



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

Case No.: IT-95-5/18-PT

Date: 5 June 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. John Hocking

Decision of: 5 June 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON FIRST PROSECUTION MOTION FOR
JUDICIAL NOTICE OF ADJUDICATED FACTS**

Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “First Prosecution Motion for Judicial Notice of Adjudicated Facts”, filed on 27 October 2008 (“Motion”), and hereby renders its decision thereon.

I. Background and Submissions

1. In the Motion, the Office of the Prosecutor (“Prosecution”) requests that the Chamber exercise its power under Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) to take judicial notice of facts relating to the shelling and sniping campaign carried out in Sarajevo by the Sarajevo Romanija Corps of the Bosnian Serb Army, which were adjudicated by the Trial and Appeals Chambers in the *Galić* case.¹ The Prosecution submits that the adjudicated facts listed in Appendix A to the Motion meet the requirements set out by relevant jurisprudence, and that taking judicial notice of those facts would achieve judicial economy while preserving the Accused’s right to a fair, public, and expeditious trial.²

2. At the Status Conference held on 28 October 2008, the Pre-Trial Judge indicated to the Accused that the Motion would be dealt with after the issue of amendment of the Indictment was resolved.³ The Prosecution filed its Third Amended Indictment in English and B/C/S on 27 February 2009 (“Indictment”).⁴ On 20 March 2009, the Pre-Trial Judge ordered the Accused to file his response to the Motion within 14 days.⁵

3. On 30 March 2009, the Accused filed a “Response to First Prosecution Motion for Judicial Notice of Adjudicated Facts” (“Response”), in which he contends that taking judicial notice of adjudicated facts is inconsistent with current rules of international law.⁶ The Accused contests all proposed facts, and submits that judicial notice of a large number of facts would violate his rights to a fair trial, to be presumed innocent, and to examine witnesses against him, and would place an unreasonable burden upon him in terms of the time and resources needed to rebut those facts.⁷ Furthermore, the Accused argues that, even if the Chamber allows as a

¹ Motion, para. 1. *See Prosecutor v. Galić*, Case No. IT-98-29-T, Judgement and Opinion, 5 December 2003 (“*Galić* Trial Judgement”).

² Motion, paras. 7–8.

³ Status Conference, T. 75 (28 October 2008).

⁴ Prosecution’s Third Amended Indictment, 27 February 2009.

⁵ Order on Filing of Response to the First Prosecution Motion for Judicial Notice of Adjudicated Facts, 20 March 2009.

⁶ Response, paras. 3–5.

⁷ Response, paras. 6–9.

general principle the admission of adjudicated facts, it should nevertheless deny judicial notice of certain facts on the basis that they do not meet the relevant requirements under the Tribunal's jurisprudence.⁸ The Accused further requests the Chamber to exercise its discretion not to take judicial notice of facts that would otherwise meet the criteria for such notice, on the basis that shifting the burden of proof to him would be prejudicial to his rights, as the proposed facts indirectly point to the modes of his liability for the alleged crimes.⁹ Finally, the Accused contends that the Prosecution should be ordered to specify in its pre-trial brief "which proposed fact relates to which part of the indictment and to which part of the facts the prosecution intends to prove at trial",¹⁰ and claims that without such information the admission of adjudicated facts would violate Rule 89(C) of the Rules.¹¹

4. On 3 April 2009, the Chamber granted the Prosecution leave to reply,¹² and a "Prosecution Reply to the 'Response to First Prosecution Motion for Judicial Notice of Adjudicated Facts' and Further Corrigendum to First Prosecution Motion for Judicial Notice of Adjudicated Facts" was filed on 6 April 2009 ("Reply"). The Prosecution challenges some of the Accused's arguments on the basis that he incorrectly interprets or applies the requirements under the test for judicial notice.¹³ Moreover, the Prosecution amends its Motion by withdrawing certain facts and correcting references to previous decisions by Trial Chambers on judicial notice,¹⁴ and requests the Chamber to take judicial notice of the proposed facts subject to these amendments.¹⁵

5. An additional amendment to the Motion was made by the Prosecution in its "Second Prosecution Motion for Judicial Notice of Adjudicated Facts and Corrigendum to First Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 16 March 2009 ("Corrigendum").

⁸ Response, paras. 14–31 and Annex A.

⁹ Response, paras. 32–36.

¹⁰ Response, para. 17.

¹¹ Response, paras. 16–17.

¹² Order on Prosecution Request for Leave to Reply to the "Response to First Prosecution Motion for Judicial Notice of Adjudicated Facts", 3 April 2009.

¹³ Reply, paras. 3–6.

¹⁴ Reply, paras. 7–8.

¹⁵ Reply, para. 9.

II. Applicable Law

6. Rule 94(B) of the Rules provides that:

At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings.

7. Rule 94(B) aims at achieving judicial economy and harmonising judgements of the Tribunal by conferring the Trial Chamber with discretionary power to take judicial notice of facts or documents from other proceedings. The Appeals Chamber has held that “[w]hen applying Rule 94 of the Rules, a balance between the purpose of taking judicial notice, namely to promote judicial economy, and the fundamental right of the accused to a fair trial must be achieved”.¹⁶ The Appeals Chamber has further held that “while it is possible to take judicial notice of adjudicated facts regarding the existence of such crimes, the *actus reus* and the *mens rea* supporting the responsibility of the accused for the crimes in question must be proven by other means than judicial notice”.¹⁷

8. As to the effects of taking judicial notice, the Appeals Chamber has held that “by taking judicial notice of an adjudicated fact, a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial”.¹⁸ It has also established that

judicial notice does not shift the ultimate burden of persuasion, which remains with the Prosecution. . . [T]he effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary.¹⁹

9. In exercising its discretion under Rule 94(B), the Trial Chamber must assess: (1) whether each adjudicated fact satisfies the various requirements enumerated in the Tribunal’s case law for judicial notice, and (2) whether a fact, despite having satisfied the aforementioned

¹⁶ *Prosecutor v. Nikolić*, Case No. IT-02-60/1-A, Decision on Appellant’s Motion for Judicial Notice, 1 April 2005, para. 12.

¹⁷ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-AR73.1, Decision on Interlocutory Appeal against Trial Chamber’s Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Prosecution’s Catalogue of Agreed Facts, 26 June 2007 (“*Dragomir Milošević Appeal Decision*”), para. 16.

¹⁸ *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 October 2003, p. 4.

¹⁹ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 (“*Karemera Appeal Decision*”), para. 42.

requirements, should be excluded on the basis that its judicial notice would not be in the interests of justice.²⁰ The requirements of Rule 94(B) are as follows:

- (a) The fact must be relevant to the current proceedings;²¹
- (b) The fact must be distinct, concrete, and identifiable;²²
- (c) The fact, as formulated by the moving party, must not differ in any substantial way from the formulation of the original judgment;²³
- (d) The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion.²⁴ In addition, the fact must be denied judicial notice "if it will become unclear or misleading because one or more of the surrounding purported facts will be denied judicial notice";²⁵
- (e) The fact must be identified with adequate precision by the moving party;²⁶
- (f) The fact must not contain characterisations or findings of an essentially legal nature;²⁷
- (g) The fact must not be based on an agreement between the parties to the original proceedings;²⁸
- (h) The fact must not relate to the acts, conduct, or mental state of the accused;²⁹ and
- (i) The fact must clearly not be subject to pending appeal or review.³⁰

²⁰ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006 ("Popović Decision"), para. 4.

²¹ *Prosecutor v. Niyitegeka*, ICTR-96-14-A, Reasons for Oral Decision Rendered 21 April 2004 on Appellant's Motion for Admission of Additional Evidence and for Judicial Notice, 17 May 2004, para. 16.

²² See, e.g., *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts Concerning Sarajevo, 26 June 2008 ("Perišić Decision"), para. 18; *Prosecutor v. Stanišić*, Case No. IT-04-79-PT, Decision on Judicial Notice, 14 December 2007 ("Stanišić Decision"), para. 37; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 March 2006, para. 12; *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts Following the Motions Submitted by Counsel for the Accused Hadžihasanović and Kubura on 20 January 2005, 14 April 2005 ("Hadžihasanović Decision"), p. 5; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 March 2005 ("Krajišnik Decision"), para. 14.

²³ *Krajišnik Decision*, para. 14.

²⁴ *Karemera Appeal Decision*, para. 55; *Popović Decision*, para. 8.

²⁵ *Popović Decision*, para. 8

²⁶ *Prosecutor v. Kupreškić*, Case No. IT-95-16-A, Decision on the Motions of Drago Josipović, Zoran Kupreškić and Vlatko Kupreškić to Admit Additional Evidence Pursuant to Rule 115 and for Judicial Notice to be Taken Pursuant to Rule 94(B), 8 May 2001 ("Kupreškić Appeal Decision"), para. 12; *Popović Decision*, para. 9.

²⁷ *Dragomir Milošević Appeal Decision*, paras. 19–22; *Popović Decision*, para. 10; *Krajišnik Decision*, para. 15. See also, *Hadžihasanović Decision*, p. 5; *Prosecutor v. Mejakić*, Case No. IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice pursuant to Rule 94(B), 1 April 2004, p. 4; *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts and Documentary Evidence, 19 December 2003, para. 16; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 March 2006, para. 12.

²⁸ *Popović Decision*, para. 11; *Prosecutor v. Mejakić et al.*, IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B), 1 April 2004, p. 4; *Prosecutor v. Krajišnik*, Case No. IT-00-39-PT, Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses Pursuant to Rule 92 bis, 28 February 2003, para. 15.

III. Discussion

A. General considerations

10. The Chamber notes that the Prosecution has withdrawn from its Motion, for reasons outlined in its Reply, proposed facts 25, 26, 28, 43, 116, and 136, as well as the first sentence of proposed fact 342, for reasons outlined in its Corrigendum. Consequently, the Chamber will not consider these facts.

11. With respect to the Accused's submission that judicial notice of adjudicated facts is unlawful and inconsistent with current rules of international law, the Chamber notes that the Accused does not refer to any rules binding upon the Tribunal that would substantiate his claim. By contrast, Rule 94(B) of the Rules is clear as to the discretion of a Trial Chamber to take judicial notice of adjudicated facts. The Chamber is bound by the Rules and will therefore follow the relevant jurisprudence of the Appeals Chamber and other Trial Chambers on this matter, to which the Accused himself refers in his Response.

