UNITED
NATIONS

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

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

Date: 14 June 2010

Original: English

IN THE TRIAL CHAMBER

Before: **Judge O-Gon Kwon, Presiding Judge**
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: **Mr. John Hocking**

Decision of: **14 June 2010**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON FIFTH PROSECUTION MOTION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 "Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 15 December 2009 ("Motion"), the "Submission of Renumbered Appendix to Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 2 February 2010 ("Renumbered Submission"), the "*Corrigendum* to Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts with Appendix A", filed on 9 February 2010 ("Corrigendum"), and the Accused's "Motion for Reconsideration of Decisions on Judicial Notice of Adjudicated Facts", filed on 4 March 2010 ("Motion for Reconsideration"), and hereby renders its decision thereon.

I. Background and Submissions

1. The Motion is preceded by the "First Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 27 October 2008 ("First Motion"); the "Second Prosecution Motion for Judicial Notice of Adjudicated Facts and *Corrigendum* to First Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 17 March 2009 ("Second Motion"); the "Third Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 7 April 2009 ("Third Motion"); and, finally, the "Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts", filed on 26 August 2009 ("Fourth Motion").

2. On 5 June 2009, the Chamber rendered its "Decision on First Prosecution Motion for Judicial Notice of Adjudicated Facts" ("First Decision on Adjudicated Facts"), granting the First Motion in part, and taking judicial notice of 302 out of 337 facts proposed by the Office of the Prosecutor ("Prosecution") in its First Motion.[1] On 9 July 2009, the Chamber issued its "Decision on Third Prosecution Motion for Judicial Notice of Adjudicated Facts" ("Third Decision on Adjudicated Facts"), accepting 466 out of 497 facts proposed by the Prosecution in its Third Motion.[2] Similarly, on 9 October 2009, the Chamber rendered its "Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts" ("Second Decision on Adjudicated Facts"), granting the Second Motion in part, and taking judicial notice of 744 out of 1049 facts proposed by the Prosecution in its Second Motion.[3] Finally, on 14 June 2010, the Chamber rendered its "Decision on Fourth Prosecution Motion for Judicial Notice of

[1] First Decision on Adjudicated Facts, para. 39.
[2] Third Decision on Adjudicated Facts, para. 63.
[3] Second Decision on Adjudicated Facts, para. 54.

Adjudicated Facts" ("Fourth Decision on Adjudicated Facts"), taking judicial notice of 627 out of 886 facts proposed by the Prosecution in its Fourth Motion.[4]

3. In the present Motion, the 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 allegedly carried out in Sarajevo by the Sarajevo Romanija Corps ("SRK") of the Bosnian Serb Army, which were adjudicated by the Trial and Appeals Chambers in the case of *Prosecutor v. Dragomir Milošević*.[5] The Prosecution submits that the adjudicated facts listed in Appendix A to the Motion meet the requirements set out in relevant Tribunal 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.[6]

4. Specifically, the Prosecution submits that the Chamber has taken judicial notice of adjudicated facts from the *Galić* case regarding the conflict in Sarajevo between 10 September 1992 and 10 August 1994, when Stanislav Galić was commander of the SRK, and that the *Dragomir Milošević* ("*D. Milošević*") case primarily concerns the period of 10 August 1994 to 21 November 1995, during which Dragomir Milošević was commander of the SRK.[7] It further submits that the *D. Milošević* Appeal Judgement has allowed the Prosecution to clearly identify the findings of the Trial Chamber which have withstood appellate scrutiny, and which are therefore not subject to pending appeal or review.[8]

5. In the Renumbered Submission, the Prosecution submits a renumbered set of adjudicated facts after finding a clerical error in the appendix attached to the Motion, in which the numbering of the proposed facts began at 2276 instead of 2776.[9] In the Corrigendum, the Prosecution submits corrections of typographical errors in the numbering of source paragraphs for proposed facts 2844, 2850, 2931, 2951, and 2973.[10]

6. On 23 December 2009, the Accused filed his "Motion for Extension of Time to Respond to Prosecution Motions", requesting an extension of time to respond to the Motion, as well as to

[4] Fourth Decision on Adjudicated Facts, para. 98.

[5] Motion, para. 1. *See Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Judgement, 12 December 2007 ("*D. Milošević* Trial Judgement"); *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009 ("*D. Milošević* Appeal Judgement").

[6] Motion, paras. 8–10.

[7] Motion, paras. 2–3.

[8] Motion, para. 3.

[9] Renumbered Submission, paras. 1–2.

[10] Corrigendum, para. 2.

two other pending motions.[11] On 24 December 2009, the Duty Judge issued a "Decision on the Accused's Motion for Extension of Time to Respond to Prosecution Motions", ordering the Accused to submit his response to the Motion by 15 February 2010.[12]

7. On 5 February 2010, the Accused filed his "Response to Fifth Prosecution Motion for Judicial Notice of Adjudicated Facts" ("Response") opposing the Motion, and incorporating by reference the arguments raised in his responses to the First Motion, Second Motion, Third Motion, and Fourth Motion.[13] As an additional consideration, the Accused submits that, in light of the fact that the Chamber has already taken judicial notice of, or has a decision pending on, more than 2700 adjudicated facts, and that the Prosecution had requested the Chamber to admit more than 200 statements and transcripts of prior testimony into evidence pursuant to Rules 92 *bis* and 92 *quater*, he "will be so far behind the [P]rosecution at the trial's opening bell that the trial will proceed with a presumption of guilt".[14] He also argues that the cumulative effect of taking judicial notice of adjudicated facts and the admission of written evidence violates the presumption of innocence, and denies him the right to a fair trial.[15]

8. Furthermore, the Accused argues that, even if the Chamber agrees to take judicial notice of adjudicated facts in general, it should nevertheless decline to do so in relation to certain facts on the basis that they do not meet the relevant legal requirements.[16] He requests the Chamber to exercise its discretion not to take judicial notice of certain proposed facts that would otherwise meet the criteria for such purposes, arguing that these proposed facts have been established either on the basis of evidentiary material to which he does not have access, or where the relevant witnesses or sources are not identifiable in the original judgement. Finally, the Accused requests the Chamber deny judicial notice of proposed facts which assign responsibility to the Bosnian Serb forces for incidents and events in Sarajevo, due to the fact that the Bosnian Serb forces' responsibility for those events is a core issue in this case.[17]

9. Finally, on 4 March 2010, the Accused filed the Motion for Reconsideration requesting the Chamber to reconsider its previous decisions on adjudicated facts in light of a decision by

[11] Motion for Extension of Time to Respond to Prosecution Motions, 23 December 2009, paras. 1–4, 10.

[12] Decision on the Accused's Motion for Extension of Time to Respond to Prosecution Motions, 24 December 2009, paras. 3–4.

[13] Response, para. 2. *See* Response to First Prosecution Motion for Judicial Notice of Adjudicated Facts, 30 March 2009; Response to Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 22 July 2009; Response to Third Prosecution Motion for Judicial Notice of Adjudicated Facts and Motion for List of Witnesses to be Eliminated, 29 May 2009; Response to Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts, 30 November 2009.

[14] Response, para. 1.

[15] Response, para. 3.

[16] Response, paras. 4–14, Annex A.

[17] Response, paras. 15–16.

the Trial Chamber in the *Zdravko Tolimir* ("*Tolimir*") case, and to apply that Trial Chamber's reasoning in assessing the proposed facts in the Motion.[18] The Prosecution responded to the Motion for Reconsideration on 9 March 2010, arguing in part that the decision whether or not to take judicial notice of adjudicated facts lies within the discretion of the Chamber, regardless of the fact that another Trial Chamber may have exercised its discretion to deny judicial notice of the same facts.[19] On 11 March 2010, the Accused filed the "Leave to Reply: Motion for Reconsideration of Adjudicated Facts" ("Request for Leave to Reply"), which included the substance of the reply, and it was granted by the Chamber in the Fourth Decision on Adjudicated Facts.[20] In the Request for Leave to Reply, the Accused argues *inter alia* that the spirit of judicial notice recommends that Trial Chambers exercise their discretion in a similar manner to ensure consistent judgements. Consequently, since the *Tolimir* Trial Chamber has reached a different conclusion on the same facts by applying the same legal test, this occurrence ought to cause this Chamber to use its discretion in order to avoid taking judicial notice of those same facts rejected by it.[21]

10. The Chamber notes that the Accused addresses facts in the Motion for Reconsideration on which this Chamber has not yet rendered a decision. However, in light of the fact that the Motion for Reconsideration raises new issues based on a Trial Chamber's decision not published at the time the Motion was filed, the Chamber will take into account the arguments raised by the Accused only to the extent that they relate to pending, proposed facts contained in the Motion. Arguments raised by the Accused which pertain to facts already judicially noticed by this Chamber will be addressed in a separate decision on the Motion for Reconsideration.[22]

II. Applicable Law

11. 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.

[18] Motion for Reconsideration, paras. 4–10. Specifically, the Accused's arguments relate to proposed facts that: (i) contain the elements of the "chapeau of the Statute", (ii) are based on agreed facts where it remains unclear from the structure of the relevant footnote in the original judgement whether the agreement was relied more upon than other evidence, and (iii) relate to the core of the Prosecution's case. *See Prosecutor v. Tolimir*, Case No. IT-05-88/2-PT, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 17 December 2009 ("*Tolimir* Decisión").

[19] Prosecution Response to Motion for Reconsideration of Decision on Adjudicated Facts, 9 March 2010 ("Response on Reconsideration"), para. 4.

[20] Fourth Decision on Adjudicated Facts, para. 11.

[21] Request for Leave to Reply, paras. 5–6.

[22] This relates to facts accepted for judicial notice in the First Decision on Adjudicated Facts, the Second Decision on Adjudicated Facts, or the Third Decision on Adjudicated Facts.

12. Rule 94(B) aims at achieving judicial economy and harmonising judgements of the Tribunal by conferring on the Trial Chamber 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".[23] The Appeals Chamber has further held that "while it is possible to take judicial notice of adjudicated facts regarding the existence of […] 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".[24]

13. 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".[25] It has also established that:

> judicial notice [under Rule 94(B)] 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.[26]

14. 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 requirements, should be excluded on the basis that its judicial notice would not be in the interests of justice.[27] The test for determining whether to consider taking judicial notice of an adjudicated fact pursuant to Rule 94(B) has been established as follows:

(a) The fact must be relevant to the current proceedings;[28]

(b) The fact must be distinct, concrete, and identifiable;[29]

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

[24] *Prosecutor v. D. 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 ("*D. Milošević* Appeal Decision"), para. 16.

[25] *Prosecutor v. S. 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.

[26] *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.

[27] *See 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.

[28] *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.

(c) The fact, as formulated by the moving party, must not differ in any substantial way from the formulation of the original judgement;[30]

(d) The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion.[31] 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";[32]

(e) The fact must be identified with adequate precision by the moving party;[33]

(f) The fact must not contain characterisations or findings of an essentially legal nature;[34]

(g) The fact must not be based on an agreement between the parties to the original proceedings;[35]

(h) The fact must not relate to the acts, conduct, or mental state of the accused;[36] and

(i) The fact must clearly not be subject to pending appeal or review.[37]

III. Discussion

A. General considerations

15. The Chamber notes that the Accused incorporates by reference the arguments raised in his responses to the First Motion, Second Motion, Third Motion, and Fourth Motion.[38] Considering that he does not substantiate any of the reasoning set out in his previous responses,

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[29] *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 ("*Perišic* Decision"), para. 18; *Prosecutor v. Mičo 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 ("*Prlić* Decision"), para. 12; *Prosecutor v. Hadžihasanović & Kubura*, 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.

[30] *Krajišnik* Decision, para. 14.

[31] *Karemera* Appeal Decision, para. 55; *Popović* Decision, para. 8.

[32] *Popović* Decision, para. 8

[33] *Prosecutor v. Cutre et al.*, 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.

[34] *Popović* Decision, para. 10; *Krajišnik* Decision, para. 15. *See also Hadžihasanović* Decision, p. 5; *Prosecutor v. Mejakić et al.*, Case No. IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice pursuant to Rule 94(B), 1 April 2004 ("*Mejakić* Decision"), p. 4; *Prosecutor v. Blagojević & Jokić*, 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; *Prlić* Decision, paras. 12, 19.

[35] *Popović* Decision, para. 11; *Mejakić* Decision, 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.

[36] *Karemera* Appeal Decision, para. 50.

[37] *Kupreškić* Appeal Decision, para. 6.

[38] Response, para. 2.

and that each and every argument submitted in these responses has already been dealt with by the Chamber in its First Decision on Adjudicated Facts, Second Decision on Adjudicated Facts, Third Decision on Adjudicated Facts, and Fourth Decision on Adjudicated Facts,[39] the Chamber will not address the same arguments again here. Therefore, the Chamber rejects the Accused's assertion that taking judicial notice of adjudicated facts is unlawful and inconsistent with international law. With respect to the Accused's contention that the cumulative effect of taking judicial notice of a large number of adjudicated facts and the admission of a large number of written evidence violates his presumption of innocence and denies his right to a fair trial, the Chamber recalls its previous decisions on this matter, and considers that neither taking judicial notice of adjudicated facts nor admitting written evidence under Rule 92 *bis* shifts the burden of proof to the Accused.[40] In contrast, the burden of proof remains firmly with the Prosecution.[41]

16. The Chamber further notes that it has already dealt with the Accused's submission that it should decline to take judicial notice of facts which are (largely) based on documentary evidence in the Second Decision on Adjudicated Facts, the Third Decision on Adjudicated Facts, and the Fourth Decision on Adjudicated Facts.[42] Again, the Chamber finds that all of the facts proposed in the Motion have already been established in the *D. Milošević* Trial and Appeal Judgements, and that it is therefore irrelevant, in terms of the test set out in paragraph 14 above, whether the Chamber issuing the relevant judgement relied on documentary evidence or on witness testimonies when establishing the facts contained in said original judgement.[43] Consequently, the Chamber rejects the Accused's submission in relation to proposed facts which are (largely) based on documentary evidence, and will consider taking judicial notice of them as long as the remaining requirements set out in paragraph 14 above are met.

[39] First Decision on Adjudicated Facts, para. 11; Second Decision on Adjudicated Facts, paras. 17, 53; Third Decision on Adjudicated Facts, para. 13; and Fourth Decision on Adjudicated Facts, para. 17.

[40] *See* Decision on Motion to Preclude Evidence or to Withdraw Adjudicated Facts, 31 March 2010, paras. 17–18; Decision on Motion for Stay of Proceedings, 8 April 2010, para. 2; Third Decision on Adjudicated Facts, para. 61; Second Decision on Adjudicated Facts, para. 53. *See also* Decision on Prosecution Motion for Admission of Testimony of Witness KDZ198 and Associated Exhibits pursuant to Rule 92 *quater*, 20 August 2009 ("Decision on KDZ198"), para. 9; *cf. Karemera* Appeal Decision, para. 42.

[41] *Cf. Prosecutor v. Perišić*, Case No. IT-04-81-PT, Decision on Prosecution's Motion for Judicial Notice of Facts Relevant to the Srebrenica Crime Base, 22 September 2008, paras. 21–23.

[42] This challenge relates to proposed facts: 2777, 2778, 2787, 2805, 2806, 2811, 2812, 2815–2818, 2820, 2824, 2825, 2835, 2868, 2884, 2885, 2944, 2965, 2971, 2984, 2997, 3006, 3011, 3021, 3022, 3030, 3037, 3058, 3065, 3069, 3070, 3084, 3085, 3088–3091, and 3094; Response, para. 6 and Annex A. *See* Second Decision on Adjudicated Facts, para. 18, Third Decision on Adjudicated Facts, para. 14, Fourth Decision on Adjudicated Facts, para. 18.

B. Further requirements for judicial notice under Rule 94(B)

17. The Accused has directed specific challenges against certain proposed facts on the basis that they do not meet one or more requirements of the test set out in paragraph 14 above. The Chamber not only has given consideration to all of these challenges, but also has considered whether each and every fact proposed by the Prosecution meets the test in its entirety.

[a] The fact must be relevant to the current proceedings

18. The Chamber considers that "Rule 94 is not a mechanism that may be employed to circumvent the ordinary requirement of relevance and thereby clutter the record with matters that would not otherwise be admitted".[44] At the admissibility stage of these proceedings, relevance, in the context of Rule 89(C), has been defined by the Appeals Chamber as a consideration of "whether the proposed evidence sought to be admitted relates to a material issue".[45] The material issues of a case are found in the indictment.[46] It is, however, for the party proffering evidence for admission to make submissions on its relevance.[47]

19. The Accused challenges proposed facts 2776, 2956, 2963, 2964, 3053, 3061, and 3083, on relevance grounds.[48] The Chamber considers that proposed fact 2776 describes the background and history of Sarajevo and provides context for the subsequent proposed facts, satisfying the Chamber that it is relevant to this case.[49] Proposed facts 2956,[50] 3053,[51] and 3061[52] describe the weather on the day of a specific incident, and are relevant to the issue of visibility when placed in the context of the surrounding proposed facts. Similarly, proposed

[43] *See* Second Decision on Adjudicated Facts, para. 18; Third Decision on Adjudicated Facts, para. 14; Fourth Decision on Adjudicated Facts, para. 18.

[44] *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 189; *accord Prosecutor v. Nikolić*, Case No. IT-02-60/1-A, Decision on Appellant's Motion for Judicial Notice, 1 April 2005, para. 17.

