

1. Hakije Turajlića, Dobrinja, 12 July 1993 (Scheduled Incident G.5)

4088. The Indictment alleges that on 12 July 1993, an 82 mm mortar shell was fired at about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakije Turajlića (previously Aleja Branka Bujića¹³⁶³³ then Spasenije Cane Babović), in Dobrinja, which was a residential settlement.¹³⁶³⁴ The Indictment further alleges that the origin of fire was VRS/SRK-held territory approximately to the west-northwest and that 13 people were killed and 14 were wounded.¹³⁶³⁵ In its Final Brief, the Prosecution submits that the shell exploded at approximately 3 p.m. on a group of approximately 50 to 60 civilians queuing to gather water from a well, killing more than ten and wounding more than ten others.¹³⁶³⁶ The Accused acknowledges that on 12 July 1993 an 82 mm calibre shell exploded in the settlement of Dobrinja leaving 27 casualties.¹³⁶³⁷ He argues, however, that the fire originated from the north-northeast area controlled by ABiH forces.¹³⁶³⁸ He also submits that the incident occurred about 100 metres from an ABiH command post and that no orders were issued to SRK forces during this period to open fire at this location.¹³⁶³⁹

4089. The Chamber has taken judicial notice of the fact that due to a water cut-off in Dobrinja, inhabitants of “C5”, a settlement in Dobrinja, replenished their water supply at well-known emergency water points,¹³⁶⁴⁰ one of which was located in Hakije Turajlića street.¹³⁶⁴¹ In the middle of the afternoon of 12 July 1993, a fairly clear day until 5 p.m., there were 100 or more canisters in that street.¹³⁶⁴² People, mostly elderly, were waiting for their turn to enter into the front yard of the house through an iron gate guarded by Enver Taslaman.¹³⁶⁴³ Rasim Mehonić, a retiree who had been queuing with his wife and two daughters since dawn, was crouched next to Taslaman, waiting for his turn to collect water when, at approximately 3 p.m., a mortar shell exploded,¹³⁶⁴⁴ and Mehonić felt the left side of his body hit by shrapnel.¹³⁶⁴⁵ Next to Mehonić, Taslaman was hit on the arm and the left leg.¹³⁶⁴⁶ The area around the well was then repeatedly shelled.¹³⁶⁴⁷

¹³⁶³³ Indictment, Scheduled Incident G.5. While the Indictment provides that the street was called “Aleja Branka Bulića” at the time of the incident, the documentation received by the Chamber refers to “Aleja Branka Bujića”, which is the correct spelling of that street’s name.

¹³⁶³⁴ Indictment, Scheduled Incident G.5.

¹³⁶³⁵ Indictment, Scheduled Incident G.5. *See also* Prosecution Final Brief, Appendix C, para. 51.

¹³⁶³⁶ Prosecution Final Brief, Appendix C, para. 51.

¹³⁶³⁷ Defence Final Brief, para. 2013.

¹³⁶³⁸ Defence Final Brief, para. 2015.

¹³⁶³⁹ Defence Final Brief, paras. 2013, 2017–2019.

¹³⁶⁴⁰ *See* Adjudicated Fact 271. Hajir testified that civilians in Dobrinja were deliberately targeted while waiting in line for water at those points. *See* Youseff Hajir, T. 8853 (2 November 2010).

¹³⁶⁴¹ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 2.

¹³⁶⁴² *See* Adjudicated Fact 272.

¹³⁶⁴³ *See* Adjudicated Fact 273.

¹³⁶⁴⁴ *See* Adjudicated Fact 274.

¹³⁶⁴⁵ *See* Adjudicated Fact 275.

¹³⁶⁴⁶ Adjudicated Fact 276.

¹³⁶⁴⁷ *See* Adjudicated Fact 281.

4070. According to the report on this incident prepared by CSB Sarajevo, on 12 July 1993, at around 3:27 p.m., in front of a family house at Aleja B. Bujića 155 in Dobrinja,¹³⁶⁴⁸ a shell impacted and exploded against the body of Zorka Simić, who was, together with around 30 others, lining up to get water.¹³⁶⁴⁹ The report also provides that the CSB Sarajevo investigation team, including the ballistics expert Hamdija Čavčić, was dispatched to the scene some two hours after the incident.¹³⁶⁵⁰ The team eventually found that the explosion killed 12 people, including Simić, while 15 others were injured.¹³⁶⁵¹ The report notes that the people queuing for water were warned by the police just before the incident that they should not stay at this location as the frontline was only 200 metres away.¹³⁶⁵²

4071. A shell stabiliser was found at the scene of the explosion, next to Simić's body, which Čavčić determined belonged to an 82 mm calibre mortar shell.¹³⁶⁵³ Čavčić also concluded that the shell exploded some distance from the ground, "most probably upon impact with person" as there was no explosion crater at the scene, only the heavily damaged body.¹³⁶⁵⁴ Further, he thought that the shell had been fired from the northwest-west, that is, from the direction of Nedžarići.¹³⁶⁵⁵ According to the report, Čavčić made this conclusion on the basis of (i) traces of powder burns and mechanical damage from mortar shell fragments evident on the fence occupying the eastern side of the street; (ii) similar traces he observed on the rear seat of a green Škoda car, which was parked close to this section of the fence, facing eastwards; and (iii) the fact that the pavement to the northwest of the damaged fence showed mechanical damage forming an irregular arc towards the northwest-west.¹³⁶⁵⁶

4072. Members of the UNPROFOR also conducted an investigation at the site and prepared a report, concluding that the projectile was an 82 mm mortar shell, that it was highly probable that it came from "the Serbian party", and that it "could have been shot from corridor Nedžarići-Ilidža nord."¹³⁶⁵⁷ The UNPROFOR report also noted that "the absence of a characteristic crater and furrow" and the spray pattern of damage to the asphalt showed the direction of 5100 mils (northwest-west).¹³⁶⁵⁸

4073. Higgs visited the incident site and noted that, "due to the lapse of time and the fact that the mortar hit a person before striking the ground little or no evidence still exists at this

¹³⁶⁴⁸ The official CSB Sarajevo report refers to the site of the incident as being in front of a family house at Aleja B. Bujića 155, across the street from a block of flats at S.C. Babović street Number 6, in Dobrinja V. Later, it describes the location as "B. Bujića 6", and then "155 Aleja B Bujića across the street from the entrance to apartment house at 6, Spasenija-Cana Babović street". The report of the forensic technician refers to Spasenije-Cane Babović next to number 6, while the report of the ballistics expert refers to Spasenije Cane Babović street, next to 115. See P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court pp. 2–6. Given that the incident took place at an intersection, the Chamber does not consider these discrepancies as to the actual address where it happened to have any bearing on the CSB Sarajevo's analysis and conclusions.

¹³⁶⁴⁹ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

¹³⁶⁵⁰ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

¹³⁶⁵¹ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court pp. 3–4.

¹³⁶⁵² P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 4.

¹³⁶⁵³ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

¹³⁶⁵⁴ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

¹³⁶⁵⁵ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

¹³⁶⁵⁶ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 6.

¹³⁶⁵⁷ P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court p. 3.

¹³⁶⁵⁸ P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court pp. 2–3, 5.

site.”¹³⁶⁵⁹ **(But, hitting a person #was a possibility, not an established fact#! Anyway, the Chamber concluded that the evidence obtained by Higs and his analysis of the other person findings has a limited value, and thus prevented the Defence to challenge higs’s testimony further, see T.5943-44: JUDGE KWON: This is our ruling: The Chamber has considered the arguments put forward by Mr. Robinson as to why the underlying investigatory reports and other material reviewed by Mr. Higgs, in reaching his conclusions and preparing his report, should be admitted as source documents rather than for all purposes, as the Prosecution wishes. However, as this underlying material was referred to by the witness in the course of his testimony, the situation differs from that of Mr. Philipps and the source material that was only referenced in his expert report and not discussed in the courtroom with him. Having said that, as we indicated in our ruling on the time for cross-examination of Mr. Higgs, the Chamber is of the view that his evidence is of a limited nature, as he could only comment, on the basis of his expertise, on the investigations conducted by others and the conclusions reached by them. This has an effect on the weight which the Chamber can ascribe to those underlying reports and other materials, and, indeed, there would need to be further evidence brought to support them before the Chamber could reach conclusions based thereon. As he’s not the author of these underlying reports, additional time to cross-examine this witness about them would be of limited purpose, and the Chamber remains of the view that three hours is sufficient. With these comments, the Chamber will admit the documents commented upon by the witness in the course of his testimony and upon which he based his expert report. So, this #ruling of the Chamber limits all the Higgs interpretations#!)**

Thus, he commented mostly on the forensic report prepared by CSB Sarajevo and agreed with the findings made therein, concluding that the calibre of the weapon fired was an 82 mm mortar from the direction of west northwest.¹³⁶⁶⁰ He noted that the methodology used by CSB Sarajevo, as mentioned in the official report, was appropriate but that there would be a slightly larger margin of error because there was no crater to examine so that only the “approximate direction” from which the round came could be determined, as was indeed done.¹³⁶⁶¹ Higgs also opined that, as this area was an emergency water supply, it would be “fair to assume” that it was well known and “recorded”¹³⁶⁶² that it would be full of civilians.¹³⁶⁶³ Given that only one shell was fired, which is not something that would happen if the aim was to neutralise a large area or a military target, Higgs concluded that “it is most probable that harassment was intended on the people at that location.”¹³⁶⁶⁴ The possibility that there was a sniper operating in the area approximately 200 metres away did not affect his opinion as the round would have been too inaccurate to target the sniper.¹³⁶⁶⁵ Higgs also commented on the discovery of the shell’s tail fin next to the body of one of the victims,

¹³⁶⁵⁹ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8; Richard Higgs, T. 5994 (19 August 2010). Hogan also visited the site in 2009 and took GPS readings of the location where the shell impacted. See Barry Hogan, T. 11205–11206 (3 February 2011); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents).

¹³⁶⁶⁰ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8; Richard Higgs, T. 5994 (19 August 2010).

¹³⁶⁶¹ Richard Higgs, T. 5920 (18 August 2010); P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9; P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993).

¹³⁶⁶² On the issue of “prerecorded” targets, see Richard Higgs, T. 5918 (18 August 2010).

¹³⁶⁶³ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 8.

¹³⁶⁶⁴ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 8–9.

¹³⁶⁶⁵ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

stating that “the body would have probably stopped the fins from being blown away any further”.¹³⁶⁶⁶ **(#Too many peculiarities and “probabilities”# and a reasonable chamber would require more certainty to be able to sentence some accused! A separate question is: what all of it does have to do with the President?)**

4074. When asked by the Accused to explain the slight difference between the directions of fire as determined by the CSB Sarajevo and UNPROFOR teams, he said that only general bearings could be determined due to the type of crater on the scene.¹³⁶⁶⁷ Higgs marked two contemporaneous photographs of the scene taken by CSB Sarajevo with the evident shrapnel marks, pieces of debris, and also the explosion’s likely direction of force.¹³⁶⁶⁸ While doing so, Higgs opined that the shell exploded very close to the Škoda, slightly to the rear of the car, but that a definite angle of the direction of the force was impossible to determine on the basis of the photograph, including whether the force came from above or below the car.¹³⁶⁶⁹ **(#Another peculiarity!!!)**

4075. Zorica Subotić first visited the site of the incident in 2010.¹³⁶⁷⁰ She testified that in her opinion the shell had come from the north or northeast, an area under ABiH control, rather than the west or northwest.¹³⁶⁷¹ In coming to this conclusion, Subotić used the azimuth of the street, which she calculated using Google Earth, as well as the central-axis method that she applied to the pattern of the damage on the pavement shown in the photographs taken by CSB Sarajevo.¹³⁶⁷² She argued that Čavčić misinterpreted the fragment marks that were left on the asphalt and also on the Škoda car, and that the true direction bisecting these marks actually slanted slightly eastward in relation to the pavement.¹³⁶⁷³ In addition, according to Subotić, the analysis undertaken by Čavčić to determine the centre of the explosion was done using an unacceptable “imaginary lines” methodology.¹³⁶⁷⁴ Subotić also observed that Simić’s remains

¹³⁶⁶⁶ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

¹³⁶⁶⁷ Richard Higgs, T. 5995–5996, 6028 (19 August 2010).

¹³⁶⁶⁸ D549 (Photograph marked by Richard Higgs); D550 (Photograph marked by Richard Higgs). Higgs stated that he did not use photographs as part of his analysis because of their poor quality and because some of the markings and the debris may not be visible. See Richard Higgs, T. 5996–5998, 6001, 6003 (19 August 2010).

¹³⁶⁶⁹ Higgs eventually stated, however, that the boot of the car did give the impression that some force pushed down on the boot in the right hand corner, which “may indicate that the blast could have been slightly higher than the level of the boot of the car”. See Richard Higgs, T. 5998–5999 (19 August 2010); D549 (Photograph marked by Richard Higgs).

¹³⁶⁷⁰ Zorica Subotić, T. 38363 (15 May 2013).

¹³⁶⁷¹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 89, 91, 158; Zorica Subotić, T. 38367 (15 May 2013).

¹³⁶⁷² D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 81–83, 85, Figure 46; Zorica Subotić, T. 38255–38256 (14 May 2013). Subotić conducted this analysis by marking the traces of damage visible on a photograph of the scene taken by the CSB Sarajevo team. On cross-examination, she denied that she was at a disadvantage compared to Čavčić who conducted a *de visu* examination. See Zorica Subotić, T. 38357–38363, 38374–38379 (15 May 2013). When it was put to her that she marked more shrapnel marks at the scene (as seen on her photograph of the scene taken in 2010) than she did in the contemporaneous CSB Sarajevo photograph which she had used to determine the direction of fire, Subotić responded that she could see all the marks in the latter but only marked those necessary to show an approximate trajectory, the trajectory that was partly based on the damage to the car. See Zorica Subotić, T. 38380–38384 (15 May 2013), T. 38627–38630 (22 May 2013); P6319 (Photograph showing shrapnel marks marked by Zorica Subotić); D3557 (Photograph of a street marked by Zorica Subotić).

¹³⁶⁷³ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 83. In relation to the Škoda, Subotić testified that the deformation to the rear of the vehicle seen in photographs and video footage indicates that the shell exploded from a direction to the east of north. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 85–88, 92, 158; Zorica Subotić, T. 38256–38258, 38267 (14 May 2013), T. 38377 (15 May 2013). When put to her on cross-examination that the video footage was of such low quality that it was impossible to determine all those things from it, Subotić responded that she viewed it in the context of all the evidence. See Zorica Subotić, T. 38396–38399 (16 May 2013); P6320 (Excerpt from video footage re shelling of Hakiye Turajlića on 12 July 1993).

¹³⁶⁷⁴ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 84–85. The Chamber notes that this methodology is not outlined in Čavčić’s report but rather in his statement in the *Galić* case, which is not in

were located beside the rear right-hand side of a Škoda car, which indicated to her that the shell had come from the direction slightly east of the north—had the shell come from the direction as determined by Čavčić, the force of the blast would have pushed the victim either onto the car or to its left hand side.¹³⁶⁷⁵ Finally, Subotić also noted that in his report Čavčić stated that the stabiliser was found next to the victim's body whereas in the video footage of the aftermath of the incident it can be seen next to the rear left tyre of the Škoda.¹³⁶⁷⁶ According to Subotić, had the shell come from the west or northwest as determined by CSB Sarajevo, the stabiliser would have been on the right hand side of the car, on Simić's body.¹³⁶⁷⁷

4076. In relation to the UNPROFOR investigation, Subotić argued that their conclusions, like those of CSB Sarajevo, ran counter to evidence at the scene.¹³⁶⁷⁸ In addition, she expressed concern that the UNPROFOR investigators relied on information given to them by CSB Sarajevo and therefore did not run an independent investigation.¹³⁶⁷⁹ **(#The UN personnel already admitted that they had never made any proper investigation, particularly not in a criminal justice sense!#)**

4077. Subotić also referred to a number of witness testimonies from the *Galić* case in relation to the disposition of forces on 12 July 1993, arguing that the scene of the incident was about 120 metres from an ABiH command post.¹³⁶⁸⁰ She also argued that the large numbers

evidence in this case. **But, taking it into account, Subotic made it a part of this case. Why it wouldn't be a case, since it contradicted to what was ment on the basis of his report? Deronjic, for Srebrenica, is widely used in this case, although not being in this case! What a witness said in any case is subject to the Defence challenge!).** In his statement, as quoted in Subotić's report, Čavčić explicitly says that the team managed to determine the direction of fire based on the damage on the asphalt which indicated where the centre of explosion may have been. It is then that he drew imaginary lines from the damaged parts of the asphalt and noticed that they all converged on the victim's body.

¹³⁶⁷⁵ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 82–83, 86.

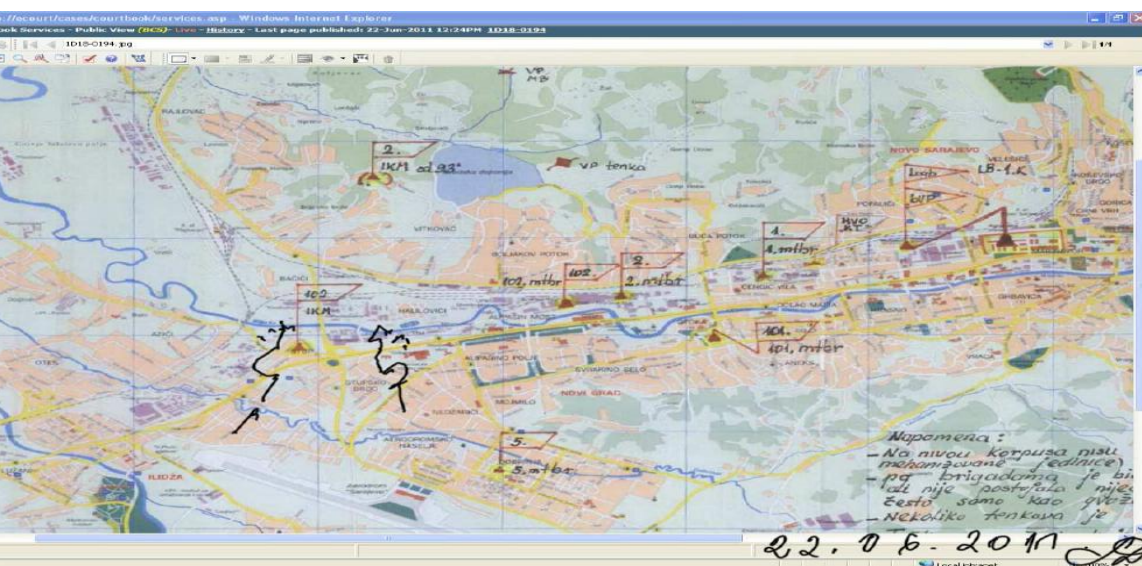
¹³⁶⁷⁶ P6320 (Excerpt from video footage re shelling of Hakije Turajlića on 12 July 1993); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 88–89, Figure 51.

¹³⁶⁷⁷ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 88; Zorica Subotić, T. 38267 (14 May 2013). In cross-examination, when it was put to her that the stabiliser could have easily ricocheted off an object after the explosion and/or could have been moved by people in the immediate aftermath of the incident, Subotić accepted that this was possible but explained that the stabiliser was just one piece of the puzzle in addition to the damage caused by the shell, which pointed her to the incoming trajectory of north or northeast. See Zorica Subotić, T. 38399–38406 (16 May 2013).

¹³⁶⁷⁸ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 81, 83, 85, 92, 158.

¹³⁶⁷⁹ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 81, 158. The Chamber notes that the UNPROFOR report provides that an 82 mm mortar shell fin found at the site was given to the UN officers by local police officials. See P1442 (UNPROFOR report re shelling of Dobrinja on 12 July 1993), e-court, p. 2. In cross-examination, Subotić conceded that she did not have access to the testimony of the UNPROFOR officer who, according to the Prosecution, testified in the *Galić* case in relation to the conduct of this investigation and who explained that the direction of fire was arrived at independently by two separate members of the UNPROFOR team. See Zorica Subotić, T. 38369–38373 (15 May 2013) (private session).

¹³⁶⁸⁰ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 75–76, 157. Džambasović confirmed that the command post of the 2nd Battalion of the 155th Brigade of the ABiH was located in the Šipad building in the centre of Dobrinja. The map he marked showing the command post suggests that it was to the north of the incident site and several blocks away. See Asim Džambasović, T. 15220 (22 June 2011); D1379 (Map of ABiH positions in Sarajevo marked by Asim Džambasović). **Just let us see this map for a moment: it is obvious that behind Nedzarici many places were under the Muslim control, like: Svrakino selo, Mojnilo, Alipasino polje, Stupsko brdo, and all the way down to Sokolovic kolonija, Butmir and Donji Kotorac, i.e. out of 360 degrees some 300 degrees was under the Muslim control, see below, the next page:.**



of canisters seen in the contemporaneous photographs and footage of the scene indicate that there was a conspiracy to show that “the water supply situation in Sarajevo was dramatic”.¹³⁶⁸¹ Further, she recalled that, shortly before the incident, local authorities warned people not to loiter in the area due to the proximity of the confrontation lines, which to her indicated that they had knowledge of the possibility of shelling.¹³⁶⁸²

¹³⁶⁸¹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 76–79, 91, 157.

¹³⁶⁸² D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 76–79, 157–158. When cross-examined in relation to the suggestion that there may have been a conspiracy to shell, Subotić conceded that it “was merely an indication of a possibility”. See Zorica Subotić, T. 38367–38369 (15 May 2013).

4078. Galić testified that he did not remember issuing any orders to fire on Hakije Turajlića street and could not remember any subordinates informing him of such activities.¹³⁶⁸³ He also stated that during this period the SRK forces were engaged in operation Lukavac 93 and “it was not necessary to engage in any active operations towards the centre of the city.”¹³⁶⁸⁴

4079. Radojčić testified that he never issued an order to open fire at Hakije Turajlića street to any unit of his brigade.¹³⁶⁸⁵ Sladoje testified that no orders to target civilians were issued and further that there was no line-of-sight between his unit’s positions and the scene of the incident in Dobrinja C5.¹³⁶⁸⁶ He also testified that the battalion positions in Nedžarići “were frequently targeted from high-rises in Dobrinja C5” during July 1993.¹³⁶⁸⁷ On cross-examination, Sladoje confirmed that the suburbs of Vojničko Polje, Mojmiro, Dobrinja, and Alipašino Polje were all within the range of the 1st Battalion’s weaponry.¹³⁶⁸⁸ He also acknowledged that civilians lived in these areas but stated that “among the civilians it was the [ABiH] using practically all buildings for their purposes”.¹³⁶⁸⁹

4080. Guzina testified that he never issued an order to fire at civilians, nor was he aware of any of his subordinates or superiors issuing any such orders.¹³⁶⁹⁰ In relation to the incident he stated that he was engaged in Operation Lukavac 93 and therefore had no information about it.¹³⁶⁹¹

4081. Savo Simić, Chief of Artillery in the 1st Sarajevo Mechanised Brigade from 29 May 1992 till the late May 1994,¹³⁶⁹² commented that in his opinion the shell fired in this incident was “fired from the Butmir sector, from positions under the control of the [ABiH] forces”.¹³⁶⁹³ However, he never explained the basis of this opinion and the Chamber is unable to assess its reliability. **(#That was a duty of the adversary, of the Prosecution, to check and test the reliability. He was never asked by the Prosecutor, in a cross examination, nor the Chamber asked for an explanation!)** On cross-examination, speaking of the situation in Sarajevo generally, Simić testified that it was the ABiH’s responsibility to take

¹³⁶⁸³ Stanislav Galić, T. 37387–37388 (18 April 2013). Dragomir Milošević agreed in principle that the shelling of a water line was an unacceptable example of direct targeting of a group of civilians. In relation to this incident he testified that it had to have been properly investigated and that this was within Galić’s remit. See Dragomir Milošević, T. 33120–33121 (4 February 2013). **Milosevic was right, but Galic even wasn’t aware, let alone in a position to participate in the investigation. So, it can not be taken against the Accused.**

¹³⁶⁸⁴ Stanislav Galić, T. 37390–37393 (18 April 2013); D3418 (SRK combat report, 11 July 1993); D3419 (SRK Order, 12 July 1993).

