IN THE TRIAL CHAMBER

Before:
Judge Alphons Orie, Presiding
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar:
Mr. Hans Holthuis

Decision of:
3 October 2002

PROSECUTOR
v.
STANISLAV GALIC

DECISION ON THE MOTION FOR THE ENTRY OF ACQUITTAL OF THE ACCUSED STANISLAV GALIC

The Office of the Prosecutor:

Mr. Mark Ierace

Defence Counsel:

Ms. Mara Pilipovic
Mr. Stéphane Piletta-Zanin

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I. INTRODUCTION

1. Pending before Trial Chamber I, Section B ("the 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 ("the Tribunal") is the motion for the entry of acquittal of the accused Stanislav Galic, filed on 2 September 2002 ("the Motion for Acquittal").

2. The accused Stanislav Galic ("the Accused") assumed command of the Sarajevo Romanija Corps ("the SRK") of the Bosnian Serb Army ("the VRS") on or about September 10, 1992 and remained in that position until about August 10, 1994. According to the Prosecution, the forces under his command and control conducted a campaign of sniping and shelling against the civilian population of Sarajevo during this period of time. As a result, the Accused is charged in the Indictment with crimes against humanity and violations of the laws or customs of war, namely:

   in count 1 with unlawfully inflicting terror upon civilians in violation of the laws or customs of war,
   in count 2 with murder as a crime against humanity,
   in count 3 with inhumane acts other than murder as a crime against humanity,
   in count 4 with attacks on civilians in violation of the laws or customs of war,
   in count 5 with murder as a crime against humanity,
   in count 6 with inhumane acts other than murder as a crime against humanity and
   in count 7 with attacks on civilians in violation of the laws or customs of war.

3. In support of these counts charged against the Accused, the Prosecution listed as an annex to the Indictment, and presented during the trial evidence regarding , 26 scheduled sniping incidents (collectively, "the Scheduled Sniping Incidents ")[1] and five scheduled shelling incidents (collectively, "the Scheduled Shelling Incidents").

4. After the end of Prosecution case, the Defence, within the time limit fixed by the Trial Chamber, has moved for entry of a judgement of total acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal ("the Rules").

5. The Prosecution filed on 16 September 2002 a "Prosecution's Response to the Submission of Stanislav Galic under Rule 98 *bis*" ("the Response"), in which , with the exception of Scheduled Sniping Incident No. 12, it opposes each ground raised in the Motion for Acquittal and requests that the Trial Chamber deny the relief sought and proceed on all counts in the Indictment.

6. The Chamber heard the oral submissions of the parties on 20 September 2002.

THE TRIAL CHAMBER, HAVING CONSIDERED the written and oral submissions of the parties,

HEREBY ISSUES ITS DECISION.

II. THE APPLICABLE STANDARD OF PROOF UNDER RULE *98BIS*

7. The Defence appears to consider that the applicable standard in deciding upon the Motion for Acquittal is whether there is sufficient evidence to prove the guilt of the Accused beyond a reasonable doubt with respect to the counts of the Indictment . The Prosecution counter-argues in its Response that the "appropriate standard of review under Rule *98bis* as to each count charged in the Indictment, contrary to the Defence submissions, is whether, as a matter of law, there is some evidence which, if accepted by the Trial Chamber, *could* sustain a conviction of the accused beyond a reasonable doubt."[2]

8. Rule 98 *bis* of the Rules provides in relevant part that:

> The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or *proprio motu* if it finds that the evidence is insufficient to sustain a conviction on that or those charges.

9. In the *Jelisic* Appeals Chamber Judgement,[3] the Appeals Chamber interpreted the requirement of Rule 98 *bis* to mean that a Trial Chamber must acquit in cases:

> "in which, in the opinion of the Trial Chamber, the prosecution evidence, if believed ,[4] is insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt. In this respect, the Appeals Chamber follows its recent holding in the *Delalic* appeal judgment, where it said: "[t]he test applied is whether there is evidence (if accepted) upon which a reasonable tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question."[5] The capacity[6] of the prosecution evidence (if accepted) to sustain a conviction beyond a reasonable doubt by a reasonable trier of fact is the key concept; thus the test is not whether the trier would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence (if accepted) but whether it could. At the close of the case for the prosecution , the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence , the prosecution has not in fact proved guilt beyond a reasonable doubt."

