

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. John Hocking

Date: 13 December 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public*

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MOTION TO RECALL HARRY KONINGS  
FOR FURTHER CROSS EXAMINATION

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The Office of the Prosecutor:

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully requests that the Trial Chamber order prosecution witness Harry Konings to be recalled for further cross examination. He contends that the Trial Chamber erred in precluding him from inquiring into statements made during his September 2009 interview of Lt. Colonel Konings, precluding him from eliciting relevant evidence concerning legitimate military objectives, and in precluding him from completing his cross examination due to time restrictions.

2. On 24 September 2009, Lt. Colonel Harry Konings was interviewed at the United Nations Detention Unit by Dr. Karadzic in the presence of Trial Attorney Carolyn Edgerton and Investigator Barry Hogan of the Office of the Prosecutor, and Marko Sladojevic, Enrico Boninsegna, and Peter Robinson from the Karadzic defence team.

3. Mr. Robinson took contemporaneous notes during the interview.<sup>1</sup> On 26 September 2009, he prepared a confidential report of the interview for Dr. Karadzic.<sup>2</sup>

4. During his cross examination of Lt. Colonel Konings, Dr. Karadzic began by asking the witness to confirm some of the things that he had said during their September 2009 interview. Lt. Colonel Konings denied having stated during the interview that he had not observed any disproportionate fire from the Serb side.<sup>3</sup> Colonel Konings objected to being asked about what he had said during that interview, and the Presiding Judge agreed with him.<sup>4</sup> The Presiding Judge also ruled that the witness hadn't come as a legal expert and could not be asked questions concerning legitimate military objectives.<sup>5</sup>

5. Later during the cross examination, Dr. Karadzic offered to have Lt. Colonel Konings read the report of the interview.<sup>6</sup> Colonel Konings indicated that he would read the report if ordered to, but would decline to answer any questions about what he said during that interview.<sup>7</sup> The Trial Chamber agreed with him.<sup>8</sup> Judge Morrison indicated that it was inappropriate to ask a witness about what he had said on a prior occasion

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<sup>1</sup> The notes are attached as Annex "A" to this motion.

<sup>2</sup> The report is attached as Annex "B" to this motion. The Trial Chamber has earlier indicated that it did not want to review this report. It is free to disregard it. However, Dr. Karadzic wishes it to be part of the record for appellate purposes, if necessary.

<sup>3</sup> Transcript of 7 December 2010 at pp. 9321-22

<sup>4</sup> Transcript of 7 December 2010 at p. 9322

<sup>5</sup> Transcript of 7 December 2010 at p. 9319

<sup>6</sup> Transcript of 7 December 2010 at pp. 9323, 9329-30

<sup>7</sup> Transcript of 7 December 2010 at pp. 9331-32

<sup>8</sup> Transcript of 7 December 2010 at p. 9332

without having first given him the opportunity to read and correct a report of the interview, labeling it “almost cross examination by ambush”<sup>9</sup>

6. As a result of the Trial Chamber’s rulings, Dr. Karadzic was precluded from inquiring of Lt. Colonel Konings about the following statements at the interview which were either inconsistent with his evidence or matters which would have advanced the defence case:

- He did not see a disproportionate attack by the Serbs during the time he was in Sarajevo.<sup>10</sup>
- It would be legitimate to harass forces of the enemy if it was directed towards military targets.<sup>11</sup>
- It was legitimate to use artillery and mortars to frighten the enemy.<sup>12</sup>
- Acts designed to break the morale and cohesiveness of the enemy had a legitimate military purpose.<sup>13</sup>
- Acts which disrupted the command and control system and the ability and will to execute operations of the enemy had a legitimate military purpose.<sup>14</sup>
- Acts to psychologically defeat the enemy and to gain the support of the civilian population could be legitimately exploited in military operations. It would be legitimate to attempt to influence the population of the enemy to overthrow their government. It would also be legitimate to send a message through military operations to civilians as well as the military.<sup>15</sup>

7. As a result of the Trial Chamber’s termination of his cross examination due to time restrictions, Dr. Karadzic was precluded from eliciting evidence from Lt. Colonel Konings which was inconsistent with other evidence concerning the Markale II shelling including:

<sup>9</sup> Transcript of 7 December 2010 at p. 9332-33. Dr. Karadzic agrees that it is preferable to have a witness confirm a prior statement. However, he did not anticipate the witness refusing to confirm what he had said at their meeting. He still believes that if shown the report of interview and required to answer, Lt. Colonel Konings is likely to accept that he had made those statements. He notes that the prosecution is also in a position to confirm the accuracy of the notes and report made by the defence as it was present during the interview.