[45] *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.13, Decision on Jadranko Prlić's Consolidated Interlocutory Appeal Against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009 ("*Prlić* Appeal Decision"), para. 17 (quoting *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 5).

[46] *Prlić* Appeal Decision, para. 17. *Cf. Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko's Request for Reconsideration, 27 September 2004, para. 12 (stating that "[t]he Trial Chamber has the discretion under Rule 89(C) to admit any evidence which it deems to have probative value, to the extent that it may be relevant to the proof of other allegations specifically pleaded in the Indictment").

[47] *Prlić* Appeal Decision, para. 17.

[48] Response, para. 14.

[49] Proposed fact 2776 states: "Sarajevo was well-known as a multi-ethnic, multi-religious city, with a long history of religious and cultural tolerance."

[50] Proposed fact 2956 states: "It was a clear day and there was still natural light at that time of the afternoon. There were no leaves on the trees."

[51] Proposed fact 3053 states: "The weather was good on 26 May 1995, in Safeta Hadžića Street, Novi Grad Municipality."

[52] Proposed fact 3061 states: "On 16 June 1995, there was fine weather and good visibility."

facts 2963,[53] 2964,[54] and 3083[55] describe specific injuries experienced by victims in the *D. Milošević* case, which are relevant in this case as going towards proving the existence of alleged crimes in the Third Amended Indictment ("Indictment").

20. However, the Chamber considers that proposed fact 3002, which states that "[i]n 1995 Tarik Žunić still suffered pain when the weather changed", and which has been challenged by the Accused under section [**d**] of the test set out in paragraph 14, is irrelevant to the current proceedings even when placed in context with the surrounding facts; as such, the Chamber will decline to take judicial notice of this fact. Similarly, the Chamber finds that proposed fact 2898, stating that "[t]he methods of investigating the incident site by the RS police were almost identical to the methods of the BiH police", is also irrelevant to this case and thus, inappropriate for judicial notice.

21. The Chamber will, for the aforementioned reasons, deny judicial notice of proposed facts 2898 and 3002, and will consider taking judicial notice of proposed facts 2776, 2956, 2963, 2964, 3053, 3061, and 3083, as long as the remaining requirements of the test set out in paragraph 14 above are met.

[b] The fact must be distinct, concrete, and identifiable

22. In the Response, the Accused challenges the following proposed facts on the basis that they are not concrete, distinct, or identifiable: 2781, 2809, 2902, 2906, 2908, 2937, 2947, 2953, 3001, 3003, 3011, 3013 to 3015, 3023, 3039, 3059, 3068, 3080, 3084 to 3086, 3090, 3092, 3095 to 3101, 3103, and 3105 to 3107.[56]

23. When considering whether proposed facts in the Motion are indeed sufficiently concrete, distinct or identifiable, the Chamber must examine the proposed facts in the context of the original judgement with "specific reference to the place referred to in the judgement and to the indictment period of that case".[57] Furthermore, "[t]he Chamber must also deny judicial notice

[53] Proposed fact 2963 states: "Afeza Karačić had several operations as a result of which her arm was shortened by six centimetres. Due to her injuries, she has 80 per cent disability; she cannot drive a car or write properly and has difficulty eating with her right hand."

[54] Proposed fact 2964 states: "Sabina Šabanić stayed in hospital for four days. She could not use her arm properly and had difficulty eating and getting dressed, leaving her unable to work until March 1995."

[55] Proposed fact 3083 states: "One of the victims, Djula Leka stayed in the hospital for four to five days. She still feels some pain in her shoulder and chest as a result of the injuries she received from the explosion. Medusa Klarić still has pieces of shrapnel in her body, one in her back, one near the kidney area and one below her right knee."

[56] Response, para. 7.

[57] *Krajišnik* Decision, para. 14, note 44; *see also Prosecutor v. Stanišić & Župljanin*, Decision Granting In Part Prosecution's Motions for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 1 April 2010 ("*Stanišić & Župljanin* Decision"), para. 30; *Tolimir* Decisión, para. 13; *Hadžihasanović* Decision, p. 6.

where a purported fact is inextricably commingled either with other facts that do not themselves fulfil the requirements for judicial notice under Rule 94(B), or with other accessory facts that serve to obscure the principal fact."[58]

24. As a preliminary matter, the Chamber considers it more appropriate to discuss the Accused's challenges to proposed facts 2908, 2937, 2947, and 2953 in section [**c**] below, and proposed fact 3101 in section [**f**] below, and will not analyse these proposed facts here. Additionally, the Chamber will discuss proposed facts 3003, 3011, 3013, and 3014 in this section, though the Accused also challenges these facts under sections [**d**] and/or [**f**] of the test set out in paragraph 14 above.

25. The Chamber notes that the Accused has challenged proposed facts 3059, 3080, 3084, 3085, 3086, and 3090 on the grounds that they are generally vague and not concrete. However, the Chamber has carefully reviewed these challenges and is satisfied that when considering each fact in the context of the relevant part of the *D. Milošević* Trial Judgement, the indictment period of the *D. Milošević* case, as well as in the context of the surrounding facts in the Motion, they are adequately distinct, concrete, and identifiable for the purposes of judicial notice. For example, the phrases "three *or* four civilians", "*some* surrounding buildings", and "*at least* 35 persons died and *at least* 78 persons were wounded", do not render proposed facts 3059[59] and 3080,[60] respectively, insufficiently distinct, concrete or identifiable.[61] Proposed fact 3084[62] describes the circumstances under which utilities were blocked in Sarajevo in June 1995 according to UNPROFOR, and the Chamber similarly finds this proposed fact to be sufficiently concrete and identifiable for judicial notice. Although proposed facts 3085, 3086, and 3090[63] discuss food shortages and the transport of humanitarian food aid during a relatively general time period, the Chamber also finds these proposed facts to be adequately distinct, concrete, and

[58] *Tolimir* Decision, para. 13 (citing *Prlić* Decision, para. 12).

[59] Proposed fact 3059 states: "Three or four civilians were injured as a result of the explosion, and that some surrounding buildings were destroyed." However, the Chamber used its discretion to delete the word "that" in this proposed fact, in para. 39 below, for readability purposes.

[60] Proposed fact 3080 states: "At least 35 persons died and at least 78 persons were wounded, many of them seriously."

[61] Emphasis added.

[62] Proposed fact 3084 states: "UNPROFOR reported that at the end of June 1995 efforts to restore gas, water and electricity were blocked by the 'Serb military', despite agreements to restore the utilities between Bosnian Muslim and Bosnian Serb civil leaders. Zdravko Tolimir stated that there would be no restoration of utilities until the fighting around Sarajevo was over."

[63] Proposed fact 3085 states: "Food shortages meant that civilians living inside the confrontation lines were substantially dependent on humanitarian food aid."

Proposed fact 3086 states: "The Blue Routes were opened intermittently from August 1994 to November 1995. At such times, and when airplanes carrying humanitarian aid were able to land at Sarajevo Airport, the food situation improved."

Proposed fact 3090 states: "Food convoys that reached Sarajevo on 22 June 1995 after a period of four weeks without any transport provided for only 20 per cent of the total need for food."

identifiable for judicial notice. The Chamber therefore rejects the Accused's challenges to proposed facts 3059, 3080, 3084, 3085, 3086, and 3090, and it will consider taking judicial notice of them as long as they satisfy the remaining elements of the test articulated in paragraph 14 above.

26. However, the Chamber is satisfied that several of the proposed facts include terms or phrases that are insufficiently distinct, concrete, or identifiable for the purposes of judicial notice. Specifically, it considers that the phrase "substantial damage to houses" in proposed fact 3039[64] is insufficiently concrete for the purposes of judicial notice. However, this phrase does not render the entire proposed fact impermissible for judicial notice; as such, the Chamber will strike the vague phrase, and will admit the new formulation of proposed fact 3039, as stated in paragraph 39 below. The Chamber further finds that proposed fact 2781, which states that "[p]rotest letters were *most frequently sent* to the SRK, but were also sent to the ABiH", is not sufficiently concrete. Similarly, proposed facts 2809,[65] 2902,[66] 2906,[67] 3001,[68] and 3003,[69] suffer from the same vagueness and generalisations, including terms such as "whole array", "daily occurrence", and "many civilians", and necessarily lack the concreteness to be permissible for judicial notice. Further, the Chamber finds proposed fact 3011, stating that "[t]he civilian population in the city of Sarajevo was *regularly* the target of shelling by the SRK", to be too vague and general to warrant taking judicial notice.[70] The Chamber also finds that the use of the term "regularly", or otherwise the failure to specify a concrete time period, renders proposed facts 3013,[71] 3014,[72] 3015,[73] 3023,[74] and 3092[75] insufficiently concrete. The

[64] Proposed fact 3039 states: "The explosion of the modified air bomb caused substantial damage to houses in the vicinity of the explosion; the explosion completely destroyed two houses and damaged at least ten other houses nearby.

[65] Proposed fact 2809 states: "The JNA had a '*whole array of truly powerful weapons*' and the VRS took over the majority of those weapons. It also took over weapons from the reserve forces of the police." Emphasis added.

[66] Proposed fact 2902 states: "Artillery and mortar explosions were a *daily occurrence* in Sarajevo." Emphasis added.

[67] Proposed fact 2906 states: "A sniper would be able to distinguish between a combatant and a non-combatant." Additionally, the *D. Milošević* Trial Judgement says "shooter" instead of "sniper"; regardless of this difference, this fact is not sufficiently concrete for purposes of judicial notice.

[68] Proposed fact 3001 states: "The shots were fired from the M84, M87 *or* M53 machinegun." Emphasis added.

[69] Proposed fact 3003 states: "*Many civilians* had been hit by snipers in this area, especially in Sedrenik Street." Emphasis added.

[70] Emphasis added.

[71] Proposed fact 3013 states: "The shelling was carried out in an *indiscriminate* manner." Emphasis added.

[72] Proposed fact 3014 states: "Civilian areas such as residential buildings, parks, cemeteries, market places and places where people collected water were *regularly targeted* by shelling." Emphasis added.

[73] Proposed fact 3015 states: "The hospitals within the confrontation lines were shelled and sniped, which was also the case *before August 1994*." Emphasis added.

[74] Proposed fact 3023 states: "There was a cease-fire in force on 8 November 1994 and there had been no shelling for some time."

[75] Proposed fact 3092 states: "*From August 1994 to November 1995*, the provision of medical services was severely affected as a result of the ongoing conflict. There was not enough electricity to run the machines or elevators and the State Hospital even rationed the use of generators. Food preparation, laundry and sterilisation were all done

Chamber will, for the aforementioned reasons, decline to take judicial notice of proposed facts 2781, 2809, 2902, 2906, 3001, 3003, 3011, 3013, 3014, 3015, 3023, and 3092.

27. Proposed fact 3068 states that "[t]he origin of fire of the modified air bomb *would have been* outside the confrontation lines and within SRK-held territory. The modified air bomb was launched by members of the SRK."[76] The Chamber finds that the supposition inherent in this proposed fact renders it insufficiently concrete for the purposes of judicial notice and, as such, it will deny judicial notice thereof. Furthermore, the Chamber also considers that proposed facts 3095,[77] 3096,[78] 3097,[79] 3098,[80] 3099,[81] and 3100,[82] which discuss generally what "people in Sarajevo" or "some witnesses" were experiencing during the entire period covered by the *D. Milošević* indictment, are insufficiently concrete individually, as well as in conjunction with each other, for the purposes of judicial notice. Similarly, proposed facts 3103,[83] 3105,[84] 3106,[85] and 3107,[86] which relate to the general objectives of the shelling and sniping campaign carried out in Sarajevo during the entire period of the *D. Milošević* indictment, are insufficiently

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using firewood, or gas, if available. Small tanks were built to preserve water, which was occasionally provided by tankers, for a few days. However, '[o]nly the most vital part[s] of the hospital were provided with electricity and the minimal quantities of water.' There was no regular heating in the hospital, with the exception of one heater that was installed by using gas as an open source of energy." *D. Milošević* Trial Judgement, para. 732. However, the *D. Milošević* Trial Judgement states that "[e]vidence indicates that…" instead of the italicised section above, and therefore, the Chamber does not find this to be sufficiently concrete for the purposes of taking judicial notice.

[76] Emphasis added.

[77] Proposed fact 3095 states: "From August 1994 to November 1995, people in Sarajevo were affected by the knowledge that one might be killed or wounded any day and by living in a city under siege for such a long time without basic necessities."

[78] Proposed fact 3096 states: "From August 1994 to November 1995, people in Sarajevo risked their lives every time they ventured out. It was dangerous to collect food and water."

[79] Proposed fact 3097 states: "From August 1994 to November 1995, people in Sarajevo felt safer during lulls in the shelling and sniping but even then one was not safe and there was no way of knowing when the shelling and sniping would resume."

[80] Proposed fact 3098 states: "From August 1994 to November 1995, people in Sarajevo knew that they could be shot at any moment and that shells could land anywhere."

[81] Proposed fact 3099 states: "From August 1994 to November 1995, there were very few places where *one* could be entirely safe from shelling, except underground, under fortified cover or in the cave down by the Miljacka River. *People* would vary the routes that they took according to the areas of the city that were known to be particularly dangerous in order to ensure they were concealed from the view of snipers as much as possible, including by finding alternative ways to enter their homes." Emphasis added.

[82] Proposed fact 3100 states: "*Some witnesses* continue to suffer the psychological effects of the war by, for example, needing medication to remain calm, being unable to work, experiencing anxiety, difficulty sleeping, waking during the night because of thunder and believing it is an attack by the Bosnian Serbs, and being frightened by loud noise." Emphasis added.

[83] Proposed fact 3103 states: "From August 1994 to November 1995, civilians and civilian areas were sniped and shelled when the SRK had not achieved particular military objectives."

[84] Proposed fact 3105 states: "Another objective of the campaign of sniping and shelling was to maintain a psychological upper hand over UNPROFOR in order to prevent the UN from taking action."

[85] Proposed fact 3106 states: "From August 1994 to November 1995, sniper fire against civilians within the confrontation lines primarily came from SRK-held territory. As a result of the sniping, civilians were seriously injured or killed. The shots, originating from SRK-held territory, were fired by members of the SRK."

concrete. Thus, the Chamber considers that proposed facts 3068, 3095 to 3100, 3103, and 3105 to 3107 do not meet the standard necessary for requirement [**b**] of the test set out under paragraph 14 above and, for these reasons, will decline to take judicial notice thereof.

28. Finally, the Chamber has performed its own review of the proposed facts in the Motion, and has identified several proposed facts it considers insufficiently distinct, concrete or identifiable. In particular, the Chamber finds that proposed fact 2788, stating that "[t]he SRK weapons in the WCP's, could be, and 'very often' were, used from those positions to fire onto the city",[87] is insufficiently distinct and concrete, even when placed in the context of the surrounding proposed facts. The same applies to proposed fact 3102, which states that "[t]he purpose of the siege of Sarajevo was to compel the BiH Government to capitulate".[88] This statement is vague and does not make sense even when read within the context of the surrounding facts. The Chamber further considers that proposed fact 2856, stating that "SRK Commander Dragomir Milošević exercised 'effective command' over the SRK and over operations around the city of Sarajevo", is overly generalised and is therefore not a distinct, concrete, and identifiable fact for purposes of judicial notice. The Chamber similarly finds that proposed fact 2907, stating that "[s]nipers targeted places where civilians gathered, including, for example, markets, trams and where people queued for food and water", is overly generalised with regard to all of the various places mentioned and also not sufficiently distinct, concrete, or identifiable to warrant judicial notice. In relation to proposed fact 2904, the Chamber notes that the *D. Milošević* Trial Chamber placed the term "the Serbs" in quotation marks in the *D. Milošević* Trial Judgement; however, there is no indication as to the exact meaning of the quotation marks in this context, and, therefore, the Chamber finds that proposed fact 2904 fails to be sufficiently distinct, concrete, and identifiable.[89] Finally, the Chamber also considers proposed facts 2849,[90] 2874,[91] 2893,[92] and 2909[93] to be general and vague, and thus, fail to satisfy the minimum threshold of concreteness to be permissible for judicial notice. As a result,

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[86] Proposed fact 3107 states: "From August 1994 to November 1995, shelling against civilians within the confrontation lines primarily came from SRK-held territory and that, as a result of the shelling, civilians were seriously injured or killed. The shells, originating from SRK-held territory, were launched by SRK troops."

[87] *See D. Milošević* Trial Judgement, paras. 52, 84.

[88] *See D. Milošević* Trial Judgement, para. 751.

[89] Proposed fact 2904 states: "During the later part of August 1995, tension around Sarajevo increased and a pattern of random shelling by 'the Serbs' of a few rounds a day was established by the end of that month."

[90] Proposed fact 2849 states: "From August 1994 to November 1995, the SRK headquarters in Lukavica functioned well."

[91] Proposed fact 2874 states: "SRK Commander Dragomir Milošević visited SRK-held areas from which civilians were targeted." The Chamber finds that this proposed fact is not sufficiently concrete as it states generally that Dragomir Milošević visited "SRK-held areas" without any further definition as to what particular areas.

[92] Proposed fact 2893 states: "*In general*, there were no restrictions on the movement of UNMOs." Emphasis added.

the Chamber will decline to take judicial notice of proposed facts 2788, 2849, 2856, 2874, 2893, 2904, 2907, 2909, and 3102.