10. In its review of the Motion for Acquittal, the Trial Chamber will apply the standard of proof emanating from the jurisprudence of the Tribunal as laid out in the *Jelisic* Appeals Chamber Judgement since the Trial Chamber can discern no arguments or cogent reasons for departing from that standard of review. As stated in the *Aleksovski* Appeals Chamber Judgement, "a proper construction of the Statute [of the Tribunal] requires that the *ratio decidendi* of [the Appeals Chamber's] decisions is binding on Trial Chambers"[7] so long as the "question settled by … [the Appeals Chamber] is the same as the question that is raised by the facts of the subsequent case [before the Trial Chambers]."[8]

11. Several of the arguments raised by the Defence for acquittal would require the Trial Chamber to assess the reliability and credibility of witnesses. The question of whether reliability and credibility of witnesses should be considered in mid- trial motions for acquittal is intimately intertwined with the determination of the applicable standard implied by Rule 98 *bis*. By deciding that the standard is whether a reasonable tribunal of fact could on the basis of the evidence presented by the Prosecution convict the Accused, the Trial Chamber, in line with the jurisprudence of the Tribunal on that issue, will not assess the credibility and reliability of the evidence called by the Prosecution until all the evidence has been finally given ; however, where the evidence is so manifestly unreliable or incredible that no reasonable tribunal of fact could credit it, the evidence should be dismissed. Therefore , in examining the claims that follow, the Trial Chamber will not assess the credibility and reliability of witnesses unless the Prosecution case can be said to have "completely broken down,"[9] in that no trier of fact could accept the evidence relied upon by the Prosecution to maintain its case on a particular issue.

12. The Trial Chamber also observes that it may, in line with prior decisions, enter a judgement of acquittal with regard to a factual incident or event cited in the Indictment in support of the offence, if the Prosecutor's evidence on that particular incident does not rise to the level of the standard laid down in Rule 98 *bis*.[10]

III. THE SUBSTANCE OF THE MOTION FOR ACQUITTAL

13. The Motion for Acquittal raises both general and specific issues on respectively the allegations of sniping and shelling. The Trial Chamber will address these issues one after the other.

A. Issues Related to Sniping

14. The Defence offers several general arguments to the effect that the Prosecution did not prove that the VRS deliberately targeted civilians in Sarajevo by sniping , and then reviews each Sniping Incident individually to argue that the Prosecution failed to present evidence sufficient for criminal responsibility of the Accused to arise from these incidents. The Trial Chamber has considered the general arguments of the Defence before dealing with the Scheduled Sniping Incidents.

1. General Issues on Sniping

15. The Defence argues that the Prosecution failed to prove the Accused's guilt under counts 2 to 4 on the ground that it did not provide sufficient evidence that the victim(s) of each Sniping Incident were civilians. The Defence deems that a civilian is a person who has "no connection with the activities of the armed forces "[11] and claims that this cannot be proven

by merely describing the clothing, the activity at the time of the incident , the age or the sex of the victim(s). Rather, it supposes that "the activities of the said person (...) as well as its assignments in the specified period of time " be established,[12] which the Prosecution failed to do for any Sniping Incident. The Prosecution responds that, while "a prerequisite of an unlawful attack is that the victim is a civilian who is not taking an active part in hostilities",[13] the evidence should be assessed in light of the presumption, enshrined in Article 50 (I) of the Additional Protocol to the Geneva Conventions ("AP.I"), that "in case of doubt whether a person is a civilian, that person shall be considered to be a civilian".[14] While applying Rule 98 *bis*, the Trial Chamber is aware that a reasonable trier of fact will have to consider the meaning of words used in the Indictment in a specific legal context, such as the term "civilian" in times of armed conflict . The meaning of such words may have implications with respect to facts that need to be established. On the basis of the evidence presented and within the margin of interpretation of what should be established in order to make this determination , the Trial Chamber finds that a reasonable trier of fact could conclude beyond a reasonable doubt that the victims of the Sniping Incidents were civilians.