<sup>10</sup> Annex “A” at #128; Annex B at p. 4

<sup>11</sup> Annex A at #1, Annex B at p. 1

<sup>12</sup> Annex A at #24, Annex B at p. 1

<sup>13</sup> Annex A at #3, Annex B at p. 1

<sup>14</sup> Annex A at #4, Annex B at p. 2

<sup>15</sup> Annex A at #11-12; Annex B at p. 2

--Lt. Colonel Konings disagrees with some of the conclusions of the UNPROFOR G-2 report on this incident<sup>16</sup>

--The shell that caused the fatalities was the first of five shells that landed in the area that day.<sup>17</sup>

--No one established the location of where the other four shells were fired from<sup>18</sup>

--The accuracy of modified air bombs and the use of such projectiles by the Bosnian Muslim Army

--His lack of knowledge of the location of the confrontation lines and the possibility that the sniping he observed came from Bosnian Muslim Army positions

8. The right to cross examine a witness with previous inconsistent statements is fundamental because it may demonstrate a contradiction by the witness, which is material for assessing his credibility and reliability.<sup>19</sup>

9. It is well established that a witness may be confronted with evidence that on a prior occasion he or she had said something inconsistent with the evidence given by the witness in court. There is no requirement that the witness have signed the prior statement. The prior statement may be a newspaper article, questionnaire filled out by human rights groups, or report of interview.

9. In the *Gotovina* case, the Trial Chamber held that a witness could be questioned on parts of a prior statement that he claimed he had not made and refused to attest to under Rule 92 *ter*. If such prior inconsistent statements may be considered by a Trial Chamber, there is no reason why Dr. Karadzic should have been precluded from putting to Lt. Colonel Konings the substance of his prior statements during their interview, irrespective of whether he had signed the interview report or not.<sup>20</sup>

10. The Appeals Chamber has held that a Trial Chamber may take into consideration the following factors when presented with an inconsistent statement or

<sup>16</sup> Annex A at #99; Annex B at p. 9

<sup>17</sup> Annex A at #108; Annex B at p. 7

<sup>18</sup> See his testimony in *D. Milosevic* trial at p. 3590

<sup>19</sup> *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Second Motion to Exclude Testimony of Witness AXA and Edouard Karemera's Motion to Recall the Witness* (4 March 2008) at para. 17

<sup>20</sup> *Prosecutor v Gotovina et al*, No. IT-06-90-T, *Guidance on the Admissibility into Evidence of Unattested Parts of Rule 92 ter Statements as Previous Inconsistent Statements* (30 March 2010)

prior testimony: (1) the language in which the statement or testimony was given; (2) the access of the Trial Chamber to the prior statement or testimony and corresponding ability to scrutinize the nature of the questions put to the witness; (3) the time lapse between the prior statement and the trial; (4) the difficulties of recollection; (5) the use or non-use of solemn declarations; and (6) whether the witness had reviewed the prior statement at the time it was made.<sup>21</sup>

11. The inclusion of the last factor indicates that prior statements not reviewed by the witness may be used in cross examination.

12. Indeed the proofing notes prepared by the prosecution in this case after interviews similar to that conducted by Dr. Karadzic are labeled “Information Report” and are not signed by the witness. No one would suggest that a witness could not be confronted with an inconsistent statement appearing in one of these reports.<sup>22</sup>

13. At the Special Court of Sierra Leone, the prosecution took the position that a prior inconsistent statement could be admitted whether it was signed or not.<sup>23</sup> In refusing to compel the prosecution to have its witnesses sign their prior statements, the Trial Chamber explicitly held that the defence has the right to cross examine the witnesses on unsigned statements.<sup>24</sup>

14. The Special Court cited a decision from a Trial Chamber of the ICTR to the same effect.<sup>25</sup>

15. The Trial Chamber therefore erred in allowing the witness to refuse to answer questions based upon his prior interview with Dr. Karadzic. There were no promises or assurances to the witness that his statements would not be used, and the contemporaneous notes were taken openly by a person sitting next to Colonel Konings. This can be verified by the prosecution, who were present throughout the interview.

