the brigades in the northwestern part of the front.¹⁵⁰¹²

¹⁵⁰⁰² Dragomir Milošević, T. 32779–32780 (28 January 2013).

¹⁵⁰⁰³ Dragomir Milošević, T. 32780 (28 January 2013). *But see* Ekrem Suljević, T. 6165 (6 September 2010) (testifying that he did not even know there was a helicopter squadron in Sarajevo); David Harland, T. 2351 (11 May 2010) (testifying that the ABiH did not have any helicopters in Sarajevo).

¹⁵⁰⁰⁴ D1193 (Ilidža Crisis Staff members, 10 April 1992).

¹⁵⁰⁰⁵ P5638 (Intercept of conversation between Neđeljko Prstojević and Radomir Ristić, 16 June 1995). The Chamber notes that during his testimony, Prstojević denied that the term “krmača” was a reference to a modified air bomb, and claimed that it was also used to refer to artillery weapons of higher calibre. Having been confronted with his interview with the Prosecution given in 2006 where he discussed “krmača” bombs and their imprecise nature—which in light of all the evidence about these bombs clearly indicates that he was discussing modified air bombs—Prstojević rejected the 2006 interview, on the basis that it was wrongly interpreted. As noted earlier, the Chamber has reviewed the audio portion of the relevant interview and found that it was accurately interpreted and transcribed. Accordingly, the Chamber does not accept Prstojević’s evidence on this matter and is convinced that in this intercepted conversation with Ristić he was referring to modified air bombs. *See* Neđeljko Prstojević, T. 13570–13577 (17 March 2011); P2516 (Excerpt from transcript of Neđeljko Prstojević’s interview, with audio); P2517 (Excerpt from transcript of Neđeljko Prstojević’s interview, with audio).

¹⁵⁰⁰⁶ *See* fn. 542. *See also* Miladin Trifunović, T. 30443 (27 November 2012).

¹⁵⁰⁰⁷ Zoran Kovačević, T. 30612–30613 (28 November 2012); Stanislav Galić, T. 37539 (22 April 2013); Dragomir Milošević, T. 32569–32570 (23 January 2013).

¹⁵⁰⁰⁸ D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 3. Before that, Kovačević was a soldier in the Vogošća Brigade, and also served in the 1st KK. *See* D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 2.

¹⁵⁰⁰⁹ D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), paras. 4–5; Zoran Kovačević, T. 30593–30595 (28 November 2012); D2486 (Map of Sarajevo marked by Zoran Kovačević); D2487 (Map of Sarajevo marked by Zoran Kovačević); D2488 (Map of Sarajevo marked by Zoran Kovačević). *See also* D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), paras. 12–13; D2445 (Map of Sarajevo marked by Miladin Trifunović); D2446 (Map of Sarajevo marked by Miladin Trifunović); Miladin Trifunović, T. 30378–30387 (15 November 2012).

¹⁵⁰¹⁰ D2484 (Witness statement of Zoran Kovačević dated 25 November 2012), para. 23; Zoran Kovačević, T. 30617 (28 November 2012).

¹⁵⁰¹¹ Zoran Kovačević, T. 30613–30615 (28 November 2012).

¹⁵⁰¹² P1283 (SRK report to VRS Main Staff re aircraft weaponry, 15 June 1995). *See also* P1300 (SRK Order, 11 July 1995) and P1314 (Request from 3rd Sarajevo Infantry Brigade to SRK, 25 July 1995) (both indicating that the 3rd Sarajevo Infantry Brigade had modified air bombs in its arsenal).

4471. Miladin Trifunović, a former Commander of the Vogošća Brigade and a Director of Transportation at Pretis at the time of the incident,¹⁵⁰¹³ testified that no modified air bomb was ever launched from Pretis or from the brigade's zone of responsibility.¹⁵⁰¹⁴ He stated that he was within the perimeter of Pretis at the time and did not hear anything that would resemble a modified air bomb launch.¹⁵⁰¹⁵

4472. In addition to the evidence and the adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts: (i) on 16 June 1995, a modified air bomb exploded at the UMC;¹⁵⁰¹⁶ (ii) three or four civilians were injured as a result of the explosion and some surrounding buildings were destroyed;¹⁵⁰¹⁷ and (iii) the modified air bomb was fired from outside the confrontation lines and within SRK-held territory and was launched by members of the SRK.¹⁵⁰¹⁸