16. The Defence defines sniping as fire that comes from "rifles with optical sights , used for single shots"[15] and attaches considerable consequences to this definition as far as the burden of proof for the Prosecution is concerned.[16] The Prosecution responds that sniping should not be so narrowly defined and recalls that the Indictment defines sniping as "the deliberate targeting of civilians with direct fire weapons ".[17] The Trial Chamber first notes that the case focuses on whether civilians were targeted either deliberately or indiscriminately rather than on whether a specific type of weapon was used. The Trial Chamber also refers to the definition of sniping used in the common language [18] as well as to the different meanings of sniping reflected in the evidence[19] and concludes that, at this stage of the proceedings, it cannot subscribe to the narrow definition proposed by the Defence.

17. The Defence also argues that the intention to kill cannot be established if the perpetrator is not known. Noting that no evidence was brought by the Prosecution on the identity of the shooter in any Sniping Incident, the Defence concludes that "the Prosecutor has not proven a single deliberate killing" [20] or injury.[21] The Trial Chamber finds that it cannot be excluded that a reasonable trier of fact could, even without knowing the identity of the shooter, and on the basis of an evaluation of the circumstances under which the shooter acted, determine whether the killing or the infliction of injury was deliberate. The Defence also repeatedly refers to the proximity of the victim to the confrontation lines[22] at the time of the incident and argues that such proximity does not in any event permit the conclusion beyond reasonable doubt that the victim was deliberately targeted . Since the proximity of the victim to the confrontation lines in itself neither implies nor excludes that the victim was deliberately targeted, the Trial Chamber , in applying the standard of review laid down by the Appeals Chamber, finds that , at this stage, it cannot acquit the Accused on this basis.

18. The Defence further claims that the Prosecution has not shown that the accused ordered, aided and abetted, or even knew or could have known that any of the 27 Sniping Incidents occurred.[23] In particular , the Defence repeatedly claims that the Prosecution failed to determine the source of fire of a single Sniping Incident.[24] The Prosecution responds that it is not necessary, in order to prove the charges against the Accused, to precisely establish the source of fire. What needs to be proven is that "whoever fired the shot was subject to the command and control of the accused". In the Prosecution's view, this can be substantiated through circumstantial evidence such as the "direction of fire" and "a pattern of behaviour

of fire being deliberately aimed at civilians from the Bosnian Serb-held territory along that direction of fire", which would eliminate "any *reasonable* possibility that the shots came from the BiH side".[25] The Prosecution further specifies that "it is not the Prosecution case that the accused [personally ordered any of the Sniping Incidents]; rather, that he gave general orders to his subordinates to target civilians by means which included sniping ".[26] The Trial Chamber recognises that the Prosecution does not charge the Accused with having committed the Sniping Incidents himself, but rather bases its charges on the his involvement as the Commander of SRK during the period covered in the Indictment. In the present case, the Prosecution seeks to prove the alleged responsibility of the Accused substantially through circumstantial evidence. Such circumstantial evidence comprises the origin or direction of fire . However, it is not the only element which could be taken into account by a reasonable trier of fact in assessing the alleged responsibility of the Accused with regard to the Sniping Incidents. At this stage of the proceedings and applying the test of the *Jelisic* Appeals Chamber Judgement, the Trial Chamber deems that the origin of sniping fire need not be precisely established. It is sufficient that the Trial Chamber be satisfied that the evidence presented, if believed, would permit a reasonable tribunal of fact to conclude that the shot(s) originated from someone under the command and control of the Accused.

2. Scheduled Sniping Incidents

19. With respect to the Scheduled Sniping Incidents, the Defence repeatedly argues that no or insufficient evidence has been provided for criminal liability of the Accused to arise.[27] The Prosecution replies essentially by identifying specific elements from testimonies and other evidence adduced to argue that there is sufficient evidence for such criminal liability to arise.[28] Having reviewed the evidence under Rule 98 *bis*, the Trial Chamber finds that evidence has been presented by the Prosecution which, if accepted, could prove the crimes of which the Accused is charged with respect to the Scheduled Sniping Incidents. The Motion for Acquittal is therefore rejected with respect to all of the 26 Scheduled Sniping Incidents, except for Sniping Incidents No. 7, 12 and 19 which are discussed below.