12. The Chamber has examined each proposed fact in the Motion against the requirements for judicial notice under Rule 94(B), set out in paragraph 9 above. While noting the absence of submissions by the parties on the requirements that each proposed fact must be identified with adequate precision, must not relate to the acts, conduct, or mental state of the Accused, and must not be subject to pending appeal or review, i.e. requirements e, h, and i of paragraph 9 above, the Chamber has satisfied itself that all proposed facts meet these requirements. However, the Chamber notes the finding of the *Galić* Appeals Chamber with regard to the incidents concerning Koševo hospital that a number of attacks on the hospital were attacks on a legitimate military target.³¹ The Chamber considers that this finding qualifies the factual findings made by the *Galić* Trial Chamber in paragraph 509 and will, therefore, not take judicial notice of proposed facts 98–100, which were taken from that paragraph.

B. The further requirements for judicial notice under Rule 94(B)

The fact must be relevant to the current proceedings

13. The Chamber is not convinced by the Accused's contention that, in the absence of specifications by the Prosecution as to how a proposed fact fits into its case, judicial notice of

²⁹ *Karemera* Appeal Decision, para. 50.

³⁰ *Kupreškić* Appeal Decision, para. 6.

³¹ *Prosecutor v. Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Galić* Appeal Judgement"), para. 351.

adjudicated facts would violate Rule 89(C) of the Rules. Rule 89 governs the admission of evidence at trial, and provides at paragraph (C) that “a Chamber *may* admit any relevant evidence which *it deems to have* probative value” (emphasis added). Thus, according to this provision, it is within the Chamber’s discretion whether or not to admit evidence, in order not to “clutter the record with matters that would not otherwise be admitted”.³²

14. The Chamber notes that the Prosecution has not replied to the Accused’s contention that proposed fact 29³³ does not meet the relevance requirement because it has no bearing on, or connection to, the charges against the Accused,³⁴ and the Accused’s statement that proposed fact 47³⁵ is irrelevant to the current proceedings.³⁶ However, the Chamber considers that the proposed facts in the Motion, including proposed facts 29 and 47, are directly relevant to the allegations in the Indictment regarding the role, in relation to some of the alleged shelling and sniping incidents in Sarajevo, of Galić who is said to be one of the members of the joint criminal enterprise to establish and carry out a campaign of sniping and shelling against the civilian population of Sarajevo, alleged in the Indictment.³⁷ Proposed fact 29 is discussed further at paragraph 34, and proposed fact 47 at paragraph 15.

The fact must be distinct, concrete, and identifiable

15. Although the Accused has not submitted that proposed fact 47 does not meet this test, the Chamber finds that the clarification of terminology contained in said proposed fact cannot be considered as a distinct, concrete, and identifiable factual finding of the *Galić* Trial Chamber, and will therefore not take judicial notice of that fact.

16. The reasons underlying the Accused’s submission that other proposed facts are not distinct, concrete, and identifiable are not clearly stated in his Response. On the basis of what is provided in Annex A of the Response, the Chamber infers that those reasons are the absence of citations in the relevant parts of the *Galić* Trial Judgement from which the proposed facts have been taken, as well as the fact that the Accused is not in possession of the relevant material cited to in said judgement. The Chamber considers that whether a factual finding is distinct, concrete, and identifiable does not depend upon the presence of footnote citations in the judgement from which the proposed facts are taken. While it is necessary to consider each fact in the context of

³² *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 189.

³³ See Motion, Appendix A, fact 29: “General Galić was an efficient and professional military officer.”

³⁴ See Response, para. 15 and Annex A, fact 29.

³⁵ See Motion, Appendix A, fact 47: “The term “sniping” must be understood as direct targeting of individuals at a distance using any type of small calibre weapon.”

³⁶ See Response, Annex A, fact 47.

³⁷ Indictment, para. 16.

the original judgement, this does not mean that it is the task of the Chamber to assess whether another Trial Chamber has properly edited the text of its judgement. In addition, the Accused's contention that he does not have access to some of the evidentiary material upon which the original judgement was based does not render a proposed fact less distinct, concrete, or identifiable. This contention is a matter for the Chamber to consider when assessing whether to deny judicial notice to certain adjudicated facts that meet the test because taking such notice would not be in the interests of justice.

17. With regard to particular facts, the Chamber notes the Accused's contention that the word "experienced" in proposed fact 108 could mean that persons witnessed gunfire or suffered from gunfire attacks. However, the Chamber is not satisfied that this makes the fact insufficiently concrete, because it is evident from a reading of the relevant paragraph in the original judgement that the fact relates to both meanings.³⁸

18. The Chamber concurs with the Trial Chamber in *Perišić* and finds that the reference to "UN sources" in proposed fact 50 is excessively vague.³⁹ Similarly vague are proposed facts 88, referring to a time period of "[d]uring the conflict", and 269, stating that the shelling occurred "well after" the beginning of the football tournament. The Chamber will therefore not take judicial notice of these facts. Furthermore, the Chamber will not take judicial notice of proposed fact 143, because it does not consider the reference to "the possibility that she was a civilian" to be sufficiently concrete.

The fact must not differ in any substantial way from the formulation of the original judgment

19. The Chamber notes that the Prosecution has not addressed the Accused's challenges to those facts that, in his submission, differ in a substantial way from the formulation in the original judgement.

20. The Chamber notes that the Accused challenges certain proposed facts on the basis that their formulation does not include the evidentiary basis for factual findings in the relevant paragraph of the original judgement. For instance, with regard to proposed fact 118, the Accused argues that removing any reference to "photographs adduced into evidence", which, according to paragraph 584 of the *Galić* Trial Judgement, "show the extensive destruction of civilian inhabitations in Sarajevo", substantially alters the meaning of the adjudicated fact, which the Accused considers to be "that there was extensive destruction to the inhabitations

³⁸ See *Galić* Trial Judgement, para. 531, from which the proposed fact was taken.

³⁹ *Perišić* Decision, para. 20.

photographed and entered into evidence at trial".⁴⁰ The Chamber does not accept this reasoning. The Chamber is concerned to identify facts established in an earlier judgement rather than to record the evidentiary basis on which the findings were made. In this particular instance, the factual finding, that there was an extensive destruction of civilian inhabitations in Sarajevo, is based, in part, upon the photographs adduced into evidence but is not limited to those inhabitations on these photographs. For the same reason, the Chamber is satisfied that proposed facts 110, 129, 135, 137, and 138 do not differ in any substantial way from their formulation in the *Galić* Trial Judgement.⁴¹ However, the Chamber will not take judicial notice of proposed fact 231, for which it is unclear whether it relates to a factual finding of the *Galić* Trial Chamber or merely to the opinion of a witness.⁴²

21. The Chamber considers that it must assess on a case-by-case basis whether the difference between a proposed fact and the formulation in the relevant part of the original judgement is a substantial one. The Chamber is not satisfied that proposed fact 133 has been reformulated in a way that would change the meaning of the relevant part in the original judgement, as argued by the Accused; the Chamber considers that the meaning of said fact is clear if it is considered in the context of the surrounding proposed facts. However, the Chamber considers that proposed fact 117, as reformulated in the Motion, substantially differs from the relevant passage of the original judgement, and will not take judicial notice thereof.⁴³ The remaining proposed facts disputed by the Accused [facts 38, 39, 41, 42, 44, and 45] have been formulated by the Prosecution in a way that eliminates legal terms contained in the original judgement (such as

⁴⁰ Motion, Annex A, fact no. 118 (emphasis added).

⁴¹ Proposed fact 110 states that "no civilian activity and no area of Sarajevo held by the ABiH seemed to its residents to be safe from sniping or shelling attacks from SRK-held territory", and proposed fact 129 states that "civilians were shot at almost every day". Both facts, although taken from testimony of specific witnesses, adequately reflect the overall finding of the *Galić* Trial Chamber in paragraph 583 of the *Galić* Trial Judgement that a campaign of shelling and sniping of civilians existed. Proposed fact 135 states that "there was a constant background noise of small arm, mortar and artillery fire" and was recalled in paragraph 590 of the *Galić* Trial Judgement to support the general conclusion of the *Galić* Trial Chamber that fire into Sarajevo was intense. Proposed fact 137 states that "the objective the SRK pursued was to make every inhabitant of Sarajevo feel that nobody was sheltered from the shooting", and proposed fact 138 states that "the shooting was not aimed at military objectives but rather to increase the helplessness of the population". These facts, although taken from testimony of one witness, adequately reflect the finding of the *Galić* Trial Chamber in paragraph 592 of the *Galić* Trial Judgement that "[t]he evidence, especially in relation to the nature of the civilian activities targeted, the manner in which the attacks on civilians were carried out and the timing and duration of the attacks on civilians, consistently shows that the aim of the campaign of sniping and shelling in Sarajevo was to terrorise the civilian population of the city".

⁴² See *Perišić* Decision, para. 32 (footnote 64); *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Defence Request for Judicial Notice of Adjudicated Facts, 29 August 2007, p. 3. Proposed fact 231 states that "there was no military facility nearby", which differs quite substantially from the statement that "the witness was not aware of any military facility nearby" in paragraph 320 of the *Galić* Trial Judgement, from which the fact was taken.

⁴³ Proposed fact 117 states that "every single part of Dobrinja...was exposed to severe shelling", whereas it is not clear from paragraph 584 of the *Galić* Trial Judgement, from which the fact was taken, whether the Trial Chamber accepted that it was "every single part" of Dobrinja or just Dobrinja generally, which was exposed to severe shelling.

“unlawful” or “illegal”). The Chamber considers that these facts do not differ in a substantial way from their formulation in the original judgement, with the exception of proposed fact 42, which will not be judicially noticed.

22. The Chamber notes that if a proposed fact contains only a minor inaccuracy or ambiguity, it is in its discretion to correct such inaccuracy or ambiguity.⁴⁴ This applies not only to typographical errors but also to inaccuracies as to the time and location of the events referred to in a proposed fact, which can be corrected having regard to either the original judgement or the surrounding facts proposed in the motions.⁴⁵ Therefore, in order to render the relevant proposed facts consistent with the meaning plainly intended in the *Galić* Trial Judgement, the Chamber has corrected several typographical errors in the following proposed facts:⁴⁶

- Proposed fact 14: the acronym for the Post Office “PIT” shall read “PTT” as in the *Galić* Trial Judgement;
- Proposed fact 71: “Liljacka river” shall read “**Miljacka river**” as in the *Galić* Trial Judgement;
- Proposed fact 114 shall read as follows: “Between September 1992 and August 1994, civilians were targeted while fetching water in Dobrinja IV, in Dobrinja **C5**, in Novi Grad, and in Kobilja Glava”;
- Proposed fact 149 shall read as follows: “Anisa Pita remained only a short while at the water source; she met there another child named Elma **Smajkan** and both girls decided to go back to the Pitas’ house to play”;
- Proposed fact 155 shall read as follows: “On 13 December 1992 Anisa Pita, a **three-and-a-half** years old civilian, was deliberately targeted and injured by a shot from an area that SRK soldiers had access to”;
- Proposed fact 165 shall read as follows: “On 11 July 1993, **Munira** Zametica was filling her bucket with water from the Dobrinja river when she was shot. It was too dangerous for Sadiha Šahinović and for Vahida Zametica, the 16 year old daughter of the victim who came to assist once alerted of the incident, to leave the protection of the bridge over the Dobrinja River. **Munira** Zametica was lying face down in the river, blood coming out of her mouth. Vahida Zametica heard the shooting continue and saw the bullets hitting the water near her mother”;
- Proposed fact 167 shall read as follows: “The victim, **Munira** Zametica, was pulled out of the water and taken to hospital; she died later that afternoon”;

⁴⁴ *Popović* Decision, para. 10.