¹³⁶⁸⁵ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 110.

¹³⁶⁸⁶ D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 26; D2483 (Map of Sarajevo marked by Mile Sladoje). Sladoje suspected that the ABiH shelled the area on purpose in order to accuse the Serbs. With respect to his evidence on the line of sight, he acknowledged that mortars are indirect fire weapons and explained that he simply meant to say that they could not see people gathering at the incident site. See Mile Sladoje, T. 30574–30576 (28 November 2012). **In addition to that, it was a very precise, without a sight and without at least few shells for adjusting the fire to be precise.**

¹³⁶⁸⁷ D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 25.

¹³⁶⁸⁸ Mile Sladoje, T. 30570 (28 November 2012).

¹³⁶⁸⁹ Mile Sladoje, T. 30570 (28 November 2012).

¹³⁶⁹⁰ D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 42.

¹³⁶⁹¹ D2553 (Witness statement of Svetozar Guzina dated 3 December 2012), para. 42; D2559 (Medical certificate, 2 March 1994) (stating that he was engaged in Operation Lukavac 93, on the Jahorina-Trnovo-Bjelašnica-Igman axis, that he spent 45 days there, and was wounded on 25 July 1993).

¹³⁶⁹² D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 3.

¹³⁶⁹³ D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 26. The Chamber recalls that Butmir and Sokolović Kolonija are to the southwest of the Sarajevo Airport and were occupied by the ABiH. Dragomir Milošević, T. 32565 (23 January 2013); T. 32792–32793 (29 January 2013). See also para. 4058.

into account whether a location was inhabited when they placed their firing positions.¹³⁶⁹⁴

(Right. Particularly, #since the Serbs never intended to conquer a piece of the Muslim inhabited territory in Sarajevo#, nor made any offensives in that terms. All what happened in Sarajevo was the Muslim side own choice!)

4082. In terms of casualties in this incident, the CSB Sarajevo report lists the following 12 individuals as having been killed: Ljiljana Matić, Ibro Talić, Enisa Talić, Jasna Tvrtković, Stela Tvrtković, Rahima Mehonić, Sedajeta Mehonić, Nedžiba Mehonić, Ajdin Kirlić, Dragica Mićanović, Zora Simić, and Sulejman Selinović.¹³⁶⁹⁵ It also lists the following 15 persons as wounded: Ilhan Jelovac, Rasim Mahonić, Enver Taslaman, Ahmed Milić, Hamid Džozo, Vinka Kneht, Husein Grebić, Džulsuna Mršović, Derviš Fazlić, Majda Alihodžić, Kasim Čaušević, Enes Turhan, Manojlo Dangubić, Izet Čolaković, and Fehma Kurić.¹³⁶⁹⁶ Medical records from Dobrinja Hospital show that all of the 27 casualties listed in the CSB Sarajevo report on 12 July 1993 were admitted to that facility on the day of the incident.¹³⁶⁹⁷ Koševo Hospital morgue records further indicate that Ilhan Jelovac and Vinka Kneht were then placed in the morgue having eventually died in the Koševo Hospital.¹³⁶⁹⁸

4083. The Chamber has also taken judicial notice of a number of adjudicated facts which go to the origin of fire in this incident. They provide as follows: (i) the mortar shell which landed on 12 July 1993 in Dobrinja “C5” and which caused civilian casualties was of a caliber of 82 mm;¹³⁶⁹⁹ **(Big deal! All the three armies had the same!)** (ii) the mortar shell which landed on 12 July 1993 in Dobrinja “C5” and which caused civilian casualties was fired from the direction west-northwest to the point of impact of the mortar shell;¹³⁷⁰⁰ **(Opposed by the Defence expert!)** (iii) there were no immediate military objectives near the well, which could have explained the firing of a shell in that area;¹³⁷⁰¹ and (iv) the water queue of civilians in Dobrinja “C5” was deliberately targeted on 12 July 1993 by an 82 mm mortar shell fired from SRK-held territory.¹³⁷⁰² **(#Deadly combination#! Since the Chamber needed a help of the AF 282, it is obvious that the Prosecution case was weak. Why the Chamber didn’t point out to some undoubted fact, because what is presented is doubtful?)**

4084. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that the mortar that struck the water line on 12 July 1993 was of 82 mm calibre. The Chamber is also convinced, based on the traces left by the explosion and the CSB Sarajevo report, that the mortar struck Zorka Simić, killing her on the spot. Relying on the medical evidence and the CSB report discussed above, the Chamber finds that the

¹³⁶⁹⁴ Savo Simić, T. 30058 (12 November 2012).

¹³⁶⁹⁵ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 3. See Adjudicated Fact 277. The Chamber has received death certificates for six of those individuals, all of which state that they died as a result of injuries sustained in an explosion on 12 July 1993. See P1881 (Death certificate for Stela Trtković); P1882 (Death certificate for Jasminka Trtković); P1883 (Death certificate for Nedžiba Mehonić); P1884 (Death certificate for Rahima Mehonić); P1885 (Death certificate for Sadeta Mehonić); P1886 (Death certificate for Sulejman Selimović).

¹³⁶⁹⁶ P1438 (BiH MUP Report re shelling of Dobrinja on 12 July 1993), e-court p. 4. See Adjudicated Fact 277.

¹³⁶⁹⁷ P1890 (Medical records from Dobrinja Hospital, 12 July 1993), e-court pp. 1–6; P1887 (Medical records from Dobrinja Hospital).

¹³⁶⁹⁸ P461 (Admission records from Koševo Hospital), p. 54; P463 (Koševo Hospital morgue records), e-court p. 5; P462 (Surgery records from Koševo Hospital), e-court p. 8; Faris Gavrankapetanović, P473 (Transcript from *Prosecutor v. Galić*, T. 12603–12604).

¹³⁶⁹⁹ Adjudicated Fact 278.

¹³⁷⁰⁰ Adjudicated Fact 279.

¹³⁷⁰¹ Adjudicated Fact 280.

¹³⁷⁰² Adjudicated Fact 282.

explosion caused by the said mortar resulted in 27 casualties, 14 of whom—including Simić—died as a result. **(#What said the pathology finding of Simic's autopsy? It would be a unique case of the kind, and should be the main evidence in this case. The body must have contained an enormous number of fragments. And would sustain a huge destruction of the body! This is not serious presentation! When there is no a sufficient evidence, the Prosecution-Chamber take an "adjudicated fact", which is a #Deadly combination#!)**

4105. In terms of the direction and origin of fire, the Chamber recalls that both the CSB Sarajevo and the UNPROFOR investigators came to the scene on the day of the incident and were thus able to observe the traces of the impact, and that they all found the same direction of fire, namely northwest-west. This was confirmed by Higgs who thought that all the investigators were consistent in their conclusions and who also added that the methods they used were appropriate. In contrast, Subotić concluded that the fire came from the direction of north or northeast. The Chamber finds her conclusions in relation to this incident unreliable as they were mainly based on her analysis of the photographs taken at the time of the incident and thus highly speculative. For example, having confirmed that, aside from having radar, the central axis methodology performed on the day of the incident is the most reliable method to determine the direction of fire, she nevertheless proceeded to conduct her own central axis analysis using the photographs of the traces at the incident site.¹³⁷⁰³ **(But, #why any of the traces should be excluded from analysis#? If, as alleged by the Prosecution/Chamber, the shell landed at the Sinic's body, the fragmentation must have been some atypical, and traces that Subotic included in her analysis should not be excluded by anyone, so more since there was no evidence of another shell lending prior to this one. The Prosecutor excludes everything that doesn't fit to it's intent! The same as in Srebrenica, the expert witness Dusan Janc excluded many remains, because he "didn't know how these remains got there, and got a result he needed. But, the excluded remains were crucial in clarifying the case. Or Riedlmeyer, reviewing 107 mosques, and concluding that 80% were damaged, but had he been clever enough, he could review only 82 and a result would be 100% would be damaged. A number of such an examples in this case is very high!)** However, as noted by Higgs who decided not to use the photographs in his analysis, they are of poor quality and thus unreliable since some of the markings and the debris may not be seen on them. Accordingly, the conclusions Subotić drew from the traces shown on the photographs cannot be considered reliable. **(However, she said that she visited the spot, and could have seen the traces even after so much time, the traces that are hardly visible on photos, but very visible on spot!)** Furthermore, Subotić also based her conclusions on the damage to the Škoda car observed on another photograph taken by the CSB Sarajevo. However, as noted by Higgs, it is impossible to determine a definite angle of the direction of fire on the basis of that photograph.¹³⁷⁰⁴ **(On what basis it could have been determined? Or wasn't at all? What was the basis Higs determined on? Entirely on the other's materials. Why #something that couldn't be determined should be on an account of President Karad'i}#?)** Finally, Subotić also discussed the location of the stabiliser as seen in one of the photographs and noted that it was in a different location to the one

¹³⁷⁰³ See fn. 13672.

¹³⁷⁰⁴ While Higgs eventually did express an opinion as to the direction of fire based on the damage to the car, he did so after having made a disclaimer, more than once, that it was not possible to be sure of this or the direction of fire based on the photographs alone. See Richard Higgs, T. 5995–5999 (19 August 2010).

described in Čavčić's report. She then proceeded to make conclusions assuming that the stabiliser was found in the location seen on the photograph. However, she failed to consider in the report the possibility that the stabiliser may have been moved at some point during the investigation to the location seen on the photograph.¹³⁷⁰⁵ **(I#n such a case, the crime scene was disturbed, and that may have influenced the finding#, and the Accused must not be liable for that! All the omissions are on the account of the Prosecutor, not the accused President!)** Indeed, this would have been highly likely given that its original location was next to Simić's body which was, by the time the photograph was taken, covered by a sheet.¹³⁷⁰⁶ **(This is #hard to believe that a serious chamber would accept such a patchwork# and decide against the highest civilian authority, who didn't have anything to do with the incident!)**

4106. The Chamber also does not accept Subotić's insinuations that the scene was staged so as to show that the water supply in Sarajevo was dire, or that the authorities warned people queuing for water about the possibility of shelling because they knew it was definitely coming. Her insinuations simply ignore the evidence to the contrary, namely that this was a well known water-hole where people often gathered to collect water and that there was a lot of shelling all over Dobrinja, which would have prompted the authorities to warn the inhabitants not to congregate in that or any other area. The fact that Subotić was so quick to resort to conspiracy theory conclusions while wilfully ignoring evidence to the contrary is a serious stain on her credibility and yet another reason why the Chamber has decided not to accept any of her evidence in relation to this incident. **(That weren't any "insinuations" but #only possibilities#, the same as the Prosecution's, and equally valuable, so that any inference had to take it into account, and, in the absence of a firm findings and a proper investigation had to be taken into account as "In dubio pro reo"! Another contradiction in this Chamber's standpoint: if it was "a well known water-hole where people often gathered" – how come it was not shelled during 1,400 days of war, ever, except this dubious case?)**

4107. As far as the origin of fire is concerned, the Chamber notes that both the CSB Sarajevo and the UNPROFOR investigators concluded that the fire came from the SRK-held positions in or around Nedžarići. Given the location of the incident site and the fact that the confrontation line in the direction of west and northwest was around 200 metres away from that location,¹³⁷⁰⁷ the Chamber is also convinced that the shell originated in the SRK-held territory. **(To the same direction was the Muslim line, and above Nedzarici there was a huge territory controlled by the ABiH, and Nedzarici was a small area intruded in the Muslim territory, how a possibility of fire from the Muslim units was excluded?)** In this respect, the Chamber recalls Hamill and Galić's evidence about safety zones and that it would have been unsafe and risky to fire an 82 mm calibre mortar at a target that is less 200 metres away.¹³⁷⁰⁸ Thus, the fire must have originated in the area that was further than 200 metres away from the incident site in the direction of fire as determined by the CSB Sarajevo and

¹³⁷⁰⁵ She did admit during cross-examination that that was possible however, thus invalidating her own analysis in her report in relation to the stabiliser. See fn. 13677.

¹³⁷⁰⁶ Furthermore, the location of the stabiliser as recorded by Čavčić places it to the right-hand side of the car, which in fact confirms that the fire came from the west-northwest direction, as explained by Subotić. See para. 4091.

¹³⁷⁰⁷ See e.g. D3381 (Map of Sarajevo marked by Stanislav Galić); D3382 (Map of Sarajevo). See also para. 4090.

¹³⁷⁰⁸ See para. 3982.

UNPROFOR investigators. This places it firmly within the SRK-held territory. **(#Completely wrong#! There was more possibilities that the shell came from the Muslim positions, particularly from the direction west-northwest! See D3885 excerpt pertaining to Dobrinja, Nedzarici)**



ABiH

Nedzarici (Serbs)

Dobrinja (ABiH)

The left half of this picture are the ABiH positions, Nedzarici is in the middle, a Serb civilian settlement, and Dobrinja, part under the ABiH control.) .

4108. As recounted above,¹³⁷⁰⁹ a number of SRK witnesses, including Galić and Sladoje, testified that they never ordered this particular shelling or the shelling of civilians in Dobrinja in general, and seemed to imply that fire was not opened on civilians on that day as the SRK units were engaged in operation Lukavica 93.¹³⁷¹⁰ However, while there is indeed no evidence of a specific SRK order to open fire on Hakiye Turajlića, in light of the evidence above, the Chamber cannot accept the implication of their evidence that no fire was opened on that area. **(Obviously, a fire had been opened, but the main question is: #who opened it#? Had the SRK done it, even if there was no an order, there would be in a report back to the Main Staff, which was not a case. There is no a single trace or indication that it eas the SRK!)**

4109. In terms of the nature of the area and the status of the victims, the Chamber recalls that the incident site was a well-known water collection point, located in the yard of a private house, at which civilians would get water. Accordingly, the house and the area around it were not military targets. In addition, the 27 casualties who died or were wounded in this incident were all civilians and, having come to collect water, were not taking direct part in hostilities at the time the shell exploded in the area. While the command of the 2nd Battalion of the 5th Motorised Brigade of the ABiH was several blocks away to the north of the incident site, the Chamber considers that this was too far away to explain the firing of the particular shell that landed at the incident site. **(If it was**

¹³⁷⁰⁹ See paras. 4098–4101.

¹³⁷¹⁰ See para. 4098.

aimed at any military target by the SRK, there would be either an order, or a report, or both as usually, but nothing indicated that it was the SRK. There is no any indication in the intercepted conversation, or any mentioning of any fire by the SRK!) In addition, had the command post been the intended target, the SRK soldiers, having missed it, would have presumably fired again until it was hit and destroyed. (To the same degree it is a proof that they didn't fire at all! But, this is highly speculative and unusual that a chamber speculate that way, which only indicated a formidable lack of evidence!) Thus, the Chamber does not consider that the command post was in fact the intended target.¹³⁷¹¹ To the contrary, given that only one shell was fired, the Chamber is convinced that it was the water collection point that was deliberately targeted by the SRK. This is also confirmed by the fact that this area was shelled again later during the conflict.¹³⁷¹² (And the only one, the first shell was so precise? All what is said afterwards is not important, #since it is not established beyond a reasonable doubt that it was fired from Nedzarici#. Full stop! All of it is a speculation which doesn't go with a serious chamber. First there is "obtained" a poor inference that it was SRK firing, and after that, this fragile construction is "supported" by a very imagined arguments!)

4090. Alipašino Polje, 22 January 1994
(Scheduled Incident G.6)

4110. The Indictment alleges that on 22 January 1994, three mortar shells landed in the area of Alipašino Polje. The shells are alleged to have landed at the front and rear of residential apartments located at 3 Cetinjska street (currently Geteova street) and at 4 Klara Cetkin street (currently Bosanska street), where children were playing. The Indictment further alleges that the origin of fire was from VRS/SRK-held territory approximately to the west and that six children were killed and five other people wounded.¹³⁷¹³ In its Final Brief, the Prosecution claims that two 82 mm and one 120 mm mortar shells landed amongst two groups of children who were playing in the snow, killing six children and injuring other civilians, and that the shells originated either from Nedžarići (the Institute for the Blind) or from the area of Stup in the Serb part of Ilidža.¹³⁷¹⁴ **A very small portion of Stup was in the Serb hands, the rest was in the ABiH hands.** The Accused argues that, absent data about the size and shape of the relevant craters, it is "impossible" to determine the calibre of the shells but submits that at least two of the shells were of 120 mm calibre and they all originated from the southwest in

¹³⁷¹¹ Furthermore, the Chamber recalls Sladoje's testimony that the ABiH used "practically all" civilian buildings in Dobrinja for its purposes, thereby implying that most if not all of Dobrinja was considered to be a military target by the SRK soldiers and officers in the area. Similar attitude was exhibited by Simić. See para. 4099. **Dobrinja as well as the entire city could have been demilitarized, but the Muslim side have chosen to keep it militarized and to maintain a constant combat activity.**

¹³⁷¹² The Chamber also recalls Hajir's evidence that water collection points in Dobrinja were deliberately targeted by the SRK on many occasions. See para. 3785; Adjudicated Fact 281.

¹³⁷¹³ Indictment, Scheduled Incident G.6. The Indictment alleges that the first shell landed in a park behind the apartments and that the second and third landed in front.

¹³⁷¹⁴ Prosecution Final Brief, Appendix C, para. 52.

ABiH-held territory near the UPI Institute.¹³⁷¹⁵ He also argues that the UNPROFOR investigation was inconclusive and that no order was issued by the SRK to fire on Alipašino Polje at the time.¹³⁷¹⁶ In addition, regardless of the origin of fire, the location of the incident was a legitimate military target as it was within the zone of operation of the ABiH and there were military units stationed in the area.¹³⁷¹⁷

4111. On 22 January 1994, Muhamed Kapetanović, who was nearly ten years old at the time and lived at 2 Cetinjska street, was playing with four friends in a parking lot.¹³⁷¹⁸ Another group of children was playing in Klara Cetkin street.¹³⁷¹⁹ It was a quiet day during a lull in hostilities.¹³⁷²⁰ No activity of a military nature was underway in the neighbourhood nor was any soldier to be seen.¹³⁷²¹ Suddenly there was a loud explosion, whereupon the children ran for cover.¹³⁷²² Just before Kapetanović reached the entrance of his building, another shell exploded 10 metres behind the child following Kapetanović; it killed him and wounded three others including Kapetanović, who suffered serious injuries to his leg.¹³⁷²³ Goran Todorović, a 12 year old boy, ran towards the buildings for cover and just as he started climbing the staircase to his apartment at 6 Klara Cetkin street, another shell exploded 10 to 15 metres away and wounded him.¹³⁷²⁴ A man was walking along Klara Cetkin street where he lived and heard two explosions at a distance of approximately 100 metres.¹³⁷²⁵ Before he could take cover, a third shell fell three to five metres to his left; the explosion threw him into the air and seriously wounded him in the face.¹³⁷²⁶ Refik Aganović was in his apartment on the 14th floor of the building at 4 Klara Cetkin street when, at around 1 p.m., he heard the “usual” hissing sound of a shell and then a loud explosion nearby.¹³⁷²⁷ About a minute or two later a second shell exploded.¹³⁷²⁸ Aganović opened a west-facing window to see what had happened and a third explosion in front of his entrance threw him back.¹³⁷²⁹ He rushed downstairs to the entrance where he saw a 13 year old boy stagger over and die.¹³⁷³⁰ Another younger boy whom Aganović said he tried to assist also died in those moments.¹³⁷³¹ Other children, whom Aganović did not recognise because they were covered in blood and were missing parts of their bodies, had also been killed.¹³⁷³²

¹³⁷¹⁵ Defence Final Brief, paras. 2022, 2024–2026, 2028–2033. The Accused submits that the UPI Institute was also known as the “Butmir agricultural estate”. Defence Final Brief, para. 2034.

¹³⁷¹⁶ Defence Final Brief, paras. 2035–2036. He also argued that the Ilidža Brigade stationed in Nedžarići did not have any mortars stationed at the Institute for the Blind. Defence Final Brief, para. 2037.

¹³⁷¹⁷ Defence Final Brief, para. 2038.

¹³⁷¹⁸ See Adjudicated Fact 284.

¹³⁷¹⁹ Adjudicated Fact 285.

¹³⁷²⁰ See Adjudicated Fact 298.

¹³⁷²¹ See Adjudicated Fact 299.

¹³⁷²² See Adjudicated Fact 286.

¹³⁷²³ See Adjudicated Fact 287.

¹³⁷²⁴ See Adjudicated Fact 283.

¹³⁷²⁵ See Adjudicated Fact 288.

¹³⁷²⁶ See Adjudicated Fact 289.

¹³⁷²⁷ See Adjudicated Fact 290.

¹³⁷²⁸ Adjudicated Fact 291.

¹³⁷²⁹ See Adjudicated Fact 292.

¹³⁷³⁰ See Adjudicated Fact 293.

¹³⁷³¹ Adjudicated Fact 294.

¹³⁷³² See Adjudicated Fact 295.