(a) Scheduled Sniping Incident No.7

20. The Defence argues with respect to this incident that the Prosecution "has not shown the position of [the victim Hjrija Dizdarevic] when she was shot in order to determine the incoming angle of the bullet"[29] and that the shot which killed Mrs. Dizdarevic could have been a stray bullet or a ricochet from the nearby confrontation line. The Prosecution replies that the submitted evidence establishes that Mrs. Dizdarevic was killed by a bullet wound to the right temple and that the "victim, identifiably of the Muslim faith, praying in front of an open window facing the SRK positions, would have presented a prime target to SRK snipers who were instructed to shoot civilians."[30]

21. Based, among other things, on the testimony of Witness I and the Rule 92 *bis* statement of Ferzaheta Dzubur,[31] the Trial Chamber notes that sufficient evidence has been adduced to convince a reasonable trier of fact that Mrs. Dizdarevic was killed by a shot while being in her apartment. However, the circumstances of the killing remain unclear, especially in view of the location and of the absence of evidence which could precisely describe the circumstances of the shooting. Thus, the Trial Chamber considers that the totality of the evidence submitted in relation to Scheduled Sniping Incident No.7 does not provide a sufficient basis upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt that someone under the command and control of the Accused shot Mrs. Dizdarevic.

There is therefore no case for the Accused to answer in relation to Scheduled Sniping Incident No.7.

(b) Scheduled Sniping Incident No.12

22. The Accused argues that, with respect to this incident, there is no or insufficient evidence to determine either the affiliation of the person who shot and killed Mrs . Trto or the position from which this person shot his or her victim.[32] In its Response, the Prosecution concedes that, with respect to this incident, " it cannot meet its obligation of proof with respect to this scheduled incident."[33]

23. In light, among other things, of the Prosecution's concession, the Trial Chamber considers that the totality of the evidence relating to Sniping Incident No.12 does not provide a sufficient basis upon which a reasonable tribunal of fact could be satisfied beyond a reasonable doubt that someone under the command and control of the Accused shot Mrs. Trto. There is therefore no case for the Accused to answer in relation to Sniping Incident No.12.

(c)Scheduled Sniping Incident No.19

24. The Defence argues, with respect to this incident, that the wounding of Edin Husovic in front of a pizza restaurant was caused by a stray bullet and was not the result of a deliberate intent to target Mr. Husovic.[34] The Prosecution contends that there is consistent testimony indicating that Mr. Husovic was deliberately shot at from a distance with a machine gun.[35]

25. The Trial Chamber first notes that there is contradictory testimony as to the number of shots fired at Mr. Husovic, which casts a cloud on the sufficiency of the submitted evidence relating to this incident. Mr. Husovic testified that he heard about 20 shots fired in his direction,[36] Jonathan Hinchliffe, another witness, said that he inspected the site of the incident some eight years after the incident[37] and found traces of several bullet impacts on the ground.[38] Mirsad Abdurahmanovic, who was present by Mr. Husovic's side at the time of the incident, testified though that only one shot had been fired.[39]

26. The Trial Chamber observes that Mr. Husovic initially stated in a report drafted by the Sarajevo police on 3 March 1995 that the bullet that had injured him had been fired from Grbavica.[40] He however later changed his mind when, after discussions with a representative of the Prosecution , he realised that it was an improbable source of fire, and indicated during his testimony that he believed the shot to have been fired from Hrasno Brdo instead.[41] Should Hrasno Brdo be taken to be the source of fire, the distance from that area to the site of the incident[42] would represent considerable ground for a bullet which had been shot from either a rifle or machine to cover and hit a target. The Trial Chamber also notes the presence of buildings in the vicinity and towards the same direction, where the source of fire could have potentially come from. There is therefore outstanding uncertainty as to whether the bullet which injured Mr. Husovic could have been fired from Hrasno Brdo.

27. In light of these observations, the Trial Chamber considers that the totality of the evidence relating to Scheduled Sniping Incident No.19 does not provide a sufficient basis upon which a reasonable tribunal of fact could be satisfied beyond a reasonable doubt that the troops under the command of the Accused shot Mrs. Husovic . There is therefore no case for the

Accused to answer in relation to Scheduled Sniping Incident No.19.

