

Trial Hearing
WITNESS: CIV-OTP-P-0411

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Trial Hearing - Courtroom 3
9 Friday, 30 June 2017
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:53] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:34:10] Good morning. Good morning to
15 everybody.
16 Good morning to you.
17 I give immediately the floor to the Office of the Prosecutor to continue his
18 questioning.
19 MR GARCIA: [9:34:29] Good morning, Mr President, your Honours.
20 PRESIDING JUDGE TARFUSSER: [9:34:32] Good morning.
21 WITNESS: CIV-OTP-P-0411 (On former oath)
22 QUESTIONED BY MR GARCIA: (Continuing)
23 Q. [9:34:41] Good morning, Mr FitzGerald-Finch.
24 A. [9:34:45] Good morning, sir.
25 MR GARCIA: [9:34:47] First of all, I would like ask for the floor from the court

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1 officer, please.

2 THE COURT OFFICER: [9:34:51] The Prosecution has the floor.

3 MR GARCIA: [9:34:53] Thank you.

4 Q. [9:34:54] Now, Mr FitzGerald-Finch, when we left yesterday we were at SOS
5 village. And I'm going to return to panorama 19, that is the street level in front of
6 the mosque that we saw yesterday briefly as well.

7 THE COURT OFFICER: [9:35:17] Evidence channel 2.

8 MR GARCIA: [9:35:27]

9 Q. [9:35:27] Are you able to see that on your screen?

10 A. [9:35:29] Yes, I can, sir. It would perhaps be helpful to have that folder back
11 that I had yesterday. Thank you very much.

12 Q. [9:35:54] Thank you for reminding us.

13 So what we'll do is just briefly to situate you, we'll just do briefly the 360 on the street
14 level, panorama 19, and we'll stop looking at the gate on the facade of the mosque, I
15 believe.

16 Now, sir, do you recognize that facade, the doors that we see there?

17 A. [9:36:30] Yes, I do.

18 Q. [9:36:33] Now, did you proceed to forensically analyse those doors?

19 A. [9:36:40] Yes. I looked at the doors when they were indicated to me, and I
20 found a series of penetration or puncture marks and strike marks which were again
21 attributable to the high velocity fragmentation that we've seen previously.

22 MR GARCIA: [9:37:00] I'd ask the court officer to please show on the screen
23 CIV-OTP-0049-0154, please.

24 THE COURT OFFICER: [9:37:32] Evidence channel 1 for this item.

25 MR GARCIA: [9:38:00] Now if we could just zoom in a little bit more, please.

1 Q. [9:38:11] All right. Now I think we have a better view than the photo that we
2 have in the report itself.

3 What can you tell us about the size of those pockmarks, the puncture holes that we
4 see in that metal door?

5 A. [9:38:24] These marks, they're obviously all varying in size. They are largely
6 asymmetric. And we can see that one or two of them are significant in size, and
7 there are lots of smaller strike marks that were visible all over the door.

8 MR GARCIA: [9:38:46] I'd ask the court officer to please show on the screen
9 CIV-OTP-0049-0155. Now if we could just zoom in a bit more, please. Right to the
10 middle. That's fine.

11 Q. [9:39:43] Now, Mr Witness, what is it that we see there on this photo?

12 A. [9:39:50] So, your Honours, this is the reverse side of the same door. And we
13 can see a metal seam, the rolled metal seam running down the back of the door.
14 There is a puncture mark going all the way through it, indicating that an object
15 presumably travelling at very, very high velocity struck the front side, the front face
16 of the door and punctured all the way through. And we can see in the photograph
17 that it has punctured through several layers of the metal door.

18 Q. [9:40:24] Now, the fragmentation patterns that we've seen on the previous photo
19 and this photo here, are they consistent with the fragmentation pattern of the
20 detonation of a shell coming from a detonation of a 120 millimetre Russian or Soviet
21 shell, mortar shell?

22 A. [9:40:48] Yes, sir. The fragmentation pattern that we've seen certainly on the
23 front face of the door would indicate that. And further, too, if I can expand on your
24 question, if I may?

25 Q. [9:41:01] Please do so.

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1 A. [9:41:02] This door is further from the probable point of detonation than the
2 door that we saw at close of play yesterday. So I would expect and we do indeed see
3 that the spread of fragmentation is wider, indicating that indeed the point of
4 detonation is further away. This indicated to me on the ground on the day that my
5 assertion was correct and that a heavy cased item of ammunition had indeed
6 functioned in that area and spread fragmentation in a pattern consistent with a 120
7 millimetre heavy cased high explosive mortar or similar piece of ammunition. And
8 this, the witness screen, this door, demonstrates that yet further in my opinion.

9 Q. [9:41:57] Thank you for that clarification.

10 Now if we can move on to the next page of your report, and that's at
11 CIV-OTP-0049-0065. Just to situate you, your report is at tab 4 actually, and that is
12 page C10 of the report.

13 It's the page where we see three fragments.

14 Now, could you please tell the Court how exactly you came into possession of those
15 three fragments?

16 A. [9:43:06] These fragments were passed to me by OTP personnel on the day.

17 Q. [9:43:13] It says here that they were handed to you on the scene on 11 July 2013;
18 is that correct?

19 A. [9:43:21] Yes, sir, I believe that to be correct.

20 Q. [9:43:25] Now, did you proceed to do a forensic analysis of these three
21 fragments?

22 A. [9:43:33] Yes, I did, sir.

23 Q. [9:43:37] Can you tell the Court what were your conclusions?

24 A. [9:43:44] Your Honours, these fragments that I was presented on the day were
25 consistent in the size and shape of fragmentation that I would expect to find from a

1 heavy cased item of ammunition such as a 120 millimetre Russian shell.
2 The fragmentation on closer inspection, and we can see from my close-up
3 photographs, you can see the cracking, which is in effect called brisance. And this is
4 commonly found and really it is only found when a metal has been subject to the
5 extreme pressure of detonating material.

6 To put that into perspective, you would expect gigapascals of pressure to cause
7 brisance. So it would be -- it is almost impossible to find this effect exhibiting in
8 anything other than a material that has been in contact with a detonating explosive
9 such as a military explosive.

10 Q. [9:44:56] Thank you. We're going to proceed now to the next page of your
11 expertise report, and that's at 0049-0067 for the purposes of the court record. And
12 once again this is in the vicinity of SOS village. We have the GPS coordinates on that
13 page.

14 And I'd like to have the floor, please, from the court officer.

15 THE COURT OFFICER: You have the floor.

16 MR GARCIA: [9:45:38]

17 Q. [9:45:38] Now, we are going to be using panorama number 23 for this specific
18 exercise. So first just to situate, Mr FitzGerald-Finch, we'll just do a 360 and we'll
19 come back onto the facade of a house. Just zoom in on the door a little bit more, and
20 a little bit more.

21 Now, Mr Witness, do you recall having proceeded to undertake a forensic analysis of
22 that door, the door we see here on the screen?

23 A. [9:46:39] Yes, I do.

24 Q. [9:46:45] Now, can you tell us briefly what we see? What did you analyse and
25 what were your conclusions upon looking at this door?

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1 A. [9:46:52] This door exhibits a significant amount of fragmentation damage,
2 which again would be consistent with the high velocity fragmentation you would
3 expect from a heavy cased item of ammunition.

4 Q. [9:47:18] Does it tell you anything about the vicinity of where this, the impact of
5 this mortar would have been, this mortar shell?

6 A. [9:47:29] Because of the amount of penetration, the amount of fragmentation, I
7 would assess that the detonating item was in close vicinity to that door, very close
8 vicinity.

9 MR GARCIA: [9:47:42] Now I would like the court officer to bring upon the
10 screen 0049-0176, please.

11 THE COURT OFFICER: [9:48:36] Back to evidence channel 1.

12 MR GARCIA: [9:48:38] Thank you.

13 Q. [9:48:41] Now, Mr Witness, when you look, when we look at what we see here
14 on the screen, what are we looking at exactly?

15 A. [9:48:49] Your Honours, we are looking at the reverse side of the door that we
16 have just seen. And so the light patches are obviously where there is complete
17 penetration and we can see the light coming through.

18 Now, I would ask to direct your attention to the wall on the left-hand side of the
19 photograph. And so I can see corresponding strike marks on the wall consistent
20 with the direction of the fragmentation that has been coming -- that has come through
21 the door.

22 And what is interesting to me is that the strike marks on the wall only exhibit on one
23 side, which gives me a very clear indication of the direction of the fragmentation as it
24 came through. By this I mean where you see the strike marks on the wall, on the
25 opposite wall there are none, which says to me that the detonating object was in a line

1 from that wall through the door and beyond.

2 And given the size and close proximity to the penetration marks in the door, that
3 confirms my theory that the detonating item was close to that door.

4 Q. [9:50:12] Now, given that we see pockmarks or puncture marks on the wall as
5 well, what does that tell you about the velocity of the projectiles?

6 A. [9:50:24] The projectiles must have been, the fragmentation must have been
7 carrying a great deal of velocity. The energy to puncture through the door, and we
8 can see again where it is punctured through in places several layers of the folded
9 metal and then still carried on and punctured the wall, indicating that the velocity
10 must have been very, very high.

11 Q. [9:50:48] Yesterday during your testimony you spoke to us about a band of
12 fragmentation pattern. Is that visible here on this door and the wall?

13 A. [9:51:03] That band is less visible in this particular scenario, and if I can just
14 explain that. I spoke yesterday of the angle of incidence, the angle that a mortar
15 bomb hits the ground. If it is not completely vertical, then the radial spread of
16 fragmentation may not exhibit as perfectly as we would like to see.

17 But I still see a radial spread of fragmentation there. So I would ascertain that the
18 mortar bomb was not completely vertical when it hit the ground. But in the small
19 area that we are looking at, there is a spread of -- there is a concentration of
20 penetration towards the middle of the door, and that concentration decreases as we
21 go up the door, which indicates to me in the small area that we look that that radial
22 spread, that radial pattern does still exist. It is just less obvious.

23 MR GARCIA: [9:52:17] If we could have the floor back, please. I would like to go
24 back to panorama 23, showing the facade of the house.

25 Q. [9:52:43] Now, Mr Witness, I direct your attention once again, and we're at

1 page 0068, that's C13 of your report, and at one of the photos in the middle you speak
2 about or you indicate a probable seat of explosion; is that correct? You were able to
3 identify a probable seat of explosion when you looked at the environment
4 surrounding this house?

5 A. [9:53:09] Yes, that is correct. I could see the probable seat of explosion. And
6 there were a number of features that indicated that that would be the case. We can
7 see a very small depression in the ground. The panorama that we see in front of us,
8 right in the middle, so we can see that depression in the ground.

9 And there is a circumferential band, so there is a circle of brown around the edge of
10 that. Now, that indicates to me that there is a high level of iron oxide there. This
11 would be very consistent with the result of detonation of a Russian type shell.

12 Now, I spoke yesterday of the metallurgy that is used in Russian ammunition. Now,
13 when ammunition is cast and not forged, I would expect the decomposition of that
14 material during detonation to -- the metal would break down into fragments of
15 different sizes, and maybe up to 50 percent of that material would just turn to dust.

16 So the fragmentation effect is lost, but that is a byproduct of it being cheaper
17 manufacture. This means that where Russian ammunition has functioned you can
18 reasonably expect to find higher concentrations of iron oxide. And this is visually
19 exhibited in this photograph here. Whilst it is not conclusive, it is indicative of this
20 being the case.

21 Q. [9:55:01] Now, when we look at this possible or probable seat of explosion and
22 you match it up to the fragmentation pattern that you see on the door and the wall,
23 does that tell you anything?

24 A. [9:55:21] Sirs, I spoke a few minutes ago about the strike marks on the wall and
25 the lack of strike marks on the corresponding wall, and I spoke of the angle. And I

1 think in my photograph Y74A2806 we can see where I've indicated the probable seat
2 of explosion and its proximity to the door. And we'll be able to, on the panorama,
3 we can see that here as well.

4 So if that is where the item functioned, where it exploded, I would expect the
5 fragmentation to penetrate the door, as we can see that it did, and I would expect it to
6 strike the wall on the right, as we are looking now. But I would not expect to see
7 strike marks exhibiting on the left-hand side in that corridor.

8 MR GARCIA: [9:56:15] I would ask the court officer to please demonstrate, show on
9 the screen CIV-OTP-0049-0183, please.

10 Q. [9:57:08] Now, Mr Witness, can you please tell the Court what it is that we see
11 on this photo?

12 A. [9:57:16] This is a close-up of the probable seat of explosion. And you can see
13 clearly I believe the circumferential ring of iron oxide or iron dust that is around the
14 probable seat of explosion.

15 Q. [9:57:36] Now if we move to the next page of your report, and that's 0049-0069,
16 and that's C14, at the top of that report I understand that you were also provided a
17 historical photograph and that you -- did you forensically analyse that historical
18 photograph?

19 A. [9:58:01] Yes, sir. The photograph that we see I believe was handed to us on
20 the day. It was handed to me by OTP personnel. It shows to me very clearly a
21 radial band of fragmentation pattern. I would assess that to be high velocity
22 fragmentation due to the significant amount of damage to the wall and to the
23 infrastructure of the pedestrian area, the curb as I would term it.
24 Again, we can see that circumferential band, and here it exhibits quite clearly. And
25 when I look closer at it, I can see the range of size of fragmentation penetration marks.

1 I can see the range in velocities where some have penetrated and some have not.

2 Looking at the damage and the damage to the door, I would again assess this to be
3 high velocity low angle fragmentation. And this would be consistent with a
4 detonating shell of military specification such as a 120 millimetre high explosive
5 mortar.

6 Q. [9:59:21] Now, if we turn to page 0070, CIV-OTP-0049-0070, that's the next page,
7 C15, I understand that we have there four fragments. How did you come about
8 obtaining these fragments?

9 A. [9:59:40] These fragments were handed to me on the day by OTP personnel. I
10 regret I didn't recall whether they were handed over on the day to OTP personnel.
11 But, again, when I examined these fragments, I found examples of brisance, which to
12 remind the Court would indicate that this metal, these fragments had been in contact
13 with detonating material. That evidence to me is quite clear.
14 The size, the range in size and shape of the fragments is consistent with fragmentation
15 formed from a detonating shell. And indeed when we look closely, we can see tool
16 marks on the front face of the fragments, indicating that they are from a machined
17 metal item.

18 Q. [10:00:44] Now, Mr Witness, I'd like for us to go to page, the next page in your
19 expert report, and that's C17. That's CIV-OTP-0049-0072, and it's subject area 4 once
20 again in the vicinity of SOS village.

21 And if we could please have the floor once again.

22 So we will be going to panorama number 24.

23 Mr Witness, I direct your attention to page C20 of your expert report. That's
24 CIV-OTP-0049-0075 for the court record.

25 Now, Mr Witness, can you please tell us what it is we see on this portion of the

1 panorama?

2 A. [10:03:07] Your Honours, this particular picture that we're seeing differs
3 somewhat from the previous pictures, because the fragmentation pattern is much,
4 much higher up. This to me in my professional opinion, it told me a story. So the
5 fragmentation band that we see is a band that is consistent with the shape and
6 fragmentation pattern that we have seen previously. But as I've indicated, it is
7 higher up, so it is above head height.

8 Now, if I may, I just need to explain mortar bombs and specifically a mortar fuse. So
9 the fuse is the part of the mortar bomb, it's the nose. It sits on the front. And this
10 can be set in certain fuse types, this can be set by the user to have two or more
11 functions. The fuse can be set to what's called immediate or super quick. And this
12 is where when the mortar bomb touches the ground or touches an object, it will
13 function, it will detonate straight away.

14 There is another setting on some fuses, some mortar fuses called delay. Now, delay
15 is where a number of milliseconds is added so that when the mortar bomb touches an
16 object, there is a very slight delay, maybe 0.05 seconds, for example, before the mortar
17 bomb then detonates.

18 So when I see a fragmentation pattern high up in this situation, in this residential area
19 where these residential dwellings have very thin roofs, I know that if a mortar fuse is
20 set to super quick or immediate, it will function, it will detonate at roof level. It will
21 not reach the floor before it detonates.

22 And so as soon as I saw this area and compared it to the areas that I've seen
23 previously, I could make the assumption, it's probably the correct assumption, that if
24 this was a mortar bomb, the fuse was set to immediate.

25 So it was not a surprise to me to find a fragmentation pattern high up at roof level,

1 because this would indicate to me that a mortar bomb, if that was what had detonated
2 here, had hit the roof and functioned at roof level.

3 PRESIDING JUDGE TARFUSSER: [10:05:54] So in the two, it's another type of shell?

4 THE WITNESS: [10:06:03] Your Honour, no. Potentially it's exactly the same shell.

5 It is a setting, a screw on the side of the fuse and you set it to setting 1, setting 2,
6 however many settings there are.

7 PRESIDING JUDGE TARFUSSER: [10:06:16] Okay.

8 THE WITNESS: [10:06:17] But it would help me, in the investigation, this helped me
9 to understand what setting had been prescribed by the users of a mortar system.

10 And this further indicated to me, this quite clearly indicates to me that this was an
11 indirect fire piece of, item of ammunition, just from what I see here.

12 PRESIDING JUDGE TARFUSSER: [10:06:42] Thank you.

13 MR GARCIA: [10:06:44]

14 Q. [10:06:47] Now, you've mentioned these different settings that you can put on
15 the mortar shell itself. Can you explain to us in what circumstances or if there are
16 any circumstances where someone firing these shells will use one of those functions,
17 whether it be the immediate or super quick? Is there a difference?

18 A. [10:07:06] The different settings on the mortar fuse exist to help the users get the
19 desired target effect. So that is the effect that they want to achieve at the target end,
20 where the mortar bomb will land. And this is one of the reasons that mortar bombs
21 are really inappropriate in the urban area, because these delay and super quick
22 settings are designed for mortar bombs to puncture through, if soldiers have dug
23 themselves into cover or if they are in soft ground, for example, sand or somewhere, it
24 will make sure that the mortar bomb functions and achieves the effect that the firer is
25 trying to achieve.

1 Because mortar bombs are area effect weapons, they're not precision weapons, the
2 user would set the fuse according to the overall type of the ground and what they
3 want to achieve, whether they wanted to achieve a crater, whether they wanted to go
4 through some, a layer of soil that soldiers had, you know, dug into a trench, or
5 whether they wanted the item to function on the surface and kill soldiers in a radial
6 band in the area where the mortars were landing. So you would use the fuse setting
7 according to the ground and the target effect.

8 Q. [10:08:42] Just before moving on, you say that they are inappropriate in the
9 urban area. Where are mortar weapon systems appropriate for?

10 A. [10:08:54] A mortar system would be appropriate where you have a
11 concentration of enemy and no civilian population. So, I mean, if you had, if you
12 were in a counterinsurgency operation and your area was completely flushed of
13 civilians, then indeed it might be militarily appropriate to use a mortar system.
14 So I'm not saying that it's always inappropriate in the urban area. I'm just saying
15 that a mortar system is only appropriate where you have an area that you want to
16 deny the enemy the immediate use of; or if you are trying to achieve a high casualty
17 or fatality yield, then it is appropriate to use your area effect weapon.

18 In an area where there is a significant number of civilian population or where there is
19 going to be a large amount of collateral damage, then an area effect weapon such as a
20 mortar, such as a 120 millimetre heavy cased high explosive mortar, that would be an
21 inappropriate use of that weapon system.

22 MR GARCIA: [10:10:30] I'd ask CIV-OTP-0049-0196 be shown on the screen, please.

23 If you can just zoom in a bit more. Can we zoom in just a bit more? Is that possible?
24 That's fine. Thank you.

25 Q. [10:11:27] Now, what can you tell us about the pattern, the fragmentation

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1 pattern that we see here on the wall?

2 A. [10:11:37] Again I see the familiar circumferential band. I can see varying -- I
3 can see a range of sizes. I can see a range of penetration depths. This again is
4 consistent with the fragmentation patterns that we have seen previously.