[c] The fact must not differ in any substantial way from the formulation of the original judgement

29. In the Response, the Accused challenges a series of proposed facts on the basis that they differ "in a substantial way from the formulation in the original judgement" or are "unclear or misleading in the context in which they are placed".[94] While the Accused seemingly challenges them all under section [**d**] of the test laid out in paragraph 14 above in the Response, in the Annex to the Response he challenges them as either "inconsistent", "unclear", "misleading", or "out of context". In its previous decisions, the Chamber has considered these arguments under either this heading or heading [**d**] below.[95] The Chamber is cognisant, however, that the underlying concept for both of these considerations is whether each proposed fact contains a substantially different meaning than the adjudicated fact in the original judgement, regardless of whether it relates to the proposed fact's actual content as abstracted from the prior judgement, or the way the proposed facts relate to each other in the context of the Motion. Thus, there is the potential for significant overlap between these provisions, and in fact, several Trial Chambers have combined these two tests into one.[96] This Chamber has nevertheless kept the analysis separate, rejecting those facts which are: 1) formulated in the Motion in such a different way than in the original judgement as to carry a substantially different meaning; and 2) unclear, misleading, or out of context when read in the context of the proposed facts in the Motion as a whole.

30. As a result of the Chamber's analysis, it finds that it is appropriate to address proposed facts 2801, 2804, 2815, 2834, 2866, 2896, 2899, 2908, 2937, 2947, 2953, 2989, 3008, 3010, 3012, 3031, 3040, 3063, 3070, and 3087 under this section as differing substantially from the formulation of the original judgement.

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[93] Proposed fact 2909 states: "Trams were targeted by shelling, forcing trams to the depot, which was also shelled *on many occasions*, destroying several trams." Emphasis added.

[94] The Accused challenges the following proposed facts on this basis: 2801, 2815, 2824, 2834, 2866, 2893, 2896, 2897, 2899, 2900, 2901, 2906, 2908, 2931, 2935, 2989, 2996, 3000, 3002, 3003, 3008, 3010, 3012, 3013, 3016, 3017, 3031, 3040, 3063, 3070, 3087, 3094, 3101, and 3104. Response, para. 8 and Annex A.

[95] First Decision on Adjudicated Facts, paras. 19–28; Second Decision on Adjudicated Facts, paras. 34–39; Third Decision on Adjudicated Facts, paras. 22–36.

[96] *See, e.g.*, *Prosecutor v. Stanišić & Simatović*, Case No. IT-03-69-T, Decision on Second Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 January 2010, paras. 24, 56; *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, paras. 16, 32.

31. With regard to proposed fact 2815, the Chamber considers that, although the relevant paragraphs from the original judgement have been paraphrased, the fact is sufficiently clear and accurate as stated in the Motion.[97] Similarly, the Chamber finds that proposed fact 3031 is sufficiently clear when read in the context of the surrounding facts.[98] It also finds that proposed facts 3040 and 3087 were cited directly from the *D. Milošević* Trial Judgement, and therefore it is satisfied that these facts do not differ substantially from the formulation of the original judgement. The Chamber therefore rejects the Accused's challenges to proposed facts 2815, 3031, 3040, and 3087, and will consider taking judicial notice thereof, as long as they satisfy the remaining elements of the test articulated in paragraph 14 above.

32. However, proposed fact 2801 states that "[o]n 11 October 1995, the parties agreed to a 60 day cease-fire as of 12 October 1995", whereas the original judgement refers to the parties agreeing to the 60-day cease-fire on 5 October 1995.[99] The Chamber finds this fact to be substantially different from the passage in the original judgement and will deny judicial notice thereof. Similarly, it considers that the formulation of the second sentence of proposed fact 2834, stating that "[t]he Lukavica barracks were at the southern foot of Momjilo Hills, held by the SRK", does not accurately reflect the corresponding paragraph in the *D. Milošević* Trial Judgement, which merely states "one of the barracks in Lukavica".[100] As such, the Chamber will exercise its discretion pursuant to Rule 94(B) to remove the second sentence of proposed fact 2834, and will take judicial notice of the first sentence. The Chamber additionally finds that proposed facts 2896[101] and 2899[102] present oversimplified statements as compared to the corresponding paragraphs in the *D. Milošević* Trial Judgement and, as such, do not satisfy the requirements for judicial notice.

33. The Accused challenges proposed fact 2908[103] on the basis that it is a misleading amalgamation of various sentences from the original judgement, under section [**d**] of the test laid out in paragraph 14 above. The Chamber considers that the omission of the beginning of

[97] Proposed fact 2815 states: "Among the weapons used for shelling Sarajevo, the VRS used modified air bombs. Air bombs were modified in order to enable their launch from the ground."

[98] Proposed fact 3031 states: "Investigations into this incident were carried out by the KDZ, the UNPROFOR French Battalion, and two UNMOS, Major Hanga Tsori Hammerton and Major Ilonyosi."

[99] *See D. Milošević* Trial Judgement, para. 65.

[100] *See D. Milošević* Trial Judgement, paras. 122, 124. Additionally, the Chamber notes that in Annex A of the Response, the Accused marked this proposed fact as 2836.

[101] Proposed fact 2896 states: "The direction of fire of air bombs is determined through an analysis of the centre of the explosion and the traces left by the explosion."

[102] Proposed fact 2899 states: The BiH police investigation teams produced investigation reports that are generally reliable."

[103] Proposed fact 2908 states: "Trams and people on trams were targeted. Trams were a favourite target of snipers inside of Sarajevo because of the psychological impact it had on the people of Sarajevo." *See D. Milošević* Trial Judgement, para. 214.

the second sentence, namely that "*[a]ccording to Brig. Gen. Fraser*: 'trams were a favourite target of snipers…'", results in a significant alteration in the meaning of the fact, and is therefore improper for judicial notice. Upon its own review of the facts, the Chamber also finds that proposed fact 2804 is similar to proposed fact 2908, in that both omit that the finding taken from the *D. Milošević* Trial Judgement is based on a witness's observation, rendering this fact substantially different in the Motion.[104] As such, the Chamber will decline judicial notice thereof. Finally, the Accused challenges proposed facts 3012[105] and 3070[106] as inconsistent or out of context. The Chamber finds that these two facts are indeed sufficiently different from the corresponding paragraphs in the original judgement, and thus improper for judicial notice.

34. The Chamber considers the Accused's challenges to proposed facts 2866, 3008, and 3010 together under the same analysis. In the Motion, proposed fact 2866 states that "[i]n June 1994 the Main Staff of the VRS issued an order to the SRK stressing that it was the Main Staff of the VRS that was to decide on the use of air bombs." However, the original judgement states that "*Maj. Gen. Milovanović stressed* that it was the Main Staff of the VRS that was to decide on the use of air bombs."[107] Furthermore, proposed fact 3008 says that "Dobrinja was divided between ABiH and SRK forces", whereas the *D. Milošević* Trial Judgement states: "*When asked by the Defence, W-28 agreed that* Dobrinja was divided between ABiH and SRK forces."[108] The Chamber finds that the reformulation of this proposed fact in the Motion from a witness's tacit agreement to a finding of the *D. Milošević* Trial Chamber is misleading and significantly differs from the actual adjudicated fact. The Chamber finds that the omission of details upon which the *D. Milošević* Trial Chamber based its findings renders the proposed fact sufficiently different from the formulation in the Motion, and will therefore deny judicial notice thereof. Similarly, proposed fact 3010 states that "[d]uring the course of the war about a half million shells were fired at Sarajevo", yet the relevant sentence from the *D. Milošević* Trial Judgement

[104] Proposed fact 2804 states: "General Mladić was always familiar with events that were occurring in Sarajevo"; while the relevant paragraph of the *D. Milošević* Trial Judgement states: "*According to Gen. Smith*, he [Gen. Mladić] was always familiar with events that were occurring in Sarajevo". Emphasis added. *See D. Milošević* Trial Judgement, para. 67.

[105] Proposed fact 3012 states: "The positions of the SRK on the hills around Sarajevo meant that the SRK could shell Sarajevo without restriction" whereas the original judgement states that "[*t]he Trial Chamber heard that the location of Sarajevo in a valley and* the positions of the SRK on the hills around Sarajevo meant that the SRK could shell Sarajevo without restriction." Emphasis added. *See D. Milošević* Trial Judgement, para. 417. The Chamber considers this to be a misleading reformulation of the original judgement, particularly in that it conveys that the Trial Chamber made a finding, rather than only hearing evidence, on this fact.

[106] Proposed fact 3070 states: "The projectile was fired from the direction of Ilidža, SRK-held territory", whereas the *D. Milošević* Trial Chamber makes a finding in the next paragraph of the *D. Milošević* Trial Judgement that "[t]he Trial Chamber is satisfied that the modified air bomb originated from SRK-held territory, either Ilidža or Butila, and that it was launched by a member of the SRK." Emphasis added. *See D. Milošević* Trial Judgement, paras. 441–443.

[107] Emphasis added. *See D. Milošević* Trial Judgement, para. 823.

[108] Emphasis added. *See D. Milošević* Trial Judgement, para. 248.

is based on a witness's testimony as follows: "*David Harland estimated* that during the course of the war about half a million shells were fired at Sarajevo…".[109] The Chamber finds that proposed facts 2866, 3008, and 3010 are sufficiently different from their formulation in the Motion, and will decline to take judicial notice of them.

35. For the foregoing reasons, the Chamber will deny judicial notice of proposed facts 2801, 2804, 2866, 2896, 2899, 2908, 3008, 3010, 3012, and 3070, as well as of the second sentence of proposed fact 2834.

36. The Accused further challenges proposed facts 2937, 2947, and 2953 as unacceptable combinations of various sentences, including witness testimony and findings of the Chamber, from the *D. Milošević* Trial Judgement.[110] The Chamber first considers proposed fact 2937, which states that "[t]he shooting had come from the School of the Blind. The School of the Blind was held by the SRK and was known as a sniper location. The shots were fired by a member of the SRK". The Chamber finds that it is, in fact, a combination of the three paragraphs cited in the Motion, but that it is nevertheless an accurate reflection of the original judgement.[111] Proposed fact 2947, as reformulated in the Motion, is a summary of the relevant paragraph in the *D. Milošević* Trial Judgement and, therefore, is slightly different.[112] However, the Chamber does not consider the manner in which it has been summarised to substantially alter the meaning of the fact in such a way to render it impermissible for judicial notice. Similarly, proposed fact 2953, which is also an amalgamation of two paragraphs in the original judgement, is sufficiently clear and accurate as stated in the Motion.[113] The Chamber will therefore consider taking judicial notice of proposed facts 2937, 2947, and 2953, as long as they satisfy the remaining elements of the test articulated in paragraph 14 above.

37. The Accused also challenges proposed facts 2989 and 3063 on the basis that they are inconsistent with the original judgement. He argues that in proposed fact 2989,[114] the quote is

[109] Emphasis added. *See D. Milošević* Trial Judgement, para. 415.

[110] *See* challenge to proposed fact 2937 in Annex A of the Response.

[111] *See D. Milošević* Trial Judgement, paras. 385, 389, 393.

[112] Proposed fact 2947 states: "On 21 November 1994, a tram, ordered to return to the depot at Alipašin Most due to the intensity of the shelling in the centre of Sarajevo, picked up a group of passengers. The passengers were mainly women and children, as well as some elderly and young people"; while paragraph 267 of the *D. Milošević* Trial Judgement states: "The twenty-first of November 1994 was a cold day. The trams were operating that morning. Howerver, the centre of Sarajevo came under shell-fire and due to the intensity of the shelling, the trams could not reach Baščaršija and were ordered to return to the depot of Alipašin Most. A tram driver, Hajrudin Hamidić, picked up a group of passengers while driving the empty tram back to the depot. The passengers were mainly women and children, as well as some elderly young people."

[113] Proposed fact 2953 states: "The tram was hit by a M80 hand-held rocket which was used by the JNA, and had a range of 1,300 metres." *See D. Milošević* Trial Judgement, paras. 273, 276.

[114] Proposed fact 2989 states: "Alen Gičević had been a member of the ABiH, but had been demobilised from the army nine months before this incident. He was wearing a three-piece grey suit on the day of the incident."

wrong with respect to what Alen Gičević and Azem Agović were wearing on the day of the incident in question. Although the Chamber notes that the formulation of the proposed fact is not precise, it finds this to be a minor error, and will exercise its discretion under Rule 94(B) to correct it. Similarly, proposed fact 3063[115] refers to a "local commune centre", which is not mentioned in the relevant paragraph of the original judgement, nor in any of the immediately preceding or subsequent paragraphs. The Chamber will exercise its discretion under Rule 94(B) to delete the inaccurate reference to the commune centre, and will admit the new formulations of proposed facts 2989 and 3063, as they are stated in the paragraph 39 below.

38. In addition to the facts challenged by the Accused, the Chamber has identified two proposed facts that it considers to have been reformulated in a substantially different way in the Motion from the original judgement. First, proposed fact 2822 states that "[t]he ABiH did not possess modified air bombs", while the relevant paragraph of the *D. Milošević* Trial Judgement says: "The Trial Chamber *is not convinced* that the ABiH also had modified air bombs during the Indictment period."[116] Similarly, proposed fact 2875 states: "SRK Commander Dragomir Milošević was aware of the crimes committed by SRK units," whereas the judgement says "[i]t *is reasonable to infer* that the Accused [Dragomir Milošević], who was the commander of the SRK and who regularly visited SRK units in these areas, was aware of the crimes that were committed."[117] The Chamber considers that these proposed facts recharacterise the meaning of the relevant section of the *D. Milošević* Trial Judgement, and will therefore deny judicial notice of both 2822 and 2875.

39. As previously noted by the Chamber in its First Decision on Adjudicated Facts, if a proposed fact contains only a minor inaccuracy or ambiguity, it is within the Chamber's discretion to correct such inaccuracy or ambiguity, as long as the resultant correction accurately reflects the fact adjudicated in the original judgement.[118] This applies not only to typographical errors but also to other inaccuracies which can be corrected with regard to either the original judgement or the surrounding facts proposed in the motion.[119] In order to render the relevant proposed facts consistent in every respect with the factual adjudication made in the *D. Milošević* Trial Judgement, the Chamber has made additions to, or corrected minor errors in, the following proposed facts:

[115] Proposed fact 3063 states: "The projectile that exploded close to the local commune centre on Trg Međunarodnog Prijateljstva 10, was a modified air bomb. Its explosion injured seven people." *See D. Milošević* Trial Judgement, para. 551.

[116] Emphasis added. *See D. Milošević* Trial Judgement, para. 107.

[117] Emphasis added. *See D. Milošević* Trial Judgement, para. 845.

[118] *Popović* Decision, para. 7; *cf.* First Decision on Adjudicated Facts, para. 22.

[119] *See Stanišić* Decision, para. 38; First Decision on Adjudicated Facts, para. 22.

- Proposed fact 2784 shall read as follows: "On 9 February 1994, the VRS and the ABiH agreed, *inter alia*, to a cease-fire, the establishment of a **Total Exclusion Zone ("**TEZ**")** in Sarajevo, the interposition of UNPROFOR between the two sides and the placement of heavy weapons in so-called Weapons Collection Points ("WCPs"), which were monitored by UNPROFOR.

- Proposed fact 2800 shall read as follows: "On 15 September 1995, representatives of the VRS, **including Dragomir Milošević,** and UNPROFOR representatives agreed to a cease-fire and withdrawal of VRS troops from the area surrounding Sarajevo."

- Proposed fact 2818 shall read as follows: "Air bombs were produced in the Pretis Factory, which was used by the SRK **between August 1994 and November 1995**."

- Proposed fact 2863 shall read as follows: "SRK Commander Dragomir Milošević was directly involved in the deployment of **modified air bombs and air bomb launchers**."

- Proposed fact 2921 shall read as follows: "**On 8 October 1994**, Alma Ćutuna was shot while she was travelling on a tram on Zmaja od Bosne."

- Proposed fact 2955 shall read as follows: "**On 23 November 1994**, Afeza Karačić and her sister took a tram to Otoka, where they lived. Just before 1600 hours, Sabina Šabanić took a tram home from work. Sabina Šabanić and Afeza Karačić were on the same crowded tram."

- Proposed fact 2989 shall read as follows: "Alen Gičević had been a member of the ABiH, but had been demobilised from the army nine months before this incident. He was wearing **black trousers ~~a three piece grey suit~~** on the day of the incident."

- Proposed fact 3031 shall read as follows: "Investigations into this incident were carried out by the **Counter Sabotage Protection Department of the Bosnian Muslim Ministry of Interior ("**KDZ**")**, the UNPROFOR French Battalion, and two UNMOS, Major Hanga Tsori Hammerton and Major Ilonyosi."

- Proposed fact 3039 shall read as follows: "The explosion of the modified air bomb ~~**caused substantial damage to houses in the vicinity of the explosion; the explosion**~~ completely destroyed two houses and damaged at least ten other houses nearby."

- Proposed fact 3059 shall read as follows: "Three or four civilians were injured as a result of the explosion, and ~~**that**~~ some surrounding buildings were destroyed."

- Proposed fact 3063 shall read as follows: "The projectile that exploded ~~**close to the local commune centre**~~ on Trg Međunarodnog Prijateljstva 10, was a modified air bomb. Its explosion injured seven people."