B. Issues Relating to Shelling

28. The Defence offers several general arguments to the effect that the Prosecution did not prove that the VRS deliberately targeted civilians in Sarajevo by shelling , and then reviews each Scheduled Shelling Incident individually to argue that the Prosecution failed to present evidence sufficient for criminal responsibility of the Accused to arise from these incidents. The Trial Chamber will consider the general arguments of the Defence before dealing with the Scheduled Shelling Incidents.

1. General Issues on Shelling

29. The Defence argues that the Prosecution failed to prove that a campaign of shelling was conducted by the SRK against Sarajevo during the time period covered in the Indictment. The Defence claims that such conclusion would be incompatible with the desire of peace expressed by the Bosnian Serbs[43] and the evidence, presented among others through the expert witness Ewa Tabeau, of a decrease from May 1992 to August 1994 in the number of casualties. The Defence also notes the absence in the evidence of any written document that would support the thesis that the SRK had planned a campaign of shelling.[44] The Prosecution rejects the interpretation of the evidence suggested by the Defence ,[45] refers to witness testimony which , in its view, would prove the existence of a campaign and concludes that "[t]here is an irresistible inference to be drawn from the evidence of the frequency, intensity and geographical spread of the sniping and shelling attacks against civilians that it was a campaign".[46] Applying the standard of review laid down by the Appeals Chamber, the Trial Chamber finds that the arguments raised by the Defence would not necessarily prevent a reasonable trier of fact to conclude, in view of the evidence presented, that there was a campaign of shelling.

30. The Defence further argues that the evidence presented does not permit to rule out that the civilian casualties caused by shelling were either collateral damages or due to firing errors. The Defence claims that the Prosecution presented no evidence which would precisely locate the legitimate military targets in the city, although , in the Defence's view, it is well-known that legitimate military targets were spread throughout the city.[47] The Defence also refers to the movements of ABiH troops within the city and preparation of attacks by the ABiH from within the city, which would justify military action by the SRK.[48] Further, the Defence points to evidence showing, in its view, that the ABiH used mobile mortars which , while constituting legitimate military targets, by essence moved throughout the city and could justify shelling in areas where there was no fixed legitimate military targets. To the Defence, evidence presented also shows that the mortars used had a targeting zone of around 300 to 400 meters and were not precise enough for the Trial Chamber to be able to conclude beyond a reasonable doubt that it landed where it was intended to land.[49] The Prosecution responds that evidence on the location of legitimate military targets was presented .[50] It also claims that evidence shows that the SRK was able to fire mortars with a high degree of accuracy.[51] To the Prosecution, the Defence's arguments basically consist of maintaining that "when a shell landed anywhere within a circle with a diameter of 600 to 800 metres centred on a legitimate target, civilian casualties were lawfully incurred,"[52] a proposition, which, in its view, would not be supported by law. At this stage of the proceedings, and applying the standard of review laid down in the *Jelisic* Appeals Chamber Judgement, the Trial Chamber finds that it cannot subscribe to such general statements as those presented by the Defence to dismiss all charges under Counts 5 to 7. In its analysis of

the Scheduled Shelling Incidents, the Trial Chamber has thus considered whether there is evidence upon which, if believed, a reasonable tribunal of fact could conclude beyond a reasonable doubt that it deliberately or indiscriminately targeted the civilian population.

2. Scheduled Shelling Incidents

31. With respect to the Scheduled Shelling Incidents, the Defence argues essentially that the source of the firing of the mortar shell has not been established,[53] and that, in any event, the site of the Scheduled Shelling Incidents was in the immediate vicinity of legitimate military targets which might have been the subject of an attack at the time.[54] The Prosecution responds that the submitted evidence clearly establishes the source of the firing [55] and that there were no legitimate military targets in the vicinity of the locations of the Scheduled Shelling Incidents .[56] Having reviewed the evidence under Rule 98 *bis*, the Trial Chamber considers that sufficient evidence has been presented by the Prosecution upon which, if accepted, a reasonable trier of fact could convict the Accused of the crimes of which the Accused is charged with respect to the Scheduled Shelling Incidents. The Motion for Acquittal is therefore rejected with respect to all of the five Scheduled Shelling Incidents.