⁴⁵ *See Stanišić* Decision, para. 38.

- Proposed fact 168 shall read as follows: “There was a line of sight between the tower of the Orthodox Church and the spot where **Munira** Zametica was shot”;
- Proposed fact 218 should read as follows: “On 25 May 1994 civilian passengers of a civilian vehicle were deliberately targeted from SRK-controlled territory and such **targeting** resulted in the wounding of Sehadeta Plivac and Hajra Hafizović”;
- Proposed fact 220 shall read as follows: “The shot which struck the tram was fired from the area of the Jewish **Cemetery** held by the SRK”;
- Proposed fact 308 shall read as follows: “Medical records confirm that Sabahudin Ljusa sustained severe **shrapnel** wounds to the chest”;
- Proposed fact 318 shall read as follows: “Sabahudin Ljusa did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca **Sarajeva** Street”.

23. The Chamber considers that the word “right” in proposed fact 176, which refers to a bullet that grazed the victim’s “right hand” should be deleted in order to adequately reflect paragraph 267 of the *Galić* Trial Judgement, which only mentions the victim’s “hand”. The Chamber has also corrected minor inaccuracies as to the time and location of the events in the following proposed facts:

- Proposed fact 93 shall read as follows: “Between September 1992 and August 1994, the Orthodox church in Dobrinja IV could be seen from the three bridges that linked Dobrinja II to Dobrinja **III**”;
- In proposed fact 95, the words “during the conflict” shall be deleted, as the temporal scope is already adequately identified, so that this proposed fact shall read as follows: “Between September 1992 and August 1994, the Koševo Hospital was one of the two main medical facilities in Sarajevo in operation”;
- Proposed fact 144 shall read as follows: “**On 5 August 1993**, Vildana Kapur, a civilian, was deliberately targeted from SRK-controlled territory”.

24. The Chamber has further corrected minor inaccuracies as to the identity of witnesses in the following proposed facts:

- The words “A woman known as Witness AP” in proposed fact 288 shall be replaced by the words “A **man** known as Witness AP”;

⁴⁶ Modifications are indicated in bold.

- In proposed fact 319, the words “Dobrinja Brigade of the”, contained in paragraph 405 of the *Galić* Trial Judgement, from which it was taken, shall be added and the fact will read as follows: “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”;
- Proposed fact 330 shall read as follows: “On 5 February 1994 the UNMO and UN FreBat (French Battalion) 4 determined that the tail fin belonged to a 120 mm mortar shell”;
- Similarly, the words “ABiH Commander Vahid Karavelić” in proposed fact 336 shall be substituted with the words “**Vahid Karavelić, commander of the 1st ABiH Corps**”, contained in paragraph 456 of the *Galić* Trial Judgement, from which the fact was taken.

25. Furthermore, the Chamber considers it appropriate to delete the words “The only reasonable inference is that” in proposed fact 181, in order to avoid any ambiguity, and to limit judicial notice to the relevant factual finding of the *Galić* Trial Chamber.

26. However, in addition to proposed facts 42, 117, and 231 already discussed, the Chamber will not take judicial notice of proposed facts 19, 52, 113, 205, and 326 as they differ substantially from the formulation in the original judgement.⁴⁷ Finally, the Chamber notes that proposed facts 102 and 156 contain essentially the same information, and will therefore not take judicial notice of proposed fact 156, in order to avoid repetition.

The fact must not be unclear or misleading in the context in which it is placed in the Motion

27. The Chamber is mindful that it must decline to take judicial notice of facts if it considers that the way they are formulated is misleading or inconsistent with the facts actually adjudicated

⁴⁷ While proposed fact 19 refers to a call by the Security Council “on 22 May 1992”, paragraph 201 of the *Galić* Trial Judgement, from which it was taken, does not indicate an exact date and cites to two Security Council resolutions dated 15 May 1992 and 30 May 1992, respectively. Proposed fact 42 states that “sniping and shelling of civilians was widespread and conducted over a long period of time by SRK troops”, and differs substantially from the relevant passage of paragraph 741 of the *Galić* Trial Judgement, from which the fact was taken, which reads “crimes were committed against civilians in a widespread fashion and over a long period of time by SRK troops”. Proposed fact 52 reads “[b]etween September 1992 and August 1994, civilian patients received at the State Hospital out-numbered combatants by at least four to one”, and differs substantially from the way it was expressed in paragraph 216 of that Judgement, which reads as follows: “Akif Mukanović, soldier with the ABiH, said that he felt more secure at the frontline than elsewhere in Sarajevo because ‘fire was opened less often’ at the confrontation lines. This is concordant with the explanation given by Milan Mandilović surgeon at the State Hospital, as to why civilian patients received at the State Hospital out-numbered combatants at least four to one.” Proposed fact 113 states that “civilians were repeatedly and deliberately targeted” in different areas of Sarajevo, whereas paragraph 584 of the *Galić* Trial Judgement, from which the fact was taken, does not explicitly state that civilians were targeted “repeatedly and deliberately” in areas other than Kobilja Glava. Proposed fact 205 refers to the “frontline in the area of Neđarići”, instead of the “frontline in the direction of Neđarići”, as stated in paragraph 365 of the *Galić* Trial Judgement, from which the fact was taken. Proposed fact 326 states that “Edin Suljić, of a local investigative team and Afzaal Niaz of the UN set up a team to investigate the incident”, and substantially changes the meaning of paragraph 439 of the *Galić* Trial Judgement, from which the fact was taken, which states that “Edin Suljić, on behalf of a local investigative team set up to investigate the incident, and Afzaal Niaz, on behalf of the UN, visited the hospitals and the morgue where the victims of the blast were taken”.

in the case in question.⁴⁸ It is essential to have regard to the surrounding proposed facts in the motion when assessing whether a particular fact is unclear or misleading.⁴⁹ While noting that the proposed facts contested by the Accused as unclear and misleading do not specify the time period of the events described therein, the Chamber is satisfied that the relevant period becomes evident when considering those facts in the context of other surrounding facts.

28. Nevertheless, the Chamber will not take judicial notice of proposed fact 306, because the Prosecution has clearly misstated the identity of the witness referred to in this fact, which was taken out of its context.⁵⁰ Consequently, judicial notice must also be denied to facts 307 and 308, as these refer to wounds sustained by the witness referred to in proposed fact 306, as well as to a “second explosion”, both of which would then become unclear in the absence of any mention to a first explosion. Similarly, due to the fact that proposed fact 326 has been denied judicial notice in accordance with the test contained in the previous section, proposed facts 327, 328, and 329 will be denied judicial notice, as they become unclear or misleading without proposed fact 326. The Chamber further declines to take judicial notice of proposed fact 343, which relates to an incident on 22 January 1994 and is, therefore, clearly unrelated to the surrounding proposed facts concerning an incident on 5 February 1994.

The fact must not contain characterisations or findings of an essentially legal nature

29. The Chamber is mindful that taking judicial notice of adjudicated facts does not serve the purpose of importing legal conclusions from past proceedings.⁵¹ While a finding is legal when it involves interpretation or application of legal principles,⁵² many findings have a legal aspect, if this expression is interpreted broadly. The Chamber considers that it is necessary to determine on a case-by-case basis whether the proposed fact must be excluded because it contains findings or characterizations which are of an essentially legal nature, or whether the factual content prevails.⁵³ In general, “findings related to the *actus reus* or the *mens rea* of a crime are deemed to be factual findings”.⁵⁴

⁴⁸ *Karemera* Appeal Decision, para. 55.

⁴⁹ *Popović* Decision, para. 8.

⁵⁰ The Prosecution appears to have taken the wording of this fact from paragraph 399 in the *Galić* Trial Judgement and not, as indicated in the Motion, from paragraph 398.

⁵¹ *Dragomir Milošević* Appeal Decision, para. 22; *Prosecutor v. Lukić et al.*, Case No. IT- IT-98-32/1-T, Decision on Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 22 August 2008, para. 21.

⁵² See *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Appeals Chamber Remand of Judicial Notice of Adjudicated Facts with Separate Opinion of Judge Robinson, 18 July 2007, para. 11.

⁵³ See *Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on the Second Motion for Judicial Notice of Facts Relevant to the Sarajevo Crime Base, 17 September 2008, para. 15.

⁵⁴ *Krajišnik* Decision, para. 15.

30. The Chamber notes the Accused's submission that several proposed facts use legally significant terms, for example "civilians" or "indiscriminate attack", in such a way as to render them essentially legal in nature.⁵⁵ While agreeing with the Prosecution that such terms may also be used in a "factual" sense to describe victims, objects, or situations, the Chamber has carefully assessed each of the disputed facts in determining whether it contains characterisations or findings of an essentially legal nature. Consequently, the Chamber is satisfied that none of the proposed facts challenged by the Accused uses the above terms in such a way as to render them essentially legal in nature.

31. Moreover, the Chamber notes that the Accused asks the Chamber to reject certain proposed facts as essentially legal in nature, due to the fact that they are located in certain sections of the *Galić* Trial Judgement, which relate to conclusions on the knowledge or the effective command and control of the accused in that case [proposed facts 29–41]. The Chamber is not satisfied that every finding in the sections of the *Galić* Trial Judgement pertaining to the chain of command and/or the mental state of the accused is necessarily of a legal nature, because findings related to the material and subjective elements of a crime are generally deemed to be factual findings. Having reviewed each of the contested proposed facts, the Chamber is satisfied that none of these facts contains findings of an essentially legal nature.