<sup>21</sup> *Musema v Prosecutor*, No. ICTR-96-13-A (16 November 2001) at para. 99

<sup>22</sup> In the United States, the FBI routinely does not obtain the witness' signature on its reports of interviews, known as FD-302s. See <http://www.azcentral.com/arizonarepublic/news/articles/1206fbitaping.html?&wired>. They are routinely used as impeachment in the courts of the United States. See *i.e. United States v Trujillo*, 136 F.3d 1388 (10<sup>th</sup> Cir. 1998)

<sup>23</sup> *Prosecutor v Sesay et al*, No. SCSL-04-15-T, *Prosecution Response to Joint Defence Motion Requesting Conformity of Procedural Practice for Taking Witness Statements* (1 July 2005) at paras. 11-13

<sup>24</sup> *Prosecutor v Sesay et al*, No. SCSL-04-15-T, *Decision on Joint Defence Motion Requesting Conformity of Procedural Practice for Taking Witness Statements* (26 October 2005) at para. 45

<sup>25</sup> *Prosecutor v Rwamakuba*, No. ICTR-98-44C-T, *Decision on the Defence Motion Regarding Will-Say Statements* (14 July 2005) at paras. 3-4

16. The Trial Chamber also erred in precluding Dr. Karadzic from eliciting evidence in support of his own case. Lt. Colonel Konings was in a position, much like General David Fraser, to offer evidence on what constitutes legitimate military objectives based on his own personal experience.<sup>26</sup> He testified as an expert witness for the prosecution in the *Gotovina* case. Even if the evidence sought to be elicited by the defence could be classified as an expert opinion, there is nothing which precludes the defence from eliciting such evidence on cross examination.

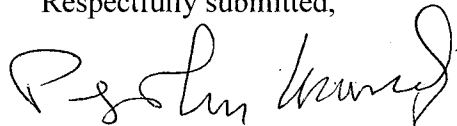
17. Another Trial Chamber has held that Rule 90(H) should be interpreted broadly as authorizing the cross examining party to ask questions relevant to its own case, even when those questions go to matters that were not raised in the direct examination.<sup>27</sup> Dr. Karadzic should have been allowed to put matters to Lt. Colonel Konings that would advance his own case that many of the shellings in Sarajevo were for legitimate military purposes.

18. Finally, the time restrictions placed upon the cross examination of Dr. Karadzic were unreasonable given the scope of the witness' evidence. A review of the transcript reveals that Dr. Karadzic elicited relevant evidence throughout his examination but was simply not given enough time to cover all of the questions he had prepared.

19. For any and all of these reasons, Dr. Karadzic respectfully requests that the Trial Chamber order that Lt. Colonel Konings be recalled for cross examination.

Word count: 2004

Respectfully submitted,



Radovan Karadzic

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<sup>26</sup> Transcript of 18 October 2010, p. 8014, 8062-63

<sup>27</sup> *Prosecutor v Prlic et al*, No. IT-04-74-T, *Decision on Scope of Cross Examination Under Rule 90(H) of the Rules* (27 November 2008) at para. 11

**ANNEX "A"**

09 Harry Konings

OTP: Carolyn Edgerton  
Barry Hogan

Enrico, Marko, me

- ① It would be legitimate to harass forces of the enemy if directed toward military targets -
- ② Smaller force would be keen to obtain intelligence on what enemy was <sup>planning</sup>
- ③ OK to <sup>do acts which</sup> break their morale and cohesiveness
- ④ OK to disrupt combat & control system and to execute operations to attack the will of the enemy
  - psychological warfare
  - intelligence operations
- ⑤ OK to restrict enemy movement & freedom of action
- ⑥ Military operations are 24/7 - cannot shut down - as long as conflict lasts
- ⑦ Neutralizing the enemy includes destruction of enemy places from which fire is coming
- ⑧ Show of force might deter opponent - can use it in non-lethal ways
- ⑨ To postpone conference - can do act which blame enemy
- ⑩ There ~~can~~ be long term effects from massive bombing
- ⑪ Can be desirable to psychologically defeat the enemy - can exploit it in military operations - Can be used to get support of population
- ⑫ Can try to influence population of enemy to overthrow their gov't
- ⑬ In case of self defence, w/ no other possibility, commander on scene can take decision to use weapons
- ⑭ NO idea of Muslim objectives by firing on Serbian ~~part of~~ <sup>part of</sup> city