4112. Sabljica participated in the investigation of this incident on 22 January 1994, together with another ballistics expert, Boris Stankov, and the rest of the CSB Sarajevo team.¹³⁷³³ Sabljica and Stankov concluded that two 82 mm and one 120 mm calibre mortar shells landed respectively in Cetinjska street, Klara Cetkin street, and in the park between the Klara Cetkin and Rade Končar square.¹³⁷³⁴ They found that the shell that fell in front of the building at number 3 Cetinjska street was an 82 mm mortar shell and that it came from a westerly direction, “where Nedžarići is located i.e. the Institute for the Blind.”¹³⁷³⁵ **Was anything further towards west from Nedzarici, and who controlled it?** One child was killed by this shell.¹³⁷³⁶ As for the shell that landed at number 4 Klara Cetkin street, it was found to be an 82 mm mortar shell, that came from “a slightly northerly direction in relation to the west”, where the Institute for the Blind is located.¹³⁷³⁷ **“#a slightly northerly direction in relation to the west” was the Student dormitories, not the Institute.** Five children were killed by this shell.¹³⁷³⁸ The tail fin of a 120 mm shell was also found near the area where the shell landed but, on the basis of the traces, it was concluded that the tail fin must have come from another location, most probably from the roof of a nearby building where, according to eyewitnesses, another shell had exploded at the time of the incident.¹³⁷³⁹ **Don’t tell me that! A manipulation, or not, #nobody can exclude it, and this is a clumsy investigation#.** The impact sites in Klara Cetkin and Cetinjska streets were said to be within a radius of 50 to 100 metres from one another.¹³⁷⁴⁰ The shell that landed in the park between Klara Cetkin street and Rade Končar square, was found—based on the general shape of the crater and visible blast traces—to have been a 120 mm mortar shell.¹³⁷⁴¹ The ballistics report notes that it is “possible to claim” that this shell came from the west, from the direction of Nedžarići and the Institute for the Blind.¹³⁷⁴² Further, according to the report, this shell did not injure or kill anyone.¹³⁷⁴³ Sabljica confirmed that there is no line of sight between the Institute for the

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- ¹³⁷³³ P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3, 5; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19–20; Mirza Sabljica, T. 7802–7803 (12 October 2010). *See also* D978 (Map of Sarajevo marked by KDZ477).
- ¹³⁷³⁴ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 19; Mirza Sabljica, T. 7805–7808 (12 October 2010), T. 7815, 7825 (13 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica).
- ¹³⁷³⁵ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1697 (BiH MUP photographs re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 20–21, 25, 27. Sabljica could not comment on why more detailed photographs, including those showing the craters after they had been cleaned up, were not available but noted that he believed they existed. Mirza Sabljica, T. 7810 (12 October 2010), T. 7816, 7826–7831 (13 October 2010); D751 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica). **It is certain that the Defence didn’t hide those photos, but is entitled to demand it to be available.**
- ¹³⁷³⁶ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 28–29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).
- ¹³⁷³⁷ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1697 (BiH MUP photographs re shelling of Alipašino Polje on 22 January 1994); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 24, 27–28; Mirza Sabljica, T. 7844–7850 (13 October 2010); D754 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D755 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D756 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica). Mirza Sabljica agreed that Stankov did not establish the azimuth but instead simply described the direction the shell had come from. *See* Mirza Sabljica, T. 7810 (12 October 2010).
- ¹³⁷³⁸ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 28–29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).
- ¹³⁷³⁹ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19, 23, 25.
- ¹³⁷⁴⁰ KDZ477, T. 11018 (1 February 2011).
- ¹³⁷⁴¹ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 19, 25–26. Sabljica explained that this shell was not analysed because there were no casualties and because it landed on the unpaved surface. *See* Mirza Sabljica, T. 7816 (13 October 2010).
- ¹³⁷⁴² P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2.
- ¹³⁷⁴³ P1698 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), p. 2.

Blind and the incident site.¹³⁷⁴⁴ **Being #“possible to claim”# doesn’t mean that it was proven beyond a reasonable doubt.**

4113. KDZ477, who was a resident of Alipašino Polje during the conflict, testified that the suburb was “a strictly residential area [with] many high rises”.¹³⁷⁴⁵ Both he and Sabljica testified that there were no military installations in the general area of Alipašino Polje and Sabljica was not aware of the existence of any reserve police stations in the settlement.¹³⁷⁴⁶ Mojmiro Hill, where ABiH troops were positioned, was located west of the incident site, as was Vojničko Polje.¹³⁷⁴⁷ Kučanin testified that a personnel department for an ABiH unit called Kulin Ban was located “some 200 metres away” from Rade Končara square, but that mostly women worked there and none of the personnel wore a uniform.¹³⁷⁴⁸

4114. Sabljica admitted that he did not know precisely where the confrontation line was but noted that the ABiH controlled the “Oslobodenje” building (now Crowne Plaza), located immediately to the north of the Institute for the Blind, as well as the student dormitories, located northeast of the Institute.¹³⁷⁴⁹ **But still northwest from the site of impact,** which meant that three out of the four Institute walls were exposed to the confrontation line.¹³⁷⁵⁰ He admitted that it would be unusual to place two mortars at the Institute given that it was exposed to the confrontation line but reiterated that the ballistics experts on the site were not able to establish the exact origin of fire but gave a “general direction”, which in this particular case “involved Nedžarići and the Institute for the Blind.”¹³⁷⁵¹ **(A“general direction” without further specification, such as distance, is not sufficient, because the confrontation lines were very close to each other, and were meandering, so a direction means nothing. Take a look of P01765 map, and you will see how many other possibilities of a source of fire!)**

4115. When it was put to Sabljica that another report for this incident, prepared by a forensic technician on the scene at the time, referred to two 120 mm shells falling on Cetinjska and Klara Cetkina streets, Sabljica responded that this report was inaccurate.¹³⁷⁵² **(#How many**

¹³⁷⁴⁴ Mirza Sabljica, T. 7821–7822 (13 October 2010).

¹³⁷⁴⁵ KDZ477, T. 10918 (31 January 2011); P2165 (Map of Sarajevo marked by KDZ477).

¹³⁷⁴⁶ KDZ477, T. 10918–10923 (31 January 2011); P2165 (Map of Sarajevo marked by KDZ477); D977 (Map of Sarajevo marked by KDZ477). KDZ477 stated that this may have been the reason why the children who were killed or injured during the incident had been out playing in the snow. See KDZ477 T. 10923 (31 January 2011). See also P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26.

¹³⁷⁴⁷ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26; Mirza Sabljica, T. 7822 (13 October 2010); D749 (Photograph of Vojničko Polje).

¹³⁷⁴⁸ Mirsad Kučanin, P16 (Transcript from Prosecutor v. Galić), T. 4499, 4522, 4663–4665, 4687–4689.

¹³⁷⁴⁹ Mirza Sabljica, T. 7806–7807 (12 October 2010), T. 7819–7821 (13 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica); D748 (Map of Sarajevo marked by Mirza Sabljica). See also P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 26.

¹³⁷⁵⁰ Mirza Sabljica, T. 7820–7821, 7823–7824 (13 October 2010); D750 (Photograph of the Institute for Blind in Sarajevo). Sabljica also conceded that, based on the map he was asked to look at, the Institute for the Blind is in fact located southwest of the broad area on which the shells fell, while the Oslobodenje building is west and the student dormitories are northwest of that area. Mirza Sabljica, T. 7808–7810 (12 October 2010); D746 (Map of Alipašino Polje marked by Mirza Sabljica). **Wasn’t it enough? The first claims were that the fire came from the northwesterly direction. How come this contemporaneous findings was changed, and the Prosecution (and the Muslim) experts adjusted it to the Serb position. Any reasonable chamber wouldn’t allow it. There should be consulted a map, P01765, and see how Nedžarići was a small settlement, and exactly southwesterly positioned from the site of event, while there are many Muslim positions clearly western and northwestern from the site.**

¹³⁷⁵¹ Mirza Sabljica, T. 7818, 7821, 7824 (13 October 2010).

¹³⁷⁵² P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 29; P1696 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994).

peculiarities is needed# not to damage the claims and assertions of the Muslim side or the Prosecution? Once we do have two or more opinions, particularly from an independent sources, i.e. not from the Defence, this should be enough to dismiss the case, although a convincing doubts from the Defence experts should also be sufficient to do so.) He further explained that the technician in question had not consulted the ballistics experts when he finalised his report.¹³⁷⁵³

4116. The UNPROFOR also reported on this incident; it noted that, on 22 January 1994, some 40 shots were fired by the VRS while three were fired by the ABiH, and that six children were killed and nine wounded while playing in the snow.¹³⁷⁵⁴ (#So, in the middle of shooting, the children played#? Where is a limit to this lies#? Everyone knows that after the first explosion all people are looking for shelter, and we are supposed, including the Chamber, to buy this kind of garbage#?) The UNPROFOR further notes that it was too early to tell who was responsible, but that, “according to reports”, at least four 82 mm shells fell in the area and that the Sarajevo radio station was reporting that the shells had come from the nearby Serb-held neighbourhood of Nedžarići.¹³⁷⁵⁵ However, an UNPROFOR ballistics report prepared by Captain Verdy the next day notes that three 120 mm mortar shells were fired in succession from a single tube over a period of several minutes.¹³⁷⁵⁶ It also states that the “angle of fall” was over 1,100 mils, the “angle of approach” was between 4,200 and 4,250 mils, and the maximum range was between 2,000 and 3,000 metres.¹³⁷⁵⁷ Finally, the report concludes that the shells “could have been fired from the Stup or Ilidža neighbourhood on the Serb side”, which are to the west and southwest of the incident site.¹³⁷⁵⁸ The Chamber notes that, in its Final Brief, the Prosecution chose not to rely on this report as Verdy only came to the scene one day after the incident and because his methodology was questioned by his superiors.¹³⁷⁵⁹ Nevertheless, as will be seen below, Zorica Subotić argues that Verdy’s findings were for the most part accurate and relies on them in her analysis.¹³⁷⁶⁰ Therefore, the Chamber has examined his report as well. (Who said that Stup was in the Serb hands? Look at the map, P01765!)

4117. Higgs visited the incident site and noted that the crater locations, though still visible, had deteriorated to the extent that a detailed examination was not possible.¹³⁷⁶¹ He, therefore,

¹³⁷⁵³ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 29–30. *See also* P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 70; KDZ477, T. 10922, 10945–10946 (31 January 2011), T. 11018–11019 (1 February 2011).

¹³⁷⁵⁴ P1700 (UNPROFOR report re Sarajevo, 21–23 January 1994), p. 1; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 30.

¹³⁷⁵⁵ P1700 (UNPROFOR report re Sarajevo, 21–23 January 1994), p. 1. *See also* D3432 (Report of ABiH 1st Corps, 24 January 1994), p. 2.

¹³⁷⁵⁶ D752 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994); P1439 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), e-court p. 8. The Chamber notes that P1439 is a duplicate of D752 but that it contains both the original version of Verdy’s report in French and an English translation. D752, on the other hand, is only the translation of the report and lacks the photographs attached to the original report. The Chamber considers the English translation in P1439 to be less accurate than the translation in D752 and will therefore use D752, unless it is referring to the photographs in question. *See also* Mirza Sabljica, T. 7832–7834 (13 October 2010).

¹³⁷⁵⁷ P1439 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 4–8 (where Verdy indicates that the shell that landed on the curb in Klara Cetkin street had an azimuth of 4,200 mils while the shell that landed in Cetinjska street had an azimuth of 4,250 mils).

¹³⁷⁵⁸ D752 (UNPROFOR report re shelling of Alipašino Polje on 22 January 1994), p. 2.

¹³⁷⁵⁹ Prosecution Final Brief, Appendix C, para. 52, fn. 330. *But see* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), para. 96 (stating that Captain Verdy “did a very good job in this particular matter”).

¹³⁷⁶⁰ *See* para. 4121.

¹³⁷⁶¹ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9. Hogan also visited the site in 2009 and took GPS readings of the location where the shells impacted and plotted this on a map of Sarajevo. *See* P2190 (GPS locations for

based his opinion on the data collected at the time, in particular on the report prepared by CSB Sarajevo.¹³⁷⁶² He concurred with the conclusion in that report that 82 mm mortar bombs “were involved to the street side of the building with a 120 mm bomb falling on the other side”.¹³⁷⁶³ Higgs then compared this report with Verdy’s ballistics report, noting that he would accept the former as it was prepared on the day of the incident and by those with experience in dealing with mortars in the area.¹³⁷⁶⁴ He observed that both reports agreed on the direction of fire and that there was nothing he would disagree with in that respect.¹³⁷⁶⁵

4118. Higgs also noted that it was difficult to ascertain the purpose of firing in this incident, given that two different calibres were used.¹³⁷⁶⁶ However, focusing on the two 82 mm mortar shells, Higgs concluded that they constituted “harassing” fire aimed at causing maximum casualties because they landed in front of building entrances.¹³⁷⁶⁷ Furthermore, the distance between the two rounds was greater than Higgs would expect in case of an error by the mortar crew.¹³⁷⁶⁸ In other words, the two shells fell exactly where the mortar crew intended them to fall and they originated from the direction of Nedžarići.¹³⁷⁶⁹ **(But #there was no the minimum required minimum of 2,000 metres. Look at the map. A distance to Nedzarici is about 1 km, not 2, and certainly not 3 km.# However, when the Prosecution witnesses are in question, in spite of this admittance that “it was difficult to ascertain the purpose of firing”, the Chamber is satisfied with one “”concluded that they constituted “harassing” fire...”, and since it didn’t look sufficient, the Chamber added a “cum grano salis” In other words, the two shells fell exactly where the mortar crew intended them to fall” deciding that the shells originated from the direction of Ned`ari}I, in spite of the fact that a mere “direction” is not sufficient, particularly for Ned`ari}I, which had been almost entirely surrounded by the Muslim Army!))**

4119. KDZ450 who was with the UNPROFOR in Sarajevo between 1993 and 1994, testified that the incident was particularly striking to him as it occurred opposite the Sector Sarajevo Headquarters and “led to the death of six children in a residential area”.¹³⁷⁷⁰ He testified that due to technical reasons the UNPROFOR could not definitively determine the origin of fire but that there were considerable “suspicions” the shells originated from SRK-

shelling and sniping incidents in Sarajevo), p. 6; P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); Barry Hogan, T. 11205–11206 (3 February 2011).

¹³⁷⁶² P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

¹³⁷⁶³ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

¹³⁷⁶⁴ Richard Higgs, T. 5921–5924 (18 August 2010); P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 9.

¹³⁷⁶⁵ Richard Higgs, T. 5921–5923 (18 August 2010).

¹³⁷⁶⁶ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), pp. 9–10; Richard Higgs, T. 6020–6021 (19 August 2010).

¹³⁷⁶⁷ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10. (Higgs also opined that two 82 mm mortar shells could not “achieve any military objective”).

¹³⁷⁶⁸ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁷⁶⁹ P1437 (Richard Higgs’s Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁷⁷⁰ KDZ450, T. 10618 (20 January 2011).

held territory.¹³⁷⁷¹ (#“Considerable suspicions” wouldn’t be sufficient in his country too. A suspicion may be sufficient for initiating an investigation, but not for sentencing!#)

4120. Zorica Subotić visited the incident site in September 2010 and based on the available evidence, determined that the first shell exploded in Rade Končara square, the second in front of 3 Cetinjska street, and the third in front of 4 Klara Cetkin street.¹³⁷⁷² She analysed in detail the two shells that landed in front of 4 Klara Cetkin and 3 Cetinjska streets and placed considerable emphasis on the inconsistencies between the original investigations as to the precise number and calibre of mortar shells involved and also on the fact that Sabljica and Stankov were at odds with one of their forensic technicians with respect to the calibre of the two shells.¹³⁷⁷³ Based on the distance between the two impact sites examined, namely “about 200 metres”, she concluded that there was a deliberate adjustment of fire by the mortar crew that fired the shells.¹³⁷⁷⁴

4121. In relation to the crater in Klara Cetkin street, Subotić determined, using the central axis method on preserved marks at the scene, that the shell originated from an azimuth of 238 degrees and thus in an area about 30 degrees south of the Institute for the Blind in Nedžarići.¹³⁷⁷⁵ The Chamber notes that this is almost identical to the azimuth established by Verdy. She observed, in contrast to CSB Sarajevo, that the radial marks left by the explosion extended towards the middle of the street, to a length of about three metres.¹³⁷⁷⁶ Acknowledging that the impact site on the curb had been repaired, she opined that the crater was about 60 centimetres in diameter and thus caused by a 120 mm calibre mortar shell, which was the calibre established by Verdy.¹³⁷⁷⁷ Subotić also noted that the azimuth from 4 Klara Cetkin street to the Institute for the Blind was 266 degrees, which to her reinforced the fact that the CSB Sarajevo ballistics investigators simply guessed the origin of fire.¹³⁷⁷⁸

¹³⁷⁷¹ KDZ450, T. 10618–10620, 10694–10697 (20 January 2011). See also D964 (ABiH 1st Corps combat report, 24 January 1994) (under seal).

¹³⁷⁷² D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 93, 108, 158–159; Zorica Subotić, T. 38260 (14 May 2013).

¹³⁷⁷³ Zorica Subotić, T. 38260 (14 May 2013); D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 92–96, 108, 159.

¹³⁷⁷⁴ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 107–108; Zorica Subotić, T. 38266 (14 May 2013).

¹³⁷⁷⁵ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 96–99, 109–110, 160–161. Subotić also stated that Sabljica agreed with how this trajectory was established based on a photograph of her investigation, implying that he was affirming the result despite it being contrary to the direction he established during the CSB Sarajevo investigation. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 99; Zorica Subotić, T. 38262 (14 May 2013); T. 38423–38426 (16 May 2013). The Chamber notes, however, that Sabljica did not agree to the direction but rather that the method used, as seen in the photograph, appeared to be accurate and thus could indicate the direction from which the projectile came. See Mirza Sabljica, T. 7846–7850 (13 October 2010); D755 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica); D756 (Photograph re shelling of Alipašino Polje on 22 January 1994 marked by Mirza Sabljica).

¹³⁷⁷⁶ Zorica Subotić, T. 38260–38262 (14 May 2013). Subotić argued that the CSB Sarajevo description of the scene was therefore inaccurate and yet Higgs gave his “unreserved trust” towards their investigation as he did not notice that the shrapnel marks extended further than 120 cm from the crater. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 96–97;

¹³⁷⁷⁷ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 97, 108, 159. Subotić accepted that she did not investigate how the curb was repaired noting that the fragmentation pattern on the road meant that the shell could not have been an 82 mm mortar shell, regardless of the diameter of the crater. See Zorica Subotić, T. 38420–38423 (16 May 2013); T. 38632–38633 (22 May 2013); D3558 (Photograph depicting point of impact of shell marked by Zorica Subotić).

¹³⁷⁷⁸ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 98 (noting that the CSB Sarajevo’s determination of origin to the west, or from a direction slightly north of west, translates into an azimuth of 270 degrees or more, rather than 266 degrees). See also Mirza Sabljica, T. 7810 (12 October 2010).

4122. In respect of the Cetinjska street crater, Subotić did not conduct any physical examination because the road had been resurfaced.¹³⁷⁷⁹ Using contemporaneous CSB Sarajevo photographs, however, she determined that the crater had a diameter of approximately 90 cm, meaning that a 120 mm mortar shell impacted the scene—again agreeing with Verdy.¹³⁷⁸⁰ She also expressed the opinion that the forensic technician from CSB Sarajevo who concluded that both shells were 120 mm shells must have relied on the size of the crater he observed.¹³⁷⁸¹ Using footage taken by Hogan in 2001 before the road had been resurfaced, Subotić also observed that there was a “central hole” within the crater, which was surrounded by a larger crater, and that the CSB investigators measured the smaller central hole thus mistakenly concluding that the crater was smaller than it actually was.¹³⁷⁸² Using stills from Hogan’s footage and a computer application, Subotić then concluded that this shell originated from a direction with an azimuth that was “slightly less than 240 degrees”.¹³⁷⁸³
4123. While essentially agreeing with Verdy’s opinion as to the azimuth and the calibre of the two shells, Subotić argued that he made a mistake when assigning the azimuths of the shells to the two craters.¹³⁷⁸⁴ She then plotted the adjusted trajectories on Google Earth and saw that they intersected at a point 3,270 metres southwest of the impact site in Klara Cetkin street; namely in the ABiH-held territory, near the UPI institute in Sokolović Kolonija.¹³⁷⁸⁵ Subotić agreed with Verdy’s determination as to the shells’ angle of descent and calculated, using the firing tables for 120 mm mortars, that they were most probably fired using charge four.¹³⁷⁸⁶
4124. Galić testified that Alipašino Polje was in ABiH-held territory and that as far as he could remember at the time he did not order fire to be opened on the settlement.¹³⁷⁸⁷ He

¹³⁷⁷⁹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 99; Zorica Subotić, T. 38262–38263 (14 May 2013).

¹³⁷⁸⁰ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 100–101; Zorica Subotić, T. 38262–38263 (14 May 2013) (wherein Subotić admitted that the photograph of the crater was blurry and using another image that depicts the broader street to confirm her calculation of the crater dimension. She explained that a manhole cover, which is substantially smaller in size when compared to the crater, can be seen in that photograph. Noting that the standard diameter of such covers is 70 cm, she concluded that the crater must have been bigger than 70 cm). The Chamber notes, however, that the quality of both photographs is poor and is therefore not persuaded that it is possible to determine the size of the crater from them. In addition, Subotić is not an expert on manholes and the Chamber has no evidence to verify her claim that the average size of a manhole is 70 cm. See D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 103.

¹³⁷⁸¹ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 102. *But see* P2164 (Witness statement of KDZ477 dated 13 February 2010), para. 70; KDZ477, T. 10922, 10945–10946 (31 January 2011), T. 11018–11019 (1 February 2011).

¹³⁷⁸² D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 102–103.

¹³⁷⁸³ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 103–104; Zorica Subotić, T. 38263–38264 (14 May 2013) (arguing that the shadow cast by an electricity pole within the footage had a similar trajectory to the central axis of the fragment pattern of the crater and calculating the azimuth of the sun to determine the azimuth of the shadow).

¹³⁷⁸⁴ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 102, 104–5. According to Subotić, Verdy correctly determined a direction of fire towards the southwest for both shells. Since all three shells landed within the “range error margin” for mortars, all three were fired from the same mortar. This meant that Verdy’s trajectories should intersect at their origin, to the southwest. Verdy marked the azimuth beside the photograph of the shell that landed at Klara Cetkin street as 4,200 mils and for the shell that landed at Cetinjska street as 4,250 mils. When plotting these trajectories, she found that they intersected at a point to the northeast of the incident site, which is impossible and thus indicates that Verdy swapped the azimuths when ascribing them to the respective craters. See Zorica Subotić, T. 38264–38265 (14 May 2013); T. 38426–38427, 38430–38436 (16 May 2013).

¹³⁷⁸⁵ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), pp. 106–107; Zorica Subotić, T. 38265–38266 (14 May 2013) (explaining that UPI Institute was an agricultural institute).

¹³⁷⁸⁶ D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 107.