The fact must not be based on an agreement between the parties to the original proceedings

32. The Chamber must deny judicial notice of proposed facts that are based upon agreement between the parties to the original proceedings, which may be the case where "the structure of the relevant footnote in the original judgement cites the agreed facts between the parties as a primary source of authority".⁵⁶ The Prosecution does not dispute that certain proposed facts challenged by the Accused are based upon an agreement between the parties to the original proceedings, and it has withdrawn all but proposed facts 6 and 66 on the basis that the agreement is not the primary source of these facts. The Chamber notes that the respective passages of the *Galić* Trial Judgement, from which these facts were taken, are supported primarily by evidence other than the agreement between the parties. The Chamber considers that these facts are supported by sufficient evidence, and should not be denied judicial notice merely because they have also been agreed upon by the parties to the original proceedings.

⁵⁵ Response, paras. 29–31.

Discretion to refuse notice

33. The Accused challenges certain proposed facts on the basis that they recount witness testimony rather than noting a distinct factual finding [proposed facts 147–151, 153, 157–159, 163, 165–167, 171, 173–177, 183, 189–190, 198–202, 209–215, 218, 222–225, 228, 234–238, 245–260, 271–277, 283–295, 298, 305–307, 309–315, 318, 324–325, and 332–333] and requests the Chamber to exercise its discretion to exclude those facts.⁵⁷ The Chamber notes that, while these facts are taken from paragraphs of the original judgement in which the *Galić* Trial Chamber recalls witness testimony, in the same or immediately following paragraphs, the *Galić* Trial Chamber relies directly on that testimony⁵⁸ or satisfies itself of the reliability of the witnesses, and accepts that testimony as credible.⁵⁹ Upon a close examination of the paragraphs in the original judgement from which the relevant proposed facts were taken, the Chamber is satisfied that the *Galić* Trial Chamber did not merely recount witness testimony, but accepted the testimony as accurate. However, the same cannot be said of all of the remaining proposed facts in question, because for some of these facts it remains unclear whether the *Galić* Trial

⁵⁶ *Popović* Decision, para. 11.

⁵⁷ *See* Response, para. 36.

⁵⁸ Proposed facts 165 and 167 relate to witness testimony concerning the circumstances of the shooting and death of Munira Zametica, which is relied upon by the *Galić* Trial Chamber in making findings in paragraph 355 of the *Galić* Trial Judgement.

Proposed fact 166 states that “ABiH soldiers passing by the bridge saw what had happened, positioned themselves on the bridge behind sandbags and shot into the direction of the Orthodox Church”, which is relied upon in paragraph 355 of the *Galić* Trial Judgement, where the *Galić* Trial Chamber found that “[r]eliable testimony establishes that ABiH soldiers passed by after the event and only then opened return fire”. Proposed fact 171 states that “[t]he perpetrator repeatedly shot toward Munira Zametica, preventing rescuers from approaching her” and in paragraph 355 of the *Galić* Trial Judgement, the *Galić* Trial Chamber relied on this fact in concluding that the perpetrator deliberately attacked the victim.

Proposed fact 183 states that “[o]n 2 November 1993, at around 4 pm, Ramiza Kundo, 38 years old at that time, and Rasema Menzilović, were hurrying back with full 10-litre canister in each hand along Brijеčko Brdo Street from a well located about 50 metres away from Menzilović’s house”. In paragraph 429 of the *Galić* Trial Judgement, the *Galić* Trial Chamber appears to rely on the relevant testimony from which the proposed fact was taken, by considering “the activity in which she was engaged at the time of the incident”.

The *Galić* Trial Chamber relied upon proposed fact 218, which states that “[t]he tram was impacted on the left side in the direction it was traveling”, when making a finding in the last sentence of paragraph 257 of the *Galić* Trial Judgement.

Similarly, the *Galić* Trial Chamber reached its finding that that the incident was not caused by a lost shot during ongoing combat in paragraph 320 of the *Galić* Trial Judgement, relying upon proposed fact 228, which states that “[o]nly one single shot was fired which directly hit Muratović”.

Proposed fact 310 states that “a group of twenty women and children had gathered”, and in paragraph 408 of the *Galić* Trial Judgement, the *Galić* Trial Chamber relied on this fact stating that “[t]he evidence establishes that the people gathered there ran for cover after hearing the explosion”.

Proposed fact 318 states that “Sabahudin Ljusa did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca Sarejeva Street” and in paragraph 409 of the *Galić* Trial Judgement, the *Galić* Trial Chamber relied on the fact that no military personnel were seen in the vicinity in order to find that the shells struck civilians engaged in peaceful activities.

Proposed fact 324 states that “[o]n 5 February 1994 around noon many people were shopping in the Markale open-air market” and is explicitly accepted by the *Galić* Trial Chamber in paragraph 495 of the *Galić* Trial Judgement, where it held that “[t]hat market drew large numbers of people”.

⁵⁹ *See Galić* Trial Judgement, paras. 255, 267, 286, 319, 339, 359, 364, 375, 390, 491, 515, and 534.

Chamber accepted the witnesses' testimony as relevant facts. Consequently, the Chamber will use its discretion to exclude proposed facts 305, 309–315, 325, and 333.

34. The Chamber will not take judicial notice of proposed fact 29 discussed in paragraph 14 above, because it considers it unclear whether it relates to a factual finding or merely a statement of opinion of the *Galić* Trial Chamber.

35. The Chamber has carefully assessed whether the admission of the proposed facts that meet the above requirements would advance judicial economy while safeguarding the rights of the Accused. The Chamber notes that the Accused has not specified the “highly contested issues for which adjudicated facts would be inappropriate”,⁶⁰ and recalls that “[t]here is no requirement that adjudicated facts be beyond reasonable dispute”.⁶¹ The Chamber has taken into consideration the concerns raised by the Accused that, in order to rebut the adjudicated facts, he would require adequate time and facilities to investigate those facts and to call witnesses and present his evidence. The Chamber also notes the Accused’s contention that it will be argued from the adjudicated facts that he must have known of the crimes that were being committed under the authority of his subordinates, as well as his submission that shifting the burden of disproving his knowledge would prejudice his rights because “the proposed facts indirectly point to the mode of his liability...under Article 7(1) or Article 7(3) of the Statute”.⁶²

36. However, on the basis of the submissions made by the Accused, the Chamber is not satisfied that he would require more time and facilities to rebut adjudicated facts than would be necessary in order to counter the evidence to be presented by the Prosecution should the Chamber decline to take judicial notice of adjudicated facts. The Chamber considers that the proposed facts are not sufficient to establish the Accused’s responsibility, and recalls that “judicial notice under Rule 94(B) is in fact available *only* for adjudicated facts that bear, at least in some respect, on the criminal responsibility of the accused”.⁶³ More importantly, the ultimate burden of persuasion remains with the Prosecution, which will have to prove beyond reasonable doubt the necessary connection between the immediate perpetrators of any crimes proved and the Accused, under the modes of liability alleged in the Indictment.

37. The Chamber also notes the Accused’s contention that he does not have access to some of the evidentiary material upon which the *Galić* Trial Judgement was based. However, he has

⁶⁰ Response, para. 18.

⁶¹ *Karemera* Appeal Decision, para. 40.

⁶² Response, para. 35.

⁶³ *Karemera* Appeal Decision, para. 48.

made a rather belated request for access to confidential materials in that case.⁶⁴ The Chamber considers that the Accused will have the opportunity to challenge the adjudicated facts that will be judicially noticed, using the background material that he obtains. Therefore, the Chamber is not satisfied that any injustice would arise from the fact that the Accused does not, at this stage, have access to the evidentiary material.

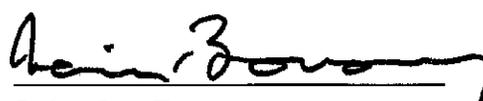
38. Finally, the Chamber is satisfied that none of the facts in the Motion which meet the requirements of Rule 94(B), as set out in paragraph 9 above, should be excluded on the basis that judicial notice would not be in the interest of justice.

IV. Disposition

39. Accordingly, the Trial Chamber, pursuant to Rules 54 and 94(B) of the Rules, hereby **GRANTS** the Motion in part, and decides as follows:

- (a) the Trial Chamber takes judicial notice of the adjudicated facts in the Annex attached to this decision, in the manner formulated therein;
- (b) the following adjudicated facts proposed in the Motion are denied judicial notice: proposed facts 19, 29, 42, 47, 50, 52, 88, 98–100, 113, 117, 143, 156, 205, 231, 269, 305–315, 325–329, 333, and 343;
- (c) the following adjudicated facts proposed in the Motion will not be judicially noticed as they were withdrawn by the Prosecution: proposed facts 25, 26, 28, 43, 116, and 136, as well as the first sentence of proposed fact 342.

Done in English and French, the English text being authoritative.



Judge Iain Bonomy
Presiding

Dated this fifth day of June 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶⁴ Motion for Access to Confidential Materials in Completed Cases, 16 April 2009.

ANNEX

Proposed Fact No.	Proposed Adjudicated Fact
1.	By 1992, Sarajevo had grown into the most important political, cultural, industrial, and commercial centre of BiH.
2.	Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaž, Hadžići, and Trnovo.
3.	According to the 1991 census, the municipality of Pale was the only one in which BiH Serbs constituted an absolute majority (around 69%).
4.	According to the 1991 census, the Serbs were a simple majority in Ilidža and Ilijaž.
5.	According to the 1991 census, the Serbs were in approximately equal numbers to the Muslims in Novo Sarajevo.
6.	In early March 1992, barricades and checkpoints were erected in Sarajevo by both SDS and SDA members.
7.	On 6 April 1992, extensive gunfire erupted in Sarajevo, with each side accusing the other of having started the hostilities.
8.	Between May and September 1992, shelling of military and civilian targets within the city of Sarajevo by both sides continued, and fighting was intense and brutal.
9.	On 8 June 1992, with Resolution 758, the Security Council enlarged the mandate and strength of UNPROFOR and authorized the deployment of UN Military Observers ("UNMOs").
10.	By Security Council Resolution 761 of 29 June 1992, UNPROFOR was tasked with protecting Sarajevo airport, a strategic location south-west to the city, and with helping it function so that humanitarian aid could reach the population.
11.	In the summer of 1992, pursuant to an agreement with the UN, the Sarajevo Romanija Corps ("SRK") handed over Sarajevo airport to UNPROFOR. From that moment on, the airport was only to be used by UN personnel for UN purposes.
12.	UNPROFOR's mandate was again broadened by Security Council Resolution 776 of 14 September 1992, to include the protection of convoys of humanitarian aid.
13.	In September 1992, at least three UNPROFOR military battalions, French, Egyptian, and Ukrainian, were positioned in the city. Each consisted of around 500 to 600 soldiers.
14.	The headquarters of the UN troops in charge of "Sector Sarajevo" were in the Post Office (PTT) building in downtown Sarajevo and the warring factions had liaison offices there to maintain contact with UNPROFOR and file protests on alleged violations of rules and agreements by the other party.
15.	The two opposing forces in the Sarajevo sector were observed by military monitoring teams (UNMOs) in stations code-named LIMA (outside the city to cover SRK positions) and PAPA (in the city to cover the territory controlled by the ABiH).
16.	There were around 60 observers as of February 1993, spread out over a total of 14 observation posts (11 LIMAs and 3 PAPAs). However, it was generally thought that, due to insufficient numbers, UNMOs could not effectively cover each assigned area.