5 Q. [10:12:03] I'd ask that we turn back one page, and that's page C19 in your report,
6 and that's CIV-OTP-0049-0074.

7 Now, can you tell us what we see at the bottom of this page, a photo?

8 A. [10:12:27] Sirs, this photo was a historic photo. I think it was handed to OTP
9 personnel either on the day or it was already in possession of OTP personnel.
10 It was, if I remember correctly, it was verified by a witness to be damage caused on
11 the day in question. And so when I saw this photo, I saw damage consistent with
12 my assertion that a mortar bomb or an item of ammunition had detonated on the
13 roof of this building.

14 PRESIDING JUDGE TARFUSSER: [10:13:21] Excuse me. You're saying it was, if I
15 remember correctly, it was verified by a witness.

16 Which witness?

17 THE WITNESS: [10:13:36] Sir, the photograph was pointed out to us, I believe, on
18 the day. It was handed to me and it was pointed out to me in conjunction with OTP
19 personnel that this photograph was taken in the corridor that's indicated in my report.
20 So the arrow that I've drawn from this photograph into my photograph at the top of
21 the page, that is where we stood. And it was pointed out to me that the damage to
22 that roof was where we were standing.

23 PRESIDING JUDGE TARFUSSER: [10:14:15] It was pointed to you by a person there,
24 who was there or --

25 THE WITNESS: [10:14:21] Sir, I am going to say it was pointed out to me by OTP

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1 personnel. It was four years ago. I don't recall the exact set of circumstances that
2 this was pointed out to me. But in my report I report that this is the same location.
3 So that would have been OTP personnel pointing this out to me.

4 Because I don't speak the local language, I would have obviously referred to them
5 anyway. So it would be OTP personnel that pointed this out.

6 PRESIDING JUDGE TARFUSSER: [10:14:52] Okay, thank you.

7 MR GARCIA: [10:14:53] Your Honour, once again just for the record, there are two
8 accompanying reports that detail certain aspects of this mission, and I'll say them
9 again for the record, it's CIV-OTP-0073-0906 and CIV-OTP-0073-0931. And they are
10 two mission reports regarding that specific mission where there is details regarding
11 what occurred exactly.

12 Q. [10:15:32] Now, Mr Witness, I'd like us to -- now, Mr Witness, I'd like us to turn
13 our attention to Annex D, which is at tab number 5 of that binder that I've given you,
14 and it's CIV-OTP-0049-0076.

15 Now, I'll not touch upon most of these conclusions that you've enumerated here,
16 because you've already testified to them during your testimony. I just have a couple
17 of questions.

18 Now, paragraph 8, in paragraph 8, you're dealing with a question of the range of
19 the 120 millimetre mortar. You state here that "It is certainly possible to deploy
20 mortar systems from Camp Commando. The areas of SOS village and Siaka Koné
21 market are well within the minimum and maximum range limitations of most mortar
22 systems, including Soviet type 120 millimetre mortar systems, so the assertion that the
23 attack originated from there is certainly viable."

24 THE INTERPRETER: [10:17:00] Message from the interpreters: Could counsel be
25 requested to speak more slowly.

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1 MR GARCIA: [10:17:03]

2 Q. [10:17:04] What I would like to know is --

3 PRESIDING JUDGE TARFUSSER: [10:17:05] Could counsel be requested to speak
4 more slowly is the request coming from the interpreters.

5 MR GARCIA: [10:17:11] Certainly, your Honour.

6 PRESIDING JUDGE TARFUSSER: [10:17:13] Thank you.

7 MR GARCIA: [10:17:22]

8 Q. [10:17:23] Now, can you tell us what are the minimum and maximum range of
9 a 120 millimetre mortar shell fired from a mortar firing system, a Russian or Soviet
10 one?

11 A. [10:17:40] Your Honours, every mortar system is operated against a table called
12 a firing table. So every mortar system is different. But as a general rule, you could
13 expect a 120 millimetre mortar system to be usable between 500 metres and
14 maybe 7,000 metres. Those are not definite brackets, and an experienced user or a
15 different weapon, a different mortar system may have slightly different, you know,
16 slight variations upon that.

17 However, as a planning range, as an experienced user, I would use those as realistic
18 planning ranges. But experienced users of mortar systems will have methods of
19 varying those and extracting more performance out of the weapon system. But
20 crucially, the target areas here, the areas in question are within the minimum and
21 maximum brackets of almost any mortar system.

22 MR GARCIA: [10:19:01] Now, if we could just show on the screen
23 CIV-REG-0001-0220, please.

24 Q. [10:19:45] Now, just before we do broach this point, I understand that at the first
25 page of your Annex C, which is CIV-OTP-0049-0056, you had indicated approximate

1 distances. I'll let you go back to that. That's tab 4. You had indicated approximate
2 distances. The first one was area of Camp Commando to area of SOS village area.
3 The second one, area of Camp Commando to area of Siaka Koné market.
4 I understand that those were your distances that you had taken from Google map; is
5 that correct?

6 A. [10:20:45] Yes, sir, that is correct.

7 MR GARCIA: [10:20:49] And if we could please go back to CIV-REG-0001-0220.

8 Q. [10:21:57] Now, Mr Witness, I'd ask you to look at the screen. We have, it says
9 evidence that is in the case record of this case, and where we can read, "Emplacement
10 d'un mortier 120mm utilisé." The evidence that we have is that shells were fired
11 from that place, and that is at Camp Commando. And we can read that on the
12 indication just above.

13 Now, from what you are telling us of the range of this 120 millimetre Soviet or
14 Russian mortar shell, would mortar shells fired from Camp Commando from that
15 place be able to attain or to have an impact in Siaka Koné or SOS village on a range?

16 A. [10:22:54] Your Honours, the range is, as I said earlier, within the brackets of the
17 utility of almost all mortar systems that I know of. The mortar system as a weapon
18 system is ideally suited to firing indirectly. It is an indirect fire weapon system.
19 And one of the ways to describe that is where you cannot physically see the target
20 from the barrel, from the mortar barrel.

21 And so if you are firing as indicated here inside the camp, yes, that mortar system is
22 usable as a weapon system to fire into the two areas in question.

23 Q. [10:23:50] I'd just ask you to wait a couple of seconds. We're putting two maps
24 together.

25 So now we see on the left hand of the screen, that is I believe a map that you, a

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1 screenshot that you obtained from Google Maps; that's correct?

2 A. [10:24:59] Yes, sir, that is correct.

3 Q. [10:25:00] And our item of evidence on the right-hand side. And your
4 testimony is that from this place, the indication where it says "Emplacement 120
5 millimetres," an indirect firing system firing 120 millimetre Soviet or Russian mortar
6 shells could attain SOS village or Siaka Koné market; is that correct?

7 A. [10:25:27] Yes, sir, that is correct.

8 Q. [10:25:29] All right. So that's --

9 PRESIDING JUDGE TARFUSSER: [10:25:31] Hang on please.
10 Mr Jacobs.

11 MR JACOBS: [10:25:34] (Interpretation) Now, before the witness says whether you
12 can fire from a location on the two maps, perhaps it would be more appropriate to ask
13 him if he is familiar with these places.

14 PRESIDING JUDGE TARFUSSER: [10:25:55] With these places, which ones do you
15 mean?

16 MR JACOBS: [10:26:04] (Interpretation) The Google Map photo. The witness has
17 not said anything about this particular Google Map. He has not said whether --

18 MR GARCIA: [10:26:11] Your Honour, if I may, that's really not the point actually.
19 The question we're asking is a question of range of the mortar shells. Whether or not
20 he recognizes the place for this purpose is not relevant. There is another witness
21 who has already testified to where this -- where the indication on the map.

22 PRESIDING JUDGE TARFUSSER: [10:26:28] May I ask you not to make sort of a
23 ping-pong between you.

24 Now, please.

25 MR GARCIA: [10:26:36] Your Honour, our position is that the question of whether

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1 the witness can or cannot recognize a Google Earth image of Camp Commando is
2 irrelevant for the specific purpose of this exercise.

3 All the witness is testifying on is a question of whether the 120 millimetre shell mortar
4 can or cannot be directed and have an impact in two different places, SOS village and
5 Siaka Koné market from Camp Commando. It's a simple exercise. We're not
6 asking him to recognize, whether or not he can recognize certain places in Camp
7 Commando.

8 PRESIDING JUDGE TARFUSSER: [10:27:11] Mr Jacobs.

9 MR JACOBS: [10:27:12] (Interpretation) The witness is being shown a photograph
10 with a dot that indicates the location of a mortar and an arrow. And now he's being
11 asked to comment whether -- if it's necessary to ask a generic question, then that is
12 one thing.

13 PRESIDING JUDGE TARFUSSER: [10:27:40] Yes. But I don't understand the photo.
14 If the generic question is if that is possible, I don't understand the need of the two
15 photos one near the other. Put the question and --

16 MR GARCIA: [10:27:55] That's fine, your Honour. We can actually move on.

17 PRESIDING JUDGE TARFUSSER: [10:27:58] Yes.

18 MR GARCIA: [10:27:59]

19 Q. [10:28:03] Now, Mr Witness, in this report in Annex D, 0049-0076, at
20 paragraph 1, this is the fourth sentence, you say, "The weapon is not pinpoint or
21 precision."

22 Now, could you tell the Court from your expertise, from your knowledge of mortars,
23 what is the margin of error of a 120 millimetre shell mortar? I believe that you call
24 that the circular error probable. I'm not sure if I'm correct in that. But the general
25 idea, what we'd like to know is what is the margin of error of a shell fired?

1 A. [10:28:47] Technically, the question is one of what we term accuracy and
2 consistency. And for a 120 millimetre mortar, I would expect for an experienced
3 user group with that weapon system to achieve a line in the direction of the target of
4 somewhere between 60 and 100 metres. So if their point of aim is a specific point on
5 the map, they are very unlikely to hit that point. But they will, the mortars will
6 land 60 to 100 metres in diameter from that point, so a radius of maybe 30 to 50
7 metres from that point.
8 There will be a spread to the left and right. So we call this a circular area, you know,
9 error probable. It's not actually circular. There will be a left and right spread. But
10 I don't want to, I don't want to give a figure for that, because it is dependent entirely
11 on every different weapon system, the amount of barrel wear that has been, the
12 experience of the users, the wind on the day. There are many, many variables.
13 But you could reasonably expect mortars to be -- from a 120 millimetre system to be
14 landing within the figures that I have stated.

15 Q. [10:30:24] Now, in line with what you've just told us, you've also spoken in
16 paragraph 5 about fire mission. You say that, and I'll just repeat for the record what
17 you say in paragraph 5, "This will take into account geo-spatial variables and target
18 effect required but will not permit precision targeting, therefore a 'fire mission' will be
19 used and a number of rounds will be fired in order to cover the target area with a
20 target effect; hence this being and referred to as an area effect weapon."

21 A. [10:31:07] So as I have alluded to previously, your Honours, the mortar system
22 will not hit a specific target. So when you are predicting, when you are planning
23 your mortar fire mission, you'll pick a spot on the map or a spot on the ground and
24 you expect an area effect. What I mean by that is you'll rain your mortar bombs into
25 that area, and you do not reasonably expect to hit a specific target, but you do expect

1 to hit a specific area.

2 Q. [10:31:49] Now, can you tell us anything about the lethal radius or the casualty
3 producing radius of a 120 millimetre mortar shell?

4 A. [10:32:05] Your Honours, the lethality as we term it reduces with range. I
5 would expect the lethal radius of a heavy cased 120 millimetre mortar to be in excess
6 of 90 to 100 metres. But realistically I would expect fragmentation to still be lethal in
7 excess of 200 metres, possibly beyond.

8 Again, there are many variables, but I would use that as a planning figure. And I
9 would, if I was going to prescribe a cordon, an evacuation distance, I would prescribe
10 it to be much, much greater just to reduce the risk.

11 Q. [10:32:54] Now, you say in excess of 200 metres and possibly beyond. Can you
12 give us an approximate number of metres?

13 A. [10:33:07] If I was as a bomb disposal expert, I would be prescribing a cordon
14 evacuation distance way, way in excess. I mean, I would require people to have
15 what we term hard cover, i.e., cover from fragmentation and both low angle high
16 velocity and fragmentation that's raining down on top of them. I would probably
17 prescribe a safety distance of 500 metres in the first instance and maybe greater.
18 But it's, again, we have to be -- I don't like to put specific figures on this, because it
19 really depends on the environment and the terrain that you're in.

20 Q. [10:33:57] Now, can you tell us how much time it takes to load and fire a 120
21 millimetre firing system?

22 A. [10:34:07] Okay. Your Honours, a 120 millimetre mortar system, the bombs are
23 heavier than obviously smaller systems, so you would expect a rate of fire to be
24 marginally slower because it is a manual task.

25 However, in a fire mission you would expect to see a single round being fired to, we

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1 term it bed in the system. So once the fire mission has been prescribed, then a
2 mortar bomb will be fired to bed in the system. And it's what's called laying on. So
3 the mortar fire controller and maybe a forward observation officer would see where
4 that fall of shot lands and then adjustments can be made.

5 That will take a few seconds in flight and a few more seconds to work out the
6 adjustment, and then the fire mission would conventionally proceed, and you could
7 expect a rapid rate of fire of maybe 5 or 6 rounds per minute from a 120 millimetre
8 system, maybe more if the team is quick. But they would probably not be able to
9 sustain that rate of fire.

10 Q. [10:35:28] Very well. I would like us to go now to your Annex E. That's at tab
11 number 6 of the binder that I've given you. For the record of the Court it's
12 CIV-OTP-0049-0078.

13 So the first video we are going to playing for you, and this is from your report, Annex
14 E is video CIV-OTP-0042-0593. And it's at approximately 9.30 timestamp.

15 THE COURT OFFICER: [10:36:54] Public or confidential video, please?

16 MR GARCIA: [10:36:58] This portion is public.

17 Do we have the floor? Yes? Thank you.

18 (Viewing of the video excerpt)

19 THE COURT OFFICER: [10:37:21] Evidence channel 2.

20 MR GARCIA: [10:37:24] Thank you.

21 Q. [10:37:31] Mr FitzGerald-Finch, this is a video that is in your report that I
22 understand you've seen. And I've stopped it at timestamp 9.29.19. Can you tell the
23 Court briefly what we see at this specific timestamp?

24 A. [10:37:44] Your Honours, we're looking here at the base or the tail fin of
25 probably a 120 millimetre mortar.

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1 I can see the radial fins coming out, which is consistent with the fin pattern at the base
2 of a mortar.

3 I can see looking at the number of fins and the angle that the fins are at is consistent
4 with that of 120 millimetre mortars of Russian variation.

5 Q. [10:38:19] Now we're going to play one last extract for you, and that's from 10.23
6 to 10.35 of the same video.

7 That extract is public.

8 (Viewing of the video excerpt)

9 MR GARCIA: [10:38:36]

10 Q. [10:38:36] Now we've stopped the video at 10.35.16. Can you tell the Court
11 briefly what we see there?

12 A. [10:38:55] Your Honours, again I can see what appears to be the fin pattern. It's
13 the base of the tail fin of a mortar. Again, looking at the angle of the fins, I can see
14 that it is consistent with the fin pattern expected on a 120 millimetre mortar system.

15 Q. [10:39:18] Thank you, Mr Witness.

16 Now I'd like to direct your attention to the report itself that you sent to the
17 Prosecution on 1 September 2013. And that's at CIV-OTP-0049-0048, and it would be
18 at your tab number 6.

19 Now, I would just like to have you confirm that this is indeed your report; is that
20 correct?

21 A. [10:40:00] Yes, sir, that is correct.

22 Q. [10:40:04] Am I correct in stating that this is basically a report summarising the
23 conclusions in which you arrived in the other annexes?

24 A. [10:40:13] Yes, sir.

25 Q. [10:40:17] Thank you, Mr Witness. The Prosecution has no further questions

1 for you, your Honours.

2 PRESIDING JUDGE TARFUSSER: [10:40:39] Thank you very much.

3 Just a couple of questions before giving the floor to the Defence.

4 Here at page 27, line 2 and following, you spoke about, and I'm talking about the

5 English transcript, you spoke about the time needed to load and fire the 120

6 millimetres. It is alleged that two shells have been fired, one SOS market and the

7 other one -- SOS village and the other to the market.

8 As they are not in the same direction according to what you are saying here, but they

9 diverge, how much time do you need to, you have to change the direction and also

10 the angle in order to fire at 500 instead of 1,500 metres?

11 THE WITNESS: Your Honour, that would be correct if you were just using one

12 single tube. So there would be a tangible amount of time. It is difficult, and I will

13 not be drawn to specify a time, but you would be looking in maybe within 1 to 2

14 minutes, maybe quicker. However, it would be unusual in my opinion to find a

15 mortar fire team with only one barrel. And by that I mean it's unusual to find a

16 mortar team that only has one mortar system.

17 They would routinely be deployed in pairs, sometimes more. I'm not saying that it

18 is more than one, but that would be certainly a routine mortar deployment would be

19 multiple systems.

20 PRESIDING JUDGE TARFUSSER: [10:42:45] Thank you. Then on page 4 at the

21 beginning of today's testimony, at page 4, line 3, you said on the question by the

22 Office of the Prosecutor, who asked you about these fragmentations, if they are, the

23 fragmentation patterns, if they are compatible. You said "Now, these fragmentation

24 patterns we have seen on the previous photo and this photo here, are they

25 consistent" -- no, this is the question -- "are they consistent with the fragmentation

1 pattern of the detonation of a shell coming from a detonation of 120 millimetre
2 Russian or Soviet shell, mortar shell?"
3 And your response is: "Yes, the fragmentation that we have seen certainly on the
4 front face of the door would indicate that.
5 So they are compatible" is your answer.
6 My question is, they are also compatible with something else?
7 THE WITNESS: [10:43:58] Your Honour, when I wrote this report as a whole, I
8 stated that no -- out of the four sections, the four areas that we investigated, the four
9 physical locations we investigated, not one single location would definitively suggest
10 that type of weapon system. I have to look at everything as a whole. So I look at all
11 four. I look at all the evidence together.
12 Now, all of the evidence together and bearing in mind that this is in excess of two
13 years, I think two and a half years from the actual incident, a lot of the physical
14 evidence has disappeared.
15 So I have to look at the damage patterns. I look at the witness screens, so the
16 physical objects that still exhibit the manifestation of high velocity low angle
17 fragmentation patterns. And that connected with the physical fragments that we
18 found, connected with the video evidence that we're shown, connected with my
19 personal visit to Camp Commando and walking around and being shown the
20 possible, the probable firing point, all of that evidence together indicates to me that
21 that weapon system is -- it's possible that it was that weapon system. In my opinion
22 it is very likely it was that weapon system.
23 But I'm afraid I can't -- I couldn't tell you from one very small very specific little photo.
24 But I look at that, and in my report I use those little bits of evidence to build up that
25 bigger picture in my professional opinion.

1 PRESIDING JUDGE TARFUSSER: [10:45:51] My last question relates to what you
2 said at page 5, line 11, on the question now: "Did you proceed to have forensic
3 analysis of these three fragments?"

4 And I'm talking now of the fragments you see on page 0065. I don't know your tab.
5 And you said, "Yes, I did."

6 The first question is, what do you mean by "forensic analysis" from your point of
7 view?

8 THE WITNESS: [10:46:30] Your Honour, I look at the fragments, so I make a visual
9 inspection of them. I then do a magnified visual inspection of the fragments. I look
10 at them, I look at the fragments and using my historical knowledge and my
11 professional experience, I then ascertain the likelihood of those fragments being
12 metallurgical fragments from type of weapon system or any other type of weapon
13 system. But my assessment would be they are consistent in the size and shape as
14 I've described previously.

15 PRESIDING JUDGE TARFUSSER: [10:47:15] So there is no biological or chemical
16 investigation on these fragments?

17 THE WITNESS: [10:47:23] No, sir, there is not.

18 PRESIDING JUDGE TARFUSSER: [10:47:25] I ask this because you say in the report,
19 "They reportedly have been removed by wounds sustained by an eyewitness."

20 So the question is if there was done, if this is of your knowledge an investigation on
21 biological material on this, or did you see, did you recognize anything like this?

22 THE WITNESS: [10:47:55] Your Honour, I was handed these fragments in an
23 evidence bag on the day. I was not asked to conduct any biological examination.