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

40. In determining if a fact is indeed unclear or misleading, the Chamber must have regard for the surrounding proposed facts in the Motion.[120] In the Response, the Accused challenges proposed facts 2801, 2815, 2834, 2866, 2893, 2896,[121] 2897, 2899, 2900, 2901, 2906, 2908, 2931, 2935, 2989, 3000, 3002, 3003, 3008, 3010, 3012, 3013, 3016, 3017, 3031, 3040, 3063, 3070, 3087, 3094, 3101, and 3104,[122] on the basis that they differ "in a substantial way from the formulation in the original judgement" or are "unclear or misleading in the context in which they are placed".

41. The Chamber has already determined in sections [**a**], [**b**], and [**c**] above that it will not take judicial notice of proposed facts 2801, 2834, 2866, 2893, 2896, 2899, 2906, 2908, 2989, 3002, 3003, 3008, 3010, 3012, 3013 3063, and 3070, and does not deem it necessary to deal with them under this challenge. It has also determined that proposed facts 2815, 3031, 3040, and 3087 are appropriate for judicial notice under section [**c**], as long as they satisfy the remaining elements of the test articulated in paragraph 14 above. Finally, the Chamber considers it more appropriate to discuss proposed fact 3101 in section [**f**] below.

42. The Accused identified proposed facts 2931,[123] 2935, 3000, 3016, 3017, and 3104 as misleading and out of context.[124] However, the Chamber has reviewed the context in which these proposed facts are set in the Motion and does not consider them to be misleading. Although these proposed facts are formulated slightly differently from the corresponding sections in the *D. Milošević* Trial Judgement, the Chamber finds that they have identical meaning when read in the context of the Motion, and therefore rejects this argument.

[120] *Popović* Decision, para. 8.

[121] The Chamber notes that in the Response, the Accused includes proposed fact 2996 under the general "Consistent/Out of context" heading. *See* Response, para. 8. However, the Accused did not challenge this fact in Annex A to the Response. Yet the Accused specifically challenged proposed fact 2896 in Annex A as out of context and misleading, but did not include it in the corresponding general heading in the Response. *See* Response, Annex A. Upon review of both proposed facts, the Chamber considers that the Accused intended to challenge proposed fact 2896, instead of proposed fact 2996, and will address it here. Moreover, the Chamber has analysed proposed fact 2996 and does not find it to be misleading.

[122] Response, para. 8 and Annex A.

[123] The cited source paragraph of the *D. Milošević* Trial Judgement for proposed fact 2931 was corrected in the Corrigendum, and is now accurate, rendering the Accused's challenge on this fact moot.

[124] Response, Annex A.

Consequently, the Chamber will consider taking judicial notice of proposed facts 2931, 2935, 3000, 3016, 3017, and 3104, as long as they satisfy the remaining elements of the test articulated in paragraph 14 above.

43. However, the Chamber considers proposed facts 2897,[125] 2901,[126] and 3094[127] to be entirely misleading without providing the context of the surrounding sentences from the original *D. Milošević* Trial Judgement, and as such, will deny judicial notice of these facts. Finally, with respect to proposed fact 2900, the Chamber will also deny judicial notice of it based on the fact that it is missing the second part of the sentence from the *D. Milošević* Trial Judgement, rendering it misleading in the context in which it is placed in the Motion.[128]

[e] The fact must be identified with adequate precision by the moving party

44. The Accused submits that of the following proposed facts are "not properly cited" or "uncited": 2822, 2844, 2850, 2873, 2875, 2876, 2883, 2889, 2925, 2935, 2950, 2951, 2973, 3001, 3004, 3005, 3009, 3019, 3026 to 3028, 3035, 3037 to 3041, 3044, 3047 to 3051, 3055 to 3060, 3063, 3064, 3066 to 3068, 3071 to 3082, and 3101 to 3104.[129] However, recalling its First, Second, Third, and Fourth Decisions on Adjudicated Facts, the Chamber finds that whether a factual finding is identifiable or not is not dependant on the possibility of being able to trace it back to an original source as, for example, a witness statement that has been given in public session.[130] The Chamber is therefore satisfied that requirement [**e**] of the test is met as long as the fact can be clearly identified in the original judgement. Additionally, the Chamber reiterates that it is not its task to assess whether another Trial Chamber has properly edited the text or the footnotes of its judgement.[131]

[125] Proposed fact 2897 states: "It is impossible for anyone to try and tamper with a crater, not only because there would be too many witnesses to such an activity, but also because in order to falsify traces in hard surfaces, such as asphalt, so as to make them appear to have been caused by shrapnel, one would have to hammer hard at the surface. People walking over the crater could not change the traces left in the surface."

[126] Proposed fact 2901 states: "Between August 1994 and November 1995, the level of sniping was almost constant, independent of the fluctuations and the intensity of the armed conflict." *See D. Milošević* Trial Judgement, para. 195.

[127] Proposed fact 3094 states: "329 persons were wounded and 95 persons were killed in 214 shelling and sniping incidents investigated by the Bosnian Muslim police between 30 August 1994 and 9 November 1995." *See D. Milošević* Trial Judgement, paras. 737–738.

[128] Proposed fact 2900 states: "Between August 1994 and November 1995, the people living in the area of Sarajevo within the confrontation lines were continuously shelled and sniped," whereas the relevant section from the original judgement says: "…the people living in the area of Sarajevo within the confrontation lines were continuously shelled and sniped, *although some witnesses noted that the level of intensity varied, particularly with regard to shelling.*" Emphasis added. *See D. Milošević* Trial Judgement, para. 195.

[129] Response, para. 11.

[130] *See* First Decision on Adjudicated Facts, para. 16; Second Decision on Adjudicated Facts, para. 40; Third Decision on Adjudicated Facts, para. 37; Fourth Decision on Adjudicated Facts, para. 90.

[131] *See* First Decision on Adjudicated Facts, para. 16; Second Decision on Adjudicated Facts, para. 40; Third Decision on Adjudicated Facts, para. 37; Fourth Decision on Adjudicated Facts, para. 90.

45. Having reviewed the facts challenged by the Accused on this basis, as well as the Motion in its entirety, the Chamber is of the view that the Prosection has identified those proposed facts with adequate precision, and will not decline to take judicial notice on any proposed facts under this section.

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

46. The Chamber is mindful, as in its First, Second, Third, and Fourth Decisions on Adjudicated Facts, that taking judicial notice of adjudicated facts does not serve the purpose of importing legal conclusions from past proceedings. While a finding is a legal conclusion when it involves interpretation or application of legal principles, many findings have a "legal aspect" in the broad sense of that term. The Chamber considers that it is necessary to determine on a case-by-case basis whether a proposed fact must be excluded because it contains findings or conclusions which are of an essentially legal nature, or whether the factual content prevails.[132]

47. The Accused has made repeated submissions that several proposed facts use certain legally significant terms, namely "attack", "armed conflict", "civilians", "civilian population", and "targeted" in such a way as to render them essentially legal in nature.[133] Again, the Chamber has carefully assessed each of the disputed proposed facts in determining whether it contains findings or conclusions of an essentially legal nature, and is satisfied that, with the exception to 2913 and 3101, in none of the proposed facts challenged by the Accused, the above-mentioned terms are used in such a way as to render them essentially legal in nature.

48. The Chamber considers that proposed fact 2913, stating that "[t]he trams targeted in the city of Sarajevo had civilian status", can be distinguished from the other proposed facts concerning "civilians" in general. The Chamber finds that this fact amounts to a legal finding made by the *D. Milošević* Trial Chamber and thus, is not appropriate for judicial notice. Further, proposed fact 3101, which was also challenged by the Accused under sections [**b**] and [**d**] of the test set out in paragraph 14 above, states:

> From August 1994 to November 1995, Sarajevo was *effectively besieged* by the SRK. It was a siege in the sense that it was a military operation, characterised by a *persistent attack or campaign* over a period of fourteen months, during which the *civilian*

[132] *See* First Decision on Adjudicated Facts, para. 29; Second Decision on Adjudicated Facts, para. 43; Third Decision on Adjudicated Facts, para. 40; Fourth Decision on Adjudicated Facts, para. 76.

[133] *See* the Accused's challenges to proposed facts 2887, 2913, 2997, 3003, 3004, 3011, 3014, 3021, 3027, 3028, 3030, 3035, 3038, 3048, 3050, 3056, 3059, 3067, 3070, 3073, 3076, 3081, 3101, 3103, 3104, 3106, and 3107, in Annex A and paragraph 10 of the Response. The Chamber notes that it has already declined to take judicial notice of proposed facts 3003, 3011, and 3014 in para. 26; proposed facts 3103, 3106, and 3107 in para. 27; and proposed fact 3070 in para. 33, and therefore, will not discuss these proposed facts under this section. In addition, the Chamber already discussed proposed fact 3104 in para. 42 above, but did not deny judicial notice thereof under section [**d**] of the test.

> *population* was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace.[134]

The Chamber finds that this proposed fact contains a number of phrases which render it essentially legal in nature and, as such, it is not available for judicial notice.

49. Consequently, the Chamber will not take judicial notice of proposed facts 2913 and 3101. It will, however, consider taking judicial notice of proposed facts 2887, 2997, 3004, 3021, 3027, 3028, 3030, 3035, 3038, 3048, 3050, 3056, 3059, 3067, 3073, 3076, 3081, and 3104, as long as the remaining requirements of the test, as set out in paragraph 14 above, are met.

[g–i] The fact: must not be based on an agreement between the parties to the original proceedings; must not relate to the acts, conduct, or mental state of the accused; and must clearly not be subject to pending appeal or review

50. The Accused does not challenge any of the proposed facts on the basis that they: 1) are based on an agreement between the parties to the original proceedings; 2) relate to the acts, conduct, or mental state of the Accused; or 3) are subject to pending appeal or review. In light of its review of the proposed facts on these bases, the Chamber considers that requirements [**g**], [**h**]**,** and [**i**] are met by all of the proposed facts contained in the Motion.

[j] Discretion to refuse notice

51. In response to the Accused's argument that he does not have access to evidentiary materials that form the basis of the *D. Milošević* Trial Judgement,[135] the Chamber notes that this is not a new argument raised by the Accused, and it has been dismissed in this Chamber's previous decisions on adjudicated facts.[136] Furthermore, the Accused has already been granted confidential access to the materials from the *D. Milošević* case,[137] and he does not point to any specific facts where the underlying material is not accessible to him. In light of the failure of the Accused to expand upon this argument, despite this Chamber's clear position on the issue in its previous decisions on adjudicated facts, the Chamber rejects this argument.

52. The Accused also requests the Chamber to deny judicial notice of proposed facts which ascribe responsibility to the Bosnian Serb forces for incidents and events in Sarajevo, due to the

[134] *See D. Milošević* Trial Judgement, para. 751. Emphasis added.
[135] Response, para. 15.
[136] First Decision on Adjudicated Facts, para. 37; Second Decision on Adjudicated Facts, para. 52; Fourth Decision on Adjudicated Facts, para. 89.

fact that the Bosnian Serb forces' responsibility for those events is a core issue in this case.[138] Once again, the Chamber re-iterates that if the Accused wishes to challenge any facts which have been the subject of judicial notice, he is entitled to put the relevant points into question by introducing reliable and credible evidence to the contrary during the trial.[139] As such, the Chamber rejects the Accused's reasoning that taking judicial notice of general facts surrounding the Bosnian Serb forces' responsibility for incidents and events in Sarajevo would violate his rights and will not exercise its discretion to deny judicial notice on such facts.

53. However, the Chamber finds that it is not in the interests of justice to take judicial notice of proposed facts 3079[140] and 3082,[141] relating to the direction of fire of the shelling of Markale Market on 28 August 1995.[142] The Chamber is on notice that both parties will present ample evidence on this contested issue in the course of the trial, and, therefore, the Chamber finds it is unnecessary to take judicial notice of these two facts at this time.

54. In addition, the Chamber notes that the Prosecution requests that the Chamber take judicial notice of a number of proposed facts which relate to incidents not specifically listed in the Schedules to the Indictment, namely under headings: 8, 10, 12, 16, 18, and 26 to 29 in the attached Annex.[143] In light of the fact that this is the Chamber's fifth decision on motions for judicial notice of adjudicated facts submitted by the Prosecution, and that it has already taken judicial notice of a substantial number of the facts proposed, the Chamber considers it appropriate to take a more rigorous approach to assessing whether judicial economy is indeed served by taking judicial notice of facts containing details about incidents not specifically charged in the Indictment. For this reason, the Chamber will exercise its discretion not to take judicial notice of such facts; namely, proposed facts: 2933 to 2937, 2947 to 2954, 2970 to 2975, 3006 to 3009, 3023 to 3028, and 3065 to 3077.[144]

55. Finally, the Chamber notes that in the Motion for Reconsideration, the Accused requests the Chamber to decline judicial notice of a number of the proposed facts included in the Motion

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[137] *See Prosecutor v. D. Milošević*, Case No. IT-98-29/1-A, Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case, 19 May 2009.

[138] Response, paras. 15–16.

[139] *Karemera* Appeal Decision, para. 42.

[140] Proposed fact 3079 states: "The direction of fire was 170 degrees, that is, Mount Trebević, which was SRK-held territory."

[141] Proposed fact 3082 states: "The mortar shell that struck the street in the vicinity of the Markale Market was fired from the territory under the control of the SRK by members of the SRK."

[142] Scheduled Incident G19 of the Indictment.

[143] The Chamber notes that the headings provided in the Annex are afforded no evidentiary weight and are for organisational purposes only.

[144] The Chamber notes it has already denied judicial notice of proposed facts 3023, 3068, and 3070 in sections [**b**] and [**c**] above.

in light of the recent *Tolimir* decision.[145] The Accused more specifically requests the Chamber to apply the *Tolimir* Trial Chamber's reasoning in assessing the proposed facts in the Motion with respect to two of the arguments in the Motion for Reconsideration. He argues that specific proposed facts submitted in the Motion either: (i) contain an essentially legal characterisation[146] or (ii) relate to the core of the Prosecution's case,[147] and as such, requests that the Chamber deny judicial notice thereon. The Chamber has reviewed the arguments raised by the Accused in the Motion for Reconsideration and in the Request for Leave to Reply, and stresses that Rule 94(B) clearly places the decision on whether to take judicial notice of previously adjudicated facts solidly in the discretion of the Trial Chamber.[148] The Chamber has already dealt with the arguments of the Accused that he is unfairly prejudiced, or that his rights under the Statute have been violated by the approach to judicial notice taken by this Chamber. Furthermore, it does not consider that the different exercise of a Trial Chamber's discretion in *Tolimir*, and now in *Stanišić & Župljanin*,[149] warrants a change of approach by this Chamber, or in any way further infringes upon the rights of the Accused.

[145] Motion for Reconsideration, paras. 1, 5, 8–10.

[146] The Accused challenges the following proposed facts relevant to this Motion as essentially legal in character: 2887, 2913, 2997, 3003, 3004, 3011, 3014, 3021, 3027, 3028, 3030, 3035, 3038, 3048, 3050, 3056, 3059, 3067, 3070, 3073, 3076, 3081, 3101, 3103, 3104, 3106, and 3107. Motion for Reconsideration, para. 5.

[147] The Accused challenges the following proposed facts, relevant to this Motion, on the grounds that they relate to the core of the Prosecution's case: 2780, 2781, 2788, 2792–2795, 2797, 2903, 2804, 2806–2813, 2815, 2818, 2821, 2835, 2850, 2852, 2853, 2856, 2858, 2862–2864, 2866–2881, 2883, 2884, 2896, 2900–2902, 2904, 2906–2915, 2917–2926, 2929–2932, 2939, 2944–2946, 2953, 2954, 2966–2969, 2975, 2984, 2985, 2995, 2997, 3004, 3005, 3009, 3011–3019, 3021, 3022, 3025–3030, 3032, 3040, 3041, 3047, 3048, 3051, 3057, 3060, 3064, 3068, 3070, 3071, 3074, 3077, 3079, 3082, 3084, 3087, 3088, 3091–3093, 3095, 3101, 3103–3107. Motion for Reconsideration, paras. 8–10.

[148] Rule 94(B) of the Rules; *Karemera* Appeal Decision, para. 41.

[149] The Chamber notes that in the "Second Motion for Reconsideration of Decision on Judicial Notice of Adjudicated Facts", filed on 26 April 2010 ("Second Motion for Reconsideration"), the Accused requests the Chamber to reconsider 86 adjudicated facts from the Second Decision on Adjudicated Facts, in light of the recent decision from the *Stanišić & Župljanin* Trial Chamber. As the Accused does not challenge any proposed facts from the Motion in the Second Motion for Reconsideration, the Chamber will address the Accused's submissions in a separate decision on the Second Motion for Reconsideration.

IV. Disposition

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

- The Trial Chamber takes judicial notice of the adjudicated facts in the Annex attached to this decision, in the manner formulated therein, including the reformulation of the following facts: 2784, 2800, 2818, 2863, 2921, 2955, 2989, 3031, 3039, 3059, and 3063;
- The following adjudicated facts proposed in the Motion are denied judicial notice: 2781, 2788, 2801, 2804, 2809, 2822, 2849, 2856, 2866, 2874, 2875, 2893, 2896, 2897 to 2902, 2904, 2906 to 2909, 2913, 2933 to 2937, 2947 to 2954, 2970 to 2975, 3001 to 3003, 3006 to 3015, 3023 to 3028, 3065 to 3077, 3079, 3082, 3092, 3094 to 3103, 3105 to 3107, and the second sentence of 2834.