¹³⁷⁸⁷ Stanislav Galić, T. 37436 (18 April 2013). See also Dragomir Milošević, T. 32710 (28 January 2013).

observed that there were some military targets within Alipašino Polje and specifically he recalled that there was a unit of the 1st Corps of the ABiH stationed in the area at a place called Kulin Ban, approximately “110 to 150” metres away from the incident site.¹³⁷⁸⁸ He suggested that this may have been the reason behind fire being opened but that—due to a cease-fire—he did not think the SRK had in fact opened fire.¹³⁷⁸⁹ He testified that the decision for further SRK operations on 23 January 1994 was for the Corps to adopt a defensive posture and that he did not receive a report or protest from the UNPROFOR in relation to the incident.¹³⁷⁹⁰ He also testified that regardless of the faction that fired the shells, there was “no [valid] reasons or justifications” for the incident.¹³⁷⁹¹ When asked about this incident, Milošević testified that he could not recall it but that the SRK “did not open fire [on areas] inhabited by the civilian population” or do anything that was prohibited.¹³⁷⁹²

4125. Sladoje testified that the ABiH units positioned in Vojničko Polje, Alipašino Polje, and Stup, had, *inter alia*, 82 and 120 mm mortars and a tank in depth of Alipašino Polje; they were also supported by artillery from Mt. Igman.¹³⁷⁹³ Sladoje’s 1st Battalion was equipped with 82 and 120 mm mortars, four or five of which were located near the Faculty of Theology; according to him, military targets in the area included the Oslobođenje building, the student dormitories, and a building located a few blocks from Cetinjska street in the vicinity of Prvomajska street, where civilians were also living.¹³⁷⁹⁴ He categorically denied, however, that the SRK had any mortars at the Institute for the Blind and further that anyone ordered this particular shelling.¹³⁷⁹⁵ Accepting that there was a substantial risk of civilian casualties when firing on any urban areas with military presence, such as Alipašino Polje, he nonetheless wondered “how can [the SRK] not open fire [on enemy soldiers] if [its] positions [are] jeopardized”.¹³⁷⁹⁶ **(Certainly, and nobody was supposed to forbid them to defend their own lives and families. This is perfectly legitimate, and the other side shouldn’t abuse it’s own civilians to jeopardize the other side and thus indanger civilian population!)**

4126. Contrary to Sladoje, Radojčić, commander of the Ilidža Brigade, testified that there was an 82 mm mortar platoon positioned close to the Institute for the Blind but that there were

¹³⁷⁸⁸ Stanislav Galić, T. 37436 (18 April 2013); T. 38036–38040 (9 May 2013). *See also* D2497 (Witness statement of Nikola Mijatović dated 27 November 2012), para. 9; D2499 (Map of Alipašino Polje marked by Nikola Mijatović).

¹³⁷⁸⁹ Stanislav Galić, T. 37436 (18 April 2013); T. 37936 (8 May 2013).

¹³⁷⁹⁰ Stanislav Galić, T. 37436–37437 (18 April 2013); D2806 (SRK combat report, 23 January 1994). *See also* Dragomir Milošević, T. 32710 (28 January 2013).

¹³⁷⁹¹ Stanislav Galić, T. 37441–37442 (18 April 2013). Galić also testified that numerous incidents during this period, including this particular incident, were part of the Sarajevo media campaign against the SRK and the VRS in general. *See* Stanislav Galić, T. 37442 (18 April 2013).

¹³⁷⁹² Dragomir Milošević, T. 32710 (28 January 2013).

¹³⁷⁹³ D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 5, 7, 10 (stating that the ABiH units in the area were the 101st and 102nd Brigades of the 1st Corps of the ABiH). *See also* Milomir Šoja, T. 7214–7216 (30 September 2010) (stating that ABiH would open small arms fire on the Ilidža Brigade positions from the cold storage plant in Stup). The Chamber notes that it appears from the evidence before it that the cold storage plant was part of the UPI Institute. *See* D676 (Map of Sarajevo marked by Milomir Šoja); D3542 (Zorica Subotić’s expert report entitled “Mortar Operations in Sarajevo Area in 1992–1995”, 15 August 2012), p. 106, Figure 62.

¹³⁷⁹⁴ Mile Sladoje, T. 30563–30566, 30571–30573 (28 November 2012); D2479 (Witness statement of Mile Sladoje dated 25 November 2012), paras. 6–7; D2481 (Map of Sarajevo marked by Mile Sladoje); D2482 (Map of Sarajevo marked by Mile Sladoje); P6009 (Map of Sarajevo marked by Mile Sladoje). *See also* P1058 (ABiH map) (indicating that the SRK had mortars both near the Faculty of Theology and near the Institute for the Blind).

¹³⁷⁹⁵ D2479 (Witness statement of Mile Sladoje dated 25 November 2012), para. 27. Sladoje confirmed that Alipašino Polje was within the range of his battalion’s weaponry and further that he was aware that civilians lived in the area but stated that the ABiH used most of the buildings. *See* Mile Sladoje, T. 30570, 30573 (28 November 2012).

¹³⁷⁹⁶ Mile Sladoje, T. 30573–30574 (28 November 2012).

no 120 mm mortars at this location.¹³⁷⁹⁷ He also stated that he never issued an order to open fire on the incident location and that he did not receive information from subordinates about such an attack.¹³⁷⁹⁸

4127. Savo Simić, who was with the 1st Sarajevo Mechanised Brigade positioned towards Lukavica, stated that the shells in this incident originated from ABiH-held territory in the direction of Butmir.¹³⁷⁹⁹ Dušan Škrba, Simić's subordinate, stated that, in his opinion, the "most probable" location of the origin of fire towards the southwest was the "Butmir agricultural estate" as this was an ideal place to fire mortars.¹³⁸⁰⁰

4128. In terms of casualties in this incident, the CSB Sarajevo report provides that the following children had been killed: Danijel Jurenić, Admir Subašić, Nermin Rizvanović, Jasmina Brković, Indira Brković, and Mirza Dedović.¹³⁸⁰¹ The report also notes that the following persons were wounded, the majority of whom were children: Elvir Ahmethodžić, Admir Ahmethodžić, Muhamed Kapetanović, Nedžad Topel, Goran Todorović, and Samir Sarač.¹³⁸⁰² The medical records available to the Chamber indicate that six persons died, and at least five persons were injured during the incident.¹³⁸⁰³

4129. In addition to the evidence and the adjudicated facts outlined above, the Chamber has also taken judicial notice of the following adjudicated facts which go to the direction and origin of fire, as well as the calibre of the shells used in this incident: (i) three mortar shells (two 82 mm and one 120 mm calibre) were fired into the residential neighbourhood of Alipašino Polje around noon on 22 January 1994, killing six children and injuring other civilians, including children;¹³⁸⁰⁴ (ii) the impact traces were considerably more pronounced to the west of the craters;¹³⁸⁰⁵ (iii) it can be safely concluded that the shells came in from either the west or north of west;¹³⁸⁰⁶ (iv) the impact traces were strongly elliptical and significantly displaced to the west;¹³⁸⁰⁷ (v) the three shells were fired from SRK positions somewhere to the west of Alipašino Polje;¹³⁸⁰⁸ and (vi) the sequence of explosions, together with the fact that the shelling ceased after just three volleys were fired, all of which landed wide of Kulin

¹³⁷⁹⁷ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), paras. 1–2; 111. *See also* P1058 (ABiH map).

¹³⁷⁹⁸ D2562 (Witness statement of Vladimir Radojčić dated 8 December 2012), para. 111.

¹³⁷⁹⁹ D2412 (Witness statement of Savo Simić dated 4 November 2012), paras. 3, 12, 26. The Chamber notes that Simić does not explain the basis for this opinion. The Chamber is therefore unable to assess its reliability and will not rely on this evidence.

¹³⁸⁰⁰ D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 7, 20.

¹³⁸⁰¹ P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3–6, 8, 11–12, 15–16.

¹³⁸⁰² P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 3–7, 10, 13–16.

¹³⁸⁰³ P463 (Koševo Hospital morgue records), pp. 1–4; P461 (Admission records from Koševo Hospital), p. 50; P818 (Extracts from Fatima Zaimović's diary), p. 21; P1025 (Medical records for Muhamed Kapetanović); P1236 (Medical reports for Elvir and Admir Ahmethodžić); P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 10–12. The Chamber notes that Adjudicated Fact 296 states that the investigative Judge Zdenko Eterović "established by interviewing witnesses and by observation of bodily remains at the site, as well as by visiting the hospitals where the casualties had been taken" that six children were killed and another three children and one adult were seriously injured, bringing the total number of casualties to ten. However, Eterović did not include Goran Todorović among the list of casualties in his report even though Todorović was also wounded in the incident. The Chamber will therefore rely on another part of the CSB Sarajevo report which includes Todorović among the victims, as well as Samir Sarač. *See* P1443 (BiH MUP Report re shelling of Alipašino Polje on 22 January 1994), e-court pp. 4, 15–16.

¹³⁸⁰⁴ Adjudicated Fact 297.

¹³⁸⁰⁵ Adjudicated Fact 300.

¹³⁸⁰⁶ Adjudicated Fact 301.

¹³⁸⁰⁷ Adjudicated Fact 302.

¹³⁸⁰⁸ Adjudicated Fact 303.

Ban (two at a distance of at least 150 metres) allowed for the conclusion that Kulin Ban was not the intended target of this attack.¹³⁸⁰⁹

4130. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that at least three mortar shells exploded in the area of Alipašino Polje on 22 January 1994. One of the shells landed in front of 3 Cetinjska street, another in front of 4 Klara Cetkin street, and a third in Rade Končara square behind these two locations. With respect to the calibre of the shells involved, the Chamber is more persuaded by the CSB Sarajevo findings than Subotić's analysis and her reliance on Verdy. First, Sabljica and Stankov conducted a detailed *de visu* examination on the day of the incident and were thus able to see the scene and fresh traces caused by the three shells in question. This was not the case with Verdy who only examined two of the three traces one day later, while Subotić examined the scene over a decade later. Second, Subotić's conclusions in relation to the craters are highly speculative, to the point of being unreasonable at times. For example, with respect to the Klara Cetkin street shell, she based her conclusions on the examination of a repaired curb, without knowing anything about the nature of those repairs or how much the repairs had affected the size of the crater. This means that her conclusions about the size of this crater carry no persuasive value. Similarly, with regard to her analysis of the site in Cetinjska street, Subotić relied on the footage taken by Hogan in 2001 and the contemporaneous photographs taken by the CSB Sarajevo, which were of a clearly inferior quality. Her analysis of these secondary sources, involving concepts such as the average size of a manhole cover and the relative size of an object in photographs, is highly speculative and unpersuasive. Therefore the Chamber does not accept that all of the shells in the incident were 120 mm in calibre and finds that at least two 82 mm and one 120 mm mortar shells exploded in Alipašino Polje on 22 January 1994.
4131. Relying on the medical evidence and the CSB Sarajevo investigation discussed above, the Chamber finds that the explosion caused by the three shells on 22 January 1994 resulted in 12 casualties, six of whom died (all children) and six of whom (majority children) were injured.
4132. In terms of the direction of fire, the Chamber recalls that the CSB Sarajevo investigators concluded that the shells originated from a general direction to the west of Alipašino Polje, while Verdy thought that the projectiles in Cetinjska and Klara Cetkin streets originated from the same mortar, positioned in either Stup or Ilidža, that is either to the west or southwest of the incident site. The Chamber recalls that, to Higgs, the two investigations were not far apart in terms of direction as they both essentially concluded that the shells originated from approximately the west of Alipašino Polje in the direction of Nedžarići. However, Higgs considered that the CSB Sarajevo investigation would have been more accurate as it was more contemporaneous. The Chamber agrees with his analysis.
4133. While Subotić thought that the two shells analysed by both Verdy and CSB Sarajevo originated from approximately the southwest of Alipašino Polje, her conclusions were based on an examination of what was a substantially altered scene, as well as secondary sources such as unclear photographs and video footage of the scene. For example, with regard to the

Cetinjska street shell, she calculated the azimuth using the 2001 video footage of Hogan standing next to the crater, as well as the azimuth of the sun and the shadows cast by objects in the footage. The Chamber considers that this type of analysis is unacceptable and further that it seriously damages her credibility in relation to both this incident and generally. Accordingly, the Chamber does not accept any of her evidence in relation to the direction of fire in this incident.

4134. The Chamber finds that the shells originated from the area approximately west of the incident site.

4135. As far as the precise origin of fire is concerned, the angle of descent for the shells was not determined by either the CSB Sarajevo investigators or Subotić, while Verdy concluded that it was more than 1,100 mls and that the shells had a maximum range of between 2,000 and 3,000 metres, thus placing the origin of fire in the SRK-held territory. Given that it is unclear from his report how Verdy managed to calculate the maximum range of the shells, the Chamber is unable to assess his method and thus cannot accept those findings. At the same time, the Chamber does not accept Subotić's analysis that the fire came from the UPI Institute southwest of the incident site either. This is because she based her analysis on Verdy's azimuths being absolutely accurate at 236 and 239 degrees, albeit reversed. However, the Chamber notes that Verdy also concluded in his report that the azimuths were "between" 236 and 239 degrees. In other words, the trajectories plotted by Subotić, which intersect at the UPI Institute, predicate an absolute accuracy. The Chamber finds this to be unrealistic in light of the margin of error with which ballistic experts have to work.

4136. With respect to the origin of fire, the Indictment alleges that the shells came from the SRK-held territory to the west of the incident site and does not specify the exact origin of fire. The Prosecution Final Brief then refers to Nedžarići and the Institute for the Blind, or alternatively the Stup area in the Serb part of Ilidža, as the origin of fire.¹³⁸¹⁰

4137. However, taking all of the above into account, as well as the adjudicated facts relating to this incident, the Chamber is not satisfied beyond reasonable doubt that the origin of fire was Nedžarići and the Institute for the Blind. First, the CSB Sarajevo report does not conclude that the fire came from there but only that it came from a westerly direction where Nedžarići and the Institute for the Blind are located. In addition, as noted earlier,¹³⁸¹¹ Sabljica conceded that CSB Sarajevo did not establish the azimuth of the shells, as was normal practice. Finally, the adjudicated facts do not provide that the origin of fire was Nedžarići or the Institute for the Blind.

4138. With respect to Stup, the Chamber notes that the adjudicated facts do not state that it was the origin of fire in this incident. In addition, as noted above, this area was mostly under the control of the ABiH, while a small part was controlled by the SRK.¹³⁸¹² On the basis of the evidence before the Chamber, Verdy is the only person who determined the angle of descent and calculated the potential distance the shells had travelled, and thus placed the origin of fire in the SRK territory in Stup. However, in its Final Brief, the Prosecution states

¹³⁸¹⁰ Prosecution Final Brief, Appendix C, para. 52.

¹³⁸¹¹ See fn. 13737.

¹³⁸¹² See para. 4056, fn. 13492. See also P1058 (ABiH map).

that it has chosen not to rely on his report as Verdy's methodology was criticised by his superiors and he did not come to the scene on the day of the incident.¹³⁸¹³ The Chamber is therefore unable to conclude, beyond reasonable doubt, that the origin of fire was the Serb-held part of Stup, as neither the evidence before it nor the adjudicated facts indicate this location as the origin of fire.

4139. While Adjudicated Fact 303 states that the shells came from the SRK positions "somewhere to the west of the incident site", both ABiH and SRK held positions to the west of the incident site. Given the above findings with respect to Nedžarići and Stup, both of which are locations to the west of the incident site, and bearing in mind that the only report which placed the origin of fire in the SRK territory on the basis of something other than mere guesswork was discredited by the Prosecution, the Chamber is unable to rely on Adjudicated Fact 303. The Chamber therefore cannot conclude beyond reasonable doubt that the fire came from SRK positions. **(#This is exactly what should have been concluded in the vast majority of the cases, since there was no a step of territory without tranches of both sides, and wherever there was no proper investigation, objective and unbiased and with the Serb presence, this should be the only conclusion#.)**

1. Dobrinja, 4 February 1994 (Scheduled Incident G.7)

4140. The Indictment alleges that on 4 February 1994, a salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential settlement.¹³⁸¹⁴ The first shell is alleged to have landed in front of a block of flats at Oslobodilaca Sarajeva street, hitting persons who were distributing and receiving humanitarian aid and also children attending religious classes.¹³⁸¹⁵ The second and third shells are alleged to have landed amongst persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina street and Oslobodilaca Sarajeva street.¹³⁸¹⁶ The shells are alleged to have originated from VRS/SRK-held territory to the east of Dobrinja, and to have resulted in the death of 8 persons and the wounding of at least 18 others.¹³⁸¹⁷ In its Final Brief, the Prosecution submits that the 120 mm mortar shells were fired with at least three charges and originated from the direction of SRK-held territory to the east of Dobrinja, in the vicinity of Lukavica, possibly the Energoinvest complex.¹³⁸¹⁸ The Accused argues that in fact four 120 mm mortar shells exploded at the scene, and that they originated from the ABiH-held positions.¹³⁸¹⁹

4141. On 4 February 1994, humanitarian aid was being distributed along Oslobodilaca Sarajeva street in Dobrinja where a large number of people had gathered waiting for the aid when a number of shells exploded causing a number of casualties.¹³⁸²⁰ One of those present

¹³⁸¹³ See Prosecution Final Brief, Appendix C, para. 52, fn. 330. While Subotić does rely on Verdy's report to a large extent, she concludes that he made a mistake when determining the exact origin of fire. Accordingly, as neither party relies on his report with respect to the origin of fire and he did not give evidence before the Chamber explaining and defending his methodology, the Chamber cannot rely on it in this regard.

¹³⁸¹⁴ Indictment, Scheduled Incident G.7.

¹³⁸¹⁵ Indictment, Scheduled Incident G.7.

¹³⁸¹⁶ Indictment, Scheduled Incident G.7.

¹³⁸¹⁷ Indictment, Scheduled Incident G.7.

¹³⁸¹⁸ Prosecution Final Brief, Appendix C, para. 53.

¹³⁸¹⁹ Defence Final Brief, paras. 2040–2046.

¹³⁸²⁰ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 5; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 54. See also KW570, T. 32220 (18 January 2013) (private session).

in the area was Sabahudin Ljuša who did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca Sarajeva street.¹³⁸²¹ The Chamber also took judicial notice that Ismet Hadžić, commander of the Dobrinja Brigade of the ABiH, stated that on that date there were no ABiH military units close to the site.¹³⁸²²

(However, the Regular Combat report of the SRK to the Mains Staff of VRS for 4 February 94 contains a description of an intensive fire from the Muslim side, even from Mojmiilo, hill, which is in the close vicinity of Dobrinja, see D1515:

1. THE ENEMY:

- Sniper fire from the direction of *Ceneks* towards Ilidža, towards Ugorsko, at Lukavica, Vraca and Grbavica.
- Infantry fire at the positions in Pejton (Ilidža), the Forestry School, Mijatovića Kosa, Krčevina (Ilijaš) from Ackarov Grob at Tirića Bare.
- Mortar fire at positions in the sector of the suburb of Ilidža, from Mojmiilo at Lukavica and Grbavica (Šoping).
- Fired Brownings from Sokolje at the *Orao* VZ /air force complex/.
- Fired rifle launched grenades from Celina at Krčevine.
- Fired a hand-held rocket launcher from Sokolje at Rajlovac.
- Movements and regrouping was spotted in the sector of Švabino Brdo and Brijesće (motor vehicles), Sokolje, Turkovići (Renovica), the crossroads Prespica-Renovica, Buci, Kralupi and Goduša, and entrenchment in the sector of Sokolje.

4142. Sabljica and Mededović participated in the investigation of this incident on 4 February 1994, together with a team from CSB Sarajevo, led by an investigating judge, Zdenko Eterović, and including a number of forensic technicians, such as Bešić and KDZ166.¹³⁸²³ According to the report prepared by Eterović on the day of the incident, three 120 mm shells landed in the area, the first two almost simultaneously at 11:30 a.m.¹³⁸²⁴ One of the two hit the ground floor of an apartment building at number 8 Oslobodilaca Sarajeva street, injuring a boy but causing no deaths.¹³⁸²⁵ The other hit a retaining wall in the backyard of an apartment at number 3 Mihajla Pupina street and a 120 mm shell stabiliser was found on the scene.¹³⁸²⁶ A boy and a woman were killed by this shell.¹³⁸²⁷ The third shell landed a few minutes later, hitting the playground located next to a covered parking lot

¹³⁸²¹ See Adjudicated Fact 318.

¹³⁸²² See Adjudicated Fact 319.

¹³⁸²³ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 8–9. See also P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), p. 49; P129 (Witness statement of Zlatko Mededović dated 20 November 1995), p. 3; P1791 (Witness statement of KDZ166 dated 13 February 2010), pp. 14–15. Before the on-site investigation was conducted the bodies and the wounded people were removed and taken to either Dobrinja or Koševo Hospitals. See P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

¹³⁸²⁴ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 2–3, 5.

¹³⁸²⁵ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3. This shell “hit the window frame” of an apartment at the ground floor of the building which was being used as a Muslim primary school. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

¹³⁸²⁶ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 10–13; P1792 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 1–4; D998 (Video footage re shelling of Dobrinja on 4 February 1994); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

¹³⁸²⁷ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

and surrounded by buildings in the vicinity of Oslobodilaca Sarajeva street.¹³⁸²⁸ More specifically, the report states that this shell landed on the “asphalt sidewalk”, on the side closer to the playground.¹³⁸²⁹ A 120 mm shell stabiliser was found embedded in the asphalt.¹³⁸³⁰ The report also notes that altogether six persons were killed on the scene and two more people died on admission to the Koševo Hospital;¹³⁸³¹ while 22 others were seriously wounded.¹³⁸³² The official report CSB prepared the following day lists eight killed and 18 wounded.¹³⁸³³ **(#Absurdity# And how the CSB Sarajevo explained the fact that within those few minutes between second and third shells hadn’t been used by the victims of the third shell to find a shelter? It is not believable that the people remained outside after the first two shells.)**

4143. Sabljica and Mededović examined only two out of the three impact sites, namely those that resulted in significant casualties.¹³⁸³⁴ They concluded, based on the size and shape of the shrapnel traces and on the recovered stabiliser, that a 120 mm calibre mortar shell landed in the backyard of number 3 on Mihajla Pupina street, from the direction of east-northeast, “where Lukavica, that is, the Energoinvest complex of buildings is located.”¹³⁸³⁵ For the same reasons, the projectile that landed on the footpath beside the playground was also found to have been a 120 mm calibre mortar shell and the team concluded that it had originated “from the east”, again where Lukavica and the Energoinvest complex were located.¹³⁸³⁶ When asked about the lack of reference to the shell that landed at number 8 Oslobodilaca Sarajeva street in his report, Sabljica explained that Eterović “insisted” on including in his official report some analysis relating to that shell, despite the

¹³⁸²⁸ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 2–9; P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 5–10; D1001 (Video footage re shelling of Dobrinja on 4 February 1994); D1002 (Video footage re shelling of Dobrinja on 4 February 1994); D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995). See Adjudicated Fact 316.

¹³⁸²⁹ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3. Pools of blood, pieces of flesh, spilled flour and a damaged boot were also found at the scene. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 5, 7. See P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal); P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), pp. 49–50; P1707 (Photographs re shelling of Dobrinja on 4 February 1994).

¹³⁸³⁰ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 3.

¹³⁸³¹ While the report notes that three other individuals died on admission to the Koševo Hospital, the Chamber notes that one of the three listed is Sabahudin Ljuša who in fact survived the attack and is also listed in Eterović’s report as one of the seriously wounded victims. Ljuša was 10 years old at the time of the attack. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 5–6. Adjudicated Fact 318 makes it clear that Ljuša survived and went on to give evidence in the *Galić* case.