Proposed Fact No.	Proposed Adjudicated Fact
17.	After the JNA partially withdrew, the parliament of Republika Srpska on 12 May 1992 ordered the formation of the Bosnian-Serb Army ("VRS").
18.	On 22 May 1992 BiH was admitted as a member state of the United Nations.
19.-	On 22 May 1992 the Security Council called for the withdrawal of foreign forces, including the JNA, from BiH territory.
20.	The SRK was to be located in the greater Sarajevo area, the former zone of responsibility of the 4th JNA Corps.
21.	The SRK's main forces were positioned around what was colloquially called the inner ring of Sarajevo, in particular in the area of Ilidža, Neđarići, and Grbavica.
22.	Until the end of 1992, seven SRK brigades were positioned in that part of the confrontation lines constituting the "inner ring", whose length was some 55 kilometres.
23.	Auxiliary forces of the SRK were positioned on the so-called exterior ring of the Sarajevo front, whose length was approximately 180 kilometres.
24.	On 1 September 1992, the ABiH troops positioned in and around Sarajevo formally came to be known as the 1st ABiH Corps.
25.	[withdrawn]
26.	[withdrawn]
27.	General Galić remained as commander of the Sarajevo Romanija Corps until 10 August 1994 when Dragomir Milošević, his Chief of Staff, assumed command.
28.	[withdrawn]
29.-	General Galić was an efficient and professional military officer.
30.	Upon his appointment as commander of the Sarajevo Romanija Corps, General Galić finalised the composition and organisation of the Sarajevo Romanija Corps.
31.	General Galić was present on the battlefield of Sarajevo throughout the period 10 September 1992 to 10 August 1994, in close proximity to the confrontation lines.
32.	The confrontation lines remained relatively static during the period 10 September 1992 to 10 August 1994.
33.	General Galić actively monitored the situation in Sarajevo.
34.	General Galić was perfectly cognisant of the situation in the battlefield of Sarajevo.
35.	Sarajevo Romanija Corps reporting and monitoring systems were functioning normally during the period 10 September 1992 to 10 August 1994.

Proposed Fact No.	Proposed Adjudicated Fact
36.	General Galić was in a good position to instruct and order his troops.
37.	The Sarajevo Romanija Corps personnel were under normal military command and control.
38.	Not only was General Galić informed personally about both sniping and shelling activity attributed to Sarajevo Romanija Corps forces against civilians in Sarajevo, but his subordinates were conversant with such activity.
39.	General Galić was subsequently informed by his subordinates about both sniping and shelling activity attributed to Sarajevo Romanija Corps forces against civilians in Sarajevo.
40.	As Corps commander, General Galić was in full control of Sarajevo Romanija Corps artillery assets and knew of the rate of use of ammunition.
41.	General Galić was fully appraised of the sniping and shelling at civilians taking place in the city of Sarajevo and its surroundings.
42.—	General Galić issued orders to target civilians or the civilian population and the sniping and shelling of civilians was widespread and conducted over a long period of time by SRK troops. The manner of commission of these crimes revealed a striking similarity of pattern throughout.
43.	[<i>withdrawn</i>]
44.	General Galić deliberately ensured a lack of measures by the VRS to prevent sniping and shelling activities.
45.	General Galić, at times, intended to target civilians and the civilian population in the city of Sarajevo.
46.	General Galić acted in furtherance of a strategy to attack the civilian population of Sarajevo.
47.—	The term “sniping” must be understood as direct targeting of individuals at a distance using any type of small calibre weapon.
48.	The city of Sarajevo came under extensive gunfire and was heavily shelled between September 1992 and August 1994.
49.	A 1993 UNPROFOR report indicated that shelling had resulted in a “High level of civilian casualties relative to recent months”.
50.—	Between September 1992 and August 1994, on other occasions, UN sources attributed civilian injuries and deaths to SRK actions, including deliberate targeting.
51.	Between September 1992 and August 1994 civilians and the civilian population as such, in ABiH-held areas of Sarajevo, were targeted from SRK-controlled territory.
52.—	Between September 1992 and August 1994, civilian patients received at the State Hospital outnumbered combatants by at least four to one.
53.	Between September 1992 and August 1994, civilians were deliberately targeted while engaged in civilian activities or while in civilian locations.

Proposed Fact No.	Proposed Adjudicated Fact
54.	Between September 1992 and August 1994, ambulances were also targeted. To avoid being fired upon they were sometimes driven at night, without their flashing lights, and not on main roads.
55.	Between September 1992 and August 1994, the Commander of the Ilijaš Brigade of the SRK gave orders to his mortar battery to target ambulances, a marketplace, funeral processions, and cemeteries further north from the city, in Mrakovo.
56.	Between September 1992 and August 1994, civilians in ABiH-held areas of Sarajevo deferred even basic survival tasks to times of reduced visibility, such as foggy weather or night time, because they were targeted otherwise.
57.	Between September 1992 and August 1994 civilians, in particular older people, would often collect wood at night, because they knew it was risky to travel during the day.
58.	Between September 1992 and August 1994, schools were closed, and temporary neighbourhood schools were established in cellars, to minimize the distance that children had to travel to their classes, and therefore minimise their exposure to sniping and shelling.
59.	Between September 1992 and August 1994, many civilians lived for a long period of time in the cellars of their buildings in order to avoid the shells. They learned to move around as little as possible, rarely leaving their apartments.
60.	Because obtaining food and water was fraught with danger, since both involved queuing for prolonged periods with the risk of being targeted, between September 1992 and August 1994, the Civil Defence varied the sites for the distribution of food provided by humanitarian agencies.
61.	Between September 1992 and August 1994, when the water supply failed, international aid agencies supplied water pumps which were installed at suitable locations around the city. Residents had to wait, sometimes for a day, before their turn to fill their containers.
62.	Between September 1992 and August 1994, UN troops had to frequently modify the locations where citizens gathered to receive humanitarian aid in order to avoid being targeted by shells.
63.	Between September 1992 and August 1994, civilians venturing from their homes for these chores would often accompany each other, so that if they were wounded there would be assistance.
64.	Between September 1992 and August 1994, civilians developed alternative routes to traverse the city, which offered a greater degree of cover from sniper fire from SRK-held areas. Even so, these routes could afford no protection from shelling with indirect fire weapons, such as mortars.
65.	Grbavica was a neighbourhood in the Municipality of Novo Sarajevo located in the southern-central part of the city of Sarajevo.
66.	Between September 1992 and August 1994, Grabvica was under SRK control.
67.	Between September 1992 and August 1994, the confrontation line in Grbavica ran along the Miljacka River, with Grbavica lying to the south.
68.	The area of Vrace, to the southwest of Grbavica, was also under the control of the SRK, between September 1992 and August 1994.
69.	Between September 1992 and August 1994, civilians in Novo Sarajevo were targeted from the SRK-controlled area of Grbavica.
70.	Between September 1992 and August 1994, some areas of town were deliberately avoided by the population due to the danger of gunfire originating in Grbavica. The main thoroughfare of Sarajevo, part of which was then called Marshal Tito Boulevard, and Marin Dvor, a central district, were

Proposed Fact No.	Proposed Adjudicated Fact
	exposed to frequent gunfire from Grbavica.
71.	Between September 1992 and August 1994, the main avenue in Sarajevo, which runs parallel to the Miljacka river from Stari Grad into the western part of town, became known as "Sniper Alley".
72.	The Jewish Cemetery of Sarajevo was located on the western slopes of Mount Trebević.
73.	Both belligerent parties held positions in the area of the Jewish cemetery of Sarajevo: the confrontation lines were separated by the width of the cemetery. The SRK was positioned on the south-western side of the cemetery, while the ABiH was stationed along the north-eastern wall.
74.	The confrontation lines in the area of the Jewish cemetery of Sarajevo remained unchanged throughout the conflict.
75.	The neighbourhood of Hrasno was a residential area located in the south-western part of Sarajevo, adjacent to Grbavica.
76.	Between September 1992 and August 1994, civilians in the neighbourhood of Hrasno were exposed to shooting from several SRK positions.
77.	Between September 1992 and August 1994, the area of Hrasno Brdo in the vicinity of Ozrenska Street was a regular source of gunfire.
78.	Between September 1992 and August 1994, the neighbourhood of Hrasno was under ABiH control, including the lower parts of Hrasno Brdo or Hrasno Hill.
79.	Between September 1992 and August 1994, the SRK also had positions on Hrasno Brdo, in the area of Ozrenska Street, which ran along the top of the hill.
80.	Between September 1992 and August 1994, the SRK controlled upper parts of Hrasno Brdo, including the area of Ozrenska Street and the ABiH held the lower parts of the hill.
81.	Between September 1992 and August 1994, civilians in Hrasno were targeted from the area of Grbavica.
82.	Alipašino Polje is a residential neighbourhood in the west of Sarajevo. It is bounded by Mojmiho hill and the neighbourhood of Dobrinja to the south, and by the neighbourhood of Neđarići to the west and south-west.
83.	Between September 1992 and August 1994, the whole of Alipašino Polje was on the ABiH side of the confrontation line, which separated it from Neđarići. The line at this point extended from west to east and curved into ABiH-controlled territory. The result was that Neđarići was bordered on three sides by territory controlled by the ABiH; a west-running corridor connected this neighbourhood with the more expansive SRK-controlled territory to the west.
84.	The Neđarići neighbourhood, where the SRK held a salient in the ABiH lines between September 1992 and August 1994, consisted mostly of low buildings of one to two storeys.
85.	The portion of Neđarići east of Ante Babića Street and south of Đure Jakšića Street (now renamed Adija Mulebegovića), where there are higher buildings, was controlled by the ABiH, together with Alipašino Polje, between September 1992 and August 1994.
86.	Close to the "Institute for the Blind", a group of buildings in the SRK-controlled territory of Neđarići, ABiH and SRK forces were only a few meters apart.