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

Judge O-Gon Kwon
Presiding

Dated this fourteenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

Proposed Fact No.	Adjudicated Fact	Source
	1. General Facts	
2776.	Sarajevo was well-known as a multi-ethnic, multi-religious city, with a long history of religious and cultural tolerance.	*D. Milošević* Trial Judgement, para. 11
2777.	On 24 December 1991, the SDS formed a Crisis Staff for Sarajevo.	*D. Milošević* Trial Judgement, para. 15
2778.	On the night of 6 April 1992, the central tramway depot and the old city were shelled and JNA units took control of Sarajevo Airport.	*D. Milošević* Trial Judgement, para. 22
2779.	In Sarajevo, UNMOs were tasked with observing and investigating shelling and sniping incidents.	*D. Milošević* Trial Judgement, para. 39
2780.	UNPROFOR wrote protest letters in response to incidents of sniping or shelling of civilians and situations of non-compliance with intervention measures of the parties about which it was informed.	*D. Milošević* Trial Judgement, para. 41
~~2781.~~	~~Protest letters were most frequently sent to the SRK, but were also sent to the ABiH.~~	*D. Milošević* Trial Judgement, para. 42
2782.	UNPROFOR always sought confirmation as to whether the Bosnian Serbs had received the protest letters. If the letter was not hand-delivered, confirmation would be sought via telephone.	*D. Milošević* Trial Judgement, para. 42
2783.	A demilitarised zone ("DMZ"), which included Sarajevo Airport and a "large part" of Mount Igman, was established in Sarajevo on 14 August 1993.	*D. Milošević* Trial Judgement, para. 48
2784.	On 9 February 1994, the VRS and the ABiH agreed, *inter alia*, to a cease-fire, the establishment of a **Total Exclusion Zone ("**TEZ**")** in Sarajevo, the interposition of UNPROFOR between the two sides and the placement of heavy weapons in so-called Weapons Collection Points ("WCPs"), which were monitored by UNPROFOR.	*D. Milošević* Trial Judgement, para. 49
2785.	The TEZ encompassed the area within a 20-kilometre radius around Sarajevo. Within the TEZ, all heavy weapons had to be withdrawn to the WCPs	*D. Milošević* Trial Judgement, para. 49
2786.	There were nine WCPs in and around Sarajevo; two were in ABiH-controlled territory and seven were in SRK-held territory.	*D. Milošević* Trial Judgement, para. 49
2787.	Neither the SRK nor the ABiH adhered to the TEZ. They kept heavy weaponry within the 20-kilometre zone around Sarajevo, and outside WCPs, at times between August 1994 and November 1995.	*D. Milošević* Trial Judgement, para. 50
~~2788.~~	~~The SRK weapons in the WCPs could be, and very often were, used from those positions to fire onto the city.~~	*D. Milošević* Trial Judgement, paras. 52, 84
2789.	On 14 August 1994, the "Agreement on Elimination of Sniping Activities in Sarajevo Region" ("Anti-sniping Agreement") was signed by Maj. Gen. Vahid Karavelić and Dragomir Milošević.	*D. Milošević* Trial Judgement, para. 53
2790.	A comprehensive Cessation of Hostilities Agreement ("COHA") was signed on 23 December 1994.	*D. Milošević* Trial Judgement, para. 57
2791.	The TEZ arrangements collapsed in May 1995.	*D. Milošević* Trial Judgement, para. 61

Proposed Fact No.	Adjudicated Fact	Source
2792.	On 24 May 1995, the SRK removed weapons from WCPs, following an increase in the fighting, and refused to return them.	*D. Milošević* Trial Judgement, para. 62
2793.	Gen. Smith issued an ultimatum to re-establish the TEZ but this was ignored, resulting in NATO air strikes on bunkers in an ammunitions depot outside Pale on 25 May 1995.	*D. Milošević* Trial Judgement, para. 62
2794.	During the night of 25 May 1995, the shelling of safe areas in BiH, including Sarajevo, by the VRS, continued.	*D. Milošević* Trial Judgement, para. 62
2795.	On 25 and 26 May 1995, the SRK took a number of heavy weapons from WCPs.	*D. Milošević* Trial Judgement, para. 62
2796.	NATO targeted the ammunitions depot outside Pale on the 26 May 1995.	*D. Milošević* Trial Judgement, para. 62
2797.	On 18 June 1995, UNPROFOR withdrew from all WCPs around Sarajevo because UNPROFOR units could no longer be deployed safely in isolated parts of SRK-held territory.	*D. Milošević* Trial Judgement, para. 63
2798.	During the night of 29 August 1995, air attacks against Bosnian Serb positions began. These attacks lasted until 1 September 1995.	*D. Milošević* Trial Judgement, para. 63
2799.	The NATO attacks, targeting the wider area of Sarajevo, resumed on 5 September 1995 and lasted until 14 September 1995.	*D. Milošević* Trial Judgement, para. 63
2800.	On 15 September 1995, representatives of the VRS, **including Dragomir Milošević**, and UNPROFOR representatives agreed to a cease-fire and withdrawal of VRS troops from the area surrounding Sarajevo.	*D. Milošević* Trial Judgement, para. 64
~~2801.~~	~~On 11 October 1995, the parties agreed to a 60 day cease-fire as of 12 October 1995.~~	*D. Milošević* Trial Judgement, para. 65
2802.	The fighting subsided by 14 October 1995.	*D. Milošević* Trial Judgement, para. 65
2. Military Structures and Confrontation Lines		
2803.	The VRS was formed from parts of the JNA, and TO and volunteer units.	*D. Milošević* Trial Judgement, para. 67
~~2804.~~	~~General Mladić was always familiar with events that were occurring in Sarajevo.~~	*D. Milošević* Trial Judgement, para. 67
2805.	Each of the JNA corps in BiH was renamed while retaining most of its personnel and weaponry.	*D. Milošević* Trial Judgement, para. 68
2806.	The VRS was supported by the government in Belgrade with logistics, money and material.	*D. Milošević* Trial Judgement, para. 68
2807.	The SRK had professional mortar crews.	*D. Milošević* Trial Judgement, para. 69
2808.	The SRK had snipers.	*D. Milošević* Trial Judgement, para. 69

Proposed Fact No.	Adjudicated Fact	Source
~~2809.~~	~~The JNA had a whole array of truly powerful weapons and the VRS took over the majority of those weapons. It also took over weapons from the reserve forces of the police.~~	*D. Milošević* Trial Judgement, para. 79
2810.	The SRK had more heavy weaponry than the 1st Corps of the ABiH.	*D. Milošević* Trial Judgement, para. 79
2811.	Apart from tanks, APCs and other combat vehicles, the SRK's weaponry included howitzers, guided missiles, guns, multiple rocket launchers and mortars.	*D. Milošević* Trial Judgement, para. 79
2812.	SRK units had precision rifles, in particular, 7.9 millimetre calibre sniper 76 weapons.	*D. Milošević* Trial Judgement, para. 80
2813.	The SRK had better equipment and weapons than the 1st Corps of the ABiH and their troops and officers were better trained.	*D. Milošević* Trial Judgement, para. 85
2814.	Mortars are generally used to target areas, rather than individual targets.	*D. Milošević* Trial Judgement, para. 89
2815.	Among the weapons used for shelling Sarajevo, the VRS used modified air bombs. Air bombs were modified in order to enable their launch from the ground.	*D. Milošević* Trial Judgement, paras. 92, 107
2816.	The SRK possessed modified air bombs and launchers in 1994 and 1995. The VRS attached rockets to air bombs and fired them from launch pads on the ground.	*D. Milošević* Trial Judgement, paras. 92, 107
2817.	Two types of air bombs were used in Sarajevo: the FAB-100 and the FAB-250. The numbers in the name indicate the approximate weight of the bombs.	*D. Milošević* Trial Judgement, para. 93
2818.	Air bombs were produced in the Pretis Factory, which was used by the SRK **between August 1994 and November 1995.**	*D. Milošević* Trial Judgement, para. 93
2819.	FAB-100 had TNT as its explosive charge, whereas the typical explosive charge for a FAB-250 was a fuel-air mixture.	*D. Milošević* Trial Judgement, para. 93
2820.	Fuel-air explosions cause a lethal wave of overpressure and destroy everything and everyone in the blast.	*D. Milošević* Trial Judgement, para. 94
2821.	Once a modified air bomb was launched, its flight path could not be managed; it could only be directed at a general area. As a result, modified air bombs are a highly inaccurate weapon, with extremely high explosive force.	*D. Milošević* Trial Judgement, para. 97
~~2822.~~	~~The ABiH did not possess modified air bombs.~~	*D. Milošević* Trial Judgement, para. 107
2823.	The SRK was responsible for a triangular zone in Central Bosnia around Sarajevo between Višegrad, Kladanj and Igman.	*D. Milošević* Trial Judgement, para. 112
2824.	In the period from August 1994 to November 1995, the area of responsibility of the SRK included the following places: the south of Sarajevo, including Lukavica, Vraca, Grbavica, Zlatište, parts of Dobrinja and the area up to Mount Trebević, the hills south and south-west of Sarajevo, the Rajlovac area in the north-west of Sarajevo towards Mrkovići, including Špicasta Stijena, also known as Sharpstone, the north-east of Sarajevo and the area of Pale.	*D. Milošević* Trial Judgement, para. 112
2825.	In the period from August 1994 to November 1995, the ABiH held the eastern part of the city of Sarajevo, including very densely-populated parts of Sarajevo, such as the area of Stari Grad and Centar, part of Grbavica, and the south-western part of Sarajevo, Hrasnica, Sokolović Kolonija, and Butmir, and the hills in the north of Sarajevo.	*D. Milošević* Trial Judgement, para. 113

Proposed Fact No.	Adjudicated Fact	Source
2826.	In the period from August 1994 to November 1995, most of Grbavica was controlled by the SRK, but was surrounded on three sides by the ABiH: Hrasno, part of Hrasno Hill in the West, the northern bank of the Miljacka River and Debelo Brdo in the East were held by the ABiH. In the Grbavica area, the Miljacka River constituted the northern confrontation line, with the ABiH north of the river and the SRK south of the river.	*D. Milošević* Trial Judgement, para. 114
2827.	In the period from August 1994 to November 1995, Marindvor was ABiH-held territory.	*D. Milošević* Trial Judgement, para. 115
2828.	On the eastern confrontation line, in Grbavica, the area from Vrbanja Bridge towards the Jewish cemetery up to the foot of Debelo Brdo was held by the SRK.	*D. Milošević* Trial Judgement, para. 116
2829.	The Jewish Cemetery is located on the slopes of Debelo Brdo, towards the south-east of Grbavica.	*D. Milošević* Trial Judgement, para. 116
2830.	Debelo Brdo, from where Grbavica and the Jewish Cemetery were visible, was held by the ABiH. Čolina Kapa was held by the ABiH. Both Debelo Brdo and Čolina Kapa overlooked Sarajevo.	*D. Milošević* Trial Judgement, para. 118
2831.	The SRK held the area south of Debelo Brdo and the Zlatište Hill, overlooking the city. The stretch of land between Zlatište and Debelo Brdo was a buffer zone, a no man's land.	*D. Milošević* Trial Judgement, para. 118
2832.	The settlement of Dobrinja was split between the warring factions. There were two confrontation lines, one running through Dobrinja V and the airport settlement towards Sarajevo Airport, and another one in the eastern part between Dobrinja IV and Oslobođenja. Dobrinja II and Dobrinja III were controlled by the ABiH.	*D. Milošević* Trial Judgement, para. 119
2833.	Nedarići, north of the airport, was controlled by the SRK, but it was bordered by ABiH-held territory from three sides: Alipašino Polje, Mojmilo and Stup. Stup Hill to the north-west of Nedarići, was held by the ABiH, and so were Butmir and Kotorac, located south of the runway of the airport.	*D. Milošević* Trial Judgement, para. 121
2834.	Between August 1994 and November 1995, the largest part of Mojmilo Hill was held by the ABiH. The eastern side of Mojmilo Hill and the area from there up to Vraca were under the control of the SRK. ~~The Lukavica barracks were at the southern foot of Mojmilo Hills, held by the SRK.~~	*D. Milošević* Trial Judgement, paras. 122, 124
2835.	The SRK held Ilidža, Osijek, Butila and Blažuj and had mortars, air bomb launchers and air bombs in these locations. The SRK also held territory between Ilidža and Lukavica.	*D. Milošević* Trial Judgement, para. 123
2836.	Sokolovići, also known as Sokolović Kolonija, south of Ilidža, was held by the ABiH.	*D. Milošević* Trial Judgement, para. 123
2837.	Golo Brdo, south-east of Lukavica was held by the SRK. It offered a perfect view of the whole area under ABiH control, the "free territory", Hrasnica, Butmir and Sokolovići, and one could observe and immediately fire upon any military movement or movement of pedestrians, civilians and vehicles.	*D. Milošević* Trial Judgement, para. 124
2838.	In 1994, the ABiH controlled 80 per cent of Mount Igman. Poljane, an area on Mount Igman, was held by the SRK.	*D. Milošević* Trial Judgement, para. 125
2839.	The confrontation line in the north-west of Sarajevo ran from the Miljacka River along the railway tracks towards the north to the Rajlovac Barracks.	*D. Milošević* Trial Judgement, para. 126
2840.	Between August 1994 and November 1995, Vogošća and the area to the west and north-west of the confrontation line were controlled by the SRK. The Pretis factory in Vogošća was under the control of the SRK.	*D. Milošević* Trial Judgement, para. 128
2841.	Ilijaš was also controlled by the SRK.	*D. Milošević* Trial Judgement, para. 128
2842.	The SRK held the north-western slopes of Žuč Hill towards Vogošća and Rajlovac.	*D. Milošević* Trial Judgement, para. 129

Proposed Fact No.	Adjudicated Fact	Source
2843.	The slopes towards the city from Žuč Hill and Mali Hum were under the control of the ABiH. From Mali Hum, Lt. Col. Butt added, one had an excellent view of Sarajevo, especially of Skenderija, the Jewish Cemetery, Vrbanja Bridge, the Marshal Tito Barracks and Debelo Brdo.	*D. Milošević* Trial Judgement, para. 130
2844.	Sedrenik was a settlement in the north-east of Sarajevo, and was held by the ABiH.	*D. Milošević* Trial Judgement, para. 131
2845.	The ABiH also controlled several hills and elevations close to the central parts of Sarajevo, such as Debelo Brdo, Čolina Kapa, Mojmilo Hill, Žuč Hill and Hum Hill. However, most of these hills, or elevations, in particular, those on the confrontation lines in the south and in the south-east, were overlooked by territory controlled by the SRK.	*D. Milošević* Trial Judgement, para. 138
2846.	The ABiH held most of the Igman area in the south-west.	*D. Milošević* Trial Judgement, para. 138
2847.	Sarajevo was encircled by the SRK between August 1994 and November 1995.	*D. Milošević* Trial Judgement, para. 139
2848.	Špicasta Stijena ridge was held by the SRK, and the ABiH was located at the foot of the hill.	*D. Milošević* Trial Judgement, para. 140
3. Command and Communication		
~~2849.~~	~~From August 1994 to November 1995, the SRK headquarters in Lukavica functioned well.~~	*D. Milošević* Trial Judgement, para. 801
2850.	As SRK Commander, Dragomir Milošević held regular meetings with his subordinate staff, once or twice a month, and held briefings after visiting the confrontation lines.	*D. Milošević* Trial Judgement, para. 801
2851.	Dragomir Milošević, in his capacity as SRK Commander, controlled the use of ammunition.	*D. Milošević* Trial Judgement, para. 803
2852.	On 23 April 1995, SRK Commander Dragomir Milošević ordered all unit commands to submit information on the daily use of all types of ammunition and ordered that the quantities of ammunition issued and consumed be monitored and registered.	*D. Milošević* Trial Judgement, para. 803
2853.	On several occasions, SRK Commander Dragomir Milošević warned subordinate officers not to allow unnecessary use of ammunition.	*D. Milošević* Trial Judgement, para. 803
2854.	SRK Commander Dragomir Milošević regularly toured the confrontation lines and visited the different SRK units at their positions.	*D. Milošević* Trial Judgement, para. 804
2855.	SRK Commander Dragomir Milošević was respected and highly esteemed by the SRK soldiers.	*D. Milošević* Trial Judgement, para. 805
~~2856.~~	~~SRK Commander Dragomir Milošević exercised effective command over the SRK and over operations around the city of Sarajevo.~~	*D. Milošević* Trial Judgement, para. 809
2857.	In the SRK, orders were often communicated to the lower levels orally by phone or radio.	*D. Milošević* Trial Judgement, para. 809
2858.	From August 1994 to November 1995, the operation centres of the SRK brigades received daily reports and prepared reports which were sent to the corps command.	*D. Milošević* Trial Judgement, para. 809