24 PRESIDING JUDGE TARFUSSER: [10:48:06] Okay. Thank you very much.

25 Now I give the floor to Maître Altit for the Defence for Mr Gbagbo.

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1 MR ALTIT: [10:48:15] (Interpretation) Thank you, Mr President. Mr President,
2 your Honours, the questions to be put to the witness on behalf of the Gbagbo team
3 will be done by Professor Jacobs.

4 QUESTIONED BY MR JACOBS: (Interpretation)

5 Q. [10:49:24] Good morning, Mr FitzGerald-Finch.

6 A. [10:49:30] Good morning, sir.

7 Q. [10:49:33] My name is Dov Jacobs and I will ask you questions on behalf of the
8 Laurent Gbagbo Defence team.

9 I do not know whether it is better to use the microphone on the right or the left.

10 Mr Witness, are you registered on a list of experts in any country?

11 A. [10:50:14] Your Honours, as a member of the Institute of Explosive Engineers,
12 my expertise is registered and quantified as part of that institute. As a holder of an
13 Ammunitions Technical Officer Certificate, I am part of a group of experts. I am
14 former military, but still regularly employed as a holder of that qualification.
15 So yes, I guess I'm on a list of experts.

16 Q. [10:50:53] I will be more specific. Are you on a list of experts who are
17 supposed to be able to intervene before a court of law?

18 A. [10:51:12] Your Honour, I was appointed to do this investigation after
19 submitting my curriculum vitae. My bona fides were established before this
20 investigation proceeded, and I was selected to conduct this investigation.

21 Q. [10:51:36] I did not ask you what you were doing here, but I was talking about
22 appearing before a court in the UK or other countries.

23 MR MACDONALD: [10:51:57] Your Honours, in common law systems --

24 PRESIDING JUDGE TARFUSSER: [10:51:59] Wait. Just finish.

25 Mr MacDonald now.

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1 MR MACDONALD: [10:52:04] Thank you, your Honour. In common law system
2 is different from the civil law system in how you manage such things. I will say no
3 more.

4 PRESIDING JUDGE TARFUSSER: [10:52:29] If there is something you have to
5 address the witness with in his qualification, please do so. But don't, we don't go to
6 fish, on a fishing expedition.

7 Maître N'Dry.

8 MR N'DRY: [10:52:50] (Interpretation) Mr President, I just want to say that you
9 observed the reaction of the Defence during the questioning by the Office of the
10 Prosecutor. I do not know whether there is an objection or not. We let it slide, not
11 because there was no objection, but I would like Mr MacDonald to limit himself to
12 objections. He is not there to give lessons on what happens in other jurisdictions. It
13 is not up to him to tell the Chamber what the Chamber has to do.

14 PRESIDING JUDGE TARFUSSER: [10:53:37] Well, I said this. It would not be the
15 first time that I say this.

16 Mr Jacobs.

17 MR JACOBS: [10:53:52] (Interpretation)

18 Q. [10:53:54] Mr Witness, are you registered on the list of experts at the
19 International Criminal Court?

20 A. [10:54:05] Your Honour, I regret that I'm not familiar with your internal
21 procedures. But I am United Nations P-4 grade pool of experts member, and I
22 served the United Nations in Libya as their chief of weapons and ammunition
23 management. I hope this goes some way to answering the question adequately for
24 you.

25 Q. [10:54:37] Thank you, Mr Witness.

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1 If you can answer my questions while looking at me, that would be more appropriate.

2 PRESIDING JUDGE TARFUSSER: [10:54:44] No, no, no. He's looking at me.

3 That's okay. He can look at me, because he's talking to the Court.

4 MR GARCIA: [10:54:50] That is the normal procedure, your Honour. The witness
5 looks at the Court.

6 PRESIDING JUDGE TARFUSSER: [10:54:53] No. Come on. It's okay.

7 MR JACOBS: [10:54:56] (Interpretation)

8 Q. [10:55:06] So the Prosecutor did not ask you to register yourself on the list of
9 experts of the ICC for the purposes of this appearance?

10 PRESIDING JUDGE TARFUSSER: [10:55:19] I didn't know that there is a list of
11 experts at the ICC, but ...

12 THE WITNESS: [10:55:30] I'm sorry, your Honour, was that question directed at me?

13 MR JACOBS: [10:55:36] (Interpretation)

14 Q. [10:55:38] Let me repeat the question. The Prosecutor did not ask you for the
15 purposes of this expert study to have your expertise recognised by this Court?

16 A. [10:55:55] Your Honour, regretfully, I'm unfamiliar with your internal
17 procedures. I can only say that I was appointed by the Office of the Prosecutor to
18 undertake this investigation.

19 Q. [10:56:11] Mr Witness, yesterday you told us, and it is French transcript line 9,
20 and I quote, "Personally I never testified before a court. However, my reports were
21 used in courts, particularly in courts martial and also during judicial investigations."
22 End of quote.

23 I would like to know what you mean by the word "used," your reports were used.
24 During which phase of the proceedings?

25 A. [10:57:04] Your Honour, as a subject matter expert in the military, during the

1 routine investigation of the criminal use of ammunition, the criminal use of weapon
2 systems, the criminal use of improvised explosive devices, I would have to submit a
3 report for every single one of those investigations.
4 Those reports would be used and taken as evidence in whatever mechanism of legal
5 inquiry was appropriate or deemed appropriate at the time. I would have no
6 jurisdiction over that mechanism. But my reports would be submitted as evidence
7 and then used in the subsequent legal proceedings, whether that be the courts martial,
8 which would be the military court system, or whether that would then be submitted
9 into the civilian court. Unfortunately I never had the privilege to be asked to attend
10 court to speak on my reports.

11 Q. [10:58:06] Did these reports deal with the use of mortars specifically, and
12 especially 120 millimetre mortars?

13 A. [10:58:31] Your Honour, many of my reports were subject -- the subject of many
14 of my reports were on the use or the misuse of mortar systems. As I said to the
15 Court yesterday, in the British army we do not use 120 mortar systems. So that
16 would not be my routine line of inquiry. However, we work, the British army works
17 in a multinational environment, and our close colleagues, the Americans, use 120
18 millimetre mortar system. I work closely with the Americans.
19 I have witnessed the firing and the use of 120 millimetre mortar systems. I've
20 witnessed and investigated the use and misuse of 120 millimetre mortar systems.
21 As a weapons expert, it would be unusual for someone to have -- to dedicate their
22 entire career to one specific weapon type. And, indeed, in my professional opinion,
23 you would require the intimate knowledge of all different weapon systems in order to
24 be specific and be objective in your investigation.

25 So to more accurately answer the Defence's question, yes, I have investigated the use

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1 and misuse of 120 millimetre mortar systems before, but that was not my routine line
2 of inquiry.

3 Q. [11:00:12] Thank you, Mr Witness.

4 I will move on to something else, so maybe this is the ideal time for the break.

5 PRESIDING JUDGE TARFUSSER: [11:00:23] Okay. Let's break. Half an hour
6 break. We come back at 11.30. Thank you. The hearing is adjourned.

7 THE COURT USHER: [11:00:31] All rise.

8 (Recess taken at 11.00 a.m.)

9 (Upon resuming in open session at 11.31 a.m.)

10 THE COURT USHER: [11:31:33] All rise.

11 Please be seated.

12 PRESIDING JUDGE TARFUSSER: [11:31:55] Good morning again. Good morning,
13 Mr FitzGerald-Finch.

14 I give the floor back to the Defence for Mr Gbagbo. Mr Jacobs.

15 MR JACOBS: [11:32:23] (Interpretation) Thank you very much, your Honour.

16 Q. [11:32:28] Hello, Mr Witness.

17 Now, I'd like us to go back to the training that you took, if we could. The
18 Prosecution disclosed a few days ago on 16 June a document entitled "Technical CV".
19 And I will provide the reference CIV-OTP-0098-1529. Now, did the Prosecution ask
20 you to draft this document in preparation for your arrival here?

21 A. [11:33:10] Your Honour, sorry, may I have I my folder back, just so I can
22 reference the document that's being questioned? Thank you.

23 THE COURT OFFICER: [11:33:19] This is also displayed on evidence channel 1.

24 THE WITNESS: [11:33:25] Pardon me. Now I can see it.

25 Your Honour, yes the technical curriculum vitae the Office of the Prosecutor asked

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1 me to draft this specifically for this -- for this hearing.

2 MR JACOBS: [11:33:42] (Interpretation)

3 Q. [11:33:44] Did the Prosecution explain to you why?

4 A. [11:33:54] Your Honour, I believe they wanted me to just demonstrate more
5 technical detail than the original curriculum vitae that I submitted with my original
6 report.

7 PRESIDING JUDGE TARFUSSER: [11:34:07] Well, did they ask you or do you
8 believe they did, they asked you because of this?

9 THE WITNESS: [11:34:12] Pardon me. Yes, they asked me.

10 PRESIDING JUDGE TARFUSSER: [11:34:14] Yes. Did they tell you why
11 or -- because you said I believe they did ask me because of this and this. Did
12 they -- do you believe it or you know it?

13 THE WITNESS: [11:34:27] I know it, your Honour. They asked me to produce it.

14 PRESIDING JUDGE TARFUSSER: [11:34:29] Okay.

15 MR JACOBS: [11:34:30] (Interpretation)

16 Q. [11:34:31] So they asked you that at a meeting that you had with them?

17 A. [11:34:39] Yes, that is correct.

18 Q. [11:34:45] And during that meeting you covered the various points that you
19 should deal with during your testimony?

20 A. [11:34:55] During that meeting we just covered points that from -- in
21 the -- points in my report. So we just covered detail in my report.

22 Q. [11:35:07] In the CV that you appended to your report in 2013, and this is
23 CIV-OTP-0049-0054, you did not make mention of any particular knowledge in the
24 area of mortars; is that correct?

25 A. [11:35:32] Your Honour, my knowledge of mortars is covered by me holding the

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1 ammunition technical officer certificate, my membership of the -- I mean, Institute of
2 Explosive Engineers, my vocational experience as an ammunition technical officer in
3 the British army and my subsequent operational experience working alongside
4 mortar teams, advising mortar teams and working in a multinational environment
5 with mortar teams. I believe it's implied.

6 Q. [11:36:12] Could you tell us which courses you took at university?

7 PRESIDING JUDGE TARFUSSER: [11:36:25] No. Come on, please.

8 THE WITNESS: [11:36:36] Your Honour, as part of the ammunition technical officer
9 qualification, I attended the Cranfield University.

10 MR JACOBS: [11:36:44] (Interpretation)

11 Q. [11:36:45] We will get to your ATO training later, but let me be more specific.

12 Did you take a specific kind of training before you entered the army when you were
13 at university?

14 A. [11:37:00] Your Honour, sorry, I was -- I was cut off. I attended Cranfield
15 University as part of my ammunition technical officer qualification. And there I took
16 courses in ammunition design, the mathematics behind it, the chemistry behind it, the
17 metallurgy behind it. All of these courses are part of the technical training.

18 To further answer the question, I took a BSC in integrated engineering, where I did
19 mechanical engineering and electronic engineering. And I have a BSC in that.

20 Q. [11:37:40] Now, if we could return to the issue of your ATO training. The
21 Prosecution disclosed your certificate of qualifications to us on 16 January 2017.
22 Why not before?

23 THE INTERPRETER: [11:38:13] 16th of July.

24 THE WITNESS: [11:38:17] Your Honour, my ammunition technical officer
25 qualification was disclosed to the United Nations in 2012. I would have disclosed it

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1 as part of my application to be a subject matter expert on this investigation.

2 MR JACOBS: [11:38:37] (Interpretation)

3 Q. [11:38:40] I'm sorry, I don't quite understand the response you have given.

4 This was disclosed in 2012. It was sent to the UN. Let me repeat, why did you not
5 provide it to the Prosecution in 2013 at the time of the drafting of your report?

6 A. [11:39:00] Your Honour, my place as a subject matter expert on this
7 investigation was obviously subject to whatever due diligence the International
8 Criminal Court and the Office of the Prosecutor conduct.

9 I did not withhold this certificate. I have previously submitted it to the United
10 Nations. It is available for anyone who reasonably requires to see it. And I've
11 never withheld it from anyone who has reasonably asked for it.

12 Q. [11:39:37] According to the certificate, you did training in June 2006 to May 2007.
13 Now, judging by your technical CV, and once again I repeat this is
14 *CIV-OTP-0098-0529, you began your duties as ATO in July 2005, 12 years before you
15 received your certificate. Could you explain exactly --

16 THE INTERPRETER: Correction, two years *before.

17 MR JACOBS: (Interpretation)

18 Q. -- why did you begin your duties before obtaining the qualification in this area?

19 A. [11:40:32] Your Honour, when I initially embarked on my ammunition technical
20 officer qualification, I started the course as indicated. My father died, so I took a
21 hold-over job conducting duties as a British army officer within the ammunition
22 technical officer environment, and then I subsequently qualified as per the certificate.
23 So the certificate is dated as per the course that I took that resulted in my qualification.
24 My training started as per my curriculum vitae.

25 Q. [11:41:06] I'd like to show you a document. This is CIV-D15-0004-2465. It will

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1 be up on the screen in just a few moments.

2 Can you see the document up on the screen?

3 A. [11:42:09] Yes, I can.

4 Q. [11:42:13] Is this the training that you did? I'll give you some time to review
5 the document.

6 A. [11:42:26] Your Honour, I cannot see the -- I can't see the -- where this document
7 has actually come from. I can't verify exactly what this document pertains to. I
8 can't accurately answer the question, I'm afraid.

9 PRESIDING JUDGE TARFUSSER: [11:42:49] What is the source of this document?

10 MR JACOBS: [11:42:52] (Interpretation) Allow me to be more specific. If we
11 could now turn to the next page. This is from the Internet site of the university of
12 Cranfield. And we can see that this is an outline of the training required to be an
13 ATO. And the witness did mention earlier that he had attended this university.

14 MR GARCIA: [11:43:15] Can we also know for the court record when this link was
15 retrieved, what date?

16 MR JACOBS: [11:43:26] (Interpretation) As you can see on the document, on 28
17 June 2010.

18 PRESIDING JUDGE TARFUSSER: [11:43:39] 2017, I would say. It was
19 translated 2010. It's on the English transcript as 2010.

20 MR JACOBS: [11:43:56] (Interpretation)

21 Q. [11:43:57] I'll repeat my question. Is this the training that you took?

22 A. [11:44:04] Your Honour, this Internet source document is entitled the
23 "Ammunition Technical Officers - Course Details", however, this is not the -- this is
24 not pertaining to the whole of the ammunition technical officer course.

25 This pertains to what appears to be part of the course at the university of Cranfield

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1 conducted at Shrivenham. The -- my certificate pertains to my entire training.
2 The -- much of the training is caveated and it is under -- has security classifications,
3 which I'm sure would be -- the information would be available to the Court, however
4 I'm not at liberty to divulge exact details of that. Suffice to say, that the ammunition
5 technical officer course for which I hold the certificate is -- it is longer than the course
6 that is specified here, it is more detailed than the course that is specified here and I
7 suspect this is an advertisement for the course. I'm afraid I'm not completely
8 familiar with the document that we're being shown.

9 PRESIDING JUDGE TARFUSSER: [11:45:14] Thank you very much.

10 MR JACOBS: [11:45:16] (Interpretation)

11 Q. [11:45:17] So you are telling us that you've never seen this page from the
12 Internet; is that what you are saying?

13 PRESIDING JUDGE TARFUSSER: [11:45:31] When did you do your course at the
14 university?

15 THE WITNESS: [11:45:35] (Interpretation) My course at university, my course at
16 the university started at the very start of my training, and so it comprised the first six
17 months of the ammunition technical officer course, your Honour.

18 PRESIDING JUDGE TARFUSSER: [11:45:49] But when was it?

19 THE WITNESS: [11:45:51] January 2005.

20 PRESIDING JUDGE TARFUSSER: [11:45:52] Well, that's it.

21 MR JACOBS: [11:45:54] (Interpretation) I'm sorry, your Honour, but I do have one
22 question. I'm putting this question quite deliberately. If you could allow me to
23 follow up. If the witness could answer my question, I have one more question in this
24 regard.

25 PRESIDING JUDGE TARFUSSER: [11:46:12] Please --

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1 MR JACOBS: Oui.

2 PRESIDING JUDGE TARFUSSER: -- but only because you said you have one more
3 question in this regard.

4 MR JACOBS: [11:46:20] (Interpretation)

5 Q. [11:46:21] If we look at your technical CV, 0098-1529, we can see at the fourth
6 paragraph, we see this is copy and paste of the description of the course description
7 that we find on the Internet. Could you explain that if you never have been to this
8 particular site on the Internet?

9 A. [11:46:55] Your Honour, because that is a site on the Internet, I don't really want
10 to patronise you, but it's open source. That is -- it is a common paragraph that I've
11 used many times. And I don't recall my original source of that paragraph, but I'm
12 afraid it is a commonly used paragraph to describe the ammunition technical officer
13 course.

14 Q. [11:47:26] Used --

15 MR GARCIA: I object, your Honour.

16 PRESIDING JUDGE TARFUSSER: [11:47:31] Yes, but come on. No, please, now
17 it's -- I think we should go to the merit of the expertise, because probably it's not the
18 first time that he uses a CV for any reason.

19 MR JACOBS: [11:47:48] (Interpretation) I'm sorry, but the TV -- the technical CV is
20 an exact duplicate, and I think this is a legitimate question. We are here to --

21 PRESIDING JUDGE TARFUSSER: [11:48:01] Can we please go to the merit of the
22 expertise.

23 MR JACOBS: [11:48:07] (Interpretation)

24 Q. [11:48:44] Can you tell us, sir, what the best practices are, the protocols are that
25 specify how an expert working in your area should conduct an expert assessment or

1 report?

2 A. [11:49:01] I'm sorry, can I have the question repeated, please?

3 Q. [11:49:12] I suppose that in the army things are quite regulated and there are
4 protocols, ways to conduct an assessment, various steps to follow. Is there such a
5 document that you followed in your -- that you follow in your day to day work?

6 A. [11:49:33] If the question pertains to my writing this particular report, I took my
7 direction from the OTP staff that accompanied me, that directed me on this mission.
8 And I took my direction from the letter, the letter of mission. And then my
9 procedure, my methodology, my procedure would essentially be a logical flow
10 according to the requirements set to me. And that is how I would routinely conduct
11 my business as a subject matter expert.

12 Q. [11:50:17] So if I understand you correctly, when it comes to ballistics, which is
13 an area of science, there is no manual or protocol that says how to carry out a
14 particular analysis to determine a certain thing from biological or chemical approach?
15 So there is no specific manual or protocol to establish a trajectory, that sort of thing
16 you have no source?

17 A. [11:50:51] Your Honour, I would select a source of information appropriate to
18 the line of investigation that I'm choosing and appropriate to the line of investigation
19 that is being directed to me.

20 There is no one specific manual that I would follow and, indeed, adherence to a
21 specific manual would potentially almost certainly result in missing or overlooking
22 specific areas of inquiry.

23 Because I was directed to investigate the probable shelling of the crowded
24 marketplace of Siaka Koné market, the word "probable" indicates to me that I needed
25 to look, you know, to the left and to the right of the information that was given to me.

1 So I didn't just limit my investigation to it being 120 millimetre mortar, I looked to
2 either discount or include in information that would suggest that it was something
3 else.

4 I would not follow a specific procedure, a laid-down procedure because every
5 situation is different. And in my professional opinion, in my hundreds of
6 investigations, I would -- you know, there is no one procedure that I could follow.

7 Q. [11:52:27] Now, I realise that you have to adapt your procedure to each situation,
8 but can you give us any manual, any protocol, anything like that that you would have
9 followed to investigate?

10 A. [11:52:43] Your Honour, I would refer to academic literature to back up theories
11 and assertions. I would refer to academic literature to bolster an argument. I
12 would use my historical knowledge and my previous training. So I would routinely
13 refer to what we would term the ammunition handbook, which would be a script that
14 we use at Cranfield University. I would use redacted and open-source information
15 from army manuals, both British, Russian, American. I would use appropriate
16 sources is what I am trying to say. And I would use accepted academic literature
17 from a series such as the Brassey's series of books on guns, mortars, rockets and the
18 references held therein.