Proposed Fact No.	Proposed Adjudicated Fact
87.	Between September 1992 and August 1994, fighting in the Alipašino Polje area was intense, and soldiers from both sides constantly fired from and against the area.
88.—	During the conflict, a barricade was placed to protect civilians against sniping from the SRK-held part of Neđarići in Ante Babića Street.
89.	The residential settlement of Dobrinja, which is situated alongside the airport to the south west of the city, was constructed as the athletes' village for the winter Olympics in Sarajevo in 1984.
90.	In the early stages of the conflict prior to the period between September 1992 and August 1994, Dobrinja was isolated from the rest of the city.
91.	Between September 1992 and August 1994, the confrontation lines on the eastern side of Dobrinja ran approximately along a street separating the SRK-controlled areas of Dobrinja I and IV from ABiH-controlled areas of Dobrinja II and III B.
92.	The Orthodox Church in Dobrinja IV, which had been under construction when hostilities broke out and retained external scaffolding throughout the period between September 1992 and August 1994, was one of the sources of sniping fire against civilians in Dobrinja.
93.	Between September 1992 and August 1994, the Orthodox Church in Dobrinja IV could be seen from the three bridges that linked Dobrinja II to Dobrinja III.
94.	Between September 1992 and August 1994, three bridges were mostly used: the bridge close to the eastern part of the confrontation line going from Emile Zola street to the square, the bridge used for traffic connecting Dobrinja II and Dobrinja III, then a pedestrian bridge also connecting Dobrinja II and Dobrinja III.
95.	Between September 1992 and August 1994, the Koševo hospital was one of the two main medical facilities in Sarajevo in operation.
96.	Between September 1992 and August 1994, the Koševo hospital was formally known as the "University Clinical Centre of Sarajevo" or the "Clinical Centre of the University of Sarajevo" and consisted of a series of large buildings located in the north-eastern part of the center of Sarajevo.
97.	Between September 1992 and August 1994, the Koševo hospital was a widely known civilian medical facility.
98.—	Between September 1992 and August 1994, attacks on Koševo hospital caused the death or injury of civilians present at the hospital, significantly damages its infrastructure, and substantially reduced the medical facility's ability to treat patients.
99.—	The Koševo hospital, a well-known civilian medical facility, was regularly targeted between September 1992 and August 1994 by the SRK.
100.—	Between September 1992 and August 1994 the Koševo hospital buildings themselves were, on occasions, directly targeted, resulting in civilian casualties.
101.	Between September 1992 and August 1994, the area known as Špicasta Stijena or "Spikey Rock" or "Sharpstone" was under the control of the SRK during the conflict.
102.	The SRK controlled the immediate vicinity of Špicasta Stijena between September 1992 and August 1994, with the ABiH positioned nearby, below the ridgeline.
103.	Civilians in the area of Sedrenik experienced indiscriminate or direct small-arms fire originating from Špicasta Stijena, SRK-controlled territory, between September 1992 and August 1994.

Proposed Fact No.	Proposed Adjudicated Fact
104.	Between September 1992 and August 1994, the SRK and the ABiH faced each other along a confrontation line located in the south-eastern quadrant of Sarajevo, with the ABiH controlling the northern base of Mount Trebević.
105.	Between September 1992 and August 1994, immediately east of the northern base of Mount Trebević, ABiH troops also controlled elevated positions in the vicinity of a hill called Colina Kapa.
106.	Between September 1992 and August 1994, the SRK deployed forces in the area enabling it to control much of the remainder of Mount Trebević including upper regions affording a view of Sarajevo.
107.	Between September 1992 and August 1994, except for an area to the north and northwest, much of Mount Trebević, including its upper regions, lay in SRK-held territory.
108.	Between September 1992 and August 1994, civilians experienced regular gunfire in the neighbourhood of Širokača.
109.	Between September 1992 and August 1994, many hundreds of civilians were killed and thousands were injured in ABiH-controlled areas.
110.	Between September 1992 and August 1994, no civilian activity and no area of Sarajevo held by the ABiH seemed to its residents to be safe from sniping or shelling attacks from SRK-held territory.
111.	Between September 1992 and August 1994, civilians were targeted during funerals, in ambulances, in hospitals, on trams, on buses, when driving or cycling, at home, while tending gardens or fires or clearing rubbish in the city.
112.	Between September 1992 and August 1994, civilians were targeted while using public transport vehicles running during cease-fires in Dobrinja and in Novo Sarajevo.
113.	Between September 1992 and August 1994, civilians were repeatedly and deliberately targeted in Kobilja Glava and while crossing intersections in Novo Sarajevo, in Hrasno, in Dobrinja, in Novi Grad, in Alipašino Polje, or in Stari Grad.
114.	Between September 1992 and August 1994, civilians were targeted while fetching water in Dobrinja IV, in Dobrinja C5, in Novi Grad, and in Kobilja Glava.
115.	Between September 1992 and August 1994, children were targeted in schools, or while playing outside, riding a bicycle, near their home, or in the street.
116.	[withdrawn]
117.	Between September 1992 and August 1994, every single part of Dobrinja, a very populated neighbourhood, was exposed to severe shelling originating from SRK-controlled territory.
118.	Between September 1992 and August 1994, there was an extensive destruction of civilian inhabitations in Sarajevo.
119.	The natural and urban topography of the city of Sarajevo, such as ridges and high-rise buildings, provided vantage-points to SRK forces to target civilians moving around the city between September 1992 and August 1994.
120.	Between September 1992 and August 1994, there were specific areas throughout the city of Sarajevo which became notorious as sources of sniping fire directed at civilians.

Proposed Fact No.	Proposed Adjudicated Fact
121.	Between September 1992 and August 1994, in the general area of Grbavica, fire was opened against civilians from different high-rise buildings on the southern side of the Miljacka River, in the SRK-controlled neighbourhood of Grbavica. These positions allowed soldiers to "literally shoot down streets" in the central part of Sarajevo, exposing all pedestrians at intersections, as well as cars, buses and trams travelling from the east to the west of the city, to sniper fire.
122.	Between September 1992 and August 1994, the main thoroughfare of Sarajevo, part of which was then called Marshal Tito Boulevard, became known as "Sniper Alley" as it was particularly prone to regular gunfire.
123.	Between September 1992 and August 1994, containers were set up at intersections, such as near the Presidency and Energoinvest buildings and in proximity to the Holiday Inn, to shield civilians against fire coming from the tall buildings in Grbavica.
124.	Between September 1992 and August 1994, the central district of Marin Dvor, in particular Marin Dvor square, was also particularly targeted from Grbavica.
125.	Between September 1992 and August 1994, throughout the city of Sarajevo, there were points in SRK-controlled territory, such as the Jewish Cemetery, the Orthodox Church and the School for the Blind in the areas of Neđarići, Špicasta Stijena, Mount Trebević and Baba Stijena or Orahov Brijeg which were prominent sources of sniper fire against civilians.
126.	Between September 1992 and August 1994, the same pattern of regular fire at civilians from SRK-controlled positions or areas appears consistently throughout ABiH-held areas of the city of Sarajevo.
127.	Between September 1992 and August 1994, although civilians adapted to that hostile environment by closing schools, living at night, hiding during the day in their apartment or cellar, moving around the city of Sarajevo as little as possible, setting up containers and barricades to provide shelter against sniping fire, they were still not safe from sniping and shelling fire from SRK-controlled territory.
128.	Between September 1992 and August 1994, civilians who were seen through gaps between containers set up along streets and main avenues in the city of Sarajevo, were targeted from SRK-controlled territory.
129.	Between September 1992 and August 1994, civilians were shot at almost every day.
130.	Between September 1992 and August 1994, ABiH-held territory, including most of the city, was almost completely surrounded by SRK forces and distances were so short in some areas that one belligerent party could fire into the territory of the other party and also over that territory into its own positions.
131.	Between September 1992 and August 1994, the pattern of fire throughout the city of Sarajevo was that of indiscriminate or direct fire at civilians in ABiH held areas of Sarajevo from SRK-controlled territory not that of combat fire where civilians were accidentally hit.
132.	Between September 1992 and August 1994, fire into ABiH-held areas of Sarajevo followed a temporal pattern.
133.	Fire into Sarajevo was intense between September and December 1992.
134.	Fire into Sarajevo was still important throughout the year 1993, with daily or weekly fluctuations (days of little shootings followed by days of extreme activity), with an intensification of fire in winter 1993 and up to the wake of the Markale shelling incident in February 1994 and then subsided.

Proposed Fact No.	Proposed Adjudicated Fact
135.	In Sarajevo between September and December 1992, there was a constant background noise of small arm, mortar and artillery fire.
136.	[<i>withdrawn</i>]
137.	Between September 1992 and August 1994, the objective the SRK pursued was to make every inhabitant of Sarajevo feel that nobody was sheltered from the shooting.
138.	Between September 1992 and August 1994, the shooting was not aimed at military objectives but rather to increase the helplessness of the population.
139.	Between September 1992 and August 1994, the attacks on civilians were numerous, but were not consistently so intense as to suggest an attempt by the SRK to wipe out or even deplete the civilian population through attrition.
140.	Between September 1992 and August 1994, the attacks on civilians had no discernible significance in military terms.
141.	Ramiz Velić was a civilian who was deliberately targeted from SRK-controlled territory in Vrace on 2 November 1993.
142.	On 25 June 1993 a civilian was shot deliberately from SRK-controlled territory.
143.	On 24 July 1993 Mejra Jusović was fired upon from SRK-controlled territory in reckless disregard of the possibility that she was a civilian.
144.	On 5 August 1993, Vildana Kapur, a civilian, was deliberately targeted from SRK-controlled territory.
145.	On 9 November 1993 civilian Fatima Osmanović was targeted from an SRK-controlled area in full awareness of the high risk that the target was a civilian.
146.	On 27 June 1993, a civilian was deliberately targeted and killed by a shot fired from SRK-controlled territory in Grbavica.
147.	There was no ongoing fighting when Anisa Pita and her father left their house in the morning on 13 December 1992 between 10 and 10:30 am.
148.	They went to a water source about 150 metres from the house and people were already there so that they had to wait in line.
149.	Anisa Pita remained only a short while at the water source; she met there another child named Elma Smajkan and both girls decided to go back to the Pitas' house to play.
150.	The fog had lifted by the time Anisa Pita reached her house.
151.	Both parents inspected their daughter and found that she had been injured above the knee of her right leg by a bullet which had subsequently exited the girl's body.
152.	The SRK operated from the general area of a ridge known as Baba Stijena.