¹³⁸³² While Eterović’s report refers to 23 seriously wounded victims, the number is actually 18 as a number of persons appear to have been listed twice. The Chamber notes that “Mukšija Pribinja”/“Muskija Pubinja”—who appears to be the same individual—is listed both among those who died in the hospital and among those who were seriously wounded. The official report, prepared the next day, clarifies that this individual was among the dead and that 18 people were wounded in this incident. P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3–6. See also Adjudicated Fact 317, which provides that Eterović’s report found that altogether eight people had been killed by shells and 22 were wounded. The Chamber notes, relying on the available evidence, that the number of wounded was in fact 18 people. As a result, the Chamber will not rely on this particular Adjudicated Fact in its findings below.

¹³⁸³³ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 5–6.

¹³⁸³⁴ P1695 (Witness Statement of Mirza Sabljica dated 11 February 2010), p. 49; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 8–9; P129 (Witness statement of Zlatko Mededović dated 20 November 1995), p. 3; Mirza Sabljica, T. 7768–7769 (12 October 2010); Sead Bešić, T. 9488–9489 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 3–7.

¹³⁸³⁵ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 50; P1816 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), p. 1; P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

¹³⁸³⁶ P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 51; P1816 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), p. 1; P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

fact that Sabljica and Mededović did not analyse it.¹³⁸³⁷ Commenting on Eterović's reported sequence in which the shells landed, Sabljica stated that he and Mededović did not know the sequence as all they did was look at the traces of the explosion.¹³⁸³⁸ Assuming that the sequence was correct, however, Sabljica could not explain why the children would still be on the playground when the third shell landed, if the two other shells had already landed nearby several minutes before it.¹³⁸³⁹ **(Exactly! #The Chamber was aware of invalidity of these investigations too#!)**

4144. Sabljica testified that the confrontation line to the north and northeast of Dobrinja was between 350 to 400 metres away from the incident site.¹³⁸⁴⁰ He acknowledged that there was a certain difference in his findings as to the origins of the two shells, namely east and northeast, and explained that the Energoinvest complex that is mentioned in the report was only used as an "orientation point" rather than as the actual calculated origin of fire.¹³⁸⁴¹ Mededović testified that there were only one or two buildings between the incident site and the Serb lines.¹³⁸⁴²

4145. As part of the official report one of the CSB Sarajevo, a forensic technician drew a sketch of the incident site marking the three impact sites and noting the direction of the north.¹³⁸⁴³ However, during cross-examination of Sabljica, the Accused successfully established that the sketch was inaccurate, as was the direction of north marked on it.¹³⁸⁴⁴ KDZ166 explained that this mistake occurred because the forensic technician was unfamiliar with Dobrinja and under pressure to work fast.¹³⁸⁴⁵ **(#Manipulation with azimuth#! From this "excuse" we see that he wasn't looking for the north, but for Lukavica, in order to allocate the source of the fire to Lukavica! In any case, if he marked north to be towards east, the conclusion about fire source being Lukavica can not survive! Rectifying the azimuth and properly marking north, the direction has to be corrected for more than 90° and thus Lukavica must be excluded!)** Despite this error, Sabljica remained of the view that the second shell came from the east, while the third shell came from the northeast.¹³⁸⁴⁶ Both he and KDZ166 testified that the direction of fire was not determined on the basis of this sketch, nor was it indicated on it; rather it was

¹³⁸³⁷ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 53–54; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9.

¹³⁸³⁸ Mirza Sabljica, T. 7791–7795 (12 October 2010).

¹³⁸³⁹ Mirza Sabljica, T. 7793–7794 (12 October 2010). On cross-examination, Sabljica testified that this site was what Eterović referred to as the third shell in the sequence, which in the CSB sketch was marked with number one. Mirza Sabljica, T. 7790–7791, 7795–7797 (12 October 2010); D744 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica); D743 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica).

¹³⁸⁴⁰ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 52. According to Sabljica, the confrontation line ran east and northeast of Dobrinja, in the direction of Lukavica. See Mirza Sabljica, T. 7771–7772 (12 October 2010); D741 (Map of Dobrinja marked by Mirza Sabljica).

¹³⁸⁴¹ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 52–53; Mirza Sabljica, T. 7768 (12 October 2010).

¹³⁸⁴² P129 (Witness statement of Zlatko Mededović dated 20 November 1995), p. 3.

¹³⁸⁴³ P1902 (Sketch re shelling of Dobrinja on 4 February 1994) (under seal).

¹³⁸⁴⁴ Sabljica drew the correct direction of north on the sketch that was rotated in order to show accurate illustration of the area. See Mirza Sabljica, T. 7768–7773, 7777–7789 (12 October 2010), T. 7947–7951, 7953–7957 (14 October 2010); D741 (Map of Dobrinja marked by Mirza Sabljica); D742 (Sketch re shelling of Dobrinja on 4 March 1994 marked by Mirza Sabljica); P1739 (Map of Dobrinja); P1740 (Aerial photograph of Sarajevo marked by Mirza Sabljica); P1741 (Sketch re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica); D768 (Composite images of P1740 and P1741 marked by Mirza Sabljica); D900 (Map of Dobrinja marked by Sead Bešić).

¹³⁸⁴⁵ KDZ166 also marked the correct direction of north on the image, which coincides with that marked by Sabljica. See KDZ166, T. 8281–8283, T. 8298–8299 (26 October 2010); P1802 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal).

¹³⁸⁴⁶ Mirza Sabljica, T. 7798–7799 (12 October 2010); D742 (Sketch re shelling of Dobrinja on 4 March 1994 marked by Mirza Sabljica).

determined on the basis of the traces at the scene.¹³⁸⁴⁷ **(#But it is even worse: the sketch was created on the basis of their finding, because the order of moves is first to establish direction, then to sketch it#. A sketch is an organic part of investigation, and this “excuse” would not be accepted in any court all over the world! However, if they were right, that would mean that fire came from two different weapons and places! There is no possibility to achieve such a concentrated mortar fire of only three shells from two different places! Too many irregularities to have the case considered before a serious court!)**

4146. Shortly after the shelling, having heard about it from a journalist, Rose went to the incident site and ordered that the crater analysis be carried out.¹³⁸⁴⁸ The UNPROFOR determined that between 11 a.m and 11.02 a.m on 4 February 1994, three 120 mm mortar rounds exploded in Dobrinja.¹³⁸⁴⁹ The UNPROFOR found that the “presumed” origin of fire for all three shells was the SRK-held territory, in the general location of Lukavica.¹³⁸⁵⁰ Akashi informed journalists on 5 February 1994 that the UNPROFOR had confirmed that the mortar attack in Dobrinja on 4 February definitely originated from the SRK-held territory.¹³⁸⁵¹ Rose also telephoned the VRS and wrote letters of protest to the Accused and Mladić.¹³⁸⁵²

4147. KDZ450 who was with the UNPROFOR in Sarajevo between 1993 and 1994, testified that this incident demonstrated to him that the SRK targeted the civilian population of Sarajevo.¹³⁸⁵³ On cross-examination, when put to him that Dobrinja was a military target given the presence of the 155th Brigade, KDZ450 acknowledged that Dobrinja was on the confrontation line but maintained that the shells arrived in a residential area and caused only civilian casualties.¹³⁸⁵⁴

¹³⁸⁴⁷ Mirza Sabljica, T. 7800–7801 (12 October 2010), T. 7829–7830 (13 October 2010); KDZ166, T. 8297–8315 (26 October 2010); D798 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D799 (Map of Dobrinja marked by KDZ166); D800 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D801 (Sketch re shelling of Dobrinja on 4 February 1994 marked by KDZ166) (under seal); D802 (Photograph re shelling of Dobrinja on 4 February 1994 marked by KDZ166).

¹³⁸⁴⁸ P1638 (Witness statement of Michael Rose dated 26 March 2009), paras. 5, 35. *See also* KW570, T. 32220 (18 January 2013) (private session).

¹³⁸⁴⁹ P1597 (UNPROFOR report, 4 February 1994). The report lists three distinct UN grid reference points in relation to the location of the incident. It also records the damage at the scene as follows: shell one, hole on the tar lane; shell two, bedroom window; shell three, in front of a building. *See* P1597 (UNPROFOR report, 4 February 1994), e-court p.1. Thomas stated that based on his experience and under the circumstances the analysis conducted by the UNPROFOR appears to have been conducted in a thorough and professional manner. *See* P1558 (Witness statement of Francis Roy Thomas dated 13 May 2009), paras. 13, 108.

¹³⁸⁵⁰ Without referring to a specific crater, the UNPROFOR report lists the angle of descent as 1200 mils, angle of approach as 2000 mils, **(In such a case, it couldn't be northeast, because it would be an azimuth higher than 110 degrees, and it falls within southeast range!)** and the maximum range of 3500 to 4000 metres. Attached to the report is a map of Sarajevo depicting the three areas of impact and also an arrow from the likely point of origin, indicating the approach of the projectiles from the southeast of Dobrinja. *See* P1597 (UNPROFOR report, 4 February 1994).

¹³⁸⁵¹ D4473 (UNPROFOR report re mortar bomb explosions in Sarajevo on 4 and 5 February 1994, 6 February 1994), e-court p. 2. Lieutenant Colonel Shadbolt of the UNPROFOR informed Akashi of the Crater Analysis on 6 February 1994. D4473 (UNPROFOR report re mortar bomb explosions in Sarajevo on 4 and 5 February 1994, 6 February 1994), e-court pp. 3–4. *See also* Michael Rose, T. 7352–7353 (6 October 2010); KW570, T. 32220 (18 January 2013) (private session); D682 (UNPROFOR report re local press summary, 7 February 1994). KDZ450 also testified that the UNPROFOR clearly established that the SRK shelled Dobrinja on 4 February 1994 and further that these actions led only to civilian death. *See* KDZ450, T. 10618, 10621, 10695 (20 January 2011).

¹³⁸⁵² P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35.

¹³⁸⁵³ KDZ450, T. 10617–10618 (20 January 2011).

¹³⁸⁵⁴ KDZ450, T. 10620–10623 (20 January 2011). *See also* D965 (UNPROFOR report, 3 February 1994).

4148. Higgs went to the incident site and due to the scene not being well preserved decided to base his conclusions on the reports and data collected at the time of the incident.¹³⁸⁵⁵ Having examined the CSB Sarajevo report, Higgs testified that he had no reason to doubt any of the findings, including the fact that the mortars were of 120 mm calibre and that the direction of fire was from the east.¹³⁸⁵⁶ He also observed that the distance between the three rounds on the ground was within a 40 metre radius, which can be expected from one barrel firing all three rounds.¹³⁸⁵⁷ Given the time delay between the firing of the rounds, as provided by the witness statement he had at his disposal, Higgs concluded that the aim of the fire was to harass those present at the incident site, disrupt whatever was going on, and prevent movement.¹³⁸⁵⁸ According to Higgs, this was a classic example of a harassing mission.¹³⁸⁵⁹ **(However, #this presumed a clear visibility of the scene from the firing place#. Did they established this? Without this, no conclusions about motives and intentions should be taken into account. What harassing mission would it be, if there was no a direct visibility? But, the next day incident, Makrale 1, will shade a light on this unsuccessful provocation!)**

4149. Hogan visited the incident site in 2001 with several victims of the shelling¹³⁸⁶⁰ and on the basis of their recollections recorded the GPS co-ordinates and filmed the locations where two of the shells impacted on 4 February 1994.¹³⁸⁶¹ He conceded that one of the victims made a mistake in relation to one of those locations, namely the point of impact for the shell that landed on or near the playground in the immediate vicinity of Oslobodilaca Sarajeva street, explaining that seven years had passed after the incident and that at the time of the incident this victim probably would not have been in a position to even see the precise point of impact.¹³⁸⁶²

4150. Zorica Subotić visited the incident site on 17 September 2010.¹³⁸⁶³ She confirmed that the CSB Sarajevo team incorrectly marked the position of north on their sketch, meaning that the fire coming from what was in fact the direction of north-northeast would look on the sketch as originating from the direction of east-southeast, namely the SRK positions.¹³⁸⁶⁴ In

¹³⁸⁵⁵ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁸⁵⁶ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁸⁵⁷ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁸⁵⁸ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 10.

¹³⁸⁵⁹ P1437 (Richard Higgs's Consolidated Report on Sarajevo Shelling Incidents, 13 March 2009), p. 11.

¹³⁸⁶⁰ See D996 (Video footage re shelling of Dobrinja on 4 February 1994); D1000 (Video footage re shelling of Dobrinja on 4 February 1994). The Chamber notes that it is not clear who the victims in question are from the evidence before it. However, it is clear that they were not witnesses in this case. The Chamber notes that Subotić provides in her expert report that two of those victims were Sabahudin Ljuša and Fata Spahić. See D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 118, 123.

¹³⁸⁶¹ Barry Hogan, T. 11204–11206, 11263–11269 (3 February 2011); P2190 (GPS locations for shelling and sniping incidents in Sarajevo); P2191 (Map of Sarajevo with scheduled sniping and shelling incidents); D996 (Video footage re shelling of Dobrinja on 4 February 1994); D997 (Video still re shelling of Dobrinja on 4 February 1994); D998 (Video footage re shelling of Dobrinja on 4 February 1994); D999 (Video still re shelling of Dobrinja on 4 February 1994).

¹³⁸⁶² Barry Hogan, T. 11268–11269 (3 February 2011); D1000 (Video footage re shelling of Dobrinja on 4 February 1994); D1001 (Video footage re shelling of Dobrinja on 4 February 1994); D1002 (Video footage re shelling of Dobrinja on 4 February 1994).

¹³⁸⁶³ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 122; Zorica Subotić, T. 38363 (15 May 2013). Subotić based her conclusions on the documents produced by CSB Sarajevo and the remaining physical evidence at the scene in 2010. There were no remains of the craters, however. Zorica Subotić, T. 38437 (16 May 2013).

¹³⁸⁶⁴ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 120–121, 138, 164; Zorica Subotić, T. 38270–38271 (14 May 2013). On cross-examination, it was put to Subotić that she was misleading the Chamber when she asserted that the CSB findings were inaccurate based on this error as their ballistics experts did not use the sketch in any of their official calculations. She explained that she was not trying to mislead anyone and that without a correct reference point in the

Subotić's opinion all of the 120 mm mortar shells that exploded on 4 February 1994 in fact originated from ABiH-held positions to the north and northeast.^{13865 (13865)}

4151. Focusing first on the shell that struck the building at no 8 Oslobodilaca Sarajeva street and for which CSB Sarajevo conducted no analysis,¹³⁸⁶⁶ Subotić observed that the façade of the building was not repaired after the incident and proceeded to argue that its physical appearance indicates that the shell landed with a large angle of descent and that it originated from the right-hand side of the building, namely to the northeast.¹³⁸⁶⁷ Despite having conceded that she could not determine an accurate origin of fire given the lack of sufficiently preserved evidence, Subotić argued that the UNPROFOR findings for this impact were not accurate and further that the shell was fired from ABiH-held territory.¹³⁸⁶⁸

(Ms. Subotic didn't lack anything that other investigators of the Prosecution, coming as late as Subotic, had. Any investigative material should consist of a findings which would enable everyone to make the same conclusion whenever analysed!)

4152. Subotić determined that the shell that impacted at number 3 Mihajla Pupina street landed in front of a retaining wall, on pavement extending about 80 to 90 centimetres into the back yard.¹³⁸⁶⁹ Whilst the pavement had been repaired, she thought that the building's façade remained in the same condition as it had been when contemporaneously photographed by the CSB Sarajevo.¹³⁸⁷⁰ She then argued that Sabljica's description of the size of the shrapnel marks exceeded the size of the pavement which led her to conclude that his observations were not based on any physical evidence.¹³⁸⁷¹ Subotić also thought that Sabljica's crater analysis was incorrect and that this particular shell was fired from ABiH-held positions approximately to the north of Dobrinja.¹³⁸⁷² She argued that the shell fragment dispersion pattern on the building's façade disapproved Sabljica's findings, as there were fewer shrapnel marks on the left-hand side of the building, which would not have been the case had the shell originated from the direction of Lukavica.¹³⁸⁷³ She also disparaged

sketch and given the limited nature of the CSB investigation documentation it would be impossible to reconstruct and verify their results. Zorica Subotić, T. 38446–38452 (16 May 2013).

¹³⁸⁶⁵ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 120–121, 137–139, 162–164.

¹³⁸⁶⁶ Subotić contended that it was suspicious that no analysis was conducted for this impact point as, according to her, and contrary to the CSB Sarajevo report, one person was in fact killed and five were injured by this shell. Subotić then lists the names of the relevant casualties in her report. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 112. However, it appears that Subotić reached this conclusion simply on the basis that the people she lists lived on the Oslobodilaca Sarajeva street itself (their addresses are listed in the report). Given that the evidence shows that a large number of people were congregating in the area outside, queuing for humanitarian aid, the Chamber finds Subotić's assumption unacceptable. It shows her propensity to ignore contemporaneous evidence in order to reach completely unreasonable conclusions based on assumptions. This seriously brings into question her credibility as a legitimate and reliable expert witness.

¹³⁸⁶⁷ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 122–124, 138, 163–164.

¹³⁸⁶⁸ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 122, 138–139, 163–164.

¹³⁸⁶⁹ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 124–125. *See also* P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court p. 9.

¹³⁸⁷⁰ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 124–130. *See also* P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 2–4.

¹³⁸⁷¹ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 125.

¹³⁸⁷² D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131, 138–139, 163–164.

¹³⁸⁷³ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 125–127; Zorica Subotić, T. 38271–38272 (14 May 2013). On cross-examination, it was put to Subotić that she was misleading the Chamber as the shell would have landed at a downwards angle of 45 degrees or greater, and that shrapnel would have been dispersed at the scene

the CSB's use of a magnetic compass and a map to accurately determine the origin, and argued that the stabiliser that was recovered at this site did not support their findings.¹³⁸⁷⁴ Subotić also argued that the soot traces on the snow at this location, were misinterpreted by the CSB and that Sabljica wrongly marked the origin of fire during his testimony before the Chamber.¹³⁸⁷⁵

4153. Coming to the final impact point, Subotić argued that the material before her indicated that two shells landed there, thus bringing the total to four mortar shells involved in the incident.¹³⁸⁷⁶ She used photographs and footage from the CSB Sarajevo investigation to argue that some of the damage to the footpath and the soil traces around it could not have been caused by a singular shell exploding.¹³⁸⁷⁷ Using these soil traces and the damage to the footpath in a contemporaneous CSB photograph, she calculated that the second shell came from an incoming azimuth of 220 to 240 degrees or smaller, meaning that it had been fired from the northeast and that only ABiH forces could have fired it.¹³⁸⁷⁸ While noting that the stabiliser was found at the scene fully embedded into the soil with an almost vertical angle, Subotić thought that the shell could not have been fired at an almost maximum angle of elevation since the marks on the footpath did not correspond to that angle, indicating thus that the stabiliser changed its position when it penetrated the soil.¹³⁸⁷⁹ She acknowledged, however, that it was practically impossible to verify the accuracy of Sabljica's findings in

accordingly and not on a horizontal axis. She responded that her point was simply that most of the shrapnel damage would have to have been on one side of the point of impact, dependant upon origin. See Zorica Subotić, T. 38452–38455 (16 May 2013); P6323 (Diagram depicting point of impact of shell marked by Zorica Subotić).

¹³⁸⁷⁴ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 127, 131; Zorica Subotić, T. 38451 (16 May 2013). Subotić argued that contemporaneous photographs of the scene show that parts of the stabiliser not in contact with the surface were deformed, indicating that the stabiliser had changed its position on impact, having already hit the surface and then rebounded to its final resting place. According to Subotić, this meant that it could not have been of use in determining origin of fire. See Zorica Subotić, T. 38276 (14 May 2013); D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 127–128; P1972 (Photographs re shelling of Dobrinja on 4 February 1994), e-court p. 3; D896 (Video footage of shelling of Dobrinja on 4 February 1994, Markale on 5 February 1994, and Markale on 28 August 1995).

¹³⁸⁷⁵ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 129–130; Zorica Subotić, T. 38272–38273 (14 May 2013). On cross-examination, Sabljica was asked by the Accused to mark the incoming direction of fire on a contemporaneous photograph of the scene. He marked it with an arrow, but did not align the arrow with the impact point. See Mirza Sabljica, T. 7797–7798 (12 October 2010); D745 (Photograph re shelling of Dobrinja on 4 February 1994 marked by Mirza Sabljica). The Chamber notes, however, that Sabljica was simply asked during cross-examination to indicate direction of fire, not to be absolutely accurate or align that direction of fire to the actual point of impact.

¹³⁸⁷⁶ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 115–116, 137–139, 162–164; Zorica Subotić, T. 38270 (14 May 2013). The Chamber notes, however, that the CSB Sarajevo photograph she used to come to this conclusion is not sufficiently clear to be able to determine with certainty where the arrow is pointing exactly.

¹³⁸⁷⁷ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 115–119; Zorica Subotić, T. 38437–38438 (16 May 2013); P6321 (Photograph of damage caused by shell explosion marked by Zorica Subotić).

¹³⁸⁷⁸ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 119, 131–133; Zorica Subotić, T. 38274 (14 May 2013), T. 38438–38444 (16 May 2013); P6322 (Photograph depicting incoming trajectory of shell marked by Zorica Subotić). Using a map of the disposition of forces in Sarajevo, Subotić conjectured that the boundary line between the SRK and the ABiH was about 239 degrees, and that given the hilly terrain to the northeast of Dobrinja, in her opinion it was impossible that the SRK would have operated a 120 mm mortar battery in that area. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131–133.