- 5) There were front lines of confrontation w/in Sarajevo  
Some times one building was divided -
- 6) Very possible that Muslims made outgoing fire to Serbian <sup>areas</sup> ~~sett~~
- 7) Often impossible to tell who was firing w/in confrontation area.
- 8) UNMO separate from UNPROFOR
- 9) Senior Military Observer in Sarajevo - Chief Military Observer in Zagreb - UN HQ  
(chain of reporting)
- 20) Bosnian soldiers -  
some small groups slept in barracks - houses in use as barracks  
most people stayed at home -  
psychological elements - greater anxiety when you are outnumbered
- 21)
- 22) Not ~~good~~ <sup>proper</sup> to put high value targets in civilian areas  
No military commander ~~put~~ <sup>should not</sup> put high value target in civilian area - Not done  
in his army or in NATO

- (27) Military Observers receive special training
- (28) Forward Air Controllers have even more specialized training - have to requalify every year - they request air fire support & they guide the pilot to the target
- (29) Some <sup>air</sup> bombs can be guided from the ground with equipment
- (30) If not close air support, FACs only responsible to their higher commander
- (31) Strategic bombing is decided on political level
- (32) Special Forces have FACs
- (33) 120 mm - can destroy house, depending on strength of bombing
- (34) Body parts were scattered inside building - blown through windows from blast
- (35) When arrived on Markele - people had already been brought to morgue
- (36) Mortars <sup>can be</sup> on wheels - tow them or put on Armored vehicles - motors are movable - "shoot and scoot"
- (37) Didn't see any moveable mortars in 6 mos in BOSNIA
- (38) Sarajevo was paradise for using mortars - Good vision from everywhere
- (39) Can fire from woods (4 x 4 meter area)
- (40) Errors for mortar fire depends on many factors - wind, charge of mortar, distance - longer distance, greater error
- (41) You can correct a lot of these factors
- (42) Neither side had equipment for calculating mortar fire which allowed multiple mortars to be calculated @ same time
- (43) Point detonating fuse used in Markele
- (44) Not air burst detonation
- (45) Doesn't know why Croats shelled DRVA - it was in BOSNIA
- (46) Harassing fire - some sensitivity of Muslims & Serbs
- (47) No official designation that there was seige in Sarajevo - his own term
- (48) Knows of no ~~Serbian~~ Muslim village included <sup>under</sup> Serbian <sup>control</sup> areas.
- (49) It is legitimate to effect mental element - send message to civilians as we as military

- 8) Did not have <sup>extensive</sup> training in impact <sup>crater</sup> analysis  
 This was first theatre of combat  
 Had done 100 crater analysis - "not rocket science"
- 19) Stick method <sup>is</sup> ~~at~~ not important
- 30) Lived in private house - owned by Muslims  
 Rented rooms - people were good hosts
- 51) OP 1 was opposite Sredenik - on south side  
 Had clear view of Library  
 South of that is highest part - Treberic
- 52) No info on Serbian losses due to mortars
- 53) Muslim policemen were professional & skillful  
 They wanted him to say that Serbs responsible for Markele  
 At first, he refused
- 54) No wounded or killed people when armed

- 60) In morgue, bodies were on floor in rows in middle of <sup>large</sup> cell
- 61) Not aware that Serbs asked to participate in investigation of Markele
- 62) UNPROFOR warned them about planted bodies by Muslims
- 63) No second opinion given on his investigation - did it independently - no opportunity to offer side to provide counter-investigation
- 64) Markele was part of shelling by Serbs every day -
- 65) Not aware of official UN position on shelling - he thought 95% was harassing fire in his part of city
- 66) There were some small part of his area that were legitimate military targets
- 67) He visited some military units in old city - has hardly been in other parts of Sarajevo
- 68) The ~~brigades~~ <sup>battalions</sup> had their headquarters - houses  
Suppose they had ammunition storage as well
- 69) Does not recall names of Muslim commanders  
Some were good officers - doesn't know if they had military training
- 70) Dutch brigades are 5,000 people
- 71) Doesn't know how they were deployed - how many headquarters they have  
Were never given figures of Muslim troop strength