4473. Having considered the evidence and the adjudicated facts outlined above, the Chamber is convinced that a modified air bomb with three rocket motors struck the UMC on 16 June 1995. While Zečević thought that the bomb was a fuel-air bomb (and thus a FAB-250), Subotić and Anđelković-Lukić thought it was a FAB-100. Suljević thought that it was either a 100- or a 250-kilogram modified air bomb. Given that the UMC was indeed made of brick as seen in the photographs of the damage, and given that both FAB-100 and FAB-250 bombs could be mounted with three rocket motors, the Chamber is unable to determine whether a FAB-100 or FAB-250 bomb was used in this incident. The Chamber is also not convinced that the bomb in question was filled with fuel-air explosive as the damage could have also been caused by a bomb filled with solid charge, as argued by Anđelković-Lukić. Ultimately, however, there is no doubt that the projectile in question was a highly destructive modified air bomb, as indicated by the damage caused by the explosion and the fragments gathered at the scene.

4474. Relying on the evidence and Adjudicated Fact 3059, the Chamber is further satisfied that the explosion resulted in the wounding of three civilians who were not taking direct part in hostilities at the time of the incident.¹⁵⁰¹⁹ **(#Sarajevo was so much militarized#, that there was no a foot of the territory that was only civilian!)**

4475. In terms of the direction of fire, the Chamber is satisfied that it came from the northwest. While there is some discrepancy between Zečević's and Suljević's azimuths, ultimately the Chamber is convinced beyond reasonable doubt that the modified air bomb was fired from SRK-held territory. This is confirmed by the intercepted conversation on the day of the incident in which Prstojević told Ristić that they had sent over a "krmača" or two to the Bosnian Muslim side. **(This conversation couldn't pertain to this incident, since it couldn't be fired from any Prstojevic's area, and may have pertained to something else. Besside that, none of the two interlocutors was a military person, and couldn't participate An there was no any evidence that they had been talking about "sending**

¹⁵⁰¹³ D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 1.
¹⁵⁰¹⁴ D2444 (Witness statement of Miladin Trifunović dated 11 November 2012), para. 22.
¹⁵⁰¹⁵ Miladin Trifunović, T. 30442–30443 (27 November 2012).
¹⁵⁰¹⁶ See Adjudicated Fact 3058.
¹⁵⁰¹⁷ See Adjudicated Fact 3059.
¹⁵⁰¹⁸ See Adjudicated Fact 3060.
¹⁵⁰¹⁹ See *also* para. 4976.

krma~a towards the city! Konings was also convinced that the bomb came from the SRK side of the confrontation line as the launch of a modified air bomb would have been heard had it come from within the city. **(This is not correct for a several reasons, but particularly since the outgoing sound is not so loud to be heard if it was from the city itself. As a matter of fact, there was no any explosion, but only a quiet and low sound of activation of the rocket motors (reactive fuel). Further, many weapons of big calibre that fired at the city ABiH had on the outer ring, such as Igman, but also in other areas along the several hundred kilometres long confrontation line on the outer ring!)** Furthermore, as noted above,¹⁵⁰²⁰ the SRK positions were located in the established direction of fire, the range at which modified air bombs have to be fired is long, thus placing the origin of fire for this incident squarely within the SRK-held territory, and only the SRK had modified air bombs in Sarajevo.

4476. With respect to the Accused's argument that the bomb landed in a non-residential zone, and on a legitimate military target, the Chamber first recalls that Dositejeva street is in the centre of Sarajevo, not far from Mis Irbina street, and is thus in an area brimming with civilian objects and the civilian population. The Chamber also notes that, aside from the evidence given by Milošević and Subotić, it has heard no other evidence about members of a helicopter squadron residing in the UMC at the time of the incident, or even about the helicopter squadron as such. **Neither the Chamber had heard any opposite evidence, because nobody contested it. Why all of the Defence witnesses should confirm it? Since the two mentioned testimonies hadn't been refuted, it should be enough!** Further, the Chamber found both Subotić and Milošević to be lacking in credibility, as they both tried to minimise the damage caused by the SRK's activities in Sarajevo and were exceedingly biased during their testimony. Thus, the Chamber is not persuaded, without other corroborating and credible evidence, that a helicopter squadron was in the UMC building at the time of the incident. Furthermore, the Chamber has already dismissed Subotić's claim that parts of the Ministry of Defence were in the building at the time and, as indicated earlier, found her disingenuous on this issue.¹⁵⁰²¹ **(Why Subotic and Milosevic would try to minimise the damage caused by the SRK? Milosevic had been finally sentenced and his testimony couldn't affect his sentence, and Subotic has her own professional dignity. None of the Defence witnesses had been interested in the outcome and hadn't been biased as it was Zecevic. The Chamber hadn't been fair towards any of the Defence witnesses!)**