¹³⁸⁷⁹ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), p. 134. She further opined that the video footage taken by the CSB Sarajevo team shows that the stabiliser was marked with the roman letter N, which would not have been the case if it belonged to an SRK shell. D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 133–136, 138–139, 164; Zorica Subotić, T. 38275–38276 (14 May 2013). On cross-examination, it was put to Subotić that the letter N was not visible on a CSB Sarajevo photograph of the stabiliser but she maintained that she could not be sure as that photograph was not clear. Zorica Subotić, T. 38457–38460 (16 May 2013); P6324 (Photographs comparing stabilisers in the crater). The Chamber notes that contrary to Subotić's evidence the photograph is in fact clearer than the footage and clearly shows that the letter N is not engraved on the stabiliser.

relation to this shell with any precision, due to the photograph of his investigation being a side view of the footpath and crater.¹³⁸⁸⁰

4154. Noting that the number of casualties recorded in relation to the incident varied, Subotić highlighted the casualty list provided by Eterović where some victims' names are listed among both the injured and the dead, and argued that these mistakes indicate that the investigation was conducted 'sloppily'.¹³⁸⁸¹ She further challenged references made to Džavarhal Nehrua street within the CSB Sarajevo report arguing that there was intent to cover up the inconsistent presence of an eye-witness at the actual scene of the incident, namely the playground near the Oslobodilaca Sarajeva street.¹³⁸⁸²

4155. On cross-examination, Subotić agreed that the mortar shells would have to have been fired with a minimum of charge "three" as this is when a mortar shell penetrates the ground and one of the shell stabilisers had been recovered fully embedded in the footpath.¹³⁸⁸³ However, she did not want to accept, without first consulting the relevant firing tables, that the corresponding minimum firing distance for the shells would therefore have to have been roughly 600 metres.¹³⁸⁸⁴

4156. Galić testified that he did not order an attack on civilians waiting for humanitarian aid in Dobrinja on the day of the incident.¹³⁸⁸⁵ He testified that he was informed of the incident on the day it took place and that he ordered all of the relevant units in the area to report on what happened.¹³⁸⁸⁶ The SRK Command's regular combat report for 4 February 1994, sent at 6 p.m., states that the UNPROFOR did not send any kind of protest in relation to the incident but that "after checking, it was established that no fire had been opened" by the SRK in Dobrinja.¹³⁸⁸⁷ **(And this was a "#strictly confidential"# report to the Main Staff, which wouldnt contain any false information!)** Galić commented on the report stating that the UNPROFOR did not submit a protest at that time because it did not have enough information about the incident.¹³⁸⁸⁸ To Galić this incident was simply one of the examples of BiH propaganda directed against the SRK, with the Sarajevo media reporting in a politicised manner.¹³⁸⁸⁹ He further opined that UN protests during the conflict were not

¹³⁸⁸⁰ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 131–132; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court p. 6; Zorica Subotić, T. 38274 (14 May 2013).

¹³⁸⁸¹ D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 111–112, 137, 162.

¹³⁸⁸² D3542 (Zorica Subotić's expert report entitled "Mortar Operations in Sarajevo Area in 1992–1995", 15 August 2012), pp. 113–114, 137, 162, 164; Zorica Subotić, T. 38268 (14 May 2013).

¹³⁸⁸³ Zorica Subotić, T. 38456 (16 May 2013).

¹³⁸⁸⁴ Zorica Subotić, T. 38457 (16 May 2013); P5921 (Firing tables for M74 120 mm light mortar), p. 12. *See also* P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar).

¹³⁸⁸⁵ Stanislav Galić, T. 37442 (18 April 2013).

¹³⁸⁸⁶ Stanislav Galić, T. 37442–37443 (18 April 2013).

¹³⁸⁸⁷ D1515 (SRK combat report, 4 February 1994). Milošević testified that Colonel Kosovac made inquiries into the incident on behalf of the SRK Command and concluded that the SRK had not opened fire on Dobrinja. *See* Dragomir Milošević, T. 32711–32712 (28 January 2013). **This fact shouldn't be in the fn. Because it is one of a very rare investigations done by the Serb side, since many other incidents hadn't been reported to the SRK.**

¹³⁸⁸⁸ Stanislav Galić, T. 37442–37443 (18 April 2013); D1515 (SRK combat report, 4 February 1994). *See also* D2774 (Witness statement of Milenko Indić dated 19 January 2013), paras. 133–134. The Chamber recalls Rose's testimony that he personally protested to the VRS about the incident. *See* P1638 (Witness statement of Michael Rose dated 26 March 2009), para. 35. *See also* KDZ450, T. 10548 (19 January 2011) (private session).

¹³⁸⁸⁹ Stanislav Galić, T. 37441–37442 (18 April 2013), T. 38007 (9 May 2013).

based on accurate and precise information.¹³⁸⁹⁰ **(Exactly, the UN representatives, commanders and UN MOs admitted that #they never conducted a proper investigation#! Here is what Richard Mole testified about self-inflicted bombing by the Muslim side, and about investigation, T.5885-86)** **Q.** Would you agree that the Muslim side targeted their own side of the city, that there were shells directed at their own neighborhoods, their own citizens, with the aim of causing them to be perceived as victims and thus inviting international sympathy, compassion, and, of course, the military intervention that you mentioned? **A.** You raise a very good but controversial issue here. I've already, in my testimony, tried to explain that when incidents are investigated, because we were not in a cease-fire situation but were still engaged in a war, full forensic analysis of all incidents, such as those you've already seen on the incident reports which we discussed yesterday, are such that individual assessment was impossible. On top of what I've just said, there was suggestion and there were sufficient unknowns for members of UNPROFOR to be reasonably sure that what you have stated is true. I would not, because of what I've just said, be able to tell you of specific incidences because I would deny anybody in the environment which we lived to have the ability to conclude a satisfactory forensic investigation to prove whether what you have suggested was true or not. So all I can suggest to you was that we, as UNMOs, were uncomfortable about that question because we sensed that what you say may have been true. But there are a lot of riders to what I've just said. It can't be determined that it's a fact, but there were very strong suspicions.

(Therefore, Gen. Galic had a convincing basis to state what he did in the testimony! And further, T.5886:) **Q:** that there were incidents you inquired into and that inspired in you certain suspicions as to who had actually fired. And in your 1997 statement, on page 12, you said that the Muslims used Sarajevo to perpetuate their victim status -- [In English] "... sometimes caused that perpetuation ..."

[Interpretation] Whereas Mr. Henneberry in the Galic case said that investigations into incidents carried out by the United Nations made him believe that for political reasons it was not emphatically said that the Muslims had bombed their own people, but he, himself, had such information that was collated among other people among UNMOs, that facts strongly pointed to the Muslims as shooters and that on some occasions they also bombed their own people. He says that in his Galic evidence of 22nd May, 2002, on page 80734 and 35. Is his information compatible or consistent with yours? **A.** From what you've just read to me, from my personal relationship with the officer concerned, what he has said reflects very similar views, I would suggest, to those that I have just described. **(And further, T.5888-89: Q.** Let's have a look at this page: [In English] "The market-place and gathering points were common target areas where people were queuing for water, United Nations' aid, or buying what little there was available in the markets. Those were common areas."

[Interpretation] Then: [In English] "Off the top of my head, I can recall four that I believe stated that the shells were fired by the Bosnian Muslims on their own people." [Interpretation] And the last answer on this page: "All the incidents I'm talking about were generally inside, well inside the city boundary of Sarajevo and well inside the known line of confrontation inside the" -- excuse me -- "the Muslim area. I cannot provide address at the moment. I simply have forgotten details." [Interpretation] That is what Mr. Henneberry is saying, and that is consistent with your knowledge; right? **A.** It is. (...) It was not within the remit of the UNMO Group to investigate all rounds that were fired, impact areas, and so on, nor was it the UNMOs' task to assess the rights or wrongs of conflict on the front-line. So you're making the assumption, I think, that the UNMOs and/or UNPROFOR had the capability to investigate every incident. That was not the case.

(So, two officers within the UN MO, Heneberry and R. Mole had the #same opinion about the ABiH tricks. Their motives were very known to the UN personnel, while there was no Serb motives to fire towards the city, for several reasons: a) the Serbs didn't intend to advance towards the city and thus didn't initiate any firing in support to an infantry attack; b) the Serb side was inferior in the manpower and was not interested in any skirmish; c) a returning fire would jeopardize the Serb civilians without any purpose; d) the international pressure and blaming would only intensify, which the Muslim side exploited to denigrate the Serbs!)

4157. Dragomir Milošević also testified that the SRK did not open fire on Dobrinja on the day of the incident. Instead, the SRK used the period 4 to 10 February 1994 only to reinforce its positions and did not respond to ABiH “provocations”.¹³⁸⁹¹ Savo Simić stated that at the time of the incident all of the artillery weapons of the 1st Sarajevo Mechanised Brigade were under the control of the UNPROFOR who would record each instance of an artillery weapon being fired.¹³⁸⁹² Dušan Škrba testified that there were twelve 120 mm mortar weapons in his command,¹³⁸⁹³ but that his forces did not open fire on 4 February 1994 as these weapons could not have been fired without his order, which he did not give, and because there were “UNPROFOR observers” at his command who would have heard the firing of shells.¹³⁸⁹⁴ He also testified that neither he nor the members of his unit ever intended to cause civilian casualties or terrorise civilians on the Muslim side.¹³⁸⁹⁵ On cross-examination, Škrba described Dobrinja as a neighbourhood that was exclusively residential.¹³⁸⁹⁶ He disagreed with the Prosecution’s proposition that the UNMOs who were based with his brigade only had information about attacks if informed by local SRK commanders.¹³⁸⁹⁷ **(#This assertion is contrary to all the evidence according to which the SRK units always informed the UN in advance to any firing, and the UN MOs were physically observing the artillery weapons#!)**

4158. The Chamber has received medical records indicating that on 4 February 1994, 26 injured persons were received at Dobrinja Hospital as a result of this shelling incident.¹³⁸⁹⁸ A number of these victims were transferred to Koševo Hospital, including Sabahudin Ljuša who was transferred to the Children’s ward,¹³⁸⁹⁹ and “Muškija Pribinja” who was taken

¹³⁸⁹¹ Dragomir Milošević, T. 32711–32714 (28 January 2013). *See also* D1515 (SRK combat report, 4 February 1994); D2807 (SRK Order, 4 February 1994). Two other SRK regular combat reports from 1994 state that the SRK respected cease-fire agreements and further that the ABiH violated these truce agreements. *See* D4582 (SRK Report, 24 April 1994); D4588 (SRK Report, 19 May 1994).

¹³⁸⁹² D2412 (Witness statement of Savo Simić dated 4 November 2012), para. 27.

¹³⁸⁹³ Dušan Škrba, T. 29111–29113 (18 October 2012); P5934 (Map of Sarajevo marked by Dušan Škrba).

¹³⁸⁹⁴ D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 14, 21; Dušan Škrba, T. 29153 (22 October 2012). Škrba also testified that his brigade did not target the areas where larger groups of civilians tend to gather such as hospitals, bus stations, railway stations, and schools. Dušan Škrba, T. 29131 (22 October 2012).

¹³⁸⁹⁵ D2341 (Witness statement of Dušan Škrba dated 14 October 2012), paras. 14–15.

¹³⁸⁹⁶ Dušan Škrba, T. 29152–29153 (22 October 2012).

¹³⁸⁹⁷ Dušan Škrba, T. 29153–29156 (22 October 2012) (stating that the 1st Sarajevo Mechanised Brigade provided information such as the direction of fire and the number of shells fired to UNMOs and further that he never received a protest in relation to these reports). This was contradicted by the evidence of UNMO Richard Mole, however. *See* P1426 (Witness statement of Richard Mole dated 7 May 2010), paras. 79–81.

¹³⁸⁹⁸ P1878 (List of patients from Dobrinja Hospital, 4 February 1994); P1891 (Medical record for Edlar Hafizović); P1895 (Medical record for Rajko Maksimović); P1879 (Medical record for Sevdah Hasanović); P1899 (Medical record for Džanko Zumreta); P1024 (Medical records for Sabahudin Ljuša).

¹³⁸⁹⁹ P461 (Admission records from Koševo Hospital), p. 2; P1024 (Medical records for Sabahudin Ljuša); Fatima Zaimović, T. 1879–1880 (5 May 2010); P818 (Extracts from Fatima Zaimović’s diary), p. 22; P462 (Surgery records from Koševo Hospital), p. 15.

directly to surgery after receiving first aid at the scene.¹³⁹⁰⁰ The available medical records indicate that eight people died as a result of the shelling incident in Dobrinja on 4 February 1994 and that 18 persons were injured.¹³⁹⁰¹

4159. In addition to the evidence and adjudicated facts outlined above, the Chamber also took judicial notice of the following adjudicated facts which go to the origin of fire and other controversial issues in this incident: (i) on 4 February 1994 around 11 a.m. three mortar shells struck a residential neighbourhood in Dobrinja killing at least eight civilians including a child and injuring at least 18 people including two children;¹³⁹⁰² (ii) three shells struck civilians engaged in peaceful activities;¹³⁹⁰³ (iii) the origin of fire was SRK-held territory in relation to the two shells that were investigated in detail;¹³⁹⁰⁴ and (iv) the first shell to strike formed part of the same attack and therefore also originated in SRK territory.¹³⁹⁰⁵

4160. Having considered the evidence and the adjudicated facts recounted above, the Chamber is convinced that, on 4 February 1994, three 120 mm mortar shells struck two of the buildings and the playground in the immediate vicinity of Oslobodilaca Sarajeva and Mihajla Pupina streets in Dobrinja. The Chamber is also convinced that these shells struck near persons who had gathered at the incident site to receive humanitarian aid. The Chamber does not accept Subotić's evidence that there were actually four 120 mm mortar shells. Her conclusion was based principally on secondary evidence, such as traces and debris she identified in the contemporaneous video footage and photographs and is therefore not as reliable as the *de visu* examination that was conducted by CSB Sarajevo and the UNPROFOR. Furthermore, the Chamber considers, as discussed above, that her proposition that one of the two recovered 120mm mortar stabilisers was engraved with a Roman letter "N" is blatantly false. The Chamber also does not accept Subotić's insinuations that references made to a nearby street contained within the amalgamated CSB Sarajevo report are indicative of some sort of conspiracy to pervert the truth. This insinuation simply ignores the evidence to the contrary, namely that the other CSB Sarajevo reports, including the official and on-site investigation reports, all refer to the incident site as being in the immediate vicinity of Oslobodilaca Sarajeva and Mihajla Pupina streets. The Chamber considers that this type of analysis, and Subotić's readiness to resort to conspiracy theory has seriously damaged her credibility both generally and specifically with respect to this incident.

¹³⁹⁰⁰ P462 (Surgery records from Koševo Hospital), p. 15; P463 (Koševo Hospital morgue records), p. 13; P1710 (BiH MUP Report re shelling of Dobrinja on 4 February 1994), e-court pp. 3, 6, 66–70. The Chamber notes that she was initially recorded as "Huskija Dubinja" in the Dobrinja Hospital records. See P1878 (List of patients from Dobrinja Hospital, 4 February 1994), p. 1.

¹³⁹⁰¹ These individuals were Jadranka Tenžera, Selma Spahić, Enver Mustagrudić, Saida Balićević, Emin Kolar, Aiša Šito, Mirsad Spahić, and "Muškija Pribinja". See P1874 (Death certificate for Jadranka Tenžera); P1875 (Death certificate for Enver Mustagrudić); P1876 (Death certificate for Emin Kolar); P1877 (Death certificate for Aiša Šito); P463 (Koševo Hospital morgue records), p. 13; P462 (Surgery records from Koševo Hospital), p. 15; P461 (Admission records from Koševo Hospital), p. 2. See also Adjudicated Facts 317, 320; P1707 (Photographs re shelling of Dobrinja on 4 February 1994), e-court pp. 7–8, 14–21; P1878 (List of patients from Dobrinja Hospital, 4 February 1994).

¹³⁹⁰² Adjudicated Fact 320.

¹³⁹⁰³ Adjudicated Fact 322.

¹³⁹⁰⁴ Adjudicated Fact 321.

¹³⁹⁰⁵ Adjudicated Fact 322.

4161. Relying on the medical evidence and the CSB Sarajevo report discussed above, the Chamber finds that the explosions caused by the mortar attack on 4 February 1994 resulted in 26 casualties, eight of whom died as a result. **(From the standpoint of allocation of responsibility, these facts are irrelevant, and the Defence didn't have any interest to challenge it! But, these facts do not say anything about the responsibility of the sides!)**

4162. In terms of the direction of fire, the Chamber recalls that both the CSB Sarajevo and the UNPROFOR investigators came to the scene on the day of the incident and were thus able to observe traces of the impact, and further that they all arrived at the same general direction of fire, namely towards Lukavica, to the east of Dobrinja. The Chamber also notes that Higgs examined the incident site and the CSB Sarajevo investigation and concluded that there were no reasons to doubt any of their findings. In contrast, Subotić concluded that the fire came from the direction of the north and northeast. **(#Manipulation with azimuth#! That was an inevitable conclusion when the azimuth was rectified for more than 90 degrees! A children would conclude the same!)** The Chamber however finds her conclusions in relation to this incident unreliable as they were mainly based on the analysis of secondary evidence or the remains of traces that were found at the scene in 2010 and thus are highly speculative. For example, having conceded that due to a lack of examinable evidence she could not accurately determine the origin of fire in relation to the impact site on Oslobodilaca Sarajeva street, she nevertheless concluded that the UNPROFOR findings were not accurate and that ultimately this shell, like the other shells, was fired from ABiH-held territory. **(#Deception and manipulation#! There was no any reason to suspect this finding of Ms. Subotić. It was clearly depicted in the Courtroom that the contemporaneous sketch of the scene decisively determined the direction of the shell, but in order to fit it, the sketch was twisted and declined for 90 degree. The north on this sketch was marked where the east should be. That enabled them to conclude that Lukavica was a source of fire. The simplest remedy was to make the North as it should be, and the deceptions would fall down! Neither other "findings" of the Muslim police investigations were any better. Why the Chamber accepted to be deceived so easily**

4163. As for the origin of fire, the Chamber notes that both the CSB Sarajevo and the UNPROFOR investigators concluded that it came from the SRK-held positions in the general direction of Lukavica. Given the location of the incident site and the fact that the confrontation line in the direction of Lukavica was between 350 to 400 metres away from that location,¹³⁹⁰⁶ the Chamber is also convinced that the shells originated in the SRK-held territory. In this respect, the Chamber recalls that Subotić agreed with the Prosecution that the 120 mm mortar shells related to this incident would have to have been fired with a minimum of charge 3 and that this would have increased the minimum firing distance for the shells.¹³⁹⁰⁷ This places the origin of fire firmly within SRK-held territory.

¹³⁹⁰⁶ See e.g. D741 (Map of Dobrinja marked by Mirza Sabljica). See also para. 4144.

¹³⁹⁰⁷ See generally P5921 (Firing tables for M74 120 mm light mortar); P5922 (Firing tables for M75 120 mm light mortar); P5923 (Firing tables for M52 120 mm mortar). See also para. 4155.

4164. As recounted above, a number of SRK witnesses, including Galić and Milošević, testified that no fire was opened by the SRK on Dobrinja on the day of the incident.¹³⁹⁰⁸ The Chamber cannot accept this evidence, however, in light of the evidence analysed above, as well as the evidence about the general situation in Dobrinja and the shelling that its civilian inhabitants were exposed to on a regular basis during the conflict.¹³⁹⁰⁹ **(There was no evidence (at least before and after this incident(s) that there was any fire initiated by the SRK, but only responses. So, it is awkward to say something in general, which wasn't in the Indictment. This manner is used to corroborate a tiny evidence in such a cases, but it shouldn't be allowed. So, how come a general situation in Dobrinja was relevant for this incident, and nothing that the Muslim side kept doing wasn't? Not only all the SRK commanders testified that there was no any fire, but also no a document, report, intercepted conversation, or any, any indication towards the Prosecution/Chamber case! And finally, as in all other incidents, the SRK was not notified and facilitated a participation in the investigation. This should be a UN norm and rule from now on!)**

4165. In terms of the nature of the area and the status of the victims, the Chamber recalls that the incident site was a residential neighbourhood in Dobrinja where humanitarian aid was being unloaded and distributed. The Chamber also recalls that there were no ABiH military units close to the site.¹³⁹¹⁰ In addition, the 26 casualties who died or were wounded in this incident were all civilians, including three children, and were all engaged in peaceful activities. The Chamber concludes based on the location of the incident, the lack of ongoing combat and military presence at the time, and the nature of the activity in which the victims were engaged, that the ultimate nature of the area and the population that was gathered on or near the playground on 4 February 1994 was civilian. **(#All of it is irrelevant, since there was no finding beyond a reasonable doubt that the SRK fired the shells#)** The Chamber recalls that there was a time delay between the three rounds and is thus convinced that the purpose of fire was to harass those present and prevent movement rather than to destroy any target. **(#This is senseless! What would be a purpose of the delay between the shells? After the first shell all that could move, took shelter, which is the most natural reaction!#)** The Chamber also has no doubt that the SRK deliberately targeted whomever may have gathered in this residential area. **(Or it was a warming up for the event on the next day, an Markale Market place, to have an accumulative effect on the international opinion#? But, if that was a SRK intention, why it didn't happen every now and then?#)**

(C) Stari Grad (Old Town)

¹³⁹⁰⁸ See paras. 4156–4157.

¹³⁹⁰⁹ See paras. 3783, 4059. The Chamber also recalls here Sladoje's testimony that the ABiH used "practically all" civilian buildings in Dobrinja for its purposes, thereby implying that most if not all of Dobrinja was considered to be a military target by the SRK soldiers and officers in the area. Similar attitude was exhibited by Simić. See paras. 4049, 4101.

¹³⁹¹⁰ See Adjudicated Facts 318, 319.

4166. Three of the shelling incidents alleged in the Indictment took place in Stari Grad (Old Town) of Sarajevo.¹³⁹¹¹ Two of those happened in the area of the Markale market (namely Scheduled Incidents G.8 and G.19) and one in Baščaršija fleamarket (Scheduled Incident G.9). According to the Prosecution, these incidents were consistent with the pattern of SRK attacks on Stari Grad, the aim of which was to target large gatherings of civilians or locations with a significant number of civilians present.¹³⁹¹² **(But this assertion is incorrect and unfounded. #There were many, many better opportunities and gatherings, and this never happened#. It had been heard in the courtroom that there was close to 300 mosques in Sarajevo, always overcrowded by people, and none of them had ever been fired at. There were many gasoline stations, and none of them ever had been fired at. There were periods with a very vivid daily life on streets, and had never been any fire from the SRK side. So, the Prosecution is counting on the Chamber's "understanding", in spite of illogical claims!#)**

4167. Dozo testified that from the very beginning of the conflict, the central part of Stari Grad, particularly the area around Mula Mustafe Bašeskije street was constantly shelled.¹³⁹¹³ According to him, the SRK was targeting places where the most civilians would gather.¹³⁹¹⁴ When asked why only two shells hit the area of the Markale market during the whole period of the conflict, he explained that many shells fell around the Markale market area and on nearby streets.¹³⁹¹⁵ Indeed, the Chamber heard that in the three months leading up to the first Markale incident the area was shelled between 10 to 12 times.¹³⁹¹⁶ Similarly, in the months prior to the second Markale incident, the area had also been shelled several times.¹³⁹¹⁷ **(This kind of #general allegations, unsupported by any evidence is not correct#. There must be a specific evidence about conduct of the both sides, tested and challenged. As general allegations without any evidence that could have been challenged, the Defence didn't deal with it, as it looked like a #gossip. If it is not so, there is no place in the Judgment for such a general assertions! This way it looks like a morale-political lecturing!)**

4168. The Chamber heard that in 1992 the SRK artillery firing plan included Baščaršija and other areas in its vicinity, although Galić explained that it was merely a plan in case of possible attacks by the ABiH and therefore did not mean that fire was in fact opened on the areas mentioned.¹³⁹¹⁸ **(This is the typical distortion of evidence. Let us see what is said in P1009:**

¹³⁹¹¹ Stari Grad is one of the ten constitutive municipalities of Sarajevo, located in the east part of the city and encompassing the areas of Baščaršija and Bistrik. See P966 (Map of Sarajevo marked by Robert Donia); P2362 (Map of Vogošća municipality with photographs); P973 (Robert Donia's expert report entitled "Bosnian Serb Leadership and the Siege of Sarajevo, 1990–1995", January 2010), e-court pp. 11, 126; Robert Donia, T. 3130 (1 June 2010); P2345 (Witness statement of KDZ020 dated 17 February 2011), para. 3. See also Adjudicated Fact 2.