19 There is no one source, no one repository of information in the wide and varied
20 science of ammunition.

21 Q. [11:53:57] Thank you. Now, in your report you have used some open source
22 information, various kinds thereof. Was there a specific reason for that?

23 A. [11:54:15] Your Honour, I used Google Maps because it is an appropriate and
24 accurate mapping system and, you know, something that is common and easy for
25 people to refer to.

1 I routinely use open source information so that my reporting is -- so that the wording
2 in my reporting is easy to read. I think that answers the question.

3 Q. [11:54:55] Thank you. But that doesn't entirely answer my question. About
4 the technical and scientific aspects of your report, not Google Maps but, rather,
5 identifying a fragment or ballistics, you don't cite any source to back up what you are
6 saying for an outside person.

7 A. [11:55:21] Sorry, your Honour, but was that a question or a statement? Forgive
8 me.

9 Q. [11:55:30] I will rephrase my question.
10 Now, a document needs to be verifiable. Would you agree with me on that point or
11 not?

12 A. [11:55:44] Yes, sir, I would agree.

13 Q. [11:55:47] In this particular context, how can you verify, how do you establish
14 your conclusions if you don't explain how you came to those conclusions on the basis
15 of documents, theories, manuals in order to establish that it was a particular kind of
16 shell, that it came from a particular location? We don't know where you got that
17 information from, on the basis of what, what source. So my question was, did you
18 voluntarily decide not to place any sources in your report?

19 A. [11:56:26] Your Honour, the report, the letter to mission cites specific references
20 for source information that I was asked to write the report on. And I was asked to
21 write a report using my technical opinion.
22 When I submitted the report, I was not subsequently asked to provide any references,
23 so I did not do so.

24 PRESIDING JUDGE TARFUSSER: [11:56:53] May I just make a correction in the
25 transcript. I think when you referred to the sources, the question was, in French,

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1 "aucune source", no source, and it was translated with "open source". That's why,
2 yes, there is -- so this is in English, page 49, lines 7 to 9 and in French 46, line 6 to 8.
3 In English it should be no source, not open source.

4 MR JACOBS: [11:57:31] (Interpretation) Thank you, your Honour.

5 Q. [11:57:37] Yesterday, in response to a question from the OTP, you said, and I
6 quote, French version, *page 91, line 7.

7 THE INTERPRETER: Page and line references given at great speed.

8 MR JACOBS: (Interpretation)

9 "I investigated the detonations ..." and it's a bit difficult, this is the realtime version
10 and sometimes there are difficulties in re-reading things, but:
11 *"I investigated the detonations in order to determine whether the explosion and the
12 fragmentation ... that the bursts of shrapnel were from the shots fired by the coalition
13 troops, or were the result of an attack by the enemy. For example, I had to
14 determine the distinction between the two." Now, in your report, and you said this
15 several times yesterday and today, you took as your working assumption or -- well, I
16 think, I believe that you took the Prosecution's scenario as you're working
17 assumptions, why did you not assess other assumptions to --

18 MR GARCIA: [11:58:58] And I'd like to object to that.

19 PRESIDING JUDGE TARFUSSER: [11:59:00] Can you please stand up and wait until
20 the floor is given to you instead of jumping in because otherwise we have a transcript
21 which is not readable. Now, please.

22 MR GARCIA: Thank you, your Honour. Two things, your Honour. If Defence
23 counsel is going to put any quotes verbatim to the witness, I suggest he read it out
24 specifically so that there is no confusion.

25 And as for the last premise, I suggest also Defence counsel not put different premises

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1 and then a question. I suggest that it's asked of the witness if he agrees with it and
2 then we move on to the question.

3 Those are the issues that I have with the question.

4 PRESIDING JUDGE TARFUSSER: [11:59:46] Well, on the quotation, please quote
5 where you have to quote and then put the question. Thank you.

6 MR JACOBS: [11:59:50] (Interpretation) The quote is incomprehensible if I read the
7 realtime transcript.

8 So yes, indeed, I removed one or two meaningless words so as to make things clearer,
9 first of all.

10 And secondly, I asked a question of the witness. And to be fair, I explained what my
11 question was based on.

12 Q. So the question was: In your report, why do you not assess other hypotheses
13 other than the ones given to you by the Prosecution?

14 PRESIDING JUDGE TARFUSSER: [12:00:25] The question would be did you assess,
15 I would say. Did you assess also other assumptions?

16 THE WITNESS: [12:00:39] Your Honour, yes. While conducting the investigation,
17 my assessment, as I alluded to earlier today, would look at all the available evidence.
18 And I did not walk into that investigation with the cognitive bias that it was
19 categorically a 120 millimetre mortar attack.

20 I was given the information that it was a probable attack. And the information that
21 was presented to me during the investigation, both the physical evidence on the
22 ground, the evidence and the references that are quoted in the letter of mission and in
23 my subsequent analysis, I looked at many different possible courses of events.
24 However, I was asked to write a report on the probable shelling using the 120
25 millimetre mortar weapon system, and the evidence that was presented to me on the

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1 ground and subsequently led me to the conclusions that I stated in my report.

2 MR JACOBS: (Interpretation)

3 Q. [12:01:58] Thank you. Mr Witness, during your military activities did you ever
4 cooperate with the French army?

5 A. [12:02:08] Your Honour, I don't recall specifically cooperating with the French
6 army. But as part of multinational operations, in many theatres of conflict that I
7 served in, I will have worked from time to time with the French army or the French
8 forces.

9 Q. [12:02:32] Do you remember which operations, which specific context?

10 A. [12:02:42] No, I'm afraid I do not.

11 Q. [12:02:46] Have you previously worked in Africa?

12 A. [12:02:55] Yes, your Honour, I have.

13 Q. [12:02:59] In which country? In Côte d'Ivoire?

14 A. [12:03:08] In Algeria, your Honour.

15 Q. [12:03:14] Are there any modes of conducting hostilities that are different in
16 Africa or in particular countries? You mentioned the context. You said that you
17 have to adjust to the particular context. In certain African countries during civil war
18 for example, are there differences in the conduct of hostilities?

19 PRESIDING JUDGE TARFUSSER: [12:03:40] Wait a minute.

20 Mr Garcia.

21 MR GARCIA: [12:03:43] I'm going to object on the basis of relevance. I don't see
22 with what the expert witness is here to testify about and what his testimony has been
23 on for the last two sessions, how this question is relevant in any which way, and I'd
24 like Defence counsel to explain that.

25 PRESIDING JUDGE TARFUSSER: [12:03:57] We will hear this when the answer is

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1 given by the expert if it's relevant or not.

2 THE WITNESS: [12:04:05] Your Honour, as I've alluded to earlier, I served in Libya,
3 as I just stated, I've served in Algeria, I've served in many areas around the world.
4 It is important to adapt to every environment that you serve in. And I moderate my
5 behaviour, I moderate and adapt the way I conduct my business with everybody who
6 I serve with because it is important to integrate as best you can everywhere,
7 everywhere you can.

8 MR JACOBS: (Interpretation)

9 Q. [12:04:46] Thank you. How did the Prosecution contact you to carry out this
10 exercise to prepare this report?

11 A. [12:05:06] Your Honour, I'm afraid I do not recall the initial mode of contact.

12 PRESIDING JUDGE TARFUSSER: [12:05:19] Were you contacted directly or through
13 your structure you're in with, your organisation, be it the army or the UN or
14 whatever?

15 THE WITNESS: [12:05:33] Your Honour, if I recall, I was -- after I'd served in Libya
16 for the United Nations as their chief of weapons and ammunition management, I was
17 subsequently contacted, I think, through, you know, either a social or professional
18 network of friends essentially, and that -- I think that's how the initial contact started.
19 I, of course, had to then subsequently submitted an application.

20 PRESIDING JUDGE TARFUSSER: [12:06:06] Thank you.

21 MR JACOBS: [12:06:22] (Interpretation)

22 Q. [12:06:24] Just so that we've understood one another, you are telling us that
23 through friends the Prosecution contacted you? So you got a phone call or an email
24 from the OTP at one particular point in time?

25 A. [12:06:41] Your Honour, I think -- I think I said friends and professional network.

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1 And I'm afraid I do not recall the initial mode of contact.

2 Q. [12:06:53] Mr Witness, your mission was from the 8th to 13 July; is that

3 correct -- no, 8 to 12 July 2013; correct?

4 PRESIDING JUDGE TARFUSSER: [12:07:17] Yes, it is correct. It is written on the
5 expertise, so.

6 MR JACOBS: [12:07:25] (Interpretation)

7 Q. [12:07:26] If we look at the mission letter that you received, CIV-OTP-0049-0051,
8 it would appear that you received the letter on 9 July 2013, after the beginning of the
9 mission; is that correct?

10 A. [12:07:46] Yes, that is correct.

11 Q. [12:07:51] So you were already in Côte d'Ivoire when you received the mission
12 letter?

13 A. [12:08:00] No, that is not correct.

14 Q. [12:08:07] But I suppose in order to prepare the mission, you had to make
15 contact with the OTP before the official letter on 9 July. You didn't receive the letter,
16 then immediately head out the same day or the next day direction Côte d'Ivoire.

17 A. [12:08:31] Your Honour, again, I don't wish to patronise the Court, the
18 procedure for which I was recruited and subsequently engaged on to the mission, the
19 exact facts I do not recall. However, I was obviously contacted some time before the
20 mission. The mission was established. And if I remember correctly, and I'm sure
21 the official mission records will verify, the mission date at relatively short notice was
22 changed, and I seem to remember that being the case. I'm afraid I can't be exact on
23 that. You would have to refer to the OTP's internal records.

24 Q. [12:09:20] So you had contacts with the OTP before the official mission letter, yes
25 or no?

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1 A. [12:09:36] I would have had -- there would have been a mode of contact and an
2 established procedure for that contact. I'm afraid I would need to refer to either my
3 own email records or my own phone records or, indeed, the -- there will be records
4 within the OTP of all the communication with regards to this mission.

5 Q. [12:10:03] So we can deduct from what you said that you had oral or other
6 sources of discussions in addition to the mission letter. So when you received the
7 mission letter, you already knew what was being required of you, you did not learn
8 about it exclusively from that letter?

9 A. [12:10:37] Your Honour, again, I do not recall the exact mode, method and
10 procedure of me being assigned to this mission and contracted on to this mission.
11 However, when I look at the letter to mission, it is clearly, you know, a set of official
12 instructions.
13 I don't recall it being a surprise to me when I received this letter. And I will have
14 been forewarned that an investigation of some kind was going to be asked of me
15 during this, during this mission. Otherwise I wouldn't have agreed to -- so I already
16 knew that there would be some investigation. I'm afraid I cannot recall the exact
17 conversations that were held before that, but I'm sure there are official email records.

18 Q. [12:11:39] Thank you, Mr Witness.

19 Mr President, with your leave, I would like to go into private session for a couple of
20 questions.

21 PRESIDING JUDGE TARFUSSER: [12:11:52] Can we go into private session, please.

22 (Private session at 12.11 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Open session at 12.13 p.m.)
16 THE COURT OFFICER: [12:13:39] We are back in open session, Mr President.
17 PRESIDING JUDGE TARFUSSER: [12:13:44] Thank you very much.
18 Now we are in open session. Mr Jacobs.
19 MR JACOBS: [12:13:48] (Interpretation)
20 Q. [12:13:49] So that everyone should understand, let me ask the question again in
21 open session. In your report, I note that you sent it to Mr Eric MacDonald in the
22 OTP and to Mr Eric Baccard. Can you tell us who is Mr Eric Baccard?
23 A. [12:14:16] Your Honour, if I remember correctly, Mr Eric Baccard was a member
24 of the OTP at the time of me being contracted for this mission. That's all I can tell
25 you at the moment.

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1 Q. [12:14:38] Do you know his occupation, his position?

2 A. [12:14:46] Your Honour, I'm afraid I do not recall Mr Baccard's position or
3 occupation, but maybe I could refer to some of his former colleagues to answer that
4 question.

5 PRESIDING JUDGE TARFUSSER: [12:15:01] Was he with you on mission?

6 THE WITNESS: [12:15:06] Your Honour, I don't recall him being on mission with me.
7 And I -- honestly, your Honour, it's four years ago. I don't recall him being on the
8 mission with me. But I've referenced him in this document, so he was, he was a
9 bona fide addressee for this document as far as I was concerned.

10 PRESIDING JUDGE TARFUSSER: [12:15:25] Okay.

11 MR JACOBS: [12:15:27] (Interpretation)

12 Q. [12:15:33] According to your mission letter, and we can go to the page in your
13 report which is 0049-0051, you were sent a certain number of documents. We are
14 going to come back to the substance of those documents later, but I would like to
15 know specifically when those documents were sent to you?

16 A. [12:16:08] Your Honour, I'm afraid I do not recall exactly when those documents
17 were sent to me. But those documents were made available to me either -- they were
18 definitely available to me on the mission and subsequent to the mission. I'm afraid I
19 don't recall the exact method of delivery or, I'm sorry, I don't know how to answer
20 that question more completely.

21 PRESIDING JUDGE TARFUSSER: [12:16:34] The question would be: Did you go
22 on mission already prepared, meaning after having read these documents, or did you
23 read them during the mission or after it, just roughly?

24 THE WITNESS: [12:16:52] Your Honour, I'm afraid I do not recall that. I cannot
25 answer that accurately, I'm afraid.

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1 PRESIDING JUDGE TARFUSSER: [12:17:00] Mr Jacobs.

2 MR JACOBS: [12:17:02] (Interpretation)

3 Q. [12:17:03] Mr Witness, in which language were these documents?

4 A. [12:17:12] Your Honour, if I recall, the documents were in French. I can't recall
5 if I was provided with a translation. There may be a translation as part of those
6 document references.

7 PRESIDING JUDGE TARFUSSER: [12:17:38] Do you speak French, or do you
8 understand French, do you read French?

9 THE WITNESS: [12:17:42] Your Honour, no, I do not. But I would have referred
10 to -- on the mission, I will have conferred on any parts of the documents that I did not
11 understand to ensure that I was presented with information that I could understand.
12 So again, I don't recall, you know, following the significant passage of time exactly
13 how that information was conveyed to me in English, but I would have made the, you
14 know, appropriate steps to ensure that I was given accurate information. So I,
15 honestly without seeing those documents in front of me, I cannot recall whether I was
16 given English translations with them or not.

17 PRESIDING JUDGE TARFUSSER: [12:18:27] Mr Jacobs.

18 MR JACOBS: [12:18:31] (Interpretation)

19 Q. [12:18:32] You have just told us, page 57, line 11, that during the mission, if there
20 were documents that I did not understand, I would ask for explanations. So to
21 whom did you ask for these explanations?

22 A. [12:18:57] Your Honour, as I said previously, I conducted this mission as a
23 member of the team from the Court, from the Office of the Prosecutor. The team was
24 comprised of multilingual personnel. And so I don't recall at any point being
25 disadvantaged through my own inability with languages because there were

1 translators present.

2 Q. [12:19:29] Did you ask the Prosecutor for any additional information on the
3 alleged incidents, that is in addition to the documents that were made available to
4 you?

5 A. [12:19:56] I don't recall asking for any additional information because I was
6 asked to report on the information that I was given. And at the time of writing the
7 report, I was able to report as requested on all the information that presented to me.

8 Q. [12:20:17] So in order to be clear, you worked only on the basis of the
9 information provided to you by the Office of the Prosecutor?

10 A. [12:20:36] I could only work on the information given to me by the Office of the
11 Prosecutor because I can only work on the information given to me by the people
12 conducting the mission for which I'm contracted to serve. I hope that answers the
13 question.

14 Q. [12:20:58] Earlier on you told us, I don't have the exact reference, that when you
15 were carrying out your expertise, you looked at open sources, newspapers, to
16 understand the context. So in this specific case you are telling us that you did not
17 actually look for other sources to better understand the context?

18 A. [12:21:36] Open source information is -- it cannot always be relied upon. So the
19 information that I was given in some of these references was from Internet sources
20 such as YouTube, et cetera. And I can -- I would have looked at the time for
21 interesting but anecdotal information, but I can't, I can't use, I can't use open source
22 information as a verbatim source, because it is, as the name suggests, open source.
23 I don't know -- I don't really understand the direction your question is going, so I
24 don't know how to answer it accurately.

25 Q. [12:22:37] Were you, for example, interested in what the Defence might have

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1 said about these incidents during the confirmation of charges proceedings, for
2 example, prior to your mission in 2013?

3 A. [12:23:01] Your Honours, I would of course at the time have read around the
4 situation in the area, and I would use to the best of my ability multiple sources of
5 information. However, it's impossible to get unbiased reporting. And so for a
6 technical investigation, I'm professionally compelled to use the information that's
7 presented to me.

8 It is interesting to read around and find out other people's opinion, but I was asked to
9 write a report using my opinion, my technical opinion, and with the benefit of my
10 technical expertise.

11 So I would have at the time for my own enjoyment of the subject and my professional
12 satisfaction, I would have read to find out more completely the political situation in
13 the region. However, I was asked specifically in my letter to mission for a report on
14 the following documents and so that is what I based my report on.

15 Q. [12:24:22] Did you ask to meet with any staff members of ONUCI who were
16 officials in Abidjan or other such persons?

17 A. [12:24:49] Your Honours, I don't recall specific conversations, and if it's not
18 stated in a report or an official record from the mission, however, yes, I would have
19 asked to speak to any relevant personnel; and any relevant personnel would have
20 either availed themselves, been made available or if they were available, we would
21 have met them.

22 So I would say that my line of investigation was as complete as it could have been at
23 the conclusion of the physical mission to Abidjan.

24 Q. [12:25:33] Thank you, Mr Witness.

25 Now, let us come back to the conduct of the mission itself. Yesterday you said that

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1 members of staff accompanied you during this mission. Can you tell us who else
2 accompanied you?

3 A. [12:26:10] Sirs, I do not recall the exact composition of the mission, but if I can be
4 permitted to say some names, there will be an official record of the mission
5 composition.

6 PRESIDING JUDGE TARFUSSER: [12:26:26] So let's go into private session, please,
7 for the names.

8 (Private session at 12.26 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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13 Page redacted – Private session

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- 1 (Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Open session at 12.32 p.m.)
- 13 THE COURT OFFICER: [12:32:35] We are back in open session, Mr President.
- 14 PRESIDING JUDGE TARFUSSER: [12:32:43] Mr Jacobs.
- 15 MR JACOBS: [12:32:46] (Interpretation)
- 16 Q. [12:32:47] In your report, you described a visit of four sites and you also talked
- 17 to that with the Prosecutor. I will ask you questions about that. You do not need to
- 18 repeat everything that you said to the counsel for the Prosecution.
- 19 The first site that you visited according to your report, and it's CIV-OTP-0049-0056,
- 20 and at page 0057, was the Siaka Koné market. Can you tell us on what day of your
- 21 mission that you visited this site, that is if you recall, of course?
- 22 A. [12:33:43] Your Honours, I recall this being the first full day of the mission. So
- 23 it would have been the morning after we arrived, I think.
- 24 Q. [12:33:58] And how long did you spend there?
- 25 PRESIDING JUDGE TARFUSSER: [12:34:04] The whole day.

1 MR JACOBS: [12:34:11] (Interpretation)

2 Q. [12:34:12] Do you confirm it was the whole day?

3 A. [12:34:15] Yes, it was the whole day.

4 Q. [12:34:19] Yesterday you said that you visited a second site in Siaka Koné. It is
5 page 108 onwards. But why did you mention only one site in your report?

6 A. [12:34:46] As I answered yesterday, we were -- a second site was indicated to us,
7 but there was nothing of any technical substance there that I could make an
8 assessment from. So I chose to discount that from my -- from any further
9 investigation.

10 Q. [12:35:09] So in your report, you only maintained the elements that you had
11 investigated that confirmed the thesis of the Prosecutor?