- (72) He was there for big Muslim Offensive - tried to get out of the city and into city
- (73) Not aware that 12 or 13 cease violations were Muslims
- (74) <sup>Can't say</sup> Serbs tried to take territory in Sarajevo
- (75) Lines stayed more or less the same during his stay in Sarajevo
- (76) ~~Could not~~ Would have been easy for Serbs to take his area if they wanted to
- (77) He is sure sniper fire he encountered was from Sharpstone - Serbian area  
His impression, but no expertise
- (78) Serbs occupied areas outside of Sarajevo city - suburbs
- (79) Srebrenik was predominantly Muslim
- (80) Had map & compass for crater analysis -  
Depth of crater not necessarily determined by <sup>distance</sup> ~~impact~~  
Depends on angle of impact
- (81) French had same equipment w/ same accuracy
- (82) Many people gathered around Markele after shelling - they were 2-300 meters away - harassed them where stopped car
- (83) Only officials were at the ~~stop~~ spot of the Markele market
- (84) Between car & scene - people were there
- (85) His translator was Damien Musesic - Muslim married to Serb
- (86) Drove from Police Station w/ Muslim investigators
- (87) Crew of <sup>Bosnian</sup> investigators already on scene

- (88) Surface was a kind of asphalt - softer than concrete  
Was not a hot day
- (89) French UNPROFOR = Bosnian Muslims took photos of tail fin  
Cyrillic alphabet - can't tell if Russian or Serbian  
It was engraved  
Tail was copper colored - not painted
- (90) Doesn't know what <sup>mortars</sup> Serbs produced -
- (91) Tail was not warm - doesn't change temperature
- (92) Everything is possible - could have been planted at scene
- (93) Had to investigate quickly - so as not to be targeted again
- (94) Didn't use stick method - not because of tension, everyone shouting  
- officials, crowd
- (95) Officials were quite angry
- (96)  $67^\circ$  was angle of impact  
 $170^\circ$  - direction of projectile - due south (180° is due south)  
OP South was in that same direction  
They were quite high peak.
- (97) If fired over that peak, should have been caught on radar  
(Radar has ~~to~~ be pointed in that direction) - if you have beam, it  
only in that direction
- (98) Don't hear whistle when mortars have high angle
- (99) French was sent by UNPROFOR  
Disagreed with some conclusions of G2 - intelligence of UNPROFOR
- (100) Saw legs, fingers, parts of brains on street and inside of house -  
Doesn't know why not disposed of before

- (101) Very disturbing to see body parts with that  
There were ~~some~~<sup>no</sup> shoes on legs - many empty shoes on street
- (102) Doesn't recall sex of bodies he saw - Made no record of their sex  
Can't say if more men than women
- (103) Doesn't think there were children among victims he saw in morgue
- (104) Arrived 40 minutes after blast
- (105) Sredjenik - 15 minutes drive w/o traffic
- (106) Major Knustad died  
Paul Conboy - working @ Parliament in Dublin
- (107) Some days no one on Merkele -  
Most days it was active -  
Depended on shelling
- (108) 120mm explosion is loud - can be heard  
Merkele was the first - other 4 afterwards  
OP saw explosions on impact - Didn't hear anything - outgoing fire  
Others were nearby
- (109) Some people said it first hit roof - then Merkele  
He doesn't believe it - if it hit roof, would not explode  
Did not investigate place where fired from
- (110) Couldn't tell distance - depends on charge
- (111) Merkele came from 170°  
Others came from 220-240°

- (112) His conclusion that 4 shells fired from different place than Markale (south-west) - different gun positions
- (113) Doesn't know why 5 rounds from 2 different directions not picked up on radar or observed.
- (114) Summer offensive had ended by time of Markale incident - it was very quiet - "came out of the blue"
- (115) Had never seen such a destructive effect from 120mm before or after
- (116) He did not inform his own gov't - only reported to UN - had no contacts with own government
- (117) Thoughts have been growing since his initial report.
- (118) It was not a mine
- (119) Guarantee that throwing from roof would not explode
- (120) If from neighboring area, would have been seen by Observer
- (121) Did not find fuse (it can be completely destroyed)
- (122) It is possible that scene was tampered with
- (123) No one from Int'l community identified the identities of the victims
- (124) He was <sup>the UN</sup> ~~an~~ observer to Muslim ~~stage~~ <sup>investigation</sup> team - not member of team just observer
- (125) Had no relations with Serbians authorities

- (126) There was no discussion about autopsies while he was present
- (127) Thinks shot was intended - not lucky shot  
Due to distance - have been lucky  
Hardly any wind that day
- (128) Did not see disproportionate attack by Serbs during time he was present
- (129) When he passed market, saw lot of people, felt it was not right - "feeling in his neck"
- (130) shape of crater influenced by distance, angle of impact, & type of ground  
shape does not ~~influence~~ <sup>say much about</sup> by distance.
- (131) Knows what 120mm can do - is an expert on that - damage was consistent with that (blast + shrapnel)
- (132) In his country, they would have done autopsy
- (133) Soil was asphalt