¹³⁹¹² Prosecution Final Brief, Appendix C, para. 54.

¹³⁹¹³ Nedžib Dozo, T. 9578 (10 December 2010).

¹³⁹¹⁴ Nedžib Dozo, T. 9582 (10 December 2010).

¹³⁹¹⁵ Nedžib Dozo, T. 9581–9583 (10 December 2010).

¹³⁹¹⁶ P1441 (UNPROFOR report re shelling of Markale on 5 February 1994), e-court p. 24.

¹³⁹¹⁷ P1978 (Witness statement of Nedžib Dozo dated 7 December 2010), paras. 24–35.

¹³⁹¹⁸ P1009 (Order of Chief of Artillery of SRK, 11 October 1992), p. 2 (referring to "offensive combat operations"); P2656 (SRK order, 26 November 1992), p. 2; Stanislav Galić, T. 37937–37942 (8 May 2013). Galić also explained that fire was opened on his troops in Stari Grad from the residential area of Velešići. See Stanislav Galić, T. 37937 (8 May 2013).

3.1.- The KAG /Corps Artillery Group/ from the 4th map is to support the forces at the focus of the defence.

Therefore, the “defence” is determining the entire plan! Further:

Prevent the enemy's attack from Sarajevo aimed at lifting the blockade of Sarajevo by opening fire at the areas of Humsko Brdo, Pofalići, Velešići, Jarčedoli, Čolina Kapa, Briješće village, Stup, Alipašino Polje, Mojmiro Brdo.

“#Preventing the enemy's attacks from Sarajevo#” was #perfectly legitimate and only the attackers decided where the defence projectiles were to land! Further:

Support the counter-attack of our forces by opening fire along the following axes:

Trebević - Čolina Kapa - Bistrik, Radava - Pionirska Dolina, Rajlovac - Briješće, and Vogošća - Ugorsko - Kobilja Glava.

“along the following axes” didn't mean that Rajlovac was going to be shelled, since it was entirely the Serb settlement. Similar is with the next paragraph:

Support the offensive combat operations by opening fire along the following axes:

Faletići - Zmajevac, Mrković - Breka, and Borija - Baščaršija.

Therefore, these spots are only a geographic marks of an axes, while the next paragraph is specific about neutralising the enemy's artillery:

Neutralise the enemy's artillery by opening fire on the areas of: Velešići, Pofalići, Bistrik (the tunnel on the transit route), Koševsko Brdo, and the Bare cemetery. Neutralise enemy tanks by opening fire at the Koševsko Brdo area.

There is no a bit of any illegality in this order, all was aimed at a defence and was conditional, depending on the enemy's actions. As such, it shouldn't have been used to support an empty case of the Prosecution!)

In May 1995, most of Stari Grad was placed under “fire control” by the SRK, which, according to Savo Simić, meant that the SRK endeavoured to improve its tactical positions so that it could control the ABiH fire in that area; in other words, it did not mean that fire was in fact opened on the area.¹³⁹¹⁹

(Only less than 10% of the #Municipality of Stari Grad was an urban area, and Bascarsija was about 2 - 3% of it. The Stari Grad units numbered more than 3,500 combatants#. See D2414 of 16 July 1992:

2. Information on our units

The units of the Stari Grad OS participated in the freeing and capturing of the Bistrička Kula facility as a dominant feature. We are working on engineering fortification of the positions at this facility and along all defence lines. We

These units were able to capture a fortified hill “Bistrica Kula”, which meant that they made a very formidable attack on the Serb positions and succeeded! Certainly, the Serb side fired at the attacking units, which most probably was registered as #“shelling of Stari grad#”

¹³⁹¹⁹

Savo Simić, T. 30084–30090 (12 November 2012); P5940 (SRK Order, 9 May 1995), pp. 1–2. *See also* Miloš Škrba, T. 29200–29202 (22 October 2012). However, when discussing the Hreša-Vogošća road, which was controlled by the SRK and fired upon by the ABiH, Simić also appeared to agree that the term “fire control” meant that the road was kept under constant fire. *See* Savo Simić, T. 30059–30061 (12 November 2012).

are actively engaged in reconnaissance and observation of enemy positions along every axis. Reserve units are used to reinforce endangered axes. We are currently working on establishing new units, such as the Stari Grad Brigade consisting of the existing units, the 12th *Hadži Lojo* Brigade comprising the recently formed battalions and the newly established *Romanija* Detachment. Work related to formations and establishment is being done. The Stari Grad OS units are regularly carrying out duty service at the Bosut barracks and being sent as reinforcement to the units of the Centar Municipality. Training activities are ongoing.

or the next, D3517 of August 5, 92:

REPUBLIC OF BOSNIA AND HERZEGOVINA
Stari Grad OpŠTO /Municipal Territorial Defence Staff/
Confidential no. 02-P.184
Sarajevo, 5 August 1992

MILITARY SECRET
STRICTLY CONFIDENTIAL

Re: Your order no. 02-1093/92

Three brigades and detachments are active in the zone of responsibility of Stari Grad Municipality.

A. 12th Brigade

- Mixed ARJ /Artillery Rocket Unit/ platoon formed
- Additional training of LPA /light anti-aircraft artillery/ platoon for 20/1 mm and 20/3 mm guns carried out
- Rocket section theoretical training carried out

B. Stari Grad Brigade

- Formation of AR /artillery rocket/ platoon in progress

C. *Isa beg Isaković* Brigade

- Brigade in process of being formed

D. Sirokača Detachment

- Combat disposition protected by infantry

or D3518

from 1993:

1. Carry out the following organisational changes in the war units of the 1st Corps:

- a) The 1st and 2nd Anti-sabotage Detachments of the Novo Sarajevo OpŠO /Municipal Defence Staff/ shall enter the organisational composition of the 1st Mechanised Brigade;
- b) The 4th Anti-sabotage Detachment of the Novi Grad Sarajevo OpŠO shall enter the organic unit of the 2nd Motorised Brigade;
- c) The *Baščaršija* 1st Anti-sabotage Detachment of the Stari Grad Sarajevo OpŠO shall enter the organic unit of the 1st Mountain Brigade;
- d) The *Gazijin Han* 4th Anti-sabotage Detachment of the Stari Grad Sarajevo OpŠO shall enter the organic unit of the 2nd Mountain Brigade;
- e) The *Sedrenik* 3rd Anti-sabotage Detachment of the Stari Grad Sarajevo OpŠO shall enter the organic unit of the 3rd Mountain Brigade, and
- f) The 5th Anti-sabotage Detachment of the Stari Grad Sarajevo OpŠO shall enter the organic unit of the 5th Mountain Brigade.

#As it can be seen, Bascarsija, Gazijin Han and Sedrenik had their own units, constantly active, and the Serb side had a great difficulties to defend#)

4169. Galić testified that the SRK endeavoured not to target certain areas, such as Baščaršija, as it was a symbol of Sarajevo.¹³⁹²⁰ He did not deny, however, that the SRK forces shelled Stari Grad, noting that it was a municipality that covered a wide area, including Bistrik, from which fire was opened on the SRK forces.¹³⁹²¹ Contrary to Galić's evidence, as discussed above,¹³⁹²² by 28 May 1992, Mladić had already ordered that Velešići and Baščaršija be shelled.¹³⁹²³ **(But, that time Bascarsija hadn't been shelled. On the other side, the #Serbs kept more than 70% of the Stari Grad municipality#, all the time, and even now there is a municipality called Eastern Stari Grad, belonging to the Republic of Srpska! D311 (excerpt) depicts the majority of the Stari Grad municipality under the Serb and under the Muslim control. The Muslim controlled is the area within the confrontation lines:**

¹³⁹²⁰ Stanislav Galić, T. 37836–37837 (7 May 2013), T. 37929–37931 (8 May 2013).

¹³⁹²¹ Stanislav Galić, T. 37931–37934 (8 May 2013).

¹³⁹²² See para. 4028.

¹³⁹²³ P1521 (Intercept of conversation between Ratko Mladić and Mirko Vukašinović, 28 May 1992). See also D582 (SRK Order, undated), p. 1 (indicating the Baščaršija was one of the SRK targets).



**Two shelling incidents, a highly dubious
pertaining to a perpetrator!**

1. Confrontation lines in the area

4170. The Chamber has already described some of the confrontation lines that surrounded Stari Grad in Sections IV.B.1.b.iii.A and C: Zmaja od Bosne Street (formerly Vojvode Putnika) and Sredrenik and shall not repeat the same evidence here.

4171. It suffices to recall that the 1st Romanija Infantry Brigade and the 1st Sarajevo Mechanised Brigade of the SRK held the area of Grbavica and the positions south and east of Grbavica towards Stari Grad.¹³⁹²⁴ The area from Vrbanja Bridge towards the Jewish

¹³⁹²⁴ Stanislav Galić, T. 37184 (15 April 2013); D3382 (Map of Sarajevo); P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); D2622 (Witness statement of Željko Bambarež dated 9 December 2012), paras. 5–6; D2628 (Map of Sarajevo marked by Željko Bambarež); Adjudicated Facts 66 and 2826.

cemetery up to the foot of Debelo Brdo was held by the 3rd Infantry Battalion of the 1st Sarajevo Mechanised Brigade of the SRK.¹³⁹²⁵ This battalion was positioned on the western side of the Jewish cemetery while the ABiH was stationed along its northeastern wall—the two sides were separated only by the width of the cemetery.¹³⁹²⁶ The 1st Romanija Brigade (and later the 1st Sarajevo Mechanised Brigade) held the area south of Debelo Brdo, including Zlatište Hill, which overlooked the city.¹³⁹²⁷ Much of Mt. Trebević, with the exception of the area to its north and northwest, lay in those brigades' zone of responsibility, thus covering also the areas of Bistrik Kula and Vidikovac.¹³⁹²⁸ The ABiH held positions on the northern base of Mt. Trebević.¹³⁹²⁹ In addition to the eastern side of the Jewish cemetery, it also controlled Debelo Brdo and Čolina Kapa.¹³⁹³⁰ **(#All of the locations that the Muslim Army controlled had been dominant over the city#)**

4172. As far as positions to the north of the city are concerned, the 7th Infantry Battalion of the 1st Romanija Infantry Brigade of the SRK was in control of the nine kilometre long confrontation line in the Kadrijina Kuća—Mala Tvrđava—Špicasta Stijena—Pašino Brdo—Velika Tvrđava—Pašino Brdo—Donje Bioško—Faletići—Zečija Glava—Borije—Tabakovo Guvno sector.¹³⁹³¹ Blaško Rašević, a commander of a platoon and later a company in Mrkovići,¹³⁹³² which was part of the 1st Romanija Infantry Brigade,¹³⁹³³ testified that from 5 April 1992 his platoon, as well as another Mrkovići platoon, took up

¹³⁹²⁵ See Adjudicated Facts 2828; D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), para. 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević).

¹³⁹²⁶ See Adjudicated Fact 73; D3382 (Map of Sarajevo); D2331 (Witness statement of Blagoje Kovačević dated 14 October 2012), paras. 2, 5; D2339 (Map of Sarajevo marked by Blagoje Kovačević); D2340 (Map of Sarajevo marked by Blagoje Kovačević); Blagoje Kovačević, T. 29054–29056 (18 October 2012). *But see* P4498 (Report of 1st Romanija Infantry Brigade, 3 September 1992), p. 4 (stating that in September 1992 the 1st Battalion of the 1st Romanija Infantry Brigade was manning the positions on Jewish cemetery).

¹³⁹²⁷ See Adjudicated Fact 2831; Stanislav Galić, T. 37358–37359 (18 April 2013); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; D2351 (Witness statement of Stevan Veljović dated 19 October 2012), para. 12; Stevan Veljović, T. 29249–29250 (23 October 2012); Alen Gičević, T. 7664–7665 (11 October 2010); D736 (Photograph of Sarajevo marked by Alen Gičević); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac); D584 (SRK combat report, 23 June 1992), p. 1; D2671 (SRK combat report, 30 May 1993), p. 1. It was from Zlatište that the area of Stari Grad was placed under fire control in 1995, with 82 and 120 mm mortar batteries. *See* Savo Simić, T. 30084–30090 (12 November 2012); P5940 (SRK Order, 9 May 1995), pp. 1–2; Miloš Škrba, T. 29200–29202 (22 October 2012).

¹³⁹²⁸ See Adjudicated Facts 106 and 107; Stanislav Galić, T. 37358–37359 (18 April 2013). *See also* P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo); D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; Stevan Veljović, T. 29249–29250 (23 October 2012); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac); D2149 (Aide mémoire of Manojlo Milovanović), p. 24; P1641 (SRK proposal re artillery, 10 February 1994), p. 2 (indicating that the SRK had self-propelling guns in the area of Zlatište and Vidikovac); P1496 (ABiH map of Sarajevo marked by KDZ088) (indicating that the SRK had a tank on Vidikovac); D850 (UNMO report, 17 June 1995), p. 11 (also indicating that the SRK had a tank in Vidikovac); P926 (Witness statement of Aernout van Lynden dated 26 February 2010), para. 91; Aernout van Lynden, T. 2425 (19 May 2010).

¹³⁹²⁹ See Adjudicated Fact 104. *See also* P1764 (ABiH Map of Sarajevo); P1058 (ABiH map); D1380 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); Alen Gičević, T. 7657–7663 (11 October 2010); D733 (Photograph of Sarajevo marked by Alen Gičević); D734 (Photograph of street sign in Sarajevo); D735 (Photograph of Sarajevo); Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac).

¹³⁹³⁰ See Adjudicated Facts 105 and 2830; D2389 (Witness statement of Predrag Trapara dated 3 November 2012), para. 21; Desimir Šarenac, T. 34935–34944 (6 March 2013); D3091 (Map of Sarajevo marked by Desimir Šarenac).

¹³⁹³¹ D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 13; D2384 (Map of Sarajevo marked by Slavko Gengo); P1021 (VRS map of Sarajevo); P6295 (VRS map of Sarajevo). The Chamber notes that Mala and Velika Tvrđava were also known and referred to as Mala and Velika Kula throughout the evidence.

¹³⁹³² Rašević was the company commander between 31 January 1993 and September 1994. D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 16–17, 29. Mrkovići is a village north of Grdonj Hill and the city of Sarajevo. *See* D2794 (Satellite image of Sarajevo marked by Dragomir Milošević).

¹³⁹³³ With the formation of the VRS, the two Mrkovići platoons first became part of the 2nd Romanija Brigade and then later part of the 1st Romanija Infantry Brigade, which was part of the SRK. The commander of the 1st Romanija Brigade was Dragomir Milošević, followed by Vlado Lizdek. *See* D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 20; Blaško Rašević, T. 30911 (4 December 2012).

positions on the Velika Tvrđava—Špicasta Stijena axis and “successfully defended this line until the end of the war”.¹³⁹³⁴ The ABiH units opposing the 7th Battalion, including the Mrković Company, belonged to the 105th and 110th Mountain Brigades and held the top of the Grdonj Hill, with the area of Sedrenik behind them, as well as the extensive views towards the city.¹³⁹³⁵

((#The Muslim military side was invisible#! #Why the Chamber, or any other chamber of this Court didn't depict the deployment of the Muslim forces##, with the names and strength of their units and commanders, at least to the extent they did with the Serb units and commanders? Only than it would be clear that the Serb side defended it's own territory with the forces three times weaker that their Muslim adversaries. In this light everything would look different than now!))

2. Markale Market, 5 February 1994 (Scheduled Incident G.8)

4173. The Indictment alleges that, on 5 February 1994, a 120 mm mortar shell hit the crowded open-air market called “Markale” situated in Old Town, killing 66 people and wounding over 140.¹³⁹³⁶ It further alleges that the origin of fire was VRS/SRK-held territory approximately to the north-northeast.¹³⁹³⁷ In its Final Brief, the Prosecution claims that the mortar shell struck the market between 12 and 12:30 p.m. and exploded when it hit the ground.¹³⁹³⁸ In response, the Accused puts forth three different arguments: (i) the shelling incident was staged; (ii) alternatively, it was orchestrated by the Bosnian Muslim side; (iii) in a further alternative, he argues that the evidence presented by the Prosecution does not allow for a conclusion beyond reasonable doubt that the shell was fired by the Bosnian Serb Forces.¹³⁹³⁹

4174. In late January and early February 1994 the situation in Sarajevo was difficult as the Bosnian Muslim side had rejected the Owen-Stoltenberg plan and there was no explicit threat by NATO to use force against the Bosnian Serbs.¹³⁹⁴⁰ Thus, neither side had any reason to restrain its military activity, resulting in a period characterised by a high level of shelling and sniping, as well as tight controls on utilities and convoys.¹³⁹⁴¹ On 26 January 1994, Galić ordered the SRK units to “continue with offensive activities and liberate the

¹³⁹³⁴ D2527 (Witness statement of Blaško Rašević dated 1 December 2012), paras. 18, 20, 29; D2528 (Map of Grdonj marked by Blaško Rašević). See also D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), paras. 5, 9; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357 (Photograph of Sarajevo from Grdonj Hill).

¹³⁹³⁵ D2527 (Witness statement of Blaško Rašević dated 1 December 2012), para. 26; D2354 (Witness statement of Siniša Maksimović dated 19 October 2012), para. 5; Siniša Maksimović, T. 29306 (23 October 2012); D2355 (Map of Sarajevo marked by Siniša Maksimović); D2356 (Photograph of Sarajevo from Grdonj Hill); D2357 (Photograph of Sarajevo from Grdonj Hill); Dragomir Milošević, T. 32567, 32570 (23 January 2013); D2794 (Satellite image of Sarajevo marked by Dragomir Milošević); D2383 (Witness statement of Slavko Gengo dated 14 October 2012), para. 16; Slavko Gengo, T. 29838 (6 November 2012); Asim Džambasović, T. 15194, 15207, 15238–15240 (22 June 2011); D1378 (Map of ABiH positions in Sarajevo marked by Asim Džambasović); P1058 (ABiH map). According to Džambasović, the command post of the 105th Brigade was located in the Šipad building in Trampina street. Asim Džambasović, T. 15207 (22 June 2011). See also D633 (Order of ABiH 1st Corps, 25 October 1993), para. 5.

¹³⁹³⁶ Indictment, Scheduled Incident G.8. The Chamber notes that the Prosecution Final Brief refers to “over 60” dead. See Prosecution Final Brief, Appendix C, para. 55.

¹³⁹³⁷ Indictment, Scheduled Incident G.8.

¹³⁹³⁸ Prosecution Final Brief, Appendix C, para. 55.

¹³⁹³⁹ Defence Final Brief, paras. 2054–2076, 2098–2105. The Trial Chamber notes that throughout the trial the Accused led extensive evidence through, *inter alios*, his expert witness Subotić, seeking to establish that the incident was staged. Although he does not specifically address this line of argument in his Final Brief, the Chamber will nevertheless consider it and the related evidence in its analysis.

¹³⁹⁴⁰ David Harland, T. 2038–2039 (6 May 2010).

¹³⁹⁴¹ David Harland, T. 2038–2039 (6 May 2010). See also P1562 (UNMO report, 4–5 February 1994).

Serb part of the city of Sarajevo”.¹³⁹⁴² **(How this is #wrong, selective and unfair presentation can be seen from the quoted P5968, which confirmed testimony of S. Gengo, see the footnote below#:**

The enemy did not stop with his offensive intents on the de-blocking of Sarajevo and on linking the 1st, 2nd and the 3rd K /Corps/ of the so-called A BiH /Army of Bosnia and Herzegovina/ along the Sarajevo-Vogošća-Visoko axis, in order to cut through our lines putting our forces in an unfavorable operations position.

In all parts of the frontline, the enemy is carrying out the preparations for the future activities in winter conditions. With that purpose in mind, /the enemy/ took wide range of measures to mobilize the manpower, acquire weaponry and ammunition while storing the humanitarian aid in warehouses used primarily for the needs of the army.

The City of Sarajevo is defended by the following enemy troops: 1st, 2nd, 5th, 9th, 105th, 101st and 102nd mtbr /motorized brigade/; 1st, 2nd and 15th bbr /mountain brigade/; 1st mabr /mixed artillery brigade/; reconnaissance-sabotage brigade; HVO /Croatian Defense Council/ Kralj Tvrtko Brigade; the PVO /Anti-Air Craft Defense/ regiment; the 1st and the 2nd independent battalions; the “Delta” detachment; the “All fatah” (sic) detachment; the “Laste” Special MUP Detachment; the “Biseri” Special Detachment; the “Vikićevci” Special Unit as well as numerous police units, training centers and other headquarters support units and logistics units.

Now we will see the strength of these units and their intentions, which comes first, and caused Gen. Galic caution:

1st mtbr with 4500 troops, engaged in the defense along the: Žuč plateau – Sokolje-Centrotrans garages.

KM /command post/ in the house near the “Blagoje Parović” school.

The Command post in a shool!!! If fired at, the Serbs would be blamed!

2nd mtbr (“Viteška”) with 5000 troops, engaged in the defense along the frontline from Žuč to Kobilja glava.

5th mtbr with about 3000 troops, holds positions in Dobrinja.

KM in the Dobrinja school.

Again, the Command in a shool! Dobrinja was not a civilian area!

105th mtbr with about 2500 troops, holds positions along the Kobilja glava-Sedrenik line.

KM in “Šipad” (Maršala Tita Street)

101st mtbr has about 4000 troops, holds positions in the part of the frontline as follows: Pero Kosorić Square – Hrasno brdo-Asimovo brdo-Mojmilo to Stup.

KM in the former “Viktor Bubanj” Barracks.

102nd mtbr with about 3500 troops, holds positions along the: Azići-Stupsko brdo-Nedžarići axis.

KM in the “Žica” Factory.

“Zica” Factory, was missed in the incident S@

¹³⁹⁴²

P5968 (SRK Order, 26 January 1994), o. 6. *But see* Slavko Gengo, T. 29831–29837, 29841–29842 (6 November 2012) (arguing that these were defensive activities).

1st bbr with about 2600 troops, holds positions along the: left bank of the Miljacka river – /up to and/ including the Čolina kapa line.

KM – the former Command of the 2nd VO /military district/
2nd bbr with about 2000 troops, holds positions along the: right bank of the Miljacka river – /up to and/ including the Hladivode line.

15th bbr with about 2000 troops, took up positions along the: /?up to and/ excluding Čolina kapa-/?up to and/ excluding Pero Kosorić Square line.

KM in the building of the Command of the former 2nd VO.