12 A. [12:35:29] Yes.

13 Q. [12:35:35] Thank you. On page 0058 of this annex, you reproduce a
14 photograph and you indicate that it is the probable site of the explosion -- correction,
15 probable seat of the explosion. But on the photograph there is no depression, there
16 is no crater. So on the basis of what did you say that this is the probable seat of the
17 explosion?

18 A. [12:36:38] Your Honours, the series of photographs in the report are there to
19 draw the reader's eye and to orientate the reader into the areas in question.
20 So whilst there is no visible depression, there is no visible indication on the ground,
21 the indicated probable seat is there to essentially enhance the reader's understanding
22 of the geography, because individual photos are just little snapshots, and the reader,
23 it's difficult for the reader to be geographically aware.
24 So the probable seat of explosion is indicated to show its proximity to the door that
25 we discussed in great detail yesterday.

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1 PRESIDING JUDGE TARFUSSER: [12:37:33] But how could you identify this
2 location?

3 THE WITNESS: [12:37:37] Your Honour, when I looked on the ground at the radial
4 fragmentation pattern and how the fragmentation damage exhibited itself, I would
5 have looked for where the probable seat of explosion would be, where it would
6 realistically be.

7 And the reason for putting just a wide circle rather than a specific mark, a specific
8 arrow or mark on the ground is to indicate that it's in the vicinity of that, that circle,
9 not the exact point.

10 The photo really is there just to steer the reader and try and help the reader to become
11 geographically more aware from the series of photos.

12 PRESIDING JUDGE TARFUSSER: [12:38:26] Mr Jacobs.

13 MR JACOBS: [12:38:31] (Interpretation)

14 Q. [12:38:32] Did you take any specific measurements? You say that you started
15 with the marks on the door. But did you measure any distances to establish the seat
16 of the explosion?

17 A. [12:38:46] Distances were measured and OTP personnel were measuring with
18 tape measures and height rulers. So to give a reference, because this was the first
19 seat, this was the first area we looked at, it is very difficult to be scientific. And
20 when such an amount of time has elapsed, it is difficult to -- it's impossible to be exact
21 about these things, you know, with a paucity of evidence, when there is a lack of
22 evidence.

23 So the distances were measured on the day, but not stated in the report, because it is a
24 few metres to the door. I don't recall the exact distance. And I don't recall, I do not
25 report the exact distance.

1 Q. [12:39:50] And why?

2 A. [12:39:55] Because the -- well, as I said to you before, it is not an exact science.

3 You know, we have to look at all of the evidence as a whole. And so when I look at
4 the door that we examined in great detail yesterday, I can see the fragmentation
5 pattern, and so I can extrapolate back and I can make an approximation.

6 So that distance would be within 10 to 15 metres of the door, and that would be
7 realistic for the fragmentation pattern we saw. I mean, the seat of the explosion may
8 have been closer.

9 The photograph there is, as I said, an indication to make the reader more
10 geographically aware rather than stating an explicit fact.

11 Q. [12:40:51] And where do you get this figure 10 or 15? Why not 25 or 100?
12 What is your source of information to tell us that the explosion occurred 10 to 15
13 metres away?

14 A. [12:41:08] Your Honours, from significant operation experience working with
15 mortar systems, as an explosion specialist working within the bomb disposal
16 environment, investigating innumerable mortar incidents, both at the ammunition
17 types functioning within their design mode and outside of their design mode, it's
18 through operation and professional experience that I can make that assessment.
19 Like I said, there is no exact science to this, and especially when significant time has
20 elapsed. If I went 100 metres back, then as I explained yesterday the fragmentation
21 pattern, the radial fragmentation pattern would not exhibit in the concentration that it
22 exhibited on the door that we looked at yesterday.

23 Q. [12:42:06] Once again, page 0059, you said that the marks you observed, and I
24 quote in English, (Speaks English) "consistent with but not conclusive of that of a
25 fragmenting case construction." (Interpretation) End of quote.

1 Am I to understand that such marks could be compatible with other kinds of
2 weapons?

3 A. [12:42:53] Yes.

4 Q. [12:42:58] Such as? Which ones?

5 A. [12:43:05] Any other fragmenting heavy cased item of ammunition, something
6 that is going to produce a similar fragmentation pattern, so something with a cast,
7 potentially with a cast steel body, something that is designed to produce
8 fragmentation in a radial pattern, something that is going to produce through its
9 design mode or otherwise fragmentation that had differing sizes and fragments that
10 are travelling at different velocities.

11 So when as I said yesterday when we talked about this door, I would expect a similar
12 fragmentation pattern perhaps from an improvised explosive device. However, I
13 also said that, you know, I took all of this information as a whole and I did not look at
14 any one specific site to be conclusive.

15 Q. [12:44:15] Thank you. Could you explain to us what are the necessary
16 conditions to establish the origin of a mortar that has been fired from a ballistic point
17 of view?

18 A. [12:44:34] Your Honours, that would be a very difficult question to answer.
19 Technically, you couldn't answer that following the significant passage of time. And
20 I don't mean to be imprecise in my answer, but if the gentleman is referring to the
21 shape and direction of the fragmentation and could we extrapolate back and
22 somehow work out what the ballistic trajectory of the mortar was, I'm not aware of
23 any procedure available to do that.
24 Mortar fire origin, so it's called shot detection within the military environment, shot
25 detection is done with radar and it is done in realtime.

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1 On the subsequent functioning of an indirect item of ammunition, it is, I would
2 suggest, almost impossible to ascertain its origin, its origin of flight from the fragment,
3 from the damage pattern on the ground.

4 Q. [12:45:54] Thank you, Mr Witness.

5 If we could now move on to the second site that you mentioned in Annex C. If we
6 could move on to page 0061. And you identified a site that was close to SOS village.
7 If we could now move to the page in question.

8 Do you remember which day you visited this site and how much time you spent
9 there?

10 A. [12:46:37] I remember this being the second full day of the mission, and I think
11 we spent all day there. But again I would have to refer to an official mission record
12 to verify that.

13 Q. [12:47:07] Page 0062 now. Here we see a photograph that you reproduced, and
14 you placed an arrow showing the probable seat of explosion. We don't see a crater
15 once again.

16 Could you tell us how you determined that this was the seat in the same way as the
17 first seat of explosion?

18 A. [12:47:44] I believe there was in the complete photo record, one of the OTP
19 personnel took a photo of the probable seats of explosion, and I think yesterday we
20 saw an expanded view of that.

21 PRESIDING JUDGE TARFUSSER: [12:48:00] What would interest me is were you
22 guided to the probable seat of explosion or did you find the probable seat of
23 explosion?

24 THE WITNESS: [12:48:12] Your Honours, I was guided by OTP personnel into the
25 general vicinity of this incident. And on gaining this aerial view, I then started to

1 deduce the probable seat of explosion, and then I would have then verified it through
2 physical evidence on the ground, through walking the ground.

3 PRESIDING JUDGE TARFUSSER: [12:48:36] Okay. Thank you.

4 Mr Jacobs.

5 MR JACOBS: [12:48:40] (Interpretation) Thank you.

6 Q. [12:48:46] Now, this photograph was taken from the top, from the roof of the
7 mosque. You said so. You said that earlier, I believe. Who gave you access to the
8 roof of the mosque?

9 A. [12:48:59] Your Honours, yesterday when we discussed getting access to the
10 roof of the holy mosque, I explained that the custodian had kindly given us
11 permission to go up there, and he accompanied us up onto the roof.

12 Q. [12:49:16] And did he provide information about what you might observe?

13 A. [12:49:22] I do not recall him providing information to what we might observe.
14 And I would have spoken to him briefly on the day. But, again, I was concerned
15 with physical evidence, and the physical evidence is what tells me the technical story.
16 Whatever the custodian of the mosque discussed with me would have been
17 interesting, but I would have really only used the physical evidence to draw
18 conclusions.

19 Q. [12:49:59] Now, once again, page 62, I'll quote in English, you wrote this,
20 (Speaks English) "This ammunition type cannot be confirmed from the information
21 derived in this location. However, it is entirely feasible that the heavy cased high
22 explosive mortar round would exhibit this pattern of damage."

23 (Interpretation) Just so that we can understand what you have said here, you are
24 telling us that you can't confirm that a shell fell that day at that place on the basis of
25 the information that you had?

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1 A. [12:50:58] On the basis of the information that we had on the day, I can confirm
2 that the damage pattern is consistent with. But as I've said in my report and I've
3 stated verbally on several occasions, there is no, in all of these areas, there is no one
4 specific area that suggests that, that confirms the use of 120 millimetre heavy cased
5 ammunition. It is the culmination of all the evidence that remains over that long
6 period of time that draws me to that conclusion. So there is no one specific site that
7 says to me I can conclude this is 120 millimetre mortar ammunition.

8 Q. [12:51:49] So as was the case for the first site, if I were to ask you if other theses
9 were entirely feasible, you'll confirm that, for example, an IED could have produced
10 similar damage?

11 A. [12:52:04] Yes. I mean, that's taken in isolation, your Honours, that could
12 conceivably be the case. You know, an IED could consist of, for example, a suicide
13 bomber carrying a 120 millimetre heavy cased item of ammunition, or it could be
14 some, you know, some other, you know, source of fragmentation that's accelerated
15 through, you know, a high explosive event.
16 However, the radial spread, the height, the damage pattern on each site indicates but
17 does not conclude.

18 PRESIDING JUDGE TARFUSSER: [12:52:51] Can I ask you how many seats of
19 explosion you have seen or identified or probable seat of explosions you have
20 investigated and seen or identified or whatever?

21 THE WITNESS: [12:53:07] Your Honours, I will try not to be flippant here, because
22 it's almost innumerable, hundreds or thousands. I've conducted demolitions of --

23 PRESIDING JUDGE TARFUSSER: [12:53:25] No, no. Here in this occasion, in this
24 mission.

25 THE WITNESS: [12:53:28] Pardon me.

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1 PRESIDING JUDGE TARFUSSER: [12:53:29] No, not generally speaking.

2 THE WITNESS: [12:53:32] There were four, four locations, the four sites that we
3 went to. I have in my Annex C, I number them one to four.

4 PRESIDING JUDGE TARFUSSER: [12:54:03] Please go ahead while I check.

5 MR JACOBS: [12:54:08] (Interpretation) Thank you, your Honour.

6 Q. [12:54:09] Now once again let's continue. Page 62, you say that you received a
7 number of photographs provided to the OTP by eyewitnesses. So I think you have
8 told us that you don't remember whether the photographs were given to you on site
9 or beforehand. Exactly how did you come into the possession of these photographs?

10 A. [12:54:32] The photographs as I stated yesterday were given to me on site. But
11 I'm afraid I do not recall whether they were given to OTP personnel before that day
12 on that mission or whether they were given to us on site on that mission. But I saw, I
13 only saw those photos on the day when they were presented to me on the ground at
14 that scene.

15 Q. [12:55:01] Now, you have said that these photographs were taken at the site
16 immediately after the attack by the alleged mortar. Once again, page 62. How did
17 you know that?

18 A. [12:55:22] This was information given to me by OTP personnel.

19 Q. [12:55:28] Is it a usual practice to conduct ballistic analysis on the basis of
20 photographs?

21 A. [12:55:41] The photographs are interesting and they start to paint a bigger
22 picture to me on a technical basis.

23 So I act on all the information given to me. And so I was told by OTP personnel that
24 these were photographs that were relevant to the investigation. They were local to
25 that scene. And so yes, they become useful bits of technical information.

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1 Q. [12:56:15] So are we to understand from your response, is it a common practice
2 to conduct ballistic analysis on the basis of photographs? Because this is what you
3 have done in your report. Yes or no?

4 A. [12:56:33] Yes, your Honours, it's common to conduct any sort of analyses from
5 all the relevant information provided. And I felt at the time and I feel now that it
6 would have been remiss of me to ignore this information because it was presented to
7 me by OTP personnel.

8 Yes, it is common to use all sources available if there is technical merit.

9 In terms of a ballistic analyses within the strict term of -- it's very difficult to -- it's
10 impossible for me to ascertain a ballistic trajectory from those photographs, but if
11 we're talking about the analyses of the potential functioning of an item of heavy cased
12 ammunition, then those photos are relevant, and yes, it would be common to use
13 relevant information.

14 Q. [12:57:33] You have just told us that it is impossible to determine a specific
15 ballistic trajectory on the basis of photographs. And yet on the same page further
16 down you use one of the photographs that were given to you to conclude, and once
17 again I'll quote in English:

18 (Speaks English) "The three photographs below show the trajectory of the projectiles
19 through the pedestrian access door and into the wall of the residential dwelling
20 beyond."

21 (Interpretation) How did you conduct this ballistic analysis on the basis of the
22 photograph?

23 A. [12:58:17] Your Honour, that would be the ballistic trajectory of the
24 fragmentation, not the ballistic trajectory of the mortar round. So I'm looking at post
25 blast. So I'm afraid I either misunderstood the original question, but I will elaborate

1 further.

2 Using all of the information presented to me on the day, both the physical evidence
3 and the photographs, I was able to determine that the damage was consistent with the
4 functioning of the ammunition type in question; and the ballistic trajectory of the
5 fragmentation, the subsequent fragmentation from the detonation of that item of
6 ammunition, that could be ascertained and an analysis and conclusion drawn from
7 the information presented.

8 Q. [12:59:15] But did you conduct some kind of scientific calculation of the
9 trajectory in terms of distance, direction to make this affirmation that the projectiles
10 went from photo 1 to 2 to 3? Did you calculate that?

11 A. [12:59:44] We would have to look at the wider OTP report to see the exact
12 distances. But the photographs are linked. So we look in the photographs and
13 we'll see the front face of the wall and then the next set of photographs we will see the
14 reverse face of the wall.

15 And the photographs that were handed to us on the day by an eyewitness show the
16 damage as it manifested at the time. And so we can see that there was some very
17 high velocity projectile fragmentation of some kind that penetrated steel doors,
18 penetrated walls and then subsequently entered the buildings beyond.

19 As we discussed yesterday, we can see the familiar radial pattern. We can see the
20 familiar spread of the fragmentation, and we can see the reduction in the strike marks
21 in the subsequent walls as the fragmentation has potentially travelled through solid
22 objects and then struck objects behind.

23 So the photographs are essentially there in a specific order to show a specific chain of
24 events.

25 Q. [13:01:04] Mr Witness, you told us about a report from the OTP, a broader

1 report, a comprehensive report. Which report are you talking about?

2 A. [13:01:19] Your Honours, there will be some kind of a mission record, I'm sure,
3 that talks about the mission in its wider context. So I was asked to report on a
4 specific chain of events. There were investigators there within the composition of
5 our group conducting and taking photographs and conducting their own analysis of
6 the situation.

7 PRESIDING JUDGE TARFUSSER: [13:01:55] It's 1 o'clock.

8 MR JACOBS: [13:01:58] (Interpretation) May I put one last question on this point?

9 Q. [13:02:02] I'm trying to understand, now, the ballistic report, the scientific report
10 that we have is yours. There is a mission report that sets out what you did in general
11 terms, and then the scientific report is yours.

12 Wouldn't it be relevant to see your calculations, your scientific calculations, which I
13 believe you did not do, that the OTP did? Isn't that a useful item of information for a
14 scientific report?

15 A. [13:02:34] There are no calculations that are specifically relevant to this. I mean,
16 I could, I could look at the probable explosive type in any item of ammunition. I can
17 use a calculation called the Gurney equation to work out a fragment velocity.

18 I could look at, you know, I could look at distances, but to what end? Essentially,
19 you know, I was contracted and asked to look at the situation as a whole and to see if
20 it was essentially correct that this ammunition type could have been used.

21 There is a lot of more scientific analysis that could be done, but there is no, there is no
22 evidential benefit to that. The evidence to me is the fragmentation pattern and the
23 various other little pieces of evidence that we see when we can see a potential seat of
24 explosion and across the whole of the report when we can see the circumferential ring
25 of iron deposition into the ground, et cetera, et cetera, et cetera.

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1 So I'm not really sure what calculations I would be asked to do in this particular set of
2 circumstances.

3 PRESIDING JUDGE TARFUSSER: [13:04:01] Now we break for lunch. We come
4 back at 2.30 or just after 2.30. Therefore, the hearing is adjourned for this, and the
5 witness can leave the courtroom. Thank you very much. And see you in the
6 afternoon.

7 Just one thing. Today is Friday. I think we have to go to extended hours, I can
8 imagine. I'm asking. Just a minute.

9 (The witness exits the courtroom)

10 PRESIDING JUDGE TARFUSSER: [13:04:56] Yes, please.

11 MR JACOBS: [13:04:57] (Interpretation) Mr President, I will try to conclude in less
12 than one hour after the break.

13 PRESIDING JUDGE TARFUSSER: [13:05:05] Yes. But then we have the team for
14 Mr Blé Goudé, although I think it's very much common the comments. But please,
15 could you -- I know it's difficult to say, but we have also to organise. I mean, this
16 is --

17 MR KNOOPS: [13:05:25] I think, Mr President, in light of the questions of Professor
18 Jacobs, we might probably need one hour -- half an hour, 45 minutes maximum.

19 PRESIDING JUDGE TARFUSSER: [13:05:36] So we go for extended hours in any
20 case.

21 MR KNOOPS: [13:05:39] Just to be sure.

22 PRESIDING JUDGE TARFUSSER: [13:05:40] Just for the court officer, we go for
23 extended hours in the afternoon and trying to conclude, okay? Thank you very
24 much.

25 The hearing is adjourned. So at 2.30 more or less. Well, 2.30, yes.

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1 THE COURT USHER: [13:05:56] All rise.

2 (Recess taken at 1.05 p.m.)

3 (Upon resuming in open session at 2.32 p.m.)

4 THE COURT USHER: [14:33:00] All rise.

5 Please be seated.

6 PRESIDING JUDGE TARFUSSER: [14:33:16] Good afternoon.

7 Good afternoon, Mr Witness.

8 I give the floor immediately to the Defence for Mr Gbagbo and to that effect to Mr
9 Jacobs.

10 I just want to say that I was informed that you have another half an hour, 35 minutes,
11 because it's timed on the Prosecution. We're not in a chemistry here, of course, we're
12 not in a pharmacy, but it's a little bit less than an hour in any case.

13 So also for the benefit of the Defence for Mr Blé Goudé to have more time.

14 MR JACOBS: [14:34:16] (Interpretation) Thank you, Mr President.

15 Q. [14:34:21] Good afternoon, Mr Witness. I will come back to your report,
16 page 0065. And you have three photographs of fragments. And you said they were
17 given to the investigators on 11 July 2013. Can you tell us who gave them to the
18 investigators?

19 A. [14:34:54] No, sir, I'm afraid I cannot.

20 Q. [14:35:02] So it is the investigators who gave them to you?

21 A. [14:35:07] Yes, sir, that is correct.

22 Q. [14:35:12] On the next page, 0066, second paragraph, I will quote you in English,
23 (Speaks English):

24 "Whilst it is not possible to ascertain the exact origin of these fragments."

25 (Interpretation) Despite this beginning of the sentence, you still propose a

1 conclusion. So why didn't you just stop there? Either you know or you do not
2 know.

3 A. [14:36:05] Your Honours, I was asked to report on what I -- on the evidence
4 presented to me, and elaborating that the fragments that I see, it's very likely that they
5 were formed in the manner in which I describe, but I wanted to reiterate that that
6 paragraph was not conclusive.

7 Q. [14:36:31] You say that the fragments are, and I continue in English, (Speaks
8 English):

9 "Typical of the size and shape of a significant percentage of the fragmentation
10 expected from a Soviet-style heavy case high explosive mortar round."

11 THE INTERPRETER: [14:36:56] From the interpreters: If Mr Jacobs changes
12 languages he needs to pause.

13 PRESIDING JUDGE TARFUSSER: [14:37:05] If you change language, please pause,
14 otherwise we get in confusion. Not we, they.

15 MR JACOBS: [14:37:13] (Interpretation) Yes, Mr President.

16 Q. [14:37:23] If you go back to the previous page 0065, there are three fragments of
17 different sizes. And I would like to know what you mean by typical size?

18 A. [14:37:47] Your Honours, based on my significant experience working in
19 Afghanistan and other regions where we would routinely find former Soviet, former
20 Russian ammunition, and that ammunition was used routinely in those regions, that
21 is, in my experience, a typical size, a typical shape from, sort of, larger to smaller type
22 of fragments, it's an assessment based on personal experience, not necessarily a
23 scientific point.