# **ANNEX "B"**

**PETER ROBINSON**  
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**M E M O R A N D U M**

To: Radovan Karadzic  
Re: Interview of Harry Konings  
Date: 26 September 2009

***Confidential—Attorney Client Privilege***

LIEUTENANT COLONEL HARRY KONINGS, Director, Doctrine Department, Land Forces Doctrine and Training Center, Bernhard Barracks, Amersfoort, The Netherlands, telephone: [redacted] was interviewed on 24 September 2009 at the United Nations Detention Unit in The Hague by Dr. Radovan Karadzic.

Also present were Legal Advisor Peter Robinson, Legal Associate Marko Sladojevic, Case Manager Enrico Boninsegna, OTP Trial Attorney Carolyn Edgerton, and OTP investigator Barry Hogan.

**Military Doctrine**

KONINGS was first asked about some military doctrine arising from the expertise he had provided to the ICTY in connection with Operation Storm.

KONINGS said that it would be legitimate to harass forces of the enemy if it was directed towards military targets. He said that it was legitimate to use artillery and mortars to frighten the enemy.

KONINGS stated that a smaller force would be keen to obtain intelligence on what its enemy was planning and that acts designed to break the morale and cohesiveness of the enemy had a legitimate military purpose.

KONINGS said that a force which was outnumbered would be under greater anxiety as a result of that fact.

KONINGS said that acts which disrupted the command and control system and the ability and will to execute operations of the enemy had a legitimate military purpose. He said that such acts were frequently accomplished through psychological warfare and intelligence operations.

KONINGS said that military operations were conducted on a 24 hour, 7 days a week basis for as long as the conflict lasts.

KONINGS said that a show of force was a legitimate military act to deter the enemy so long as it was used in non-lethal ways. He further stated that military operations to place blame on the enemy or to create an event which might postpone a political conference were had legitimate objectives.

KONINGS indicated that there could be long term effects from massive bombing. He said that all people are of the same sensitivity to harassing fire—whether Muslim or Serb.

KONINGS stated that acts to psychologically defeat the enemy and to gain the support of the civilian population could be legitimately exploited in military operations. It would be legitimate to attempt to influence the population of the enemy to overthrow their government. It would also be legitimate to send a message through military operations to civilians as well as the military.

KONINGS said that a commander on the scene could take the decision to use force in a situation of self-defence and where there is no reasonable possibility to communicate with superiors.

KONINGS stated that neutralizing the enemy included destruction of places from which enemy fire was coming and that this was a legitimate military objective.

KONINGS said that it was improper for a military commander to place high value targets, such as mortars, in civilian areas. This was not done in his army nor in NATO.

KONINGS stated that mortars can be mobile by towing them or putting them on armored vehicles. They called that "shoot and scoot".

KONINGS said that he did not see any mobile use of mortars when he was in Bosnia.

KONINGS said that having observers watching the fire in areas where civilians were present was very desirable. One reason was to see if you were being effective and, if not, to adjust the targets.

KONINGS said that military observers were highly trained soldiers who were posted in the units and were responsible to the unit commanders. Each unit has its own observers. They have to be very educated and very skilled, and receive special training. Sometimes, these observers can be used to guide air strikes.

Forward air controllers have even more specialized training. They have to re-qualify every year. Special Forces have forward air controllers. They are the ones who request air fire support and guide the pilot to the target. Some air bombs can be guided from the ground with equipment.

### **General Situation in Sarajevo**

KONINGS said that it was very possible that he Bosnian Muslims engaged in outgoing fire into the Serbian populated areas. He did not know what their objectives were in firing on the Serb part of Sarajevo.

KONINGS said that the front lines in Sarajevo were within the streets of the urban areas and sometimes were within one divided building. It was often impossible to tell who was firing within the confrontation area.

KONINGS said that the front lines curved in the city of Sarajevo and around the mountains.

KONINGS said that he was not aware of any official designation that there was a "siege" in Sarajevo.

KONINGS said he was not aware of any Muslim village which was under the control of the Bosnian Serbs.

KONINGS stated that he was located in Srednik and that he had hardly been in other parts of Sarajevo. What he could recount from his personal knowledge was limited to what he observed in that part of Sarajevo.

KONINGS said that he had no knowledge of any efforts by the Serbs to take territory in Sarajevo. While he was there, the confrontation lines stayed more or less the same. In his opinion, it would have been easy for the Serbs to take his area if they wanted to.