Apart from the above mentioned, the reconnaissance-sabotage brigade with about 1500 troops and the 1st and the 2nd independent battalions with about 400 men represent the maneuver force for the intervention or for the reinforcement /of the troops in/ the attack at the selected axes.

The HVO “Kralj Tomislav” Brigade with about 1600 troops was placed in reserve with the intention of its disbandment and absorption into the ABiH.

The mixed artillery brigade has distributed the equipment to the brigades and, including the MB-82mm and 120 mm /artillery pieces/, they have about 30 artillery pieces.

The artillery pieces are relocated, as the need arises, to the VP /fire position/, depending on the situation. So far, the following VP have been registered:

- “Viktor Bubanj” Barracks (Ramiz Salčin) with 2 x MB 120mm and 2 x 105mm howitzer gun;
- 2 x 122mm howitzer gun at the foot of Hum;
- 120mm howitzer guns in the region of Centrotrans;
- “Maršala Tita” Barracks, an MB 120mm and 82mm;
- a self-propelled gun and one tank, in the region of Ciglane (the tunnel);
- Mojmiro, an MB 120mm and 82mm;

Some of the MB 120mm and 82mm guns are mounted on vehicles and can be quickly relocated, if the need arises.

for the many of the artillery pieces. The enemy has at his disposal about 45000 armed persons, including the recruit centers, the HQ support units and independent units, the ŠVK /Supreme Staff Command/ and the 1st K, etc. OG /operations group/ “Igman” from the 6th K of the so-called /Army of/ BiH comprised of 4 brigades is deployed in the area of Hrasnica, Igman and Bjelašnica, as follows:

4th mtbr with about 2400 troops, is deployed in and carries out the defense in Hrasnica, Sokolović kolonija, Butmir and Kotorac, with elements of forces deployed in the north slopes of Igman.

KM in Hrasnica, in the OŠ /elementary school/ “Aleksa Šantić”.

8th mtbr with about 2000 troops is deployed in the eastern slopes of Igman.

KM in Igman, in the shacks.

9th bbr – 1800 troops, deployed in Ormanj and the western slopes of Igman.

KM in Pazarić.

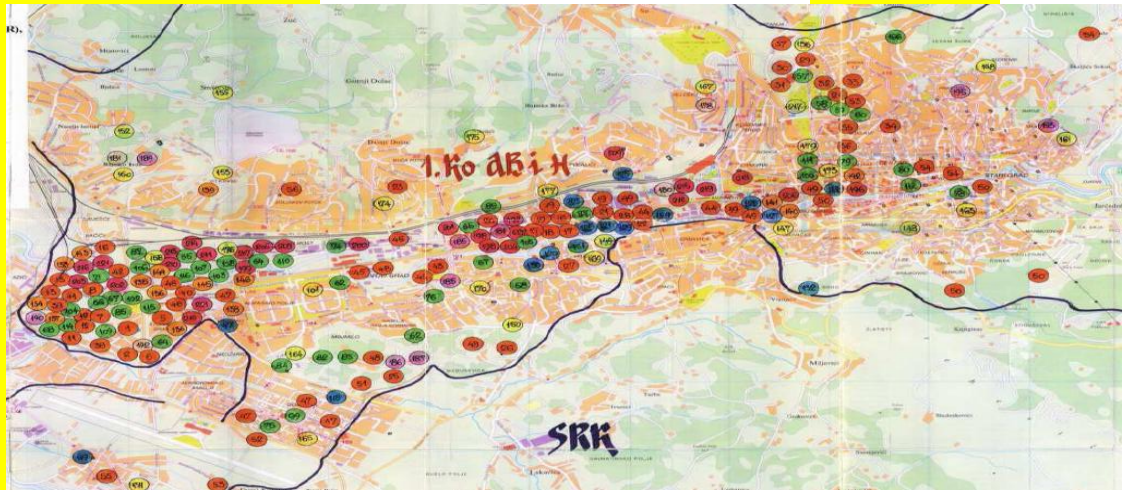
82nd bbr, with about 1500 men, holds positions in Bjelašnica.

OG Igman has about 9000 men, excluding the support means which are partially engaged in the Mostar theatre of war and are as follows:

- 130mm gun
- 4 x 105mm howitzer guns
- 2 x 152mm howitzer guns and 1 x VBR /multi-barreled rocket launcher/

SRK /currently/ is in /line of/ contact with about 70 000 enemy troops, with the probability that this number increases.

So 17,000 combatants of the SRK (not all of them combatants) were confronted to the four times more numerous 1st Corps of ABiH. How the city of Sarajevo was militarised



is shown in the next map, D3885 (#The City of Sarajevo under the Muslim control was extremely militarised#! There was no a single street without a military facilities, of headquarters, or a manoeuvring paths, not to mention artillery, tanks, mortars, howitzers#. And this big and dense concentration attacked the Serb areas on a daily basis, but the Defence was prevented to present the conduct of the other side, which influenced the conduct of the Serb soldiers and low commanders for their necessary actions for which they didn't have time, ans were not obliged to ask their supreme commands!);

a. The incident

4175. On 5 February 1994, around noon, many people were shopping in the Markale open-air market.¹³⁹⁴³ (This is a false assertion, because there was no any stuff on the tables. Nobody was shopping there, and the Chamber didn't admit a video footage of the empty Markale, because it was unknown who filmed it!) Around 12:20 p.m. a projectile exploded

¹³⁹⁴³ See Adjudicated Facts 324 and 342.

at the market.¹³⁹⁴⁴ The Chamber took judicial notice of the fact that Witness AF testified in the *Galić* case that between 12 and 12:30 p.m. he heard the sound of a heavy weapon like a mortar being fired from behind Špicasta Stijena, at Mrkovići.¹³⁹⁴⁵ **(Here is the Adjudicated Fact 332: A man known as Witness AF in the Prosecutor v. Galić (IT-98-29) was in the garden of his mother's house at about 12:00-12:30 when he heard the sound of a heavy weapon like a mortar being fired from behind Špicasta Stijena, at Mrkovići. Where was he? How come he knew this shell was going towards the centre of the city, at Markale market place? This is unbelievable to have this kind of "evidence" in such a serious case! #This is a mockery of justice#!)**

It also took judicial notice of the fact that Vahid Karavelić, commander of the 1st ABiH Corps, testified in the *Galić* case that the nearest location of a brigade headquarters appeared approximately 300 metres away from the market.¹³⁹⁴⁶ **(Irrelevant, in the light of fact that the UN representatives reported to the UN seat that it can not be allocated to the Serb side!)**

a. BiH MUP investigation

4176. The CSB Sarajevo team that investigated this shelling included, *inter alios*, an investigative judge; ballistics experts Sabljica and Čavčić; a crime technician, Bešić; and a criminal investigator, Kučanin.¹³⁹⁴⁷ The team arrived at the scene at around 1:20 p.m., after all the bodies had been cleared away and only a few people remained in the area.¹³⁹⁴⁸ The market was already secured by the police, the stalls were overturned and body parts, human tissue, and bloodstains could be seen.¹³⁹⁴⁹ The site was video-recorded and sketched, and Bešić took photographs of the scene.¹³⁹⁵⁰ The team also went to the morgue and video-recorded the bodies of the victims.¹³⁹⁵¹

4177. Having examined the scene, Sabljica and Čavčić prepared a report noting that one projectile landed on the asphalt in the northeast part of the market area, 4.16 metres away from the buildings of the "UPI supermarket" and 11.1 metres away from the 22 December

¹³⁹⁴⁴ P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 2.

¹³⁹⁴⁵ See Adjudicated Fact 332. The Chamber also took judicial notice of the fact that "weapons specialists indicate that the noise made by the firing of a mortar can be used to determine the approximate direction of fire". See Adjudicated Fact 334.

¹³⁹⁴⁶ See Adjudicated Fact 336. See also Sead Bešić, T. 9425–9426, 9429–9430 (8 December 2010) (testifying that there was an "army hall" some 500 metres from the incident site).

¹³⁹⁴⁷ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 30–31; Mirza Sabljica, T. 7694–7695 (11 October 2010), T. 7907 (13 October 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 2, 8–9; Sead Bešić, T. 9436 (8 December 2010); Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4747.

¹³⁹⁴⁸ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 31; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8–9; Mirza Sabljica, T. 7907–7908 (13 October 2010), T. 7930 (14 October 2010); Sead Bešić, T. 9437–9440 (8 December 2010).

¹³⁹⁴⁹ Mirza Sabljica, T. 7911, 7927–7928 (14 October 2010); Sead Bešić, T. 9436, 9440–9441 (8 December 2010), T. 9458 (9 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 9; D767 (Photograph re shelling of Markale on 5 February 1994 marked by Mirza Sabljica).

¹³⁹⁵⁰ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 31, 37–40; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 9–10, 16. See also Sead Bešić, T. 9418 (8 December 2010); P1709 (Photographs re shelling of Markale on 5 February 1994); P1970 (Photographs re shelling of Markale on 5 February 1994); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5.

¹³⁹⁵¹ Sead Bešić, T. 9415–9416 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

building.¹³⁹⁵² The UPI supermarket buildings are to the north of the impact site and are 3.65 and 5.25 metres tall, while the 22 December building is to the east of the impact site and is 18.45 metres tall.¹³⁹⁵³ At the time of the impact, there were 18 rows of stalls, all located close to each other.¹³⁹⁵⁴

4178. To determine the direction of fire, Sabljica and Čavčić used the central axis method because, according to Sabljica, that was the only method that could be used in this case.¹³⁹⁵⁵ The projectile, the stabiliser of which was found in the centre of the crater,¹³⁹⁵⁶ was found to be a 120 mm calibre mortar shell that came from the north-northeast, that is, 18 degrees from the north (plus or minus five degrees).¹³⁹⁵⁷ It was activated at the moment of contact with the asphalt surface.¹³⁹⁵⁸ The depth between the asphalt surface and the top of the stabiliser in the crater was nine centimetres, but the team did not measure the depth of the crater once the stabiliser was removed from it.¹³⁹⁵⁹ Instead, this measurement was taken the next day by Zečević.¹³⁹⁶⁰ Sabljica also explained that his team did not try to determine what type of charge was used for this shell as this was very difficult and also not necessary in order to determine the direction of fire.¹³⁹⁶¹ **(There is #too many irregularities#: there was no surface traces, the trash had been back and the furrow tail had been “buried” in dust, so they couldn’t decide direction by the scentral axis method. Other irregularities will be commented later, and it pertained to the tunnel and manipulations which “enabled” Zecevic to interfere and smuggle his “findings”# Mockery, nothing else#!)**

- ¹³⁹⁵² P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 1; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 12; Sead Bešić, T. 9456 (9 December 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 6–7; D895 (Photograph re shelling of Markale on 5 February 1994 marked by Sead Bešić); P1970 (Photographs re shelling of Markale on 5 February 1994). Sabljica conceded that if the margin of error in placement of the point of impact was in metres rather than centimetres it could affect the conclusions as to the direction of fire. However, he was confident that his measurements were accurate and that the margin of error here would have been some five centimetres. See P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 45–46; P1712 (Sketch re shelling of Markale on 5 February 1994). See also Mirza Sabljica, T. 7917–7925 (14 October 2010); D766 (Sketch re shelling of Markale on 5 February 1994 marked by Mirza Sabljica).
- ¹³⁹⁵³ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 41–43, 45–46; P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5; P1712 (Sketch re shelling of Markale on 5 February 1994). See also Mirza Sabljica, T. 7917–7918, 7925–7926 (14 October 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), photograph 4.
- ¹³⁹⁵⁴ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 43–44; P1713 (Sketches re shelling of Markale on 5 February 1994). For discussion of the size of the stalls, see also Mirza Sabljica, T. 7926–7928 (14 October 2010); D767 (Photograph re shelling of Markale on 5 February 1994 marked by Mirza Sabljica); Sead Bešić, T. 9444–9447 (8 December 2010); D891 (Sketch re shelling of Markale on 5 February 1994 marked by Sead Bešić).
- ¹³⁹⁵⁵ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 37–38; Mirza Sabljica, T. 7698 (11 October 2010), T. 7912–7913 (14 October 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 12–13; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 8–11; P1970 (Photographs re shelling of Markale on 5 February 1994); Sead Bešić, T. 9412–9413 (8 December 2010).
- ¹³⁹⁵⁶ P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 8–12. Both Sabljica and Bešić testified that the stabiliser was discovered only once Bešić cleaned the surface layer of the tarmac by hand. See P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 12–14; Sead Bešić, T. 9418–9419 (8 December 2010); P1970 (Photographs re shelling of Markale on 5 February 1994); Mirza Sabljica, T. 7911–7912 (14 October 2010).
- ¹³⁹⁵⁷ P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), pp. 1–2; P1973 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 5; P1967 (Mortar stabiliser from Markale I); P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 37, 40–41, 44–45; P1440 (BiH MUP Report re shelling of Markale on 5 February 1994), e-court p. 5; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 11; P1709 (Photographs re shelling of Markale on 5 February 1994), e-court p. 5; P1711 (Video footage re shelling of Markale, 5–6 February 1994). See also Mirza Sabljica, T. 7913 (14 October 2010); Sead Bešić, T. 9416–9417 (8 December 2010); Richard Higgs, T. 5924–5926 (18 August 2010).
- ¹³⁹⁵⁸ P1708 (BiH MUP Report re shelling of Markale on 5 February 1994), p. 2; P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 40–41; Mirza Sabljica, T. 7914 (14 October 2010); Sead Bešić, T. 9417 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994). This was confirmed by an expert in ballistics, Richard Higgs. See Richard Higgs, T. 6028–6031 (19 August 2010); P1451 (Video footage of Markale, 5 February 1994); P1452 (Video footage of Markale, 5 February 1994); P1453 (Video footage of Markale, 5 February 1994).
- ¹³⁹⁵⁹ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 36; Mirza Sabljica, T. 7913 (14 October 2010).
- ¹³⁹⁶⁰ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 18, 36.
- ¹³⁹⁶¹ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 41.

4179. Both Sabljica and Bešić testified that by the time the UNPROFOR had arrived that day,¹³⁹⁶² some 10 to 15 minutes after the arrival of the CSB Sarajevo team, they had already determined the direction of fire and washed off the blood and debris at the centre of the impact.¹³⁹⁶³ **(How convenient!!! So, that nobody else could check their finding!)** However, the team left the stabiliser in the crater, which was then dug out by the UNPROFOR soldiers and eventually returned to CSB Sarajevo by Bešić.¹³⁹⁶⁴ Bešić identified the said stabiliser in court and testified that it was not tampered with at any time while in his possession; furthermore, its serial number was photographed at the scene in order to enhance the reliability of the chain of custody.¹³⁹⁶⁵ Bešić also testified that the markings on the stabiliser indicated it had been manufactured in the Krušik Factory in Valjevo, Serbia, in 1987.¹³⁹⁶⁶ He measured the stabiliser in the courtroom and stated that it was around 17 centimetres long, which was some three centimetres less than what could be seen in the photograph of the same stabiliser taken by his team back in 1994.¹³⁹⁶⁷ He explained this difference by the fact that the stabiliser was so damaged that it had to be held at an angle when photographed.¹³⁹⁶⁸ **(Don't tell me that! There is no irregularity that could not be "compensated" by a generous "explanations" admitted by the Chamber!)**

4180. As for the origin of fire, Kučanin testified that it was established that the shell had come from the direction of Mrković but did not provide any further explanation as to how this conclusion was reached.¹³⁹⁶⁹ **(As characterized by the Chamber on the previous page, #Kucanin wasn't a ballistic expert#! And the BH investigators didn't feel obliged to do a proper investigations, it was expected of them just to say that it was from the "aggressor's positions". No court all over the world would decide in this incident as it was decided!)** Bešić compiled a criminal technician's report the day after the incident, without having access to Sabljica's ballistics reports, wherein he stated that the shell was fired from the "aggressor's position", basing this conclusion on the direction from which the mortar shell came as established by the ballistic experts on the scene.¹³⁹⁷⁰ He did confirm, however,

¹³⁹⁶² Sabljica explained that CSB Sarajevo team would usually wait for UNPROFOR every time there was an incident causing a great number of civilian casualties. See P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 33–34.

¹³⁹⁶³ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 32–33; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 20, 21–22; Mirza Sabljica, T. 7912 (14 October 2010); Sead Bešić, T. 9410–9412 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

¹³⁹⁶⁴ P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), p. 33–35; Mirza Sabljica, T. 7699–7701 (11 October 2010), T. 7912 (14 October 2010); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14; P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 13–14, 17, 19–20; P1711 (Video footage re shelling of Markale, 5–6 February 1994); Sead Bešić, T. 9413–9414 (8 December 2010), T. 9456–9457 (9 December 2010). Sabljica could not say, however, whether the stabiliser, as well as the fragments of the projectile collected at the scene, were analysed by the CSB Sarajevo's crime laboratory but presumed this to be the case as it was part of the procedure. See P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 34–35. See also Sead Bešić, T. 9420 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 13–14.

¹³⁹⁶⁵ Sead Bešić, T. 9420–9421 (8 December 2010); P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 8, 15; P1967 (Mortar stabiliser from Markale I); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14.

¹³⁹⁶⁶ P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 15, 22–23. See also Berko Zečević, T. 12190–12191 (22 February 2011).

¹³⁹⁶⁷ Sead Bešić, T. 9458–9460 (9 December 2010); P1967 (Mortar stabiliser from Markale I); P1709 (Photographs re shelling of Markale on 5 February 1994), e-court pp. 13–14.

¹³⁹⁶⁸ Sead Bešić, T. 9461–9464 (9 December 2010).

¹³⁹⁶⁹ Mirsad Kučanin, P16 (Transcript from *Prosecutor v. Galić*), T. 4747.

¹³⁹⁷⁰ P1966 (Witness statements of Sead Bešić dated 18 February 2010), pp. 14–15, 20–21.

that in the part of the town from which the shell came, the confrontation lines were such that the SRK and ABiH were close to each other.¹³⁹⁷¹

4181. Sabljica explained that he and Čavčić did not establish the angle of descent, the range of fire, or the origin of fire that day, but he confirmed that another team went to Markale the following day, 6 February, and that this team included Čavčić, Zečević, and an investigative judge.¹³⁹⁷² Zečević's team brought the stabiliser back to the scene and placed it into the crater by first removing a few little stones that had fallen into the hole.¹³⁹⁷³ Zečević then removed the stabiliser from the crater once more and measured the depth of the penetration of the stabiliser, which he found to be at 25 centimetres.¹³⁹⁷⁴ He used this depth to determine the angle of descent, as well as the direction and the origin of fire.¹³⁹⁷⁵ Within 36 hours of starting the investigation, Zečević and his team had compiled a report in which they confirmed that the shell came from the direction of north-northeast, that is, 18 degrees from the north, plus or minus five degrees, with an angle of descent of 60 degrees, plus or minus five degrees.¹³⁹⁷⁶ They also determined that the projectile was a 120 mm shell that detonated upon contact with the ground¹³⁹⁷⁷ and that its destructive power corresponded to the number of victims and the type of injuries they suffered in this incident.¹³⁹⁷⁸ His report concluded that, depending on the charges used to launch it, the shell could have come from six different areas, the first one being between 1,640 and 1,840 metres away¹³⁹⁷⁹ and the last one between

¹³⁹⁷¹ P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 21.

¹³⁹⁷² P1695 (Witness statement of Mirza Sabljica dated 11 February 2010), pp. 47–48; Mirza Sabljica, T. 7913–7916 (14 October 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994). See also P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 3. Berko Zečević testified that he and another three colleagues volunteered to investigate the incident, having heard the then-UNPROFOR commander say that the direction of fire could not be established. Zečević also claimed that they were appointed by the investigative judge. See Berko Zečević, T. 12278–12291 (23 February 2011); D1093 (Information on engagement of Berko Zečević).

¹³⁹⁷³ Berko Zečević, T. 12159–12160 (22 February 2011), T. 12375–12376 (24 February 2011) (stating that the stabiliser could be lowered back into the crater without any difficulty); P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 5; P1966 (Witness statements of Sead Bešić dated 18 February 2010), p. 19; Sead Bešić, T. 9415–9417 (8 December 2010); P1711 (Video footage re shelling of Markale, 5–6 February 1994); P1711 (Video footage re shelling of Markale, 5–6 February 1994).

¹³⁹⁷⁴ Berko Zečević, T. 12159–12160 (22 February 2011), T. 12338–12340, 12357 (24 February 2011); P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 5.

¹³⁹⁷⁵ Berko Zečević, T. 12159–12160 (22 February 2011), T. 12338–12340, 12357 (24 February 2011); P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 5. Zečević conceded that the method he used to establish the angle of descent was not standard at the time but stated that it has now been adopted in urban zones. See Berko Zečević, T. 12340 (24 February 2011). **Why should the Defence believe him on that? Was there any document?**

¹³⁹⁷⁶ Berko Zečević, T. 12161–12162, 12173 (22 February 2011); P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court pp. 5, 8. The Chamber notes that while e-court page 5 of the English translation of the report refers to a direction of “northwest”, this is clearly a mistake in translation as the original BCS version of the report refers to a “north-east” direction.

¹³⁹⁷⁷ Berko Zečević, T. 12162–12163 (22 February 2011), T. 12332–12338, 12355–12357 (24 February 2011); P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court pp. 5–6, 8.

¹³⁹⁷⁸ P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court p. 8; Berko Zečević, T. 12311–12318 (24 February 2011); D1095 (Sketch re shelling of Markale on 5 February 1994).

¹³⁹⁷⁹ The range in the distances outlined here takes into account the range in the established angle of descent. In other words, if the angle of descent at the lowest spectrum, namely 55 degrees, and the shell was fired on charge one, then it came from 1,840 metres away. If however the angle of descent was 65 degrees, then it came from 1,640 metres away. Zečević used the same method for all other points he listed. The ranges were therefore as follows: on charge two, between 2,972 and 2,577 metres away, on charge three between 4,120 and 3,622 metres away, on charge four between 5,110 and 4,570 metres away, on charge five between 5,979 and 5,500 metres away, and on charge six between 6,546 and 6,170 metres away. These values also show that the higher the angle of descent, the shorter the distance the shell has to travel on a particular charge.

6,170 and 6,546 metres away; only the first one was in the territory held by the ABiH in the area of Grdonj Hill.¹³⁹⁸⁰

¹³⁹⁸⁰

P2317 (Report by Berko Zečević entitled “Study of the circumstances and causes of the massacre at the Markale market on 5 February 1994”), e-court pp. 6, 8; Berko Zečević, T. 12172–12173 (22 February 2011). The Chamber notes that, unlike the English version, the BCS version of P2317, at e-court page 17, contains a map on which Zečević marked the six locations and that the first location is near Grdonj, which was in the ABiH zone of responsibility during the conflict. *See* para. 3856. Although the Accused challenged Zečević’s expertise in relation to his ability to conduct the above analysis, the Chamber found that Zečević had the necessary expertise. *See* Hearing, T. 12145–12146, 12171–12172 (22 February 2011); Berko Zečević, T. 12282–12284 (23 February 2011).