4477. As for the commands of the 1st Corps and the 105th Brigade of the ABiH, the Chamber finds that they were located in Danijela Ozme and Trampina streets respectively, as testified to by Džambasović. However, as noted earlier, both those locations were around 200 metres away from the incident site.¹⁵⁰²² Similarly, the BiH Presidency was some 100 metres away from the incident site. Assuming any one of these locations was indeed the intended target of the bomb that struck the UMC, it was missed by the SRK by around 200 and 100 metres respectively. Yet, when another modified air bomb was launched later in the day, it landed in Čobanija street, which is even farther away from these locations, while another landed in Alipašino Polje.¹⁵⁰²³ Accordingly, the Chamber does not consider these locations to have been the intended targets. Even if they

¹⁵⁰²⁰ See para. 4454.

¹⁵⁰²¹ See fn. 14994.

¹⁵⁰²² See fn. 14993.

¹⁵⁰²³ See discussion relating to Scheduled Incident G.15.

were, the fact that they were not hit but were, rather, missed by large margins simply shows the inherent inaccuracy of modified air bombs. **(But #no any criminal intention was proven#! And why this Accused would be responsible even if it was as the Prosecution wanted to present? Certainly, no army would waste such an expensive device for nothing!)**

4478. While there may have been some fighting on the day, given that ABiH was in the middle of the offensive in those days, the Chamber is persuaded by Konings who explained that there was a lot of fighting at the time but that it took place on the confrontation lines; as noted earlier, his evidence that the fighting took place on the confrontation lines is confirmed by various combat reports of both the SRK and the ABiH.¹⁵⁰²⁴

(Then, how come the ABiH was shelling the SRK territory far from the confrontation lines? As it can be seen from the evidence, the ABiH used mortars and howitzers against the dept of the Serb Sarajevo, and the See D850, p. 1:

UNMO SARAJEVO. THE COMPLETE CLAMPDOWN ON SECURITY IN THE AREA OF ABiH OPERATIONS IS NEW AND UNMO WERE UNABLE TO GET FIRST HAND INFORMATION ON THE EVENTS OF 16 JUN. THERE ARE UNCONFIRMED REPORTS OF ABiH TERRITORIAL GAINS, FOR DETAIL READ UNMO SARAJEVO REPORT.

further, the same D850, p. 9:

-BETWEEN 160600B-161300B JUN 95 THERE HAS BEEN AT LEAST 650 EXPLOSIONS. HOWEVER, IT SHOULD BE NOTED THAT AT TIMES, THE INTENSITY OF FIRE HAS BEEN TOO HIGH TO ACCURATELY RECORD AND THERE HAVE BEEN MANY EXPLOSIONS HEARD IN THE FAR DISTANCE (NORTH) NOT RECORDED NUMERICALLY, LOCATIONS OF MOST INTENSE ACTIVITY INCLUDE RAJLOVAC (BP8560) AROUND TO POLJINE (BP9163), SHARPSTONE (BP9562) AROUND TO DEBELO BRDO (BP9659).

All the places mentioned as the places of explosion were #under the Serb control#, which meant that the ABiH shelled the Serb parts of Sarajevo. Further, the same D850, p.13:

- BiH HAVE TAKEN THE UN-OP MOJMILO/BP886571, MANNED BY RUSBAT, SECTOR TRIED TO ARRANGE A LOCAL CEASEFIRE TO GET THE RUSBAT SOLDIERS OUT BUT BiH DID NOT AGREE. THE RUSBAT PERSONNEL ARE BELIEVED TO BE STILL AT THE OP LOCATION. NOT UNMO CONFIRMED.

Nothing dramatic, because the villains were the Muslims, and victims were the Russians!

Further, the D850, p. 13:

- SECTOR OPS SJV BELIEVE THE ABiH HAVE MADE TERRITORIAL GAINS IN THE AREA OF TINOVO 828 FEATURE (BP748550), D. JOSANICA (BP860635), AND CRNIVRH 1026 FEATURE / DEBELO BRDO 962 FEATURE (BP8969). INFORMATION HAS ALSO BEEN PROVIDED OF ABiH SUCCESS IN THE POLINJE AREA (BP906646), HOWEVER, THIS REQUIRES FURTHER CONFIRMATION.