Proposed Fact No.	Proposed Adjudicated Fact
153.	The distance from Anisa Pita's house to Baba Stijena was 900 metres.
154.	Anisa Pita was injured by a shot fired from the area of the ridge known as Baba Stijena.
155.	On 13 December 1992 Anisa Pita, a three-and-a-half-years old civilian, was deliberately targeted and injured by a shot from an area that SRK soldiers had access to.
156.	The SRK controlled the immediate vicinity of Špicasta Stijena between September 1992 and August 1994 with the ABiH positioned nearby, below the ridgeline.
157.	The weather was sunny and a nine-year old girl known as Witness E in the <i>Prosecutor v. Galić</i> (Case No. IT-98-29), who was wearing dark trousers and a blue jacket, had gone outside into her front yard to play underneath a window of her house in Sedrenik.
158.	The bullet hit Witness E in "the area of [her] shoulder blade ... went through [her] body and ended up in the wall" behind her.
159.	Some unspecified time thereafter that same day, Witness E was transported in a car to a hospital in Sarajevo with the help of neighbours. A shot was fired at the car as it pulled away from Witness E's house, hitting it in the back.
160.	Špicasta Stijena afforded a view of Sedrenik and was controlled by the SRK.
161.	The bullet which injured Witness E was fired from the area of Špicasta Stijena.
162.	There was no military equipment or personnel near Witness E at the time and place of the incident.
163.	Some time after she was shot, Witness E along with others was targeted again from the direction of Špicasta Stijena as she was being taken to the hospital.
164.	Witness E, a civilian, was deliberately targeted from SRK-controlled territory.
165.	On 11 July 1993, Munira Zametica was filling her bucket with water from the Dobrinja river when she was shot. It was too dangerous for Sadiha Šahinović and for Vahida Zametica, the 16-year old daughter of the victim who came to assist once alerted of the incident, to leave the protection of the bridge over the Dobrinja River. Munira Zametica was lying face down in the river, blood coming out of her mouth. Vahida Zametica heard the shooting continue and saw the bullets hitting the water near her mother.
166.	ABiH soldiers passing by the bridge saw what had happened, positioned themselves on the bridge behind sandbags and shot into the direction of the Orthodox Church.
167.	The victim, Munira Zametica, was pulled out of the water and taken to hospital; she died later that afternoon.
168.	There was a line of sight between the tower of the Orthodox Church and the spot where Munira Zametica was shot.
169.	The area of the Orthodox Church from where the fire came from was within SRK-controlled territory.

Proposed Fact No.	Proposed Adjudicated Fact
170.	At a distance of 1100 metres, a well-equipped perpetrator would have been able to observe the civilian appearance of Munira Zametica, a 48 year old civilian woman.
171.	The perpetrator repeatedly shot toward Munira Zametica, preventing rescuers from approaching her.
172.	On 11 July 1993 Munira Zametica, a civilian, was deliberately shot from SRK-held territory.
173.	On 3 September 1993 Nafa Tarić and her eight year old daughter Elma Tarić walked from their apartment in Hrasno down Ivan Krndelja Street.
174.	They crossed the street holding hands behind a line of containers installed to provide protection against SRK snipers from the area of Ozrenska Street.
175.	As they emerged from the cover of the barriers, they were shot.
176.	A single bullet hit Nafa Tarić's left thigh, then grazed her daughter's hand and penetrated her stomach.
177.	They managed to crawl away from the exposed position and were taken to the hospital.
178.	Nafa Tarić and Elma Tarić were civilians.
179.	A police officer, known as Witness J in the <i>Prosecutor v. Stanislav Galić</i> (Case No. IT-98-29) trial, concluded that the shot had been fired from the SRK positions on Ozrenska Street and based his conclusion not only on common knowledge but also on the fact that the police was unable to immediately access the site because of on-going shooting from those positions.
180.	There was an unobstructed line of sight from SRK positions on Hrasno Brdo to the location of the incident.
181.	Nafa and Elma Tarić were injured by a shot fired from this area.
182.	Nafa and Elma Tarić, civilians, were deliberately targeted from an SRK-controlled position.
183.	On 2 November 1993, at around 4 pm, Ramiza Kundo, 38 years old at that time, and Rasema Menzilović, were hurrying back with full 10-litre canister in each hand along Brijesko Brdo Street from a well located about 50 metres away from Menzilović's house.
184.	The ABiH confrontation line was between 300 and 400 metres away from the site of the incident.
185.	Ramiza Kundo was wounded by a shot fired from the direction of "Polje," a field in the area of Bačići and Brijesće.
186.	Ramiza Kundo was injured by a bullet fired from SRK-held territory in the field area, where Brijesće and Bačići are.
187.	Ramiza Kundo was not hit by a stray bullet or a ricochet as a consequence of regular combat activity.

Proposed Fact No.	Proposed Adjudicated Fact
188.	On 2 November 1993, a civilian Ramiza Kundo was targeted from an SRK-controlled area in full awareness of the high risk that the target was a civilian.
189.	Sanija Dževlan was cycling back from the hospital located in Dobrinja II when she was shot in the buttocks just after crossing one of the bridges connecting Dobrinja II to Dobrinja III.
190.	She cycled home, was taken to the hospital where she remained for about 10 days.
191.	The clothing of the victim, the activity she was engaged in (riding a bicycle) and the fact that she was unarmed were indicia of Dževlan's civilian status and would have put a perpetrator on notice of her civilian status.
192.	The area of the Orthodox Church in Dobrinja IV was under SRK control.
193.	There was a line of sight between the site of the incident and the area of the Orthodox Church.
194.	There was no ongoing combat activity at the time and in the vicinity of the incident.
195.	The bullet, coming from Dževlan's right-hand side, came from the direction of the Orthodox Church located approximately 800 metres from the site of the incident.
196.	Sanija Dževlan was shot from SRK-controlled territory.
197.	The victim, Sanija Dževlan was a civilian who was deliberately targeted from SRK-controlled territory.
198.	In 1994, Ramiz Grabovica, an ABiH conscript in logistics, was employed by the public transport company to drive civilians on a regularly scheduled bus route between the Alipašino bridge and Dobrinja during cease-fires.
199.	On 25 May 1994, a sunny day, at approximately 11:40 am, Grabovica reached his last stop at the intersection of Nikole Demonje Street and Omladinskih Brigada Street in the centre of Dobrinja, stopped the red and white bus, opened the three doors of the bus and turned off the engine to save fuel.
200.	As he waited for passengers to board, Grabovica heard a single shot coming from the direction of Neđarići, which was controlled by the SRK, precipitating panic on the bus.
201.	Ramiz Grabovica saw that two middle-aged women had been injured. The one sitting on the right side of the bus was holding her knee and the other sitting in the opposite side of the aisle was bleeding profusely.
202.	The victims, Šehadeta Plivac and Hajra Hafizović, were taken off the bus and remained at the hospital where they received medical assistance.
203.	The bus was visibly a civilian vehicle, which only functioned during cease-fires along a regularly scheduled bus route.
204.	The passengers of the bus were targeted from the area of Neđarići.

Proposed Fact No.	Proposed Adjudicated Fact
205.	The SRK frontline in the area of Nedarići was approximately 750 metres away from the incident.
206.	There was one line of sight between the site of the incident and Nedarići.
207.	The area of Nedarići was controlled by the SRK at the time of the incident.
208.	On 25 May 1994 civilian passengers of a civilian vehicle were deliberately targeted from SRK-controlled territory and such targeting resulted in the wounding of Sehadeta Plivac and Hajra Hafizović.
209.	On 19 June 1994, at approximately 5 p.m., Mensur Jusić was riding on a tram heading down Vojvode Putnika Street in the direction of Ilidža.
210.	A woman, known as Witness M in the <i>Prosecutor v. Stanislav Galić</i> (Case No. IT-98-29) trial, was on the same tram with her four year old son.
211.	As the tram approached the intersection of Vojvode Putnika and Trscanska Streets, Witness M heard a shot and saw that her son who had been sitting by the window had been injured.
212.	Jusić was hit in the shin of his right leg.
213.	Jusić saw that another woman standing to his right was bleeding from her arm.
214.	The injured received medical treatment at a nearby emergency clinic.
215.	The tram was struck by a bullet, which injured three passengers, as it travelled down Vojvode Putnika Street towards Ilidža.
216.	No military vehicles were present in the close vicinity of the location of the incident.
217.	No military activity was underway in the area.
218.	The tram was impacted on the left side in the direction it was traveling.
219.	There was an unobstructed line of sight between the site of the event and the area of the Jewish Cemetery under the SRK control.
220.	The shot which struck the tram was fired from the area of the Jewish Cemetery held by the SRK.
221.	On 19 June 1994, a civilian vehicle was deliberately targeted from SRK-controlled territory in the area of the Jewish Cemetery, resulting in the wounding of three civilian passengers.
222.	On 26 June 1994, Sanela Muratović, age 16, and Medina Omerović, age 17, were walking to Omerović's apartment in Đure Jaksića Street 17 on the eastern side of Lukavička Cesta in Novi Grad, between 19:00 and 19:30, on a sunny early evening.

Proposed Fact No.	Proposed Adjudicated Fact
223.	Some uniformed soldiers warned them of incoming sniper fire.
224.	Muratović was shot in her right shoulder.
225.	Omerović, walking to the left, was not injured.
226.	The shot which hit the victim Muratović originated from the area of the Institute for the Blind.
227.	UNMO and other witnesses had found that the Institute of the School for the Blind was a "sniping nest" from where civilians were shot at.
228.	Only one single shot was fired which directly hit Muratović.
229.	No fighting was ongoing in the area at the time of the incident.
230.	The bullet did not hit Muratović by mistake nor was there a ricochet.
231.	Soldiers were not garrisoned in the immediate vicinity of the spot where the incident occurred, and there was no military facility nearby.
232.	The distance between the area of the Institute for the Blind and the position of the victim at the time of the incident was about 200 meters.
233.	Sanela Muratović, a civilian, was deliberately targeted from SRK-controlled territory.
234.	On 22 July 1994 a boy, known as Witness AG in the <i>Prosecutor v. Stanislav Galić</i> (Case No. IT-98-29) trial, aged 13, and his sister, known as Witness AH in the <i>Prosecutor v. Stanislav Galić</i> (Case No. IT-98-29) trial, went out with their mother to visit a relative.
235.	It was a clear day.
236.	[withdrawn]
237.	Witness AG got off his bicycle and was shot in the lower part of his stomach. The bullet tore through his body and shattered the shop window.
238.	Witness AG was taken to an emergency unit and then hospitalized for several days.
239.	Witness AG was a civilian.
240.	There was no military activity in the area at the time of the incident.
241.	Several children were playing and a neighbourhood restaurant was open.