Proposed Fact No.	Adjudicated Fact	Source
2859.	The SRK operations centre could enquire from SRK brigade operations officers whether certain orders were carried out.	*D. Milošević* Trial Judgement, para. 809
2860.	After the signing of the Anti-Sniping Agreement on 14 August 1994, the number of sniper casualties immediately and sharply declined, although this did not last more than two or three months.	*D. Milošević* Trial Judgement, para. 815
2861.	SRK Commander Dragomir Milošević issued orders pertaining to positions of artillery pieces and to artillery ammunition.	*D. Milošević* Trial Judgement, para. 819
2862.	The SRK used modified air bombs, and air bomb launchers.	*D. Milošević* Trial Judgement, para. 822
2863.	SRK Commander Dragomir Milošević was directly involved in the deployment of **modified air bombs and air bomb launchers**.	*D. Milošević* Trial Judgement, para. 822
2864.	On 15 July 1995 SRK Commander Dragomir Milošević requested the Main Staff of the VRS to approve the issuance of 100 FAB-100s and 100 FAB-250s.	*D. Milošević* Trial Judgement, para. 822
2865.	On 10 August 1994, SRK Commander Dragomir Milošević ordered that air bomb launchers be "ready for firing at Moševićko Brdo structure and 2 launchers for firing at Gradina, Konjsko Brdo and Velika Bukva."	*D. Milošević* Trial Judgement, para. 822
~~2866.~~	~~In June 1994 the Main Staff of the VRS issued an order to the SRK stressing that it was the Main Staff of the VRS that was to decide on the use of air bombs.~~	*D. Milošević* Trial Judgement, para. 823
2867.	On 26 April 1995 General Mladić issued an order to SRK Commander Dragomir Milošević stating that "we are in possession of information that you are planning to use two air bombs against enemy targets and settlements in the area of Sarajevo, in the evening or during the night of 26.04.1995" and General Mladić reminded Dragomir Milošević that it was his duty to inform him about the planned use of air bombs.	*D. Milošević* Trial Judgement, para. 824
2868.	In a report to the VRS Main Staff dated 15 June 1995, SRK Commander Dragomir Milošević wrote that air bomb launchers "are grouped in the brigades in the north western part of the front and are used throughout the SRK zone of responsibility as required and as decided by the SRK commander".	*D. Milošević* Trial Judgement, para. 825
2869.	On 21 April 1995, the SRK Commander Dragomir Milošević ordered the preparation of launchers for air bombs and to ensure that "four to six aerial bombs can be launched simultaneously against the designated target, the condition being that they must hit the target, which means that provisions have to be made for more bombs so that, in the event of a miss, the next projectile lands on the target."	*D. Milošević* Trial Judgement, para. 826
2870.	On 19 April 1995, the SRK Commander Dragomir Milošević, in response to information indicating that "the enemy is preparing for actions", ordered all units to have "launching pads and aerial bombs ready for firing on the town".	*D. Milošević* Trial Judgement, para. 834
2871.	On 16 May 1995, the SRK Commander Dragomir Milošević ordered the Ilidža Brigade to "immediately prepare an aerial bomb launcher with at least five aerial bombs" to be ready to fire at his command, with the launchers being "roughly aimed at the airport". Milošević further ordered the SRK 3rd Sarajevo Brigade to "immediately transfer their aerial bomb launcher to the Trebević sector (near what used to be *Jugobanka*) with five aerial bombs" and to "inform the SRK Command of their readiness for movement and arrival at destination."	*D. Milošević* Trial Judgement, para. 835

Proposed Fact No.	Adjudicated Fact	Source
2872.	Lower level SRK units regularly sent reports to the higher commands, as SRK Commander Dragomir Milošević himself had ordered. The reports also included information about civilian casualties.	*D. Milošević* Trial Judgement, para. 843
2873.	SRK Commander Dragomir Milošević knew about allegations that SRK forces had targeted civilians.	*D. Milošević* Trial Judgement, para. 845
~~2874.~~	~~SRK Commander Dragomir Milošević visited SRK-held areas from which civilians were targeted.~~	*D. Milošević* Trial Judgement, para. 845
~~2875.~~	~~SRK Commander Dragomir Milošević was aware of the crimes committed by SRK units.~~	*D. Milošević* Trial Judgement, para. 845
2876.	SRK Commander Dragomir Milošević received protest letters from UNPROFOR about crimes committed by SRK troops.	*D. Milošević* Trial Judgement, para. 846
2877.	In a letter dated 30 June 1995, Col. Meille lodged a protest with SRK Commander Dragomir Milošević regarding several shelling attacks on civilian targets in the city of Sarajevo on 28 and 29 June 1995, in particular the shelling of the TV Building on 28 June 1995, the shelling of a residential area in Alipašino Polje, the firing at residential buildings in the city centre and the shelling of the PTT Building on 29 June 1995. A copy of the same letter was also sent to General Mladić on 1 July 1995.	*D. Milošević* Trial Judgement, para. 852
2878.	On 6 April 1995, SRK Commander Dragomir Milošević issued an order to the Ilidža Brigade to "immediately prepare a launcher with an aerial bomb and transport the bomb for launching." Further, the order stated that "[t]he most profitable target must be selected in Hrasnica or Sokolović [K]olon[ija] where the greatest casualties and material damage would be inflicted."	*D. Milošević* Trial Judgement, para. 854
2879.	On 7 November 1994 General Mladić issued an order stating: "I have an information that on 5 November 1994 a meeting took place between local Serb leaders of Serbian Sarajevo in Vogošća, at which the Sarajevo-Romanija Corps Commander was also present, and at which a decision was made to block the UNPROFOR, to confiscate heavy technical equipment under the UNPROFOR's control, and to shell civilian targets in Sarajevo with heavy weaponry." General Mladić also stated in the same order that he "forbid all use of weapons of bigger calibre on civilian targets in Sarajevo without my approval."	*D. Milošević* Trial Judgement, paras. 855–856
2880.	On 12 or 16 August 1994 SRK Commander Dragomir Milošević issued an order bringing the SRK units to full combat readiness, ordering the 4th Mixed Artillery Regiment to "draw up a fire plan in the region of Baščaršija and Vrbanja" and that "[f]ire is to be open in compliance with the order of the SRK Commander".	*D. Milošević* Trial Judgement, para. 857
2881.	VRS regulations dated June 1992, setting out the application of international law, stated: "Commanders and commanding officers and each member of the army or other armed formation taking part in combat activities shall be responsible for the application of the rules of international laws of war. The competent superior officer shall initiate proceedings for sanctions as provided by the law against individuals who violate the international laws of war".	*D. Milošević* Trial Judgement, para. 860
2882.	On 19 June 1995 SRK Commander Dragomir Milošević informed all SRK officers and unit members that the law on military courts and the law on the military prosecutor's office during a state of war applied.	*D. Milošević* Trial Judgement, para. 861

Proposed Fact No.	Adjudicated Fact	Source
	4. Shelling and Sniping Campaign carried out in Sarajevo between 1992 and August 1994	
2883.	The State Hospital was the target of shelling and sniping in the 1992 to 1994 period.	*D. Milošević* Trial Judgement, para. 151
2884.	Following the decision of the JNA to evacuate the hospital on 9 May 1992, the VRS deliberately targeted it and was intent on destroying vital parts of the hospital.	*D. Milošević* Trial Judgement, para. 151
2885.	At the start of the conflict, the population in the ten municipalities of Sarajevo comprised approximately 500,000 persons.	*D. Milošević* Trial Judgement, para. 154
2886.	Between 40,000 and 60,000 Bosnian Serbs remained in Sarajevo within the confrontation lines.	*D. Milošević* Trial Judgement, para. 158
2887.	Approximately 90 per cent of all civilians who were killed in Sarajevo were killed inside the confrontation lines, that is, on ABiH-held territory.	*D. Milošević* Trial Judgement, para. 160
2888.	Fire fighters within the confrontation lines had to work under shell and sniper fire.	*D. Milošević* Trial Judgement, para. 167
	5. Investigation by BiH Police and BiH Police Reports	
2889.	The BiH investigation teams were led by an investigative judge, unarmed, did not wear uniforms and included a criminal inspector, a forensic technician or a crime scene officer and, if the incident concerned a shelling, a member of a bomb squad.	*D. Milošević* Trial Judgement, para. 175
2890.	Under law in BiH, it was possible that another member of the investigation team would take charge of the investigation in the absence of the judge.	*D. Milošević* Trial Judgement, para. 175
2891.	Members of investigative teams were trained in investigation techniques, including the determination of direction of fire, through courses and field experience, and were sometimes taught techniques by UN personnel. If officers were inexperienced, they conducted their tasks under the supervision of a more experienced police officer.	*D. Milošević* Trial Judgement, para. 176
2892.	UNMOs attended the scenes of shelling or sniping incidents on a regular basis and UNPROFOR was involved in some investigations.	*D. Milošević* Trial Judgement, para. 178
~~2893.~~	~~In general, there were no restrictions on the movement of UNMOs.~~	*D. Milošević* Trial Judgement, para. 179
2894.	When investigating shelling incidents between August 1994 and November 1995, the BiH police and UN personnel used the same basic method for determining the origin or direction of fire.	*D. Milošević* Trial Judgement, para. 180
2895.	The BiH police and UNMOs also investigated shelling incidents involving modified air bombs.	*D. Milošević* Trial Judgement, para. 181
~~2896.~~	~~The direction of fire of air bombs is determined through an analysis of the centre of the explosion and the traces left by the explosion.~~	*D. Milošević* Trial Judgement, para. 181
~~2897.~~	~~It is impossible for anyone to try and tamper with a crater, not only because there would be too many witnesses to such an activity, but also because in order to falsify traces in hard surfaces, such as asphalt, so as to make them appear to have been caused by shrapnel, one would have to hammer hard at the surface. People walking over the crater could not change the traces left in the surface.~~	*D. Milošević* Trial Judgement, para. 186

Proposed Fact No.	Adjudicated Fact	Source
~~2898.~~	~~The methods of investigating the incident site by the RS police were almost identical to the methods of the BiH police.~~	*D. Milošević* Trial Judgement, para. 187
~~2899.~~	~~The BiH police investigation teams produced investigation reports that are generally reliable.~~	*D. Milošević* Trial Judgement, para. 189
	6. Sniping and Shelling Campaign between August 1994 and November 1995	
~~2900.~~	~~Between August 1994 and November 1995, the people living in the area of Sarajevo within the confrontation lines were continuously shelled and sniped.~~	*D. Milošević* Trial Judgement, para. 195
~~2901.~~	~~Between August 1994 and November 1995, the level of sniping was almost constant, independent of the fluctuations and the intensity of the armed conflict.~~	*D. Milošević* Trial Judgement, para. 195
~~2902.~~	~~Artillery and mortar explosions were a daily occurrence in Sarajevo.~~	*D. Milošević* Trial Judgement, para. 197
2903.	The level of shelling at the end of June 1995 was so high that the four teams of UNMOs deployed around Sarajevo had to prioritise the incidents they investigated, based on whether or not there were casualties, because they could not investigate them all.	*D. Milošević* Trial Judgement, para. 197
~~2904.~~	~~During the later part of August 1995, tension around Sarajevo increased and a pattern of random shelling by "the Serbs" of a few rounds a day was established by the end of that month.~~	*D. Milošević* Trial Judgement, para. 197
2905.	Between 30 August 1994 and 9 November 1995, there were 214 sniping and shelling incidents investigated by the BiH police.	*D. Milošević* Trial Judgement, para. 200
~~2906.~~	~~A sniper would be able to distinguish between a combatant and a non-combatant.~~	*D. Milošević* Trial Judgement, para. 207
~~2907.~~	~~Snipers targeted places where civilians gathered, including, for example, markets, trams and where people queued for food and water.~~	*D. Milošević* Trial Judgement, para. 208
~~2908.~~	~~Trams and people on trams were targeted. Trams were a favourite target of snipers inside of Sarajevo because of the psychological impact it had on the people of Sarajevo.~~	*D. Milošević* Trial Judgement, para. 214
~~2909.~~	~~Trams were targeted by shelling, forcing trams to the depot, which was also shelled on many occasions, destroying several trams.~~	*D. Milošević* Trial Judgement, para. 216
2910.	Trams were fired upon by the SRK from Grbavica.	*D. Milošević* Trial Judgement, para. 217
2911.	The operation of trams was impeded by irregular power supply. The Bosnian Serbs controlled the Reljevo transformer station and, as such, in 1994 and 1995, they could stop the operation of the trams if they chose to.	*D. Milošević* Trial Judgement, para. 220
2912.	Buses were also subject to sniping as well as shelling.	*D. Milošević* Trial Judgement, para. 221
~~2913.~~	~~The trams targeted in the city of Sarajevo had civilian status.~~	*D. Milošević* Trial Judgement, para. 224
2914.	There was an excellent view of Marindvor from the Jewish Cemetery and the distance the snipers had to shoot from the Jewish Cemetery and Grbavica to Marindvor was short.	*D. Milošević* Trial Judgement, para. 225

Proposed Fact No.	Adjudicated Fact	Source
2915.	The most infamous place for sniping was the street Zmaja od Bosne, aka "Sniper Alley", which ran along the city's east-west axis; it was under constant sniper fire.	*D. Milošević* Trial Judgement, para. 226
2916.	The area of Zmaja od Bosne around the Museum and the Holiday Inn was particularly vulnerable and became known as "Snipers' Corner".	*D. Milošević* Trial Judgement, para. 227
2917.	The source of the sniper fire along "Sniper Alley" was Grbavica in SRK-held territory; the Metalka Building and the "sky-scrapers", high-rise buildings in Grbavica, were well-known SRK sniper positions.	*D. Milošević* Trial Judgement, para. 228
2918.	The SRK was positioned in the Invest Bank Building and their snipers could fire from the top of this building onto Zmaja od Bosne.	*D. Milošević* Trial Judgement, para. 228
2919.	Other areas that were particularly exposed to sniping were concentrated around intersections and bridges across the Miljacka River. For instance, the Butmir Bridge and civilians using the bridge were targeted. Sokolovići, Skenderija, the railway station and the area near Koševo Stadium were also under "constant" sniper fire, as was Dobrinja.	*D. Milošević* Trial Judgement, para. 231
2920.	People were killed by fire from Špicasta Stijena, Mount Trebević, Vraca, the Jewish Cemetery, and the curve of the Lukavica-Pale road above Skenderija, precisely above Debelo Brdo	*D. Milošević* Trial Judgement, para. 232
	7. Sniping Incident, 8 October 1994 (Karadžić Indictment Schedule F11)	
2921.	**On 8 October 1994,** Alma Ćutuna was shot while she was travelling on a tram on Zmaja od Bosne.	*D. Milošević* Trial Judgement, para. 254
2922.	No ABiH soldiers were on the tram and there were no military activities or establishments in the area.	*D. Milošević* Trial Judgement, para. 254
2923.	A cease-fire was in place that day.	*D. Milošević* Trial Judgement, para. 254
2924.	Shots were fired at and hit the crowded tram around 1200 and 1210 hours, when it was running east, in the direction of the Presidency Building and Baščaršija, between the National Museum and the Faculty of Philosophy, in front of the Holiday Inn.	*D. Milošević* Trial Judgement, para. 255
2925.	Alma Ćutuna was wounded on the left side of her head by a piece of shard and shot in her right upper leg, where the shot severed an artery.	*D. Milošević* Trial Judgement, para. 256
2926.	Alma Ćutuna was taken to the State hospital and received surgery.	*D. Milošević* Trial Judgement, para. 256
2927.	Alma Ćutuna still suffers from poor circulation in her leg and needs help with day-to-day activities.	*D. Milošević* Trial Judgement, para. 256
2928.	The type of weapon used was automatic fire most likely with a M84 or M53 machinegun, since there were a number of victims and several shots were fired at a rapid rate.	*D. Milošević* Trial Judgement, para. 260
2929.	Further to the shooting of the tram carrying Alma Ćutuna, there is evidence of two other sniping incidents that took place in the same area and within minutes of each other.	*D. Milošević* Trial Judgement, para. 261
2930.	The sniping of the two trams and the children had resulted in 11 casualties, including Alma Čutuna.	*D. Milošević* Trial Judgement, para. 262

Proposed Fact No.	Adjudicated Fact	Source
2931.	The visibility on 8 October 1994 was sufficient to allow a sniper at the Metalka Building to identify and target a tram negotiating the S-curve.	*D. Milošević* Trial Judgement, para. 265
2932.	The shots came from the direction of the Metalka Building, which was held by the SRK. The shots were fired by a member of the SRK.	*D. Milošević* Trial Judgement, para. 266
	8. Sniping Incident, 24 October 1994	
~~2933.~~	~~On 24 October 1994, Adnan Kasapović and two of his friends, all fourteen years of age, went to the so-called Vemeks department store in Vojničko Polje. Adnan Kasapović was dressed in a black or grey tracksuit, the other two were wearing a blue tracksuit and jeans and a black T-shirt respectively.~~	*D. Milošević* Trial Judgement, para.380
~~2934.~~	~~There was no military activity in the area that day, nor were ABiH soldiers in the area.~~	*D. Milošević* Trial Judgement, para.380
~~2935.~~	~~In a passageway to one side of the Vemeks department store, Adnan Kasapović was shot.~~	*D. Milošević* Trial Judgement, para. 393
~~2936.~~	~~The bullet had entered from the front right shoulder of Adnan Kasapović's body, passed to the left of his lungs and exited near his back left shoulder. Adnan Kasapović died on the way to the Dobrinja Hospital.~~	*D. Milošević* Trial Judgement, para. 384
~~2937.~~	~~The shooting had come from the School of the Blind. The School of the Blind was held by the SRK and was known as a sniper location. The shots were fired by a member of the SRK.~~	*D. Milošević* Trial Judgement, paras. 385, 389, 393
	9. Sniping Incident, 18 November 1994 (Karadžić Indictment Schedule F12)	
2938.	There was a cease-fire in place on 18 November 1994 and the trams were running.	*D. Milošević* Trial Judgement, para. 325
2939.	There were no soldiers around and no combat going on in the area at the time.	*D. Milošević* Trial Judgement, para. 326
2940.	Dženana Sokolović and her son, Nermin Divović, were shot as they crossed the Franje Račkog Street, at the zebra-crossing.	*D. Milošević* Trial Judgement, para. 327
2941.	Nermin Divović died on the way to the hospital and was taken to the mortuary.	*D. Milošević* Trial Judgement, para. 328
2942.	Dženana Sokolović and her daughter were taken to Koševo Hospital by a UN vehicle. Dženana Sokolović underwent surgery and stayed in hospital for seven or eight days. She was unable to attend her son's funeral. Since the incident, she has not been able to hold a full-time job.	*D. Milošević* Trial Judgement, para. 328
2943.	The shots came from the Metalka Building, which was located at the end of the Franje Račkog Street and across the river.	*D. Milošević* Trial Judgement, para. 329
2944.	From the Metalka Building, it would have been possible to identify Dženana Sokolović and her child as an adult and a child, even with the naked eye as the relative size of the child compared to the mother was very obvious at that range.	*D. Milošević* Trial Judgement, para. 329
2945.	Dženana Sokolović was shot in the right side of her body and that the bullet went through her abdomen and exited on the left side, continuing through Nermin Divović's head.	*D. Milošević* Trial Judgement, para. 340