Therefore, the Serbs had been under a general pressure of the “international community” including the UN, and NATO, employed by the UN against the Serbs – while the Muslims exploited this pressure to advance on the battlefield. And this Court is criminalizing an ultimate defence of the Serbs! This is rather an orcherstrated “international injustice”#!.

- AT 161330B JUN 95 UNMO LO BiH SIDE REPORTED THE FOLLOWING INFORMATION FROM 1ST CORPS ABiH SOURCES:

- AT 161020B JUN 95 ONE LARGE IMPACT AT GRID BP 924593 NEAR THE PRESIDENCY AND THE INTERNATIONAL RESCUE CENTRE (IRC) EXTENSIVELY DAMAGED THREE BUILDINGS AND CAUSED FOUR INJURIES (TWO CIVILIAN PRESIDENCY STAFF AND TWO ABiH PERSONNEL). THERE WERE NO FATALITIES. THERE IS SPECULATION THAT THIS IMPACT COULD HAVE BEEN AN IMPROVISED AIRCRAFT BOMB WEAPON. NOT UNMO CONFIRMED.

The UN report depicts only four wounded, two of whom were the ABiH personnel, and the vicinity of the Presidency. The IRC may have been a mild surname of the helicopter basis! Further:

- THREE IMPACTS (161350B, 161358B AND 161535B) VERY CLOSE TO SECTOR SARAJEVO HQ, PTT BUILDING (BP865584), CAUSED LIMITED DAMAGE TO WINDOWS IN THE UPPER FLOORS AND NO CASUALTIES. IT SHOULD BE EMPHASISED THAT THERE HAD BEEN OUTGOING MORTAR ROUNDS AND HEAVY MACHINE GUN FIRE FROM POSITIONS AROUND THE BUILDING ALL DAY. IT IS NOT BELIEVED THAT THE HQ WAS THE TARGET.

“All day” of firing from positions around the UN HQ building, a usual practice to denigrate the Serbs, who were restrained as much as possible. Further: D850, p.14:

- AT 161200B 1 EXPL, NO CASUALTIES. NOT UNMO CFM. AGAIN IT SHOULD BE EMPHASISED THAT OUTGOING ROUNDS HAD BEEN OBSERVED IN THE AREA OF KOSEVO HOSPITAL.

So, even when the UN observers reported correctly, the Chamber didn't pay any attention to it, if it was correct towards the Serb side! In spite of such a picturesque reports of the United Nations about: 1) A horrifying Muslim offensive on the entire zone of the SRK, both on the inner and outer ring; 2) the territorial gains of the ABiH facilitated by the international help, including the NATO bombardment; 3) abuse of the UN HQ building (PTT) for firing against the Serbs; 4) abuse of the Kosevo Hospital for firing from mortars; 5) the fact that within seven hours (6:00 to 13:00) had been 630 shells fired at the Serbs, THE CHAMBER REMAINED BLIND, accepting that there may be some Muslim attacks, but that the Serbs didn't have any reason to fire against the firing positions that fired against the Serb civilian settlements!!!

Further, the UMC was in the centre of Sarajevo and not on the confrontation line. Accordingly, the Chamber does not consider that the modified air bomb that landed in Dositejeva street was aimed at neutralising a specific military target. Rather, the Chamber is convinced beyond reasonable doubt that it was launched into a generally residential area in retaliation for the attacks mounted by the ABiH on the confrontation lines. This is confirmed by Mladić's instruction to Milošević that the Bosnian Muslim side should be made to pay for fighting. Further, given the inaccuracy of the modified air bombs and recalling their destructive power, the Chamber is of the view that the SRK soldiers launching this modified air bomb into the central area of Sarajevo should have been aware that such an attack would cause great damage to civilian objects and result in civilian casualties. **((Prvo, UMC nije bio cilj, nego helikopterska baza, zamaskirana “humanitarnim naslovom” Medjunarodni centar za**

spasavanje. Ti isti helikopteri su tokom cijelog rata slijetali u @epu sa tovatima oru`ja I municije za “za{ti}ene zone” @epu I Srebrenicu. This is also not the only inference. Had it been an intention to retaliate towards a residential area, there were so many more suitable locations, far from those facilities in the immediate vicinity of the site of impact. There is no any limitation provided in the international law of war that a retaliatory fire must be directed only to a firing place. There is a whole scale of approved moves, from disabling any military facility to lowering the enemy’s morale and will to continue to fight. See: the SFRJ law on use of the armed forces, see: the NATO rules and regulations