C. Issues relating to the Infliction of Terror (Count 1)

32. The Defence argues that the Prosecution has failed to offer sufficient evidence to show that the SRK deliberately attacked the civilian population of Sarajevo with the specific intent to terrorize.[57] The Defence condones that terror was experienced by the population, but claims that this was but one consequence of urban warfare,[58] as opposed to a specific intent from the Accused to inflict terror. The Prosecution replies that it adduced evidence which would demonstrate that the terror experienced by the population was the result of an intention to inflict terror, as opposed to a mere consequence of warfare.[59] Having reviewed the evidence under Rule 98 *bis* and in light of the above discussion regarding shelling and sniping, the Trial Chamber considers that evidence has been presented by the Prosecution upon which, if accepted, a reasonable tribunal of fact could convict the Accused under count 1 of the Indictment. The Motion for Acquittal is therefore rejected with respect to count 1.

D. Conclusion

33. After a careful consideration of the arguments raised and an extensive review of all of the evidence submitted in documentary, audio-visual and testimonial form , the Trial Chamber concludes that the Prosecution has presented sufficient evidence to meet the standard under Rule 98 *bis* of the Rules on all of the counts the accused is charged with, except as discussed above with respect to Scheduled Sniping Incidents No. 7, 12 and 19. The Trial Chamber also observes that both the Defence and the Prosecution made extensive submissions, which raise issues which the Trial Chamber will duly consider at the final judgement phase of this trial.

IV. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 98 *bis* of the Rules,

THE TRIAL CHAMBER

ENTERS a judgement of acquittal on those parts of the Indictment which concern Scheduled Sniping Incidents No. 7 and No. 12 in support of counts 1, 2 and 4, and Scheduled Sniping Incident No. 19 in support of counts 1, 3 and 4; and

DISMISSES the rest of the Motion for Acquittal.

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

Dated this third day of October 2002,
The Hague,
The Netherlands

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Alphons Orie
Presiding Judge, Trial Chamber

[Seal of the Tribunal]

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1 - Response at para. 30. The first amended schedule to the Indictment listed 27 scheduled sniping incidents, but the Pre-Trial Chamber disallowed the first of these sniping incidents so that there are now 26 scheduled sniping incidents. Nonetheless, the Pre-Trial Chamber authorised the Prosecution to submit evidence on this first incident as corroborating evidence of a consistent pattern of conduct pursuant to Rule 93 of the Rules of Procedure and Evidence of the Tribunal. Decision of Trial Chamber, 19 October 2001 at para. 23. In the context of this decision, and since evidence was specifically adduced on the incident that was rejected as a scheduled incident, the Trial Chamber will refer to all the 27 sniping incidents as "the Sniping Incidents".
2 - Response at para. 1.
3 - *The Prosecutor v. Goran Jelisic*, Case No. IT-95-10-A, Judgement, 5 July 2001 ("the *Jelisic* Appeals Chamber Judgement"), para. 37.
4 - Footnote in the original judgement: "As to the permissibility of drawing inferences at the close of the case for the prosecution, see *Monteleone v. the Queen* [1987] 2 S.C.R. 154 in which McIntyre J., for the court, said: 'It is not for the trial judge to draw inferences of fact from the evidence before him'. And see the reference to 'inferences' in *Her Majesty v. Al Megrahi and Another, infra*. See the *Kvocka* decision, para. 12, p. 5, in which the Trial Chamber said: 'The Chamber prefers an objective standard, under which it is entitled at this stage to apply any reasonable inferences and presumption or legal theories when reviewing the Prosecution evidence.' The issue posed is not passed upon here."
5 - Footnote in the original judgement: "*Delalic* appeal judgement, para. 434, p. 148 (emphasis in original). Or, as it was correctly put by Trial Chamber II in the *Kunarac* decision, para. 10, p. 6, the "'Prosecution needs only to show that there is evidence upon which a reasonable tribunal of fact could convict, not that the Trial Chamber itself should convict'" (emphasis in original).
6 - Footnote omitted.
7 - *The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 ("the *Aleksovski* Appeals Chamber Judgement"), para. 113.
8 - The *Aleksovski* Appeals Chamber Judgement, para. 125.
9 - *The Prosecutor v. Kordic and Cerkez*, Case No.: IT-95-14/2-T, Decision on Defence Motions for Judgement of Acquittal, 6 April 2000, para. 28 and *Prosecutor v. Kvocka & al*, Case No.: IT-98-30/1-T, Decision on Defence Motions for Acquittal, 15 December 2000, para. 17.
10 - *The Prosecutor v. Kvocka & al*., Decision on Defence Motions for Acquittal, Case No.: IT-98-30/1-T, 15 December 2000, para. 9. See also *Prosecutor v. Kordic and Cerkez*, Decision on Defence Motion for Judgement on Acquittal, Case No.: IT-95-14/2-T, 6 April 2000 and *Prosecutor v. Kunarac & al*., Decision on Motion for Acquittal, Case No.: IT-96-23-T and IT-96-23/1-T, 3 July 2000.