Proposed Fact No.	Adjudicated Fact	Source
2946.	The shot that killed Nermin Divović and wounded Dzenana Sokolović, both civilians, originated from the Metalka Building, a known SRK sniper position. The shots were fired by a member of the SRK.	*D. Milošević* Trial Judgement, para. 341
	10. Sniping Incident, 21 November 1994	
~~2947.~~	~~On 21 November 1994, a tram, ordered to return to the depot at Alipašin Most due to the intensity of the shelling in the centre of Sarajevo, picked up a group of passengers. The passengers were mainly women and children, as well as some elderly and young people.~~	*D. Milošević* Trial Judgement, para. 267
~~2948.~~	~~No military personnel got onto the tram with that group of passengers.~~	*D. Milošević* Trial Judgement, para. 267
~~2949.~~	~~When the tram reached the intersection between the National Museum and the Holiday Inn, a projectile fell one or one and a half metres in front of the tram. The windscreen was shattered, the front section of the tram was damaged, all the windows were broken and there was shrapnel inside the tram.~~	*D. Milošević* Trial Judgement, para. 268
~~2950.~~	~~The glasses of Hajrudin Hamidić had been shattered and he was bleeding profusely.~~	*D. Milošević* Trial Judgement, para. 268
~~2951.~~	~~The tram was fired at with sniper fire immediately after being targeted by the rocket projectile.~~	*D. Milošević* Trial Judgement, para. 276
~~2952.~~	~~A wounded woman disembarked from the tram and an ambulance was called to assist.~~	*D. Milošević* Trial Judgement, para. 270
~~2953.~~	~~The tram was hit by a M80 hand-held rocket which was used by the JNA, and had a range of 1,300 metres.~~	*D. Milošević* Trial Judgement, paras. 273, 276
~~2954.~~	~~The sniper fire and the rocket projectile originated from the high rise buildings at Grbavica which were held by the SRK. The shots were fired by a member of the SRK.~~	*Milošević* Trial Judgement, para. 276
	11. Sniping Incident, 23 November 1994 (Karadžić Indictment Schedule F14)	
2955.	**On 23 November 1994,** Afeza Karačić and her sister took a tram to Otoka, where they lived. Just before 1600 hours, Sabina Šabanić took a tram home from work. Sabina Šabanić and Afeza Karačić were on the same crowded tram.	*D. Milošević* Trial Judgement, para. 277
2956.	It was a clear day and there was still natural light at that time of the afternoon. There were no leaves on the trees.	*D. Milošević* Trial Judgement, para. 278
2957.	No soldiers were on the tram, and there were no soldiers or any ABiH vehicles in the area.	*D. Milošević* Trial Judgement, para. 278
2958.	From Baščaršija, the tram ran towards the West, on Zmaja od Bosne, in the direction of the Technical School and the Marshal Tito Barracks. When the tram reached the area of Marindvor, it was shot by a sniper.	*D. Milošević* Trial Judgement, para. 279
2959.	Afeza Karačić was standing in the middle of the tram, at the connecting platform between the front and the rear cars of the tram, facing east, when she was shot.	*D. Milošević* Trial Judgement, para. 281
2960.	The bullet came from Afeza Karačić's right, entered her upper right shoulder and exited slightly lower on the right arm, severing a nerve.	*D. Milošević* Trial Judgement, para. 281
2961.	Sabina Šabanić was standing at the back of the front section of the tram, facing Grbavica. She was hit in the front right shoulder and the bullet exited two inches lower at the back of the same shoulder.	*D. Milošević* Trial Judgement, para. 282

Proposed Fact No.	Adjudicated Fact	Source
2962.	Afeza Karačić and Sabina Šabanić were taken to the Koševo Hospital Trauma Clinic.	*D. Milošević* Trial Judgement, para. 283
2963.	Afeza Karačić had several operations as a result of which her arm was shortened by six centimetres. Due to her injuries, she has 80 per cent disability; she cannot drive a car or write properly and has difficulty eating with her right hand.	*D. Milošević* Trial Judgement, para. 283
2964.	Sabina Šabanić stayed in hospital for four days. She could not use her arm properly and had difficulty eating and getting dressed, leaving her unable to work until March 1995.	*D. Milošević* Trial Judgement, para. 283
2965.	Afeza Karačić and Sabina Šabanić had been hit by one single bullet which fragmented.	*D. Milošević* Trial Judgement, para. 284
2966.	It was common for the Bosnian Serb Army to fire fragmentation bullets at trams that would fragment on impact, even through glass.	*D. Milošević* Trial Judgement, para. 284
2967.	The tram was shot at the intersection in front of the Holiday Inn, or shortly thereafter in front of the Marshal Tito Barracks between the two museums.	*D. Milošević* Trial Judgement, para. 288
2968.	The origin of fire was either the high-rise buildings on Lenjinova Street or the Metalka Building, both held by the SRK.	*D. Milošević* Trial Judgement, para. 288
2969.	The shots came from SRK-held territory. The shots were fired by a member of the SRK	*D. Milošević* Trial Judgement, para. 289
	12. Sniping Incident, 10 December 1994	
~~2970.~~	~~Sedrenik was a civilian area, with a civilian population.~~	*D. Milošević* Trial Judgement, para. 342
~~2971.~~	~~In the morning of 10 December 1994, there was a constant sniper fire into Sedrenik from Špicasta Stijena.~~	*D. Milošević* Trial Judgement, para. 355
~~2972.~~	~~At around 1100 hours, Derviša Selmanović went out into a friend's garden to get firewood when a bullet struck her knee on the inside of her leg. Immediately afterwards, another 20 to 30 bullets were fired at the house.~~	*D. Milošević* Trial Judgement, para. 356
~~2973.~~	~~Derviša Selmanović was taken to Koševo Hospital where it was established that she had received a light wound.~~	*D. Milošević* Trial Judgement, para. 356
~~2974.~~	~~In 2006, Derviša Selmanović stated that she still felt pain in her knee when she stood or walked for a long time or when the weather changed.~~	*D. Milošević* Trial Judgement, para. 357
~~2975.~~	~~Derviša Selmanović was shot with a machinegun. The shots came from the SRK-controlled ridge Špicasta Stijena. The shots were fired by a member of the SRK.~~	*D. Milošević* Trial Judgement, para. 364
	13. Sniping Incident, 27 February 1995 (Karadžić Indictment Schedule F15)	
2976.	A tram was fired upon on 27 February 1995 on Zmaja od Bosne, travelling westwards, from the centre of town toward Ilidža.	*D. Milošević* Trial Judgement, para. 290
2977.	There was a cease-fire in place and it was a peaceful day.	*D. Milošević* Trial Judgement, para. 290

Proposed Fact No.	Adjudicated Fact	Source
2978.	The weather conditions allowed for good visibility, with neither fog nor rain.	*D. Milošević* Trial Judgement, para. 290
2979.	Alma Mulaosmanović, maiden name Čehajić, aged 18, was on the tram on her way back home from school. Alija Holjan, a foreman of a street cleaning crew, was sitting on the right-side of the tram, next to an exit. They were both seriously injured in this incident.	*D. Milošević* Trial Judgement, paras. 291, 308
2980.	Alma Mulaosmanović and Alija Holjan were taken to the first-aid station of the State Hospital, and an elderly man and woman were also brought there.	*D. Milošević* Trial Judgement, para. 294
2981.	Since his injury, Alija Holjan cannot use his right hand for extended periods of time and experiences pain when the weather changes. He has been declared 20 per cent disabled.	*D. Milošević* Trial Judgement, para. 294
2982.	The incident had a psychological as well as a physical impact on the tram driver's life. Since the incident, she no longer works as a tram driver.	*D. Milošević* Trial Judgement, paras. 290, 294
2983.	30 bullet holes and marks were found on the left side of the tram just below and on the windows.	*D. Milošević* Trial Judgement, para. 295
2984.	The shots came from the high-rise buildings in Grbavica, to the South of the tram, from SRK held territory. The shots were fired by a member of the SRK	*D. Milošević* Trial Judgement, paras. 296, 307, 310
2985.	There was a clear view from the high-rise buildings on Lenjinova Street in Grbavica onto the intersection at the Marshal Tito Barracks.	*D. Milošević* Trial Judgement, para. 307
	14. Sniping Incident, 3 March 1995 (Karadžić Indictment Schedule F16)	
2986.	The third of March 1995 was the Muslim Bajram holiday. There was no military activity that morning and a cease-fire was in place.	*D. Milošević* Trial Judgement, para. 311
2987.	At around noon, a tram driven by Slavica Livnjak was travelling along Zmaja od Bosne from west to east, that is, from Čengić Vila toward Baščaršija.	*D. Milošević* Trial Judgement, para. 311
2988.	Alen Gičević, his girlfriend and Azem Agović were among the many passengers on the tram.	*D. Milošević* Trial Judgement, para. 312
2989.	Alen Gičević had been a member of the ABiH, but had been demobilised from the army nine months before this incident. He was wearing **black trousers** ~~a three-piece grey suit~~ on the day of the incident	*D. Milošević* Trial Judgement, para. 312
2990.	The tram was hit in the area of the Holiday Inn, close to the National Museum, just before the S-curve in the tram tracks.	*D. Milošević* Trial Judgement, paras. 313, 322
2991.	There were no military institutions, vehicles or equipment present in the vicinity of the incident site.	*D. Milošević* Trial Judgement, para. 313
2992.	Alen Gičević, Azem Agović, both civilians, were seriously injured by the shots.	*D. Milošević* Trial Judgement, paras. 314, 322
2993.	Alen Gičević left the tram and walked to the State Hospital with the help of his girlfriend. A part of the bullet was lodged in his knee and was extracted seven days later. Alen Gičević still suffers from this injury; his blood circulation is poor, he feels pain in his tibia and gets tired quickly.	*D. Milošević* Trial Judgement, para. 315

Proposed Fact No.	Adjudicated Fact	Source
2994.	Azem Agović was brought by a car to Koševo Hospital where he stayed for a month, 16 days of which were in intensive care. He required treatment for another three years and initially could not walk far, drive a car or carry heavy things.	*D. Milošević* Trial Judgement, para. 315
2995.	The shots came from Grbavica, which was SRK-held territory. The shots were fired by a member of the SRK.	*D. Milošević* Trial Judgement, paras. 322, 324
2996.	More than one bullet hit the tram and injured Azem Agović and Alen Gičević.	*D. Milošević* Trial Judgement, para. 322
2997.	The visibility on the day of the incident was sufficient for a shooter to identify the victims as civilians.	*D. Milošević* Trial Judgement, para. 323
	15. Sniping Incident, 6 March 1995 (Karadžić Indictment Schedule F17)	
2998.	On 6 March 1995, Tarik Žunić, aged 14 years, was walking home from his school in the Pofalići area to Sedrenik. He was wearing jeans and a green jacket and was carrying a blue rucksack.	*D. Milošević* Trial Judgement, para. 367
2999.	It was a cloudy day, but there was no fog.	*D. Milošević* Trial Judgement, para. 367
3000.	Tarik Žunić was hit in his right hand by a single bullet. The bullet entered the palm of his hand and exited at the wrist.	*D. Milošević* Trial Judgement, para. 369
~~3001.~~	~~The shots were fired from the M84, M87 or M53 machinegun.~~	*D. Milošević* Trial Judgement, paras. 370, 376
~~3002.~~	~~In 1995 Tarik Žunić still suffered pain when the weather changed.~~	*D. Milošević* Trial Judgement, para. 371
~~3003.~~	~~Many civilians had been hit by snipers in this area, especially in Sedrenik Street.~~	*D. Milošević* Trial Judgement, para. 373
3004.	Tarik Žunić, a civilian, was shot and seriously wounded by a machine gun from SRK-held positions at Špicasta Stijena when he was walking on Sedrenik Street and appeared from behind a sheet of canvas.	*D. Milošević* Trial Judgement, para. 378
3005.	There was no reason for the sniper to mistake Tarik Žunić for a combatant.	*D. Milošević* Trial Judgement, para. 378
	16. Sniping Incident, 14 May 1995	
~~3006.~~	~~On 14 May 1995, Jasmina Tabaković, a lawyer, was in her bedroom in an apartment in Dobrinja, which faced Bosnian Serb positions in Dobrinja I.~~	*D. Milošević* Trial Judgement, para. 247
~~3007.~~	~~Jasmina Tabaković was shot in her chest and died. The bullet passed through the plastic sheet that had replaced her window, passed through her body and eventually lodged in the wall behind a wardrobe.~~	*D. Milošević* Trial Judgement, para. 247
~~3008.~~	~~Dobrinja was divided between ABiH and SRK forces.~~	*D. Milošević* Trial Judgement, para. 248
~~3009.~~	~~The shot came from SRK positions in Dobrinja I. The shot was fired by a member of the SRK.~~	*D. Milošević* Trial Judgement, paras. 249, 250

Proposed Fact No.	Adjudicated Fact	Source
17. Shelling between August 1994 and November 1995		
~~3010.~~	~~During the course of the war about half a million shells were fired at Sarajevo.~~	*D. Milošević* Trial Judgement, para. 415
~~3011.~~	~~The civilian population in the city of Sarajevo was regularly the target of shelling by the SRK.~~	*D. Milošević* Trial Judgement, para. 417
~~3012.~~	~~The positions of the SRK on the hills around Sarajevo meant that the SRK could shell Sarajevo without restriction.~~	*D. Milošević* Trial Judgement, para. 417
~~3013.~~	~~The shelling was carried out in an indiscriminate manner.~~	*D. Milošević* Trial Judgement, para. 420
~~3014.~~	~~Civilian areas such as residential buildings, parks, cemeteries, market places and places where people collected water were regularly targeted by shelling.~~	*D. Milošević* Trial Judgement, paras. 423, 424
~~3015.~~	~~The hospitals within the confrontation lines were shelled and sniped, which was also the case before August 1994.~~	*D. Milošević* Trial Judgement, para. 425
3016.	Between August 1994 and November 1995, the State Hospital was hit about a dozen times and shells landed in its compound by fire coming from the Jewish Cemetery, Grbavica, Mount Trebević and Vraca.	*D. Milošević* Trial Judgement, para. 425
3017.	There were no military facilities in the immediate vicinity of the State Hospital in 1994 and 1995.	*D. Milošević* Trial Judgement, para. 426
3018.	The Koševo Hospital and the area around it was shelled.	*D. Milošević* Trial Judgement, para. 427
3019.	The State Hospital and the Koševo hospital were intentionally targeted by the SRK.	*D. Milošević* Trial Judgement, para. 428
3020.	The "Blue Routes", which were established in early 1994, were land routes over which basic necessities, such as food and medical supplies, could be brought into Sarajevo and which allowed civilians to move between different areas.	*D. Milošević* Trial Judgement, para. 429
3021.	No distinction was made as to who was on the "Blue Routes"; the UN, civilians, military personnel, humanitarian aid convoys and NGO personnel were all fired at by the SRK.	*D. Milošević* Trial Judgement, para. 430
3022.	During the period of May, June and July 1995, the SRK targeted UNPROFOR with shelling.	*D. Milošević* Trial Judgement, para. 432
18. Shelling Incident, 8 November 1994		
~~3023.~~	~~There was a cease-fire in force on 8 November 1994 and there had been no shelling for some time.~~	*D. Milošević* Trial Judgement, para. 444
~~3024.~~	~~On 8 November 1995, three shells impacted on Livanjska Street, between 1515 hours and 1800 hours.~~	*D. Milošević* Trial Judgement, para. 445
~~3025.~~	~~The first shell came from a north-westerly direction, Poljine, which was under the control of the SRK. The shell was fired by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 452, 463