KONINGS himself encountered sniper fire. He is sure it came from the Serbs because the source was in Sharpstone, which was a Serbian area. He has no expertise in tracing the source of sniper fire, but that was his impression.

KONINGS said that he never was aware of any disproportionate attacks by Serb forces during the time he was present in Sarajevo.

### **United Nations Military Observers (UNMOs)**

KONINGS stated that the UNMOs were separate from UNPROFOR. He reported to a Senior Military Observer in Sarajevo, who reported to the Chief Military Observer in Zagreb, who reported to the United Nations headquarters in New York.

KONINGS said he did not inform his own government of the events he observed, he only reported to the UN. He had no contacts with his own government while in Bosnia.

### **Bosnian Muslims**

KONINGS said that while in Sarajevo he rented a room in a private house owned by a Muslim family. They were good hosts. He lived in Serednik, a predominantly Muslim area.

KONINGS stated that only a small number of soldiers of the Bosnian Muslim Army slept in barracks, which were usually houses converted to barracks. The rest of the soldiers slept in their own homes.

KONINGS stated that he had visited some Bosnian Muslim military units in the old part of Sarajevo. He said that the battalions had their headquarters in houses and supposed they had locations for ammunition storage as well, but he had not seen those.

KONINGS said that he did not know how the Muslim troops were deployed or how many headquarters they had. He was never given any figures of Muslim troop strength.

KONINGS said he could not recall the names of any Muslim commanders. Some were good officers. He doesn't know if they had any military training.

KONINGS said that the Bosnian Muslim policemen who he observed were professional and skillful.

KONINGS said that he was warned by UNPROFOR that he should be aware of the possibility that the Muslims might plant bodies at a scene.

KONINGS was aware that a large Muslim military offensive took place while he was in Sarajevo and that Muslim troops tried to break the Serb lines from inside and outside of the city.

KONINGS said that the Markale shelling had come after the Muslim offensive had ended and came "out of the blue" while it was very quiet.

KONINGS was not aware that 12 of the 13 cease fire violations were committed by the Muslims.

### **Mortars**

KONINGS said that Sarajevo was a "paradise" for using mortars because there was good vision from everywhere.

KONINGS said that a mortar could be fired from the woods, but that one would need a clearing of about 4 x 4 meters.

KONINGS said that errors in mortar fire were based on many factors including the wind, the charge of the mortar, and distance. The longer the distance, the greater chance of error. However, many of these factors can be corrected.

KONINGS said that in Bosnia, neither side had the equipment necessary to calculate multiple mortar firings at the same time.

KONINGS said he had no information on Serbs killed by mortar fire.

### **Markale II shelling**

KONINGS said that his posting in Bosnia was the first time he was in the theatre of combat.

KONINGS stated that prior to going to Bosnia, he did not have extensive training in impact crater analysis. However, while in Sarajevo, he had done around 100 crater analyses. "It is not rocket science."

KONINGS passed by the Markale market in the morning and was struck by the large number of people there. He had a "feeling in his neck" that it was not right.

KONINGS said he had never seen a mortar have such a destructive effect as the Markale explosion. Prior to that, the only time he had seen dead bodies was in car accidents.

KONINGS said that he used a map and a compass for his crater analysis. The French UNPROFOR troops who examined the scene also had the same equipment. He did not use the "stick method."

KONINGS said that the depth of the crater was not necessarily determined by the distance from which the mortar was fired. It depended on the angle of impact.

The shape of the crater was influenced by the distance, angle of impact, and type of surface. You cannot tell the distance that the mortar was fired from the shape of the crater.

KONINGS said that a 120mm mortar could destroy a house, depending on the strength of the building. The damage he saw was consistent with that from a 120mm mortar, both the blast and the schrapnel.

KONINGS said that the angle of impact was 67 degrees and the direction of the projectile was 170 degrees, which was almost due south. The OP-1 post was due south so the fire would have originated from the same direction.

KONINGS said that the Serb-controlled areas south of Sarajevo were on the other side of the mountain. The mortar would have had to be fired on a very high trajectory. It should have been caught on radar, although the radar would have to be pointed in that direction to detect it.

KONINGS said that he does not know why any of the 5 shells that were fired on that day were not picked up on radar.

KONINGS said that he disagreed with those who claimed that the mortar first hit the roof. If it had hit the roof, it would not have exploded.