24 Q. [14:38:28] And when you say "significant percentage", what do you mean by
25 that? Can you be more specific?

1 PRESIDING JUDGE TARFUSSER: [14:38:44] Can you give a figure? That's I think
2 the question.

3 THE WITNESS: [14:38:48] Okay. Your Honours, the -- as I said before when I was
4 discussing cast-bodied ammunition, I would expect maybe 50 per cent of that body to
5 turn to dust and, you know, be unusual to find remnants of it, although we found
6 some within this investigation.

7 The rest of the body I would expect to break up into different sized fragments. So
8 this would be a typical spread of fragment sizes that I would expect to find. The
9 larger fragment is maybe nearly 20 millimetres in size. I would have said that is a
10 large fragment. It would be unusual to find many from a cast-bodied piece of
11 ammunition. That would be much bigger. And so these are just within the normal
12 variance of fragment sizes.

13 Q. [14:39:47] You have just said, but I've not seen the equivalent in the French
14 report, you said you found fragments during the investigation. Did you, yourself,
15 find the fragments on the site?

16 A. [14:40:25] These were fragments that were handed to us. I'm sorry, maybe my
17 choice of language was not specific enough.

18 Q. [14:40:41] So you yourself, you did not find any fragment, you did not extract
19 any fragment personally on any of the sites, walls or doors that you visited?

20 A. [14:40:57] No, sorry, I don't recall collecting any fragments myself.

21 Q. [14:41:06] Why do you talk about Soviet-style shells in your report?

22 A. [14:41:25] Your Honours, it's the period that I come from in terms of my military
23 training. We used the -- Soviet in our standard lexicon. So I'm afraid I used the
24 term probably incorrectly, but by Soviets I mean Russian.

25 PRESIDING JUDGE TARFUSSER: [14:41:43] It has become Russian in the meantime.

1 THE WITNESS: [14:41:46] Yes. Yes.

2 MR JACOBS: [14:41:47] (Interpretation)

3 Q. [14:41:48] That is not really my question. Why did you talk about Soviet,
4 Soviet mortars? Did you have any information on the field that led you to conclude
5 that this would be Soviet?

6 A. [14:42:02] I understand. The shape and the size of the fragmentation leads me
7 to believe that the casing of the items that detonated were heavy cased and cast.
8 Soviet ammunition, Russian ammunition historically was mass produced in such
9 huge quantities that it was cast as opposed to --

10 Q. [14:42:36] I'm sorry, Mr Witness. I am interrupting you. You explained that
11 to the Chamber yesterday.

12 My question is more specific. On the site, were you given information that Russian
13 mortars were used or might have been used?

14 A. [14:42:54] On this site, no, no, I was not.

15 Q. [14:43:00] And during your mission?

16 A. [14:43:14] During the mission when we were in Camp Commando we
17 found -- we were shown items of ammunition and ammunition packaging that was
18 Russian in appearance. So it's a general indication that Russian ammunition
19 is -- was present and Russian ammunition is known to be used in that region.

20 Q. [14:43:42] What do you mean by Russian appearance?

21 A. [14:43:56] The ammunition packaging has a distinctive -- there is some
22 distinctive colours that generally indicate the -- the region, potentially the region that
23 the ammunition could have come from. Again, the overall body colour of a lot of
24 ammunition and a lot of ammunition packaging is non-significant, however, it is
25 indicative, and so it is just another small piece of information that leads a person, an

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1 investigator towards a conclusion.

2 Q. [14:44:33] Thank you. You did not mention that analysis in Camp Commando,
3 of what you saw in Camp Commando --

4 MR MACDONALD: Objection, your Honour.

5 MR JACOBS: (Interpretation) --in your report. Why did you not mention it if it is
6 that important?

7 PRESIDING JUDGE TARFUSSER: [14:45:01] Mr MacDonald.

8 MR MACDONALD: [14:45:02] It's Mr Assistant Professor Jacobs that is referring to
9 important information.

10 PRESIDING JUDGE TARFUSSER: [14:45:07] No, but it doesn't matter.

11 MR MACDONALD: [14:45:09] Just put questions.

12 PRESIDING JUDGE TARFUSSER: [14:45:10] Leave the word important away.

13 MR MACDONALD: [14:45:13] The editorial.

14 PRESIDING JUDGE TARFUSSER: [14:45:14] Leave the word important away and so
15 we be neutral, we are neutral and put the question. Thank you.

16 MR JACOBS: [14:45:22] (Interpretation)

17 Q. [14:45:23] Can you answer, Mr Witness?

18 A. [14:45:27] Your Honours, honestly I may have been remiss in not reporting that
19 in my report, but I tried to be as specific and as accurate as possible. And that piece
20 of information, it's generic and it lacks precision. So I don't like to use it as part of a
21 conclusion, but it is just one of the small pieces of evidence that would -- that starts to
22 point me in the direction. So perhaps I was remiss in leaving it from my report.

23 Q. [14:46:04] Thank you, Mr Witness.

24 Yesterday in answer to a question from the Presiding Judge, you explained that the
25 damage depended on the trajectory of the shell, whether it is straight or oblique.

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1 Did you carry out an analysis to determine what type of angle it came from in order
2 to arrive at your conclusion?

3 A. [14:46:45] With such a small amount of information to work for, there is no
4 analysis that I can really undertake to determine that. And honestly, it is again, it is
5 a small, it's a small piece of information when, you know, I look at the overall picture.
6 It would be interesting to understand that, but with the significant passage of time
7 between the events and looking at the remaining physical evidence, there would be, I
8 believe, little benefit in working out the angle of incidents of the mortar round.

9 Q. [14:47:30] Thank you. Now, let me move onto the third site. And it is on
10 page 0067. You indicate that you were shown a photograph. Now, who showed
11 you that photograph?

12 A. [14:47:50] OTP personnel, sir.

13 Q. [14:47:56] Was the photo dated?

14 A. [14:48:04] I do not recall if the photo had a date written anywhere on it. The
15 photograph is, as you see in my own photograph, of that photograph.

16 Q. [14:48:21] On page 0068, you publish a photograph indicating that it is the
17 probable seat of the explosion. And in the next page, you explain, and I quote in
18 English:

19 (Speaks English) "There is an isolated patch of circumferential iron deposition and an
20 indentation in the ground in the exact area of the seat of the explosion which, in this
21 instance, in this instance is likely to be the residual effect from the breakdown of the
22 cast iron body of an ammunition item during and post detonation."

23 (Interpretation) Mr Witness, did you take a sample from this site that you identify as
24 the seat of the explosion to be able to analyse the residual material?

25 A. [14:49:44] Your Honours, no, I did not take a sample from this site. I took the

1 evidence that was -- that I found at the time and drew my conclusions from that.

2 And again, if I was remiss in not taking a physical sample, then, you know, that is
3 entirely on me.

4 Q. [14:50:06] And you talk about the precise or exact zones of the explosion. How
5 do you know that?

6 A. [14:50:24] Sir, as I look at the probable seat of the explosion, and then I look at
7 the fragmentation pattern as it manifests in the photos, the photograph that I was
8 given and the physical remnants of the strike marks and puncture marks, and so it is
9 obvious to me the direction of the fragmentation. And so when we travel in the
10 photographs through that door, and I see the strike marks on the wall facing the
11 probable seat of the explosion, and I see no strike marks on the corresponding wall,
12 then it leads me to be able to extrapolate back at least to the direction of the seat of the
13 explosion.

14 Q. [14:51:08] On page 0070, you show a photograph of fragments from the walls of
15 a store near the site. Who gave you those fragments?

16 A. [14:51:36] Again, it would have been OTP personnel.

17 Q. [14:51:47] Did you visit the store in question?

18 A. [14:51:59] During the process of the investigation in that area, we did a thorough
19 walk-around of the whole area in question. But due to the elapse in time, much
20 renovation had taken place. And so the only evidence that manifested to me during
21 my investigation is shown in my report.

22 Q. [14:52:24] So you did not visit the shop from which these fragments allegedly
23 came?

24 A. [14:52:35] Sir, I don't recall if we, I don't recall if we actually walked into the
25 shop. But I did a superficial examination all around in order to actually discover the

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1 remnants of strike marks and other witness of an explosive event. So yes, we would
2 have visited the shop from the premises. I don't recall if we were granted entry into
3 the shop, and I certainly didn't find anything of any significance that I wanted to
4 report on.

5 Q. [14:53:13] I am putting you this question, because how can you decide from
6 where these fragments come if you cannot identify the source, the direction, the place
7 from which these fragments come from?

8 A. [14:53:43] Sir, I can see your point. I was handed that fragment by a member of
9 OTP personnel. And so I only report on what I was told.

10 Q. [14:53:56] We will go to the fourth site that you visited. And it is a site close to
11 SOS village from page 0072. And I quote you in English:

12 (Speaks English) "Given the scenario that mortar ammunition was being fired into
13 this location on this date from a military establishment within 700 metres into this
14 location on this date, the balance of probability suggests that this damage was caused
15 by mortar bomb functioning on impact."

16 (Interpretation) I'm trying to understand what you are saying. You say because
17 you were told that there were shells fired from that direction, it is highly -- it is likely
18 or probable that it is shells that caused that damage; that is what you are saying?

19 PRESIDING JUDGE TARFUSSER: [14:55:20] Can we let the witness give an
20 authentic interpretation? Thank you.

21 Can you explain better on what you said on this --

22 THE WITNESS: [14:55:37] Yes, I can, your Honour.

23 PRESIDING JUDGE TARFUSSER: [14:55:39] -- process of the --

24 THE WITNESS: [14:55:41] So what I mean by given this scenario, so if we are
25 assuming that it is correct that mortar ammunition was being fired, then --

1 PRESIDING JUDGE TARFUSSER: [14:55:52] Which you were told?

2 THE WITNESS: [14:55:54] Which I was told, yes -- the damage being caused at roof
3 level, not at ground level, would suggest that the item of ammunition had a fuse, an
4 impact fuse that would cause it to detonate as soon as it touched something, and that
5 something in this case would be the roof of the building.

6 So what I'm saying is if it is correct that mortar ammunition was being used, and the
7 fuse settings were as I described earlier today, then that damage pattern would be
8 entirely consistent with heavy cased indirect fired ammunition hitting the roof of that
9 building.

10 MR JACOBS: [14:56:44] (Interpretation)

11 Q. [14:56:45] On page 75 -- before that, just one question. You have talked about
12 the fuses on the shells. Do all shells have a system, a setting system on the fuses?

13 A. [14:57:29] Fusing for shells, the fuse is the piece of equipment attached to the
14 shell that makes it function or detonate under a certain set of circumstances. And
15 the user would have the choice of attaching the type of fuse for the effect that they
16 want, whether that's time, impact or whatever other method of functioning that they
17 want.

18 Not every fuse has a setting that the user can change. So if we're assuming that
19 impact fuses were used here, which is all the evidence that I see suggests that impact
20 fuses were attached to those mortar bombs, those fuses may or may not have a setting,
21 but it is unlikely that -- I've never come across a fuse that has the only setting on it is a
22 delay. It is an impact fuse would be either immediate, super quick, or it would have
23 a setting on it to give it a delay. So not every fuse is settable by the user.

24 Q. [14:58:42] Thank you. On page 75, there is a photograph that was given to the
25 investigators on site.

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1 MR GARCIA: [14:58:57] I think there might be a bit of confusion in there, that is
2 the photo on 75 is not a historical photo. It's referring to the photo on the page
3 before that.

4 MR JACOBS: [14:59:11] (Interpretation) Thank you.

5 Q. [14:59:19] So it is actually page 74. And on page 75 you explain that the photo
6 was given to you by an alleged witness. And I am asking you, was it the OTP that
7 gave you the picture?

8 A. [14:59:47] It was the OTP personnel that gave me the picture.

9 Q. [14:59:54] Thank you. I would like to understand, based on what you are
10 saying on page 75, I understand that it is an adjacent site to what you yourself
11 showed on the previous page based on what I understand from here. It is an
12 adjacent room.

13 A. [15:00:41] I'm sorry, I don't understand if that was a question or not. Was that
14 a statement?

15 Q. [15:00:47] I'll just read out the passage. That will be more simple. I'll read it
16 out in English.

17 (Speaks English) "With photograph Y74A2827 is a historical picture submitted to
18 investigators on 11 July 2013 by an eyewitness to the event. It shows the damage to
19 the roof and walls that was apparently caused by the attack and matches the
20 corresponding damage to the interior walls that is still evident as shown in
21 photograph which is just below," and you put in brackets "(adjacent room) where the
22 fragmentation had been projected on roof level through the building."

23 (Interpretation) My question is this, I understand that the photograph on the
24 preceding page and then this photograph here are pictures of two rooms that are one
25 alongside another, adjacent, not the same room; is that correct?

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1 A. [15:01:50] My apologies. I understand. Yes. In the photograph that we were
2 handed, that is the adjoining wall between the room in that photograph and the room
3 in my photograph.

4 Q. [15:02:08] Thank you. And did you visit this adjoining room?

5 A. [15:02:19] Yes. We walked through into that adjoining room. It was a shower
6 cubicle of some kind.

7 Q. [15:02:27] Was there damage there?

8 A. [15:02:32] The room had subsequently been repaired.

9 Q. [15:02:41] So if I understand you correctly, only one room was repaired, but not
10 the adjoining room; is that what you are telling us?

11 A. [15:02:51] What had happened was in the subsequent period, the building had
12 been restored to a usable state. So the significant damage that you see in the
13 photograph that was handed to us was not present. It did not -- it was not
14 manifested to us during our investigation. So the building had basically been
15 restored for domestic use again.

16 Q. [15:03:20] Now, your report mentions three sites that were visited at SOS village,
17 the report from the OTP investigator, CIV-OTP-0073-0931, paragraph 21, and it
18 indicates that you visited four sites; is that correct?

19 A. [15:03:49] There may have been part of that OTP, the wider OTP investigation,
20 they may have visited another site. I've reported on the four sites that I write about
21 in the annex.

22 Q. [15:04:10] Mr Witness, in the summary of your report, you said that you visited
23 the Camp Commando area. So I understood from what you said earlier was that
24 you visited the camp itself; is that indeed the case?

25 A. [15:05:09] Yes, that is the case.

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1 Q. [15:05:13] How many times?

2 A. [15:05:17] Once.

3 Q. [15:05:21] Are you sure of that?

4 A. [15:05:26] Honestly, I'm quoting that from memory.

5 Q. [15:05:33] And who greeted you when you reached that location amongst the
6 authorities of Côte d'Ivoire?

7 A. [15:05:45] I accompanied the OTP personnel onto the camp. We were greeted
8 by the current camp commander and some of his staff.

9 Q. [15:05:56] Did you ask if there were any mortars at Camp Commando during
10 the crisis?

11 A. [15:06:08] Your Honours, yes, I did ask that specific question. And I distinctly
12 remember the camp commander there being evasive. And he did not want to be
13 drawn into any sort of argument as to whether mortars had or hadn't been used or
14 were stored in that location at that time.

15 But there was no -- we didn't push for any confrontation. We didn't push for any
16 argument. We just had a polite conversation. The direct question was asked and
17 the answer is as given.

18 Q. [15:06:50] Did you ask whether there were mortars or if they had been located in
19 the camp? I would imagine that wasn't the case judging by your response just now.

20 A. [15:07:05] Again, because there is -- there is a story to this. So to answer your
21 question, we were told quite categorically that, you know, there were no mortars on
22 site. And as far as I remember, all answers were to the negative suggesting that
23 mortars weren't used at Camp Commando. As was clear --

24 PRESIDING JUDGE TARFUSSER: [15:07:31] Ever? Ever?

25 THE WITNESS: [15:07:34] The commander, the commandant at the time was not

1 going to be drawn on to giving us a specific answer on that, sir.

2 MR JACOBS: [15:07:45] (Interpretation)

3 Q. [15:07:46] Thus, I deduce from what you've said is that you didn't ask what
4 direction those mortars may have been pointed in. I think the response is obvious
5 now.

6 A. [15:08:04] Absolutely. The -- all of the interviews on the day at Camp
7 Commando were conducted in French. So I took all of my direction from OTP
8 personnel. We were, if I'm permitted to elaborate slightly just to clarify, we were,
9 once we left the camp commandant's office, we were escorted around camp to have a
10 look around. And then on our way out we were taken through a building and
11 shown a room full of ammunition items, which included an assembly, the leg
12 assembly for a 120 millimetre mortar system.

13 Q. [15:08:54] Thank you. Did you measure the height of the walls surrounding
14 Camp Commando?

15 A. [15:09:06] No, sir, I did not.

16 Q. [15:09:10] Did you measure the height of the buildings between Camp
17 Commando and the sites you visited?

18 A. [15:09:19] No, sir, I did not.

19 Q. [15:09:23] In the statement that was provided to you amongst the various
20 documents that you received from the Prosecution, one witness, 164, said,
21 CIV-OTP-0028-0481, this witness said, page 0504, paragraph 153 -- I'm just waiting for
22 the reference numbers to come up on the screen. I'll quote:

23 "The other one was aimed at PK18 and the N'Dotre intersection. Even if the second
24 mortar was aimed at the town hall, the shell would not have hit the market or SOS
25 village because there was an obstacle, a large building of more than 3 storeys."

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1 Did you read that statement?

2 A. [15:11:04] That statement would have been indicated to me during the mission,
3 yes, that is correct.

4 Q. [15:11:11] So shouldn't that information have led you to have crosschecked
5 whether or not it would have been possible to fire from those various locations at
6 Camp Commando at that particular site?

7 A. [15:11:37] Your Honours, I would completely agree with that statement if I was
8 not an experienced user and an ammunitions specialist.

9 When I stood at Camp Commando, I saw no high-rise buildings or any obstacles in
10 the probable direction of fire that would have limited the use of mortar ammunition.
11 If the user of the mortar system was disposed to do this, the mortar system is the
12 perfect weapon system for use in the built-up environment because the mortar bombs
13 will easily pass over buildings, that is we've discussed -- we, you know, we discussed
14 the indirect fire principles earlier in my testimony that it's just a fundamental of
15 indirect fire.

16 The author of that statement I suspect potentially mistakes a direct fire weapon with
17 an indirect fire weapon. So you don't need to be able to see the target to use an
18 indirect fire weapon system. And a three-storey building would not be an obstacle
19 for a mortar.

20 PRESIDING JUDGE TARFUSSER: [15:12:57] Mr MacDonald.

21 MR MACDONALD: [15:12:58] I know the Chamber is looking at the clock, but it
22 would be good to have references since that witness testified as to being put those
23 questions by the Defence because we're basing ourselves on facts. Here it's an
24 hypothetical that the Defence is raising since using the statement of the witness -- of a
25 witness that has testified. And I don't recall him being questioned on that by the

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1 Defence. So, therefore, we're going on things that have at this stage no weight in
2 relation to 164.

3 PRESIDING JUDGE TARFUSSER: [15:13:42] Yes. But I would like to remind you
4 that this witness has based his knowledge on the statement and not on the -- on what
5 the witness said here in the courtroom, therefore --

6 MR JACOBS: [15:13:59] (Interpretation) Yes, I was about to say the same thing.
7 That was a document provided and it's only normal to --

8 PRESIDING JUDGE TARFUSSER: [15:14:08] I anticipated you. But you have still
9 one minute left.

10 MR JACOBS: [15:14:15] (Interpretation) I still have a few questions, but I'm afraid I
11 will need another 10 minutes with your indulgence, but these are very important
12 questions to a rather important witness.

13 PRESIDING JUDGE TARFUSSER: [15:14:28] Yes, well, just do them. I give you
14 five, six.

15 MR JACOBS: [15:14:32] (Interpretation) I will do my best. Thank you, your
16 Honour.

17 Q. [15:14:37] Mr Witness, I've understood you analysed the fragments that were
18 given to you on site, correct?

19 A. [15:14:49] Correct.

20 Q. [15:14:52] And I've understood that your analysis consisted of measuring them
21 and observing them?

22 A. [15:15:04] Correct.

23 Q. [15:15:07] So you did not conduct a chemical analysis to determine the
24 composition of the fragment?

25 PRESIDING JUDGE TARFUSSER: [15:15:20] I've already asked this.

1 MR JACOBS: [15:15:24] (Interpretation)

2 Q. [15:15:27] I'll put the next question. You did not conduct any analysis to
3 determine the chemical composition of the explosive that was used?