Proposed Fact No.	Proposed Adjudicated Fact
242.	The victim was not hit by a stray bullet but was deliberately targeted.
243.	A clear line of sight existed between the site of the incident and SRK positions.
244.	Witness AG, a civilian, was injured by a shot deliberately fired at him from SRK-controlled territory on Hrasno Brdo.
245.	On 1 June 1993, some residents of Dobrinja decided to organize a football tournament in the community of Dobrinja IIIB.
246.	On 1 June 1993, it was a beautiful, sunny day.
247.	The football pitch was set up in the corner of a parking lot, which was bounded by six-storey apartment blocks on three sides and on the fourth side, which faced the north, by Mojmiilo hill, and was not visible from any point on the SRK side of the confrontation line.
248.	Around 200 spectators, among whom were women and children, gathered to watch the teams play.
249.	Some minutes after 10 am, during the second match, two shells exploded at the parking lot.
250.	Ismet Fažlić a member of the civil defence, was the referee of the second game.
251.	About 10 to 20 minutes into that game, as they carried out a penalty kick, the first shell landed among the players in the centre of the pitch.
252.	Ismet Fažlić was hit by shrapnel and sustained serious injuries in both legs as well as in other parts of his body.
253.	There were eleven young men on the ground, eight of whom had died on the spot.
254.	Omer Hadziabdić who was 15 years old at the time, was watching the match from the overturned cars when the first shell struck the football pitch.
255.	Omer Hadziabdić was wounded by shrapnel in his leg.
256.	Nedim Gavranović who was 12 years old at the time, was standing behind one of the goals when he heard the first explosion and felt a very strong blow.
257.	Nedim Gavranović sustained an entry and exit wound in his right lower leg caused by shrapnel.
258.	On 1 June 1993, a second shell landed at almost the same spot in Dobrinja IIIB within seconds of the first shell.
259.	It fell in front of a young man and tore his leg off.

Proposed Fact No.	Proposed Adjudicated Fact
260.	There were many wounded people on the ground.
261.	The explosion of 1 June 1993 in Dobrinja killed over 10 persons and injured approximately 100 others.
262.	The shells that hit the football pitch in Dobrinja IIIB on 1 June 1993 were of a calibre of at least 81-82mm and originated from the direction east-south-east, within SRK-held territory.
263.	The distance from the site of the event to the confrontation lines in the direction of the fire was approximately 300 metres.
264.	The ABiH 5th Motorised Dobrinja Brigade headquarters were not in the area of the parking lot in Dobrinja IIIB settlement where the football pitch was set up on 1 June 1993, but in the Dobrinja II settlement.
265.	There was a nuclear shelter of the Dobrinja IIIB community, located approximately 100 metres away from the parking lot behind a block of flats.
266.	Considering that only two shells were fired, that these fell in quick succession and landed at almost the same spot on the parking lot, and that the second shell did not land any closer to the nuclear shelter, this was not the intended target of the attack.
267.	There were ABiH soldiers present at the parking lot, who were off-duty, unarmed and not engaged in any military activity.
268.	Due to its location, the parking lot was not visible from SRK lines.
269.	The parking lot was shelled well after the tournament began.
270.	The shelling incident which took place on 1 June 1993 in Dobrinja IIIB constitutes an example of indiscriminate shelling by the SRK on a civilian area.
271.	Due to a water cut-off in Dobrinja, a suburb of Sarajevo, inhabitants of "C5", a settlement in Dobrinja, replenished their water supply at well-known emergency water points.
272.	In the middle of the afternoon of 12 July 1993, a fairly clear day until 17:00 hours, there was a hundred or more canisters in the street.
273.	These people, mostly elderly, were waiting for their turn to enter into the front yard of the house through an iron gate guarded by Enver Taslaman.
274.	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 15:00 hours, a mortar shell exploded.
275.	Mehonić felt the left side of his body hit by shrapnel.
276.	Next to Mehonić, Taslaman was hit on the arm and the left leg.
277.	The mortar shell, which landed on the water collection point on 12 July 1993 in Dobrinja C5 at approximately 15:00 hours upon approximately 50-60 persons, killed over ten persons and wounded over ten more.

Proposed Fact No.	Proposed Adjudicated Fact
278.	The mortar shell which landed on 12 July 1993 in Dobrinja "C5" and which caused civilian casualties was of a caliber of 82 mm.
279.	The mortar shell which landed on 12 July 1993 in Dobrinja "C5" and which caused civilian casualties was fired from the direction west-north west to the point of impact of the mortar shell.
280.	There were no immediate military objectives near the well, which could have explained the firing of a shell in that area.
281.	The area around well where civilians pumped water was repeatedly shelled after the shelling incident of 12 July 1993.
282.	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.
283.	On 22 January 1994, 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 in Alipašino Street, another shell exploded, 10 to 15 metres away, wounding him.
284.	Muhamed Kapetanović, living at No. 2 Centinjska Street, nearly ten years old in January 1994 was playing with four friends in a parking lot.
285.	Another group of children was playing in Klara Cetkin Street.
286.	Suddenly there was a loud explosion from one or two shells, whereupon the children ran for cover.
287.	Just before Kapetanović reached his building's entrance, another shell exploded 10 metres behind the trailing child, killing him and wounding three others including Kapetanović, who suffered serious injuries to his leg.
288.	A man known as Witness AI in the <i>Prosecutor v. Stanislav Galić</i> (Case No. IT-98-29) was walking along Klara Cetkin Street in Alipašino Polje where he lived, when he heard two explosions at a distance of 100 metres approximately.
289.	Before witness AI 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.
290.	Refik Aganović was in his apartment on the 14 th floor of No. 4 Klara Cetkin Street. At around 1 p.m. he heard the "usual" hissing sound of a shell and then a loud explosion nearby.
291.	About a minute or two later a second shell exploded.
292.	Aganović opened a west-facing window to see what had happened when a third explosion in front of his entrance threw him back.
293.	Aganović rushed downstairs to the entrance where he saw a 13 year old boy stagger over and die.
294.	Another younger boy whom Aganović said he tried to assist also died in those moments.
295.	Other children, whom the witness did not recognize because they were covered in blood and were missing parts of their bodies, had also been killed.

Proposed Fact No.	Proposed Adjudicated Fact
296.	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 had been killed by the explosions and another three children and one adult (Witness AI) had been seriously injured.
297.	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.
298.	The attack was carried out on an otherwise quiet day during a lull in hostilities.
299.	No activity of a military nature was underway in the neighbourhood, nor were any soldiers to be seen, and groups of children including Todorović and Kapetanović, had gone out onto the streets to play.
300.	The impact traces were considerably more pronounced to the west of the craters.
301.	It can be safely concluded that the shells came in from either the west or north of west.
302.	The impact traces were strongly elliptical and significantly displaced to the west.
303.	The three shells were fired from SRK positions somewhere to the west of Alipašino Polje.
304.	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 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.
305.	On 4 February 1994, Sabahudin Ljusa crossed the street to get a broom from the offices at no. 9 Oslobodilaca Sarajeva Street where aid was being distributed.
306.	Sabahudin Ljusa heard a whistling sound followed by the explosion of a shell falling on a nearby block of flats fronting Oslobodilaca Sarajeva Street.
307.	After checking his wounds he walked to a nearby clinic where he was when he heard a second explosion.
308.	Medical records confirm that Sabahudin Ljusa sustained severe shrapnel wounds to the chest.
309.	Fata Spahić went to Dobrinja to trade cigarettes for flour.
310.	A group of twenty women and children had gathered.
311.	Fata Spahić heard a whistling sound, followed by the explosion of a shell falling on a nearby block of flats fronting Oslobodilaca Sarajeva Street.
312.	Fata Spahić noticed that some of the injured were crawling away from the site, while two of her friends and two boys she did not know were killed or were dying.

Proposed Fact No.	Proposed Adjudicated Fact
313.	A medical record from Dobrinja General Hospital states that a woman known as Witness R in the <i>Prosecutor v. Galić</i> (Case No. IT 98-29) was "injured by shell explosion".
314.	Eldar Hafizović saw wounded people in the street calling for help.
315.	A second explosion injured Eldar Hafizović in his right arm.
316.	Hafizović was heading for the clinic when he heard another loud explosion which was a third shell.
317.	Zdenko Eterović's report found that altogether eight people had been killed by shells and 22 were wounded.
318.	Sabahudin Ljusa did not see any soldiers or military personnel at the place where humanitarian aid was being unloaded or in Oslobodilaca Sarajeva Street.
319.	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.
320.	On 4 February 1994 around 11.00 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.
321.	The origin of fire was SRK-held territory in relation to the two shells that were investigated in detail.
322.	The first shell to strike formed part of the same attack and therefore also originated in SRK territory. Three shells struck civilians engaged in peaceful activities.
323.	The Territorial defence office was not the target of the attack.
324.	On 5 February 1994 around noon many people were shopping in the Markale open-air market.
325.	Ezrema Boškailo was shopping at the Markale Open Air Market when an explosion knocked her over.
326.	Edin Suljić, of a local investigative team and Afzaal Niaz of the UN set up a team to investigate the incident.
327.	Suljić and Niaz each counted over 60 persons killed and over 140 persons injured.
328.	The investigation lasted approximately one week.
329.	The investigation resulted in a comprehensive official report and incorporated separate reports by expert members, including ballistic experts Mirza Sabljica, Hamdija Čavčić and Berko Zečević.
330.	On 5 February 1994 the UNMO and UN FreBat (French Battalion) 4 determined that the tail fin belonged to a 120 mm mortar shell.

Proposed Fact No.	Proposed Adjudicated Fact
331.	On 11 February 1994 another UN team was formed.
332.	A man known as Witness AF in the <i>Prosecutor v. Galić</i> (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.
333.	Witness AK-1 in the <i>Prosecutor v. Galić</i> (Case No. IT-98-29) heard firing from the direction of Mrkovići.
334.	Weapons specialists indicate that the noise made by the firing of a mortar can be used to determine the approximate direction of fire.
335.	The distance between Markale market and the SRK confrontation line to the north-north east at the time of the incident was approximately 2,600 metres.
336.	Vahid Karavelić, commander of the 1st ABiH Corps, marked a map where the nearest location of a brigade headquarters appeared approximately 300 metres away from the market.
337.	A projectile exploded in Markale market on 5 February 1994 between 12:00-12:30.
338.	A 120 mm mortar shell exploded upon contact with the ground in Markale market on 5 February 1994 between 12:00-12:30 hours, killing over 60 persons and injuring over 140 others.
339.	The 120 mm mortar was fired from the direction north northeast of the market or at a bearing of approximately 18 degrees.
340.	The shell could not have been fired from any place on the ABiH side of the confrontation lines in a direction north-northeast of Markale market.
341.	The mortar shell which exploded at Markale market on 5 February 1994 was fired from SRK-controlled territory.
342.	[<i>first sentence withdrawn</i>] That market drew large numbers of people. There was no reason to consider the market area as a military objective.
343.	The shell was deliberately aimed at civilians.