KONINGS said that one can only hear the "whistle" sound of a mortar when it is fired at a very high angle. The explosion itself from a 120mm mortar is very loud. The people manning the OP-1 position heard the explosions from Markale and recorded them. They did not hear the outgoing fire, which is why he believes the shells were not fired from the Muslim-controlled area, which would have been close to OP-1.

KONINGS said he could only determine the direction the mortar was fired from, not the distance. It is not possible to determine distance from crater analysis. You have to know the kind of charge used to fire the mortar.

KONINGS said that the shell that exploded in the Markale market and killed the people was the first one fired. Four other shells also landed in the general area, but his analysis indicated that they were fired from a different location, at 220-240 degrees, being from the southwest.

KONINGS said he thought the shot that killed the people at Markale was intended to kill the people there, although it was a "lucky shot" given the distance involved.

KONINGS said that OP-1 was located in the hills on the south side of Sarajevo. It had a clear view of the national library. Further south was the highest part of Sarajevo.

KONINGS stated that there were many people gathered in an area 2-300 meters from the area of the explosion when he arrived. They parked their car there and walked the rest of the way. They were harassed by the people there. At the place of the explosion, only Muslim officials and not members of the population were there.

KONINGS said that he observed body parts which had been blown through windows scattered inside the buildings around the Markale area after the explosion. He saw legs, fingers, and parts of brains on the street and inside of some buildings. He does not know

why they were not removed before he arrived. There were many empty shoes on the street.

KONINGS stated that when he arrived at the scene, the bodies of the deceased had already been brought to the morgue. He did not observe any dead or wounded people on the scene.

KONINGS' translator was Damien Musesic, a Muslim married to a Serb.

KONINGS said that while he was in Sarajevo the Markale market area was active most days, but some days was deserted, depending on the shelling.

KONINGS said that they drove to the scene with Muslim police investigators. When they arrived, other Muslim police investigators were already on the scene. He arrived about 40 minutes after the explosion. It is possible that the scene was tampered with.

KONINGS said that the two people who worked with him on the investigation were Major Knustad, who has died, and Paul Conboy, who works for the Parliament in Dublin.

KONINGS said that when he went to the place where the bodies of the deceased victims were kept, they had their clothes on. He never saw any reports of autopsies on those victims, nor was there any discussion in his presence of conducting autopsies.

KONINGS stated that he was brought to that location by the Bosnian police. He does not remember the names of the victims, but they are recorded in a report. No one from the international community verified the identities of the victims.

KONINGS said that he was there for 10-15 minutes and simply counted the bodies. They were on the floor in rows in the middle of a large cell. He cannot say what sex they were or what the proportion was between men and women. He does not recall seeing any bodies of children.

KONINGS said that the fuse for the Markale explosion was a point detonating fuse, rather than air burst detonation. The tail fin was located at the scene and photographed. It had Cyrillic writing engraved in it. He could not tell if it was Russian or Serbian. The tail was copper colored and not painted.

KONINGS said that the tail was not warm, and that it does not change temperature. When asked if it could have been planted at the scene he replied, "Everything is possible."

KONINGS stated that the fuse was not found, but that it can be completely destroyed in the explosion.

KONINGS said the damage at Markale was definitely not caused by a mine.

KONINGS said that he did not know what kind of mortars the Serbs produced.

KONINGS stated that the surface where the crater was located was asphalt, and not concrete.

KONINGS said that it was not a hot day, and there was no wind.

KONINGS said that he had to conduct his investigation quickly because he did not want to be targeted again. People in the area were shouting, even the officials. The officials were quite angry.

KONINGS said that the Bosnian Muslim police wanted him to say that the explosion was caused by the Serbs, but he resisted at first.

KONINGS said he was not aware that the Bosnian Serbs had requested to participate in the investigation of the Markale explosion.

KONINGS said that his own investigation of Markale was independent. There was no peer review, nor an opportunity for the other side to provide a counter-investigation.

KONINGS said that he was assigned as the UN person to observe the Bosnian Muslim investigation of the Markale explosion. He had no relations with any Serbian authorities.

KONINGS stated that he was not aware of the official UN position on the Markale shelling. KONINGS has reviewed the report of the G-2 of UNPROFOR and disagrees with some of his conclusions.

KONINGS said that the Serbs were shelling Sarajevo every day and that Markale was just one part of that. 95% of that was harassing

fire in his part of Sarajevo. In his area, there were some legitimate military targets, but it was a small part of his area.