4 A. [15:15:39] If the time, the elapsed time was not so long, if it had been maybe 24
5 or 36 hours, that would be a worthwhile course of investigation.
6 I'm afraid that it would be irrelevant two and a half years later.

7 Q. [15:15:58] And Annex E to your report, page CIV-OTP-0049-0078, you provided
8 a screenshot of a video. We saw this this morning. And you said, I quote, in
9 English:

10 (Speaks English) "Calibre is difficult to determine without scale however, the fin
11 configuration of 10 equally spaced (circular pitch) and concentric to the longitudinal
12 axis is consistent with known variants of 120 millimetre mortar ammunition."

13 (Interpretation) Could you tell us what variation that you had in mind? Which
14 known variation you had in mind?

15 A. [15:17:13] Many different 120 millimetre variants show exactly that pattern. So
16 just the, as I said earlier, the fin angle, et cetera, is consistent with the silhouette, the
17 shape of Russian 120 millimetre ammunition.

18 Q. [15:17:30] Aren't there other calibres that would have that configuration, 81
19 millimetres for example?

20 A. [15:17:53] Yes, I completely agree; however, you would not expect to find so
21 many fins because there just physically wouldn't be space to have so many fins. So
22 to have 10 fins around would suggest one of the *larger calibres. And a 120
23 millimetre that would be entirely consistent.

24 Q. [15:18:07] I would like to show something to you, CIV-D15-0004-2463. It's now
25 up on the screen. This is a press release from ONUCI, 18 March 2011. And if we

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1 look at the first paragraph we read this, and I quote:

2 "The review by the UN operations in Côte d'Ivoire of the projectiles shot Thursday
3 afternoon at the Abobo market and surrounding areas allow one to confirm that these
4 were 81 millimetre mortar rounds."

5 Have you seen this press release before?

6 A. [15:19:26] No, I've not, sir.

7 Q. [15:19:30] Did you hear that information, the information that we find here, the
8 fact that the ONUCI confirmed that they were 81 millimetre mortar shells?

9 A. [15:19:43] That would be --

10 PRESIDING JUDGE TARFUSSER: [15:19:45] No. Excuse me. You said that the
11 confirmed -- that the ONUCI confirmed, they said, not confirmed. Okay.

12 MR JACOBS: [15:19:52] (Interpretation) Indicated that.

13 THE WITNESS: [15:19:57] That would be their assessment. And, you know, they're
14 entitled to their assessment. That is not my assessment.

15 MR JACOBS: [15:20:04] (Interpretation) I'm trying to move as quickly as I can, your
16 Honour.

17 Q. Now, if I've understood your testimony, there is no way to verify on the basis of
18 the sites that you visited the origin of the possible shells that fell; is that correct?

19 A. [15:21:05] That is correct.

20 Q. [15:21:10] So the only reason that you thought Camp Commando was the point
21 of origin is because the Prosecution told you so?

22 A. [15:21:21] It's -- yes, I agree, it's the local military camp where 120 millimetre
23 mortars were based.

24 PRESIDING JUDGE TARFUSSER: [15:21:32] Well, I would ask you really to come to
25 the conclusion.

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- 1 MR KNOOPS: [15:21:37] Mr President, we --
- 2 PRESIDING JUDGE TARFUSSER: [15:21:38] Yes. I know you come in now to
- 3 support.
- 4 MR KNOOPS: [15:21:42] Well, just to say that --
- 5 PRESIDING JUDGE TARFUSSER: Yes, yes, yes.
- 6 MR KNOOPS: -- we have less questions as --
- 7 PRESIDING JUDGE TARFUSSER: [15:21:44] Okay. So another 10 minutes.
- 8 MR KNOOPS: [15:21:46] Yes.
- 9 MR JACOBS: [15:21:48] (Interpretation) Thank you. And I thank you.
- 10 Q. [15:21:55] I'd like to show you another document, CIV-D15-0004-2464. I'm just
- 11 waiting for the document to come up on the screen. Ah, there it is.
- 12 Now, this map has the Abobo market at the centre. I took it off of Google Maps.
- 13 And we see a radius of 6 kilometres around the market, Abobo market.
- 14 A bit earlier you said that a useful range*of a mortar was between *five and eight but,
- 15 if I understand correctly, what you are telling us is that if there were mortar shells
- 16 they could have come from any location within this circle?
- 17 A. [15:23:10] That would be a correct assessment, yes.
- 18 Q. [15:23:15] Did you know that there were rebel armed groups in Abidjan that
- 19 were attacking throughout the entire area, particularly Camp Commando, and
- 20 according to a number of witnesses, they had heavy weaponry? Did you have that
- 21 information?
- 22 A. [15:23:36] No, I did not.
- 23 Q. [15:23:40] Now, the statement of Witness *P-0297 -- reference number CIV-OTP-0041-0412
- 24 -- that was provided to you for your report mentioned on several opportunities, the
- 25 Invisible Commando that was present in the area, did you read that statement?

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1 A. [15:24:10] That's -- I would have read -- I would have read that statement or a
2 translation of that statement during the mission.

3 Q. [15:24:20] So the fact that there were other armed groups in the area did not lead
4 you to consider the possibility that the damage could have been caused by other
5 armed groups?

6 A. [15:24:33] In my report I'm -- I suggest that the damage is caused by heavy cased
7 high calibre indirect fired ammunition. Its origin was not something I was asked to
8 report on. The reports are interesting, but I only dealt with the facts that were
9 presented to me by OTP personnel on the ground, your Honours.

10 Q. [15:25:01] I'm sorry, you say that you were not asked to provide an opinion on
11 the origin of the firing? Is that what you are saying?

12 A. [15:25:19] I would have to refer back to the letter of mission, but I think I was
13 just asked to report on the -- well, we'll look at the letter of mission, but I reported as
14 per the letter of mission.

15 Q. [15:25:40] Indeed. This mission letter, CIV-OTP-0049-0051, page 0052 says that
16 you were asked to determine whether the mortars could have come from Camp
17 Commando. So you were asked to determine what the origin was?

18 A. [15:26:05] Yes, sorry, absolutely. So I -- and so I -- we investigated the Camp
19 Commando. Whether I was asked to -- well, I certainly was not asked to determine
20 the origin or any other origin. So I just dealt with the information and the request
21 presented to me by the OTP personnel.

22 Q. [15:26:27] Thank you, Mr Witness. I have a few final questions for you. Did
23 you conduct any analysis to attach dates to anything that you saw at the various sites?

24 A. [15:26:49] The YouTube videos were, or the video that presented was reportedly
25 from a significant date. Now, I don't recall from the top of my head exactly what

1 date that was but, again, it's open source third party information, so it's alleged that it
2 was on a date significant to this report and, again, it's -- you know, I pass comment on
3 what I saw in the video, and I've tried to link it potentially to the rest of the report,
4 but I --

5 Q. [15:27:26] I'm sorry. I'm very short of time. I'm very sorry, but could you
6 answer the question. On the places you visited, did you conduct any ballistic
7 analyses to determine the date at which the impact occurred? You, in the field, on
8 site, not on the YouTube video.

9 A. [15:27:52] No, I did not. I don't know what -- I'm trying to think what -- how I
10 could link something with such a long gap between the instance and investigation.
11 There is no way to determine that.

12 Q. [15:28:12] So if I've understood you, if I've understood you, there is no way to
13 determine whether those incidents occurred at some point in time during the crisis,
14 before the crisis, after the crisis, several years after the crisis or whether the locations
15 in question came under -- were subject to such incidents on the same day?

16 A. [15:28:40] Again, your Honours, the areas that I investigated were directed by
17 the OTP personnel. So the background, the dates, the witness testimony, everything
18 clearly led the OTP personnel to request that I investigate those sites. So the
19 historical dates, the links, the chronological links must already have been established
20 for them to have directed me to investigate those sites.

21 Q. [15:29:16] And my final question to you, so you've told us on several occasions
22 during your testimony that taken in isolation, you did not have information about
23 each site to say clearly what the origin of the incidents were. You mentioned a
24 number of IEDs. But to consider these items of information altogether in a whole,
25 and this seems to be the key of your report, the first thing, wouldn't it have been to

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1 determine that those incidents actually occurred on the same day? Would that have
2 not been the first step?

3 A. [15:30:00] Your Honours, that was the assertion by the OTP personnel. That
4 was the fundamental reason for my presence there.

5 PRESIDING JUDGE TARFUSSER: [15:30:08] The last question, right? This is the
6 last of the last, okay.

7 MR JACOBS: [15:30:15] (Interpretation) The last of the last.

8 Q. [15:30:18] But once again, did the Prosecution -- and as a scientist, for each site,
9 you had no conclusive information, so how could you have established a link
10 between the various sites? I am a novice but, to my mind, if you do sums and take
11 zero plus zero plus zero plus zero, the total is zero, not four.

12 So how could you take this information from these four separate sites and come to
13 one single conclusion?

14 PRESIDING JUDGE TARFUSSER: [15:30:58] Please, Mr Garcia, let him respond.

15 MR GARCIA: [15:31:01] Yes.

16 PRESIDING JUDGE TARFUSSER: [15:31:02] I would have said this is a comment
17 and not a question. But if the witness is able to respond, please do so.

18 THE WITNESS: [15:31:09] Your Honours, I was asked to make an objective analysis
19 against -- with some very subjective, subjective information. And by that I mean
20 there was a huge elapse of time between the alleged incident and our subsequent
21 investigation.

22 With the benefit and the privilege of having attended immediately afterwards, we
23 could derive an awful lot more information. But that unfortunately was not -- that
24 was not granted to us. So with the elapse of time, two and a half years later, we
25 made an objective assessment with the physical information that was given to us.

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1 MR ALTIT: [15:31:59] (Interpretation) Thank you. This concludes the questioning
2 of the witness by the Gbagbo Defence team. Thank you.

3 PRESIDING JUDGE TARFUSSER: [15:32:08] Thank you very much.

4 I would like only to remind not only the Office of the Prosecutor but also the Defence
5 for Mr Gbagbo that time management is crucial to a smooth, to smoothly carry out
6 the trial. You went far over the time which was used by the OTP, far over that, not a
7 little over that. But that's it.

8 MR ALTIT: [15:32:34] (Interpretation) Thank you, Mr President.

9 PRESIDING JUDGE TARFUSSER: [15:32:39] Okay. Thank you very much.
10 Mr Knoops.

11 QUESTIONED BY MR KNOOPS:

12 Q. [15:32:46] Good afternoon Mr FitzGerald-Finch. My name is Geert-Jan
13 Alexander Knoops. I'm a lawyer in the Kingdom of The Netherlands, representing
14 Mr Blé Goudé. Good afternoon, sir. I have some small additional questions for you.
15 My first question is relating to your report itself. It's CIV-OTP-0049-0049.
16 Mr FitzGerald-Finch, in this report you summarise your findings and one of your
17 findings is that a number of possible causes for an isolated event such as these, i.e.
18 stolen ammunition, use, misuse, improvised explosive device, ammunition accident,
19 criminal activity, et cetera, are being mentioned by you.

20 Now, this report, sir, you wrote on 1 September 2013. Did you receive based on this
21 report any request from the Office of the Prosecution to examine the likelihood of the
22 scenario you describe here, namely, that there are a number of possible causes for the
23 respective isolated events?

24 And you mention in total five, four examples, it's not exhaustive, I understand. My
25 question very specific is: Did you receive after September 2013 a request to examine

1 any other potential scenarios based on these possible causes for the isolated events?

2 A. [15:34:59] No, I did not.

3 Q. [15:35:03] In specific, Mr FitzGerald-Finch, did you receive a request from the
4 Office of the Prosecution to include in your examination, which led to your report of 1
5 September 2013, to include in your examination the possibility of the use of other
6 weapon systems, except for mortars, for instance, the use of RPGs?

7 A. [15:35:41] No, I did not.

8 Q. [15:35:45] Speaking about RPGs, in your report, you refer to IEDs, improvised
9 explosive devices. My first question is, do you have any experience with the pattern
10 of impact of IEDs, and if so, can you tell the Chamber whether the pattern of impact
11 you saw at the various isolated events or locations could match the use of an IED?

12 A. [15:36:33] Your Honours, I spent nine and a half months in constant conflict in
13 Iraq and Afghanistan as an IED disposal operator. So I have significant experience
14 of IEDs, improvised explosive devices.

15 And as I hope I've alluded to throughout this testimony, if the IED comprised of a
16 heavy cased item of ammunition, then the fragmentation pattern could potentially
17 look very, very similar.

18 However, if we took, for example, area 4, where the explosive event was on the roof, I
19 would have to ask why was an IED on the roof of a building and who was it targeting
20 or what was it targeting? And so throughout the report, everything pointed towards
21 or points towards as I've suggested previously.

22 Q. [15:37:35] Well, Mr FitzGerald-Finch, I'm sorry, I just asked you the question not
23 to make any interpretations or conclusions on your findings, but I just asked you the
24 question whether if you look at the events in its isolation you cannot exclude the
25 possibility that the pattern of impact resembles the use of an IED? You confirm that

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1 the pattern of impact can be quite similar based on your nine months experience in
2 Afghanistan; is that correct?

3 I'm not asking you now to make an assessment.

4 PRESIDING JUDGE TARFUSSER: [15:38:16] Yes. But, again, no, of course. He
5 cannot just say "yes" or "no." Let him please also explain this "yes" or "no" briefly, of
6 course.

7 THE WITNESS: [15:38:25] In my significant experience with IEDs, I do not recognize
8 very much similarity between the blast pattern from IEDs, which are improvised, but
9 I do recognize a lot of similarities between the fragmentation patterns that we see and
10 that of heavy cased ammunition functioning as intended.

11 So there are cases, there are situations where other IEDs could produce a similar
12 fragmentation pattern. But take this report as a whole and --

13 MR KNOOPS: [15:39:08]

14 Q. [15:39:08] Yes, that's clear to us, that's very clear. That was not my question.
15 Now, what about the RPG 29, the rocket propelled grenade 29 which is of Russian
16 dissent, Russian origin, did you examine the possibility that the fragments or the
17 pattern of impact could resemble the use of an RPG 29?

18 A. [15:39:41] No, I did not.

19 Q. [15:39:44] You did not examine this?

20 A. [15:39:47] I didn't examine it with the specific view that it could be an RPG 29.
21 I'm not intimately familiar with the RPG 29, but because it is a rocket propelled
22 grenade, its properties are different. That is a direct fire item of ammunition. And
23 it has many features that would be dissimilar with the pattern that we saw on the
24 ground.

25 Q. [15:40:18] But you do agree, Mr FitzGerald-Finch, that the RPGs have a high

1 explosive either anti-tank war head or a high explosive war head, so called

2 *HEAT or H-E?

3 A. [15:40:36] Your Honours, if we are going to start examining *HEAT and
4 anti-tank, anti armour, the *HEAT war head would use a very thin metal case. It
5 would use high explosive, absolutely. But it uses that to deform a copper lining that
6 penetrates armour.

7 It would have a fragmentation element mainly only really as a countermeasure to
8 surrounding troops. It does not have a heavy case, it's unlikely to have a heavy case.
9 I haven't come across an RPG round with a heavy case.

10 So as an expert, I would discount a *HEAT weapon used in the direct fire role as
11 something that would cause a fragmentation pattern such as this. I mean, they are
12 completely different.

13 Q. [15:41:28] Are you familiar, Mr FitzGerald-Finch, with the penetration
14 possibility of an RPG 29 to penetrate a so-called ERA, E-R-A? That's an explosive
15 reactive armour which can also hit the composite armour behind it?

16 A. [15:41:52] Yes, yes, I am.

17 Q. [15:41:55] So the RPGs have the capability once shaped with a charged explosive,
18 of course, to penetrate tank armour, steel to a depth of seven times or more the
19 diameter of the charge? Are you familiar with those technique, technical data, sir?

20 A. [15:42:17] Yes, I am.

21 Q. [15:42:20] And you still maintain your position that you can exclude an RPG 29
22 in this situation?

23 A. [15:42:29] Your Honours, can we -- the damage pattern would be completely
24 different. So an RPG that is designed to counteract, a rocket propelled grenade that
25 is designed to counteract explosive reactive armour will have two *HEAT war heads

1 on it. One is designed to function the explosive reactive armour and the second one
2 to function immediately behind it in order to penetrate the armoured vehicle.
3 I would expect to see a very -- I would expect to see one or two precise holes in the
4 target. So if a rocket propelled *HEAT grenade hits a target, I would expect to see a
5 relatively neat hole. There would be some, we term it splatter around the outside.
6 We would not see the radial band of fragmentation. It would be circular,
7 circumferential in its appearance.
8 The explosive charge is being initiated in different directions, one is being initiated on
9 a vertical axis, one on longitudinal, longitudinal horizontal axis.
10 This is the first time *HEAT has been mentioned. This is not the correct avenue of
11 inquiry in my professional opinion, your Honours.

12 Q. [15:43:57] But then you assume, Mr FitzGerald-Finch, the scenario that there
13 was a direct firing with the RPG. If the RPG produces shrapnel, so has been aimed
14 at a vehicle and the vehicle is hit, it causes shrapnel, so have you considered the
15 option that the fragments you looked at, visually inspected, were caused by shrapnel
16 attributed to an RPG 29 used in the direct vicinity of the, for instance, the door you
17 visually inspected or any other scenario?

18 A. [15:44:44] Your Honours, I think that question alludes to two factors here. One,
19 the gentleman has asked if I've considered it, the RPG not being used in the direct role.
20 So if it was someone tried to use it indirectly, RPGs have a fail-safe which comes in
21 at 900 metres. So if the RPG was in parabolic flight, it would function -- if someone
22 was trying to use it indirectly, it would function before it hit the target because it
23 would function in the air.
24 If it was fired at the door, at a metal door, I would expect to see a neat hole in the door.
25 I would not expect to see circumferential -- I would not see -- expect to see the

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1 fragmentation pattern that manifested when we did the mission.

2 Q. [15:45:43] But you cannot tell the Court what is your experience with an indirect
3 effect of an RPG 29, isn't it, sir?

4 A. [15:45:55] No. I can absolutely categorically with firsthand experience discuss
5 indirect use of RPGs, having seen them being used recreationally in Libya for
6 nine -- seven months. But I'm happy to talk about that if --

7 PRESIDING JUDGE TARFUSSER: [15:46:13] Please don't.

8 MR KNOOPS: [15:46:14]

9 Q. No. It was not asked by the Prosecution to you, that's correct, sir. You didn't,
10 you weren't asked to look into that scenario?

11 PRESIDING JUDGE TARFUSSER: [15:46:21] But we know what was asked by the
12 Prosecution.

13 MR KNOOPS: [15:46:24] Yes.

14 Q. [15:46:25] Sir, the charge, the main filling of an RPG, can that be the same as the
15 main filling of a mortar grenade, especially when it concerns an RPG 29 which is of
16 Russian dissent?

17 A. [15:46:44] Your Honours, the filling of an RPG would be fundamentally
18 different to the filling of a mass produced indirect fire weapon because it is a rocket.
19 There is a lot more precision that goes into the manufacture of an RPG.
20 It is very likely to be a filling that is wax based, whereas the filling of a mortar is much
21 more likely to be a TNT based filling just because it can be poured and it is cheap.

22 Q. [15:47:18] So it is your testimony that an RPG has no filling with elements of
23 TNT? That's your testimony before this Court?

24 A. [15:47:30] That's -- no, that's not my testimony. The fact is there are many
25 variants of RPGs. RPGs are made by a number of different countries. I'm not

1 familiar with every single explosive filling of every single RPG. I'm just saying this
2 is the general way RPGs manifest when you find them.