11 - Motion for Acquittal, para. 8 b).
12 - Motion for Acquittal, para. 8 b).
13 - Response, para. 9.
14 - Response, para. 9, Article 50 (1) API.
15 - Motion for Acquittal, para. 11.
16 - Motion for Acquittal, paras. 17 to 20.
17 - Indictment, first para. under counts 2 to 4, quoted in the Response, para. 22.
18 - The Oxford English Dictionary defines "to snipe" as follows: "to shoot or fire at (men, etc.) one at a time, usually from cover and at long range".
19 - See for instance P3675 at p. 8; Witness John Hamill, T. 6156, 6208-6210.
20 - Motion for Acquittal, para. 8 c).
21 - Motion for Acquittal, para. 8 d).
22 - See incident No. 1, para. 28; Incident No. 2, paras. 30 and 33; Incident No. 3, para. 36; Incident No. 4, para. 40; Incident No. 5, paras 42 and 44; Incident No.6, para. 48; Incident No. 7, para. 52; Incident No. 11, para. 65; Incident No. 13, paras. 71 and 72; Incident No. 14, para. 73; Incident No. 15, paras. 75 and 77; Incident No. 16, paras. 78 and 79; Incident No. 17, para. 81; Incident No. 18, para. 82; Incident No. 20, para. 86; Incident No. 21, para. 87; Incident No. 23, para. 92; Incident No. 24, para. 93; Incident No. 94; Incident No. 26, para. 96; Incident No. 27, para. 98.
23 - Motion for Acquittal, paras. 12 to 16.
24 - See Incident No. 1, para. 27; Incident No. 8, paras. 57 and 63; Incident No. 12, para. 68; Incident No. 24, para. 93.
25 - Response, para. 58.
26 - Response, para. 43.
27 - Motion for Acquittal at para. 23.
28 - Motion for Acquittal at paras. 58 to 90.
29 - Motion for Acquittal at para. 52.
30 - Response at para. 68.
31 - P3663C.
32 - Motion for Acquittal at para. 68.
33 - Response at para. 73.
34 - Motion for Acquittal at paras. 84 and 85.
35 - Response at para. 82.
36 - Edin Husovic, T. 8781 and 8784.
37 - The incident occurred on 10 January 1994 and Jonathan Hinchliffe visited the sites in December 2001 and March 2002.
38 - Jonathan Hinchliffe, T. 12990.
39 - Mirsad Abdurahmanovic, T. 3045.
40 - Edin Husovic, T. 8794.
41 - Edin Husovic, T. 8794, T. 8812-8814. Mr. Adburahmanovic's testimony also suggested that source of fire to be in Hrasno Brdo. Mirsad Abdurahmanovic, T. 3025-3026.
42 - some 2 kilometres. See Mirsad Abdurahmanovic, T. 3026.
43 - Motion for Acquittal, para. 102.
44 - Motion for Acquittal, para. 103.
45 - See for instance the Response, para. 40.
46 - Response, para. 35.
47 - Motion for Acquittal, para. 104.
48 - Motion for Acquittal, para. 119.
49 - Motion for Acquittal, para. 107.
50 - Response, para. 36.
51 - Response, para. 92.
52 - Response, para. 93.
53 - Motion for Acquittal at paras. 125 and 128.
54 - Motion for Acquittal at paras. 122, 123 and 125.
55 - Response at paras. 96, 104, 107, 111 and 114.
56 - Response at paras. 102, 106, 108 and 112.
57 - Motion for Acquittal at para. 120; Oral Arguments, T. 13057.
58 - Oral Arguments, T. 13058, 13059.
59 - Response, paras. 20, 21; Oral Arguments, T. 13082.