Proposed Fact No.	Adjudicated Fact	Source
~~3026.~~	~~The second and third shells were fired from SRK-held territory in the north-east. The shells were fired by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 464
~~3027.~~	~~Three civilians, Lejla Hodžić, Dino Blekić, and Nena Deljanin were killed and six civilians were seriously injured as a result of the explosion of the first shell.~~	*D. Milošević* Trial Judgement, para. 465
~~3028.~~	~~Two civilians were injured by the explosions of the second and third shells; Muharem Aladjuz was lightly injured and Razija Šteta later died of her injuries.~~	*D. Milošević* Trial Judgement, para. 465
	19. Shelling Incident, 22 December 1994 (Karadžić Indictment Schedule G9)	
3029.	On the foggy morning of 22 December 1994, at around 0910 hours, two shells exploded on the Baščaršija flea market.	*D. Milošević* Trial Judgement, para. 466
3030.	The explosions resulted in civilian casualties; two civilians were killed and seven or eight were injured, three of them seriously.	*D. Milošević* Trial Judgement, para. 468
3031.	Investigations into this incident were carried out by the **Counter Sabotage Protection Department of the Bosnian Muslim Ministry of Interior (“**KDZ**”)**, the UNPROFOR French Battalion, and two UNMOS, Major Hanga Tsori Hammerton and Major Ilonyosi.	*D. Milošević* Trial Judgement, para. 469
3032.	Both shells that exploded on 22 December 1994 at the Baščaršija flea market, were fired from the south-east.	*D. Milošević* Trial Judgement, paras. 470, 473; *D. Milošević* Appeal Judgement, para. 229
	20. Shelling Incident, 7 April 1995 (Karadžić Indictment Schedule G10)	
3033.	In April 1995, Ziba Šubo, a homemaker, was living with her husband Zemir, her twin sons Elmir and Elvir, her daughter Emira Brajlović, and grandson Elvis Brajlović in a two-storey house at Alekse Šantića Street, number 1, Hrasnica, Ilidža Municipality.	*D. Milošević* Trial Judgement, para. 475
3034.	At about 0850 hours on 7 April 1995, a shell fell and destroyed Ziba Šubo’s house.	*D. Milošević* Trial Judgement, para. 478
3035.	Hrasnica was a civilian area.	*D. Milošević* Trial Judgement, paras. 480, 899, 900
3036.	Ziba Šubo still has back and arm pain from the injuries she suffered; her hearing is impaired and, since the day of the shelling, she suffers from high blood pressure. One of her sons also has problems hearing.	*D. Milošević* Trial Judgement, para. 482
3037.	The projectile that exploded in Hrasnica on 7 April 1995 was a modified air bomb.	*D. Milošević* Trial Judgement, paras. 488, 492
3038.	One civilian was killed and three civilians were injured, one of them seriously, as a result of the explosion of the modified air bomb.	*D. Milošević* Trial Judgement, para. 493
3039.	The explosion of the modified air bomb ~~caused substantial damage to houses in the vicinity of the explosion; the explosion~~ completely destroyed two houses and damaged at least ten other houses nearby.	*D. Milošević* Trial Judgement, para. 494

Proposed Fact No.	Adjudicated Fact	Source
3040.	The modified air bomb that exploded in Hrasnica on 7 April 1995 was fired from the area north-west of the impact site, in the area of Ilidža, an area that was controlled by the SRK.	*D. Milošević* Trial Judgement, paras. 490, 495
3041.	The modified air bomb was launched by members of the SRK.	*D. Milošević* Trial Judgement, para. 495
	21. Shelling Incident, 24 May 1995 – Safeta Zajke street (Karadžić Indictment Schedule G11)	
3042.	In May 1995, Anđa Gotovac lived in Safeta Zajke Street, number 43, near the railway technical school, across the tracks behind the Television Building, in the Novi Grad Municipality.	*D. Milošević* Trial Judgement, para. 496
3043.	It was a quiet day with no ABiH troops present and there had been no shooting between 0930 and 1000 hours	*D. Milošević* Trial Judgement, para. 497
3044.	A FAB-250 air bomb with fuel-air explosive, propelled by at least three rockets, hit Safeta Zajke Street on the morning of 24 May 1995.	*D. Milošević* Trial Judgement, para. 507
3045.	A piece of shrapnel was lodged deep into Anđa Gotovac's left shoulder, and this injury required surgery.	*D. Milošević* Trial Judgement, para. 499
3046.	Anđa Gotovac still has breathing problems and cannot lean back on her left side. She is permanently affected by the constant fear that [she] felt during that three and a half years. She takes medication to calm [her] nerves and cannot sleep more than three or four hours a night.	*D. Milošević* Trial Judgement, para. 499
3047.	The modified air bomb was fired from the SRK-controlled area of Lukavica by members of the SRK.	*D. Milošević* Trial Judgement, paras. 507, 508
3048.	Two civilians were killed and five civilians were seriously injured as a result of the explosion of the modified air bomb.	*D. Milošević* Trial Judgement, para. 507
	22. Shelling Incident, 24 May 1995 – Majdanska Street (Karadžić Indictment Schedule G12)	
3049.	A FAB-250 modified air bomb exploded on Majdanska Street in the afternoon of 24 May 1995.	*D. Milošević* Trial Judgement, para. 519
3050.	Two civilians were killed, and six civilians were injured, five of them seriously, as a result of the explosion on Majdanska Street.	*D. Milošević* Trial Judgement, para. 520
3051.	The modified air bomb that exploded in Majdanska Street originated from SRK-held territory and it was launched by members of the SRK.	*D. Milošević* Trial Judgement, para. 521
	23. Shelling Incident, 26 May 1995 (Karadžić Indictment Schedule G13)	
3052.	Safeta Hadžića Street was a residential area with apartment buildings and offices, close to the Majdanska Street.	*D. Milošević* Trial Judgement, para. 522
3053.	The weather was good on 26 May 1995, in Safeta Hadžića Street, Novi Grad Municipality.	*D. Milošević* Trial Judgement, para. 522

Proposed Fact No.	Adjudicated Fact	Source
3054.	It was a quiet day with no military operation going on in the area.	*D. Milošević* Trial Judgement, para. 523
3055.	A modified air bomb hit Safeta Hadžića Street on 26 May 1995.	*D. Milošević* Trial Judgement, para. 531
3056.	At least 14 persons were slightly injured and two persons were seriously injured as a result of this shelling. These persons were all civilians.	*D. Milošević* Trial Judgement, para. 532
3057.	The modified air bomb was fired from the area of Ilidža-Rajlovac, which was SRK-held territory. It was launched by members of the SRK.	*D. Milošević* Trial Judgement, para. 533
	24. Shelling Incident, 16 June 1995 – UMC (Karadžić Indictment Schedule G14)	
3058.	On 16 June 1995, a modified air bomb exploded at the University Medical Centre at Dositejeva Street, number 4a.	*D. Milošević* Trial Judgement, paras. 535, 538
3059.	Three or four civilians were injured as a result of the explosion, and ~~that~~ some surrounding buildings were destroyed.	*D. Milošević* Trial Judgement, para. 538
3060.	The modified air bomb was fired from outside the confrontation lines and within SRK-held territory and was launched by members of the SRK.	*D. Milošević* Trial Judgement, para. 539
	25. Shelling Incident, 16 June 1995 – Trg Međunarodnog Prijateljstva (Karadžić Indictment Schedule G15)	
3061.	On 16 June 1995, there was fine weather and good visibility.	*D. Milošević* Trial Judgement, para. 541
3062.	Trg Međunarodnog Prijateljstva, number 10, was located in a residential area, in Alipašino Polje, and across the street from the PTT Building, where UNPROFOR Sector Sarajevo Headquarters was based.	*D. Milošević* Trial Judgement, para. 542
3063.	The projectile that exploded ~~close to the local commune centre~~ on Trg Međunarodnog Prijateljstva 10, was a modified air bomb. Its explosion injured seven people.	*D. Milošević* Trial Judgement, para. 551
3064.	The modified air bomb was fired from a position under the control of the SRK and was launched by members of the SRK.	*D. Milošević* Trial Judgement, para. 552
	26. Shelling Incident, 16 June 1995 - Čobanija Street	
~~3065.~~	~~At around 1710 hours on 16 June 1995, in the Centar Municipality, a projectile struck a boiler room on Čobanija Street, number 7, causing damage to the building in which the boiler was located.~~	*D. Milošević* Trial Judgement, para. 554
~~3066.~~	~~The projectile that exploded on Čobanija Street in the evening of 16 June 1995 was a modified air bomb.~~	*D. Milošević* Trial Judgement, para. 560
~~3067.~~	~~At least three civilians were injured, two of whom seriously, as a result of the explosion of the modified air bomb.~~	*D. Milošević* Trial Judgement, para. 560

Proposed Fact No.	Adjudicated Fact	Source
~~3068.~~	~~The origin of fire of the modified air bomb would have been outside the confrontation lines and within SRK-held territory. The modified air bomb was launched by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 561
27. Shelling Incident, 28 June 1995		
~~3069.~~	~~On 28 June 1995, at about 1030 hours, a modified air bomb hit an apartment building on Geteova Street, number 5. Three people died in the explosion and seven people were injured, all civilians who lived in the apartment building.~~	*D. Milošević* Trial Judgement, paras. 440, 443
~~3070.~~	~~The projectile was fired from the direction of Ilidža, SRK-held territory.~~	*D. Milošević* Trial Judgement, paras. 441, 442
~~3071.~~	~~The modified air bomb originated from SRK-held territory and was launched by a member of the SRK.~~	*D. Milošević* Trial Judgement, para. 443
28. Shelling Incident, 1 July 1995		
~~3072.~~	~~Two modified air bombs fell on the evening of 1 July 1995, one on Bunički Potok Street and the other on Alekse Šantića Street.~~	*D. Milošević* Trial Judgement, para. 639
~~3073.~~	~~The explosion on Bunički Potok Street caused injuries to 13 civilians, two of whom were seriously injured.~~	*D. Milošević* Trial Judgement, para. 639
~~3074.~~	~~The modified air bombs were fired from the Ilidža area, which was controlled by the SRK. It was launched by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 640
29. Shelling Incident, 23 July 1995		
~~3075.~~	~~On 23 July 1995, a modified air bomb exploded on Bjelašnička Street.~~	*D. Milošević* Trial Judgement, para. 650
~~3076.~~	~~Two civilians were killed and 11 civilians were injured, some seriously, as a result of the explosion of the modified air bomb.~~	*D. Milošević* Trial Judgement, para. 651
~~3077.~~	~~The modified air bomb was fired from a north-westerly direction, from SRK-controlled territory and was launched by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 652
30. Shelling Incident, 28 August 1995 (Karadžić Indictment Schedule G19)		
3078.	On 28 August 1995, at 1110 hours, there was an explosion on Mula Mustafe Bašeskije Street, just outside the Markale Market.	*D. Milošević* Trial Judgement, para. 714
~~3079.~~	~~The direction of fire was 170 degrees, that is, Mount Trebević, which was SRK-held territory.~~	*D. Milošević* Trial Judgement, para. 719
3080.	At least 35 persons died and at least 78 persons were wounded, many of them seriously.	*D. Milošević* Trial Judgement, para. 721
3081.	The great majority of wounded were civilians. Only one of the deceased was a soldier of the ABiH. The other 34 deceased were civilians.	*D. Milošević* Trial Judgement, para. 721

Proposed Fact No.	Adjudicated Fact	Source
~~3082.~~	~~The mortar shell that struck the street in the vicinity of the Markale Market was fired from the territory under the control of the SRK by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 724
3083.	One of the victims, Djula Leka stayed in the hospital for four to five days. She still feels some pain in her shoulder and chest as a result of the injuries she received from the explosion. Medusa Klarić still has pieces of shrapnel in her body, one in her back, one near the kidney area and one below her right knee.	*D. Milošević* Trial Judgement, paras. 673, 674
31. Effects of Shelling and Sniping on Civilians		
3084.	UNPROFOR reported that at the end of June 1995 efforts to restore gas, water and electricity were blocked by the "Serb military", despite agreements to restore the utilities between Bosnian Muslim and Bosnian Serb civil leaders. Zdravko Tolimir stated that there would be no restoration of utilities until the fighting around Sarajevo was over.	*D. Milošević* Trial Judgement, para. 727
3085.	Food shortages meant that civilians living inside the confrontation lines were substantially dependent on humanitarian food aid.	*D. Milošević* Trial Judgement, para. 729
3086.	The Blue Routes were opened intermittently from August 1994 to November 1995. At such times, and when airplanes carrying humanitarian aid were able to land at Sarajevo Airport, the food situation improved.	*D. Milošević* Trial Judgement, para. 730
3087.	Between August 1994 and November 1995 the Blue Routes were subject to SRK fire and closure.	*D. Milošević* Trial Judgement, para. 730
3088.	At the end of May and early June 1995, the food situation in Sarajevo was rapidly deteriorating due to the closure of the land routes and the ongoing suspension of the humanitarian airlift as a result of the closure of Sarajevo Airport on 8 April 1995.	*D. Milošević* Trial Judgement, para. 730
3089.	An UNPROFOR report dated 19 May 1995 stated that UNHCR was only able to bring in 50 per cent of the city's food needs by land.	*D. Milošević* Trial Judgement, para. 730
3090.	Food convoys that reached Sarajevo on 22 June 1995 after a period of four weeks without any transport provided for only 20 per cent of the total need for food.	*D. Milošević* Trial Judgement, para. 730
3091.	An UNPROFOR report noted that in May and early June 1995, all sources of water, producing about 15 per cent of the pre-cut off level, were located in the eastern part of Sarajevo.	*D. Milošević* Trial Judgement, para. 731
~~3092.~~	~~From August 1994 to November 1995, the provision of medical services was severely affected as a result of the ongoing conflict. There was not enough electricity to run the machines or elevators and the State Hospital even rationed the use of generators. Food preparation, laundry and sterilisation were all done using firewood, or gas, if available. Small tanks were built to preserve water, which was occasionally provided by tankers, for a few days. However, only the most vital parts of the hospital were provided with electricity and the minimal quantities of water. There was no regular heating in the hospital, with the exception of one heater that was installed by using gas as an open source of energy.~~	*D. Milošević* Trial Judgement, para. 732
3093.	From August 1994 to November 1995 there were not enough medical supplies in Sarajevo. The outpatient and emergency wards at the State Hospital and the Medical Clinical Centre were supplied 100 per cent by the World Health Organisation.	*D. Milošević* Trial Judgement, para. 733
~~3094.~~	~~329 persons were wounded and 95 persons were killed in 214 shelling and sniping incidents investigated by the Bosnian Muslim police between 30 August 1994 and 9 November 1995.~~	*D. Milošević* Trial Judgement, paras. 737–738
~~3095.~~	~~From August 1994 to November 1995, people in Sarajevo were affected by the knowledge that one might be killed or wounded any day and by living in a city under siege for such a long time without basic necessities.~~	*D. Milošević* Trial Judgement, para. 740

Proposed Fact No.	Adjudicated Fact	Source
~~3096.~~	~~From August 1994 to November 1995, people in Sarajevo risked their lives every time they ventured out. It was dangerous to collect food and water.~~	*D. Milošević* Trial Judgement, para. 742
~~3097.~~	~~From August 1994 to November 1995, people in Sarajevo felt safer during lulls in the shelling and sniping but even then one was not safe and there was no way of knowing when the shelling and sniping would resume.~~	*D. Milošević* Trial Judgement, para. 743
~~3098.~~	~~From August 1994 to November 1995, people in Sarajevo knew that they could be shot at any moment and that shells could land anywhere.~~	*D. Milošević* Trial Judgement, para. 743
~~3099.~~	~~From August 1994 to November 1995, there were very few places where one could be entirely safe from shelling, except underground, under fortified cover or in the cave down by the Miljacka River. People would vary the routes that they took according to the areas of the city that were known to be particularly dangerous in order to ensure they were concealed from the view of snipers as much as possible, including by finding alternative ways to enter their homes.~~	*D. Milošević* Trial Judgement, para. 744
~~3100.~~	~~Some witnesses continue to suffer the psychological effects of the war by, for example, needing medication to remain calm, being unable to work, experiencing anxiety, difficulty sleeping, waking during the night because of thunder and believing it is an attack by the Bosnian Serbs, and being frightened by loud noise.~~	*D. Milošević* Trial Judgement, para. 746
~~3101.~~	~~From August 1994 to November 1995, Sarajevo was effectively besieged by the SRK. It was a siege in the sense that it was a military operation, characterised by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace.~~	*D. Milošević* Trial Judgement, para. 751
~~3102.~~	~~The purpose of the siege of Sarajevo was to compel the BiH Government to capitulate.~~	*D. Milošević* Trial Judgement, para. 751
~~3103.~~	~~From August 1994 to November 1995, civilians and civilian areas were sniped and shelled when the SRK had not achieved particular military objectives.~~	*D. Milošević* Trial Judgement, paras. 759, 752
3104.	Following a failed attack by the SRK to take Debelo Brdo on 16 to 17 May 1995, the SRK rained Sarajevo town with artillery and mortars and snipers were active all along the confrontation line.	*D. Milošević* Trial Judgement, para. 759
~~3105.~~	~~Another objective of the campaign of sniping and shelling was to maintain a psychological upper hand over UNPROFOR in order to prevent the UN from taking action.~~	*D. Milošević* Trial Judgement, paras. 760, 752
~~3106.~~	~~From August 1994 to November 1995, sniper fire against civilians within the confrontation lines primarily came from SRK-held territory. As a result of the sniping, civilians were seriously injured or killed. The shots, originating from SRK-held territory, were fired by members of the SRK.~~	*D. Milošević* Trial Judgement, para. 794
~~3107.~~	~~From August 1994 to November 1995, shelling against civilians within the confrontation lines primarily came from SRK-held territory and that, as a result of the shelling, civilians were seriously injured or killed. The shells, originating from SRK-held territory, were launched by SRK troops.~~	*D. Milošević* Trial Judgement, para. 796