3 Q. [15:47:56] You're familiar with the abbreviation RPG, Mr FitzGerald-Finch?

4 A. [15:48:02] Yes, I am.

5 Q. [15:48:03] Yes. You agree it's Russian, that the acronym is Russian? It's a
6 Russian device?

7 A. [15:48:14] No, I don't agree with that, sir.

8 Q. [15:48:18] No. Please explain why it's not in your accordance, in your opinion
9 a Russian fabricated grenade.

10 A. [15:48:27] Your Honours, Russian -- the Russians led the development of many
11 different ammunition types. But those developments have been copied and
12 superseded by many other nations. And so you can go to companies in China, Iran
13 and get identical copies and developments on the theme.

14 Q. [15:48:52] So you contest that the RPG is of Russian design?

15 PRESIDING JUDGE TARFUSSER: [15:48:57] No. He didn't say this.

16 MR KNOOPS: [15:49:00] Well --

17 PRESIDING JUDGE TARFUSSER: [15:49:00] He said just that it's copied by others.

18 MR KNOOPS: [15:49:03] Well, okay.

19 Q. [15:49:03] Yes. But you agree it's initially fabricated in Russia, that the design
20 was made in Russia? You can agree with that?

21 A. [15:49:13] Your Honours, I think if we are going to deal with semantics, I would
22 argue that the rockets were invented in China probably 2,000 years ago, but --

23 Q. [15:49:24] Okay. The option of an RPG 22, was this asked?

24 PRESIDING JUDGE TARFUSSER: [15:49:35] No, it was not asked, because we know
25 what was asked.

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1 MR KNOOPS: [15:49:38] All right.

2 PRESIDING JUDGE TARFUSSER: [15:49:40] Everything else was not investigated as
3 we are hearing since yesterday.

4 MR KNOOPS: [15:49:44] All right. The Chamber confirms --

5 PRESIDING JUDGE TARFUSSER: [15:49:47] Yes.

6 MR KNOOPS: [15:49:48] -- so I'll continue.

7 Q. [15:49:49] Mr FitzGerald-Finch, in relation, my second question in relation to the
8 report is you took into account nine witness statements which were given to you by
9 the Office of the Prosecution. Now, in your report, the very first page of the
10 summary, you used the word, "It's quite possible that a 120 millimetre mortar bomb
11 could have been the cause of each impact site visited."

12 That's the same page where I cited the number of possible causes.

13 So on this page you speak about it's possible when you look at each impact site in
14 isolation.

15 The second page you actually transgress from the qualification "possible" into "likely."

16 That's the end of your report. "Most likely, 120 millimetre mortar system variant."

17 So you shift from "possible" to "most likely."

18 My question to you, sir, when transgressing from the qualification "possible" into
19 "most likely" when you review the elements in its totality, did you come to that
20 conclusion most likely also on the basis of the witness testimony you read? Was this
21 a factor which you took into account when coming to your end conclusion
22 overviewing all the separate places, the seats, the four seats?

23 PRESIDING JUDGE TARFUSSER: [15:51:50] What is the difference between
24 "probably" and "most likely," first of all?

25 THE WITNESS: [15:51:55] Your Honours, "probably" is the evidence that I found

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1 and that I investigated and "most likely" when I start to take in all of the accounts
2 together.

3 MR KNOOPS: [15:52:09] It's, by the way, the word "possible," not "probable,"
4 "possible."

5 PRESIDING JUDGE TARFUSSER: [15:52:13] Sorry.

6 MR KNOOPS: [15:52:15]

7 Q. [15:52:15] I asked you this, Mr Witness, because on page 0049, 0050, the third
8 paragraph above of your report, we find the reference to witness testimony, and I
9 quote, "Add significant weight to the theory that one of the 120 millimetre mortar
10 system used by the military forces of Côte d'Ivoire may have been used in the attacks
11 of 17 March in the areas visited."

12 So is it correct, sir, that these nine witness statements you were presented by the
13 Office of the Prosecution indeed had for you a significant weight in coming to the
14 overall assessment of the events and the transgression of the qualification "possible"
15 to "most likely"?

16 MR GARCIA: [15:53:24] Your Honour.

17 PRESIDING JUDGE TARFUSSER: [15:53:26] Mr Garcia.

18 MR GARCIA: [15:53:27] In fact, two objections, actually, to the first line of
19 questioning of Defence counsel. I'm going to point it out, and I'm not going to
20 necessarily say it because the witness is here, and we can see what he's speaking
21 about, the witness when he speaks about "possibility" at 0049, and what he is
22 speaking about when he's speaking, when he's using the term "highly likely" at the
23 end of 0050.

24 And in this last excerpt that has been read to the witness, it is a bit misleading because,
25 actually, the way it has been framed by Defence counsel, it seems like it's only one

1 element that would add this weight. When you read the total paragraph, that's not
2 exactly the case.

3 So I suggest that we put to the witness the paragraph, he has it before him actually,
4 and he can comment on it if need be.

5 MR KNOOPS: [15:54:16] I said it was one, it could have been one of the factors
6 which contributed. I never suggested this is the decisive factor for the witness. I
7 asked the witness could it be that this was one of the factors, the reading of the
8 witness statements, which actually attributed weight to your final conclusion at the
9 end of the report that it was highly likely or most likely that a 120 millimetre mortar
10 was used.

11 THE WITNESS: [15:54:45] Your Honours, in my final paragraph, I try and use all of
12 the information that's given to me. And, you know, I allow, I allow -- pardon me.
13 The Court makes its decision on whether other witness statements are correct or not.
14 And so again, given the scenario, that adds weight to the possibility and, therefore, it
15 becomes in my professional opinion likely.

16 PRESIDING JUDGE TARFUSSER: [15:55:18] I would have, following this, I would
17 have asked you at the end, but I do it now, if you had not -- I know it's difficult to
18 think in these terms, but I try nevertheless.

19 If you had not read the witness statements, and if you wouldn't have had the other
20 information on paper which was given to you by the Office of the Prosecutor, would
21 you have come to the same conclusions?

22 THE WITNESS: [15:55:53] Yes, sir, I believe that I would have done.

23 PRESIDING JUDGE TARFUSSER: [15:55:57] Mr Knoops.

24 MR KNOOPS: [15:56:00]

25 Q. [15:56:00] Now I have two questions on the so-called forensic examination.

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1 First of all, that question was not asked to you before, Mr FitzGerald-Finch. It relates
2 to the mentioning of you in transcript page 9, lines 21-22 of today's transcript, the
3 third place you mentioned depression in the ground. And do you remember you
4 were shown a picture of an alleged crater, a small crater, and you told the Court that
5 you were able to visually see iron oxide?

6 PRESIDING JUDGE TARFUSSER: [15:56:52] It is page 9, line 21 and --

7 MR KNOOPS: [15:56:55] 22.

8 PRESIDING JUDGE TARFUSSER: [15:56:56] Well, 21 and following.

9 MR KNOOPS: [15:56:58] Yes.

10 PRESIDING JUDGE TARFUSSER: [15:57:00] And 10, line 9 following.

11 MR KNOOPS: [15:57:02] Yes.

12 Q. [15:57:05] So just for my understanding, you were able to find this spot or this
13 spot was indicated to you two and a half years after the alleged incident?

14 A. [15:57:18] Your Honours, that is correct. I remember distinctly when we were
15 taken, the OTP personnel took me into that, the general area, and when I saw the
16 damage pattern, that ring of probable iron oxide was there, right there on the floor.
17 It just helped to tell the overall story.

18 Q. [15:57:42] So you assumed that in these two and a half years this so-called crater
19 has remained intact?

20 A. [15:57:50] Yes.

21 Q. [15:57:52] Okay. And you only visually came to the indication that it was iron
22 oxide that you saw, or was any form of chemical examination being conducted to
23 verify or falsify this so-called conclusion that it might be iron oxide? Were samples
24 taken, for instance, from this crater which was there for two and a half years and
25 being brought to a laboratory?

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1 A. [15:58:29] Sirs, I've already answered this question. But it was my assessment.

2 No laboratory assessment was done. It was just my visual assessment on the day.

3 Q. [15:58:38] And who told you that this so-called crater was still there after two
4 and a half years after the events? Was it the Prosecution or somebody of the people
5 there around living there?

6 A. [15:58:49] I did. I saw it.

7 Q. [15:58:51] You saw it?

8 A. [15:58:52] Yes.

9 Q. [15:58:52] Right. Right. My second question relates to on several occasions in
10 your report, like page *C9, C12, you referred to repairs, repairs have been made.
11 And today you told us, transcript page 91, line 5, that much renovation had taken
12 place. How were you able to verify this?

13 A. [15:59:24] I could verify repairs had taken place from the lack of significant
14 damage surrounding areas of significant damage. So when we look at, say, a heavily
15 damaged door and then a wall that has no marks on it or no marks consistent with the
16 damage to the door, then we can see that repairs have taken place.

17 And you can see in some of the historical photos, your Honours, where the wall may
18 have changed its appearance, the decoration on a wall has been filled in or a wall has
19 been painted, for example, in the subsequent period.

20 Q. [16:00:08] But you didn't see any evidence when repairs were made, how they
21 were made, on which locations were made? You assumed from the lack of damage
22 on a certain location that there had to be a repair?

23 A. [16:00:23] Your Honours, when I look at a historical photo of a wall with
24 massive damage on it, and then I stand in front of that wall and there is a lack of
25 massive damage, assuming it is the same wall, I therefore conclude that the repair has

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1 happened.

2 Q. [16:00:40] Assuming that it's the same wall. Were you able to verify whether it
3 was the same wall, Mr FitzGerald-Finch?

4 A. [16:00:47] Again, I am handed a photo by OTP personnel. And I'm instructed
5 that this is a photo of the scene in front of me taken on the day in question. And so I
6 have to make the -- I have to take that as fact.

7 Q. [16:01:05] Yes. So you didn't verify this --

8 THE COURT OFFICER: [16:01:08] Could the Defence make a pause after the witness
9 answers, please.

10 PRESIDING JUDGE TARFUSSER: [16:01:12] Yes.

11 MR KNOOPS: [16:01:13]

12 Q. [16:01:13] So you receive your instructions, and based on your instructions you
13 started to do your business?

14 PRESIDING JUDGE TARFUSSER: [16:01:20] That's what he said.

15 MR KNOOPS: [16:01:21] Right.

16 Q. [16:01:21] Now, what about the fragments, Mr FitzGerald-Finch, which were
17 presented to you on several occasions, who presented those fragments to you? I
18 believe it was a person of the OTP?

19 PRESIDING JUDGE TARFUSSER: [16:01:33] Yes, it was a person of the OTP.

20 MR KNOOPS: [16:01:35]

21 Q. [16:01:35] How was it presented to you? Was it presented to you just coming
22 from a bag or was it in a box? How were these fragments presented to you and with
23 what information?

24 A. [16:01:44] The fragments were either presented as fragments and we had the
25 opportunity to photograph them before OTP personnel put them in a bag. But I was

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1 handed the fragments by OTP personnel, and then I returned them to OTP personnel.

2 And there were fragments that I was handed that were already in evidence bags.

3 Q. [16:02:08] But I understand your evidence that there were fragments which were
4 not in the evidence bag and shown you, to you barehanded by a member of the OTP?

5 A. [16:02:20] Yes, that would be the case in one of the scenarios.

6 Q. [16:02:24] And did this person have this fragment in his pocket or where did it
7 appear? He just showed it to you?

8 A. [16:02:34] If I remember correctly, one of the OTP personnel called my name. I
9 turned and to respond to a question that they had, and they had fragments for me to
10 examine. Where they appeared from, I can't comment, I'm afraid.

11 Q. [16:02:49] So you did not investigate the so-called chain of custody? You
12 weren't asked to verify the chain of custody, where these fragments came from, how
13 they were stored, where they were stored, whether they were sealed?

14 A. [16:03:04] The chain of custody, if they were -- I don't want to presume to tell the
15 Court how the ICC's chain of custody works, but I would have to assume that the
16 chain of custody was maintained by OTP personnel.

17 Q. [16:03:18] So also this is an assumption?

18 THE COURT OFFICER: [16:03:20] Rule of five seconds, please.

19 MR KNOOPS: [16:03:22] Sorry.

20 PRESIDING JUDGE TARFUSSER: [16:03:24] Yes, it's an assumption because he said
21 "I would think it is."

22 MR KNOOPS: [16:03:28]

23 Q. [16:03:30] But you were not -- you didn't verify yourself as a forensic expert this
24 chain of custody before coming to any assumption and conclusions?

25 A. [16:03:39] Your Honours, as a professional investigator, I would always observe

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1 chain of custody. It would remain extant and honestly it goes without saying, if I'm
2 handed something by OTP personnel, then I believe that to be one official to another.
3 They never left my, the OTP personnel never left my presence. The fragments never
4 left their sight.

5 I returned the fragments to the OTP personnel, where they were bagged and put into
6 the evidence chain. So to the best of my knowledge, the evidence chain was
7 maintained.

8 Q. [16:04:22] I have two final questions for you, Mr FitzGerald-Finch. The first
9 one relates to page C15 of your report. The question was asked by Mr Jacobs to you,
10 the recovering of fragments shortly after the alleged mortar attack by a member of the
11 public from the wall of the shop.

12 Now, the question which was not asked to you is the following. You mention in
13 your report that this fragment was recovered shortly after the alleged mortar attack.
14 What should we understand to be with the word "shortly"?

15 A. [16:05:15] Your Honours, I used the term "shortly" because the time between the
16 alleged mortar attack and the time between the shopkeeper recovering this fragment
17 from the wall of his shop is undetermined. I do not know that length of time, and so
18 I describe it in my report as the information was presented to me.

19 Q. [16:05:36] If you were informed that it would have been, for instance, one year,
20 would you have written down shortly?

21 A. [16:05:50] Your Honours, if I was given an exact time, I would have written an
22 exact time.

23 Q. [16:05:56] My final question, sir. You ever used yourself mortar in live fire?
24 You ever were part of a mortar unit using mortars in live fire?

25 A. [16:06:13] Your Honours, as I described when we first met, I have, whilst I've

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1 never been part of a formal mortar unit, i.e., the name of the organisation that I've
2 worked for has not had the word "mortar" in it, I have worked as an infantry soldier
3 using infantry weapon systems including mortar systems.

4 I have used mortar systems myself both as the operator and as a mortar fire
5 controller.

6 I've used mortar systems as a commander, both in training, extensively in training
7 and extensively on operations.

8 I spent weeks in Afghanistan living next to the mortar pit, which is where the mortar
9 teams operate, consulting with the mortar fire controller, consulting with the
10 commanders.

11 I have extensive use of mortar systems.

12 Q. [16:07:08] Well, then I'm very happy to question you on this issue, very lastly.

13 Are you familiar, sir, with the doctrine that the military commander of a mortar unit
14 is obliged to take written orders of his superior before he can launch a mortar grenade
15 in warfare?

16 A. [16:07:31] Yes, I am, I am aware of that. I mean, it's different, different people
17 have different doctrines, but that would be standard.

18 Q. [16:07:42] You have experience with mortar fire given by units based on oral
19 orders in a war situation?

20 A. [16:07:52] Yes, I do.

21 Q. [16:07:55] So it can happen that the mortar unit fires a mortar based on an oral
22 order of his superior?

23 A. [16:08:07] Your Honours, in a mortar fire mission, there is quite a significant
24 amount of information. It would be for an experienced mortar fire controller or a
25 mortar team, they could commit that information to memory. They are most likely

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1 to write that information down so that they can refer to it again.

2 Q. [16:08:26] Thank you very much.

3 That concludes our questioning, Mr President.

4 PRESIDING JUDGE TARFUSSER: [16:08:33] Thank you very much.

5 Now I revert to the Office of the Prosecutor asking if they have re-questioning.

6 MR GARCIA: [16:08:43] Your Honours, we don't have any further questions, but

7 just for the record I wish to put two references for the Chamber. It's regarding the

8 forensic mission report by Sabina Zenetta which was formally submitted into

9 evidence through paragraph 43. That's decision 629. The references would

10 be 0073-0906 at 0908 and at 0911. And those are regarding the questions of

11 inconclusive sites. And if we also look at the question of visits to Camp Commando,

12 I would give the reference to the Chamber of 0073-0931 at 0935 and, once

13 again, 0073-0906 at 0910.

14 I'm sorry, the first one should read 0073-0906 at --

15 PRESIDING JUDGE TARFUSSER: [16:09:35] Slowly, slowly, otherwise -- yes, okay.

16 THE INTERPRETER: [16:09:36] Message from the interpreters: Excessive speed and

17 quite a very long --

18 MR GARCIA: [16:09:42] 0073-0906.

19 PRESIDING JUDGE TARFUSSER: [16:09:44] Yes. But can we start again, because

20 otherwise we don't know where we were.

21 Yes, please, Mr Jacobs.

22 MR JACOBS: [16:09:54] (Interpretation) I'm trying to understand the meaning of

23 this particular exercise. I believe this is the time for re-questioning.

24 Now, if the Prosecution is -- well, I really don't quite understand why the Prosecution

25 is engaged --

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1 MR GARCIA: [16:10:11] They are just references for the Chamber, your Honour,
2 regarding the testimony.

3 PRESIDING JUDGE TARFUSSER: [16:10:15] Please speak slowly and without
4 overlapping. Now, please, start from scratch, because otherwise we don't
5 understand.

6 MR GARCIA: [16:10:23] So, your Honours, the references again --

7 PRESIDING JUDGE TARFUSSER: [16:10:26] What for?

8 MR GARCIA: [16:10:27] These are references regarding, I know a lot has been
9 mentioned about the inconclusive sites that were not in the reports, so in these reports,
10 one of them by the mission reports, there is indications as to what exactly happened.
11 This is for the Chamber, for the parties, so we can refer to them.

12 The first reference is 0073-0906. This is the forensic mission report. It was
13 submitted into evidence formally through paragraph 43 in decision 629, and I'd refer
14 the Chamber to 0908 in that regard. And also 0073-0906 at 0911.

15 PRESIDING JUDGE TARFUSSER: [16:11:09] We are talking about the reports from
16 the two, from the photographs and the reports on the OTP report on the mission?

17 MR GARCIA: [16:11:20] That's correct.

18 PRESIDING JUDGE TARFUSSER: [16:11:21] Dated 2 February 2015, just to be -- not
19 to mention the name.

20 MR GARCIA: [16:11:32] Just for the report under CIV-OTP-0073-0906, that's date of
21 30 January 2015. And those are the references that I've just given.

22 And as regards to the other mission report, it's CIV-OTP-0073-0931, this report is
23 dated 2 February 2015. And the indications or the references that are important
24 there are at 0073-0931 at 0935, and 0073-0906 and 0 --

25 PRESIDING JUDGE TARFUSSER: [16:12:26] Why are we giving all of this? The

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1 two reports, and that's it.

2 MR GARCIA: [16:12:31] Those are the two reports, your Honour, and those are the
3 references.

4 PRESIDING JUDGE TARFUSSER: [16:12:35] Yes. But you have no re-questioning?

5 MR GARCIA: [16:12:38] No re-questioning as I indicated.

6 PRESIDING JUDGE TARFUSSER: [16:12:41] Okay. Therefore, I would
7 have -- Mr FitzGerald-Finch, your testimony is concluded. I thank you for having
8 been here and for having answered to all the questions which were put to you. And
9 I wish you a safe trip back home, which is not as far as other witnesses which are here.
10 But still, it should be a safe trip home. Thank you very much.

11 THE WITNESS: [16:13:12] Thank you, your Honours.

12 PRESIDING JUDGE TARFUSSER: [16:13:13] Thank you.

13 (The witness is excused)

14 PRESIDING JUDGE TARFUSSER: [16:13:19] Now, just two things which, well, one
15 thing is that for your knowledge, on Thursday, the 6th, next week, we have only two
16 sessions in the morning because the afternoon session there is -- I'm engaged in
17 another Chamber, so we have only the two morning sessions.

18 And as far as the in-court protective measures requested for the next
19 witness, 706 -- or 607, yes, could be, the decision will be issued Monday morning
20 immediate just before we call the witness in.

21 Thank you very much. The hearing is adjourned to Monday 9.30. Thank you.

22 THE COURT OFFICER: [16:14:12] All rise.

23 (The hearing ends in open session at 4.14 p.m.)